

# The Breakfast Club

## Constitutional Minute for 9 January 2024

### Who is a “Natural Born Citizen?”

I was flabbergasted! Five years-worth of “Constitutional Corner” essays, published between 2013 and 2019, and almost three years of “Constitutional Minute” essays for Breakfast Club and not one of them had examined the “Natural Born Citizen Clause” of the Constitution. My hopes of quickly dusting off something and shooting it out to Breakfast Clubbers were dashed. So, here we go from scratch.

Article II, Section 1, Clause 6 of the Constitution states:

**No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President;** neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States. (*Emphasis added*)

If only the Constitution’s framers had taken a moment and defined the phrase “natural born citizen” there would be no confusion or disputes over what they meant; but they didn’t, so now we get to decipher it. They didn’t bother defining or explaining this familiar [term of art](#) because they all understood what it meant. Let’s learn:

More than 200 years after it wasn’t returned, George Washington’s [long overdue library book](#), Emmerich Vattel’s [Law of Nations](#), was finally located<sup>1</sup> and returned to the New York Public Library; the more than \$300,000 in fines graciously waived.<sup>2</sup> Why is Vattel’s 1758 book<sup>3</sup> important to our discussion today? Because that book contains the definition we seek, one we know the framers were quite familiar with. James Madison had a copy of Vattel in his library as did Jefferson, John Adams was gifted three copies when he was our Ambassador in Europe. Ben Franklin presented a copy to the Library Company of Philadelphia which stood walking distance from Independence Hall where the 1787 convention took place. A 1783 committee (which included Congressman James Madison) tasked with recommending books for a proposed Congressional library [recommended Vattel’s book](#). We know it had a wide distribution both before and after independence and that [Vattel’s name came up several times in the Constitutional Convention debates](#), chiefly concerning the Law of Nations. You can read an online version [here](#). So what was Vattel’s view of the subject?

From [Law of Nations, Book I, Ch. XIX](#), at §212 we learn:

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<sup>1</sup> Actually, the identical book was never located but a similar edition was purchased from a collector by Mt Vernon’s staff and returned instead.

<sup>2</sup> The newly elected first president of the U.S. was no doubt interested in a Law of Nations question, not the Natural Born Citizen question.

<sup>3</sup> Vattel’s book was translated into English in 1760 and first printed in America in

§ 212: **Natural-born citizens** are those born in the country of parents who are citizens – it is necessary that they be born of a father who is a citizen. If a person is born there of a **foreigner**, it will be only the place of his birth, and not his country. (Emphasis added)

It is important to not confuse “natural born citizen” with the concept of “birthright citizenship” as defined in Section 1 of the 14<sup>th</sup> Amendment, which states: “*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.*” According to these words, if you are born on American soil and are subject to the jurisdiction of the U.S.,<sup>4</sup> you become a *citizen*, but not a *natural born citizen* unless both your parents are also citizens of the USA.

The impetus for having a special qualification for President likely came from [a letter](#) John Jay wrote to Convention President George Washington on July 25, 1787, while the convention was in progress. Jay stated:

*“...Permit me to hint, whether it would not be wise & seasonable to provide 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.”*

On September 2, Washington [acknowledged receipt](#) of Jay’s letter and thanked him “*for the hints contained in [his] letter.*” Five days later a draft of the Constitution mysteriously containing the “Natural Born Citizen” clause was approved without objection.

Yes, this is all circumstantial evidence, but I am convinced by it.

What about children born to U.S. citizens but outside the confines of the U.S? The very first Naturalization Act passed by Congress, in 1790, stated:

*“[T]he children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be **considered as natural born citizens**: Provided, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States.”*<sup>5</sup> (Emphasis added)

Before we turn to the application of the clause we should also briefly mention “the British View” of the subject because it comes up from time to time in discussions. In 1787, American law still contained “a heavy dose” of British law so we must also consider how the “mother country” viewed the matter. Britain, being a monarchy, views “citizens” as “subjects of the King (or Queen)” rather than as citizens as we understand the term. A “subject” has “allegiance” to the sovereign king. British common law focused on the citizenship of the father rather than the citizenship of both parents.

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<sup>4</sup> The phrase “subject to the jurisdiction thereof” is another complicated subject; for another day.

<sup>5</sup> An Act to Establish an Uniform Rule of Naturalization, 1790, ch. 3, 1 Stat. 103, 103-04.

The U.S. Supreme Court has four times rendered opinions which touch on the Natural Born Citizen question and all are in harmony with Vattel's definition, as [this writer](#) concludes. However, the [Congressional Research Service](#) states: "There is no provision in the Constitution and no controlling American case law to support a contention that the citizenship of one's parents governs the eligibility of a native born U.S. citizen to be President."

When [Kamala Harris](#) was announced as Joe Biden's running mate, John Eastman, a lawyer on Donald Trump's team investigated and concluded she did not fit the definition of natural born citizen; [Newsweek](#) published Eastman's opinion (to outcries of [xenophobia](#) from the Left) but then the magazine and the rest of the MSM quickly shoved the issue under the rug. Since Kamala Harris' parents were NOT U.S. citizens at the time of her birth in 1964 in Oakland, California, she is unqualified to become President of the United States, yet she sits one heartbeat away from doing just that.

Similarly, [Nikki Haley's](#) parents were NOT U.S. citizens when she was born Nimarata Nikki Randhawa in 1972 in Bamberg, South Carolina, to immigrant Sikh parents from Amritsar, Punjab, India. Haley's father and mother did not become naturalized citizens until 1978 and 2003, respectively. Haley is clearly a U.S. citizen under the 14<sup>th</sup> Amendment, but it is equally clear to me that she is not a natural-born citizen. When asked about Haley's qualification, [her staff simply points to the 14<sup>th</sup> Amendment](#). Why the other Republican candidates do not bring up what to me is Haley's obvious disqualification in the debates is mindboggling. This "[fact check](#)" of the accusation against Haley simply states as evidence that Haley was born in the United States, suggesting that that settles the matter.

I find this frankly disgusting. It appears we've reached the point in this country where everyone is entitled to interpret the Constitution as they wish, leading to the conclusion that we live under not one but 330 million Constitutions. I encourage Nikki Haley fans to do their homework and get back to me if they disagree with my conclusion.

As you might expect, there are a few law review articles on this subject, and they all go into much more detail than I have here, including addressing the English Common Law definition of "Natural Born Subject." They are lengthy, but worth the read if you have the time. See [here](#) and [here](#).

Bottomline: Until the Supreme Court issues a definitive opinion on the Natural Born Citizen Clause, the matter remains in constitutional limbo. No one seems willing to bring the Court a case that will settle the issue.

Next week on Constitutional Minute: More on the 14<sup>th</sup> Amendment.