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3 Things You Should Know About Birthright Citizenship

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Every few years, the common law concept of *jus soli* — or birthright citizenship — comes back into the news.

This time, it was thrust onto the stage by Republican presidential candidate Donald Trump, who just unveiled an immigration plan. One of his proposals is to stop automatically giving citizenship to most people born on U.S. soil. Rival GOP candidate Scott Walker issued a similar call.

The concept of *jus soli* has a storied history in the United States that dates to the late 1800s.

Here are three things that will bring you up to speed on the issue:

1. It's in the Constitution

The issue of citizenship was brought into focus by a Supreme Court ruling in 1857 that essentially declared that blacks — even the daughters and sons of freed slaves — were not U.S. citizens.

In 1868, the U.S. ratified the 14th Amendment to the U.S. Constitution. The first sentence reads: "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."

That language made it clear the Supreme Court's ruling in the Dred Scott case was overturned and that black Americans would enjoy U.S. citizenship.

2. It still left some big, open questions

As we've explained in the past, there's one key clause in that sentence from the 14th Amendment — "subject to the jurisdiction thereof" — that left wiggle room for interpretation.

As a Congressional Research Service report from 2010 puts it, what that clause means has been the subject of great debate. Did it mean that the children born to Chinese immigrants — who were once under law not permitted to become naturalized citizens — conferred birthright citizenship? Did it include Native Americans born on sovereign reservations?

All those questions were eventually settled in the 1898 Supreme Court case *United States v. Wong Kim Ark*.

Essentially, the court said the common law concept of *jus soli* should be applied to the 14th Amendment. Congressional Research Service explains:

"The Court held that the Fourteenth Amendment affirmed the traditional *jus soli* rule, including the exceptions of children born to foreign diplomats, to hostile occupying forces or on foreign public ships, and added a new exception of children of Indians owing direct allegiance to their tribes. It further held that the 'Fourteenth Amendment ... has conferred no authority upon Congress to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right to citizenship' and that it is 'throughout affirmative and declaratory, intended to allay doubts and settle controversies which had arisen, and not to impose any new restrictions upon citizenship.'"

In other words, the 14th Amendment excludes children born to diplomats or hostile

occupying forces and those born on foreign public ships.

Those are some very narrow restrictions that most legal scholars agree do not exclude the children of illegal immigrants from receiving automatic citizenship. To be clear, it means that current jurisprudence indicates the U.S.-born children of undocumented immigrants are given citizenship by the 14th Amendment.

As for Native Americans, the court ruled that the amendment did not confer birthright citizenship to those born on reservations, because they are not technically subject to U.S. jurisdiction. As Congressional Research Service reports, the Nationality Act of 1940 "finally and unambiguously declared all Native Americans born in the United States to be U.S. citizens."

3. Birthright citizenship is a New World philosophy

As University of California, San Diego sociologist John Skrentny told NPR in 2010, the U.S. is an anomaly in the world when it comes to this issue.

Most of the rest of the world, for example, gives people citizenship based on a concept known as *jus sanguinis*, literally "by right of blood."

"The idea there is that the nation, the people are bonded together through ancestry," Skrentny said. "The other notion of nationhood is generally understood as a civic notion of nationhood. And this is the idea that folks are bonded together by where they are, by locality and by the ideas that they might share. And that's what we have in the United States. There are folks who say that, you know, to be an American is to embrace an idea."

It is, Skrentny added, a philosophy that works well for countries made up of immigrants, such as the U.S. and Canada.

In 2012, the Law Library of Congress took a comprehensive look at France, Germany, Greece, Italy, Portugal, Spain and the U.K. and found that none of those countries automatically give citizenship to children born to undocumented immigrant parents.

