AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 5: The Jacksonian Era—Democratic Rights/Citizenship

Lynch v. Clarke, 3 N.Y. Leg. Obs. 236 (NY 1844)

The firm of Lynch & Clarke owned a mineral spring in Saratoga Springs, New York, and created a very profitable business from it. In 1833, Thomas Lynch died. Thomas had two brothers, both in Ireland. His brother, Bernard, immigrated to the United States shortly after the death of Thomas and became a naturalized American citizen in 1839. His other brother, Patrick, died before Thomas but had a daughter, Julia, who had been born in New York City during a family visit in 1819. Upon the death of Thomas Lynch, John Clarke claimed the entire business as his own but that some real estate had been owned solely by Thomas and had been inherited by the niece, Julia. Bernard maintained that the water business was the joint property of the firm, and thus half of its profits should fall to him as the heir to Thomas.

Although there were various factual disputes regarding the ownership of the business, a key legal question was whether Julia could inherit any land that had been in the clear possession of Thomas. New York continued to follow the common law rule that barred aliens from inheriting land within the state. If she was an alien by virtue of her Irish parents, then she could not inherit New York land. In one of the first judicial rulings on the issue, the New York court concluded that she was instead a natural-born citizen and thus could inherit from her American uncle. Infants born on American soil, regardless of the nationality of their parents, are necessarily natural-born Americans.

JUDGE SANDFORD.

The first question which I will examine in this case, is the political condition of the defendant Julia Lynch, at the death of her uncle, Thomas Lynch. This question stands at the threshold of the cause. For, if, as claimed in her behalf she were in truth a citizen of the United States at that time, she inherited all the real estate. . . .

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My conclusion upon the facts proved is, that Julia Lynch was born in this state, of alien parents, during their temporary sojourn. That they came here as an experiment, without any settled intention of abandoning their native country, or of making the United States their permanent abode. They never concluded to remain here permanently, and after trying the country, they returned to their native land, and there ended their lives many years afterwards. They took Julia with them to Ireland; she continued to reside there, and when Thomas Lynch died, she was about fourteen years of age, and a resident of Ireland.

Her right to inherit as the heir of Thomas Lynch, must be tested by the state of allegiance existing at his death, when the descent was cast. It is evident, therefore, that the right depends upon her alienage or citizenship at the time of her departure from this country in her mother's arms in the year 1819; for no act intervened between that time and the death of Thomas, which could alter her political state or condition.

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It is an indisputable proposition, that by the rule of the common law of England, if applied to these facts, Julia Lynch was a natural born citizen of the United States. And this rule was established and inflexible in the common law, long anterior to the first settlement of the United States, and, indeed, before the discovery of America by Columbus. By the common law, all persons born within the ligeance of the crown of England, were natural born subjects, without reference to the status or condition of their parents. So if a Frenchman and his wife, came into England, and had a bob during their stay, he was a liege man. . . .

Mr. Chitty . . . says that by the common law, all persons born out of the king's dominions and allegiance were deemed aliens; and whatever were the situation of his parents, the being born within the allegiance of the king, constituted a natural born subject.

He states no exception to the latter proposition although there are some exceptions to the former, in favor of children of British subjects who are born in foreign countries. Whether the foreign parents were in England, *in itinere*, or for occasional business, their children born during their stay, were natural born subjects.

Second. Such being the rule of the common law, in the absence of express legislation, the difficult question is presented for decision; is the common law in this respect, the law of this state, or of the United States? If it be the law here, then Julia Lynch was a native born citizen, and inherited the property in controversy; assuming that it was the property of Thomas Lynch, as alleged in the bill of complaint.

It is undoubtedly true that the right to real estate by descent in this state, must be governed by the municipal law of the state. And by the law of this state, which in this respect, is the common law, aliens cannot inherit land. But this does not relieve the case from its difficulty, because we have no state law which in express terms declares who are aliens and who are citizens, either in general, or for the purpose of inheriting land. It thus becomes necessary to inquire who is an alien, according to the law which must control that subject in this state. . . .

I think that this general principle is not to be obtained from the mere local or municipal law of the State of New York. This state is a member of a confederation of states, having a common federal executive head, and for many purposes affecting the general interest and convenience of all the states, a national legislature and judiciary. Our internal affairs and government, are almost exclusively reserved to the control of the people of the states. Amongst ourselves, we are twenty-six sovereign and independent states, confederated under a compact or constitution, for limited and prescribed objects of government.

