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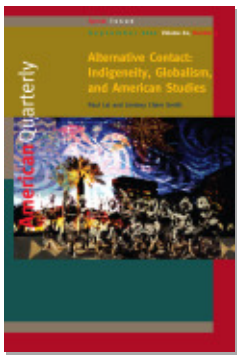

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J. M. Mancini and Graham Finlay

In 1916, armed insurrectionists revolted against the chief ally of the United States. The rebels surrendered quickly, but were punished severely: 15 were executed, and 3,500 faced imprisonment. Curiously, the British government spared one of the rebel leaders, propelling him to take a central role in an ongoing and ultimately successful campaign to subvert British rule. Even more curiously, nearly fifty years later, in 1964, President Lyndon B. Johnson welcomed this aging insurrectionist—who had abandoned his belief in the use of force against the British only a few years before—to the White House on a state visit. Johnson's greeting to Eamon de Valera, by then the president of the Republic of Ireland, immediately suggests why he was spared: "This is the country of your birth, Mr. President . . . this will always be your home."[1] Although de Valera, the American-born son of an Irish mother and a Spanish father, lived in the United States for fewer than three years, both the British courts and Johnson after them understood de Valera to be an American citizen—despite his expatriation, despite his participation in armed political struggle, and despite his ascent to the leadership of a foreign government.

Until recently, the notion that the country of one's birth determines one's citizenship had as powerful a hold in Ireland—where it was encoded in the 1922 Constitution of the Irish Free State, the Irish Nationality and Citizenship Acts of 1935 and 1956, and from 1998 to 2004 in Article 2 of the Irish Constitution—as it has in the United States, where it is protected by the Fourteenth Amendment.[2] Nonetheless, in 2004, a referendum was called—and passed with a nearly 80 percent majority[3]—removing the constitutional provision of territorial birthright citizenship for the children of noncitizens.[4] This monumental change in the citizenship regime of the newly prosperous Ireland of the "Celtic Tiger" marked a radical departure from the shared history, embodied in de Valera's personal story, that joined Ireland to the United States. At the same time, the citizenship referendum also highlighted both continued and new interconnections between the two nations. In the debates leading up to the referendum, both the American legal example and the historical

experience of legal and illegal Irish immigrants in the United States figured prominently. And both the revocation of jus soli and the circumstances leading to its revocation underscored the fact that Ireland's sudden exposure to the complicated political pressures resulting from globalization, including new inward migration from Africa, Asia, and the accession states of the European Union, made its political landscape more like that of the United States than it had been.

In this article, we discuss both the importance of American practice for the normative discussions surrounding the removal of jus soli as an automatic qualification for citizenship in Ireland and the importance of the Irish debates as an example for the historical and normative investigation of the foundations of citizenship in the United States, especially in the field of American studies. In an increasingly interconnected world in which people, and not just goods and capital, are on the move, we argue that the elimination of jus soli as a basis for citizenship was unjustified in the Irish case, despite the popular pressures on Irish politicians, and that the pressure being placed on U.S. politicians to undermine jus soli should be consciously resisted. Changes in the basis of citizenship are not simply about the moral composition of the civic public, but have important economic and social consequences—chiefly, the creation of a docile class of laborers who can be dismissed and deported at will, and who have almost no rights to seek redress for the exploitive aspects of their condition. We believe that it is a lack of attention to these consequences that allowed the Irish government to succeed in removing unrestricted jus soli from the Irish Constitution, leading the debates to be solely carried on in terms of the intensity of immigrants' connections to the Irish state and in terms of Ireland's emigrant past. At a time when politicians from across the political spectrum in the United States propose the replacement of permanent immigrants by guest workers, a similar neglect of the moral, cultural, and economic importance of jus soli threatens to impoverish contemporary debates surrounding immigration in the United States.

Migration and Citizenship in Comparative Perspective: Proscription without Exclusion

One of the key contributions to the understanding of American migration in recent years has been Mae M. Ngai's persuasive articulation of the direct relationship between restrictive naturalization laws and more direct forms of immigration restriction that developed in the late nineteenth and early twentieth century United States. As Ngai argues, "the system of quotas based

on national origin was the first major pillar of the Immigration Act of 1924. The second was the exclusion of persons ineligible to citizenship."[5] Both the persuasiveness of Ngai's argument and the significance of historical campaigns for immigration restriction in the United States might tempt observers to conclude that there is a dependent relationship between immigration restriction and citizenship proscription, and that the hidden purpose of the latter is always to bolster the former.

But what if we move beyond this notorious period of immigration restriction, and beyond the historical United States? The consideration of alternative contexts immediately shows that the relationship between immigration restriction and citizenship proscription is not fixed, either in theory or in practice. In theory, it is possible for states to place onerous restrictions on immigration, yet to grant citizenship freely to the small numbers of migrants who are permitted to enter, or, inversely, to accept and even encourage immigration, but to curtail access severely to citizenship for immigrants and their children.

In practice, many European states embody this second scenario. Far from simply excluding foreigners, "Fortress Europe" has millions of non-European Union (EU) nationals living and working within its borders, many of whom are legally resident in Europe and many of whom were encouraged to immigrate by their host countries. In Ireland, the government deliberately promoted immigration on the basis of work permits during the early period of its economic boom, steadily increasing the number of work permits issued to non-European Economic Area (EEA) citizens from 5,750 in 1999 to 40,504 in 2002.[6] These work-permit holders far outnumbered the uninvited migrants who were the target of the government's campaign during the referendum, exceeding seekers of asylum by approximately 4 to 1 in 2002.[7] And, in 2004, Ireland was one of only three states in the newly enlarged EU to allow the entry of unrestricted numbers of workers from the new accession states, leading to a sudden rise in immigration from eastern European and Baltic states,[8] so that by March 2006, "over 160,000" PPS numbers (the social security number needed to work in Ireland) had been issued to citizens of accession countries.[9]

While immigration has been encouraged in recent decades by Ireland and by certain other European states, this encouragement has not necessarily been matched by the liberalization of citizenship laws. Quite the contrary: in all of the three states that permitted unrestricted immigration from the accession states (Ireland, Sweden, and the United Kingdom), recent years have seen the tightening of access to citizenship. In Ireland, it was the very same government that expanded the recruitment of foreign workers that initiated

the citizenship referendum, and that also successfully argued in the Supreme Court in 2003 that it had constitutional sanction to deport the noncitizen parents of a citizen child.[10]

The Irish referendum is of particular consequence in Europe, because since the revocation of unrestricted jus soli in Ireland, there is no longer a single nation in Europe that grants unrestricted territorial birthright citizenship to people born within its borders. It should be admitted that Germany introduced important reforms tending toward jus soli in 1999, notably a right to citizenship for second-generation immigrants at birth, provided one parent has been legally resident in Germany for eight years,[11] and, as Christian Joppke has emphasized, that the Netherlands, Belgium, and other countries have added restricted jus soli provisions to their previous jus sanguinis traditions.[12] Nonetheless, Germany's reforms do not reflect a general European trend. Austria, which also has a large population of longtime alien residents, has not changed its citizenship law and has no jus soli component.[13] And some European countries, notably Italy and Malta, have increased restrictions on access to citizenship through territorial naturalization or birth even as they have expanded access to citizenship via jus sanguinis.[14] Moreover, there is a very important difference between unrestricted and restricted forms of territorial birthright citizenship such as "double jus soli," which grants automatic citizenship to the third generation, in that "double jus soli" substantially excludes the same people as a jus sanguinis rule would for at least two generations.

Beyond Europe, the Irish referendum also marks part of a long trend of successful agitation against unrestricted birthright citizenship in countries governed by the common law tradition with which jus soli is traditionally associated. Australia removed unrestricted birthright citizenship in 1986[15] and India in 1987.[16] South Africa required that one parent be either a citizen or permanent resident in the South African Citizenship Act of 1995,[17] and New Zealand removed unrestricted jus soli as of January 1, 2006, for much the same reasons cited in the case of the Irish Citizenship Referendum.[18]

Similar pressures to remove unrestricted jus soli abound in the United States. Over the past ten years, every Congress has seen the introduction of amendments proposing citizenship proscription for the children of some immigrants.[19] FAIR, the Federation for American Immigration Reform, appeals to the example of the Irish Citizenship Referendum and the work of Peter Schuck and Rogers M. Smith, discussed below, in its campaign to reinterpret the Fourteenth Amendment to exclude the children of illegal aliens.[20] Significantly, FAIR's position deploys arguments made during the

Irish campaign, including the costs of births to "illegal alien mothers" and the threat of disease.[21] Taking a different approach, Friends of Immigration Law Enforcement (FILE) argue that territorial birthright citizenship is a threat to national security, citing the case of Yaser Esam Hamdi. FILE, the Center for American Unity, and a number of members of the House of Representatives filed an amicus curiae brief urging an understanding of the Fourteenth Amendment that would deny birthright citizenship to children of individuals, like Hamdi's parents, in the United States on work permits.[22] This brief has been used by print and broadcast commentator Michelle Malkin to call for a reinterpretation of the Fourteenth Amendment that would prevent the creation of "accidental Americans."[23] Access to citizenship has also been the target of proposed state legislation. Leo Berman, a Texas state representative, has put forward a bill that would deny state benefits to the children of undocumented immigrants as "illegal aliens," in an explicit attempt to alter the current interpretation of the Fourteenth Amendment.[24] Thus, while the United States has so far resisted campaigns to restrict territorial birthright citizenship, such campaigns are on the rise.

