

Blunders of the Supreme Court of the United States

Part 8

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This work is the eighth in a series of articles the author has written on blunders made by the Supreme Court of the United States. Originally, he decided to write on only two mistakes made by the Supreme Court of the United States. However, the author reconsidered after writing about the third blunder of the Supreme Court of the United States, to not place any limit on the number of blunders he finds with the Supreme Court of the United States.

The eighth blunder of the Supreme Court of the United States is in the case of the *Cramer v. United States* (325 U.S. 1, 1945). The blunder occurs at page 3, wherein, it is written:

“Anthony Cramer, the petitioner, stands convicted of violating Section 1 of the Criminal Code which provides: Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason. [fn 1]

Cramer owed allegiance to the United States. A German by birth, he had been a resident of the United States since 1925 and was naturalized in 1936.”

fn 1: 18 U.S.C. § 1, derived from Act of April 30, 1790, c. 9. § 1, 1 Stat. 112. [An Act for the Punishment of certain Crimes against the United States, 1 Stat. 112 (1790).]

http://scholar.google.com/scholar_case?case=2809896451252158562

The blunder made is that the United States Supreme Court applied this section to a citizen of the United States, under the Fourteenth Amendment, when this section relates to a citizen of a State who is a citizen of the several States (united), under Article IV, Section 2, Clause 1 of the Constitution of the United States of America.

According the United States Supreme Court, Section 1 of the Criminal Code is derived from the Act of April 30, 1790, 1 Stat. 112. The act is entitled “An Act for the Punishment of certain Crimes against the United States.” At Section 1 it states:

“Section 1. *Be it enacted by the Senate and House of Representatives of the United*

States of America in Congress assembled, That if any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort within the United States or elsewhere, and shall be thereof convicted, on confession in open court, or on the testimony of two witnesses to the same overt act of the treason whereof he or they shall stand indicted, such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death.” **[Footnote 1]**

http://press-pubs.uchicago.edu/founders/documents/a3_3_1-2s18.html

Upon reading either version of this section one will notice the following:

“Whoever, owing allegiance to **the United States**, levies war against **THEM** or adheres to **THEIR** enemies.”

“That if any person or persons, owing allegiance to **the United States** of America, shall levy war against **THEM**, or shall adhere to **THEIR** enemies.”

It is to be noted that the term, the United States, is expressed in a plural sense, rather than in a singular sense. **[Footnote 2]**

An example where the term, the United States, is used in a singular sense and a plural sense can be seen in the following provisions to the Constitution of the United States of America:

Section 1, Clause 1 of the Fourteenth Amendment provides:

“All persons born or naturalized in **the United States**, and subject to **THE** jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

Section 1 of the Thirteenth Amendment reads:

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within **the United States**, or any place subject to **THEIR** jurisdiction.”

http://www.archives.gov/exhibits/charters/constitution_amendments_11-27.html

Note that Section 1, Clause 1 of the Fourteenth Amendment does not state:

“All persons born or naturalized in **the United States**, and subject to **THEIR** jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

Before the Fourteenth Amendment, the term “the United States,” referred to the several States united:

“At the time of the formation of the constitution, the States were members of the confederacy united under the style of ‘the United States of America,’ and upon the express condition that ‘each State retains its sovereignty, freedom, and independence.’ And the consideration that, under the confederation, ‘We, the people of the United States of America,’ indubitably signified the people of the several States of the Union, as free, independent and sovereign States, coupled with the fact that the constitution was a continuation of the same Union (“a more perfect Union”), and a mere revision or remodeling of the confederation, is absolutely conclusive that, **by the term, ‘the United States’ is meant the several States united** as independent and sovereign communities; and by the words, ‘We, the people of the United States,’ is meant the people of the several States as distinct and sovereign communities, and not the people of the whole United States collectively as a nation.” Stunt v. Steamboat Ohio: 4 Am. Law. Reg. 49, at 95 (1855), Dis. Ct., Hamilton County, Ohio; and (same wording) Piqua Bank v. Knoup, Treasurer: 6 Ohio 261, at 303 thru 304 (1856). **[Footnote 3]**

<http://books.google.com/books?id=pWhKAAAAYAAJ&pg=PA95#v=onepage&q&f=false>

<http://books.google.com/books?id=UfADAAAAYAAJ&pg=PA303#v=onepage&q&f=false>

So, Section 1 of the Criminal Code, refers to these United States; that is, the several States united. And not to the United States.

