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United Stateless: Race, Gender, and the Fragility of Rights

The "Right to Have Rights" and Statelessness in the Contemporary US

In 1949, Hannah Arendt, a leading political scientist who had been a stateless refugee fleeing from Nazi Germany, wrote a famous phrase describing nationality as "the right to have rights," that is, the only fundamental guarantor for rights.[1] In contrast to this sentiment, in mainstream US discourse, some rights have typically been interpreted to originate from personhood and not solely from political membership.[2] Nonetheless, in recent years, judicial proceedings have increasingly dodged the question of non-citizens' rights of personhood in favor of a conceptual framework that focuses on rights that come strictly from membership.[3] What happens then to a person's rights when he or she is not recognized as belonging to any nation?

In 2012, the Office of the United Nations High Commissioner for Refugees (UNHCR), in partnership with the Open Justice Society, issued a report highlighting the legal limbo occupied by stateless persons living within the United States. According to the 1954 Convention Relating to the Status of Stateless Persons, stateless persons are those who are not considered nationals by any state. Such a status might come about due to state dissolution and succession; discrimination and arbitrary denial of nationality based on grounds like gender, race, or religion; or administrative technicalities.[4] Despite the promises of birthright citizenship, which prevents people from *becoming* stateless within US borders, the US lacks a solid legal framework that protects the rights of those who are *already* stateless. As a result, thousands of stateless persons

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[1] Gessen, Masha. 2018. "'The Right to Have Rights' and the Plight of the Stateless." May 3, 2018. http://www.newyorker.com/news/our-columnists/the-right-to-have-rights-and-the-plight-of-the-stateless.
[2] Heeren, Geoffrey. "Persons who are not the people: The changing rights of immigrants in the United States." *Colum. Hum. Rts. L. Rev.* 44 (2012): 367.
[3] ibid.
[4] UNHCR and Open Society Justice Initiative. 2012. *Citizens of Nowhere: Solutions for the Stateless in the U.S.* New York and Washington, DC: Open Society Justice Initiative and UNHCR. http://www.unhcr.org/refworld/docid/50c620f62.html.

live “in the shadows” and are vulnerable to discrimination, precarious work arrangements, and difficulty with travel. Many also find themselves in protracted deportation proceedings in which they have no country to which they can be “returned.”[5] In 2017, the Center for Migration Studies of New York (CMS) estimated that there are 218,000 such stateless persons in the US, who are largely invisible “legal ghosts."[6] Yet this issue, invisible as it is, is not a new one. Rather, the United States has a long history of systematically creating and fostering statelessness. In this paper, I will look specifically at how the US attempted to deny the right to nationality to unwanted groups through the regulation of female bodies: in cases involving both American citizen women and non-citizen women as wives and mothers, the US manipulated gender discourse to further a form of gatekeeping and advance an implicitly racist nation-building project. At the same time that Stateless Others play an important role in defining the nation by providing a negation against which citizens are able to view themselves, they receive uneven and asymmetrical access to rights, thereby demonstrating the exclusive, hierarchical, and fragile nature of citizenship.

Defining the Other: *Dred Scott* and Foundations of Statelessness

Before diving into the meat of this paper, I will aim to set the foundation of the history of statelessness in the US by looking at the landmark Supreme Court case, *Dred Scott v. Sandford*, a 7-2 decision that set the precedent that free descendants of slaves were not and could never be citizens under the US Constitution. This case was an extremely high-profile one as the issue of slavery continued to deepen the wedge between slave states and free states in the years leading up to the Civil War. As a New York Daily Tribune correspondent reported, “the delivery of this opinion occupied about three hours, and was listened to with profound attention by a crowded

[5] ibid.
[6] Kerwin, Donald, Daniela Alulema, Michael Nicholson and Robert Warren. 2020. Stateless in the United States: A Study to Estimate and Profile the US Stateless Population. CMS Report, January. New York: CMS

Court-room," which included "gentlemen of eminent legal ability, and a due proportion of ladies."[7]

In his majority opinion, Chief Justice Taney (who was, unsurprisingly, from a wealthy slaveholding family) argued that a certain state can make laws to extend "rights and privileges" like voting to certain persons and even foreigners, but such rights do not make people citizens nor give them "any of the privileges and immunities of a citizen in another State."[8] Chief Justice Taney further cemented that on the contrary, there could be persons with the formal status of 'citizens' who nevertheless had no political power, notably, women and minors. However, the fact that they exercised "no share of the political power and were incapacitated from holding particular offices" did not mean they were not "a part of the political family."[9] In his argumentation, having rights and being a citizen are thus two distinctive categories that have no bearing on one another. Someone like Dred Scott, though stateless, could theoretically be given rights, but such rights would only be the result of governmental grace, so to speak, and no merit of the individual. In essence, stateless persons can be granted a form of rights, but these rights are paperealities that do not guarantee or signify any meaningful citizenship.

