The Revolutionary Idea That Remade the New World

Birthright citizenship is distinctly American—but not in the way Trump thinks.

By Greg Grandin

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The united states, Donald Trump says, "is the only country in the world" that grants citizenship to babies born within its borders. He's wrong, of course. Tanzania, Pakistan, and France all grant some form of birthright citizenship.

But birthright citizenship is ultimately an American ideal. That is, all of the Americas. Nearly every country in the Western Hemisphere grants citizenship to children born in its territory irrespective of the nationality of their parents. It's part of the promise of the New World, that the Western Hemisphere would be, as the American revolutionary Thomas Paine said of the United States, an "asylum" for humanity. "Open," echoed George Washington, "to receive not only the opulent & respectable" but the "oppressed & Persecuted of all nations." The children of those oppressed and persecuted would be citizens by right.

The legal term for birthright citizenship is *jus solis*, or "by right of soil"—in contrast to *jus sanguinis*, which assigns citizenship to children based on the national identity of one or both of their parents, an identity that could be defined by bloodline, race, or religion. Mexicans were the first to write jus solis into a constitution, in 1814, during their war of independence against Spain. In bright, unambiguous language, the rebels stated that "all those born in La Mexica América are considered citizens." By "all," they meant all. Having declared the abolition of both

chattel slavery and Indigenous tribute and servitude, Mexican revolutionaries intended to make everyone, regardless of skin color, a member of the nation, but Spanish troops retook Mexico before this constitution could go fully into effect.

The three-century-old Spanish empire was obsessed with blood—how it conveyed lineage and, in the Spanish view, confirmed virtue. Jus sanguinis had been the law of the land, and a good part of the empire's massive bureaucracy worked to keep track of ancestry, issuing certificates of purity certifying that no taint of Jewish, Muslim, Native American, or African blood flowed in the bearer's veins.

Mexico was just one front in a hemisphere-wide war against Spanish rule, which began in 1810 and didn't end until 1826, when revolutionaries overran royalism's last bastion, the Pacific port city of Callao, Peru. With all of Spanish America (save Cuba and Puerto Rico) now free, the region's republican leaders were eager to leave Spain's blood medievalism behind, to create a modern legal system for the Americas.

The foundation of that system was jus solis. In a revolutionary act of inclusion, the new nations of Spanish America adopted it universally, to apply to every free resident within a given national territory. In Spanish America, as in the United States, the politics of jus solis was tied to the politics of race and slavery. The historians Martha S. Jones and Kate Masur recently submitted an amicus brief to the U.S. Supreme Court to counter the Trump administration's efforts to abolish or curtail birthright citizenship. They note that free people of color—decades before the Civil War and ratification of the Fourteenth Amendment in 1868—regularly invoked a common-law version of jus solis: They were citizens of the United States because they'd been born in the United States. In 1848, African American activists in Pennsylvania published a pamphlet demanding constitutional protection, insisting that their "certificates of Birth and Nativity" provide all the "evidence" needed to confirm their citizenship. The nation's courts and laws, however, ensured

that, in the United States, the bestowal of citizenship at birth remained predominantly a right enjoyed by white people.

Spanish Americans applied jus solis more generously. In many of the region's new republics, to be born a citizen meant to be born free, as independence leaders moved quickly to repeal a doctrine—*partus sequitur ventrem*, Latin for "the child follows the womb"—that defined children born to enslaved mothers as also enslaved. Widely applied during Spanish rule, the doctrine was still the law of the land in U.S. slave states when Chilean insurgents declared their independence in 1810 and passed, a year later, the world's first "free womb" law.

The idea of childbirth as an emancipatory act was Spanish America's unique contribution to the transatlantic antislavery movement. Argentina followed with a similar law in 1813, then Colombia in 1814, Venezuela and Peru in 1821, and Ecuador and Uruguay in 1825. Different nations ended slavery at different times, depending on local politics. Many countries—Chile and Mexico, for instance—did so soon after their break with Spain. Others, including Argentina, took longer. But with independence, the end of human bondage in Spanish America was clearly in sight. "No one is born a slave," Mexican abolitionists said. They are born citizens.

