The Effects of the Fourteenth Amendment on the Constitution of the United States: More

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Abstract:

The Fourteenth Amendment was passed by the 39th Congress on June 13, 1866. It was proclaimed in effect on July 28, 1868, by the then Secretary of State of the United States, William H. Steward.

Section 1, Clause 2 of the Fourteenth Amendment changed the wording in Article IV, Section 2, Clause 1 of the Constitution of the United States. The Supreme Court of the United States gave notice of this before the *Slaughterhouse Cases*. Other courts followed suit.

The wording in Article IV, Section 2, Clause 1 was changed from "The citizens of each state shall be entitled to privileges and immunities of citizens IN the several States" to "The citizens of each state shall be entitled to privileges and immunities of citizens OF the several States." Article IV, Section 2, Clause 1 of the Constitution of the United States was converted from the Comity Clause into a Citizenship Clause. Article IV, Section 2, Clause 1 now related to a citizen of the several States.

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The Fourteenth Amendment was passed by 39th Congress on June 13, 1866. On June 16, 1866, the House Joint Resolution proposing the Fourteenth Amendment was submitted to the States.

On July 20, 1868, the Secretary of State, William H. Seward, gave notice in (Presidential) Proclamation no. 11; 15 Statutes at Large 706, that the Fourteenth Amendment was ratified, with a catch. The catch was that two of the 29 states had withdrawn their consent. The two states were Ohio and New Jersey:

> "Now, therefore, be it known that I, William H. Seward, Secretary of State of the United States, by virtue and in pursuance of the second section of the act of Congress, approved the twentieth of April, eighteen hundred and eighteen, hereinbefore citied, do hereby certify that if the resolutions of the legislatures of Ohio and New Jersey ratifying the aforesaid [Fourteenth] amendment are to be deemed as remaining of full force and

effect, notwithstanding the subsequent resolutions of the legislatures of those States, which purport to withdraw the consent of said States from such ratification, then the aforesaid amendment has been ratified in the manner hereinbefore mentioned, and so has become valid, to all intents and purposes, as a part of the Constitution of the United States." **[Footnote 1]**

The issue of Ohio and New Jersey rescinding their ratification of the Fourteenth Amendment was taken up by Congress and on July 21, 1868, a joint resolution was passed in the Senate. Senate Resolution 166 (40th Congress, Second session, page 1126) provided:

"**JOINT RESOLUTION**

Declaring the ratification of the fourteenth article of amendment of the Constitution of the United States

Whereas the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, West Virginia, Kansas, Missouri, Indiana, Ohio, Illinois, Minnesota, New York, Wisconsin, Pennsylvania, Rhode Island, Michigan, Nevada, New Hampshire, Massachusetts, Nebraska, Maine, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States duly proposed by two-thirds of each house of the thirty-ninth Congress: Therefore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State."

On July 28, 1868, Secretary of State Seward issued his proclamation, (Presidential) Proclamation no. 13, 15 Statutes at Large 708, that the Fourteenth Amendment was ratified, to wit:

"And whereas the Senate and House of Representatives of the Congress of the United States, on the twenty-first day of July, one thousand eight hundred and sixty-eight, adopted and transmitted to the Department of State a concurrent resolution (see above). . . .

And whereas official notice has been received at the Department of State that the legislatures of the several States next hereinafter named have, at the times respectively herein mentioned, taken the proceedings hereinafter recited upon or in relation to the ratification of the said proposed amendment, called article fourteenth . . .

Now, therefore, be it known that I, William H. Seward, Secretary of State of the United States, in execution of the aforesaid act, and of the aforesaid concurrent resolution of the

21st of July 1868, and in conformance thereto, do hereby direct the said proposed amendment to the Constitution of the United States to be published in the newspapers authorized to promulgate the laws of the United States, and I do hereby certify that the said proposed amendment has been adopted in the manner hereinbefore mentioned by the States specified in the said concurrent resolution, namely, the States of Connecticut, New Hampshire, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, Rhode Island, Wisconsin, Pennsylvania, Michigan, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Louisiana, South Carolina, Alabama, and also by the legislature of the State of Georgia, the States thus specified being more than three fourths of the States of the United States.

And I do further certify that the said amendment has become valid to all intents and purposes as a part of the Constitution of the United States."

