

BOOK ANNOTATIONS

A NATIONALITY OF HER OWN: WOMEN, MARRIAGE, AND THE LAW OF CITIZENSHIP. By Candice Lewis Bredbenner. Berkeley: University of California Press, 1998. Pp. xi, 294.

In *A Nationality of Her Own*, Candice Bredbenner, Associate Professor of American Studies at Arizona State University West, presents the legal history of married women's citizenship in the United States. In a detailed analysis of the political processes that led to different citizenship laws, Bredbenner demonstrates that debates over citizenship law had a central role in energizing the feminist movement both in the United States and abroad during the early twentieth century.

Bredbenner's story can be usefully divided into four periods. The first period begins with the enactment of the Naturalization Act of 1855, which bestowed American citizenship on foreign women who married American men. For Bredbenner, this Act marked the first moment when American citizenship law borrowed ideas from nineteenth-century family law – in particular, the law of coverture, which recognized a woman's legal personhood in terms of her marital status (p.19). As Bredbenner notes, at a time when the idea of coverture was increasingly challenged in matters relating to property and contracts, it persisted in matters of federal immigration law (pp.19, 56).

Indeed, the second period starts with the federal government passing the Expatriation Act of 1907, which required American women who married foreign men to surrender their American citizenship. With the 1855 and 1907 laws operating in tandem, women in transnational marriages found their national identity legally transformed. Such women became "dependent citizens" under American law and were involuntarily subjected to the privileges and restrictions appropriate for their husbands' legal status: "A woman's wedding vows now served as a renunciation of her premarital citizenship and allegiance" (p.60). Not surprisingly, just as the common law tradition concerned itself with specifying women's civil duties as covered wives, federal immigration law imagined women's marital duties as being owed to the nation-state. In the words of James Blaine: "Every woman who leaves the duty and decorum of her native land and prostitutes her American name to the scandals . . . mars the fair fame of the republic" (p.45).

The national preoccupation with women's duties undoubtedly stemmed from lawmakers' anxieties concerning the loyalty of eastern and southern European immigrants to the United States. Bredbenner observes: "The policy arguments employed to justify the imposition of these

uniquely burdensome citizenship standards were closely linked to the government's interest in restricting immigration" (p.60). As she notes, it was not coincidental that the Expatriation Act was passed the same year as the number of immigrants passing through Ellis Island peaked (p.61). Although Bredbenner should have explored this point further, her work shows that the law of citizenship imagined women's personhood in terms of the nation's racial reproductive powers.

Following the United States Supreme Court's declaration in 1915 that the Expatriation Act was constitutional, organizations such as the National League of Women Voters and the National Woman's Party strenuously contested state regulation of women's nationality (p.81). These organizations observed that the Nineteenth Amendment, ratified in 1920, meant that women's "dependent citizenship" led to unhappy consequences: American-born women marrying foreign men were expatriated and disenfranchised, but foreign-born women marrying American men were naturalized and allowed to vote. Persuaded of the logic of this regime, the *Chicago Tribune* explained: "A law which regarded [American-born women who marry foreigners] as American citizens in spite of their transfer of allegiance would be a harmful fiction" (p.84). In 1922, in response to the demands of feminists and nativists alike, Congress passed the Married Women's Independent Citizenship Act, also called the Cable Act (pp.80-96).

The passage of the Cable Act marks the third period because it repealed many of the provisions of the Naturalization Act of 1855 by granting most noncitizen wives the option of maintaining their premarital citizenship. But in the context of federal immigration restrictions passed in the early 1920s, this privilege meant that many women faced exclusion from the United States without having recourse to the protections of their husbands' citizenship (p.100). Moreover, with the Cable Act, "The American-born woman not identified as Caucasian or of African descent who married an alien ineligible for naturalization lost her U.S. citizenship permanently" (p.98). In conjunction with new immigration restrictions, the Cable Act practically enforced racial nationalism in the name of liberal individualism.

Bredbenner's book finishes with an account of the internationalization of American efforts to reform citizenship laws concerning married women. In the 1920s, nations such as the United States, the U.S.S.R., France, China, and many others granted some independent nationality status to married women (p.195). Bredbenner argues that this was due in part to a practical necessity to deal with increasing numbers of dual citizens and transnational marriages, but she also suggests that the change resulted from the efforts of organizations such as the League of Nations, the Inter-American Commission of Women, and the International Alliance of Women (pp.203-04).

