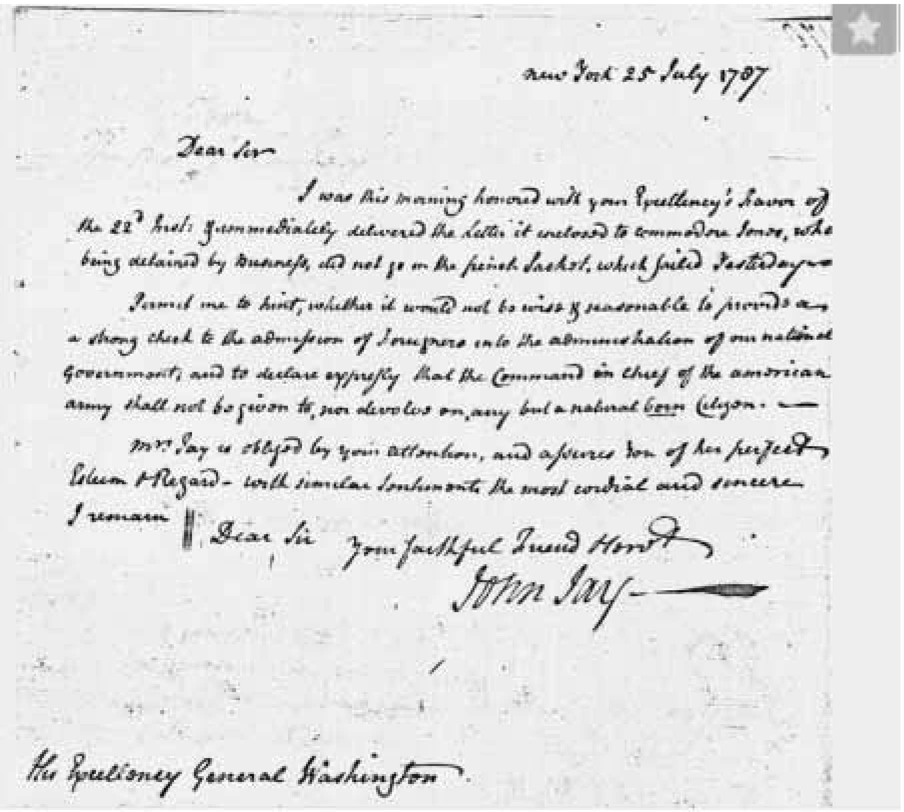
More News on Bing AI's Views of an nbC

by Joseph DeMaio, ©2023



New York 25 July 1787

Dear Sir

I was this morning honored with your Excellency's Favor of the 22d Inst: & immediately delivered the Letter it enclosed to Commodore Jones, who being detained by Business, did not go in the french Packet, which sailed Yesterday—

Permit me to hint, whether it would not be wise & seasonable to provide a a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in chief of the american army shall not be given to, nor devolve on, any but a natural born Citizen.—

Mrs Jay is obliged by your attention, and assures You of her perfect Esteem & Regard—with similar Sentiments the most cordial and sincere I remain Dear Sir Your faithful Friend & Servt

John Jay

His Excellency General Washington.

(Dec. 9, 2023) — As the issue of what it takes to be a "natural born Citizen" ("nbC") as intended by the Founders – as contrasted with contemporary wags and academics – continues to be "evaded" by the U.S. Supreme Court, your humble servant persists in interrogating Bing AI on the question.

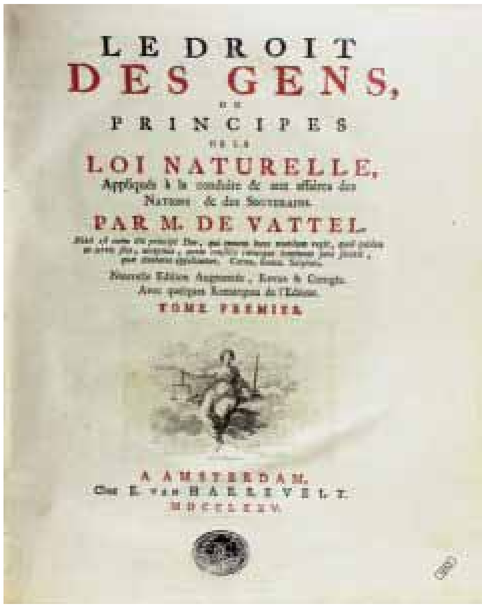
Specifically, following up on another "hint" by nbC warrior CDR Charles Kerchner (Ret), your servant posed the following question to the machine this morning: "Did John Jay rely on Emer de Vattel for his definition of natural born citizen?" Here was Bing AI's response:

"John Jay, one of the Founding Fathers of the United States, suggested that the President of the country should be a "natural born" citizen in a letter he wrote to George Washington on July 25, 1787.[1] It is believed that *Jay's proposal was inspired by Emer de Vattel's book, "The Law of Nations,"* which discusses the subject of natural-born citizenship in Chapter XIX.[1, 2] However, it is unclear whether Jay relied solely on Vattel's definition for his proposal. Noah Webster, whose dictionary is used as a reference document, agrees with Vattel that a *natural-born citizen is also a native citizen.*[3] (Emphasis added)

"I hope this helps!"

