

Rethinking Birthright Citizenship: A Normative Analysis

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Birthright citizenship has long been taken for granted. Although the existing regime of citizenship has been recently challenged from various angles, birthright citizenship remains a blind spot in such rethinking.

However, birthright citizenship situates birth as the primary and natural form of citizenship acquisition. It thus implies that postnatal acquisition of citizenship is an exception and, ultimately, functions as a source of discrimination between native-born citizens and naturalized citizens.

Based on this recognition, this article reconsiders birthright citizenship from a normative perspective. The justificatory arguments for birthright citizenship can be divided into two types: (1) the arguments based on the intrinsic value of birth and (2) those based on its instrumental value. The instrumental arguments vary according to their normative rationale: (a) prevention of statelessness, (b) stability of the intergenerational community, or (c) bestowment in advance. This article shows that none of these arguments is substantive.

For the concrete institutional arrangement, historical and social contexts must be carefully taken into account. Nevertheless, the result of the analysis suggests the possibility of alternative regimes, where each individual remains stateless until the establishment of ties to a certain state, under the condition that their basic rights are secured. This conclusion requires radical re-conception and further theoretical investigation into citizenship.