

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

Chapter 3: The Founding Era – Democratic Rights/Citizenship

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**Respublica v. Chapman, 1 U.S. 53 (PA, 1781)**

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*Samuel Chapman was born in Bucks County, Pennsylvania. On December 26, 1776, he joined the British army. Chapman was subsequently captured by Revolutionary forces and tried for treason against Pennsylvania. Chapman asserted that he could not be tried for treason because he was born a British subject, had always remained a British subject, and had joined the British army before the Pennsylvania legislature on February 11, 1777 passed a law banning treason. The state attorney general responded that Chapman became a subject of Pennsylvania on either July 4, 1776, when Americans declared independence, or on November 28, 1776, when Pennsylvanians ratified a new state constitution.*

*Chief Justice McKean ruled that Chapman could not be tried for treason. In his view, the Pennsylvania legislature gave residents from July 4, 1776 to February 11, 1777 to decide whether to remain subjects of England or become citizens of Pennsylvania. Most states, by statute or judicial decree, provided residents with a similarly short time period to decide whether their allegiance lay with England or their newly independent home state. Is Respublica v. Chapman consistent with Calvin's Case? Is the principle of Chapman more consistent with liberal principles of consent? If so, on what basis could Americans continue justifying birthright citizenship after 1776?*

CHIEF JUSTICE MCKEAN:

The question that is to be decided on the facts before us, is, whether Samuel Chapman, the prisoner at the bar, ever was a subject of this Commonwealth? . . .

. . . In civil wars, every man chooses his party; but generally that side which prevails, arrogates the right of treating those who are vanquished as rebels. The cases which have been produced upon the present controversy, are of an old government being dissolved, and the people assembling, in order to form a new one. When such instances occur, the voice of the majority must be conclusive, as to the adoption of the new system; but, all the writers agree, that the minority have, individually, an unrestrainable right to remove with their property into another country; that a reasonable time for that purpose ought to be allowed; and, in short, that none are subjects of the adopted government, who have not freely assented to it. What is a reasonable time for departure, may, perhaps, be properly left to the determination of a court and jury. But whether a man should be suffered to join a party, or nation, at open war with the country he leaves, is a question of singular magnitude. The ground is hitherto untrodden, but there is such apparent injustice in the thing itself, that I am inclined to think, it would amount to an act of treason.

This is not, however, the situation of the prisoner. Pennsylvania, was not a nation at war with another nation; but a country in a state of civil war; and there is no precedent in the books to show what might be done in that case; except indeed, where a prince has subdued the people who took arms against him, before they had formed a regular government, which is, likewise, inapplicable here.

But this difficulty seems to vanish by having recourse to the opinion of the legislature, in their act of the 11th February, 1777; for, when describing from whom allegiance is due, they speak only of persons then inhabiting the state, or who should thereafter become its inhabitants. Hence a discrimination is

evidently made between those persons, and such as had previously joined the enemy; meaning that this election to adhere to the British government, should not expose the party to any future punishment. It is true, that there are not any negative words to this effect; but, taking the act for the revival of the law also into consideration, we think the desire and intention of the legislature sufficiently appears to have been, to allow a choice of his party to every man, until the 11th of February, 1777; and that no act favouring of treason, done before that period, should incur the penalties of the law.

This construction, it may be said, is favorable to traitors, and tends to prejudice of the Commonwealth. But we cannot be influenced by observations of a political nature in the exposition of the law; it is our duty to seek for, and to declare, the true intention of the Legislature; the policy of that intention, it is their duty to consider.



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