

BIRTHRIGHT, BLOODRIGHT, AND BELONGING

A COMPARATIVE CONSTITUTIONAL ANALYSIS
OF CITIZENSHIP IN THE UNITED STATES AND UGANDA—
THE CASE FOR JUDICIAL CLARIFICATION OF THE STATUS
OF BANYARWANDA BORN IN UGANDA

A JURISPRUDENTIAL INQUIRY INTO CONSTITUTIONAL IDENTITY,
CITIZENSHIP BY BIRTH, DESCENT, AND THE LIMITS OF
EXECUTIVE AND ADMINISTRATIVE POWER IN
CONSTITUTIONAL DEMOCRACIES



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A Jurisprudential Inquiry into Constitutional Identity, Citizenship by Birth, Descent, and the
Limits of Executive and Administrative Power in Constitutional Democracies

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PREFACE

This monograph proceeds from a single conviction: that citizenship is not merely a legal status conferred or withheld at administrative discretion, but the constitutional expression of political belonging. It is the foundation upon which all other rights rest — the “right to have rights,” as Hannah Arendt so memorably phrased it. Yet in many constitutional democracies, the determination of who belongs to the political community has, in practice, been left to administrative discretion rather than anchored in authoritative judicial interpretation.¹

The immediate occasion for this work is comparative. On 30 June 2026, the Supreme Court of the United States handed down its decision in *Trump v Barbara*, rejecting an executive order that sought to deny citizenship to children born in the United States to parents unlawfully or temporarily present. The Court reaffirmed that the Fourteenth Amendment's Citizenship Clause guarantees birthright citizenship, and that the President cannot alter that constitutional guarantee by executive order.²

That decision strengthens the comparative argument advanced here — not because Uganda should adopt *jus soli*, but because it illustrates a broader constitutional principle: where citizenship is constitutionally protected, disputes over its meaning belong to the courts through constitutional interpretation, and not to administrative discretion or executive policy. Uganda deliberately chose a *jus sanguinis* model under Article 10 of its 1995 Constitution. The question this monograph asks is not whether Uganda should copy the American model, but whether the constitutional status of Banyarwanda born in Uganda has been left to inconsistent administrative practice instead of authoritative judicial interpretation.³

This is, self-consciously, a work of comparative constitutional method rather than of advocacy for any particular litigant. Its purpose is to lay the doctrinal, historical, and comparative groundwork upon which a constitutional reference concerning Article 10 might properly be brought, and to argue — as a matter of constitutional principle — that citizenship disputes of this kind belong in the courts.

¹Hannah Arendt, *The Origins of Totalitarianism* (Harcourt, Brace 1951) 296–297.

²*Trump v Barbara*, 609 US ____ (2026), No. 25-365 (30 June 2026) (slip op.).

³Constitution of the Republic of Uganda 1995, art 10.

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This work owes an intellectual debt to the judges whose reasoning has illuminated the path toward constitutional clarity on questions of citizenship, both in Uganda and in the United States, and whose published judgments and opinions are engaged with throughout this monograph on their merits.

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PART I

CITIZENSHIP AS THE FOUNDATION OF CONSTITUTIONAL ORDER

CHAPTER ONE

The Meaning of Citizenship

1.1 Citizenship in Political Philosophy

Citizenship has been understood throughout the Western political-philosophical tradition as the fundamental relationship between the individual and the political community. Aristotle conceived of citizenship as participation in the political life of the polis – the capacity to rule and be ruled in turn. For Aristotle, the citizen was defined by participation in deliberative and judicial office; citizenship was not merely a status but an activity, a form of practical engagement in collective self-government.⁴

John Locke, writing within the social-contract tradition, framed citizenship as the product of consent – whether express or tacit – by which individuals enter civil society and thereby acquire both the obligations and the entitlements of membership: the duty to obey the law, and the right to participate, directly or through representation, in the exercise of legislative power.⁵

