Introduction

There was a time, in the not-distant past, when marriage turned women into aliens in their own country. For the simple act of marrying a foreign man their citizenship was stripped from them. Often it was replaced with another (that of the husband), although sometimes with none at all. This history is little known, and the laws that performed its strange alchemy are even less understood. The story's end lies in the United Nations Convention on the Nationality of Married Women.[1] The Convention, which was adopted in 1957 and entered into force in 1958, is, undeniably, one of the lesser known of the international rights-bearing treaties, overshadowed by the mighty UN Conventions that were ratified in the following decades, giving expression to the rights of disadvantaged groups and peoples, including women. Yet, in its day, the 1957 Convention was a great milestone in the protection of rights. It addressed a century-old (or older) practice that had caused hardship in the lives of countless individuals and at the heart of which lay what we recognise today as a profound denial of rights.

The Convention was overtaken by the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (among the reasons, perhaps, for the first Convention's relative obscurity). Its history, however, is directly relevant to public policy today. Indeed, it addresses a subject – citizenship-stripping – that governments around the world are increasingly contemplating in response, specifically, to the rise of terrorism by non-state actors (including 'home-grown' citizens) that has marked the first decades of the twenty-first century, throwing up

[1] This is not to say that gender discrimination in nationality law no longer exists. Many instances of discrimination (both direct and indirect) in laws and procedures governing naturalisation, transmission of citizenship to children, and diplomatic protection, among others, still operate around the world. Karen Knop and Christine Chinkin, 'Remembering Chrystal Macmillan: Women's Equality and Nationality in International Law' (2001) 22 *Michigan Journal of International Law* 523.

profound and troubling questions about the demands of citizenship and the conditions of its conferral.

The opening words of the Convention on the Nationality of Married Women (impervious to the irony of the masculine pronoun) include an affirmation of Article 15 of the United Nations Universal Declaration of Human Rights of 1948: 'everyone has the right to a nationality' and 'no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality'. The Convention continues:

> [N]either the celebration nor the dissolution of marriage between one of [a member State's] nationals and an alien nor the change of nationality by the husband during marriage shall affect the nationality of the wife.

It then adds that a woman should not be prevented from retaining her nationality by the change of her husband's nationality, and affirms that privileged arrangements for naturalisation (subject to national security and public policy limitations) should be available to alien wives, at their request.

Why, then, if nationality is a human right, already affirmed as such by the international community,[2] was a specific Convention on women's nationality and marriage needed? What, to use the lawyer's expression, was the 'mischief'? The Convention was a response to the long, almost-universal history of laws that had governed the nationality of married women between the early-to-mid nineteenth century and the mid-twentieth century. Such laws made a woman's citizenship dependent on whether and whom she married. A woman who did not marry was subject only to the general citizenship laws that applied in her country. Her native 'birthright' citizenship, all else being equal, was secure. A woman who married a fellow citizen was similarly secure. But the status of a woman who married a foreign man – a man whose citizenship was other

[2] The contrast between the 1948 United Nations Declaration and the 1930 League of Nations Hague Nationality Convention ('Convention on Certain Questions Relating to the Conflict of Nationality Laws') illustrates the evolution in thinking about nationality as a human right. The Convention's preamble states: 'it is in the general interest of the international community to secure that all its members should recognize that every person should have a nationality'. This is not to suggest that nationality was never thought of as a human right at that time. In 1930, Conservative British Member of Parliament, Victor Cazalet spoke in support of the (unsuccessful) UK Nationality of Married Women Bill, which sought to confer citizenship equality on British women, as a measure 'strongly on the side of human rights'; Labour MP, Edith Picton-Turbervill, added, concerning marital naturalisation, that '[t]o compel nationality upon any human being is surely a denial of human rights'. United Kingdom, House of Commons, *Debates*, 28 November 1930, 1683, 1716.

than her own – was fundamentally different. Simultaneously with her marriage, under the law of virtually all countries, she was automatically deprived of her native citizenship (a process that, for reasons explained in the Preface, I refer to as 'marital denaturalisation'). The marriage vow transformed her not only into a wife, but also into an alien in her own country. At the same time, more often than not (by 'marital naturalisation') she simultaneously became a citizen of her husband's country. Along with her husband's name,[3] his citizenship was transferred to her. With this change of status, the woman lost any rights and entitlements she had enjoyed as a citizen of her (former) country, and in most cases, acquired such rights as were afforded to married women in her husband's country.

