

# Two citizens under the Constitution

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## Author's Note:

This is the third in a series of articles on the *Slaughterhouse Cases* and Citizenship under the Constitution of the United States. The first article is "Slaughterhouse Cases, Two Citizens." The next, "Slaughterhouse Cases, Up Close." The last in this series is "Privileges and Immunities of a Citizen of the several States."

A companion completes the set. Entitled "Mistake in the Syllabus" it shows a mistake in the Syllabus to the *Slaughterhouse Cases* with a footnote to the *Slaughterhouse Cases* opinion itself.

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It is a popular misconception today that because of the Fourteenth Amendment and the *Slaughterhouse Cases*, that there is only one citizen, a citizen of the United States. Such is not the case. The Supreme Court, in the *Slaughterhouse Cases*, decided that because of the Fourteenth Amendment, there were now two separate and distinct citizens under the Constitution of the United States, a citizen of the United States and a citizen of the several States. [1]

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 now were two separate and distinct citizens under the Constitution of the United States.

Before the Fourteenth Amendment there was only one class of citizens under the Constitution of the United States. A person, as such, was a citizen in three capacities: as a citizen of a State [2], as a citizen of the several States [3], and as a citizen of the United States [4]. Each was based on jurisdiction, that is, the jurisdiction of the appropriate government and under each a person had rights and privileges. As a citizen of the State, the constitution and laws of the individual state provided the rights and privileges. As a citizen of the several States, a citizen of a State had the same rights and privileges (in general) as the citizens of the State in which he was in. And, as a citizen of the United States, the Bill of Rights and constitutional provisions and amendments plus the laws and treaties of the United States

contained them.

After the adoption of the Fourteenth Amendment, the Supreme Court of the United States decided in the *Slaughterhouse Cases* that because of the Fourteenth Amendment there were now two separate and distinct citizens under the Constitution of the United States (and not the Fourteenth Amendment); a citizen of the United States and a citizen of the several States.

In the *Slaughterhouse Cases*, the Supreme Court dealt with two clauses of the Fourteenth Amendment; Section 1, Clause 1 and Section 1, Clause 2. Citizenship of the United States and citizenship of a state were treated in Section 1, Clause 1 of the Fourteenth Amendment. Citizenship of the United States and citizenship of the several States were covered in Section 1, Clause 2 of the Fourteenth Amendment:

“ . . . [T]o establish a clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States and also citizenship of a state, the 1st clause of the 1st section was framed. . . .

The first observation we have to make on this clause is that it puts at rest both the questions which we stated to have been the subject of differences of opinion. It declares that persons may be citizens of the United States without regard to their citizenship of a particular state . . .

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 (2<sup>nd</sup> clause of the 1<sup>st</sup> 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, 72-74.

Moreover, it was decided that citizenship of the United States and citizenship of a state were now separate and distinct. Privileges and immunities of a citizen of a state were to be found in the constitution and laws of the individual state. Privileges and immunities of a citizen of the United States were to be located at the Fourteenth Amendment.

Also, the *Slaughterhouse* court concluded that there were now two separate and distinct citizens under the Constitution of the United States (and not the Fourteenth Amendment); a citizen of the United States and a citizen of the several States.

To wit:

“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 (1873).

And:

“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.

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Also:

“Fortunately we are not without judicial construction of this clause of the Constitution (that is, Article IV, Section 2, Clause 1). The first and the leading case on the subject is that of *Corfield v. Coryell*, decided by Mr. Justice Washington in the circuit court for the district of Pennsylvania in 1823. 4 Wash C. C. 371.

'The inquiry,' he says, 'is, what are **the privileges and immunities of citizens of the several States?** . . .'

This definition of the **privileges and immunities of citizens of the states** is adopted in the main by this court in the recent case of *Ward v. Maryland*. . . .

Having shown that **the privileges and immunities relied on in the argument are those**

**which belong to citizens of the states** as such, and that they are left to the state governments for security and protection, and not by this article placed under the special care of the Federal government, we may hold ourselves excused from defining **the privileges and immunities of citizens of the United States** which no state can abridge, until some case involving those privileges may make it necessary to do so.” Slaughterhouse Cases: 83 U.S. 36, 75-76, 78-79. [6]

It is to be observed that the terms “citizens of the states” and “citizens of the several states” are used interchangeably by the *Slaughterhouse* court. And they are employed in contradistinction to the term “citizens of the United States.”

