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What Does It Mean To Be a "Natural Born Citizen"?

Thanks to Donald Trump and his billion-dollar-network bully pulpit, the issue of President Obama's birthplace (and the related issue of why he's never released a long-form birth certificate) is not going away. Earlier this week, mainstream media mainstay CNN published a story with the headline: "Who's Really Eligible to be President?" In the opinion piece, the author, Gabriel "Jack" Chin, Professor of Law at the University of Arizona's Rogers College, immediately telegraphs his own take on the issue with the following opening paragraph:

> The Constitution provides that only "natural born citizens" can be president. Never has this obscure restriction been more controversial; in spite of conclusive evidence that President Barack Obama was born in Hawaii, "birthers" insist that he is ineligible because, they claim, he was really born in Kenya or Indonesia.

Setting aside his use of the weasel word "conclusive," the author wraps the controversy in a tidy little package.

The bundle begins to unravel, however, as the author wades into the historical origins of the "natural born citizen" phrase used in Article II of the Constitution. He writes:

> Unfortunately, the text of the Constitution does not define natural born citizenship, and neither the Supreme Court nor Congress has weighed in on the question. This much is clear. The term "natural born citizen" was borrowed from the English concept of "natural born subject," which came from Calvin's Case, a 1608 decision.
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> Natural born subjects were those who owed allegiance to the king at birth under the "law of nature." The court concluded that under natural law, certain people owed duties to the king, and were entitled to his protection, even in the absence of a law passed by Parliament.

What follows is a brief exposition of the possible source and appropriate interpretation of the "natural born citizen" qualification:

First, despite the certainty the CNN writer apparently has in his own opinion, there are significant legal and historical problems that should make others a little less sure.

At the time of the drafting of the Constitution, a person born subject to the British Crown could hold "double allegiance," a concept similar to "dual citizenship" as understood today.

Our own Founding Fathers, nearly every one of whom was born in some outpost of the British Empire, feared the damage that could come from such divided loyalty. They instituted the "natural born citizen" qualification in order to avoid what Gouverneur Morris described during the Constitutional Convention as "the danger of admitting strangers into our public councils."

As famed jurist St. George Tucker, a contemporary of Morris, explained:

> That provision in the constitution which requires that the president shall be a native-born citizen (unless he were a citizen of the United States when the constitution was adopted) is a happy means of security against foreign influence, which, wherever it is capable of being exerted, is to be dreaded more than the plague. The admission of foreigners into our councils, consequently, cannot be too much guarded against; their total exclusion from a station to which foreign nations have been accustomed to attach ideas of sovereign power, sacredness of character, and hereditary right, is a measure of the most consummate policy and wisdom.

In fact, as indicated in early records of the naturalization process, men applying for American citizenship were required to make two renunciations of all fealty to foreign powers before swearing allegiance to the Republic of the United States.

As a matter of fact, the possibility of any legal acceptance of divided allegiance was explicitly rejected in a report issued by the House of Representatives in 1874:

> The United States have not recognized a "double allegiance." By our law a citizen is bound to be "true and faithful" alone to our government.

The practical effect of that proclamation is that in order to be a "natural born citizen" of the United States, one would have to be free from a competing claim for allegiance from another nation.

That such a schizophrenic situation was not only anticipated but accepted by His Majesty's government during the time of the American founding can be inferred from the impressment of American sailors into the service of the Crown. During the War for Independence, British ships would block American ships from sailing and then the seamen on the British vessels would board the American ships and force the Americans to serve the side of the Empire.

The insistence on the part of the British that anyone born within the realm was a British subject regardless of any voluntary severance thereof and subsequent vow of allegiance to another prince was a significant factor in the hostilities known as the War of 1812.

Finally, in this regard, the British required no process of naturalization as such. Simply being born within the dominions of the monarchy of Great Britain was sufficient to endow one with the rights and privileges granted to any British subject. Nothing such a person did later in life (including becoming a citizen of another country) would ever alter his status as subject.

Obviously, in the United States that concept is neither the law now, nor was it the law at the time of the founding, despite Mr. Chin's assurance.

Unfortunately, after misstating the relationship between "natural born subject" and "natural born citizen," Mr. Chin goes on to incorrectly interpret the 14th Amendment and the portions thereof relevant to the presidential qualification debate.

He writes in his CNN op-ed:

> The Supreme Court held that the 14th Amendment's citizenship clause, recognizing the citizenship of persons "born in the United States and subject to the jurisdiction thereof," embodied the rule of Calvin's Case. In addition, given that there were U.S. citizens before 1868, when the 14th Amendment was passed, the Supreme Court held that the amendment was "declaratory" of unwritten law in force even before the amendment was passed.
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> Accordingly, there is agreement that "natural born citizens" include those made citizens by birth under the 14th Amendment. This means that, for example, although there have been proposals for

> change, the children of undocumented noncitizens born in the United States are both citizens at birth and natural born.

Given his impressive academic credentials and his legal training, Mr. Chin should not make such egregious errors in constitutional legal history.

The relevant clause of the 14th Amendment reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the States wherein they reside.

The principal architect of the citizenship clause of the 14th Amendment was Michigan Senator Jacob Merritt Howard, a Republican representing Detroit.

Senator Howard crafted much of the language that was eventually ratified as part of the 14th Amendment. ??During the debates that embroiled the Senate in the years following the Civil War, Senator Howard insisted that the qualifying phrase "subject to the jurisdiction thereof" be inserted into Section 1 of the 14th Amendment being considered by his colleagues. In the speech with which he proposed the alteration, Howard declared:

> This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, [or] who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons.

How could a person "born in the United States" be simultaneously a citizen and a "foreigner" or "alien" if the mere fact of nativity settled the question of citizenship?

Another legislator commenting at the time of the ratification of the 14th Amendment, Representative John Bingham, provided the following clarification of the meaning behind the "subject to the jurisdiction thereof" clause:

> Every human being born within the United States *of parents not owing allegiance to any foreign sovereignty* is, in the language of your Constitution itself, a natural born citizen. [Emphasis added.]

Therefore, although not in the way claimed by Mr. Chin, the foregoing analysis does make one thing clear: When applied to the case of the current President, the principles of constitutional law and interpretation set forth above call into question Barack Obama's qualification for President, as there is no debate that at the time of his birth (regardless of the location), his father was not an American citizen — and thus the President is the child of a person with legal allegiance to a foreign sovereignty and so does not conform to the accepted legal definition of "natural born citizen."