NATURAL BORN CITIZEN DEFINED

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This authoring involves no consideration whatsoever of the contentious “birth certificate”, as the contents of that document are entirely irrelevant to the final conclusion. This analysis examines the importance of historic context in considering the terms of qualification for the Office of President of the United States, resolving that Barack Obama is incapable of being a natural born citizen and is thereby forever ineligible to hold that Office, based on established fact.

Outline

Introduction:

The positive mandate in Article 2, Section 1, Clause 5, that "No person except a natural born Citizen,… shall be eligible to the Office of President" is neither irrelevant nor antiquated and originates from the core philosophy of the Declaration of Independence, and U.S. Constitution, and is of the very same origin as our "unalienable rights" as American citizens.

"Natural born citizen" is a known, static definition, derived from Natural Law, a term of art outside of any Positive Law, hence the reason it needs no definition within the Constitution. This Natural Law involves a "self-evident" status so fundamental to our "unalienable rights" and freedoms, that it is expressed in the very first sentence of the Declaration of Independence:

> When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the **Laws of Nature** and of **Nature's God** entitle them,…

A "natural born citizen" is a "self-evident" status upon birth because that offspring could not possibly be a citizen of, and owe allegiance to, any other country or peoples. Natural Born incorporates all aspects of citizenship heritance at birth, including that conveyed by the soil (jus soli) and that conveyed by both parents' blood allegiance (jus sanguinis).

"Natural Born Citizen", Not "Citizen"

The requirement for President in Article II is not "citizen" nor "citizen at birth", but rather "natural born citizen".

In Alexander Hamilton's first draft of Article II the requirement was indeed only **"citizen"**, or more accurately **citizen at birth** ("born citizen"). *However* they did not go with Hamilton's early draft of Article II. From the Yale Law Journal [Vol. 97: 881] referencing John Jay's letter to George Washington leading to the inclusion of "natural born citizen" [8]:

> On June 18, a little over a month before Jay's letter, Alexander Hamilton submitted a "sketch of a plan of government which 'was meant only to give a more correct view of his ideas, and to suggest the amendments which he should probably propose ... in ... future discussion.' "40 Article IX, section 1 of the sketch provided: "No person shall be eligible to the office of President of the United States unless he be now a Citizen of one of the States, or **hereafter be born a Citizen of the United States**.":" Hamilton's draft, which appears to be an early version of the natural-born citizen clause, contains two distinct ideas: first, that those currently citizens will not be excluded from presidential eligibility, and second, that the President must be born a citizen.

What actually transpired over this change in wording, replacing "born a citizen" with "natural born citizen", was that the President was no longer to be elected by Congress, but

rather by the people, and therefore the office required more stringent safeties regarding the allegiance of the office holder.[12] By selection among the duly qualified and elected Congress, a certain degree of security was established for the office of President. However in transferring the responsibility to the citizens, a more stringent requirement was needed to ensure that any occupant of the Office would have allegiance to Constitutional principles and American society.

Especially given this draft change, it is *clearly wrong* to equate *"natural born citizen"* with anyone who is a *citizen at birth*. Similarly, it is improper to ignore the word "natural" in the phrase "natural born citizen" simply because one has no innate understanding of the meaning of "natural". Again, "natural" in "natural born citizen", in the language of our founding documents and principles, is a "self-evident" status upon birth, owing no allegiance to any other country, and thereby a full participant in this society.

Given that the requirements for the Office of President have long been inscribed on parchment, since the founding of this country, it would be unreasonable to assume that the definition of "natural born citizen" was unknown or vague. This same Yale Law Journal article [Vol. 97: 881] recognizes that the only reasonable interpretation of "natural born citizen" would be that held by the founders at the time of ratifying the Constitution, and that this meaning was "clear." [8]:

> "Constitutional scholars have traditionally approached the uncertainty surrounding the meaning of the natural-born citizen clause by inquiring into the specific meaning of the term "natural born" at the time of the Constitutional Convention. They conclude that a class of citizens should be considered natural born today **only if they would have been considered natural-born citizens under the law in effect at the time of the framing of the Constitution**" (see footnote 8)
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> 8. These writers assume that the phrase "natural born citizen" was a term of art during the preconstitutional period since the phrase is not defined in either the Constitution or the records of the Constitutional Convention. See Gordon, supra note 2, at 2 ("The only explanation for the use of this term is the apparent belief of the Framers that its connotation was **clear**.");

These two conclusions together indicate that 'scholars' believe that the one interpretation of "natural born citizen" by the founders from 200+ years ago remains intact, discernable, and the only valid interpretation today.

