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"She Was Surprised and Furious": Expatriation, Suffrage, Immigration, and the Fragility of Women's citizenship, 1907-1940

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"SHE WAS SURPRISED AND FURIOUS": EXPATRIATION, SUFFRAGE, IMMIGRATION, AND THE FRAGILITY OF WOMEN'S CITIZENSHIP, 1907-1940

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INTRODUCTION

Illinois, in 1936, adopted a new election law that required documentary proof of U.S. citizenship to vote.[1] Seemingly simple in the abstract, on the ground it generated a host of problems. Some Illinois voters abruptly learned that they

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1. *See* Adena M. Rich, *Naturalization and Family Welfare: Doors Closed to the Noncitizen*, 14 SOC. SCI. REV. 237, 238-39 (1940).

were not U.S. citizens.[2] The law particularly affected U.S.-born women who had been stripped of their citizenship in 1907 when Congress passed the Expatriation Act.[3] This act took away the U.S. citizenship of women married to men who were not U.S. citizens.[4] One U.S.-born woman who attempted to vote was "surprised and furious" to learn that the government had revoked her citizenship, without notice, in 1913 when she married a Polish man.[5] She had previously voted in elections and considered the vote "an important and precious privilege."[6] For such women to suddenly discover that they were not U.S. citizens was an emotional shock that not only made them ineligible to vote but also put their civil, social, and economic rights in jeopardy.

Although there have been widespread celebrations of the centennial of the Nineteenth Amendment, women's suffrage opened a fraught labyrinth of questions regarding which women were actually U.S. citizens eligible to vote and receive other benefits of citizenship. The Nineteenth Amendment was not an on-off switch, a neat before and after. Instead it created a messy reality encompassing not only who could vote but also the very meaning of women's citizenship and relationship to the state. As we shall see, the Nineteenth Amendment was juxtaposed with more than a century of common and statutory law that denied women the rights of full citizenship, and these laws and practices continued well after passage of the Amendment. Likewise, during the twentieth century the importance of citizenship—of belonging to a sovereign nation—grew. In fact, passage of the Nineteenth Amendment corresponded with a period of time in which white supremacism and xenophobia were on the rise and the U.S. passed increasingly restrictive immigration and naturalization laws. These laws further enshrined patriarchy and racial hierarchies, opening up the questions of whether and how immigrant women might become citizens and what citizenship even meant for such women.

This article stands at the intersection of women's history and the history of citizenship, immigration, and naturalization laws. The first part of this article proceeds by examining the general legal status of women under the laws of coverture, in which married women's legal existence was "covered" by that of their husbands. It then discusses the 1907 Expatriation Act, which resulted in women who were U.S. citizens married to non-U.S. citizens losing their citizenship. The following sections discuss how suffragists challenged the 1907 law in the courts and how passage of the Nineteenth Amendment—and with it a new concept of women's political autonomy—conflicted with the 1907 law. The article continues by analyzing the 1922 Cable Act, which was intended to redress the 1907

2. Doris Lockerman, *Women's League Straightens Out Puzzled Voters*, CHI. DAILY TRIB., Nov. 5, 1938, at 5.

3. *See* Expatriation Act of 1907, Pub. L. No. 59-193, Ch. 2534 § 3, 34 Stat. 1228.

4. *Id.*

5. Rich, *supra* note 1, at 268.

6. *Id.*

law by providing a process for U.S. women who had lost their citizenship to regain it.[7] Yet the Cable Act was extraordinarily stingy, and it created new problems for immigrant women attempting to gain U.S. citizenship and for expatriated U.S. women attempting to regain citizenship.[8]

The second part of the article explores the actual legal problems that women brought to Chicago's renowned Immigrants' Protective League—an organization founded and managed by some of the leading feminist reformers of the Progressive and New Deal Era and which provided legal advice and help to immigrants. Using the League's documents, the article excavates how the 1921 and 1924 Immigration Quota Acts, along with the Cable Act, continued to discriminate against women and prevented some immigrant women from reuniting their families or gaining the benefits of citizenship. The article then examines the onset of large-scale deportations of immigrants in the 1930s and the specific and gendered pain that such immigrant women faced. The final part of the article explores the League's efforts to amend discriminatory immigration and citizenship laws.

The documents of the League allow us to perceive how law on the books collided with the lived experiences of women, especially poor and working-class women immigrants. Likewise, they reveal how ordinary people gained legal literacy as they learned about laws that they did not know existed or applied to them. Looking at both formal law and law as lived on the ground, we see how, repeatedly, even white women's claims to citizenship and its benefits were treated by the U.S. government as trivial, as opposed to the vital ways in which citizenship was crucial to so many women.

I. COVERTURE, EXPATRIATION, AND WOMEN'S CITIZENSHIP

A. Coverture and Citizenship

Coverture is crucial to understanding the historical meaning of women's legal rights and citizenship in the U.S. Under this common law doctrine, married women's legal identities theoretically merged into their husbands' and they lost the legal ability to independently own property, enter into contracts, own their

7. Act of Sept. 22, 1922 (Cable Act), ch. 411 § 4, Pub. L. No. 67-346, 42 Stat. 1022. The Act is commonly called the Cable Act, as Congressman John Cable authored and supported it. CANDICE LEWIS BREDBENNER, A NATIONALITY OF HER OWN: WOMEN, MARRIAGE AND THE LAW OF CITIZENSHIP 89 (1998).

8. Other excellent scholars have, with sophistication and subtlety, narrated large parts of this complicated history. For a detailed discussion of immigration and naturalization law and women's citizenship, see generally MARTHA GARDNER, THE QUALITIES OF A CITIZEN: WOMEN, IMMIGRATION, AND CITIZENSHIP, 1870-1965 (2005); Kristin Collins, *When Fathers' Rights Are Mothers' Duties: The Failure of Equal Protection in Miller v. Albright*, 109 YALE L.J. 1669 (2000); Nancy Cott, *Marriage and Women's Citizenship in the United States, 1830-1934*, 103 AM. HIST. REV. 1440 (1998).

own wages, sue in court, or establish an independent domicile.[9] The law deemed that women consented to coverture and their loss of property and other rights by the very act of entering into marriage.[10] Coverture constructed men as rights-bearing, property-owning, independent heads of households; such men stood in contrast to their dependent wives and children.[11] Women legal reformers from the 1840s onward were deeply aware of coverture and sought at every turn to dismantle it.[12] Yet, even when states began enacting Married Women's Property Acts to abolish coverture first in the 1840s and then in the 1860s, its shadow was long, and courts and legislatures often reanimated coverture into the twentieth century.[13] Coverture went directly to women's relationship to the state and the meaning of women's citizenship, which had long been mediated through the patriarchal family.[14]

Related to coverture were a large variety of state laws, court cases, and even local government rules stating that a woman's domicile was that of her husband, even when this was a complete myth.[15] Sophonisba Breckinridge, a leading social worker, academic, reformer, and longtime officer of the Immigrants' Protective League, elaborated that it made no difference under the laws of coverture whether the wife had ever actually set foot in the husband's domicile.[16]

Even under coverture, however, a woman who was a U.S. citizen, either born or naturalized, generally remained a U.S. citizen even if she married a non-U.S. citizen, at least so long as she remained in the U.S.[17] In other words, married women generally possessed their own individual U.S. citizenship, which was not relinquished upon marriage to a noncitizen.[18]

As immigration to the U.S. increased in the 1840s, the question arose

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9. *See generally* HENDRIK HARTOG, MAN & WIFE IN AMERICA: A HISTORY 93-100 (2002); AMY DRU STANLEY, FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION 10-11 (1998).

10. *See* STANLEY, *supra* note 9, at 10-11; HARTOG, *supra* note 9, at 100-01.

11. Cott, *supra* note 8, at 1452-53.

12. *See* 1 HISTORY OF WOMAN SUFFRAGE 70-71 (Elizabeth Candy Stanton et al. eds., 1881).

13. NORMA BASCH, IN THE EYES OF THE LAW: WOMEN, MARRIAGE, AND PROPERTY IN NINETEENTH-CENTURY NEW YORK 27-29 (1982).

14. LINDA K. KERBER, NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATION OF CITIZENSHIP 26-27 (1998); *see also* Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 948, 977-94 (2002).

15. *See* HARTOG, *supra* note 9, at 2-23, 106, 123-28; SOPHONISBA P. BRECKINRIDGE, MARRIAGE AND THE CIVIC RIGHTS OF WOMEN: SEPARATE DOMICILE AND INDEPENDENT CITIZENSHIP 3-18 (1931).

16. *See* BRECKINRIDGE, *supra* note 15, at 8-9.

17. Luella Gettys, THE LAW OF CITIZENSHIP IN THE UNITED STATES 121 (1934) (discussing multiple cases before 1907 when American women did not lose their citizenship upon marriage to an alien).

18. BREDBENNER, *supra* note 7, at 58-59.

whether the non-U.S. wives of U.S. citizen husbands maintained their native citizenship. Congress, in 1855, passed a law providing that an alien woman, eligible for naturalization, would automatically become a naturalized citizen upon marriage to a husband who was a U.S. citizen.[19] In other words, such a woman took the U.S. citizenship of her husband. This concept became known as derivative citizenship.[20] Within the context of coverture, it at least made logical sense that a married woman's citizenship would be covered by that of her husband's citizenship. It is important to recognize, however, that only women derived their citizenship from husbands. Alien husbands of wives who were U.S. citizens did not take their citizenship from their wives.