But in reference to all foreign nations, we stand as one single and united people, The United State of America. The right of citizenship, a right which is not only important as between the different states, but has an essential bearing in our intercourse with other nations and the privileges conceded, by them to our citizens; is therefore, not a matter of mere state concern. It is necessarily a national right and character. It appertains to us, not in respect to the State of New York, but in respect of the United States.

In speaking of this right in its proper and enlarged sense, we never say of any one, that he is a citizen of the State of New York; we say he is a citizen of the United States. Our own constitution recognizes the propriety of this mode of expression, in declaring that no person except a native citizen of the United States, shall be eligible to the office of governor. . . . I speak now of the relationship of a citizen in its general and enlarged sense. In its particular sense, it is applicable to the rights and duties of our people in and towards the states in which they reside. And in this sense, while a citizen of one state may hold lands in another state, yet he cannot interfere in the elections of the latter, or in any of those rights which from the nature of government belong exclusively to the citizens of such state. As citizens, we owe a particular allegiance to the sovereignty of our state, and a general allegiance to the confederated sovereignty of the United States.

The provisions of the Constitution of the United States demonstrate that the right of citizenship, as distinguished from alienage, is a national right or condition, and does not pertain to individual states.

. . . [I]t is evident that the subject of alienage, must be controlled by the general, and not by the local allegiance. The constitution declares that the citizen of each state shall be entitled to all the privileges and immunities of citizens in the several states. (Article IVth, Sec. 2.) The effect of this clause in the first instance, was to bring within the fold of citizenship of the United States, and thus of each and every state, all who at the time of the adoption of the constitution, were by birth, adoption or any of their discordant laws of naturalization, citizens of any one of the thirteen states. It made all alike, citizens of the newly organized nation, and in this respect a homogeneous people. And the very necessity for such a, provision to bring all upon a common platform, exhibited in the strongest light the absolute need of guarding against different and discordant rules for establishing the right of citizenship in future. We therefore find that one of the first powers conferred upon Congress, was "to establish an uniform rule of naturalization throughout the United States." (Article I. Sec. 8: § 4.)

A few brief considerations, out of many which force themselves upon the mind, will illustrate the position that the right of citizenship in its enlarged sense, was after the adoption of the constitution, not only a national right, but from the nature of the case, it must from thenceforth he governed by the law of the whole nation and the acts of the national legislature. The different colonies, while pursuing the same general policy, had manifested very diverse views in their legislation upon the subject of aliens. The same thing was apparent in the legislation of the respective states, after the Declaration of Independence, and during the confederation. As early as in the year 1782, Mr. Madison strenuously urged the adoption of a uniform rule of naturalization by the states. If the states were to be left to themselves, the same diversity would doubtless continue under the constitution. One state would foster immigration, and confer on foreigners all the rights of citizens on their landing upon its shores; while another, with the same general object in view, but cherishing the ancient jealousy of aliens, would require a probation of many years, before conferring those privileges upon the emigrant. Then under the clause of the constitution which I have first cited, interminable and harassing conflicts of state jurisdiction would have speedily ensued. . . .

The clause in the constitution conferring upon Congress the power to establish an uniform rule of naturalization, was designed to obviate the various evils which were justly anticipated from leaving the subject of citizenship to the control of the several states. Has it had the intended effect? It certainly has not, if there be any portion of the field to legislation on the subject, left open to the action of the several states.

I will next inquire whether there be any such portion left to the states?

The constitution went into full operation on the fourth day of March, 1789. The first Congress assembled under it, at its second session, exercised the power conferred upon that body by the constitution, and on the 26th day of March, 1790, passed an act to establish a uniform system of naturalization. And from that time to the present there has been one or more acts of Congress regulating this subject, constantly in force. After Congress exercised this power, it is well settled that it no longer fell within the scope of state legislation.

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The authors of the Federalist . . . insisted that the power to naturalize must necessarily be exclusive, else there could be no uniform rule. And it seems now to be conceded on all hands, that it is exclusive. . . .

This is not only true in regard to what Congress has legislated upon expressly, but it holds good for what they have omitted. If the subject matter belong to the national legislation, the fact that Congress has covered only a part of the ground, does not warrant any state in legislating over the residue. This principle is well settled, and upon reasons that are unanswerable. . . .

