Natural-Born Citizens of the United States. Eligibility for the Office of President

By Alexander Porter Morse

As a wide-spread interest attaches to the discussion of the meaning and scope of the constitutional provision in respect to eligibility for the office of president of the United States, I submit some views in this relation which may be opportune.

The question is often asked: Are children of citizens of the United States born at sea or in foreign territory, other than the offspring of American ambassadors or ministers plenipotentiary, natural-born citizens of the United States, within the purview of the constitutional provision? After some consideration of the history of the times, of the relation of the provision to the subject-matter and of acts of congress relating to citizenship, it seems clear to the undersigned that such persons are natural-born, that is, citizens by origin; and that, if otherwise qualified, they are eligible to the office of president. In respect to the citizenship of children of American parentage, wherever born, the principle of *jus sanguinis* seems to be the American principle; that is to say, the law of *hereditary,* rather than *territorial allegiance,* is recognized, which is modern, as distinguished from the ancient, and at one time, common-law principle of *jus soli.* If the provision was as sometimes inaccurately cited, namely, that the president must be "a native-born citizen," there might be no question as to its meaning. But the framers generally used precise language; and the etymology actually employed makes the meaning definite. Its correspondent in English law, "natural-born subject," appears in constitutional history and parliamentary enactments; and there it includes all children born out of the king's allegiance whose fathers were natural-born subjects; and the children of such children (i. e., children whose grandfathers by the father's side were natural-born subjects), though their mothers were aliens, are now deemed to be natural-born subjects themselves to all intents and purposes, unless their said ancestors were attainted or banished beyond sea for high treason, or were at birth of such children in the service of a prince at enmity with Great Britain.

At the time of the adoption of the Constitution, immigration was anticipated and provisions for naturalization would immediately follow the establishment of the government. Those residents in the United States at the time the Constitution was adopted were made citizens. Thereafter the president must be taken from the natural-born citizens. If it was intended that anybody who was a citizen by birth should be eligible, it would only have been necessary to say, "no person, except a native-born citizen;" but the framers thought it wise, in view of the probable influx of European immigration, to provide that the president should at least be the child

of citizens owing allegiance to the United States at the time of his birth. It may be observed in passing that the current phrase "native-born citizen" is well understood; but it is pleonasm and should be discarded; and the correct designation, "native citizen" should be substituted in all constitutional and statutory enactments, in judicial decisions and in legal discussions where accuracy and precise language are essential to intelligent discussion.

The earliest act of congress to establish a uniform rule of naturalization (March 26, 1790) contained the following clause: "And the children of citizens of the United States that may be born at sea or out of the limits of the United States, *shall be considered as natural-born citizens."* The draft of this act has been credited to Mr. Jefferson, although his authorship has been questioned; and his reputed relationship to it may be ascribed to the fact that he was the author of the original naturalization acts in the Constitution of Virginia, and was an ardent supporter of a wise system of naturalization laws before and after he became President. But whoever drew the act followed closely the various parliamentary statutes of Great Britain; and its language in this relation indicates that the first congress entertained and declared the opinion that children of American parentage, wherever born, were within the constitutional designation, "natural-born citizens." The act is declaratory; but the reason that such children are natural born remains; that is, their American citizenship is natural—the result of parentage—and is not artificial or acquired by compliance with legislative requirements. The second act of naturalization (January 29, 1795), which was reported and probably drawn by Mr. Madison, chairman of a select House committee, enacted "That the children of persons duly naturalized dwelling within the United States, and being under the age of twenty-one years at the time of such naturalization, and the children of citizens of the United States born out of the limits and jurisdiction of the United States shall be considered as citizens of the United States." As carried forward in the Revised Statutes, the provision reads: "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof *are declared to be citizens of the United States*; but the rights of citizenship shall not descend to children whose fathers never resided in the United States." This provision, as its terms express, is declaratory; it is not the statute that constitutes children of American parentage citizens; it is the fact of American descent, the *jus sanguinis*, that makes them citizens at the moment of birth—a fact which, for sufficient and convenient reasons, the legislative power of the State recognizes and announces to the world.

If there was ambiguity, the rights and privileges of children of American parents dependent upon constitutional guarantees would demand recognition; and constitutional guaranties in favor of such persons might not be restricted or denied by congress.

To return to the constitutional requirement in respect to eligibility for the office of president, let us inquire what was the obvious purpose and intent of the limitation? Plainly, it was inserted in order to exclude "aliens" *by birth and blood* from that high office, upon considerations which naturally had much weight at the time of the adoption of the Constitution. It was scarcely intended to bar the children of American parentage, whether born at sea or in foreign territory. Where it was said in the old books that an alien is one born out of the king's or State's dominions or allegiance, this must be understood with some restrictions. A forced or restricted construction of the constitutional phrase under consideration would be out of harmony with modern conceptions of political status, and might produce startling results. It remains to be decided whether a child of domiciled Chinese parents, born in the United States, is eligible, if otherwise qualified, to the office of president and to all the privileges of the Constitution. And it would be a strange conclusion, in another aspect, if the child of American parents, born in China, should be denied correspondent rights and privileges in the United States.

A natural-born citizen has been defined as one whose citizenship is established by the jurisdiction which the United States already has over the parents of the child, not what is thereafter acquired by choice of residence in this country.

Our conclusion is that the child of citizens of the United States, wherever born, is "a natural-born citizen of the United States," within the constitutional requirement; and, as such, if possessed of the other qualifications, would be eligible for the office of president of the United States.

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