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## **Citizenship and the Presidency: Parsing Article II.1(5) of the US Constitution**

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*Article II.1(5) of the US Constitution defines who is eligible to serve as president of the United States. Simple requirements often lead to major controversies. In this case, the primary issues arise over how to construe the phrase “natural born.” After an exposition and definition of some basic concepts, the article will use a brief analysis of several hypothetical questions to illustrate the problems of constitutional and statutory interpretation. It will then discuss English common law as it existed in the late eighteenth and early nineteenth centuries, the first acts of Congress insofar as they are relevant in determining the meaning of the natural-born requirement, and the relevance of the Fourteenth Amendment. The article will finally analyze seven cases where eligibility for the presidency has surfaced as an issue. Not surprisingly, some controversial issues that arose early in US history still have currency. Finally, the narrative will summarize the issues and continuing areas of uncertainty.*

**T**he Constitution of the United States has only three requirements for those aspiring to the presidency: citizenship, age, and residency. Article II.1(5) states:

No person except a natural born Citizen or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible who shall not have attained to the age of thirty five Years, and been fourteen Years a Resident within the United States.

The requirements are simple in formulation, but simple statements in legal documents often mask myriad minefields of potential problems. While the age question has always seemed straightforward, the residency requirement did stir some debate in the early years of the Republic over how the term “resident” might be defined and the requirement satisfied. After that brief flurry of debate, the residency requirement never again surfaced as a serious issue in the electoral process (Corwin 1957, 330n.).<sup>1</sup> In contrast, heated debates over the meaning of “natural born Citizen” still have considerable currency.

### **Constitutional Interpretation**

Not surprisingly, several “schools” of constitutional interpretation have emerged over the years. Space does not permit a review of all. The argument will proceed on the premise that interpreting the Constitution requires a balancing act. Laurence Tribe (1995) has observed: “the lawyer’s tools of parsing text, intention, and structure are essential to avoid the temptation—increasingly prevalent among legal academics these days—of resorting to ‘free-form’ methods of interpreting the Constitution” (1227). Professor Tribe’s three-pronged arsenal of weapons—parsing, intent, and structure—forms the methodological approach of this article, because taking one analytical tool as always superior to the other two, or as sufficient by itself, can produce results that make little sense.

#### **Parsing the Constitution I: The Citizenship Requirement**

The Constitution uses the phrase “citizen of the United States” in three different provisions to set qualifications for representatives, senators and the president (Art. I § 2, Art. I §3, Art. II § 1). Clearly the citizenship requirement by itself indicates that citizenship in *the United States* existed prior to, and independent of, the entry into force of the Constitution. Common sense and logic might tell us that the Framers would not have crafted the document in a way that might exclude anyone who had gone through the rigors of the Revolution and the political trials of life under the Articles of Confederation. Nonetheless, this exercise requires that we rely on the text as written in its plain form. The first problem comes from determining when the *United States* as a distinctive legal entity came into existence. Though unspecified, the Framers must have had in mind some prior date of origin that would not impose an impossible burden and all would accept as valid.

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<sup>1</sup> Herbert Hoover had not resided in the United States for fourteen years prior to his nomination. The concern was voiced, but never rose to a legal challenge (Corwin 1957).

An article in the *Christian Science Monitor* (DeLear 2012) claims that the term United States originated with three letters to the editor of the *Virginia Gazette* (Williamsburg) sent by an unknown author in March 1776. Regardless, the usual attribution is to Jefferson because the phrase appears in the heading of the Declaration of Independence: “A Declaration by the Representatives of the UNITED STATES OF AMERICA in General Congress assembled.” This would make the official date of first use July 4, 1776, the date of formal adoption by the Second Continental Congress, thus occurring considerably before the colonies gained formal independence as a sovereign state. The question then would become the status of the Declaration of Independence as a legal document that establishes the formal legal identity of the thirteen colonies. No American court has ever considered the Declaration to have any legal significance (Wills 2002, xxv).<sup>2</sup>

If the Declaration of Independence does not offer a legal basis, then perhaps the Articles of Confederation do. The Preamble to the Articles states: “Whereas the Delegates of the United States of America, in Congress, assembled did on the 15th day of November in the Year of Our Lord One thousand Seven Hundred and Seventy seven, and in the *Second Year* of the Independence of America agree to certain Articles of Confederation and perpetual Union ...” Article 1 specifies that, “The Stile of this Confederacy shall be ‘The United States of America.’”

The Articles do use the term “in the *Second Year* of the Independence of America” which seemingly refers back to the Declaration. Yet, accepting either the date of the Declaration or that for the adoption of the Articles still poses a problem. July 4, 1776, does not quite fit with the date of entry into force of the Constitution in 1788. If we take that date and work backward, some entity that could be identified as the United States would have had to have been in existence sometime early in 1774. This eliminates the Articles as the source as well (Kesavan 2002).

Perhaps we should accept Abraham Lincoln’s contention (Lincoln 1861) that the union that became the United States existed from the date of the First Continental Congress in Philadelphia that convened on September 5, 1774.

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<sup>2</sup> In *Cotting v. Godard* (1901), the Court stated:

The first official action of this nation declared the foundation of government in these words: “We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.” While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government.

Alternatively, perhaps a better date would be October 20, 1774, when the First Continental Congress adopted the Articles of Association in response to the “Intolerable Acts” the British government had imposed on its subjects in the American colonies (Articles of Association 1774). Others have suggested different dates, but at this point, whatever date the Framers had in mind remains an interesting historical mystery that has no relevance to current controversies. Nonetheless, it still poses a problem for textual analysis (see Blackman 2010).

### **Parsing the Constitution II: The Residency Requirement**

Other issues come to mind as well. Does the residence requirement mean fourteen consecutive years, or a cumulative total of fourteen? Does it require physical presence, or simply legal domicile? Many prominent citizens were out of the colonies on various missions in Europe for lengthy periods of time. For example, from 1778 to 1788, John Adams served overseas almost continuously in Paris, Amsterdam, and London. (McCullough 2001, 167–388). From a narrow constructivist perspective (ordinary meaning of words), he was not then “resident within” even though he had not formally (legally) changed his place of domicile. Given its ordinary meaning, residence does imply physical presence. The word “within” reinforces the idea that an insistence on physical presence reflected the belief of the Framers that a president should be intimately familiar with everyday American life. This would lead us directly to a conclusion that Adams did not meet the requirement as “Resident within the United States” while in fact living in Europe.