By 1934, American reformers finally succeeded in pushing new laws through Congress, thus leading to the fourth period of citizenship law that

largely structures today's regime. In that year, the Senate ratified a multi-lateral equal-nationality treaty, and Congress adopted legal reforms, according to which foreign-born children of an American woman or man assumed citizenship at birth, men were expected to follow the Cable Act rules for naturalization and renunciation of citizenship, and women were no longer subject to expatriation upon marrying foreigners. As Bredbenner argues, "Women of the United States had achieved independent citizenship" (p.241).

A Nationality of Her Own is a detailed, well-researched history of women, marriage, and the law of citizenship. At its best, it shows how the momentum of the suffrage movement was sustained in the political struggles over American citizenship law. However, Bredbenner's book is, at its heart, a study of legislative policy-making and international diplomacy, and its analysis of politics follows traditional approaches. Her tantalizing work could have incorporated a study of the cultural and social operations of immigration law by attending to the intersections of racial and gender identity as practiced in particular cases. In this regard, her fourth chapter, "Entangled Nets," which documents different cases of people encountering legal structures, should have been a model for more of the project. Nonetheless, Bredbenner's work usefully identifies the historical contours of the relationship between women and citizenship law, and it deserves attention from readers who seek to understand the political history of feminism in the United States.

Louis Anthes

SEX, LAWS, AND CYBERSPACE: FREEDOM AND CENSORSHIP ON THE FRONTIERS OF THE ONLINE REVOLUTION. By Jonathan Wallace and Mark Mangan. New York: Henry Holt, 1996. Pp. xi, 304.

In this series of cautionary tales about censorship and intellectual property on the Internet in the early 1990s, Jonathan Wallace and Mark Mangan explore the state of laws on the electric frontier. From Robert and Carleen Thomas, a northern California couple convicted in Memphis, Tennessee, for hosting a sexually explicit bulletin board, to the Church of Scientology's mixed success in prosecuting bulletin board sponsors for third party postings of secret church documents, Wallace and Mangan describe an Internet in which free speech is vulnerable to attack. But Wallace and Mangan show that the impulse to quash conversation on the Net is not without historical precedent. The advent of each successive wave of communications technology (writing, printing press, telegraph, telephone, television, and now the Internet) has brought with it a flurry of legal and social confusion. And in each case, the critics of innovation have a sky-is-falling outlook: throughout the ages, demagogues have decried new communications technology as the tool of vice and cultural disintegration.

Ultimately, Wallace and Mangan argue, legislators and judges must find the proper rules and standards by which to regulate new media, “searching history for the right analogy”(p.193). The rapid and global flow of information over the Internet not only makes regulations nearly impossible to enforce, it also thwarts traditional notions of culpability for copyright infringement, makes impossible time restrictions designed to prevent objectionable material from reaching minors, and throws a wrench into the established “community standards” obscenity test (p.254). None of the available analogies—broadcast media, common carrier, print media—captures the essence of on-line communications.

The authors assert that in such an environment, the only appropriate analogy is to “a constellation of printing presses and bookstores,” in which “[e]very computer connected to the Net is a printing press. . . [b]ut every computer connected to the Net is equally a bookstore, which can store all these works and make them available to anyone who wants to download them . . . It is not a radio or TV station or a telephone network or the United States post office,” and thus it should not be regulated following their models (p.228). Envisioned as printing presses and bookstores, the Net would come under the full protection of the First Amendment. Wallace and Mangan argue against a system of First Amendment enforcement in which speech that is legal if disseminated in book or pamphlet form becomes illegal when disseminated by computer (p.253). The limits of this First Amendment approach are so unpredictable that they threaten to quash marginal speech. As a result, Wallace and Mangan assert that obscenity jurisprudence must be completely reworked to avoid the chilling results produced by a local community standards test when applied to the Net (p.35).

When the book was published in 1996, the search for an apt analogy to link past jurisprudence to new technology was in full swing. The Communications Decency Act, seeking to render criminal anything depicting or describing “indecent” materials on the Net, was signed into law by President Clinton, although a federal court struck it down as unconstitutional (pp.174-90). The Hyde amendment to the Telecommunications Reform Act was introduced the same year: the provision sought to apply similarly strict penalties to the distribution of “patently offensive” materials on the Net—specifically those which depict or describe “sexual or excretory activities or organs” (pp.190-91). Both acts would have limited not only material deemed objectionable, but also interactions between users that would be unquestionably legal if conducted person-to-person, or over traditional media, as well as important medical and scientific information (pp.190-91).

