*Article 13*

# Racial Restrictions in the Law of Citizenship

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The racial composition of the U.S. citizenry reflects in part the accident of world migration patterns. More than this, however, it reflects the conscious design of U.S. immigration and naturalization laws.

Federal law restricted immigration to this country on the basis of race for nearly one hundred years, roughly from the Chinese exclusion laws of the 1880s until the end of the national origin quotas in 1965.[1] The history of this discrimination can briefly be traced. Nativist sentiment against Irish and German Catholics on the East Coast and against Chinese and Mexicans on the West Coast, which had been doused by the Civil War, reignited during the economic slump of the 1870s. Though most of the nativist efforts failed to gain congressional sanction, Congress in 1882 passed the Chinese Exclusion Act, which suspended the immigration of Chinese laborers for ten years.[2] The Act was expanded to exclude all Chinese in 1884, and was eventually implemented indefinitely.[3] In 1917, Congress created "an Asiatic barred zone," excluding all persons from Asia.[4] During this same period, the Senate passed a bill to exclude "all members of the African or black race." This effort was defeated in the House only after intensive lobbying by the NAACP.[5] Efforts to exclude the supposedly racially undesirable southern and eastern Europeans were more successful. In 1921, Congress established a temporary quota system designed "to confine immigration as much as possible to western and northern European stock," making this bar permanent three years later in the National Origin Act of 1924.[6] With the onset of the Depression, attention shifted to Mexican immigrants. Although no law explicitly targeted this group, federal immigration officials began a series of roundups and mass deportations of people of Mexican descent under the general rubric of a "repatriation campaign." Approximately 500,000 people were forcibly returned to Mexico during the Depression, more than half of them U.S. citizens.[7] This pattern was repeated in the 1950s, when Attorney General Herbert Brownell launched a program to expel Mexicans. This effort, dubbed "Operation Wetback," indiscriminately deported more than one million citizens and noncitizens in 1954 alone.[8]

Racial restrictions on immigration were not significantly dismantled until 1965, when Congress in a major overhaul of immigration law abolished both the national origin system and the Asiatic Barred Zone.[9] Even so, purposeful racial discrimination in immigration law by Congress remains constitutionally permissible, since the case that upheld the Chinese Exclusion Act to this day remains good law.[10] Moreover, arguably racial discrimination in immigration law continues. For example, Congress has enacted special provisions to encourage Irish immigration, while refusing to ameliorate the backlog of would-be immigrants from the Philippines, India, South Korea, China, and Hong Kong, backlogs created in part through a century of racial exclusion.[11] The history of racial discrimination in U.S. immigration law is a long and continuing one.

As discriminatory as the laws of immigration have been, the laws of citizenship betray an even more dismal record of racial exclusion. From this country's inception, the laws regulating who was or could become a citizen were tainted by racial prejudice. Birthright citizenship, the automatic acquisition of citizenship by virtue of birth, was tied to race until 1940. Naturalized citizenship, the acquisition of citizenship by any means other than through birth, was conditioned on race until 1952. Like immigration laws, the laws of birthright citizenship and naturalization shaped the racial character of the United States.

## Birthright Citizenship

Most persons acquire citizenship by birth rather than through naturalization. During the 1990s, for example, naturalization will account for only 7.5 percent of the increase in the U.S. citizen population.[12] At the time of the prerequisite cases, the proportion of persons gaining citizenship through naturalization was probably somewhat higher, given the higher ratio of immigrants to total population, but still far smaller than the number of people gaining citizenship by birth. In order to situate the prerequisite laws, therefore, it is useful first to review the history of racial discrimination in the laws of birthright citizenship.

The U.S. Constitution as ratified did not define the citizenry, probably because it was assumed that the English common law rule of *jus soli* would continue.[13] Under *jus soli,* citizenship accrues to "all" born within a nation's jurisdiction. Despite the seeming breadth of this doctrine, the word "all" is qualified because for the first one hundred years and more of this country's history it did not fully encompass racial minorities. This is the import of the *Dred Scott* decision.[14] Scott, an enslaved man, sought to use the federal courts to sue for his freedom.

