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ALEXANDER'S ESSAY
THURSDAY, AUGUST 26, 2010

BIRTHRIGHT CITIZENSHIP?

Only if your mother was "subject to the jurisdiction thereof" (Ciudadanía por Nacimiento -- sólo si su madre estaba sujeta a su jurisdicción)

"The bosom of America is open to receive not only the Opulent and respectable Stranger, but the oppressed and persecuted of all Nations and Religions; whom we shall welcome to a participation of all our rights and privileges, if by decency and propriety of conduct they appear to merit the enjoyment." --George Washington

Given the far-reaching implications of illegal immigration, and more recently the Left's objections to enforcing immigration law in border states like Arizona, the 14th Amendment of our Constitution is receiving some long-overdue attention.

Like every contemporary political debate, the questions raised concerning the meaning of the 14th Amendment are, essentially, about whether we are a nation subject to Rule of Law codified in our Constitution, or we are subjects under the rule of men, subject to a "living constitution" amended primarily by judicial diktat and legislative mischief, rather than amended by the people, as prescribed in Article V.

Does the 14th Amendment mean what its framers intended and the states ratified, or does it mean whatever the courts and Congress have construed it to mean today?

Section 1 of the 14th Amendment, which pertains to immigration and naturalization, reads, "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."

To discern the authentic meaning of this amendment as originally intended by its framers, we must first start with its plain language, and then further examine the context under which it was proposed and passed. Any debate about the authority of our Constitution must begin with First Principles, original intent.

"All persons born or naturalized in the United States..."

This language is plain and easily understood.

"[A]nd subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

This language, too, is plain and easily understood, unless there is a contemporary Leftist political agenda, which does not comport with that understanding, in which case benefactors and beneficiaries of that agenda will interpret (read: misconstrue) it to fit their purposes.

So, what does "subject to the jurisdiction thereof" actually mean? Beyond the apparent plain language definition, a factual interpretation is supported by the context in which this amendment was framed and ratified.

After the War Between the States, freedmen (former slaves) may have been liberated by Abraham Lincoln's 1863 Emancipation Proclamation, but they didn't enjoy the same rights as those who freed them. Though slaves were in the United States legally, and thus, "subject to the jurisdiction thereof," they had no assurance of equal rights.

The Civil Rights Act of 1866 was designed to rectify this injustice by noting in part, "All persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States. ... All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

The first definition of "citizenship" in legal references is "nationality or legal status of citizenship."

The 1866 act defined "persons within the jurisdiction of the United States" as all persons at the time of its passage, born in the United States, including all slaves and their offspring.

However, concern that the Act might be overturned by a future Congress motivated its sponsors to make it more resistant to the arbitrary rule of men, so they proposed the 14th Amendment to our Constitution, which upon ratification, would protect the provision of the 1866 Act from legislatures and the courts.

Michigan Sen. Jacob Howard, one of two principal authors of Section 1 of the 14th Amendment (the Citizenship Clause), noted that its provision, "subject to the jurisdiction thereof," excluded American Indians who had tribal nationalities, and "persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers."

According to University of Texas legal scholar Lino Graglia, the second author of the Citizenship Clause, Illinois Sen. Lyman Trumbull, added that "subject to the jurisdiction of the United States" meant "not owing allegiance to anybody else."

Thus, in the plain language of its author, those who are not born to American citizens have no birthright to citizenship.

Despite the confidence of the 14th Amendment's authors that it wouldn't be subject to legislative and judicial mischief, subsequent generations of legislatures and judges have so twisted its plain language as to all but alienate it from its original intent -- as they have likewise done with the rest of our Constitution.

For that reason, House Minority Leader John Boehner (R-OH) is now proposing a measure to restore the original intent of the 14th Amendment's Citizenship Clause by way of another amendment.

The problem is that Boehner and likeminded conservatives still erroneously rely on the Rule of Law, an assumption that our Constitution is still the Supreme Law of the land. Unfortunately, it has been thoroughly subordinated to the rule of men.

Where does that leave the birthright citizenship debate?

Today, more than 20 percent of all children born in the United States are born to those who have entered the United States unlawfully, and who are, by any authentic definition of the 14th Amendment, NOT subject to the jurisdiction of the U.S. because they are not citizens. Yet Barack Hussein Obama and his Socialist Bourgeoisie assert that the "anchor babies" of illegal immigrants are owed all the entitlements of an American citizen.

The near-term consequences of this fallacious assertion have dire implications for the future of Liberty, for the Rule of Law, and for the very survival of our nation. But this is consistent with Obama's "fundamental transformation" agenda to break the back of free enterprise, which is essential to liberty.

In 1776, Benjamin Franklin, John Adams and Thomas Jefferson proposed the national motto, "E pluribus unum" ("Out of many, one"), but that unity will not last much longer if we do not take dramatic action to restore the Rule of Law.

In 1919, Theodore Roosevelt penned these words: "We should insist that if the immigrant who comes here in good faith becomes an American and assimilates himself to us, he shall be treated on an exact equality with everyone else, for it is an outrage to discriminate against any such man because of creed, or birthplace, or origin. But this is predicated upon the person's becoming in every facet an American, and nothing but an American. There can be no divided allegiance here. Any man who says he is an American, but something else also, isn't an American at all. We have room for but one flag, the American flag. We have room for but one language here, and that is the English language ... and we have room for but one sole loyalty and that is a loyalty to the American people."

Indeed.

Now, writes Graglia, "It is difficult to imagine a more irrational and self-defeating legal system than one which makes unauthorized entry into this country a criminal offense and simultaneously provides perhaps the greatest possible inducement to illegal entry," making a child born to that immigrant "an American citizen, entitled to all the advantages of the American welfare state."

For the record, according to both the Justice Department and Homeland Security, "A person born in the United States to a foreign diplomatic officer accredited to the United States, as a matter of international law, is not subject to the jurisdiction of the United States. That person is not a United States citizen under the 14th Amendment."

So, according to current laws and regulations, consistent with the original intent of both the 1866 Civil Rights Act and the 14th Amendment as duly ratified on 9 July 1868,

the child of a diplomat born in the United States, though that diplomat is legally on U.S. soil, has no birthright entitlement to citizenship.

However, according to Obama and his Leftist cadres, inconsistent with both the 1866 Civil Rights Act and the 14th Amendment, a child born to anyone who enters the U.S. illegally has a birthright entitlement to citizenship.

Which will it be, then: Rule of Law or the rule of Obama?

Veritas vos Liberabit -- Semper Vigilo, Fortis, Paratus, et Fidelis! Mark Alexander, Publisher, for *The Patriot Post's* editors and staff. Read online at http://patriotpost.us

(Please pray for our Armed Forces standing in harm's way around the world, and for their families -- especially families of those fallen Soldiers, Sailors, Airmen, Marines and Coast Guardsmen, who granted their lives in defense of American liberty.)