Practically, the effects of both marital denaturalisation and marital naturalisation were often minor. In many cases, the latter was in practice beneficial, allowing a woman to gain the citizenship of her husband's country without undertaking the indeterminate process of applying for naturalisation and satisfying the eligibility criteria under that country's law, thus guaranteeing her the right to live securely in his country. In many other cases, however, the practical consequences were severe, even drastic. Women lost the protection of their former state, including the right to the particular diplomatic representation abroad that they had previously enjoyed; they lost the right to live or travel freely in what had been their home country (that of their pre-marital citizenship) or, if they remained in that country, they did so now as aliens, subject to the many legal limitations that applied to the alien.

The practical effects, whether negative or positive, were, however, far from the whole picture. Even where the functional consequences were minimal, women who experienced marital denaturalisation found themselves psychologically affected. Many described this experience in terms of injury: the loss of 'home', exposure or vulnerability, the stripping-away

[3] The history of taking the husband's surname varies greatly around the world. In some countries it was (and is) mandated under legislation; in others, it was a 'rule' of common law, and in others, merely a cultural practice. In France and Quebec, it was/is prohibited under law. In some (Japan and Switzerland) the old rule specifying the husband's surname has been replaced with the requirement of a single family name; the choice is almost always that of the husband. Heather MacClintock, 'Sexism, Surnames, and Social Progress: The Conflict of Individual Autonomy and Government Preferences in Laws Regarding Name Changes at Marriage' (2010) 24 *Temple International Law and Comparative Law Journal* 277. The arguments in favour of the rule of marital name-change resemble those regarding marital citizenship change: maintaining family unity, facilitating administration and identification. They are, equally, rebuttable.

of part of their personal identity, becoming alienated. A sense of inferiority or subordination often accompanied this experience. A married woman's vulnerability to citizenship deprivation, combined with the practical impact, created a particular, perhaps unique, existential effect. Even those who happily embraced their husband's citizenship had a sense of this. These characterisations of loss were expressed, again and again, by the women affected and by those who campaigned for reform or repeal of the particular laws.

Both the loss of one citizenship and the acquisition of another happened without any action on the woman's part. Her consent was neither sought nor required. She had no opportunity to decline; she did not even necessarily know what was to happen. Frequently, indeed, she did not. But, even if she did, there was no chance of negotiating an alternative arrangement, or of keeping her original citizenship while acquiring her husband's. The transformation occurred as a non-negotiable result of nothing more than the act of marriage.

A woman who married a foreign man was no longer a (legal) member of her pre-marital constitutional community. She was assumed to have become a member of her husband's. She could not be both. Until well after the Second World War, the international community, supported by the great majority of countries, opposed dual nationality. Although it was understood that the condition occurred, unavoidably and regrettably, in certain, limited circumstances (see Chapter 6), the consensus was clear: dual nationality was anathema, a condition to be eliminated as far as possible. *Forsaking all others*, in law as in love, one citizenship alone was permitted, and that was determined, not by the woman or her own country, but by the law of her husband's state.

The underlying assumption in the policy of conditional marital nationality was that the woman who married 'out' was automatically absorbed into her alien husband's community, and her allegiance was accordingly transferred. Allegiance was thus subjective and contingent, but only for women. Although, in a couple of limited cases, marriage to a citizen woman led to the naturalisation of the alien husband[4] or allowed him to acquire his wife's citizenship,[5] the circumstances in which this occurred

[4] Under the Brazilian Constitution of 1891, the definition of Brazilian citizens included: 'Foreigners, residents of Brazil, who hold real estate in Brazil and who are married to Brazilian women or have Brazilian children, unless they have declared their intention to retain their original nationality'. Brazilian women who married foreigners were not denaturalised, and foreign women who married Brazilians were not naturalised.

[5] Japanese law of 1899 included the extraordinary provision that an alien man acquired Japanese nationality if (among other things) he became the 'nyufu' of a Japanese woman,

were extraordinary and they involved both a voluntary act and a secondary criterion – property ownership or elite family status. The acquisition of a new citizenship, that is, did not follow from the act of marriage alone. More significantly, no country stripped a man of his citizenship for marrying an alien woman.

In a tiny number of early examples, the woman lost her citizenship only in cases where she acquired, in fact, the citizenship of her husband's country as a consequence of her marriage,[6] and her allegiance was thus considered to have been 'objectively' transferred (in the manner of ordinary naturalisation). This policy – no loss without gain – was, as we shall see, ultimately adopted in the 1930s by the international community and subsequently followed in many countries. It was, however, very rare in the nineteenth century when conditional marital nationality laws were spreading, and in the early twentieth century, when they were at their peak. Even widely adopted, as it came to be, it did not satisfy the demands of citizenship equality campaigners.

