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Ted Cruz: Constitutionally Qualified to Be President?

Every day since his announcement that he would run for president, Senator Ted Cruz (R-Texas) has faced questions about his constitutional qualification to hold that office, particularly in regard to the "natural born citizen" clause of Article II.

Although the issue appears nearly daily on some blog or in some online article, it is not a new question. In fact, over two years ago — when Cruz was a newly elected senator — *The New American* carried an article by this reporter analyzing the constitutional considerations of this now very relevant problem.

Is it, in fact, a problem? For Cruz, the short answer is yes. For two reasons. First, because he does not fit the Founders' definition of a natural born citizen; and second, because for a man who claims to hold the Founders and the Constitution in such high regard, it would appear self-serving and hypocritical to ignore both of those sources and seek the presidency anyway.

To begin the investigation, I'll reprint what I wrote previously pertaining to Cruz and his qualification:

> At the time of the drafting of the Constitution, a person born subject to the British Crown could hold "double allegiance," a concept similar to "dual citizenship" as understood today.
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> Our own Founding Fathers, nearly every one of whom was born in some outpost of the British Empire, feared the damage that could come from such divided loyalty. They instituted the "natural born citizen" qualification in order to avoid what Gouverneur Morris described during the Constitutional Convention as "the danger of admitting strangers into our public councils."
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> As famed jurist of the early republic St. George Tucker, a contemporary of Morris, explained:
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> > That provision in the constitution which requires that the president shall be a native-born citizen (unless he were a citizen of the United States when the constitution was adopted) is a happy means of security against foreign influence, which, wherever it is capable of being exerted, is to be dreaded more than the plague. The admission of foreigners into our councils, consequently, cannot be too much guarded against; their total exclusion from a station to which foreign nations have been accustomed to attach ideas of sovereign power, sacredness of character, and hereditary right, is a measure of the most consummate policy and wisdom.
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> In fact, as indicated in early records of the naturalization process, men applying for American citizenship were required to make two renunciations of all fealty to foreign powers before swearing allegiance to the Republic of the United States.
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> As a matter of fact, the possibility of any legal acceptance of divided allegiance was explicitly rejected in a report issued by the House of Representatives in 1874:

> "The United States have not recognized a "double allegiance." By our law a citizen is bound to be "true and faithful" alone to our government."
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> The practical effect of that proclamation is that in order to be a "natural born citizen" of the United States, one would have to be free from a competing claim for allegiance from another nation.

And there's the rub: Senator Cruz does have a competing claim — two, in fact. His father is Cuban and he (Cruz) was born in Canada. While it is true that Cruz has reportedly renounced his Canadian citizenship, that act has little bearing on the issue, as it is natural "born" citizen, not naturalized citizen, that is the Article II standard.

Back to the historical account.

That such a schizophrenic situation was not only anticipated but accepted by His Majesty's government during the time of the American founding can be inferred from the impressment of American sailors into the service of the Crown. During the War for Independence, British ships would block American ships from sailing and then the seamen on the British vessels would board the American ships and force the Americans to serve the side of the Empire.

The insistence on the part of the British that anyone born within the realm was a British subject regardless of any voluntary severance thereof and subsequent vow of allegiance to another prince was a significant factor in the hostilities known as the War of 1812.

Finally, in this regard, the British required no process of naturalization as such. Simply being born within the dominions of the monarchy of Great Britain was sufficient to endow one with the rights and privileges granted to any British subject. Nothing such a person did later in life (including becoming a citizen of another country) would ever alter his status as subject.

Despite the clarity of the historical record, some supporters of Cruz cite the 14th Amendment to the Constitution as further evidence that although born outside the United States to a foreign father, Cruz fits the 14th Amendment's definition of a natural born citizen.

The relevant clause of the 14th Amendment reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the States wherein they reside.

The principal architect of the citizenship clause of the 14th Amendment was Michigan Senator Jacob Merritt Howard, a Republican representing Detroit.

Senator Howard crafted much of the language that was eventually ratified as part of the 14th Amendment.

During the debates that embroiled the Senate in the years following the Civil War, Senator Howard insisted that the qualifying phrase "subject to the jurisdiction thereof" be inserted into Section 1 of the 14th Amendment being considered by his colleagues. In the speech with which he proposed the alteration, Howard declared:

> This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, [or] who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States,

> but will include every other class of persons.

How could a person "born in the United States" be simultaneously a citizen and a "foreigner" or "alien" if the mere fact of nativity settled the question of citizenship?

Another legislator commenting at the time of the ratification of the 14th Amendment, Representative John Bingham, provided the following clarification of the meaning behind the "subject to the jurisdiction thereof" clause:

> Every human being born within the United States of parents *not owing allegiance to any foreign sovereignty* is, in the language of your Constitution itself, a natural born citizen. [Emphasis added.]

While similar questions have been raised regarding the Article II eligibility of Senator John McCain (R-Ariz.) who ran for president in 2000 and in 2008, and Mitt Romney, who ran in 2008 and 2012, the cases of those two men are distinct from that of Cruz.

Both McCain, who was born in the Panama Canal Zone to an American father serving overseas in the military, and Romney, whose father was born in Mexico to American parents, pass constitutional muster.

In this case of Senator Cruz, however, there is no debate that at the time of his birth his father was not an American citizen, and so the senator is the child of at least one person with a legal allegiance to a foreign sovereignty — in his case, either Cuba or Canada. Therefore, no matter how badly some conservatives wish he did, Senator Ted Cruz does not conform to the accepted legal definition of "natural born citizen."

The British statutes whose language and spirit were grafted by our Founders into our Constitution made it clear that in order to be a "natural born subject" of the king, one's father must have been a subject of that monarch at the time of the child's birth. Otherwise, one could not be a natural born subject as defined in the law. One simply could not be a subject if the father was, at the time of the child's birth, not a subject himself.

Or, in the words of the Apostle James: "Doth a fountain send forth at the same place sweet water and bitter?"

Finally, someone as professedly committed to the Constitution and to the men who framed it must not look for loopholes that will serve their own desire for power. Such an act would send the wrong message to the millions who share the senator's respect for the document and the drafters and might even leave a bitter taste in their mouths.