Introduction

A citizen is a person who has membership within a state and has the rights and privileges of that state, which means that he or she is also beholden to that state’s laws. Citizenship is conferred in three ways: through *jus soli*, *jus sanguinis*, or naturalization. *Jus soli* and *jus sanguinis* are received at birth. *Jus soli* (Latin for “right of the soil”), also known as birthright citizenship, gives children born within the territory of a state automatic citizenship within that country. *Jus sanguinis* (“right of blood”) provides citizenship to children based on the citizenship of one or both of their parents. Naturalization, which refers to the process by which immigrants are granted citizenship in their adoptive country, occurs later in life and may vary from nation to nation.

Throughout the world the most popular form of citizenship is *jus sanguinis*. A smaller percentage of countries, including the United States and Canada, offers *jus soli* to all children born within their borders, regardless of their parents’ citizenship. All countries have elements of both *jus soli* and *jus sanguinis*. For example, if an American mother has a baby abroad, she can claim US citizenship for that child when she returns home even though the child was not born in the United States. Similarly, the naturalization laws of *jus sanguinis* countries take into account the amount of time an immigrant has spent in the country when determining whether to provide citizenship.

Birthright citizenship, in particular, became a hotly debated legal issue in the late 20th and early 21st centuries in countries with *jus soli* that began receiving mass influxes of undocumented immigrants. Opponents of birthright citizenship argue that it encourages immigration, incentivizes irregular immigration, and drains states of valuable resources that could otherwise be spent on rightful citizens. Proponents of birthright citizenship argue that it is a foundational component of an equitable society and that it facilitates the successful assimilation of the children of newly arrived immigrants.

Historical Background

Most countries that have birthright citizenship are located in the Western Hemisphere, and nearly all countries in the Western Hemisphere have birthright citizenship. In the Eastern Hemisphere, however, most countries do not. In a 2015 interview with Will Cabaniss for PolitiFact, sociologist John Skrentny postulated that the stark geographic divide between hemispheres might be an effect of colonialism. Skrentny stated that young nations in North and South America may have adopted permissive citizenship laws to attract immigrants.

The majority of all wealthy and industrialized nations do not have birthright citizenship. In the late 20th and early 21st centuries, Eastern Hemisphere countries that had birthright citizenship abandoned or amended their birthright citizenship laws, regardless of their wealth or level of industrialization. These countries included Australia, France, India, Ireland, and New Zealand. In 2004 Ireland became the last country in the European Union (EU) to abandon birthright citizenship. Irish citizens overwhelmingly voted against retaining *jus soli*, in part because they were concerned that foreign nationals were traveling to Ireland to give birth so their children could acquire Irish and EU citizenship.

In this regard, the United States and Canada are anomalies. English colonies in North America inherited the English legal concept of birthright citizenship, which held that people born in England or in an English colony were English citizens. After successfully securing independence from England during the American Revolution (1775–1783), the young United States made no immediate changes to its policy of birthright citizenship.

It was not until 1844 that US courts addressed whether people born in the United States to noncitizen parents were afforded birthright citizenship. In *Lynch v. Clarke* a New York court ruled that the child of an Irish parent born in the United States was a US citizen by virtue
of being born in the United States. The court affirmed that birthright citizenship applied to certain people born in the United States, regardless of their parents' citizenships.

In 1857 the US Supreme Court case *Dred Scott v. John F. A. Sandford* further clarified which Americans could be afforded birthright citizenship. In what is now considered one of the worst US court rulings in history, the Supreme Court declared that free African Americans were not citizens of the United States because their ancestors were slaves and were not considered citizens by the framers of the US Constitution.

For nine years birthright citizenship was not extended to free African Americans. After the Civil War (1861–1865), Congress passed the Civil Rights Act of 1866, which held that almost all people born in the United States, including former slaves, were afforded birthright citizenship. Two years later birthright citizenship was reaffirmed when the 14th Amendment was ratified. The citizenship clause of the 14th Amendment states, “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.”

Although the state ruling in *Lynch v. Clarke* indicated that children of noncitizens were afforded citizenship if they were born in the United States, the Supreme Court did not rule on the matter until *United States v. Wong Kim Ark* in 1898. The court stated that Wong, the US-born child of Chinese immigrants who were denied the possibility of citizenship under the Chinese Exclusion Act of 1882, was afforded birthright citizenship. The law clarified that the 14th Amendment extends to all people born in the United States, regardless of the citizenship of their parents. However, Native Americans did not receive full birthright citizenship until the Indian Citizenship Act of 1924.

After *Wong Kim Ark* the topic of birthright citizenship largely faded from legal discussion in the United States. In the early 1990s, however, state and federal legislators began introducing bills to overturn the legal precedent set in *Wong Kim Ark*. One bill put forth in the US House, titled the Birthright Citizenship Act of 2015, would make it illegal for children born in the United States to undocumented immigrants to be automatically granted citizenship. However, the bill failed to gain support and was ultimately not passed.