If we make no allowance for individuals being “on government business,” one can argue that the phrase does not specify that the years be consecutive—that the requirement does not mean fourteen consecutive years, but fourteen years as a cumulative total. This brings us back to the question of date of origin. Bearing in mind the discussion of date of origin in the previous section, even if interpreted as cumulative, this would still mean that Adams would not have qualified to run as Washington’s vice president (a problem if Washington had died in office), although he would then have been eligible by the time of his own candidacy if 1774 was the date of origin.

More interestingly, what does that mean for more modern times? Could a person, otherwise eligible, having spent only 14 years in the United States over their life and all of these before the age of 18 be eligible? Or, how about someone who spent 7 years before the age of 18, left for 30 years, and came back for 7 years before declaring? If we rely only on the text and not on subsequent legislation, the answer ought to be yes, but the issue has never arisen in any meaningful sense. The question of electability stands as a separate nonrelevant issue.

### Parsing the Constitution III: The Citizenship Requirement II—Commas Can Induce Confusion

As an illustration of taking a method to extreme to prove a point, Steiker, Levinson, and Balkin (1995) argue that no president since Zachary Taylor has met the constitutional requirements for eligibility (243). The analysis rests upon a purely logical grammatical parsing. To review, Article II begins: “No person except a natural born Citizen or a Citizen of the United States, at the time of the Adoption of this Constitution . . .” Note the position of the comma—the qualifier “at the time of the Adoption” modifies both of the prior requirements. So, by logic and grammar, one has to be either a natural-born citizen of the United States at the time of adoption, *or* a citizen of the United States at the time of adoption. Hence, Zachary Taylor born in 1784, is the last president born before the time of adoption. In fact, Tyler (1790) and Polk (1795), who preceded Taylor, did not meet the condition, either.

For those who might object that this parsing makes little sense because the second phrase would then merely repeat the first, this conclusion would ignore a category of individuals the Framers might have wished to reward for their allegiance during the time of the Revolution. The second stipulation would permit those “naturalized” citizens, who otherwise met the requirements and had shown their allegiance to the new country, to have the exactly same rights as citizens. Adoption of the Constitution would remove any barrier to those who chose America instead of its oppressor. This would still bar “Johnny come lately” immigrants who subsequently become naturalized citizens (Steiker, Levinson, and Balkin 1995, 244).

At this point, we might question the foresight of the Framers unless they all were radical Jeffersonians and truly believed that a revolution would occur every so often which would obviate any problems, or perhaps they all missed the comma lesson in school. Misplaced commas can cause much grief (Truss 2003). *Still, the comma is where it is*, and grammatical rules have not changed to obviate its placement (Garner 2002, 15–20). We must assume that the Framers intended to place the comma there. In passing, one should note that this instance does not represent the only questionable comma in the Constitution. But, rules that differentiate between commas with regard to their importance must in turn rely on a “theory of commas.” As an outside analyst, one must presume, given the extensive editing of the document before final adoption, the comma survived because it gave meaning:

Thus, the Framers may well have believed that it would be dangerous for the Republic to have a president whose republican spirit had not been born through baptism by total immersion in the holy spirit of

1775–1787. Could one really trust a leader whose own freedom was not fought for and earned through an audacious appeal to heaven, but who was instead handed his freedom routinely and unceremoniously as an expected birthright? (Steiker, Levinson, and Balkin 1995, 243)

This is a very interesting conclusion. Did the Framers have the foresight to think that by postulating requirements for president that would be impossible to fulfill, they might force new generations to engage in their own exercise in Constitution building? We could speculate, but our chosen method will not permit such a departure from protocol.

### **Parsing the Constitution IV: Natural-Born Citizens**

Unlike the other two requirements, questions about the parameters that define the term “natural born” have arisen in a number of elections over the years. The presidential qualification clause forms the sole use of the term in the Constitution. Although the Constitution gives Congress the authority to “to establish an uniform rule of naturalization” (Article I.2.2), as with many other terms, the document does not contain a precise statement of who qualified as a citizen. In fact, much was debatable prior the adoption of the Fourteenth Amendment in 1868. This has led many to conclude that the omission was deliberate to avoid tackling very difficult political questions such as the status of Negro slaves and the distinction between state and national citizenship (Gordon 1968, 2).

The inclusion of the natural-born citizen clause can be traced back to early discussions among the country’s founders. In late July 1787, John Jay sent a letter to George Washington, and possibly to other delegates at the Constitutional Convention, which stated:

Permit me to hint, whether it would be wise and seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in Chief of the American army shall not be given to nor devolve on, any but a natural born Citizen. (Farrand 1911, 61)

Despite much speculation over the years, no one has determined what prompted Jay’s concern. Moreover, notes from the constitutional convention have nothing useful to contribute to an answer. In this case we must seek out other avenues that might shed some light on intent.

We do know that questions of “foreign influence,” particularly the possibility of wealthy persons immigrating to the United States to seek the presidency as

well as that of a potential but American monarchy formed very real concerns by the Framers as well as of the general public. Akhil Amar (2005) chronicles the concerns and anxieties over the possibility that ambitious and duplicitous foreigners, such as a foreign earl or duke, might cross the Atlantic with immense wealth and a vast retinue, and use his resources to buy friends on a scale that no home-grown citizen could match. He concludes that this fear led the Framers to incorporate Article II's "most questionable eligibility rule" (161).

These fears certainly entered into the construction of the qualifications, duties, and powers of the chief executive officer of the new republic. Justice Story in his commentaries distinguished "natural born" citizens eligible to be president from "foreigners" who are generally excluded, noting the exception only for a "naturalized citizen to become president" when such person was a citizen at the time of the adoption of the Constitution "out of respect for those distinguished revolutionary patriots, who were born in a foreign land, and yet had entitled themselves to high honors in their adopted country" (Story 1833, 3: §§ 1472–73). This interpretation gives support to the idea broached earlier, that the second category mentioned had the intent of recognizing those who had sacrificed and endured the hardships during the struggle for independence. However, it still does not shed any light on the meaning of natural born.

### **Some Preliminary Definitions and Distinctions**

Understanding the discussion requires a slight digression to provide some background on how citizenship in general has been defined historically. Citizenship may be acquired "naturally" through application of one of two (or both as in US law) principles: born on the soil (*ius soli*)<sup>3</sup> and born of the blood (*ius sanguinis*). Throughout history, *ius sanguinis* with citizenship normally passing solely through the male side has been used much more than *ius soli* side. As a second consideration, in modern times, one must make a distinction between nationality, statutory citizenship, and constitutional or "birthright" citizenship. Often conflated in discussions as they are in the Constitution, nationality and citizenship are not exact synonyms and should not be used interchangeably particularly with respect to contemporary American and British law (Glahn and Taulbee 2017, chap. 9).<sup>4</sup>

Indeed, although the Constitution does not make a distinction, American statutory law does so in explicit language. Certain persons can be "non-citizen"

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<sup>3</sup> Note, although often written *jus*, *ius* is the Latin spelling. The Latin alphabet has no "j."

