

2014

## Marriage and Citizenship in the United States

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### Recommended Citation

Gardner, Shanella (2014) "Marriage and Citizenship in the United States," *Psi Sigma Siren*: Vol. 8 : Iss. 1 , Article 3.

Available at: [https://digitalscholarship.unlv.edu/psi\\_sigma\\_siren/vol8/iss1/3](https://digitalscholarship.unlv.edu/psi_sigma_siren/vol8/iss1/3)

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## *Marriage and Citizenship in the United States – Shanella Gardner*

Most countries associate being a citizen with having certain legal rights and being born in that country, although this has not always been the case, especially in the United States. When writing the U. S. Constitution, the founding fathers were thinking of white, male landowners to be given the legal rights as citizens. This would leave the remaining population of women, African Americans and other people of color to fight to be recognized as citizens. The Naturalization Act of 1790 was the first legislative act that defined who could be citizens in the United States.<sup>1</sup> It allowed citizenship for immigrants that were white and had good character. After the Civil War, section one of the Fourteenth Amendment gave the majority of people born in the United States the title of being a citizen. This amendment was passed to give citizenship to slaves from the South but women born or naturalized in the United States assumed that it meant that they were citizens too. Women would be informed by the government that their citizenship would be based on their marriage to their husbands. This would become known as derivative citizenship.

This article examines case laws and statutes that would restrict women from becoming full citizens by dictating who they could marry. It argues that, by restricting marriage rights, the United States government was able to mold the American population. Women who wanted to become citizens in America were reliant on the patriarchal and moralistic views of men on what American women should be.

### **Married Women's Status in the U.S. in the 18<sup>th</sup> to Mid-19<sup>th</sup> Centuries**

One early case that questioned whether a woman was an independent citizen was *Martin vs. Commonwealth of Massachusetts*.<sup>2</sup> James Martin was the son of William Martin and Ann Gordon Martin, who fled Massachusetts during the American Revolution because William Martin was a loyalist. The state of Massachusetts confiscated the property but James Martin petitioned the court to regain it. James's argument to the court was that his mother would have never willingly left her property but due to the law of coverture had to follow her husband. The

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<sup>1</sup> Naturalization Act, 1 Stat. 103 (1790).

<sup>2</sup> *Martin vs. Massachusetts*, 1 Mass. Reports 348 (1805).



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court had to decide if women were legally separate from their husbands. If a married woman was separate from her husband, then she could renounce her citizenship and make other legally binding decisions. The court found that married women were not legally separated from their husbands and could not make legal decisions such as denouncement of citizenship. This case was used as precedent in the late late-nineteenth century when many immigrant women were coming to America and also helped define American women's legal status when marrying a foreigner.

Another important case is *Shanks v. DuPont* in 1830.<sup>3</sup> Ann Scott was born in South Carolina and she inherited land after her father's death. Scott married a British officer and left South Carolina. Her property was confiscated by the state. When Mrs. Scott's children tried to regain her property after her death, the courts denied their request, stating that she gave up her citizenship once she married the British officer and gained his legal status. The U. S. Supreme Court ruled that that marrying an immigrant did not dissolve a woman's obligation to her native country. This case would be overturned by the Naturalization Act of 1855, which placed the legal status of women in the power of their husbands. It was significant because women's marriage did not at one point determine her citizenship. It was not until the restrictive immigration laws were passed that a women's status was tied to her husband.

## **Immigration and Marital Status**

Immigration and nationality policy between the years of 1855 and 1934 took away women's citizenship. In *Shanks v. DuPont*, the courts proclaimed that marrying a foreigner did not dissolve one's citizenship.<sup>4</sup> In the middle of the nineteenth century in Europe, laws towards women's legal position became more rigorous.<sup>5</sup> Most nations, before this change in policy, agreed that in order for a citizen to dissolve their citizenship, that citizen would have to give consent. The French, under the Napoleonic Code, proclaimed that when a woman married a foreigner, she gave consent to lose her citizenship with France.<sup>6</sup> These laws were followed in Britain and the United States.<sup>7</sup> The United States enforced this policy with two important acts, the Naturalization Act of 1855 and the Expatriation Act of 1907, which were primarily put into place to stop immigrants from entering the United States, but also removed all married women's

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<sup>3</sup> *Shanks v. Dupont*, 28 U.S. 242 (1830).

