

Citizenship-in-Question

Evidentiary Challenges for *Jus Soli* and Autochthony, from *Authenticité* to 'Birtherism'

CONFERENCE REPORT

May 9, 2012

Jacqueline Stevens, on behalf of co-conveners Benjamin Lawrance and Daniel Kanstroom, Rachel Rosenbloom and Rogers Smith
(details below)

About two dozen scholars from all regions of the world recently convened to discuss papers they had submitted in response to an invitation to describe evidentiary challenges to proving citizenship. Based on their investigations into practices in American Samoa, Thailand, Ivory Coast, India, and from many other places, scholars analyzed how laws and the practices of local and federal officials mean practices of “forensic citizenship” may differ from legal understandings of “essential citizenship,” as Daniel Kanstroom observed during a panel Q and A session. The takeaway was the revelation of countries depriving citizens of their recognition as such by way of practices with a surprising number of similarities, as well as intriguing differences.

The conference opened Thursday evening, April 19, with a speech by Johann “Ace” Francis, who automatically derived U.S. citizenship at age 14 when his mother naturalized. Mr. Francis described how his dreams of graduating from high school in Washington state were dashed when immigration agents flew him to a detention center in Arizona and then deported him to Jamaica in 1999. It took Ace ten years to gather the paperwork for his return in 2009.

Mr. Francis's talk was followed by a presentation by Attorney Gerald Phelps. Mr. Phelps reviewed the federal laws that a judge in Georgia recently invoked for dismissing sovereign immunity claims from several of the federal employees who in 2008 deported Mark Lyttle, a U.S. citizen born in North Carolina who is presently suing them. Mr. Phelps, on behalf of Robert Dominguez, recently submitted to the federal government a \$14 million demand letter for damages on his client's behalf. Mr. Dominguez was born in Lawrence, Massachusetts and in 2009, after ten years of unlawful banishment to the Dominican Republic, returned home only to have the government again call for the cancellation of his passport.

EXAMPLES

These are selected to illustrate the range of countries discussed; abstracts for all the papers follow.

India, Malaysia, Indonesia

“A variety of marginalized groups (immigrants, minorities, homeless, etc) experience a gap between legal institutional citizenship and their actual lived reality. Sometimes, legal citizenship is a hurdle to those who otherwise are eligible by birth and descent. In our rush to strengthen rights and build legal citizenship, we neglect the exclusionary impact of its institutions and documents. A highly regulated and formalized citizenship will produce an oppressive and exclusionary citizenship.”

--Kamal Sadiq, “Limits of Legal Citizenship: Narratives from South and Southeast Asia”

Ivory Coast

“At the Marcoussis Peace Agreement negotiations in early 2003, the issues of nationality and citizenship were identified as the ‘Gordian Knot’ of the crisis. How can we account for the problematic role of nationality in a country such as Ivory Coast, a location of high in-migration? In this paper I demonstrate that ‘Ivoirité’— a controversial policy of Ivorian authenticity targeting the birth-origins of Ivorian citizens and their parents – played an important role. What is ‘ivoirite’ and how did it influence or change citizenship in Ivory Coast? A study of the material evidence of implementation associated with the law permits us to answer this question.”

--Alfred Babo, “*Ivoirité* and citizenship in Côte d’Ivoire: Law, Evidence and the Short-lived Ivorian Experiment with *Authenticité*.”

Mumbai and Johannesburg

“The forms of movement regulation prevalent in each city differ markedly in terms of their historical and conceptual origins. In the Mumbai case, the laws are based firmly around the history of the squatter movement and the efforts to formalize illegal settlements in this land-strapped mega-city. In Johannesburg, the new form of urban citizenship harkens back to the laws of Apartheid and the attempt to differentiate black Africans with rights to the city from their purportedly ‘rural’ counterparts who were destined for forcible removal back to the ‘homelands’. Given their diverse origins and historical trajectories, can we draw meaningful generalizations across these two expressions of urban autochthony?”