Jean-Jacques Rousseau offered a more demanding, participatory vision. In *The Social Contract*, Rousseau argued that citizenship requires the active engagement of the individual in the formation of the general will: the citizen is not merely a subject of law but a co-author of the laws to which he is subject. This conception of citizenship as active political co-authorship has profoundly shaped modern constitutional democracy's self-understanding, particularly the notion that a constitution is an act by which “the people” constitute themselves as a political community.⁶

Hannah Arendt, writing in the aftermath of the Second World War and out of her own experience of statelessness, provided the most consequential articulation of citizenship's stakes for the twentieth century and beyond. She observed that persons deprived of citizenship are deprived, in substance, of the “right to have rights” – for it is only within an organised political community that legal rights of any kind

⁴ Aristotle, *Politics* (Ernest Barker tr, Oxford University Press 1946) bk III, ch 1.

⁵ John Locke, *Two Treatises of Government* (Peter Laslett ed, Cambridge University Press 1988, first published 1689) bk II, ch VIII.

⁶ Jean-Jacques Rousseau, *The Social Contract* (Maurice Cranston tr, Penguin 1968, first published 1762) bk I, ch 6.

can be effectively claimed and enforced. Arendt's insight, developed from the catastrophic experience of stateless and denationalised persons in interwar Europe, is that citizenship is not one right among many but the precondition for the enjoyment of any right at all. Without it, the individual stands exposed to the arbitrary power of the state, unprotected by the ordinary guarantees of law.⁷

1.2 Citizenship versus Nationality

A distinction is conventionally drawn between citizenship and nationality, though the terms are frequently used interchangeably in both scholarship and statute. In public international law, “nationality” denotes the legal bond between an individual and a state for purposes of diplomatic protection and the attribution of rights and duties under international law, while “citizenship” more often connotes the domestic political rights that attach to that bond – the franchise, eligibility for public office, and full membership of the constitutional order. In many legal systems, including Uganda's, the terms are used synonymously in domestic legislation, though the analytical distinction remains useful.

The distinction matters for the purposes of this work because Banyarwanda born in Uganda are not merely seeking recognition of a legal status for purposes of international protection. They are seeking recognition of political belonging – not merely a passport, but acknowledgment that they form part of the Ugandan political community and are entitled, on the same terms as others, to participate in its governance.

1.3 Citizenship as Constitutional Membership

Citizenship is, at bottom, the constitutional expression of membership in the political community. It defines the boundaries of the demos – the people who constitute the state and who are entitled to participate in its governance – and it therefore sits at the foundation of constitutional order rather than at its periphery.

The Constitution of Uganda recognises this constitutive function in its very opening words: “We the People of Uganda ... do hereby ... adopt, enact and give to ourselves and our posterity, this Constitution.” The Constitution is presented as an

⁷Arendt (n 1) 296–297.

act of self-constitution by “the People.” The question this monograph pursues — who, precisely, constitutes “the People” for purposes of Article 10 — is therefore not incidental to constitutional interpretation but goes to the identity of the constitution-making community itself.⁸

⁸Constitution of the Republic of Uganda 1995, preamble.

CHAPTER TWO

Birthright versus Bloodright

2.1 Historical Evolution

The distinction between birthright citizenship (*jus soli*) and bloodright citizenship (*jus sanguinis*) has deep roots in the legal history of the West. Roman citizenship was initially organised around birth and family membership, but evolved, as Rome expanded, to incorporate territorial and administrative elements; the *Constitutio Antoniniana* of 212 CE extended citizenship to the great majority of free inhabitants of the Empire, an early and dramatic instance of a broadly territorial conception of membership.⁹

Feudal allegiance in medieval Europe rested instead on personal loyalty to the sovereign rather than on territorial or civic membership as such. The doctrine of perpetual allegiance — that a person born within the sovereign's dominions owed permanent loyalty to that sovereign — would go on to shape the development of the English common-law rule of *jus soli*, most famously articulated in *Calvin's Case*.

