

# Two citizens under the Constitution, and not the Fourteenth Amendment

©2009 Dan Goodman

---

## Author's Note:

Citizenship under the Constitution was changed by the Fourteenth Amendment. Before the Fourteenth Amendment there was only one class of citizens under the Constitution of the United States. After the adoption of the Fourteenth Amendment, the Supreme Court, in the *Slaughterhouse Cases*, decided that there now were two separate and distinct citizens under the Constitution of the United States.

√

---

Citizenship under the Constitution was changed by the Fourteenth Amendment. Before the Fourteenth Amendment there was only one class of citizens under the Constitution of the United States. After the adoption of the Fourteenth Amendment, the Supreme Court, in the *Slaughterhouse Cases*, decided that there now were two separate and distinct citizens under the Constitution of the United States.

The Supreme court in the *Slaughterhouse Cases* states that Article IV, Section 2, Clause 1 is to be read as "The Citizens of each State shall be entitled to all Privileges and Immunities **OF** (and not **IN**) the several states." [\[footnote 1\]](#) (83 U.S. 38, at page 75). In addition, at page 74, the Court states:

"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, (first section, second clause) [\[footnote 2\]](#) 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 *Slaughterhouse* court decided that the Fourteenth Amendment created two citizens

under the Constitution of the United States (and not the Fourteenth Amendment): a citizen of the United States, under the Fourteenth Amendment; and a citizen of the several States, under Article IV, Section 2, Clause 1. [\[footnote 3\]](#)

This 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, at pages 113 thru 114 (1890).

And, that *Corfield v. Coryell*, now relates to a citizen of the several states:

"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** 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. [\[footnote 5\]](#)

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. [\[footnote 6\]](#)

---

## Footnotes:

[1] In *Maxwell v. Dow* (176 U.S. 581 (1900), at page 588), there is the following:

"A provision corresponding to this [Justice Miller (*Slaughterhouse Cases*)] 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.'

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

[3] This was done before the *Slaughterhouse Cases* (and after the adoption of the 14th Amendment) in the cases of *Woodruff v. Parham* (75 U.S. 123) and *Hinson v. Lott* (75 U.S. 148), both decided November 8, 1868. In these cases, Justice Miller [\[footnote 4\]](#) wrote in the Statement of the Case:

“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.

[4] 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).

[5] In *Corfield v. Coryell*, Justice Bushrod Washington, wrote:

“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, 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.’ “

[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](http://press-pubs.uchicago.edu/founders/documents/a4_2_1s10.html)

---

**Readings:**

Dan Goodman, “Two Citizens Under the Constitution of the United States”  
(<http://www.jdsupra.com/post/documentViewer.aspx?fid=1b576684-aed8-4f2f-b663-529d35169c65>)

Dan Goodman, “Diversity of Citizenship: Who is a Citizen of a State?”  
(<http://www.jdsupra.com/post/documentViewer.aspx?fid=97ed7a66-525b-4c65-ac84-f150253f2913>)

Dan Goodman, “From Dred Scott to Slaughterhouse”  
(<http://www.jdsupra.com/post/documentViewer.aspx?fid=9d907fef-a73d-44a5-8b90-41dfe28f1fa2>)

Dan Goodman, “Citizen of the several States \_ Settled!”  
(<http://www.jdsupra.com/post/documentViewer.aspx?fid=0172afa1-e76c-42e1-a34f-5c95de71f605>)

Dan Goodman, “The Effects of the Fourteenth Amendment on the Constitution of the United States \_ More”  
(<http://www.jdsupra.com/post/documentViewer.aspx?fid=545bf0b2-1126-40f4-8098-27169f3d5cce>)

Dan Goodman, “The Effects of the Fourteenth Amendment on the Constitution of the United States”

(<http://www.jdsupra.com/post/documentViewer.aspx?fid=fbd578ce-7cda-4fd7-a865-41ceb0839556>)

Dan Goodman, “A Look At Corfield (On Citizenship)”

(<http://www.jdsupra.com/post/documentViewer.aspx?fid=e781853b-af48-4c46-bb13-561f5be7d82b>)