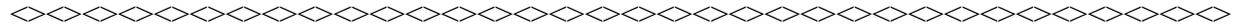


A Look At Corfield

(On Citizenship)

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Abstract:

Justice Bushrod Washington’s determination of the Privileges and Immunities clause of Article IV, Section 2, Clause 1 of the Constitution of the United States is still the first, and leading opinion, on this clause of the Constitution.

Corfield before and after the Fourteenth Amendment relates to Article IV, Section 2, Clause 1 of the Constitution of the United States, but now it describes the privileges and immunities of a citizen of the several States, whereas before the Fourteenth Amendment, it described the privileges and immunities a citizen of one state had in another State.



The Privileges and Immunities clause of Article IV, at Section 2, Clause 1 originally came from the Articles of Confederation. [\(Note 1\)](#)

Article IV, Section 2, Clause 1 reads:

“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”

Its purpose “was to help fuse into one Nation a collection of independent, sovereign States.” Toomer v. Witsell: 334 U.S. 385, at 395 (1948). “It was undoubtedly the object of the clause in question 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, at 180 (1869).

What are the privileges and immunities of citizens in the several States? The answer to this question came from a Supreme Court Justice, however, he was sitting on the bench of a circuit

court in Pennsylvania (that is, riding circuit). Justice Bushrod Washington, in *Corfield v. Coryell* ([Note 2](#)) wrote:

“The inquiry is, what are the privileges and immunities of citizens **IN** (emphasis mine) the several States? 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 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. The right of a citizen of one State to pass through, or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; 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 expressions of the preamble of 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.’ “

"Washington's *Corfield* opinion not only served as a leading interpretive authority for the Privileges **and** Immunities Clause (of Article IV, Section 2), but also greatly influenced the drafting of the later Privileges **or** Immunities Clause of the Fourteenth Amendment. In the minds of the drafters of that Amendment, *Corfield* provided the most authoritative interpretation of the expression 'privileges and immunities of citizens.' Indeed, Washington's pronouncement was the legal authority to which the congressional framers most frequently appealed in describing the constitutional privileges of citizenship. Most notably, while introducing the proposed Amendment to the Senate, Jacob Howard explained the import of the 'privileges and immunities of citizens' secured therein by means of a lengthy quotation from *Corfield*.

Washington's exposition of 'privileges and immunities of citizens' is, therefore, essential to American constitutional studies, for it provides evidence crucial to any inquiry into the roots of two different clauses of the Constitution: the Privileges **and** Immunities Clause of Article IV and the Privileges **or** Immunities Clause of the Fourteenth Amendment. Through *Corfield*, Washington both became the leading judicial expounder of the former provision and posthumously influenced the drafting of the latter. Surely, if one is to understand the history of

the privileges of citizenship, as guaranteed in both the original and the amended Constitution, one must understand *Corfield*." [\(Note 4\)](#)

In the *Slaughterhouse Cases*, the Supreme court held that privileges and immunities of a citizen of the several States [\(Note 5\)](#), under Article IV, Section 2, Clause 1 of the Constitution of the United States, were now those described in *Corfield*; whereas, privileges and immunities of a citizen of the United States, under the Fourteenth Amendment, are only such as owe "their existence to the federal government, its national character, its Constitution, or its laws [\(Note 7\)](#)."

"Fortunately we are not without judicial construction of this clause of the Constitution. 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.

'The inquiry,' he says, 'is, what are the privileges and immunities of citizens **OF** (emphasis mine) 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, at pages 75-76.

So *Corfield* before and after the Fourteenth Amendment relates to Article IV, Section 2, Clause 1 of the Constitution of the United States, but now it describes the privileges and immunities of a citizen of the several States, whereas before the Fourteenth Amendment, it described privileges and immunities a citizen of one state had in another State. [\(Note 8\)](#)

Notes:

(1) "The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, **the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States**; and the people of each State shall enjoy free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State, of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them." Article IV, Section 1, Clause 2 of the [Articles of Confederation](#).

(2) Listed are two citations to *Corfield v. Coryell*. Both relate to the same opinion, however, one states 1825, the other 1823. The author tends to lean to 1825, as the Syllabus for that case (the other case not having a Syllabus) contains information with that year in it. The Supreme Court of the United States has cited both with each year. (Note 3) The citations are:

Corfield v. Coryell: 4 Wash. C.C. 371 (1825)

Source: Cases on Constitutional Law, James Bradley Thayer, 1894, pp. 453-456.

http://books.google.com/books?id=CFwPAAAAYAAJ&printsec=titlepage&source=gbs_summary_r&cad=0#PPA453,M1

Corfield v. Coryell: (C.C.E.D. Pa.) 6 Fed. Cas. 546, (No. 3230) (1823)

Source: **The Founders' Constitution**, a joint venture of the University of Chicago Press and the Liberty Fund.

http://press-pubs.uchicago.edu/founders/print_documents/a4_2_1s18.html

(3) The cases are:

Zobel v. Williams: 457 U.S. 55, at page 80 (1982) -

“Early opinions by the Justices of this Court also traced a right to travel or migrate interstate to Art. IV's Privileges and Immunities Clause. In ***Corfield v. Coryell*, 6 F.Cas. 546, 552 (No. 3,230) (CC ED Pa. 1823)**, for example, Justice Washington explained that the Clause protects the "right of a citizen of one state to pass through, or to reside in any other state."

