

Supplementary Material

Chapter 2: The Colonial Era – Democratic Rights/Citizenship

Calvin's Case, 6 James I (1608)

Robert Calvin was born in Scotland on November 5, 1607. His birthright included land in England. Richard and Nicholas Smith took possession of that property. When charged with trespass, they claimed that Calvin had no legal right to own land in England. The Smiths based this claim on a common law rule that prohibited aliens from possessing English lands. Calvin, they claimed, was not English because he was born in Scotland. Calvin's lawyers pointed out that James I, who became the King of England in 1603, had previously been the King of Scotland. In their view, because James I united Scotland and England under one throne, any person born in Scotland after 1603 was an English citizen entitled to hold property in England.

Chief Justice Edward Coke of the Court of Common Pleas supported Calvin's right to own land in England. Coke ruled that any person born on English soil or where England exercised sovereignty was an English subject. Such persons enjoyed all the rights of an English subject. Those rights included the right to own property in England.

Calvin's Case had important consequences for residents of the American colonies. If Robert Calvin was an English subject because he was born in the King's dominion in Scotland, then persons born in the King's dominions in the Americas were also English citizens. Both Robert Calvin and the colonists were entitled to the rights of English citizens. Calvin's Case became the leading authority for birthright allegiance or citizenship. This is the rule that one's allegiance or citizenship is determined by one's place of birth. This principle affected emigration as well as immigration. Under the common law, people cannot leave the realm or renounce their allegiance to the king without permission of the king.

As you read the passages below, consider the following questions. Who was English under the rule of Calvin's Case? What, if anything, does Calvin's Case say about the status of Native Americans? Calvin's Case was decided long before liberal ideas began to influence public policy. Can political liberals justify birthright citizenship? If liberals champion government by consent, should a person's citizenship be determined by some manifestation of voluntary allegiance rather than by an accident of birth?

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... The question of this case as to matter in law was, whether Robert Calvin the Plaintiff (being born in Scotland since the Crown of England descended to His Majesty) be an alien born, and consequently disabled to bring any real or personal action for any lands within the realm of England. ...

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Allegiance is a true and faithful obedience of the subject due to his Sovereign. This allegiance and obedience is an incident inseparable to every subject; for as soon as he is born he owes by birth right allegiance and obedience to his Sovereign. ... Allegiance is the mutual bond and obligation between the King and his subjects, whereby subjects are called his liege subjects, because they are bound to obey and serve him, and he is called their liege Lord, because he should maintain and defend them. Whereby it appears, that in this point the Law of England, and of Scotland is all one. ... By all which it evidently appears, that they that are born under the obedience, power, faith, ... or allegiance of the King, are natural subjects, and no aliens. ...

...

[T]he subjects of England are bound by their allegiance to go with the King, &c. in his wars, as well within the Realm, &c. as without. ...

. . . The protection and government of the King is general over all his dominions and kingdoms, as well in time of peace by justice, as in time of war by the sword, and that all be at his command, and under his obedience. Now seeing power and protection draws allegiance, it follows, that seeing the King's power, command and protection, extends out of England, that allegiance cannot be local, or confined within the bounds thereof. He that is abjured the Realm . . . owes the King his allegiance and he remains within the King's protection; for the King may pardon and restore him to his country again. . . .

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The Law of Nature. The Law of Nature is that which God at the time of creation of the nature of man infused into his heart, for his preservation and direction. . . . By this Law of Nature is the Faith, Allegiance, and Obedience of the Subject due to his Sovereign or Superior. . . .

. . . [I]f the obedience and allegiance of the subject to his Sovereign be due by the Law of nature, if that law be parcel of the Laws, as well of England, as of all other nations, and is immutable, and that . . . we of England are united by birth right, in obedience and allegiance . . . by the law of nature; It follows, that Calvin the Plaintiff being born under one allegiance to one King, i.e. of Scotland, cannot be an alien born; And there is great reason, that the Law of nature should direct this case. . . . First the King hath the crown of England by birth right, being naturally procreated of the blood royal of this Realm; Secondly, Calvin the Plaintiff naturalized by procreation and birth right, since the descent of the Crown of England; Thirdly, allegiance and obedience of the subject to the Sovereign, due by the law of nature; Fourthly, protection and government due by the law of nature. . . .

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Who is an alien. An Alien is a subject that is born out of the allegiance of the king, and under the allegiance of another, and can have no real or personal action for or concerning land. . . .