However, access to the courts was predicated on citizenship. Dismissing his claim, the United States Supreme Court in the person of Chief Justice Roger Taney declared in 1857 that Scott and all other Blacks, free and enslaved, were not and could never be citizens because they were "a subordinate and inferior class of beings." The decision protected the slave-holding South and infuriated much of the North, further dividing a country already fractured around the issues of slavery and the power of the national government. *Dred Scott* was invalidated after the Civil War by the Civil Rights Act of 1866, which declared that "All persons born. . . in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States."[15] *Jus soli* subsequently became part of the organic law of the land in the form of the Fourteenth Amendment: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."[16]

Despite the broad language of the Fourteenth Amendment—though in keeping with the words of the 1866 act—some racial minorities remained outside the bounds of *jus soli* even after its constitutional enactment. In particular, questions persisted about the citizenship status of children born in the United States to noncitizen parents, and about the status of Native Americans. The Supreme Court did not decide the status of the former until 1898, when it ruled in *U.S. v. Wong Kim Ark* that native-born children of aliens, even those permanently barred by race from acquiring citizenship, were birthright citizens of the United States.[17] On the citizenship of the latter, the Supreme Court answered negatively in 1884, holding in *Elk v. Wilkins* that Native Americans owed allegiance to their tribe and so did not acquire citizenship upon birth.[18] Congress responded by granting Native Americans citizenship in piecemeal fashion, often tribe by tribe. Not until 1924 did Congress pass an act conferring citizenship on all Native Americans in the United States.[19] Even then, however, questions arose regarding the citizenship of those born in the United States after the effective date of the 1924 act. These questions were finally resolved, and *jus soli* fully applied, under the Nationality Act of 1940, which specifically bestowed citizenship on all those born in the United States "to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe."[20] Thus, the basic law of citizenship, that a person born here is a citizen here, did not include all racial minorities until 1940.

Unfortunately, the impulse to restrict birthright citizenship by race is far from dead in this country. Apparently, California Governor Pete Wilson and many others seek a return to the times when citizenship depended on racial proxies such as immigrant status. Wilson has called for a federal constitutional amendment that would prevent the American-born children of undocumented persons from receiving birthright citizenship.[21] His call has not been ignored: thirteen members of Congress recently sponsored a constitutional amendment that would repeal the existing Citizenship Clause of the Fourteenth Amendment and replace it with a provision that "All persons born in the United States. . . of mothers who are citizens or legal residents of the United States. . . are citizens of the United States."[22] Apparently, such a change is supported by 49 percent of Americans.[23] In addition to explicitly discriminating against fathers by eliminating their right to confer citizenship through parentage, this proposal implicitly discriminates along racial lines. The effort to deny citizenship to children born here to undocumented immigrants seems to be motivated not by an abstract concern over the political status of the parents, but by racial animosity against Asians and Latinos, those commonly seen as comprising the vast bulk of undocumented migrants. Bill Ong Hing writes, "The discussion of who is and who is not American, who can and cannot become American, goes beyond the technicalities of citizenship and residency requirements; it strikes at the very heart of our nation's long and troubled legacy of race relations.[24] As this troubled legacy reveals, the triumph over racial discrimination in the laws of citizenship and alienage came slowly and only recently. In the campaign for the "control of our borders," we are once again debating the citizenship of the native-born and the merits of *Dred Scott*.[25]

## Naturalization

Although the Constitution did not originally define the citizenry, it explicitly gave Congress the authority to establish the criteria for granting citizenship after birth. Article I grants Congress the power "To establish a uniform Rule of Naturalization."[26] From the start, Congress exercised this power in a manner that burdened naturalization laws with racial restrictions that tracked those in the law of birthright citizenship. In 1790, only a few months after ratification of the Constitution, Congress limited naturalization to "any alien, being a free white person who shall have resided within the limits and under the jurisdiction of the United States for a term of two years."[27] This clause mirrored not only the de facto laws of birthright citizenship, but also the racially restrictive naturalization laws of several states. At least three states had previously limited citizenship to "white persons": Virginia in 1779, South Carolina in 1784, and Georgia in 1785.[28] Though there would be many subsequent changes in the requirements for federal naturalization, racial identity endured as a bedrock requirement for the next 162 years. In every naturalization act from 1790 until 1952, Congress included the "white person" prerequisite.[29]

