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By soil and blood

Citizenship laws in the world

By Jean-François Mignot

Which countries make it easiest for the children of immigrants to obtain citizenship, and which countries make it the most difficult? This essay gives an overview of birthright citizenship, which may be acquired by soil or by blood and may also include particular conditions or discriminations.

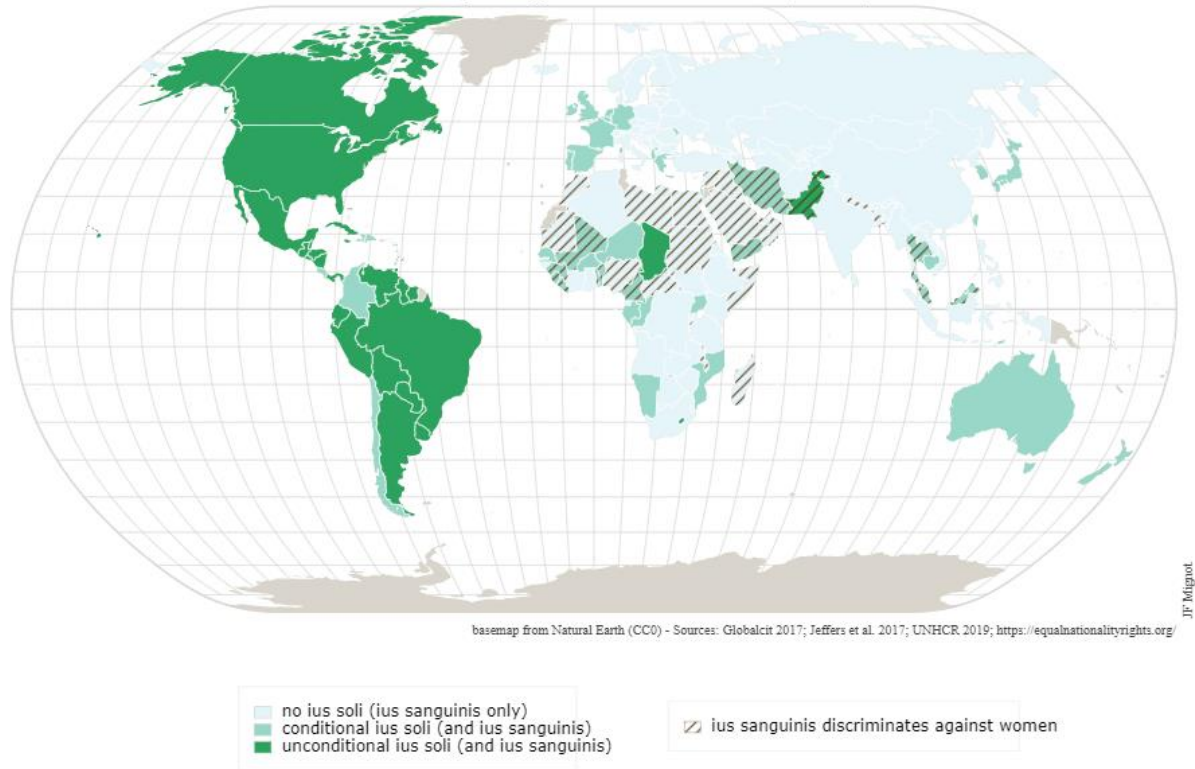
The possibility for the child of an immigrant to acquire the citizenship of the country where he or she was born varies considerably across countries. Which countries are the most legally open and, on the contrary, most closed to the possibility that the children of immigrants, by virtue of their birth on the territory, get access to the civil, political and socio-economic ‘privileges’ (Slama 2003) associated with citizenship? Citizenship may be acquired at birth by soil (*ius soli*) as well as by blood (*ius sanguinis*), the former facilitating the entry of the children of immigrants into citizenship, and the latter restricting it. This article provides an overview of the laws of citizenship acquisition at birth around the world. Citizenship acquisition after birth (i.e. naturalization in the broad sense) and citizenship loss will not be addressed, however, as most individuals acquire their citizenship at birth and retain it throughout their lives (Honohan & Rougier 2008).

As of 1 January 2016, all countries in the world provide for the acquisition of citizenship at birth by *ius sanguinis*, i. e. by descent, at least for the first generation of children born abroad (Globalcit 2017; Jeffers & al. 2017; Honohan & Rougier 2018). On the other hand, less than half of the world's countries (81 out of 177) provide for the acquisition of citizenship at birth by *ius soli*, i.e. by the country of birth. Therefore, the main difference between citizenship laws in the world is the degree to which *ius soli* exists (De Groot & Vonk 2018; Honohan & Rougier 2018). *Ius soli* is not a homogeneous technique, however, and practices vary from 'unconditional' *ius soli*—whereby citizenship is granted to the child from birth and by the mere fact of their birth on the state's territory—to 'conditional' *ius soli*—whereby citizenship is acquired at birth upon the satisfaction of certain conditions related for example to the child's habitual residence. Three main types of citizenship laws emerge, which we report below on the map we have designed:

- ▶ unconditional *ius soli* (and *ius sanguinis*), in dark green;
- ▶ conditional *ius soli* (and *ius sanguinis*), in light green;
- ▶ no *ius soli* (only *ius sanguinis* exists), in very light green.

