

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 3: The Founding Era – Democratic Rights/Citizenship

National and State Citizenship

The Constitution of the United States failed to resolve crucial questions about American citizenship. No clause sets out the conditions for American citizenship. This omission was particularly puzzling because Article II, Section 1 declares, “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.” On one interpretation, anyone born in the United States is a “natural born citizen.” If Robert Calvin was a natural born subject of James I because he was born in Great Britain, then Robert Calvin would have been a natural born citizen of the United States had he been born in Philadelphia after 1776. On a different interpretation, Article II, Section 1 suggests that being natural born and being a citizen are two distinctive qualifications for the presidency. If so, then some persons born in the United States are not citizens of the United States.

Other constitutional provisions provide no more light on the qualifications for American citizenship. Article IV, Section 1 declares, “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” This clause can be interpreted as making national citizenship conditional upon state citizenship. Anyone who is a citizen of Massachusetts or another state is a citizen of the United States. If so, then the constitution permits states to establish qualifications for national citizenship. This has troubling implications. Whether South Carolinians consented to having Massachusetts declare persons of color (or Native Americans) national citizens is doubtful. Article I, Section 8 implies national control over citizenship. That clause gave Congress the power to “establish a uniform Rule of Naturalization.” Federal law was necessary to make aliens American citizens. Article I, however, says nothing about the citizenship status of persons already residing in the United States at the time of independence.

State citizenship laws varied.¹ Some states, slave states in particular, limited the residents eligible to elect citizenship when the United States declared independence in 1776. Virginia in 1779 declared that only white persons could become state citizens. In South Carolina, all “free white persons” who met residency requirements could choose to become state citizens. Most northern states (and North Carolina) initially treated all state residents at the time of independence as state citizens. In those jurisdictions, free blacks voted and exercised some other rights associated with citizenship. Nevertheless, qualifications for citizenship were often ambiguous. Free blacks who voted were often denied other rights associated with citizenship, such as the right to bear arms.

¹ See James H. Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill, NC: University of North Carolina Press, 1978), 214–21.