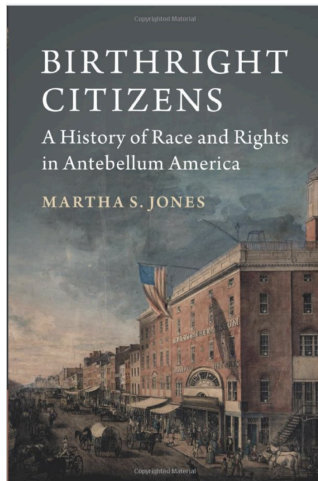


Birthright Citizenship in the United States

Background



Birthright citizenship, codified in Section 1 of the Fourteenth Amendment which states, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States,” is a topic that is often debated and frequently misunderstood. Birthright citizenship did not begin with the Fourteenth Amendment; in fact, it is an idea that pre-dates the Constitution and the founding of the United States. Nor was the post-Civil War era the beginning of debates about it in the U.S. As historian Martha Jones writes in *Birthright Citizenship*, “None were more interested in this question than black Americans themselves... The pressures brought on by so-called black laws and colonization schemes, especially a radical strain, explain why free people of color feared their forced removal from the United States. In response, they claimed an unassailable belonging, one grounded in birthright citizenship”¹. Why, then, is an idea entrenched in the Constitution with roots in British common law still up for debate? For one, though more than thirty nations provide for birthright citizenship many, including some of the United States’ closest allies, do not. In addition, opponents of birthright citizenship argue that it promotes “birth tourism” and is, in part, responsible for increases in undocumented immigrants entering the country. Throughout U.S. history the ways in which we define “citizenship” and the groups of people to whom the government extends that title have evolved; the rationales for supporting and opposing birthright citizenship have, as well. Examining the way we think and talk about birthright citizenship, then, from the Constitution to the present, is an important lens through which to study the nation’s history and current events.

Citation: Martha S. Jones, *Birthright Citizenship: A History of Race and Rights in Antebellum America* (Cambridge: Cambridge University Press, 2018), 1.

Essential Questions:

- How have changing circumstances in the United States contributed to the persistent debate over birthright citizenship?
- Should a democratic nation grant citizenship to everyone born within its borders?

- To what extent might changing citizenship requirements change the national discussion on immigration?

I) Pre-Constitution / Constitution

A) *Presidential Requirement*

Article II, Section 1, US Constitution

“No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.”

- Why was this important in 1787?
- Is this effective today?

B) *Congress, Naturalization*

Article I, Section 8, US Constitution

“The Congress shall have power...To establish a uniform rule of naturalization...”

- How did the colonial mind shape the ideas of ‘Rights’ and ‘citizenship’?
- What made someone a citizen in 1790?

C) *Naturalization Act 1790*

An [Act](#) to establish an uniform Rule of Naturalization (March 26, 1790)

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof, on application to any common law court of record, in any one of the states wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such court, that he is a person of good character, and taking the oath or affirmation prescribed by law, to support the constitution of the United States...

And the children of such persons so naturalized, dwelling within the United States, being under the age of twenty-one years at the time of such naturalization, shall also be considered as citizens of the United States. And the children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered natural born citizens; Provided,

That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States....”

- According to this law, how did Congress determine who was eligible to become a citizen in the newly established United States of America?
- How might this law contribute to early ideas on birthright citizenship?

D) Jus Soli vs Jus Sanguinis (from *National Geographic*)

Right of Soil

Federalists like Alexander Hamilton and anti-Federalists like Patrick Henry may not have agreed on much when crafting the Constitution, but they did share a common, practical understanding of English common law—a tradition the young nation inherited from Great Britain. Under common law, citizenship was determined using the principle of *jus soli*—a Latin term meaning “right of the soil” or birthright citizenship. In general, if one was born on British soil, then one was a British subject. The Founders carried this principle forward in their new government, and *jus soli* became the “law of the land” for American citizenship.

Right of Blood

Another concept—*jus sanguinis* (“right of the blood”)—also came into play in defining who was a citizen in the new nation. Under this principle, citizenship was hereditary, passed down from fathers to their children. In March 1790, Congress passed “An act to establish an uniform Rule of Naturalization,” which established that children born to American men abroad or at sea were still considered “natural born citizens.” The status of their fathers would be conferred upon the children no matter where they were born. (Beginning with France in 1804, the nations of Europe began applying *jus sanguinis* standards to define citizenship, a continuing practice today).

