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ARTS & CULTURE | HISTORY | ESSAY

What Birthright Citizenship Gave to Me

I was the first person in my family to be born in the U.S. The Constitution leaves no doubt: that makes me a full American citizen.



A newborn Akhil Reed Amar with his mother and father in 1958. He was born in Michigan to parents from India who later became naturalized U.S. citizens. PHOTO: AKHIL REED AMAR

By Akhil Reed Amar

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Sixty-seven years ago this month, at the very moment of my birth in Ann Arbor, Mich., I received an extraordinary birthday present from the American people: the gift of birthright citizenship.

According to the first sentence of the Fourteenth Amendment of the Constitution, “All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States.”

That included me, even though my parents back in 1958 were neither American citizens nor permanent resident aliens.

True, my parents were in the U.S. legally, as young doctors from India with valid visas, and in the mid-1960s, they became naturalized citizens. Although my own birthright citizenship has never depended on these happy facts, I do recall the boyhood thrill I felt when my parents joined the citizenship club of which I was the Amar family’s charter member.

In 1969, Americans became the first humans to reach the moon. Along with tens of millions across America and hundreds of millions across the globe, I watched this event unfold on television. The

American who first set foot on the lunar surface and proclaimed this moment as “one giant leap for mankind,” Neil Armstrong, was an Eagle Scout. Three months later, I joined the Boy Scouts, solemnly pledging “On my honor...[to] do my best to do my duty to God and my country.” I later became an Eagle Scout myself.

Meanwhile, many of my relatives were crisscrossing planet Earth. Nearly a dozen of my cousins left their native-born countries to come to the U.S. and eventually naturalize. But none of my American-born cousins left to settle elsewhere. That got me thinking about American greatness and American exceptionalism.



A cake celebrating the author for attaining the rank of Eagle Scout as a 17-year-old in 1976. PHOTO: AKHIL REED AMAR

In mid-June 1976, when given the chance to offer commencement remarks at my high school in Walnut Creek, Calif., I chose to speechify about patriotism—a rather obvious topic, in retrospect, given that America was celebrating a notable birthday, its 200th, that season.

By the time I reached formal adulthood and arrived in September 1976 as a student at Yale College —on my 18th birthday, as it happened—I had decided to devote my life to studying and serving the generous nation that had given me birthright citizenship and the epic national document that had codified that gift.

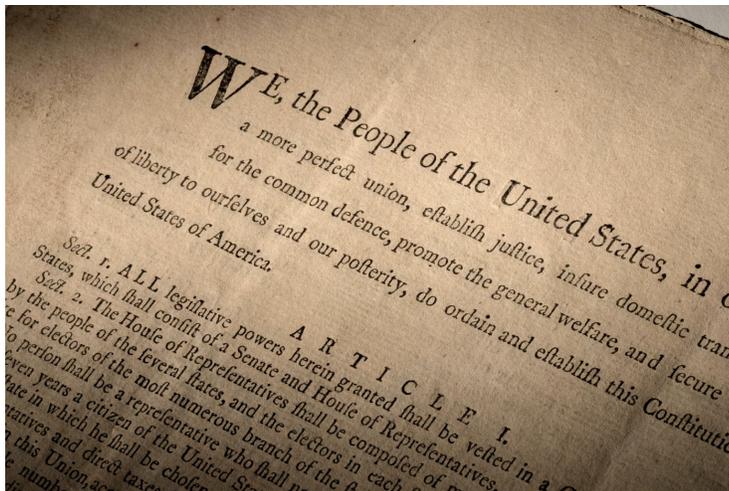
Since then, I’ve spent more than 40 years researching and expounding the U.S. Constitution, trying to share with my fellow citizens what I’ve learned about this remarkable text and the story behind it.

The many books and articles on constitutional law that I have churned out over the years do not aim to tell the story of me. (I’ve probably disclosed more about myself in this essay than in my entire previous body of work.) Rather, my writings aim to tell the story of us—of the U.S., of We the People of the United States and of our unfolding Constitution. It is a story of genuine American greatness, and equal birthright citizenship is an essential part of that greatness.

