Privileges and Immunities of a Citizen of the several States

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Author's Note:

This is the last 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 third in this series is "Two Citizens Under The Constitution."

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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Under the Constitution of the United States; since the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*; are two citizens, separate and distinct. They are a citizen of the several States and a citizen of the United States. Cases were cited and quoted in my article "Two Citizens Under The Constitution."

Two that were not are the following:

> "The expression, Citizen of a State, is carefully omitted here. In Article IV, Section 2, Clause 1, of the Constitution of the United States, it had been already provided that 'the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.' The rights of Citizens of the States [1] (under Article IV, Section 2, Clause 1) and of citizens of the United States (under The Fourteenth Amendment) are each guarded by these different provisions. That these rights are separate and distinct, was held in the *Slaughterhouse Cases*, recently decided by the Supreme court. The rights of Citizens of the State, as such, are not under consideration in the Fourteenth Amendment. They stand as they did before the adoption of the Fourteenth Amendment, and are fully guaranteed by other provisions. [2]" United States v. Anthony: 24 Fed. Cas. 829, 830 (Case No. 14,459) (1873).

> "The proper construction of this amendment was first called to the attention of this court in the *Slaughterhouse Cases*, 16 Wall. 36, which involved, however, not a question of race, but one of

exclusive privileges. The case did not call for any expression of opinion as to the exact rights it was intended to secure to the colored race, but it was said generally that its main purpose was to establish the citizenship of the negro, to give definitions of citizenship of the United States and of the states [1], and to protect from the hostile legislation of the states the privileges and immunities of citizens of the United States, as distinguished from those of citizens of the states [1]." Plessy v. Ferguson: 163 U.S. 537, 543 (1896), overruled on other grounds, Brown v. Board of Education of Topeka: 347 U.S. 483 (1954).

Privileges and immunities for a citizen of the several states are located at Article IV, Section 2, Clause 1, in the Constitution of the United States:

"The intention of section 2, Article IV (of the Constitution), was to confer on the citizens of the several States a general citizenship." Cole v. Cunningham: 133 U.S. 107, 113-114 (1890).

A citizen of the several States, as a citizen of the several States, has privileges and immunities which are fundamental. 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). (See Illustration A)

Also, there is the following:

"The power of a state to make reasonable and natural classifications for purposes of taxation is clear and not questioned; but neither under form of classification nor otherwise can any state enforce taxing laws which, in their practical operation materially abridge or impair the equality of commercial privileges secured by the Federal Constitution to citizens of the several states." Chalker v. Birmingham & N.W. Railroad Company: 249 U.S. 522, 526-527 (1919).

In addition:

"It this were not so it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several States could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to citizens of the several States be materially abridged and impaired." Guy v. City of Baltimore: 100 U.S. 434, 439-440 (1879); reaffirmed, I.M. Darnell & Son Company v. City of Memphis: 208 U.S.113, 121 (1908).

A citizen of the several States, as a citizen of a State, would have "privileges and immunities which

are common to the citizens in the latter States under their constitution and laws by virtue of their being citizens." Slaughterhouse Cases: 36 U.S. 76-77 (1873), quoting Paul v. State of Virginia: 75 U.S. 168, 180 (1868).

Examples include:

> "It was undoubtedly the object of the clause in question (Article IV, Section 2, Clause 1) to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws." Paul v. State of Virginia: 75 U.S. 168, 180 (1868), quoting Lemmon v. The People: 20 New York, 607.
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> "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).
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> "Beyond question, a state may, through judicial proceedings take possession of the assets of an insolvent foreign corporation within its limits, and distribute such assets or their proceeds among creditors according to their respective rights. But may it exclude citizens of other states from such distribution until the claims of its own citizens shall have been first satisfied? In the administration of the property of an insolvent foreign corporation by the courts of the state in which it is doing business, will the Constitution of the United States permit discrimination against individual creditors of such corporations because of their being citizens of other states, and not citizens of the state in which such administration occurs? . . . .
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> We hold such discrimination against citizens of other states to be repugnant to the second section of the fourth article of the Constitution of the United States, although, generally speaking, the state has the power to prescribe the conditions upon which foreign corporations may enter its territory for purposes of business. Such a power cannot be exerted with the effect of defeating or impairing rights secured to citizens of the several states by the supreme law of the land. Indeed, all the powers possessed by a state must be exercised consistently with the privileges and immunities granted or protected by the Constitution of the United States. . . . .
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> We must not be understood as saying that a citizen of one state is entitled to enjoy in another state every privilege that may be given in the latter to its own citizens. There are privileges that may be accorded by a state to its own people in which citizens of other states may not participate except in conformity to such reasonable regulations as may be established by the state. For instance, a state cannot forbid citizens of other states from suing in its courts, that right being enjoyed by its own people; but it may require a nonresident, although a citizen of another state, to give bond for costs, although such bond be not required of a resident. Such a regulation of the

