

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

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

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**The Controversy over William Smith (1789)**

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*William Smith was born in Charleston, South Carolina, on October 2, 1758. When he was twelve years old, he was sent to study in Europe. Smith spent the next twelve years abroad. After he returned to the United States, he immediately entered politics. In 1789, he was elected to the House of Representatives. Dr. David Ramsay, a prominent South Carolinian, immediately petitioned the House to reject Smith's membership. Ramsay insisted that Smith had never become a citizen of the United States because Smith did not reside in the United States when independence was declared and had never been naturalized. Congress briefly debated the issue and voted to seat Smith.*

*Consider the different ways in which one might become a citizen. Most Congressmen thought that colonial residents in 1776 became state citizens unless they allied with England. What additional reasons did James Madison give for thinking Smith a state citizen? Are those reasons valid? If Madison and Smith were correct, were some free blacks in the north citizens of the United States in 1776? What precedent, if any, did the decision to seat Smith create? Did House members agree on any principle broader than William Smith should be allowed to take his seat?*

*David J. Ramsay, A Dissertation on the Manners of Acquiring the Character and Privileges of a Citizen (1789)<sup>1</sup>*

...  
A citizen of the United States, means a member of this new nation. The principle of government being radically changed by the revolution, the political character of the people was also changed from subjects to citizens.

The difference is immense. Subject is derived from the latin words "sub" and "jacio," which means one who is under the power of another; but a citizen is a unit of a mass of free people, who, collectively, possess sovereignty.

Subjects look up to a master, but citizens are so far equal, that none have hereditary rights superior to others. . . .

There is also a great difference between citizens, and inhabitants or residents.

Any person living within a country of state, is an inhabitant of it, or resident in it.

Negroes are inhabitants, but not citizens. Citizenship confers a right of voting at elections, and many other privileges not enjoyed by those who are no more than inhabitants

The precise difference may be thus stated: The citizen of a free state is so united to it as to possess an individual's proportion of the common sovereignty; but he who is no more than inhabitant, or resident, has no farther connection with the state in which he resides, than such as gives him security for his person and property, agreeable to fixed laws, without any participation in its government.

...  
The following appear to be the only modes of acquiring this distinguishing privilege.  
1st. By being parties to the original compact, the declaration of independence.

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<sup>1</sup> Excerpted from David J. Ramsay, *A Dissertation on the Manners of Acquiring the Character and Privileges of a Citizen* (n.p., 1789).

2nd. By taking an oath of fidelity to some one of the United States agreeable to law.

3d. By tacit consent and acquiescence.

4th. By birth or inheritance.

5th. By adoption. . . .

1st. By the declaration of independence . . . [n]early three millions of people who had been subjects, became citizens. Their former political connection with George the third was done away with, and a new one formed, not with another king, but among themselves, by which they became coequal citizens, and, collectively, assumed all the rights of sovereignty. As this was done by the representatives of the people of this country, and in their name, and on their behalf, all who had concurred in investing congress with power, acquired citizenship, by being parties to this solemn act. These original citizens were the founders of the United States. Citizenship could not be required in this way by absentees from America, for two reasons; 1st. Such were not thrown out of British protection by the restraining act of parliament, and therefore continued British subjects, under the obligations, and in quiet possession of their British allegiance: And, secondly, such could not be parties to the constitution of congress. The members of that body were not their deputies or agents, and therefore could not bind them, or act for them.

2d. . . .

3d. . . . Minors who were not old enough to be parties to the declaration of independence, or to take oaths of fidelity to the states at the time they were imposed, became citizens in consequence of their continuing to reside in the United States after they had arrived to mature age, especially if at the same time they claimed the protection, and performed the duties of citizens.

At twenty-one years of age, every freeman is at liberty to choose his country, his religion, and his allegiance. Those who continue after that age in the allegiance under which they have been educated, become, by tacit consent, either subjects or citizens. . . .

From the whole it is plain, that no private individual, though a native, who was absent from this country at the time independence, was declared, could have acquired citizenship with the United States, prior to his returning and actually joining his countrymen subsequent to the revolution.

. . .

*Debate in Congress*<sup>2</sup>

REPRESENTATIVE WILLIAM SMITH (Federalist, South Carolina)

. . .

