

The Fourteenth Amendment's effect on Article IV, Section 2, Clause 1 of the Constitution of the United States of America

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Before the Fourteenth Amendment, there was only a citizen of a State and a citizen of the United States. One born in a State of the Union, was, in general, a citizen of that particular State. As such he or she was entitled to the special privileges and immunities of that particular State, and was entitled to the common privileges and immunities of citizens of another State in which he or she was in, and had fundamental privileges and immunities recognized under Article IV, Section 2, Clause 1. Like the predecessor clause from the Articles of Confederation, a citizen of a State, was also a citizen of the United States. The only difference now, under the Constitution before the Fourteenth Amendment, was that the several States, under the Articles of Confederation, gave up a part of their sovereignty, in order to form a more perfect Union, under the Constitution. A citizen of the United States, under the Articles of Confederation was recognized as such, under international law. So was the citizen of the United States, under the Constitution. Thus, under the Constitution of the United States of America, a citizen of a State, before the Fourteenth Amendment, was a citizen of the United States, under Article IV, Section 2, Clause 1 of the Constitution, and because of this, was recognized as such; that is, a citizen of the United States, under the law of nations (international law).

In addition, the privileges and immunities of citizens in the several States, under Article IV, Section 2, Clause 1 of the Constitution, were in essence, the privileges and immunities of a citizen of the United States, under international law; that is, the fundamental privileges and immunities of a citizen of a particular State.

What the Fourteenth Amendment did was to transfer the privileges and immunities of a citizen of the United States from Article IV, Section 2, Clause 1 ("privileges and immunities of citizens in the several States") of the Constitution to Section 1, Clause 2 of the Fourteenth Amendment ("privileges or immunities of citizens of the United States"). So a citizen of a State, under Article IV, Section 2, Clause 1 remained. This is in harmony with the holding in the *Slaughterhouse Cases* that citizenship of a State is now separate and distinct from citizenship of the United States. That a citizen of a State is now separate and distinct from a citizen of the United States. A citizen of a State is at Article IV, Section 2, Clause 1 of the Constitution, while a citizen of the United States is at Section 1 of the Fourteenth Amendment.

It is to be noted that a citizen of the United States can become also a citizen of a State under Section 1 of the Fourteenth Amendment; that is, a citizen of the United States AND a citizen of a State. In this case, there would be a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, and also, a citizen of the United States AND a citizen of a State, under Section 1, Clause 1 of the Fourteenth Amendment. This is shown in the following case from the Supreme Court of the United States:

“The bill filed in the Circuit Court by the plaintiff, McQuesten, alleged her to be ‘a citizen of the United States and of the State of Massachusetts, and residing at Turner Falls in said State,’ while the defendants Steigleder and wife were alleged to be ‘citizens of the State of Washington, and residing at the city of Seattle in said State.’ “ *Statement of the Case, Steigleder v. McQuesten*: 198 U.S. 141 (1905).

“The averment in the bill that the parties were citizens of different States was sufficient to make a prima facie case of jurisdiction so far as it depended on citizenship.” *Opinion, Steigleder v. McQuesten*: 198 U.S. 141, at 142 (1905).

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A citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, before the Fourteenth Amendment, was recognized as a citizen of the United States, under international law. However, the Fourteenth Amendment, as mentioned, transferred a citizen of the United States (with its privileges and immunities) from Article IV, Section 2, Clause 1 of the Constitution to Section 1, Clause 2 of the Fourteenth Amendment. **[Footnote 1]** A citizen of the United States is still recognized as such, under international law. A citizen of a State is not. Even though a particular State is sovereign, it is not independent, each is a member of a Union (whereas under the Articles of Confederation, they were a part of a league). Because of this they are not nations, and therefore their citizens are not recognized as citizens of a nation, under the law of nations (international law).

