Recent U.S. Supreme Court Decision Quotes Vattel's "The Law of Nations"

"TAKEN AS A GIVEN BY THE FOUNDERS"

by Joseph DeMaio, ©2019


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 I.
A LONDRES.
M. DCC. LVIII.

(Jun. 30, 2019) — Recently, your faithful servant (moi) submitted a post for consideration here at The P&E, which the intrepid editor accepted and published. The post arose in connection with the continuing question of who is – and more importantly, who is not (and was not) – eligible to the office of the president as a "natural born Citizen." Based on new information received, a correction needs to be made.

Specifically, the post addressed the "removal" of the original Congressional Research Service ("CRS") April 3, 2009 Memorandum from the "scribd.com" website where it had originally appeared on the Internet. Go ahead, click on the link and see what pops up. The image of the memo was likely originally posted by eligibility guru Mario Apuzzo at his website.

There is no explanation accompanying the notice of removal and no indication of why it was done or who ordered/requested that it be scrubbed. This was the original CRS Memorandum prepared by a CRS lawyer, Jack Maskell, who has been the subject of

many of your faithful servant's offerings over the years, and in particular, his (or his superiors') substantive ellipsis alteration of a quote from the U.S. Supreme Court opinion in *Perkins v. Elg*, 307 U.S. 325 (1939).

The scribd.com "terms of use" policy suggests that perhaps the person or entity who first "uploaded" the 2009 CRS Memorandum requested that it be removed. The policy also allows the conclusion that scribd.com itself decided to remove it because of some violation of policy. All we know, however, is that the document "has been removed from scribd." Note, however, that the URL (uniform resource locator) for the document contains the identifying number/file name "41131059/CRS." This will come in handy later.

Because it was believed that the potential existed for some ulterior or clandestine motive to "erase" the initial appearance of the memo from public access and scrutiny – consistent with the "Memory Hole" tactics of the CRS and Obama regime apparatchiks – your faithful servant penned the post "Like it Never Happened." The background and motivation for that post is explained therein for anyone interested in the details.

However, fortuitously and out of the blue, a P&E reader alerted the intrepid editor that another copy of the 2009 CRS memorandum was still in existence and could still be accessed at the scribd.com website. The URL number/file name for this document is: "70476658/CRS." It will be interesting to see whether this document remains posted at the scribd.com site or whether it, too, might eventually get removed. If you want to preserve it, you should save a screenshot of it while you can. Moreover, if in the near future it, too, disappears, rest assured, there is something rotten in the Deep State.

The point, however, is this: to the extent that the P&E post "Like it Never Happened" left the impression that because Barack Hussein Obama II's usurpation of the presidency had been successfully completed, dark and nefarious forces were now at work to begin scrubbing the evidence which facilitated the usurpation – at least for his second term –, that impression is modified to reflect the continued accessibility on the Internet of the 2009 CRS Memo. However, the impression is not altogether rescinded, because there are many other indicia which persist suggesting that the "natural born Citizen" and eligibility clause issues contained in the Constitution are still under attack and will surely resurface in the future.

As noted with regard to Sen. Kamala Harris here and here and Rep. Tulsi Gabbard here, the constitutional "natural born Citizen" issue will continue to bubble up and fester on the political landscape until the Supreme Court screws up the courage to accept jurisdiction over a "ripe" "case or controversy" and decide, one way or the other, who is correct: (1) Emmerich (or Emer) de Vattel and the Founders, or (2) Jack Maskell. The smart money is on the former.

And speaking of de Vattel, even as this post was being composed, your faithful servant came across an interesting nugget. Recall that the 2009 CRS Memo and subsequent 2011 and 2016 "Reports" trivialize and dismiss the seminal work of E. de Vattel, *The Law of*

Nations. Indeed, the 2011 CRS Report, Nov. 14, 2011), at 22, makes the absurd assertion that, because (purportedly) no French-to-English translation of *The Law of Nations* was available in 1787 when the Founders were drafting the Constitution, they could not possibly have been influenced by de Vattel when he used the term "naturels ou indigenes" or have contemplated those words meant "natural born citizens." Reasoning such as this, coming from the repository of "the nation's best thinking," gives new meaning to the term "goofy."

In this regard, the aforementioned nugget comes in the form of the May 13, 2019 (hot off the press) 5-4 decision of the U.S. Supreme Court in *Franchise Tax Board of California v. Hyatt*, __ U.S. __, 139 S. Ct. 1485 (2019). The case involved a tax dispute and issues of state sovereign immunity. But the discussion of the origins of state sovereign immunity in the majority opinion (Thomas, J.) contains this gem (139 S.Ct. at 1493-1494): "According to the *founding era's foremost expert on the law of nations*, "[i]t does not … belong to any foreign power to take cognizance of the administration of [another] sovereign, to set himself up for a judge of his conduct, and to oblige him to alter it." *2 E. de Vattel, The Law of Nations § 55*, p. 155 (J. Chitty ed. 1883). The sovereign is "exemp[t] … from all [foreign] jurisdiction." 4 *id.*, § 108, at 486. The *founding generation thus took as given* that States could not be haled involuntarily before each other's courts." (Emphasis added)

With those words, the Supreme Court once again – and in textual opinion rather than in a footnote as in *United States Steel Corp. v. Multistate Tax Commission*, 434 U.S. 452, 462, n.12 (1977) – acknowledges de Vattel as the "foremost expert" on the law of nations and that "thus," the "founding generation" relied on his teachings and the provisions of *The Law of Nations* when drafting the Constitution. Stated otherwise, if the principles of de Vattel's tome articulated in § 55 are good enough to be "taken as a given by the Founders" and serve as a guide for the Supreme Court in adjudicating a present-day issue regarding the sovereign immunity of the states, why are not the principles of § 212 properly accorded the same degree of authority regarding constitutional eligibility under Art. 2, § 1, Cl. 5 instead of being marginalized and relegated to a lower level of import?

Inquiring minds want to know.