

# BEING AMERICAN/BECOMING AMERICAN: BIRTHRIGHT CITIZENSHIP AND IMMIGRANTS' MEMBERSHIP IN THE UNITED STATES<sup>1</sup>

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## ABSTRACT

*Various politicians and public commentators seek to deny birthright citizenship to children born in the United States to undocumented or temporary migrants. Among their claims, critics of universal birthright citizenship contend that the practice flies in the face of liberal principles, in which both individuals and the state should consent to membership. From this perspective, citizenship through naturalization is valorized, since it rests on the affirmative choice of the immigrant and the clear consent of the state. This chapter proposes a different approach to these debates, one that underscores the principles of inclusion and equality. The argument rests on empirical evidence on how those affected by these debates – foreign-born residents and their U.S.-born children – understand belonging in the United States. Interviews with 182 U.S.-born youth and their immigrant parents born in Mexico, China, and Vietnam show*

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*that despite a discourse portraying U.S. citizenship as a civic and political affiliation blind to ascriptive traits, many of those interviewed equate "being American" with racial majority status, affluence, and privilege. For many immigrants, membership through naturalization – the exemplar of citizenship by consent – does not overcome a lingering sense of outsider status. Perhaps surprisingly, birthright citizenship offers an egalitarian promise: it is a color-blind and class-blind path to membership. The Citizenship Clause of Fourteenth Amendment provides constitutional legitimacy for the ideals of inclusion and equality, facilitating immigrant integration and communal membership through citizenship.*

In November 2010, soon after the Republican Party secured a majority in the U.S. House of Representatives, Steve King (R-Iowa) declared that one of the first pieces of business for the House Subcommittee on Immigration Policy and Enforcement would be to deny birthright citizenship to the children of undocumented migrants. Currently, the Fourteenth Amendment ensures that a child born in the United States automatically receives U.S. citizenship, regardless of his or her parents' legal status.<sup>2</sup> Citing the intentions of nineteenth century lawmakers, fears that birthright citizenship increases migration through "anchor babies," concerns about rewarding illegal behavior, and worry over cash-strapped social programs, King joined a chorus of politicians challenging automatic birthright citizenship under the Fourteenth Amendment.<sup>3</sup>

Political attacks against birthright citizenship find reflection in – and gain legitimacy from – the writings of political and legal scholars. In particular, Peter Schuck and Rogers Smith's 1985 book, *Citizenship Without Consent*, serves as a frequent source of historical material and legal reasoning presented by those in favor of restrictive birthright citizenship (see, e.g., Feere, 2010). Schuck and Smith argue that consent was a foundational principle of the American Revolution. The citizenship of new members should rest on the consent of both would-be members and the state. Other scholars criticize birthright citizenship on different grounds, for example, as a quasi-feudal system perpetuating global inequality, but they concur that the practice flies in the face of modern philosophies of membership based on social contract and deliberative choice (e.g., Shachar, 2009).

Thus, for individuals like Representative King, providing birthright citizenship to the children of undocumented migrants is illegitimate since the state never consented to their parents' presence.<sup>4</sup> In contrast, King has gone on record to underscore his participation in naturalization ceremonies "to

welcome new citizens as full-fledged members of the American experiment in democracy and our constitutional Republic."<sup>5</sup> Citizenship through naturalization is valorized, since it is based on the affirmative choice of the immigrant and the clear consent of the state.

Rather than focusing on consent, I propose an approach to citizenship that underscores the principles of inclusion and equality. The primary purpose of the Fourteenth Amendment was to ensure equal citizenship status for freed slaves and their descendents. Within three decades, the Supreme Court used the amendment to guarantee the citizenship of the U.S.-born children of Chinese immigrants who were, themselves, barred by statute from citizenship through naturalization. Of course, other laws, judicial decisions, and everyday practices made the ideal of equality through citizenship hollow for many groups throughout U.S. history. The rights-holding, normative American was a white male, preferably someone of property and the Protestant faith. Nevertheless, the Constitutional enshrinement of birthright citizenship can be understood, especially by immigrants and people of color, as a victory for greater inclusion and a protection against future attempts to exclude based on race or ancestry.

Various observers have thus labeled attempts to re-interpret the Fourteenth Amendment as a return to an exclusionary tradition of "ascriptive Americanism" since denying birthright citizenship to the children of undocumented parents would affect Latino and Asian-origin communities most heavily. The Department of Homeland Security estimates that 62 percent of unauthorized migrants in 2010 were born in Mexico; another 24 percent hailed from one of nine Latin American or Asian countries.<sup>6</sup> As Smith (1993, 1997) has argued, American political thought, legislation, and judicial decision-making reflect multiple ideological traditions. These traditions rest on liberal and republican ideals of equality and participation, but also on a persistent strand of "ascriptive Americanism." Ascriptive Americanism, according to Smith, is not merely a small stain on a historical trajectory toward greater equality, but an ideology deeply woven into the fabric of the United States.<sup>7</sup> While those wishing to limit birthright citizenship have not made public appeals to racial exclusion, neither have they advocated a wholesale renunciation of birthright citizenship. Rather, they focus on the state's right to decide who can be a member. A zealous celebration of individual volition and state consent – only applied to the foreign-born and their children, not to other native-born Americans who acquire citizenship at birth – could be interpreted as a return to racially inflected Americanism.

In debating birthright citizenship, most of the existing political and legal scholarship has focused on the original intent of the legislators who enacted the Fourteenth Amendment, the case law that interprets it, and the moral or normative principles that buttress or undermine its continued existence. We know much less, however, about how citizenship law shapes the meanings of membership and belonging for those at the heart of this debate: foreign-born residents and their U.S.-born children. I argue that taking this into account – examining how those affected view and interpret their membership – provides important purchase on these legal debates. To this end, I draw on a research project that interviewed 182 U.S.-born youth and their immigrant parents born in Mexico, China, and Vietnam.

These interviews challenge simple dichotomies of membership that contrast an enlightened civic membership based on mutually consenting parties to a problematic, quasi-feudal ascription of citizenship based on birth. Instead, the interviews remind us that citizenship law balances multiple inclusions and exclusions and it speaks to values and principles beyond consent, notably ideals of equality. For many immigrants, membership through naturalization – the exemplar of citizenship by consent – does not overcome a lingering sense of outsider status. Perhaps surprisingly, birthplace citizenship appears to provide – more than naturalization – a sense of legitimate belonging that challenges notions of being American predicated on race and economic privilege.

My argument proceeds from theoretical concerns to empirical data. First, in line with claims advanced by Cristina Rodriguez (2009), who proposes that the Fourteenth Amendment should be understood to embody an anti-subordination principle, I suggest that consent is only one value inherent in the conception of U.S. citizenship. Equality and inclusion are other key aspirations. Birthright citizenship, by providing automatic citizenship to the U.S.-born children of immigrants, helps fulfill an anti-subordination principle.

The interview material underscores the limits and promise of equality through citizenship. Interviews with immigrants and their children reveal that despite a discourse portraying U.S. citizenship as a civic and political affiliation blind to ascriptive traits – a view shared by many scholars of comparative citizenship studies – many of those interviewed identify an “ethnic” notion of membership in “being American.” Being American is equated with racial majority status, affluence, and privilege.

