

THE PROPOSITION

A PUBLICATION OF THE CLAREMONT INSTITUTE

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The Islamic Challenge

by William A. Rusher, Distinguished Fellow

Following the foundation of the religion of Islam by Muhammed in Mecca in 610 AD, the new faith spread rapidly throughout the Middle East, and over the ensuing centuries far more widely, extending its grip from Spain and Morocco to the Philippines. Beginning with the Crusades, however, it encountered strenuous opposition from Christianity and other faiths, and in the last two centuries Islam has endured the humiliation of seeing Western culture compete with it successfully almost everywhere. Rather than undermining their faith, however, the challenge of the West has simply confirmed Muslims' belief in the superiority of their religion, and in the importance of its ultimate victory.

From the standpoint of the West, on the other hand, and in particular from that of the United States, Islam has seemed simply another defeated cultural competitor, doomed to ultimate absorption by a thoroughly Westernized world.

In the past quarter-century, however, the nations of the Western world have begun experiencing what seemed to be, and perhaps to a large extent were, isolated attacks by individual Muslims and small Muslim groups on Western targets, notably including targets symbolic of American power and culture. Probably simply for reasons of convenience, most of the American targets chosen were located abroad: American embassies and diplomatic officials, American military assets, and major American corporations.

Thus some 60 people were killed in an explosion at the U.S. embassy in Lebanon in 1983; America's CIA station chief in Beirut, William Buckley, was kidnapped and killed in 1985; 241 U.S. servicemen were killed by a suicide bomber there later that year; a bomb

To some extent, we are blinded because the threat seems so preposterous. These people could not possibly defeat even a second-rate Western power in a traditional battle. But they have devised a style of guerilla warfare that is almost immune to the traditional forms of military attack.

detonated in the garage of the World Trade Center in 1993, killing six people and injuring over a thousand; 19 U.S. servicemen were killed in the Khobar Towers explosion in Dhahran, Saudi Arabia, in 1996; America's embassies in Kenya and Tanzania were bombed almost simultaneously in 1998, with major losses of life; and the U.S. destroyer Cole was attacked and nearly sunk in Aden in 2000, killing 17 sailors. Similar atrocities (such as the destruction by bombs of eleven American airliners in flight simultaneously over the Pacific in 1995, and the bombing of Los Angeles International Airport in late 1999) were prevented only by the timely discovery of the plots.

Apparently the fact that most of these incidents occurred abroad prevented the American public from taking much notice of them, or drawing suggestive conclusions about them. But the destruction of the World Trade Center and the crash of a passenger airliner into the Pentagon on September 11, 2001 shook the American people wide awake. Since then, it has been possible to suggest the common factors in these various events, and to focus on the most significant one: All of them have been perpetrated by Muslims, and have been designed to do serious damage to what Osama bin Laden and others call "the Great Satan."

Since 9/11, there have been no more successful attacks on the American homeland, though various plots have been detected and thwarted. But other nations of the world have been subjected to similar attacks: Indonesia, in the bombing of an entertainment area in Bali favored by Australians and other Westerners in 2002; Spain, in the Madrid train bombings of 2004; Great Britain in the subway bombings of 2005; and so on. And there is not the slightest reason to suppose that America's recent immunity will survive a single day beyond our opponents' successful insertion or recruitment of fresh agents here to carry out their plans.

Moreover, there have been dramatic and dismaying developments in the technology of terrorism. The fanatics behind these attacks may hate the West, but they are only too glad to avail themselves of its skills. They know very well how to hijack and use its planes, and are fully familiar with cell phones and the most modern explosives. Worse yet, they have learned to

recruit, train and deploy hundreds or even thousands of individuals who, confident in the reward of their faith, are cheerfully willing to strap explosives to themselves and detonate them wherever they will do the most harm.

Unfortunately, however, the signs are unmistakable that the American public, in the absence of more successful attacks here at home, are drifting back to sleep. The continuing attacks abroad are too episodic, too remote, and perhaps individually too minor, to keep us alert to the dangers. Above all, we have not learned to regard them as of a piece—as simply individual events in a connected series. We do not realize that we are facing a force that has now mobilized itself worldwide, recruited hundreds of thousands of devout Muslims to assist in doing its deadly work, and genuinely intends to bring about the destruction of the Western world.

