



America's Children

Protecting the rights of those born on U.S. soil

By Donald Kerwin

SEPTEMBER 24, 2007 – America Magazine

Not since the “Americanization” movement of the first quarter of the 20th century has the United States given the integration of its immigrants the kind of sustained policy attention it deserves. At its best, that movement sought to promote citizenship, to assure that government agencies addressed the specific needs of immigrants and to teach them English, U.S. history and civic skills. These goals need to be revisited, particularly since Congress failed to pass comprehensive immigration reform this year.

It would be reckless to assume that a diverse and growing population of 37 million immigrants will be incorporated easily or automatically into our national life. The United States’ historic genius at integrating immigrants has been rooted in a relatively open job market, a participatory political system, strong mediating institutions (including family) and a legal framework that extends its core rights and protections to “persons,” not only to U.S. citizens. The essential ingredient, however, has been the conviction of successive waves of immigrants that they can become full members of the United States. By contrast, many European nations have developed formal immigrant “integration” policies and extend generous social safety nets to immigrants, but the children and grandchildren of many of these immigrants do not feel either that they belong or that they can become full and equal French or German or Dutch citizens.

What Is a Nation?

How immigrants see the United States depends largely on how the United States views them and how it conceives of itself, and those attitudes are changeable. At present, two visions of nationhood vie for primacy in the U.S. immigration debate. Civic nationalism

does not deny the role of history, tradition and culture in forging ties among citizens, but it views national membership primarily in terms of shared civic values and political institutions. This vision resonates with immigrants and others who see the United States as a “creedal” nation. According to one of our most cherished national myths, people from throughout the world have fled poverty and persecution to find a home in a nation that asks in return only that they be good and loyal citizens. In gratitude, these immigrants have put aside their other differences to build a nation that offers hope to a bitterly divided world.

Ethnic or ethnocultural nationalism, by contrast, views nations as distinct peoples connected most deeply by inherited characteristics like race, religion, history and language. This vision does not dismiss the importance of shared civic goals and beliefs, but regards concepts like rights, freedom and equality as mere noble abstractions that do not sufficiently bind citizens to one another and to their nation. This paradigm might itself be dismissed as an abstraction that fails to capture the U.S. experience. Its proponents would do away with the primacy given to family unity in U.S. immigration law. In their view family-based immigration has led to the admission of large numbers of immigrants who threaten to dilute, if not overwhelm, U.S. “Western” culture. These cultural differences can be overstated. Religious faith, a commitment to family, hard work and patriotism—which many see as core features of U.S. culture—likewise characterize immigrant communities. The great wave of immigrants from 1890 to 1916 faced similar criticism, primarily because of their countries of origin (mostly Southern and Eastern Europe) and their faith (mostly Catholic), which U.S. nativists attacked as alien and incompatible with democratic values.

Targeting Birthright Citizenship

The main policy ethnocultural nationalists oppose is the granting of birthright citizenship for the children of undocumented persons. Some who would restrict immigrants cynically refer to such children as “anchor babies,” although such children cannot petition for their family members to join them in the United States until they themselves become adults. On the one hand, the opposition to birthright citizenship seems to contradict the primacy that ethnocultural nationalists give to U.S. history and tradition in defining membership. In fact, most of these children will never have another culture, heritage or tradition than what they acquire in the United States. On the other hand, it stands to reason that if you want to perpetuate a distinct people, you would want to deny citizenship to children who lack the inherited characteristics you value. The Fourteenth Amendment, which many who would restrict the number of immigrants trivialize as an immigration loophole, presents a formidable obstacle to such a denial. Its 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.” This language reversed the infamous Dred Scott decision, which held that persons of African descent could never become U.S. citizens. An 1898 Supreme Court decision, *United States v. Wong Kim Ark*, affirmed that the amendment also applied to children born in the United States of parents who are not U.S. citizens.