As just shown the Fourteenth Amendment uses the term, the United States, in a singular sense. Whereas, Section 1 of the Criminal Code uses the term, the United States, in a plural sense. Therefore, Section 1 of the Criminal Code does not apply to a citizen of the United States, under the Fourteenth Amendment, since the Fourteenth Amendment, expresses the term, the United States, in a singular sense.

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 4]** As such, one owed allegiance to both the individual State government as well as to 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).

<http://books.google.com/books?id=1FUGAAAAYAAJ&pg=PA33#v=onepage&q&f=false>

As such Section 1 of “An Act for the Punishment of certain Crimes against the United States” applied to a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, since such citizen owed allegiance to the United States; that is, to the several States united.

Before the Fourteenth Amendment, a citizen of the United States was the same as a citizen of the several States united [Footnote 5]. Therefore, a citizen of a State, before the Fourteenth Amendment, was also a citizen of the several States united [Footnote 6].

However, the Fourteenth Amendment changed that. In the *Slaughterhouse Cases*, the Supreme Court split the two equivalent terms. Thereafter, there was a citizen of the United States and a citizen of the several States (united):

“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), 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, 74 (1873).

<http://books.google.com/books?id=DkgFAAAAYAAJ&pg=PA74#v=onepage&q&f=false>

Since the Fourteenth Amendment and the *Slaughterhouse Cases*, there is a citizen of the United States, who is not a citizen of the several States (united) and a citizen of the several States (united) who is not a citizen of the United States. [Footnote 7]

A citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, is a citizen of the several States; that is, a citizen of the several States united. As such, a citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, owes allegiance to the several States united; that is, these United States.

Therefore, Section 1 of the Criminal Code applies to a citizen of a State who is a citizen of the several States (united), under Article IV, Section 2, Clause 1 of the Constitution, since the term, the United States, is used in a plural sense; that is, the term, the United States, is the several States (united). [Footnote 8]

Footnotes:

1. In *United States v. Wiltberger* (18 U.S. (Wheat. 5) 76, 1820) it is stated as:

“Sec. I. That if any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort within the United States or elsewhere, and shall be thereof convicted, on confession in open court, or on the testimony of two witnesses to the same overt act of the treason whereof he or they shall stand indicted, such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death.” United States v. Wiltberger: 18 U.S. (Wheat. 5) 76, at 77 thru 78 (1820).

<http://books.google.com/books?id=1FUGAAAAYAAJ&pg=PA77#v=onepage&q&f=false>

2. This can be seen also in the following provisions from the Organic Constitution:

“Treason against **the United States**, shall consist only in levying War against **THEM**.” Article III, Section 3, Clause 1 of the Constitution of the United States of America.

“The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from **the United States**, or any of **THEM**.” Article II, Section 1, Clause 7 of the Constitution of the United States of America.

http://www.archives.gov/exhibits/charters/constitution_transcript.html

3. “The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. ***Without the States in union there could be no such political body as the United States.***” Lane County v. the State of Oregon: 74 U.S. (Wall. 7) 71, at 76 (1868).