The French Revolution marked a decisive turn toward a territorial and popular conception of citizenship, expressed in the Declaration of the Rights of Man and of the Citizen's proclamation that sovereignty resides essentially in the nation. The French Civil Code of 1804 subsequently adopted what would become an influential mixed system, combining elements of *jus soli* with a strong emphasis on *jus sanguinis* through paternal descent.¹⁰

2.2 The Development of *Jus Soli*

The common-law rule that a person born within the sovereign's dominions is a subject was well established in England by the seventeenth century. *Calvin's Case* (1608) affirmed that a person born in Scotland after the union of the crowns was a natural-born subject of England, on the ground that he was born within the king's allegiance.¹¹

This common-law rule was inherited by the American colonies and became

⁹See generally A N Sherwin-White, *The Roman Citizenship* (2nd edn, Oxford University Press 1973) 380–394.

¹⁰Code civil des Français (1804) arts 9–12 (as originally enacted).

¹¹*Calvin's Case* (1608) 7 Co Rep 1a, 77 ER 377.

the foundation of American citizenship law. The Fourteenth Amendment to the United States Constitution, ratified in 1868, constitutionalised the rule in its opening sentence: “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.”¹²

2.3 The Development of Jus Sanguinis

Jus sanguinis – citizenship transmitted by descent from a citizen parent, irrespective of place of birth – has its principal modern origin in the continental European legal tradition, most influentially in the French Civil Code of 1804. This model was subsequently adopted, in various forms, by many European states and, through colonial transplantation, by numerous states in Africa and Asia.

Jus sanguinis reflects a conception of the nation as, at least in part, a community of descent – united by lineage, language, or culture, rather than by territory alone. This conception carries particular resonance in Africa, where colonially drawn borders frequently bisected pre-existing ethnic and linguistic communities, and where post-independence states have often sought to define citizenship by reference to membership in communities designated as “indigenous” as at a fixed historical date.

2.4 Comparative Constitutional Models

Contemporary constitutional systems adopt a wide range of combinations of jus soli and jus sanguinis. The United States operates a broadly jus soli system, as reaffirmed in *Trump v Barbara*: birth on United States territory confers citizenship, subject to narrow historical exceptions recognised since *United States v Wong Kim Ark* for children of accredited foreign diplomats and of occupying enemy forces.¹³

Germany historically operated a near-pure jus sanguinis system, though its Nationality Act was reformed in 1999 and again subsequently to introduce elements of jus soli for children born in Germany to parents with a defined period of lawful residence. The United Kingdom operates a composite system combining jus soli, for children born in the UK to a parent who is a British citizen or settled, with jus

¹²US Constitution, amend XIV, §1.

¹³*United States v Wong Kim Ark*, 169 US 649 (1898); *Trump v Barbara* (n 2).

sanguinis, for children born abroad to British parents.¹⁴

Uganda adopts a jus sanguinis model under Article 10 of its 1995 Constitution: citizenship by birth turns on descent from a parent or grandparent who is or was a member of an indigenous community present in Uganda as at 1 February 1926, or from a parent or grandparent who is or was a citizen of Uganda by birth. South Africa and Kenya, by contrast, each operate mixed systems combining descent-based and territorial elements, including protection against statelessness for children who would otherwise have no nationality.¹⁵

This comparative range — pure jus soli, pure jus sanguinis, and various mixed models — forms the analytical backdrop against which Parts II through V of this monograph proceed: first through a close study of American constitutional citizenship (Part II), then through a doctrinal account of Uganda's own model (Part III), before the two are brought together to bear on the specific and unresolved constitutional status of Banyarwanda born in Uganda (Part IV) and set within a wider comparative and international human rights frame (Parts V and VI).

¹⁴British Nationality Act 1981 (UK), ss 1–2; on the German reforms, Staatsangehörigkeitsgesetz (StAG) §4, as amended.

¹⁵Constitution of the Republic of Uganda 1995, art 10; Constitution of the Republic of South Africa 1996, s 3 and the South African Citizenship Act 88 of 1995; Constitution of Kenya 2010, arts 12–14.