Racism of course continued throughout the now-free Spanish America, as did a status and class hierarchy organized around racial identity. It was easier to defeat Spain's army than to dismantle the social structure its empire left behind. And jus solis had a dark side. Politicians used generous citizenship and naturalization laws to encourage European migration and campaign to "whiten" the nation.

Still, compared with the expansion of chattel slavery and hardening of racial apartheid then taking place in the United States, Spanish America was exceptional. Its founders were creating something entirely new in the

world: a community of sovereign nation-states composed, at least legally, of equal, racially diverse citizens.

James Madison noticed. The former president knew that his country couldn't go on subjugating people of color forever, be they, as he put it, "the black race within our bosom" or the "red on our border." Writing in 1826, Madison thought it worth studying how "the regions South of us," especially Mexico and Peru, were incorporating emancipated slaves and Indigenous peoples into their newly constituted nations.

Senator John C. Calhoun of South Carolina thought otherwise. Spanish America's "fatal error" was "placing the colored race on an equality with the white." "Ours is the Government of the white man," he said in 1848, and it needed to remain so. Denying birthright citizenship to people of color was necessary to that vision.

The United States eventually caught up with Latin America. In 1865, the Union Army defeated the Confederacy with the help of about 180,000 Black soldiers. Their rights could no longer be denied. The first sentence of the Fourteenth Amendment, ratified three years later, finally granted citizenship to free people of African descent: "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 middle clause of that sentence—"and subject to jurisdiction thereof"—is U.S. birthright citizenship's potential Achilles heel. It shouldn't be, because congressional debates from that time make clear what the drafters meant by that phrase. As the historian Eric Foner writes, Congress intended that clause to exclude not migrants but specifically Native Americans, who, the argument went, were ineligible for U.S. citizenship because of their subordination to tribal jurisdiction. (Congress would grant them citizenship in 1924.) Also excluded were foreign diplomats and soldiers, who were protected by their home country's jurisdictional immunity. (Most Spanish American nations

likewise exempted foreign envoys from their jus solis clause, though none excluded Native Americans.)

Migrants began arriving in the United States in massive numbers toward the end of the Civil War—mostly from Europe but also from Spanish America, the Caribbean, and Asia. Most came undocumented, without visas, passports, or formal permission to enter the country. Mexicans crossed the border at will, to work and to live.

If the drafters of the Fourteenth Amendment wanted to exclude the children of these people from the benefit of birthright citizenship, they would have said so. But as Congress moved toward ratifying the amendment, whenever a nativist legislator proposed excluding this or that pariah people—the Chinese, say, or the Romani—from birthright citizenship, their colleagues pushed back with the broadest interpretation possible of jus soli, generous enough to cover, said California Senator John Conness, even "the children born here of Mongolian parents." There is no doubt that the amendment's authors understood that the offspring of foreign migrants in the United States *were* subject to the jurisdiction of the United States.

But starting in the 1990s, activists and politicians seeking to restrict U.S. immigration policy interpreted the clause to apply to undocumented migrants. The first to formally do so was Senator Harry Reid of Nevada, a Democrat, who in 1993 introduced the Immigration Stabilization Act, arguing that a baby born to an undocumented mother who was a citizen of another country was, by definition, subject to *that* country's jurisdiction, not the United States'. Reid's proposal ignored the legal status of fathers and focused exclusively on the nationality of birth mothers, a curious resurrection of *partus sequitur ventrem*: The child follows the womb and is condemned to return to the country the mother fled.