Can immigrants and their children, particularly those who are non-white and poor, “become American?” Some interview respondents see the adoption of American social and cultural practices as highly salient in the

process of being or becoming American. But so, too, is the mere fact of being born in the United States. From the viewpoint of an immigrant population, birthright citizenship offers an egalitarian promise. Placed against a lingering feeling of exclusion, it is a color-blind and class-blind path to membership. Beyond a legal guarantee, the existence and legitimacy of birthright citizenship solidify normative claims of membership in one’s own eyes and the eyes of others.

Many Americans oppose unauthorized entry and residence. But many also celebrate historic struggles that eradicated legally constituted inequality, from the end of slavery after the Civil War to key legislative victories in the struggles for civil rights. From the perspective of an egalitarian project, although birthright citizenship is not volitional, it creates possibilities for equality and inclusion, thereby furthering the country’s egalitarian aspirations, the same aspirations that fueled passage of the Fourteenth Amendment.

## CONSENT, EQUALITY, AND THE CONTOURS OF U.S. CITIZENSHIP

On January 5, 2011, Steve King, the new Vice-Chair of the House Subcommittee on Immigration Policy and Enforcement, introduced H.R. 140. This bill, the “Birthright Citizenship Act of 2011,” would amend Section 301 of the Immigration and Nationality Act so as to deny birthright citizenship to the children of undocumented or legal temporary migrants.<sup>8</sup> On the same day, Republican state lawmakers from Arizona, Georgia, Oklahoma, Pennsylvania, and South Carolina announced plans for bills that would require states to issue distinct birth certificates depending on the legal status of a baby’s parents.<sup>9</sup> The group, which includes prominent legal experts such as Kris Kobach, currently Secretary of State in Kansas and previously Professor of Law at the University of Missouri – Kansas City, wants the Supreme Court to reinterpret the application of the Fourteenth Amendment. Think tanks favoring immigration restrictions, such as the Center for Immigration Studies (CIS), have also produced reports in support of denying birthright citizenship to the children of undocumented parents (Feere, 2010) and, by raising the specter of terrorism and national security, to the U.S.-born children of legal, temporary residents, including visitors, foreign students, and temporary workers (Reasoner, 2011).

These arguments are not just political posturing, but draw upon the scholarship of well-respected academics. Contending that the principle of consent was foundational to the new republic, academics Peter Schuck and Rogers Smith (1985) conclude that the citizenship clause of the Fourteenth Amendment does not require automatic citizenship for undocumented or temporary migrants; Congress can legislate on this matter. This position, they maintain, is the logical upshot of a consensual notion of political membership, one which “would be more legitimate in theory, more flexible in meeting practical policy problems, and more likely to generate a genuine sense of community among all citizens than the existing scheme” (Schuck and Smith, 1985, p. 5). They stake out their argument by contrasting the individual, liberal ethos of consent inherent in the American Revolution with what they term the feudal vestiges of ascriptive subjectship under English common law.<sup>10</sup>

A fair amount of scholarship has debated this particular historical reading as well as the legal meaning of the clause restricting the Fourteenth Amendment to those “subject to the jurisdiction” of the United States.<sup>11</sup> Those questioning broad application of birthright citizenship point out that the primary focus at the time were residents of African heritage, not immigrants; that certain groups were meant to be excluded, such as foreign officials and members of Indian tribes; and that the entire concept of illegal immigration, as understood today, had no relevance when the amendment was ratified. In response, supporters of the current reading of the amendment note that the issue of Chinese migration was raised during legislative debates; that undocumented individuals are clearly subject to U.S. jurisdiction, as when they are jailed for crimes committed on U.S. territory; and that the very passage of the Fourteenth Amendment through legislative decision-making embodies state consent to birthright citizenship.

Rather than revisit these arguments, I wish to extend the discussion beyond the historical and legal record and take into account the views of contemporary immigrants and their U.S.-born children. Before doing so, however, I interrogate what is meant by “ascriptive” citizenship and I offer two alternative principles – equality and inclusion – that undergird U.S. citizenship.

#### *Ascriptive Citizenship*

In the argument advanced by Schuck and Smith, they acknowledge that early U.S. law, following the English common law tradition, always

included what they term an “ascriptive” strand where “one’s political membership is entirely and irrevocably determined by some objective circumstance – in this case, birth within a particular sovereign’s allegiance or jurisdiction” (1985, p. 2). Automatic citizenship based on territorial birth is ascriptive in that it is assigned at birth without volition, either on the part of the person receiving citizenship or on the part of the state giving citizenship, beyond the state’s general decision to allow birthright citizenship. Schuck and Smith view ascriptive citizenship as less legitimate than a consensual approach. Consent, they maintain, was a foundational principle of the revolution; political membership should rest upon free choice.<sup>12</sup> Once a government is established, would-be members and the state must *both* consent to the citizenship of new members.

From this perspective, the process of naturalization most purely embodies liberal and republican ideals of social contract and deliberative choice. In citizenship through naturalization, a consenting adult foreigner (“alien”) affirmatively applies for U.S. citizenship. The state, satisfied that the person has met various qualifications, purposively grants citizenship to that individual (thereby “naturalizing” the person). U.S. naturalization ceremonies frequently celebrate the volitional process, with speakers underscoring the moral superiority of citizenship through choice rather than birth (Aptekar, 2012).

Citizenship through the geographical happenstance of one’s birthplace is certainly not volitional. However, the label “ascriptive” ignores important nuances, notably the distinction between ascribed citizenship based on blood descent (*ius sanguinis*) and that based on birth in a particular sovereign territory (*ius soli*).<sup>13</sup> This distinction is particularly important when considering immigrant groups and their children, as various scholars of comparative citizenship studies have underscored (e.g., Howard, 2009; Joppke, 2010; Vink & de Groot, 2010). In one of the most prominent elaborations of this distinction, Rogers Brubaker noted the differential legal inclusion of immigrants in France and Germany where “the French citizenry is defined expansively, as a territorial community, [but] the German citizenry – except in the special case of ethnic German immigrants – restrictively, as a community of descent” (1992: p. x). As a heuristic, comparative studies of national membership often distinguish between “civic” and “ethnic” conceptions of citizenship, with the United States placed squarely in the former category.

While citizenship through territorial birth or descent is equally ascriptive – based on condition, rather than volition – it is not equally restrictive to new members. Membership through descent can never broaden beyond the

select group of ancestors who held citizenship at some earlier time; membership through territory opens up the possibility that although a particular group of residents might not themselves hold citizenship, their descendants will.<sup>14</sup> Viewing citizenship as a simple dichotomy of consent or ascription is thus problematic, since ascription through descent is qualitatively more restrictive for immigrant populations than ascription through territorial birth. If we accept that citizenship law balances values beyond consent, in particular the ideals of equality and inclusion, we can instead view citizenship laws on a continuum of being more or less inclusive.<sup>15</sup>

#### *Beyond Consent: Equality and Anti-Subordination*

This reasoning – that territorial citizenship is more inclusive than descent-based membership – applies not only to immigrants. The Fourteenth Amendment was enacted to overcome the injustice of perpetual legal subordination that flowed from the *Dred Scott* decision denying U.S. citizenship to blacks. In emphasizing *ius soli*, the Fourteenth Amendment – both the Citizenship Clause and the Equal Protection Clause – embody an anti-caste or anti-subordination principle (Rodríguez, 2009). By enshrining birthright citizenship in the Constitution, the amendment also privileged egalitarian considerations above consent by shutting off the possibility that a future political majority could withhold state membership to a particular U.S.-born group.<sup>16</sup>