- How did British common law influence American ideas about citizenship?
- How did the Naturalization Act expand the idea of ‘natural born citizens’?

II) Antebellum America

A) *Martha S. Jones on “Rights of Colored Men” by William Yates (1838)*

Yates provides a window onto the position that some activists—black and white—took on race and citizenship at the end of the 1830s. Law was an instrument of change, and Yates forthrightly explained his objective: to undermine prejudice against color.... Assembling evidence from legal culture, he believed, would help establish the rights and citizenship of free black people.

Yates made a bold claim: Free black Americans could not be banished, excluded, or colonized—from the borders of the individual states or the United States. With this he confronted head on the thorniest legal question of the antebellum period: Were free African Americans citizens with a claim to place? His answer was yes. Citizenship, he wrote, was distinct from political rights. It strikes deeper than, for example, the right to vote. Denied the status of citizens, free black people were not secure in their life, liberty, and property, or what he called “personal rights.” At its core, citizenship is a claim to place, to enter and remain within the nation’s borders. Citizenship, Yates believed, would protect free black people from expulsion.

(Source: Martha S. Jones, *Birthright Citizenship: A History of Race and Rights in Antebellum America* (Cambridge: Cambridge University Press, 2018), 3 & 4.)

- According to Yates, why was recognition of citizenship, more so than the rights that accompany it, essential to free blacks in the antebellum era?
- Why was it significant that Yates specifically wrote about free blacks? How might this distinction have contributed to the need for the Fourteenth Amendment after the war?

B) *Dred Scott v. Sanford* (1857)

Justice Roger Taney's Decision

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who ... form the sovereignty, and who hold the power and conduct the Government through their representatives.... The question before us is, whether the class of persons described in the plea in abatement [people of African ancestry] compose a portion of this people... We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings...and had no rights or privileges but such as those who held the power and the Government might choose to grant them.... the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts.

Justice Curtis's Dissent

When, therefore, the Constitution speaks of citizenship of the United States, existing at the time of the adoption of the Constitution, it must necessarily refer to citizenship under the Government which existed prior to and at the time of such adoption... it is only necessary to know whether any such persons were citizens of either of the States under the Confederation, at the time of the adoption of the Constitution. Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors... That Constitution was ordained and established by the people of the United States, through the action, in each State, or those persons who were qualified by its laws to act thereon, in behalf of themselves and all other citizens of that State. In some of the States, as we have seen, colored persons were among those qualified by law to act on this subject....

- How does this decision establish the context for the Fourteenth Amendment's "birthright citizenship" clause?

III) Civil War -14th Amendment

Amendment XIV, Section 1, US Constitution

“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. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

- Why is birthright citizenship important in post-slavery America?
- Why was it important to explicit have “all persons born or naturalized are citizens of the US”?

IV) Post Civil War: Immigration Laws / Court Cases

A) Chinese Exclusion Act (1882)

...Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or having so come after the expiration of said ninety days to remain within the United States....

**The government invoked the Chinese Exclusion Act when it banned Wong Kim Ark, a Chinese American citizen born in San Francisco, from returning to the United States after visiting his family in China in 1895.*

B) United States v. Wong Kim Ark (1898)

Wong Kim Ark was born in 1873 in the city of San Francisco, in the State of California and United States of America, and was and is a laborer.... Wong Kim Ark, ever since his birth, has had but one residence, to-wit, in California, within the United States, and has there resided, claiming to be a citizen of the United States, and has never lost or changed that residence... he remained in the United States, claiming to be a citizen thereof, until 1894, when he... again departed for China on a temporary visit and with the intention of returning to the United States, and he did return thereto by sea in August, 1895, and applied to the collector of customs for permission to land, and was denied such permission upon the sole ground that he was not a citizen of the United States.