Underlying the 1855 Act was a normative assumption that a wife's relationship to the state would be mediated by her husband and that a wife's citizenship should match that of her husband. Historian Nancy Cott writes of the 1855 law, "It was as if each male citizen who married a foreigner 'annexed' and naturalized her, as the United States naturalized by treaty the inhabitants of territory conquered or purchased."[21]

The Act also reaffirmed and reified certain racial hierarchies, as automatic citizenship only applied to foreign wives who could be "lawfully naturalized."[22] As we will see, such wording would have significant ramifications, as a 1790 federal statute provided that naturalization was limited to "whites" (and, after 1870, also to those of African descent).[23] Thus in the intersection of gender and race, many women, especially those from Asia, were not deemed worthy of even U.S. derivative citizenship.[24]

B. The Expatriation Act of 1907 and the Loss of Women's Citizenship

In 1907, Congress passed the Expatriation Act.[25] The law shockingly revoked the citizenship of women—both born U.S. citizens and naturalized—who were married to non-U.S. citizens.[26] This applied whether or not the couple resided in the U.S. In contradiction with modern understandings of the rule of law or due process, the act applied retroactively, meaning that thousands of women

19. Act of Feb. 10, 1855, ch. 71, § 2, 10 Stat. 604.

20. Ernest J. Hover, *Derivative Citizenship in the United States*, 28 AM. J. INT'L L. 255, 255 (1934).

21. Cott, *supra* note 8, at 1457.

22. Act of Feb. 10, 1855 Act § 2.

23. Naturalization Act of 1870, ch. 254, § 7, 16 Stat. 254 (1870); Naturalization Act of 1790, ch. 3, §1, 1 Stat. 103.

24. On Chinese wives and immigration, see Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 662 (2005).

25. Expatriation Act of 1907, Pub. L. No. 59-193, Ch. 2534 § 3, 34 Stat. 1228.

26. *Id*. § 3.

simply lost their U.S. citizenship overnight without notice.[27] The State Department urged Congress to pass the Act for the bureaucratic reason that it needed clearer and more uniform rules regarding who was a U.S. naturalized citizen entitled to a U.S. passport and consular protection while abroad. The State Department was also concerned that naturalized citizens were shirking their duties by living abroad and having dual citizenship.[28]

The State Department further asserted that U.S. women who married men who were not U.S. citizens presented a series of problems. Some countries automatically provided a wife with derivative citizenship.[29] This was the case in the U.S. following the 1855 Act, which provided U.S. citizenship to foreign women who married U.S citizen husbands.[30] Other countries, however, allowed a woman to maintain her native citizenship.[31] This variation in law could result in a wife having dual citizenship in her native country and in her husband's country.[32]

To prevent this, the State Department advocated that U.S. citizen women who married non-U.S. citizen husbands lose their U.S. citizenship.[33] In making its recommendation, the State Department used the language of coverture: "That an American woman who marries a foreigner shall take during coverture the nationality of her husband . . . ."[34] The Department argued that expatriation was necessary to prevent dual citizenship and that international law required a uniform rule.[35]

Lurking just below the surface of the Act was the idea that an American woman who married a foreigner had deserted and betrayed the U.S. and that her allegiance to her husband took precedence over her loyalty to her country.[36] Indeed, the very language of "expatriation" elides the affirmative action taken by the state of revoking a woman's citizenship. Expatriation referred to voluntarily relinquishing one's citizenship.[37] In contrast, a person being stripped of his or her U.S. citizenship occurred only as punishment for the crime of desertion

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27. BREDBENNER, *supra* note 7, at 66. It is simply not known how many women actually lost their citizenship. One of the most well-known cases involved the expatriation of William Jennings Bryan's daughter, Ruth Bryan, when she married an English husband. *See generally* Daniel B. Rice, *The Riddle of Ruth Bryan Owen*, 29 YALE J.L. & HUMAN. 2 (2017). After regaining her citizenship in 1925, she was elected to Congress. *Id.*

28. *See* BREDBENNER, *supra* note 7, at 57-58, 60; U.S. Dep't of State Citizenship Board, "Report on the Subject of Citizenship, Expatriation, and Protection Abroad," H.R. Doc. No. 326, 59th Cong., 2d Sess. 13-14, 18 (1906).

29. U.S. Dep't of State Citizenship Board, *supra* note 28, at 29-33.

30. *Id*. at 29-31.

31. *Id*. at 32-33.

32. *Id*. at 33.

33. *Id*. at 3.

34. *Id*.

35. *Id.* at 33.

36. *See* Cott, *supra* note 8, at 1461-62.

37. Brief for the Plaintiff at 21-23, Mackenzie v. Hare, 239 U.S. 299 (1915) (No. 376).

from the military or by sailors.[38] Thus, the use of "expatriation" by the Act draped a woman's decision to marry a non-U.S. citizen in the language of voluntary relinquishment of her citizenship.[39] This argument mirrored the older idea that women voluntarily accepted the loss of their property and legal identity upon marriage.[40] Problematically, some countries did not recognize a U.S. wife as a citizen of her husband's country. This left such women stateless.[41]

In an effort to dismiss the serious consequences of the Act, popular culture portrayed those women affected by the 1907 Act as young heiresses who married into European aristocracy, abandoning U.S democracy for monarchy.[42] This characterization, however, did not reflect reality, as many women who lost citizenship were first-generation, working-class Americans or immigrants who had become naturalized U.S. citizens.[43] After passage of the Expatriation Act, the State Department began rejecting the U.S. passport applications of expatriated women, whether or not they were entitled to citizenship in their husbands' countries.[44]

The timing of the Act is puzzling, as it occurred during the campaign for women's suffrage and after most states had passed statutes repealing some of the most drastic consequences of coverture.[45] The Act perhaps represented a backlash to the expanding acceptance of women's legal and political autonomy, including the right to vote.[46] In fact, in some locales, women already possessed full or limited suffrage and in just twelve years the Nineteenth Amendment would be enacted.[47] In such a context, the Expatriation Act could be read as exhibiting a return to concepts of coverture in which a married woman's independent legal identity was covered by that of her husband. Likewise, it perhaps represented a fear of women's growing autonomy as citizens. Such autonomy could destabilize the construct that husbands were heads of families, as well as heads of state.

Yet, women's rights organizations did not immediately condemn the Act, and it is difficult to know why there was no outcry. Perhaps few people knew about the Act as Congress passed it quickly and without much fanfare.[48] It is also possible that the Expatriation Act seemed of little consequence to women's organizations, given the scarce material citizenship rights that women possessed at the time of its passage.

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38. *Id.* at 22.
39. BREDBENNER, *supra* note 7, at 60.
40. KERBER, *supra* note 14, at 15; STANLEY, *supra* note 9, at 10-11.
41. BREDBENNER, *supra* note 7, at 27-28.
42. *Id.* at 61-62.
43. *Id.*
44. *Id.* at 58.
45. *Id.* at 5.
46. *See id.* at 57.
47. *Id.* at 64.
48. *Id.* at 63.

C. Myth Making and Women's Expatriation of Citizenship in the U.S. Supreme Court

Although the Expatriation Act may not have immediately provoked women's ire, as women gained suffrage, the Act had significant material consequences.[49] Suddenly, U.S.-born women who believed that they were U.S. citizens discovered upon trying to vote that they were no longer citizens, due to their marriage to non-U.S.-citizen husbands.[50] Some of these women began to litigate the constitutionality of the 1907 Act. Ultimately, however, the U.S. Supreme Court confirmed both the reasoning of the law and the power of Congress to pass it.[51] Furthermore, the Court was clear that U.S.-born women's possession of U.S. citizenship was not protected by the Fourteenth Amendment of the U.S. Constitution.[52]

Ethel Mackenzie, a California suffragist, was a born U.S. citizen.[53] When she married a British man, she lost her citizenship pursuant to the 1907 Act, even though the couple lived in and intended to remain in California.[54] Women had won suffrage in California in 1911; and Mackenzie attempted to register to vote in San Francisco in 1913. She was denied registration on the grounds that she was not a citizen by virtue of her marriage, and she brought suit against the California Board of Elections for violations of her Fourteenth Amendment rights.[55] Mackenzie lost the case.[56] As the California court stated, whether or not a woman married to a U.S. citizen intended to relinquish her U.S. citizenship was of no consequence: "She must bow to the will of the nation."[57]

On appeal to the U.S. Supreme Court, Mackenzie's lawyers submitted a powerful brief, arguing that the Fourteenth Amendment protected women's U.S. citizenship, and that the mere fact of a woman marrying a non-U.S. citizen could not constitute her voluntary relinquishment of citizenship.[58] Expatriation, it argued, went to a citizen's right to voluntarily give up their citizenship, not the government taking his or her citizenship.[59] The brief continued that such a law had more to do with outdated notions of coverture and the role of a wife than real concern about uniform international law or a woman's actual allegiances.[60] It emphasized that with the advent of suffrage, a wife was "a *political* entity apart

49. *Id*. at 64.
50. *Id*.
51. Mackenzie v. Hare, 239 U.S. 299, 311 (1915).
52. *Id*. at 310.
53. Mackenzie v. Hare, 165 Cal. 776, 778 (1913).
54. *Id.*
55. *Id*.
56. *Id.* at 786.
57. *Id*. at 783.
58. Brief for the Plaintiff at 40-42, Mackenzie v. Hare, 239 U.S. 299 (1915) (No. 376).
59. *Id*. at 40.
60. *Id.* at 42-45.

from her husband."[61]

In contrast, the defendant's brief primarily argued that a wife deriving her citizenship from her husband was an important part of international law.[62] The defendant emphasized that the 1907 Act was simply a corollary to the 1855 Act, which provided derivative U.S citizenship to foreign wives.[63] A wife's citizenship followed her husband's.

