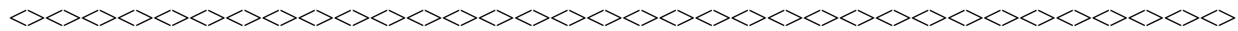


State Citizenship does not relate to Privileges and Immunities of citizens of the several States

©2009 Dan Goodman



Author's Note:

There appears to be a misunderstanding by some relating State citizenship to privileges and immunities of citizens of the several States. This is understandable since this conclusion is based on a mistake in the Syllabus to the *Slaughterhouse Cases*. ([Readings 1](#))



In the work, “United States Constitutional History and Law, 1908” ([Footnote 1](#)), the author, Albert H. Putney, writes on page 475, at §287 the following:

“**Privileges and immunities of citizens of the several States.**—‘The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.’
(fn 14)

The rights of every citizen of this country are of two classes, those which he possesses as a citizen of the United States, and, second, those which pertain to State citizenship. (fn 15) It is with the second class of rights that this clause is concerned. In *Kimmish v. Ball* (fn 16) the Court in construing this clause said: ‘[T]he clause of the Constitution declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States, does not give non-resident citizens of Iowa any greater privileges and immunities in that state than her own citizens can enjoy. So far as liability is concerned and the act mentioned, citizens of other States and citizens of Iowa stand upon the same footing.’

fn 14 United States Constitution, Art. IV., Sec. II., Clause I. Compare this with Clause I of Art. IV. Of the Articles of Confederation.

fn 15 For a treatment of this distinction see account of the Slaughter House Cases, Chap. XIII.

fn 16 129 U.S. 217.”

The author relates State citizenship with privileges and immunities of citizens of the several States. This can be seen also in the work “The Privileges and Immunities of State Citizenship, 1918” ([Footnote 2](#)). In the Preface the author, Roger Howell, records:

“The following study was undertaken at the suggestion of Professor Westel W. Willoughby. So far as is known, no previous attempt has been made to treat the subject comprehensively, or to enumerate the rights which the citizens of the several States are entitled to enjoy free from discriminatory legislation, by virtue of the so-called Comity Clause (Article IV, Section 2, Clause 1 of the Constitution of the United States).”

And, in “The General Principles of Constitutional Law in the United States of America, first edition, second edition & third edition, 1880, 1891 and 1898” ([Footnote 3](#)) the authors, Thomas M. Cooley (first edition), Thomas M. Cooley, Alexis C. Angell (second edition) and Thomas M. Cooley, Andrew C. McLaughlin (third edition) have at page 187 (first edition), page 195 (second edition) and page 206 (third edition), respectively:

“Privileges and Immunities of Citizens.—The next succeeding provision is that ‘the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States. (fn 2)

The privileges and immunities here in question are those which belong to state citizenship.

fn 2 Const., Art. IV., § 2, cl. 1.”

State citizenship has nothing to do with privileges and immunities of citizens of the several States. It relates rather to privileges and immunities of citizens of a State:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.’

The first observation we have to make on this clause (section 1, clause 1) 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, and it overturns the Dred Scott decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States. . . .

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. [\[page 74\]](#) Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it. . . .

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. . . .

Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause (section 1, clause 1) under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment.” Slaughterhouse Cases, 83 U.S. 36, 73-74.

The correct description for privileges and immunities of citizens of the several States is citizenship of the States or citizenship of the several States: ([Footnote 4](#))

“The first section of the fourteenth article, to which our attention is more specially invited, opens with a definition of citizenship — not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. . . .

. . . [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 first clause of the first section was framed. . . .

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 (section 1, clause 2), 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.

The language is, 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.' It is a little remarkable, if this clause was intended as a protection to the citizen of a State against the legislative power of his own State, that the word citizen of the State should be left out when it is so carefully used, and used in contradistinction to citizens of the United States, in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.” Slaughterhouse Cases, 83 U.S. 36, 72-74. ([Readings 2](#))

The conclusion that State citizenship applies to citizens of the several States comes from reading the [Syllabus](#) to the *Slaughterhouse Cases*. On Page 37, at Section 3, Paragraphs 3 and 4: it states:

“(para 3) The first clause of the fourteenth article was primarily intended to confer citizenship on the negro race, and secondly to give definitions of citizenship of the United States and citizenship of the States, and it recognizes the distinction between citizenship of a State and citizenship of the United States by those definitions.

(para 4) The second clause protects from the hostile legislation of the States the privileges and immunities of citizens of the United States, as distinguished from the privileges and immunities of citizens of the States.”

Reading the two paragraphs together, one concludes that citizenship of the States and citizenship of a State are different names for the same thing, and that they describe the privileges and immunities of citizens of the States.

However, this is not the case. There is a mistake in paragraph 3 ([Readings 1](#)). Specifically it states:

“The first clause of the fourteenth article was primarily intended to confer citizenship on the negro race, and secondly to give definitions of citizenship of the United States and citizenship of the States, and it recognizes the distinction between citizenship of a State and citizenship of the United States by those definitions.” ([Footnote 5](#))

It should read:

“The first clause of the fourteenth article was primarily intended to confer citizenship on the negro race, and secondly to give definitions of citizenship of the United States and citizenship of a State, and it recognizes the distinction between citizenship of a State and citizenship of the United States by those definitions.”