Approaching birthright citizenship through the lens of equality becomes even more salient when we consider the historical record of immigration and naturalization law in the United States. A strong consensual framework suggests that democratic institutions – as the voice of people joined together in a political community – can legitimately set the terms by which new members may join. While logical in the abstract, such democratic decision-making has produced gross inequities in practice. One of the first acts of the new U.S. Congress was to establish a “uniform Rule of Naturalization” in 1790 that only applied to “any Alien being a free white person.”<sup>17</sup> Following the Civil War, the Naturalization Act of 1870 broadened this provision to encompass “aliens of African nativity and to persons of African descent,” but in 1882, Congress instructed “That hereafter no State court or court of the United States shall admit Chinese to citizenship.”<sup>18</sup> Court cases and administrative decisions subsequently extended legal exclusions to almost all Asian migrants. As Devon Carbado puts it in considering the court cases

that determined who precisely was “white” under naturalization law, “In the prerequisite cases, law establishes whiteness as American identity.... Americanization and racial formation are not oppositional. They go hand in hand.” (2005, p. 637). Restrictions only began to break down during World War II and they only ended definitively with the 1952 Immigration and Nationality Act, which eliminated race or national origin as a criterion for naturalization.

Thus, from 1790 to 1952, access to citizenship was racialized and inherently unequal (Gualtieri, 2001; Haney López, 1996; Smith, 1997). Legislation and court decisions became instruments in the separation of individuals into distinct groups, and helped constitute who was deemed worthy of U.S. citizenship and who was not. This tradition of “ascriptive Americanism” linked “the true meaning of Americanism with particular forms of cultural, religious, ethnic, and especially racial and gender hierarchies” (Smith, 1993, pp. 549–550). Laws on immigration and citizenship reflected racial prejudices and hierarchies and they further institutionalized and legitimized inequalities.

For many, this backdrop of racial exclusions makes the Fourteenth Amendment all the more valued. The application of consent between a state and an individual is one of grossly unequal power, especially when the state is controlled by a group of individuals – even a democratic majority – that holds prejudice or animus toward another group. The egalitarian promise of the Fourteenth Amendment is seen most clearly in the 1898 *Wong Kim Ark* Supreme Court decision, which uses the Fourteenth Amendment to uphold the citizenship of U.S.-born children, even when their Asian-born parents were racially ineligible for naturalization.<sup>19</sup> As Neuman puts it, “The Court’s courageous recognition of citizenship for Americans of Chinese descent was an extreme illustration of the irrelevance of ‘consent’ ... the Court overrode strong indications of unwillingness to admit the Chinese to the American polity” (1987, p. 495). Today, third and fourth generation Asian Americans earn higher incomes and hold higher educational credentials than their native-born white and black counterparts, an outcome likely unimaginable had the Supreme Court denied their parents and grandparents birthright citizenship.<sup>20</sup>

At the same time, legislation and case law over the last 60 years raise questions about the relevance of birthright citizenship in the contemporary period. Starting in the 1950s, the successes of the civil rights movement advanced many equality guarantees. Supreme Court decisions like *Brown v. Board of Education* and *Hernandez v. Texas* in 1954, Congressional legislation such as the 1964 Civil Rights Act and 1965 Voting Rights Act,

and subsequent legislative, legal, and administrative efforts generated a “minority rights revolution” in the United States (Skrentny, 2002).<sup>21</sup> Indeed, the United States stands out for its robust legal and institutional responses to discrimination based on race, ethnicity, religion or national origins. In a comparative survey of 31 highly industrialized democracies, the Migrant Integration Policy Index names the United States, with Canada, as having done the most to pass policies and set up institutions to fight discrimination and combat racial profiling or incitements to hatred, protections that also cover foreign-born residents.<sup>22</sup>

Against the backdrop of these protections, two distinct scholarly positions question the importance of birthright citizenship. One perspective suggests that traditional nation-state citizenship is being eclipsed by global human rights norms and an expanding rights regime that applies to people regardless of citizenship (e.g., Soysal, 1994). Citizenship, according to this optimistic view, is not really necessary given widespread rights guarantees. An alternative, more pessimistic perspective examines racial minorities’ “second-class” status despite formal guarantees of legal equality. Critics point to research showing significant differences between U.S. minority groups in their rates of incarceration, incidence of poverty, educational attainment, access to high performing schools, living conditions, overall wealth, employment rates, health outcomes, and chances of dying due to violent crime. These indicators of continuing racial inequality undermine the belief that formal citizenship status holds out much egalitarian promise.

I argue that we should not discount the importance of legal citizenship – whether for optimistic reasons of human rights or pessimistic concerns about de facto second-class citizenship – because citizenship provides a claim to legitimate membership. Perhaps surprisingly, given the philosophical value placed on the idea of consent, these claims appear stronger – in the eyes of those with immigrant-origins – when one is born in the United States.

### AN IMMIGRANT VIEW: BEING AMERICAN AND BECOMING AMERICAN

At the time that many civil rights guarantees were becoming law, few immigrants lived in the United States. In 1970, less than 5 percent of U.S. residents were foreign-born, and the majority of those people were naturalized citizens. In 2009, however, 38.5 million people, or 12.5 percent

of the country’s 307 million residents, were born outside of the United States.<sup>23</sup> In California, more than one in four people, 27 percent, were foreign-born.

For immigrants, legal status in the United States spans a continuum. On one end, in the most secure status are the 16.8 million foreign-born residents, almost 44 percent of the total in 2009, who are naturalized U.S. citizens. Once a person receives permanent legal status, he or she can apply for citizenship after five years (or three years if married to a U.S. citizen), provided that they meet the other requirements of naturalization, such as basic English language ability, knowledge of U.S. history and political institutions, and demonstration of good moral character.

At the other end of the legal continuum, an estimated 11 million people, about 29 percent of all foreign-born individuals live as unauthorized residents (Hofer et al. 2011; Passel & Cohn, 2009). They entered the country clandestinely, overstayed legal visas for tourism, study, or temporary work or fall out of status when asylum bids are denied or temporary protected status ends. Today, undocumented or “illegal” migration has become a defining feature of U.S. immigration debates: a majority of U.S. residents think – incorrectly – that most migrants in the country are illegal.<sup>24</sup>

Between these two ends of the legal spectrum are legal permanent residents (LPRs) who are “aliens,” but who enjoy many of the same rights and benefits as citizens. More precariously, another group of migrants lives in a situation of “liminal legality,” a term Menjivar (2006) uses for people who move in and out of legal status or who have temporary residence rights but limited possibilities for becoming permanent residents. This group includes people in Temporary Protected Status or asylees waiting for their cases to be adjudicated, as well as international students, temporary workers, and various other specialized visa categories. LPRs are eligible for citizenship; temporary residents, even if legally present, are not.

Although these legal categories seem clear and differentiated on paper, in reality many foreign-born individuals move between statuses, from refugee to permanent resident, from temporary student to temporary worker, from Temporary Protected Status to unauthorized, from unauthorized to legalized. It is estimated that in 2003, about half of all people granted legal permanent residence had already lived in the United States under some temporary status or as an unauthorized migrant (Jeffery, 2007; Hayes & Hill, 2008).<sup>25</sup> In 2009, almost 60 percent of new lawful permanent residents (668,000 of 1.1 million) adjusted their status from within the United States.<sup>26</sup> Many immigrants’ lived experience of legal status is characterized

by fluidity, which can offer some hope to those lacking documents but also reinforces the sense of an ambiguous future and precarious legal existence.