The Irish Citizenship Referendum: From Jus Soli to Jus Sanguinis

In Ireland, the successful campaign to overturn jus soli was brief and dramatic. Before the 2004 referendum, Article 2 of the Irish Constitution, enacted by referendum in accordance with the Good Friday Agreement in 1998 with a vote of more than 94 percent, determined the citizenship of all children born in Ireland.[25] Based on a straightforward provision of jus soli, Article 2 stated, in terms very similar to the Fourteenth Amendment:

> It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish Nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland.[26]

The referendum proposed by the government in 2004, in contrast, trumped the authority of Article 2 via the insertion of an amendment to Article 9 that explicitly distinguishes between the children of citizens and the children of noncitizens. It reads:

> Notwithstanding any other provision of this Constitution, a person born in the island of Ireland, which includes its islands and seas, who does not have, at the time of his or her birth, at least one parent who is an Irish citizen or entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless otherwise provided for by law.

While the passage of the referendum did nothing to alter Irish *immigration* law, then, it immediately and radically transformed the legal boundaries surrounding *citizenship*.

The long-term implications of the referendum are difficult to gauge, but two significant changes may be noted. First, the amendment to Article 9 removed the provision of citizenship to the Irish-born children of noncitizens from its protected place within the Constitution to the more uncertain sphere of legislation. At its enactment, sitting elected officials obtained the power to determine not only the terms under which immigrants could become *naturalized* citizens, but also the conditions under which the children of foreigners were eligible for *birthright* citizenship.[27] During previous periods when birthright citizenship was determined by legislation rather than constitutional principle, the designation of citizenship as a legislative matter had no practical effect, as politicians never challenged jus soli. But the 2004 referendum was accompanied by the Irish Nationality and Citizenship Act of 2004, which limited access to citizenship to those children whose parents had resided legally in the state for three of the four years previous to the birth.[28] The government also specified that time spent on student visas or in the asylum process would not count as residence, even retroactively. Thus, the resulting act guaranteed that there would be a class of children, born in Ireland to legal residents, who had access to citizenship solely through the naturalization process. Moreover, the removal of citizenship to the legislative realm also presented the possibility that future governments might propose more onerous citizenship barriers, a scenario that has become increasingly likely with the introduction of legislation in 2006 (reintroduced in a modified form in 2008) that proposed a number of restrictions on immigrants with implications for citizenship—including the proposed requirement that non-EEA nationals seek ministerial approval to marry an Irish national.[29]

Second, the amendment to Article 9 represented a fundamental philosophical shift in Irish law from the principle of citizenship based on birth within the territory to citizenship based on blood descent from the citizenry.[30] Prior to the amendment, Irish law did employ jus sanguinis as a device for recognizing the citizenship of persons born *beyond* its borders: due to its emigrant history, Ireland (unlike the United States) grants citizenship to the foreign-born grandchildren of citizens, and under certain circumstances even to subsequent generations.[31] However, until 2004 Irish law had never used parentage as a basis for the civic exclusion of persons born *inside* Ireland. The passage of the referendum marked a sharp break from both this tradition and the universalism it entails. By imposing a barrier to citizenship that must be crossed only by persons who are not the descendants of citizens, as Oran Doyle argues, the

new Article 9 gave constitutional sanction to the granting of legal privilege on the basis of pedigree.[32] By tying the future citizenry more firmly to the citizenry at the time of the referendum, moreover, the amendment also worked to limit temporal and ethnic change in the composition of "the Irish Nation."

There are important parallels, then, between the Irish citizenship referendum and historical efforts to restrict immigration and proscribe citizenship in the United States. Like the fixing of national immigration quotas in the 1920s to the 1910 and 1890 censuses in the United States (and accompanying bars to naturalization for excluded nationalities), the referendum can be seen to work toward "freezing" the nation in time by curtailing the access of "new" ethnic and racial groups. As Brook Thomas suggests, this impulse is more than merely xenophobic, but also represents a central limitation of classical republicanism: the tendency to define "the sovereign people . . . as those who founded the republic, a definition making it impossible to redefine 'the people' in light of changing circumstances."[33] In Ireland, where independence is much more recent than in the United States and lineal descent from the founders of the republic is still the source of great political and social capital, this "republican limitation" is felt even more acutely. Indeed, the politician most associated with the referendum, the then minister for Justice, Equality, and Law Reform Michael McDowell, emphasized that he was the grandson of Eoin MacNeill, who had founded the Irish Volunteers and served as Finance minister after independence.

In contrast to the 1920s United States, however, the Irish government campaign for citizenship restriction was made, as we have suggested, in the *absence* of overt border closures: the government never proposed reductions to overall immigration—or even remotely suggested limitations on immigration based on race or national origin. Nor did it propose more than minimal steps toward tightening Ireland's borders, even though various commentators suggested that the enforcement of airline regulations barring the travel of heavily pregnant women or other small changes would cut entry numbers. Rather, the government insisted throughout the referendum campaign that it was not opposed to immigration, insisting that immigration had "enriched" Ireland's economy and culture.[34] And even within the government, the strongest impulse toward both policies—looser immigration and tighter citizenship—came from one party within the ruling coalition, the minority Progressive Democrats, whose two leading figures were McDowell and Mary Harney, then head of the department that issued the work permits that brought in the majority of Ireland's foreign workforce, the Department of Enterprise, Trade and Employment.

The government's official position was explicitly to distinguish between immigration and citizenship, and to insist that the referendum's purpose was not to keep out immigrants, but to reform citizenship law. Its argument was that Article 2's exclusive intended remit had been to provide constitutional entitlement to Irish citizenship for the children of those caught in quite another border dispute—the partition of Ireland—and that its passage had created an unintended constitutional "loophole" regarding citizenship. Although it is difficult to accept this argument at face value, the government's expressed concerns about citizenship may not have been entirely disingenuous. A number of the arguments presented in favor of the referendum did derive in part from republican theories of citizenship, most prominently notions of duty and fear of corruption. Progressive Democrat TD (Teachta Dála) Fiona O'Malley, for example, drew upon Article 9 of the Constitution, which requires "[f]idelity to the nation and loyalty to the State," to bolster the argument that non-nationals needed to "prove" their connection to the nation by a term of residence before their children could "earn" the right to citizenship.[35] Similarly, the Taoiseach (prime minister) argued that Article 2—and Ireland's status at the time as Europe's only nation fully to recognize unrestricted jus soli—encouraged fraud among non-EU nationals who might have Irish citizen babies *not* so that they could immigrate to Ireland, but so that they could obtain residence in *other* EU states.[36] Particularly after the European Court of Justice offered a preliminary opinion establishing the right to residence in Great Britain of Man Levette Chen,[37] a Chinese woman who traveled to Belfast specifically to have an Irish-born child, the government seized on this possibility as an affront to the duties of citizenship (and to Ireland's EU neighbors).[38]

Nonetheless, it would be naive to think that immigration—and negative feelings toward immigrants within the electorate—did not play a role in the politics of the referendum. The government proposed the referendum at a time when polls showed significant gains for opposition parties, including Sinn Féin (who subsequently opposed the referendum). Although the government denied it, it was widely reported that it had received polling data showing that immigration was a lightning-rod issue for voter discontent.[39] Furthermore, the government scheduled the referendum for the same day as European and local elections, leading opposition parties such as Labour to charge that the government was "facilitating anyone who wanted to play the race card." Even some members of Fine Gael, which ultimately supported the referendum, criticized its timing on the same grounds.[40] Nonetheless, Fine Gael's Dublin candidate for the EU parliament, Gay Mitchell, openly admitted that hostility toward immigrants within the electorate had motivated his party's decision not

to campaign against the referendum, but instead to give it passive support.[41] Noting a high degree of anger among voters, and that voters tended to blame all their misfortunes on immigrants, he somewhat paradoxically argued that the making of public arguments against the referendum was *more* likely to fan the flames of racism than the quiet passage of an amendment restricting immigrants' rights to citizenship.[42]