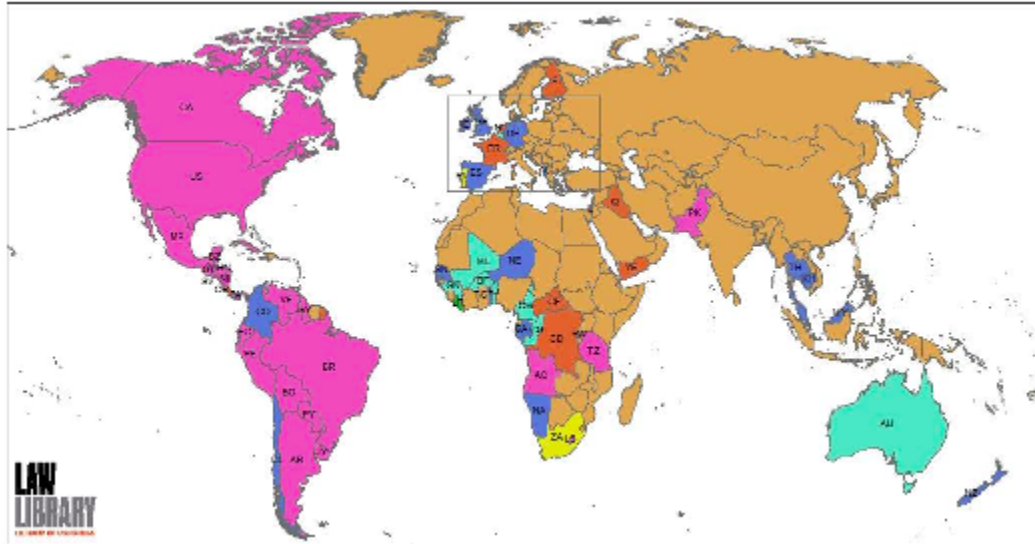
It is conceded that, if he is a citizen of the United States, the acts of Congress, known as the Chinese Exclusion Acts, prohibiting persons of the Chinese race, and especially Chinese laborers, from coming into the United States, do not and cannot apply to him.

[The purpose of this case is to determine the answer to] the single question stated at the beginning of this opinion, namely, whether a child born in the United States, of parent of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States. For the reasons above stated, this court is of opinion that the question must be answered in the affirmative.

**The Court affirmed Wong Kim Ark's status as a United States citizen by a 6-2 majority.*

- How did the Supreme Court apply the Fourteenth Amendment in *U.S. v. Wong Kim Ark*?
- Why is it significant that the Supreme Court set this precedent?
- How/why is this relevant today?

V) Global Perspective on Birthright Citizenship



Birthright Citizenship Conditions

<div></div>	Unconditional at birth	<div></div>	Combination of parental status and age/residency of child
<div></div>	Parental status	<div></div>	Race/ethnicity
<div></div>	Age/residency of child	<div></div>	No birthright citizenship
<div></div>	Parental status or age/residency of child		

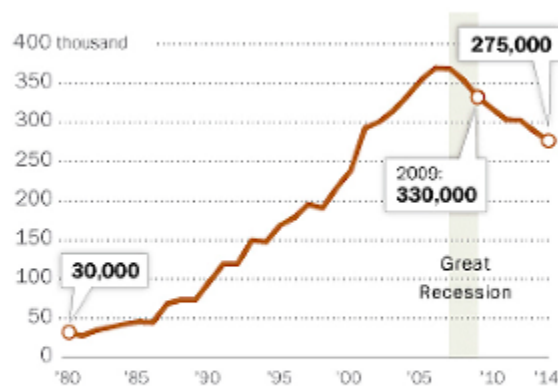
- What does this indicate about international perspective on birthright citizenship?
- How does this impact our understanding of this 'right' in the twenty first century?

VI) Immigrant Babies: [Chart](#)

In 2016, there were four million U.S.-born children with at least one parent who is an unauthorized immigrant, according to a Migration Policy Institute analysis that pulled from the Census Bureau's American Community Survey and Survey of Income and Program Participation. Of those:

- 1.3 million children live with two parents who are both unauthorized
- 1.8 million live with one unauthorized parent and one parent who is a legal immigrant
- 909,000 live with only one parent, who is unauthorized

Births to U.S. unauthorized immigrants decline since the Great Recession



Source: Pew Research Center estimates based on augmented American Community Survey, 2005-2014 (IPUMS) and March Current Population Survey, 1995, 1998, 2000 and 2003.

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- To what extent does this evidence support limits to birthright citizenship?
- Why might immigrants want to give birth in the United States? Should those sentiments be considered in the debate over birthright citizenship?
- Based on this evidence, is birthright citizenship used or abused? Explain your answer.