<sup>4</sup> Some societies do pass identity through the female side. For example, according to *halakha* (the corpus of rabbinic legal texts, body of religious law), if one of the parents is not Jewish, the child will take the status of the mother. Hence, Jewish identity passes basically through the mother's side. A "natural born Jew" must have a Jewish mother. Interestingly, classical Judaism draws no distinction in its laws between religious and nonreligious life. In theory, Jewish religious tradition does not recognize distinctions based on national, racial, or ethnic identities (see Kertzer 1996).

nationals.” Section 308 of the Immigration and Naturalization Act (8 USC 1452(b)) confers US nationality but not US citizenship, on persons born in “an outlying possession of the United States” or born of a parent or parents who are noncitizen nationals who meet certain physical presence or residence requirements. The term “outlying possessions of the United States” is defined in Section 101(a)(29) of the INA as American Samoa and Swains Island. No other statutes define any other territories or any of the states as outlying possessions.<sup>5</sup>

However, designated as commonwealths, Puerto Rico and the Northern Marianas exist as separate cases. In addition, the people of Guam are officially in an “unincorporated organized territory” of the United States. The Jones Act (1917) recognized Puerto Ricans as legal citizens of the United States of America, but with a form of circumscribed citizenship with restricted rights (statutory citizenship).<sup>6</sup> For the sake of brevity, I will note that the following comments on Puerto Rico apply equally to the Northern Marianas, but some may not apply to Guam. For the purposes here, the difference has no importance.

Puerto Ricans can live, travel, and work in any part of the United States without legal restrictions. They may not vote in presidential elections (but have a say in primaries to select candidates). Residents on the island pay US Social Security tax but not federal income tax. Like the District of Columbia, Puerto Rico elects a nonvoting delegate to the US Congress. Interestingly, mainland constitutional citizens who elect full-time residence in Puerto Rico may not vote in federal elections because the right to vote is tied to state residency in terms of representation and the Electoral College. On the other hand, if citizens born in Puerto Rico move to one of the fifty states and acquire permanent residence, they can vote (Flegenheimer and Chozick 2016).

The most important distinction here stems from the simple fact that Congress can change, amend, or terminate the status of future Puerto Rican children born on the island. The Jones Act as well as the legislation for Guam and the Northern Marianas provided eligible residents with statutory, not constitutional citizenship. Statutory citizenship means simply that citizenship depends upon the law that

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<sup>5</sup> Aliens and Nationality, 8 USC 1452 (January 3, 2012). Source: June 27, 1952, ch. 477, title III, ch. 2, §341, 66 Stat. 263; Pub. L. 97-116, §18(p), Dec. 29, 1981, 95 Stat. 1621; Pub. L. 99-396, §16(a), Aug. 27, 1986, 100 Stat. 843; Pub. L. 99-653, §22, Nov. 14, 1986, 100 Stat. 3658; Pub. L. 100-525, §8(q), Oct. 24, 1988, 102 Stat. 2618; Pub. L. 102-232, title III, §305(m)(8), Dec. 12, 1991, 105 Stat. 1750; Pub. L. 103-416, title I, §102(b), Oct. 25, 1994, 108 Stat. 4307. June 27, 1952, ch. 477, title III, ch. 2, §341, 66 Stat. 263; Pub. L. 97-116, §18(p), Dec. 29, 1981, 95 Stat. 1621;

<sup>6</sup> *Puerto Rican Federal Relations Act of 1917* (Jones Act—Puerto Rico), Pub. L. 64-368, 39 Stat. 951 (March 2, 1917); *The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America*, Pub. L. 94-241, 90 Stat. 263 (March 24, 1976). After World War II, the *Guam Organic Act of 1950*, 48 U.S.C. § 1421 et seq., established Guam as an unincorporated organized territory of the United States, provided for the structure of the island’s civilian government, and granted the people US citizenship.

defines it. Persons born in the fifty states have constitutional citizenship by simple circumstance of place. Unlike constitutional citizenship, new legislation could redefine the status of future statutory citizens with respect to the constitutional rights enjoyed. The fascinating question is: Could a person born in Puerto Rico of Puerto Rican citizen parents qualify as a constitutionally legitimate candidate for the US presidency?

### **The Impact of British Common Law and Other Sources**

The Framers, of course, would have been intimately familiar with British statutes and practice when they used terms like “natural born,” since the statutes were binding law in the colonies before the Revolutionary War. They were also well documented in *Blackstone’s Commentaries*, “a text widely circulated and read by the Framers and routinely invoked in interpreting the Constitution” (Clement and Kayal 2015, 162). Interestingly, the Supreme Court has never had to deal with this particular issue within the specific context of a challenge to the eligibility of a candidate. For the reasons discussed in the preceding section, textual analysis alone cannot provide an answer. In this case, one must look for guidance from other sources with respect to discerning intent. Based on that discussion, one can say that the relevant materials unambiguously convey the simple idea that “natural born Citizen” means a citizen from birth who does not need to go through naturalization proceedings. Yet this leaves open many questions.

A number of US Supreme Court cases give some insight into how the Court would proceed in the event of such a challenge. The Supreme Court has long recognized that two particularly useful sources in understanding constitutional terms are English common law and enactments of the First Congress (*Wisconsin v. Pelican Ins. Co.*). In *Smith v. Alabama*, the Court held that words and phrases used, but not defined, within the Constitution should generally “be read in light of British common law,” since the US Constitution is “framed in the language of the English common law” (also, *Calder v. Bull*). Note that this statement simply indicates that English common law forms a tool for use; it does not imply that English law has any effect in the everyday legal business of the United States except in those states that have formally incorporated it into their legal codes or constitutions. The actions of the First Congress have special meaning because so many of the Framers of the Constitution served.

British law clearly recognized the principle of *ius soli*<sup>7</sup> (Gordon 1968, 6–7). However, even in the eighteenth century, some controversy surrounded the requirements governing citizenship via *ius sanguinis*. While some elements of

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<sup>7</sup> Book the First: Chapter the Tenth: Of People, Whether Aliens, Denizens or Natives (*Blackstone’s Commentaries on the Laws of England*, 354 et seq.). For a summary of the evolution of British nationality law, see Gordon (1968, 6–7).

