

Questions and Answers on Citizenship in the United States

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Q. What are the privileges and immunities of citizenship in the country of the United States?

A. Since the adoption of the Fourteenth Amendment, there are three sets of privileges and immunities in the United States. The three sets of privileges and immunities are: privileges and immunities of a citizen of the United States; privileges and immunities of a citizen of a State, and privileges and immunities of a citizen of the several States.

Privileges and immunities of a citizen of the United States are at Section 1, Clause 2 of the Fourteenth Amendment:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

Privileges and immunities of a citizen of a State are at the constitution and laws of a particular State:

“. . . Whatever may be the scope of section 2 of article IV — and we need not, in this case enter upon a consideration of the general question — the Constitution of the United States does not make the privileges and immunities enjoyed by the citizens of one State under the constitution and laws of that State, the measure of the privileges and immunities to be enjoyed, as of right, by a citizen of another State under its constitution and laws.” *McKane v. Durston*: 153 U.S. 684, at 687 (1894).

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

“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.’ ” Maxwell v. Dow: 176 U.S. 581, at 592 (1900).

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Privileges and immunities of a citizen of the United States “owe their existence to the Federal government, its National character, its Constitution, or its laws.”

Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 79 (1873).

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Privileges and immunities of a citizen of a State are expressed in the constitution and laws of a particular State. McKane v. Durston; supra.

Privileges and immunities of a citizen of the several States are those described in Corfield v. Coryell:

“In the Slaughter House Cases, 16 Wall. 36, 76, in defining the privileges and immunities of citizens of the several States, this is quoted from the opinion of Mr. Justice Washington in Corfield v. Coryell, 4 Wash. Cir. Ct. 371, 380.” Hodges v. United States: 203 U.S. 1, at 15 (1906).

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Q. What is the difference between privileges and immunities under Article IV, Section 2, Clause 1 of the Constitution of the United States of America and the Fourteenth Amendment?

A. The Supreme Court, in the Slaughterhouse Cases, held that there are now two citizens under the Constitution of the United States of America, a citizen of the United States, at Section 1 of the Fourteenth Amendment, and also a citizen of the several States, at Article IV, Section 2, Clause 1 of the Constitution:

“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 of the Fourteenth Amendment), 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 (privileges and immunities) of citizens of the several States. . . .

The first occurrence of the words ‘privileges and immunities’ in our

constitutional history, is to be found in the fourth of the articles of the old Confederation. . . .

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.'" *Slaughterhouse Cases*: 83 U.S. (16 Wall.) 36, at 74, 75 (1873).

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Further:

"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.'" *Maxwell v. Dow*: 176 U.S. 581, at 592 (1900).

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Therefore, there is a citizen of the United States, under Section 1 of the Fourteenth Amendment and also a citizen of the several States, under Article IV, Section 2, Clause 1 of the Constitution of the United States of America.

Thus, the distinction between the privileges or immunities of the Fourteenth Amendment and the privileges and immunities of Article IV, Section 2, Clause 1 of the Constitution is that privileges and immunities of the Fourteenth Amendment belong to a citizen of the United States whereas privileges and immunities of Article IV, Section 2, Clause 1 of the Constitution ("privileges and immunities of citizens OF the several States [*Slaughterhouse Cases*, supra.]) belong to a citizen of the several States.

It is to be added that privileges and immunities of a citizen of a State are at the constitution and laws of a particular State:

". . . Whatever may be the scope of section 2 of article IV — and we need not, in this case enter upon a consideration of the general question — the Constitution of the United States does not make the privileges and immunities enjoyed by the citizens of one State under the constitution and laws of that State, the measure of the

privileges and immunities to be enjoyed, as of right, by a citizen of another State under its constitution and laws.” McKane v. Durston: 153 U.S. 684, at 687 (1894).

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Q. What are the privileges and immunities of a citizen of the United States under the Fourteenth Amendment?

A. “One of these privileges is conferred by the very article (Fourteenth Amendment) under consideration. It is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a bond fide residence therein, with the same rights as other citizens of that State.” Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 80 (1873).

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“One of these is well described in the case of *Crandall v. Nevada*, 6 Wall. 36. It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, ‘to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the subtreasuries, land offices, and courts of justice in the several States. . . .

Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States. The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of habeas corpus, are rights of the citizen guaranteed by the Federal Constitution. The right to use the navigable waters of the United States, however, they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States, and not citizenship of a State. . . . To these may be added the rights secured by the thirteenth and fifteenth articles of amendment, and by the other clause of the fourteenth, next to be considered (“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 its law.”). Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 79 thru 80 (1873).

<http://books.google.com/books?id=DkgFAAAAYAAJ&pg=PA79#v=onepage&q&f=false>

See also *Maxwell v. Dow*, 176 U.S 581 (1900).