The U.S. Supreme Court rejected Mackenzie's arguments wholesale. It read the Expatriation Act broadly, finding that Congress was well within its power.[64]

> The identity of husband and wife is an ancient principle of our jurisprudence. It was neither accidental nor arbitrary and worked in many instances for her protection. There has been, it is true, much relaxation of it, but in its retention as in its origin it is determined by their intimate relation and unity of interests, and this relation and unity may make it of public concern in many instances to merge their identity, and give dominance to the husband. It has purpose, if not necessity, in purely domestic policy; it has greater purpose, and, it may be, necessity, in international policy. And this was the dictate of the act in controversy. Having this purpose, has it not the sanction of power?[65]

Thus, as late as 1915, the supposed universal importance of the male head of household representing the family through his citizenship simply trumped any argument that the Fourteenth Amendment protected the citizenship of U.S. women. The Court further adopted the view that women who married noncitizens had voluntarily consented to expatriation by the marriage itself, even when wives had no notice of such consequences.[66]

Thus, decades after states had passed statutes ending the most noxious elements of coverture, the Supreme Court gave it new life. Coverture had long rested on the legal myth that a woman by choosing to marry *voluntarily* gave up her own legal existence and property to her husband.[67] Using similar logic, the Court created the legal myth that women upon marriage gave up their U.S. citizenship. The Court further refused to grapple with the reality that, historically, women had not automatically lost their U.S. citizenship under the common law. The Court ducked these real issues with the excuse that to do so would make the opinion "very voluminous" and that an analysis of history was of little interest given "popular sentiment on the issue."[68] Women were not even entitled to a full and honest determination of the legal issues raised by the Act.

The *Mackenzie* opinion is frustratingly similar to *Bradwell v. Illinois*, an

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61. *Id*. at 45.

62. Brief for the Defendant at 25-28, 33-43, Mackenzie v. Hare, 239 U.S. 299 (1915) (No. 376).

63. *Id*. at 2-3, 7.

64. Mackenzie v. Hare, 239 U.S. 299, 310 (1915).

65. *Id*. at 311.

66. *Id*. at 309.

67. STANLEY, *supra* note 9, at 10-11.

68. *Mackenzie*, 239 U.S. at 311.

1873 case in which the U.S. Supreme Court held that it was not a violation of the Fourteenth Amendment for a state to refuse women admission to the legal bar.[69] The concurring opinion by Justice Bradley highlighted that coverture, women's supposed fragility, and her domestic duties made law an unsuitable, if not impossible, career for women.[70] The *Mackenzie* decision was but one more case in which the Supreme Court refused to recognize or protect the rights of women.[71]

D. Women's Suffrage, the Cable Act, and the Partial End of Derivative Citizenship

Passage of the Nineteenth Amendment, the culmination of a seventy-year campaign, was a watershed moment for many, as it provided a constitutional right to women's suffrage. Suffrage also highlighted the meaning of women's citizenship, their relationship to the state, and what possible "equality" between men and women might look like. Ideas such as a woman's derivative citizenship were for many women's rights activists and others incompatible with women's suffrage and political autonomy.

As women won the Constitutional right to vote, the effects of the 1907 Expatriation Act became clearer. Women who were U.S. citizens who married noncitizen husbands learned as they attempted to register to vote that they were no longer U.S. citizens. In contrast, immigrant wives of U.S. citizens could vote as they automatically gained citizenship under the 1855 Act.[72] That naturalized immigrant men and their wives could vote, when native-born women who had lost their citizenship could not, infuriated some suffragists and suffrage organizations.[73] A variety of women's organizations began campaigning to repeal that portion of the 1907 Act which expatriated U.S. women, as well as the 1855 Act that provided citizenship for foreign wives.[74]

Two years after passage of the Nineteenth Amendment, Congress enacted the Cable Act in 1922 as a corollary to the Nineteenth Amendment.[75] In part, it read: "That the right of any woman to become a naturalized citizen of the United States shall not be denied or abridged because of her sex or because she is a married woman."[76] The Cable Act provided (at least theoretically) that the citi-

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69. Bradwell v. People of Illinois, 83 U.S. 130, 139 (1873).

70. *Id*. at 141-42.

71. *See also* Minor v. Happersett, 88 U.S. 162, 178 (1874) (holding that the Fourteenth Amendment did not guarantee women a right to vote).

72. BREDBENNER, *supra* note 7, at 55.

73. *Id.* at 48-50.

74. *Id.* at 86-89.

75. Act of Sept. 22, 1922 (Cable Act), ch. 411 § 4, Pub. L. No. 67-346, 42 Stat. 1022, 1021-22.

76. *Id.* at § 1.

zenship of a wife would no longer follow that of her husband. Women's organizations across the country supported the Act, viewing it as a step towards equality of citizenship and women's autonomy, as it severed marital status and the power of husbands from citizenship.[77] The Cable Act contained the possibility of an intellectual and ideological paradigm shift as women's citizenship was now to be independent and non-derivative. This, at least theoretically, repositioned women as autonomous and independent citizens with a direct connection to the state. Adena Miller Rich, the Executive Director of the Chicago Immigrants' Protective League, proclaimed that the "Cable Act was vigorously supported by groups of those who had secured passage of the Suffrage Amendment, and who saw it at once as the spirit of the Amendment in action."[78]

Some women's organizations soon realized that their optimism regarding the Cable Act was premature.[79] The Cable Act contained multiple contradictions, tensions, and exceptions that enshrined differences between men and women's citizenship and rights.[80] It simultaneously had drastic on-the-ground consequences. Pursuant to the Act, after 1922, women who were U.S. citizens and who married noncitizens (eligible to become U.S. citizens) did not automatically lose their U.S. citizenship upon marriage.[81] The Act, however, did not reinstate the citizenship of those women who had lost their U.S. citizenship in the years between 1907 and 1922.[82] Rather, the Act required such women to be naturalized pursuant to an expedited naturalization process that still condescendingly required such women to pass a naturalization examination and take a loyalty oath.[83]

Furthermore, the Cable Act contained a provision that dramatically penalized U.S. women who married men who were ineligible for citizenship.[84] Pursuant to a 1917 law, national origins which made immigrants ineligible for citizenship now included a vast swath of Asia, which stretched from India to the Pacific Islands.[85] Likewise, under the 1790 Naturalization statute, anyone who was not "white" or of African descent was also ineligible for citizenship.[86] Women who

77. BRECKINRIDGE, *supra* note 15, at 24-25.

78. Yoosun Park, *"A Curious Inconsistency": The Discourse of Social Work on the 1922 Married Women's Independent Nationality Act and the Intersecting Dynamics of Race and Gender in the Laws of Immigration and Citizenship*, 30 AFFILIA: J. WOMEN & SOC. WORK 560, 561 (2015).

79. BREDBENNER, *supra* note 7, at 97.

80. BRECKINRIDGE, *supra* note 15, at 26.

81. BREDBENNER, *supra* note 7, at 99-102.

82. Cable Act, Pub. L. No. 67-346, § 4, 42 Stat. 1021, 1021-22; *see also* BRECKINRIDGE, *supra* note 15, at 29.

83. Cable Act § 4, 42 Stat. at 1021-22.

84. BREDBENNER, *supra* note 7, at 98.

85. An Act to Regulate the Immigration of Aliens to, and the Residence of Aliens in, the United States, Pub. L. No. 301, 39 Stat. 874 (1917).

86. Naturalization Act of 1870, Pub. L. No. 41-254, 16 Stat. 254, 255-56; *see also* Naturalization Act of 1790, ch. 3, §1, 1 Stat. 103.

married such ineligible men automatically lost their U.S. citizenship, contradicting the supposed purpose of the Act.[87] This was miscegenation law writ large upon women's claims to citizenship. Pursuant to the racial logic of the Act, women citizens who married foreign nonwhite men were, by their very choice of husbands, demonstrating their lack of self-control and poor judgment. They were unworthy of autonomy and were essentially traitors to the white race. In return, they were banned from the polis. Crucially, this provision did not apply to male citizens who married women ineligible for citizenship.[88] Thus, such exclusions were built upon the intersections and hierarchies of race and gender.

The Cable Act was anemic at best, but some male jurisprudes thought that it went too far in conferring rights to women and insisted that the logic and rationale behind the 1907 Expatriation Act was correct even after passage of the Nineteenth Amendment.[89] Richard W. Fortney, a lawyer in the U.S. State Department writing in the *Yale Law Review*, objected to the Cable Act using the well-worn trope that, for the benefit of the international order, countries needed uniform laws in which the wife took the citizenship of her husband.[90] Otherwise, some women would have dual citizenship and multiple allegiances, creating discord not only in a marriage but also within the international order. "[N]ations cannot live and act for themselves alone, and . . . mutual concessions and accommodations are necessary to the maintenance of harmonious international intercourse."[91] He argued that American women who married non-U.S. citizens would and should, by nature and custom, be the party making "accommodations" and compromises.[92] A woman was not "compelled to marry an alien," he wrote. "When she does decide, of her own free will, to marry an alien, because of natural affection or for any other reason, it is natural to assume that she realizes that marriage requires giving up some things in order to gain others. It clearly involves leaving her own family and joining herself to her husband, for the purpose of establishing a new family unit."[93] Here, the author's understanding of international law again paralleled that of marriage under coverture. For a harmonious marriage to work, the wife had to sacrifice her independence and identity. He blamed passage of the Cable Act on a small but vocal and organized minority of women and their women's organizations.[94]

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87. Cable Act of 1922 § 3, 42 Stat. at 1021-22; *see also* BRECKINRIDGE, *supra* note 15, at 29.

88. BREDBENNER, *supra* note 7, at 105.

89. For a discussion of the opposition of various legal scholars and practitioners, *see id.* at 106-08.

90. Richard W. Flournoy, *The New Married Women's Citizenship Law*, 33 YALE L.J. 159, 159 (1923).

91. *Id.* at 161.

92. *Id.* at 168.

93. *Id.*

94. *Id.* at 169.