As noted in this proclamation, the State of Georgia was a new state which had ratified the Fourteenth Amendment (on July 21, 1868). This made a total of 30 states which had ratified the Fourteenth, and even with the states of Ohio and New Jersey rescinding their ratification of the Fourteenth Amendment being valid, it left 28 states ratifying the Fourteenth Amendment, more than the three-fourths needed for adoption of the Fourteenth Amendment to the Constitution of the United States. **[Footnote 2]** So the joint (or concurrent) resolution of the Senate and House was unnecessary. **[Footnote 3]**

The Supreme Court of the United States decided to wait for another state to ratify the Fourteenth Amendment before they made any comments on it. On October 8, 1868, the State of Virginia ratified the Fourteenth Amendment. Virginia became the 31st state to do so. Again, even with the States of Ohio and New Jersey rescinding their ratifications, this left 29 states which had ratified the Fourteenth Amendment. At this point, it was all over. Only 28 states were needed. Now there were 29 states, one more than necessary in case of an error with any of the other 28 states.

The Supreme Court acted. In the cases of *Woodruff v. Parham* (75 U.S. 123) and *Hinson v. Lott* (75 U.S. 148), **[Footnote 4]** both decided on the same day (November 8, 1868), it is stated:

"The case being thus:

The Constitution thus ordains: 'Congress shall have power to regulate commerce with foreign nations and among the several States.' 'No State shall levy any imposts or duties on imports or exports.' 'The citizens of each State shall be entitled to all the immunities and privileges of citizens OF the several States'." Statement of the Case, both cases, pages 123 and 148 respectively.

"Mr. P. Philips, contra:

(2nd para) The Constitution cannot be construed to present such a result. When it declared that 'the citizens of each State shall be entitled to all the immunities and privileges of citizens OF the several States,' it provided for harmony by securing equality." Statement of the Case, *Woodruff*, pages 127-128

> "Mr. Campbell contended that this 13th section of the act in question was a plain violation of the Constitution; as well of that provision of it which says that 'no State shall levy any imposts on imports,' as of that other which declares ' that the citizens of each State shall be entitled to all the immunities and privileges of citizens OF the several States.' Moreover, the State act regulated interstate commerce." Statement of the Case, *Hinson*, page 150. **[Footnote 5]**

In these two cases, the Supreme Court gave notice that there was a new citizen under the Constitution of the United States, a citizen of the several States. **[Footnote 6]** Article IV, Section 2, Clause 1 had been modified by the Fourteenth Amendment. Before, it was the Comity Clause, now it was to be a Citizenship Clause. **[Footnote 7]**

It is to be noted that Justice Miller, who wrote the majority opinions in these two cases, wrote the majority opinions in the *Slaughterhouse Cases* (83 U.S. 36) and *Bradwell v. State of Illinois* (83 U.S. 130). In the *Slaughterhouse Cases*, at page 75 there is the following:

> "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.' "

Prior to this page there is the following at page 74:

> "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 (first section, second clause), 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."

A federal case decided after *Woodruff* and before the *Slaughterhouse Cases* removes any doubt. In *The Insurance Company v. The City of New Orleans* (1 5th. Jud. Cir. 85, 1870) at pages 86 through 88, Judge Woods examines if a corporation is a citizen of the several States, under Article IV, Section 2, Clause 1 of the Constitution of the United States or if it is a citizen of the United States under the first section of the Fourteenth Amendment. He writes:

> "The first question presented for adjudication is: Admitting the tax to be unequal, is the ordinance providing for its levy and enforcement in violation of the 1st section of the 14th amendment to the constitution of the United States, especially the last clause of the section? The section reads as follows: '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. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'
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> The complainant, to be entitled to the protection of this constitutional provision, must

be either a citizen of the United States or a person in the sense in which that term is used in this section.

It has been repeatedly held, by the supreme court of the United States, that corporations were not citizens of the several states in such sense as to bring them within the protection of that clause in the constitution of the United States (section 2, article IV), which declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens OF the several states;' *Bunk of Augusta v. Earle,* 13 Peters, 586; *Paul v. Virginia,* 8 Wallace, 177. **[Footnote 8]**

Are corporations citizens of the United States within the meaning of the constitutional provision now under consideration? It is claimed in argument that, before the adoption of the 14th amendment, to be a citizen of the United States, it was necessary to become a citizen of one of the states, but that since the 14th amendment this is reversed, and that citizenship in a state is the result and consequence of the condition of citizenship of the United States.