Whatever the effects of Mitchell's passive strategy, the government clearly employed racist and xenophobic tropes to link the presence of immigrants to a pressing contemporary political issue: the crisis in the health-care system. In making its initial case for the need for a referendum, the government alleged that foreign women had overwhelmed the Dublin maternity hospitals, provoking the hospitals' masters (administrators) to demand the change. Although this charge was subsequently discredited,[43] it served to divert attention from the government's extremely unpopular pursuit of maternity and emergency closures within regional hospitals, which erupted into a political crisis in 2002 when a premature baby died after her mother was refused admittance to Monaghan General Hospital.[44] Furthermore, the government's association of migrants with health risks facilitated the spread of a medicalized language of immigrant danger that Alan Kraut has described in the U.S. context as the "double helix of health and fear."[45] Indeed, this link was seized upon by the "Stormfront White Nationalist Community," whose Web site recounted the "minutes of a meeting between Michael McDowell and two of the masters [in which] 'Dr Geary said the high rate of infectious diseases among these groups has huge cost implications for the maternity hospitals [and that] it was surprising that there had not been a major catastrophe within the maternity services as yet.'"[46] Seen in this context, claims by the Health minister Micheál Martin and the Progressive Democrats that citizenship proscription would prevent infant and maternal mortalities took on a clear political aspect.[47]

This, and the fact that Ireland has seen an increase in racist incidents,[48] has led a number of scholars, most notably Ronit Lentin, to apply contemporary critical theories of race to the Irish situation.[49] Lentin and others argue that the referendum was the culminating moment of a process of converting the Irish nation into a racial group. This is a powerful argument, and explains certain seeming anomalies, most obviously efforts by some officials to lobby for a special deal for Irish illegals in the United States—who, as members of Ireland's diaspora are seen as having more of a connection to the Irish state than do actual immigrant residents—even while the government deports people illegally resident in Ireland. Nonetheless, while the government certainly employed developing Irish racism to promote a "yes" vote through

hostile appeals to "citizenship tourists" and "bogus asylum seekers" that clearly coded such people as ethnically and racially different—"people from Nigeria [and] Moldovia [*sic*]," as the Taoiseach put it—the purpose of this was not, as Lentin suggests, to separate the different and separate "undeserving" from "deserving" immigrants who contribute to the economy.[50] Rather, we argue that it was precisely to mask the fact that the largest group of people affected by the citizenship referendum was not the asylum seekers from Africa that were the chief target of Irish racism, but the less visible and less politically contentious population of immigrant work permit holders of various races and ethnicities that vastly outnumbered them.[51]

Immigration as Insourcing: Differential Citizenship and the Dual Workforce

Cynical as the Irish government's appeal to anti-immigrant sentiment may have been, it did not amount to a call for immigration restriction. What, then, might the government have hoped to gain from maintaining (and even lowering) legal barriers to entry while simultaneously raising legal obstacles to citizenship? To answer this question, it is first necessary to examine what kind of immigration was facilitated by the government's policy on the eve of the referendum, not least because it contrasts in many respects with much American immigration. First, it was largely an immigration of temporary workers. Unlike in the United States, the vast majority of non-EEA immigrant workers admitted at the time were (and continue to be) work permit holders and students. The latter may work twenty hours per week ("full-time during the university holidays") and themselves represent a significant workforce. Second, this sector of Irish immigration was (and is) dominated by contract labor: unlike American green cards, Irish work permits are issued to employers, rather than directly to immigrants, and do not permit workers to change jobs without first securing a new work permit. For non-EEA citizens, there was and is no legal framework for permanent economic immigration to Ireland, and no equivalent to the "visa lottery."[52] Prospective immigrants from outside the EEA thus faced three choices: get a temporary work permit and hope that it would be renewed, marry an Irish or EEA national, or claim asylum (and be banned from paid employment or third-level education until the resolution of a long and extremely uncertain legal process required to achieve refugee status).[53] In effect, the status of the vast majority of Ireland's non-EEA immigrant workforce was, and continues to be, more akin to that of migrant

agricultural laborers in the U.S. H-2 Guest Worker Program than to that of permanent resident aliens in the United States.[54]

The different legal framework surrounding immigration in Ireland thus requires a reassessment not only of the relationship between citizenship proscription and immigration restriction, but also of the economic dimensions of that relationship. In the American context, citizenship proscription and immigration restriction have both primarily been conceived and analyzed in protectionist terms—as a means of preventing competition from immigrants by keeping them out and by limiting their access to economic resources and activities. Yet protectionism is only one potential economic goal of citizenship proscription. As an adjunct to increased migration, citizenship proscription has another possible motive: *increased* competition for jobs and wages. Additionally, in combination with *increased* migration, citizenship proscription has the capacity not just to increase competition, but also to distort it by undermining the regulatory framework and institutions that are designed to ensure its fairness. The joint rise of the temporary work permit/student visa system in Ireland *in conjunction with* citizenship proscription has the potential, thus, to facilitate the emergence of two workforces: one composed of workers who enjoy the full economic benefits of citizenship, including social welfare benefits, and one of "insourced" immigrants who have only minimal recourse even to basic employment protections such as the right to change jobs.

This reading of the current circumstances is lent plausibility on several fronts. The first is that the rights of noncitizens are not equal to those of citizens. Although, as sociologist Yasemin Soysal argues, "international conventions and charters . . . oblige nation-states not to make distinctions on the grounds of nationality in granting civil, social, and political rights,"[55] the Irish Constitution (like many other national constitutions) does restrict certain rights and protections to citizens.[56] Both work permit holders and European workers from the new accession states are excluded from social welfare benefits, which has led to a marked incidence in homelessness and other forms of deprivation among eastern European migrants.[57] In terms of politics, foreign nationals residing in Ireland can vote and run for office at the local level, but they cannot vote in national elections or referenda. Similarly, there is evidence that noncitizens are less likely to feel represented by or to join political parties, particularly mainstream parties[58] and unions.[59] This places noncitizens at an economic disadvantage in, for example, representation at pay negotiations and access to redress for discrimination or wrongful dismissal.[60] Further, Ireland has not ratified the International Convention on

the Protection of the Rights of All Migrant Workers and Members of Their Families and has blocked or opted out of European Union directives, such as the 2002 Temporary Agency Workers Directive, that would give migrant workers hired from other countries greater parity with Irish workers in terms of workplace rights.[61]

Second, the outcome suggested above accorded with the stated ideology of prominent members of the government, and with policy goals such as checking inflation (which gained Ireland the censure of the EU in the late 1990s) and maintaining low levels of taxation. McDowell unapologetically embraced the economic benefits of an extreme form of competition and even inequality itself, arguing in an interview with the *Irish Catholic* that "a dynamic liberal economy like ours . . . demands flexibility and inequality in some respects to function."[62] Presumably wage inflation was one of the chief issues in McDowell's mind, as protracted, expensive demands for pay increases had become a commonplace in Ireland by this time. Migrant labor addressed this issue: the recruitment of five thousand Filipino nurses, for example, averted a near-catastrophic labor shortage that threatened to cripple the health service and did so, more importantly, while limiting expansionary or inflationary alternatives such as further increases in outlay for the pay, training, and recruitment of Irish or EU nurses.