Many of these migrants have children. Some children come as migrants themselves, but most were born in the United States and thus acquired U.S. citizenship through the Fourteenth Amendment. Jeffrey Passel estimates that in 2009, 17.3 million children, or 23 percent of all youth under 18, had at least one foreign-born parent (2011, p. 24). Of these children, 84 percent were U.S. citizens by birth, 10 percent were non-citizen legal residents, and 6 percent were themselves unauthorized. Among the approximately 14.5 million U.S.-born youth in immigrant families, Passel's estimates that almost 29 percent have at least one unauthorized parent. This gives rise to the increasingly common phenomenon of "mixed status" families: families in which different members hold distinct legal statuses and who are thus subject to different laws and regulations when it comes to social benefits, political voice, and protection from deportation. How do these immigrants and their children understand membership and belonging in the United States?

#### *Understanding American Membership: Models and Survey Data*

Scholarly observers come to quite different conclusions about immigrants' chances for full membership and inclusion in the United States. For many students of comparative citizenship studies, the United States is a country of "civic" membership where holding citizenship is synonymous with being American; immigrants and minorities can become full members of the polity and society through political affiliation (e.g., Joppke, 2010). A more multicultural approach might allow hyphenated identities, such as being Chinese American or Mexican American, but these very terms underscore the distinction between an ethno-cultural background (Chinese or Mexican) and a civic, political membership (American). Being American can be combined with different ancestry adjectives, but the key noun, American, is a civic identity.

Among scholars of U.S. immigration, this view finds partial reflection in contemporary models of immigrant assimilation, where the relatively open boundaries to citizenship are seen as critical to integration (Alba, 2005). These immigration scholars argue that newcomers – and especially their children – integrate into a diverse and largely welcoming American "mainstream," where ethnic and racial origins have, at most, minor effects on life chances and opportunities (Alba & Nee, 2003, p. 12). In the strongest

version of the civic membership argument, full inclusion happens in the first generation through naturalization since consensual political membership is blind to race, ancestry, or other ascriptive traits.

This view of open civic membership is predicated on at least four factors. First, the U.S. self-image as a country of immigration provides an idiom for immigrant inclusion. Such a narrative is harder to find in European societies with large migrant populations. Second, birthright citizenship and relatively low barriers to naturalization provide for large-scale legal and political inclusion. Third, the empirical evidence of earlier integration, largely by immigrants of European origin but including the descendants of late nineteenth century Asian migrants, shows that their grandchildren and great-grandchildren are linguistically and socioeconomically indistinguishable from other native-born Americans. Finally, the bases of legalized inequality in the past are now illegal and largely discredited. In the words of Alba and Nee, "Because of the ... extension of civil rights to nonwhites, the monitoring and enforcement of formal rules that once worked to effect exclusion from the mainstream now contribute to lower the barriers to entry for immigrant minorities and the new second generation" (2003: p. 14). For all these reasons, many view the United States as epitomizing an inclusive society where, literally, the son of a temporary African migrant can become President of the United States.

The counterpoint to this optimistic narrative is the substantial evidence of continuing ethno-racial inequality in the United States, despite equality guarantees or even affirmative action programs. For example, in their study of third- and fourth-generation Mexican Americans, Telles and Ortiz point to the limits of inclusion through law, especially in terms of educational attainment, but also in identification, "Ethnic identification for Mexican Americans remains strong even into the fourth generation ... The especially slow rate of identificational assimilation seems to be at least partly shaped by racialization experiences" (Telles & Ortiz, 2008, pp. 236, 237). Such data speak to the idea of second-class citizenship: formal legal equality, but extensive inequality in experience, which influences feelings of membership.

Adjudicating between these opposing views is more difficult than one might think. Scholars often use survey data as evidence, but interpreting responses is not self-evident.<sup>27</sup> A response of "I am American" to an identity question could be a straightforward example of assimilation and membership. But what does one make of hyphenated or multiple identities? This could indicate second-class citizenship, or a more inclusive multiculturalism (Bloemraad, 2006). In the 2006 National Latino Survey, which polled native-born and foreign-born Latinos across the country, respondents were asked how strongly they thought of themselves as American, Latino, or their

particular national origin (e.g., Mexican and Cuban).<sup>28</sup> As seen in Table 1, native-born Latinos – of the second generation or with longer roots in the United States – are more likely to report “somewhat” or “very” strong identification as American than foreign-born Latinos, 88 percent and 55 percent, respectively.<sup>29</sup> There is, however, little difference between native-born and foreign-born respondents’ attachment to a “Latino” or “Hispanic” identity or a national-origin identity: 89 and 91 percent of native-born and foreign-born respondents, respectively, reported feeling somewhat or very “Latino/Hispanic,” while 82 and 91 percent, respectively, reported a strong national origin identification. These numbers are much higher, for the foreign-born, than their sense of being American.

Thus, in line with the arguments of Telles and Ortiz (2008), we find a strong persistence in ethnic identity, although this might be affected in part by the LNS survey design, which targeted self-identified Latinos. But does this represent second-class citizenship or a more positive multicultural inclusion where one can be a particular ancestry, but also an American in a civic (or even cultural) sense? In the LNS, when respondents were pressed to choose between an American, Latino, or national origin identification, the native-born divided into roughly equal thirds, as shown in Table 2.<sup>30</sup> Not surprisingly, foreign-born respondents were relatively more likely to choose their national origin—about half did so—than the native-born. Strikingly, very few immigrants choose the American label, only 7 percent.

Immigrants’ reluctance to pick “American” when pushed raises questions about the contours of membership for the foreign-born. However, the forced choice might be excessively artificial, and the results from the survey can be interpreted in multiple ways. Noteworthy for the present context, the data are consistent with a story about the importance of U.S. birth, among other factors, in increasing one’s sense of being American. To get a better handle on immigrants’ sense of membership, I conducted research using in-depth interviews, which do not provide pre-set answer categories, allowing respondents to articulate their own views of belonging. In-depth interviews are particularly valuable for revealing people’s sometimes contradictory but consequential understandings of membership. They also reveal how people try to make these ideas relevant to their own lives and those of their family members.

#### *The Immigrant Families, Political Socialization Project*

The Immigrant Families’ Political Socialization Project conducted in-depth interviews with U.S.-born youth between the ages of 14 and 18 and at least

**Table 1. Strength and Content of Latinos’ Identifications, by Nativity.**

	American ID			Latino/Hispanic ID			National Origin ID								
	Not at all strongly	Somewhat strongly	Very strongly	Not at all strongly	Somewhat strongly	Very strongly	Not at all strongly	Somewhat strongly	Very strongly						
Native-born	4	8	22	66	2998	4	7	24	65	2976	8	10	25	57	2980
Foreign-born	20	24	31	24	5308	3	6	26	65	5389	3	7	21	70	5395
All respondents	14	18	28	39	8306	3	6	25	65	8365	5	8	22	65	8375

Source: Latino National Survey, 2006. Puerto Rico-born subjects classified as U.S.-born. Tabulations are weighted according to survey weights.



*Table 2.* Latinos' Primary Identification, by Nativity.

	Latino	National Origin	American	None of These	<i>N</i>
Native-born	35	27	35	3	2941
Foreign-born	42	49	7	3	5388
All respondents	39	41	17	3	8329

Source: Latino National Survey, 2006.

