

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

Chapter 4: The Early National Era – Democratic Rights/Citizenship

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**Case of Williams (C.C. Conn. 1799)**

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*Issac Williams in 1797 was indicted for accepting a commission aboard the French ship, Jupiter. Federal law forbade American citizens from serving on foreign ships. Williams claimed that he could legally accept that commission because he emigrated from the United States in 1792 and became a French citizen. The prosecution claimed that American citizens had no right to emigrate without congressional permission.*

*Chief Justice Ellsworth ruled that Williams could not voluntarily abjure his American citizenship without congressional permission. On what basis did Ellsworth make that claim? Does any constitutional provision discuss expatriation? If so, what constitutional provision? If not, how should justices determine emigration rights? Williams was an early instance of Federalist judicial appointees clearly siding with a Federalist position on a matter of some political importance.*

CHIEF JUSTICE ELLSWORTH

The common law of this country remains the same as it was before the Revolution. The present question is to be decided by two great principles; one is, that all the members of civil community are bound to each other by compact. The other is, that one of the parties to this compact cannot dissolve it by his own act. The compact between our community and its members is, that the community will protect its members; and on the part of the members, that they will at all times be obedient to the laws of the community, and faithful in its defence. This compact distinguishes our government from those which are founded in violence or fraud. It necessarily results, that the members cannot dissolve this compact, without the consent or default of the community. There has been here no consent—no default. . . . In countries so crowded with inhabitants that the means of subsistence are difficult to be obtained, it is reason and policy to permit emigration. But our policy is different; for our country is but sparsely settled, and we have no inhabitants to spare. Consent has been argued from the condition of the country; because we were in a state of peace. . . . [But] [t]he most visionary writers on this subject do not contend for the principle in the unlimited extent, that a citizen may at any and at all times, renounce his own, and join himself to a foreign country. Consent has been argued from the acts of our own government, permitting the naturalization of foreigners. When a foreigner presents himself here, and proves himself to be of a good moral character, well affected to the constitution and government of the United States, and a friend to the good order and happiness of civil society; if he has resided here the time prescribed by law, we grant him the privilege of a citizen. We do not inquire what his relation is to his own country; we have not the means of knowing, and the inquiry would be indelicate; we leave him to judge of that. If he embarrasses himself by contracting contradictory obligations the fault and the folly are his own. But this implies no consent of the government, that our own citizens should expatriate themselves.