PART II

BIRTHRIGHT CITIZENSHIP IN AMERICA

CHAPTER THREE

Historical Origins

3.1 The American Civil War and the Question of Citizenship

The American Civil War (1861–1865) fundamentally transformed the constitutional order of the United States, and the question of citizenship lay near the centre of that transformation. Before the war, the status of persons of African descent within the constitutional order was gravely contested. In *Dred Scott v Sandford* (1857), Chief Justice Taney held, for the Court, that persons of African descent whose ancestors had been brought to the United States and sold as slaves could not be, and were never intended to be, citizens of the United States.¹⁶

The abolition of slavery through the Thirteenth Amendment in 1865 left unresolved the constitutional status of the newly freed population. It was against this backdrop that the Thirty-Ninth Congress turned to drafting what would become the Fourteenth Amendment.

3.2 The Citizenship Clause of the Fourteenth Amendment

Section 1 of the Fourteenth Amendment, ratified in 1868, provides: “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.” The Citizenship Clause was drafted to overrule *Dred Scott* and to place birthright citizenship beyond the reach of ordinary legislative revision — a constitutional guarantee rather than a statutory one.¹⁷

The phrase “subject to the jurisdiction thereof” was, from the outset, understood to exclude only a narrow class of persons — principally children of accredited foreign diplomats and, at the time of ratification, members of Native American tribes not then subject to the full jurisdiction of the United States. The Supreme Court's subsequent jurisprudence, discussed in Chapter Four, would confirm that this exception was narrow and historically bounded, rather than a general licence to condition citizenship on the immigration status of a child's parents.

¹⁶*Dred Scott v Sandford*, 60 US (19 How) 393 (1857).

¹⁷US Constitution, amend XIV, §1.

CHAPTER FOUR

The Supreme Court and Constitutional Citizenship

4.1 United States v Wong Kim Ark (1898)

United States v Wong Kim Ark is the foundational modern authority interpreting the Citizenship Clause. Wong Kim Ark was born in San Francisco in 1873 to Chinese parents who were, at the time, ineligible for naturalisation under then-prevailing law. Following a visit to China, he was denied re-entry to the United States on the ground that he was not a citizen. The Supreme Court held that he was a citizen by birth under the Fourteenth Amendment.¹⁸

The Court reasoned that the Citizenship Clause “affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens.” The Court expressly rejected the argument that the Clause should be read to exclude children of aliens generally, and it recognised only narrow, historically bounded exceptions: children born to accredited foreign diplomats, children born to enemy forces in hostile occupation, and, at that time, members of Native American tribes not subject to full federal jurisdiction. Wong Kim Ark's parents were domiciled residents of the United States and were accordingly held to be subject to its jurisdiction.¹⁹

4.2 Trump v Barbara (2026)

Trump v Barbara, decided by the Supreme Court on 30 June 2026, reaffirmed and applied the reasoning of Wong Kim Ark in a direct constitutional challenge to Executive Order 14160, “Protecting the Meaning and Value of American Citizenship,” issued by President Donald Trump on 20 January 2025. The Order directed federal departments and agencies to decline to recognise United States citizenship for children born in the United States where the mother was unlawfully present and the father was neither a citizen nor a lawful permanent resident, or where the mother's presence was lawful but temporary and the father was neither a citizen nor a lawful

¹⁸Wong Kim Ark (n 8).