Puerto Rico-born subjects classified as U.S.-born. Tabulations are weighted according to survey weights.

one of their foreign-born parents. The interviews were conducted in two phases. Phase one concentrated on 83 people drawn from 42 Mexican-origin families that mostly lived in Richmond and Oakland, California.<sup>31</sup> Oakland and Richmond are both ethnically and racially diverse "majority-minority" cities with large percentages of foreign-born migrants. Latinos – the bulk of whom are Mexican-origin – make up a quarter of the population of Oakland and a third of Richmond's residents.<sup>32</sup> We recruited roughly equal numbers of parents with one of three legal statuses: undocumented (12 parents), LPR (13 parents) or naturalized citizen (14 parents). We also recruited four families in which the parent was a U.S.-born citizen as a comparison point.<sup>33</sup> All but four interviews were conducted between March and August 2006.

Phase two expanded the study to include Chinese- and Vietnamese-origin parents and their U.S.-born youth. We did an additional 99 interviews with members of 53 families.<sup>34</sup> Among those of Vietnamese-origin, 15 parents were naturalized citizens and one was a LPR. Our inability to get much variation in parents' legal status is indicative of the very high levels of naturalization among the Vietnamese.<sup>35</sup> Among Chinese parents, 7 were U.S.-born, 19 were naturalized citizens, and 8 were LPRs.<sup>36</sup> Our geographic focus in phase two expanded to include people living in San Francisco and San Jose, as well as Oakland.<sup>37</sup>

During our interviews, we asked general questions about current and past civic and political engagement, specific questions about participation in and attitudes toward contemporary political events (such as the massive 2006 immigrant rights marches during phase one, and the 2008 presidential primaries in phase two), questions about the respondent's identity, as American or something else, and their views on citizenship.<sup>38</sup> This chapter draws from these latter questions.

*Being American: Who Can be a Member?*

For many students of comparative citizenship, the United States epitomizes a country of "civic" nationalism, while critical race scholars in law, ethnic studies, and the social sciences question the narrative of civic equality. A "multiple traditions" approach to American membership, applied to the contemporary period, suggests that both accounts hold some truth. In fact, immigrants articulate narratives of both inclusion and exclusion when they discuss who is and who can become an American.

*Being American: Civic Inclusion Through Citizenship*

Many respondents saw value in being a U.S. citizen and a fair number talked about citizenship with reference to rights or political engagement in a way that is consonant with liberal or republican notion of membership and inclusion. Fewer, however, unequivocally equated civic membership with "being American"; citizenship and being American were somewhat distinct for many respondents. Of those who did see an overlap between the two, most were born in the United States. For example, asked what it means to be American, a U.S.-born Chinese American parent first replied, with a loud laugh, "Someone who lives in America?" Pausing to think a bit more, he elaborated, "Um, someone who lives in America and can appreciate the ideals that are appreciated within a country that has freedom of speech and everything else." A U.S.-born Mexican American teen who identified as American explained, "I think it means, to me, going out there. It means freedom of speech, being able to do things that you want to do. And an opportunity to pursue your dream, and stuff like that." A naturalized Vietnamese American articulated a strong notion of liberal and republican belonging in her response:

R: I am an American because I live here, I have a right to speak out, I get benefits from the government, I don't miss out [on] anything. I have responsibilities, I have benefits. I have responsibilities to this country, so I'm a citizen of this country.

I: Do you see a difference between having the passport of a US citizen and being an "American"?

R: Anyone can get a U.S. passport, but to truly become an American you have to contribute, put your energy, your strength, your mentality, everything. Those are two different things, some people have passports but they don't do anything. ... Like if there is a war, you have the responsibility to go; my children, I will support them if they need to fight to protect our country.

For these respondents, “being American” did not implicate ascriptive traits or personal circumstance, but rather it rested on adherence to civic values, as well as rights and responsibilities. These responses were closest to a pure civic membership.

Among parents who were naturalized citizens, a fair number evoked notions of civic inclusion in explaining their decision to naturalize, but they also spoke about practical and instrumental motivations, ranging from protection against deportation to greater access to social benefits.<sup>39</sup> A Mexican-born mother explained that she had acquired U.S. citizenship “because I think it is better, I had been here for a long time .... I decided to do it, to be able to vote, and, well, to make [immigration] petitions for family members.” A Chinese-origin mother born in Hong Kong said, “As an immigrant, being a citizen is good because you could obtain [public] benefits more easily. Nowadays all benefits require being a citizen. You can also vote and express yourself. Whenever I think about citizenship, I think about voting and benefits.” Civic inclusion was important – many immigrants were sensitive to the rights and protections that came with citizenship – but practical benefits often weighed as heavily as passionate adherence to constitutional values.<sup>40</sup>

#### *Being American: Race, Class, and Privilege*

The notion of American identity as synonymous with civic membership is celebrated in the U.S. naturalization process (Aptekar, 2012; Bloemraad, 2006). It also rests on a strong notion of consent and volition: those who believe in freedom of speech and similar values can be American since membership is about political adherence, not background. We might expect that foreign-born immigrants, especially those who are naturalized U.S. citizens, would embrace a civic discourse, equating being American with U.S. citizenship. But this was not often the case.

More common among the foreign-born were responses where people hesitated when asked if they saw themselves as American. Asked how strongly she thinks of herself as an American, a naturalized Mexican American parent responded, “So-so .... Not that much ...” She then explained, “Because why are you going to think you are [American], if in reality – You are American, but you still have the Mexican type [look].” Legal citizenship through naturalization did not necessarily make her feel, or think others perceived her, as American. In a similar manner, a naturalized Vietnamese American parent was blunt when asked what it means to be American. Referring to his sons, he answered, “They don’t look like Americans. Their bodies, they don’t look like Americans.” A

naturalized Chinese-born parent articulated the difference between U.S. citizenship and being American in the following exchange:

I: Do you think of yourself as “American”?

R: I think I’m yellow... I’m not a white person .... No matter where we go, we have yellow skins.

I: So you think holding an American passport and being an American is different?

R: Yes.

I: How so?

R: The passport is just for travel convenience. But in America, it’s impossible that we are considered Americans.

Being American, for these respondents, rested on a normative set of physical characteristics, not consensual citizenship.

Being American is not just about race, however. A fair number of people, foreign-born and U.S.-born, articulated a notion of Americanism linked to wealth and the benefits that come from economic security. Indeed, physical appearance and economic success seemed to be mutually constitutive for some respondents. Asked what it means to be an American, one U.S.-born Mexican American parent answered, “fulfilling the American dream, your family, your house, a job, that’s to me what American is .... I figure most people picture Americans with money, white.” A U.S.-born teen echoed this sentiment, responding, “Like ... when they say that it’s white and like, being higher and everything. Money and more rights.” This group of respondents seemed to take Judith Shklar’s (1991) arguments about American citizenship a step further: not only do true Americans work and control their labor, they must embody the American dream of economic success.<sup>41</sup>

A particularly poignant expression of this view of citizenship came out in an interview with a young, U.S.-born Mexican American student who attended a high school in Richmond. Richmond, like Oakland, regularly ranks among the most violent cities in the United States. In 2006, when the FBI documented 474 violent crimes per 100,000 people nationally, in Richmond the rate was 1187 violent crimes per 100,000, including 42 cases of murder. Asked what it means to be American, this teen responded: “American[s] ... they live in quiet areas, most of them have bought their homes, they live peacefully, not in places where there are shootings at every hour... Where they live, nothing like that happens ....” Since her school and home are not in peaceful neighborhoods, she cannot be considered American by her own definition.

