Example of anchor babies and the 14th amendment research paper

Sociology, Immigration

(Course/Major)

The immigration debate has been tackled and contested in numerous forums and in the media as well. Many of these issues have centered on the factors of illegal immigrants taking job opportunities from Americans to the issue of the possibility that illegal immigrants pose a heavy expense on state and Federal coffers and the possibility even that illegal immigrants contribute to criminality.

More recently, a new angle, or term, has entered the vocabulary of the immigration debate, one that presumes that illegal immigrants have found a new way to claim citizenship in the United States by way of having babies in the United States. In the context of the 14th Amendment, these babies are and should be regarded as " natural born" citizens and not as a means for illegal or undocumented aliens to secure citizenship in the United States. Nevertheless, dogmatists have introduced bills to prevent babies born to illegal aliens from securing American citizenship. Rep. Steve King (R-Iowa), one of the most vocal dogmatists on the issue of immigration, has placed on the House floor that would seek to define these " categories of individuals [who are] born in the United States and citizens of the United States at birth."

In the argument of the Supreme Court, those that are born in the United States, in spite of their parent's immigration situation, must be given citizenship under the tenets of the 14th Amendment. This is where King as well as the 13 cosponsors of the bill, The " Birthright Citizenship Act of 2013", disagree with the advocates of the ' anchor babies' issue. According to King and his group, there is a need to establish a " common sense"

explication to revamp the malfunctional “ citizenship clause” of the Constitution, and the 2013 Birth Right Act, according to King, will fix the problem.

Opponents of the ‘ anchor babies” issue believe that the prevailing practice of giving American citizenship to anchor babies must be stopped as this creates an enticement for illegal immigrants to continue to steam into the United States. To King, the Framers did not factor in the offspring of illegal aliens when they crafted the 14th Amendment since at the time; there was no issue of illegal immigration to speak of. As the Framers did not consider the babies of illegal immigrants into the “ immigration equation”, these could not have incorporated the automatic grant of citizenship to the babies of those who are illegally in the United States (Foley 1).

Under the 1965 Immigration Act, babies that are born to mothers who are undocumented aliens who are within the territorial limits and jurisdiction of the United States are termed as ‘ anchor babies’ or ‘ jackpot babies’; they are termed as such owing to the fact that the children serve as an “ anchor” that will pull the illegal immigrant mother, and in the long run, the family and the relatives of the mother.

When the United States enacted the 14th Amendment, the government did not seek to restrict immigration; hence, if the government did not seek to criminalize illegal immigration when the 14th was passed, there would have been no illegal aliens coming or staying in the United States and the problem of automatic conferment of citizenship on the children of immigrants would have been nonexistent.

The grant of citizenship to children of undocumented aliens is a

contemporary and completely unforeseen consequence of the provision and the Reconstruction era that prevailed when the provision was enacted. Reformist initiatives in the post Civil War era centered on the remediation of the inequities inflicted upon the African Americans at the time. The 14th was adopted in 1868 to safeguard the rights of African American children born in the United States. As recently liberated slaves, these were being denied their rights.

The provision was designed in such a way that state governments would be prohibited from infringing on the rights of African Americans born in the United States up to that time. However, in 1868, the United States did not have an official immigration program and the framers did not see a need to discuss the issue of immigration particularly (14th Amendment 1).

The provision includes a number of clauses such as the guarantee of equal protection, due process and the highly contested citizenship clause. The citizenship provision was incorporated in the immediate wake of the enactment of the 1866 Civil Rights Act to protect the birth right guarantees was given the protection of the Constitution.

This discrimination towards this sector resulted in the adoption of the 1882 Chinese Exclusion Act, prohibiting any immigrant from China from entering the United States. In a case that contested the narrow interpretation of the 14th, Wong Kim Ark, born in California in 1873, left to travel to China but was barred from reentering the United States. Ark took his case to the United States Supreme Court who ruled (6-2) that Ark was a citizen of the United States and was excluded from the scope and application of the Chinese Exclusion Act.

Other cases, such as Perkins v Elg (1939) and Afroyim v Ark (1967) have tackled the particular issues related to the citizenship provision of the 14th, and the Supreme Court has consistently ruled that any child born within the territory of the United States is to be viewed as a legal American citizen. Conservatives have contended that the term “ within the jurisdiction of” cannot be seen to apply to the offspring of illegal immigrants who have illicitly gained entry into the United States.

The Supreme Court, however, resoundingly rejected this position in its ruling in Plyer v Doe (1982). Plyer declared that illegal immigrants who live in a particular state are considered to be “ within the jurisdiction” of the state. In addition, the majority in Plyer ruled that there is no clear, definitive difference in the text of the 14th regarding the term “ jurisdiction’ to define a resident of the United States in the country legally and between one who entered the country illicitly.