Natural Born Citizen vs. British "Common Law" Natural Born Subject:

Many reference British Common Law in search for a definitive answer as to the meaning of natural born, and resolve, by that Common Law, the definition of natural born to result from birth on the native soil of a country. Justice Gray does a thorough job of delving into British history in the landmark case of U.S. vs. Wong Kim Ark, 169 U.S. 649 (1898), even going back to Lord Coke and Calvin's case (1608), some 180 years before this nation's founding, and preceding the Ark decision by 290 years.

However, in truth, Lord Coke's decision in Calvin's case is as fundamentally alien to these United States' founding principles as the rest of British Common Law citizenship. Calvin's case was landmark in its day, and the early modern common-law mind, for being the first to articulate a theoretical basis for territorial birthright citizenship. Calvin's Case was not only influential in establishing the citizenship right of American colonials, but also was much later argued as the basis common-law rule for U.S. birthright citizenship. Calvin's Case is the earliest, most influential theoretical articulation by an English court of what came to be the common-law rule that a person's status was vested at birth, and based upon place of birth. .[7]

However this recognition of British common law also ignores the inherent conflicts with the fundamental tenets of our Constitution, conflicts so profound philosophically that they were causal in the Revolutionary War and War of 1812. In Lord Coke's decision, the law of the Creator is conflated with the law of England and being lain down via edict to the common man from that divine Crown through the judiciary. Even as described by Justice Gray in Wong Kim Ark, the Coke decision involves feudal concepts of " 'ligealty,' 'obedience,' 'faith,' or 'power' of the 'King'".[11] This feudal oblige and extension of the dominion of the Crown to ANY territory held by the King, even making "natural born subjects" of those born in America, contributed to British settlers leaving Britain in the first place and ultimately became a primary factor in the "Declaration of Independence", with colonists declaring themselves free of such an involuntary burden of the Crown while having no protection and no representation.

In 1765 the British Jurist William Blackstone recognized the mandate of the Crown having changed the inherent meaning of "natural-born Subject", progressively over time, to be anyone born in British territory, regardless of the parents' allegiance or citizenship. Initially a child was born a natural-born subject if born on British soil, even if the child's parents were aliens.

However, Blackstone later wrote in his 1765 Commentaries, the following [2][1]:

> To encourage also foreign commerce, it was enacted by statute 25 Edw. III. st. 2. that all children born abroad, provided both their parents were at the time of the birth in allegiance to the king, and the mother had passed the seas by her husband's consent, might inherit as if born in England: and accordingly it hath been so adjudged in behalf of merchants. **But by several more modern statutes these restrictions are still farther taken off: so that all children, born out of the king's ligeance, whose fathers were natural-born subjects, are now natural-born subjects themselves**, to all intents and purposes, without any exception; unless their said fathers were attainted, or banished beyond sea, for high treason; or were then in the service of a prince at enmity with Great Britain.

This passage indicates that even those not born on British territory are to be thenceforth considered "natural born" because of blood lineage no less, and for the purpose of trade (as well as the Treasury), showing that this is not a static understanding of "natural born", but one evolved over time and by "executive" mandate of the Crown – hardly any sort of "common law."

What Gray has represented as British “common law” natural born subject, was not static and was the evolution of Crown dictate over time, expressed in statutory law. This statutory definition is *far removed* from any sort of natural, ‘self-evident’ term employed by the United States in its Constitution.