Taney utilized a strictly originalist interpretation to argue that African Americans were never conceived of as members of the political community by the framers of the Constitution and were seen either as property or as a "separate class of persons." To bolster this point, he cited the wide breadth of anti-miscegenation laws against African Americans.[10] The Court's racial project clearly excluded black Americans as wholly Other, explicitly differentiating them even from

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[7] "THE LATEST NEWS, RECEIVED BY MAGNETIC TELEGRAPH: FROM WASHINGTON THE DRED SCOTT CASE DECIDED THE CABINET." *New - York Daily Tribune (1842-1866)*, Mar 07, 1857, pp. 5. *ProQuest*, http://proxy.uchicago.edu/login?url=https://www-proquest-com.proxy.uchicago.edu/historical-newspapers/latest-news-received-magnetic-telegraph/docview/570403960/se-2?accountid=14657.
[8] *Dred Scott v. Sanford,* 60 U. S. 394
[9] ibid., 60 U.S. 422
[10] ibid., 60 U.S. 411

other racial outsiders like Native Americans,[11] who were granted citizenship in 1924.[12] This ruling thereby left African Americans, even when free, stateless, with no nation to which they could invoke protection. The Court clearly set forth a very particular understanding of what it meant to be a citizen and part of the "We, the People of the United States" by establishing that "the Constitution was made only for white men."[13] The US thereby defined citizenship through its negation.

Although the decision in *Dred Scott* was eventually overturned by the passage of the Fourteenth Amendment, which provided automatic citizenship to all persons born in the US, the foundations of statelessness set forth in *Dred Scott* were not so quickly dismantled. Instead, the idea that there were persons who could categorically be stripped of or refused citizenship due to innate factors like their race or gender followed into the twentieth and twenty-first centuries. In the remainder of my paper, I will focus specifically on two rulings, *Mackenzie v. Hare* (1915) and *Tuan Anh Nguyen v. INS* (2001). These cases were decided nearly a century apart, during which the US underwent substantial transformations in its conceptualization of citizenship, its immigration policies, and racial composition. However, both maintained implicit racial logics that used discourses of gender to limit the unwanted claims to citizenship from racial undesirables, in this case Asians.

The Liminality of Women's Citizenship: The Expatriation and Cable Acts

In 1907, Congress passed an Expatriation Act that would retroactively strip American women of their citizenship if they married or had married a foreign husband. The short bill, which numbered just a few lines in length, passed with little public scrutiny or attention; in fact, many women did not realize that their citizenship had been revoked until years later, and reacted

[11] ibid., 60 U.S. 403
[12] 43 Stat. 253 Pub. Law 68-176
[13] "The Latest News."

with shock upon realizing that they were unable to vote.[14] In 1915, the Supreme Court upheld the validity of the Expatriation Act in its decision *Mackenzie v. Hare*, 239 U.S. 299, 312 (1915), bolstering that Congress had the power to take citizenship away from people that it deemed had deserted the nation through marriage with a non-national. Through the language of the decision, the Court justified the creation of stateless persons following gendered patterns: the ruling established that women's status was both liminal and schizophrenic, contingent upon their marriage and the citizenship status of their spouse.

In its decision, the Court relied heavily upon a principle called coverture, which defines husbands and wives as one legal entity and establishes women's status as inherently tied to that of their husbands'. The Court held that "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."[15] Despite the fact that the early twentieth century was characterized by growing independence for women and various suffrage movements that acknowledged that women had distinct legal personhood from their husbands, this decision gave dominance to the husband as the bestower of citizenship and the mediator between the state and their wives. *Mackenzie v. Hare* further ignored the fact that women were becoming stateless within US territory by pretending that all women marrying foreigners would take their husbands' nationality.