--Darshan Vigneswaran, Max Planck Institute for the Study of Religious and Ethnic Diversity, Göttingen Paroj Banerjee, Partners for Urban Knowledge and Research, Mumbai, “Keys to the City: Urban Autochthony in the Global South.”

Taiwan

“Both marital immigrants who move across the Taiwan Strait and Taiwanese bureaucrats who regulate cross-Strait flows articulate anxieties and desires regarding personal and national status through the documents they carry and peruse on a daily basis. The paper argues that the practices and emotional investments surrounding documentary circuits link immigrants and bureaucrats in shared aspirations for recognition in a context of uncertain sovereignty and insecure citizenship claims.”

--Sara Friedman, “Documenting Contested Borders and Citizenship Claims: Affect, Materiality, and Sovereignty Struggles across the Taiwan Strait.”

Thailand

The paper "draw[s] from ethnographic observations and interviews, gathered during more than two years of living with stateless individuals and families in Thailand, to illustrate the ways in which state registration campaigns and citizenship application procedures (including birth registration enforcement and new DNA testing) have produced conditions of statelessness and citizenship in Thailand's highlands."

--Amanda Flaim, "Thai Status, Low Status, No Status: Producing Statelessness in Thailand's Highlands."

In addition to papers focusing on citizenship documentation, others illuminated through theory, historical research, and ethnographies the background policy and political contexts posing obstacles to claiming citizenship.

CONFERENCE SPONSORS

The idea of convening scholars investigating the difficulties people face proving citizenship was initiated by Benjamin Lawrance (Conable Chair of International Studies, Rochester Institute of Technology) and Jackie Stevens (Northwestern University), and significantly supported intellectually and materially by the following individuals and their respective institutions:

Daniel Kanstroom, Center for Human Rights and International Justice, Boston College Law School

Rachel Rosenbloom, Northeastern Law School

Rogers Smith, Program on Democracy, Citizenship, and Constitutionalism, University of Pennsylvania

The conference was held at the Boston College Connors Center in Dover, Massachusetts, April 19-22.

In addition to the presenters associated with the following abstracts, attendees benefited from the opening remarks by Vincent Rougeau, Dean, Boston College Law School and the generous and thoughtful paper comments by Rogers Smith, Daniel Kanstroom, Erik Owens (Boisi Center for Religion and American Public Life, Boston College), Peter Spiro (Temple University Law School), and David Hollenbach (Center for Human Rights and International Justice, Boston College).

Citizenship-in-Question Conference at Boston College Law School, April 19-21, 2012

Abstracts

[Some have been edited for length, as indicated by ellipses and brackets—JS]

"Ivoirité and Citizenship in Ivory Coast: the Controversial Ivoirian Policy of Authenticity"

Alfred Babo, Smith College/Amherst College

After three decades of political and social stability, the Ivory Coast entered a deep socio-political crisis in 1990. This crisis worsened with the rebellion and subsequent civil war from 2002. At the Marcoussis Peace Agreement negotiations in early 2003, the issues of nationality and citizenship were identified as the 'Gordian Knot' of the crisis. How can we account for the problematic role of nationality in a country such as Ivory Coast, a location of high in-migration? In this paper I demonstrate that *Ivoirité* – a controversial policy of Ivorian authenticity targeting the birth-origins of Ivorian citizens and their parents – played an important role. What is *Ivoirité* and how did it influence or change citizenship in Ivory Coast? A study of the material evidence of implementation associated with the law permits us to answer this question.

"Reclaiming Citizenship within Europe: Roma youth and the right to adolescence"

Jacqueline Bhabha, Harvard University

"What does it mean to be an authentic citizen"? The 10 – 12 million strong Roma community in Europe provides a compelling case study for examining both questions. Historically the target of extreme discrimination and exclusion, questions of citizenship loom large in this community's life. My presentation explored how the authenticity of Roma youth's citizenship is disputed and challenged, by lack of documents, by discrimination and stigma, by exclusion from productive social networks. Educational marginalization compounds the ghettoization Roma communities experience and prevents adolescents and youth from achieving financial and social autonomy. My data was drawn from the situation of the Romanian Roma community in Italy, European citizens in theory but not authentic citizens in practice.

