

Reproductive Agents: The Right-Wing Vilification of Immigrant Women's Fertility

By Susana Sánchez

Editors' Note: January, 2011 has already proven a sobering transition into the new year and new decade. Continued political violence in Arizona, the state that entrenched discrimination against immigrants through legislation last year, and a concerted effort across fourteen states to attack the birthright citizenship guaranteed in the 14th Amendment leave many of us disheartened. Yet committed social justice activists and organizations across many different movements are standing strong against these challenges. This month, PopDev offers two companion pieces illuminating the political context of anti-immigrant scapegoating within the U.S., the growing resistance to this politics of hate and exclusion, and the road forward.

— Co-editors Katie McKay Bryson and Betsy Hartmann

Birthright citizenship, or *jus soli*, is a constitutional right granted in the Fourteenth Amendment to the U.S. Constitution, which states, "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."¹ However, the privilege that many Americans take for granted as a common value has not always been a guarantee for all Americans.

In 1857, just 11 years before the ratification of the Fourteenth Amendment, the Supreme Court decided in *Dred Scott v. Sanford* that African Americans could never become citizens.² Congress added the Citizenship Clause to the constitution to overrule the *Dred Scott* decision and to constitutionally guarantee birthright citizenship. In addition to granting citizenship to African Americans, the amendment also guaranteed citizenship to the children of other immigrants such as Chinese and Roma people who had long been victims of social prejudice and legal discrimination. It is for this reason that Elizabeth Wydra writes, "Fixing the conditions of birthright citizenship in the Constitution—rather than leaving them up to constant revision or debate—befits the inherent dignity of citizenship, which should not be granted according to the politics or prejudices of the day."³



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The current “prejudices of the day” are motivating legislators in fourteen states to work with the Immigration Reform Law Institute (legal arm of the Federation for American Immigration Reform, known as FAIR),⁴ to deny birthright citizenship to the children of undocumented immigrants. In October 2010, Elise Foley from the *Washington Independent*⁵ reported that a group of state legislators in Alabama, Arizona, Delaware, Idaho, Indiana, Michigan, Mississippi, Montana, Nebraska, New Hampshire, Oklahoma, Pennsylvania, Texas and Utah are collaborating with anti-immigrant organizations and citizen activists working on bills to challenge the citizenship clause in the case of the children of undocumented immigrants, children they sometimes refer to with the derogatory and dehumanizing epithet “anchor-babies.” The campaign’s principal intent is not to accomplish their goal at the state level, but to utilize state bills to bring the issue before the Supreme Court, using the same avenues as right-wing efforts to decree gay marriage unconstitutional.

Proponents of removing birthright citizenship argue that the clause’s reference to “subject of jurisdiction” didn’t intend to give citizenship rights to people who hold allegiance to a country outside the US. Constitutional scholars disagree with their reading of legal history, however, and other activists and scholars have convincingly exposed the racial prejudices central to a political campaign aimed primarily at vilifying the reproduction of immigrant women, who are for the most part women of color.

The activists and legislators behind this effort believe that birthright citizenship is a strong incentive for immigrants to come to the U.S. unlawfully. The groups behind this anti-immigrant legislation don’t accept that most undocumented immigrants migrate in search of work, risking their lives in hopes of better opportunities. Instead they believe, as does Tennessee State Rep. Curry Todd, that undocumented immigrants “multiply like rats.”⁶

The Constitutional Argument

Constitutional scholar James Ho argues that FAIR’s interpretation of the constitution is historically wrong, based on his review of the legislative debate over Senator Jacob Howard’s (R-MI) proposed citizenship-related language changes in 1866. Ho concludes that, “proponents and opponents of birthright citizenship alike consistently interpreted the [1866 Civil Rights] Act, just as they did the Fourteenth Amendment, to cover the children of [undocumented] aliens.”⁷ Ho adds, “Nothing in text

or history suggests that the drafters intended to draw distinctions between different categories of aliens.”