The mistake is revealed when you read from page 73 of the *Slaughterhouse Cases* opinion. There it states:

“To remove this difficulty primarily, and to establish clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States and also citizenship of a State, the first clause of the first section was framed.”

Thus, there is a conflict between the Syllabus of the *Slaughterhouse Cases* and the Opinion of the Supreme Court in the *Slaughterhouse Cases*. “The headnotes to the opinions of this Court are not the work of the Court, but are simply the work of the Reporter, giving his understanding of the decision, prepared for the convenience of the profession.” Syllabus, United States v. Detroit Lumber Company: 200 U.S. 321, at 322 (1906). “. . . [T]he headnote is not the work of the court, nor does it state its decision, though a different rule, it is true, is prescribed by statute in some states. It is simply the work of the reporter, gives his understanding of the decision, and is prepared for the convenience of the profession in the examination of the reports.” *Opinion, United States v. Detroit Lumber Company*: 200 U.S. 321, at 337 (1906). ([Footnote 6](#))

Therefore, the Syllabus to the *Slaughterhouse Cases*, is not a part of the Opinion of the Supreme Court in the *Slaughterhouse Cases*, and as such has no legal force. And so, anyone using or relying on it does so at their own risk.

Footnotes:

(1) “United States Constitutional History and Law”; Albert H. Putney; 1908. (Reprinted 1985 by Wm. S. Hein Publishing; ISBN 0837710219, 9780837710211; 599 pages.)

http://books.google.com/books?id=Xxg7HRhU33oC&printsec=frontcover&source=gb_s_summary_r&cad=0#PPA475,M1

(2) “The Privileges and Immunities of State Citizenship”; Roger Howell; Published by the Johns Hopkins Press; 1918; 112 pages.

http://books.google.com/books?id=q-g9AAAAIAAJ&printsec=titlepage&source=gb_s_summary_r&cad=0#PPA7,M1

(3) “The General Principles of Constitutional Law in the United States of America”, Thomas McIntyre Cooley; First edition; Published by Little, Brown, and Company; 1880; 376 pages.

<http://www.worldcat.org/oclc/2675774?page=viewport>

“The General Principles of Constitutional Law in the United States of America”, Thomas McIntyre Cooley, Alexis C. Angell; Second edition; Published by Little, Brown, and Company; 1891; 390 pages.

<http://www.worldcat.org/oclc/123222926?page=viewport>

“The General Principles of Constitutional Law in the United States of America”, Thomas McIntyre Cooley, Andrew Cunningham McLaughlin; Third edition; Published by Little, Brown, and Company; 1898; 423 pages.

http://books.google.com/books?id=7-g9AAAAIAAJ&printsec=titlepage&source=gb_s_summary_r&cad=0#PPA206,M1

(4) “Citizens of the several States” is equivalent to “citizens of the 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 (second clause of the first 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 several states’ and ‘citizens of the states’ are used interchangeably by the *Slaughterhouse* court. And they are employed in contradistinction to the term ‘citizens of the United States.

(5) This paragraph is quoted verbatim in *Boyd v. State of Nebraska ex. Rel. Thayer*, to wit:

“In *The Slaughter-House Cases*, 16 Wall. 36, it was held by this Court that the first clause of the Fourteenth Article was primarily intended to confer citizenship on the negro race, and secondly to give definitions of citizenship of the United States and citizenship of the states, and it recognized the distinction between citizenship of a state and citizenship of the United States by those definitions.” Boyd v. State of Nebraska ex. Rel. Thayer: 143 U.S. 135, at 160 (1892).

(6) “Where the headnote of a decision of a state court is not given special force by statute or rule of court, the opinion is to be looked to for original and authentic grounds of the decision.” *Syllabus*, Burbank v. Ernst: 232 U.S. 162, at 162-163 (1914). “. . . [T]he headnote is given no special force by statute or rule of court, as in some states. It inaccurately represents the reasoning of the judgment. In 129 La., it is said to have been made by the court. However that may be, we look to the opinion for the original and authentic statement of the grounds of decision.” *Opinion*, Burbank v. Ernst: 232 U.S. 162, at 165 (1914).

Readings:

(1) Dan Goodman, "Mistake in the Syllabus", at:
<http://mhkeehn.tripod.com/DG05MistakeInSyllabus.pdf>.

(2) Dan Goodman, "Slaughterhouse Cases, Up Close", at:
<http://mhkeehn.tripod.com/DG02UpClose.pdf>.

Cite as: “State Citizenship does not relate to Privileges and Immunities of citizens of the several States” Dan Goodman, at the Minuteman Page (<http://mhkeehn.tripod.com>)

Conversion to Acrobat and permission to post on this website granted by Mr. Goodman.