British law changed over time, particularly with respect to women with British citizenship married to foreigners and resident overseas, British statutes did recognize children born abroad to subjects of the British Empire as “natural-born Subjects” for all intents, constructions, and purposes. As stated by Blackstone in his 1765 treatise:

[A]ll 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 (*Blackstone’s Commentaries* 1765, 361).

The first American law drew on the British precedent. Clement and Katyal (2015) note:

the First Congress established that children born abroad to U.S. citizens were U.S. citizens at birth, and explicitly recognized that such children were “natural born Citizens.” The Naturalization Act of 1790 provided that “the children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as natural born citizens: Provided, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States. (162)

Note the qualification that limited the scope of *ius sanguinis*. As with other issues, the legislation leaves open the question of how one might determine “residency” for the purposes of the legislation. However, considering the law governing nationality passed in 1795, in the United States, the common understanding of the term “natural born” at the time of the drafting of the Constitution seemingly was more expansive than the English common law meaning of that term at the time.

With respect to this first law, eight of the eleven members of the committee that proposed the natural-born eligibility requirement to the Convention served in the First Congress and none objected to a definition of “natural born Citizen” that included persons born abroad to citizen parents (Lohman 2000–2001, 371). Moreover, considering the letter from Jay which presumably led to the discussion during the Constitutional Convention, we can conclude that the original intent was not to limit eligibility only to those born within the boundaries of the United States. Such an interpretation would have made Jay’s own children ineligible because they were born in Spain and France during the period he represented the United States overseas (Maskell 2016, 19).

The argument takes on another dimension, however, because the Congress repealed the 1790 law in 1795. The replacement statute still granted citizenship to foreign-born children of American citizens, but for some unknown reason, eliminated the phrase “natural born.” This accords with the accepted statutory designations of today which refer only to citizenship at birth and by naturalization, with the former group divided into individuals born to residents and those born to citizens abroad. Nonetheless, the absence of the term and a definition continue to lurk in the shadows as issues.

### **Parsing a Statute: Certainty May Be in the Eye of the Beholder**

The 1795 act was repealed in 1802 and replaced by legislation that essentially reaffirmed the status of foreign-born children of American citizens (*Naturalization Act of 1802*, §4). However, a rearrangement of language created an interesting ambiguity. The 1802 law stated that “the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits or jurisdiction of the United States, be considered as citizens of the United States” (*Naturalization Act of 1802*, §4). Little controversy arose until Horace Binney, a distinguished lawyer, argued that the plain meaning of the language effectively meant that foreign-born children of American citizens born after 1802 did not have citizenship. Binney’s argument brought a quick response from Congress, which passed a new statute in 1855 making an explicit statement:

That persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States ... (Act of Feb. 10, 1855, ch. 71, §1)

This legislation continued until 1940 without substantial change, except to confer upon American women equal right to transmit citizenship (Gordon 1968, 14).

### **Amendment XIV.1**

Section 1 of the Fourteenth Amendment states that:

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. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without

due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Scholars and others have endlessly debated the intent and impact of Section 1 in terms of its specification of citizenship, due process, and equal protection. While the issues of equal protection and due process merit scrutiny because of the extension of their meaning and use by the Court in the twentieth century, much of this seems no more than the fabled “tempest in a teapot” with regard to citizenship. Given the context, the reasonable and generally accepted view of its purpose is that in speaking of citizenship acquired by birth or naturalization in the United States, the Fourteenth Amendment did not seek to do any more than to guarantee citizenship to former slaves. The amendment did not attempt to supersede previous definitions, nor change the status of progeny born to citizens outside the jurisdiction of the United States. The Court itself has cautioned against interpreting later enacted provisions of the Constitution as amending, merely by implication, separate, earlier provisions of Constitution (*Freytag v. Commissioner*). Still, we must note the decision in the following case.

#### **Parsing a Decision: Confirming *Ius Soli*—*Wong Kim Ark***

In *U.S. v. Wong Kim Ark* (1898), the Supreme Court set forth how the common law regarding citizenship had evolved in America. Taken to its logical conclusion, the 1898 case held that an individual born abroad to American parents could not be deemed a “natural-born citizen.” Although the Court did not specifically address the presidential Natural-Born Citizen Clause, it nevertheless made reference to the clause and proceeded to explicate the Fourteenth Amendment in light of the English common law. The case centered on an individual, born in the United States (California), whose parents themselves were not eligible for citizenship. In 1894, Wong Kim Ark left the United States for a visit to China. Upon returning in 1895, he was refused re-entry on the basis that he was not a citizen of the United States. Concluding that Wong Kim Ark was a US citizen, the Court explained “[t]he fundamental principle of the common law with regard to English nationality was birth within the allegiance, or *ius soli*” (*U.S. v. Wong Kim Ark* 1898, 657). As explicated earlier, this principle meant that anyone born within British dominions was deemed a natural-born British subject, regardless of parentage. The Court held fast to this interpretation of the common law and quoted from numerous sources as well as American case law:

Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization. A person born out of the jurisdiction of the United States

can only become a citizen by being naturalized, either by treaty, as in the case of annexation of foreign territory, or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens, or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts. (*U.S. v. Wong Kim Ark* 1898, 701)

The problem with the case is that the majority of the Court *did take* the “definition” in the Fourteenth Amendment to mean that children of US citizens born overseas would have “naturalized citizenship,” not one based upon *ius sanguinis*. As noted earlier, this violated prior Court practice in that, unless specifically targeted, newer amendments to the Constitution would not change prior usages and understandings.

Recognizing the inconsistency, Chief Justice Fuller’s dissent (with Justice Harlan concurring) expressed the concern that:

[i]f the conclusion of the majority opinion is correct, then the children of citizens of the United States, who have been born abroad since July 28, 1868, when the amendment was declared ratified, were, and are, aliens, unless they have, or shall on attaining majority, become citizens by naturalization in the United States; and no statutory provision to the contrary is of any force or effect (*U.S. v. Wong Kim Ark* 1898, 706).

Fuller then argued:

Considering the circumstances surrounding the framing of the Constitution, I submit that it is unreasonable to conclude that “natural-born citizen” applied to everybody born within the geographical tract known as the United States, irrespective of circumstances, and that the children of foreigners, happening to be born to them while passing through the country, whether of royal parentage or not, or whether of the Mongolian, Malay or other race, were eligible to the Presidency, while children of our citizens, born abroad, were not (*U.S. v. Wong Kim Ark* 1898, 715).