Only 30 years prior to Blackstone’s writings, in 1736, British scholar Matthew Bacon recognized the fundamental meaning of "natural-born Subject" to be:

> "All those are natural-born Subjects whose Parents, at the Time of their Birth, were under the *actual* Obedience of our King, and whose Place of Birth was within his dominions."
>
> (Matthew Bacon, A New Abridgement of the Law, 1736, Vol 1, pg 77)2

Not only does this indicate that the place of birth must be within the "dominion" (British territory) itself, but it also indicates that the parents must be under the “actual obedience” of the King. The emphasis on “actual Obedience” seems to strongly differentiate that from a presumed obedience resulting from mere happenstance of birth within the dominion. Given this, those who had foreign allegiance did not give birth on British soil to British natural born subjects. This is definition by Bacon is the same as our own “Natural Law” definition today, involving (1) the allegiance (citizenship) of both parents and (2) birth within the U.S. territory (dominion).

In Gray’s majority opinion for Wong Kim Ark, Gray makes two references to natural born citizen which directly conflict with his British common law approach. The first is a reference to Justice Waite’s opinion from Minor vs. Happersett [6], in which Waite refers to a Vattel’s definition of natural born citizen as birth to two citizen parents on country’s soil [10].

In the second, Justice Gray quotes from a pamphlet entitled “Alienigenae of the United States”, by Horace Binney, which used the term "natural born" in connection with a child of a citizen, but not in connection with a child of an alien parent.:

> The right of citizenship never descends in the legal sense, either by the common law or under the common naturalization acts. It is incident to birth in the country, or it is given personally by statute. The child of an alien, if born in the country, is as much a citizen as the natural born child of a citizen, and by operation of the same principle. (Binney’s statement, as cited by Gray U.S. v. Wong Kim Ark (1898)[11])

While Binney references both children as citizens, only the child born of a citizen is referenced as "natural born".

Justice Gray’s articulation of British Common Law in Wong Kim Ark regarding U.S. citizenship should be considered nothing short of an abomination, because it is truly runs contrary to the very origins and hard-won principles of this country. While Gray’s argument in Wong Kim Ark has had deleterious effect on citizenship, the case did not affect natural born citizen because Gray never pronounced that a natural born citizen was equivalent to a natural born Subject, despite obviously desiring to do so, and Gray never at all undermined

the definition provided by Justice Waite from Minor vs. Happersett. While Wong Kim Ark was pronounced a citizen of the United States, Ark was *never declared* to be a natural born citizen of the United States.

George Mason, called the "Father of the Bill of Rights" and considered one of the "Founding Fathers" of the United States, is widely quoted as saying:

> **The common law of England is not the common law of these states.**
>
> (Debate in Virginia Ratifying Convention, 19 June 1788)

More recently Justice Antonin Scalia confirmed the irrelevancy of *British* Common Law:

> **The common law is gone. The federal courts never applied the common law and even in the state courts it's codified now.**
>
> (Audio/Video: Justice Scalia speech, Nov 22, 2008)

Citizen vs. Subject:

Those who argue that meaning of "natural born citizen" can be resolved by looking to British common law "natural born Subject" ignore the vast difference between Citizen and Subject.

A Michigan Law Review article considers the profound difference between Citizen and Subject [9]:

> So far we have assumed that the conventional meaning of "natural born citizen" for those learned in the law in the eighteenth century was equivalent to the meaning of "natural born subject" in nineteenth century English law. But is this assumption correct? Does the substitution of the term "citizen" for "subject" alter the meaning of the phrase? And if those learned in the law did recognize a difference, what implications does that have for the meaning of the natural born citizen clause?
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> The distinction between citizens and subjects is reflected in Chief Justice John Jay's opinion in Chisholm v. Georgia, the first great constitutional case decided after the ratification of the Constitution of 1789:
>
> > " **[A]t the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects** . . . ."
>
> Justice James Wilson confirmed Jay's articulation of the opposition between subjects and citizens. <snip>The term "citizen" reflects the notion that individual citizens are

> sovereign in a republic, whereas the term "subject" reflects feudal and monarchical conceptions of the lord or monarch as sovereign and the individual as the subject.
>
> (Solum, "Originalism and the Natural Born Citizen Clause" [9])

The effects of the historic events that forged this Great Nation are as relevant today as they were at the time of the signing of the Constitution. In feudal-monarchical constitutional theory, individuals were the subjects of a sovereign monarch, but the republican constitutional theory of the post-revolutionary period conceived of the individual as a citizen and recognized that sovereignty as the unalienable right of the people.

