

## Book Review

Craig Robertson, *The Passport in America: The History of a Document*. Oxford and New York: Oxford University Press, 2010, pp. 340, \$27.95.

Reviewed by Peter J. Spiro

After my father's death last year, in that middle-aged rite of passage it fell to my brother and me to sift through his papers and other belongings. There were centers and peripheries, even in his small, retirement-community apartment; some caches required close attention, while others were more obviously ephemeral. In a secretary that amounted to a sort of ground zero, full of old family photographs and keepsakes, we found two stacks side by side. One consisted of credit cards, easily more than a hundred, dating back almost half a century. The other consisted of a dozen or so United States passports. For younger generations, the proximity of the stacks might seem strange, at opposite ends of the dignitary range. For my father, I think, they were both about membership in the way of clubs. The old green American Express cards (from the long-ago days before precious metals identified one's purchasing power) signified membership in an elite mutual protection association, just as did the passport. The AmEx office was as much on the map of foreign capitals as was the U.S. embassy. In both cases membership had its privileges.

In *The Passport in America*, Craig Robertson explores the origins of the passport and its emergence as an incident of modern life. The story has gone largely untold, and Robertson, a communications studies scholar at Northeastern University, deftly fills the void. This book is an important contribution to our thinking not just about citizenship and migration but also about the broad interplays of state and society. In Robertson's account, the passport holds a mirror to the state as it entered modernity. The rise of the passport tracked the end of a world characterized by personal bonds to one that demanded documentary standardization. Although Robertson does not deploy the analogy, it's a story in which the growing membership in the club of the state came to demand proof. That proof—the membership card in the state—takes the form of the modern passport.

**Peter Spiro** is Charles Weiner Chair in Law, Temple University—Beasley School of Law.

The vestiges of the passport's familial bonds remain evident in the document today. Unlike, say, a driver's license (which remains the more ubiquitous form of documentary identification in the United States), your passport sets forth a message to a target audience, namely other states. "The Secretary of State of the United States of America hereby requests of all whom it may concern that the citizen of the United States named herein to pass without delay or hindrance and in case of need to give all lawful aid and protection." The passport was in its origins a form of diplomatic correspondence, a kind of letter of introduction, understood "to endorse the bearer's character or reputation" (23, 130). Until the Civil War, the secretary of state personally signed all passports. Issuance was on a small scale. Fewer than 500 passports were issued on average per year through the first half of the 19th century (61).

Those numbers correlated not only to low levels of international travel. Most countries didn't require passports for entry (Russia and Turkey presenting the notable exceptions). Passports were more often put to work to introduce travellers to their U.S. diplomatic representatives than used as travel documents. The passport thus served as a kind of calling card with official American representation abroad.

Not all who traveled were full members of the club. Before the Civil War, free blacks were issued a special certificate, not a passport, evidencing birth in the United States and entitlement to U.S. diplomatic protection.<sup>1</sup> Married women were also denied passports, at least in their own right. Until World War I, State Department practice was to issue a joint passport to spouses in the full name of the husband only.<sup>2</sup> In both cases, the passport practice reflected subordinated status. Even free blacks, of course, were not considered citizens prior to the adoption of the Fourteenth Amendment. Women were subordinated in various respects, including citizenship practice; from 1907 until 1922, for instance, women automatically lost their citizenship upon marriage to a foreigner.<sup>3</sup> The club remained restricted to white gentlemen.

At the same time that native-born blacks and women were deemed ineligible, some foreign-born non-citizens were issued passports. Immigrants who had declared their intention to naturalize as U.S. citizens (so-called "declarant" aliens who had taken out their "first papers") were often issued passports in the first half of the 19th century. Declarants stood in a kind of