<sup>4</sup> Virginia Sapiro, "Women, Citizenship, and Nationality: Immigration and Naturalization Policies in the United States," *Politics Society* 13, no. 1 (January 1984): 6.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, 7

<sup>7</sup> *Ibid.*, 8



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independent nationalities.<sup>8</sup> The Act of 1855 proclaimed that any woman who married a foreigner would gain the legal position of her husband.<sup>9</sup> It would not be until the suffrage movement's reaction to the 1907 act that women would voice their outcry against their legal standing in the United States.<sup>10</sup> If women lost their status as citizens, they would not be able to vote.

Scores of women would not take notice of the Naturalization Act of 1855, which gave citizenship derivatively.<sup>11</sup> This changed when Congress enacted the Expatriation Act of 1907, which took away a woman's citizenship if she married an alien.<sup>12</sup> Outraged by the government's actions, women's rights activists argued that derivative citizenship was a political assault against women. After implementation of the Expatriation Act, married women lost their citizenship that was normally given to them by naturalization or birth.<sup>13</sup> Moreover, the government only bestowed citizenship to women that were deemed worthy of becoming American citizens by using derivative citizenship to deny full status to women who were considered part of the "sexually immoral classes."<sup>14</sup> By making married women's citizenship derivative, it gave men sole control over which women were given citizenship. Prior to these acts, the government allowed married women to pursue naturalization or to maintain her premarital citizenship in spite of her husbands' nationality, and it was not until 1855 that married women had to give up their individual sovereignty.<sup>15</sup>

The Naturalization Act of 1855 removed rights that U.S. law had ostensibly ensured to all persons within its jurisdiction, regardless of sex or marital status.<sup>16</sup> However, it also gave a level of protection to immigrant women by preventing automatic deportation or exclusion.<sup>17</sup> Some women protested the loss of their citizenship, but the government was unsympathetic to the protest.<sup>18</sup> The government felt that women having the right to consent to naturalization had no real purpose because their husbands could exercise political rights, serve in the military, and

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<sup>8</sup> Candice Lewis Bredbenner, *A Nationality of Her Own* (London, England: University of California, 1998), 16; Sapiro 8.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid., 10.

<sup>11</sup> Bredbenner, 15-34.

<sup>12</sup> Ibid., 16.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid., 17.

<sup>15</sup> Ibid., 19.

<sup>16</sup> Ibid., 20.

<sup>17</sup> Ibid., 21.

<sup>18</sup> Ibid.



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have the right to hold office.<sup>19</sup> Marital naturalization was not intended to protect immigrant women; it served to affirm the privileges of their husbands.

The most important law pertaining to women's citizenship was the Expatriation Act of 1907 which proclaimed that American women who married foreigners would automatically forfeit their citizenship to the United States.<sup>20</sup> This law was to stop white women from marrying Asian men, but it affected all women. For example, an American woman was denied entry into America because, even though she was a citizen of the United States, her husband was a national of Sweden.<sup>21</sup> The Expatriation Act was eventually overturned by the Cable Act of 1922, which proclaimed that women who were married to foreign men would not lose their citizenship unless the men were ineligible for citizenship. Until the Cable Act, many women were subjected to a law that left them legally powerless in their own country.

By implementing the Naturalization Act of 1855 and Expatriation Act of 1907, the federal government made marriage an institution that helped define a woman's political identity.<sup>22</sup> The government created incentives for some kinds of marriages and disincentives for others, thereby shaping the political body of America. There was a history of regulating marriage between whites and people of color in America. By regulating racially who can marry, the government helped shape racial order.<sup>23</sup>

## Civil War and Civil Rights

Before the Civil War, citizenship was something the states defined but after implementation of the Fourteenth and Fifteenth Amendments, the United States Constitution defined citizenship and what it entitled.<sup>24</sup> A citizen was entitled to certain civil rights such as to "make contracts, sue and testify in court, own and devise property, and pursue an occupation, all very important in daily life and prosperity."<sup>25</sup> During the nineteenth century, states and international treaties tried to remove these obstacles that earlier defined citizenship through civil rights.<sup>26</sup> Women, who were considered citizens, lost their property in marriage due to the

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<sup>19</sup> Ibid.