On the contrary, text and history confirm that the Citizenship Clause covers all persons who are subject to U.S. jurisdiction and laws, regardless of race or country of origin.⁸ Ho argues that the Citizenship Clause guarantees automatic citizenship to those born within the jurisdiction of the U.S. and does not require ‘allegiance’ as a precondition for birthright citizenship. By adding the Citizenship Clause, Congress guaranteed citizenship to *all persons* born in the United States. While anti-immigrant advocates would have us believe their arguments are based on constitutionality, in reality such campaigns are motivated by racial prejudices and gendered biases.

The Race and Gender Implications of Denying Birthright Citizenship:

Eric Ward from the Center of New Community says, “While it would certainly be unfair and inaccurate to generalize all opponents of birthright citizenship as racist, racially prejudiced attitudes among the leadership of this movement are well documented.”⁹ FAIR is one of the mobilizing organizations he refers to. For instance, John Tanton, FAIR’s founder, expressed his xenophobia in a memo, “Latin onslaught,” written to his FAIR colleagues: “Will the present majority peaceably hand over its political power to a group that is simply more fertile, ... As whites see their power and control over their lives declining, will they simply go quietly into the night?”¹⁰ In 2007, the Southern Poverty Law Center added FAIR to its list of hate groups, reflecting that it had received money from the Pioneer Fund (a foundation established “to promote the racial stock of the original colonists, finance studies of race and intelligence, and foster policies of ‘racial betterment’” – in short, a white supremacist political project).¹¹

Ward also cites other organizations collaborating on efforts to remove birthright citizenship from the Constitution whose racial prejudices are well documented. The Council of Conservative Citizens, formerly the White Citizens Council, for instance, believes that the U.S. is a ‘European Country and that Americans are part of a European People We therefore oppose the massive immigration of non-European and non-Western people in the United States that threaten to transform our nation into a non-European majority in our lifetime.’¹²

Another layer of this anti-immigrant effort is its gendered attack on immigrant women as ‘reproductive agents.’ Priscilla Huang, formerly of the National Asian Pacific

American Women's Forum, in the *Harvard Law and Policy Review* says the "underlying nativism of the immigration control movement and its effort to limit the reproductive capacities of immigrant women of color"¹³ expose its true motives. She explains that, "immigration restriction proponents have been largely silent about the practical and legal consequences of creating a class of U.S.-born 'alien' children. Creating a classification that would apply only to the offspring of immigrant women, the majority of whom are women of color, raises questions about whether citizenship status will soon become a proxy for national origin and a vehicle for racial discrimination."¹⁴

Nicole M. Guidotti-Hernández, an Associate Professor of Women's Studies at the University of Arizona, expands on Huang's point in the context of specifically Latina immigrants:

"Not only does the theory of the anchor baby frame the Latina body as 'uncontrollable' in its reproduction, but it also criminalizes women for having children and, therefore, accessing social services. The implication is that all Latina women are not citizens, have too many children, can't control their sex drives, have children to access U.S. citizenship by proxy and are to blame for the overtaxing of the U.S. welfare system. This could not be further from the truth."¹⁵

When anti-immigrant groups advocate for denying birthright citizenship to the children of undocumented immigrants, not only are they misreading legal precedent and U.S. history, they are also proposing a policy that attacks and polices the fertility of women of color and aims to establish further legal justification for racial discrimination. It is necessary to dismantle the apparent simplicity of what anti-immigrant groups call a policy to curtail undocumented immigration to understand the racial roots and social consequences of removing birthright citizenship.

Will Changing the Constitution Deter Undocumented Immigration?