To some extent, we are blinded because the threat seems so preposterous. These people could not possibly defeat even a second-rate Western power in a traditional battle. But they have devised a style of guerilla warfare that is almost immune to the traditional forms of military attack. They have no capital that could be bombed, no leaders whose capture or killing would disable the movement, not even uniforms or any other effective means of identification. They can dissolve at will back into the populations from which they sprang, and which still give them sustenance.

Moreover, and worse yet, they have arisen—and know they have arisen—at a time when the West is, morally and psychologically, at its weakest. Our peoples are busy enjoying the ripe fruits of Western culture, and have no stomach for the stern demands of defense. We cannot bear to see our soldiers die in obscure battles against nameless foes, above all without even the consolation of "victory." They saw America abandon its Vietnamese ally and flee the battlefields of Southeast Asia. They saw it withdraw its forces from Somalia in 1994 when one of our eighteen dead in a skirmish there was televised being dragged through the streets of Mogadishu. They see American public opinion, and at least one of its two major parties, preparing to abandon Iraq. They see all this—and they see Muslims by the millions emigrating to Europe. Are they really so unreasonable to expect that, in the fullness of time, their will shall prevail over ours? **P**

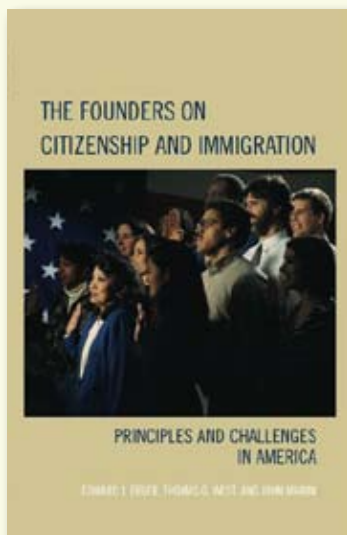
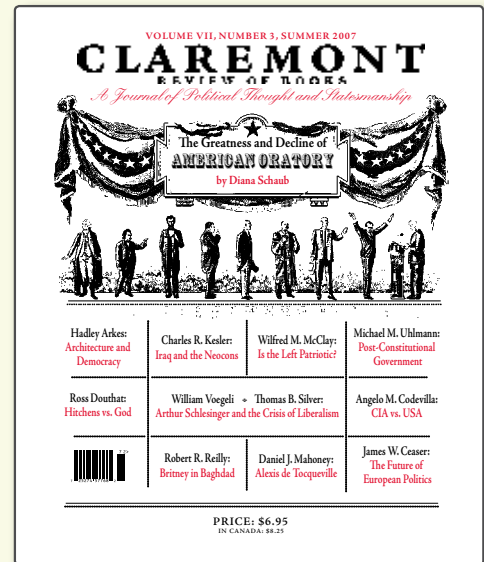
Recent Publications of the Claremont Institute

The Summer 2007 issue of the

CLAREMONT REVIEW OF BOOKS

Featuring

- Charles R. Kesler on Iraq and the neocons
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- Hadley Arkes on democratic architecture
- William Voegeli and Thomas B. Silver on the late Arthur Schlesinger, Jr.
- Mark Helprin on a permanent copyright for creative work



THE FOUNDERS ON CITIZENSHIP AND IMMIGRATION

In their newly released book, Institute senior fellows Edward J. Erler, John Marini, and Thomas G. West seek to revive the issue of republican character in the current immigration debate, and to elucidate the constitutional foundations of American citizenship.

Published Feb 28, 2006 by Rowman & Littlefield Publishers, Inc., in cooperation with the Claremont Institute.

To subscribe to the *Claremont Review of Books*, or for more information about Claremont Institute publications, please visit www.claremont.org or call (909) 621-6825.

The 2007 Publius Fellows

Every summer since 1979, the Claremont Institute has brought together a select group of promising young conservatives for its prestigious Publius Fellowship Program. The 2007 program was held in Newport Beach, California from June 22 to July 6, and was extremely successful. Publius Fellows met with the Institute's Senior Fellows and other distinguished visiting scholars to study the principles of American politics and American political thought. In intensive daily seminars and relaxed evening symposia, fellows discussed the great American readings—from the Founding to the Civil War, the Progressive Era, the Great Society, and the enduring disputes of liberalism and conservatism of our day. Fellows also worked closely with the editors and writers of the *Claremont Review of Books* to hone the craft of political writing.