Based on this conclusion, Fuller maintained that statutes passed by Congress regarding the status of such children, which ran contrary to the English birthplace rule, were meant as “declaratory, passed out of abundant caution, to obviate misunderstandings which might arise from the prevalence of the contrary rule elsewhere” (*U.S. v. Wong Kim Ark* 1898, 714). He stated that “[i]n my judgment,

the children of our citizens born abroad were always natural-born citizens from the standpoint of this Government” (*U.S. v. Wong Kim Ark* 1898, 714). The majority rejected this view, however, accepting only the narrower British common law rule of *jus soli*, ignoring changes in the interpretation of British law at the end of the eighteenth century that encompassed a limited *ius sanguinis*. As a footnote here, Fuller extended the reasoning above to argue also that Wong Kim Ark *did not* have citizenship—that in essence, *ius soli* did not apply to the children of foreign citizens born in the United States (*U.S. v. Wong Kim Ark* 1898, 727).

From a more modern perspective, the Court majority erred slightly in its interpretation. (Strauss 1996, 877–935). The *Wong Kim Ark* Court answered only the rather simplistic question of whether “within the allegiance” of America, in the narrow meaning of born on American soil. It made no attempt to define the breadth of “within the allegiance.” Nothing within the decision precludes a determination that some children may be born in a foreign land, but are still “within the allegiance” of the United States. Fuller’s dissent, not the majority opinion, reflects the actions of Congress, although as discussed earlier, subsequent legislation did attempt to define eligibility even more narrowly.

### **Women and Leadership**

The women’s rights movement gained considerable traction after World War I with the passage of the Nineteenth Amendment (1920) and other measures that, while falling short of granting full equality, still removed onerous provisions from previous statutes. The 1907 *Act in Reference to the Expatriation of Citizens and their Protection Abroad* stripped American citizenship from women who married foreign nationals. In 1922, Congress changed the law to permit most, but not all, American-born women who married foreigners to retain their US citizenship (Cable Act of 1922). For example, women who married men ineligible for citizenship, such as Chinese immigrants, still forfeited their US citizenship. The enactment of the *1934 Citizenship Act*, passed to make the United States compliant with the provisions of the newly ratified *Inter-American Convention on the Nationality of Women* (1933), finally removed all restrictions. The Convention mandated States Parties (states that have formally ratified/accepted) “explicitly set sexual equality as a principle to be incorporated into national legislation.” Among other important changes, the law permitted nationality and citizenship to pass through the maternal as well as the paternal line and removed all conditions that imposed the nationality of her husband if an American woman married a foreign national.<sup>8</sup>

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<sup>8</sup> Act of May 24, 1934, Section 1, 48 Stat. 797; amending, 10 Stat. 604 (1855) amending 2 Stat. 155 (1802) together with 34 Stat. 1229 (1907), 8 U.S.C.A. § 6 (1926). (see Bredbenner 1998, Simon 2014).

### The Importance of the 1940 Legislation

The 1934 law made some important changes, but the *Immigration and Nationality Act of 1940* planted an important milestone. Specifically, the legislation intended to codify the nationality laws of the United States. The legislation drew on a five-year study by a Cabinet Committee, comprised of the Secretary of State, the Attorney General, and the Secretary of Labor. First, the 1940 Act defined naturalization as the “acquisition of nationality after birth” because “this meaning is now universally attributed to the word.” Most importantly, the legislation explicitly defined the three ways citizenship could be acquired. With some subsequent tweaking, these still remain the basis for current legislation: (1) reiterating the Fourteenth Amendment and confirming the traditional reliance on *ius soli*, “birth in the United States, by those subject to the jurisdiction thereof”; (2) birth outside the United States to American parents confirming a limited acceptance of the principle of *jus sanguinis*; and, (3) naturalization of aliens, usually through familiar judicial processes.

Nonetheless, U.S. Supreme Court decisions as well as those from other federal courts use a two-way test. In numerous decisions they have held that the general categories of “citizens” are: (1) those who are “natural born” citizens, that is, those who are citizens “by birth” or “at birth,” including all native-born citizens, and (2) those who were born “aliens” but chose to be “naturalized.”<sup>9</sup> Perhaps the clearest statement of views came in *Miller v. Albright* (1998):

There are “two sources of citizenship, and two only: birth and naturalization.” *United States v. Wong Kim Ark*, 169 U.S. 649, 702 (1898). Within the former category, the Fourteenth Amendment of the Constitution guarantees that every person “born in the United States, subject to the jurisdiction thereof, becomes at once a citizen of the

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This particular case formed a prime argument in the movement for the Bricker Amendment in the early 1950s in that the treaty, when ratified, became part of the Federal Code, and thus required the United States to adopt policies that it might not have done otherwise. You see this same rationale in current US practice. The Senate regards all human rights treaties as “non-self executing,” meaning that they can be applied by US courts only through the provisions of the enabling legislation, adopted as part of the ratification process. The enabling legislation defines relevant terms and obligations. Hence, courts may not interpret the treaty for themselves. (Taulbee 2000, 152–57).

<sup>9</sup> *Elk v. Wilkins*, 112 U.S. 94, 101 (1884); *Luria v. United States*, 231 U.S. 9, 22 (1913); *Rogers v. Bellei*, 401 U.S. 815, 828 (1971); *Schneider v. Rusk*, 377 U.S. 163, 165 (1963); *MacIntosh v. United States*, 42 F.2d 845, 848 (2nd Cir. 1930); *Diaz-Salazar v. INS*, 700 F.2d 1156, 1160 (7th Cir. 1982), cert. den. 462 U.S. 1132 (1983); *Mustata v. U.S. Department of Justice*, 179 F.3d 1017, 1019 (6th Cir. 1999); *Robinson v. Bowen*, 567 F.Supp. 1144, 1145-1146 (ND Cal. 2008); *Hollander v. McCain*, 566 F.Supp. 63, 66 (D.N.H. 2008).

United States, and needs no naturalization.” 169 U.S. at 702. Persons not born in the United States acquire citizenship by birth only as provided by Acts of Congress (Id. at 703).

However, in a more recent case, the Supreme Court indicated that under current law and jurisprudence, a child born to US citizens while living or traveling abroad, and a child born in the geographic United States, had the same legal status. In *Tuan Anh Nguyen v. INS* (2001), the Court said that a woman who is a US citizen living abroad and expecting a child had a choice. She could re-enter the United States and have the child born in the United States, or could stay abroad and not travel back to this country and have the child born abroad, and that the child in either case would have the same status as far as US citizenship: “[T]he statute simply ensures *equivalence* between two expectant mothers who are citizens abroad if one chooses to reenter for the child’s birth and the other chooses not to return, or does not have the means to do so” (*Tuan Anh Nguyen v. INS* 2001, 61).