1. The document thus served as an acknowledgment of nationality, a category denoting state affiliation for purposes of international law, rather than citizenship, which historically was a matter of domestic law only. See Maximilian Koessler, Subject, Citizen, National, and Permanent Allegiance, 56 *Yale L.J.* 58, 62-63 (1946-47).
2. The passport indicated the name of the husband followed by "accompanied by his wife" or "and wife" (49). The practice was justified in part by the "embarrassment" to U.S. officials that would result in failing to conform to similar practice on the part of other states (52).
3. See Act of March 2, 1907, ch. 2534, § 3, 34 Stat. 1228, 1228-29 (1907), repealed by Cable Act, ch. 411, 42 Stat. 1021 (1922). See Candice Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship* (Univ. of Calif. Press 1998).

limbo nationality. For purposes of domestic law, they were often treated as citizens. In many states they were extended the right to vote.<sup>4</sup> Having taken an oath to the United States, they were thought to have severed ties to their homeland and forfeited eligibility for passports from their country of origin. It was on that theory that the United States extended them protection, through either a passport or the declaration itself.<sup>5</sup> The blurred edges of early passport eligibility reflected the blurred edges of citizenship itself.

### **The Passport's Rise**

The lines began to harden in the second half of the 19th century, and the passport became more than a marker of a man's character as he moved beyond the water's edge. The passport came to advance three functions. First, it served to capture the community as it became more imagined than personal.<sup>6</sup> Robertson tracks the evolution of the passport to a "move away from a culture of identification in which authority derived from the implication or assumption of knowledge of one person by another person," (62–63) to one in which identity needed to be confirmed through standardized documents. It became part of the project of reifying the state. This process played out at the molecular level of standardizing the spelling of a bearer's name and ensuring consistency among other identifying documents (most notably, in this context, between passports and naturalization certificates). In the old world where identity was based on personal knowledge, the spelling of a name was unimportant. But the more distant federal bureaucracy demanded "consistent spelling to assist in the articulation of identity" (44), a requirement that helped to cement state control and supply "a symbol of national membership" (47).

Documentary standardization also required assurance that the bearer was in fact the person to whom the passport had been issued. Early passports—single-sheet documents—included no more than the bearer's name. That evolved to include a laundry list of identifying characteristics, including the forehead (e.g., "high"), nose (e.g., "roman"), complexion (e.g., "dark"), and "face" (e.g., "oval").<sup>7</sup> These descriptors were kept until the adoption of the booklet passport in 1926 (67), following the adoption of a photograph requirement in 1914 (80). Robertson highlights the discomfort many had with the inclusion of physical description. In recounting the difficulties of one T.H. Aldrich and his wife with Russian authorities, Robertson suggests that

4. See Jamin Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. Pa. L. Rev. 1391 (1993).
5. See Maximillian Koessler, *Rights and Duties of Declarant Aliens*, 91 U. Pa. L. Rev. 321 (1942); see also Hiroshi Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* 151–67 (Oxford Univ. Press 2006).
6. See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 1991).
7. See the passport reproduced in a photograph at p. 99.

[His] presence, the racialized, classed, and gendered body he presented, was thought by some to make explicit that he was a person who could be trusted, a person whose word (made manifest in his body) should be sufficient to establish identity; he had only to be looked at. In the case of 'Americans' like Aldrich, the encoding of class and whiteness as status and privilege was so naturalized as to be practically invisible.... Within the world of the Aldriches a demand for verification of identity beyond the 'obvious' constituted an affront (78-79).

When women were issued passports in their own right, they deplored the revealed age in addition to the possibly unflattering physical description. The photograph requirement came in turn also to be derided. A 1930 *New York Times* editorial observed that while professional celebrity photographs made their subjects appear if not beautiful at least "generally attractive," the passport photographs "beggar description," with a "criminal or imbecile cast of countenance...marked in most of them" (87). Transformed from the letter of introduction to an identification document, the passport was perceived by the better classes to be at best a nuisance, at worst a humiliation, requiring something "over and above an individual's word," and suggesting "that officials considered them dishonest and untrustworthy" (215). A mugshot was the price of attachment to the modern state.

