

Blood, Soil, and Tears

Conceptual Metaphor-based Critical Discourse Analysis of the Legal Debate on US Citizenship

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The Fourteenth Amendment to the US Constitution grants citizenship to every child born on US soil. While most Americans think this 150 year old formulation is permanent, it is actually open to change. We explore the legal debate over the current formulation of US citizenship. Using the research design of the exemplar case study, we undertake a conceptual metaphor-based critical discourse analysis of three contending contemporary legal stances regarding US citizenship. In the light of four current court cases, some legal theorists argue that the formulation is both undemocratic and inadequate, and should be amended to address 21st century national concerns. Others argue to retain the current formulation in spite of these concerns. Our study reveals that the rival stances are argued in terms of irreconcilable conceptual metaphors, and each legal stance in itself is deficient to address these current concerns.

Keywords: citizenship, conceptual metaphor, critical discourse analysis, legal discourse

1. Introduction and background

Citizenship is “the right to have rights.” Hannah Arendt’s (1958, 299) life as a refugee and stateless person led her to argue that citizenship is the one true human right, and is the basis for other national and international rights, such as the right to live and work in a nation, the right to a State’s assistance, and its legal protection. It is also the individual’s thin line of defense against arbitrary State actions. This precept of nationhood and personhood has been fought on the battlefields and in the courts. Today, the political issues created by war, globalization and terrorism

now are forcing many nations to reconsider this fundamental entitlement. In light of four specific 21st century concerns, we will review current legal arguments regarding changing the formulation of US citizenship with an inductive, conceptual metaphor-based critical discourse analysis of exemplar documents of three legal stances.

Although the US Declaration of Independence proclaims that everyone is created equal and possesses “certain unalienable rights,” this is an illusion. In fact, the US government defines and enforces the most basic of all rights. At the nation’s founding, US citizenship was based on so-called ‘birthright citizenship’, which has its roots in the English Common Law concept of *jus soli*, ‘law of the soil’. This contrasts with the *jus sanguinis* or ‘law of blood’ basis, namely by family lineage (Ngai 2007, 2527).

When the US Constitution was ratified in 1788, however, the only fully entitled citizens were property-owning White men.¹ Since then the exact formulation of birthright citizenship has been contested by conservatives who want to tighten the provisions, and progressives who want to expand them. One sharp restriction came sixty-eight years later in the *Dred Scott* decision, when the US Supreme Court ruled that formerly enslaved African Americans born on US soil were not entitled to US citizenship upon emancipation (*Dred Scott v. Sandford*, 1857). The repugnant phrasing of the *Dred Scott* opinion stated that African Americans were an “inferior class of beings” who were “not people of the United States.” This decision contributed to the Civil War, which took 850,000 lives (Finkelman 2007; Hacker 2011). Consequently, in 1868 during the post-Civil War era, US Congress secured full citizenship for African Americans by authorizing the 14th Amendment to the US Constitution, which among other things nullified *Dred Scott* and constitutionalized a version of *jus soli*. The Citizenship Clause, which is the first sentence of the first section of the Fourteenth Amendment, states:

- (1) 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. (US Constitution, Amendment XIV, 1868, §1)

At the time of its enactment the 14th Amendment did not apply to American Indians, who Anglo Americans believed maintained allegiance to their indigenous communities. But their exclusion was triggered by more than tribal affiliation. In

1. “Are we alien because we are women?” In 1838 abolitionist Angelina Grimke condensed into a single question US women’s struggle to purge the patriarchal character of US citizenship (Kerber 1992: 370). In this article we will not discuss features of US citizenship that equated women with children, denied them the vote, and sustained other debasing traditions such as coverture, only because the law articles on US citizenship we reviewed did not address gender issues.

the 1884 the Supreme Court denied US citizenship to an individual Indian who had freely “severed his tribal relations to the tribes, and had fully and completely surrendered himself to the jurisdiction of the United States.” The Court opinion included the following provision:

- (2) To be a citizen of the United States is a political privilege that no one, not born to, can assume without its consent in some form.

(*Elk v. Wilkins*, 1884, 109)

Thus, the US government simply chose to exclude American Indians – on grounds other than *jus soli*.

Two years earlier another restrictive turn was taken when a conservative US Congress passed the Chinese Exclusion Act. This Act ended Chinese immigration and barred Chinese from becoming US citizens. This was the first law targeting a particular ethnic group, and it spawned other anti-ethnic group statutes. The restrictions on the Chinese were not fully repealed until 1943. In contrast to these restrictive actions, the Supreme Court reversed its trajectory and expanded citizenship with the 1898 *United States v. Wong Kim Ark* case. A divided Court held that the Chinese Exclusion Act did not stop a San Francisco-born child of Chinese parents from becoming a citizen of the United States at birth, by virtue of the 14th Amendment to the US Constitution (*Wong Kim Ark*, 1898).

- (3) The language employed in the 14th amendment is unqualified in its scope... By the language “citizens of the United States” was meant all such citizens, and by “any person” was meant all persons within the jurisdiction of the State. ...No distinction is intimated on account of race or color. ...The protection...intended to...embrace equally all races, classes and conditions of men.

(*Wong Kim Ark*, 1898, 678)

However expansively the 14th Amendment was proclaimed, at the time of the *Wong Kim Ark* decision the amendment still did not apply to US-born children of Japanese parents, American Indians, and several other groups of US-born residents. Even in 2016, while in principle every child born on US soil is granted US citizenship, exceptions remain.

Today this 150 year old formulation of US citizenship is criticized on four counts. The first is the aforementioned inconsistent allotment of citizenship. In 2015 a lawsuit pending before the US Court of Appeals, some American Samoans argued that they should be US citizens because they are born in American Samoa, a US territory. The second concern is a business abuse of birthright citizenship that exploits the material advantages of being related to a US citizen. The unscrupulous ‘maternity tourism’ industry profits enormously by inviting pregnant foreign nationals to the US to give birth on US soil. A 2015 news report noted that

one company advertised that it has served 4,000 Chinese mothers at the price of \$50,000 per baby (Kim & Shyong 2015).

The third concern gets the most media attention. This is the automatic citizenship that has been granted to approximately 4.5 million US-born children (Passel & Lopez 2012) of the twelve million unauthorized immigrants whose presence is “not only without the government’s consent but in violation of its law” (Graglia 2009, 10).² The parents of these children are subject to the State’s persecution, not for heinous crimes, but for seeking a better life for their children.

