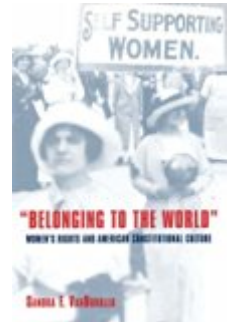


**Sandra F. VanBurkleo.** *"Belonging to the World": Women's Rights and American Constitutional Culture.* Bicentennial Essays on the Bill of Rights. New York: Oxford University Press, 2001. xvii + 409 pp. \$69.95, cloth, ISBN 978-0-19-506971-6.



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Is the Family the Basis of the State? Dividing Household Sovereignty and American Women's Constitutional Standing

Sandra VanBurkleo's synthetic treatment of American women's constitutional standing, from the colonial period to the present, places women's engagement with the Anglo-American concept of the unitary household sovereign--"the kinglike husband whose sovereignty could not be divided"--at the center of a densely packed narrative (p. xi). Guided by historian John Murrin's concept of constitutional "settlement," described here as "the dynamic process of renegotiating basic terms of legal-political discourse" (p. xi), VanBurkleo divides her book into three parts organized around the constitutional settlements of the Revolution, the Civil War, and the modern Civil Rights Movement. Embodied in each settlement is a discrete set of rights and obligations that prescribed the limits of women's ability to exercise self-sovereignty over her body and property and to exercise co-sovereignty with husbands in families. VanBurkleo argues that with the ratification of the 19th amendment in 1920, "men and women were

[made] constitutional cosovereigns," yet this is not a whiggish narrative (p. 304). Instead, this impressively wide-ranging survey of women's experiences with the law over four centuries concludes on a cautionary note: in the present era women stand "on unstable constitutional ground, well beyond 'wardship' but well short of equality and self-possession" (p. 305).

In part 1, VanBurkleo turns her attention to "Anglo-American constructions of the female subject and citizen, as well as the evolution on New World soil of an American version of the sovereign head within family government" (p. xi). Here VanBurkleo presents a wonderfully complex discussion of colonial coverture that effectively synthesizes a growing body of literature on women and property in colonial America. VanBurkleo's analysis of the law of marriage nicely illustrates how English and colonial law "burdened" wives (along with "aliens, monks, serfs, servants, apprentices and children") with a series of "status disabilities" (p. 10). In turn, VanBurkleo is attentive to moments of what she calls "early colonial liberality" in terms of women's real ability to par-

ticipate in complex economic transactions, to divorce, and to control separate estates, however "partial and geographically specific" (p. 36). VanBurkleo's analysis supports understandings of the mid-eighteenth century as "a relatively brief, magical time," when social change "seemed to be liberating women" (p. 38). In this narrative the revolutionary abolishment of entail, the gradual elimination of equity jurisdiction, the "masculinization of work," and the re-making of womanhood as a "private, noneconomic condition or status" contribute equally to a significant "loss of ground for women, especially wives" by the end of the century (p. 36).

A crucial part of VanBurkleo's analysis of women's constitutional status, is an explanation of the limits of republican constitutionalism, or the "revolutionary settlement," for women. If the genius of the revolutionary generation was, in part, dividing the indivisible sovereignty of the King-in-Parliament, VanBurkleo points out that when it came to women, judges and lawyers were unable to think through the process of dividing the sovereignty of husbands within households. Rather, "despite its feudal character, they perpetuated the life of the supposedly indivisible petting within families" (p. 37). Fleshing out what historians Linda Kerber and others have taught us about the limits of republican women's relationship to government, VanBurkleo takes readers on a careful journey through major cases that address the question of women's autonomous citizenship in the early republic. This discussion includes *Martin v. Massachusetts* (1805), which "denied women the primary association with the state supposedly enjoyed by members of the constituent power" (p.54), and *Kempe's Lessee v. Kennedy* (1809), in which John Marshall's Supreme Court addressed questions of women's legal personality. VanBurkleo uses these cases and others to illustrate how "the framing generation reconstructed only political government" but "did

not undertake a parallel decentralization of domestic governments" (p. 56).

Using a presentist angle of vision to good effect, VanBurkleo also explores how contemporary concerns about the policing of women's bodies and women's ability to exercise the types of freedoms that would eventually come under a constitutional frame (including speech and association) were handled in the colonial context. VanBurkleo's attention to divorce, locomotion, and other "areas of law fundamental to women's day-to-day well-being--including economic freedom, reproductive autonomy, marital equality, and personal security," is a fascinating exercise in defamiliarizing past practices (pp. 304-305). VanBurkleo traces precisely how "law and procedure expressed prevailing conceptions of men's and women's nature" (p. 28) and readers will find brief discussions of both procedural differences based on sex and gender-specific crime.

