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Female Sexuality, Citizenship, and Law

The Strange Case of Louise Comacho

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The relationship between sexuality and law encompasses the regulation of sexual activities, expressions, behaviors, and choice of sexual partners. Although the most visible forms of sexual regulation occur in the policing of homosexual activities, heterosexual activities are not exempt, especially the activities of heterosexual females. This article examines how immigration and citizenship law provided the legal basis for the attempted deportation of an American-born female citizen under the “moral turpitude” clause of immigration law. It is a historical snapshot of a moment in which immigration restrictions, sexual politics, and law intersected to create a unique situation that compromised the civic rights of an American-born woman.

Immigration law has long targeted gay men and lesbians for exclusion from entering the United States and from subsequent citizenship under the auspices of “moral turpitude” clauses. Although there has never been a specific reference to sexual identity in immigration law, until 1990, most courts interpreted persons “afflicted with a psychopathic personality” to include homosexuals (Minter, 1993, p. 1). But heterosexuals were also at risk under the moral turpitude clause, especially women because female sexual behavior and practices were subjected to more stringent regulation. Heterosexual females were also at greater risk than heterosexual males because of derivative citizenship—citizenship that was derived from their husbands. Because of derivative citizenship, American-born females could be subjected to immigration laws, including the moral turpitude clauses. This article examines one such case, thereby illustrating how criminal law and immigration law intersected to control the sexual behavior of female U.S. citizens.

In 1931, the Immigration and Naturalization Service (INS) began deportation proceedings against Louise Pauer Comacho. Because she was a former
prostitute, she was in violation of the Immigration Act of February 5, 1917, which stipulated that an alien who was “a female member of the sexually immoral classes” could not enter the United States (Hutchinson, 1981, p. 421), and that she was “likely to become a public charge” (INS File 55720/588, 1931: Warrant for the Arrest of Louise Comacho, np). What made Comacho’s case unique was that she was a native-born citizen of the United States, but lost her citizenship when she married John Comacho. Like thousands of other women in America between the years 1907 and 1931, she unwittingly chose her spouse over her nationality under the provisions of the Expatriation Act of 1907 (8 U.S.C. § 16, 34 Stat. 1228).

Comacho’s case provides a remarkable example of the ways in which the law, via both the criminal justice and immigration systems, has regulated female sexuality. The study of the case of Louise Comacho provides a historical snapshot of a moment in which immigration restrictions, sexual politics, and law intersected to create a unique situation that entangled a woman who lost her rights under the Fourteenth Amendment because of her choice of marital partner. Because she lost her citizenship, and the protection that status affords, Comacho’s sexual transgressions placed her in a vulnerable position vis-à-vis the morality clauses of immigration law. Because she married a foreigner, the law denied Comacho her national identity and attained the means with which to punish her because of her sexual activities. Under the auspices of protecting American citizens abroad, the Expatriation Act of 1907 jeopardized the Constitutional rights of female citizens at home.¹

Background on The Expatriation Act of 1907

By the latter part of the 19th century, immigration laws excluded undesirable women from becoming U.S. citizens. Such undesirables included “criminals and prostitutes, and those with physical or mental illness” (Lilienthal, 1996, p. 1606). But, as the case of Louise Comacho illustrates, these immigration restrictions reached far beyond would-be immigrants to control the behaviors of even native-born American women. Consider the effects of Section 3 of the Expatriation Act of 1907, which stipulated that an American-born woman lost her citizenship when she married an alien man:

That any American who married a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or if residing in the United States at the termination of the marital relation, by continuing to reside therein (34 Stat. 1228).²
The wording of the act ensured that an American-born woman would share in the “nationality of her husband,” so far as the United States was concerned. Implied in this phraseology was the recognition that she would also share in the immigration restrictions placed on her husband’s nationality. Passed in the beginning of the 20th century, the Expatriation Act of 1907 appears to be nothing more than a poorly planned piece of legislation to keep U.S. foreign policy in step with other Western nations. Applying a gendered analysis to the legislation, and its effects on women citizens and marriage, however, reveals another layer—one that seems less benign.

In 1907, Congress codified derivative citizenship for American women. Derivative citizenship—citizenship contingent on the civic status of one’s husband—deprived American women of their political birthright: membership in the American polity. If an American woman chose to marry a foreign man, she forfeited her American citizenship. Derivative citizenship also provided the state with a means to manipulate women’s citizenship to obtain the objectives of foreign and domestic policy and of prevailing racial attitudes. Because the Expatriation Act of 1907 redefined women as members of their husbands’ nationality, it reveals an anxiety concerned with guarding both the American female and the concept of American citizenship. The American female citizen, legally, was any female born in or naturalized by the United States; but ideologically, she was a woman of Anglo descent who embodied the racial and cultural ideals of American identity.