<sup>20</sup> Expatriation Act of 1907, 34 Stat. 1228 (1907).

<sup>21</sup> "Pair in Immigration Net: Former American Army Officer's Wife, Born in This Country, Denied Admission at Harbor." *Los Angeles Times*, Dec 11, 1924.

<sup>22</sup> Nancy F. Scott, "Marriage and Women's Citizenship in the United States, 1830-1934," *The American Historical Review* 103, no.5 (Dec. 1998): 1440-1474.

<sup>23</sup> Ibid., 1443.

<sup>24</sup> Ibid., 1445.

<sup>25</sup> Ibid., 1446.

<sup>26</sup> Ibid.



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doctrine of coverture but it did not mean they lost their citizenship.<sup>27</sup> In the U. S. Supreme Court case *Minor vs. Happersett*, Virginia Minor tried to vote in the state of Missouri.<sup>28</sup> Minor, a leader of the women suffragists, tried to use the Privilege and Immunity Clause of the Fourteenth Amendment to vote. The clause states that all citizens are given the same civil rights such as voting. The Supreme Court stated she was a citizen but denied her right to vote because she was a woman. This case was an example of civil rights not defining citizenship. After the Civil War, Congress soothed the South by expressing that the newly freed blacks who had gained citizenship did not necessarily mean that they gained political rights; *Minor* would be used as an example to allow “halfway” citizenship to blacks after the Civil War.<sup>29</sup>

Women’s marriage also became a standard for partial citizenship because marriage required that women were dependent on their husbands.<sup>30</sup> Marriage, along with property, made men the head of the household, which made him independent and gave him a voice in politics, unlike women who became dependent upon marriage.<sup>31</sup> And although by the mid-nineteenth century, most states allowed women to own their own property, ownership of property eventually faded as a prerequisite for political participation.<sup>32</sup> Women’s dependence, in the eighteenth century, would not negate her national citizenship.<sup>33</sup> This would change during the nineteenth century. In passing the Naturalization Act of 1855, Congress made wives and their children’s nationalities dependent on the male citizen, which increased men’s political privileges while limiting women’s.<sup>34</sup> One congressional member, Democrat Francis Cutting of New York, affirmed “by the act of marriage itself the political character of the wife shall at once conform to the political character of her husband.”<sup>35</sup>

The Act of 1855 raised the doctrine of coverture to the level of national identity. The aim of the Act of 1855 was to prevent Chinese people from infiltrating the American political body by preventing American women from marrying Chinese men.<sup>36</sup> In 1907, Congress pushed this further by passing the Expatriation Act, declaring any American woman who married a foreigner

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<sup>27</sup> Ibid., 1446.

<sup>28</sup> *Minor v. Happersett*, 88 U.S. 162 (1875).

<sup>29</sup> Scott, 1449-1451.

<sup>30</sup> Ibid., 1451.

<sup>31</sup> Ibid., 1452.

<sup>32</sup> Ibid., 1453.

<sup>33</sup> Ibid., 1455.

<sup>34</sup> Ibid., 1456.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid., 1459.



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would lose her citizenship.<sup>37</sup> This law discouraged American women from marrying immigrants, especially Chinese men, and prevented immigrant wives from becoming citizens.<sup>38</sup>

## **Marriage and the Nineteenth Amendment to the U. S. Constitution**

Women's enfranchisement through the Nineteenth Amendment helped initiate further challenges to the 1855 and 1907 acts. This resulted in passage of Cable Act of 1922.<sup>39</sup> Though the Cable Act overturned women losing their citizenship by marrying aliens, it did stipulate that if a woman lived in her husband's country for two years or any other foreign nation for five years, she gave up her citizenship.<sup>40</sup> Once again Congress gave men control over determining a woman's nationality by basing it on where the man lived. The Cable Act also took away immigrant wives' automatic citizenship once married to American men, and they would have to wait a year to be naturalized and still go through the citizenship procedure.<sup>41</sup> Congress still wanted men to control the ideal American family but their efforts were complicated by the Nineteenth Amendment because they did not want foreign women becoming voters upon marrying American men Marriage could not break a woman's national identity when marrying an alien but in the early twentieth century it still did not allow her to have full participating citizenship.<sup>42</sup>