*Becoming American? Cultural Pathways and Birthright Membership*

Sharp distinctions between ascriptive and civic citizenship obscure the degree to which membership narratives are fluid. Many respondents articulated multiple notions of belonging. These narratives highlighted a process by which immigrants and their children could “become” American, a process that was neither purely civic nor completely ascriptive.

*Becoming American: Cultural Transformations*

One key pathway articulated by respondents was through the adoption of “American” practices, a long-standing theme in the history of immigrant integration. A Vietnamese American teen, asked about his parents, said they were Vietnamese but also American, because “they wear American-style clothing and stuff, and they talk English, and things like that.”<sup>42</sup> As one Chinese-born permanent resident put it, being American “is the ability ... to enjoy life here. Or is it the lifestyle? How would you describe it? [Americans] are more relaxed. They are not as stressed. Life isn’t as stressful. People even walk slower.” Another Chinese-born parent, who is a naturalized citizen, put it slightly differently, “We Chinese don’t usually call the police, like when [our relatives] got robbed. They don’t want to get into troubles. ... being an American means being brave, to go out and do things.” Since these behaviors and the attitudes behind them can be adopted by immigrants, socialization to American ways can provide a means to be American. As one Chinese-born parent suggested, in talking about her kids, “They’re Chinese in appearance, but inside, American.” Respondents differed in the emphasis placed on appearance, but they agreed that it was not an absolute barrier, depending on behaviors, cultural practices, and attitudes. Such responses support the claims of sociologists who predict that contemporary immigrants and their children can assimilate into an American mainstream.

Those of Asian origins appeared somewhat more likely to invoke a narrative of socialization or adoption of American norms as a means to becoming American. Not all changes were viewed positively, however. In some cases, parents did not want their children to become American. One naturalized Vietnamese American explained, “American boys, they can cuss and yell at each other when they get mad at each other. But my boys, they were raised the Vietnamese way and they know better than to do or say those things.” Being American is not purely ascriptive, but in this case cultural change is not valued. Another Vietnamese American respondent, a man who was interviewed by a younger Vietnamese American woman, explained to the interviewer, “You are very American .... You are a strong

woman; Vietnamese women are just more delicate with their bodies, they are soft. They know where to sit at the table and when they talk, they talk with a softer voice.” For this respondent, cultural behaviors erase hard barriers of race in determining membership, making the woman “very American” in his eyes.

*Becoming American: Birth, Rights, and Inclusion*

In addition to cultural transformations, respondents made frequent implicit and explicit appeals to birthplace as a means of being American. For many, being born in the United States did, or could, make someone American, despite racial minority status or socioeconomic condition. For certain respondents, especially some U.S.-born youth, birthplace and being American seemed synonymous. One Vietnamese American teen’s response was typical. Asked why he thinks of himself as American, he seemed a bit puzzled and said, “Because I was born here.” This sort of response – repeated among a fair number of the teens – did not involve discussion of civic principles or cultural habits. U.S. birth was enough for this teen to feel like he was American.

For some, the notion of being American through birth also came with a sense of legitimacy and standing that allowed the person to challenge narrower or more exclusionary notions of being American. For example, the U.S.-born Mexican American parent who felt that “most people picture Americans with money, white,” went on to assert:

... we are all 100% Americans, we were born here. No matter what people say, we are Americans. ... but I know a lot of people don’t see [that]. If they are not the American color, then a lot of people don’t say that you are American.

Although she believes that many equate being American with being white, birthplace gives her a trump card to challenge perceptions or experiences of racial exclusion and to make claims to membership. Some other respondents articulated similar logics, though not always so forcefully.

Birthplace as a path to inclusion seemed slightly more prevalent among Mexican-born respondents, perhaps due to the higher prevalence of undocumented status in the Mexican immigrant population and public perceptions equating the two. A Mexican permanent resident said that she did not see herself as American because her color “is not a light color.” But then she expressed more ambiguity about what it means to be American as she began to think out loud:

It means ... Being born here maybe? ... For me Americans are the white people [gabachos], they are Americans .... But the people born here are Mexican Americans and

they have Mexican parents. They, too, even if they are not white, they too are Americans, Mexican-Americans, right?

In a similar way, another LPR born in Mexico was categorical that she was not an American, but an immigrant. When asked what it means to be an American, she reflected on the situation of her U.S.-born children:

Well, what can I say? It means a lot because you have a lot of rights. Voting, a lot of things. ... for Americans, it is always better, more respect. And we, us Mexicans, there is a lot of discrimination. Even if they have fixed their residency, I still feel I am being discriminated that way. Rejected. Even if we have papers. I think that it is better to be a citizen like my children, all the boys. Maybe ... they were born here and they feel much better.

To her mind, U.S. birth might provide some antidote to discrimination and could affect one sense of inclusion.

In fact, for some respondents and their family members, citizenship "whitens." This seemed the case for a U.S.-born Mexican American teen whose older brother is an undocumented resident. The brother, who was brought to the United States as a small child, does not benefit from the legal status and opportunities that his sister enjoys due to her birthright citizenship. Discussing her sense of identity, the teen explained:

I am both American and Mexican ... but my brother is always like "oh, you are American and you are like white" [tone of disgust]. But he is playing around. And I'm like, "No, I am not, I am a Chicana, I am both." And then he just gets angry at the fact that I am going to be able to drive with permission and he is not, because he is not legal and he is almost 19.

The teen rejects an undifferentiated American label, but accepts that being American is part of her multi-faceted identity, an identity that also reflects an ethnic and perhaps racial membership. Strikingly, in the eyes of her brother, citizenship means being American and white, an option foreclosed to him. This teen's experiences remind us that notions of membership are not just about relations between immigrants and the dominant mainstream population, but that it also has salience and is negotiated in mixed status families.

While sensitivity to the importance of legal status, and especially birthright citizenship, appeared more prevalent among Mexican-origin respondents, those of Asian background also hinted at emancipatory notions of birthright citizenship.<sup>43</sup> Themes of racialized exclusion, cultural assimilation, and the privileges of birth all came out in an interview with a U.S.-born Vietnamese American teen who identified himself as Asian

American. Asked what, for him, it means to be an American, the youth responded:

T: Um ... I guess, just if they have a job, a house, a family, I guess they are American. ... I guess you're only American if you were born here .... If you are a naturalized citizen, then you're just a person who came here.

I: Do you think of your parents as American?

T: Not really (laughs).

I: Why not?

T: Because, I don't know, they don't do anything American. They are just Asian. ... I mean 'American' is like anything a white person does. Basically, you know, have dinner with the whole family at the dinner table.

Yeah. Just anything a white person does. And my parents don't do any of that.

Many implicit and explicit notions of "being American" are embedded in his answer, but from the perspective of a consensual view of U.S. citizenship, it is noteworthy that the most "pure" form of membership through consent – citizenship through naturalization—is not highly prized in this young man's eyes. Although his parents are naturalized citizens, it does not make them American, but "just a person who came here."