The act also affords an illustration of the sex/gender system of American citizenship, and how the law determines “proper” expressions of sexuality, especially female sexuality. In the case of Louise Comacho, her improper sexual conduct, both her past activities as a prostitute and her current marriage to a foreigner, left her vulnerable to the legal penalties of those sexual transgressions.

Factual Background of the Case of Louise Comacho

Louise Comacho’s collision course with the INS began when 15-year-old Louise Pauer left the rural town of Edwardsville, Illinois, with her older sister for the excitement of Chicago. There she met James O’Brien, the man who “ruined” her (INS File 55720/588, 1922: Statement of Louise Comacho, p. 1). Louise and O’Brien left Chicago and went to Detroit, where Louise stayed for 2 months before she returned to Chicago. On her return, Louise worked at the Boston Shoe Factory for a few months, then returned to her hometown of Edwardsville for a brief stay before she ventured to St. Louis, Missouri.

In Missouri, Louise drifted into prostitution and was arrested. She and Georgia Rieker, with whom she was arrested, went to the Union Restaurant.
after their release. While there, Louise met John (Juan) Comacho, a Mexican man who told Louise he had been born in Colorado. Comacho was a hustler and pimp and persuaded Louise and Georgia to work for him. A few months later, Louise, John Comacho, Georgia Rieker, and Georgia’s husband left St. Louis for the more lucrative town of Granite City, Iowa, where Louise and Georgia plied their trade in a brothel that catered to Mexican men.

The four returned to St. Louis, and Louise turned all her earnings over to Comacho. She was again arrested and sent to the House of the Shepherd, and detained until “[I was] cured of a venereal disease” (INS File 55720/588, 1922: Statement of Louise Comacho, p. 3). After her parole, Louise’s father took her back to Edwardsville. The day after her return, John Comacho showed up at Louise’s family home. Louise and John married 1 week later.

Back in Granite City after their marriage, Louise continued to practice prostitution to support John and to provide the funds necessary for his purchase of a combination restaurant and pool hall. John Comacho had a long history of criminal activity. He was arrested 13 times between 1919 and 1922 for charges ranging from operating a disorderly place to rape and robbery (INS File 55720/588, 1931: Statement of Inspector Carl H. Thode, np). Comacho’s illegal activities eventually caught up with him, and he was deported in 1928. Only then did Louise learn that Comacho was not an American citizen but a citizen of Mexico. Louise went with him and they stayed in Mexico for a few months. In September of 1928, they crossed the border to return to the United States, and settled in San Antonio, Texas, for 2 months before going to Detroit. Once back in the United States, John resumed his illegal activities, and in one of this ventures, he killed a man. Although acquitted of homicide charges on the grounds of self-defense, the high-profile case alerted the INS to the fact that John and Louise Comacho had returned to the United States.

The INS began deportation proceedings against Louise in 1931. Her status as a former prostitute while legally in the United States as a U.S. citizen—the very citizenship she was forced to surrender when she married John Comacho—rendered her an alien who was “a female member of the sexually immoral classes” (Hutchinson, 1981, p. 421). As such, she was not permitted to enter the United States pursuant to the Immigration Act of 1917.

DISCUSSION

Louise married John Comacho in August 1922, 1 month prior to the passage of the Cable Act (1922), which changed the laws regarding derivative citizenship for American women who married foreigners (Hogeland, 1991). If Louise had married Comacho only 1 month later, there would have been no deportation proceedings for her because she would not have lost her citizen-
ship by marrying a foreigner. This fact was never brought up in her deportation proceedings!3

Another irony of Louise’s case concerned the lack of due process she received in her deportation proceedings. Because Louise was unaware of John Comacho’s civic status at the time of their marriage, there existed some legal ambiguity in the applicability of the Expatriation Act to her. After all, she did not knowingly renounce her citizenship under then applicable law; she thought she was marrying another U.S. citizen.

The premier case that tested the constitutionality of Section 3 of the Expatriation Act of 1907 was Mackenzie v. Hare (1915). Feminist and California suffragette Ethel Mackenzie, no stranger to political activism, sought recourse in the courts when the State of California refused to allow her to vote. The California State Constitution specified that a voter had to be an American citizen. Mackenzie had forfeited her citizenship under the Expatriation Act when she married British subject Gordon Mackenzie in 1909. Her case eventually reached the Supreme Court in 1915, where it set precedent and became the “outstanding court opinion interpreting the Act of 1907” (American Citizenship Rights of Women, 1933, p. 21).