The fourth concern involves *jus soli* US citizenship, which automatically grants lifetime entitlements, whether or not a newborn spends another day in the country. Discussions regarding terrorism in the wake of 9/11 have centered on so-called home-grown terrorists, namely alienated youth raised in the US who are drawn to calls for the annihilation of the US. However, the case of Yaser Esam Hamdi reveals the fourth liability of the US citizenship status-quo. In 2001 US military forces captured Mr. Hamdi fighting alongside the Taliban in Afghanistan. Originally he was considered a foreign national “enemy combatant” who was raised in Saudi Arabia. However, Hamdi was born in Louisiana, and in spite of his avowed abhorrence toward the US, he was entitled to treatment as a US citizen. The claim that US interests are served with automatic citizenship allotment can be questioned when the nation cannot prevent transient foreign nationals intent on harming the US from giving birth to infants who are instantly fully vested as US citizens, and who as adults can freely return to the US to wage war against other US citizens.

Thus this article offers a critical discourse analysis of three recent US legal articles regarding US citizenship and how they would address these four contemporary concerns, since the US Supreme Court may well consider these issues in the coming years. Before undertaking the analysis, we offer a précis of the theoretical foundations of our formulation of critical discourse analysis.

2. Conceptual Metaphor Theory

To ground our empirical work on language use, we ascribe to Conceptual Metaphor Theory (Gibbs 2013). Conceptual metaphor theory is a coherent and productive

2. In 2014 the US immigrant population accounted for about 13% of the 319 million US population. The 81 million immigrants in the US and their US-born children constituted 26% of the overall US population. In this year 17.5 million children lived with at least one immigrant parent accounting for about 25% of all underage children. US citizen under the age of 18 who were born to a foreign-born parent accounted for 88% of the 15.4 million children with immigrant parents (Zong & Batalova 2016).

thirty year old scientific enterprise encompassing cognitive science, experimental psychology, experimental social psychology, computational modeling, linguistics, and related fields that addresses fundamental queries about the relations among cognition, language, communication, and social structure. Conceptual metaphor theory makes broad claims, beginning with the idea that conceptual metaphor has a privileged position in the structure of human thinking. Conceptual metaphor, along with other cognitive structures which derive from our embodied experience, are used to make sense of our environment. The findings of conceptual metaphor investigators demonstrate the pervasiveness of metaphorical guidance for cultural, social, and ideological thinking (See Perrez & Reuchamps 2015). It is an outgrowth of the longstanding philosophical view that language gives structure to humankind's worldview.

Conceptual metaphor theory argues that metaphor suffuses language as well as nonlinguistic human expression. The theory provides an account of how metaphorical concepts create semantic relationships that govern wide ranges of human thought. Conceptual metaphor theory has generated many studies that now demonstrate that people reason and do not merely speak using conceptual metaphor. In language, it encompasses studies of conventional linguistic expressions, lexical generalizations, the historical change of language, language acquisition, and psycholinguistic studies (Landau et al. 2013). Beyond language, this theory has guided research in human physical gestures, affective responses to non-linguistic metaphors that seem to motivate people's social behavior, and neural-computational models of the mind. Its methods include standard linguistic analysis, large-scale language corpora studies, as well as psychological experiments, some using electrodes and eye movement and millisecond measuring tools, and computational modeling.

For centuries people have speculated about the relationship of metaphor to human thought (Gibbs 1994). Many thinkers have made the observation that language provides the images that guide how we understand reality. The intellectual origin of the 20th century linguistic turn in social theory can be traced back to the 19th century German thinkers, Gottlob Frege and Wilhem von Humboldt. While metaphor has been studied for two millennia, the linguistic turn led us to reconsider cognitive linguistic modeling. Lakoff and Johnson (1980) broke open the field with a new way to think about metaphor – namely that humans use our biological experience to make analogical sense of our experience.

A metaphor is a cognitive relationship, a mapping between two semantic domains: Source X \rightarrow Target Y. Humans tend to use the better understood properties of a source domain to think about a target domain. Speakers typically do not attend to the metaphors they use everyday. However, conceptual metaphor scholarship confirmed in numerous studies the foundational place of conceptual

metaphor in everyday and professional discourses (summarized in Landau et al. 2013). By predisposition and dint of use people naturalize these semantic mappings we call conceptual metaphors – both in their everyday language and their professional practices – and hence configure their understanding of their world in terms of these constitutive metaphors.

All the sciences rely on conceptual metaphors. The histories of the physical, natural and social sciences are all based on a succession of conceptual metaphors that have been sequentially replaced by more observationally adequate conceptual metaphors. One possibly familiar example is the increasingly obsolete MIND AS COMPUTER metaphor. This metaphor was preceded by the MIND AS ANIMATE BEING metaphor (Van Besien 1989, 11–19) which arose in the recent decades in psychology. In fact, John Searle notes that thinkers across history have appealed to the “latest technological device” to conceptualize the brain. Thus in Searle’s own youth, the brain was describe as a telephone. Much earlier some referred to the brain as a telegraph. Searle states that a British neurobiologist metaphorized the brain as a Jacquard Loom, which was the first automatic weaving machine able to produce highly intricate patterns. Also in the 18th century we can find a more general form of this metaphor, namely MIND AS MACHINE, prompted by Julien Offray de La Mettrie’s influential book entitled *L’homme Machine* ‘The Machine Man’ (Gardner 1996, xviii.) Leibniz’s metaphor was the mill, the most complicated technology of the 17th century. Searle even notes that ancient Greeks described the workings of the brain as a catapult (Searle 1992).

3. Metaphor in Legal Thinking

Conceptual metaphors also underlie the functioning of social institutions, such as the judicial system. Legal and political theorist Stephen Winter argued that legal thinking is profoundly metaphorical. For example, he noted that the First Amendment is conceptualized in terms of metaphors. In the 18th century the notion of truth was conceptualized in terms of the “free flow of ideas,” a streaming source metaphor that emphasized progress toward a single essential truth. This metaphor guided the jurisprudence of the time; taxes on newspapers were considered an unconstitutional infringement of the free flow of ideas. This changed in the 20th century when Oliver Wendell Holmes promulgated the “marketplace of ideas” metaphor of free speech, which led to a significantly different jurisprudence regarding the First Amendment, such as permitting taxes on newspapers (Winter 1988; 1989; 1990). In 2008 Robert Tsai published an analysis of the “First Amendment culture” of the US. Using a version of conceptual metaphor theory, he traced how the US Supreme Court discourse on “freedom of speech” became the

cultural practice of US citizenry. More recently still, Keith Cunningham-Parmeter (2011) insightfully undertook a conceptual metaphor-based critical discourse analysis to expose the demeaning ways US Supreme Court Justices have conceptualized immigrants, and following conceptual metaphor theory, how the metaphors they use guided their legal opinion regarding immigrants.