¹⁹ibid 693, 705–706.

permanent resident.²⁰

The case was argued before the Supreme Court on 1 April 2026 — the first occasion in modern history on which a sitting president attended oral argument in person — with Solicitor General John Sauer appearing for the government and Cecillia Wang, National Legal Director of the American Civil Liberties Union, appearing for the respondents.²¹

The Court ruled against the government by a vote of 6–3, though on a narrower 5–4 division as to the constitutional question itself. Chief Justice Roberts, writing for the majority and joined by Justices Sotomayor, Kagan, Barrett, and Jackson, held that children born in the United States to parents unlawfully or temporarily present satisfy both elements of the Citizenship Clause — they are “born in the United States” and “subject to the jurisdiction thereof” — and are accordingly “citizens at birth” under the Constitution. Justice Kavanaugh concurred in the judgment on statutory rather than constitutional grounds, holding that the Order was inconsistent with the Immigration and Nationality Act's codification of the Citizenship Clause, without reaching the constitutional question. Justices Thomas, Alito, and Gorsuch dissented.²²

*“Citizenship, then and now, was the right to have rights — to freely participate in our political community. The Framers of the Fourteenth Amendment extended that promise to ‘every free-born person in this land.’ ... We keep that promise today.”*²³

The majority traced the historical pedigree of birthright citizenship from English common law through early American jurisprudence, reaffirmed *Wong Kim Ark* as controlling precedent, and rejected the government's argument that a child's citizenship should depend on the immigration status — and specifically the “domicile” — of the child's parents. The Court found “scant evidence” for that revisionist reading of the historical record, and held that nothing in the “succinct language of the Citizenship Clause” supported reading such a qualification into the constitutional

²⁰Exec Order No 14160, 90 Fed Reg 8449 (20 January 2025); *Trump v Barbara* (n 2).

²¹*Trump v Barbara: Supreme Court Considers Birthright Citizenship*, Congress.gov CRS Legal Sidebar LSB11423 (29 April 2026).

²²*Trump v Barbara* (n 2) (Roberts CJ, majority op.); Amy Howe, ‘Supreme Court strikes down Trump's order ending birthright citizenship’, SCOTUSblog (30 June 2026).

²³*Trump v Barbara* (n 2) (Roberts CJ, majority op., slip op. at 24), quoting Cong Globe, 39th Cong, 1st Sess 600 (1866) (Sen Trumbull).

text.²⁴

The Court's reasoning carries at least four implications of direct relevance to this monograph's comparative argument. First, the Court reaffirmed that constitutional citizenship cannot be altered by executive order: the President cannot, by directive, redefine who is a citizen, since the Constitution establishes the rule and only constitutional amendment can change it. Second, the Court treated the meaning of constitutional citizenship as, ultimately, a judicial question rather than an administrative one — efforts to narrow birthright citizenship through executive action were found irreconcilable with “the Constitution's text, structure and enduring precedent.” Third, the Court placed weight on legal stability and the rule of law, observing that departure from the settled understanding of the Citizenship Clause would introduce widespread uncertainty. Fourth, the Court treated citizenship as foundational to participation in the political community — consistent with Arendt's “right to have rights” — such that its denial could not be treated as a matter of ordinary administrative discretion.

4.3 The Institutional Lesson for Uganda

The comparative lesson this monograph draws from *Trump v. Barbara* is institutional rather than substantive. Uganda has not adopted, and this monograph does not argue that it should adopt, a *jus soli* model of citizenship. Uganda deliberately chose *jus sanguinis* under Article 10 of its Constitution, and nothing in the American decision bears on the wisdom of that choice as such.

What the American decision does illustrate — and what supplies the institutional premise for the remainder of this monograph — is a more general constitutional proposition: that where citizenship is constitutionally protected, disputes about its meaning belong to the courts, through the ordinary methods of constitutional interpretation, and not to administrative discretion or executive or ministerial policy. The Supreme Court of the United States reaffirmed that constitutional citizenship cannot be altered by executive policy; the argument developed in Parts III and IV below is that Uganda should not, by the same logic, leave the unresolved constitutional status of thousands of Banyarwanda born in

²⁴*Trump v. Barbara* (n 2) (Roberts CJ, majority op., slip op. at 14–18).

Uganda to immigration officials or administrative circulars, but should instead permit – indeed require – the Constitution to speak through judicial interpretation, under the jurisdiction conferred on the Constitutional Court by Article 137 of the Constitution of Uganda.²⁵

²⁵Constitution of the Republic of Uganda 1995, art 137.