A legal skirmish has erupted over whether being “subject to the jurisdiction” of the United States means being required to obey U.S. law (in which case the amendment applies to all children born on U.S. soil), or allegiance to the nation (in which case citizenship could arguably be denied to the children of noncitizens without amending the Constitution). The court reasoned in the Wong Kim Ark case that “every citizen or subject of another country, while domiciled here, is within the allegiance and protection, and consequently subject to the jurisdiction, of the United States.”

Limiting the Rights of Young Citizens

One must question how it would serve the national interest to relegate children born here to lives with few rights, limited prospects and no security. How would such children contribute or be bound to the only country they might ever know? The Supreme Court made this point trenchantly in *Plyler v. Doe*, its 1982 decision on the right of undocumented children to public education through high school. The *Plyler* decision highlighted the complementary nature of rights and the common good, an enduring feature of both U.S. law and Catholic social teaching. “It is difficult to understand,” the court reasoned, “precisely what the State hopes to achieve by promoting the creation and perpetuation of a sub-class of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime.... Whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the nation.”

What would restrictionists do with such children? Ethnocultural nationalists might favor deporting them (and their parents). Or they might pressure such families to leave by denying them the means to subsist, as hundreds of pending state and local measures are attempting to do. Or they could make it a felony to be or to assist an undocumented person, as the House of Representatives voted to do in 2005. The more this vision plays out in practice, the less it seems to honor core U.S. ideals, although this is its very point. After all, ideals cannot play a large role in attempts to resurrect one of the most shameful legal decisions in U.S. history, the *Dred Scott* decision, and apply it to a new class of defenseless persons. The ethnocultural vision never seems more un-American than when it attempts to articulate exactly which attributes or characteristics should determine membership.

No mainstream group in the U.S. immigration debate favors open borders, supports undocumented migration or opposes the “patriotic assimilation” of immigrants. Immigrant advocates believe, however, that these immense challenges must be addressed in ways that honor our nation’s underlying values.

The Views of Early Presidents

What beliefs make up the U.S. creed? In the Declaration of Independence, Thomas Jefferson names equality, self-evident rights and the consent of the governed. In the preamble to the 1780 Constitution of the Commonwealth of Massachusetts, John Adams defined as the purpose of government “to secure the existence of the body politic, to

protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life.” He referred to the polity as a “voluntary association” of persons governed by laws enacted for the “common good.”

In a letter to a Hebrew Congregation at Newport in August 1790, George Washington identified good citizenship and allegiance as the fundamental requirements for membership in the new nation. “It is now no more,” Washington wrote, “that toleration is spoken of as if it were the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights, for, happily, the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens giving it on all occasions their effectual support.” In his “Gettysburg Address,” Lincoln called the United States a nation “conceived in liberty, and dedicated to the proposition that all men are created equal.” These concepts define our nation and bind us to our fellow citizens. Although political membership and religious affiliation cannot be equated, ethnocultural nationalism also seems alien to a religious tradition based not on ethnicity, race or culture, but on a person’s deepest beliefs and commitments. St. Paul wrote, “There is neither Jew nor Greek, there is neither slave nor free man, there is neither male nor female; for you are all one in Christ Jesus” (Gal 3:28). Pope John Paul II made the same point about immigrants in his message for World Migration Day 1996: “The church considers the problem of illegal migrants from the standpoint of Christ, who died to gather together the dispersed children of God, to rehabilitate the marginalized and to bring close those who are distant, in order to integrate all within a communion that is not based on ethnic, cultural or social membership.” The church’s vision has been inclusive, even for those who violate immigration laws. In 1986 the U.S. bishops wrote in *Together a New People*: “It is against the common good and unacceptable to have a double society, one visible with rights and one invisible without rights—a voiceless underground of undocumented persons.”

In the last two years, hundreds of thousands of immigrants have taken to the streets in cities across the country. The overwhelming majority of them—pushing strollers, dressed in their work clothes, carrying religious symbols, marching peacefully, carrying “We are America” posters—share our civic values. Like millions of immigrants before them, they want to help build the United States and to participate fully in our national life. We should let them.

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