

CHARACTERISTICS OF MIGRANTS

The Process of Acquiring Citizenship at Birth in Mexico and the United States

*Jorge A. Bustamante, Guillermina Jasso,
J. Edward Taylor & Paz Trigueros Legarreta*

Citizenship at Birth—United States

At birth, according to U.S. nationality law, a person is either a national of the United States—a person owing permanent allegiance to the United States—or an alien. Most, but not all, nationals of the United States are also citizens of the United States. In general, citizenship may be acquired at birth or through naturalization. There are two main principles that nations use to confer citizenship at birth, *jus soli*—that is, citizenship based on place of birth, and *jus sanguinis*—that is, citizenship based on kinship. While some nations use one or the other principle, the United States follows both principles.

The principle of *jus soli*, a guiding principle of feudalism and of English common law, was codified in the Fourteenth Amendment to the Constitution (1868), which 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.

As the Fourteenth Amendment makes clear, there are two requirements for acquisition of citizenship via *jus soli*: physical birth in the United States and birth subject to the jurisdiction of the United States. Thus, persons born in the United States to diplomatic personnel representing foreign countries do not acquire U.S. citizenship at birth, because diplomatic personnel are not subject to U.S. jurisdiction; and persons born on board foreign-flag ships in U.S. territorial waters do not acquire U.S. citizenship via *jus soli*. Federal legislation has extended citizenship at birth to persons born in most territories and possessions of the United States. For example, the Act of 1952 (66 Stat. 163) grants citizenship to persons born in the Virgin Islands after January 17, 1917, a date one week before the United States purchased the Virgin Islands from Denmark; on the other hand, persons born in the Philippines during the period when it was a Commonwealth of the United States (1898-1946) were nationals but not citizens of the United States.

Under the principle of *jus sanguinis*, the United States grants citizenship at birth to persons born abroad to two U.S. citizen parents and also to persons born abroad to one U.S. citizen parent (and an alien parent), provided that the U.S. citizen parent meets the requirements to transmit citizenship. These requirements—notably physical residence in the United States for a specified number of years during specified periods of the life course—have changed over the years, so that date of birth is a key factor in ascertaining the rules governing acquisition of citizenship at birth for particular individuals. For example, persons born between January 13, 1941, and December 23, 1952, are covered by provisions of the Nationality Act of 1940 (54 Stat. 1137), which stipulates that, in order to transmit citizenship, the U.S. citizen parent must have previously resided in the United States or its outlying possessions for 10 years, at least five of which were after attaining the age of 16.^{1,2}

In the study of migration, citizenship at birth is a fundamental variable of interest. Table 1 reports, in the rightmost column, the actual citizenship at birth of the major categories of persons, by birthplace and parental citizenship. As discussed above, information on birthplace and parental citizenship is not always sufficient for ascertaining citizenship at birth; there are two cases—(i) individual born in the United States to two alien parents, and (ii) individual born abroad to one U.S. citizen parent—in which additional information is needed in order to ascertain citizenship at birth.

Table 1
Citizenship at Birth, by Place of Birth and Parental Citizenship

Place of Birth	Number of U.S. Citizen Parents	Citizenship at Birth
United States	Two	U.S. citizen
United States	One	U.S. citizen
United States	Zero—Born subject to U.S. jurisdiction	U.S. citizen
United States	Zero—Born not subject to U.S. jurisdiction	Alien
Abroad	Two	U.S. citizen
Abroad	One—Requirements to transmit citizenship met	U.S. citizen
Abroad	One—Requirements to transmit citizenship not met	Alien
Abroad	Zero	Alien

NOTES: United States = 50 states, plus outlying territories and possessions to which the United States has extended *jus soli*.

Abroad = Outside the United States.

Nationality at Birth and Citizenship—Mexico

Mexico's law of the land distinguishes between nationality and citizenship. It includes both criteria, *jus soli* and *jus sanguinis* to establish that Mexican nationality is acquired either by birth within the Mexican territory or, regardless of birth place, by being the child of a Mexican father or a Mexican mother or both. Mexican nationality can also be acquired by naturalization. Mexican nationality however, is a necessary but not a sufficient condition to become a Mexican citizen. A Mexican national by birth needs, a) to be 18 years of age or older or, b) in the case of being born in other country of Mexican parents, or being born in Mexico of both parents being citizens of other country, to have expressly and formally resigned being a citizen of any other country, after being 18 years of age. Such a distinction between nationality and citizenship in Mexico has important implications for patrimonial and job-related rights. The basic assumption behind it is that nationality is part of a heritage that an individual cannot erase even if he or she wants to. In this sense it is like the parents one had, the color of one's skin, language first spoken, religion,

etc. Citizenship, in contrast, derives from fundamental rights of any individual to willfully select one's allegiance to a nation and government in association to the residence one wants to have on a permanent basis.

Recent (1996) Mexican legislation reforms have introduced unprecedented modalities to the constitutional definition of nationality. Mexican nationality in the past was considered lost when a Mexican national had acquired another nationality. With the new legislation, not yet formally enacted, Mexican nationality is considered indelible within the Mexican territory, regardless of any other nationalities an individual has acquired. This is the case of a Mexican national who acquires the U.S. nationality/citizenship, who returns to Mexico. As far as the recent reform, such an individual will be considered by the Mexican laws to be as Mexican as when he or she left Mexico. Mexican laws about citizenship however, remain the same. A Mexican national by birth might acquire dual or multiple nationalities without losing his or her original Mexican nationality obtained by either *jus soli* or *jus sanguinis*, when in Mexican territory. However, such an individual cannot have more than one country of citizenship. If such a Mexican national, who has acquired U.S. citizenship, wants to exercise electoral rights in Mexico, he or she has to formally resign the U.S. citizenship before being eligible to exercise any electoral right in Mexico.

Notes

1. Note that citizenship acquired via *jus sanguinis* must be maintained through residence requirements, and these have also changed over the years. For example, under the 1940 Act, the child lost his/her citizenship unless he/she resided in the United States for five consecutive years between the ages of 13 and 21.

2. An interesting sidelight concerns the gender requirement for transmitting citizenship. Until 1934, only U.S. citizen men could transmit citizenship to children born to them and an alien parent. The Act of May 24, 1934 (48 Stat. 797) extended the privilege of transmitting citizenship to U.S. citizen women.