Therefore, before *Slaughterhouse* (and possibly *Ward* [7]), one could be a citizen of the several States and a citizen of the United States. However, after *Slaughterhouse*, one can be a citizen of the United States or a citizen of the several States, but not both.

To make clear that a citizen of the United States is not the same as a citizen of the several States, there is the following:

“To determine, then, who were citizens of the United States before the adoption of the [14th] amendment it is necessary to ascertain what persons originally associated themselves together to form the nation, and what were afterwards admitted to membership. Looking at the Constitution itself we find that it was ordained and established by 'the people of the United States,' and then going further back, we find that these were the people of the several States that had before dissolved the political bands which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth, and that had by Articles of Confederation and Perpetual Union, in which they took the name of 'the United States of America,' entered in to a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted, became ipso facto a citizen - a member of the nation created by its adoption. He was one the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt. Disputes have arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were.” Minor v. Happersett: 88 U.S. 162, 167 (1874).

Privileges and immunities of a citizen of the United States are in the Fourteenth Amendment. For a citizen of the several States, they are located at Article IV, Section 2 of the Constitution: [9]

“The intention of section 2, Article IV (of the Constitution), was to confer on the **citizens of the several States a general citizenship**, and to communicate all the privileges and immunities which the citizen of the same State would be entitled to under like circumstances.” Cole v. Cunningham: 133 U.S. 107, 113-114 (1890). [10]

By force of the Fourteenth Amendment, a citizen of the United States residing in a state of the Union becomes a citizen of that state. As such he or she would have privileges and immunities found in the Fourteenth Amendment plus those privileges and immunities provided for under the constitution and laws of the state where he or she resides (*Slaughterhouse*). A citizen of the several States domicile in an individual state becomes by Article IV, Section 2, Clause 1, a citizen of that state. As such he or she would have privileges and immunities located in Article IV, Section 2, Clause 1, plus those privileges and immunities provided for under the constitution and laws of the state where he or she is domicile (*Cole*).

Therefore in any state of the Union now, there are two state citizens, a citizen of the United States and a citizen of the several States.

The *Slaughterhouse Cases* changed to whom Article IV, Section 2, Clause 1 applied. Before it applied to a citizen of a state, whereas with the adoption of the Fourteenth Amendment, it applies to a citizen of a state who is a citizen of the several States.

Article IV Section 2, Clause 1, stills relates to a citizen of a state, but to one who is a citizen of the several States, as distinguished from a citizen of the United States:

“The court below proceeded upon the assumption that petitioner was a citizen of the United States; and his status in that regard is not questioned. The effect of the privileges and immunities clause of the Fourteenth Amendment, as applied to the facts of the present case, is to deny the power of Ohio to impose restraints upon citizens of the United States resident in Alabama in respect of the disposition of goods within Ohio, if like restraints are not imposed upon citizens resident in Ohio.

The effect of the similar clause found in the Fourth Article of the Constitution (section 2), as applied to these facts, would be the same, since that clause is directed against discrimination by a state in favor of its own citizens and against the citizens of other states. *Slaughterhouse Cases* (Live-Stock Dealers' & Butchers' Ass'n v. Crescent City Live-Stock Landing & Slaughter-House Co.), Fed.Cas. No. 8,408, 1 Woods 21, 28; *Bradwell v. State of Illinois*, 16 Wall. 130, 138.”  
Whitfield v. State of Ohio: 297 U.S. 431, 437 (1936).

One was therefore a citizen of a state, then a citizen of the several States under Article IV, Section 2, Clause 1, before the Fourteenth Amendment and the *Slaughterhouse Cases*, whereas after *Slaughterhouse*, one is under Article IV, Section 2, Clause 1, a citizen of the several States, then a citizen of a state. This is because there are two state citizens, a citizen of the United States and a citizen of the several States. To this is that before the Fourteenth Amendment, a citizen of the several States and a citizen of the United States were considered distinct whereas after the Fourteenth Amendment and the *Slaughterhouse Cases*, a citizen of the several States and a citizen of the United States were determined to be separate and distinct. [11]

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## Footnotes:

[1] Minor v. Happersett: 88 U.S. 162, 165 (1874) -

“Before its adoption the Constitution of the United States did not in terms prescribe who should be citizens of the United States or of the several States [8], yet there were necessarily such citizens without such provision.”

