## Squeeky Fromm, Girl Reporter's Response to Mario Apuzzo, Esq.

First, you said:

> You err in your essay in refusing to recognize that we have **two different standards for U.S. citizens at birth**. We have one standard that applies to an Article II "natural born Citizen" and a different standard that applies to a Fourteenth Amendment "citizen of the United States" at birth. The former is defined under American "common-law" and the latter under the Fourteenth Amendment.
>
> First, let us look at the origins of the American "common-law" standard that applies to defining a "natural born Citizen." The law of nations mentioned in Article I, Section 8, Clause 10 refers to the general law of nations which was a body of law that had its origins in the law of nature which guided individuals in their personal conduct and when applied to the affairs of nations was called the law of nations. The Romans called this body of law jus gentium. This law was based on "natural reason" and because it was widely used by the peoples of so many nations was accepted as a body of law by all the civilized nations of the world. Not only was it a basis upon which the written law was made, but also continued to be a basis of law whenever the written law did not adequately provide a solution to a legal problem.

Lets's start with your statement:

> Article II "natural born Citizen" . . . is defined under American "common-law"

This is correct. And for those who do not know what **common law** means, it is basically **JUDGE MADE LAW**. The **Wong Kim Ark** decision has seven sections. That Court starts down the same path as you, saying at the end of section I:

**From section I of Wong Kim Ark**

> In **Minor v. Happersett**, Chief Justice Waite, when construing, in behalf of the court, the very provision of the Fourteenth Amendment now in question, said: "The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that." And he proceeded to resort to the common law as an aid in the construction of this provision. 21 Wall. 167.
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> In Smith v. Alabama, Mr. Justice Matthews, delivering the judgment of the court, said:
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> There is no common law of the United States, in the sense of a national customary law, distinct from the common law of England as adopted by the several States each for itself, applied as its local law, and subject to such alteration as may be provided by its own statutes. . . . There is, however, one clear exception to the statement that there is no

> national common law. The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the **English common law**, and are to be read in the light of its history.
>
> 124 U.S. 478.

Now, **in section II**, the Court begins its recitations of English cases dealing with ***natural born subjects***, and **ends section II, and begins section III** with this statement:

> It thus clearly appears that, by the law of England for the last three centuries, beginning before the settlement of this country and continuing to the present day, aliens, while residing in the dominions possessed by the Crown of England, were within the allegiance, the obedience, the faith or loyalty, the protection, the power, the jurisdiction of the English Sovereign, and therefore every child born in England of alien parents was a natural-born subject **unless the child of an ambassador or other diplomatic agent of a foreign State or of an alien enemy in hostile occupation of the place where the child was born.**
>
> III. The same rule was in force in all the English Colonies upon this continent down to the time of the Declaration of Independence, and in the United States afterwards, and continued to prevail under the Constitution as originally established.

The WKA Court then begins reciting the list of applicable American cases. **And, here is where your Birther theory begin to go astray.** For nowhere in the recitation of English or American common law cases relating to natural born citizenship is there any mention of either **Vattel** or **Minor v. Happersett** whatsoever, much less being cited for precedental value.

As a matter of fact, the latest chronological case discussed in **section III** is:

In **United States v. Rhodes** (**1866**), Mr. Justice Swayne, sitting in the Circuit Court, said:

> All persons born in the allegiance of the King are natural-born subjects, and **all persons born in the allegiance of the United States are natural-born citizens.** Birth and allegiance go together. Such is the rule of the common law, and it is the common law of this country, as well as of England. . . . We find no warrant for the opinion [p663] that this great principle of the common law has ever been changed in the United States. It has always obtained here with the same vigor, and subject only to the same exceptions, since as before the Revolution.
>
> 1 Abbott (U.S.) 28, 40, 41..

And notice that this case, which is cited with approval, says **nothing at all** about the citizenship of the parents except to mention the exceptions, those being found above, as:

> **unless the child of an ambassador or other diplomatic agent of a foreign State or of an alien enemy in hostile occupation of the place where the child was born.**

Remember that **Vattel's Law of Nations** was first published in **1758**. **Minor v. Happersett** was decided in **1875**. And the WKA Court is not sparing any ink in this majority decision. It runs about 19,464 words more or less. The cases and cites stretch back to at least 1350, and run up until **Rhodes** in 1866 for sure, and all the way until 1898 when the WKA Court sat, yet there is **no mention** of either **Vattel**, or **Minor v. Happersett** in the history of the common law as **defining *natural born citizenship*.**

If this was the **Cat In The Hat** book, we would have just met **Thing 1.** So, let's set it down:

> **Thing 1.** There is no mention of either **Vattel** or **Minor v. Happersett** in the WKA decision for the purpose of defining ***natural born citizenship*.**

Now, to be fair, let us consider the possibility that perhaps the **WKA Court** was just slack and neglected to mention either of them. Could that be possible?

Let us look again at the **Birther** Implied Holding in **Minor v. Happersett** (1875). From your analysis:

> This is how Minor defined one: "At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives or natural-born citizens, as distinguished from aliens or foreigners." Id. at 167-68.

