Who Gets to Be an American?

The 14th Amendment makes everyone born in the U.S. a citizen—including the children of illegal immigrants. But now, birthright citizenship is under attack.

By Patricia Smith

Ever since the 14th Amendment was passed in the aftermath of the Civil War, it's been largely unquestioned that everyone born in the United States is automatically a citizen.

But, as the national debate over illegal immigration intensifies in an election year, birthright citizenship is being seriously questioned for the first time in almost 150 years.

"This surfaces every once in a while as part of a bigger debate—it's usually more of a fringe discussion," says Audrey Singer of the Brookings Institution, a Washington think tank. "What's different this time is that people in Congress are talking about it."

The Amendment was adopted in 1868 to ensure the citizenship of American-born former slaves and their children.

Opponents of birthright citizenship say it encourages continued illegal immigration. They contend that illegal immigrants are not under U.S. jurisdiction, as the Amendment specifies, and therefore their American-born children should not automatically be citizens.

"If you are an illegal immigrant, we clearly have not given you permission to reside here," says Rosemary Jenks of NumbersUSA, a group that favors decreased immigration. "You are still subject to the jurisdiction of your own country."

Talk of 'Anchor Babies'

But giving citizenship to everyone born in the United States has been upheld by the Supreme Court on the few occasions when it was tested there, immigration lawyers say.

The issue of birthright citizenship was thrust into the limelight by Senator Lindsey Graham in an interview with Fox News in August.

"We can't just have people swimming across the river having children here—that's chaos," said Graham, a South Carolina Republican. It quickly became a hot topic on cable TV and the Internet, and revived a popular misunderstanding—the problem of so-called "anchor babies." Talk show callers express frustration that pregnant women could cross the border from Mexico illegally, and rely on their newborns, who are citizens at birth, to put them immediately on a path to citizenship. In fact, under immigration law, American citizen children must wait until they are 21 years old to apply for legal residency for their parents.

Technically speaking, changing the law to disallow citizenship for the children of illegal immigrants would actually increase the size of the illegal population, since babies born to anyone here illegally would be illegal from the moment of their birth.

"You would be perpetuating a large undocumented population, with all these children growing up very much living in the shadows," says Hiroshi Motomura, an immigration law professor at the University of California, Los Angeles.

About 4 million children who are American citizens have at least one parent who is illegal, according to a study last year by the Pew Hispanic Center. They usually live in families that have been in the U.S. for a number of years and very often include both illegal immigrants and American citizens.

Altering the Constitution—which requires approval by two thirds of the Senate and the House of Representatives and then ratification by 38 state legislatures—is such a huge political hurdle that the idea is unlikely to go beyond discussion.

"It's a diversion from talking about comprehensive immigration reform," says Michelle Waslin of the Immigration Policy Center in Washington, D.C. "This is about politics and emotions, not about real policy. If you deny birthright citizenship, that doesn't do anything to solve our immigration problem."
How Other Countries Handle It

Some Republicans worry that the issue could backfire in the long term. "This type of position may help you win a few elections," says Alfonso Aguilar of the Latino Partnership for Conservative Principles, a group that tries to draw Hispanics to the Republican Party. "But you are damaging relations with the Latino community."

The U.S. isn't alone in offering birthright citizenship: Canada and most Latin American countries, including Brazil and Mexico, do so. But it's much less common in Europe and Asia, where citizenship more frequently depends on whether a parent is a citizen.

"Birthright citizenship is particularly characteristic of countries in the 'New World'—settler societies that wanted people to come," notes Caroline Brettell, an anthropologist at Southern Methodist University in Dallas.

The 14th Amendment has played a critical role in the country's history, says historian Gary Gerstle of Vanderbilt University.

"One of the things the U.S. has done incredibly well over its history is to bring newcomers into the fold," he says. "The story of integration that we can tell about America might have been impossible to tell without birthright citizenship."