Finally, it is instructive to turn to the government's insistence that the referendum, in the words of then minister for Health, Micheál Martin "isn't about migrant workers," [63] and to reflect upon the children born in Ireland to such workers. With these children in mind, it might reasonably be suggested that Martin's angry refusal to assess how the referendum would affect migrant workers speaks to a very different purpose than the preservation of "loyalty." Rather, it speaks to the urge to make the temporary workforce *more temporary* by severing one of the emotional and legal ties—the birth of a citizen child—that might make temporary workers feel a "connection" to Ireland.[64] Certainly other members of Martin's party had trouble envisioning immigrant workers as anything other than permanently foreign. When pressed on the referendum's impact on the children of Filipino nurses, Martin's Fianna Fáil colleague and candidate for the European Parliament, Jim McDaid, declared that "they are Filipino citizens, protected by Filipino law."[65]

If there is a primary economic lesson from American history that does apply here, we would suggest that it is not the lesson of protectionism offered by immigration restriction. Rather, it is the evidence offered by African American and Native American history that shows how differential citizenship provision can contribute to economic inequality by coercing certain groups

into undesirable occupations and working conditions,[66] and by historical immigration policies, notably the Bracero Program, that show how the use of temporary workers ineligible for permanent residence or citizenship served not to prevent "aliens" from working, but to create and maintain a dual and subjugated workforce. As Aristide Zolberg notes, this is a "common solution" to two conflicting demands on "industrial societies—to maximize the labor supply and to protect cultural integrity." In this scenario, migrants are not excluded from the physical borders of the nation but, once admitted are "confine[d] strictly to their economic role by reinforcing the barrier against citizenship, a legal device which can be translated sociologically as the erection of a boundary within the territorial confines of the receiving society to offset the consequences of physical entry."[67]

Indeed, as migration theorist Robin Cohen has argued, the differentiated system of citizenship required by global capitalism has created a world utterly different than that faced by the many early twentieth century migrants who "threw off their poverty and feudal bondage to enter the American dream as equal citizens."[68] The status of today's unskilled workers from poor countries, in contrast, is increasingly that of a "helot" whose origin is an "indelible stigmata, determining a set of life chances, access to a particular kind of employment or any employment and other indicators of privilege and good fortune."[69]

Thus even in partial form, the scenario posed by immigrant "insourcing" raises a central global ethical question: whether or not it is acceptable for wealthy nations to impose policies and conditions upon the people of poor countries that they would not normally impose upon their own citizens.[70] Immigration may not solve the problem of global inequality, but if, as citizens of nations that have benefited from globalization, we are to rely on immigrant labour, we must make sure that that labor is not coerced. One of the ways that we can do that is to give immigrants full access to the protections of citizenship.

Jus Soli: A "Dead Zone" in American Studies

A comparative analysis of the repeal of unrestricted jus soli in Ireland reveals a curious fact about the study of jus soli in the United States: that is, the almost complete absence of research in American studies specifically devoted to this subject, with the important exception of work by Brook Thomas and, more recently, Ngai.[71] This absence is set into relief by the mountain of scholarship on the Fourteenth Amendment that relates to *Plessy v. Ferguson* (1896, 163 U.S. 537) versus the virtually nonexistent literature on *U.S. v. Wong Kim Ark* (1898, 169 U.S. 649), and by the lack even of a keyword entry for jus soli within ABC-Clio's *America: History and Life*.

It is perhaps too much to ask the humanities to take on a cheerleading role for jus soli. Yet, it is to be expected that, within the hundreds of articles and books written each year on virtually every conceivable aspect of immigrant history and life, at least some would specifically analyze how the provision of territorial birthright citizenship has affected the economic, social, political, and cultural life of the native-born children of immigrants and their parents; how jus soli has affected relations between immigrant families and their longer-established counterparts; how its establishment has influenced immigration law, such as the prioritization of family unification; or how the provision of jus soli in the United States has affected the legal and political construction of immigration and citizenship in other countries. Moreover, the lack of such studies arguably has contributed to two problematic results: first, an apparent misunderstanding about what it actually entails, and second, the rise of an interpretation of jus soli in American political studies that we believe to be pernicious.

The first can be seen in the noted historian Linda Kerber's analysis of *Nguyen v. INS* (2001, 533 U.S. 53). In this case, the Supreme Court decided that the adult, resident alien, foreign-born son (Tuan Anh Nguyen) of a U.S. citizen father (Joseph Boulais) and a Vietnamese mother could be deported from the United States for a felony sexual assault conviction.[72] As Kerber notes, if Nguyen's mother had been American, or his parents had been married, his citizenship would have been "automatically" conferred at birth—but as his father failed to meet the requirements for declaring Nguyen's U.S. citizenship before the age of majority, he never obtained it. Kerber argues that the court's decision undermined the Fourteenth Amendment's birthright citizenship clause because it refused to overturn provisions that require American men with foreign-born children to meet a higher burden of proof than women must to obtain citizenship for their children.

We would not defend *Nguyen*'s apparent sanctioning of the differential treatment of men and women, or the ensuing denial of "equal protection of the laws" identified by Kerber. But we would also emphasize that the case does not necessarily infringe upon the Fourteenth Amendment's provisions for the *conferring* of citizenship. This is because the Fourteenth Amendment does not actually protect the "rights of citizenship to the foreign-born descendants of native-born citizens"—or any other forms of citizenship based on heredity.[73] That is a matter for legislation, which has protected it, but only in limited circumstances, since 1790, and which may yet grant citizenship equally to the children of expatriate fathers.[74] The source of this confusion is Kerber's use of the term "birthright citizenship," which does not distinguish between jus soli and jus sanguinis, and which thus implies that all forms of citizenship by

birth are equal, equally protected, and equally desirable. This is problematic, because *Nguyen* is clearly a case about jus sanguinis, and as such presents different analytical questions than jus soli. Moreover, these two categories of "birthright citizenship" are radically different, and to defend one or the other is to support radically different principles. Indeed, while there might be legitimate arguments on behalf of jus sanguinis for the children of emigrants, it also could be argued that it is a good thing, from the perspective of equality, that the Fourteenth Amendment does *not* recognize hereditary privilege in the granting of citizenship. On this point, we must concur with legal scholar Gerald Neuman that "U.S. citizenship isn't racial," and suggest that this point is not incidental, but fundamental to understanding the case.[75]

An even graver consequence of the lack of attention to jus soli is the second problematic result we have identified: the fact that it has allowed Smith and Schuck's analysis to have attained disproportionate weight. In his highly influential *Civic Ideals*, Smith characterizes jus soli as an "ascriptive anomaly in America's titularly consensual laws of membership" that, like other "inegalitarian ascriptive principles," assigns "people to places in hereditary hierarchical orders."[76] Smith proposes abandoning this outmoded, "feudal" route to citizenship for one based on consent. His argument there follows upon his earlier argument, outlined in his collaborative work with Peter Schuck, that the Fourteenth Amendment should correctly be interpreted as protecting the birthright citizenship of only those persons whose parents met the criterion of mutual consent between the individual and the state—and not the children of illegal aliens.[77] Emphasizing the purported absence of immigration restriction before the 1870s, Smith and Schuck argued that the drafters of the Fourteenth Amendment could not have envisioned a world in which people obtained citizenship due to their parents' illegal entry into the United States, or they would have placed limitations on citizenship obtained in this way.

Smith and Schuck's argument for citizenship by consent—one might call it *jus consensus*—has provoked a robust critical response from legal scholars, most notably Neuman.[78] Neuman convincingly undermines Smith and Schuck's position on historical and policy grounds. He shows that, before Reconstruction, the United States did not have "open borders": state and federal law restricted the immigration of paupers, the physically infirm, convicts, and, after 1808, illegally imported slaves. Nonetheless, the framers of the Fourteenth Amendment did not seek to exclude from citizenship anyone who descended from these "illegal" entrants. Furthermore, Neuman argues, the adoption of Smith and Schuck's interpretation—and the resulting denial of citizenship to the children of undocumented aliens—would entail great costs. These "include

the blighting of the children's lives and the harm to U.S. society and values that would result from the creation of a hereditary undocumented caste;" and the possible emergence of a calculated

> two-track immigration regime, under which some immigrants would be admitted as lawful permanent residents on a naturalization track and others would be induced to reside unlawfully and threatened with a sufficient risk of deportation to render them docile and to avoid the applicability of the amended citizenship clause.

"In a global environment of overpopulation and Third World underdevelopment," Neuman concludes, such developments "could transform the United States into precisely the sort of society that the Fourteenth Amendment sought to prevent."[79]

Without recounting Neuman's prescient argument in full, we would like to make a few additional observations. The first is that Smith's emphasis on the feudal and ascriptive origins of jus soli overlooks its revolutionary adaptation within American law: while British law in the eighteenth century recognized both jus soli and jus sanguinis for the children and grandchildren of subjects, in the United States jus soli was immediately stripped of this tie to heredity in favor of a strict territorial requirement in the Naturalization Act of 1790. The main purpose of this, as Supreme Court Chief Justice William Howard Taft later suggested, was to prevent the descendants of loyalist absconders from claiming American citizenship.[80] There are certainly repressive aspects at work here, as the act deliberately excluded those singled out for proscription by the revolutionary authorities—just as Sections 2 and 3 of the Fourteenth Amendment prohibited from office holding, and excluded from the calculation of "the basis of representation," citizens who had "engaged in insurrection or rebellion." Nonetheless, the repression entailed within this construction of jus soli is of a revolutionary, rather than a feudal, sort and aims to diminish hereditary privileges even as it recognizes rights of birth.