Baldwin v. Fish & Game Commission of Montana: 436 U.S. 371, at page 384 (1978) -

“Many of the early cases embrace the concept that the States had complete ownership over wildlife within their boundaries, and, as well, the power to preserve this bounty for their citizens alone. It was enough to say ‘that, in regulating the use of the common property of the citizens of [a] state, the legislature is [not] bound to extend to the citizens of all the other states the same advantages as are secured to their own citizens.’ ***Corfield v. Coryell*, 6 F.Cas. 546, 552 (No. 3,230) (CC ED Pa. 1825)**. It appears to have been generally accepted that, although the States were obligated to treat all those within their territory equally in most respects, they were not obliged to share those things they held in trust for their own people. In *Corfield*, a case the Court has described as ‘the first, and long the leading, explication of the [Privileges and Immunities] Clause,’ see *Austin v. New Hampshire*, 420 U.S. 656, at 661, Mr. Justice Washington, sitting as Circuit Justice, although recognizing that the States may not interfere with the ‘right of a citizen of one

state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; 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’ nonetheless concluded that access to oyster beds determined to be owned by New Jersey could be limited to New Jersey residents. 6 F. Cas. at 552.”

Candian Northern Railroad Company v. Eggen: 252 U.S. 553, at page 560 (1920) –

“This Court has never attempted to formulate a comprehensive list of the rights included within the ‘privileges and immunities’ clause of the Constitution, Article IV, §2, but it has repeatedly approved as authoritative the statement by Mr. Justice Washington, in 1825, in *Corfield v. Coryell*, 4 Wash. C.C. 371 (the first federal case in which this clause was considered), saying: ‘We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental.’ “

United States v. Wheeler: 254 U.S. 281, at pages 293 and 296 (1920) –

“In all the states, from the beginning down to the adoption of the Articles of Confederation, the citizens thereof possessed the fundamental right, inherent in citizens of all free governments, peacefully to dwell within the limits of their respective states, to move at will from place to place therein, and to have free ingress thereto and egress therefrom, with a consequent authority in the states to forbid and punish violations of this fundamental right. *Corfield v. Coryell*, 4 Wash. C.C. 371, 380, 381; *Slaughterhouse Cases*, 83 U.S. 36.

In the *Slaughterhouse Cases*, 83 U.S. 36, 75-76, (Note 6, para 2) the Court, after reciting both the provisions of Article IV of the Confederation and Article IV, §2, of the Constitution, said:

‘There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the article of the Confederation, we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase.

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.’ “

(4) Excerpt from Texas Law Review, “*Corfield v. Coryell* and the Privileges and Immunities of American Citizenship,” David R. Upham, Volume 83, at page 1484, April 2005.

<http://www.utexas.edu/law/journals/tlr/abstracts/83/83Upham.pdf>

(5) The Supreme Court decided in the *Slaughterhouse Cases* that because of the Fourteenth Amendment there were now two separate and distinct citizens under the Constitution of the United States; a citizen of the United States, under the Fourteenth Amendment; and a citizen of the several States, under Article IV, Section 2, Clause 1 ([Note 6](#)) The last was later reaffirmed in *Cole v. Cunningham*:

“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).

In addition, in the *Civil Rights Cases*, the Supreme Court states the following on the first section of the Fourteenth Amendment:

“The first section of the Fourteenth Amendment (which is the one relied on), **after declaring who shall be citizens of the United States, and of the several states**, is prohibitory in its character, and prohibitory upon the States. It declares that:

‘No State shall make or enforce any law which shall abridge the privileges 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.’ “ *Civil Rights Cases*: 109 U.S. 3, 10-11 (1883).

(6) “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.” *Slaughterhouse Cases*: 83 U.S. 36, page 74.

And, “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** (emphasis mine) the several States.’” *Slaughterhouse Cases*: 83 U.S. 36, page 75.

(7) *Slaughterhouse Cases*, 83 U.S. 36, at page 79.

(8) *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** (emphasis mine) 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** (emphasis mine) 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

Further Readings:

Bushrod Washington (Justice), The Edinburgh Encyclopedia, David Brewster, Volume 13, page 464, Published by Joseph and Edward Parker, William Brown, printer, Philadelphia, 1832

http://books.google.com/books?id=O4wEAAAAYAAJ&printsec=titlepage&source=gb_s_summary_r&cad=0#PPA464,M1

Bushrod Washington (Justice), Encyclopedia VBXML

http://encyclopedia.vbxml.net/Bushrod_Washington