The history of racial prerequisites to naturalization can be divided into two periods of approximately eighty years each. The first period extended from 1790 to 1870, when only Whites were able to naturalize. In the wake of the Civil War, the "white person" restriction on naturalization came under serious attack as part of the effort to expunge *Dred Scott*. Some congressmen, Charles Sumner chief among them, argued that racial barriers to naturalization should be struck altogether. However, racial prejudice against Native Americans and Asians forestalled the complete elimination of the racial prerequisites. During congressional debates, one senator argued against conferring "the rank, privileges, and immunities of citizenship upon the cruel savages who destroyed [Minnesota's] peaceful settlements and massacred the people with circumstances of atrocity too horrible to relate."[30] Another senator wondered "whether this door [of citizenship] shall now be thrown open to the Asiatic

population," warning that to do so would spell for the Pacific coast "an end to republican government there, because it is very well ascertained that those people have no appreciation of that form of government; it seems to be obnoxious to their very nature; they seem to be incapable either of understanding or carrying it out."[31] Sentiments such as these ensured that even after the Civil War, bars against Native American and Asian naturalization would continue.[32] Congress opted to maintain the "white person" prerequisite, but to extend the right to naturalize to "persons of African nativity, or African descent."[33] After 1870, Blacks as well as Whites could naturalize, but not others.

During the second period, from 1870 until the last of the prerequisite laws were abolished in 1952, the White-Black dichotomy in American race relations dominated naturalization law. During this period, Whites and Blacks were eligible for citizenship, but others, particularly those from Asia, were not. Indeed, increasing antipathy toward Asians on the West Coast resulted in an explicit disqualification of Chinese persons from naturalization in 1882.[34] The prohibition of Chinese naturalization, the only U.S. law ever to exclude by name a particular nationality from citizenship, was coupled with the ban on Chinese immigration discussed previously. The Supreme Court readily upheld the bar, writing that "Chinese persons not born in this country have never been recognized as citizens of the United States, nor authorized to become such under the naturalization laws."[35] While Blacks were permitted to naturalize beginning in 1870, the Chinese and most "other non-Whites" would have to wait until the 1940s for the right to naturalize.[36]

World War II forced a domestic reconsideration of the racism integral to U.S. naturalization law. In 1935, Hitler's Germany limited citizenship to members of the Aryan race, making Germany the only country other than the United States with a racial restriction on naturalization.[37] The fact of this bad company was not lost on those administering our naturalization laws. "When Earl G. Harrison in 1944 resigned as United States Commissioner of Immigration and Naturalization, he said that the only country in the world, outside the United States, that observes racial discrimination in matters relating to naturalization was Nazi Germany, 'and we all agree that this is not very desirable company.'"[38] Furthermore, the United States was open to charges of hypocrisy for banning from naturalization the nationals of many of its Asian allies. During the war, the United States seemed through some of its laws and social practices to embrace the same racism it was fighting. Both fronts of the war exposed profound inconsistencies between U.S. naturalization law and broader social ideals. These considerations, among others, led Congress to begin a process of piecemeal reform in the laws governing citizenship.

In 1940, Congress opened naturalization to "descendants of races indigenous to the Western Hemisphere."[39] Apparently, this "additional limitation was designed 'to more fully cement' the ties of Pan-Americanism" at a time of impending crisis.[40] In 1943, Congress replaced the prohibition on the naturalization of Chinese persons with a provision explicitly granting them this boon.[41] In 1946, it opened up naturalization to persons from the Philippines and India as well.[42] Thus, at the end of the war, our naturalization law looked like this:

> The right to become a naturalized citizen under the provisions of this Act shall extend only to—
>
> (1) white persons, persons of African nativity or descent, and persons of races indigenous to the continents of North or South America or adjacent islands and Filipino persons or persons of Filipino descent;
>
> (2) persons who possess, either singly or in combination, a preponderance of blood of one or more of the classes specified in clause (1);
>
> (3) Chinese persons or persons of Chinese descent; and persons of races indigenous to India; and
>
> (4) persons who possess, either singly or in combination, a preponderance of blood of one or more of the classes specified in clause (3) or, either singly or in combination, as much as one-half blood of those classes and some additional blood of one of the classes specified in clause (1).[43]

This incremental retreat from a "Whites only" conception of citizenship made the arbitrariness of U.S. naturalization law increasingly obvious. For example, under the above statute, the right to acquire citizenship depended for some on blood-quantum distinctions based on descent from peoples indigenous to islands adjacent to the Americas. In 1952, Congress moved towards wholesale reform, overhauling the naturalization statute to read simply that "[t]he right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married."[44] Thus, in 1952, racial bars on naturalization came to an official end.[45]