Citizenship has been the subject of sustained political debate since the establishment of the United States. In the second decade of the 21st century, this debate has kindled the four aforementioned legal challenges to the current formulation of US citizenship. As a key feature of nationhood, US citizenship has amassed an immense body of case law going back to the 14th century reign of Edward III, from which contending legal theorists draw their various interpretations. We cannot undertake a comprehensive critical discourse analysis of this major segment of US jurisprudence and its resultant political actions. Instead, we offer a preliminary exploration of the legal discourse of the three key contemporary US legal positions regarding US citizenship.

We will employ case study research design, comparing three rival theorists who each have an exemplar law journal article on US citizenship. We will track their use of metaphors regarding immigration in the articles, since following the premises of conceptual metaphor theory, the conceptual metaphors that each theorist uses to argue his or her legal stance will constitute major aspects of his or her conceptualization of the law. We want to underscore that critical discourse analysis does not mirror legal reasoning, or in any way supplants legal argumentation. Rather, our analysis extracts and displays the guiding metaphors that are the basis of legal argumentation. By comparing rival sets of metaphors, stripped of obscuring legal armature and conventions, we may be able to compare the fundamental differences of these three contending legal views of US citizenship.

The next section exemplifies our empirical method as we discuss our findings of the first legal stance regarding citizenship. We used the same method to discern the guiding metaphors of the other two legal stances.

4. Our Critical Discourse Analytic Method

The US legal system employs a formal adversarial contest between a plaintiff and defendant. Rival attorneys propose their best interpretation of the agreed upon facts of the case. The judge renders her verdict in keeping with what she considers the better interpretation of the law that sustains her views of law and society. All these interpretations are made in terms of metaphors.

To study contemporary contending US legal views on citizenship, we might have studied the recorded discourse of a single case as it worked its way through

different stages of litigation. Such discourse would be generated in an adversarial courtroom setting and would provide vivid metaphor expression. But selecting the optimum case would be tricky. Since the use of critical discourse analysis on legal discourse is relatively novel, we chose to conduct our case study analysis on law journal articles that exemplify the major contemporary legal stances on citizenship. We selected three frequently cited law journal articles, as indicated by Scholar Google and other metrics, beginning with one that took what the popular media call politically conservative point of view. This stance on citizenship is referred to as “consensualist” in legal circles. Our first case study is on Lino Graglia’s very highly cited 2009 law journal article on US citizenship that took a consensualist stance, and called for a principled change from the current “mistaken” formulation. For our second case study, we selected a highly cited law journal article by Matthew Ing (2011) that contested the consensualist stance taken by Graglia and others. Ing offered a status-quo defense of US citizenship that is commonly found in many law articles. Finally, we selected a law review article written by the renown US citizenship historian, Mae Ngai, who provided an illuminating historical critique of both the status-quo and consensualist stances on citizenship.

With each article, we undertook an inductive process that is explicit, systematic and can be replicated, not a deductive one. This is consistent with large corpus studies of metaphor-based critical discourse analysis. Space limitations preclude a full discussion of the empirical study of metaphor in discourse. The traditional challenges revolve around the relationship of language to thought, the real time processing and long term mapping of form to concept, the relationship among different instantiations of a single metaphor, and dealing with alternative interpretations of any metaphor. Over thirty years these have been addressed with increasingly sophisticated methods to achieve high levels of scientific validity and replicability. Gerald Steen, among others, has developed methods for various sized corpora that consider metaphor as a concept, a feature of language, and as communication (Steen et al. 2010, 760). We adhere to the basic methodological principles of the Pragglejaz group (2007), of which Steen was a member, adapting them to our project. They address the aforementioned problems by reading the whole text document for general understanding, then locating metaphor tokens in the text, and establishing the meaning for each token in context from the full range of contemporary meanings. Steen demonstrated that we are justified to study metaphors by looking at form alone, if we adhere to these well-tested and replicable methods.

We did not begin with a particular thesis about US citizenship. Instead, we used the premise that text instances of conceptual metaphors, or “tokens,” can be located in law journal articles. When compiled and organized into a coherent order, the tokens can reveal internally self-consistent concept constellations that compose the legal perspective of the author. In the first phase of our work, multiple

independent readings of the same text was the goal. In this phase our team of six original readers worked in groups of two to read and code each article. Each group of two independently read it to familiarize themselves with the text. Each group of two readers then worked on their own as they began the painstaking process of reading for metaphor tokens located in the text, which required reading simultaneously for linguistic form and semantic content. They focused on the metaphors most relevant to citizenship. As they worked through the article, the groups also independently recorded each token in a database with sufficient context so that its description in terms of source and target semantic domain could be independently confirmed and its contemporary meaning established. When each team had completed locating and initially coding all the tokens of one article, then the second phase began. In this phase, all six readers met together to settle on a consensus labeling of the source and target semantic domains for each token. A single final database was created with a consensus coding of semantic domains. For example, in the first phase of the work, for a given token in the law article, such as the word *foreigner*, one team of readers might have chosen to label the target domain FOREIGNER, while another might have independently labeled the target domain of the same token ALIEN. In the consensus phase, in the total context of the exemplar article, all the readers would work to come to a consensus, for example, to relabel all the closely associated tokens with the target domain ALIEN, with the objective to make as clear as possible the full set of semantic patterns of all the metaphors in the exemplar article. The six readers repeatedly sorted and gently systematized the database of tokens and metaphor sources and target domains of the article, arriving at the three tables presented in this article. For more detailed descriptions of our method, please refer to (Santa Ana et al., 2007).³ The critical discursive study of US legal discourse is not sufficiently advanced to undertake a discourse-historical approach, so we designed an exploratory study of three well-attested

3. An anonymous JLP reviewer asked a related question: why we chose to collapse three actual tokens (e.g. *citizens*, *voter*, *countryman*) of a single exemplar article into one target semantic domain, CITIZEN, rather than preserve and display the entailments of each token. If we had undertaken a large-scale critical discourse analysis of a broad swath of US case law, then such a move would be appropriate. Such a project would involve gathering more text of distinct genres across a selected time depth, from which we would extract many more conceptual metaphor tokens. From their analysis, a more detailed schematic map of the associated semantic domains would have emerged. Such a broad based cross-genre approach is consistent with the discourse-historical approach – although conceptual metaphor is not the privileged linguistic datum of that approach. Moreover, beyond gathering wide arrays of data across time and space, the discourse-historical approach employs abductive analysis, moving between theory and empirical data, since intertextuality and interdiscursivity among a wide set of different sources and genres is paramount in this approach (Wodak 2002b: 67–70).

contemporary legal stances toward US citizenship. For each stance, we have chosen an exemplar article. To better discern the conceptual distinctiveness of each exemplar, we considered each exemplar as a separate discursive universe. We do so fully cognizant that each of our selected documents in reality are elements of a single large “field of action” (Wodak 2002a, 70), namely the field of socio-discursive action of US jurisprudence on citizenship. To this end, we located all the metaphor tokens in each article that pertained to citizenship. We began inductively, with no expectation about the language used in the exemplar to discuss US citizenship, other than many legal scholars had cited the article as a key text that presented a particular stance on citizenship. For each token we located we considered the semantic associations and entailments that clustered in the exemplar. In the case of the three tokens (i.e. *citizens*, *voter*, *countryman*), our inductive method of the language patterns in an article led us to cluster them into the single target semantic domain, CITIZEN. This can be noted in the three summary tables that present the guiding metaphors of each article. The three tables do not display the same target semantic domains, only those that are revealed in the patterns of language use of each article. In sum, we designed our inductive method to preserve and reveal the distinctiveness of each exemplar law journal article, in order to explore the legal discourse on a topic of jurisprudence, in this case, US citizenship.