After the Nineteenth Amendment was passed, most women wondered if this would change their political identity within the United States.<sup>43</sup> When women gained the right to vote, it changed their political standing whereas before the amendment women's status was dependent on men.<sup>44</sup> This status was still unclear because society continued to allow marriage to control women's citizenship outside of the electoral realm, and subsequently, as scholar Gretchen Ritter wrote, "the Nineteenth Amendment diminished the gender distinctiveness of citizenship, [but] it did not create equal citizenship."<sup>45</sup> The right to become a citizen was used by the government to shape an ideal political nation by organizing the roles and rights of different social groups by

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<sup>37</sup> Ibid., 1461.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid., 1464.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid., 1465.

<sup>42</sup> Scott, 1473

<sup>43</sup> Gretchen Ritter, "Gender and Citizenship after the Nineteenth Amendment," *Polity* 32, no. 3 (Spring, 2000): 345-375.

<sup>44</sup> Ibid., 346.

<sup>45</sup> Ibid., 346-347.



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using the courts to construct the rights and roles of different groups of citizens.<sup>46</sup> Specifically, the courts defined women's citizenship in jury service and married women's rights.<sup>47</sup>

Women hoped that the right to vote would help change their political and legal status in the United States because in the previous century the right vote was associated with first class citizenship.<sup>48</sup> In an effort to associate voting with citizenship in the 1920's, women activists openly promoted denying the right to vote to immigrants.<sup>49</sup> This effort showed the changing attitude toward the relationship between citizenship and voting.<sup>50</sup> The Nineteenth Amendment also shifted the common law limitations on married women's citizenship by defining "women's public, civic identity, and indirectly, by providing a new normative standard by which women were politically regarded."<sup>51</sup> Numerous women suffragists wanted the right to vote in order to advance women's issues and they believed that voting rights would change women's political position in the United States.<sup>52</sup>

Even though women won the right to vote, coverture continued to affect women's lives in the early twentieth century.<sup>53</sup> The Cable Act of 1922 overturned women losing their citizenship upon marrying a foreigner unless they were ineligible for citizenship (a provision aimed specifically at Asians).<sup>54</sup> Women activists tried to fight coverture in the states.<sup>55</sup> They were successful in this fight because by 1930, new laws concerning married women's rights and equal rights for women were being put into place.<sup>56</sup>

## Women and Expatriation

It was not until the Fourteenth Amendment that the Constitution defined who were considered citizens, but it did not address the subject of expatriation. In 1868, Congress passed the Expatriation Act, which gave governmental protection to citizens and naturalized citizens abroad.<sup>57</sup> But the 1907 act would be the first to detail how citizens could lose their citizenship,

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<sup>46</sup> Ibid., 348.

<sup>47</sup> Ritter, 348

<sup>48</sup> Ibid., 349.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid., 355.

<sup>53</sup> Ibid., 362.

<sup>54</sup> Cable Act, 42 Stat. 1021 (1922)

<sup>55</sup> Ritter, 364.

<sup>56</sup> Ritter, 364

<sup>57</sup> Elwin Griffith, "Expatriation and the American Citizen," *Howard Law Journal* 31, no. 453 (1988): 457.





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which established Congress' power over who lost their citizenship.<sup>58</sup> The first case to challenge this right was *Mackenzie v. Hare*.<sup>59</sup> The Supreme Court ruled that Congress could not take away a person's citizenship but the plaintiff willingly denounced her citizenship by marrying a foreigner.<sup>60</sup> The question later for the courts would be if they could remove a person's citizenship even if they voluntarily expatriated.<sup>61</sup> There would be three cases that would answer this question in 1958. The first case was *Perez v. Brownell*.<sup>62</sup> In *Perez*, an American citizen voted in Mexico.<sup>63</sup> The question for the court was if a person could lose their citizenship by voting in a foreign election.<sup>64</sup> The Supreme Court found that removing a person's citizenship did not require assent from the citizen because Congress could take away a person's citizenship through their implied power dealing with foreign affairs.<sup>65</sup> However, the court once again failed to clarify what is considered voluntary abandonment of citizenship.