Finally, the hatched areas indicate the countries whose *ius sanguinis* does not allow women, as much as men, to transmit their citizenship to their children and/or their husbands, which constitutes discrimination against women.

Citizenship acquisition at birth (2016)



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Countries with unconditional *ius soli*: the Americas

Most North, Central and South American countries have had unconditional *ius soli* since the 19th century, meaning that children of foreigners born in these countries ('second generation') acquire the citizenship of their birth country *automatically* at birth (Globalcit 2017). These are the countries whose laws are currently most open to the rapid integration of immigrants' offspring.

Under English *common law*, the United States applied unconditional *ius soli* as a legacy of the colonial period. The 14th amendment adopted in 1868 confirmed in the Constitution the unconditional existence of *ius soli*, in particular to ensure that the States of the South would apply this principle to black slave populations deprived of it until the end of the Civil War (Spiro 2015). Even when the country sought to limit immigration and made the naturalization of foreigners of full age subject to certain ethno-racial criteria (from the adoption of the *Chinese Exclusion Act of 1882*, which

excluded the Chinese from naturalization, to the elimination of the last ethno-racial criterion of naturalization, against the Japanese, in 1952), *ius soli* was retained intact. More recently, President Trump, who accuses this unconditional *ius soli* of attracting too many immigrants, sought to reform it but abandoned the project. Canada has followed a similar path: even when it restricted immigration of non-whites from the early 20th century to 1967, it did not question the unconditional *ius soli*, which was better able to integrate the children of immigrants into the nation, which has been conceived as multicultural since the 1970s (Winter 2015).

Most South American countries and Mexico have also applied unconditional *ius soli* since their independence, with their 19th century constitutions based on the 1812 Spanish Constitution (Acosta 2016). The newly independent countries chose unconditional *ius soli* to attract European immigrants and to populate and promote their territory, while ensuring the loyalty these immigrants' children and trying to put an end to their protection by their parents' country of origin. Most countries in America have retained this unconditional *ius soli* to this day.

The current preponderance of unconditional *ius soli* in the Americas is a transposition of European principles and, as a whole, dates back to the 19th century, a period during which this continent, massively depopulated by the demographic catastrophe caused by European colonization, was seeking to attract immigrants (Spiro 2015; Acosta 2016). Even in periods when they have restricted immigration, most of these countries have not waived the unconditional *ius soli*, designed to quickly integrate the children of immigrants into the countries where they were born and destined to live.

Countries with conditional *ius soli*: Western Europe and Oceania

In Western Europe and Oceania (Australia and New Zealand), *ius soli* is not open unconditionally to foreigners' children (Globalcit 2017). In order to be able to acquire the citizenship of their birth country at birth, the children ('second generation') or even the grandchildren of immigrants ('third generation') must meet certain

conditions: their parents must have lived in the country for a minimum period, they must live there permanently, etc.

In some countries such as the United Kingdom or Germany, *ius soli* is open to the second generation under certain conditions (De Groot and Vonk 2018). But various historical paths have led to this type of citizenship law. In the United Kingdom, the *common law* that emerged from the medieval period—before influencing most of the British Empire - included an unconditional *ius soli*, according to which anyone born on British soil was born a subject of the king. More recently, however, the United Kingdom has adopted conditional *ius soli* (1983). In contrast, in Germany from the end of the 19th century onwards, *ius sanguinis* prevailed, inspired by the French model transmitted through Prussian legislation (Weil 2005), and in order to prevent the descendants of the Polish minority in German territory from acquiring German citizenship (Gosewinkel 2008, p. 8). But Germany, which became an immigration country at the end of the 20th century, abandoned its exclusive *ius sanguinis* in favor of a conditional *ius soli* (2000).

In other countries such as France, *ius soli* is open to the third generation without conditions (Weil 2005). Since 1851, children born in France to at least one parent born in France are born French ('double *ius soli*'). As for children born in France to foreign parents born abroad, since the 1804 Civil Code, they become French when they reach the age of majority, subject to certain conditions of residence ('simple postponed *ius soli*'). These mechanisms are in line with the French tradition in favor of *ius soli*, which dates back at least to the Ancient Régime (Sahlins 2004). Moreover, these mechanisms served a pragmatic goal: the descendants of immigrants, second and, later, third generation, born and raised under the same conditions as any Frenchman, should not oppose their status as foreigners when called up for duty—a common practice in an era when military service was both long and dangerous. Double *ius soli* was also applied in the Ottoman Empire (1869) and in some Arab countries (Egypt, Transjordan) at the beginning of the 20th century (Parolin 2009). Double *ius soli* has finally been applied in several former French colonies, where it has sometimes been preserved to this day, whether in Central Africa (Gabon) or West Africa (Senegal, Niger, Burkina Faso, Benin, Cameroon) (De Groot and Vonk 2018).