"Jus Ne Quis Excludatur as a Principle of Citizenship: Immigrants, Deportation, and the Avoidance of Hardship"

Barbara Buckinx, Goethe University Frankfurt

Alexandra Filindra, University of Illinois at Chicago

We critique two recent proposals for evaluating citizenship claims; namely, *jus temporis* (Cohen 2011) and the principle of "constituted identities" (Smith 2010, 2011). We contend that time cannot independently ground citizenship claims and that the principle of "constituted identities" neglects the importance of state boundaries and does not indicate how or by whom identity-based claims would be evaluated. In response, we articulate a principle of citizenship that we call *jus ne quis excludatur*. Drawing on the human rights

literature and refugee and asylum law, we argue that states have an obligation to extend membership to territorially-present noncitizens who can demonstrate that deportation would entail significant social and economic hardship.

“Earning Citizenship”

Jennifer M. Chacón, University of California, Irvine

As is often the case in U.S. history, national discussions around immigration reform have prompted some to call into question the jus soli citizenship guaranteed by the Fourteenth Amendment. In these discussions, the term “anchor baby” is surfacing with growing frequency. In this paper, I would like to suggest two complementary explanations for the growing preoccupation with “anchor babies.” One explanation is that the increasing use of the term is part of the general coarsening of the national immigration discourse. The second explanation is that the rising reliance on the “anchor baby” trope illuminates a continued tension between the racially neutral definition of “citizenship” in the Fourteenth Amendment and social constructions of citizenship and belonging that reflect the continued salience of race in the lived experience of people in the United States. “Anchor babies” are constructed as part of an unassimilated group that must “earn” their citizenship not only through their labor but through their assimilation.

“On Borrowed Time: The Proliferation of Temporary Immigration Statuses in US Citizenship Law”

Elizabeth F. Cohen, Syracuse University

Since the passage of the 1965 Immigration and Nationality Act, temporary immigration statuses for foreigners seeking specific types of work or short-term refuge (Temporary Protected Status) in the US have proliferated. There are currently 24 broad categories of temporary visas and 87 specific types of nonimmigrant visas. In addition to the creation of new political statuses, the sheer number of persons admitted to the country on a temporary basis has also swelled. So significant is the fact of temporary admission that the Migration Policy Institute has described the United States as having interdependent “permanent and temporary immigration systems.” In this paper I focus on two facets of the dilemma engendered by the temporary immigration system: 1) the variable of time in immigration and citizenship in the United States, particularly as it pertains to determining eligibility for naturalization; 2) the political implications of the long-term presence of persons whose status disqualifies them from naturalization.

“Thai Status, Low Status, No Status: Producing Statelessness in Thailand’s Highlands”

Amanda Flaim, Cornell University

...In this paper, I describe the rise of the current identity regime that has come to prevail in the highlands of Thailand over the past thirty years. I argue that this regime has both reproduced and reinforced imagined boundaries of difference between highlanders and ethnic Thais, and contributes to the persistent exclusion of highlanders from Thai citizenship as well as from the rights, protections, and opportunities afforded thereto. After describing the current identity regime, I briefly trace the historical roots of imagined difference that has led to the current and persistent exclusion of highlanders from Thailand’s citizenry.

“Documenting Contested Borders and Citizenship Claims: Affect, Materiality, and Sovereignty Struggles across the Taiwan Strait”

Sara L. Friedman, Indiana University

This paper discusses the identity documents used to cross contested borders between Taiwan and China, focusing on how these documents function as symbols of state sovereignty and as sites of affective investment. Both marital immigrants who move across the Taiwan Strait and Taiwanese bureaucrats who regulate cross-Strait flows articulate anxieties and desires regarding personal and national status through the documents they carry and peruse on a daily basis. The paper argues that the practices and emotional investments surrounding documentary circuits link immigrants and bureaucrats in shared aspirations for recognition in a context of uncertain sovereignty and insecure citizenship claims.