In other words:

> **children born of citizen parents are natives or natural-born citizens**.

Does this jibe with the reasoning in **WKA**? No, in fact, just the opposite is true. As cited in **Rhodes**, above:

> **all persons born *in the allegiance* of the United States are natural-born citizens.**

And the **WKA** Court even tells what ***in the allegiance*** means:

> It thus clearly appears that, by the law of England for the last three centuries, beginning before the settlement of this country and continuing to the present day, **aliens, while residing in the dominions possessed by the Crown of England**, **were within the allegiance**. . . of the English Sovereign, and therefore every child born in England of alien parents was a natural-born subject **unless the child of an ambassador or other**

> **diplomatic agent of a foreign State or of an alien enemy in hostile occupation of the place where the child was born.**

So let's recap the two:

> **Birther MvH: children born of citizen parents are natives or natural-born citizens**.
>
> **WKA: all persons born *in the allegiance* of the United States are natural-born citizens and aliens** residing in the dominions, *are within the allegiance*, and therefore **every child born of alien parents** is a **natural born citizen**, unless the child of an ambassador or other diplomatic agent of a foreign State or of an alien enemy in hostile occupation of the place where the child was born.

Now, how do those two definitions get along? They do not get along very well at all, if the first definition is read to restrict ***natural born citizenship*** to children of citizens. Under that construction, they become two separate definitions.

If, on the other hand, the **Birther MvH** definition is read as *not excluding* the children of aliens born here from being natural born citizens, too, then the two get along quite well. The **Minor** statement could just be omitting the discussion of children of aliens for some reason. Which we actually know to be the case, because the **Minor Court** tells us there are doubts about the children born here of aliens, and that it was not necessary to resolve those doubts for that particular case.

But, remember the **WKA Court** cited the **Rhodes** definition with approval. If the **MvH Birther** interpretation is correct, then the **WKA Court** has to make some mention of it and discuss how **MvH** and/or **Vattel** work to obviate the **Rhodes** definition. If the Birthers are correct, then the **WKA Court** has to do something to break the chain of common law case holdings in the decision. But it doesn't, and in fact, repeatedly supports the opposite conclusion, that children born here of aliens in allegiance are ***natural born citizens***.

Which gives us **Thing 2**. Let's put both the two Things together:

> **Thing 1.** There is no mention of either **Vattel** or **Minor v. Happersett** in the WKA decision for the purpose of defining ***natural born citizenship*.**
>
> **Thing 2.** The cases cited in WKA support the opposite of the Birther conclusion, stating that the citizenship of the parents does not matter for children born here who fall within neither of the two exceptions.

It gets worse from here on for your theory. For now we are to **section IV**, of the WKA decision. This is where the WKA Court discusses "International Law" or citizenship *by parentage* versus the common law citizenship *by birth* within the dominion. And, let us refresh our memory on your

statement above:

> Article II "natural born Citizen" . . . is defined under American "**common-law**"

Now, **section IV** begins with:

> IV. It was contended by one of the learned counsel for the United States that the rule of the Roman law, by which **the citizenship of the child followed that of the parent, was the true rule of international law, as now recognized in most civilized countries**, **and had superseded the rule of the common law**, depending on birth within the realm, originally founded on feudal considerations.

In other words, the attorney for the losing side makes the Birther argument, that the citizenship of the parents control the citizenship of the child. And that position is opposed to a **common law** definition. And we find this statement cited with approval further on:

> Dicey Conflict of Laws, 17, 741. "The acquisition," says Mr. Dicey, (p. 741) "of nationality by descent is foreign to the principles of the common law, and is based wholly upon statutory enactments."

In other words, if you believe as you wrote:

> Article II "natural born Citizen" . . . is defined under American "**common-law**"

Then we have now found **Thing 3**. Let's once again put all the Things together;

> **Thing 1.** There is no mention of either **Vattel** or **Minor v. Happersett** in the WKA decision for the purpose of defining ***natural born citizenship*.**
>
> **Thing 2.** The cases cited in WKA support the opposite of the Birther conclusion, stating that the citizenship of the parents does not matter for children born here who fall within neither of the two exceptions.
>
> **Thing 3.** A **common law** definition of ***natural born citizenship*** does not embrace citizenship through blood or descent.

Now, lets see where we have gotten so far. Your theory implies that somehow the Birther **Vattel** definition made it into American **common law**, and into **Minor v. Happersett**, yet:

> The two are never mentioned for that purpose;
>
> Are countered by opposing case law which is cited with approval; and

Are not even recognized as valid common law principles.

Now, let's keep going! **Section V** of the WKA decision deals with the mechanics of the 14th Amendment. Your theory assumes the 14th Amendment deals with a whole 'nother ball of wax besides Article II ***natural born citizenship***, You assume this because you believe that **Vattel** and the **Birther MvH** made it somehow into the common law, and was then left undisturbed by the **WKA Court.**

Yet, as you can see from the above, the WKA Court dealt extensively with ***natural born citizenship***, and completely ignored **Vattel** and the **Birther MvH** as precedental, endorsed the opposite conclusions of the Birther theory, and found that the principle of citizenship by blood was not even a common law concept.