Of more than eighty applicants, the following fourteen were selected to comprise the 2007 class:



Ryan Anderson is a Princeton graduate who holds positions as a Junior Fellow at *First Things* and as the Assistant Director of the Bioethics Program at the Witherspoon Institute. Previously, he was Executive Director of the Program and a research assistant to Robert P. George.

David Azerrad is a third year Ph.D. student and adjunct professor at the University of Dallas. Holding a B.A. in Journalism and Political Science and an M.A. in Political Science, he has interned at the Middle East Forum in Philadelphia, and has written for the journals *Interpretation* and *Innovations*, as well as for *The London Times*.

Alexander Benard is a J.D. candidate at Stanford Law School and a graduate of Claremont McKenna College. He has written on the war in Iraq and the Middle East in the *Journal of Strategic Studies* and *Policy Watch*.

Darryn Beckstrom is pursuing a Ph.D. in Political Science at the University of Wisconsin-Madison. She currently holds a Family Facts Fellowship from the Heritage Foundation and works as Director of Research at the Wisconsin Family Council.

Brian Brenberg is currently enrolled in the joint MPA/MBA program at Harvard's John F. Kennedy School of Government and Harvard Business School, where he serves as an elected Board Member and Section Representative for *The Harbus*. He is also the President of the Harvard Business School Christian Fellowship.

Sandra Czelusniak holds a B.A. in History from Cornell University, where she was a staff writer for the **Cornell Review**. She has served as an intern to Congressman Thomas M. Reynolds of New York and has worked as a research assistant at the Heritage Foundation's Center for American Studies.

Anthony Dick is a graduate of the University of Virginia, where he co-founded the Individual Rights Coalition. Mr. Dick currently works as a research and editorial assistant to William F. Buckley, Jr. at **National Review**. He will attend Stanford Law School in the fall.

Michael Harding holds an M.A. in philosophy from the University of Dallas and is currently finishing an M.A. in Politics. He has worked as an adjunct professor in the areas of Philosophy and Ethics since 2004, and currently teaches American politics at the University of Dallas.

John Hrabe is Communications Director for California Board of Equalization member Michelle Steel. A graduate of California State University, Mr. Hrabe has also worked as California State Assemblyman Chuck Devore's Press Secretary.

Mary Beth Mitaly has recently completed her final semester of coursework in the Ph.D. program in American Government and Political Theory at Claremont Graduate University. Ms. Mitaly is currently Director of Special Projects at the Claremont Institute.

David Morrell holds a B.A. in History from Hillsdale College, where he served as President of the Hillsdale Student Federation and Co-Founder and Executive Editor of the **Hillsdale Conservative**. Mr. Morrell will attend Pepperdine Law School in the fall.

Elise Passamani holds a B.A. in French from Wellesley College and an MSt. in European Literature from St. John's College, Oxford. She has worked as a research intern for Michael Ledeen at the American Enterprise Institute, and is currently an Associate Editor of AEI's new magazine, **The American**.



Claremont Institute Distinguished Fellow Harry V. Jaffa leads a discussion on the future of the conservative movement

Robert Samuel currently works as an Assignment Editor at the Fox News Channel. Holding a B.A. in History and Political Science from Duke University, Mr. Samuel was the recipient of the 2005 Richard M. and Helen DeVos Freedom Center Award for Student Leadership for his efforts aimed at inspiring his peers to better understand American freedom.

Dov Zigler has recently obtained an M.A. in International Relations from the Johns Hopkins University School of International Studies. He holds a B.A. in Politics and Economics from McGill University, and has worked as an analyst at the Canadian Department of National Defence.

The Claremont Dr. Milton



Senator Fred Thompson

JULY 31, 2007

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NEWPORT BEACH, CALIFORNIA



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and Speaker Dr. Charles R. Kesler



Kathy Gremer with Claremont Institute
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Chapman University Professor
and Speaker Dr. Donald R. Booth

Institute Honors Friedman

On what would have been Milton Friedman's 95th birthday, the Claremont Institute hosted a special event honoring the life and work of this great American. Following a cocktail and dessert reception, Brian T. Kennedy, President of the Claremont Institute, led a panel discussion featuring Dr. Charles R. Kesler, Editor of the **Claremont Review of Books**, and Dr. Donald R. Booth, Professor of Economics at Chapman University. Many friends—old and new—attended, including Senator Fred Thompson, who joined us in reflecting on the principles to which Dr. Friedman devoted his life and scholarship.