The Court held that allegiance to a nation was not immutable and explicitly equated marriage to a foreigner with voluntary expatriation. Though the plaintiff, a native-born US citizen who lost her citizenship upon marriage to a British immigrant, argued that her citizenship was a "a right, privilege, and immunity which could not be taken away from her except as a

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[14] Batlan, Felice. "She Was Surprised and Furious": Expatriation, Suffrage, Immigration, and the Fragility of Women's Citizenship, 1907-1940." *Stan. JCR & CL* 15 (2019): 316.
[15] *Mackenzie v. Hare*, 239 U.S. 311 (1915)

punishment for crime or by her voluntary expatriation,"[16] the Court essentially criminalized marriages with foreigners and claimed that women like the plaintiff had *chosen* to lose their citizenship, even when they were not aware of it. The language of the decision highlighted that the marriage of an American woman with a foreigner was "a condition voluntarily entered into, with notice of the consequences. It is as voluntary and distinctive as expatriation, and its consequence must be considered as elected."[17] Inherent in this logic was the assumption that the foreign husband was an enemy and a national threat to US interests who could, by virtue of his foreignness, de-Americanize his wife and make her a threat to US interests. The fact that the Expatriation Act simply did not apply to American men taking foreign wives spoke to both the patriarchal underpinnings of legal personhood and the fear of foreign immigrant men that prevailed in American society. The Court did appear to leave an opportunity for women to regain their citizenship upon divorce: "At its termination, she may resume her American citizenship if in the United States by simply remaining therein; if abroad, by returning to the United States, or, within one year, registering as an American citizen."[18] However, this created at best a schizophrenic citizenship status and access to rights for women like Mackenzie.

After World War I and the passage of the Nineteenth Amendment, women used their newly acquired constitutional right to vote by pressing Congress to pass a corollary to the Expatriation Act of 1907, calling attention to the unfair gendered dimensions of the Expatriation Act. In advocating for the passage of the Cable Act of 1922, which would repeal parts of the Expatriation Act by theoretically making it so that women's citizenship status was not dependent on her husband's, leaders of the women's suffrage movement mobilized on the inequality engendered in *Mackenzie v. Hare*. They highlighted that the plaintiff, Ethel Mackenzie, had been

[16] ibid., 239 U.S. 308
[17] ibid., 239 U.S. 312
[18] ibid., 239 U.S. 307-308

a suffragist herself, belonging to a "national congregation of female activists committed to achieving equal citizenship" and they expressed outrage at "her demotion from the rank of citizen. From their perspective, Mackenzie's disownment represented the federal government's lack of regard for even its most respectable and active female citizens."[19] In their framing of the issue, the female suffragists thus clearly aimed to demonstrate how the Expatriation Act and the ruling in *Mackenzie v. Hare* were fundamentally against their aims of gender equality and centered their disapproval on feminist arguments.

The gendered dimensions of the Expatriation Act further generated some national and international scrutiny for its treatment of female citizenship. For example, a 1926 article from the New York Herald highlighted that the League of Nations discussed the Expatriation Act as an "embarrassment" that left "women without a country."[20] Additionally, while the history of the Expatriation and Cable Acts still remains largely unknown to many Americans, recent advocacy efforts to raise awareness about these acts in Minnesota led to a bipartisan Senate resolution passing in 2014. In this resolution, Congress apologized for this stain on American history, extended "sympathy and regret" for the women who lost citizenship due to these laws, and reaffirmed its commitment to upholding women's rights and equal protection under the law. Senators including Amy Klobuchar of Minnesota expressed that "[t]his resolution revives [the women's] memories, recognizes this injustice, and allows us to reflect on the hardships women

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[19] Bredbenner, Candice Lewis. "America's Prodigal Daughters and Dutiful Wives: Debating the Expatriation Act of 1907" in *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (UC Press E-Books Collection, 1998), 70.

[20] "League Airs U. S. Law which Deprives Women of Country: Cable Act Discussed at Geneva Codification Meeting and Cases of Embarrassment Dwelt upon." *The New York Herald, New York Tribune (1924-1926),* Jan 26, 1926. http://proxy.uchicago.edu/login?url=https://www-proquest-com.proxy.uchicago.edu/historical-newspapers/league-airs-u-s-law-which-deprives-women-country/docview/1112709309/se-2?accountid=14657.

have faced throughout our nation's history."[21] As we can see, America's retroactive gaze toward the Expatriation Act recognizes how it emphasized the fragility of women's citizenship.