. . . [A]s he was admitted to offices of trust, to which aliens were not admissible, and as he was admitted to them without having the rights of citizenship conferred upon him . . . , it followed clearly, that the people of South Carolina and the Legislature acknowledged him to be a citizen by virtue of the revolution.

. . . Now, it was clear, his residence prior to the war was deemed such a residence as the constitution required; because he was admitted to vote and admitted to a seat in the Legislature and Council by right of such residence, not having the requisite residence since the war, and yet being deemed qualified. If, therefore, that part of the constitution which gave a right of voting, in consequence of a year's residence and paying a certain tax, virtually conferred citizenship, by giving a right to vote, (and it appeared absurd that a right to vote should be given to persons not citizens,) and if, also, his residence, prior to the revolution was deemed a sufficient residence, then he was a citizen by virtue of the constitution.

. . .

. . . [H]e denied that residence in the country was absolutely necessary. Was it to be supposed, he asked, that when a man sent his son into another country for his education and improvement, the son

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<sup>2</sup> *Annals of Congress*, 1st Cong., 1st Sess. (1789), 413–26.

was thereby to lose any political benefits which might, during such temporary absence, accrue to his country?

...

REPRESENTATIVE JAMES MADISON (Jeffersonian, Virginia)

...

... I think there is a distinction which will invalidate [Dr. Ramsay's] doctrine in this particular, a distinction between that primary allegiance which we owe to that particular society of which we are members, and the secondary allegiance we owe to the sovereign established by that society. . . .

What was the situation of the people of America, when the dissolution of their allegiance took place by the declaration of independence? I conceive that every person who owed this primary allegiance to the particular community in which he was born, retained his right of birth, as a member of a new community; that he was consequently absolved from the secondary allegiance he had owed to the British sovereign. . . . What was the allegiance, as a citizen of South Carolina, he owed to the King of Great Britain? He owed his allegiance to him as a King of that society to which, as a society, he owed his primary allegiance. When that society separated from Great Britain, he was bound by that act, and his allegiance transferred to that society, or the sovereign which that society should set up; because it was through his membership of the society of South Carolina that he owed allegiance to Great Britain.

This reasoning will hold good, unless it is supposed that the separation which took place between these States and Great Britain, not only dissolved the union between those countries, but dissolved the union among the citizens themselves: that the original compact, which made them altogether one society, being dissolved, they could not all into pieces, each part making an independent society; but must individually revert into a state of nature; but I do not conceive that this was, of necessity, to be the case: I believe such a revolution did not absolutely take place. . . . I conceive the colonies remained as a political society, detached from their former connection with another society, without dissolving into a state of nature; but not capable of substituting a new form of Government in the place of the old one, which they had, for special considerations, abolished. Suppose the State of South Carolina should think proper to revise her constitution, abolish that which now exists, and establish another form of Government: surely this would not dissolve the social compact. It would not throw them back into a state of nature. It would not dissolve the union between the individual members of that society. It would leave them in perfect society, changing only the mode of action, which they are always at liberty to arrange. Mr. Smith being then, at the declaration of independence, a minor, but being a member of that particular society, with respect to the question of independence and change of Government; and if afterwards he had taken part with the enemies of his country, he would have been guilty of treason against that Government to which he owed allegiance, and would have been liable to be prosecuted as a traitor.

...

REPRESENTATIVE JAMES JACKSON (Jeffersonian, Georgia)

... The situation of America, at the time of the revolution, was not properly to be compared to a people altering their mode or form of Government. Nor were their two allegiances due, one to the community here, another to that of Great Britain. We were all on a footing; and I content the principle is right, in some degree, of a total reversion to a state of nature amongst individuals. . . . I conceive the whole allegiance or compact to have been dissolved. . . . [D]uring that period we were in a little better state than that of nature; and then it was, that every man made his election for an original compact, or tie, which, by his own act . . . he became bound to submit to. [I]f the gentleman's doctrine of birth were to be supported, those minors who, with British bayonets, have plundered and ravaged, nay, cruelly butchered their more virtuous neighbors, . . . those, I say, after the blood of thousands has been spilt in the establishment of our Government, can now come forward and sneer at the foolish patriots, who enduring

every hardship of a seven years war, to secure to them the freedom and property they had no hand in defending.



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