As with so much legislation involving women's rights, courts often interpreted the Cable Act stingily. Some courts held that women who were married to noncitizen husbands before the Cable Act and who resided abroad had—if they wished to pursue naturalization—a high evidentiary burden to demonstrate their intent to continuously live in the United States.[95] In *United States v. Martin*, the plaintiff was a U.S.-born citizen who lost her citizenship upon marriage to a German physician.[96] She lived in Germany for a number of years and then returned to the United States without her husband.[97] After a year in the U.S., she filed her naturalization papers for U.S. citizenship.[98] At the naturalization hearing, she testified that if her husband did not join her in the U.S., it was possible that she might return to Germany.[99] The lower court issued her naturalization certificate, but the state appealed, claiming that Mrs. Martin did not have the requisite intent to remain in the U.S.[100] Agreeing with the government, the appellate court found that a husband's domicile prevailed unless a wife fully renounced the possibility of joining him overseas.[101] Most intriguing was the court's reference to the 1907 Expatriation Act as support for its position.[102] The laws of marriage and domicile and the 1907 Act seeped into and cast a long shadow over interpretations of the Cable Act.[103] It thus became questionable whether a woman with an intact marriage and a non-U.S. citizen husband living abroad could ever regain her U.S. citizenship through the Cable Act's naturalization process.[104]

The Cable Act also eliminated the ability of immigrant wives of U.S. citizens to automatically become naturalized citizens.[105] Instead, it provided an expedited naturalization process for immigrant wives married to U.S. citizens who were otherwise eligible for citizenship.[106] The Act did not require such women to reside in the U.S. for five years before filing their naturalization papers, but they still had to apply for naturalization and take the naturalization examination.[107] No such abbreviated naturalization process existed for the non-U.S. husbands of women who were U.S. citizens. One way of conceptualizing this is that women's

95. *See* BRECKINRIDGE, *supra* note 15, at 34.

96. U.S. v. Martin, 10 F.2d 585, 585 (E.D. Wis. 1925); *see also* BRECKINRIDGE, *supra* note 15, at 34.

97. *See Martin*, 10 F.2d at 585.

98. *Id.* at 587.

99. *Id.* at 587-88.

100. *Id.* at 587.

101. *Id.* at 590.

102. *Id.* at 588-90.

103. BRECKINRIDGE, *supra* note 15, at 34-35.

104. *Id.* at 38.

105. Cable Act, Pub. L. No. 67-346, § 2, 42 Stat. 1021, 1021-22 (requiring "compliance with all requirements of the naturalization laws").

106. *Id.*

107. *Id.*

claims to U.S. citizenship were so weak that they did not have the symbolic or literal power to confer citizenship upon husbands. Thus, the Cable Act contained a jumble of ideas about women's sameness and difference, independence and dependence.

Some women's organizations, especially those that supported the new Equal Rights Amendment, thought that the provision providing immigrant wives with expedited naturalization undercut the concept of equality between women and men. For them, it was crucial that marriage and citizenship be severed and that men and women have the same political and legal rights.[108] In contrast, a variety of organizations believed that this was too high a threshold, as many immigrant women had little education and scant time to learn English or study for the naturalization examination. They favored the pre-Cable Act practice of immigrant women deriving citizenship from husbands or, at the very least, not requiring an examination as part of the naturalization process.[109] They argued that immigrant women needed to be treated differently than men. Only through such different treatment would women approximate equality with men. Sophonisba Breckinridge wrote of the immigrant wife, "[S]he has had independence thrust upon her but she has not been given equality."[110] These arguments tracked the fears of social feminists that the Equal Rights Amendment would require the repeal of workers legislation for women that they had spent years trying to pass with an understanding that working women did not have the market power to demand equal working conditions with men.[111] Thus, the debate over equal citizenship laws reflected the fear that the reality of immigrant women's lives would put them at a significant disadvantage to men in regards to obtaining citizenship and the right to vote. Such women, they worried, would be perpetually without the franchise as well as the other benefits of citizenship. These were not abstract arguments about equality but reflected the reality of women's lives.[112]

E. The Opinions of Expatriated U.S. and Immigrant Women Regarding the Cable Act

Sophonisba Breckinridge was one of the founders and Deans of the School of Social Service Administration (SSA) at the University of Chicago as well as a longtime officer of the Immigrants' Protective League.[113] Under her direction,

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108. BREDBENNER, *supra* note 7, at 155-57.

109. *See* BRECKENRIDGE, *supra* note 15, at 40-41, 138; BREDBENNER, *supra* note 7, at 163; *see also* ANYA JABOUR, SOPHONISBA BRECKINRIDGE: CHAMPIONING WOMEN'S ACTIVISM IN MODERN AMERICA (2019), 164-66.

110. *Id*. at 40-41.

111. NANCY WOLOCH, A CLASS BY HERSELF: PROTECTIVE LAWS FOR WOMEN WORKERS, 1890S-1990S, 130 (2015).

112. *See* BRECKINRIDGE, *supra* note 15, at 59-60.

113. On Breckinridge's life, see generally JABOUR, *supra* note 109.

the SSA conducted a fascinating study of the views of immigrant and other women in Chicago about the Cable Act, independent citizenship, and the naturalization process.[114] These interviews offer a unique (though mediated) opportunity to hear the voices of ordinary women. They also allow us to better understand the thoughts of women who had lost their citizenship under the 1907 Expatriation Act and how the Cable Act functioned on the ground. Interviewers surveyed three groups of women: those who had lost their U.S. citizenship under the 1907 Act and used the Cable Act's abbreviated naturalization process to regain their citizenship; immigrant wives who became naturalized using the Cable Act's expedited process; and those immigrant women who tried to become naturalized citizens but failed.[115] Below are some of the stories and sentiments of such women.

Mrs. Sloninski (as in most documents of this kind, her first and maiden name is not recorded) was born in the United States.[116] Her parents, who owned a bakery in Chicago, were Polish immigrants and naturalized citizens.[117] Mrs. Sloninski worked in her parents' store and it was there that she met her future husband—a Polish immigrant who was not a U.S. citizen.[118] She married him in 1918 and therefore lost her U.S. citizenship.[119] She told the interviewer that she felt "very badly" about being deprived of her citizenship and had always been an active member of her community.[120] Having never been to Poland, she considered herself as having no citizenship.[121] In 1925, her husband became a naturalized U.S. citizen, and she soon also went through the naturalization process provided for in the Cable Act.[122] After regaining her citizenship, she voted.[123] Mrs. Sloninski understood that citizenship was important not only to vote but also because she and her husband had bought a store and citizenship made her feel secure in her property rights. This was especially the case given that during World War I, the U.S. confiscated the property of German immigrants deemed to be alien enemies.[124] This included the property of U.S.-born women who had lost their U.S. citizenship upon marriage.[125] Thus, for Mrs. Sloninski citizenship went to her identity, security, and ability to be politically active. Perhaps with prompting from the interviewer, she explained that she had a certain "bitterness"

114. *See* BRECKINRIDGE, *supra* note 15, at 59-83.
115. *Id.* at 62.
116. *Id.* at 62-63.
117. *Id.* at 63.
118. *Id.*
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.*
123. *Id.*
124. Cott, *supra* note 8, at 1463.
125. *Id.*

in seeing the wives of newer immigrants quickly obtain citizenship.[126]

Mrs. Hartja was another native-born U.S. citizen who married a Polish man and lost her citizenship.[127] A year after her husband was naturalized, she followed suit.[128] The couple felt that citizenship was especially important as they wanted to travel to Poland to help family members and were afraid that they might run into difficulty reentering the U.S.[129] Mrs. Hartja viewed the Cable Act as "promoting women's rights" but thought that it was unjust that women who had lost their citizenship before 1922 did not regain it automatically.[130] She, however, praised the Cable Act for requiring immigrant women to pass the naturalization examination as it forced women outside of the home and widened their horizons.[131]

Mrs. Ashinoski, who lost her U.S. citizenship upon marriage, ultimately became a widow.[132] Left with five children, she needed a mother's pension, which required that she be a U.S. citizen.[133] Ashinoski was not even aware that she had lost her citizenship until informed by a social worker when she attempted to apply for the pension.[134] She went through the naturalization process but was angered by having to do so.[135]

A multitude of reasons existed for expatriated women to reclaim their citizenship. These included the right to vote, but citizenship also provided a sense of security, identity, and material government benefits. These elements of citizenship would become even more important through the course of the 1920s through World War II.

Interviewers also queried married immigrant women who became naturalized citizens after enactment of the Cable Act. Some of these women viewed the requirements that they be independently naturalized rather than receive automatic derivative U.S. citizenship as anti-immigrant.[136] Others, however, expressed that learning the material for naturalization exams made them more independent.[137]

Not all immigrant wives, however, had the resources or ability to pass the naturalization examination despite their desire to become naturalized. Many found it difficult to learn English and nearly impossible to pass the exam. Such

126. BRECKINRIDGE, *supra* note 15, at 63.
127. *Id.*
128. *Id.*
129. *Id*. at 63-64.
130. *Id*. at 64.
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.* at 66.
135. *Id*. at 66.
136. *Id*. at 69.
137. *Id*. at 70-71.

women tended to be poor and burdened with children and wage work, which prevented them from attending classes.[138] Some of these women had been in the U.S. for a substantial amount of time, had successfully raised or were raising children, often worked or owned a business, and expressed embarrassment and humiliation at their inability to master English or pass the examination.[139]

Breckinridge, examining the results of the survey, advocated for greater leniency for immigrant wives. Immigrant wives who were raising their children to be good citizens, managed households, cared for the ill, and also often engaged in wage labor had already demonstrated their capacity for citizenship.[140] Language difficulties or "obscure questions about government" should not prevent such women from becoming citizens.[141]

II. CHICAGO'S IMMIGRANT PROTECTIVE LEAGUE, WOMEN'S CITIZENSHIP, AND IMMIGRATION LAW

By 1922, Chicago's Immigrants' Protective League had spent well over a decade providing free legal aid and other assistance to immigrants, and it soon would become an expert on the Cable Act and some of the most restrictive immigrations laws that the country had ever seen.[142] Examining the League and the cases that it handled allows us to interrogate how immigration, naturalization, and citizenship laws functioned on the ground and in the everyday. We hear the stories of the women who, at times, desperately sought its assistance.

The League was founded in 1908 to assist immigrants, especially young women. Over the years, its workers became immigration law experts.[143] The League was deeply connected to the famed Hull House, which had been founded by Jane Addams in 1889.[144] The women leaders of the League were immersed in the world of Hull House and would become some of the most well-known reformers, social workers, and intellectuals of the Progressive and New Deal

138. *Id*. at 59.

139. *Id*. at 59, 84-107.