VII) Birthright Citizenship in the Twenty First Century

A) Birthright Citizenship Act of 2009

This act was introduced to the House of Representatives on April 2, 2009 to amend the Immigration and Nationality Act of 1965. It did not pass. It has been reintroduced several times, to the same effect.

(b) Definition.—Acknowledging the right of birthright citizenship established by section 1 of the 14th amendment to the Constitution, a person born in the United States shall be considered ‘subject to the jurisdiction’ of the United States for purposes of subsection (a)(1) if the person is born in the United States of parents, one of whom is—

1. a citizen or national of the United States;
2. an alien lawfully admitted for permanent residence in the United States whose residence is in the United States; or
3. an alien performing active service in the armed forces (as defined in section 101 of title 10, United States Code).

B) Stance on Birthright Citizenship: A Trajectory (2016-2020)

Presidential Election 2016 (Video from 8.20.2015)	Mid-Term Elections 2018 (Video from 10.13.2018)	Presidential Election 2020 (Video from 1.24.2020)

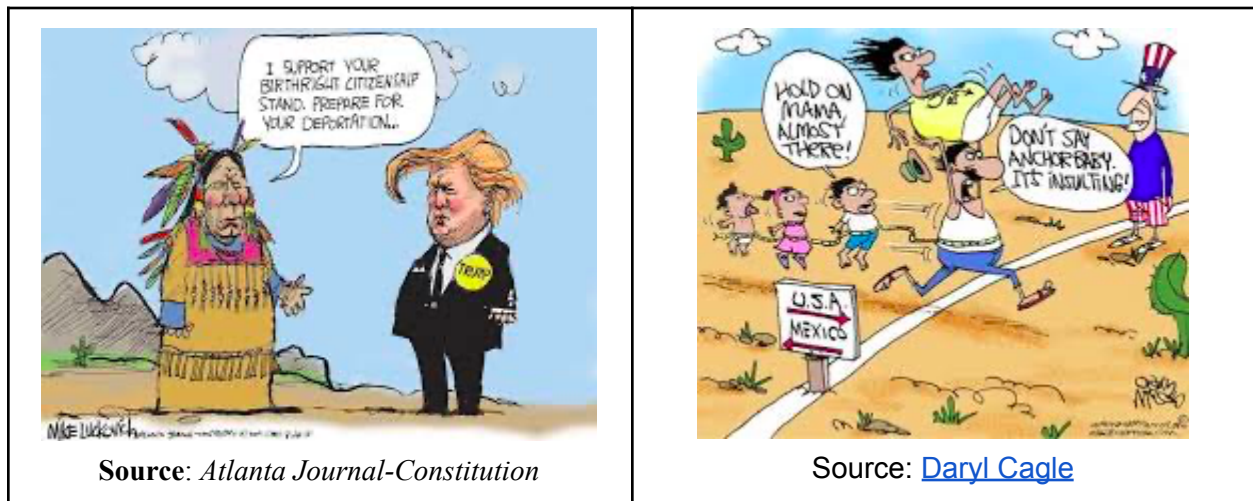
C) The Amendment Process



The Framers purposefully made it difficult to amend the Constitution to ensure that amendments reflected meaningful, necessary change and not the whims of the day. In order for the Trump administration to successfully spearhead a movement to remove birthright citizenship from the Fourteenth Amendment via a new amendment, it would require broad, national support from $\frac{3}{4}$ of the states.

- Why would a constitutional amendment be necessary to overturn birthright citizenship?
- Do you think there is enough support for this change to pass a constitutional amendment overturning birthright citizenship?

D) Birth Tourism- Perspectives



COMBATTING BIRTH TOURISM: President Donald J. Trump is taking action to combat birth tourism.

- The Administration is taking action to end “birth tourism” – a practice in which aliens travel to the United States with the purpose of giving birth to gain citizenship for their children.
 - Organizations bring in large numbers of aliens to systematically exploit this loophole and unfairly provide citizenship for their children.
 - Most birth tourism groups charge tens of thousands of dollars, which often doesn’t include coverage for medical care.
 - Groups are flown to the United States and often brought to motels, whose owners are also often complicit in the scheme.
- The State Department will stop issuing temporary visitor visas to applicants who are traveling to the United States to engage in birth tourism.
- The Administration’s new rule makes clear that attempting to improperly provide citizenship for one’s child through birth tourism is not a legitimate grounds for obtaining a visitor visa.
- Citizenship is the crown jewel of the American immigration system and must be vigorously protected from exploitation.