Under the old British common law doctrine of natural-born subject, birth itself was an act of naturalization that required no prior consent and demanded allegiance, with one's position in society preordained by that birth. Furthermore, birth was viewed as enjoining a **"Perpetual Allegiance"** that could never be severed or altered by any act other than high Treason. To say Britain's common-law and "perpetual allegiance" were extremely unpopular in this country is an enormous understatement, with these being causal in two wars, the Revolutionary War and the War of 1812.

To put these differences in a more timely perspective, Charles Townshend, speaking to Britain's Parliament in 1765 in support of the Stamp Act, spoke contemptuously of the American colonists as being "children planted by our care, nourished up by our indulgence...and protected by our arms." A friend of the Colonists, Isaac Barre stated in response:

> "They nourished up by your indulgence! They grew up by your neglect of them. As soon as you begin to care about them, that care was exercised in sending persons to rule them in one department and another, . . . men whose behavior on many occasions has caused the blood of those Sons of Liberty to recoil within them."

Barre's efforts against the Stamp Act were recognized in America with the founding of the Pennsylvania town of Wilkes-Barré in 1769. Compound this outrage with that of the enduring doctrine of British perpetual allegiance citizenship that resulted in American citizens being taken by British ships even after our independence, and you begin to understand why asserting Common Law citizenship principles here is so profoundly wrong.

The fact that Britain considered all who were born within the dominions of the crown to be its natural born subjects of Britain, even after becoming naturalized citizens of the United States, led to British vessels blockading American ports. Under the British blockade, every American ship entering or leaving was boarded by soldiers in search of British born subjects. At least 6,000 American citizens, found to be British natural-born subjects, regardless of this Nation's Declaration of Independence and War, were pressed into military service on behalf of the British Empire, thus a primary reason we went to war. [5]
[War of 1812]

Given that the citizenship allegiance is no longer dictated by "common law" mandate of the Crown, then the only way to judge "natural born" status is to recognize all aspects of citizenship allegiance in effect upon birth, excluding by statute. These sources would be via

the soil, and via “blood” heritance from the parents. While both British common law “natural born subject” and American “natural born citizen” might be said to involve “birthright” citizenship, the former involves an unequal obligation to the Crown and the latter involves natural, self-evident recognition of at-birth conditions of the citizen, with that citizen being sovereign, and a full member of American society having no allegiance to any other society.

Supreme Court Opinion:

While there are deviations from the Natural Law definition of “natural born”, these deviations have generally been asserted on the state rather than federal level and part of court ‘obiter dicta’, offered without any supporting legal argument. Both British common law and American statutory history involve such assertions, yet these do not change the fundamental meaning of “natural born”, as it is exerting statutory definition on a term outside of Positive Law, when it is resolved by natural, self-evident means.

Not surprisingly the first 100+ years of this country’s history are spanned by Supreme Court opinions clearly indicating the **definition of natural born citizen, and repeatedly indicating the same reference consulted by our founders as they authored the Constitution in Carpenter's Hall, that reference being Emmerich de Vattel's "Law of Nations".**

► 1814 **The Venus**, 12 U.S. (8 Cranch) 253, 289 (1814) (Marshall, C.J., concurring) (cites Vattel’s definition of natural born citizens);

► 1830 **Shanks vs. Dupont**, 28 U.S. 242, 245 (1830) (same definition without citing Vattel);

► 1875 **Minor vs. Happersett**, 88 U.S. 162, 167-68 (1875) (same definition without citing Vattel);

► 1879 **Ex parte Reynolds**, 1879, 5 Dill., 394, 402 (same definition and cites Vattel);

► 1890 **United States vs. Ward**, 42 F.320 (C.C.S.D.Cal. 1890) (same definition and cites Vattel);

► 1898 U**.S. vs. Wong Kim Ark**, 169 U.S. 649 (1898) (same definition and C.J, Fuller’s dissent confirming Vattel’s definition of a “natural born Citizen”);

1899 **Keith vs. U.S., 8 Okla**. 446; 58 P. 507 (Okla. 1899) (common law rule that the offspring of free persons followed the condition of the father was applied to determine the citizenship status of a child);

All six of the highlighted Supreme Court cases, above, indicate the same definition of natural born citizen, with two of the cases also referencing that definition in minority opinion.