140. *Id.* at 59-60, 137.

141. Letter from Sophonisba Breckinridge to Katherine Lenroot (Sept. 1, 1933) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 5, fl. 60).

142. *See generally* Felice Batlan, *Déjà Vu and the Gendered Origins of the Practice of Immigration Law: The Immigrant's Protective League*, 36 L. & HIST. REV. 713 (2018) (providing a full discussion of the League, its leaders, and its work).

143. *Id.* at 726-27.

144. There is a large historiography on Hull House and Jane Addams. Just a few of these works include JEAN BETHKE ELSHTAIN, JANE ADDAMS AND THE DREAM OF AMERICAN DEMOCRACY: A LIFE (2002); RIVKA SHPAK LISSAK, PLURALISM & PROGRESSIVES: HULL HOUSE AND THE NEW IMMIGRANTS, 1890-1919 (1989); ALLEN F. DAVIS, AMERICAN HEROINE: THE LIFE AND LEGEND OF JANE ADDAMS (1973); JANE ADDAMS, TWENTY YEARS AT HULL-HOUSE (1910).

era.[145] They included Grace Abbott, Edith Abbott, Sophonisba Breckinridge, and later, Adena Miller Rich.[146] The women leaders of the League, who for the most part were not attorneys, considered themselves and were viewed by others as some of the foremost experts on immigration law, and they had developed over the years substantial connections to immigration officials, the Labor Department, the State Department, and a vast number of immigrant aid organizations.[147] These women also had substantial social capital as they brought together the contacts, resources, and the reputation of Hull House, the University of Chicago, multiple professional organizations for social workers, and numerous women's organizations.[148]

A. The League and the Cable Act

Soon after passage of the 1922 Cable Act, the League took up the many novel, complex, and puzzling legal issues related to the Act. On the ground, the Cable Act created decades of confusion regarding whether women who married men who were not U.S. citizens had lost their citizenship. Such women needed somewhere to turn for advice. The League developed a unique expertise in the Cable Act. One League memorandum explained, "Women who lost their citizenship before the passage of the 'Cable Act,' are constantly advised regarding its special provisions, and assisted in recovering what was perhaps a birthright."[149] Women with immigration or citizenship issues continually and proactively sought out the advice of the League. At times, Cable Act matters were simple and at other times more complex, even messy, and without clear answers. In such cases, League workers, all women, engaged in legal improvisation.[150]

For example, one League client was a woman whose parents were both U.S. citizens.[151] She, however, had been born in Ireland.[152] The family left Ireland and moved to Chicago when she was a child.[153] Sometime before 1922, she married

145. *See* Batlan, *supra* note 142, at 725-27.

146. *Id.* at 726.

147. *Id.* at 732, 740-41, 750.

148. *Id.* at 715-16, 718.

149. Immigrants' Protective League, Helping a Mother Recover Her American Citizenship (n.d.) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 4, folder 44).

150. Batlan, *supra* note 142, at 716-17.

151. Immigrants' Protective League, Illustration of the Unique Functions of the Immigrants' Protective League (1926) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 5, folder 61).

152. *Id.*

153. *Id.*

a Danish man who was a citizen of Chile.[154] By doing so, she lost her U.S. citizenship.[155] For some time, she lived with her husband and his family in Chile, but the marriage disintegrated.[156] After her father's death, she returned to Chicago to care for her ill mother.[157] Eventually her U.S. visitor's visa expired, requiring her to leave the country.[158] Yet she literally had nowhere else to go. The League, through a series of machinations and the use of its substantial contacts within the State Department, was able to have the U.S. consulate in Ireland issue her a permanent visa so that she could remain in the U.S. and, one would assume, begin the process of naturalization to reclaim her American citizenship.[159] Indeed, immigration and naturalization law invested a vast amount of discretion in immigration officers and consular officials, and the League was able to use its cultural capital on behalf of their clients.[160]

Another complicated, frustrating, and circuitous case involved Mrs. Fencl, who had been born a U.S. citizen and whose niece sought the League's help in 1928.[161] Before 1922, Mrs. Fencl had met and married a Czech man.[162] She thus lost her U.S. citizenship under the 1907 Act.[163] When her husband later became a naturalized U.S. citizen, she automatically became a naturalized citizen under the 1855 Act, which provided a non-U.S.-citizen wife with U.S. citizenship.[164] Sometime later, the couple moved to Czechoslovakia to care for the husband's aging parents.[165] Eventually the parents died, along with her husband.[166] Mrs. Fencl was now stranded in Czechoslovakia without family or income and her niece wanted to bring her to the U.S. As a naturalized citizen, however, if Mrs. Fencl had resided out of the U.S. for more than two years in her husband's native country, she may have lost her U.S. citizenship—yet again.[167]

The League requested additional information and learned that Mrs. Fencl had lived in Czechoslovakia for an extended period of time.[168] The League advised that Mrs. Fencl's best argument was that she had always planned to return

154. *Id.*
155. *Id.*
156. *Id.*
157. *Id.*
158. *Id.*
159. *Id.*
160. Batlan, *supra* note 142, at 750.
161. Immigrants' Protective League, Cable Act (Apr. 1928) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 4, folder 50).
162. *Id.*
163. *Id.*
164. *Id.*
165. *Id.*
166. *Id.*
167. *Id.*
168. Letter from the Immigrants' Protective League to C.C. Fuller (Mar. 28, 1928) (on

to the U.S. and had not intended to relinquish her citizenship.[169] Ultimately, it would be for the U.S. consul to decide. The League suggested that Mrs. Fencl submit statements from those who knew her before going abroad swearing that she had intended to return to the U.S. It further counseled that she produce documentation from Czech acquaintances explaining the reason for her delay in returning to the U.S.[170] Although we do not know whether Mrs. Fencl was allowed to return to the U.S., what is clear is the absurd situation that the law created and the failure of the Cable Act to remedy the plight of women who had lost their U.S.-born citizenship pursuant to the 1907 Act.

Some of the League's cases involved U.S. women's eligibility to vote. The League provided concrete and efficient advice to such women while spreading legal knowledge about the Cable Act to clients, the community, and even election officials. Melba Shimkus was a U.S.-born woman of Lithuanian descent.[171] In 1931, she sought advice from the League. Shimkus had married a Lithuanian man who was not a U.S. citizen in 1928.[172] In 1930, she went to the Chicago polls to vote but was turned away on the ground that her husband was not a U.S. citizen and hence she was not a citizen.[173] This of course was incorrect, for a woman did not automatically lose her U.S. citizenship after 1922.[174] When the next election approached, Mrs. Shimkus turned to the League for assistance. The League advised that she should take a witness to the polls who knew that she was a U.S. citizen when she married.[175] A League worker further wrote a letter to the precinct poll judge explaining the Cable Act and the fact that Ms. Shimkus had not lost her citizenship upon marriage.[176]

After successfully casting her ballot, Mrs. Shimkus reported to the League that the precinct judge was entirely unaware of the Cable Act or that women who married non-U.S.-citizen husbands no longer lost their citizenship and thus could vote.[177] One can only imagine the number of women that election officials wrongly prevented from voting. The League wrote: "[W]ith immigration legis-

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file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 4, folder 50).

169. *Id.*

170. *Id.*

171. Immigrants' Protective League, Citizenship Rights of American Born Women Married to Aliens Protected by 1922 Cable Act (Feb. 1931) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 5, folder 50).

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

lation becoming more voluminous and complicated each year, the official's confusion was not without cause."[178] It continued, "[T]hrough interest in individual cases brought to its office the League functions to interpret concretely the meaning of the law."[179] As this matter demonstrates, legal knowledge about women's citizenship rights trickled down at a glacial pace.

U.S. citizenship for poor women also became crucial as mother's pensions from states were often only available to U.S. citizens. Take the case of one Italian widow who came to the League's office in 1932; she had lived in the U.S. since 1898.[180] She had married a non-U.S. citizen in the U.S. and borne six children in the U.S.[181] She, however, was not a citizen.[182] Widowed and impoverished with children to support, she applied for a mother's pension, which was denied on the ground that she was not a citizen.[183] The League helped her locate necessary papers and raised the $20 fee required for naturalization, a sum that was impossible for her to pay alone.[184] Aware of the terrible irony that impoverished mothers and others had to pay high naturalization fees to qualify for such programs, the League continually lobbied the government for a reduction in fees.[185]

Women not only actively sought out the advice of the League, but some were repeat clients whose travails mirrored the significant events of women's lives. An English-born woman living in a small Illinois town wrote to the League in 1925 about problems she had encountered when applying for her naturalization papers.[186] The League provided advice and assisted her in filling out various documents. Eventually, she was successfully naturalized.[187] In 1931, she was legally savvy enough to contact the League again with news that she was about to marry an Englishman and move to Canada.[188] She wanted to know whether she would lose her citizenship upon marriage and the consequences of living in Canada.[189] The League assured her that pursuant to the Cable Act she would not lose her

178. *Id.*

179. *Id.*

180. Immigrants' Protective League, Naturalization of a Widow Who Arrived in the United States Prior to June 20, 1906 (Sept. 1932) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 4, folder 50, IPL Papers).

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id*.

186. Immigrants' Protective League, Being Married to Alien and Residence Abroad Following Acquisition of Citizenship (Apr. 21, 1933) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 4, folder 50).

187. *Id.*

188. *Id.*

189. *Id.*

citizenship upon marriage but might lose her citizenship were she to make Canada her permanent home.[190] At least this woman married knowing the consequences of moving to her husband's native country.

