

Citizenship and Allegiance: Before and After the Fourteenth Amendment

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Before the adoption of the Fourteenth Amendment to the Constitution of the United States, one was considered a citizen of a State **as well as** a citizen of the United States. **[Footnote 1]** As such, one owe allegiance to both the individual State government as well as the United States government:

“... Every citizen of a State owes a double allegiance; he enjoys the protection and participates in the government of both the State and the United States.” Houston v. Moore: 18 U.S. (5 Wheat.) 1, at 33; concurring opinion of Justice Johnson (1820).

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“... Every citizen of the United States is also a citizen of a state He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either.” Moore v. State of Illinois: 55 U.S. (Howard 14) 13, at 20 (1852).

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After the ratification of the Fourteenth Amendment; in the *Slaughterhouse Cases*, it was held that citizenship of a State was separate and distinct from citizenship of the United States. That a citizen of a State was separate and distinct from a citizen of the United States. Now a citizen of a State owes allegiance to the individual State government while a citizen of the United States owes allegiance to the United States government **[Footnote 2]**:

“We have in our political system a government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect.” United States v. Cruikshank: 92 U.S. 542, at 549 (1875)

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By force of the Fourteenth Amendment; at Section 1, Clause 1, a citizen of the United States residing in a State of the Union, becomes a citizen of a State also; that is, a citizen of the United States **and** a citizen of a State:

“The fourteenth Amendment declares that citizens of the United States are citizens of the State within which they reside; therefore the plaintiff was, at the time of making her application, a citizen of the United States and a citizen of the State of Illinois.” Bradwell v. State of Illinois: 83 U.S. 130, at 138 (1873)

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As such a citizen of the United States, as a citizen of the United States and a citizen of a State [Footnote 3] owes allegiance to the individual State government and the United States government:

“... [The government of the United States] can neither grant nor secure to its citizens any right or privilege not expressly or by implication placed under its jurisdiction.

[A citizen] of the United States resident within any State [is] subject to two governments: one State, and the other National; but there need be no conflict between the two. The powers which one possesses, the other does not. They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the [citizens] of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amenable to both jurisdictions for one and the same act. Thus, if a marshal of the United States is unlawfully resisted while executing the process of the courts within a State, and the resistance is accompanied by an assault on the officer, the sovereignty of the United States is violated by the resistance, and that of the State by the breach of peace, in the assault. So, too, if one passes counterfeited coin of the United States within a State, it may be an offence against the United States and the State: the United States, because it discredits the coin; and the State, because of the fraud upon him to whom it is passed. This does not, however, necessarily imply that the two governments possess powers in common, or bring them into conflict with each other. It is the natural consequence of a citizenship which owes allegiance to two sovereignties [Footnote 4], and claims protection from both. The citizen cannot complain, because he has voluntarily submitted himself to such a form of government. He owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts for disobedience to its laws. In return, he can demand protection from each

within its own jurisdiction.” United States v. Cruikshank: 92 U.S. 542, at 550 thru 551 (1875). [\[Footnote 5\]](#), [\[Footnote 6\]](#)

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Therefore, in any State of the Union, there are two State citizens, a citizen of a State (**as well as** a citizen of the several States (Article IV, Section 2, Clause 1) [\[Footnote 7\]](#)), and, a citizen of the United States **and** citizen of the State (Fourteenth Amendment). Each owes allegiance to the individual State government. [\[Footnote 8\]](#)

Footnotes:

1. “. . . [I]n examining the form of our government, it might be correctly said that there is no such thing as a citizen of the United States. But constant usage – arising from convenience, and perhaps necessity, and dating from the formation of the Confederacy – has given substantial existence to the idea which the term conveys. A citizen of any one of the States of the Union, is held to be, and called a citizen of the United States, although technically and abstractly there is no such thing. To conceive a citizen of the United States who is not a citizen of some one of the States, is totally foreign to the idea, and inconsistent with the proper construction and common understanding of the expression as used in the Constitution, which must be deduced from its various other provisions. “ Ex parte Frank Knowles: 5 Cal. 300, at 302 (1885)

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2. “This section contemplates two sources of citizenship, and two sources only: birth and naturalization. The persons declared to be citizens are ‘all persons born or naturalized in the United States, and subject to the jurisdiction thereof.’ *The evident meaning of these last words is, not merely subject in some respect or degree to the (territorial) jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance.* And the

words relate to the time of birth in the one case, as they do to the time of naturalization in the other. Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized, either individually, as by proceedings under the naturalization acts, or collectively, as by the force of a treaty by which foreign territory is acquired. “ Elk v. Wilkins: 112 U.S. 94, at 101 thru 102 (1884)

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(See also Title 8 U.S.C. 1448 *Oath of renunciation and allegiance*.)