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A citizen of the United States also has common privileges and immunities, when also a citizen of a State, under Section 1, Clause 2 of the Fourteenth Amendment:

"2. As applied to a citizen of another State, or to a citizen of the United States residing in another State, a state law forbidding sale of convict-made goods does not violate the privileges and immunities clause[s] of Art. IV, § 2 and the [privileges or immunities clause of the] Fourteenth Amendment of the Federal Constitution, if it applies also and equally to the citizens of the State that enacted it. P. 437." *Syllabus, Whitfield v. State of Ohio*: 297 U.S. 431 (1936).

"1. 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~~] or 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, 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. *Slaughter-House Cases*, 16 Wall. 36, 1 Woods 21, 28; *Bradwell v. State*, 16 Wall. 130, 138." *Opinion, Whitfield v. State of Ohio*: 297 U.S. 431, at 437 (1936).

<http://supreme.justia.com/us/297/431/> (Syllabus)

http://scholar.google.com/scholar_case?case=13866319457277062642
(Opinion)

Common privileges and immunities are:

"... [T]hose privileges and immunities which are common to the citizens in the latter States under their constitution and laws by virtue of their being citizens." *Paul v. State of Virginia*: 75 U.S. 168, at 180 (1868).

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Q. What are the privileges and immunities given by Justice Washington in *Corfield v. Coryell*?

A. The privileges and immunities which Justice Washington opined in *Corfield v. Coryell*, before the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, were fundamental rights belonging to a citizen of any particular State.

However, after the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, these fundamental rights now belong to a citizen of the several States, under Article IV, Section 2, Clause 1:

“In the *Slaughter House Cases*, 16 Wall. 36, 76, in defining the privileges and immunities of citizens of the several States, this is quoted from the opinion of Mr. Justice Washington in *Corfield v. Coryell*, 4 Wash. Cir. Ct. 371, 380.” Hodges v. United States: 203 U.S. 1, at 15 (1906).

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“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.’ ” Maxwell v. Dow: 176 U.S. 581, at 592 (1900).

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“ . . . [W]hat are the privileges and immunities of citizens [of (*Slaughterhouse Cases*)] the several States? . . . 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.” Corfield v. Coryell: 4 Wash. Cir. Ct. 371, 380 (1825).

<http://books.google.com/books?id=CFwPAAAAYAAJ&pg=PA453#v=onepage&q&f=false>

Q. Are privileges and immunities of a citizen of a particular State related to fundamental rights?

A. Before the Fourteenth Amendment and the *Slaughterhouse Cases*, privileges and immunities of a citizen of a particular State included fundamental privileges and immunities, common privileges and immunities, and special privileges and immunities.

Fundamental privileges and immunities were those described in *Corfield v. Coryell*:

“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 fundamental.” *Corfield v. Coryell*: 4 Wash. Cir. Ct. 371, 380 (1825).

<http://books.google.com/books?id=CFwPAAAAAYAAJ&pg=PA453#v=onepage&q&f=false>

Common privileges and immunities:

“But the privileges and immunities secured to citizens of each State in the several States, by the provision in question (Article IV, Section 2, Clause 1), are those privileges and immunities which are common to the citizens in the latter States under their constitution and laws by virtue of their being citizens.” *Paul v. State of Virginia*: 75 U.S. 168, at 180 (1868).

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And special privileges and immunities:

“Special privileges enjoyed by citizens in their own States are not secured in other States by this provision (Article IV, Section 2, Clause 1).” *Paul v. State of Virginia*: 75 U.S. 168, at 180 (1868).

<http://books.google.com/books?id=-bwGAAAAAYAAJ&pg=PA180#v=onepage&q&f=false>

See also, *McCready v. State of Virginia*: 94 U.S. 391, at 395 thru 396 (1876).

<http://books.google.com/books?id=Wb4GAAAAAYAAJ&pg=PA395#v=onepage&q&f=false>

However, after the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, fundamental privileges and immunities, under *Corfield v. Coryell*, were transferred from a citizen of a particular State to a citizen of the several States:

“In the *Slaughter House Cases*, 16 Wall. 36, 76, in defining the privileges and immunities of citizens of the several States, this is quoted from the opinion of Mr. Justice Washington in *Corfield v. Coryell*, 4 Wash. Cir. Ct. 371, 380.” Hodges v. United States: 203 U.S. 1, at 15 (1906).

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“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.’ ” Maxwell v. Dow: 176 U.S. 581, at 592 (1900).

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Therefore, privileges and immunities of a citizen of a particular State have nothing to do with fundamental privileges and immunities described under *Corfield v. Coryell*, since the adoption of the Fourteenth Amendment and the *Slaughterhouse Cases*, since such privileges and immunities now belong to a citizen of the several States.

Cite as: “Questions and Answers on Citizenship in the United States” Dan Goodman, at the Minuteman Page (<http://mhkeehn.tripod.com>)

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