

Will,

I received your inquiry concerning U.S. citizenship. I fully read the case you referred, to wit: US vs Wong Kim Ark 169 US 649 (1898). The case asked the question, if a child born of Chinese foreigners, residing legally in the U.S., but not citizens, does the 14th Amendment confer U.S. citizenship to this child?

The court answered yes.

Nowhere in the court's decision does it lay out the dual requirements, per se, as stated in the placard you sent me. The court mostly rested its decision on the English common law. In England if you were born in the territorial limits of any part of the Kingdom you were a subject of the King, regardless of the parents nationality or how long they were in the Kingdom. A subject of the King could never expatriate.

The court did not expressly state that the alien parents must be in the U.S. legally for the 14th Amendment to confer birth-right citizenship. The court spoke of their decision in Lem Moon Sing vs U.S. 158 US 538 (1895), where an alien chinaman legally in the U.S. voluntarily left the U.S. to visit China. On his return to the U.S. he was denied reentry because his alien status. Sing sued the U.S. and lost because he had no right as an alien to enter the country. The court stated that as long as Sing lawfully remained in the country he had all the guarantees secured by the constitution as everyone else. This is the only place it talks about being in the U.S. legally. But because Sing voluntarily left the U.S., the U.S. did not have to let an alien or foreigner reenter. The court never addressed what if the alien is in the country illegally and to what affect this would have on birth-right citizenship.

The crux to that injury appears to hinge on the meaning of the term: "and subject to the jurisdiction thereof." The 14th Amendment states in pertinent part "All persons born or naturalized in the U.S., and subject to the jurisdiction thereof, are citizens of the U.S....." The court concluded these jurisdiction clause was to exclude children born of Indians not taxed, alien enemies in hostile occupation and diplomatic representatives of a foreign state. This group does not owe immediate allegiance to the U.S., according to the court. Everyone else born in the territorial limits (including territorial possessions such as Guam) of the U.S. are citizens.

The dissent (which is not binding on any court) argued that the English common law with regard to citizenship was not fully mirrored by the U.S. The dissent pointed out that U.S. citizens can expatriate while in England subjects cannot. Therefore, the majority is wrong to assert English common law controls the decision. The dissent went on to explain that "subject to the jurisdiction thereof" means not merely subject in some respect to degree to the jurisdiction of the U.S., but completely subject to its political jurisdiction and owing direct and immediate allegiance. And to be "completely subject" to the political jurisdiction of the U.S. is to be in no respect or degree subject to the political jurisdiction of any other government. Therefore, aliens whose parents have not formally renounced their allegiance to their native country, cannot be subject to the jurisdiction of the U.S. as understood in the 14th Amendment. This was dissents reasoning.

In short to answer your question, no, the Supreme Court did not lay out two requirements for birth-right citizenship.

An assertion I oft heard was that I am a state citizen not a citizen of the U.S. This was an assertion that had some plausibility prior to the 14th Amendment. Citizenship was a term in ambiguous flux until the 14th Amendment. That Amendment made citizenship of the U.S. primary and state

citizenship secondary and derivative, depending upon citizenship of the U.S. and the citizens place of residence. You can be a citizen of the U.S. and not be a citizen of the state, but you cannot be a citizen of a state and not be a citizen of the U.S. For example, a person who lives in Wash D.C. is a U.S. citizen but not a citizen of the 50 states. You must reside in a state to be one of its citizens. There is no such thing as being just a state citizen. If you're a citizen of a state you must be a citizen of the U.S. The national legislature has exclusive power to determine who and how one becomes a citizen, via the naturalization clause in the U.S. Const. By the 14th Amendment, the people made citizenship dependent on place of birth, and jurisdiction requirement. The S. Court has weighed in on the 14th Amendment to a certain extent, but the legal vs illegal alien question is still one inquiry that I believe needs examining.

Another thing which is of concern, was the 14th Amendment ratified lawfully? There is strong evidence to support it was not. The S. Court passed on this question. Pushing it to the legislature. Excepting a revolution, I believe we are forever yoked with the 14th Amendment. The 14th Amendment made the states subject to the U.S. Constitution. This gave the national courts power to oversee internal state policies, or police them under the guise of protecting civil rights. The original design of the Union left the states to police themselves under their own constitutions. Now anyone who feels the state has violated their rights can turn to the national gov't. Some may like this oversight, others may see this as too much centralized power. I know this. The U.S. courts have been able to mold society by their striking an upholding state laws based on rights not even found in the U.S. Constitution. For example, the right for gays to marry- implied under the equal protection clause. You see, how these decisions mold society like clay?

I'll end it at that. Take Good Care.