The court had a second chance to explain expatriation with the case of *Trop v. Dulles*.<sup>66</sup> The subject for the court was if a citizen could lose citizenship if charged with desertion during wartime.<sup>67</sup> The court proclaimed that this was unconstitutional because there was no relationship between the statute and war power.<sup>68</sup> This would leave the court with two dissimilar opinions, which would be rectified by *Afroyim v. Rusk*.<sup>69</sup> This was another case regarding a citizen voting in foreign election. In this case, however, the court relied upon the Fourteenth Amendment, which did not give Congress power dissolve a citizen's citizenship because it did not have any provisions for taking citizenship away..<sup>70</sup> It would not be until the late twentieth century that the U. S. Supreme Court would determine if Congress had the right to take away a person's citizenship.

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<sup>58</sup> Griffith, 457-458.

<sup>59</sup> *Mackenzie v. Hare*, 239 U.S. 299 (1915)

<sup>60</sup> Griffith, 458.

<sup>61</sup> *Ibid.*, 458.

<sup>62</sup> *Perez v. Brownell*, 356 U.S. 44.

<sup>63</sup> Griffith, 461.

<sup>65</sup> *Ibid.*, 462.

<sup>65</sup> *Ibid.*, 462.

<sup>66</sup> *Trop v. Dulles*, 356 U.S. 86 (1958).

<sup>67</sup> Griffith, 464.

<sup>68</sup> *Ibid.*, 465.

<sup>69</sup> *Afroyim v. Rusk*, 387 U.S. 253 (1967).

<sup>70</sup> Griffith, 468.



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## **The Impact of Anti-Asian Campaigns on Women's Citizenship Rights**

The above laws were originally put into place to stop the flow of Chinese immigrants from entering the United States. During the nineteenth century, Asia had many upheavals that made coming to the United States a promise for better life with new economic opportunities. During mid-nineteenth century, China was going through the Taiping Rebellion in which thousands of civilians died. This upheaval caused thousands of Chinese people to migrate to America. Initially Chinese men were encouraged to come to the United States as cheap labor. They were hired on farms in Hawaii and on the transcontinental railroad. Sentiments towards the Chinese began to change in the late nineteenth century. The United States was experiencing an economic depression which caused a lot of people to lose their jobs. According to the new labor union movement, Chinese people were hired at lower wages and threatened the potential employment of white laborers.<sup>71</sup> This caused numerous people to blame the Chinese for multiple issues. This hatred would eventually lead all the way to Congress where Congress passed several discriminatory laws to limit the migration of Chinese people to the United States.

Immigration laws have been concerned with the roles of women for many years.<sup>72</sup> By defining these roles for women, these laws help build “the body politic around specific and exclusionary understandings of race, gender and citizen.”<sup>73</sup> It also gave an image of what the American family should look by restricting who came into the United States.<sup>74</sup> For example, beginning with the 1875 Page Law, followed by several Chinese exclusion acts between 1882 and 1924, immigration laws tried to keep out prostitutes. These laws caused immigrant women to be judged on their morality.<sup>75</sup> Women were judged on their sexuality, what work they did, their race, and the position in the family. Numerous women of many ethnicities would use these same laws to challenge the government to gain their citizenship.

The Page Act was the first national legislation to restrict Chinese labor and prostitution, but states were putting laws into effect earlier to stop the flow of Chinese prostitutes. In San Francisco in 1854, a municipal committee went to Chinatown and informed city council that most of the women in Chinatown were prostitutes.<sup>76</sup> California would pass Ordinance No. 546

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<sup>71</sup> George Anthony Peffer, *Forbidden Families: Emigration Experiences of Chinese Women Under the Page Law, 1875-1882*, ed. Charles McClain (New York: Garland Publishing, 1994), 318-336

<sup>72</sup> Martha Mabie Gardner, “The Qualities of a Citizen: Women, Immigration, and Citizenship in the United States, 1870-1965” (PhD diss., Stanford University, 2000), 3.

<sup>73</sup> *Ibid.*, 6.

<sup>74</sup> *Ibid.*, iv.