<http://books.google.com/books?id=MfY7AAAAIAAJ&pg=PA76#v=onepage&q&f=false>

4. A citizen of a State was recognized as a citizen of the United States, under international law. A citizen of the United States did not exist under the Constitution, but rather was a nationality recognized under international law for one who was a citizen of a State:

“The intercourse of this country with foreign nations and its policy in regard to them, are placed by the Constitution of the United States in the hands of the government, and its decisions upon these subjects are obligatory upon every citizen of the Union. He is bound to be at war with the nation against which the war-making power has declared war, and equally bound to commit no act of hostility against a nation with which the government is in amity and friendship. This principle is universally acknowledged by the laws of nations. It lies at the foundation of all government, as there could be no social order or peaceful relations between the citizens of different countries without it. It is, however, more emphatically true in relation to citizens of the United States. For as the sovereignty resides in the people, every citizen is a portion of it, and is himself personally bound by the laws which the representatives of the sovereignty may pass, or the treaties into which they may enter, within the scope of their delegated authority. And when that authority has plighted its faith to another nation that there shall be peace and friendship between the citizens of the two countries, every citizen of the United States is equally and personally pledged. The compact is made by the department of the government upon which he himself has agreed to confer the power. It is his own personal compact as a portion of the sovereignty in whose behalf it is made. And he can do no act, nor enter into any agreement to promote or encourage revolt or hostilities against the territories of a country with which our government is pledged by treaty to be at peace, without a breach of his duty as a citizen and the breach of the faith pledged to the foreign nation.” Kennett v. Chambers: 55 U.S. (Howard 14) 38, 49 thru 50 (1852).

<http://books.google.com/books?id=LgAGAAAYAAJ&pg=PA49#v=onepage&q&f=false>

5. “The act of Congress referred to in the first section of the *act of 11th April, 1799* is repealed and supplied by an act passed *14th April, 1802*, which is incorporated in this note for the purpose of connecting the whole law on the subject.

‘An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.

Be in enacted, &c. That any alien being a free white person, may be admitted to become **a citizen of the United States, or any of THEM** on the following conditions, and not otherwise:

First, That he shall have declared, on oath or affirmation, before the Supreme, Superior, District or Circuit Court of some one of the states or of the territorial districts of the United States, or a Circuit or District Court of the United States, three years at least before his admission, that it was, bona fide, his intention to become a citizen of the United States, and to renounce for ever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whereof such alien may, at the time, be a citizen or subject.

Secondly, That he shall, at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject, which proceedings shall be recorded by the clerk of the court.' " Laws of the Commonwealth of Pennsylvania, From the Fourteenth Day of October, One Thousand Seven Hundred. Republished, Under the Authority of the Legislature with Notes and References, Volume 4, (1810); Philadelphia: John Bioren, page 364.

<http://books.google.com/books?id=HO1BAAAAAYAAJ&pg=PA364#v=onepage&q=&f=false>

6. " . . . For all national purposes embraced by the federal constitution, the states and the citizens thereof are one, united under the same sovereign authority, and governed by the same laws. In all other respects, the states are necessarily foreign to, and independent of each other." Buckner v. Finley: 27 U.S. (Peters 2) 586, at 590 (1829).

<http://books.google.com/books?id=lm8DAAAAQAAJ&pg=PA590#v=onepage&q&f=false>

" . . . [T]he States of this Union, although united as one nation for certain specified purposes, are yet, so far as concerns their internal government, separate sovereignties, independent of each other." Commonwealth of Kentucky v. Dennison: 65 U.S. (Howard 24) 66, at 100 (1860).

<http://books.google.com/books?id=FpkGAAAAAYAAJ&pg=PA100#v=onepage&q&f=false>

7. “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).

<http://books.google.com/books?id=HuEGAAAAYAAJ&pg=PA15#v=onepage&q=&f=false>

“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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“The objection that the acts abridge the ***privileges and immunities of citizens of the United States***, within the meaning of the [Fourteenth] amendment, is not pressed, and plainly is untenable. As has been pointed out repeatedly, the privileges and immunities referred to in the amendment are only such as owe their existence to the federal government, its national character, its Constitution, or its laws. *Maxwell v. Bugbee*, 250 U.S. 525, 537-538, and cases cited.” Owney v. Morgan: 256 U.S. 94, at 112-113 (1921).

<http://books.google.com/books?id=1v0xAAAAIAAJ&pg=PA112#v=onepage&q=&f=false>

8. A citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution of the United States of America, is also a citizen of a particular State as well as a citizen of all the several States; that is, a citizen of the several States, generally.