

Salmon P. Chase was Lincoln's Secretary of the Treasury, and Edward Bates was Lincoln's Attorney General. In September 1862, Chase wrote Bates an official letter requesting a legal opinion on whether free colored men can be citizens of the United States, which was relevant to a Treasury department matter involving a free black. In 1857, in the Dred Scott decision, Chief Justice Taney had denied that free blacks were or ever could be American citizens. Questioning the correctness of Taney's position and preparing to deliver the Emancipation Proclamation, the Lincoln administration wanted to flesh out the historical and legal aspects of the potential citizenship of free blacks.

Responding to the question at hand, Bates explores the basis and meaning of citizenship up to the time of the Civil War. And in the process of arriving at the conclusion that free blacks are indeed citizens, Bates reveals the details, complexities, and practicalities of United States citizenship, while also elaborating on the established fact of birthright citizenship.

Edward Bates on American Citizenship

(Opinion on Citizenship, by U.S. Attorney General Edward Bates; November 29, 1862.)

Some time ago I had the honor to receive your letter submitting, for my opinion, the question whether or not [free] colored men can be citizens of the United States...

Who is a citizen? What constitutes a citizen of the United States? I have often been pained by the fruitless search in our law books and in the records of our courts for a clear and satisfactory definition of the phrase *citizen of the United States*. I find no such definition, no authoritative establishment of the meaning of the phrase, neither by a course of judicial decision in our courts nor by the continued and consentaneous [agreed upon] action of the different branches of our political government. For aught I see to the contrary, the subject is now as little understood in its details and elements, and the question as open to argument and to speculative criticism, as it was at the beginning of the government. Eighty years of practical enjoyment of citizenship, under the Constitution, have not sufficed to teach us either the exact meaning of the word or the constituent elements of the thing we prize so highly.

In most instances, within my knowledge, in which the matter of citizenship has been discussed, the argument has not turned upon the existence and the intrinsic qualities of citizenship itself, but upon the claim of some right or privilege as belonging to and inhering in the character of citizen. In this way we are easily led into errors both of fact and principle. We see individuals, who are known to be citizens, in the actual enjoyment of certain rights and privileges, and in the actual exercise of certain powers, social and political, and we, inconsiderately, and without any regard to legal and logical consequences,

attribute to those individuals, and to all their class, the enjoyment of those rights and privileges and the exercise of those powers as incidents to their citizenship, and belonging to them only in their quality of citizens.

In such cases it often happens that the rights enjoyed and the powers exercised have no relation whatever to the quality of citizen, and might be as perfectly enjoyed and exercised by known aliens. For instance, General [Simon] Bernard, a distinguished soldier and devoted citizen of France, for a long time filled the office of general of engineers in the service of the United States, all the time avowing his French allegiance, and in fact, closing his relations with the United States by resigning his commission and returning to the service of his own native country. This, and all such instances, (and they are many,) go to prove that in this country the legal capacity to hold office is not confined to citizens, and therefore that the fact of holding any office for which citizenship is not specially prescribed by law as a qualification is no proof that the incumbent is an American citizen.

Again, with regard to the right of suffrage, that is, the right to choose officers of government, there is a very common error to the effect that the right to vote for public officers is one of the constituent elements of American citizenship, the leading faculty indeed of the citizen, the test at once of this legal right, and the sufficient proof of his membership of the body politic. No error can be greater than this, and few more injurious to the right understanding of our constitutions and the actual working of our political governments. It is not only not true in law or in fact, in principle or in practice, but the reverse is conspicuously true; for I make bold to affirm that, viewing the nation as a whole, or viewing the States separately, there is no district in the nation in which a majority of the known and recognized citizens are not excluded by law from the right of suffrage. Besides those who are excluded specially on account of some personal defect, such as paupers, idiots, lunatics, and men convicted of infamous crimes, and, in some States, soldiers, all females and all minor males are also excluded. And these, in every community, make the majority; and yet, I think, no one will venture to deny that women and children, and lunatics, and even convict felons, may be citizens of the United States.

Our code (unlike the codes of France, and perhaps some other nations,) makes no provision for loss or legal deprivation of citizenship. Once a citizen, (whether *natus* or *datus* [*born* or *given*], as Sir Edward Coke expresses it,) always a citizen, unless changed by the volition and act of the individual. Neither infancy nor madness nor crime can take away from the subject the quality of citizen. And our laws do, in express terms, declare women and children to be citizens.

The Constitution of the United States does not declare who are and who are not citizens, nor does it attempt to describe the constituent elements of citizenship. It leaves that quality where it found it, resting upon the fact of home, birth, and upon the laws of the several States. Even in the important matter of electing members of Congress it does no more than provide that “the House of Representatives shall be composed of members chosen every second year *by the people* of the several States, and the *electors* in the several States shall have the qualifications requisite for the electors of the most numerous branch of the State legislature.” Here the word *citizen* is not mentioned, and it is a legal fact, known of course to all lawyers and publicists, that the constitutions of several of the States, in specifying the qualifications of electors, do altogether omit and exclude the word *citizen* and *citizenship*.

...[Referencing the constitutions of Massachusetts, North Carolina, and Illinois:] These three constitutions belong to States widely separated in geographical position, varying greatly from each other in habits, manners, and pursuits, having different climates, soils, productions, and domestic institutions, and yet not one of the three has made *citizenship* a necessary qualification for a voter; all three of them exclude all females, but only one of them (Illinois) has excluded the black man from the right of suffrage. And it is historically true that the practice has conformed to the theory of those constitutions, respectively, for, without regard to citizenship, the colored man has not voted in Illinois, and freemen of all colors have voted in North Carolina and Massachusetts.