Our second objection to Smith's reading of jus soli is that, although it appeals to the history of international jurisprudence, it fails properly to recognize how citizenship is regulated in national contexts outside of the United States. As a radical utopian possibility, the consensus ideal Smith proposes in *Civic Ideals* has some appeal. Nonetheless, the primary citizenship laws of all nations are based not on consent, but birth: on jus soli, jus sanguinis, or—the most common case—a combination of the two.[81] The only exception is the Vatican. With this in mind, it is necessary to revisit the question of what is constituted by an "ascriptive inegalitarian principle," and to ask whether jus soli is ascriptive and inegalitarian, or merely ascriptive. As the authors of the

1790 Act realized, all birthright entitlements do not have the same implications vis-à-vis equality. What makes ascription inegalitarian is not that entitlements are granted at birth, but that they are granted unequally: in other words, when the circumstances of birth are used to distinguish between those who possess rights and those who do not. Moreover, some forms of ascriptive distinction are more pernicious than others: distinctions based on pedigree, for example, are arguably more harmful than distinctions based on the accidental circumstances of birth (for example, time or place). A policy providing that "all children born after 2004 have the right to free health care" would discriminate against persons born before that date, but it would be less pernicious than a policy limiting health care to persons whose parents are literate or who are members of a particular racial group.

It might be objected that jus soli is inegalitarian insofar as it excludes and treats differently those born outside a particular national jurisdiction. But this problem extends well beyond the question of how citizenship is regulated to the question of citizenship per se. As anyone who has tried to get a Vatican passport can verify, the conversion to a consensual model of citizenship would not solve the problem of exclusion—only the abolition of national citizenship would do that. And jus soli does not necessarily have to be limited to persons born within a state's borders. Indeed, as the Irish example demonstrates, this is not just a theoretical possibility: Article 2 grants birthright territorial nationality not just to every person born in the Republic, but to "every person born in the island of Ireland." As this wording suggests, this entitlement is based on a utopian notion of the Irish nation that, until superseded by Article 9, derived not from heredity but territory.[82] It might also be objected that jus soli contributes to the inferior and repressive treatment of naturalized citizens, such as the constitutional limitation of presidential election to native-born citizens. But this repression does not necessarily derive from jus soli, but from the strength or weakness of the laws governing the rights of naturalized citizens—the Fourteenth Amendment itself requires the equal treatment of "natural" and "naturalized" citizens.[83] As a corollary, it should be noted that jus soli nations other than the United States have not always prohibited the foreign-born from holding high office (such as the first prime minister of Canada, Sir John A. MacDonald). As Rainer Bauböck argues in *Transnational Citizenship*, the territorial principle "minimizes the potential incongruities between the population over which territorial sovereignty can be rightfully exercised and the collective of those formally recognised as citizens."[84] In other words, jus soli is a more inclusive principle of democratic self-government.

Smith's characterization of jus soli as an ascriptive, inegalitarian principle must be re-evaluated both from the practicalities of what is feasible, given the constitutional history of the countries under discussion, and the abstract normative principles we use to evaluate practical policy. Even if a consensual model of citizenship would have the best effects—which given the way that states have employed citizenship law, is unlikely—we may have to settle for a solution that is second best: in this case a constitutionally protected right to full citizenship based on something other than blood or lineage. The removal of unrestricted jus soli as a determination of citizenship and the introduction of some principle of jus sanguinis in reality removes rights and benefits from the children of those most likely to be in the worst off position in society and removes from those children's noncitizen families one of their best chances of bettering their own condition by eventually becoming full citizens. Furthermore, as Jules L. Coleman and Sarah K. Harding have noted, assuming the legitimacy of borders and then arguing that questions of equality apply only to those within those borders begs the question that is at issue in debates over immigration or (as here) over access to citizenship.[85] Such a begging of the question may be occurring both in our argument for the benefits of jus soli to migrant workers—documented and undocumented—and in Smith's arguments for consensual citizenship. On the other hand, the other perspective that Harding and Coleman offer, a cosmopolitan perspective that applies considerations of equality to every individual on earth, makes the justification of borders or limited communities of citizenship quite problematic in themselves.[86] As Coleman and Harding note, these restricted entities are justified only if they further the project of cosmopolitan equality. If Cohen is right, however, about the international division of labor, then the "helots" who occupy the lowest rung of the hierarchy of workers more approximate the globally worst off than the candidates for Smith's consensual citizenship. They are also the individuals we can most easily help, however imperfectly, through a conception of citizenship that affords them a greater real chance of gaining an equal share of the world's wealth and a greater exercise of their rights.

Why Jus Soli Matters

Why, then, should we reinvigorate the study and defense of unrestricted jus soli? The first answer is that the need for an ethical response to globalization demands it. The movement of capital and persons and the dynamics of international labor markets mean that we must take an interest not just in migrations

across the American border, but in migrations across all borders—particularly the borders of nations like Ireland with a high degree of economic and political interdependence with the United States. In so doing, we must be sure to understand how citizenship, like immigration policy, creates borders between the global haves and the global have-nots. Just as the trade policies and farm subsidies of the European Union are relevant for an understanding of the ethical dimensions of U.S. trade policy, so the citizenship regulations of European Union states are relevant for the ethical consideration of U.S. citizenship regulation. This means stepping "outside the frame" of American studies, which treats jus soli as an invisible, inevitable right, and recognizing that it is neither inevitable nor without tangible implications. If nothing else, more comprehensive research on jus soli's historical role in American life will provide comparative data to international scholars and advocates working within less equitable citizenship frameworks. As Jürgen Habermas argues, arguments for liberalizing immigration and citizenship regimes worldwide can increasingly be made in a developing global public sphere.[87]

The Irish citizenship referendum suggests that what happens in American scholarship does have an impact on what happens in the rest of the world. Many of the referendum's most vociferous critics came from the academic legal community. In large part, their arguments pertained to universal or to specifically Irish concerns: the danger of hastily changing the Irish Constitution, the undesirability of affording privilege to pedigree, and the risk of undermining the Northern Ireland peace process.[88] Yet, perhaps surprisingly, many of the referendum's legal critics specifically appealed to *American* law and legal thought, including Aisling Reidy, director of the Irish Council for Civil Liberties, and legal scholar Cathryn Costello, who explicitly drew upon both *U.S. v. Wong Kim Ark* and upon Neuman's writings in her critique of the referendum.[89] Indeed, at a time when the United States government has ceased, in the minds of many international commentators, to be a leader on matters of global justice, American jurisprudence provided not just examples but inspiration to the referendum's critics. Citing Ronald Dworkin's phrase that constitutions are documents "*of principle*" and thus should constitute the highest aspirations of the state, barrister and law lecturer Neville Cox made this passionate plea for the rejection of the referendum: "I would wish that like Eleanor Roosevelt as she worked to create a Human Rights language for the world we would be able to say 'Save us from ourselves and show us a vision of a world made new.'"[90]

In contrast to the passionate criticism of Ireland's academic lawyers, however, scholars in the humanities and social sciences contributed little by way

of organized resistance to the referendum.[91] This relative silence cannot be attributed to a generalized lack of political engagement on the part of Irish academics; its historians, for example, have taken a leading role in legal and political campaigns for heritage preservation. Rather, it seems that scholars in the humanities and social sciences did not see the referendum as "their battle." One of the likely reasons for this is that scholars in the humanities and social sciences lacked a body of scholarship on jus soli comparable to that available to legal scholars, who have also taken internationalism seriously for longer than scholars from history, political theory, and the social sciences have.