Concerning the contention made in earlier cases that everyone who is made a citizen only by federal statute is a “naturalized” citizen (even those who are made citizens at birth by statute), the common understanding and usage of the terms “naturalized” and “naturalization,” as well as the precise legal meaning under current federal law, now indicate that someone who is a citizen “at birth” is *not* considered to have been “naturalized” (*Millar v. Albright*). The Supreme Court recently recognized in *Tuan Anh Nguyen v. INS* that federal law now specifically defines “naturalization” as the “conferring of nationality of a state upon a person *after* birth.”

### **Seven Controversies**

Since the founding, the issue of eligibility has been raised seven times: Chester A. Arthur (1880), Charles Evans Hughes (1916), Barry Goldwater (1964), George Romney (1968), John McCain (2008), Barack Obama (2008), and Ted Cruz (2016). As the first, the Arthur controversy actually set the pattern. Arthur was born in 1829 of an Irish father and American mother. Rumors circulated that he had actually been born in Canada while his mother visited relatives, not in Vermont. If so, he would not have met the requirements of the 1802 statute that would have applied because that law did not recognize matrilineal transfer through *ius sanguinis*. Presumably evidence surfaced toward the end of Arthur’s term that confirmed the Canadian birth rumor, but no action was ever initiated. Arthur Hinman, who had been hired by the Democratic Party to investigate the background of opposing candidates, had first produced a story that Arthur had actually been born in Ireland, an allegation

easily disproved. His later book that contained the Canadian allegation had little credence because of the earlier controversy (Hinman 1884; Hylton 2009; Karabell and Schlesinger 2004).

The challenge to Hughes involved two assertions, one of which involves a technical point about the Fourteenth Amendment that I explored earlier. Breckinridge Long, who subsequently gained a rather unsavory reputation for anti-Semitism while serving as assistant secretary of state during World War II, challenged Hughes because although Hughes's mother was clearly a citizen born in New York State and no one disputed his place of birth, his father held British citizenship. Long (1916) argued that a difference existed between "native born" and "natural born." As somewhat of a red herring, Long also argued that Hughes's birth in 1862 occurred before enactment and ratification of the Fourteenth Amendment, which clearly made *ius soli* a legal principle. On the first point, considerably before Long's contention, the Supreme Court in *Inglis v. Trustees of Sailor's Snug Harbor* (1830) had stated:

Nothing is better settled at the common law than the doctrine that the children even of aliens born in a country while the parents are resident there under the protection of the government and owing a temporary allegiance thereto are subjects by birth.

So even if both parents had had foreign citizenship at the time of his birth, through *ius soli* Hughes clearly had the right to claim American citizenship. His continued residence would have signified allegiance confirming his choice. Do not read too much into this statement because the context and the facts made it easy for the Court to adopt, as it did in another similar case a month later. Even so, Justice Story was not a happy camper in either case.

The Goldwater challenge came from the fact that his birth occurred in the Arizona Territory in 1909 before its admission to statehood in 1912. This had little basis because Arizona formed an organized "incorporated territory" formed in 1863 with the division of the New Mexico Territory. Interpretations of the language and intent in the legislation defining the status of the territories have always suggested that Congress meant to grant US citizenship to folks born there. Hypothetically, if Barack Obama had been born in 1932 in the Territory of Hawaii, he would have qualified through *ius soli* because Hawaii was an organized incorporated territory of the United States from July 7, 1898, through August 21, 1959 (Organic Act). The interesting question today would be if a citizen of Guam, an organized unincorporated territory, chose to run.

In the lead up to the presidential primaries in 1968, newspapers began raising questions about George Romney's place of birth. Romney, at the time the governor of Michigan, emerged as an early challenger to Richard Nixon. Interestingly,

the challenges to his eligibility came from Democrats who raised the circumstances of his birth, foreshadowing the later controversies over McCain, Obama, and Cruz (Hosenball 2012). Romney's grandparents were American citizens who were polygamous Mormons. They had fled the United States with their children because of the federal government's prosecution of polygamists. Romney was born in a Mormon colony in Mexico. When the Mexican Revolution began, fearing for their safety, the family moved back to the United States (Rosenbaum 1995). The issue, of course, was Romney's place of birth. At the time, legal experts, including those at the Congressional Research Service, clearly supported his claim to "natural born" citizenship. It became a non-issue when his support disappeared after his famous comment that with respect to Vietnam, he had "the greatest brainwashing that anybody could get" (Rosenbaum 1995). He withdrew from the race.

The "birther movement," among others, raised the issue concerning the eligibility of Ted Cruz and Barack Obama, but actually the interesting controversy in the run-up to the 2008 election involved John McCain, not Barack Obama.<sup>10</sup> Senator McCain was born on a military base in the Panama Canal Zone while his father (career US Navy, eventually a four-stripe admiral) was stationed there. While under US jurisdiction and governance, the question became, did control and governance mean that the Canal Zone constituted US "territory" in the sense that those living there, particularly American citizens, enjoyed the full benefits and protections of the Constitution? As an exercise in solidarity, and affirmation of Supreme Court decisions, the Senate passed a unanimous resolution declaring that: "The circumstances of Senator McCain's birth satisfy the original meaning and intent of the Natural Born Citizen Clause, as confirmed by subsequent legal precedent and historical practice" (*Congressional Record* 2008).

Cruz was born in Canada in 1970. Like Obama, his mother had American nationality and citizenship, his father did not. The obvious difference comes from the fact that Obama was born on US territory, Cruz was not. *Given current American law and practice*, Cruz was correct in insisting that "the son of a U.S. citizen born abroad is a natural-born citizen." (8 U.S. Code § 1401). Currently, American nationality and citizenship pass through both paternal and maternal links. As discussed earlier, that has not always been true. Until the 1934 Citizenship Act, nationality and citizenship passed only through the male side; hence Ted Cruz would not have met the citizenship test although Obama would have.

As a final note on the Obama controversy, many asserted that President Obama's birth occurred outside the United States. If true, this would have been a critical issue because his father was not a US citizen at the time of the

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<sup>10</sup> For the views and analyses of the Birther Movement, visit "The Birthers: Dedicated to the Rebirth of Our Constitutional Republic": <http://birthers.org/>.

president's birth. In *United States v. Ahumada-Aguilar* (1999), the Court noted that: "The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." The federal laws in effect in 1961, would have required for citizenship at "birth" of one born outside of the United States to only *one* citizen-parent, that such citizen-parent must have resided in the United States for not less than ten years, at least five of which were after the age of fourteen. Because of her age, the president's mother would not have met the requirement.