A Beautiful Idea

Ironically, equal birthright citizenship has recently come under attack by those who say they aim to “Make America Great Again.” Here MAGA mangles a beautiful idea.

The Supreme Court will likely weigh in on the issue sometime in the next year or so. When it does, it will almost surely insist, as I do, that the Constitution means what it says. Despite an executive order that President Trump issued on the first day of his second term aiming to deny citizenship to wide swaths of American-born babies going forward, every person born under the American flag is, in fact, an equal birthright citizen, even if their parents are not at that moment citizens or permanent resident aliens—indeed, even if his or her parents are here illegally.



The Constitution establishes that the President of the United States must be a ‘natural born citizen,’ that is, a citizen from birth. PHOTO: ARDON BAR-HAMA/SOTHEBY’S/REUTERS

But why, some might wonder, should that be? Why can’t the exception in the text—giving citizenship only to persons born in the U.S. and “subject to the jurisdiction thereof”—be expansively construed to deny birthright citizenship to those whose parents are not “true” Americans, especially those whose parents are here in defiance of American laws?

To answer these questions, it’s helpful for all Americans, left and right, to remind ourselves of the basic outlines of our people’s epic story.

The story of American citizenship began precisely when America itself began—legally, officially—in July 1776, when 13 New World colonies bravely united to declare their joint independence from Great Britain. Over the next several years, these new states finalized a unifying treaty called the Articles of Confederation. Only once did this document refer to “citizens,” and that one clause failed to define the term. Because each state under this treaty expressly retained its “sovereignty,”

the best reading was that each state would decide for itself who was and was not a citizen of that state. In principle, each state promised to respect the citizens of sister states, but the provision containing that promise was a jumble.

In 1787-91, Americans dramatically strengthened their union by ordaining a new-minted document, the Constitution, which repeatedly referred to American citizenship. Each member of the new House of Representatives needed to be “a citizen of the United States” for at least seven years; each new U.S. senator for at least nine. America’s new president needed to be not just a citizen but (with a small exception for recently arrived Americans such as Alexander Hamilton) a “natural born citizen”—that is, a citizen from birth. New federal courts could hear lawsuits between “citizens of different states.” Yet another provision required each state to respect the “privileges and immunities” of citizens of sister states.

Though the recurrent phrase “citizen of the United States” had strong nationalist overtones, perhaps the framers did not mean to codify a one-size-fits-all approach. Massachusetts generally treated free Blacks as citizens; South Carolina did not. So maybe each state could continue to decide for itself? But what would happen when a Massachusetts free Black citizen tried to travel to South Carolina?

In an 1857 decision that would eventually become the most reviled Supreme Court ruling in history, Chief Justice Roger Taney opined that a man named Dred Scott had no citizenship-based right to sue in federal court—not just because Scott was a slave but also because he was Black. One passage of Taney’s lead opinion was especially provocative: No “Negro whose ancestors were imported into this country, and sold as slaves,” wrote Taney, could ever be a citizen of the U.S., whatever individual states might decide.

A statue of Chief Justice Roger Taney, author of the Dred Scott decision, is removed from the Maryland State House in Annapolis in August 2017. PHOTO: BEEPRB/REUTERS

Out on the Midwestern prairie in 1858, a rising anti-slavery lawyer named Abraham Lincoln routinely blasted key parts of Taney's opinion, which had also declared that Congress lacked power to prohibit slavery in America's far western territory. But Lincoln spent rather little energy condemning Taney's citizenship passage. At one point he told a crowd that "I am not in favor of Negro citizenship" for Illinois.

'All Persons Born'

A few short years later, however, as president in the midst of a horrific civil war, Lincoln dramatically changed course. On New Year's Day of 1863, his final Emancipation Proclamation not only promised freedom to millions of slaves in the Deep South but also urged Black Americans to join the Union Army. Henceforth, Blacks and whites were, in Lincoln's view, brothers in arms. If so, all Blacks deserved to be treated as full and equal citizens.

