

“We do not conceal from ourselves the great responsibility which this duty devolves upon us. No questions so far reaching and pervading in their consequences, so profoundly interesting to the people of this country, and so important in their bearing upon the relations of the United States and of the several States to each other, and to *the citizens of the states and of the United States*, have been before this court during the official life of any of its present members. We have given every opportunity for a full hearing at the bar; we have discussed it freely and compared views among ourselves; we have taken ample time for careful deliberation, and we now propose to announce the judgments which we have formed in the construction of those articles, so far as we have found them necessary to the decision of the cases before us, and beyond that we have neither the inclination nor the right to go.” Slaughterhouse Cases: 83 U.S. 36, at 67.

In dealing with the first section of the Fourteenth Amendment, the Court stated the following:

“The next observation is more important in view of the arguments of counsel in the present case. It is, that the distinction between citizenship of the United States and citizenship of a state is clearly recognized and established. . . .

It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a state, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.

We think this distinction and its explicit recognition in this Amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, *speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several states*. The argument, however, in favor of the plaintiffs, rests wholly on the assumption that the citizenship is the same and the privileges and immunities guaranteed by the clause are the same.” Slaughterhouse Cases: 83 U.S. 36, 73-74. ([footnote 2](#))

What are privileges and immunities of citizens of the several States? In the *Slaughterhouse Cases*, the following is quoted from the opinion of Mr. Justice Washington in *Corfield v. Coryell*, 4 Wash C. C. 371, Fed.Cas.No. 3230:

“The inquiry,' he says, 'is, what are the privileges and immunities of *citizens of the several states*? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would be more tedious than difficult to enumerate.’ ‘They may all, however, be comprehended under the following general heads: protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole.’” Slaughterhouse Cases: 83 U.S. 36, 75-76 (1873).

Citizenship under the Constitution was changed by the Fourteenth Amendment. Before the Fourteenth Amendment there was only one class of citizens under the Constitution of the United States. After the adoption of the Fourteenth Amendment, the Supreme Court, in the *Slaughterhouse Cases*, decided that there were two citizens under the Constitution of the United States.

Footnotes:

1. "The Supreme Court, however, adopted a narrower view when it first interpreted the Fourteenth Amendment in 1873 in the *Slaughter-House Cases*. These consolidated cases addressed several butchers' constitutional challenges under the Reconstruction Amendments to a Louisiana statute granting a monopoly on the butchering of animals in New Orleans to a single slaughtering company. Justice Miller, writing for the five Justices in the majority, rejected each of the butchers' constitutional claims, holding that the statute did not violate the guarantees of the Thirteenth Amendment or the Fourteenth Amendment's Privileges or Immunities Clause, (fn 86) Equal Protection Clause, or Due Process Clause, all of which he believed were concerned predominantly with the protection of the recently freed slaves. . . .

fn 86: *Id.* at 72-80 The Court divined a purported distinction in the text of the Fourteenth Amendment between the 'privileges and immunities of citizens of the United States' and those 'of citizens of the several states.' *Id.* at 74. The Court then expressed that the clause only protected 'the privileges or immunities of citizens of the United States,' which it limited to those owing 'their existence to the Federal government, its National character, its Constitution, or its laws.' *Id.* at 79. . . ."

Source: Rhodes, Charles W. (Rocky), "Liberty, Substantive Due Process, and Personal Jurisdiction", Tulane Law Review, Vol. 82, No. 2, 2007. This paper can be downloaded at the *Social Science Research Network* at <http://ssrn.com/abstract=1004112> .

2. "In the *Slaughterhouse Cases*, 16 Wall. 36, 21 L. ed. 394, the subject of the privileges or immunities of citizens of the United States, as distinguished from those of a particular state, was treated by Mr. Justice Miller in delivering the opinion of the court. He stated that the argument in favor of the plaintiffs, claiming that the ordinance of the city of New Orleans was invalid, rested wholly on the assumption that the citizenship is the same and the privileges and immunities guaranteed by the Fourteenth Amendment are the same as to *citizens of the United States and citizens of the several states*. This he showed to be not well founded; that there was a

citizenship of the United States and a citizenship of the states, which were distinct from each other, depending upon different characteristics and circumstances in the individual.” Maxwell v. Dow: 176 U.S. 581, 587 (1900).

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