Admitting this view to be correct, we do not see its bearing upon the question in issue. Who are citizens of the United States, within the meaning of the 14th amendment, we think is clearly settled by the terms of the amendment itself. '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.' No words could make it clearer that citizens of the United States, within the meaning of this article, must be natural, and not artificial persons; for a corporation cannot be said to be born, nor can it be naturalized. I am clear, therefore, that a corporate body is not a citizen of the United States as that term is used in the 14th amendment." **[Footnote 9], [Footnote 10]**

A federal case decided after the *Slaughterhouse Cases* gives further support that there are now two citizens under the Constitution of the United States, a citizen of the several States (or states) and a citizen of the United States. In *The United States v. Susan B. Anthony* (11 2nd. Jud. Cir. 200, 1873) **[Footnote 11]** Judge Hunt states:

"After creating and defining citizenship of the United States, the fourteenth amendment provides, that 'no State shall make or enforce any law which shall abridge the privileges or immunities of *citizens of the United States* [emphasis not mine].' This clause is intended to be a protection, not to all our rights, but to our rights as citizens of the United States only; that is, to rights existing or belonging to that condition or capacity. The expression, citizen of a State, used in the previous paragraph, is carefully omitted here. In Article 4, section 2, subdivision 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 **[Footnote 12]** (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 *Slaughter-House Cases,* (16 *Wallace,* 36,) 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. The rights of citizens of the States have been the subject of judicial decision on more than one occasion. *(Corfield v. Coryell*, 4 *Wash. C. C. R.*, 371; *Ward* v. *Maryland*, 12 *Wallace*, 418, 430; *Paul* v. *Virginia*, 8 *Wallace*, 168.) These are the fundamental privileges and immunities belonging of right to the citizens of all free governments, such as the right of life and liberty, the right to acquire and possess property, to transact business, to pursue happiness in his own manner, subject to such restraint as the Government may adjudge to be necessary for the general good." **[Footnote 13]**

Article IV, Section 2, Clause 1 of the Constitution of the United States is now a Citizenship Clause.

Footnotes:

1. The twenty-nine states that ratified the Fourteenth Amendment were:

Connecticut, New Hampshire, Tennessee, New Jersey, Oregon, Vermont, Ohio, New York, Kansas, Illinois, West Virginia, Michigan, Minnesota, Maine, Nevada, Indiana, Missouri, Rhode Island, Wisconsin, Pennsylvania, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Louisiana, South Carolina, and Alabama.

2. "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution . . . which shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States." Article V, Constitution of the United States.

3. It is not the point of this article to show whether or not a State has the right to rescind its ratification of an amendment to the Constitution of the United States or that the concurrent resolution of Congress regarding the Fourteenth Amendment was lawful or not.

4. In *Ward v. State of Maryland* (79 U.S. 418, 1869), it was done in a different manner, to wit:

"The case being this:

The Constitution of the United States, in one place, thus ordains:

'Article IV. Sec. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens IN the several States.' Statement of the Case, page 418.

"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." Opinion, Pages 430-431.

(The author is concluding that Justice Clifford prepared the Statement as he is the Justice who wrote the Opinion.)

In this case, Article IV, Section 2 is cited with no change in wording, however, its meaning has been changed. It is now a citizenship clause for "citizens of the several states." This is done in *Blake v. McClung* (172 U.S. 239, 1898), to wit:

"We must therefore consider whether the statute infringes rights secured to the plaintiffs in error, citizens of Ohio, by the provision of the second section of Article IV of the Constitution of the United States declaring that the citizens of each state shall be entitled to all privileges and immunities of citizens IN the several states. . . .

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. . . . (254-255)

. . . 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." Opinion, pages 247, 254-255, 255

5. It is concluded that Justice Miller prepared both statements to these two cases as he is the Justice who wrote both (majority) opinions. Support for this conclusion is in Justice Miller's opinion in *Woodruff*. At page 140, he writes:

> "The case before us is a simple tax on sales of merchandise, imposed alike upon all sales made in Mobile, whether the sales be made by a citizen of Alabama or of another State, and whether the goods sold are the produce of that State or some other. There is no attempt to discriminate injuriously against the products of other States or the rights of their citizens, and the case is not, therefore, an attempt to fetter commerce among the States, or to deprive the citizens of other States of any privilege or immunity possessed

by citizens of Alabama. But a law having such operation would, in our opinion, be an infringement of the provisions of the Constitution which relate to those subjects, and therefore void."