From all this it is manifest that American citizenship does not necessarily depend upon nor coexist with the legal capacity to hold office and the right of suffrage, either or both of them. The Constitution of the United States, as I have said, does not define citizenship; neither does it declare who may vote, nor who may hold office, except in regard to a few of the highest national functionaries [President, Vice President, and Congress]. And the several States, as far as I know, in exercising that power act independently and without any controlling authority over them, and hence it follows that there is no limit to their power in that particular but their own prudence and discretion; and therefore we are not surprised to find that these faculties of voting and holding office are not uniform in the different States, but are made to depend upon a variety of facts, purely discretionary, such as age, sex, race, color, property, residence in a particular place, and length of residence there.

On this point, then, I conclude that no person in the United States did ever exercise the right of suffrage in virtue of the naked, unassisted fact of citizenship. In every instance the right depends upon some additional fact and cumulative qualification, which may as perfectly exist without as with citizenship.

...In my opinion the Constitution uses the word citizen only to express the political quality of the individual in his relations to the nation; to declare that he is a member of the body politic, and bound to it by the reciprocal obligation of allegiance on the one side and protection on the other. And I have no knowledge of any other kind of political citizenship, higher or lower, statal or national; or of any other sense in which the word has been used in the Constitution, or can be used properly in the laws of the United States. The phrase “a citizen of the United States,” without addition or qualification, means neither more nor less than a member of the nation. And all such are, politically and legally, equal—the child in the cradle and its father in the Senate are equally citizens of the United States. And it needs no argument to prove every citizen of a State is, necessarily, a citizen of the United States; and to me it is equally clear that every citizen of the United States is a citizen of the particular State in which he is domiciled.

And as to voting and holding office, as that privilege is not essential to citizenship, so the deprivation of it by law is not a deprivation of citizenship. No more so in the case of a negro than in the case of a white woman or child.

...We have *natural born* citizens, (Const., article 2, section 5,) not made by law or otherwise, but *born*. And this class is the large majority; in fact, the mass of our citizens; for all others are exceptions, specially provided for by law. As they became citizens in the natural way, *by birth*, so they remain citizens during their natural lives, unless, by their own voluntary act, they expatriate themselves and become citizens or subjects of another nation. For we have no law (as the French have) to *decitizenise* a citizen, who has become such either by the natural process of birth, or by the legal process of adoption. And in this connection the Constitution says not one word, and furnishes not one hint, in relation to the color or to the ancestral race of the “natural born citizen.” Whatever may have been said, in the opinions of judges and lawyers, and in State statutes, about negroes, mulattoes, and persons of color, the Constitution is wholly silent upon that subject. The Constitution itself does not *make* the citizens, (it is, in fact, made by them.) It only intends and recognizes such of them as are natural—home-born—and provides for the *naturalization* of such of them as were alien—foreign-born—making the latter, as far as nature will allow, like the former.

...[Who is eligible to become a naturalized citizen?] for our laws extend the privileges of naturalization to such persons only as are “*aliens*, being free *white* persons.”

...As far as I know, Mr. Secretary, you and I have no better title to the citizenship which we enjoy than “the accident of birth”—the fact that we happened to be born in the United States. And our Constitution, in speaking of *natural born citizens*, uses no affirmative language to make them such, but only recognizes and reaffirms the universal principle,

common to all nations, and as old as political society, that the people born in a country do constitute the nation, and, as individuals, are *natural* members of the body politic.

If this be a true principle, and I do not doubt it, it follows that every person born in the country is, at the moment of birth, *prima facie* [on the face of it] a citizen; and he who would deny it must take upon himself the burden of proving some great disfranchisement strong enough to override the "*natural born*" right as recognized by the Constitution in terms the most simple and comprehensive, and without any reference to race or color, or any other accidental circumstance.

...In the United States it is too late now to deny the political rights and obligations conferred and imposed by nativity [birth]; for our laws do not pretend to create or enact them, but do assume and recognize them as things known to all men, because pre-existent and natural; and therefore things of which the laws must take cognizance. Acting out this guiding thought, our Constitution does no more than grant to Congress (rather than to any other department) the power "to establish a *uniform rule* of naturalization." And our laws made in pursuance thereof indue the made citizen with all the rights and obligations of natural citizens. And so strongly was Congress impressed with the great legal fact that the child takes its political status in the nation where it is born, that it was found necessary to pass a law to prevent the *alienage* of children of our known fellow-citizens who happen to be born in foreign countries. The act of February 10, 1855, 10 Statutes, 604, provides that "*persons*," (not *white* persons,) "persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States: *Provided, however*, That the rights of citizenship shall not descend to persons whose fathers never resided in the United States."

...I have said that, *prima facie*, every person in this country is born a citizen; and that he who denies it in individual cases assumes the burden of stating the exception to the general rule, and proving the fact which works the disfranchisement. There are but a few exceptions commonly made and urged as disqualifying facts. I lay no stress upon the small and admitted class of the *natural born* composed of the children of foreign ministers and the like...

[Since the question at hand involves the citizenship status of free blacks, Bates says that he will not be discussing the citizenship status of slaves.]

...And now, upon the whole matter, I give it as my opinion that the *free man of color*...if born in the United States, is a citizen of the United States...