In contrast, while the language of the decision in *Mackenzie v. Hare* and mass mobilization on this case honed in on the gendered aspects of the Expatriation and Cable Acts, there was little to no attention paid to the racial elements of the decision. In *Mackenzie v. Hare*, the Court briefly conceded that "popular sentiment" played a role in the decision[22] but declined to go into more detail by dismissively stating that "it would make this opinion very voluminous to consider in detail the argument and the cases urged in support of or in attack upon the opposing conditions."[23] In our reading of this text, we cannot ignore the racialized nature of immigration policy in the United States and how this law doubly targeted native-born Asian American women and white American women who married Asian men. A long history of anti-Asian sentiment led to landmark federal laws like the 1882 Chinese Exclusion Act and the prevailing legal concept that Asians were "aliens ineligible to citizenship," an idea that would not be fully overturned until the 1965 Immigration Act.[24] While the court decision was not explicit about this, women like Mackenzie who were marrying white foreigners would have been able to become citizens again when their husbands were naturalized, and thus, recover their lost rights. In contrast, a white American marrying an Asian man would only have been able to regain her citizenship through divorce since Asians were racially ineligible to citizenship. Meanwhile, native-born Asian American women would have permanently lost their citizenship with no recourse, even if they had married *white* foreigners, because they would never be able to

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[21] "Franken-Johnson Resolution Passes Senate, Brings Attention to History of Women Stripped of Citizenship & Voting Rights: [1]." *Targeted News Service*, May 15, 2014. *ProQuest*, http://proxy.uchicago.edu/login?url=https://www-proquest-com.proxy.uchicago.edu/newspapers/franken-johnson-resolution-passes-senate-brings/docview/1524836017/se-2?accountid=14657.
[22] *Mackenzie v. Hare,* 239 U.S. 309
[23] ibid., 239 U.S. 311
[24] Ngai, Mae M. *Impossible Subjects: Illegal Aliens and the Making of Modern America.* (Princeton, N.J.: Princeton University Press, 2004).

become naturalized. In short, they would lose all access to their rights of membership, even as their husbands gained them. As such, a sort of differential citizenship based on race was furthered by this court decision, despite its surface-level colorblindness.

The Cable Act of 1922, while offering a partial solution to some women, made race a much more explicit element than the original Expatriation Act of 1907, emphasizing several times that the provisions were not applicable to women who married men racially ineligible for citizenship, meaning Asian men. As Batlan argues,

> 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.[25]

As such, while the Cable Act of 1922 provided a potential solution through which some women could regain their citizenship and thereby, their rights (e.g. the right to vote), it applied only selectively to certain women based on their race or the race of their husbands'. Women who were not able to regain citizenship would remain stateless and right-less. Through decisions like these, the US specifically targeted Asian-American women and women of any race who married Asian men, attempting to discourage women from pursuing such marriages by punishing those who did. Further, in the very process of advocating for the Cable Act, even female suffragists relied on an inherently racial logic, expressing their anger that "foreign- born women naturalized by marriage were able to register to vote while native-born women with alien husbands were turned

[25] Batlan, "She Was Surprised and Furious," 326.

away."[26] As such, we see how mobilization around gender discourses reinforced the underlying racial politics of such laws.

In 1934, more than a decade after the passage of the Cable Act, American women were finally seen as their own distinct persons and thus able to transmit their citizenship to their children, their status not tied to their husbands'.[27] However, even as American women gained these rights, the US tried to limit descent-based nationality claims by introducing a set of complex laws that would make it harder for children born to only one US citizen parent to claim nationality based on the gender of the citizen parent. Modern mechanisms of creating and permitting statelessness continued to perpetuate racial and gender discrimination under the guise of inevitable and biologically sound rationales, which we see in the Supreme Court's decision in *Tuan Anh Nguyen v. INS*.[28] In the following section, I turn to examine this particular case because it demonstrates how modern mechanisms of fostering and permitting statelessness disguised their racialized politics behind a subtle logic that appeared at first glance to be facially neutral. The Court's decision in *Tuan Anh Nguyen v. INS* exemplifies the legal construction of alien children who, despite their birth to one US citizen parent—the father—, would remain aliens based on discourses explicitly related to gender and implicitly to race. Further, this case from 2001 allows us to compare and contrast the treatment of Asian immigrants in the pre- and post-1965 era, giving us the chance to evaluate the historiographical claim that the 1965 immigration law drastically transformed Asian immigrants' relationships with American citizenship in determining them eligible for citizenship.