It's not clear from Robertson's account whether non-WASPs shared the distaste. For less well-heeled travelers, the passport guaranteed the protection of a powerful state. The second important function of the passport as it grew more common was as a certificate of citizenship abroad (126). This was not a factor within the United States, nor even at its gates. Rather, as proof of citizenship the passport insulated the bearer from the depredations of other states to the extent it was attached to the diplomatic protection of the U.S. government. The passport amounted to a kind of travel insurance in a time when governmental authority in non-democratic states could be harshly exercised. This was especially important to individuals who were visiting their countries of origin after having migrated to the United States. Many European states did not recognize naturalization by the United States and thus claimed a continuing right to the services of those born within their realms. Before the advent of human rights, states could treat their own nationals as they pleased; it was only with respect to the nationals of other states that international law imposed constraints. In these cases, as a certificate of citizenship a U.S. passport was a shield against conscription and other, sometimes severe, impositions.

Not all who thus sought passports abroad were issued them. Diplomatic protection implicated a significant expenditure of diplomatic capital, provoking high-level bilateral disputes between the United States and an array of European states.<sup>8</sup> In light of the high costs to national foreign policy interests, U.S. officials denied passports to many U.S. citizens who lived permanently abroad. They took their cue from on high; no less than President

8. See Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 *Emory L.J.* 1411 (1997).

Ulysses S. Grant decried the phenomenon of persons living permanently abroad “contributing in no manner to the performance of the duties of a citizen of the United States...[who] use the claims of citizenship of the United States simply as a shield from the performance of the obligations of a citizen elsewhere.”<sup>9</sup> Exceptions were made for those living abroad for reasons relating to work or health. In practice, it was most often naturalized citizens who were denied passports on this basis, where they had returned to live in their homeland. In the late 19th century, this administrative practice in effect set the terms of expatriation. The grant or denial of a passport translated into the affirmation or rejection of citizenship itself. The administrative practice set the stage for the subsequent legislative adoption of expatriation grounds in 1907, under which naturalized citizens would be deprived of U.S. citizenship after three years of residence in their countries of origin.<sup>10</sup>

Finally, there was the travel control function of the passport, as in, control by the United States of international travel by its citizens. A marginal factor through the 19th century, it took hold with World War I. By 1915, the Wilson Administration had effectively required citizens travelling outside the Western hemisphere to carry passports. The move was rooted in national security concerns. There was first the concern that U.S. citizens traveling to Europe would face complications in war zones, requiring U.S. government assistance. The government denied passports to missionaries, students, and journalists not working for accredited news agencies. Naturalized citizens were “discouraged” from returning to their homelands, especially where there was a risk of conscription. The government also saw the issuance of passports as a way to control the flow of information out of the United States (for this reason noncitizens present in the United States required a departure permit to leave). After the U.S. entered the war in 1917, passports were issued only upon “proof of necessity” for travel to Europe. By way of perfecting the travel control element, passports were issued only for a single trip to specified countries (194).

The WWI measures were revoked in 1921, which is where Robertson’s story ends. Issuance was no longer limited to the applicant’s stated itinerary. But the travel control function of the passport persisted through the Cold War. At the same time that the government’s attempt to deny passports on ideological grounds was struck down by the Supreme Court in *Kent v. Dulles*,<sup>11</sup> the use of passports to restrict travel by U.S. citizens to certain countries was sustained through so-called “area restrictions” in *Zemel v. Rusk*.<sup>12</sup> Passports from the late 1950s through the 1970s were denominated variably as “not valid for travel

9. John Bassett Moore, 3 A Digest of International Law 713 (1906).

10. See Act of March 2, 1907, § 2, 34 Stat. 1228. The provision was struck down as an unconstitutional discrimination against naturalized citizens in *Schneider v. Rusk*, 377 U.S. 163 (1964).

11. 357 U.S. 116 (1958).

