

Author's Response to "de Vattel Denier" Boggs

"INTERESTING, NO?"

by [Joseph DeMaio](#), ©2023

In the past questions were raised about the eligibility of, among others, the late Governor Christian A. Herter, who had been born in Paris, France, and of Franklin D. Roosevelt, Jr., who was born on Campobello Island in Canada. Now similar questions are being raised about the eligibility of Governor George W. Romney, who was born in Mexico. The New York Law Journal late last year, for example, published a two-part article by Isidor Blum, which argued that Governor Romney was not a "natural born citizen" and another article by Eustace Seligman, which argued that he was.^{1/} There is no definitive answer to these questions, nor can there be one unless and until the United States Supreme Court decides them.

https://digital.library.unt.edu/ark:/67531/metadc1038960/m2/1/high_res_d/A-225_1968feb27.pdf

(Mar. 28, 2023) — On March 28, 2023 at 11:25 a.m., in response to the article authored by your faithful servant [here](#), one "Lucius Boggs" wrote: "Label this comment – Everything that is old is new again."

After offering the above observation, the commenter then includes a live link to a 1968 [memo](#) of the "Library of Congress Legislative Reference Service," [precursor](#) to the Congressional Research Service, addressing the constitutional eligibility of then-presidential candidate George W. Romney as a "natural born citizen" ("nbC"). The memo is authored by one Vincent A. Doyle, a Legislative Attorney within the American Law Division of the Service. Yes, the memo concludes that Romney was eligible. But wait..., there's more....

Interestingly, in the Preface, we first find a discussion of competing theories about what constitutes a "natural born citizen." Really? Imagine that. Then we find this: "There is no definitive answer to these questions, nor can there be one unless and until the United States Supreme Court decides them." (Emphasis added)

Ummmm... is it just me, or does that not sound a lot like what your humble servant has been claiming here at *The P&E* for the past..., what..., decade+ or so?

Reading further, we find this: “The critical question, however, is whether, in all instances, one who is made by statute a citizen at and from his birth is, *because of that alone*, a “natural born” citizen within the meaning of the constitutional requirement. “Citizen at birth” and “natural born” citizen are not necessarily synonymous. Did the Framers have in mind that only one class of persons might properly be regarded as “natural born citizens”? If so, what was this class? (Emphasis added).

Your servant contends, of course, that the Founders intentionally selected the de Vattel § 212 definition for the Eligibility Clause, a potential that even Mr. Doyle concedes in his memo. And finally, we find this: “If the meaning of the term, as intended by the Framers, can be modified only by a Constitutional Amendment [as contended by your servant and a growing number of others], did the Fourteenth Amendment have any such effect? As indicated, the answers to these questions, in the view of some, are not free of doubt.” (Emphasis added).

Interesting, no?

As for the commenter’s second quote, taken from an 1833 essay entitled “A Brief Exposition of the Constitution of the United States” by [James Bayard](#) (a lawyer and one-time Senator from Delaware, at pp. 95-96, we find this: “Considering the importance of the office [of the President], and the great influence it has over the whole government, these qualifications [*i.e.*, those relating to a “natural born Citizen” as well as age and residency requirements] appear well calculated to prevent evils, to which other elective governments have been exposed. Were foreigners eligible to the office, it would be an object of ambition, or of policy, with foreign nations to place a dependent in the situation; (Emphasis added)

This statement seems clearly to confirm that Bayard recognized the intent of Congress in addressing presidential eligibility to preclude, as much as possible, the insinuation into the presidency of any – as in “zero” – foreign influence. Moreover, recall as well that competing claims of citizenship and obligation of allegiance can come from two different (or more) nations as to a single person. The de Vattel § 212 nbC definition eliminates entirely that potential and further fortifies the propriety of its application in Art. 2, § 1, Cl. 5 of the Constitution.

Continuing from the Bayard “exposition,” at p. 96 we find this: “It is not necessary that a man should be born in this country, to be ‘a natural born citizen.’ It is only requisite he should be a citizen by birth, and that is the case with all the children of citizens who have ever resided in this country, though born in a foreign country.” (Emphasis added)

Ummmm... is it just me, or does this not sound like an acknowledgment by Bayard that the “citizen by birth” to which he refers must be a “child of citizens” of the United States? If they must be the children of U.S. citizens at the time of their birth, not only are they “citizens”; they are “natural born citizens.” Is this not the crux of § 212 and Art. 2, § 1 Cl. 5? And is it not entirely consistent with the statement in *Minor v. Happersett* — whether or not labeled “dictum” — that there had never been doubts in the Founders’

minds that the children of U.S. citizens born here were “natural born citizens” of the nation?

In addition, as to status as one being “deemed” to be a natural born citizen even if born “beyond sea,” that anomaly was corrected by Congress in 1795 when it repealed 1 Stat. 103 and enacted 1 Stat. 414 declaring such children born thereafter to be “citizens,” but *not* “natural born citizens.” Your servant posits that the de Vattel § 212 and the Eligibility Clause both contemplate birth in the United States, and not in Canada; not in Mexico; not in Panama; not in India; not in American Samoa; and not in Kenya. And particularly, not in [Kailasa](#).

As Mr. Doyle pointed out in his 1968 memo regarding the eligibility of George Romney, the real question is whether “citizen *by* birth” or “citizen *at* birth” *alone* will suffice to render one a nbC. While many contend – adhering to the Goebbels Corollary – that the “ghost” of 1 Stat. 103 persists and/or that the “citizen at birth” or “citizen by birth” principles control, as Mr. Doyle noted: “*unless and until the United States Supreme Court decides them...*,” the debate will continue.

Ummmm... is this not the purpose and ultimate objective of the POPE option? In closing, your humble servant expresses deep appreciation to the commenter for the opportunity of response.