At the end on the response, Bing AI lists four endnotes as reference sources for its answer in a "Learn More" section. The three endnote sources found in the *text* are (1) John Jay and the Constitutional Convention of 1787: Editorial … (archives.gov); (2) Natural-born-citizen clause (United States) – Wikipedia; and (3)Vattel's Law of Nations and the U.S. Constitution – The Constitution Study. An endnote "4" is listed, but does not appear in the text response. That reference is found here. More on endnote 4 later.

Apart from the reference to the Wikipedia "Natural-born citizen clause" article – an "open-source" site which cannot be deemed "authoritative" in the sense of an appellate judicial decision – the other source references are interesting, particularly because they are seemingly selected for inclusion by the Bing AI computer itself. If selection is through some other mechanism, a different question and conclusion would be implicated.



LE DROIT
DES GENS,
OU
PRINCIPES
DE LA
LOI NATURELLE,
Appliqués à la conduite & aux affaires des
Nations & des Souverains.
PAR M. DE VATTEL.

TOME PREMIER

A AMSTERDAM,
Chez E. van HARREVELT.
MDCCLXXV.

Wikimedia Commons, public domain

Accordingly, turning to the response itself and the references supplied by Bing AI, the first big news is that this response seems clearly to confirm – at least in the artificial intelligence universe – that John Jay was "inspired by Emer de Vattel's book, 'The Law of Nations,' which discusses the subject of natural-born citizenship in Chapter XIX," with endnotes ## 1 and 2.

Setting aside the fact that there is no such thing in the Constitution as "natural born citizenship," a point discussed here, the fact that Bing AI characterizes Jay as being "inspired" by de Vattel's discussion of what it takes to be a natural born citizen lays waste to the claims of the Congressional Research Service ("CRS") that the Founders, including John Jay, could not possibly have relied upon – much less have been "inspired" by – de Vattel's treatise because they were, purportedly, dumbfounded by the French language.

Recall that the CRS produced a "Report for Congress" – R42097 – articulating that very nugget of misinformation as being the "truth" which should guide Senators and Representatives and their staffs in reaching their respective conclusions on the presidential eligibility question. Again, this from the repository of "the nation's best thinking." (*sic*).

As for the two endnotes sourcing the AI "inspired" conclusion, endnote 1 references the National Archives, "Founders Online" website. There, among other things discussed, the National Archives acknowledges that Jay may have relied on de Vattel's tome for its "natural born citizen" definition in Book 1, Ch. 19, § 212. In § 212, of course, a natural born citizen – as distinguished from a mere "citizen" – is defined as one born in the nation to parents who are already its citizens.

The National Archives article states (in fn. 11): "If JJ [*i.e.*, John Jay], or other founders, were adapting Vattel's terminology, the constitutional provision could require presidents to be born in the country of parents, or at least fathers, who were citizens." But then the footnote adds: "However, no evidence confirming such an intention has been found."

Respectfully, two observations are in order. First, the circumstance that no "evidence confirming such an intention has been found" is probably better phrased "has ***yet*** been found." (Emphasis added). The fact that something has not "yet" been found does not mean that it does not exist or that circumstantial or corroborating related but tangential evidence might exist to support the conclusion that the Founders did, in fact, rely on and adopt the de Vattel definition.

And because the de Vattel definition provides a higher barrier to the insinuation of foreign influence into the presidency than the lower "citizen at/by birth" standard, it makes no sense to contend that the Founders would consciously adopt the lower, inferior impediment.

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Who knows, perhaps one day a document such as the one postulated here might be discovered in a long-forgotten storage chest at Monticello.

Second, one such item of "evidence," albeit judicial in nature and origin, exists in the decision of the Supreme Court in *Minor v. Happersett*, 88 U.S. 162, 167 (1874).

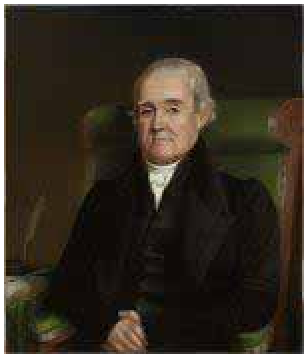
There, the Court noted that, although the nbC term is not actually defined in the Constitution, it acknowledged that the Founders were conversant and "familiar with the nomenclature" of the period when they adopted the term "natural born Citizen" for inclusion as a restriction on those persons who might be otherwise eligible to the presidency. The "nomenclature" of the period inside Independence Hall in Philadelphia in the summer of 1787 would certainly have included the words – in French and/or English – of The Law of Nations and, in particular, Book 1, Ch. 19, § 212.