Mackenzie used the Fourteenth Amendment in her challenge to the constitutionality of the Expatriation Act. Specifically, her defense stated that the terms of Section 3 of the Expatriation Act directly violated the textual mandate of the Fourteenth Amendment, which provides, in relevant part, “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” (U.S. Constitution, Amendment XIV). All parties and the Supreme Court itself agreed that Mackenzie was an U.S. citizen at birth. But California argued she no longer maintained that status after her marriage to a foreign citizen. Mackenzie countered that “the Constitution gave Congress the power to confer citizenship but not the power to take it away” (American Citizenship Rights of Women, 1933, p. 21) with the exception of cases of treason. Accordingly, citizenship should be viewed as a bilateral relationship, one that neither the government nor the citizen could destroy without the explicit consent of the other.

The Supreme Court disagreed. It affirmed that as the United States was invested with the attribute of sovereignty and possessed the character of nationality, it also possessed the power incidental to its sovereignty, hence the authority to decide nationality (see Waltz, 1937). Furthermore, the Court reasoned, the Mackenzie case had nothing to do with the concept of a bilateral or twofold relationship being unilaterally destroyed. The terms of Section 3 of the Expatriation Act of 1907 were clear to the Court; Mackenzie had voluntarily entered into the state of marriage with a British subject, thereby consenting to her expatriation:
The identity of husband and wife is an ancient principle of our jurisprudence. It was neither accidental or arbitrary, and worked in many instances for her protection. There has been, it is true, much relaxation of it, but in its retention as in its origin, it is determined by their intimate relation and unity of interests, and this relation and unity may make it of public concern in many instances to merge their identity. It has purpose, if not necessity, in purely domestic policy; it had greater purpose, and, it may be, necessary in international policy. (Mackenzie v. Hare, 1915, p. 311)

In so holding, the Supreme Court determined that marriage to an alien was a voluntary act of expatriation, similar to an act of renouncing American citizenship by serving in a foreign armed service or swearing allegiance to a foreign crown or government. In response to the decision in Mackenzie v. Hare, the prestigious Michigan Law Review condemned the Court’s reasoning, stating that it allowed a statute to “make mere marriage conclusive evidence of intent to transfer allegiance” (W.W.S., 1915, p. 235).

Key to the Supreme Court’s decision in Mackenzie was Ethel Mackenzie’s knowingly and voluntarily having entered into a marriage with a non-U.S. citizen. But Louise Comacho did not knowingly and voluntarily enter into the state of marriage with an alien. John Comacho’s fraudulent claim of American citizenship denied Louise that choice under then existing law. Therefore, she did not commit a voluntary act of expatriation and did not elect the consequences. Louise could have had her marriage annulled, as Florence Booth Truiano had done, thereby avoiding the attempts by the INS to deport her (Truiano v. Truiano, 1923).

When Florence Booth married James Truiano in November 1919, she thought she was marrying a fellow American citizen. But James Truiano, like John Comacho, had presented himself to his prospective bride as a citizen of the United States. Booth was a licensed New York State schoolteacher, which required her to be a citizen. When Booth endeavored to have her husband register to vote for a municipal election in their hometown of Glen Falls, New York, Truiano admitted he was not a citizen and had deceived her. On learning of Truiano’s deceit, Booth ceased to cohabit with Truiano and sued for annulment on the grounds that he had perpetrated a fraud in regard to the marriage contract (Truiano v. Truiano, 1923, p. 573-575).

The New York Supreme Court (the trial-level court in the New York system), agreed with Booth. Although by the time the case reached the court, the Cable Act was in effect and Booth was eligible to become a naturalized citizen, the judge ruled that was not the point. Truiano’s fraud had caused Booth to lose her citizenship under false pretenses, and her eligibility for naturalization under the Cable Act was irrelevant:
That the fraud was of such a nature seems clear. The plaintiff was an American citizen. It is easy to conceive that she would not surrender her citizenship by marriage to a foreigner who was not a citizen. Not only may she well have had the proper pride in her citizenship, but citizenship was necessary to the pursuit of her profession. . . . [I]t cannot be that a foreigner may thus fraudulently effect the expatriation of an American citizen. A fraud perpetrated in contracting a marriage, which results in such expatriation, certainly goes to the essence of the marriage contract. (*Truiano v. Truiano*, 1923, p. 574)

If Louise Comacho had sought an annulment, she might have spared herself the trials and tribulations through which the INS put her. Even though the Cable Act had passed by the time INS began deportation proceedings against her, she could not become naturalized because of her history of prostitution. One of the provisions of the Cable Act was that women who had lost their citizenship under the Expatriation Act of 1907 did not automatically regain their American citizenship; they merely became eligible for naturalization. But because Louise had been a prostitute, she was ineligible for naturalization as a member of the “sexually immoral classes.” But as a woman deceived, there was a way out of her situation. *Truiano v. Truiano* had set the precedent, but Louise Comacho did not know it. And apparently, neither did her lawyer, nor the court handling her case.