In the very season that Lincoln was pivoting toward Black arms-bearing, his handpicked Attorney General, Edward Bates, had issued a momentous memorandum. "Every person born in the country," wrote Bates in late November 1862, "is, at the moment of birth, prima facie a citizen... without any reference to race or color, or any other accidental circumstance."

At war's end, Congress emphatically sided with Bates in a landmark 1866 Civil Rights Act that opened as follows: "All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States."

But some worried that a mere executive memo and a simple congressional statute might not suffice. Perhaps the Supreme Court might try to resurrect Taney's Dred Scott opinion and declare the memo and the statute unconstitutional. Perhaps some future president might try to rescind the memo or ignore the statute.

In the late 1860s, America thus adopted a constitutional amendment to settle the matter conclusively. The amendment opened with language echoing, and slightly tweaking, the landmark statute: "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." This is the very sentence that would become my priceless birthday gift nearly a century later.

Supporters of birthright citizenship gather outside the Supreme Court, May 15, 2025. PHOTO: JIM LO SCALZO/EPA/SHUTTERSTOCK

The Americans who drafted and ratified this sentence plainly understood that it conferred citizenship upon American-born children of aliens. Leading sponsors of the amendment and its precursor statute proudly proclaimed their aim to give citizenship to American-born children of Chinese immigrants and foreign-born "Gypsies," even if some of the parents themselves were ineligible for citizenship and or were here illegally, such as slaves unlawfully smuggled into the U.S.

The essential issue for the visionary reformers of the 1860s was not the status of the parents but the status of the American-born child, whom reformers nobly insisted was a human being in his or her own right. As Ohio Congressman John Bingham, a key sponsor of the amendment, put it, "If a man is not a citizen of the country in which he was born, in God's name, of what country is he a citizen?"

American Soil

Bingham and his fellow Lincolnian visionaries' grand idea was not merely birthright citizenship but equal birthright citizenship under the flag. It simply did not matter whether one was born white or black, male or female, Jew or Gentile, in wedlock or out, eldest or youngest, or born to citizen parents or alien parents. Or whether one's alien parents were legally or illegally present on American soil.

Many MAGA leaders seek to read the words "subject to the jurisdiction thereof" far beyond the original meaning of these words, which had a precise signification going back centuries in both America and England. The exemption applied to children of foreign diplomats, in effect treating such children as if they had been born inside the foreign embassy itself—foreign soil under a foreign flag. This was a small and, in the vast run of cases, typically easy-to-administer exception to the general rule.

Relatedly, children born in an occupied enemy war zone were categorically exempt. They too were in effect born on foreign soil under a foreign flag. The same went for children born in quasi-sovereign tribal Indian enclaves, precursors of today's reservations. Hence the Civil Rights Act's exclusion of "Indians not taxed"—language that also appeared in Section 2 of the Fourteenth Amendment.

Akhil Reed Amar in 2019. PHOTO: HAROLD SHAPIRO

In all three of these precise and cleanly bounded exceptions, the crucial point was essentially territorial. Certain geographic patches inside America's general footprint were not fully American soil. For the framers of the Fourteenth Amendment, the key question to be asked in any given case was clean and simple: On the day a person is born, when they look up and first open their eyes, is an American flag flying overhead?

Sixty-seven years ago this month, the stars and stripes did indeed fly over my own birth chamber in Michigan. It did not matter that day that I was born with brown skin, or who my parents were, or what faith tradition I was born into. Constitutionally, I was born equal to all the other babies born then and there.

Though I can never repay the priceless gift of equal birthright citizenship that I received long ago, I

have tried over the years, and I am trying again today, to sing the song of our Constitution. If We, the People, today think the Fourteenth Amendment is a mistake, we are free to do what Lincoln's generation did and amend the Constitution. Unless that happens, I hope that we keep faith with our Constitution as written and with the saga of American greatness that infuses it.

Akhil Reed Amar teaches constitutional law at Yale. His new book, "Born Equal: Remaking America's Constitution, 1840-1920" will be published by Basic Books on September 16.

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