How many kinds of aliens there be. Every man is either . . . *Alien* born, or . . . subject born. Every Alien is either a friend that is in league, &c. or an enemy that is in open war. . . . Every subject is either *natus*, born, or *datus*, given or made. . . . Alien friends cannot acquire, or get, nor maintain any action real or personal, for any land or house, unless the house be for their necessary habitation. . . . But if this Alien becomes an enemy (as all Alien friends may) then is he utterly disabled to maintain any action, or get any thing within this Realm. . . . All Infidels are in Law. . . . perpetual enemies (for the Law presumes not that they will be converted, that being . . . a remote possibility) for between them, as with the devils, whose subjects they be, and the Christian, there is perpetual hostility. . . .

By what laws kingdoms gotten by conquest, &c. shall be governed. And upon this ground there is a diversity between a conquest of a kingdom of a Christian King, and the conquest of a kingdom of an Infidel; for if a King come to a Christian kingdom by conquest, . . . he may at his pleasure alter and change the Laws of that kingdom, but until he doth make an alteration of those Laws, the ancient Laws of that kingdom remain. But if a Christian King should conquer a kingdom of an Infidel, and bring them under his subjection, there *ipso facto* the Laws of the Infidel are abrogated, for that they be not only against Christianity, but against the Law of God and of Nature, contained in the Decalogue; and in that case, until certain Laws be established amongst them, the King by himself, and such Judges as he shall appoint, shall judge them and their causes according to natural equity, in such sort as Kings in ancient time did with their kingdoms, before any certain Municipal Laws were given as before hath been said. . . . Furthermore, in the case of the conquest of a Christian kingdom, as well those that served in Wars at the Conquest, as those that remained at home for the safety and peace of their country, and other the King's subjects, . . . are capable of Lands in the kingdom or country conquered, and may maintain any real action, and have the like privileges and benefits there, as they may have in England.

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There be . . . three incidents to a subject born. 1. That the parents be under the actual obedience of the king. 2. That the place of his birth be within the king's dominion. And 3. the time of his birth is chiefly to be considered; for he cannot be a subject born of one kingdom, that was born under the allegiance of a king of another kingdom, albeit afterwards one kingdom descend to the king of the other. . . . The place is observable, but so as many times allegiance or obedience without any place within the king's dominions may make a subject born, but any place within the king's dominions may make a subject born, but any place within the king's dominions without obedience can never produce a natural subject. And therefore

if any of the king's Ambassadors in foreign Nations, have children there of their wives, being English women, by the Common Laws of England they are natural born subjects, and yet they are born out of the king's dominions. . . . But the time of his birth is of the essence of a subject born; for he cannot be a subject to the king of England, unless at the time of his birth he was under the allegiance and obedience of the king. . . .

Whosoever are born under one natural allegiance and obedience, due by the Law of Nature to one Sovereign are natural born Subjects: But Calvin was born under one natural allegiance and obedience, due by the Law of Nature to one Sovereign; *ergo* he is a natural born subject.

Whosoever is born within the King's power or protection, is no Alien: But Calvin was born under the King's power and protection; *ergo* he is no Alien.

Whatsoever is due by the law or constitution of man, may be altered: But natural allegiance or obedience of the subject to the Sovereign cannot be altered; *ergo* natural allegiance or obedience to the Sovereign is not due by the law or constitution of man. Again, whatsoever is due by the Law of Nature, cannot be altered: But allegiance and obedience of the subject to the Sovereign is due by the law of Nature; *ergo* it cannot be altered. It hath been proved before, that allegiance or obedience of the inferior to the superior, of the subject to the Sovereign, was due by the Law of Nature many thousand years before any Law of man was made: Which allegiance or obedience (being the only mark to distinguish a subject from an alien) could not be altered; therefore it remains still due by the Law of Nature. . . .

Lastly, whosoever at his birth cannot be an alien to the King of England, cannot be an alien to any of his subjects of England: But the Plaintiff at his birth could be no alien to the king of England; *ergo* the Plaintiff cannot be an alien to any of the subjects of England. . . .

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. . . [I]f a *Postnatus* [a person born after James I took the crown] do purchase any lands in England, he shall be subject in respect thereof, not only to the Laws of this Realm, but also to all services and contributions, and to the payment of Subsidies, Taxes, and public charges, as any Denizen or Englishman shall be; nay, if he dwell in England, the King may command him . . . that he depart not out of England. But if a *Postnatus* dwell in Scotland, and have lands in England, he shall be chargeable for the same to all intents and purposes, as if an Englishman were owner thereof. . . .

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