6. Campbell v. Morris: 3 Harr. & McH., 535 Md. (1797) (Before the 14th Amendment):

"The object of the convention in introducing this clause into the constitution, was to invest the citizens of the different states with the general rights of citizenship; that they should not be foreigners, but citizens. To go thus far was essentially necessary to the very existence of a federate government, and in reality was no more than had been provided for by the first confederation in the fourth article. . . .

The expressions, however, of the fourth article convey no such idea. It does not declare that 'the citizens of each state shall be entitled to all privileges and immunities of the citizens OF the several states.' Had such been the language of the constitution, it might, with more plausibility, have been contended that this act of assembly was in violation of it; but such are not the expressions of the article; it only says that 'The citizens of the several states shall be entitled to all privileges and immunities of citizens IN the several states.' Thereby designing to give them the rights of citizenship, and not to put all the citizens of the United States upon a level." (http://press-pubs.uchicago.edu/founders/documents/a4_2_1s10.html)

7. This was done again by the Supreme Court in the case of *Downham v. Alexandria Council* (77 U.S. 173), to wit:

"The case was thus:

The Constitution by one clause declares that 'Congress shall have power to regulate commerce with foreign nations, and among the several States;' and by another that 'the citizens of each State shall be entitled to all the privileges and immunities of citizens OF the several States." Statement of the Case, Justice Fields, page 173.

8. Paul v. State of Virginia: 75 U.S. 168, 178 (1868) (After *Woodruff*)

> "But in no case which has come under our observation, either in the State or Federal courts, has a corporation been considered a citizen within the meaning of that provision of the Constitution which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens OF the several States."

See also, *Ducat v. Chicago*: 77 U.S. 410, (1869)

The Supreme Court in this case also gave notice that Article IV, Section 2, Clause 1 was modified by the Fourteenth Amendment. To wit:

> "The case was thus: . . . .
>
> **Messrs. Conway Robinson and R. Bowden, for the State of Virginia, contra**:

I. A corporation is a mere legal entity and can have no legal existence outside of the dominion of the State by which it is created. This was decided in *Bank of Augusta v. Earle*, and the case was referred to with approval by Taney, C. J., in delivering the judgment of the court in *Covington Drawbridge Company v. Shepherd*. In this last case, the Chief Justice, in referring to a preceding case, says, that the declaration stated that the corporation itself was a citizen of Indiana. Now, no one, we presume, ever supposed that the artificial being created by an act of incorporation could be a citizen of a State in the sense in which that word is used in the Constitution of the United States, and the averment was rejected because the matter averred was simply impossible. Yet that is one precise position of the appellant here. He insists that a corporation is a citizen of a State within the scope and meaning of the provision of the Constitution: 'That the citizens of each State shall be entitled to all privileges and immunities, of citizens IN the several States.' This court has several times decided that a corporation is not a citizen within the meaning of the Constitution." Statement of the Case, Justice Field, pages 174–175.

"But in no case which has come under our observation, either in the State or Federal courts, has a corporation been considered a citizen within the meaning of that provision of the Constitution, which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens OF the several States. In *Bank of Augusta v. Earle* . . . ." Opinion, Pages 178-179.

9. On this point of law there is the following:

Liverpool Insurance Company v. Massachusetts: 77 U.S. 566, 573 (1870)

"The case of *Paul v. Virginia* (8 Wall. 168) decided that the business of insurance, as ordinarily conducted, was not commerce, and that a corporation of one state, having an agency by which it conducted that business in another state, was not engaged in commerce between the states.

It was also held in that case that a corporation was not a citizen within the meaning of that clause of the Constitution, which declares that the citizens of each state shall be entitled to all the privileges and immunities of citizens in (should be OF, see **Footnote 8**) the several states, and that a corporation created by a state could exercise none of the functions or privileges conferred by its charter in any other state of the Union except by the comity and consent of the latter."