The second reason that we should pay more attention to jus soli is that neither it, nor the notion of permanence in immigration underpinning it, is unassailable in the United States. Ireland's massive turn to temporary migrant labor has an American parallel in the rash of new proposals—from the Bush administration, the House, and the Senate—for the large-scale issuing of limited-term visas, which come on the heels of a number of temporary visa programs for skilled workers in the past decades. Taken in the context of guest worker programs in other parts of Europe and in the Middle East, what this suggests is that the long era of permanent migration—and the long-term benefits to migrants that guarantees of permanence can provide—may be coming to an end. Revocations of jus soli only hasten this change and exacerbate its effects. Smith notwithstanding, such revocations are not made for the sake of a more egalitarian, consensual alternative. Rather, as can be seen from what has happened in Ireland, Australia, Britain, France, Malta, New Zealand, Sweden, and other democratic countries, revocations of jus soli no longer take place, as they did following the French Revolution, in the context of movements against feudal privilege. Rather, they take place within the context of inegalitarian campaigns to discourage permanence, to diminish rights, and to institute "caste division."[92]

Notes

1. Wesley Boyd, "An Irishman's Diary," *Irish Times*, May 22, 2004, 19.
2. Article 3 of the 1922 Constitution states: "Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State and shall within the limits of the jurisdiction of the Irish Free State enjoy the privileges and be subject to the obligations of such citizenship." Available at http://www.ucc.ie/celt/online/E900003-004/ (accessed March 3, 2008). The Irish Nationality and Citizenship Act of 1956, http://www.inis.gov.ie/en/INIS/consolidationINCA.

pdf/Files/consolidationINCA.pdf (accessed March 3, 2008), Section 6 (1), states: "Every person born in Ireland is an Irish citizen from birth." See also Irish Nationality and Citizenship Act of 1935, http://www.irishstatutebook.ie/plweb-cgi/fastweb?state_id=1204551270&view=ag-view&numhitsfound=1&query_rule=%28%28$query3%29%29%3Alegtitle&query3=The%20Irish%20Nationality%20and%20Citizenship%20Act%20of%201935&docid=9936&docdb=Acts&dbname=Acts&dbname=SIs&sorting=none&operator=and&TemplateName=predoc.tmpl&setCookie=1 (accessed March 3, 2008).

3. The breakdown of voting was: Yes: 79.17%; No: 20.83%. Turnout was 59.95%. See http://electionsireland.org/results/referendum/refresult.cfm?ref=2004R (accessed March 15, 2008). Although the change also affected Northern Ireland, only voters in the Republic were eligible to cast ballots.
4. The 27th Amendment of the Constitution Act 2004, http://www.irishstatutebook.ie/2004/en/act/cam/0027/index.html (accessed March 15, 2008).
5. Mae M. Ngai, "The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924," *Journal of American History* 86.1 (June 1999): 67–92.
6. See Martin Ruhs, "Emerging Trends and Patterns in the Immigration and Employment of Non-EU Nationals in Ireland: What the Data Reveal," Working Paper No. 6 (Dublin: The Policy Institute, Trinity College Dublin), 15.
7. Applications for asylum subsequently fell from 11,634 in 2002 to 3,985 in 2007. See "Minister Hails Fall in Asylum Applications," *Irish Times*, January 4, 2008. This seems to be a result of *Lobe & Osayande v. Minister of Justice*, mentioned below. See also Angelique Chrisafis, "Country's Emigrant Past Lies Forgotten as Irish Accused of Racism," *The Guardian*, June 21, 2004, 3.
8. Because immigrants from the EU did not need work permits, the number of work permits issued began to fall, with 21,395 permits being issued in 2006. See http://www.entemp.ie/publications/labour/2006/permitsbynationality.xls (accessed March 15, 2008).
9. "Address by Minister for Labour Affairs, Tony Killeen, TD, at a Seminar on 'Migration of Workers in the EU—Economic, Social and Legal Issues,'" March 8, 2006. http://www.entemp.ie/press/2006/20060308.htm (accessed March 15, 2008).
10. *Lobe & Osayande v. Minister of Justice*, January 23, 2003.
11. The German citizenship reform also specified that "when they reach the age of 23, they must decide for one pass or another." Seyla Benhabib, "Citizens, Residents and Aliens in a Changing World: Political Membership in the Global Era," *Social Research* 66.3 (Fall 1999): 709–45, 718.
12. Christian Joppke and Ewa Morawska, "Integrating Immigrants in Liberal Nation-States: Policies and Practices," in *Toward Assimilation and Citizenship: Immigrants in Liberal Nation-States*, ed. Christian Joppke and Ewa Morawska, 1–36 (London: Palgrave Macmillan, 2003), 18; and Christian Joppke, "Response to Sassen," in *Displacement, Asylum, Migration*, ed. Kate E. Tunstall, 204–9 (Oxford: Oxford University Press, 2006), 205. On the liberalization of German and Belgian naturalization regimes, see Randall Hansen, "A European Citizenship or a Europe of Citizens? Third Country Nationals in the EU," *Journal of Ethnic and Migration Studies* 24.4 (October 1998): 757–58 [751–68]; and Patrick Weil, "Access to Citizenship: A Comparison of Twenty-Five Nationality Laws," in *Citizenship Today: Global Perspectives and Practices*, ed. T. Alexander Aleinikoff and Douglas Klusmeyer, 17–35 (Washington, D.C.: Carnegie Endowment for International Peace, 2001).
13. As of 1998 persons born in Austria do have a "privileged" access to citizenship, in terms of a reduced waiting period for naturalization. See Weil, "Access to Citizenship," 30.
14. Italy increased residence requirements for naturalization for non-EU nationals while simultaneously reducing it for people of Italian descent. Hansen, "A European Citizenship," 757–60; Malta revoked jus soli in 1989, but recently offered citizenship to all persons of Maltese descent with no residence requirement whatsoever. See "Citizenship law changes come into effect," http://www.maltamedia.com/artman2/publish/govt_politics/article_2905.shtml (accessed March 30, 2008).
15. See "Automatic Citizenship: Citizenship by Birth," http://www.citizenship.gov.au/automatic-citizenship/citz-by-birth.htm (accessed March 15, 2008).
16. Citizenship (Amendment) Act 1986. This was made more restrictive by denying citizenship to children one of whose parents was illegally resident by the Citizenship (Amendment) Bill, 2003. See http://rajyasabha.nic.in/legislative/amendbills/XXXIX_2003.pdf (accessed March 15, 2008).
17. See http://home-affairs.pwv.gov.za/sa_citizenship.asp (accessed March 15, 2008).
18. See http://www.citizenship.govt.nz/diawebsite.nsf/wpg_URL/Whats-new-Changes-to-Citizenship-by-Birth-in-New-Zealand-from-2006-FAQs (accessed March 15, 2008). This site's FAQs state:

"The Government chose to amend the *Citizenship Act 1977* to recognise the value of New Zealand citizenship. The changes mean that a person cannot travel to New Zealand on a temporary permit solely to give birth and gain New Zealand citizenship for the child born in this country. By restricting citizenship by birth to the children of citizens and permanent residents, the Act's new provisions ensure that citizenship and its benefits are limited to people who have a genuine and ongoing link to New Zealand."

