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Fourteenth Amendment

With the wave of anti-immigrant proposals in the nation, some of the national debate about immigrants in the United States has turned towards the U.S. children born of undocumented immigrants. On August 3, 2010, prominent Republican Senator Lindsey Graham announced on the national Fox cable news network that it was time to reconsider how current interpretations of birthright citizenship place an unfair financial strain on the nation's social safety net, Senate Republican Minority Leader Mitch McConnell and other leading Republicans, including Arizona Senators Jon Kyl and

John McCain, also indicated an openness to exploring the Fourteenth Amendment as a way to curb undocumented immigration. Then on March 30, Diane Black (R-Tennessee) along with twenty-four other Republicans sponsored the Birthright Citizenship Act of 2013. This proposal—filed by Rep. Steve King, R-Iowa—seeks to define a key phrase of the Fourteenth Amendment. These legislators contend that the Fourteenth Amendment to the U.S. Constitution has been misapplied and was never intended to automatically grant citizenship to children born of undocumented immigrants. Consistent with previous patterns, these debates about changing the Fourteenth Amendment come on the heels of nativist sentiment (Ngai, 2007).

The Fourteenth Amendment to the United States Constitution is most familiar as the one that confers citizenship to those born in the United States. Its adoption in 1868 during the Reconstruction Period following the Civil War was an affront to a powerful idea that race could be a criterion for exclusion (Ngai, 2007). After the war, national debates raged over which, if any, civil rights should be accorded to recently freed slaves and whether federal or state legislative entities could grant or deny such rights. The amendment was a direct response to reactionary violence directed toward freed slaves and abolitionists that ensued after the war, to the Supreme Court ruling known as the *Dred Scott* decision of 1857 (in which blacks were declared noncitizens ineligible for protection within the U.S. Constitution), and to the passage of the restrictive and discriminatory Black Codes in Texas in 1866.

The drafters of the Fourteenth Amendment sought to define eligibility for U.S. citizenship and limit jurisdiction over which governmental powers were responsible for protecting the rights of citizens. The 1868 amendment granted citizenship to all people born or naturalized in the United States and placed the federal government in charge of protecting citizens from state laws that threatened to violate their civil rights. In addition, the Fourteenth Amendment granted all persons residing in the United States the right to due process of the law as well as equal protection under the nation's laws. While the federal government has at different points changed its criteria for which immigrant groups were allowed to enter the United States and become eligible for citizenship (for example, the Immigration Act of 1924 denied citizenship to Chinese and Japanese immigrants until it was repealed by the McCarran-Walter Act of 1952), the Fourteenth Amendment remains the relevant constitutional clause used to protect the rights of citizens and *all other* persons residing within the nation's borders.

The Fourteenth Amendment also provided an advantage to the United States as a nation and sovereign. It was intended to and had the effect of encouraging assimilation and a building of a citizenry with children of immigrants as they settled in the United States. It was hoped that by conferring citizenship on the children of recent arrivals, those children would break allegiances to the country of their parents and grow up to be loyal and productive members of the United States (Ngai, 2007).

This amendment has particular significance for undocumented individuals living in the United States for two reasons: first, it grants migrants residing in the United States due process and equal protection under the law; and second, it automatically grants U.S. citizenship and its attendant rights to U.S.-born children of undocumented parents. With increased immigration from Latin America, eliminating birthright

citizenship for the children of undocumented immigrants would create a caste-like structure in U.S. society, where one class of U.S. children would be subjected to a different set of laws from other U.S. citizens, and perhaps one of the most extreme cases of exclusion and disenfranchisement that would not only endanger the well-being and education of this category of second generation American citizens, but subsequent generations as well as they would start from a less advantaged situation, and more so than any other racialized group in the nation (Ngai, 2007).

Arguably, the most important case in which the Fourteenth Amendment was used to uphold the rights of undocumented individuals was the 1982 Supreme Court ruling in *Plyler v. Doe*. This case, like other key cases argued on the basis of the Fourteenth Amendment (see school desegregation cases, *Westminster v. Mendez* and *Brown v. Board of Education*) upheld the rights of all children residing in the United States to attend public school.

In the *Plyler* decision, the U.S. Supreme Court struck down a Texas law withholding funds from public schools that admitted undocumented Mexican children. The court argued that the state law violated the equal protection clause of the Fourteenth Amendment pertaining to persons of all races and nationalities residing within U.S. borders. It ruled that undocumented children had both the same right to attend public school and protection from decisions made by state legislators who had overstepped their jurisdiction. Moreover, the court concluded that denying public education to undocumented students would result in the creation of a permanent underclass comprised of members of this group and asserted that this was precisely the kind of injustice that the Fourteenth Amendment was meant to protect against.

The *Plyler* decision set an important precedent for federal intervention when laws passed at the state level violate the right of undocumented persons—rights jeopardized fourteen years later when California voters passed Proposition 187 in 1994. This proposition, passed by 59 percent of the voters who participated in the statewide referendum, established a system for determining individuals' citizenship status before providing services, thereby implicating local law enforcement, social service providers, and public school teachers in the process of identifying and reporting undocumented migrants. A district court judge delayed the implementation of most provisions in Proposition 187 after determining that it was unconstitutional for the state to have infringed on the federal government's exclusive jurisdiction over immigration and citizenship. In 1999, a newly elected state governor decided not to appeal the decision, effectively accepting the district court's ruling and dismissing the proposition.

At the time of writing, the protections afforded by the Fourteenth Amendment are facing a number of significant threats. Prominent Republican senators have recently called for the repeal of the Fourteenth Amendment in the hopes of deterring undocumented adults believed to migrate to the United States in the hopes of having U.S.-born children—derogatively referred to as “anchor babies”—from crossing the border. In addition, the recent passage of restrictive laws in Southern and Southwestern U.S. states such as SB 1070 in Arizona, HB 87 in Georgia, and HB 56 in Alabama have attempted to involve public school teachers, law enforcement officers, and other state employees in identifying and reporting undocumented migrants, reinvigorating national debate over which governing bodies have the power to regulate the presence of

noncitizen persons and interpret and dictate the constitutional rights granted to them. Lastly, the American Civil Liberties Union and other civil rights organizations have reported recent violations of the *Plyler* ruling in which school officials have requested proof of U.S. citizenship from parents enrolling their children in public school. These advocacy groups have filed a number of briefs detailing the ways in which anti-immigrant state laws violate the equal protection clause of the Fourteenth Amendment. A national conversation about the historical and contemporary role of the Fourteenth Amendment is underway, and it remains to be seen whether this constitutional clause will continue to serve as a key provision for the protection of civil rights and liberties in the United States.

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See Also: Children; Discrimination and Barriers; Exclusion; Mixed-Status Families; Pregnancy and Childbirth.

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