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. . . When our National Independence was declared, the citizens of this and the other States were subjects of Great Britain. Upon the Revolution, they were at liberty to continue their allegiance to the crown and retire from the country, or to remain and adhere to the independent states. Those who

adhered, were thence-forth citizens of the respective states. Foreigners arriving here intermediate the Declaration of Independence and the adoption of the constitution, became citizens or continued aliens, according to the laws of the several states where they resided; and the children of aliens horn here during that interval, became citizens in those states, because, as will presently be shown, the common law was in that respect, the law of all the states.

. . . When the constitution took effect, therefore, it found the existing mass of citizens of the United States ascertained and defined. It was not necessary to enact anything farther in reference to those citizens, than was done in the section which gave them immunities as citizens alike in all the states. But as we have seen, it was necessary to provide for the boundless future. State laws and state legislation could not in the nature of things, be longer permitted to define, abridge or enlarge the important privilege of citizenship in the United States. It was a purely national right, and one which must for the future, be governed by rules operating alike upon every part of the Union.

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The next inquiry is, therefore, what is the national law of the United States on this subject?

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It may then be safely assumed, that at the Declaration of Independence, by the law of each and all the thirteen states, a child born within their territory and ligeance respectively, became thereby a citizen of the state of which he was a native.

This continued unchanged to the time when our National Constitution went into full operation. There is no evidence of any alteration of the rule in any of the states during the period that intervened; and the references which will be made under another heady show conclusively that there had been no intermediate change in their policy.

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. . . The term citizen, was used in the constitution as a word, the meaning of which was already established and well understood. And the constitution itself contains a direct recognition of the subsisting common law principle, in the section which defines the qualification of the President. "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," etc. The only standard which then existed, of a natural born citizen, was the rule of the common law, and no different standard has been adopted since. Suppose a person should be elected President who was native born, but of alien parents, could there be any reasonable doubt that he was eligible under the constitution? I think not. The position would be decisive in his favor that by the role of the common law, in force when the constitution was adopted, he is a citizen.

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The inconsistency of holding that Julia Lynch is a citizen here, when it is conceded on all hands that by reason of her parents being British subjects she is also a British subject; was strongly urged. The inconsistency, however, is nothing but the occurrence of a double allegiance, which exists in the tens of thousands of instances of our naturalized citizens, who were once subjects of the crown of Great Britain. We recognize its existence, because we adopt them as citizens, with full knowledge that by the law of their native country, they never can put off the allegiance which they owe to its government.

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The policy of our nation has always been to bestow the right of citizenship freely, and with a liberality unknown to the old world. I hold this to be our sound and wise policy still, notwithstanding the religious intolerance which partially obscured it in some of our colonial legislation, and the hostility which has occasionally prevailed against it is some parts of our country. . . .

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Upon principle, therefore, I can entertain no doubt, but that by the law of the United States, every person born within the dominions and allegiance of the United States, whatever were the situation of his parents, is a natural born citizen. . . . I am bound to say that the general understanding

of the legal profession, and the universal impression of the public mind, so far as I have had the opportunity of knowing it, is that birth in this country does of itself constitute citizenship. Thus when at an election, the inquiry is made whether a person offering to vote is a citizen or an alien, if he answers that he is a native of this country, it is received as conclusive that he is a citizen. No one inquires farther. No one asks whether his parents were citizens or were foreigners. It is enough that he was born here, whatever were the status of his parents. I know that common consent is sometimes only a common error, and that public opinion is not any authority on a point of law. But this is a question which is more important and more deeply felt in reference to political rights, than to rights of property. The universality of the public sentiment in this instance, is a part of the historical evidence of the state and progress of the law on the subject. It indicates the strength and depth of the common law principle, and confirms the position that the adoption of the Federal Constitution wrought no change in that principle.

The legislative expositions speak but one language on this question. Thus the various act a on the subject of naturalization which have been passed by Congress presuppose that all who are to be benefited by their provisions were born abroad. They abound in expressions of this sort, *viz*.: the country "from which he came;" all "persons who may arrive in the United States;" the country whence they migrated is to be stated, and the like. This language is inappropriate to a person who was born here, and wholly inapplicable to one who has always resided in the country. If Julia Lynch had remained here till she was of age, the argument in regard to her citizenship would be no different, because during the intervening time she would have been incapable of election. In this state, the constitution adopted by the people in 1822, provides that no person except a native citizen of the United States shall be eligible to the office of governor. Native citizen is used as contradistinguished from citizens of foreign birth, and as a term perfectly intelligible and definite. It is based upon the assumption that there was a known rule of law, ascertaining who were native citizens of the United States; and as has already been shown that there was no such rule known, except that of the common law. In various statutes which have been enacted from time to time for more than fifty years past, to authorize aliens to take, purchase, hold and convey real estate, the expression used by the legislature in declaring the extent of the rights granted, is that they are to be as full as those of "any natural born citizen," or of "natural born citizens." . . .