Racial and Gendered Statelessness in the Modern Day

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[26] Bredbenner, "América's Prodigal Daughters," 64.
[27] Yoon, Diana H. "Reproducing Citizens through U.S. Militarism: Amerasians and Descent-Based Membership," New York University, Ann Arbor (2010): 59. ProQuest, http://proxy.uchicago.edu/login?url=https://www-proquest-com.proxy.uchicago.edu/dissertations-theses/reproducing-citizens-through-u-s-militarism/docview/816702615/se-2?accountid=14657.
[28] *Tuan Anh Nguyen v. INS*, 533 U.S. 53 (2001)

In *Tuan Anh Nguyen v. INS,* the plaintiff Nguyen was born in Vietnam to an American citizen father and non-American citizen mother. At the age of six, he moved to the US with his father and became a legal permanent resident, though his father did not try to establish a claim of US citizenship for him. However, in his early twenties, Nguyen was convicted of sexual assault of a minor, which made him deportable due to retroactively applied rules. Nguyen claimed that he should be protected from deportation and be a citizen because of his father's citizenship status. Although Nguyen's father tried to obtain evidence of parentage to have him recognized as a US citizen and prevent his deportation, the Immigration and Naturalization Service (INS) rejected the claim to citizenship due to 8 U.S.C. § 1409(a), whereby the evidence of parentage needed to have been submitted before Nguyen's eighteenth birthday. Nguyen argued that the statute violated equal protection principles because it required a much longer, more complicated process to acquire citizenship for a child born abroad and out of wedlock to one US citizen parent if the citizen parent was the father. In contrast, if the mother were the citizen partner, the child would automatically inherit her nationality. In a 5-4 split decision, the Court argued that there had been no such violation, and maintained that it was important for the child to receive the mother's nationality so as to "[prevent] certain children from being stateless" since in many foreign countries women cannot pass on their nationality.[29] The Court thus masked their decision in the ironic guise of preventing statelessness.

The majority opinion rationalized its decision by setting forth the difficulty of proving a biological relationship with the American citizen father, while the very fact of the birth itself would prove a biological connection to the American citizen mother. As such, the Court relied upon arguments that appeared biologically sound and inevitable. The Court further argued that the matter was not merely one that could be solved by a simple DNA test because "scientific

[29] ibid., 533 U.S. 92-93

proof of biological paternity does not, by itself, ensure father-child contact during the child's minority."[30] In essence, the Court implied that a mother's role was to rear her children and following this, an American citizen mother would impart onto her child her own "Americanness," but an American citizen father might not do the same. The Court also explicitly discussed the case of American military men on duty in foreign countries, who might impregnate local women (many times without consent, we might add) and then leave the country. In this scenario, the father "may not know that a child was conceived, and a mother may be unsure of the father's identity."[31] The child would thus be raised by the foreign mother and remain uninitiated in American customs. The US demonstrated its clear fear of such foreign ethnic children who could claim citizenship through simple parentage and could pose a threat to white America. In such a way, these gender-asymmetrical laws that appeared to be facially neutral were actually contributing to what a "racially nativist nation-building project":

> By determining which citizens' children would be recognized as citizens, they helped regulate the actual reproduction—and racial composition—of the citizenry. By focusing on the citizenship status of children, this history makes visible, in granular detail, the means by which laws regulating birth status—long used to create and maintain racial social and legal hierarchies within the American polity—were regularly used to shape the racial composition of the polity as well.[32]

The reasoning set forth in *Nguyen v. INS* gave relatively free reign to American military men stationed abroad while limiting the rights of citizenry to their children, in order to maintain a white-dominant US. While Nguyen himself was a Vietnamese citizen, a gender-symmetrical

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[30] ibid., 533 U.S. 67
[31] ibid., 533 U.S. 54
[32] Collins, Kristin A., Illegitimate Borders: Jus Sanguinis Citizenship and the Legal Construction of Family, Race, and Nation (July 1, 2014): 2139-2140. 123 Yale Law Journal 2134 (2014), Boston Univ. School of Law, Public Law Research Paper No. 14-36, Available at SSRN: https://ssrn.com/abstract=2461228

ruling such as this could in some instances create stateless children (e.g. in the case of a child of an American citizen man and a stateless woman). As such, the justification that this ruling was meant to prevent statelessness was a false pretense and the ruling itself served little purpose other than to create a racially homogenous, white nation.