In part 2, VanBurkleo continues to underscore the attenuated feudalisms inherent in the revolutionary settlement for women by tracking how "common-law judges regularly intervened to prop up household heads and to shepherd women into relations of dependence with the state" (p. 61). Here VanBurkleo documents how the rise of "'judicial patriarchy' or 'state paternalism' across the nineteenth century went hand in hand with the legal construction of marriage as status as opposed to contract" (p. 69). In contrast, the most radical women's rights activists urged legislators "to conceive of the marital estate as a prelegal contract ... wholly private agreements that could be terminated by the parties" (p. 79). Counter-posing Elizabeth Cady Stanton's "radical individualism, with its condemnation of all 'status' relations, including marriage," to Paulina Wright Davis and Antoinette Brown Blackwell's emphasis on co-sovereignty within marriage, VanBurkleo demonstrates differences within the women's rights community over whether families or individuals were the basis of the state. This engaging analysis of the

women's rights tradition draws illuminating connections between such scholars as Carole Pateman and Amy Dru Stanley. It is less well served by VanBurkleo's use of the conceptual frame of the "speech community" as a way of identifying activist cohorts (p. xi).

Arguing that the Civil War settlement for women "constitutionalized, and to some extent federalized, old legal and customary bars to female participation in public life" (p. 139), VanBurkleo considers the precise ways that the judicial dispensation of Reconstruction-era 14th amendment claims "seriously weakened women's claims to constitutional equality" (p. 142). This is an efficient and comprehensive look at a complicated legal history. Examined in a different light, women made real gains during this period. As VanBurkleo also notes, this was especially true in terms of married women's property acts, "which, by the end of the century, came to include earnings and contract acts as well as custody legislation" (p. 127). Despite the logic of an expanding market and the ways that "the law of coverture and attendant practices seemed to be on a collision course with capitalism" (p. 125), VanBurkleo concludes: "Industrializing America managed to fit unitary family governments and female domesticity into industrial capitalism without renovating either system" (p. 136). VanBurkleo's survey of how women's economic rights were treated by state legislatures and courts from New York to Texas vividly illustrates both sides of this coin.

"The Nineteenth Amendment yielded half a loaf: Women cast ballots ... others watched with mounting rage as judges in half the states refused to 'find' ancillary political rights in the amendment" (p. 178). In part 3, VanBurkleo treats women's efforts to obtain these "ancillary" rights, from the 1920 ratification of the 19th amendment through the Civil Rights settlement of the 1980s, when there remained only a "handful of sex-specific statutes in state law codes" and judges included "'sex' in civil rights amendments and legis-

lation" (p. 305). Readers expecting VanBurkleo to include the increasingly familiar histories of gender-based Progressive-era protective labor legislation, post-suffrage battles over the ERA, reproductive rights, and the legal agenda of second-wave feminism as embodied in NOW platforms (and more) will not be disappointed. VanBurkleo delivers on all counts. Readers will return again and again, as a point of reference, to VanBurkleo's densely packed and exhaustive compilation of the major areas of law affecting women across the twentieth century. Those looking for one narrative thread will have to grasp tightly to a point that VanBurkleo makes so subtly that it is easily missed: After the defeat of the ERA, in areas of law outside of voting but fundamental to women, "statutes and case law, not constitutional clauses, secured women's right to be free from state and individual intrusions on basic rights to earn, to be safe, to be private, and to serve the republic in crisis times alongside men" (p. 305).

As historian Linda Kerber once noted, "One way of summarizing the political history of women in the United States is to observe the redirection of a series of obligations from husbands and households to oneself as an individual or to the state." [1] VanBurkleo's legal history of women's constitutional standing implicitly adopts this frame, tracking primarily white, middle-class women's treatment at law from femme coverts towards independent citizenship. This perspective is an extremely useful way of weaving different strands of women legal standing into a larger narrative, and justifies VanBurkleo's substantial engagement with women's experiences at law in the early modern period. It is unclear whether this framework will hold up when the experiences of other women (black women, immigrant women, Puerto Rican women) receive equal attention. The work of Elsa Barkley Brown among others makes clear that many black women's approach to voting rights were often anchored in more communitarian traditions than the liberal individualist modes of thinking that animated white women's

rights activists.[2] In turn, VanBurkleo points our attention to how the experiences of women in the west and other parts of the United States that retained elements of continental traditions which emphasized community property in marriage differed significantly from those of women in New England and the South (pp. 126-131). The constitutional standing of Puerto Rican women, who cannot vote for president, differs in important ways from that of most American women. Whether or not these women's experiences can be accounted for within a framework that privileges the process of cracking open the unitary household sovereign remains to be discovered.

#### Notes

[1]. Linda Kerber, "A Constitutional Right to Be Treated Like American Ladies: Women and the Obligations of Citizenship," in Linda K. Kerber, Alice Kessler-Harris, and Kathryn Kish Sklar, eds., *U.S. History as Women's History: New Feminist Essays* (University of North Carolina Press, 1995): p. 26.

[2]. Elsa Barkley Brown, "To Catch the Vision of Freedom: Reconstructing Southern Black Women's Political History, 1865-1880," in Ann D. Gordon et al., eds., *African American Women and the Vote, 1837-1965* (University of Massachusetts Press, 1997).

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