### Impacts and Issues

The debate over birthright citizenship in *jus soli* nations has intensified in the 21st century. Opponents of birthright citizenship include conservative politicians who tend to support limited immigration. They also tend to be strongly against illegal immigration. Supporters of birthright citizenship worry that abandoning *jus soli* will increase social inequality. These supporters tend not to perceive undocumented immigrants as a threat to the nation’s economy or security.

### Public Services and Benefits

Opponents of birthright citizenship argue that the doctrine encourages illegal immigration to wealthier countries such as the United States and Canada, where birthright citizenship is legal. In some anti-birthright citizenship circles in the United States, the derogatory term *anchor babies* is used to refer to the children of undocumented immigrants who receive birthright citizenship. According to this reasoning, undocumented immigrants enter the country illegally to have babies that “anchor” their families within the United States, helping them gain legal residency or citizenship.

In a 2015 *Washington Post* article, Glenn Kessler reports that most undocumented mothers in the United States...
States do not in fact immigrate to give birth and take advantage of US social services. However, having children who are US citizens does tie mothers more securely to the United States, and they may feel less inclined to return to their home countries.

Opponents also argue that the children born to undocumented immigrants unfairly take advantage of social services such as government-sponsored health care, welfare, and public education. In 2007 some 360,000 children were born to undocumented immigrants in the United States, according to a 2015 report by Pamela Constable for the Washington Post. As rates of undocumented immigration declined in the first two decades of the 21st century, the number of children born to undocumented immigrants also declined. In 2013 there were 295,000 children born to undocumented immigrants in the United States.

Legal Interpretation

Some Americans are opposed to birthright citizenship because they feel it goes against what the framers of the US Constitution wanted. Legal scholar Peter H. Schuck and political scientist Rogers M. Smith argue in their book *Citizenship without Consent: Illegal Aliens in the American Polity* (1985) that the framers of the citizenship clause of the 14th Amendment likely did not anticipate the rise of illegal immigration in the late 20th century. Therefore, they state, the law might not be appropriate for the modern era of immigration and should be revised.

In a 2010 essay for the *American University Law Review*, legal scholar Garrett Epps denounces the validity of the anti-birthright citizenship arguments of Schuck and Smith. In the United States, Epps writes, the citizenship clause of the 14th Amendment is a crucial component of maintaining a society where all people are equal under the law. The 14th Amendment overturned the constitutional mandate that slaves were not citizens. Therefore, Epps argues, the citizenship clause also prevents the creation of another “large, permanently subordinated class of noncitizens who could be exploited to produce wealth.”

Assimilation and Extremism

Proponents of birthright citizenship argue that it helps the children of noncitizens assimilate with greater ease. Alex Nowrasteh notes in a 2016 article for the *Federalist* that, in countries with birthright citizenship such as the United States, immigrant assimilation rates are high.
Birth tourism refers to the practice of mothers traveling to countries where birthright citizenship is legal in order to give birth there so that their children can have citizenship in that country. In the early 21st century birth tourism became increasingly popular among some wealthy families from China, Russia, Nigeria, and other countries. A cottage industry sprang up in cities such as Los Angeles, California, and Vancouver, British Columbia, to cater to pregnant women, the majority of whom are from China, who wish to give birth in Canada or the United States and need support and care before and after their child is born. According to Rachel Browne writing for Vice News, in British Columbia there were 26 private “hotels” for Chinese mothers planning to give birth in Canada in 2016.

In both Canada and the United States, citizens and politicians have complained about the practice. Many feel that these birth tourists are taking advantage of a legal loophole and costing taxpayers money. It is unclear how many birth tourists arrive each year in Canada and the United States or how much money they are costing taxpayers. Scholars warn that the number of children born to birth tourists are relatively negligible in terms of overall births in both countries and that any legal overhaul of birthright citizenship laws would cost far more to taxpayers than the social services for the beneficiaries of birthright citizenship.

By contrast, in countries without birthright citizenship, the “lack of birthright citizenship created a legal underclass of resentful and displaced young people who were officially discriminated against in the government-run education system and had tenuous allegiance to the country in which they were born.”

Nowrasteh points to Germany as a case study. There, the children and grandchildren of Turkish guest workers who had arrived in Germany between the 1950s and 1970s had difficulty acquiring German citizenship, even though they were born and raised in Germany. As a result, these youths were likelier to be drawn to extremist ideologies and to engage in criminal behavior. Eventually, in 1999 Germany changed the law, allowing the Turkish descendants of guest workers to acquire citizenship.

SEE ALSO Chain Migration; Citizenship Principles; Dual Citizenship; Families; Immigrants, Undocumented; Immigration Reform; Mexico–United States Immigration; North America: Migration Patterns

and Consequences; Push-Pull Factors of Migration; Slavery and Indentured Servitude; Statelessness; Undocumented Workers and the Labor Market

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