Notice the mention of gender in the statutory language ending racial restrictions in naturalization. The issue of women and citizenship can only be touched on here, but deserves significant study in its own right.[46] As the language of the 1952 Act implies, eligibility for naturalization once depended on a woman's marital status. Congress in 1855 declared that a foreign woman automatically acquired citizenship upon marriage to a U.S. citizen, or upon the naturalization of her alien husband.[47] This provision built upon the supposition that a woman's social and political status flowed from her husband. As an 1895 treatise on naturalization put it, "A woman partakes of her husband's nationality; her nationality is merged in that of her husband; her political status follows that of her husband."[48] A wife's acquisition of citizenship, however, remained subject to her individual qualification for naturalization—that is, on whether she was a "white person."[49] Thus, the Supreme Court held in 1868 that only "white women" could gain citizenship by marrying a citizen.[50] Racial restrictions further complicated matters for noncitizen women in that naturalization was denied to those married to a man racially ineligible for citizenship, irrespective of the woman's own qualifications, racial or otherwise.[51] The automatic naturalization of a woman upon her marriage to a citizen or upon the naturalization of her husband ended in 1922.[52]

The citizenship of American-born women was also affected by the interplay of gender and racial restrictions. Even though under English common law a woman's nationality was unaffected by marriage, many courts in this country stripped women who

married noncitizens of their U.S. citizenship.[53] Congress recognized and mandated this practice in 1907, legislating that an American woman's marriage to an alien terminated her citizenship.[54] Under considerable pressure, Congress partially repealed this act in 1922.[55] However, the 1922 act continued to require the expatriation of any woman who married a foreigner racially barred from citizenship, flatly declaring that "any woman citizen who marries an alien ineligible to citizenship shall cease to be a citizen."[56] Until Congress repealed this provision in 1931,[57] marriage to a non-White alien by an American woman was akin to treason against this country: either of these acts justified the stripping of citizenship from someone American by birth. Indeed, a woman's marriage to a non-White foreigner was perhaps a worse crime, for while a traitor lost his citizenship only after trial, the woman lost hers automatically.[58] The laws governing the racial composition of this country's citizenry came inseverably bound up with and exacerbated by sexism. It is in this context of combined racial and gender prejudice that we should understand the absence of any women among the petitioners named in the prerequisite cases: it is not that women were unaffected by the racial bars, but that they were doubly bound by them, restricted both as individuals, and as less than individuals (that is, as wives).