The solution was to create another citizen under the Constitution, which would be recognized under international law as such. The Supreme Court, in the *Slaughterhouse Cases*, decided to modified Article IV, Section 2, Clause 1 of the Constitution, to give effect to the Fourteenth Amendment. One word was changed. In Article IV, Section 2, Clause 1 “citizens in the several States” was changed to “citizens of the several States”. This is shown in the *Slaughterhouse Cases*, at page 75:

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.'
“ [Footnote 2]

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Therefore, there are now privileges and immunities of citizens of the several States. [Footnote 3, see *Maxwell v. Dow*] This is shown in the *Slaughterhouse Cases*, 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 State, and does not speak of those (privileges and immunities) of citizens **OF** the several States. The argument, however, in favor of 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.' “

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And, in the case of *Corfield v. Coryell*, decided by Mr. Justice Washington, cited in the *Slaughterhouse Cases*, “The inquiry, is, what are the privileges and immunities of citizens in the several States?” was changed to, at page 76:

“Fortunately we are not without judicial construction of this clause of the Constitution. The first and 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.

‘The inquiry,’ he says, ‘is, what are the privileges and immunities of citizens **OF** the several States?’ “ [Footnote 2]

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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. Privileges and immunities of a citizen of a

State are to be found in 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 the 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 (1984).

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

References to “citizens of the several States” **[Footnote 3]** can be found in the following cases from the Supreme Court of the United States:

(a) "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?

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. . . .

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).

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(b) “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, at 526 thru 527 (1919).

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Footnotes:

1. The privileges and immunities transferred with a citizen of the United States were common privileges and immunities. This is shown in the case of *Whitfield v. State of Ohio* (297 U.S. 431 1936) at page 437:

“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 clauses of Art. IV., Sec. 2 and the Fourteenth Amendment of the Federal Constitution if it applies also and equally to the citizens of the State that enacted it." *Syllabus, Whitfield v. State of Ohio*: 297 U.S. 431 (1936).

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

The effect of the similar clause found in the Fourth Article of the Constitution (section 2), as applied to these facts, would be the same, since that clause is directed against **discrimination by a state in favor of its own citizens and against the citizens of other states**. *Slaughterhouse Cases* (Live-Stock Dealers' & Butchers' Ass'n v. Crescent City Live-Stock Landing & Slaughter-House Co.), Fed.Cas. No. 8408, 1 Woods 21, 28; *Bradwell v. State of Illinois*, 16 Wall. 130. 138." *Opinion, Whitfield v. State of Ohio*: 297 U.S. 431, at 437 (1936).

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

Fundamental privileges and immunities were not. This is reflected in the fact that *Corfield v. Coryell* was altered in the *Slaughterhouse Cases* to read "what are privileges and immunities of citizens OF the several States?" Fundamental privileges and immunities remained in Article IV, Section 2, Clause 1 of the Constitution, which, as shown in the *Slaughterhouse Cases*, is to be now read as "[t]he citizens of each State shall be entitled to all the privileges and immunities of citizens OF the several States." Fundamental privileges and immunities now belong to a citizen of the several States, whereas before the Fourteenth Amendment, they belong to a citizen of the United States, who was a citizen of a particular State. It is to be added that a citizen of the several States, as a citizen of a State, was still entitled to common privileges and immunities. This was also decided in the *Slaughterhouse Cases*.

A citizen of the United States has common privileges and immunities under Section 1, Clause 2 of the Fourteenth Amendment. A citizen of the United States also has additional privileges and immunities. Some are discussed in both the *Slaughterhouse Cases* and *Maxwell v. Dow*. In general, these additional privileges and immunities arise "out of the nature and essential character of the Federal government, and granted or secured by the Constitution" (*Duncan v. State of Missouri*: 152 U.S. 377, at 382 1894) or, in other words, "owe their existence to the

Federal government, its National character, its Constitution, or its laws”
(*Slaughterhouse Cases*: 83 (16 Wall.) U.S. 38, at 79 1873).

2. See also *Maxwell v. Dow* (176 U.S. 581, at 588 1900) where it is stated:

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

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3. This phrase “citizens of the several States” was used before the Fourteenth Amendment. It had a different meaning then, that being the citizens of each particular State, taken together. For example, see Justice Curtis dissenting opinion in the case of *Dred Scott*. Now, however, it means citizens of all the several States, generally. For clarity, the author uses the term “a citizen of the several States” rather than “citizens of the several States” to denote one who is a citizen of all the several States, generally. This is done indirectly in *Harris v. Balk* (198 U.S. 215, at 233 1905):

“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, at 223 (1905).

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The Supreme Court, in the case of *Cole v. Cunningham* (133 U.S. 107 at 113 thru 114 1890), however, uses the term “citizens of the several States”:

“The intention of section 2 of Article 4 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.”

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

“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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