5. Case study: the Consensualist view of US Citizenship

In the case of Graglia’s law review article, which is 4,871 words long, we located 114 tokens of six key conceptual metaphors pertaining to citizenship. These six metaphors are by no means all the metaphors that our inductive analysis turned up. Given space restrictions, we will not describe other constituent metaphors, such as those constituting IMMIGRANT, which we find to be similar in other discursive domains of contemporary US public discourse (Santa Ana et al., 2010).⁴ We provide a tabular summary of the metaphors that constitute the most germane features of Graglia’s discussion on citizenship in Table 1.

Graglia’s argument for his consensualist brand of citizenship is composed of a set of themes, each with its guiding metaphor. These include, (1) what comprises the US as nation, US AS DEMOCRACY; (2) how the nation is governed, LAW AS CITIZENS’ COMMAND, i.e. as determined by the citizens’ representatives, the US

4. Orthographic conventions: We employ the scholarly conventions of conceptual metaphor theory: SMALL CAPS indicate conceptual metaphors; *italics* in the body of the article signal metaphor instantiations that appear in legal documents. Finally, we set in **bold** the metaphor instantiations in the numbered excerpts.

Congress. (3) The next guiding metaphor defines what citizenship is, CITIZENSHIP AS MARK, which is to say an entitlement marked as writing on parchment. Then (4–6) there are three characteristics or criteria for individuals who can be citizens, ELIGIBILITY AS US-BORN, i.e. *jus soli*; ELIGIBILITY AS SUBMISSIVE to the laws of the US; and ELIGIBILITY AS CONSENT OF GOVERNMENT. Thus, for Graglia, the US Congress has ultimate authority to decide who shall be a citizen. In his law journal article Graglia rehearsed a courtroom argument. His overarching objective was to convince the readership that the status-quo citizenship formulation fails on several counts and the Supreme Court should replace it with what he believes is a superior formulation.

Table 1. Consensualists' guiding metaphors of US citizenship

METAPHOR, <i>text examples</i>	count
US AS DEMOCRACY, i.e. consent of governed	2
LAW AS CITIZENS' COMMAND, i.e. Congress, <i>authority to enact, establish</i>	15
CITIZENSHIP AS MARK, <i>reward, a grant, entitled</i>	13
ELIGIBILITY AS US-BORN, <i>birthright</i>	29
ELIGIBILITY AS SUBMISSIVE, <i>subject to jurisdiction, allegiance</i>	30
ELIGIBILITY AS CONSENT OF GOVERNMENT, <i>consent, exclude, to grant</i>	25

Source: Graglia (2009), 4,871 words total, 114 guiding metaphors

Metaphors are analogies. Our review of all the pertinent metaphors guiding Graglia's discussion of citizenship revealed what we call his 'leading analogy,' namely the fundamental organizing principle that he expressed via conceptual metaphors. Graglia's leading analogy was US AS DEMOCRACY. Please note that this analogy by no means constitutes the reality of the nation. Instead, it is the fundamental tenet that Graglia believed all legal judgments regarding citizenship should follow. Graglia contrasted his leading analogy with his representation of the stance of legal scholars who advocate the status-quo formulation of citizenship. He argued that the status-quo stance is an outmoded view that the US functions as a feudal kingdom. To this point Graglia (2009, 10) quoted Schuck and Smith (1985), who say that birthright citizenship "is something of a bastard concept in American ideology [that] originated as a distinctively feudal status intimately linked to medieval notions of sovereignty..."

Conceptual metaphors are commonly used patterns of inference. They are a part of the conceptual system shared in large part by speakers of the English language and encoded in part in the ways Americans use the English language. Conceptual metaphors of a given topic tend to organize themselves into constellations of concepts that the critical discourse analyst can present in various ways,

such as in schematics, cloud maps, or as a narrative (Lakoff & Johnson 1980). We will use the narrative format to present our interpretation of the constellation of concepts that the exemplar text provides. However, please note that each narrative is our attempt to capture the themes put forth in the article in terms of the exemplar's metaphors. Each narrative is consonant with the metaphors of the article, and the three narratives are not stylistically consistent. Below we offer a narrative that encapsulates the conceptual metaphors of Graglia's view of US citizenship:

- Consensualist Narrative:
- American revolutionaries liberated themselves from the arbitrary rule of the English king, and became free citizens of a country that they govern. As citizens, they abide by laws that they create, hence they consent to democratic governance. US citizenship should be consistent with the democratic principle and defined in terms of consent between two parties, like a handshake between an adult individual and the State, which is the US citizenry.

Today's consensualist legal theorists argue that the traditional citizenship distinction, *jus soli* versus *jus sanguinis*, should be discarded in favor of a more fundamental contrast, CITIZENSHIP AS CONSENT versus CITIZENSHIP AS INSCRIPTION (Schuck & Smith 1985). The consensualists' narrative is that the American revolutionaries of 1776 renounced their servility to King George III when they declared themselves free citizens who govern their own nation. The consensualists' leading analogy is that the US is a democracy, hence to be true to our nation's heritage, US citizenship should be formulated in terms of this revolutionary principle. In contrast, the status-quo formulation of US citizenship, which automatically grants citizenship to infants born on US soil, is a vestige of English Common Law. A few examples of Graglia's metaphors follow:

- US AS DEMOCRACY, i.e. consent of governed
- (4) Constitutional restrictions on policy choices should not be favored in a **democratic** society. New restrictions should not be created and existing ones should not be expanded. (Graglia 2009, 13)
 - (5) The Court was mistaken in interpreting the Citizenship Clause on the basis of the common law ascriptive view, which arose in the feudal context of the position of subjects in a monarchy... The American Revolution, however, by definition, rejected the notion of perpetual allegiance. (10)
- LAW AS CITIZENS' COMMAND, i.e. Congress, *authority to enact, establish*
- (6) Congress has the **power** "to define the contours of birthright citizenship." "If Congress should **conclude** that the prospective **denial** of birthright citizenship to the children of illegal aliens" is good policy, then "the