The statutes in favor of aliens, enabling them to take, hold and dispose of real estate, have been very general throughout the United States. I refer to the following as exhibiting the similar use of the term "natural born citizen of the United States," in contradistinction to aliens, or foreigners not naturalized. . . .

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Chancellor Kent follows Blackstone in his division of the inhabitants of our country into aliens and natives. And he says; "Natives are all persons born within the jurisdiction of the United States;" and "an alien is a person born out of the jurisdiction of the United States." The exceptions which he makes, do not affect the present question.

Judge Wilson, in his law lectures, delivered soon after our national government was organized, says that an alien, according to the notion commonly received as law, is one borne in a strange country, and in a foreign society, to which he is presumed to have a natural and a necessary allegiance. He also says, that between a subject natural, and a subject naturalized, the distinction as to private rights is merely nominal; on one they are devolved by his birth, on the other by the consent of the nation. . . .

Judge Tucker says, that "aliens in the United States are at present of two kinds—aliens by birth and by election. First. Aliens by birth are all persons born out of the dominions of the United States, since the 4th day of July, 1776, with some few exceptions, as children of citizens born abroad, and persons naturalized by acts of Congress," etc. His second class of aliens, are those made by voluntary expatriation, which he insists is reasonable.

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In the face of all these legislative expressions, and these opinions of great and learned judges and authors in various parts of the Union, and in all periods of our national career; some of whom were contemporary with the revolution, and many of them contemporary with the sages who established our national government, and at least one participated in that immortal work; it would be presumptuous in me, even if my own views had inclined the other way, to hold that the birth of Julia Lynch within our dominions did not confer upon her the rights of a citizen of the United States.

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It was assumed to be an indisputable proposition, that by the international or public law, she was an alien; for that by the public law, the child follows the political condition of the parent. It is evident that this rule, without very important qualifications, might lead to the perpetuation of a race of aliens; for if no one of the successive fathers effected his naturalization during the minority of the next in succession, generation after generation would continue in a state of alienage. Accordingly, the difficulty is sought to be obviated, by giving to the child born of alien parents, the election, on arriving at maturity, to become a citizen, either of the state where he was born, or of the state of which his father was a member. In effect, this brings us back to the theory of the formation of states and governments, by voluntary compact of their inhabitants; and yields to every man, the unqualified right of throwing off allegiance by birth, whenever he becomes of age, and attaching himself to any community which pleases him. And if he may do it when he attains his full age, why may he not exercise the same natural right, every successive year of his life? And with these notions of allegiance fully established, a state, with a well appointed army of its citizens in the field to-day, might tomorrow, find itself without citizens, and its troops in the full fruition of a new allegiance, in the ranks of its enemy.

Waiving these considerations, what, in a case like that of Julia Lynch, is to be her political quality and condition, until the period of her right to elect shall have arrived? In her case, (and it will often happen in similar cases,) important events occurred in the meantime, and rights accrued, which must be determined by the state of things then existing. Is it not unwise in the state, and unjust to the infant to withhold the quality of the citizen, or keep it in abeyance, until the years of discretion are attained? Even with the rights of election established, there must be some fixed rule determining the allegiance, until the period for making the election arrives. Shall that rule be founded upon the place of birth, or the place of the parents' birth; upon their allegiance at the time of the birth of the propositus, or upon their domicil at that time, or during the subsequent period?

The difficulty of answering these inquiries satisfactorily, strikingly exhibits the impracticability of the principle sought to be applied to this case.

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The rule contended for, is one confined to countries which derived their jurisprudence from the civil law, and is more properly a rule of the civil law, than one of the public law, or law of nations.

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In conclusion, I entertain no doubt but that Julia Lynch was a citizen of the United States when Thomas Lynch died. She therefore inherited the property in controversy, if Thomas Lynch had any estate therein, to the entire exclusion of the complainant, who was then an alien, and incapable of taking by descent.

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