<sup>75</sup> *Ibid.*, 10

<sup>76</sup> Sucheng Chan, *The Exclusion of Chinese Women, 1870-1943*, ed. Charles McClain (New York: Garland Publishing, 2004) 2-43.



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that same year “to suppress houses of ill-fame within the city limits.”<sup>77</sup> The ordinance was racially motivated.<sup>78</sup> The police force only raided Mexican and Chinese prostitution houses. This ordinance did not do enough to satisfy the State of California, which passed a statute in March of 1866 called An Act for the Suppression of Chinese House of Ill Fame.<sup>79</sup> This act made Chinese brothels a public nuisance, made rental agreements on the property invalid, and charged landlords fines and possible jail time. California state legislature also passed the Act to Prevent the Kidnapping and Importation of Mongolian, Chinese and Japanese Females, for Criminal or Demoralizing Purposes in 1870 to try to decrease the import of Asian prostitutes. The law made it illegal to bring Asian women into California without proof that they voluntarily came to America.<sup>80</sup> This was an important law because California was stepping into American immigration policy although immigration was and still is controlled by the Federal Government. This was known by California state legislators, but anti-Chinese attitudes were so widespread that legislators challenged the Federal Government.

Other states followed California by making laws to keep the “Chinese” out. This outlook would lead to Congress passing the Chinese Exclusion Act of 1882.<sup>81</sup> The Chinese Exclusion Act prohibited laborers and prostitutes from entering the country, and it was extended in 1892. People who were not laborers had to have certificates proving that they were not laborers. This stipulation was placed in the bill to allow merchants to continue to enter America. Any Chinese-Americans who left the United States had to have a certificate to reenter the country. Many Asians were barred from entering the United States after the Chinese Exclusion Act but it was extremely difficult for Chinese women. Many of the immigration laws were ambiguous concerning women so immigration inspectors along with federal courts had to interpret the laws.<sup>82</sup> This was difficult because Chinese women’s citizenship would be determined by their husband’s status. If the women were unmarried, their status would be determined by the status of the man in charge of their family. Women were rarely given the documents to enter the country because inspectors did not know how to label them. They could not be laborers or merchants because this is what their husbands did. Their place was supposedly at home. Women were judged on what was considered to be morally acceptable. Their citizenship was their husband’s or the eldest male relative, a form of derivative citizenship.

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<sup>77</sup> *Ordinances and Joint Resolutions of the City of San Francisco* (Mason and Valentine, 1854), 264.

<sup>78</sup> Chan, 5.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*, 6

<sup>81</sup> Chinese Exclusion Act, 157 Cong. Rec. H3809 (1882).

<sup>82</sup> Chan, 17.



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One of the early court cases after the implementation of the Chinese Exclusion Act was a case regarding the admittance of Chinese woman Ah Quan in 1882.<sup>83</sup> She was the wife of a Chinese laborer. He was allowed to enter the country but she was denied because she did not have the proper documentation.<sup>84</sup> The judge stated “the wife of a laborer could not enter on the certificate issued to him alone.”<sup>85</sup> Judge Sawyer declared that a wife attained her husband’s status upon marriage, therefore Ah Quan needed to obtain her own documentation because she was now considered a laborer. Assumedly, Ah Quan was deported back to China.<sup>86</sup> In July of 1884, the government made another law to remedy the growing confusion on the entry of Chinese wives. The law declared “the sole permissible evidence now allowed for the entry of all Chinese persons who were not laborers was the certificate specified in Section 6-documents.”<sup>87</sup> Cheong Ah Moy, another Chinese laborer’s wife, was denied entry because she did not have a “Section 6” certificate.<sup>88</sup> Her husband assumed that she took on his status as a laborer so she did not need this certificate.<sup>89</sup> The judge presiding over this case stated that she did take the status of her husband but since she never worked as a laborer she needed a “Section 6” certificate.<sup>90</sup> These two cases are important because they emphasized the confusing interpretations of the legal system. Judge Sawyer based his decision on derivative citizenship, but in the second case, the presiding judge contradicted the current practice at the time. By requiring Ah Moy to have a separate certificate, the judge ruled that Ah Moy had to have a separate legal status from her husband.

