Demolish It and They Will Leave

The controversy over Arizona's new illegal immigration law has prompted more than a few legislators to consider clarifying the intention of the 14th Amendment to the U.S. Constitution. The amendment, passed by Congress on June 13, 1866 and ratified by the states on July 9, 1868, reads in part:

"Section 1.
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…"

The purpose of the amendment was to bestow U.S. citizenship on all former slaves. It was of course *never* intended to make citizens of babies delivered by illegal immigrants after they crossed the border—because there were no illegal immigrants in 1868. In fact, at that time there were no laws restricting immigration. There were no such laws because the United States was then a land of opportunity—*not* a land of welfare payments, food stamps, subsidized housing, minority quotas, and political correctness. There were therefore no illegal immigrants in 1868; there were only immigrants, and they all came to the United States to work and to make a better life for themselves and their families—not to collect benefits paid for by overburdened taxpayers.

Those immigrants were not U.S. citizens unless and until they learned the English language and went through the naturalization process. Many did, many did not. But whether they became U.S. citizens with the right to vote was less important to them than having the freedom to obtain employment or start a farm or business and provide for their families in a manner not available to them in their homeland.

In 1866 Senator Jacob Howard—who authored its citizenship clause—said of the proposed 14th Amendment, "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, 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. It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States. This has long been a great desideratum in the jurisprudence and legislation of this country."

Senator Lyman Trumbull, Chairman of the Senate Judiciary Committee, said the goal of the Amendment was to "make citizens of everybody born in the U.S. who owe allegiance to the U.S.," and if "the negro or white man belonged to a foreign government he would not be a citizen."

Iowa Congressman James Wilson stated, on March 1, 1866, "we must depend on the general law relating to subjects and citizens recognized by all nations for a definition, and that must lead us to conclude that every person born in the U.S. is a natural-born citizen of such States, except that of children born on our soil (jus soli) to temporary sojourners

or representatives of foreign governments." (This statement not only clarifies the 14th Amendment, it clarifies the term natural born citizen to *exclude* someone born on U.S. soil to a "temporary sojourner"—such as Kenyan student Barack Hussein Obama, Sr.)

Ohio Congressman John Bingham said that the 14th Amendment means that "every human being born within the jurisdiction of the U.S. of parents not owing allegiance to any foreign sovereignty is, in the language of the Constitution itself, a natural born citizen." (This also means that Obama is *not* a natural born citizen because his father owed allegiance to Kenya, not the United States.) Decades earlier, Thomas Jefferson stated, "Aliens are the subjects of a foreign power."

In 1873 the Attorney General of the United States issued a clarification of the term "jurisdiction" in the 14th Amendment, saying it meant "the absolute and complete jurisdiction. …Aliens, among whom are persons born here and naturalized abroad, dwelling or being in this country, are subject to the jurisdiction of the US but only to a limited extent. *Political and military rights do not pertain to them*." [Emphasis added.]

Also in 1873, in the Slaughter-House Cases the Supreme Court stated that the main purpose of the 14th Amendment "was to establish the citizenship of the Negro" and "the phrase 'subject to its jurisdiction' was intended to exclude from its operation children of ministers, consuls, AND citizens or subjects of foreign states born within the United States."

In the 1884 case *Elk v. Wilkins* the phrase "subject to its jurisdiction" was interpreted to exclude "children of ministers, consuls, and citizens of foreign states born within the United States." The Court stated that the citizenship of the parents determined the citizenship of the child. To qualify children for U.S. citizenship under the 14th Amendment, parents must owe "direct and immediate allegiance" to the U.S. and be "completely subject" to its jurisdiction. That is, they must be U.S. citizens.

In 1889 the Supreme Court heard case *United States v. Wong Kim Ark* and ruled that a child born in the United States to legal immigrants from China was considered a U.S. citizen. However, that case related to *legal* immigrants, not illegal immigrants.