Reid's bill died in committee (and Reid later regretted his proposal, calling it the "biggest mistake" he'd ever made). But it foreshadowed bad things to come. The Trump administration today is similarly asking the Supreme Court to interpret the clause to mean that children born of foreign nationals are not "subject to the jurisdiction" of the United States, and therefore not eligible for citizenship.

Most of Latin America holds fast to birthright citizenship today. "All people born in Mexican territory," Mexico's constitution states, "regardless of their parent's nationality," are Mexican, an identity that can "never be revoked." Colombia is one of the few nations that restricts jus solis, requiring at least one parent to be a nationalized Colombian. But with Venezuelans pouring into Colombia, fleeing their country's worsening situation, Bogotá—fearing the creation of a large class of *gente apátrida*("stateless people")—has waived restrictions on jus solis. While the Trump administration seems to be set on making life miserable for Venezuelan refugees, Colombia has issued an estimated 27,000 birth certificates to babies born of Venezuelans in its territory. Chile likewise liberalized its jus solis requirements to support the arrival of hundreds of thousands of Haitian refugees, allowing many of their children to become Chilean citizens.

The one woeful exception to the rule is the Dominican Republic. For decades, courts interpreted the constitution's exemption of people "in transit" from jus solis as pertaining to diplomats. Then, in 2013, the country's Constitutional Court, stocked with right-wing nationalists and inflamed by rising anti-Haitian racism (the Dominican Republic shares the island of Hispaniola with Haiti), ruled that "in transit" applied, retroactively to 1929, to Haitian migrant sugar-field workers.

Overnight, 200,000 individuals born in the Dominican Republic to Haitian parents were stripped of their citizenship. At least 80,000 people were deported into Haiti; most of them had lived their whole lives in the Dominican Republic, and few spoke French or Creole. These deportees

were born poor, in rural communities, in many cases at home, and have no official documentation whatsoever to mark their existence.

If the United States follows the Dominican Republic and limits or does away with birthright citizenship, the result will likely be the kind of chaos seen in the Dominican Republic on an even greater scale. Trump's executive order is aimed at exempting from citizenship not just the children of undocumented parents but also the newborns of those in the United States legally, on work or student visas or awaiting their asylum hearings. The enforcement of such a restriction would require the re-creation of something like the blood-obsessed Spanish colonial bureaucracy, with officials demanding to see not just an individual's birth certificate to prove citizenship but at least one of their parent's birth certificates. The United States already has an underclass of millions of stateless workers. If their children and grandchildren were to be denied citizenship, that class would grow exponentially.

Apart from the Dominican Republic, the nativist right in Latin America hasn't launched the kind of full-on assault on birthright citizenship we see in the United States. But the slurs *niño ancla* and *bebê âncora*—"anchor baby"—have entered the Spanish and Portuguese languages, mostly through social media, as far-right figures, including Jair Bolsonaro in Brazil and José Antonio Kast in Chile, whip up anger against refugees. Kast's anti-migrant party, Partido Republicano, is rising in the polls ahead of next year's presidential election, promising to tighten immigration laws and generally menacing Haitian migrants. In Argentina, Javier Milei has called for an end to the country's historic liberal immigration policies, in order to, he said, "make Argentina great again."

The first batch of jus solis constitutions in Spanish America were drafted following a bloody, two-decade-long independence war, with fighting sprawling across the continent, scattering millions far from home. The men who led those wars were idealistic, but they also had pragmatic

motives for embracing birthright citizenship: It was a way of re-rooting people, of settling a hemisphere in tumult.

The granting of citizenship to all children born within its territory does not, as Trump insists, make the United States exceptional. It makes it American.

ABOUT THE AUTHOR

Greg Grandin

Greg Grandin is a professor of history at Yale University and the author of many books, including *America, América: A New History of the New World*, *Fordlandia: The Rise and Fall of Henry Ford's Forgotten Jungle City*, and *The End of the Myth: From the Frontier to the Border Wall in the Mind of America*, for which he won the Pulitzer Prize.