Anti-immigrant activists argue that birthright citizenship acts as an incentive to people weighing the risks of undocumented immigration. These activists argue that the U.S.-born children of these immigrants can offer their extended family a pathway to reside in the U.S. by sponsoring their parents and other relatives for legal permanent residence. Such allegations may sound preposterous to most undocumented parents, or anyone familiar with the immigration process of sponsoring a

relative, particularly a parent, which is not as simple as anti-immigrant activists want us to believe. In fact, any person who has lived in the U.S. without documents for more than one year is barred from returning to the country for a period of 10 years.¹⁶ Parents who legally entered the country may adjust their status through their children, but they have to wait until their child is 21 years old and has a steady job before the so-called "anchor-baby" can sponsor them.¹⁷

Not only do the anti-immigrant activists behind this political effort lack knowledge of the nuances of immigration law, they also don't seem to understand that most people immigrate for economic reasons, and not to have U.S.-born children. Immigrants come to work, and many people stay undocumented because there is virtually no legal path for them to become U.S. citizens. During the course of their lives they may create families and have children, just like many other people do. The effect of a law removing the pathway to citizenship from the children of a group of people living and working in the U.S. would be a reproductive control policy that essentially threatens immigrants—who are largely people of color—not to reproduce.

The New Progressive Resistance

Progressives are not simply defending against these anti-immigrant groups; immigrant rights organizers and groups have been working actively to unpack the nativist rhetoric of removing birthright citizenship, and challenge the widespread politics of hate and exclusion it represents. Some activists believe that this disturbing legislative effort actually offers a crucial moment of opportunity for reframing immigration politics in the U.S..

The United States cannot romanticize its colonial history by continuing to call itself a country of immigrants, or a country built by immigrants, even as it creates civil rights tiers of citizens, first class citizens and "U.S. born-alien." There is no evidence that the U.S. Congress intended to create citizenship categories in its ratification of the Fourteenth Amendment: on the contrary, the Citizenship Clause grants U.S. citizenship to all persons born in the United States regardless of race or legal status. Creating such categories of conditional citizenship will allow current political biases to disproportionately affect women of color, and curtail their reproductive freedom. The Fourteenth Amendment presents this country with a legacy and a mandate to continue working toward a more equitable and egalitarian society. Let's move forward in this legacy, not backwards.

Further publications by progressive organizations dedicated to protecting the Fourteenth Amendment:

- The Immigration Policy Center has a resource center page for basic facts on birthright citizenship: <http://www.immigrationpolicy.org/just-facts/defending-fourteenth-amendment-resource-page>
- The American Constitution Society has published an article titled "Birthright Citizenship: A Constitutional Guarantee": <http://www.acslaw.org/files/Wydra%20Issue%20Brief.pdf>
- The Center for American Progress has written an article on the topic, "Birthright Citizenship Debate Is a Thinly Veiled Attack on Immigrant Mothers,": http://www.americanprogress.org/issues/2010/08/citizenship_debate.html
- Pro-immigrant organizations and coalitions, including the National Coalition for Immigrant Women's Rights (NCIWR - <http://nciwr.wordpress.com/>), the National Latina Institute for Reproductive Health (NLIRH — <http://latinainstitute.org/>), the National Asian Pacific American Women's Forum (NAPAWF — <http://napawf.org/>) are actively strategizing to protect the Fourteenth Amendment.

About the Author

Susana Sánchez is in her final year at Hampshire College, where she studies the social sciences with a concentration on immigration and Latino studies. She is currently working on a thesis exploring the intersection of gender, race and legal status, based on her ethnographic research with Costa Rican immigrant women in New Jersey. Susana previously interned at the National Latina Institute for Reproductive Health, and currently works as a research assistant for the Population Development program.

Notes

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3. Immigration Policy Center, "Made in America: Myths and Facts about Birthright Citizenship," (September 15, 2009), <http://www.immigrationpolicy.org/perspectives/made-america-myths-facts-about-birthright-citizenship>.
4. FAIR, an organization founded in part with funds from a white supremacist eugenics foundation, was also behind drafting S.B.1070, the Arizona Law that racially profiles Latinos (http://colorlines.com/archives/2010/04/brewer_signs_sb1070_legalizes_racial_profiling_of_arizonas_immigrants.html). For more information on FAIR, see this article's companion piece by Rebecca Poswolsky of the Center for New Community, *DifferenTakes* Issue #68 <http://popdev.hampshire.edu/projects/dt/68>
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17. Ibid.