The simple proposition, as noted, was that a woman's citizenship (and allegiance) was changed, if she married 'out'. The simple reality was that foreign marriage led to the loss of her citizenship and, frequently, the acquisition of her husband's. Expressed in these terms, this arrangement sounds symmetrical and straightforward. In practice, however, it was anything but. To begin with, the loss of citizenship under the law of the woman's country, and the acquisition of citizenship under the law of her husband's country, were provided for in different legal instruments: those of the countries respectively involved. Consequently, marital denaturalisation and marital naturalisation did not automatically occur, either simultaneously or necessarily, at the same time. No state had a part in shaping or passing the legislation of another sovereign country. The 'reciprocity' between one country and another – depriving its own women of citizenship on the understanding that the other country (the husband's)

that is to say, the husband of 'the female head of a family and [if he] becomes a member thereof'. Richard W. Flournoy and Manley O. Hudson (eds) *A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes, and Treaties* (Oxford University Press, New York, 1929) 382.

[6] The French Civil Code was amended in 1889 so that a French woman would preserve her citizenship upon marriage to an alien unless she acquired his nationality. The Venezuelan Civil Code of 1904 similarly provided that a Venezuelan woman did not lose her citizenship unless she acquired that of her husband, and the 1904 Venezuelan Constitution had the same provision. The Venezuelan Civil Code of 1922 elaborated further: 'A Venezuelan woman who marries a foreigner is considered a foreigner with respect to the personal rights of Venezuelans while she continues married, provided that through the marriage she acquires the nationality of her husband'.

would confer citizenship upon in-marrying women – was not, and could not be, synchronised.

There were, additionally, significant periods of time in which some countries automatically naturalised foreign wives but did not yet denaturalise their own citizen women, and vice versa. Furthermore, while all countries that denaturalised women who married foreign men did so without exception, there were also countries where, under their particular naturalisation law, certain classes of foreign wives (those who were racially ineligible for naturalisation, for example, as in the United States[7]) were denied marital naturalisation, despite their having lost citizenship under their own countries' laws. In such cases, the woman became stateless. Indeed, one of the most dramatic effects of marital denaturalisation, in particular after the First World War, was statelessness among married women.

Although marital denaturalisation applied, in practice, only to women who married foreign men, it remained significant for all women. For the unmarried woman, whether she knew it or not, it was a constant lingering factor in the lottery of the heart: the citizenship of the man with whom she fell in love (something she was unlikely to control) had profound consequences. In the case of marriage to a fellow citizen the impact was unnoticeable; the woman shared her husband's citizenship, the same citizenship she (already) held. But, even in such circumstances, marriage brought vulnerability. A woman's citizenship was only as secure as that of her husband. If the husband changed nationality by naturalisation, his wife – now married to a foreign man – automatically lost her citizenship, whether or not it had been acquired by her marriage to him. In many cases, the man's naturalisation also automatically led to his wife's naturalisation, again without requiring her consent or even knowledge. If it did not, she became stateless. If a man became stateless, his wife joined in him in his statelessness.

World practice

The adoption of the Convention on the Nationality of Married Women signalled that the international community had ultimately come to

[7] Section 2 of the United States Act of February 10, 1855 ('Naturalization Act') stated: 'Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen'. Naturalisation was available only to 'white' persons.

recognise for married women what it had recognised for people generally: that vulnerability in nationality was the equivalent of vulnerability in the human community. It also revealed that conditional marital nationality had been a worldwide and long-standing policy.

The policy first appeared in a statutory instrument in the French (Napoleonic) Civil Code of 1804. The Code's Book I ('Of Persons') included a provision governing the nationality of married women: *L'étrangère qui aura épousé un Français suivra la condition de son mari* and *Une femme française qui épousera un étranger suivra la condition de son mari*: that is, a foreign woman who married a Frenchman took the citizenship of her husband, as did a Frenchwoman who married a foreign man. The principle of conditional marital nationality captured in the Code applied across Napoleonic Europe, and by the mid-nineteenth century was followed in most of the world. The British, who otherwise claimed to distinguish their nationality laws 'fundamentally' from those of continental Europe, also adopted the practice.[8]

There is something curious, and also revealing, in the formula expressed in the Code. The loss of a woman's citizenship is stated conversely. That is to say, rather than stating that a woman married to a foreign man lost her citizenship, the law declared that the woman acquired another person's citizenship. Many other countries followed this formula. The United Kingdom's Naturalization Act of 1870 (which first introduced marital denaturalisation for British women) stated: 'A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject'. The United States Act of March 2, 1907 (the 'Expatriation Act') stated: 'That any American woman who marries a foreigner shall take the nationality of her husband'.