Vattel's definition of natural born citizen, as cited in the 1759 English translation of that treatise "Law of Nations" and referenced in more than 100 years of this country's Supreme Court decisions is the following:

> § 212. Citizens and natives.
>
> The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives, or natural-born citizens, are those born in the country, of parents who are citizens . As the society cannot exist and perpetuate itself otherwise than by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights.
>
> E. de Vattel, The Law of Nations, bk 1, Ch XIX, sec. 212 (1758) (1759 first English translation, as updated in 1797);

While the original Vattel "Law of Nations" French manuscript did not include the phrase "natural-born citizens", it did use the word "Indigenes", indicating those who are entirely "indigenous". In the updated 1797 English translation, the word "indigenes" was changed to "natural born citizens", reflecting the understanding of the Founders throughout the period, both preceding and following the drafting of the Constitution. This is supported by the English translations of Bodin's Republique (1606), Patsall's Institutio Oratoria (1774), and Bacon's A New Abridgement of Law (1736), all indicating natural citizenship status to involve far more than birthplace alone, requiring a more ongoing and personal involvement with a society to make someone a natural member thereof.

This Vattel definition of "natural born citizen" is nowhere undermined by any Supreme Court at any time in this country's history, though some interests have argued that it should no longer be applicable. Some have argued that the 14th Amendment created some new form of citizen and even modified "natural born citizen" as a result. However the 14th never references "natural born citizen" at all. The 14th 's reference to "born or naturalized" merely groups those achieving citizenship upon birth (born), by both statute and natural born status, in opposition to those achieving citizenship after birth (naturalized).

In Marbury vs. Madison Chief Justice Marshall indicated that:

> "It cannot be presumed that any clause in the constitution is intended to be without effect; and therefore such construction is inadmissible, unless the words require it."

The fact that the Constitution is not "form without substance" does kill the argument that being "a 14th Amendment citizen" has the same effect on Presidential eligibility as being a "natural born citizen". If being a "citizen", or "born citizen", had the same exact effect as

being a "natural born citizen" then the clause would have no effect. As indicated by Chief Justice Marshall, **"such a construction is inadmissible."**

Barack Obama:

Barack Obama Jr. was born of his father, a British Citizen of Kenya, who at no time was ever an American Citizen. Upon birth Barack Obama Jr. had allegiance to Britain through his father's Kenyan Citizenship, as Obama admits on his FightTheSmears site. That statement indicates:

> "When Barack Obama Jr. was born on Aug. 4, 1961, in Honolulu, Kenya was a British colony, still part of the United Kingdom's dwindling empire. As a Kenyan native, Barack Obama Sr. was a British subject whose citizenship status was governed by The British Nationality Act of 1948. That same act governed the status of Obama Sr.'s children."

Given that "natural born" is a status achieved only upon birth, it is unreasonable to assert that later changes in citizenship affect that at-birth status. The requirement for natural born citizen status in this country is birth to two U.S. citizens on U.S. soil.

Conclusion

Concerns about where Barack Obama was born and what the disputed Birth Certificate might reveal are ***entirely irrelevant considerations***, given known facts. Obama could have been born on the 4th of July, in swaddling clothes, in a manger, on the steps of the U.S. Supreme Court, and witnessed by all Nine, and it still would not affect his qualification for Office. As was true of our Founders, who had to grandfather themselves to be President, Barack Obama had allegiance to Britain upon birth, through his father, making him forever incapable of being a natural born citizen of the United States, thereby entirely unqualified to hold the Office of President.

Also, it should be pointed out that there is far more likelihood that *Barak Obama was at birth a Natural Born SUBJECT of Britain* than a natural born subject of these United States, given the legislative expansion by the British Crown, according to the same British common law argued by Justice Gray in Wong Kim Ark and asserted by the British at the founding of this Nation.

One cannot reasonably be both a natural born Subject of Britain and a natural born citizen of the United States.

"Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading."

United States v. Prudden, 424 F.2d 1021 (5th Cir. 1970), cert. denied, 400 U.S. 831.

ADDITIONAL RESOURCE

John Sidney McCain: A Case of Congressional Fraud
(Click Paperclip to read)

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