Nguyen v. INS and its hidden racial agenda are also interesting to consider in light of the case's contextual background: that of the Amerasian Homecoming Act. In the early 1990s, more than 30,000 Amerasians (also known as G.I. babies, or children born in Asia to an Asian mother and a US military father—the same class of children that the plaintiff Nguyen belonged to) and 80,000 family members came from Vietnam to the US under the congressional act that sought to "bring home" the children of American citizen fathers who recognized the foreign-born children born out of wedlock as their own.[33] In the years prior to the passage of the Amerasian Homecoming Act, American media had underscored the hardships experienced by Amerasian children and the inherent responsibility of Americans, who had brought such children into existence.[34] For example, a Los Angeles Times article from 1980 highlighted the plight of Amerasian children growing up in poverty and rejected by their society who continued "searching for their roots—roots that go back to the United States, a country they have never seen, where they have fathers most of them will never know."[35] The same article also brought up the issue of stateless children: "in Thailand, many of the estimated 4,500 Amerasian children became stateless persons under a 1978 decree denying citizenship to children of foreign

[33] Yoon, "Reproducing Citizens," 11.
[34] Yoon, "Reproducing Citizens," 53.
[35] MYDANS, SETH. "SOCIETIES STILL REJECT THEM: FATHERLESS, GIS' CHILDREN GROW TO PAINFUL ADULTHOOD IN ASIA AMERASIAN CHILDREN." *Los Angeles Times (1923-1995)*, Oct 19, 1980, pp. 2. *ProQuest*, http://proxy.uchicago.edu/login?url=https://www-proquest-com.proxy.uchicago.edu/historical-newspapers/societies-still-reject-them/docview/162931204/se-2?accountid=14657.

fathers."[36] As such, many Americans began to call for Amerasian children to be recognized by their fathers, foregrounding their identity as American children and the US's responsibility.

Nonetheless, the positive media portrayals of Amerasian children and their positioning as "Americans" did not last. After the massive immigration of Amerasian children from Vietnam to the US in the 1990s, critics continued to advance arguments that emphasized "that marriages between Americans and foreign nationals were more likely to produce undesirable citizens than marriages between two citizens" and public discourse continued to try to limit access to nationality and delineate the boundaries of deservedness through "the elevation of the 'legitimate' family."[37] Despite the fact that large numbers of Amerasian children specifically from Vietnam continued to enter the US, they were classified as refugees rather than being recognized as having specific biological ties to US citizens: "American paternity did not generate a distinct legal status, even though it had legal implications. Amerasians, who had been singled out for compassion and intense political interest at other times, disappeared into the un-individuated masses of refugees."[38] Thus, at the same time that certain American women were making some "progress" and their right to pass down their nationality was being more uniformly recognized, children of non-citizen mothers and citizen fathers would continue to be regarded as inherently un-American and potentially even become stateless.

Rulings like *Tuan Anh Nguyen v. INS* maintained the racial hierarchies that discriminated against Asians even after the formal age of legalized discrimination against Asian immigrants had ended. Even as immigration policies after 1965 loosened and then completely overturned restrictions and quotas on Asian immigration, modern mechanisms and legal constructions continued to create and permit statelessness in ways that discriminated against them and other

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[36] ibid.
[37] Yoon, "Reproducing Citizens," 61-63.
[38] Yoon, "Reproducing Citizens," 105.

unwanted groups. This case demonstrates how in the modern day, the US continues to use subtle gendered discourses and facially-colorblind laws as a form of gatekeeping to discriminate against racial undesirables.