Senator Jacob Howard, Congressional Globe - Senate, 39th Congress, 1st Session, Page 2765:

“. . . Before the adoption of the Constitution of the United States, the citizens of each State were, in a qualified sense at least, aliens to one another, for the reason that the several States before that event were regarded by each other as independent Governments, each one possessing a sufficiency of sovereign power to enable it to claim the right of naturalization; and, undoubtedly, each one of them possessed for itself the right of naturalizing foreigners, and each one, also, if it had seen fit so to exercise its sovereign power, might have declared the citizens of every other State to be aliens in reference to itself. With a view to prevent such confusion and disorder, and to put the **citizens of the several States** on an equality with each other as to all fundamental rights, a clause was introduced in the Constitution declaring that "the citizens of each State shall be entitled all privileges and immunities of *citizens in the several States.*"

The effect of this clause was to constitute ipso facto the citizens of each one of the original States[,] **citizens of the United States**. And how did they antecedently become **citizens of the several States**? By birth or by naturalization. They became such in virtue of national law, or rather of natural law which recognizes persons born within the jurisdiction of every country as being subjects or citizens of that country. Such persons were, therefore, citizens of the United States as were born in the country or were made such by naturalization; and the Constitution declares that they are entitled, as citizens, to all the privileges and immunities of *citizens in the several States*. They are, by constitutional right, entitled to these privileges and immunities, and may assert this right and ask for their enforcement whenever they go within the limits of the several States of the Union.

It would be a curious question to solve what are the privileges and immunities of citizens of each of the States in the several States. I do not propose to go at any length into that question at this time. It would be a somewhat barren discussion. But it is certain the clause was inserted in the Constitution for some good purpose. It has in view some results beneficial to the **citizens of the several States**, or it would not be found there; yet I am not aware that the Supreme Court have ever undertaken to define either the nature or extent of the privileges and immunities thus guaranteed. . . . But we may gather some intimation of what probably will be the opinion of the judiciary by referring to a case adjudged many years ago in one of the circuit courts of the United States by Judge Washington; and I will trouble the Senate but for a moment by reading what that very learned and excellent judge says about these privileges and immunities of the citizens of each State in the several States. It is the case of *Corfield vs. Coryell*, found in 4 Washington's Circuit Reports, page 380. Judge Washington says:

'The next question is whether the act infringes that section of the Constitution which declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

The inquiry is, what are the privileges and immunities of *citizens in the several States?*  
...'

Such is the character of the privileges and immunities spoken of in the second section of the fourth article of the Constitution."

[2] Article III, Section 2 and Article IV, Section 2, Clause 1, Constitution of the United States:

"The judicial Power shall extend . . . to Controversies between two or more States;-- (between a State and Citizens of another State [repealed by the Eleventh Amendment]);--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

Alexander Hamilton, Federalist Papers, no. 80, "The Powers of the Judiciary":

"It may be esteemed the basis of the Union, that 'the **citizens of each State** shall be entitled to all the privileges and immunities of *citizens of the several States*.' And if it be a just principle that every government ought to possess the means of executing its own provisions by its own authority, it will follow, that in order to the inviolable maintenance of that equality of privileges and immunities to which the *citizens of the Union* will be entitled, the national judiciary ought to preside in all cases in which one State or its citizens are opposed to another State or its citizens. To secure the full effect of so fundamental a provision against all evasion and subterfuge, it is necessary that its construction should be committed to that tribunal which, having no local attachments, will be likely to be impartial between the different States and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which its is founded."

[3] Article IV, Section 2, Clause 1, Constitution of the United States:

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Joseph Story, Commentaries on the Constitution 3-§1800 (1833):

"It is obvious, that, if the citizens of each state were to be deemed aliens to each other, they could not take, or hold real estate, or other privileges, except as other aliens. The intention of this clause was to confer on them, if one may say so, a general citizenship; and to communicate all the privileges and immunities, which the citizens of the same state would be entitled to under the like circumstances."

[4] Article II, Section 5, Constitution of the United States:

“No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President.”

[5] Maxwell v. Dow: 176 U.S. 581, 587 (1900) -

“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.”

[6] The *Slaughterhouse* court also did the following:

On page 75 of its opinion it states:

"In the Constitution of the United States, which superseded the Articles of Confederation, the corresponding provision is found in section two of the fourth article, in the following words: 'The citizens of each State shall be entitled to all the privileges and immunities of citizens **OF** the several States.' "

However, Article IV, Section 2, Clause 1 states:

"The citizens of each State shall be entitled to all privileges and immunities of citizens **IN** the several States."