internal affairs of a state cannot reasonably be characterized as hostile to the fundamental rights of citizens of other states. So, a state may, by rule uniform in its operation as to citizens of the several states, require residence within its limits for a given time before a citizen of another state who becomes a resident thereof shall exercise the right of suffrage or become eligible to office. It has never been supposed that regulations of that character materially interfered with the enjoyment by citizens of each state of the privileges and immunities secured by the Constitution to citizens of the several states. The Constitution forbids only such legislation affecting citizens of the respective states as will substantially or practically put a citizen of one state in a condition of alienage when he is within or when he removes to another state, or when asserting in another state the rights that commonly appertain to those who are part of the political community known as the people of the United States, by and for whom the government of the Union was ordained and established." Blake v. McClung: 172 US. 239, 247-248, 254-255, 256-257 (1898). [3]

As a citizen of a State, a citizen of the several States, would have special privileges and immunities. However, these privileges and immunities would be restricted to the State where he or she is domiciled:

"Special privileges enjoyed by citizens in their own States are not secured in other States by this provision (Article IV, Section 2, Clause 1). It was not intended by the provision to give to the laws of one State any operation in other States. They can have no such operation, except by the permission, express or implied, of those States. The special privileges which they confer must, therefore, be enjoyed at home, unless the assent of other States to their enjoyment therein be given." Paul v State of Virginia: 75 U.S. 168, 180-181 (1868). Also, McCready v. State of Virginia: 94 US 391, at 395-396 (1876).

Footnotes:

[1] "Citizens of the States" is equivalent to "citizens of the several States." This was shown in my third article in this series, Two Citizens Under The Constitution, at pages 2 thru 3. To wit:

"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.

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 (2nd clause of the 1st 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.

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.

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.' "

[2] State of Louisiana v. Fowler: 6 S. 602; 41 La.Ann. 380 (1889) -

"A person who is a citizen of the United State is necessarily a citizen of the particular state in which he resides. But a person may be a citizen of a particular state and not a citizen of the United States. To hold otherwise would be to deny to the state the highest exercise of its sovereignty – the right to declare who are its citizens."

Crosse v. Board of Supervisory of Election of Baltimore City: 243 Md. 555, 562; 221 A.2d 431, 436 (1966) -

"Under the Fourteenth Amendment all persons born or naturalized in the United States are citizens of the United States and of the state in which they reside, but we find nothing which requires that a citizen of a state must be a citizen of the United States."

United States v. Northwestern Express, Stage & Transportation Company: 164 U.S 686, 688 (1897) -

"... [U]ndoubtedly in a purely technical and abstract sense citizenship of one of the states may not include citizenship of the United States."

United States v. Cruikshank: 92 U.S. 542, 549 (1876) -

"We have in our political system a Government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. … Slaughter-House Cases, 16 Wall. 74, 21 L.Ed. 408."

Milliken v. Meyer: 311 U.S. 457, 463 (1941) -

"As in case of the authority of the United States over its absent citizens (Blackmer v. United States, 284 U.S. 421, 52 S.Ct. 252), the authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state."

Skiriotes v. State of Florida: 313 U.S. 69, 77 (1941) -

"If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest and where there is no conflict with acts of Congress."

California Government Code §241 provides that "[t]he citizens of the State are:

a) All persons born in the State and residing within it, except the children of transient aliens and of alien public ministers and consuls.

b) All persons born out of the State who are citizens of the United States and residing within the State."

[3] Sully v. American National Bank: 178 U.S. 289, 298-299 (1900) -

"Being entitled to raise the question, we must hold, in conformity to our decision in the *Blake Case*, that Carhart, as an unsecured creditor and a citizen of New York, is entitled to share in the distribution of the assets of the Carnegie Land Company upon the same level as like creditors of the company residents of the state of Tennessee; and as the decree denies him that right, it must be reversed for that reason."

Anglo-American Provision Company v. Davis Provision Company: 191 U.S. 373, 374 (1903) –

". . . If the state does provide a court to which its own citizens may resort in a certain class of cases, it may be that citizens of other states of the Union also would have a right to resort to it in cases of the same class. *Blake v. McClung*, 172 U.S. 239, 256, 43 L. ed. 432, 438, 19 Sup. Ct. Rep. 165."