(The author wishes to note that Justice Miller wrote this opinion. Why the word "in" is used in the phrase "privileges and immunities of citizens in the several states" is unknown, however, it is incorrect. Considering he used the word "of" in *Woodruff* and uses the word "of" in the *Slaughterhouse Cases*, leads the author to conclude that someone change the word "of" after it was ready for publishing.)

Waters-Pierce Oil Company v. Texas: 177 U.S. 28, 45 (1900)

"And (in *Paul v. Virginia*, 8 Wall. 168) it was also decided that a corporation did not have the rights of its personal members, and could not invoke that provision of Section 2, Article IV, 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*

Mining Co. v. Pennsylvania, 125 U.S. 181*; Ducat v. Chicago*, 10 Wall. 410. And it has since been held in *Blake v. McClung*, 172 U.S. 239, and in *Orient Insurance Company v. Daggs*, 172 U.S. 557, that the prohibitive words of the Fourteenth Amendment have no broader application in that respect."

In Re Speed's Estate: 74 N.E. 809, 811 (1905)

"It has frequently been declared to be a well-established principle of constitutional law that a corporation is not a 'citizen,' within the meaning of the first clause of section 2 of article 4 of the Constitution of the United States, which declares the citizens of each state shall be entitled to all privileges and immunities of citizens OF the several states. *Ducat v. City of Chicago*, 48 111. 172, 95 Am. Dec. 529; *Same v. Same*, 10 Wall. 410, 19 L. Ed. 972; 10 Cyc. 150; *Tatem v. Wright*, 23 N. J. Law, 429; *Pembina Con. Silver Mining Co. v. Pennsylvania*, 125 U. S. 181, 8 Sup. Ct. 737, 31 L. Ed. 650; *Humphreys v. State (Ohio)*, 70 N. E. 957. . . . [The first sentence of the first section of said fourteenth amendment] declares that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States. The subsequent declaration, preserving unabridged the privileges and immunities of citizens of the United States, has reference only to the natural persons declared to be citizens by the preceding sentence. . . . A corporation is a mere creature of the local law whereby it has its existence. It is not a citizen of the United States, and has no right, because of its chartered powers, to exercise corporate power beyond the territorial limits of the state which created it."

Therefore, a corporation is not a 'citizen' within Const. U. S. art. 4, §2, providing that the "citizens of each state shall be entitled to all the privileges and immunities of citizens OF the several states," nor within the Fourteenth Amendment, §1. providing that "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, and that no state shall abridge the privileges or immunities of citizens of the United States."

10. There is also the following:

Loverin & Browne Company v. Travis: 115 N.W. 829, 831 (1908)

"Section 1770b has been several times considered by this court, and upheld to the full extent of its terms. It is enacted under the undoubted power of every state to impose conditions in absolute discretion upon granting the privilege of doing business in this state to any foreign corporation. *Paul v. Virginia*, 8 Wall. (U. S.) 168, 19 L. Ed. 357; *Chicago T. & T. Co. v. Bashford*, 120 Wis. 281, 97 N. W. 940. That power is not restrained by section 2, art. 4, of the federal Constitution, providing that the citizens of each state shall be entitled to all the privileges and immunities of citizens OF the several states, nor by section 1, Amend. 14, to that Constitution, providing that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, because foreign corporations are not citizens. *Paul v. Virginia*, supra; *Chicago T. & T. Co. v. Bashford*, supra."

11. The more familiar citation to this case is:

United States v. Susan B. Anthony: 24 Fed. Cas. 829, 830 (Case No. 14,459) (1873).

12. "Citizens of the States" is equivalent to "citizens 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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> 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'."

13. On this point of law there is the following:

United States v. Harris: 106 U.S. 629, 643 (1883)

"There is only one other clause in the Constitution of the United States which can in any degree be supposed to sustain the section under consideration -- namely the second section of Article IV, which declares that:

'The citizens of each state shall be entitled to all the privileges and immunities of citizens OF the several states.'

But this section, like the Fourteenth Amendment, is directed against state action. Its object is to place the citizens of each state upon the same footing with citizens of other states, and inhibit discriminative legislation against them by other states. *Paul v. Virginia*, 8 Wall. 168."

Maxwell v. Dow: 176 U.S. 581, 596 (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 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 (Fourteenth Amendment, section 1), 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."

Cite as: "The Effects of the Fourteenth Amendment on the Constitution of the United States: More" Dan Goodman, at the Minuteman Page (http://mhkeehn.tripod.com)

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