Constitution should not be interpreted in a way that impedes that effort.”
(12, citations removed)

CITIZENSHIP AS MARK, *reward, a grant, entitled*

- (7) “Congress should rethink ...**awarding citizenship** to everyone born in the United States ...including the children of illegal immigrants whose sole motive in immigrating was to **confer** US citizenship on their as yet unborn children.” (12–13, quoting a judge, citations elided)
- (8) American law...provides an enormous inducement to illegal immigration, namely, an automatic **grant** of American citizenship to the children of illegal immigrants born in this country. (2)

ELIGIBILITY AS US-BORN, *birthright*

- (9) “...**birthright** citizenship’s historical and philosophical origins,” [Schuck and Smith] argued, “make it strikingly anomalous as a key constitutive element of a liberal political system.” (12, citation removed)

ELIGIBILITY AS SUBMISSIVE, *subject to jurisdiction*

- (10) [In the 1866 Civil Rights Act] the phrase “and not **subject** to any foreign power” seems clearly to exclude children of resident aliens, legal as well as illegal. (7)

ELIGIBILITY AS CONSENT OF GOVERNMENT, *consent, exclude, to grant*

- (11) To be a citizen of the United States is a political privilege that no one, not born to, can assume without **its consent** in some form. (9)
- (12) There cannot be a more total or forceful denial of **consent** to a person’s citizenship than to make the source of that person’s presence in the nation illegal. (9)

Graglia’s criticism of the status-quo inscriptive citizenship formulation was concise. From his point of view, US citizenship should be based solely in terms of consent between the individual and the State. Moreover, Graglia dismissed the claim that legal precedent requires acceptance of the 14th Amendment pronouncement of *jus soli* citizenship. Instead he argued that the overriding democratic principle does not bind 21st century citizens to an outdated formulation. From the point of view of consensualists, each generation of citizens should be free to reformulate citizenship as its representatives, the US Congress, see fit.

5a. Implications of the Consent principle

The 14th Amendment of the Constitution was enacted in 1868. Graglia argues, given the democratic principle, that seven years later the US Congress modified the Amendment when it established two categories: legal immigrant and illegal

immigrant. Graglia claimed (2009, 11–12) that the Supreme Court should have thereafter taken the Congress's designation of illegal immigration into account. When the Court did not, Graglia claims certain subsequent key Court decisions were mistakes.

For one, Graglia stated that the Supreme Court should have rejected San Francisco-born Wong Kim Ark's 1898 petition to have his citizenship recognized. Graglia argued that the US Congress had passed the Chinese Exclusion Act fourteen years prior. This act was expressly designed to criminalize Wong Kim Ark's continued presence in the US on the basis of his ancestry. Similarly, he wrote that the Supreme Court erred in the crucial 1982 *Plyer v. Doe* case, which forced the state of Texas to admit all children to public schools irrespective of their immigration status.⁵ Without this decision, states could deny schooling to children of parents whose presence in the US "was not only without the government's consent but in violation of its laws" (Graglia 2009, 10). Changes in these two rulings alone would have immense social consequences today. Thus, for Graglia today's practice of automatically granting US citizenship to the children of unauthorized immigrants became "irrational" and is "a mockery of our immigration laws."

5b. Adjudication of current legal issues with Consent principle

Graglia argues that to address the 21st century concerns the US Supreme Court should employ his leading analogy, US AS DEMOCRACY, as the foremost principle to formulate US citizenship. Regarding the four current citizenship concerns, Graglia (2009, 13) argues it follows from his consent principle that the children of unauthorized immigrants should not be granted citizenship. Moreover, it is particularly "absurd" to grant citizenship as a reward to foreign nationals who traveled to the US with the express goal of bearing a child on US soil. Similarly, the Supreme Court should not grant US citizenship to American Samoans, unless some future Congress chooses to rewrite the law. Finally, if the Justices employ Graglia's leading analogy for citizenship, they can handily diminish the possibility that individuals like Yaser Hamdi will be able to return as US citizens to wage a war on US soil, since the Justices would have affirmed that Congress is free to rewrite citizenship law to selectively preclude allotting US citizenship. We now turn to the

5. In *Plyler v. Doe* (1982) all the Justices, including the dissenters, agreed that the Equal Protection Clause applies to unauthorized immigrants. The distinguished legal scholar Michael Olivas (2011: 25) considers this to be the "high water mark of immigrant rights. ...The transcendent, glorious meaning of *Plyler v. Doe* surely is its equal protection principles, applied to innocent sojourners in the larger community." *Plyler v. Doe* has stymied subsequent legislation that would penalize unauthorized immigrants by targeting their children.

second of three case studies, based on an exemplar article that mounts a defense of the status-quo view of US citizenship.

6. Case Study: the Status-Quo view of US Citizenship

Matthew Ing’s law review article is 27,448 words long. In it we located about 136 text instantiations of six key conceptual metaphors pertaining to citizenship. We provide a summary of our inductive critical discourse analysis analysis of Ing’s article in Table 2. Like Graglia, Ing rehearses a courtroom argument in his law journal article. His thesis is that the status-quo birthright citizenship formulation has been definitively established by an unbroken history of case law extending from English Common Law through all of US legal precedents. Ing uses six guiding metaphors, beginning with his leading analogy regarding the fundamental character of the nation: US AS SOVEREIGN. The second metaphor defines the law as whatever the sovereign proclaims LAW AS KING’S COMMAND. Law is taken to be a pronouncement of the sovereign. For example, the 14th Amendment’s “*declarative force*” is a term repeatedly used in legal discourse. The next two guiding metaphors define what US citizenship is, namely CITIZENSHIP AS MARK, and how a person obtains citizenship, CITIZEN AS CHOSEN in terms of the sovereign’s preferences. The sovereign’s preferences are dual selection criteria for citizenship: ELIGIBILITY AS US-BORN, i.e. *jus soli*, and ELIGIBILITY AS ALLEGIANCE OWED to the sovereign.

Table 2. Status-quo guiding metaphors of US citizenship

METAPHOR, <i>text examples</i>	count
US AS SOVEREIGN, <i>sovereign authority, born subject to</i>	49
LAW AS KING’S COMMAND, <i>the Clause’s declaratory nature, mandates, subject to jurisdiction</i>	18
CITIZENSHIP AS A MARK, AN ENTITLEMENT, <i>birthright, privilege, entitled, worthy, receive citizenship</i>	13
CITIZEN AS CHOSEN, <i>admitted, made worthy</i>	14
ELIGIBILITY AS US-BORN, <i>citizen at birth</i>	27
ELIGIBILITY AS ALLEGIANCE OWED, <i>owing allegiance</i>	15

Source: Ing (2011), 27,448 words total, 136 guiding metaphors

Ing’s conceptual metaphors are consistent with and supplement his leading analogy: US AS SOVEREIGN. For him, all legal determinations regarding citizenship should follow from legal precedent. Ing explicitly attacks “consensualists” like Graglia, whose claim to replace birthright citizenship with a legal principle cannot

be found in the long history of case law. We composed a narrative consistent with Ing's stance on US citizenship:

- Status-Quo Narrative:
- The First Clause of the 14th Amendment to the US Constitution declares that all people born on US soil who are wholly indebted to the nation are granted US citizenship. The US Constitution pronouncement for granting citizenship to eligible people has a history older than the nation itself. A US citizen has certain entitlements not granted to non-citizens.