“Deportation in the United States: Implications for Immigrant Communities and Citizenship”

Jacqueline Maria Hagan, University of North Carolina, Chapel Hill, David L. Leal, University of Texas at Austin, and Nestor Rodriguez, University of Texas at Austin

This paper discusses the implications of contemporary U.S. deportation policies for immigrant communities and debates about citizenship. While scholars have studied the consequences of such policies for children and families, we posit broader effects on communities through the reduction of immigrant human and social capital. Drawing on studies of immigrant communities and deportees, we show that current deportation practices entangle individuals with a wide range of socio-economic resources. When they are removed from – or deterred from participating in – economic, family, social, and civic networks, communities and individuals are impoverished in many ways. In addition, such deportations have implications for debates about the nature of citizenship and the power of the state.

“The German Citizenship of Yekkes - legal perspectives on German citizenship and anthropological findings of identity configurations”

Dani Kranz, University of Erfurt, and Alexandra Margalith, independent scholar

Somewhat ironically, a group of Germans who had been rejected as fully-fledged German citizens, have been renaturalising under *ius sanguinis* in record numbers. German Jews, or Yekkes, and their descendants in Israel, renaturalise in numbers that outdo all other descendant groups in the country. ...We will argue that while German basic law for allows for a reinstatement of citizenship for all those who were stripped of it between 1933 and 1945, and extends this reinstatement to descendants the legal framework offers clues about the societal dynamic that underpins German citizenship law... In order to demonstrate our argument, we will first present the legal framework of German citizenship law, and the special case of Jews of German descent. In the second part of this paper, we will show anthropological perspectives of German citizenship, and then of Yekkes in particular. In the final part we will pull both perspectives together.

“De Jure? De Facto? Denied, Deported: State-Effectuated Statelessness”

Benjamin N. Lawrance, Rochester Institute of Technology

This article argues that attention to evidentiary matters blurs the emerging distinction between de jure and de facto statelessness. I follow the stories of two Togolese individuals residing in the UK, as they attempt to navigate immigration bureaucracy and courts, in an effort to establish their identities. An examination of the Togo’s citizenship law demonstrates that the only path to nationality for both individuals involves a direct appeal to the Togolese Minister of Justice. The UK Border Agency, however, effected the statelessness of both by ignoring Togo’s law, and instead trying to establish their nationality by other means.

“Raising the ‘status’ of citizenship, resisting the evolving ‘international law of citizenship’: European perspectives”

Siobhán Mullally, University College Cork

This paper examines recent developments in citizenship law and practice in Ireland and the EU. In doing so, it notes attempts to ‘raise the status’ of citizenship through the imposition of increased restrictions on access to citizenship in the guise of integration conditions, strengthened residence requirements and policy initiatives to promote community cohesion across the EU. This push-back from states is examined in the light of an emerging international and European law of citizenship (Spiro: 2011), which, in highlighting the cosmopolitan underpinnings of human rights norms raises the potential of enforceable claims to ‘be here’, to belong and to full membership of the polity. At the same time, this paper highlights the denigration and questioning of the significance of citizenship status in a series of recent cases on the rights claims of citizen children and migrant families.

“Making Love for a Visa: The Sexual Citizenship of Filipina Migrants in Japan”

Rhacel Salazar Parreñas, University of Southern California

This paper examines the sexual citizenship of long-term Filipina migrants in Japan. The term sexual citizenship underscores that sex is a primary condition of long-term residency in Japan for Filipina migrants and at the same time acknowledges that their citizenship, by this I mean their terms of belonging in Japanese society, involves sexual relations with Japanese citizens. The paper addresses how love and money are constituted in the sexual citizenship of Filipina migrants. It addresses the intersections of love and money in their romances with customers, the impossibility of disaggregating the motives of love and money in their romances, and the disruption of the gender order in their marriages with Japanese nationals.