The Citizens Act of 1924 was later passed to grant U.S. citizenship to "a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe." (Even under the 14th Amendment Indians were not treated as citizens of the United States, but as citizens of tribes with which the United States maintained treaties. Clearly, the Citizens Act of 1924 would have been unnecessary had the 14th Amendment intended to include Indians as citizens.)

Partly because of misinterpretations of *Wong Kim Ark*, many came to incorrectly understand the 14th Amendment to mean simply that being born on U.S. soil made one a citizen. The 14th Amendment has been wrongly interpreted by many, including judges in court decisions. In fact, the United States is probably the *only* nation in the world that follows the absurd policy of granting citizenship to infants born of illegal immigrants.

This nonsensical policy would perhaps matter little if the United States had not become an enormous welfare state. In the 19th century millions of people emigrated to the United States to find work. One hundred years later they emigrated to the United States primarily to find work, but far too many also crossed the border or overstayed their visas simply to obtain benefits provided by a nation that seemed eager for self-destruction by spending itself into oblivion.

Illegal immigrants have been referred to as illegal aliens. The hapless Secretary of Homeland Security, Janet "Butch" Napolitano, has used the term "undocumented asylum seekers." (The term is not only absurd, it is legally incorrect. Asylum refers to granting sanctuary to a person who would suffer *religious or political persecution* if he remained in his home country. If the United States were to grant asylum solely on the basis of poverty, it would have to accept *billions* of immigrants.) Some might refer to illegal immigrants as "undocumented Democrats"—which is probably the most appropriate term, because the moment they are granted amnesty by the government and instantly turned into voting citizens they will no doubt cast their ballots for the candidates of the Party that promises them the greatest handouts.

Some politicians are now demanding that the 14th Amendment itself be amended in order to clarify that children born to illegal immigrants were never meant to be considered U.S. citizens. Others argue that the issue should simply make its way to the U.S Supreme Court, which can then issue a ruling based on historical precedent and period documents that make the intentions of the amendment clear. (Expect Justices Breyer, Bader-Ginsberg, Sotomayor, and Kagan to rule against common sense, and hope that Justice Kennedy is still angry enough with Obama to vote with Roberts, Thomas, Scalia, and Alito.)

The danger of holding a Constitutional Convention to further amend the Constitution is that no one can predict what other strange amendments might be proposed—such as declaring that citizens must purchase health insurance regardless of whether they believe they need a policy, or requiring that all citizens maintain a small "carbon footprint," or increasing the Supreme Court to 15 Justices so that Obama can add 6 new leftists. Senator Lindsey "Goober" Graham, the South Carolinian who pretends to be a conservative Republican, has proposed amending the Constitution to clarify the 14th Amendment—but only because he knows there is no chance of that happening. He can therefore tell his constituents that he *"tried very hard,"* and if they reelect him he will promise to *"try again."*

Of greater concern is that there has been an intentional effort by some legislators to confuse terms so as to make "natural born" indistinguishable from "native born." Native born means nothing more than born on U.S. soil, while a natural born citizen is one who was born on U.S. soil *of two U.S. citizen parents*. The 14th Amendment says nothing about natural born citizens, which is referenced only in Article II, Section 1 of the U.S. Constitution: "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 to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States." Some point to the 14th Amendment and state that merely being born on U.S. soil makes one eligible to be President of the United States—but that is an *invalid* argument. Being a citizen is insufficient for one to serve as President, as is being native born; one must be a *natural born citizen*. (Because his father was a Kenyan and not a citizen of the United States, Obama *cannot* legally serve as President—*regardless* of whether he was born in Hawaii.) The real motive for some who are behind a sudden interest in the 14th Amendment is not resolving the "anchor baby" problem, it is changing the meaning of terms so that Obama can continue to serve as President—and run again in 2012—before the Supreme Court gets a chance to rule on the meaning of "natural born citizen."