And, on page 76, it reads:

"Fortunately we are not without judicial construction of this clause of the Constitution (that is, Article IV, Section 2, Clause 1). The first and the leading case on the subject is that of *Corfield v. Coryell*, decided by Mr. Justice Washington in the circuit court for the district of Pennsylvania in 1823. 4 Wash C. C. 371.

'The inquiry,' he says, 'is, what are the privileges and immunities of citizens **OF** the several States?'"

But, in *Corfield v. Coryell*, it is written:



“The inquiry is what are the privileges and immunities of citizens **IN** the several states?”

Words in law are deliberately chosen. The Supreme court, in its opinion, deliberately changed the word, as indicated above; that is, **IN** to **OF** for a reason. That reason, as already stated was to establish a citizen of the several States, distinguishable from a citizen of the United States. (That is, privileges and immunities of citizens **OF** (not **IN**) the several States and privileges and immunities of citizens of the United States)

Examples of this being done since the *Slaughterhouse Cases* include::

“. . . [I]t was also decided that a corporation did not have the rights of its personal members, and could not invoke that provision of §2, article 4, of the Constitution of the United States, which gave to the citizens of each state the **privileges and immunities of citizens OF the several states**. See also *Pembina Consol. Silver Min. & Mill. Co. v. Pennsylvania*, 125 U.S. 181 , 31 L. ed. 650, 8 Sup. Ct. Rep. 737; *Ducat v. Chicago*, 10 Wall. 410, 19 L. ed. 972.” *Waters-Pierce Oil Company v. State of Texas*: 177 U.S. 28, 45 (1900).

“There can be no doubt that Balk, as a citizen of the state of North Carolina, had the right to sue Harris in Maryland to recover the debt which Harris owed him. Being a citizen of North Carolina, he was entitled to all the **privileges and immunities of citizens OF the several states**, one of which is the right to institute actions in the courts of another state.” *Harris v. Balk*: 198 U.S. 215, 223 (1905).

This was done in a similar way too before the *Slaughterhouse Cases*. See the case of *Ward v. The State of Maryland*, Note [7] and from *Corfield v. Coryell*, 6 Fed. Cas. 546, case no. 3,230 C.C.E.D.Pa. (1823), there is the following:

“The next question is, whether this act infringes that section of the constitution which declares that ‘the citizens of each state shall be entitled to all the privileges and immunities of **citizens IN the several states?**’ The inquiry is, what are the privileges and immunities of **citizens IN the several states?** We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the **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 perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, 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 justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state; may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general

description of privileges deemed to be fundamental: to which may be added, the elective franchise, as regulated and established by the laws or constitution of the state in which it is to be exercised. These, and many others which might be mentioned, are, strictly speaking, privileges and immunities, and the enjoyment of them by the citizens of each state, in every other state, was manifestly calculated (to use the expressions of the preamble of the corresponding provision in the old articles of confederation) 'the better to secure and perpetuate mutual friendship and intercourse among the people of the different states of the Union.' But we cannot accede to the proposition which was insisted on by the counsel, that, under this provision of the constitution, the **citizens OF the several states** are permitted to participate in all the rights which belong exclusively to the citizens of any other particular state, merely upon the ground that they are enjoyed by those citizens; much less, that in regulating the use of the common property of the citizens of such state, the legislature is bound to extend to the citizens of all the other states the same advantages as are secured to their own citizens." Corfield v. Coryell: 6 Fed. Cas. 546, 551-552, case no. 3,230 C.C.E.D.Pa. (1823).

See also Note [1] Senator Jacob Howard, Congressional Globe.

[7] Ward v. State of Maryland: 79 U.S. 418, 430-431 (1870) -

“Comprehensive as the power of the states is to lay and collect taxes and excises, it is, nevertheless, clear, in the judgment of the court, that the power cannot be exercised to any extent in a manner forbidden by the Constitution; and inasmuch as the Constitution provides that the citizens of each state shall be entitled to all privileges and immunities of **citizens in the several states**, it follows that the defendant might lawfully sell, or offer or expose for sale, within the district described in the indictment, any goods which the permanent residents of the state might sell, or offer or expose for sale in that district, without being subjected to any higher tax or excise than that exacted by law of such permanent residents.

