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Born in U.S.A. Is What Makes Someone an American: Eric Foner

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Bloomberg Opinion

For almost 150 years Americans have believed that anyone born here, whatever his or her origins, can be a good citizen. There is no reason to believe the children of illegal immigrants are any different.

Congress should think long and hard before tampering with this essential American principle embodied in the [14th Amendment](#) to the U.S. Constitution. Approved by Congress in 1866 at the outset of Reconstruction and ratified two years later, the amendment establishes the principle of birthright citizenship. With minor exceptions, all persons born in this country are American citizens, whatever the status of their parents.

Republican [Lindsey Graham](#) of South Carolina, several of his Senate colleagues and a number of conservative political commentators are now demanding that the amendment be reinterpreted or rewritten so as to exclude the children of illegal immigrants.

Bitter conflicts about who should be an American citizen are hardly new, nor are efforts to exclude those deemed for one reason or another undesirable. The very first naturalization law, enacted in 1790, barred non-white immigrants from ever becoming citizens. This prohibition was lifted for Africans in 1870 but lasted into the mid-20th century for Asians. In 1857, in the Dred Scott decision, Chief Justice [Roger B. Taney](#) declared that no black person, free or slave, could be a citizen of the U.S.

Union's Triumph

The Civil War transformed the debate over citizenship. In a sense, the 14th Amendment wrote into the Constitution the results of the Union's triumph and the destruction of slavery. It begins by defining as citizens all persons born or naturalized in the U.S. "and subject to the jurisdiction thereof" -- language meant to exclude Indians, deemed to be citizens of their respective tribes, and American-born children of foreign diplomats. It goes on to bar states from depriving these citizens of life, liberty or property or denying them the "equal protection of the laws."

The most important change in the Constitution since the Bill of Rights, the 14th Amendment was intended, first, to establish beyond doubt the citizenship of the 4 million emancipated slaves and to consign Dred Scott to oblivion.

But the Republicans who controlled Congress also had a larger purpose. "It is a singular fact," the abolitionist

[Wendell Phillips](#) wrote in 1866, “that, unlike all other nations, this nation has yet a question as to what makes or constitutes a citizen.” The 14th Amendment established the first national definition of citizenship and with it the idea that these citizens enjoyed their rights as part of the American people rather than as members of particular racial or ethnic groups.

National Consciousness

In this, it reflected the expansion of national consciousness brought on by the Civil War. The struggle against slavery crystallized the idea of the national government as “the custodian of freedom,” in the words of Massachusetts Senator [Charles Sumner](#). The [Black Codes](#) enacted by all-white southern governments soon after the end of the war, which sought to reduce freed people to a condition reminiscent of slavery, reinforced the conviction that the states couldn’t be trusted to respect Americans’ basic rights.

Did Congress intend birthright citizenship to apply to the children of illegal residents? No such group existed in 1866; at the time, just about anyone who wished to enter the U.S. was free to do so. Only later were certain groups singled out for exclusion -- prostitutes, polygamists, lunatics, anarchists, and, starting in 1882, the entire population of China.

Not until 1924 was the [Border Patrol](#) established, in connection with the law setting nationality quotas for immigration. Initially, its purpose was to keep “undesirable” Europeans -- Italians, Greeks, and other southern Europeans -- from sneaking across the Mexican border.

No Limits

Until 1965, there were no numerical limits on immigration from countries in the Western Hemisphere, so the issue of illegal Mexican immigrants, which so alarms today’s critics of the 14th Amendment, didn’t arise.

The closest analogy in 1866 to today’s illegal aliens were immigrants from Asia, forever barred from American citizenship. The Chinese aroused considerable hostility among white Americans, especially on the West Coast, and with an eye on congressional elections, the amendment’s opponents charged that it would make citizens of Chinese children born in this country. The amendment’s authors didn’t retreat in the face of blatant racism. They chose their words carefully; when they wrote “all persons,” they meant it.

Universal Application

The Supreme Court has consistently ruled that birthright citizenship applies to every American-born child and equal protection of the laws to citizens and non-citizens alike. The key cases, decided in the late 19th century, were [U.S. v. Wong Kim Ark](#), which affirmed the citizenship of children born to Chinese immigrants, and [Yick Wo v. Hopkins](#), which overturned a San Francisco law discriminating against Chinese-owned laundries.

The juxtaposition of the 14th Amendment with the bar on the naturalization of Asian immigrants long affected Asian-American life. In the early 20th century, California barred aliens ineligible for citizenship from owning land, so Asian parents transferred title to their homes and farms to their citizen children. Not until World War II was China given a quota (all of 105 persons per year) of immigrants eligible for naturalization. Only with the immigration reform of 1965 did Asians achieve the same status as other immigrants.

‘For Mankind’

The 14th Amendment made the Constitution what it is today: a document that guarantees the equal rights of all Americans and to which individuals and groups who feel they are being denied equality can appeal. As the 19th-century Republican editor [George William Curtis](#) wrote, it was part of a process that changed the U.S. government from one “for white men” to one “for mankind.”

To be sure, as far as blacks were concerned the amendment fell into abeyance after the abandonment of Reconstruction. It was reinvigorated in the civil-rights era. Even today’s conservative Supreme Court has used it to expand the rights of aggrieved Americans, as it did in [Lawrence v. Texas](#), which in 2003 overturned a state law criminalizing homosexual acts.

Adopted as part of the effort to purge the nation of the legacy of slavery, birthright citizenship remains an eloquent statement about the nature of our society and a powerful force for immigrant assimilation. In a world

where most countries limit access to citizenship via ethnicity, culture or religion, it sets our nation apart.

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