Looking Back at Stateless Histories

By looking at the landscape of statelessness and stateless persons' access to rights over time, I have highlighted how stateless persons have inconsistently been protected by US law and make uneven "progress" that maintains racial and gender hierarchies. I first provided a cursory analysis of the landmark Supreme Court case *Dred Scott v. Sandford*, which set the foundations of statelessness by categorically denying citizenship to all African Americans. From there, I have attempted to pay particular attention to the question of who can pass down rights and citizenship by looking at cases involving American citizen women and non-citizen women as wives and mothers. Keeping in mind the racist immigration policies that had barred Asian immigrants from citizenship until 1965, I traced how citizenship was granted and revoked in a schizophrenic way for women in *Mackenzie v. Hare*, especially for Asian-American women and women marrying Asian foreigners. I then looked at a more modern case, post-1965, *Tuan Anh Nguyen v. INS*, where I examined modern mechanisms of fostering statelessness. I argued that here too, a biologically- and rationally-sound façade hid a more insidious face of racial nation-building to continue to discriminate against Asians and other racial undesirables. Through the microcosm of the family, we see how dynamics of race and gender play a significant role in who deserves to become a citizen and to have rights guaranteed by the state, and who is able to pass down nationality to create the citizens of a state.

In future research, it would be worthwhile to continue exploring this question of how nationality is passed down and how traditional gender roles like motherhood are mobilized in US

policy and become forms of racial gatekeeping to narrow access to American nationality. In the cases that I have studied, there is a very explicit gendered dimension to citizenship laws that often hides the underlying racial logic; it would also be valuable to ask the question, are there other cases when we see variations or inversions of this practice?

Looking Forward: the Future of Statelessness

In recent decades, non-citizens and stateless persons have made certain strides in the US: after *Trop v. Dulles* in 1958, the US held that denaturalization was a cruel and unusual punishment, acknowledging statelessness as a human rights violation. The Court further upheld this decision in *Afroyim v. Rusk* in 1967, when it acknowledged that "every citizen in the U.S. has a constitutional right to remain a citizen… unless he voluntarily relinquishes that citizenship."[39] In 2001, the Supreme Court held that stateless persons could not be held in detention indefinitely through its decision in *Zadvydas v. Davis.* Such rulings have granted important protections for stateless populations in the US. Moreover, stateless studies are currently gaining traction, as are public policies that aim to eliminate statelessness. At the same time, legal cases and public policies are attempting to narrow what "legal personhood" signifies in the age of AI and transnational corporations and to ultimately restrict access to rights for non-citizens. These fundamentally contradictory trends have left stateless persons and non-citizens increasingly vulnerable and subject to a patchwork of confusing laws. Any "progress" we see is and has always been uneven and selective.

As we navigate new immigration laws and court rulings that appear to promise protection and access for non-citizens, we must continue to question: to whom are these promises made, and using what kinds of underlying racialized and gendered logics? At its core, the concept of nationhood is inherently exclusive, and the decision to grant citizenship and rights is almost

[39] Kerber, Linda K. "Toward a history of statelessness in America." *American Quarterly* 57.3 (2005): 743.

always political, based on specific logics that aim to create a specific type of nation. Although statelessness is an extreme case of rightlessness and a relatively invisible issue, it is more common than we might realize and carries a set of dangerous logics that reveal how America continues to think about concepts like deservedness, rights, and belonging. Ultimately, statelessness is not a new phenomenon, and it is not one that happens "elsewhere" to "other people" simply due to other nations' politics and histories. Instead, statelessness is often created and permitted in the US and is more closely entwined with the birth of our nation than we think. As Kerber claims,

> Stateless people, the "citizens' other… serve the state by embodying its absence, by providing frightening models of the vulnerability of those who lack sufficient awe of the state. The stateless serve the state by signaling who will not be entitled to its protection, and throwing fear into the rest of us.[40]

Thus, examining the historical and contemporary ways in which the US has both created and fostered statelessness for women, children, and immigrants reminds us of the contradictions inherent in US law and the fragility of rights.

[40] Kerber, "Toward a history," 745.

Works Cited

Batlan, Felice. "She Was Surprised and Furious": Expatriation, Suffrage, Immigration, and the Fragility of Women's Citizenship, 1907-1940." *Stan. JCR & CL* 15 (2019): 315-348.