19. *Citizenship Reform Act of 2005*, H.R. 698, 109th Cong.; H.R. 814, 109th Cong. (2005); H.J. Res. 42, 108th Cong. (2003); H.J. Res. 44, 108th Cong. (2003); H.J. Res. 59, 107th Cong. (2001); H.J. Res. 10, 106th Cong. (1999); H.J. Res. 4, 105th Cong. (1997); H.J. Res. 60, 105th Cong. (1997); H.J. Res. 56, 104th Cong. (1995); H.J. Res. 64, 104th Cong. (1995); H.J. Res. 88, 104th Cong. (1995); H.J. Res. 190, 104th Cong. (1995); H.J. Res. 117, 103rd Cong., (1993); H.J. Res. 129, 103rd Cong. (1993); H.J. Res. 396, 103rd Cong., (1993).
20. See "Anchor Babies: The Children of Illegal Aliens," http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters4608 (accessed March 23, 2008). See also Tom Tancredo, "Birth Rules Degrade U.S. Immigration," *The Mountain Mail*, January 30, 2006, http://www.themountainmail.com/main.asp?SectionID=7&SubSectionID=7&ArticleID=7180 (accessed March 20, 2008).
21. See "Illegal Immigration and Public Health," http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters64bf (accessed March 23, 2008); "Latin American Parasite Surfacing in U.S.," *Houston Chronicle*, March 15, 2007.
22. See http://www.cfau.org/hamdi/amicusmerits.html (accessed March 23, 2008).
23. "What Makes an American?" *Jewish World Review*, July 4, 2003, http://www.jewishworldreview.com/michelle/malkin070403.asp (accessed March 23, 2008).
24. Ellis Cose, "American-Born, but Still 'Alien'?" *Newsweek*, March 19, 2007; "More Apply to Be Citizens," *Dallas Morning News*, March 19, 2007. The text of the Bill, Texas HR 28, can be seen at http://www.capitol.state.tx.us/tlodocs/80R/billtext/html/HB00028I.htm (accessed March 23, 2008).
25. Referendum on British-Irish Agreement (Nineteenth Amendment of the Constitution Bill, 1998), May 22, 1998, viewable at ElectionsIreland.org, http://electionsireland.org/results/referendum/summary.cfm (accessed March 18, 2008).
26. Constitution of Ireland—Bunreacht na hÉireann, at http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%20IrelandNov2004.pdf (accessed March 18, 2008).
27. See Irish Nationality and Citizenship Act, 1956, Section 15, at http://www.inis.gov.ie/en/INIS/consolidationINCA.pdf/Files/consolidationINCA.pdf (accessed March 18, 2008).
28. See the explanatory notes of the proposed bill at http://www.oireachtas.ie/documents/bills28/bills/2004/4004/b4004d.pdf (accessed March 18, 2008), and the text of the act at http://www.oireachtas.ie/documents/bills28/acts/2004/a3804.pdf (accessed March 18, 2008).
29. See "Launch of the New Immigration Bill" at http://www.justice.ie/en/JELR/Pages/Launch%20of%20new%20Immigration%20Bill (accessed March 18, 2008).
30. Gerard Hogan, "Citizenship and the Constitution: 1922 to Date," (paper presented to The Citizenship Referendum: Implications for the Constitution and Human Rights conference, Trinity College Dublin, May 22, 2004).
31. To be eligible for citizenship beyond descent from an Irish grandparent, an applicant's parent must have taken up Irish citizenship before the applicant's birth. Oasis Information on Public Services, "Irish Citizenship Through Birth or Descent," http://www.citizensinformation.ie/categories/moving-country/irish-citizenship/irish_citizenship_through_birth_or_descent (accessed March 18, 2008).
32. Oran Doyle, "Citizenship and Equality," in *The Citizenship Referendum: Implications for the Constitution and Human Right* (Dublin: Trinity College Dublin, School of Law, 2004), 115–16 [101–24]; Hogan, "Citizenship and the Constitution," 6.
33. Brook Thomas, "*China Men*, *United States v. Wong Kim Ark*, and the Question of Citizenship," *American Quarterly* 50.4 (December 1998): 689–717, 705.
34. See Brian Lenihan, TD, "Citizen Change Common Sense," *Irish Times*, May 28, 2004, 18.
35. "YES Citizenship Matters," Fiona O'Malley, TD, *The Last Word*, June 3, 2004. See also Paul Cullen, "Citizenship Loophole Is Damaging Credibility of Entire Asylum System," *Irish Times*, June 3, 2003, 18; Constantin T. Gurdgiev, "Yes: Rejecting the Referendum Would Be a Betrayal of Those Who Truly Belong in Ireland through Effort and Achievement," *Irish Times*, June 8, 2004, 16.
36. Bertie Ahern, *The Last Word*, Today FM, June 2, 2004.

37. "Citizenship Tourists," *The Economist*, June 3, 2004; Denis Staunton, "Chinese Mother and Irish Baby 'Entitled to Live in EU,'" *Irish Times*, May 19, 2004, 9.
38. Mark Hennessy, "McDowell Insists His Action Heads Off 'Threat,'" *Irish Times*, May 19, 2004, 9; Carole Coulter, "European Finding Bolsters Case for Referendum Made by Government," *Irish Times*, May 19, 2004, 9.
39. Sean MacCarthaigh, "Government Provides the Sticks to Beat Itself," *Sunday Business Post*, April 25, 2004.
40. "Citizenship Referendum June 11th: Facts? No! Figures? No! Reasons? No! Vote NO!" Labour Party campaign leaflet, n.d. [May 2004]; Cllr. Leo Varadkar (FG), letter to the editor, *Irish Times*, May 25, 2004, 19; this charge was also leveled by Benedicta Attoh, Independent candidate for Louth County Council, on *The Last Word*, Today FM, June 3, 2004.
41. Fine Gael's campaign literature avoided specific mention of the referendum, but Mitchell and others publicly voiced their support for the referendum on the radio and in other media. Gay Mitchell, TD, "20 Questions on the European Union," campaign pamphlet, 2004; Mitchell, in debate with Ivana Bacik (Lab), Mary Lou McDonald (SF), Eoin Ryan (FF), *The Last Word*, Today FM, June 8, 2004.
42. Gay Mitchell, *The Last Word*, June 8, 2004.
43. Dr. Michael Geary, interview on *Morning Ireland*, RTÉ Radio 1, March 11, 2004; Senator Mary Henry, *The Last Word*, Today FM, May 31, 2004; Dr. Austin O. Carroll et al., "We wish to register our opposition to the upcoming referendum on citizenship" (open letter), published in "Doctors Launch No Vote Campaign," *Campaign against the Racist Referendum* press release, May 31, 2004; Kitty Holland, "Doctor to Raise Role of Three Masters," *Irish Times*, June 2, 2004, 5; Dr Muiris Houston, "Role of Masters to be Discussed Next Month," *Irish Times*, June 3, 2004, 3.
44. See Private Notice Questions of Roisin Shortall TD (Lab); Seymour Crawford TD (FG); John Gormley TD (Green); Dan Neville TD (FG); Paudge Connolly (Ind); all in *Dáil Debates*, vol. 559, December 12, 2002, 725–26.
45. In a letter to Micheál Martin on February 23, Geary apparently cited an "alarming" rise in cases of women from sub-Saharan Africa with HIV, claiming that "while we, as healthcare workers, will take the appropriate cautions to avoid transmission of HIV, it is obvious to all that I would not like to be in the position to have a member of my staff needing to change their career because of contracting HIV through an occupational incident." Arthur Beesley, "'Alarming' rise in HIV Cases in Maternity Care," *Irish Times*, May 28, 2004, 9. Alan M. Kraut, *Silent Travelers: Germs, Genes, and the "Immigrant Menace"* (Baltimore: Johns Hopkins University Press, 1994). See also Paul Cullen, "Rise in HIV among Non-nationals Highlighted," *Irish Times*, May 29, 2004, 5.
46. See http://www.stormfront.org/forum/showthread.php?t=129217 (accessed May 26, 2008).
47. Martin claimed in a radio interview that he supported the referendum because, in its absence, an immigrant child would die. *The Last Word*, Today FM, May 31, 2004. Progressive Democrat campaign literature included an anonymous quotation from "the Master of one of Dublin's leading hospitals" asserting that "'we have been fortunate that there have not been any maternal mortalities as a result of this but there have been some near misses.'" Progressive Democrats, "YES Citizenship Matters," n.d. [2004].
48. See "Report on Incidents Relating to Racism in Ireland, July–December 2007" at http://www.nccri.ie/pdf/RacistIncidentsJuly-Dec07.pdf (accessed March 20, 2008).
49. See Ronit Lentin, "Illegal in Ireland, Irish Illegals: Diaspora Nation as Racial State," *Irish Political Studies* 22.4 (December 2007): 433–53. See also Anwen Tormey, "'Everyone with Eyes Can See the Problem': Moral Citizens and the Space of Irish Nationhood," *International Migration* 45.3 (August 2007): 69–100; Steve Garner, "Babies, Bodies and Entitlement: Gendered Aspects of Access to Citizenship in the Republic of Ireland," *Parliamentary Affairs* 60.3 (July 2007): 437–51; Silvia Brandi, "Unveiling the Ideological Construction of the 2004 Irish Citizenship Referendum: A Critical Discourse Analytical Approach," *Translocations* 2.1 (Summer 2007) at http://www.translocations.ie/currentissue/volume1issue2-3.pdf (accessed March 20).
50. Ahern, *The Last Word*.
51. The racist incidents noted in note 48 indicate that while the majority of immigrants to Ireland come from other states in the EU, it is visible minorities, most especially black African males, who are the targets of racist incidents and attitudes. The sizable minority of Filipinos who have recently arrived in Ireland (the Philippine Embassy in London estimates there are approximately 11,500 Filipinos resident in Ireland, up from 500 in 1999; the Irish Central Statistics Office lists 9,548 Filipinos in the 2006 census) do not seem to be particular targets of racial harassment or xenophobic sentiment.

See www.philembassy-uk.org/default.asp?iId=KHEHL (accessed March 24, 2008). For the national composition of Irish migration, www.cso.ie/releasespublications/documents/population/non-irish/nonirishnationalscomplete.pdf (accessed July 3, 2008).