### Conclusion

Despite the constitutional history, the nearly unanimous consensus of legal and constitutional scholars, and the consistent, relevant case law, doubts still persist perhaps because in the era after the 1940 law, no definitive Court case dealing with the specific issues has ever emerged. While the clear tenor of opinion in the most recent federal cases, as well as the majority of scholarship on the subject, agree that the term "natural born citizen" would most likely include in addition to individuals born in the United States, (a) those born abroad to US citizen-parents, at least one of whom had previously resided in the United States, and (b) those born abroad to one US citizen parent who, prior to the birth, had met the requirements of federal law for physical presence in the country, the reasoning in Court opinions still places citizenship through *ius sanguinis* at the will of the Congress instead of as a logical extension of allegiance. On the one hand, it is hard to believe that Congress would overturn practice that predates the Constitution. In an era of "globalization" where great numbers of Americans travel and work abroad for lengthy periods, it is difficult to conceive that Congress would enact legislation that would adversely affect the children of citizens born overseas in denying them "natural born" status. But, on the other hand, given the current political climate that includes a backlash against globalization, nothing is impossible (Buttonwood 2016).



### References

Amar, Akhil Reed. 2005. *America's Constitution: A Biography*. New York: Random House.

- Blackman, Josh. 2010. "Original Citizenship." *University of Pennsylvania Law Review* 159(1): 95–126.
- Blackstone's Commentaries on the Laws of England*. 1765. The Avalon Project: Document in Law, History, and Diplomacy. Yale Law School. [http://avalon.law.yale.edu/18th\\_century/blackstone\\_bk1ch10.asp](http://avalon.law.yale.edu/18th_century/blackstone_bk1ch10.asp).
- Bredbenner, Candice Lewis. 1998. *A Nationality of Her Own: Women, Marriage, and the Law of Citizenship*. Berkeley: University of California Press.
- Buttonwood. 2016. "Globalisation Backlash 2.0." *The Economist*, July 27. <http://www.economist.com/blogs/buttonwood/2016/07/economics-and-politics-0>.
- Clement, Paul, and Neal Katyal. 2015. "On the Meaning of 'Natural Born Citizen,'" *Harvard Law Review Forum* 128. <http://harvardlawreview.org/2015/03/on-the-meaning-of-natural-born-citizen/>.
- Corwin, Edwin. 1957. *The President: Office and Powers*, 4th rev. ed. New York: New York University Press.
- DeLear, Byron. 2012. "Who Coined the Name 'United States of America'? Mystery Gets New Twist." *Christian Science Monitor*, August 16. <http://www.csmonitor.com/USA/Politics/The-Vote/2012/0816/Who-coined-the-name-United-States-of-America-Mystery-gets-new-twist>.
- Farrand, Max, ed. 1911. *The Records of the Federal Convention of 1787*, Vol. III. New Haven, CT: Yale University Press.
- Flegenheimer, Matt, and Amy Chozick. 2016. "As Puerto Ricans Move to Florida, the Clinton Campaign Is Waiting for Them." *New York Times*, August 11. <http://www.nytimes.com/2016/08/12/us/politics/puerto-rican-voters.html? r=0>.
- Garner, Bryan A. 2002. *The Elements of Legal Style*, 2nd ed. Oxford: Oxford University Press.
- Gordon, Charles. 1968. "Who Can Be President of the United States? The Unresolved Enigma." *Maryland Law Review* 28(1): 1–32.
- Glahn, Gerhard von, and James Larry Taulbee. 2017. *Law among Nations*, 11th ed. New York and London: Routledge.
- Hinman, A. P. 1884. *How a British Subject Became President of the United States*. New York. <http://www.obamaconspiracy.org/wp-content/uploads/2009/01/HinmanWeb.pdf>.
- Hosenball, Mark. 2012. "Romney's Birth Certificate Evokes His Father's Controversy." *Reuters*, May 29. <http://www.reuters.com/article/us-usa-campaign-romney-birth-certificate-idUSBRE84S1GF20120529>.
- Hylton, J. Gordon. 2009. "President Chester A. Arthur and the Birthers, 1880's Style." Marquette University Law School Faculty Blog. <http://law.marquette.edu/facultyblog/2009/10/14/president-chester-a-arthur-and-the-birthers-1880%E2%80%99s-style/>.

- Karabell, Zachary, and Arthur M. Schlesinger Jr., eds. 2004. *Chester Alan Arthur*. New York: Times Books.
- Kesavan, Vasan. 2002. "When Did the Articles of Confederation Cease to Be Law?" *Notre Dame Law Review* 78(1): 35–82.
- Kertzer, Morris N. 1996. *What Is a Jew?* 6th ed. New York: Touchstone, 1996.
- Lincoln, Abraham. 1861. First Inaugural Address (March 4, 1861). <http://www.bartleby.com/124/pres31.html>.
- Lohman, Christina S. 2000–2001. "Presidential Eligibility: The Meaning of the Natural-Born Citizen Clause." *Gonzaga Law Review* 36(2): 349–72.
- Long, Breckinridge. 1916. "Is Mr. Charles Evans Hughes a 'Natural Born Citizen' within the Meaning of the Constitution?" *Chicago Legal News*. <https://cdrkerchner.wordpress.com/2013/10/29/is-mr-charles-evans-hughes-a-naturalborn-citizen-within-the-meaning-of-theconstitution-by-beckinridge-long-chicago-legal-news/>.
- Maskell, Jack. 2016. "Qualifications for President and the 'Natural Born' Citizenship Eligibility Requirement." Washington, DC: Congressional Research Service. <http://armsandthelaw.com/CRS%20on%20natural%20born.pdf>.
- McCullough, David. 2001. *John Adams*. New York: Simon & Schuster.
- Rosenbaum, David A. 1995. "George Romney Dies at 88; A Leading G.O.P. Figure." *New York Times*. <http://www.nytimes.com/1995/07/27/obituaries/george-romney-dies-at-88-a-leading-gop-figure.html>.
- Simon, Richard. 2014. "Spotlighting a Law That Stripped U.S.-Born Women of Citizenship." *Los Angeles Times*, April 19. <http://www.latimes.com/nation/la-na-apology-20140420-story.html>.
- Steiker, Jordan, Sanford Levinson, and J. M. Balkin. 1995. "Taking Text and Structure Really Seriously." *Texas Law Review* 74: 237–87.
- Story, Joseph. 1833. *Commentaries on the Constitution of the United States*, Vol. 3. Boston: Hilliard Gray and Company. [http://www.constitution.org/js/js\\_000.htm](http://www.constitution.org/js/js_000.htm).
- Strauss, David A. 1996. "Common Law Constitutional Interpretation." *University of Chicago Law Review* 63(3): 877–935.
- Taulbee, James Larry. 2000. "A Call to Arms Refused: The United States and the International Criminal Court." *Emory International Law Review* 14(1): 105–57.
- Tribe, Laurence H. 1995. "Taking Text and Structure Seriously: Reflections on Free-Form Method in Constitutional Interpretation." *Harvard Law Review* 108(6): 1221.
- Truss, Lynn. 2003. *Eats, Shoots and Leaves: The Zero Tolerance Approach to Punctuation*. New York: Gotham Press.