“Jus Soli and Statelessness: A Comparative Perspective in the Americas”

Polly J. Price, Emory University

Despite the predominance of jus soli in the Western Hemisphere, effective statelessness is a hidden problem in the Americas with important ramifications for the United States. Effective statelessness occurs due to poor documentation of births as well as intentional discrimination. Migrants with unclear nationality become a problem for the United States when it attempts to deport noncitizens. These existing problems of national identity undermine the assumption that any change to jus soli rules in the U.S. would not lead to

increased statelessness. Instead, proposed limitations to US law would exacerbate statelessness into the next generation because no fall-back nationality is available.

“In the Borderlands of Citizenship: Proving Membership Along the U.S.-Mexico Divide”

Rachel E. Rosenbloom, Northeastern University

Over the past two decades, an increasingly vocal movement to limit territorial birthright citizenship has emerged in the United States. The U.S.-Mexico border has loomed large in the debate over birthright citizenship, with the specter of pregnant Mexican women crossing the border to give birth serving as a favorite trope of the restrictionist movement. Most scholarship on birthright citizenship has focused on the normative and doctrinal questions surrounding the Citizenship Clause of the Fourteenth Amendment. This paper takes a new angle, arguing that the boundaries of birthright citizenship are produced and contested not only through doctrinal and policy debates but through the everyday evidentiary determinations of administrative officials. As in the broader policy debates, Mexican American citizenship claims in the American Southwest have emerged over the past few decades as the main locus of such conflict. This paper considers one particular context in which such questions have recently arisen: a spate of lawsuits challenging the denial of U.S. passports to Mexican Americans born in the border regions.

“What is a ‘real’ Australian citizen? Insights from Papua New Guinea and Mr. Amos Ame”

Kim Rubenstein, Australian National University

....The author of this paper was counsel in *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Ame* [2005] HCA 36; (2005) 218 ALR 483. In that High Court of Australia decision, the Court was called upon to engage with the question of rights to citizenship as a result of changes in Australia’s territorial relationship with Papua New Guinea. [Counsel]... argue[d] on behalf of Mr Ame, who had been born an Australian citizen and had it stripped from him in 1975, that the deprivation of citizenship was unconstitutional. The High Court, in deciding the matter drew upon Jack Goldring, *The Constitution of Papua New Guinea: A Study in Legal Nationalism*, (1978) at 204 where he had written: "Before Independence, most Papua New Guineans had no 'real' citizenship. Those born in Papua were technically Australian citizens, but they had no right to enter or remain in Australia, or even to leave their own country. Those born in New Guinea had the status of 'Australian Protected Persons'...

“Standard Citizen: The Rise and Limits of Legal Citizenship”

Kamal Sadiq, University of California, Irvine

Law and evidentiary documentation are designed to confirm and realize citizenship. In developing states, legally sourced institutions (*Jus Soli* and *Jus Sanguinis*) and artifacts (documents) embody the actual citizenship of an individual. This standard citizen represents modern citizenship. Yet, citizenship laws and proofs in developing countries can be contingent, partial and incomplete. A variety of marginalized groups (immigrants, minorities, homeless, etc) experience a gap between legal institutional citizenship and their actual lived reality. Sometimes, legal citizenship is a hurdle to those who otherwise are eligible by birth and descent. In our rush to strengthen rights and build legal citizenship,

we neglect the exclusionary impact of its institutions and documents. A highly regulated and formalized citizenship will produce an oppressive and exclusionary citizenship.

“We Citizens”

Jacqueline Stevens, Northwestern University

When the U.S. government stops recognizing U.S. citizens' de jure citizenship status the effects are alarming, and not so well known. The paper will provide case studies of U.S. citizens who have not had their de jure citizenship, as well as the processes that lead to this and the evidence used to overcome previous misclassifications. This phenomenon might seem to reinforce Hannah Arendt's prediction that the meagre, unenforceable rights of new immigrants were a symptom of the need for bolstering the legal regimes of the nation-state to provide strong protections to their citizens, at home and abroad. This paper, however, will point out the strange quality of birthright citizenship's evidence to suggest that rather than strengthening birthright citizenship's legal protections, new policies for membership based on residence should be explored and statelessness eliminated in this way.