Grant that the states may impose discriminating taxes against the citizens of other states, and it will soon be found that the power conferred upon Congress to regulate interstate commerce is of no value, as the unrestricted power of the states to tax will prove to be more efficacious to promote inequality than any regulations which Congress can pass to preserve the equality of right contemplated by the Constitution among the **citizens of the several states**.”

[8] Congressional Globe - House of Representatives, 42nd Congress, 2nd Session, Bill 1592, page 1 & 2:

"Whereas said tax laws, in their practical operation, have not had the effect contemplated when they were enacted, of imposing a burden upon the consumers, but said taxes have fallen exclusively on producers who, while paying this especial tax on cotton, and which, at that time, were especially burdensome, have, in common with **citizens of the several States**, paid their due proportion of all other taxes; . . . “ (Before *Slaughterhouse Cases*, February 12, 1873)

Congressional Globe - House of Representatives, Volume 74, Page 163:

"Resolved, That the Committee on Banking and Currency be instructed to inquire what legislation is necessary in order to provide for a more equitable distribution of the national currency among the **citizens of the several States**, and to report by bill or otherwise." (After *Slaughterhouse Cases*, December 19, 1873)

*Slaughterhouse Cases* decided on (opinion issued) April 14, 1873.

[9] Maxwell v. Dow: 176 U.S. 581, 587 (1900) -

“So it was held in the oyster planting case, *McCready v. Virginia*, 94 U.S. 391, that the right which the people of that State acquired to appropriate its tide waters and the beds therein for taking and cultivating fish, was but a regulation of the use, by the people, of their common property, and the right thus acquired did not come from their citizenship alone, but from their citizenship and property combined. It was, therefore, a property right and not a mere privilege or immunity of citizenship, and for that reason the citizen of one State was not invested by the Constitution of the United States with any interest in the common property of the citizens of another State.

This was a decision under another section of the Constitution (section second of article fourth) from the one under discussion, and it gives to the citizens of each State all **privileges and immunities of citizens of the several States**, but it is cited for the purpose of showing that where the privilege or immunity does not rest alone upon citizenship, a citizen of another State does not participate therein.

In this case the privilege or immunity claimed does not rest upon the individual by virtue of his national citizenship, and hence is not protected by a clause which simply prohibits the abridgment of the **privileges or immunities of citizens of the United States**. Those are not distinctly privileges or immunities of such citizenship, where everyone has the same as against the Federal Government, whether citizen or not.

The Fourteenth Amendment, it must be remembered, did not add to those privileges or immunities.”

[10] “Th(is) clause established a general citizenship among the citizens of the several States. In *Cole v. Cunningham*, (fn 59) the court said:

‘The intention of section 2, Article IV (of the Constitution), was to confer on the **citizens of the several States** a general citizenship, and to communicate all the privileges and immunities which the citizen of the same State would be entitled to under like circumstances.’ (fn 59) 133 U.S. 107, 113-114.” The Constitution of the United States, Its History and Construction, Volume II; David Kemper Watson, LL.B., LL.D., of the Columbus, Ohio, Bar; Chicago; Callaghan & Company; ©1910; Chapter XLV, Page 1218. (This can be seen online at <http://books.google.com/books?hl=en&id=7GICAAAIAAJ&dq=%22Constitution+of+the+Uni>

[ted+States%22,+David+Kemper+Watson&printsec=frontcover&source=web&ots=KpkmjQr9AC&sig=w88OD6KZMFXKfOMjjCL1q0KiNDo&sa=X&oi=book\\_result&resnum=1&ct=result](https://www.gutenberg.org/files/19114/19114-h/19114-h.htm#Page_1218) , then scrolling to page 1218. The author refers the reader to pages 1205 to 1221 for additional insight to the privileges and immunities of citizens of the States.)

[11] Maxwell v. Dow: 176 U.S. 581, at 586, 587, 588, 590, 591, 592, 594, 596 (1900) -

". . . Postponing an inquiry in regard to this last objection until we have examined the other, we proceed to inquire what are the **privileges and immunities of a citizen of the United States** which no State can abridge? . . .

It is conceded that there are certain privileges or immunities possessed by a citizen of the United States because of his citizenship, and that they cannot be abridged by any action of the States. . . .

In the *Slaughterhouse* cases, 16 Wall. 36, 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. . . .