Ing's argument is inherently defensive. He argues strictly in terms of tradition and makes no appeal to a more fundamental principle that establishes why birthright citizenship is a particularly suitable formulation for the United States. In fact his leading analogy, US AS SOVEREIGN, affirms Graglia's criticism that the status-quo is non-democratic formulation of citizenship. Here are a few examples of Ing's metaphors:

US AS SOVEREIGN

- (13) US-born children of illegal aliens are subject to the **sovereign power** of the United States. (Ing 2011, 768)
- (14) Barring diplomatic immunity, on American soil that child is only subject to US **sovereign authority**; thus, his only "immediate allegiance" is his natural allegiance to the United States. (756)

LAW AS KING'S COMMAND

- (15) The fourteenth amendment did not constitutionally **mandate** American citizenship for the children of illegally imported slaves. (742)

CITIZENSHIP AS A MARK, AN ENTITLEMENT

- (16) US-born children of illegal aliens...are **entitled** to birthright citizenship under the original meaning of the Citizenship Clause. (768)
- (17) *Elk v. Wilkins* endorsed birthright citizenship generally, but excluded Indians from the **privilege**. (748)
- (18) Gypsies' pro-Union sentiment made their children **worthy** of citizenship. (745)

CITIZEN AS CHOSEN

- (19) [New Hampshire Chief Justice] Farrar supposedly limited "persons," in both Section 2 and the Clause, to "citizens or aliens, natural-born or legally **admitted**." (761)
- (20) The Court's statement that "no one can become a citizen of a nation without its **consent**..." (765)

ELIGIBILITY AS US-BORN

- (21) **US-born children** of illegal aliens **are subject** to the sovereign power of the United States. (768)

ELIGIBILITY AS ALLEGIANCE OWED

- (22) The Court defined the jurisdiction requirement as “completely subject to [the United States’] political jurisdiction and **owing them direct and immediate allegiance**.” (765)
- (23) [A]n angry American public, which was inflamed by British claims that naturalized Americans arrested as Fenians **owed perpetual allegiance** to Britain. (764)

Note that Ing expressly accepts Graglia’s main criticism against the status-quo formulation, namely that birthright citizenship was established by sovereign decree, just the way a king rules by fiat, specifically the 14th Amendment to the Constitution. Ing would not reject Graglia’s characterization, but state that there is little legal precedent for Graglia’s principled counterclaim that the citizenship formulation should be based on American Revolution concept of governance for and by the people, which Ing calls “consensualism :”

- (24) Consensualism finds little support in antebellum citizenship law. Nor do the legislative histories of the Citizenship Clause and [the 1866] Civil Rights Act buttress the consensualist reading. (749)

Our metaphor-based critical discourse case studies thus reveal the fundamental legal dispute between the two adversarial positions. Graglia’s appeal for a radical change of the current formulation of citizenship is based on what he considers to be a higher principle. Ing’s defense of the status-quo is based on the juridical principle, not based on a principle of State formation.

6a. Adjudication of current legal issues with US AS SOVEREIGN leading analogy

Here we now consider how the Roberts Court⁶ might use Ing’s rendition of the status-quo formulation of US citizenship to address the aforementioned 21st century citizenship concerns. Ing’s defense of the past and present offers no overriding principle with which the Justices should decide in the future. However, ALLEGIANCE OWED, an eligibility metaphor, might bolster the claims of the children of unauthorized immigrants and endorse the citizenship for American Samoans, as

6. The Roberts Court refers to the Supreme Court of the United States, which has since 2005 been led by Chief Justice John G. Roberts.

well as the incomplete US citizenship status of Puerto Ricans, who are nominally US citizens but among other limits cannot vote for someone to represent them in the US Congress. Further, the ALLEGIANCE OWED metaphor can be used on the other hand to deny citizenship to US-born infants who were only momentarily in US residence.

7. Case Study: the view from US Citizenship History

Mae Ngai is a respected scholar who published a widely-cited book on the history of US citizenship (Ngai 2014). However, she encapsulated her views in a law review article where she used the conventions of legal adversarial advocacy (Ngai 2007). This allows us to use her 2007 law journal article as the third exemplar to compare her stance to Graglia’s and Ing’s stances. Ngai’s law review article is 5,013 words long. In it we located about 115 text instantiations of four guiding conceptual metaphors regarding citizenship. In Table 3 we summarize her guiding metaphors located in her article.

Table 3. A historian’s guiding metaphors of US citizenship

METAPHOR, <i>text examples</i>	count
CITIZENSHIP AS MARK on skin, <i>considered [to be] a citizen</i>	10
RACE AS BLOOD, <i>unalterable, unable to assimilate, permanent foreignness, rule of descent</i>	25
RACIALIZED CITIZEN AS ALIEN, <i>unassimilable, foreign, unfit, backward, enemy</i>	20
RACIALIZED CITIZENSHIP AS INVALID, <i>accidental, presumed, nullified, exclude, deny</i>	60

Source: Ngai (2007), 5013 words total, 115 guiding metaphors

In her review of US history, Ngai does not focus on whether the US is a kingdom or a democracy. Instead her leading analogy is US AS RACIST. Thus she challenges Graglia’s criticism that the nation has always not employed democracy to define citizenship. Instead she argues that the nation does not treat all its purported citizens as equals. Thus Ngai rejects Graglia’s claim that consent should be the operative principle of US citizenship, calling it a “fiction” (Ngai 2007, 2529) that diverts attention away from the nation’s history of racial privilege. The failure to bestow full citizenship on US-born racialized children creates “alien citizens.”

Ngai’s argument is composed of four themes, each with its guiding metaphor. She characterizes what comprises citizenship, CITIZEN AS ENTITLED; what major criterion differentiates two types of citizen, RACE AS BLOOD; and what this means for citizenship of non-White Americans, RACIALIZED CITIZEN AS FOREIGN. US

citizens of color are thus marked as anomalous by combining two metaphors, namely CITIZEN + BLOOD = ALIEN. Finally she characterizes what US citizenship is for citizens of color: RACIALIZED CITIZENSHIP AS INVALID.

