

State Citizenship Has Roots in American History

Peter Spiro

JUNE 24, 2014

The New York Is Home Act supplies a new way of framing immigrant rights. If immigrants are members of the local community, why shouldn't they enjoy equality within that community, even if they are uninterested or ineligible for membership in the national one? The bill may never be enacted, but it has already succeeded in making us rethink how individuals fit into different levels of authority.

As novel as it may seem, state citizenship has roots going back to the beginning of the republic. The Constitution was largely mute on the question of citizenship. The Constitution gave Congress the power to "establish an uniform rule of naturalization," but that applied only to national citizenship. Before the Civil War, some states extended state citizenship to free blacks. In its infamous ruling in the Dred Scott case, the Supreme Court rejected the capacity of free blacks to hold national citizenship. At the same time, it confirmed state power to extend state citizenship to free blacks. In other words, it confirmed a state power to extend state citizenship to persons not holding national citizenship.

That history may seem (thankfully) antiquated. The racial aspects of the Scott ruling were erased by adoption of the 14th amendment. But the antebellum practice of state citizenship beyond national citizenship resonates today in the context of undocumented immigrants, whose path remains legally blocked in Washington. States can never exclude from their citizenries those who hold national citizenship. The 14th Amendment provides that "all persons born and naturalized in the United States ... are citizens of the United States and of the state wherein they reside." But there's nothing to stop states from

defining their own citizenship more generously to recognize the membership of those they already count as their own.

Spiro, Peter. "State Citizenship Has Roots in American History." *New York Times Opinion Pages: Room for Debate*. New York Times, 24 June 2014. Web. 20 Sept. 2014.