He then proceeded to inquire as to the meaning of the words 'privileges and immunities' as used in the amendment, and said that the first occurrence of the phrase in our constitutional history is found to be in the fourth article of the old confederation, in which it was declared:

'that the better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States, and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively.'

A provision corresponding to this he found in the Constitution of the United States in section 2 of the fourth article, wherein it is provided that 'the citizens of each State shall be entitled to all the privileges and immunities of **citizens of the several States**.' What those privileges were is not defined in the Constitution, but the justice said there could be but little question that the purpose of both those provisions was the same, and that the privileges and immunities intended were the same in each. He then referred to the case of *Corfield v. Coryell*, decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1823, 4 Washington C.C. 371, where the question of the meaning of this clause in the Constitution was raised.

Answering the question what were the **privileges and immunities of citizens of the several States**, Mr. Justice Washington said in that case:

'We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature 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, however, be all comprehended under the following general heads: Protection by the government; . . . The enjoyment of life and liberty 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. . . .'

If the rights granted by the Louisiana legislature did not infringe upon the **privileges or immunities of citizens of the United States**, the question arose as to what such privileges were, and in enumerating some of them, without assuming to state them all, it was said that a citizen of the United States, as such, had the right to come to the seat of government to assert claims or transact business, to seek the protection of the government or to share its offices; he had the right of free access to its seaports, its various offices throughout the country, and to the courts of justice in the several States; to demand the care and protection of the General Government over his life, liberty and property when on the high seas or within the jurisdiction of a foreign government; the right, with others, to peaceably assemble and petition for a redress of grievances; the right to the writ of habeas corpus, and to use the navigable waters of the United States, however they may penetrate the territory of the several States; also all rights secured to our citizens by treaties with foreign nations; the right to become citizens of any State in the Union by a bona fide residence therein, with the same rights as other citizens of that State, and the rights secured to him by the Thirteenth and Fifteenth amendments to the Constitution. . . .

The definition of the words 'privileges and immunities,' as given by Mr. Justice Washington, was adopted in substance in *Paul v. Virginia*, 8 Wall. 168, 180, and in *Ward v. Maryland*, 12 Wall. 418, 430. These rights, it is said in the *Slaughterhouse* cases, have always been held to be the class of rights which the State Governments were created to establish and secure. . . .

In speaking of the meaning of the phrase '**privileges and immunities of citizens of the several States**' under section second, article fourth of the Constitution, it was said by the present Chief Justice, in *Cole v. Cunningham*, 133 U.S. 107, that the intention was:

'to confer on the **citizens of the several States** a *general citizenship*, and to communicate all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances, and this includes the right to institute actions.' . . .

These cases show the meaning which the courts have attached to the expression, as used in the fourth article of the Constitution, and the argument is not labored which gives the same meaning

to it when used in the Fourteenth Amendment.

That the primary reason for that amendment was to secure the full enjoyment of liberty to the colored race is not denied, yet it is not restricted to that purpose, and it applies to everyone, white or black, that comes within its provisions. But, as said in the *Slaughterhouse* cases, the protection of the **citizen [of the United States]** in his rights as a **citizen of the State** still remains with the State. . . .

So it was held in the oyster planting case, *McCready v. Virginia*, 94 U.S. 391, that the right which the people of that State acquired to appropriate its tidewaters and the beds therein for taking and cultivating fish was but a regulation of the use, by the people, of their common property, and the right thus acquired did not come from their citizenship alone, but from their citizenship and property combined. It was, therefore, a property right, and not a mere privilege or immunity of citizenship, and, for that reason, the citizen of one State was not invested by the Constitution of the United States with any interest in the common property of the citizens of another State.

This was a decision under another section of the Constitution (section second of article fourth) from the one under discussion, and it gives to the **citizens of each State all privileges and immunities of citizens of the several States**, but it is cited for the purpose of showing that, where the privilege or immunity does not rest alone upon citizenship, a citizen of another State does not participate therein.

In this case, the privilege or immunity claimed does not rest upon the individual by virtue of his national citizenship, and hence is not protected by a clause which simply prohibits the abridgment of the **privileges or immunities of citizens of the United States**. Those are not distinctly privileges or immunities of such citizenship, where everyone has the same as against the Federal Government, whether citizen or not.

The Fourteenth Amendment, it must be remembered, did not add to those privileges or immunities."

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