Merchants were excluded from the Chinese Exclusion Act but this did not mean that their wives did not face difficulty trying to enter the United States. In one of the early cases, Chung Toy Ho, the wife of an Oregon merchant, and her daughter were denied entry by immigration officials because they did not have certificates of their own.<sup>91</sup> The immigration official denied her entry based on the ruling of the Treasury Department in 1889 which stated “the wife of a Chinese merchant who has never been in the United States cannot be allowed to enter the United States, with or without her husband, otherwise than upon the production of the certificate

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<sup>83</sup> In re Ah Moy, 21 F. 182, 182 (C. C. D. Cal. 1884).

<sup>84</sup> Chan, 18

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.,19.

<sup>88</sup> Case of the Chinese Wife, 21 F. 785 ( C.C. D. Cal. 1884).

<sup>89</sup> Chan, 19

<sup>90</sup> Ibid.

<sup>91</sup> In re Chung Toy Ho and Wong Choy Sin, 42 F. 398, 398 (D. Ore. 1890).



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required by Section 6 of the act of July 5, 1884.”<sup>92</sup> Judge Matthew Deady of the Circuit Court of the District of Oregon overturned this decision by ruling that this statute pertained to laborers.<sup>93</sup> Chan Shee, another merchant’s wife, applied for entry to America but was denied.<sup>94</sup> Immigration officials denied her by claiming that her marriage was not “satisfactorily established.”<sup>95</sup> She did have a marriage license which was in Latin that was given to her by a Catholic missionary in Canton, China. Chan Shee remarried her husband with the justice of the peace and a Catholic priest while fighting to overturn the immigration officials’ decision, which allowed immigration officials to argue that this proved that their marriage was not legal since they performed the ceremony again.<sup>96</sup> Luckily, the presiding judge agreed that their marriage was legal and that Chan Shee could enter the country.

Even when the courts intervened, there were conflicting views on who could come into America. Most decisions were based on the perception of the judge or immigration officials. With such confusion, enforcement officials had to interpret who could enter the country.<sup>97</sup> One question that arose was how to categorize women who were merchants and had inherited their husband’s businesses.<sup>98</sup> Immigrant officials embodied “patriarchal assumptions about the sacred unity of husband and wife, racist principles of maximum exclusion, and classist notions of merchant superiority.”<sup>99</sup> As soon the Chinese Exclusion Act was enacted, customs directors asked their superiors if the term “laborer” applied to females, married women, and servants.<sup>100</sup> The question of women having their own certificate was finally resolved with the requirement of women having “Section 6” certificates. This was a contradictory view. Women took the status of their husband but still had to get their own individual certificate to get back into the country.<sup>101</sup> Attorneys representing Chinese merchants opposed wives having to get separate certificates; they sarcastically asked if the wives of merchants would have to get documents claiming they were women.<sup>102</sup>

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<sup>92</sup> Chan, 22

<sup>93</sup> Ibid.

<sup>94</sup> Ex parte Chan Shee, 236 F. 579, 579 (N. D. Cal 1916).

<sup>95</sup> Chan, 25.

<sup>96</sup> Ibid.

<sup>97</sup> Kitty Calavita, “Collisions at the Intersection of Gender, Race, and Class: Enforcing the Chinese Exclusion Laws,” *Law and Society Review* 40, no.2 (2006): 249-281.

<sup>98</sup> Ibid., 251.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid., 261.

<sup>101</sup> Ibid., 263.

<sup>102</sup> Ibid., 265.



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Another puzzling case for the immigration enforcers was an issue of a dead merchant's wife.<sup>103</sup> Her husband passed away and she inherited his business. While trying to enter America, she was denied because officials did not consider that a woman could be a merchant.<sup>104</sup> According to the Chinese Exclusion Act, this woman should have been allowed to enter, but due to prejudice and patriarchal views, she was refused.

Many Chinese immigrants and their families refused to be deported. Instead, they chose to take most cases to court, twenty of which were appealed to the U. S. Supreme Court.<sup>105</sup> The government believed that the Chinese were unable to assimilate into American society. By taking their cases to court, the Chinese were fighting to ensure they could become a part of American society.<sup>106</sup> To encourage good relations with China, the United States implemented the Burlingame Treaty to encourage migration between China and the United States.<sup>107</sup> Even with the Burlingame Treaty in place, California tried to stop the influx of Chinese immigrants. The California Constitution of 1880 proclaimed "No native of China... shall ever exercise the privileges of an elector in this state."<sup>108</sup> The California legislature in 1852 passed a tax which did not allow anyone who was not a citizen to mine in California, and California would pass many racially discriminatory laws to prevent Chinese from working in the state of California.