# Notes

1. U.S. COMMISSION ON CIVIL RIGHTS, THE TARNISHED GOLDEN DOOR: CIVIL RIGHTS ISSUES IN IMMIGRATION 1–12 (1990).
2. Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882). *See generally* Harold Hongju Koh, *Bitter Fruit of the Asian Immigration Cases*, 6 CONSTITUTION 69 (1994). For a sobering account of the many lynchings of Chinese in the western United States during this period, *see* John R. Wunder, *Anti-Chinese Violence in the American West, 1850–1910*, LAW FOR THE ELEPHANT, LAW FOR THE BEAVER: ESSAYS IN THE LEGAL HISTORY OF THE NORTH AMERICAN WEST 212 (John McLaren, Hamar Foster, and Chet Orloff eds., 1992). Charles McClain, Jr., discusses the historical origins of anti-Chinese prejudice and the legal responses undertaken by that community on the West Coast. Charles McClain, Jr., *The Chinese Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850–1870*, 72 CAL. L. REV. 529 (1984). For a discussion of contemporary racial violence against Asian Americans, *see* Note, *Racial Violence against Asian Americans*, 106 HARV. L. REV. 1926 (1993); Robert Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1251–58 (1993).
3. Act of July 9, 1884, ch. 220, 23 Stat. 115; Act of May 5, 1892, ch. 60, 27 Stat. 25; Act of April 29, 1902, ch. 641, 32 Stat. 176; Act of April 27, 1904, ch. 1630, 33 Stat. 428.
4. Act of Feb. 5, 1917, ch. 29, 39 Stat. 874.
5. U.S. COMMISSION ON CIVIL RIGHTS, *supra*, at 9.
6. *Id. See* Act of May 19, 1921, ch. 8, 42 Stat. 5; Act of May 26, 1924, ch. 190, 43 Stat. 153.
7. U.S. COMMISSION ON CIVIL RIGHTS, *supra*, at 10.
8. *Id.* at 11. *See generally* JUAN RAMON GARCIA, OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954 (1980).
9. Act of Oct. 2, 1965, 79 Stat. 911.
10. Chae Chan Ping v. United States, 130 U.S. 581 (1889). The Court reasoned in part that if "the government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed." For a critique of this deplorable result, *see* Louis Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and Its Progeny*, 100 HARV. L. REV. 853 (1987).
11. For efforts to encourage Irish immigration, *see, e.g., Immigration Act of 1990, § 131, 104 Stat. 4978 (codified as amended at 8 U.S.C. § 1153 (c) [1994]). Bill Ong Hing argues that Congress continues to discriminate against Asians. "Through an examination of past exclusion laws, previous legislation, and the specific provisions of the Immigration Act of 1990, the conclusion can be drawn that Congress never intended to make up for nearly 80 years of Asian exclusion, and that a conscious hostility towards persons of Asian descent continues to pervade Congressional circles." Bill Ong Hing*, Asian Americans and Present U.S. Immigration Policies: A Legacy of Asian Exclusion, *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY 1106, 1107 (Hyung-Chan Kim ed., 1992).*
12. Louis DeSipio and Harry Pachon, Making Americans: Administrative Discretion and Americanization, *12 CHICANO-LATINO L. REV. 52, 53 (1992).*
13. CHARLES GORDON AND STANLEY MAILMAN, IMMIGRATION LAW AND PROCEDURE § 92.03[1][b] (rev. ed. 1992).
14. Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857). For an insightful discussion of the role of *Dred Scott* in the development of American citizenship, see *JAMES KETTNER, THE DEVELOPMENT OF AMERICAN CITIZENSHIP, 1608–1870, at 300–333 (1978);* see also *KENNETH L. KARST, BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION 43–61 (1989).*
15. Civil Rights Act of 1866, ch. 31, 14 Stat. 27.
16. U.S. Const. amend. XIV.
17. 169 U.S. 649 (1898).
18. 112 U.S. 94 (1884).
19. Act of June 2, 1924, ch. 233, 43 Stat. 253.
20. Nationality Act of 1940, § 201(b), 54 Stat. 1138. See generally *GORDON AND MAILMAN*, supra, *at § 92.03[3][e].*
21. Pete Wilson, Crack Down on Illegals, *USA TODAY, Aug. 20, 1993, at 12A.*
22. H. R. J. Res. 129, 103d Cong., 1st Sess. (1993). An earlier, scholarly call to revamp the Fourteenth Amendment can be found in PETER SCHUCK and ROGER SMITH, CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY (1985).
23. Koh, supra, *at 69–70.*
24. Bill Ong Hing, Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society, *81 CAL. L. REV. 863, 866 (1993).*
25. Gerald Neuman warns against amending the Citizenship Clause. Gerald Neuman, Back to *Dred Scott? 24 SAN DIEGO L. REV. 485, 500 (1987).* See also *Note*, The Birthright Citizenship Amendment: A Threat to Equality, *107 HARV. L. REV. 1026 (1994).*