In practice, the formula meant, as was intended, that the woman was automatically stripped of her pre-marital citizenship. It was a paradoxical and (as we shall see) erroneous way of expressing the law, but it captured a fundamental principle. Given the rule against dual nationality, in most countries, the acquisition of a foreign citizenship meant the forfeiture of

[8] In the course of a 1923 parliamentary committee review of the policy of conditional marital nationality, the Chairman (Viscount Chelmsford) pointed out that the first British 'Nationality' Act, in 1870 'did not bring the British law of nationality into entire accord with the Continental Law. As is well known, the fundamental principles of these laws are different. In most European countries a man takes his nationality from his parents. In the British Empire he takes it from the soil on which he is born, whatever nationality his parents may belong to'. *Report of the Select Committee on The Nationality of Married Women*, United Kingdom, House of Commons, July 1923, 66.

a prior citizenship. The result of declaring or 'deeming' that a married woman took her husband's citizenship was therefore denaturalisation for women who entered into a foreign marriage. The formula applied, however, regardless of whether or not a woman actually acquired her husband's citizenship. It was, in effect, and again as intended, a statement of expulsion from the woman's pre-marital constitutional community, rather than a positive statement about the woman's change of status.

By the late nineteenth century, in 'the [world's] systems of law the general rule [was] that the wife takes the nationality of the husband, whether it be that which he had at the time of marriage or that which he may acquire afterwards'.[9] In 1914, the British government, defending its law of marital denaturalisation, called it 'the practice of the whole civilised world'.[10] This was an understatement – democracies, authoritarian regimes and 'undeveloped' countries (sometimes through the imposition of colonial laws) adopted it.[11] So did countries with different degrees or intensities of nationalism. France and Germany (the first historically 'state-centred and assimilationist' in its understanding of nationhood, and the second '*Volk*-centred and differentialist'[12]) both practised marital denaturalisation in and after the nineteenth century. So did Meiji and post-Meiji Japan.[13] The United States, with its apparent constitutional protection of birthright citizenship under the Fourteenth Amendment of 1868 also

[9] G. G. Phillimore, 'Nationality of Married Women' (1917) *Journal of the Society of Comparative Legislation* 165, 167.

[10] United Kingdom, House of Commons, *Parliamentary Debates*, 20 July 1914, 1466. (Lewis Harcourt, Secretary of State for the Colonies.)

[11] The fact that British women acquired the nationality even of 'uncivilized' countries was sometimes recorded as an objection to the practice of conditional marital nationality; in parliamentary debate on the law, the fact that it was also 'Hindu' law, and the prospect that a British-born woman whose husband naturalised as a Turkish citizen would herself become Turkish were raised (albeit unsuccessfully) as reasons for opposing the British practice. United Kingdom, House of Commons, *Debates*, 19 July 1918, 1351, 1363.

[12] Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Harvard University Press, 1992) 1.

[13] Japanese law, up until 1898, provided that an alien woman who married a Japanese subject automatically acquired Japanese nationality and a Japanese woman who married an alien was deemed to have acquired his, and thus lost her own. The Law of July 9, 1898 retained the policy of unconditional marital naturalisation of alien wives of Japanese citizens, including those who acquired citizenship by naturalisation, but modified the denaturalisation rule: Article 18 specified that 'A Japanese who, on becoming the wife of an alien, has acquired her husband's nationality, loses Japanese nationality'. Japan thus became one of the first states in the world to protect women from statelessness through marriage. However, a Japanese female head of household required the permission of the Minister of the Interior to marry an alien.

practised it. To give a handful of other examples, in a 1917 overview of women's nationality laws, conditional marital nationality is illustrated, specifically (but far from exhaustively), by reference to the laws of Britain and the Dominions, the Congo, Mexico, Japan, Holland, Hungary, Portugal, France, Sweden, the United States, Switzerland and Serbia.[14] In 1929, a comprehensive survey found marital denaturalisation laws still operating in – to take just the first three letters of the alphabet – Afghanistan, Albania, Australia, Austria, Belgium, Bolivia, Britain and the British Empire, Bulgaria, Canada, China, Costa Rica, Cuba and the Czechoslovak Republic. In multiple other countries between the letters D and Z, as the survey records, the practice was also maintained.[15]