However, a number of conservatives point to the fact that world is vastly different from the societal norms in 1868. These contend that the framers could not have anticipated the immigration problem that was to flood the country in the present day, and that the wording of the 14th is not suited to the issues today. However, it can be argued that the framers of the 14th did not design the 14th to preclude the granting of citizenship for the children of the illegal entrants into the country (Nissen 1).

There are those that seek the interpretation of the 14th is to be that an undocumented illegal immigrant mother is subject to the jurisdiction of her native land, and in this case, so is the baby of the illegal alien. This narrow interpretation of the 14th was seen as the gist of the decision of the

Supreme Court in the “ Slaughter house cases” [83 US 36 (1873) and in 112 US 94 (1884)].

In Elk v Wilkins (1884), the terminology “ subject to its jurisdiction” was taken to include “ children of ministers, consuls, and citizens of foreign states within the United States.” Elk discussed the claims of a Native American litigant who was deemed not a citizen of the United States as the law mandated that the claimant to “ not be merely subject in some respect or degree to the jurisdiction of the United States, but to be completely subjected to their political jurisdiction and owing them direct and immediate allegiance.”

Here, the High Court fundamentally stated that the position of the parents of the child determined the citizenship of the baby. If the interpretation of the 14th were to follow the narrow path, then in order to qualify as a citizen, then the parents must renounce their allegiance to their native countries and must give “ direct and immediate allegiance” to the United States and be “ completely subject” to the jurisdiction of the American government. In this light, Congress enacted a law to accord full citizenship rights to Native Americans with the Citizens Act of 1924 (14th Amendment).

In more recent times, Senator Jacob Howard explicitly gave the intent of the 14th in stating that all individuals born in the United States, by virtue of law, are and must be regarded as American citizens. This interpretation of the 14th was further strengthened in the argument put forth by Senator Edward Cowen, in that a foreigner, when in the territory of the United States, is given the protection of the laws of the land, but the person is not regarded as a citizen.

Senator Howard, in proffering his position, used the phrase “ subject to the jurisdiction thereof” in intending to isolate those who, though born in the United States, cannot be given automatic citizenship owing to fears of a lack of allegiance to the United States. Children born to illegal aliens in the United States are believed to have a double standard of loyalty, one to the United States and one to their native land. Here, the fullness of their loyalty to the United States is flawed, thus proves to be a factor for the exclusion of their possibility to gain citizenship (14th Amendment 1).

In the light of recent events of the “ anchor babies” issue, there have been calls to reexamine the scope and intent of the 14th, with some fearing that the amendment protects the rights of the children of illegal immigrants in the United States. South Carolina Senator Lindsey Graham unearthed and exposed a possible new method of illegal aliens to have anchor babies by coming to the United States to come to the United States for the sole purpose of conceiving and having a baby in the United States.

In this manner, the child would serve as an anchor by being granted American citizenship that the parents could then use in availing of American citizenship themselves. Senator Graham and Arizona Senator John McCain formerly advocated for extensive reforms in immigration laws and sought to provide legal avenues to illegal immigrants to acquire citizenship in the United States.

Now, both Graham and McCain, alongside preeminent conservatives such as Arizona Senator John Kyl and Kentucky Senator and Minority Leader Mitch McConnell have aligned themselves with the far right of the political spectrum and have castigated the interpretation of the “ citizenship clause”

of the Constitution. Many critics have argued that the United States is the only country in the West that guarantees the grant of citizenship via birthright. The statement is false; the United States is only among 33 nations that practice the policy of “ jus soli”-the grant of citizenship via one’s birthright.

However, “ anchor babies” have taken another dimension apart from illegal immigration issues; “ birth tourists” and to alleged extremist organization elements. The premise that the United States restructures the 14th is considered as a ploy by the conservative bloc to further infuriate the American public on the issue of immigration comes on the heels of election posturing by all camps in the process.

Though illegal aliens do have children in the United States, accounting for 8 percent of all births in the country, the concerns over illegal immigrants deliberately coming over to the United States, conceive their babies and then leave these, or the controversial “ drop and leave” issue, is more on sowing fear among the public than an actual issue.

Moreover, the United States Supreme Court has consistently addressed the construction of the 14th particularly on the concerns that are being attacked by the conservative bloc. In order for the conservatives to triumph in their objective, the 14th must be amended, or the previous decisions of the Supreme Court on the issue must be rejected, all of them, which presupposes the impossibility of the task of the conservatives. “ Birth tourism” is done when rich foreign tourists travel to the United States, get impregnated at designated American resorts and then give birth so that the child will be automatically given American citizenship.

In the context of extremism, it was declared that terrorist organizations will send pregnant women to the United States and then harvest the benefits of American citizenship for the children. When the children come of age, these will be trained as terrorists, be able to return to the United States, and then conduct terror activities in their adopted country (Nissen 1). Children should never have to be the beneficiaries or the targets of political games. Children should have all the rights to live in a free, safe and healthy setting, and not as collateral damage in these political posturing.

Works Cited

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