

Philos 117AC, Fall 2017

Setting the stage:

“Donald Trump, Meet Wong Kim Ark”

Main text:

Joseph Carens, *The Ethics of Immigration*, Ch. 2 “Birthright Citizenship”

Today we pick up one of the loose threads from our discussion of *Ozawa v. United States*. Ozawa had no *legal* right to citizenship. But all the same he might have had a *moral right* to it.

- What is citizenship?
- Why should we care about it?
- When is it unjust to deny someone citizenship? When is someone entitled to it?

Two grounds of citizenship:

- *Birthright*: Happens (more or less) automatically at birth.
 - Born *in the territory*: *ius soli*
 - Born *to citizens*: *ius sanguinis*
- *Naturalization*: Not automatically at birth. Other criteria need to be met:
 - Residence in the territory?
 - Civics tests?
- Ozawa illustrates the *naturalization* case. He had no birthright claim to citizenship. And he was not permitted to apply for naturalization, because he was neither white nor black, even though he had grown up in the U.S. and had been, if not a model citizen exactly, a model resident.
- Wong Kim Ark illustrates the *birthright* case. He got citizenship simply because he was born in the U.S. His race, residence, conduct didn't matter.

Today we focus on birthright. Next time we'll consider naturalization.

What is citizenship?

After all, people have lots of rights whether or not they are citizens. What more comes with citizenship?

- Rights to enter into and reside in the territory.
- Right to vote and run for office.
- Diplomatic protection abroad.
- Recognition as a member of the political community.

What, if anything, entitles someone to citizenship at birth?

Carens's approach: What birthrights to citizenship, if any, are implied by the values underlying liberal democratic states? While Carens thinks that those values can be defended, he doesn't try to defend them. He assumes that we, his readers, already accept those values.

A puzzle: Why should facts about your birth matter? After all, isn't liberal democracy opposed to the idea that you should have special privileges or status just because of facts about your birth?

- For example, it was pretty important to America's founders not to have a hereditary aristocracy. Hamilton—the star of this year's *On the Same Page*—may have been down with an elected monarchy, but he agreed that had to be an *elected* monarchy.

- And the difference in Wong's rights and Ozawa's rights, due entirely to where they were born, seems pretty arbitrary. Ozawa may well have spent more of his life in the U.S., paid more in taxes, and so on.

Children born to resident citizens:

- If someone grows up in a state and receives social formation there, it is important that she have a right to become a citizen of it.
 - A "fundamental interest in being recognized as a member of the community."
 - Also required by the democratic ideal. "It is a fundamental democratic principle that everyone should be able to participate in shaping the laws by which she is to be governed and in choosing the representatives who actually make the laws, once she has reached an age where she is able to exercise independent agency." So, insofar as voting rights and rights to run for office are reserved to citizens, those who grow up in a country should have a right to become a citizen of it. This is important for a child to be able to look forward to, even if she won't have a vote until she's an adult.
- "When a baby is born to parents who are resident citizens, it is reasonable to expect that she will grow up in that state and receive her social formation there."

Children born to non-resident citizens:

- Parents might return, the child might have other relatives there, and the child will acquire ties to the nation through parents.
- So, a similar, if weaker, case for a right to citizenship.
- Does this presuppose that citizenship must have an ethnic basis? No: "Parentage is only relevant because it is an indicator of the child's social connections to the community."

Children born in the territory to non-citizen residents:

- The only relevant difference is that the fact that the parents are not citizens means that one social connection to the political community is not present.
- So, the claims of children of non-citizen residents are:
 - pretty much *as strong* as the claim of children of resident citizens, and
 - arguably *stronger* than the claims of children of non-resident citizens.
- A different (?) argument: Not giving citizenship to children born to non-citizen residents would mean an inherited caste system.
- But why not limit citizenship to children only of settled immigrants and not also of temporary visitors? Indeed, isn't that what the argument would imply? *Carens*: Yes, in principle, but in practice, in the U.S., the symbolism would be terrible.
- Doesn't this imply *dual citizenship*? Yes, but there is no reason to resist dual citizenship.

Questions:

1. In U.S. law, if Mommy is born abroad to U.S. citizen Grandma, then although Mommy is a U.S. citizen, she cannot herself automatically pass on U.S. citizenship to Baby, if Baby is born abroad. Is this a morally defensible policy, on Carens's view?
2. Carens proposes an account of when someone is, at birth, entitled to citizenship. This account implies that the *ius soli* and *ius sanguinis* accounts are each sort of, but not exactly, right. (Put another way, the group of people entitled at birth to citizenship according to Carens's account partly overlaps with the groups of people entitled by *ius soli* and by *ius sanguinis*.) Explain briefly.