By the late 1920s, although significant variations had begun to appear in the practice, and some countries (the United States, the Soviet Union) had recently repealed their conditional marital nationality laws, the majority of countries still adhered to the policy. Variations in the details, including conditions under which denaturalised women might regain their original citizenship or the effect of a husband's naturalisation on a wife's citizenship, had begun to multiply. Nevertheless, in 1937, a survey of seventy countries[16] found that only fourteen allowed the wife of an alien to retain her own citizenship without qualification. The remaining countries still provided for deprivation of a woman's nationality upon marriage to an alien man. Of these, at least fifteen made the loss 'absolute and unqualified'. Around forty made the loss 'dependent upon certain conditions attendant to the marriage': the woman's consent (eight states); the acquisition of her husband's nationality (twenty-five states); and the acquisition of her husband's nationality along with the establishment of her domicile in another country (six states).[17] The laws governing the citizenship status of alien women upon marriage to a citizen also varied, although less so: around fifty-seven states conferred citizenship unconditionally, and eleven conferred it 'under conditions, principally of option or domicile'.[18] Only eight no longer automatically naturalised the alien wife upon marriage to a citizen. There were, in short, probably no cases where marital naturalisation was never practised and almost none where marital denaturalisation was never practised.[19]

[14] Phillimore, 'Nationality of Married Women', 165.
[15] Flournoy and Hudson, *A Collection of Nationality Laws*.
[16] Waldo Emerson Waltz, *The Nationality of Married Women: A Study of Domestic Policies and International Legislation* (The University of Illinois Press, Urbana, 1937) 72.
[17] Waltz, ibid, 72–73. [18] Waltz, ibid, 83.
[19] Chile provides an exception: the 19th century Chilean Constitutions defined citizenship but did not refer to the effect of marriage upon nationality. The 1925 Constitution provided

This demands explanation. Why was marital denaturalisation practised so widely, for so long? Why was it considered necessary? What harm could there have been in a marriage between a citizen and a foreigner? Why, if there was demonstrable harm, did marital denaturalisation not also apply to the men who entered into foreign marriages? Why, instead, did most countries grant automatic naturalisation to foreign wives, whether they wanted it or not?

Gender and citizenship law

Few studies have treated citizenship law as a matter of gender. As Jennifer Ngaire Heuer writes in her outstanding history of gender in post-revolutionary France, 'most big theories about nationality and national citizenship . . . have rarely taken into account the person as a gendered category'.[20] Even fewer have looked at the history of conditional marital

for loss of citizenship by naturalisation in a foreign country, which may have applied to citizen women married to foreign men, but did not otherwise provide for loss upon marriage. Brazil and Argentina provide partial exceptions. Brazil's law of 1860 provided that an alien woman married to a Brazilian followed the condition of her husband, as did a Brazilian woman married to a foreigner, although the word 'condition' was not interpreted as applying to nationality, while a decree of 1865 paradoxically provided for the recovery of Brazilian nationality by widows. Flournoy and Hudson, *A Collection of Nationality Laws*, 47. Additionally, the 1891 Constitution provided for the loss of Brazilian citizenship through 'naturalization in a foreign country' which would have applied to Brazilian women with foreign husbands, the country of which automatically naturalised foreign wives of citizens. Bills proposing legislation for marital denaturalisation were presented in 1860 and 1899, but were opposed as unconstitutional. Bertha Lutz, 'Nationality of Married Women in the American Republics', *Bulletin of the Pan American Union*, April 1926. Argentina, having no provision in its Civil Code regarding the effect of marriage upon a woman's citizenship may also appear as an exception. However, as Kif Augustine-Adams has shown, the Supreme Court of Argentina interpreted a married woman's domicile and nationality as following her husband's, and with some exceptions, depending on the case, a married woman's citizenship as dependent on her husband's. Foreign married women could, however, naturalise under the Civil Code, but required authorisation from the husband. Kif Augustine-Adams, '"She Consents Implicitly": Women's Citizenship, Marriage and Liberal Political Theory in Late-Nineteenth and Early-Twentieth Century Argentina' (2002) 13 *Journal of Women's History* 8, 13. In 1926, the Civil Code was reformed, giving Argentinian women civil rights, with the effect of protecting the woman's independent citizenship, including for jurisdictional purposes.

[20] Jennifer Ngaire Heuer, *The Family and the Nation: Gender and Citizenship in Revolutionary France, 1789–1830* (Cornell University Press, 2007) 7. Laura Tabili is blunter. Her study, she writes, reveals 'how unimaginative and flawed remain the apparently objective, gender-blind categories through which scholars have conceived of and categorised the formation of citizenship and nationality in modern Europe'. Laura Tabili, 'Outsiders in the Land of Their Birth: Exogamy, Citizenship, Identity in War and Peace' (2005) 44 *Journal of British Studies* 796, 814. Regarding Canada's history, Philip Girard writes: 'Achievement of a citizenship