Jo Ellen Allen and Claremont Institute President
Brian T. Kennedy



Jeri and Fred Thompson



Alden and Joann McKelvey



Carmel and Tom Frees

& The Constitution Birthright Citizenship

BY EDWARD J. ERLER, SENIOR FELLOW

As illegal aliens and their advocates demanded amnesty and a “path to citizenship” in the recent immigration debate, what was missing was any discussion of birthright citizenship, the controversial notion that any baby born on U.S. soil is therefore automatically an American citizen, no questions asked.

American citizenship is a great prize—indeed, its benefits are recognized around the world. Right now, this boon is conferred upon the children of illegal immigrants born within the United States. This policy—the exact origins of which are unknown—has been in place for many years, although it has been recently challenged. It is alleged by its advocates

that birthright citizenship for the children of illegal aliens is commanded by the Constitution, which supposedly adopted the British common-law basis for citizenship. The framers, of course, were familiar with the common law, having learned its essentials from William Blackstone’s *Commentaries on the Laws of England*. But they surely would have been struck by the fact that neither Blackstone nor the common law ever mentioned “citizens.” Under English common law, there were only “birthright subjects.” The relationship was of master and servant, and all who were born within the protection of the king owed perpetual allegiance that, according to Blackstone, was “a debt of gratitude which

cannot be cancelled, or altered, by any change of time, place or circumstance.” Furthermore, “the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance of the former: for this natural allegiance was intrinsic, and primitive, and antecedent to the other.”

Is it possible that the Constitution’s framers, having

thrown off their allegiance to the king in the American Revolution, adopted “birthright subjectship” and perpetual allegiance as the basis of American citizenship? The Declaration of Independence announced to the world that the American people are “Absolved from all Allegiance to the British Crown.” American law is built upon the principle of citizenship—not subjectship—that requires

The original Constitution did not define citizenship. While both Senators and members of the House of Representatives must be citizens to hold office and the President must be a natural born citizen, citizenship was not defined until the adoption of the Fourteenth Amendment.

the “consent of the governed,” a doctrine wholly at odds with the notion of perpetual allegiance. With independence, Americans were now citizens, decisively and unequivocally repudiating the feudal idea of perpetual subjectship. (Britain abolished the common-law basis for citizenship in 1981.)

A look at several points in the historical record confirms the traditional social compact understanding of American citizenship.

The original Constitution of 1787 did not define citizenship. While both senators and members of the

House of Representatives must be citizens to hold office and the president must be a natural-born citizen, citizenship was not defined until the adoption of the 14th Amendment. As a practical matter, prior to the 14th Amendment citizens of states were automatically considered U.S. citizens. But in 1857, the Supreme Court's **Dred Scott v. Sandford** decision held that no black person, whether slave or free, could be a citizen of the United States. The 14th Amendment was necessary to overturn **Dred Scott** and to settle the question of the citizenship of the newly freed slaves. The amendment made U.S. citizenship primary and state citizenship derivative. The primacy of federal citizenship made it impossible for states to prevent former slaves from becoming United States citizens by withholding state citizenship.

During the debate over the 14th Amendment, Senator Jacob Howard, the author of the amendment's citizenship clause, denied that Indians would become citizens under the new amendment. The 14th Amendment establishes two requirements for citizenship: a person must be "born or naturalized in the United States **and** subject to the jurisdiction thereof" (emphasis added). Howard assured skeptics that "Indians born within the limits of the United States, and who maintain their tribal relations, are not, in the sense of this amendment, born subject to the jurisdiction of the United States." Senator Lyman Trumbull, Chairman of the Senate Judiciary Committee, supported Howard, contending that "subject to the jurisdiction thereof" meant "not owing allegiance to anybody else...subject to the complete jurisdiction of the United States." Indians, he concluded were not "subject to the jurisdiction" of the United States because they owed allegiance—even if only partial allegiance—to their tribes.

By itself, birth within the country's territorial limits, as the case of the Indians indicated, did not make one automatically "subject to the jurisdiction" of the United States. And "jurisdiction" did not mean simply subject to the laws of the United States or subject to the jurisdiction of its courts. Rather, "jurisdiction" meant exclusive "allegiance" to the United States. Not all who were subject to the laws owed allegiance to the country. As Senator Howard remarked, the requirement of "jurisdiction," understood in the sense of "allegiance," "will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign

Winston S. Churchill

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ministers accredited to the Government of the United States.”

