

Love and War

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Rose Cuison Villazor, *The Other Loving: Uncovering the Federal Government's Racial Regulation of Marriage*, [86 N.Y.U. L. Rev. 1361](#) (2011).

Legal historians: Find a window to read [Rose Cuison Villazor's "The Other Loving,"](#) published in the *NYU Law Review* last fall. Although Villazor, Associate Professor of Law at Hofstra, does not identify primarily as a legal historian, she has written more than one historical work well worth a read. An earlier article examined alien land laws in the United States, telling the story of [Oyama v. California](#) (1948), which held unconstitutional a provision of California's Alien Land Law that discriminated against owners of property bought by parents who were ineligible to become U.S. citizens. This more recent article, in turn, explores how immigration, citizenship, and military statutes and regulations in the period around World War II interacted to produce federal anti-miscegenation law, with both domestic and extraterritorial effects. Carefully researched and engagingly written, Villazor's article seeks to challenge the conventional view that legal restrictions on marriage have traditionally been the sole domain of state, not federal, law—with implications for historical scholarship and for current political debates.

Villazor opens the piece with the story of Helene and John Bouiss, a half-Japanese, half-German woman and her white American husband, who in the spring of 1946 arrived in Seattle, Washington aboard a military ship, having been married at sea by the captain days earlier. Despite the passage of the so-called [War Brides Act](#) the year before, officials stopped Helene at the border on the ground that immigration law prohibited the entry of persons ineligible to become U.S. citizens. At the time, U.S. law put citizenship off-limits to persons identified as belonging to certain racial and ethnic groups, including Japanese. Helene, a Swedish citizen on the basis of a prior marriage, was a person of "mixed racial blood," including that of a citizenship-ineligible group, in the eyes of the relevant immigration regulations; she was therefore covered by the prohibition. Her marriage to a U.S. citizen soldier honorably discharged from the military did not help; nor did the Ninth Circuit Court of Appeals, which upheld the exclusion. (The case never made it to the U.S. Supreme Court.)

Unlike *Loving*, [Bonham v. Bouiss](#) mostly faded from memory. But it is worth remembering, argues Villazor, for it opens a window onto an under-examined chapter in the history of family law that, once explored, calls into question familiar understandings of the role of the federal government in marriage regulation; moreover, this revised understanding of the relationship between marriage and federalism has implications for ongoing debates over same-sex marriage, where the received wisdom that family law belongs to the states, not the federal government, continues to hold sway, despite scattered challenges to it.

Villazor follows her account of the Bouiss' experience at the border with a thorough explanation of the relevant aspects of each of the three bodies of law she identifies at the outset—citizenship, immigration, and military—and detailed analysis of how their interaction produced the "federal marriage law" that the Bouisses, and thousands of other couples facing the same predicament, found themselves confronted with in the aftermath of World War II. While none of these bodies of law directly or explicitly prohibited interracial marriages in quite the way that the state laws at issue in cases like *Loving* did, their effect was essentially the same. The way in which citizenship and immigration law did so appears plainly in the Bouiss's experience at the border. What Villazor goes on to explain is how military

regulations and policy aided and abetted those immigration-related racial restrictions on entry and the acquisition of citizenship. Military rules required that soldiers obtain permission to marry, and the relevant regulations instructed military officers to deny such requests in cases of interracial marriage, except in rare special circumstances. While the Bouisses overcame these obstacles with the cooperation of a sympathetic ship captain, many soldiers made unsuccessful requests; untold others never even bothered to ask. Villazor quotes a heartbreaking letter: "I am a [sic] Army Corporal serving with the Occupation Forces in Japan.... During this time, I have become one of the hundreds of GIs, who have become fathers to children born of Japanese mothers. As you know, the laws of the Army and of the country make it almost entirely impossible for GIs to marry women of Japanese blood.... Every day, I come in contact with soldiers of my unit and of others that, [sic] are suffering from broken hearts and are left helpless when they inquire for advice or consideration from authorities." (P. 1411)

More than a hook for an interesting history, the *Bouiss* case helped inspire legal changes—albeit temporary ones—in the legal landscape affecting the Bouisses and many others like them. Despite their defeat in court, the Bouiss' case resurfaced in congressional debates over the impact of immigration and citizenship law on U.S. citizen soldiers' families formed abroad. Moved by these stories, Congress twice amended the War Brides Act to exempt, for a limited period, the otherwise racially inadmissible spouses of American citizens from the prohibitions on their entry into the United States. Helene Bouiss herself was admitted in 1948 pursuant to one of these amendments. Villazor's article ends with a discussion of the possible implications that a revised understanding of the relationship between marriage and federalism could have on the struggle over the right to same-sex marriage. Her hope is that the Bouiss' story will once again help inspire changes that will enable couples who have been separated by law to be united. More than a rewarding read, her article could help inspire those changes. It is an admirable contribution to efforts toward that end.

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