

# Would the Founders Have Cared Where Ted Cruz Was Born?

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The Constitution's "natural-born citizen" clause was a way to protect the presidency against monarchs -- not foreign-born children of Americans.

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newsletter

Jonathan Ernst/Reuters

From beginning to end, the debate over Senator Ted Cruz and his birth certificate has been silly. Like the "birtherism" debate surrounding Barack Obama, it shows that many Americans think our Constitution is a Harry Potter book of spells ("Mandamus! Habeas Corpus! Nullus inviduus mandatus!"). The "natural born" citizen clause in particular appeals to the mythological imagination.

The clause is found in [Article II § 1](#) cl. 5, which contains three and only three requirements for a potential president: He or she must be 35 years old, must have lived in the U.S. for 14 years, and must be "a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution."

What was the reason behind this third requirement? Many people are convinced that the "purpose" of the Clause was to bar Alexander Hamilton (born in Nevis in the Caribbean) from the presidency. But the provision above says in so many words that anyone who is a citizen "at the time of the adoption of this Constitution" can be president. Hamilton had become a citizen of New York by act of the legislature in 1782. He didn't become president largely on account of the whole being-shot-to-death-by-Burr thing.

In fact, in 1787, no one over 11 -- not George Washington, not John Adams, not Thomas Jefferson -- was a "natural born citizen" of something called "the United States of America." The first "natural born citizen" to enter the White House, by my count, was Martin Van Buren in 1836 -- who was born in 1782, five years before Philadelphia.

I don't think that the Framers were even *thinking* about potential presidents born to American parents abroad. Their concern was *naturalized* citizens, and it was a lot more immediate and urgent.

Under British law, a foreigner could acquire "naturalized citizenship" only one way: by special Act of Parliament. Prince George of Denmark was naturalized in 1689 to permit him to become to marry Queen Anne. Despite 17 pregnancies, Anne never gave birth to an heir. Toward the end of her reign, this lack led Parliament to pass the [Sophia Naturalization Act of 1705](#), by which Sophia, the Electress of Hanover, was made a British subject, and "the issue of her body" became heirs to the British throne. Sophia's son ascended to the throne in 1714 as George I. Had the Act not been passed, none of the Georges could have succeeded to the throne.

In other words, the Framers knew one thing about naturalization: It was the way countries shopped for kings.

In 1787, the United States seemed to be falling apart, and many worried that it might end up with an

imported European monarch. In 1786, Nathaniel Gorham, later a Philadelphia delegate, had apparently written to Prince Henry of Prussia inquiring whether he'd enjoy being America's head of state. Newspapers during the Convention speculated that the delegates were offering the Crown to Frederick, Bishop of Osnaburgh, younger brother of George III (and later Duke of York). That wasn't true, but some worried that the danger of foreign princes might not abate even after ratification of a new Constitution. Someone might propose Henry or Frederick as the new president. The newly naturalized president might make his son vice president. Since many delegates expected presidents to be re-elected every four years until they died in office, the result would be a de facto monarchy.

That fear probably inspired the "natural born citizen" clause. I can't find any evidence that the Framers wanted to discriminate against the children of Americans anywhere. The first naturalization statute, passed in 1790, said that "children of citizens of the United States, that may be born beyond sea, or out of limits of the United States, shall be considered as citizens of the United States." (Citizenship did not extend to such children if their fathers had never lived in the U.S.)

The endless parsing of the Framers' unspoken thoughts on this subject -- as on so many others -- does our politics a disservice. There's no coded message in the "natural born citizen" clause. The Framers set up a government and left a lot of things -- including supervision of citizenship -- to Congress. In passing the Immigration and Naturalization Act, Congress extended citizenship to children of Americans born abroad.

This brings us back to Cruz, who was born in Canada in 1970 and came with his family to the U.S. at the age of 4. His mother, Eleanor, is a U.S. citizen by birth; his father, Rafael, is Cuban-born. In [8 U.S.C. 1401\(g\)](#), Congress provides citizenship "at birth" for "a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years."

The Supreme Court, interpreting Congress's use of its power over citizenship, has noted that there are "two sources of citizenship, and two only: birth and naturalization." Congress extended citizenship to people like Cruz "at birth." Thus, Ted Cruz is what Barack Obama would have been if he really had been born in Kenya: a "natural born" citizen, eligible to be president.