But—however difficult it may be—putting aside the fact that the United States has a fraudulent President occupying the Oval Office, illegal immigration remains indisputably near the top of the list of issues that concern Americans. Assuming there is no Constitutional amendment and assuming the Supreme Court either never rules on the issue or rules incorrectly, what options are left? The most logical would seem to be to roll back the welfare state. That is, stop funding the programs that act as a magnet to draw illegal immigrants into the country. *"Build it and they will come"* can be replaced with *"Demolish it and they will leave."*

This applies to the issue of "amnesty" as well. The argument always seems to consist of: *"We have to grant illegal immigrants amnesty and make them voting citizens because we cannot very well deport 20 million people!"* Why exactly must those be the *only* two options? To those who whine, *"We cannot continue to have millions of people living in the shadows of society, afraid that if they break the law they will be arrested and deported!"* the appropriate response is, *"Why not?"*

If Jose and Maria entered the United States illegally 10 years ago and have been living in the shadows, they can always return to Mexico if they want to go out into the sunlight. Does it matter if they remain in the shadows for the rest of their lives? Why does it matter if they are never made citizens and can never vote? If they can live in the shadows at age 30 or 40, why can they not live in the shadows at age 70 or 80? And if we start dismantling the welfare state on which they survive, they may simply return home to the sunlight and vote in Mexico, where they are still citizens. Actions have consequences. No one asked them to enter the shadows.

"*But what about their children? Their 'anchor babies' are U.S. citizens!"* Many would argue that they are not and that the 14th Amendment never intended them to be U.S. citizens. But even if they are, why does that matter? If Jose and Maria want to return to Mexico they can certainly take their children with them. And under Mexican law those children are considered Mexican citizens. The United States is not "separating children form their parents"—one-way bus tickets can be provided for everyone.

Some argue that children born in the United States to illegal immigrant parents are U.S. citizens because they are "subject to the jurisdiction thereof." But if that argument is used

to make the individuals U.S. citizens, they cannot pick and choose the laws they are "subject to." ObamaCare, for example, requires that all U.S. citizens who do not have employer-provided health insurance policies *must* purchase a policy. The illegal immigrants cannot have it both ways. If their new baby is to be considered a U.S. citizen because it is "subject to the jurisdiction" of the United States, then it had better buy a health insurance policy and not expect free care at the border hospital to which its *madre* hurried after wading across the Rio Grande.

There is no need for an amendment to the Constitution; historical documents make it clear that it does *not* bestow U.S. citizenship on children born of illegal immigrants. But if Congress wants to take action, it can simply issue a resolution that defines what is meant by the term *"subject to the jurisdiction thereof."* Follow that by making it standard practice to deny U.S. citizenship to children of illegal immigrants. Then dismantle the welfare state and there will be no need to deport anyone—there will be a flood of self-deportation that astounds everyone. (But deporting Barack "Barry" Hussein Obama Soetoro Soebarkah to Indonesia will likely require a few burly ICE agents.)

And that's my dos centavos worth…

Don Fredrick
August 14, 2010

Note: Senate Majority Leader Harry Reid (D-NV), who recently stated, "I don't know how anyone of Hispanic heritage could be a Republican, okay. Do I need to say more?" introduced legislation in 1993 to clarify the 14th Amendment:

TITLE X—CITIZENSHIP 4 SEC. 1001. BASIS OF CITIZENSHIP CLARIFIED. In the exercise of its powers under section of the Fourteenth Article of Amendment to the Constitution of the United States, the Congress has determined and hereby declares that any person born after the date of enactment of this title to a mother who is neither a citizen of the United States nor admitted to the United States as a lawful permanent resident, and which person is a national or citizen of another country of which either of his or her natural parents is a national or citizen, or is entitled upon application to become a national or citizen of such country, shall be considered as born subject to the jurisdiction of that foreign country and not subject to the jurisdiction of the United States within the meaning of section 1 of such Article and shall therefore not be a citizen of the United States or of any State solely by reason of physical presence within the United States at the moment of birth.

Source: http://www.redstate.com/moe_lane/2010/08/13/harry-reid-is-a-hypocrite-on-birthright-citizenship/

Also see: http://judiciary.house.gov/legacy/6042.htm