

# **Who is a citizen? The Founders left us a riddle.; The 14th Amendment doesn't answer this question, as today's immigration debate exposes unsettled business.**

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## **Body**

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The raging **debate** over illegal **immigration** has grown on a steady diet of rhetoric and recrimination. However, beneath all the hyperbole is a long-standing and unresolved **debate** over what it means to be a citizen. It turns out that the most foundational right contained in the Constitution -- citizenship itself -- is poorly defined and even more poorly understood.

There has long been a conscious avoidance of the **question** over so-called birthright citizenship -- citizenship claimed by the children of illegal aliens. Indeed, the **question** has become increasingly difficult to address as the numbers of birthright **citizens** grow each year. In 2008, one in 12 babies in this country was born to illegal immigrants -- 8% of all births. This is not counting the millions of prior such births, often referred to by critics as "anchor babies." With any change in the definition of citizenship assuring tremendous social changes and upheaval, the **question** has been **left** unresolved for more than two centuries.

Muddled then, muddled now

Given our roots, it should not be too surprising that citizenship was **left** ill-defined by the Framers. After all, this was the nation formed by **citizens** of other nations -- a common covenant based as much on what we rejected as what we embraced. Indeed, in the Declaration of Independence, we defined ourselves largely by process of elimination -- we would no longer live by the long list of examples of "absolute Despotism."

Notably, one of the complaints was that the king "endeavored to prevent the population of these states; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither."

Of course, the matter became more complex with the ratification of the Constitution and, more important, the later adoption of the **14th Amendment** in 1868. That **amendment** spoke directly to the issue of citizenship, stating in the very first line: "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." The **amendment** has become the battleground for opponents and advocates of birthright citizenship, with each side claiming clarity in its meaning. The fact is that the record was as muddled then as it is now.

The **14th Amendment** was adopted in response to the infamous Dred Scott decision denying former slaves the protections of citizenship as well as "Black Codes" that created barriers to former slaves in the South. On its face, the language would appear to support birthright citizenship. However, it has long been argued that such children are not "subject to the jurisdiction" of the United States because their parents are properly subjects of their home country.

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The original debate itself offered support to both sides of today's debate. The drafter of the Citizenship Clause -- Sen. Jacob Howard of Michigan -- stated clearly that the clause did not include "persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers." This view was supported by critical leaders such as Senate Judiciary Committee Chairman Lyman Trumbull of Illinois. However, other senators like John Conness of California believed that anyone born in the U.S. would be a citizen.

Citizenship elsewhere

This debate between jus soli (law of the ground) and jus sanguinis (blood right) continues to divide leaders and nations with debates similar to our own. Many countries have long recognized jus soli, or birthright citizenship. Indeed, at the time of our founding, England recognized birthright citizenship. In Calvin's Case in 1608, the court ruled that "a person's status was vested at birth, and based upon place of birth -- a person born within the king's dominion owed allegiance to the sovereign, and in turn, was entitled to the king's protection."

Conversely, nations like Germany follow jus sanguinis, establishing citizenship by one's ancestors or connections to the country as opposed to merely birth location. Other countries have a hybrid approach. The United Kingdom, for instance, requires that the parents be legal residents.

For its part, the U.S. Supreme Court has never directly ruled on the issue of birthright citizenship. In 1898, in United States v. Wong Kim Ark, the court found that the child of Chinese immigrants was still a citizen under the 14th Amendment because he was born on U.S. territory. However, his parents were here legally as permanent residents.

Congress could force the issue into the courts through legislation. Yet, the Supreme Court would in all likelihood rule in favor of birthright citizenship. This process -- legislative and then judicial -- would unfortunately short-circuit the national debate. Some senators, as well as others, are pushing for a constitutional amendment, which is a better approach for this type of question. While the Framers made the amendment process difficult, it was designed for this type of question -- to prevent "impulse buy" amendments adopted in the heat of passion and anger.

Since the founding, we have spent more time defining the rights of citizens than citizenship itself. It is not clearly answered in the history or language of the Constitution, despite representations on both sides of the debate. Rather than continuing to question the citizenship of millions, we should first resolve what it is to be a citizen. It is not a new question, but it is a question that we might now want to answer.

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## Graphic

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