- United States Department of State. "Legal Considerations." <https://travel.state.gov/content/travel/en/legal-considerations/us-citizenship-laws-policies/certificates-of-non-citizen-nationality.html>.
- United States Senate. "Senate History 1964–Present." [http://www.senate.gov/artandhistory/history/minute/Civil\\_Rights\\_Filibuster\\_Ended.htm](http://www.senate.gov/artandhistory/history/minute/Civil_Rights_Filibuster_Ended.htm).
- Wills, Garry. 2002. *Inventing America: Jefferson's Declaration of Independence*. Boston: Houghton Mifflin Harcourt.

### **Cases, Documents, Statutes, and Treaties**

- Act in Reference to the Expatriation of Citizens and their Protection Abroad, 59th Congress, sess. 2, 34 Stat. 1228 (1907).
- Articles of Association (October 20, 1774). First Continental Congress. <https://www.archivesfoundation.org/documents/1774-articles-association/>.
- Articles of Confederation (November 15, 1777), U.S. Government Publishing Office, n.d., <https://www.gpo.gov/fdsys/pkg/SMAN-107/pdf/SMAN-107-pg935.pdf>.
- Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).
- Calder v. Bull, 3 Dall. 386, 390 (1798).
- Carmell v. Texas, 529 U.S. 513, 521 (2000).
- Chau v. Immigration and Naturalization Service, 247 F.3d 1026, 1029 (9th Cir. 2000).
- Citizenship Act of 1934, Act of May 24, 1934, Section 1, 48 Stat. 797; amending, 10 Stat. 604 (1855) amending 2 Stat. 155 (1802) together with 34 Stat. 1229 (1907), 8 U.S.C.A. § 6 (1926).
- Civil Rights Act of 1964, Pub.L. 88–352, 78 Stat. 241 (enacted July 2, 1964). *Congressional Record* (2008). "John S. McCain, III Citizenship." 110th Congress, S3645–S3646.
- Convention on the Nationality of Women, Signed at the Seventh International Conference of American States Montevideo, Uruguay, (December 3-26, 1933), [https://www.oas.org/en/cim/docs/CNW\[EN\].pdf](https://www.oas.org/en/cim/docs/CNW[EN].pdf)
- Cotting v. Godard*, 183 U.S. 79 (1901)
- Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, Pub.L. 94–241, 90 Stat. 263 (March 24, 1976).
- Elk v. Wilkins, 112 U.S. 94, 101 (1884); *Luria v. United States*, 231 U.S. 9, 22 (1913); *Rogers v. Bellei*, 401 U.S. 815, 828 (1971); *Schneider v. Rusk*, 377 U.S. 163, 165 (1963); *MacIntosh v. United States*, 42 F.2d 845, 848 (2nd Cir. 1930); *Diaz-Salazar v. INS*, 700 F.2d 1156, 1160 (7th Cir. 1982), cert. den. 462 U.S. 1132 (1983); *Mustata v. U.S. Department of Justice*, 179 F.3d 1017,

- 1019 (6th Cir. 1999); *Robinson v. Bowen*, 567 F.Supp. 1144, 1145–1146 (ND Cal. 2008); *Hollander v. McCain*, 566 F.Supp. 63, 66 (D.N.H. 2008).
- Guam Organic Act of 1950, 48 U.S.C. § 1421 et seq.
- Immigration and Naturalization Act, 8 U.S.C. 1452(b) (January 3, 2012) Source: June 27, 1952, ch. 477, title III, ch. 2, §341, 66 Stat. 263; Pub. L. 97-116, §18(p), Dec. 29, 1981, 95 Stat. 1621; Pub. L. 99-396, §16(a), Aug. 27, 1986, 100 Stat. 843; Pub. L. 99-653, §22, Nov. 14, 1986, 100 Stat. 3658; Pub. L. 100-525, §8(q), Oct. 24, 1988, 102 Stat. 2618; Pub. L. 102-232, title III, §305(m)(8), Dec. 12, 1991, 105 Stat. 1750; Pub. L. 103-416, title I, §102(b), Oct. 25, 1994, 108 Stat. 4307.
- Pub. L. 97-116, §18(p), Dec. 29, 1981, 95 Stat. 1621; Pub. L. 99-396, §16(a), Aug. 27, 1986, 100 Stat. 843; Pub. L. 99-653, §22, Nov. 14, 1986, 100 Stat. 3658; Pub. L. 100-525, §8(q), Oct. 24, 1988, 102 Stat. 2618; Pub. L. 102-232, title III, §305(m)(8), Dec. 12, 1991, 105 Stat. 1750; Pub. L. 103-416, title I, §102(b), Oct. 25, 1994, 108 Stat. 4307.
- Naturalization Act of 1790, Ch. 3, 1 Stat. 103 (repealed 1795).
- Naturalization Act of 1792, Sess. 2, ch. 3, 1 Stat. 103
- Naturalization Act of 1795, Sess. 2, ch. 20, 1 Stat. 414
- Naturalization Act of 1802, Sess. 1, ch. 28, 2 Stat. 153
- Inglis v. Trustees of Sailor’s Snug Harbor*, 28 U.S. 99 (1830)
- Organic Act. An Act to Provide a Government for the Territory of Hawaii, Act of April 30, 1900, C 339, 31 Stat 141.
- Puerto Rican Federal Relations Act of 1917 (Jones Act—Puerto Rico), Pub. L. 64–368, 39 Stat. 951 (March 2, 1917)
- Smith v. Alabama*, 124 U.S. 465, 478 (1888).
- Voting Rights Act of 1965, PL 89-110 (August 6, 1965)
- United States v. Ahumada-Aguilar*, 189 F.3d 1121, 1124 (9th Cir. 1999)
- Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 297 (1888).