(Source: [President Donald J. Trump Is Taking Action to End Birth Tourism, Protect National Security, and Curb the Abuse of Public Resources](#), January 23, 2020)

- To what extent is the Trump administration’s focus on birth tourism a political maneuver as much as it is a stance immigration?

IX) Student Resources and Activities

Using the documents and resources in this packet as well as those that follow, students will develop an argument to answer the following question:

- To what extent do efforts to eliminate birthright citizenship pose a constitutional crisis in the twenty-first century?

Students can respond to this prompt in any manner appropriate to the learning environment and in any way that the teacher determines to be most engaging. Some suggestions include, but are not limited to:

- Historical essay
- Editorial or letter to the editor
- Poem
- Speech
- Socratic seminar
- Debate
- Group presentation
- Visual representation
- Video
- Podcast

Documents

Majority Opinion in *Dred Scott v. Sandford* (1857)

The question before us is, whether the class of persons described in the plea in abatement [people of African ancestry] compose a portion of this people... We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings...and had no rights or privileges but such as those who held the power and the Government might choose to grant them....

- According to this document, what was the Supreme Court's position on African American citizenship before the Civil War?

Civil Rights Act of 1866

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

- According to this document, what rights did African Americans gain after the Civil War?

Representative John Bingham, Congressional Debate on the Fourteenth Amendment, May 10, 1866

...There was a want hitherto, and there remains a want now, in the Constitution of our country, which the proposed amendment will supply... that is, to protect by national law the privileges and immunities of all the citizens of the Republic and the inborn rights of every person within its jurisdiction whenever the same shall be abridged or denied by the unconstitutional acts of any State.

...This amendment takes from no State any right that ever pertained to it. No State ever had the right, under the forms of law or otherwise, to deny to any freeman the equal protection of the laws or to abridge the privileges or immunities of any citizen of the Republic, although many of them have assumed and exercised the power, and that without remedy....

- According to this document, why was it necessary to add the Fourteenth Amendment to the Constitution?

Fourteenth Amendment of the United States Constitution (1868)

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. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- According to this document, what factors determine United States citizenship?

Majority Opinion in *Plyler v. Doe* (1982)

The question presented by these cases is whether, consistent with the Equal Protection Clause of the Fourteenth Amendment, Texas may deny to undocumented school-age children the free public education that it provides to children who are citizens of the United States or legally admitted aliens.

In May, 1975, the Texas Legislature revised its education laws to withhold from local school districts any state funds for the education of children who were not "legally admitted" into the United States. The 1975 revision also authorized local school districts to deny enrollment in their public schools to children not "legally admitted" to the country.... These cases involve constitutional challenges to those provisions.

The court determined that the State's concern for fiscal integrity was not a compelling state interest... that exclusion of these children had not been shown to be necessary to improve education within the State... and that the educational needs of the children statutorily excluded were not different from the needs of children not excluded...

... It is thus clear that whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation.

- According to this document, what was the Supreme Court's ruling in *Plyler v. Doe*?

Bill Chappell, "Trump Administration Targets 'Birth Tourism' With New Visa Rule," NPR, January 23, 2020

The Trump administration says it is targeting the practice known as "birth tourism." The State Department says that traveling to deliver a child in the U.S. is not "a legitimate activity for pleasure or of a recreational nature."

The State Department's rule, which was unveiled Thursday, states, "birth tourism poses risks to national security." The department contends that birth tourism has created an industry "rife with criminal activity, including international criminal schemes."

Under the new rule, consular officials will have the authority to deny a visitor visa if they have reason to believe the applicant intends to travel to the U.S. for the "primary purpose" of giving birth.

Moreover, if a consular officer has reason to believe a visa applicant will give birth during her stay in the U.S., the rule states that the officer should conclude that the main reason for the trip is to secure U.S. citizenship for the child.

- According to this article, why did the Trump administration take steps to limit "birth tourism"?

Cartoon: [*USA Today*](#)



- What is the main idea of this cartoon?

Additional Sources

[Pro Con: Sources for Debate](#)

[USATODAY – Video](#)

[Birthright around the world](#)

[Birthright Data – PBS](#)

[The Hill – Jonathan Turley](#)

[Birth Tourism](#)

[National Geographic- History](#)

[Washington Law Journal](#)