26. U.S. Const. art. I, sec. 8, cl. 4.
27. Act of March 26, 1790, ch. 3, 1 Stat. 103.
28. KETTNER, supra, *at 215–16.*
29. One exception exists. In revisions undertaken in 1870, the "white person" limitation was omitted. However, this omission is regarded as accidental, and the prerequisite was reinserted in 1875 by "an act to correct errors and to supply omissions in the Rev-ised Statutes of the United States." Act of Feb. 18, 1875, ch. 80, 18 Stat. 318. See *In re Ah Yup, 1 F.Cas. 223 (C.C.D.Cal. 1878) ("Upon revision of the statutes, the revisors, probably inadvertently, as Congress did not contemplate a change of the laws in force, omitted the words 'white persons.' ").*
30. Statement of Senator Hendricks, 59 CONG. GLOBE, 42nd Cong., 1st Sess. 2939 (1866). See also *John Guendelsberger,* Access to Citizenship for Children Born Within the State to Foreign Parents, *40 AM. J. COMP. L. 379, 407–9 (1992).*
31. Statement of Senator Cowan, 57 CONG. GLOBE, 42nd Cong., 1st Sess. 499 (1866). For a discussion of the role of anti-Asian prejudice in the laws governing naturalization, see generally *Elizabeth Hull,* Naturalization and Denaturalization, *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY 403 (Hyung-Chan Kim ed., 1992).*
32. The Senate rejected an amendment that would have allowed Chinese persons to naturalize. The proposed amendment read: "That the naturalization laws are hereby extended to aliens of African nativity, and to persons of African descent, and to persons born in the Chinese empire." BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850–1990, at 239 n.34 (1993).
33. Act of July 14, 1870, ch. 255, § 7, 16 Stat. 254.
34. Chinese Exclusion Act, ch. 126, § 14, 22 Stat. 58 (1882).
35. Fong Yue Ting v. United States, 149 U.S. 698, 716 (1893).
36. Neil Gotanda contends that separate racial ideologies function with respect to "other non-Whites," meaning non-Black racial minorities such as Asians, Native Americans, and Latinos. Neil Gotanda, "Other Non-Whites" in American Legal History: A Review of *Justice at War, 85 COLUM. L. REV. 1186 (1985). Gotanda explicitly identifies the operation of this separate ideology in the Supreme Court's jurisprudence regarding Asians and citizenship. Neil Gotanda,* Asian American Rights and the "Miss Saigon Syndrome," *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY 1087, 1096–97 (Hyung-Chan Kim ed., 1992).*
37. Charles Gordon, The Racial Barrier to American Citizenship, *93 U. PA. L. REV. 237, 252 (1945).*
38. MILTON KONVITZ, THE ALIEN AND THE ASIATIC IN AMERICAN LAW 80–81 (1946) (citation omitted).
39. Act of Oct. 14, 1940, ch. 876, § 303, 54 Stat. 1140.
40. Note, The Nationality Act of 1940, *54 HARV. L. REV. 860, 865 n.40 (1941).*
41. Act of Dec. 17, 1943, ch. 344, 3, 57 Stat. 600.
42. Act of July 2, 1946, ch. 534, 60 Stat. 416.
43. Id.
44. Immigration and Nationality Act of 1952, ch. 2, § 311, 66 Stat. 239 (codified as amended at 8 U.S.C. 1422 [1988]).
45. Arguably, the continued substantial exclusion of Asians from immigration not remedied until 1965, rendered their eligibility for naturalization relatively meaningless. "[T]he national quota system for admitting immigrants which was built into the 1952 Act gave the grant of eligibility a hollow ring." Chin Kim and Bok Lim Kim, Asian Immigrants in American Law: A Look at the Past and the Challenge Which Remains, *26 AM. U. L. REV. 373, 390 (1977).*
46. See generally *Ursula Vogel,* Is Citizenship Gender-Specific? *THE FRONTIERS OF CITIZENSHIP 58 (Ursula Vogel and Michael Moran eds., 1991).*
47. Act of Feb. 10, 1855, ch. 71, § 2, 10 Stat. 604. Because gender-based laws in the area of citizenship were motivated by the idea that a woman's citizenship should follow that of her husband, no naturalization law has explicitly targeted unmarried women. GORDON AND MAILMAN, supra, *at § 95.03[6] ("An unmarried woman has never been statutorily* barred from naturalization.").
48. PRENTISS WEBSTER, LAW OF NATURALIZATION IN THE UNITED STATES OF AMERICA AND OTHER COUNTRIES 80 (1895).
49. Act of Feb. 10, 1855, ch. 71, § 2, 10 Stat. 604.
50. Kelly v. Owen, 74 U.S. 496, 498 (1868).
51. GORDON AND MAILMAN, *supra* at § 95.03[6].
52. Act of Sept. 22, 1922, ch. 411, § 2, 42 Stat. 1021.
53. GORDON AND MAILMAN, *supra* at § 100.03[4][m].
54. Act of March 2, 1907, ch. 2534, § 3, 34 Stat. 1228. This act was upheld in MacKenzie v. Hare, 239 U.S. 299 (1915) (expatriating a U.S.-born woman upon her marriage to a British citizen).
55. Act of Sept. 22, 1922, ch. 411, § 3, 42 Stat. 1021.
56. *Id.* The Act also stated that "[n]o woman whose husband is not eligible to citizenship shall be naturalized during the continuance of the marriage."
57. Act of March 3, 1931, ch. 442, § 4(a), 46 Stat. 1511.
58. The loss of birthright citizenship was particularly harsh for those women whose race made them unable to regain citizenship through naturalization, especially after 1924, when the immigration laws of this country barred entry to any alien ineligible to citizenship. Immigration Act of 1924, ch. 190, § 13(c), 43 Stat. 162. *See, e.g.,* Ex parte (Ng) Fung Sing, 6 F.2d 670 (W. D. Wash. 1925). In that case, a U.S. birthright citizen of Chinese descent was expatriated because of her marriage to a Chinese citizen, and was subsequently refused admittance to the United States as an alien ineligible to citizenship.