She states that US citizenship has historically employed two connected principles. First, *jus soli* in principle grants citizenship to all US-born children. Second, race is an operative criterion, and it activates a *jus sanguinis* principle that invalidates the citizenship of children who appear to be non-European. The guiding metaphors of her article can be expressed in a historical narrative:

- Historical Narrative:
- Race is a fundamental criterion for US citizenship. Throughout US history whole classes of native-born residents have not been treated as fully entitled citizens when they appear to be of non-European descent, whereas residents who appear to be of European descent enjoy full entitlement. The US government's judicial, legislative, and executive branches have at times invalidated the full measure of citizenship of racialized citizens.

Because race is an operative principal in the history of US citizenship, in Ngai's analysis there are two kinds of US citizens. In linguistic terms, the 'unmarked' citizen is of European descent, a well-assimilated, fit and superior member of the nation. On the other hand, the 'marked' citizen is distinguished by a non-European phenotype. This "*unassimilable*" alien citizen is considered to be permanently "*foreign*," "*unfit*," and "*backward*." Ngai (2007, 2523) deliberately chooses the oxymoron "*alien citizen*" to capture what is "inherently contradictory" about US citizenship, describing the "*alienage*" of native-born citizens that occurs when they judged in terms of their physical appearance. Ngai (2007, 2521) notes that "alien citizen is more than a racial metaphor" meaning that she portrays her term, *alien*, as constituting social reality in just the way that conceptual metaphor theorists argue that metaphor has the power to govern social thought.

Ngai does not focus on the personal animus of individual Whites against citizens of color. To support her historical perspective Ngai draws on case law and the juridical and congressional records of arguments regarding citizenship in the same way as Graglia and Ing. Ngai (2007, 2522) underscores that people of color have been designated as alien because the US government denied their forebears the "normative path of immigration and naturalization" that European immigrants took. Ngai then catalogues the history of congressional legislation, Supreme Court decisions, and presidential executive actions that officially codified racial distinctions. Supreme Court Justices have characterized alien citizens as "*presumed citizens*." Whole classes of people of color who have been categorized as an "*enemy race*," as "*terrorists*," and as "*illegal aliens*" have subsequently experienced "differential legal treatment." When non-White immigrants receive citizenship, they

effectively receive only partial citizenship. The result is what Ngai (2007, 2522) calls “*official alien citizenship*.”

For Ngai (2007, 2528), the 14th Amendment grants non-White citizens not so much the full allotment of citizen rights, but a nominal “*toe hold*” defense against the State’s power to “*denigrate, compromise, and nullify*” the citizenship of non-European Americans as a group. Ngai (2007, 2527) goes one step further to characterize racialization of US citizens as a means to “consolidate US conquest over sovereign peoples.”

Thus, in Ngai’s (2007, 2523) history of US citizenship, the *Dred Scott* decision is not an aberration in US jurisprudence. It was simply the nadir of US government practice that continues today. She points out that, for example, although the US Congress vacated that odious Supreme Court ruling, African Americans continued to be “*constructed as ‘foreign’*,” long after the 14th Amendment was enacted and these men and women had lived for generations on US soil.

Moreover, the US Congress later passed the above-mentioned Chinese Exclusion Act to deny US citizenship to Chinese Americans. Ngai (2007, 2528) points out that in their written dissent to the *Wong Kim Ark* case, the Chief Justice and another Justice wrote that the “*imposition*” of citizenship on Chinese persons born on US soil was an unintended “*accident*” that contradicted Congress’s intent to deny citizenship to Chinese Americans. Similarly, in the previously-described *Elk v. Wilkins* case, the Supreme Court denied US citizenship to American Indians who had chosen to live among Whites. While the US Congress finally granted American Indians citizenship in 1924, individual states could still deny them state citizenship. Ngai notes that American Indians were not citizens in every state of the Union until 1962.

Thus Ngai points out that racist US governmental action was not limited to 19th century. She confirms Martha Menchaca’s history of the racial subjugation that American Indians and Mexican Americans endured when she points out that even though the 1848 Treaty of Guadalupe-Hidalgo guaranteed full US citizenship to Mexicans and Indians of the southwest who had been Mexican citizens, US courts and legislatures quickly “stripped all...of legitimate belonging and impelled the construction of Mexican American alien citizenship” (Ngai 2007, 2522). Accordingly Mexican Americans and American Indians suffered the same kind of Jim Crow legislation that bedeviled African Americans until the 1964 Civil Rights Act. During those same years citizens of Mexican origin were compelled to argue in court that they should be treated like “Caucasians in order to gain the legal rights of full citizens” (Menchaca 1993, 583). The need for such demeaning legal maneuvers demonstrates the hypocrisy of the national creed of equality under law. The mistreatment of Mexican Americans included deportation, most dramatically demonstrated in the 1930s when 400,000 Americans of Mexican descent who held

US passports (including the first author's mother) were banished to Mexico during the Great Repatriation (Barderrama & Rodríguez 2006). Richard Valencia (2008) has further documented the devastating consequences of 19th and 20th century legal debasement of the citizenship for Mexican American public schoolchildren which continues today, and the legal struggles their parents have undertaken to gain greater educational equity for their children.

As for Japanese-Americans, in 1942 President Roosevelt so doubted their allegiance to the US that in the absence of any evidence of disloyalty, espionage or treason, he signed an executive order to incarcerate 120,000 in internment camps (Executive Order 9066, 1942). Most Pacific coast communities were forcibly relocated to prisons in desert locations, while Hawaii's large Japanese community was largely unaffected. This underscores that racism was the basic motivation, not military risk.

Ngai encapsulates the protracted legal struggle of citizens of color for full legal rights as an effort to eliminate the marked character of their citizenship. Their struggle for legal equity has always faced stiff opposition. Ngai (2007, 2524) notes repeated efforts have been made since 2005 to strip birthright citizenship from "unworthy" people, namely the children of unauthorized immigrants. Ngai decries these efforts as unjust and immoral, citing the biblical admonition in Ezekiel 18:20, "the son shall not bear the iniquity of the father." In the end, citizens of color must believe that in spite of hundreds of years of legal precedent, the 14th Amendment is "not a comfortable, fixed law but is politically contingent" (Ngai 2007, 2525).

In sum Ngai insists that US citizenship should not solely be based on the principle of consent. In practice the US government has always proclaimed *jus soli* citizenship, then constrained its principle by invoking some form of *jus sanguinis* 'law of blood' criterion to exclude whole groups of people born on US soil. Ever pragmatic, Ngai notes that it is instructive to consider other countries that recently modified their own citizenship formulations, not to advance egalitarian principles, but to appease White nativist sentiment against non-White residents.