“... By the cession of California to the United States, the rights of the inhabitants to their property were not affected. They remained as before. Political jurisdiction and sovereignty over the territory and public property alone passed to the United States. *United States v. Percheman*, 7 Pet. 51, 87.” More v. Steinbach: 127 U.S. 70, at 78 (1888). And,

“In pursuing this inquiry, in endeavouring to ascertain the intention of congress, it may not be improper to review the acts which have passed on the subject, in connexion with the actual situation of the persons to whom those acts relate.

Florida was a colony of Spain, the acquisition of which by the United States was extremely desirable. It was ceded by a treaty concluded between the two powers at Washington, on the 22d day of February 1819.

The second article contains the cession, and enumerates its objects. The eighth contains stipulations respecting the titles to lands in the ceded territory.

It may not be unworthy or remark, that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed.” United States v. Percheman: 32 U.S. (7 Peters) 51, at 86 thru 87 (1833).

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3. "... The same person may be at the same time a citizen of the United States and a citizen of a State, but his rights of citizenship under one of these governments will be different from those he has under the other. *Slaughter-House Cases*, 16 Wall. 74." United States v. Cruikshank: 92 U.S. 542, at 549 (1875).

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4. Some may recognize this as the dual sovereignty doctrine. See *United States v. Lanza*: 260 U.S. 377, at 382 thru 384 (1922), *United States v. Wheeler*: 435 U.S. 313 (1978) and *Heath v. State of Alabama*: 474 U.S. 82, at 87 thru 91 (1985). See also, *Printz v. United States*: 521 U.S. 898 (1997).

5. Compare to *Moore v. State of Illinois*: (quoted and cited earlier)

"... Every citizen of the United States is also a citizen of a state He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offence or transgression of the laws of both. Thus, an assault upon the marshal of the United States, and hindering him in the execution of legal process, is a high offence against the United States, for which the perpetrator is liable to punishment; and the same act may be also a gross breach of the peace of the State, a riot, assault, or a murder, and subject the same person to a punishment, under the State laws, for a misdemeanor or felony. That either or both may (if they see fit) punish such an offender, cannot be doubted [Footnote 4]. Yet it cannot be truly averred that the offender has been twice punished for the same offence; but only that by one act he has committed two offences, for each of which he is justly punishable. He could not plead the punishment by one in bar to a conviction by the other; consequently, this court has decided, in the case of *Fox v. The State of Ohio*, (5 How. 432,) that a State may punish the offence of uttering or passing false coin, as a cheat or fraud practiced on its citizens; and, in the case of the *United States v. Marigold*, (9 How. 560,) that Congress, in the proper exercise of its authority, may punish the same act as an offence against the United States." Moore v. State of Illinois: 55 U.S. (Howard 14) 13, at 20 (1852).

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6. The people of the United States are no longer citizens of the United States but are citizens of the several States:

“To determine, then, who were citizens of the United States before the adoption of the [14th] amendment it is necessary to ascertain what persons originally associated themselves together to form the nation, and what were afterwards admitted to membership.

Looking at the Constitution itself we find that it was ordained and established by 'the people of the United States,' and then going further back, we find that these were the people of the several States that had before dissolved the political bands which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth, and that had by Articles of Confederation and Perpetual Union, in which they took the name of 'the United States of America,' entered in to a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted, became ipso facto a citizen - a member of the nation created by its adoption. He was one the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt. Disputes have arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were.” Minor v. Happersett: 88 U.S. (Wall. 21) 162, at 166 thru 167 (1874).

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"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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7. "The intention of section 2, Article IV (of the Constitution), 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." Cole v. Cunningham: 133 U.S. 107, at 113 thru 114 (1890).

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“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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8. It has been shown that a citizen owes allegiance to a sovereign. And in return the citizen can demand protection from the sovereign. This relationship is termed political jurisdiction.

In the United States of America, the United States government is a sovereign and has political jurisdiction, while each individual State of the Union is also a sovereign (*dual sovereignty*) and has political jurisdiction (*United States v. Cruikshank*).

In each State of the Union there are two state citizens; a citizen of the United States, under Section 1 of the Fourteenth Amendment; and a citizen of the several States, under Article IV, Section 2, Clause 1 of the Constitution of the United States (of America).

At present there is no formal requirement for a citizen of the United States or a citizen of the several States to take a pledge of allegiance in any individual State of the Union. Some states do have a pledge of allegiance to their respective flags; for example: Texas, Rhode Island, Virginia, Alabama. In addition, there is no formal requirement for a citizen of the United States born in the United States to take a pledge of allegiance to the United States government. However, a naturalized citizen of the United States is required under 8 U.S.C. 1448 to take an oath of allegiance to the “Constitution and laws of the United States of America.” A naturalized citizen of the several States does not exist currently. As shown, a citizen of the several States is one of the People of the United States (*Blake v. McClung*). So would be a naturalized citizen of the several States. The naturalization laws of the United States government must allow for an alien or foreigner to be able to choose between becoming a citizen of the United States or a citizen of the several States. In addition, an oath of allegiance needs to be taken. The Pledge of Allegiance to the Flag of the United States of America would be an excellent choice.