12. 381 U.S. 1 (1965).

to” China, North Korea, North Vietnam, Albania, Bulgaria, and Poland, among other Communist countries. The *Zemel* Court upheld such a restriction on travel to Cuba as supported by “the weightiest considerations of national security,” on the same logic as the World War I restrictions. Travel could be an “element in the spreading of subversion.” If U.S. citizens were detained without charges, perhaps more convincingly, it might embroil “the nation in dangerous international incidents.”<sup>13</sup>

A variant of this concern emerged in travel restrictions (again, implemented in part by limited passport validity) to Lebanon in the late 1980s.<sup>14</sup> Although Lebanon itself was not a hostile state in the way of the communist regimes, hostile elements within Lebanon targeted U.S. citizens as hostages. Responsible for its citizens abroad, the United States expended substantial diplomatic, intelligence, and political costs on these hostage episodes. Travel prohibitions presented a solution; if no private Americans travelled to Lebanon, none could be taken captive. Passport validity was the vehicle for imposing the travel bans. There were no associated criminal penalties with area restrictions; their scope was determined by the secretary of state under powers delegated by the president.<sup>15</sup>

These three functions of the passport—capturing identity, delimiting citizenship, and controlling travel—all tracked the rise of the United States as a state. Robertson tells that story well. Reflecting his background in communications theory, the book is at its strongest in theorizing the rise of the passport as an identification document.<sup>16</sup> And yet that identification function was more emblematic than pervasive, a case study rather than a central player in the standardization of documentary identity. For the period that Robertson considers, only a small percentage of Americans possessed passports. Resistance to documentary identification among the upper classes supplies an interesting point of contest on the road to modernity, but the United States was hardly corralling the identity of the masses through the medium of the passport. The passport was more central to the definition and status of Americans abroad, the boundaries of human community, and the increasingly prominent place of the United States and its citizens in the world.

### The Passport’s Decline

For many of us, the passport has had an almost totemic power, a ticket to future adventure, a souvenir of past sojourns, a symbol of attachment to a powerful state in the big wide world. Robertson’s history will resonate with

13. *Id.* at 14–15.

14. See 88 Dep’t State Bull. 51 (Mar. 1987).

15. See E.O. 7856, 3 Fed. Reg. 681, 687 (1938).

16. See also John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* 10–20 (Cambridge Univ. Press 2000). Torpey’s focus is on the passport’s emergence in the European context where Robertson’s is primarily on the United States.



those who harbor those sentimental associations, to readers who remember the Pan Am days when people dressed up to fly. But the passport has almost surely seen its heyday. In the future, it may garner only antiquarian interest, like postage stamps or draft cards.

One can project this decline through each of the three functions the rise of which Robertson traces. In terms of identity, the passport never took hold in the United States as a standardized, universal form of identity. The State Department's passport arm had not issued more than 10 million passports in any given year before 2005. It is clear that even today, less than a majority of Americans possess a passport.<sup>17</sup> In the future, the document itself will be vestigial as identity is more completely captured through data and biometric forms.<sup>18</sup> Discomfort with the passport in its early days as an identity document supplies a precedent for discomfort with these new mediums of identity, one that Robertson recognizes. Perhaps similar histories will be written a century from now after these new mediums gain mainstream acceptance. But the passport itself is unlikely to be a part of that history.

Nor is the passport central to the delimitation of U.S. citizenship. The document remains available only to citizens; it is perhaps the best evidence that a person holds U.S. citizenship. But passport issuance is no longer the ground on which citizenship is contested, as it was during the 19th century. U.S. citizenship is now essentially impossible to lose in the absence of express renunciation. Unlike under 19th century practice, a person born or naturalized in the United States retains citizenship even if she permanently relocates. The government's power to terminate citizenship has been highly circumscribed.<sup>19</sup> Beyond the water's edge, citizenship no longer poses the value that it once did. U.S. citizenship is useful in limited, exceptional circumstances. For instance, the government offers to evacuate citizens from unstable conflict situations, as was recently the case in Libya. But the passport no longer marks the line between the robust protection of international law and no protection at all. Human rights is the intervening moving part which restrains states both as a general matter and in the treatment of their own citizens.

Finally, the passport is no longer deployed as a travel control mechanism, at least not outside the United States. The U.S. government does not bar travel by U.S. citizens to any country. U.S. citizens are today permitted travel even to such "rogue" states as North Korea and Iran (though the State Department warns of associated dangers). This, too, may reflect the demoted significance of the citizenship tie. U.S. citizen travel to adversary states no longer seriously threatens to undermine U.S. foreign policy, at least not in the way of Jane Fonda in North Vietnam. As for possible embroilments, the approach seems

17. For statistics on U.S. passport issuance, see [http://travel.state.gov/passport/ppi/stats/stats\\_890.html](http://travel.state.gov/passport/ppi/stats/stats_890.html).