Here are a few examples of Ngai's metaphors:

CITIZENSHIP AS MARK on the skin

- (25) The focus on *jus soli* as **ascriptive** elides the fact that both basic rules of **assigning** citizenship at birth are **ascriptive**, whether by geography or by descent (*jus sanguinis* after all means the rule of blood). (Ngai 2007, 2526)
- (26) "Denying access to territorial birthright citizenship to the children of aliens, the Court said [in *United States v. Wong Kim Ark*], would jeopardize "citizenship [for] thousands of persons of English, Scotch, Irish, German or other European parentage, who have always been considered and **treated** as citizens." (2528)

- (27) More important than the history of the English common law is the history of American citizenship, which has always operated in both **registers** of soil and blood. (2527)

RACE AS BLOOD

- (28) The alien citizen is an American citizen by virtue of her birth in the US but whose citizenship is **suspect**, if not denied, on account of the racialized identity of her immigrant **ancestry**. (2521)
- (29) In this construction, the foreignness of non-European peoples is deemed **unalterable**, making nationality a kind of racial trait. (2521)
- (30) Indeed, opponents of citizenship for Chinese and other Asians often used African American citizenship as a negative example of the harm that conferring citizenship on **unassimilated, backward races** brought to the institution. (2523)

RACIALIZED CITIZEN AS ALIEN

- (31) Its influence derives from the idea that non-European peoples are **racially** or, in modern expression, **culturally backward**, that they are **unable** or **unwilling to assimilate**, and that they are **unfit** for liberal citizenship. (2521)
- (32) **Alienage**, then, becomes permanent condition, passed from generation to generation, adhering even to the native-born citizen. (2521)

RACIALIZED CITIZENSHIP AS INVALID

- (33) As a legal matter, alien citizenship involves the **nullification** of the rights of citizenship – from the right to be territorially present to the range of civil rights and liberties – without formal revocation of citizenship status. (2522)
- (34) Qualifiers like “accidental” citizen, “presumed” citizen, or even “terrorist” citizen have been used in political and legal arguments to **denigrate**, **compromise**, and **nullify** the US citizenship of “unassimilable” Chinese, “enemy-race” Japanese, Mexican “illegal aliens,” and Muslim “terrorists.” (2521)

7a. Adjudication of current legal issues given the history of US citizenship

We now speculate on how Ngai might respond to the four contemporary concerns that may lead the Supreme Court to consider changes to the formulation of US citizenship. Ngai would call to eliminate all racial exceptions to citizenship claims, so that American Samoans and other island peoples would be granted full citizenship, and would call for a reinforced Equal Protection Clause to curb the government’s tendency to privilege the powerful. However she offers no overriding principle to strengthen the petition of children of unauthorized immigrants. Lastly she condemned Justice Scalia’s characterization of Yaser Hamdi as a “presumed

American citizen” (Graglia 2007, 4; Ngai 2007, 2521), so we surmise that she minimizes the significance of transient infant citizens born to maternity tourists who exploit the birthright citizenship loophole for economic or military advantage.⁷

8. Discussion and Conclusion

The domestic consequences of war and globalization may lead the Roberts Court to reformulate US citizenship, which will affect everyone in the country. The Court has at times expanded the formulation of citizenship, such as in the *Wong Kim Ark* decision, and at other times contracted it, such as in *Elk v. Wilkins*. Supreme Court experts repeatedly state that “the Justices’ votes... reflect their political preferences toward the policy content of the law” (Epstein & Martin 2012). Graglia (2009, 8) similarly quipped that it is a mistake to ask: What does the Constitution mean? “The question... is less what the Constitution means than what the Supreme Court is likely to say it means. The answer... depends almost entirely on the policy preferences of the Justices making the decision.” Consequently it would be unwise to presume that the Roberts Court would automatically accept a precedent-based defense of birthright citizenship. The CONSENT analogy may likely gain traction, irrespective of the racist history of US citizenship.

While admittedly no substitute for legal analysis, critical discourse analysis revealed the limitations of each legal stance. Ngai’s critique of the CONSENT analogy is definitive, but her legal claim is limited to the categorical elimination of racial distinctions. In turn, Ing’s defense of the status-quo yields to Graglia’s criticism that citizenship should be based on an overarching principle that is in keeping with the nation’s vision of itself. It is a three-way stalemate. And yet, the critical discourse analysis approach also made clear that each legal stance contributes to a broader view of citizenship.

Because war made Hannah Arendt a stateless immigrant, she realized that there are no universal human rights. All rights derive from government. People may aver that universally valid rights derive from human nature itself, but this is patently false. Ask the UN High Commissioner for Refugees, who states that the 70,000 stateless children born annually are consigned to “a life of discrimination, frustration and despair” (Sengupta & Saad 2015), in spite of the 1989 United Nations Convention of the Rights of the Child. Ask any unauthorized immigrant

7. Homebred terrorism may not be appropriate citizenship concern for the Court. Empirical studies (see, e.g., Sageman 2004) indicate that youth become affiliated with terrorism after they reach majority age, on average around 26 years of age.

who has lived for decades in the shadows. Arendt recognized that the one true human right is citizenship. It is the lighted doorway to other rights and privileges.

Arendt wrote that the stateless person, who is “an outlaw *by definition*, ... must constantly transgress the law...without ever committing a crime.” We are now witness to a staggering global phenomenon that began forty years ago when western governments, in a “drastic shift in policy, curtailed legal means of entry and residence of foreigners” (Krause 2008, 331, emphasis added). Today over 230 million immigrants across the world are effectively stateless (United Nations 2013). In the US, the stateless include 12 million undocumented immigrants. Again in the US setting, the Roberts Court may soon reconsider the definition of US citizenship. If it does, the Court will redefine for the United States who has “the right to have rights” and who has no rights.

Our overarching objective has been to demonstrate the power that conceptual metaphor wields to create societies. In US legal discourse, these metaphors frame the crucial narratives that still grant only certain people “inalienable rights.” We have attempted to expose the structured order of State discourse, to reveal the metaphors which are used to legitimize State power over human beings.

Acknowledgements

The authors want to thank Adilene Ramírez and Angel Girón, for their dedicated teamwork during the coding phases of the research project.

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Biographical notes

Otto Santa Ana is Professor in the César Chávez Department of Chicana/o Studies at UCLA. He is currently writing two books, one on the nature of human laughter, and one that develops a computer-assisted critical discourse analysis tool that is designed help journalists and civil rights groups to hold elected officials accountable for their discriminatory public discourse.

Kevin Hans Waitkuweit holds a BA in History from UCLA with minors in Chicana/o Studies, Disability Studies, and Public Affairs. He will apply to graduate programs to follow his interests in identity structures and contemporary US history.

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Publication history

Date received: 20 October 2015

Date accepted: 23 January 2017

Published online: 21 March 2017