**CONCLUSION**

Ultimately, the INS did not deport Louise Comacho. Paul Winnings, chairman of the General Board of Review, canceled the warrant for Louise’s arrest in June 1931, not because the law had changed or because Comacho had deceived Louise, but because Louise’s lawyer argued that she had not practiced prostitution since 1922 (INS File 55720/588, 1931: Decision of Chairman Paul Winnings, np). Although it is apparent that Louise did practice prostitution after 1922, there was no way to prove it; she had managed to elude arrest since then. Winnings declared,

> The charge that she was a prostitute at the time of entry is based entirely on a sworn statement made by her on September 9, 1922, that she had been practicing prostitution prior to that date. It does not appear that she has practiced prostitution since that time. The charge cannot be sustained. (INS File 55720/588, 1931: Decision of Chairman Paul Winnings, np)

The INS set Louise Comacho free.

Although Louise Comacho was not deported, her situation nevertheless reveals the vulnerability of female sexuality to the vagaries of American law.
Heterosexual expressions of female sexuality have been regulated to a far greater degree than heterosexual male expressions of sexuality. Patriarchal privilege, as well as national identity, demands vigilant guardianship of female sexuality. As a penalty for choosing “improper husbands,” the Expatriation Act of 1907 served as a deterrent for the reproduction of children that would naturally occur from the unions of American women and their undesirable alien husbands. Under the cloak of coverture, which the Expatriation Act of 1907 actually expanded, American policy makers wielded a powerful weapon for immigration restriction and population control (Sapiro, 1984, p. 3). It did so at the expense of its female citizens. This could not be done with male citizens, as it would violate the ideology of citizenship as masculine and independent.

Louise Comacho, because she violated the laws that determined the proper expressions of her sexuality, suffered through the INS’s attempts to deport her. Because the INS could not prove her prostitution activities since her reentry into the United States, it failed in its deportation proceedings. Either way, it was the regulation of Comacho’s expressions of her sexuality and sexual behavior that determined her citizenship status and her ability to remain in the United States, not her inherent right to American citizenship under the provisions of the Fourteenth Amendment.

NOTES

1. Although it is difficult to ascertain just how many American women married foreign men, birth and census records hint at the numbers and also reveal the racial concerns regarding the children of immigrants. For example, in the 1920 census, the proportion of White children born in 1920 to a native-born mother and a foreign father was almost 89 per 1,000 (Carpenter, 1927). Differences in the male and female population of foreigners also indicate that foreign men would have had to seek out native-born women to marry. In 1900, there were 119.3 foreign-born males for every 100 foreign-born females. The 1910 census reveals that almost 6 million (5,962,982) persons had one native-born and one foreign-born parent. But even more alarming, by the 1920 census, “Indians, Chinese and Japanese and males of all other races over 21 years of age” outnumbered “Indians, Chinese and Japanese females over 21 years of age” by more than a 2-to-1 ratio, with 206 males for every 100 females. In California, the state that experienced the largest Asian immigration, it was 279.4 males for every 100 females. The 1920 census also indicates a slight rise in “foreign-born White males” to “foreign-born White females” ratio from the 1900 census to 122 males for each 100 females.

2. Section 4 of the act pertains to the status of alien women married to American men on the termination of the marriage:

That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the
marital relation if she continues to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation.

Alien women (unless a member of one of the groups ineligible for naturalization) became naturalized citizens on their marriage to American men under the Nationality Act of 1855.

3. Interestingly, although the Cable Act repealed derivative citizenship for women who were U.S. citizens prior to their marriage to a foreigner, the Cable Act prevented U.S. citizen women from sponsoring their alien husbands for citizenship (Hogeland, 1991, citing Yu, 1989, p. 33). And, if a woman tried to sponsor her alien husband in violation of the Cable Act, she could lose her own citizenship (Lilienthal, 1996, p. 1606, citing Hogeland, 1991). These restrictions were not lifted until 1952 (Lilienthal, 1996, p. 1606-1607, citing Immigration and Naturalization Act of 1952).

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