B. Women and the Immigration Quota Acts

The Cable Act demonstrated that even when women obtained autonomous citizenship, it was more fragile, vulnerable, and less potent than men's citizenship.[191] These differences became even more acute when Congress passed the 1921 and then the 1924 Immigration Quota Acts.[192] These Acts were born out of an intense xenophobia, especially against immigrants who did not come from English-speaking countries.[193] The Acts set forth specific limits on the number of immigrants from each country who might be admitted to the U.S.[194] In combination with the Cable Act, they resulted in some women facing extraordinary difficulties and particularized, gendered pain and suffering.[195] This was the case as the 1921 Act and 1924 Act gave certain advantages to immigrate to the U.S. to foreign wives who were sponsored by U.S. husbands but not foreign husbands.[196] Moreover, pursuant to the 1924 Quota Act, the list of relatives who could be sponsored by U.S. citizens outside of the quota system did not include stepchildren or parents-in-law of a spouse.[197] Thus, a U.S. husband could not sponsor his wife's relatives including children from an earlier marriage.

The Immigrants' Protective League passionately opposed the 1921 and 1924 Acts. Rich, by then Executive Director of the League, argued that nationality was

190. *Id*.

191. *See* Cott, *supra* note 8, at 1441 (asking the question of whether women's citizenship was/is more "tenuous or vulnerable" than men's citizenship).

192. *See* An Act to Limit the Immigration of Aliens into the United States, 42 Stat. 5 (1921) (repealed 1943); Johnson-Reed Immigration Act, 43 Stat. 153 (1924) (repealed 1952).

193. Batlan, *supra* note 142, at 755-56, 759.

194. *Id*. at 755-56, 759-60.

195. On the different types of injuries and sufferings experienced by men and women and the, at times, failure of law to address women's injuries, see generally Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN'S L.J. 149 (2000).

196. An Act to Limit the Immigration of Aliens into the United States, ch. 8, § 2(d)(a) (providing a preference to wives but not husbands and the relatives of such husbands, though wives who merely obtained a preference were still subject to denial of a visa); *see also* Johnson-Reed Immigration Act, ch. 190 §§ 4(a)(1), 4(a)(d).

197. Johnson-Reed Immigration Act § 6(a)(1).

a random construction and constituted "accidents of chronology or geography."[198] She asserted that there was no relationship between nationality, intelligence, and the ability to be loyal, self-governing, and productive citizens.[199] Quota laws, she asserted, were the result of an environment "wrongly charged" with beliefs of "racial superiorities and inferiorities."[200]

Continually, the League remonstrated that the 1924 Act resulted in the separation of families. The League declared that "[t]he integrity of the family and the sanctity of the home are principles basic to American life. Such separation of husband and wife, of parents and children, causes an amount of human suffering beyond estimation."[201] The League's records are filled with the stories of immigrant women (who were not citizens) in the U.S. who desperately wanted their children (who were outside the U.S. and not U.S. citizens) to join them.[202] Some of these women were married to U.S. citizens but, pursuant to the Cable Act, had to be independently naturalized. As immigrants' and some women's organizations had feared, some immigrant women simply could not learn enough English to pass the naturalization examination and family unity now rested upon it.[203]

Consider Josefa Bartlamowicz, a widow who immigrated from Poland in 1912.[204] She had left her only daughter, Jadwiga (then 3 years old), with relatives in Poland.[205] Josefa had hoped to earn money to support herself and Jadwiga and then return to Poland; but World War I prevented her from doing so.[206] When her daughter was fourteen, Josefa had enough money to provide a home for her daughter in the U.S. and desperately sought a U.S. visa for the daughter.[207] She turned to the League for help. The League wrote that, "She had worked so hard to support herself and this daughter that she has not thought much about learning English and becoming a citizen. . . . She [now] realizes that under our Immigration Act of 1924 nothing can be done for Jadwiga till she becomes a citizen."[208] The League also reported that Josefa "has been most unhappy at being separated

198. Kenneth F. Miller (Adena Miller), Considerations as Changes in Naturalization Law and Procedure 38 (Jan. 1934), 38, (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago) [hereinafter Naturalization Report]; *see also* Batlan, *supra* note 142, at 760-61.

199. Naturalization Report, *supra* note 198, at 38.

200. *Id*.

201. Immigrants' Protective League, Suspension of Immigration Bill (n.d.) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 6, folder 63).

202. *See infra* Part II.B.

203. Naturalization Report, *supra* note 198, at 32.

204. Immigrants' Protective League, Report of Cases #3, Group 3 Report (n.d.) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 5, folder 53(b)).

205. *Id*.

206. *Id*.

207. *Id*.

208. *Id*.

from Jadwiga. She weeps as she talks about what both of them have missed."[209]

Another matter involved Sarough Hagopian, an Armenian woman, and the mother of a son.[210] Her husband had been killed in the Armenian genocide.[211] She, her parents, and her young son left Armenia with the hope of immigrating to the U.S.[212] Unable to gain admission to the U.S., they went to Cuba. There, Sarough married a U.S. citizen and moved to the U.S.[213] The child was left in Cuba until Sarough, who had little education, attempted to learn English and pass the naturalization examination.[214] The League explained that only if she became a citizen could she sponsor her son outside the meager quota for Armenians and that her U.S. husband could not sponsor his stepson.[215] Sarough simply was unable to learn enough English to take the examination and she became convinced that, at age twenty-nine, she was too old to learn.[216] Eventually her husband deserted her, and she was left stranded in the U.S. separated from her son and penniless.[217]

The League described the life of one of its clients, Theresa Brian, as "very sad" and "difficult."[218] In 1920, she, her husband, and her youngest daughter immigrated from Yugoslavia.[219] The couple left three daughters behind who would immigrate once the family was established.[220] The League wrote, "It never occurred to her that she was separating herself from these children for an indefinite period, if not forever."[221] Soon after settling in Chicago, the husband abandoned the family and Mrs. Brian began doing laundry work.[222] After three years, she had saved enough money to pay for the voyage to the U.S. of the three daughters still in Yugoslavia.[223] With the new quota restrictions in place, the U.S. counsel in Yugoslavia would not give them a visa, and the daughters ill-advisedly decided to try to enter the U.S. via Cuba.[224] Once in Cuba, they were unable to

209. *Id*.

210. Immigrants' Protective League, A Cable Act Story (Apr. 29, 1927) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 4, folder 50).

211. *Id*.

212. *Id*.

213. *Id*.

214. *Id*.

215. *Id*.

216. *Id*.

217. *Id*.

218. Immigrants' Protective League, Report of Cases #4, Group 3 Report (n.d.) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago box 5, Folder 53(b)).

219. *Id*.

220. *Id.*

221. *Id*.

222. *Id*.

223. *Id*.

224. *Id*.

even receive a visitor's visa to the U.S. so that they might see their mother.[225] Two of the daughters eventually returned to Yugoslavia.[226] The League wrote that Mrs. Brian had spent all of her hard-earned money and would probably never again see her daughters.[227] Indeed, by the time Mrs. Brian could learn English and take the naturalization examination, the daughters would have been older than twenty-one, making them ineligible to be sponsored by their mother.[228]

A 1928 case with a happier ending concerned Agathe Tamraz, a Syrian widow who had migrated to Cuba. Tamraz had a young daughter whom she had left behind in Marseille.[229] In Cuba, she married a naturalized U.S. citizen and moved to Chicago.[230] She quickly contacted the League to help her become naturalized as she wanted to bring her daughter to the U.S. as soon as possible.[231] The League referred her to a citizenship class and, after a one-year waiting period, with the help of the League she filed her naturalization papers using the Cable Act's abbreviated process for wives of citizens.[232] She, however, failed her citizenship examination three times.[233] The League intimated that this was in part because the examiner was suspicious of how quickly she applied for naturalization and that she truthfully told the examiner that she wanted to be a U.S. citizen in order to bring her daughter to the U.S.[234] The League conducted its own mock examination of Tamraz and found her fully prepared for the examination and its suspicions regarding the examiner increased.[235] Using its contacts in the Chicago naturalization office, the League intervened and scheduled a "personal hearing" for Tamraz before a particularly friendly examiner. A League worker accompanied her to the examination, which Tamraz successfully passed.[236] As the League understood, what questions naturalization examiners asked, and their subjective determinations of whether or not someone passed, gave such examiners a great deal of discretion in which bias against women and immigrants of certain nationalities could manifest.[237] Again, the League, having spent dozens of years working with examiners and possessing significant sway and knowledge of the immigration bureaucracy, could use their cultural capital

225. *Id*.
226. *Id*.
227. *Id*.
228. *Id*.
229. Immigrants' Protective League, Case Statement on the Cable Act (Oct. 31, 1928) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago box 4, folder 50).
230. *Id*.
231. *Id*.
232. *Id*.
233. *Id*.
234. *Id*.
235. *Id*.
236. *Id*.
237. *Id*.

to ensure that the right examiner was making the correct judgments for their clients.

The inability of minor children to sponsor parents also led to family separation. The League lamented that immigration law could leave children motherless and fatherless. Consider the case of Mrs. Litvin, a Lithuanian woman, and her family. She and her husband immigrated to the U.S. in 1912 and her husband submitted his first citizenship papers soon after.[238] Mrs. Litvin gave birth to two U.S.-born sons.[239] Following World War I, they traveled to Lithuania and stayed for a number of years.[240] The husband eventually returned to the U.S. before the enactment of the 1921 Act, to earn and save money to pay for the family's passage back to the U.S.[241] The two children joined him, and Mrs. Litvin planned to do so when they had adequate funds.[242] Tragically, however, the husband was killed in a subway accident.[243] The mother now wanted to be in the U.S. to care for her children but, even as the mother of U.S.-born sons, she fell within the quota because she was unnaturalized.[244] After the American consul refused to grant Mrs. Litvin a visa, the League became involved and argued that she had never relinquished her U.S. domicile and that she should be allowed to enter the U.S. as a "returning alien."[245] The decision was in the hands of the U.S. consulate in Lithuania.

Desiring to fulfill their gendered roles as caregivers, immigrant women also sought to bring elderly parents to the U.S. Mrs. Belfman immigrated from Russia to the U.S. and after 1922 married a Russian man who was a naturalized U.S. citizen.[246] Mrs. Belfman's mother still lived in Russia and became widowed and ill with no one to care for her.[247] The Belfmans could have easily financially supported the mother.[248] But because Mrs. Belfman was not a citizen, she could not sponsor her mother outside of the quota.[249] Mrs. Belfman had applied for

238. Immigrants' Protective League, Types of New Cases Which Come to the Immigrants' Protective League (May 5, 1931) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago box 4, Supp. II, folder 50).