Since 1996, the shape of arguments about the Net has changed radically. The authors can only imagine the powerful uses of the World Wide Web, and speak lovingly of “small software companies specializing in the Internet,” such as Netscape (p.249). Still, Wallace and Mangan’s warnings

about threats to free speech on the Internet remain instructive. More information than ever is being posted and downloaded on the Net; the number of homes with on-line connections has grown in the intervening years and the World Wide Web has made images as accessible as text was in the early 1990s.

Confronted by this massive communications wilderness, it is not surprising that the early days of the Net, in particular, saw the rise of a few self-appointed "new Comstocks," eager to find and prosecute the pornographers they imagined running rampant on the unregulated electronic frontier (p.173). Waving California-generated sexually explicit gifs (computer image files) in front of judges in Memphis, these prosecutors were able to frame the discourse for judges who had never used the technology themselves. For a Net-illiterate judge, the allegation that these images were "sent" from California to Memphis may have made sense, but the knowledgeable user will admit that it is at least as plausible that these images exist in a space not circumscribed by conventional political boundaries. As communities become less geographically-defined, Wallace and Mangan posit that community standards obscenity tests will become increasingly irrelevant, and indeed even absurd (p.254).

But Wallace and Mangan show that the judiciary is not the only branch of government that has fallen prey to the new Comstocks' crusade, and that needs to rethink its Net policies. In particular, the authors contend that the Clinton Administration's Clipper chip initiative was driven by fears about the difficulty of policing this low-cost, global network. Under this program, the federal government would hold keys to private encryption systems in escrow, in case those codes were to be used for criminal purposes. In this way, the executive branch, too, has sought to restrict speech on the Net, in the name of the common good. But Wallace and Mangan argue compellingly that "[c]ryptography is. . . socially useful" and that any attempt to control speech on the Internet via a government code-cracking device effectively amounts to the bugging of all of America's Internet communications (p.257). This is strong stuff, suggesting the need for broad First Amendment protections for Net speech.

Prodigy's liability for libelous material posted to its bulletin boards, a University of Michigan student's prosecution for writing snuff fantasy fiction about a fellow student, and an undergraduate student's alarming success at placing a phony report about the prevalence of porn on the Net in the pages of Time magazine and in Sen. Exon's floor testimony, round out Wallace and Mangan's pointed storytelling (pp.83, 63, 125-29). This is an argument about personal responsibility and civil liberties: the authors would have everyone go on-line, and see for themselves. There may be no alternative to the authors' approach to the Net: "because of its distributed nature, control of the Internet is probably impossible, and, if attempted, can result only in its destruction" (p.251).

In each of the cases Wallace and Mangan present, there is a sense of prosecution without reflection. In the rush to judgment and control, important civil liberties questions are given short shrift. Wallace and Mangan argue forcefully throughout, both explicitly and by example, that

The law of obscenity is so fundamentally confused that, before we bring it into a new technology and a new century, we should tear it down to its foundations, examine it, and determine whether and how to rebuild it to meet modern social needs. After defining the terms, we must determine who this abridgment of the First Amendment is designed to protect (p.35).

The controls we choose must then be rationally tailored to protect children, for example, without unduly impairing the rights of adults.

Sex, Laws, and Cyberspace is an undeniably interesting read, but in two short years, its account of the latest technology has grown outdated. The hero stories Wallace and Mangan present are largely drawn from the hey-day of chat rooms and text-based communications, when far fewer people had access to computers capable of handling complex visual images. The authors anticipated this shortcoming, though, and promise to provide updates and calls to action in a website at <http://www.spectacle.org/freespchl/>. This page does provide useful links to civil liberties homepages, but appears not to have been updated since 1997.

Despite their compelling argument that the Net should not be heavily or thoughtlessly regulated, poor editing and organization make the authors' otherwise cogent argument cumbersome. The chapters read like separate articles; legal analysis missing from one section often turns up several chapters down the road as if the matter had never before been discussed. The thesis takes shape in fits and starts. Written for a general readership, the authors' legal arguments are often aimed at the lowest common denominator. Occasionally, though, they rise to a more nuanced plane. This uneven quality is sure to frustrate both non-legal readers and those looking for a more technical analysis. Nonetheless, Wallace and Mangan offer a thought-provoking glimpse at new media hysteria, as well as sensible policy guidelines for the future regulation of the Internet.

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