After the Chinese Exclusion Act, many Chinese people were often refused entry or even re-entry into the country, especially laborers.<sup>109</sup> Two laborers, Ah Sing and Chew Hong, were immediately detained after the law was passed. Ah Sing was a cabin waiter on American ship and Chew Hong was a laborer returning to the United States. They both took their cases to the federal courts. The court determined that the Act did not apply retroactively so they were allowed re-entry into the United States. Numerous cases were won due to Chinese immigrants taking their cases to federal courts, causing Congress to put in place amendments that could overturn decisions that were advantageous to Chinese immigrants.<sup>110</sup> For instance, Congress passed the Scott Act of 1888, which prevented Chinese laborers from entry or re-entry into the United States. Chae Chan Ping arrived in the United States in 1875. He went to China in 1887

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<sup>103</sup> Ibid., 269.

<sup>104</sup> Ibid.

<sup>105</sup> Paul Yin, "The Narratives of Chinese-American Litigation During the Chinese Exclusion Era," *Asian American Law Journal* 145, no. 19 (2012), 1.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid., 2.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid., 3.

<sup>110</sup> Ibid., 4.



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and upon his return in 1888, the Scott Act was being enforced.<sup>111</sup> Chan Ping challenged his denial with the Supreme Court. The court questioned the constitutionality of the Scott Act but proclaimed that they “disclaimed any role as a censor of the morals of the other departments of the government.”<sup>112</sup> By upholding the Scott Act, the court allowed for many Chinese immigrants to be separated from their families.

The vagueness of the laws and the lack of decisions from the higher courts led to each federal district court making their own decisions on allowing merchants’ wives and children to enter the United States.<sup>113</sup> The U. S. Supreme Court decided to hear a case to settle some of the confusion over the rights of Chinese merchant husbands. The case that the court decided to hear was *Gue Lim*. Gue Lim was denied entry by the district court because she did not have the proper certificate. Judge Cornelius Hanford overturned the decision, arguing that the “wife of a Chinese person has the same status as her husband, and belongs to the class he belongs, whether she is in fact a laborer or not.”<sup>114</sup> Judge Sawyer used the above argument to deny entry to Ah Moy.<sup>115</sup> The U. S. Supreme Court supporting husbands’ rights for Chinese men led to a new view of the requirements of the Exclusion Act. This allowed Chinese petitioners to “claim their treaty rights to equal privileges where the immigration laws had not fixed differential treatment based on race.”<sup>116</sup> Chinese husbands used this case during the remainder of the nineteenth and twentieth century to argue for their rights as men in American society.

## Conclusion

American citizenship was not defined when writing the U. S. Constitution. It was not until the Fourteenth Amendment that the Constitution declared who was a citizen. Before the Fourteenth Amendment, there were numerous cases regarding the legal status of women, who would be informed that their legal status was tied to the status of their husband. This practice continued until the twentieth century when a racially motivated statute, the Expatriation Act of 1907, was put into place. It enabled the government to remove women’s citizenship. This statute and many others would affect Chinese immigrants in particular,, especially Chinese women. Chinese families used the court system to try to gain their entry into America, causing confusion

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<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Todd Stevens, “Tender Ties: Husband’s Rights and Racial Exclusion in Chinese Marriage Cases, 1882-1924,” *Law & Social Inquiry* 27, no. 2 (Spring, 2002): Stevens, 283.<sup>114</sup> Ibid., 284.

<sup>114</sup> Ibid., 284.

<sup>115</sup> Ibid., 285.

<sup>116</sup> Ibid., 286.



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among immigration officials and the courts. Women suffragists and other activist groups also challenged laws that they feared would cost them their citizenship and their right to vote. All of these challenges to discriminatory laws would continue throughout the twentieth century and it would take until the 1960's and 1970's to secure some equal citizenship rights for women.