Most revealing, however, was Howard’s contention that “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.” Almost everyone certainly would have understood “natural law” to refer to the social compact basis of citizenship, the basis established in the Declaration of Independence. References to the Declaration were so frequent during the 14th Amendment debate that it is almost impossible not to conclude that its principles were the ruling paradigm for the Reconstruction Amendments.

In the *Summary View of the Rights of British America* (1774), Thomas Jefferson argued that it was a natural right possessed by all men to leave the country where “chance and not choice” had placed them. The notion of a natural right to expatriation has no place in the scheme of an infeasible birthright citizenship. What’s more, the natural right to revolution that the founders invoked is the perfect antithesis of “perpetual allegiance.”

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right of expatriation as the necessary counterpart of citizenship based on consent. During debate, commentators frequently described Blackstone’s view of birthright citizenship as an “indefensible feudal doctrine of indefeasible allegiance” that was incompatible with republican government.

In *Elk v. Wilkins* (1884), the Supreme Court decided that a native Indian who had renounced allegiance to his tribe did not become “subject to the jurisdiction” of the United States by virtue of the renunciation. “The alien and dependent condition of the members of the Indian Tribes could not be put off at their own will, without the action or assent of the United States” signified either by treaty or legislation. Neither the “Indian Tribes” nor “individual members of those Tribes,” no more than “other foreigners” could “become citizens of their own will.”

Beginning in 1870 Congress had begun extending offers of citizenship to various Indian tribes. Any member of a specified tribe could become an American citizen if he so desired. Congress thus demonstrated that, using its Section 5 powers to enforce the provisions of the 14th Amendment, it could define who was properly within the jurisdiction of the United States.

In 1898, however, the Supreme Court in *United States v. Wong Kim Ark*, ignored America’s founding principles and declared that the 14th Amendment adopted the common-law definition of birthright citizenship. Wong Kim Ark was born to parents who were legally permanent residents of the United States but remained subjects of China and retained their allegiance to the emperor. As the result of a treaty between the United States and China, they were rendered ineligible for citizenship. The question was whether their son was an American citizen solely by virtue of his birth within the territorial limits of the United States. The majority opinion defied logic, arguing that since the framers were familiar with the common law the Constitution must be interpreted by common-law principles. With this, the Court rendered the jurisdiction clause superfluous—if all persons born within the territorial limits of the United States are automatically subject to its jurisdiction then the jurisdiction clause has no force or effect. But if the framers had intended this to be the meaning of the citizenship clause they would not have included the jurisdiction clause. Obviously the written Constitution

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should take precedence over the common law—just as the framers of the 14th Amendment intended.

Chief Justice Melville W. Fuller's dissenting opinion, however, argued that birthright citizenship had been repealed by the principles of the American Revolution and rejected by the framers of the 14th Amendment. Clearly Wong Kim Ark was born within the geographical limits of the United States, but not within its jurisdiction. As in the *Elk* case, his allegiance would follow that of his parents.

Nonetheless, the majority decision conferred birthright citizenship on a child of legal residents of the United States. Although the language of the majority opinion in *Wong Kim Ark* is certainly broad enough to include the children born in the United States of illegal as well as legal immigrants, there is no case in which the Supreme Court has explicitly held that this is the 14th Amendment's unambiguous command.

Based on the intent of those who framed the 14th Amendment, Congress could exercise its Section 5 powers to prevent the children of illegal aliens from automatically becoming citizens of the United States. In extending offers of citizenship to native persons, Congress exercised its power to determine who was "subject to the jurisdiction" of the United States. Beginning in 1995, several efforts to pass legislation under Section 5 denying birthright citizenship to children of illegal aliens have been made. All have failed in the face of intense political opposition from immigrant rights groups and other supporters of illegal immigration.

But policies like z-visas and family reunification make little sense when any baby born here automatically becomes a U.S. citizen. The next phase of the immigration debate must take up the question of birthright citizenship. Or else this strange understanding of American citizenship, coupled with borders that remain open, will continue to erode the integrity of the United States. **P**



Bill Bennett
Washington Fellow,
The Claremont
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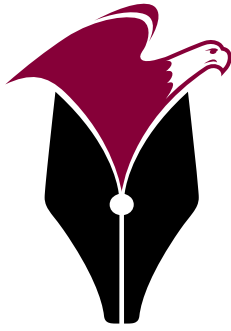
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