So, you can no longer feasibly maintain that the 14th Amendment deals with a different kind of citizenship than Article II ***natural born citizenship***. The legs have been cut out from under that argument. Now, lets put the nails in the coffin of the two citizen parent theory.

Section V deals with the 14th Amendment, and the WKA Court clearly states and holds that the Amendment deals with the very principle of ***natural born citizenship*** found in Article II.

> V. In the forefront both of the Fourteenth Amendment of the Constitution and of the Civil Rights Act of 1866, the fundamental principle of citizenship by birth within the dominion was reaffirmed in the most explicit and comprehensive terms.

That the ***fundamental principle of citizenship by birth within the dominion*** is ***natural born citizenship***. And remember ***natural born citizenship*** was discussed at length in sections II and section III. But that was five pages ago, so let's copy and paste from page 1 above:

> It thus clearly appears that, by the law of England for the last three centuries, beginning before the settlement of this country and continuing to the present day, aliens, while residing in the **dominions** possessed by the Crown of England, were within the allegiance, the obedience, the faith or loyalty, the protection, the power, the jurisdiction of the English Sovereign, and therefore every child born in England of alien parents was a natural-born subject **unless the child of an ambassador or other diplomatic agent of a foreign State or of an alien enemy in hostile occupation of the place where the child was born.**
>
> III. The same rule was in force in all the English Colonies upon this continent down to the time of the Declaration of Independence, and in the United States afterwards, and continued to prevail under the Constitution as originally established.

See, it is the whole **birth in the dominion** stuff that **section V** is discussing. And, when the WKA Court says that the 14th Amendment affirms those principles, it is affirming the definition of ***natural born citizenship*** as was set out succinctly in Rhodes:

In **United States v. Rhodes** (**1866**), Mr. Justice Swayne, sitting in the Circuit Court, said:

> All persons born in the allegiance of the King are natural-born subjects, and **all persons born in the allegiance of the United States are natural-born citizens.** Birth and allegiance go together. Such is the rule of the common law, and it is the common law of this country, as well as of England. . . . We find no warrant for the opinion [p663] that this great principle of the common law has ever been changed in the United States. It has always obtained here with the same vigor, and subject only to the same exceptions, since as before the Revolution.
>
> 1 Abbott (U.S.) 28, 40, 41..

The **WKA Court** affirms it even more emphatically further down in section V:

> The foregoing considerations and authorities irresistibly lead us to these conclusions: the Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes.
>
> The Amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States. His allegiance to the United States is direct and immediate, and, although but local and temporary, continuing only so long as he remains within our territory, is yet, in the words of Lord Coke in Calvin's Case, 7 Rep. 6a, "strong enough to make a natural subject, for if he hath issue here, that issue is a natural-born subject;"

Now, we have met **Thing 4.** For the last time let's bring all the Things together:

> **Thing 1.** There is no mention of either **Vattel** or **Minor v. Happersett** in the WKA decision for the purpose of defining ***natural born citizenship*.**
>
> **Thing 2.** The cases cited in WKA support the opposite of the Birther conclusion, stating that the citizenship of the parents does not matter for children born here who fall within neither of the two exceptions.
>
> **Thing 3.** A common law definition of natural born citizenship does not embrace citizenship through blood or descent.

> **Thing 4.** The WKA Court specifically states that the 14th Amendment affirms natural born citizenship for persons born inside the United States, whose parents are neither foreign diplomats or invading soldiers.

The impact of these **4 Things** is to logically disprove your theory. What is most damning, besides the outright impact of the statement in section V where the WKA Court flatly states the 14th Amendment affirms the principles of natural born citizenship, is your failure to explain the WKA Courts citing with approval, various cases directly opposed to your position.

First, I want to point out one of my previous arguments in the Internet Article about the fifth sentence in the paragraph that I discussed. I did not see you address this at all in your response. Here is what you said:

> **Sentence 5:** And there does not exist any evidence that the Fourteenth Amendment repealed or amended the Founders' and Framers' definition of an Article II "natural born Citizen."

If the 14th Amendment did not repeal or amend the definition of ***natural born citizenship***, then each and every time the WKA Court discusses ***natural born citizenship***, it is discussing ***Article II natural born citizenship***. Even the most illogical of Birthers is not claiming that there are two different kinds of ***natural born citizens***.

So, when the **WKA** cites with approval cases and definitions which care not about the citizenship of the parents as long as they are not foreign diplomats or invading soldiers, then you MUST address the fact that they never discuss either **Vattel** or **Minor v. Happersett** with a view of upsetting those cases.

If there is only one kind of ***natural born citizenship***, which you admit in **sentence 5** above, then your view and those opinions and cases, like **Rhodes**, can not exist in the same universe. And, when the WKA Court flatly tells you that the 14th Amendment affirms that ancient principle of ***natural born citizenship***, there is simply no excuse to continue the two citizen parents stuff.

Squeeky Fromm
Girl Reporter