18. Robertson makes the connection between the unfolding controversies over biometric data identification and historical resistance to passport requirements. See pp. 246-47.

19. See *Afroyim v. Rusk*, 387 U.S. 253 (1967) (holding unconstitutional the termination of an individual's citizenship for voting in a foreign election).

to be more oriented to assumption of the risk for those who get themselves in trouble in the world's hotspots. U.S. citizens might be taken hostage, as they were in Lebanon, but today (depending on the circumstances) the U.S. government may be less inclined to pull out all the stops by way of rescue. In any case, it would now be virtually impossible to stop U.S. citizens from traveling to all corners of the globe.

The passport continues to have one significant function today: as a mechanism of travel control into the United States. Before 2009, U.S. citizens could travel to Mexico, Canada, and the Caribbean without passports, a driver's license or birth certificate sufficing for purposes of re-entry. Major cross-border commercial and tourist traffic had long justified this practice, politically sustained by border-state members of Congress for whose constituents the issue was important. Post-9/11 security concerns supplied the peremptory justification for eliminating the loophole. Today, with minor exceptions, all returning citizens must possess a passport to secure re-entry.<sup>20</sup> The number of Americans possessing a passport has risen with the requirement.

But this development generated an innovation: the passport card. This wallet-sized item has more the look and feel of a driver's license. It involves a lower fee: \$30 for renewal versus \$110 for the traditional passport. For the moment, it is good only at land and sea ports-of-entry for travel from those locations previously exempted from the passport requirement.<sup>21</sup> Even so, it already accounts for more than 10 percent of passports issued. Perhaps the passport card marks a first move away from the traditional (i.e., 20th century) booklet form. Advances in data-chip technologies allow the storage of personal data, entry-exit, and visa information in card form. Beyond the passport card, trusted traveler programs could eliminate the need for the more formal document altogether, especially with the advent of biometric recognition techniques.

### **The Passport's End?**

Indeed, the booklet form of the passport seems anachronistic. In travel through the developed world, immigration inspectors typically don't bother with the traditional entry stamp. The secretary of state's intonations are hardly necessary to the purpose of crossing borders. Passports are cumbersome; they don't fit into your pocket; they might as a result be more prone to loss or theft. The booklet form is for now nearly universal, and so it will no doubt be sticky in the absence of any serious disadvantages (booklet form passports from many states, including the United States, are themselves already machine readable). But I suspect it won't take much to dislodge the traditional format as technology cuts a wide swath through our formerly paper-oriented lives. This prediction doesn't hinge on the decline of citizenship itself, though that

20. See Intelligence Reform and Terrorism Prevention Act of 2004, PL 108-458, § 7209, 118 Stat. 3638 (2004).

21. See 71 Fed. Reg. 60928-01 (Oct. 17, 2006).



would reinforce the trajectory.<sup>22</sup> The turn away from documentary mechanisms distinguishes this juncture from others at which the passport's obsolescence was prematurely announced.<sup>23</sup> But however much we might think of passports as an expected and essential part of international life, Robertson's book demonstrates their historical contingency.

When my children sort through my stuff, they'll find my passports, and I hope they are interested enough to hold on to them along with my father's. (Note that I have not been stockpiling expired credit cards.) They will have had their own. The medium will not be unfamiliar to them. The document may still impart some dignity to an association with the state, and, if nothing else, may supply a sort of literal framing to snapshots of a life. Their children (my grandchildren), on the other hand, are less likely to experience passports. For them, the passports of their ancestors will be more like some of the documentary fragments left by my own, certificates of membership in various associations that loomed larger then than they do now.

22. See Peter J. Spiro, *Beyond Citizenship: American Identity After Globalization* (Oxford Univ. Press 2008).

23. See Egidio Reale, *The Passport Question*, 9 *For. Affairs* 506, 509 (1931).