## CONCLUDING OBSERVATIONS

Returning to the Latino National Survey of 2006, we can make some final observations. The LNS asked what characteristics are important to being "fully American" in the eyes of most Americans.<sup>44</sup> Seventy-one percent of respondents thought that birth in the United States was important for being fully American, and there was strong consensus between native-born and foreign-born Latinos. Almost everyone, 96 percent, agreed that English language ability is an attribute of being fully American. This is noteworthy because fewer people brought up language in the in-depth interviews, perhaps because the interviewers spoke in the respondent's preferred language. The same is true of religion, which rarely came up in the in-depth interviews but which was asked in the LNS: 60 percent of respondents felt that it was somewhat or very important to be Christian to be perceived as fully American by most Americans.<sup>45</sup> In comparison, respondents to the LNS were reluctant to link being American with being white: 64 percent of those surveyed rejected the idea that this is important, with virtually no difference between U.S.- and foreign-born respondents. It is quite possible

that during in-depth interviews, people were more willing to make such links because they could articulate nuances around when and how race might matter, which is impossible in a standard survey.

Turning to the in-depth interviews, we find that “multiple traditions” of Americanism live on in the present. We might expect immigrants to embrace a strong civic view of membership, since this is blind to personal background. And, for some people, being American does mean holding certain values one could label as liberal or republican. By implication, anyone who espouses these values can be an American, regardless of their physical appearance. However, others associate “American” with a particular group defined by light skin tone and economic privilege. Such ascriptive Americanism means that poorer racial minority immigrants have little chance to gain entry into the circle of Americans. An intermediate space also exists where people can become American. Cultural changes, in line with traditional notions of assimilation and integration, offer one perceived pathway. Another, for the children of immigrants, is birth on U.S. territory, the *ius soli* doorway enshrined in the Fourteenth Amendment. The two paths are different in that cultural change implies a process of inclusion which can be challenged, while birthright citizenship involves an absolute claim.

In one sense, birthright citizenship is an exclusionary criterion, automatically shutting out foreign-born residents. Given as a matter of condition rather than volition, birthright citizenship has been labeled by some theorists as ascriptive and problematic. But as the interview material makes clear, birthright citizenship also provides a basis of inclusion. I would suggest that this is because the Citizenship Clause of Fourteenth Amendment has provided constitutional legitimacy for the ideals of inclusion and equality through citizenship. Thus, despite ongoing exclusions and discrimination in U.S. society, birthright citizenship provides a way to challenge such exclusion, one that carries the weight of U.S. history and the Constitution.

In sum, citizenship is not a simple dichotomy between consensual choice and involuntary ascription. Rather, a continuum of inclusions and exclusions exist. As suggested by the interviews, citizenship through birth can be mobilized as a claim against even more ascriptive and exclusionary notions of membership, such as those inherent in particular racial, ethnic, or religious views. Ironically, then, acquiring citizenship by birth – rather than through bureaucratic application and swearing an oath to the country – becomes a stronger process of “naturalization” into the nation than the legal process we call “naturalization.” One can only imagine how exclusion and alienation would grow if the opponents of birthright citizenship succeed in re-interpreting the provisions of the Fourteenth Amendment.

## NOTES

1. An earlier version of this paper was presented at the Law and Society Association meetings in San Francisco in June 2011. My thanks to attendees for their feedback, and to Devon Carbado, Angela Fillingim, Shannon Gleeson, Hiroshi Motomura, Marie Provine, Heidi Sarabia, and Sarah Song for very helpful comments on an earlier draft, as well as the suggestions of the journal’s reviewers. I gratefully acknowledge funding from the Russell Sage Foundation in support of the data collection.

2. The Fourteenth Amendment proclaims that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” According to Feere (2010), the United States is one of only 30 countries that accords automatic citizenship upon territorial birth with almost no restrictions. In recent years, the United Kingdom (1983), Australia (1986), and Ireland (2005) amended their laws to make birthright citizenship contingent on parents’ length of residence or legal status (Vink & de Groot, 2010).

3. “Birthright citizenship will be target of House GOP majority,” *Miami Herald* (November 18, 2010); available at: <http://www.miamiherald.com/2010/11/18/1931760/birthright-citizenship-will-be.html%23ixzz15eioezD>. A long list of Congress members has echoed such calls. See Smith (2009, pp. 1332, 1333) for an enumeration of some of the bills introduced in Congress from 1993 to 2008 seeking to limit birthright citizenship.

4. Not all critiques articulate a legal or political theory of consent, but such a frame is inherent, for example, in worries over “anchor babies.” Birthright citizenship becomes a double violation of consent: first to the presence of the child, then to the possibility that the parents’ will be placed on a path to citizenship once the adult child can sponsor them for legal residence. Principles of consent also become intertwined with other frames, such as that of law and order.

5. Remarks of Rep. King at the January 17, 2008 *Hearing before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law*, 110th Congress, Second Session, 110–64, p. 3. Available at: <http://judiciary.house.gov/hearings/printers/110th/40282.pdf>

6. Author’s calculations from Hofer, Rytina, and Baker (2011, p. 4). The top 10 source countries for undocumented migrants are, in order, Mexico, El Salvador, Guatemala, Honduras, Phillipines, India, Ecuador, Brazil, Korea, and China.

7. As Smith puts it, “For over 80% of U.S. history, its law declared most of the world’s population to be ineligible for full American citizenship solely because of their race, original nationality, or gender” (1993, p. 549). See also Haney-López (1996). It might seem contradictory that Smith has been influential in exposing a history of ascriptive exclusions in American political and legal thought while also co-authoring one of the most well-known arguments for a restrictive understanding of the Fourteenth Amendment. The intellectual bases for both lie in a firm belief that scholars must marry “logical coherence” with fidelity to the historical record. See, for example, Smith’s later (2009) reflections on *Citizenship Without Consent*.

8. The text of the bill is available at <http://www.govtrack.us/congress/billtext.xpd?bill=h112-140>

9. Shankar Vedantam, “Several states want court ruling on birthright citizenship,” *Washington Post* (January 6, 2011), available at: <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/05/AR2011010506372.html>

10. Schuck and Smith continue to stand behind their constitutional analysis, but both have said that as a matter of public policy, Congress should probably continue present practice. Smith has also suggested that the lack of widespread political support for repealing or re-interpreting the Citizenship Clause can be read as tacit consent for the Fourteenth Amendment (2009, pp. 1333, 1334).

11. Upon publication, the book provoked a spirited reaction from other scholars (e.g., Carens, 1987; Martin, 1985; Neuman, 1987) and the debate continues to the present (e.g., Rodriguez, 2009; Smith 2009).

12. Indeed, Schuck and Smith (1985) argue that the importance of consent is reiterated in the first U.S. Expatriation Act, passed the day after the Fourteenth Amendment was ratified; it underscored the "natural and inherent right" of all people to freely choose, and renounce, their national allegiances.

13. Schuck and Smith (1985, p. 9) acknowledge such differences, but view them as secondary to the more general ascription/consent dichotomy, as does Shachar (2009). I believe that this abstraction is too simplistic, especially if we place an egalitarian principle at the center of the analysis.

14. If one takes a broader view and examines citizenship as an issue of global justice, then birthright citizenship can be a source of significant inequality, especially given that only three percent of the world's population lives outside its country of birth (Shachar, 2009). Here, however, I am interested in the dynamics of inclusion within the United States, where over 12 percent of the population is foreign-born, a percentage similar to the proportion of the U.S. population that is black.