Ownbey v. Morgan: 256 U.S. 94, 109-110 (1921) -

". . . [I]t is clear that, by virtue of the 'privileges and immunities' clause of section 2 of article 4 of the Constitution, each state is at liberty, if not under a duty, to accord the same privilege of protection to creditors who are citizens of other states that it accords to its own citizens. *Blake v. McClung*, 172 U.S. 239, 248 et seq., 19 Sup. Ct. 165."

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Illustration A

Source: Federal Procedure at Law; A Treatise on the Procedure in Suits at Common Law in the Circuit Courts of the United States; C.L. Bates, of the Bar of San Antonio, Texas; Chicago; T.H. Flood and Company; ©1908; Preface, p. 215, 220-221, 229.

The purpose of this work is to state the principles controlling the judicial procedure in suits at common law, in the circuit courts of the United States. (emphasis mine) There are inherent difficulties in the subject, resulting from the complex basis of that procedure, there being four distinct sources from which its rules and principles are derived, namely, (1) the federal constitution, (2) the English common law, (3) the federal statutes, and (4) the state procedure. The act of conformity adopts the state procedure only "as near as may be" — consistently with the federal constitution and valid laws of the United States.

The great outlines of federal procedure are laid in the constitution, and cannot be overridden by acts of congress adopting state procedure. Among the rights secured by those constitutional provisions is the right to a trial, in suits at common law, by a jury, as that right existed at common law. The federal government is the only government on this continent preserving that right in its full integrity. The states are, in many insidious ways, breaking away from this great guaranty of life, liberty and property — this great fundamental principle of Anglo-Saxon civilization. The jurisdiction, both original and appellate, of the several courts of the federal judicial system, and the nature and character of the judicial remedies and procedure established and pursued in them, arise out of and are limited by the nature of the dual system of government created by the federal consti-

tution, the relations existing between the federal and state governments, the constitutional powers of each, respectively, and the limitations imposed upon each of them by the fundamental law, and, therefore, a comprehensive knowledge of the entire scheme of government is absolutely essential to an accurate knowledge and full comprehension of federal jurisdiction and procedure in all their branches and details; and, for this reason, the author has, as a basis of the discussion of Federal Procedure at Law, assayed a statement of the Dual System of Government established by the constitution, the constitutional limitations of the state and federal governments, the judicial power of the federal government, the creation of the federal judiciary, the jurisdiction of all the courts of the system, and the distinction between law, equity and admiralty, and the remedies appropriate to each, as maintained in the federal courts. An effort has been made to define suits at common law, and to point out and particularly specify the particulars in which the federal courts will, and in which they will not, conform to state procedure in suits at common law.

The work has been written in the hope that it may supply an additional aid to the working lawyer and also to the earnest student of American institutions, and is respectfully submitted to the kindly judgment of the American bench and bar.

C. L. BATES.

San Antonio, Texas, June 1, 1908.

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(d) THE PRIVILEGES AND IMMUNITIES OF THE CITIZENS OF THE SEVERAL STATES.

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§244. Privileges and immunities of the citizens of the several states under the constitution. — The constitution as originally adopted declares that: "The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." (fn 52) This provision secures valuable rights to the citizens of the several states, and is in effect, a limitation upon the states; it inhibits each state from denying to the citizens of the several other states the privileges and immunities possessed and enjoyed by its own citizens. (fn 53)

§245. Same — Defined by Justice Washington. — This provision of the constitution was first brought under judicial construction in a case in the circuit court in which Mr. Justice Washington, answering the question, what are the privileges and immunities of the citizens of the several states, said:

"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 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 the purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus;

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51 1 U. S. Stat. at L. 4.

52 U. S. Const. Art. IV, sec. 2, cl. 1.

53 Paul v. Virginia, 8 Wall. 168, 180 (19:357); Slaughter-House Cases, 16 Wall. 36, 130 (21:394); Blake v. McClung, 172, 230, 264 (43:432); Ward v. Maryland, 12 Wall. 418, 433 (20:449).

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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 expression of the preamble to 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." (fn 54)

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54 Corfield v. Coryell, 4 Wash. (C. C.) 371, Fed. Cas. No. 3,230.

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§256. Same — Intention of the constitutional provision. — The intention of the first clause of the second section of the fourth article 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 citizens of the same state would be entitled to under the like circumstances. (fn 68)

(e) THE PRIVILEGES AND IMMUNITIES OF CITIZENS OF THE UNITED STATES NOT TO BE ABRIDGED.

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68 Cole v. Cunningham, 133 U. S. 107, 138 (33:538).

(To see online go to the following link and then scroll to page v

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