

Thomas Torches Roberts for Reviving 'Feudal Darkness' in Birthright Citizenship Ruling

The American Founders would be appalled. That's the message from Supreme Court Justices Clarence Thomas and Samuel Alito, who issued blistering dissents today accusing Chief Justice John Roberts of dragging the nation back to medieval serfdom with his majority opinion on birthplace citizenship.

Thomas, joined by Justice Neil Gorsuch, didn't mince words. He accused Roberts of historical illiteracy and of imposing a "medieval English 'feudal' principle" that treats Americans as subjects rather than citizens. The ruling allows any foreigner to claim citizenship simply by being born on American soil.

"The Court's account is not historically accurate," Thomas wrote. "The Court says that the Citizenship Clause incorporated the English feudal principle that subjects owed lifetime servitude to the King who owned the soil on which they were born, but Americans, unsurprisingly, rejected this feudal principle."

Even the English eventually abandoned what Thomas called "the darkness of the middle ages." Roberts just brought it back.

At the heart of the dispute is a 418-year-old English common law case called Calvin's Case, which established the principle of "jus soli." Under this doctrine, people owed perpetual allegiance to the King of England if they were "born within the dominions" that he owned. Roberts claimed this principle was adopted into American citizenship and incorporated into the Citizenship Clause.

Thomas says that's flat wrong.



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"The English principle was a rule of feudal servitude, not a rule of citizenship," Thomas wrote in his dissent. He explained that the doctrine determined "a person's permanent feudal bondage to the King, which he could not unilaterally abandon." It was based on the notion that a man owed personal service to the lord of the soil "the same as his master owed it to the king; and it was born with the child and only ended in the grave," a relation of "master and servant."

Alito issued his own separate dissent, warning the court against embracing what he called "birthright subjecthood."

"Before saddling the Nation with a medieval rule, we had better be certain the Constitution requires it," Alito wrote.

The dissenters made clear that the American Founders deliberately rejected English feudalism when they established this nation. Citizens aren't born into subjection to a ruler. They possess rights equal to every other citizen and must consent to their government.

Thomas cited Founding Father John Adams to drive the point home. Adams wrote that the feudal theory meant "the common people were held together, in herds and clans, in a state of servile dependence on their lords" in "a state of total ignorance of every thing divine and human."

The Founders "emphatically rejected" this thinking, Thomas noted, citing the Declaration of Independence itself to support his argument.

Under the principles that built America, foreigners cannot rightfully obtain citizenship merely by showing up on our soil. They must obtain the affirmative consent of current citizens to permanently join our society. The social compact requires it.

Roberts' majority opinion effectively throws that understanding out the window, the dissenters argue, replacing it with an outdated system of feudal servitude dressed up as constitutional law.

For everyday Americans who believe citizenship means something, who understand that national identity flows from shared consent rather than accident of geography, the dissents from Thomas and Alito read like a warning. The highest court in the land just embraced a principle the Founders crossed an ocean to escape.

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