15. I am indebted to Sarah Song for helping me elaborate this line of reasoning.

16. As Neuman (1987) puts it, the framers of the Fourteenth Amendment clearly rejected the notion, inherent in *Dred Scott*, that white Americans could "consent" to bar blacks from citizenship. See also Rodríguez (2009, p. 1366) on the "prophylactic" protection of the Fourteenth Amendment against the majority's ability to deny citizenship to the U.S.-born based on prejudice. As the legal scholarship notes, however, the Fourteenth Amendment did not apply to native Americans living on tribal lands, nor have courts applied it to people living on U.S.-controlled territory outside the 50 states, who are instead covered by federal statute.

17. 1790 *Naturalization Act* (an act to establish a uniform rule of naturalization), (1 Stat. 103), 1st Congress; March 26, 1790.

18. 1870 *Naturalization Act* (an act to amend the naturalization laws and to punish crimes against the same, and for other purposes), (16 Stat. 254), 41st Congress, 2nd session; July 14, 1870, and 1882 *Chinese Exclusion Act* (an act to execute certain treaty stipulations relating to the Chinese), (22 Stat. 58), 47th Congress, 1st session; May 6, 1882.

19. *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). For more on litigation by Asian Americans and Asian immigrants in this period, see Hing (1994), Takaki (1989), and Salyer (1995).

20. This would be precisely the situation of the children of undocumented parents without the application of the Fourteenth Amendment, since such children could access neither birthright citizenship nor naturalization since naturalization requires legal permanent residency.

21. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); *Hernandez v. Texas*, 347 U.S. 475 (1954).

22. For more information, see <http://www.mipex.eu/anti-discrimination>

23. Unless otherwise noted, all population statistics come from the 2009 American Community Survey, accessed using the U.S. Census Bureau's FactFinder tool: [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en). For an overview of immigration data from the ACS, see <http://www.migrationinformation.org/USfocus/display.cfm?ID=818>

24. A 2009 German Marshall Fund survey finds 51 percent of Americans think most immigrants are illegal.

25. Jeffery's (2007) estimate uses administrative data from USCIS; the estimate by Hayes and Hill (2008) uses data from the academic New Immigrants Survey.

26. The data come from the Department of Homeland Security's *Yearbook of Immigration Statistics 2009*.

27. Space constraints prevent a thorough overview and evaluation of the quantitative social science scholarship on citizenship and national identity. For recent analyses, see Schildkraut (2007), Theiss-Morse (2009), and Wright, Citrin, and Wand (2012).

28. The Latino National Survey is a stratified geographic survey covering a universe that contains 87.5% of all Latinos in the United States. The final survey database consists of 8,634 completed telephone interviews of self-identified Latino/Hispanic residents who can be native-born or foreign-born of any legal status. The survey was conducted by bilingual English and Spanish interviewers. For more information, see <http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/20862/detail>. My thanks to Morris Levy for putting together the LNS descriptive statistics reported here.

29. The question wording was, "[In general,] how strongly or not do you think of yourself as [American]?"

30. The question wording was, "Of the three previous terms, Latino or Hispanic, [national origin], or American, which best describes you?"

31. In 3 of the 42 families, we were only able to complete an interview with one family member, either the parent or teen, but not both. In two other families, both parents (not always of the same legal status) were interviewed, either separately or together. All youth and parent interviews were conducted separately to preserve confidentiality. In two cases, we interviewed youth born in Mexico who migrated to the United States as small children (one was seven months old, the other was seven years old). Both acquired U.S. citizenship through a parent's naturalization. For more on the methodology of phase one, see Bloemraad and Trost (2008).

32. Families were primarily recruited through four public high schools with large Latino populations, with additional snowball sampling to include a few families with students at private (often religious) schools.

33. One of the initial goals of this project was to understand political socialization among groups facing significant obstacles to participation. Since prior research overwhelmingly demonstrates that socioeconomic status, and especially education, correlates strongly with civic and political engagement, we restricted recruitment to families where the interviewed immigrant parent has less than a high school education. (Indeed, 70 percent of Mexican immigrants in the United States do not hold a grade 12 high school diploma.) Among the four families with U.S.-born parents, we restricted our interviews to those with less than a four-year college degree.

34. In phase two, we also re-interviewed many of the original Mexican-origin respondents ( $N=35$ ), but those interviews are not included in the present analysis.

35. According to the American Community Survey (2005–2007), 77 percent of all foreign-born Vietnamese living in California had acquired U.S. citizenship through naturalization. In comparison, 68 percent of foreign-born Chinese had done so, and only 26 percent of foreign-born Mexicans.

36. A number of undocumented Chinese migrants live in the Bay area, but relatively few have U.S.-born children, making them ineligible for our study.

37. We drew a few respondents from other towns in the Bay area, but most were from these three cities. In phase two, we had more problems accessing students through high schools so we used a varied recruitment strategy targeting parents (through ethnic media, community organizations, ESL classes, and personal contacts) and youth (through friendship networks, the web, youth groups, and some schools).

38. Interviews were conducted by bilingual and bicultural interviewers who spoke Spanish, Vietnamese, Mandarin or Cantonese. Almost all foreign-born parents chose to be interviewed in their native language, and almost all teens chose English. Interviews lasted from 45 minutes to two hours, and were transcribed and translated into English for analysis.

39. The mix of practical reasons and civic ideals behind naturalization has been well-documented elsewhere (e.g., Bloemraad, 2006; Gilbertson & Singer, 2003).

40. Such responses strongly challenge arguments around post-national membership that posit the waning significance of citizenship in the face of greater attention to personhood and human rights.

41. Associating “being American” with economic success is exclusionary for those living in modest or precarious economic positions. For some better-off respondents, the “American dream” was an inclusive pathway to membership, as for a U.S.-born parent of Chinese origins who saw herself as American because of her values. Asked what constituted American values, she explained, “I would say it’s the belief that everyone can do better. ... that if you work hard you can raise yourself up.”

42. Other teens concluded that their parents were not American because they did not speak English, or did not speak the language sufficiently well.

43. Space constraints prevent a discussion of why national origin differences might exist in articulations of citizenship and being American. Asian-origin respondents might emphasize a cultural pathway given historical and contemporary views of Asians as “forever foreigners” within the United States (Carbado, 2005; Tuan, 1999), while the historical and contemporary attribution of Mexicans as illegal aliens likely underscores the importance of legal membership, including birthright citizenship, for this group.

44. The question wording was, “When you think of what it means to be fully American in the eyes of most Americans, do you think it is very important, somewhat important, or not important to [characteristic].”

45. Since the survey questions ask about respondents’ perceptions regarding what “most Americans” think, responses might be different from immigrants’ personal views of membership, which was the focus in the in-depth interviews.

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## EXTENDING HOSPITALITY? HISTORY, COURTS, AND THE EXECUTIVE

Dagmar Soennecken

### ABSTRACT

*While many consider court involvement in immigration matters a given, in liberal nation-states, there is actually a substantial degree of variation. This chapter revisits two "critical junctures" in the early immigration histories of Canada and Germany to show that institutions and policy legacies are not just historical backdrop, but actually shaped the strategies of political actors, subsequent institutional configurations, and policy options for long periods of time, thereby revealing unintended consequences, as well as alternative paths that the involvement of the courts (and other actors) could have taken.*

### INTRODUCTION

In liberal nation-states, extending hospitality (and later, the right to stay) to strangers has very much been a legal project. For the most part, the executive employed laws and regulations at their discretion, motivated primarily by foreign policy and economic interests, not to mention racial

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