The Founders did not concoct the term out of whole cloth or pluck it out of thin air. Nor did they labor and ruminate over whether it included a "citizen at birth" or a "citizen by birth" as advocated by Messrs. Clement and Katyal in their article.

The Court in *Minor* was stating that the Founders knew, without any doubt, that it meant a person born on U.S. ***soil*** to parents ***both*** of whom were already U.S. citizens. And because they were familiar with Emer de Vattel's treatise, it is both reasonable and likely that they used – and ***understood*** they were using – the de Vattel definition.

While this language from the Supreme Court might not satisfy the writers at the National Archives, it is nonetheless "evidence" that the Supreme Court believed that the Founders understood the term to mean a person born in this nation to citizen parents.

And as for the argument that the Court's observations in *Minor* are, purportedly, non-binding "dicta," that argument has already been eviscerated here. If anything, the Court's statement regarding the Founders' familiarity with the nbC term under the "nomenclature" of the period must be seen as "judicial dictum," which is binding on lower courts.



Noah Webster, painting by James Herring, 1833 (public domain)

Finally, the Bing AI response ends: "However, it is unclear whether Jay relied solely on Vattel's definition for his proposal. Noah Webster, whose dictionary is used as a reference document, agrees with Vattel that a natural-born citizen is also a native citizen.[3]" Recall the Euler diagram analogy: all natural born Citizens are native born citizens, but not all native born citizens are natural born Citizens. Thus, the Noah

Webster comment is interesting, but tangential to the § 212 definition of an nbC: a person born here to two U.S. citizen parents.

Saving the best for last, at the end on the response, Bing AI includes in the "Learn More" section endnote "4," a link to a law firm website and "blog" of one Jay Weller.

The fact that the AI computer (or someone) has selected this particular lawyer and website is very interesting, as the information contained therein ***undercuts*** in virtually every respect the contentions of the CRS; the arguments of Messrs. Clement and Katyal; and the entire crowd of voters who believe – against all available evidence – that if one is merely a "citizen at/by birth," that is "close enough" to satisfy Art. 2, § 1, Cl. 5 of the Constitution…, move along…, nothing to see here….

As but a few examples from the eligibility post on the Weller website:

"The 14th Amendment defines who are Citizens of the United States, based upon being born in the United States, and subject to its Jurisdiction. *The 14th Amendment is sometimes confused as determining who is a Natural Born Citizen. But any reasonable reader would know this to be false.* The 14th Amendment only defines a particular class of Citizens, namely those born upon United States soil, and subject to its jurisdiction, and *does not determine who is a Natural Born Citizen*." (Emphasis added)

And then there is this:

"The Decision in Wong [*i.e.*, *United States v. Wong Kim Ark*] holds that a requirement for Citizenship is that persons born on United States soil [be] of parents that are permanently domiciled in the United States. The parents in Wong were legal and permanent Residents of the United States. Upon the holding in Wong, "anchor babies" are not US Citizens.

The Wong Decision did not determine what Citizens are Natural Born Citizens. However, the Court reiterated the Decision in *Minor v. Happersett* that Natural Born Citizens are those born in the United States to parents, both of whom are Citizens." (Emphasis added)

This observation is important, because it recognizes that the language used by the Court in its *Minor* decision constitutes, at minimum, judicial dictum, rather than obiter dictum, the former being binding on lower courts. Indeed, by characterizing it a part of the "Decision," Weller seems to be deeming it to be part of the "holding" of the case rather than some species of inferior, non-precedential "dictum."

Was 21st "President" Chester Arthur a "natural born Citizen?" (public domain)

Moreover, in the "continued" segment of the referenced article, Weller lists those persons who, under a de Vattel analysis as adopted in the Constitution, would be ineligible to the presidency: Barack Hussein Obama; Ted Cruz; Marco Rubio; Bobby Jindal; Nikki Haley; Rick Santorum; George Romney; and Chester A. Arthur.

He hedges his conclusions with regard to John McCain. And since his article was written in 2016, he makes no mention of Kamala Harris or Vivek Ramaswamy, neither of whom, in your servant's opinion, are eligible "de Vattel" nbC's as contemplated by the Founders.

P&E readers interested in more of the details of why Mr. Weller contends that none of the persons he has named as being ineligible may want to "learn more" – as Bing AI advises and encourages – by reading his entire post. Frankly, it reads a lot like something you might see here at *The P&E.*

Yikes…, might Bing AI be actually starting to see the light? If so, could the computer-addicted electorate be far behind? Time will tell…, stay tuned.