239. *Id*.

240. *Id.*

241. *Id*.

242. *Id*.

243. *Id*.

244. *Id*.

245. *Id*.

246. Immigrants' Protective League, Report of Cases, Group V, #8 –Belfman (n.d.) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago box 5, folder 53(b)).

247. *Id*.

248. *Id*.

249. *Id*.

naturalization for herself and was preparing for her examination.[250] The League described her sorrow: "In the meantime it seems very hard to Mrs. B that she cannot have this old mother with her and cannot make her last years easy and pleasant. She is very impatient at the delay. The mother is old and feeble and she fears that if the waiting period is very long, she may not live to reach here."[251]

Women who were U.S. citizens attempting to sponsor their non-U.S.-citizen husbands also faced uphill battles. Such arrangements upset gender norms in which a wife was expected to follow the husband to his domicile and be financially dependent upon him. Immigration officials often presumed that such women would be unable to support their families and thus required greater evidence that the husband was not likely to become a public charge.[252] A League case involved a U.S. wife who was a French teacher at a prominent school in Chicago. She was attempting to sponsor her French husband, but his visa was denied.[253] The League hypothesized that "[p]erhaps it was his relationship as *husband*, supposedly not a dependent, that led to the presumption."[254]

In large part, the ability to reunite families was a privilege of U.S.-born white men, and at certain moments the courts came close to finding that such a man had something approaching a right in at least his white immigrant wife and family.[255] U.S. women did not possess such a right even in reuniting their own families. Congress baked such difference and discrimination into the 1921 and the 1924 Quota Acts.[256]

C. The Depression Years and Deportations

With the onset of the Great Depression, being admitted to the U.S. as an immigrant became increasingly difficult.[257] President Hoover issued an Executive Order requiring that the State Department examine immigration laws, rules, regulations, and procedures to determine how to reduce immigration.[258] The

250. *Id*.

251. *Id*.

252. BREDBENNER, *supra* note 7, at 130-31.

253. Immigrants' Protective League, Report of the Director 14 (Dec. 15, 1930) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 4, supp II, folder 65) [hereinafter IPL Report of the Director 1930].

254. *Id*.

255. *See* BREDBENNER, *supra* note 7, at 124-27, 130.

256. *See* An Act to Limit the Immigration of Aliens into the United States, ch. 8 § 2(d)(a), 42 Stat. 5 (1921) (repealed 1943); Johnson-Reed Immigration Act, ch. 190 § 4(a), 43 Stat. 153 (1924) (repealed 1952).

257. Batlan, *supra* note 142, at 755-56. Certain portions of this section appear in the article just cited.

258. Herbert Hoover, White House Statement on Government Policies to Reduce Immigration (Mar. 26, 1931), *in* THE AMERICAN PRESIDENCY PROJECT (Gerhard Peters & John T. Woolley, eds. 2020), https://perma.cc/X7G2-MZ7A; *see also* Batlan, *supra* note 142, at 765-

State Department recommended enhancing what it meant to be "likely to become a public charge." This discretionary standard had long been a reason to deny entry into the U.S. to immigrants.[259] Consular officials expanded this discretionary standard and carefully scrutinized each applicant, using a test of whether a potential immigrant could indefinitely support him or herself without employment—a test that few could meet.[260]

This new standard drastically impacted the ability of immigrants to reunite their families. The League watched immigration slow to a trickle and it became increasingly concerned about the growing separation of family members.[261] Family separation, the League warned, especially during an unprecedented Depression, would lead to men leaving their families, families being separated and stuck in a perpetual legal limbo, the impoverishment of women and children, increased social instability, and ongoing heartbreak.[262] Hastily passed immigration laws, policies, and practices, the League wrote, did not create rational immigration policy.[263] The League lobbied Congress and other officials not to pass laws or adopt regulations or practices that would further infringe upon family unity and integrity.[264] Family separation, the League argued, was demoralizing, inhumane, and cruel.[265] Presciently, Adena Miller Rich forewarned that visa waiting lists were becoming so long even for those who were exempt from the quota or who were on preferred quota lists that it was literally becoming an issue of "the right to life itself!"[266]

Family separation was not only emotionally painful, it also could have significant financial affects, especially on women and children. One woman's letter to the League explained that she had been born in the U.S. and had never left the country.[267] She married a Greek citizen who had long lived in the U.S. but had not become a naturalized citizen.[268] They had children born and raised in the U.S. as well.[269] The husband suddenly had to travel to Greece to care for an ill

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259. For a discussion of the history of migrants who were not allowed to enter the country on the grounds that they would be likely to become a public charge, see generally HIDETAKA HIROTA, EXPELLING THE POOR: ATLANTIC SEABOARD STATES AND THE NINETEENTH-CENTURY ORIGINS OF AMERICAN IMMIGRATION POLICY (2017).

260. IPL Report of the Director 1930, *supra* note 253, at 14-15.

261. *Id*.

262. *Id*. at 15-17; Mrs. Kenneth F. Rich, The League in 1931, (Mar. 28, 1932) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago box 4, supp. II, folder 65) [hereinafter The League in 1931].

263. IPL Report of the Director 1930, *supra* note 253, at 12-13.

264. *Id.* at 15.

265. *Id.* at 14-17.

266. Rich, *supra* note 1, at 241.

267. IPL Report of the Director 1930, *supra* note 253, at 14.

268. *Id*.

269. *Id*.

mother.[270] When he attempted to return, consular officials suddenly claimed that he was now likely to become a public charge as his wife was unable to support him.[271] The letter continued: "[T]he consul abroad will not issue a returning alien's non-quota visa, because he thinks we haven't enough money. But we must seek charity just *because* they will not let him return to his work here."[272] This was yet another grotesque catch-22.

The flipside of not allowing migrants to enter the country was the large-scale deportation of immigrants that occurred throughout the country during the Depression. Both served to further separate families.[273] By the early 1930s, the U.S. government began deportation raids in Chicago.[274] Horrified, the League reported to its members, journalists, politicians, and officials that these FBI raids could occur in the middle of the night; those arrested were held incommunicado, and deportation happened without representation of the accused or even interpreters.[275] Such actions, the League proclaimed, constituted a "Bill of Wrongs."[276]

These raids, the League explained, often resulted in husbands/fathers being deported while wives and children remained in the U.S., causing families to become poverty-stricken as they were deprived of male breadwinners.[277] As we have seen, even when wives of deportees were U.S. citizens, they could not always bring their husbands to the U.S. as they could not demonstrate that they would be able to financially support their husbands or prevent them from becoming public charges.[278] Thus, deportations and the enhanced "not likely to become a public charge" provision operated in tandem to separate families.[279] Again, a woman's citizenship was of limited use in reuniting her family in the face of zealous anti-immigrant sentiment and structural economic inequality. The League could do little but assist such women in applying for mothers' pensions and private charity and continuing to harangue government officials.

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270. *Id*.

271. *Id*.

272. *Id*.

273. Batlan, *supra* note 142, at 767-68.

274. Immigrants' Protective League, Report of the Director, July, August, September, October, November 1931, at 12-14 (Dec. 14, 1931) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago box 4, supp II, folder, 65). For a discussion of such nationwide raids, see DANIEL KANSTROOM, DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY 161-66 (2007).

275. Immigrants' Protective League, Report of the Director, April, May, June 1931, at 13-14 (June 1931) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago box 5, supp. II, folder 65).

276. *Id*.

277. *Id*.

278. IPL, Families Separated by Deportation, (Dec. 1932), box 4, folder 50, IPL Papers.

279. *Id*.

Women, as the League made clear, experienced gendered injuries as the government deported their husbands. In one matter, a woman whose husband had been deported was "so upset" that she had suffered a miscarriage.[280] According to the League, she was left "destitute" and "sad."[281] In another case, a German man was quickly deported, despite the efforts of the League in contesting the deportation.[282] His wife, pregnant and alone in the U.S., miscarried, suffered a nervous breakdown, and experienced heart trouble, rendering her too ill to work.[283] This the League blamed on the "nervous shock" that she suffered from her husband's deportation.[284] Such "intense suffering" caused by the government, decried the League, was "entirely unnecessary."[285] It continued: "[T]he government . . . pursued its course to the strict end, accomplishing in the process the undermining of one individual's health, the premature death of a child, and establishing a thorough hatred of the country in the mind and heart of the man whose guiltless acts received the full measure of the law."[286]

The League's and many of its clients' primary goal was to maintain family unity in the U.S.[287] This, however, was not always possible. At times, the League's belief in family unity and the reality of the destitution that often faced women whose husbands had been deported led them to believe that the best course was for a wife (even one who was a U.S. citizen or legally in the U.S.) to follow her husband and leave the U.S.[288] In these cases, the League focused upon raising money for the wife's journey as the government only paid for the husband's deportation.[289] One such matter involved a Czech man who improperly entered the country in 1926.[290] He married a Czech woman who was legally in the U.S and had applied for naturalization.[291] In 1932, the government ordered

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280. *Id*.

281. *Id*.

282. IPL, Extreme Suffering caused by Unduly Relentless Execution of Deportation Law, (Apr. 19, 1933), box 4, folder 50, IPL Papers [hereinafter Extreme Suffering].

283. *Id*.

284. *Id*. On the deeply gendered production of bodily injury and nervous shock experienced by women involved in railroad accidents at the turn of the century, see BARBARA YOUNG WELKE, RECASTING AMERICAN LIBERTY: GENDER, RACE, LAW, AND THE RAILROAD REVOLUTION, 1865-1920, at 43-80, 171-202, 203-34 (2001).

285. Extreme Suffering, *supra* note 282, at 521.

286. *Id*.