Bredbenner, Candice Lewis. "America's Prodigal Daughters and Dutiful Wives: Debating the Expatriation Act of 1907" in *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (UC Press E-Books Collection, 1998), 46–80.

Collins, Kristin A., Illegitimate Borders: Jus Sanguinis Citizenship and the Legal Construction of Family, Race, and Nation (July 1, 2014). 123 Yale Law Journal 2134 (2014), Boston Univ. School of Law, Public Law Research Paper No. 14-36, Available at SSRN: https://ssrn.com/abstract=2461228

Dred Scott v. Sandford, 60 U.S. 393 (1856)

"Franken-Johnson Resolution Passes Senate, Brings Attention to History of Women Stripped of Citizenship & Voting Rights: [1]." *Targeted News Service*, May 15, 2014. *ProQuest*, http://proxy.uchicago.edu/login?url=https://www-proquest-com.proxy.uchicago.edu/newspapers/franken-johnson-resolution-passes-senate-brings/docview/1524836017/se-2?accountid=14657.

Gessen, Masha. "'The Right to Have Rights' and the Plight of the Stateless." *The New Yorker*, 3 May 2018, www.newyorker.com/news/our-columnists/the-right-to-have-rights-and-the-plight-of-the-stateless.

Heeren, Geoffrey, Persons Who Are Not the People: The Changing Rights of Immigrants in the United States (December 19, 2012). Columbia Human Rights Law Review, Vol. 44, No. 2, 2013, Valparaiso University Legal Studies Research Paper No. 12-16, Available at SSRN: https://ssrn.com/abstract=2191651

Kerber, Linda K. "Toward a history of statelessness in America." *American Quarterly* 57.3 (2005): 727-749.

Kerwin, Donald, Daniela Alulema, Michael Nicholson and Robert Warren. 2020. Stateless in the United States: A Study to Estimate and Profile the US Stateless Population. CMS Report, January. New York: CMS

"League Airs U. S. Law which Deprives Women of Country: Cable Act Discussed at Geneva Codification Meeting and Cases of Embarrassment Dwelt upon." *The New York Herald, New York Tribune (1924-1926),* Jan 26, 1926. http://proxy.uchicago.edu/login?url=https://www-proquest-com.proxy.uchicago.edu/historical-newspapers/league-airs-u-s-law-which-deprives-women-country/docview/1112709309/se-2?accountid=14657.

Mackenzie v. Hare, 239 U.S. 299, 312 (1915)

MYDANS, SETH. "SOCIETIES STILL REJECT THEM: FATHERLESS, GIS' CHILDREN GROW TO PAINFUL ADULTHOOD IN ASIA AMERASIAN CHILDREN." *Los Angeles Times (1923-1995)*, Oct 19, 1980, pp. 2. *ProQuest*, http://proxy.uchicago.edu/login?url=https://www-proquest-com.proxy.uchicago.edu/historical-newspapers/societies-still-reject-them/docview/162931204/se-2?accountid=14657.

Ngai, Mae M. *Impossible Subjects: Illegal Aliens and the Making of Modern America.* (Princeton, N.J.: Princeton University Press, 2004).

"THE LATEST NEWS, RECEIVED BY MAGNETIC TELEGRAPH: FROM WASHINGTON THE DRED SCOTT CASE DECIDED THE CABINET." *New - York Daily Tribune (1842-1866)*, Mar 07, 1857, pp. 5. *ProQuest*, http://proxy.uchicago.edu/login?url=https://www-proquest-com.proxy.uchicago.edu/historical-newspapers/latest-news-received-magnetic-telegraph/docview/570403960/se-2?accountid=14657.

Tuan Anh Nguyen v. INS, 533 U.S. 53 (2001)

UNHCR and Open Society Justice Initiative. 2012. *Citizens of Nowhere: Solutions for the Stateless in the U.S.* New York and Washington, DC: Open Society Justice Initiative and UNHCR. http://www.unhcr.org/refworld/docid/50c620f62.html.

Yoon, Diana H. "Reproducing Citizens through U.S. Militarism: Amerasians and Descent-Based Membership," New York University, Ann Arbor, 2010. ProQuest, http://proxy.uchicago.edu/login?url=https://www-proquest-com.proxy.uchicago.edu/dissertations-theses/reproducing-citizens-through-u-s-militarism/docview/816702615/se-2?accountid=14657.

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