52. On the differences here, see the trenchant comments of former congressman Bruce Morrison (D-CT), author of a program that secured 48,000 green cards for Irish nationals in 1991: "During recent Irish media interviews, the hosts could not stop saying that my legislation had helped 48,000 Irish undocumented to get 'work permits' in the U.S. The number is right, but it was permanent resident 'Green Cards' they got, not temporary permits. . . . Canada and the U.S. make plenty of mistakes, but they have the basics right. Successful inclusion of immigrants requires permanent admissions and guaranteed citizenship for children born there. European use of ethnicity to define membership in the community is a recipe for segregation of newcomers and ongoing ethnic strife." Morrison, "No: There Is Nothing to Justify Citizenship Panic," *Irish Times*, June 8, 2004, 16.
53. Annual success rates of asylum applications in Ireland averaged below 11% before appeal, 1998 to 2001. See European Council on Refugees and Exiles, "Asylum in the European Union," 7. In 2004, the figure for "Convention Status" recognition was 6.02%. See "European Council on Refugees and Exiles—Country Report 2004—Ireland" at http://www.ecre.org/files/Ireland%20-%20FINAL_0.pdf (accessed March 23, 2008). On the education and work ban, see Irish Refugee Council, "The Right to Work = The Right to Dignity: Policy on the Right to Work for Asylum Seekers," http://www.irishrefugeecouncil.ie/policy01/righttoworkdignity.doc (accessed March 23, 2008).
54. For a critical view on how U.S. guest worker programs tie workers to employers, see Southern Poverty Law Center, "Close to Slavery: Guestworker Programs in the United States," available at: http://www.splcenter.org/pdf/static/SPLCguestworker.pdf (accessed March 23, 2008).
55. Yasemin Soysal, "Toward a Postnational Model of Membership [in Europe] [*sic*]," in *Readings in Contemporary Political Sociology*, ed. Kate Nash, 264–79 (Oxford: Blackwell, 2000), 270.
56. See William Binchy, "Citizenship and the International Remit of Constitutional Protection," in *The Citizenship Referendum*, 48–90.
57. Ruadhán Mac Cormaic, "Following Dreams Far from Home," *The Irish Times*, April 25, 2007.
58. This is suggested by the party affiliation of the noncitizens who contested local elections in 2004: 6 Independents, 11 Green Party, and 2 Labour. Kitty Holland, "Non-national Candidates Blaze New Trail," *Irish Times*, June 2, 2004, 9. At least one noncitizen candidate, Independent Rotimi Adebari, secured a local council position and has since become mayor of Portlaoise. Deaglán de Bréadún, "Nigerian Elected to Portlaoise Council," *Irish Times*, June 14, 2004, Election Supplement, 3.
59. See the Irish Congress of Trade Unions' document *Migration Policy and the Rights of Workers* at http://www.ictu.ie/html/publications/ictu/Migrant%20Policy.pdf (accessed March 24, 2008).
60. "Poles Unfair Dismissal Case Settled in Killarney," *Irish Times*, June 25, 2004, 4.
61. "Gov't 'Blocking' EU Worker Directive," *Irish Times*, December 5, 2007.
62. Patsy McGarry, "McDowell Says Inequality an Incentive in the Economy," *Irish Times*, May 28, 2004, 1.
63. Micheál Martin, *Last Word*, May 31, 2004.
64. The Department of Justice also made it difficult for work permit holders' families to secure even temporary visitor visas. Carl O'Brien, "Doctor's Parents Refused Entry Visas," *Irish Times*, June 23, 2004, 2.
65. Jim McDaid, *Questions and Answers*, RTÉ, May 24, 2004.
66. This is seen, for example, in the post-Reconstruction South, or in the provocative case of Native American whaling in Nantucket analyzed by Daniel Vickers in "The First Whalemen of Nantucket," in *American Encounters: Natives and Newcomers from European Contact to Indian Removal*, ed. Peter C. Mancall and James H. Merrell, 262–82 (London: Routledge, 2000).
67. Aristide R. Zolberg, "International Migrations in Political Perspective, in *Global Trends in Migration*, ed. Mary M. Kritz, Charles B. Keeley, and Silvano M. Tomasi, 3–27 (Staten Island: The Center for Migration Studies of New York, 1981), 15.
68. Robin Cohen, *The New Helots: Migrants in the International Division of Labour* (Aldershot, U.K.: Avebury, 1987), including his analysis of the Bracero Program in chapter 2. See also his more recent research, "Citizens, Denizens, and Helots: The Politics of International Migration Flows after 1945," in *Migration and Its Enemies* (Aldershot, U.K.: Ashgate, 2006), 137–53. See also Nigel Harris, *The New Untouchables* (London: I. B. Tauris, 1995).
69. Cohen, "Citizens, Denizens, and Helots," 152–53.

70. Joseph Stiglitz, *Globalization and Its Discontents* (New York: W. W. Norton, 2003).
71. Mae M. Ngai makes a criticism of Schuck and Smith similar to ours and notes the example of the Irish Citizenship Referendum, as well as the changes in New Zealand's citizenship regime in "Birthright Citizenship and the Alien Citizen," *Fordham Law Review* 75.5 (April 2007): 2524–25. We regret that Ngai's article only came to our notice as this article was going to press.
72. Linda K. Kerber, "The Asymmetries of Citizenship," *Common-place* 2.4 (July 2002).
73. See *Johnson v. Sullivan*, No. 1889, Circuit Court of Appeals, First Circuit, 8 F.2d 988; 1925 U.S. App. LEXIS 3423, November 16, 1925.
74. See H.R. 88, 108th Cong. (2003). See also *Johnson v. Sullivan*.
75. Cited in Kerber, "Asymmetries of Citizenship."
76. Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997), 507n4 and 3, respectively.
77. Peter Schuck and Rogers M. Smith, *Citizenship without Consent: Illegal Aliens in the American Polity* (New Haven: Yale University Press, 1985).
78. Gerald L. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton, N.J.: Princeton University Press, 1996), esp. chapter 9. See also Joseph Carens, "Who Belongs? Theoretical and Legal Questions about Birthright Citizenship in the United States," *University of Toronto Law Journal* 37.4 (Autumn 1987): 413; Gerald L. Neuman, "Back to Dred Scott?" *San Diego Law Review* 24 (1987): 485; David Martin, "Membership and Consent: Abstract or Organic?" *Yale Journal of International Law* 11 (1987): 278, 283; David Schwartz, "The Amorality of Consent," *California Law Review* 74.6 (December 1986): 2143.
79. Neuman, *Strangers to the Constitution*, 186–87.
80. *Weedin v. Chin Bow* (274 U.S. 657), 1927.
81. See Stephen Castles, *Citizenship and Migration* (Basingstoke, U.K.: Macmillan, 2000), 85. Castles emphasizes the integrative role of jus soli. This might be seen as the cultural aspect of the emphasis on political and economic integration of this paper.
82. On the complex relationship between citizenship and territory in an Irish context, see Brian O. Caoindealbhain, "Citizenship and Borders: Irish Nationality Law and Northern Ireland," Working Paper 68, Institute of British-Irish Studies, http://www.qub.ac.uk/cibr/WPpdffiles/MFWPpdf/w18_boc.pdf (accessed March 24, 2008).
83. Thus proposals by Senator Orrin Hatch (R-UT) and Congressman Barney Frank (D-MA) to grant Presidential eligibility for naturalized citizens would not change the Fourteenth Amendment. S.J. Res. 15, 108th Cong. (2003); H.J. Res. 47, 107th Cong. (2001).
84. Rainer Bauböck, *Transnational Citizenship* (Aldershot, U.K.: Edward Elgar, 1994), 35.
85. Jules L. Coleman and Sarah K. Harding, "Citizenship, the Demands of Justice and the Moral Relevance of Political Borders," in *Justice in Immigration*, ed. Warren F. Schwartz, 18–60 (Cambridge: Cambridge University Press, 1995), 38. Schuck has acknowledged this problem in "Membership in the Liberal Polity: The Devaluation of American Citizenship," in *Immigration and the Politics of Citizenship in Europe and North America*, ed. Rogers Brubaker, 51–65 (Lanham, Md.: The German Marshall Fund of the United States and University Press of America, 1989).
86. Coleman and Harding, "Citizenship," 39.
87. Jürgen Habermas, "Citizenship and National Identity," in *Between Facts and Norms* (Cambridge, Mass.: MIT Press, 1996), 514–15.
88. Aisling Reidy, "The Need for a Referendum Considered," paper presented at The Citizenship Referendum: Implications for the Constitution and Human Rights conference at Trinity College Dublin, May 22, 2004.
89. Reidy, "Need for a Referendum"; Cathryn Costello, "Accidents of Place and Parentage: Birthright Citizenship and Border Crossings," in *The Citizenship Referendum*, 5–33.
90. Neville Cox, "The Language of Constitutional Debate," in *The Citizenship Referendum*, 91–100.
91. A notable exception was Piaras MacÉinrí of the Department of Geography and the Irish Centre for Migration Studies Institute of University College Cork.
92. Neuman, *Strangers to the Constitution*, 184.