“American Birthright Citizenship Rules and the Exclusion of ‘Outsiders’ From the Political Community”

Margaret D. Stock, University of Alaska

The United States has had a "jus soli" (birth within the territory) basis for acknowledging citizenship since its founding; such a rule, however, has always been subject to exceptions, and those exceptions have served to exclude certain groups—such as indigenous Native Americans—from full membership in the political community. The “jus soli” rule became a matter of US constitutional law after the Civil War, when the Fourteenth Amendment was ratified; thereafter, anyone born within the United States and “subject to the jurisdiction” was considered to be a US citizen. Historically, however, the words “subject to the jurisdiction” have served to exclude certain groups, and today, many are calling for a reinterpretation of those words to exclude even more groups from full participation in the American polity. This paper explores the practical and political ramifications of modern attempts to reinterpret the Fourteenth Amendment, particularly in light of the experiences of other countries that have moved from a territorial rule of citizenship to a bloodline rule.

“Keys to the City: Urban Autochthony in the Global South”

Darshan Vigneswaran, Max Planck Institute for the Study of Religious and Ethnic Diversity, Göttingen

Paroj Banerjee, Partners for Urban Knowledge and Research, Mumbai

Since its origins in Ancient Rome and Renaissance Italy, the concept and institution of ‘citizenship’ has been deeply connected to the ‘city’. This is partly a result of the fact that the lived experience of citizenship, consisting of a public sphere, interaction between members, and affiliation to place, are often most fully realized in cities: their etymological progenitor ... It may be that we are seeing stronger assertions of urban autochthony and new ways of writing this notion of urban affiliation into law in the emerging cities of the Global South. In these contexts, where national patriotism has a much shorter history, cities are growing and changing rapidly, and contests over rights to territory, land, housing and public space are polarized and acute. This paper will explore these issues through a

comparative study of two cities where we have seen the emergence of new forms of urban autochthony: Johannesburg and Mumbai. Over the past two decades, both have seen the scramble for space amongst the urban poor give rise to vocal and violent expressions of autochthony.

“Negotiating Citizenship in the U.S. Territories”

Rose Cuison Villazor, Hofstra University

Scholars have long commented that citizens residing in the U.S. territories have ‘second-class citizenship’. One of the reasons for this criticism is the fact that, as a result of the Supreme Court’s opinions in the *Insular Cases*, territorial residents do not enjoy the full protection of the U.S. Constitution. This paper contends that there is an alternative way of thinking about the limited application of the Constitution in the U.S. territories. Specifically, this paper contends that, at least with respect to American Samoan and the Commonwealth of the Northern Mariana Islands, the territorial peoples themselves negotiated to have limited constitutional rights. Critically, they did so as conditions for becoming members of the U.S. polity.

“Citizenship and Disability in the United States”

Mark C. Weber, DePaul University

Physical and mental conditions do not necessarily disable. Disability arises instead from the dynamic between those conditions and the physical and attitudinal barriers in the human environment. Applying a social model of disability to United States citizenship calls attention to barriers to entry into the United States and to eventual naturalization as a United States citizen for individuals who have disabilities. Historically, American law excluded many classes of immigrants, including those with intellectual disabilities, mental illness, and physical defects, and any other condition likely to cause dependency. More recently, the United States has permitted legalization for severely disabled undocumented immigrants already in the country, and abolished most exclusions from entry for immigrants with specific disabling conditions, though exclusions for individuals likely to become a public charge and those with communicable diseases still exist. ... Effectively unreviewable discretion remains with regard to the public-charge determination, because counselor officers abroad decide on their own whether to issue or deny visas...