287. Batlan, *supra* note 142, at 765.

288. IPL, Keeping a Family Together in Deportation, (n.d.), 193, box 4, folder 50, IPL Papers. Although this document is undated, given its topic and place in the archival records, the author believes it was written sometime between 1931 and 1933.

289. *Id*.

290. Immigrants' Protective League, Services of the League in a Deportation Case (Dec. 1932) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago box 4, folder 50, IPL Papers).

291. *Id*.

that the husband be deported.[292] By this time the wife was ill, and the husband wanted her to accompany him through the deportation process.[293] Believing this to be the best course, the League put together the funds from various charities for the wife's voyage and worked with other organizations to ensure that she would travel alongside her husband.[294] Thus, the wife was placed on a train with other deportees to travel to New York, from which they would sail to Europe.[295] The League wrote, "Without this intervention, the wife undoubtedly would have been stranded, sick, and alone here in a public institution in Cook County. Preservation of the family group, whether the migration is into or out of the United States, is the basis of case work upon which the League proceeds."[296] As the League and its clients learned, family unity did not necessarily mean reuniting the family on U.S. soil.

D. Fixing the Cable Act and Immigration Law

Given the large number of clients that the League saw and the problems that such clients faced, it soon realized that immigration law, as well as the Cable Act, created inordinate suffering for many of its clients. Further the laws produced irrational results which often harmed women, created little or no benefit for the government, and produced family separations. The League also saw how immigration, citizenship, and naturalization laws continued to discriminate against women and put them at a distinct disadvantage.

By the late 1920s, the League engaged in significant lobbying efforts to amend the Cable Act and prevent legislation that would create even more restrictive immigration laws. The League was ideally situated to engage in such lobbying as it had vast contacts within the Labor Department, especially the Bureau of Children.[297] Indeed, it was Grace Abbott, the longtime Executive Director of the League, who occupied the role of Chief of the Children's Bureau from 1921-1934.[298] Thus, the League had a direct line to Abbott. Once President Franklin Roosevelt took office, the League's influence grew. Secretary of Labor Frances

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292. *Id*.

293. *Id*.

294. *Id*.

295. *Id*.

296. *Id.*

297. LELA B. COSTIN, TWO SISTERS FOR SOCIAL JUSTICE: A BIOGRAPHY OF GRACE AND EDITH ABBOTT 213-15 (1983). Grace Abbott was the sister of Edith Abbott and a good friend of Breckinridge. All three had worked at the Immigrants' Protective League and had spent time at Hull House. Batlan, *supra* note 142, at 726-27.

298. Robyn Muncy, *Abbott Grace*, *in* WOMEN BUILDING CHICAGO 1790-1990: A BIOGRAPHICAL DICTIONARY 7 (Rima Lunin Schultz & Adele Hast eds., 2001).

Perkins knew the leaders of the League and developed a close professional relationship with Grace Abbott.[299] Katherine Lenroot, Grace Abbott's successor as Chief of the Children's Bureau, depended on the League, Breckinridge, and Grace and Edith Abbott to guide her recommendations regarding amendments to immigration laws and the Cable Act.[300] Following the League's advice, the Labor Department (which the reader might be reminded contained within it the Immigration Service) took a strong position that immigration laws which discriminated against women, such as a women's inability to sponsor husbands entirely outside the quota, needed amendment. Moreover, the Labor Department advocated that family unity should be a central concern of immigration law.[301]

Through significant lobbying efforts by women's organizations, including the League, Congress in the early 1930s enacted a number of reforms to the Cable Act.[302] These included a more lenient naturalization process for those women who had lost their U.S. citizenship prior to the 1922 Cable Act. However, such reforms were piecemeal.[303] Regarding the Cable Act, Adena Miller Rich wrote, "Perhaps it would be more satisfactory to begin again!"[304] Moreover, Congress enacted such amendments at a time when immigration was at a trickle due to the State Department's virtual refusal to issue visas, and the country was in the midst of vast deportations of immigrants.[305]

In 1933, the Department of Labor asked the League to draft a report on needed amendments to immigration and naturalization laws which was to be presented to the President's Commission on Immigration.[306] The League, under the direction of Rich, and certainly with the input of Breckinridge and Edith and

299. On the very close professional relationship between Frances Perkins and Grace Abbott, see Costin, *supra* note 297, at 213-15.

300. *See* Letter from Sophonisba Breckinridge to Katherine Lenroot (Sept. 1, 1933) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 5, fl. 60); Katharine Lenroot, Memorandum to Mr. Eliot (Aug. 24, 1933) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago box 5, folder 60).

301. Letter from Sophonisba Breckinridge to Katherine Lenroot (Sept. 1, 1933) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 5, fl. 60); *see also* U.S. Holocaust Mem'l Museum, *Frances Perkins*, AMERICANS AND THE HOLOCAUST, https://perma.cc/B3N8-Q76A (discussing Perkins' support for Jewish immigration, the various tactics that she tried to employ, and how the State Department continually blocked them).

302. BREDBENNER, *supra* note 7, at 165-66.

303. *Id.*

304. Rich, *supra* note 1, at 269.

305. *See infra* Part II.C for a discussion of immigration during the Depression.

306. Letter from Sophonisba Breckinridge to Katherine Lenroot (Sept. 1, 1933) (on file with Immigrants' Protective League Special Collections and University Archives, University of Illinois at Chicago, box 5, fl. 60).

Grace Abbott, sent a lengthy report.[307] It harshly criticized the naturalization process, calling it "inflexible," "arbitrary," "expensive" and filled with so many "pitfalls and obstructions, that they often prove insuperable."[308]

Although wide-ranging, the report took particular aim at those laws that were prejudicial to women. The League urged that the Cable Act be amended to produce true substantive equality between men and women and allow for a broadly defined understanding of family unity in which any spouses' U.S. citizenship could provide derivative citizenship to the other spouse irrespective of race or sex.[309] The League sought to reverse the presumption that a non-U.S. spouse had to affirmatively seek U.S. citizenship. Instead it suggested that a spouse of a U.S. citizen automatically receive U.S. citizenship except when the spouse affirmatively stated that he or she wanted to maintain their own citizenship.[310] Citizenship was to be generous. Moreover, race, the League argued, should not affect one's eligibility for naturalized citizenship or the ability to immigrate as it was irrelevant to one's fitness for citizenship.[311]

The report strongly adopted Breckinridge's understandings and concerns regarding immigrant wives' citizenship. Knowing firsthand the problems that immigrant women faced, the League explained that citizenship enabled an immigrant woman to fulfill her gendered obligations of caregiving as well as allowing her to participate in politics.[312] It foregrounded the immigrant woman married to a U.S. citizen, but not yet a citizen herself, who might have to return to her home country to care for elderly parents or young children from a first marriage.[313] In a country in which she lost her original citizenship upon marriage, she would be unable to receive a U.S. passport or a passport from her native country. Even worse, if she was widowed or divorced she would be unable to return to the U.S. outside of the quota system.[314] The women of the League believed in the ideal of men and women's equality, and the importance of women engaging in politics and the public sphere, but they also recognized that on the ground many women—especially poor and working class women immigrants—lived lives that were deeply gendered, and that formal equality did not produce lived equality. The Nineteenth Amendment was but one step in the very long road to equality.

307. *Id*.
308. Naturalization Report, *supra* note 198, at 2.
309. *Id.* at 33.
310. *Id*. at 33.
311. *Id*. at 17.
312. *Id*. at 32.
313. *Id*.
314. *Id*.

CONCLUSION

At times, passage of the Nineteenth Amendment is mythologized as a magical moment that served as a kind of alchemy. The Amendment deserves to be celebrated as one step towards at least a theoretical political equality for women, but it also must be historically contextualized. The ability to vote was intricately tied to the complicated question of who the U.S. recognized as citizens, and this must be read against the complex background of coverture, the 1907 Act, the Cable Act, and naturalization and immigration laws. Likewise, while not a focus of this article, vast numbers of African American women in the south as well as Asian and Mexican women in the west were long prevented from exercising their right to vote.[315]

This article further has addressed law and policy from above—that enacted by Congress, the Executive Branch, or legal decisions from courts—as well as how law played out in the everyday lives of people on the ground. We have seen the extraordinary havoc that restrictive immigration laws based upon racial and gender hierarchies created in people's lives, as well as how recklessly Congress played with women's citizenship. This article has also traced the story of the gendered pain inflicted by such laws.

One might wish that this was only history relegated to a long-ago past, but in the present, and before our eyes, we are witnessing a resurgence of xenophobia as President Trump attempts to curtail immigration and put into place immigration laws and administrative practices that call to mind those of U.S. immigration policy in the 1920s and 1930s.[316] These practices include separating immigrant families and limiting the rights of migrant women. This is especially the case regarding the ability of migrant women to seek asylum based upon gendered violence, such as rape and sexual torture.[317]

The U.S. Senate, in 2014, offered a formal apology to those women who had lost their U.S. citizenship due to the 1907 Expatriation Act.[318] One must wonder whether there will be a formal apology a hundred years from now to those migrant women denied asylum because they were gang raped and tortured by private rather than state actors. Will the U.S. Senate offer an apology to those migrant parents who had their children snatched from them by the U.S. government? Will they offer an apology to those women and children, who if

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315. *See* Lisa Tetrault, *Winning the Vote: A Divided Movement Brought About the Nineteenth Amendment*, HUMAN. N.Y. (Dec. 17, 2019), https://perma.cc/KQZ5-EXBV.

316. *See, e.g.*, Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

317. In Matter of A-B-, 27 I. & N. Dec. 316 (A.G. 2018), the Attorney General held that sexual violence perpetrated by nonstate actors alone did not make an applicant qualified for asylum. Alex George & Carolina Solano, *On-the-Ground Advocacy at a Women and Children's Detention Center*, THINK IMMIGRATION (Mar. 13, 2019), https://perma.cc/UNA2-5DE2.

318. S. Res. 402, 113th Cong. (2014).

they make it across the border at all, are detained in detention centers, run by private corporations, while they wait for asylum officers to determine whether their fear is really credible?