Countries without *ius soli*: most of Eurasia and Africa

In most countries in Asia, Central and Eastern Europe and Africa, the lack of *ius soli* (except possibly for foundlings) and the exclusive nature of *ius sanguinis* prevent the children of foreigners from acquiring the citizenship of their birth country at birth (Globalcit 2017). The absence of *ius soli* reveals a more 'ethnic' conception of citizenship, whether linguistic, religious or cultural in nature.

In China, the exclusive *ius sanguinis* has prevailed since the Qing dynasty (1644-1911) (Low 2016). As a country of emigration rather than immigration, China has not had to integrate descendants of immigrants. On the other hand, *ius sanguinis* allows the Chinese State to consider that children of the Chinese diaspora are born Chinese, in order to protect not only their ability to 'return' to live in China, but also a certain form of loyalty to their country of origin rather than an integration into the political community of their country of birth and residence (Low 2016).

In the Persian Gulf (Saudi Arabia, Oman, United Arab Emirates, Qatar, Bahrain, Kuwait), the sudden enrichment since the 1970s has been accompanied by an increasingly complete closure of foreigners' access to citizenship. Today, foreigners may constitute the majority of most of these countries, but neither they nor their children can acquire citizenship (Albarazi 2017). This policy of restricting access to citizenship is such that the United Arab Emirates did not hesitate to buy passports in the Comoros for the stateless population of the *bidoon*, although they have resided in the Emirates for several generations (Abrahamian 2015). This policy may be criticized because it does not aim to address the problem of statelessness by granting the citizenship of the country of residence, where citizenship is relevant, because it extends the rights of the persons concerned. Rather, it involves the purely instrumental purchase of a foreign citizenship which at best provides only a form of administrative security by stabilizing the proof of civil status.

Countries whose *ius sanguinis* discriminates against women

Of the 203 states in the world in 2019, 42 do not allow women as much as men to transmit their citizenship to their children and/or foreign spouses (countries hatched on the map) (UNHCR 2019; Global Campaign For Equal Nationality Rights). In these countries, *ius sanguinis* applies only through the father (*ius sanguinis a patre*), i.e. citizenship is transmitted in a patrilineal manner (Parolin 2009). Or *ius sanguinis* applies through the mother (*a matre*) only under certain conditions restrictive for women. For example, some countries allow women to transmit their citizenship to their child only if the child was born out of wedlock, to prevent him or her from becoming stateless. But in these countries, it is usually the head of the family - the man - who determines the citizenship of the children.

The laws of Latin American countries allowed both women and men to transmit their citizenship as early as the 19th century (Acosta 2016), and North American countries and some European countries have allowed it since the first half of the 20th century (Spiro 2015; Guerry 2016). However, most countries have maintained discrimination against women until the 1970s (Lepoutre 2019). The situation has changed considerably since then, following the adoption by the United Nations General Assembly of the *Convention on the Elimination of All Forms of Discrimination against Women* (1979), which was signed and ratified by most states.

As the map above shows, countries that still discriminate against women in their citizenship laws are now concentrated in the Muslim world, whether they are Arab (from Morocco to Iraq via Egypt) (Parolin 2009) or located in sub-Saharan Africa (Mali, Nigeria, Somalia), West or South Asia (Iran, Pakistan, Bangladesh) and as far as Southeast Asia (Malaysia). Specifically, if we examine the presence of such discrimination by country in 2019 (UNHCR 2019; Global Campaign For Equal Nationality Rights) by majority religion in 2020 (Pew 2015), it appears that 53% of Muslim-majority countries discriminate against women, against 10% of other countries. These Muslim-majority countries generally express the attitudes and values most unfavorable to equal rights between women and men—and they do so consistently across birth cohorts (Inglehart and Norris 2011)—so that since the 1970s they have been relatively slow to eliminate discrimination on the grounds of sex, both in terms of citizenship laws and family laws. However, this does not apply to Indonesia, Turkey and the Turkish-speaking countries of Central Asia. On the other

hand, some countries— such as Madagascar, Nepal or Thailand—with a Christian, Hindu or Buddhist majority also retain these discriminations.

The *Global Campaign for Equal Nationality Rights*, led by members of civil society, NGOs, UN agencies and states, aims to abolish the remaining gender discrimination in citizenship laws. The objective is not only to establish equal rights for women and men, but also to reduce the risk of statelessness. The impossibility for a woman to transmit her citizenship to her child exposes the latter to the risk of being born and remaining stateless in cases where he or she cannot acquire the father's citizenship (UNHCR 2019). This may happen, for example, if the father is himself stateless or if he cannot transmit his citizenship to his child born abroad, if he is unknown or unmarried with the mother at the time of birth, or if he has abandoned his family. Gender equality and the fight against statelessness therefore combine and reinforce each other.

Conclusion

The world map of citizenship acquisition by soil and blood finally shows four large and relatively compact geographical areas, which can be considered as cultural areas:

- ▶ the Americas, with an unconditional *ius soli* that facilitates the integration of the children of immigrants;
- ▶ Western Europe and Oceania, with conditional *ius soli*;
- ▶ Eastern Europe, Asia and Africa, without *ius soli* and relatively closed to the integration of the descendants of immigrants;
- ▶ the Muslim world, where women cannot transmit their citizenship as men do.

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