

The Effects of the Fourteenth Amendment on the Constitution of the United States

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Abstract:

The Fourteenth Amendment was passed by the 39th Congress on June 13, 1866. Known as the "Reconstruction Amendment(s)" (one of three, the other two being the Thirteenth and Fifteenth Amendments) it contains five sections. Its main purpose was to make black slaves, freed under the Thirteenth Amendment, citizens under the Constitution of the United States.

Section 2 of the Fourteenth Amendment modified Article I, Section 2 of the Constitution of the United States. In addition, Section 1, Clause 2 changed the wording in Article IV, Section 2, Clause 1 of the Constitution of the United States.

The Fourteenth Amendment was passed by 39th Congress on June 13, 1866. On June 16, 1866, the House Joint Resolution proposing the Fourteenth Amendment was submitted to the States. On July 28, 1868, the Secretary of State declared the amendment ratified by the required number of States, in this case 28 of 37 States.

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Section 2 of the Fourteenth Amendment modified Article I, Section 2 of the Constitution of the United States. [Footnote 1](#) In addition, Section 1, Clause 2 changed the wording in Article IV, Section 2, Clause 1 of the Constitution of the United States.

The provision which affected Article IV, Section 2, Clause 1 was:

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

Article IV, Section 2, Clause 1 read before this change:

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

Article IV, Section 2, Clause 1 should now read:

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

The *Slaughterhouse Cases* are the source for this change. At 83 U.S. 36 (1873), page 75 there is the following:

“In the Constitution of the United States, which superseded the Articles of Confederation, the corresponding provision is found in section two of the fourth article, in the following words: ‘The citizens of each State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.’ ”

Prior to this page there is the following 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, section 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.” [\[Readings\]](#)

The Supreme Court decided that because of the Fourteenth Amendment there were now two citizens under the Constitution of the United States [\[Footnote 2\]](#); a citizen of the United States, under the Fourteenth Amendment [\[Footnote 3\]](#) and a citizen of the several States, under Article IV, Section 2, Clause 1 [\[Footnote 4\]](#). 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). [\[Footnote 5\]](#)

Footnotes:

1. Go to this link and see
(http://www.archives.gov/exhibits/charters/constitution_amendments_11-27.html)

2. "The Supreme Court, however, adopted a narrower view when it first interpreted the Fourteenth Amendment in 1873 in the *Slaughter-House Cases*. These consolidated cases addressed several butchers' constitutional challenges under the Reconstruction Amendments to a Louisiana statute granting a monopoly on the butchering of animals in New Orleans to a single slaughtering company. Justice Miller, writing for the five Justices in the majority, rejected each of the butchers' constitutional claims, holding that the statute did not violate the guarantees of the Thirteenth Amendment or the Fourteenth Amendment's Privileges or Immunities Clause, (fn 86) Equal Protection Clause, or Due Process Clause, all of which he believed were concerned predominantly with the protection of the recently freed slaves. . . .

fn 86: *Id.* at 72-80 The Court divined a purported distinction in the text of the Fourteenth Amendment between the 'privileges and immunities of citizens of the United States' and those 'of citizens of the several states.' *Id.* at 74. The Court then expressed that the clause only protected 'the privileges or immunities of citizens of the United States,' which it limited to those owing 'there existence to the Federal government, its National character, its Constitution, or its laws.' *Id.* at 79. . . ."

Source: Rhodes, Charles W. (Rocky), "Liberty, Substantive Due Process, and Personal Jurisdiction", *Tulane Law Review*, Vol. 82, No. 2, 2007. This paper can be downloaded at the *Social Science Research Network* at <http://ssrn.com/abstract=1004112> .

3. "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. 162, 167 (1874).

4. "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).

5. There is also the following from *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)

Readings:

(On Google Book Search)

Thomas McIntyre Cooley, A Treatise on the Constitutional Limitations which Rest Upon the Legislative Power of the States of the American Union, Fifth edition, Boston: Little, Brown, and Co., 1883. lxxxi, 886pp, pages 490 through 491.

An excerpt:

“[*397] The Constitution of the United States contains provisions which are important in this connection. One of these is, that the citizens of each State shall be entitled to all the {page 491} privileges and immunities of citizens of the several States,[1] and all persons born or naturalized in the United States, and subject to its jurisdiction, are declared to be citizens thereof, and of the State wherein they reside. [2] The States are also forbidden to make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States. [3]

[1] Const. of United States, art. 4 §2. See also pp. *15*16.

[2] Const. of United States, 14th Amendment.

[3] The line of distinction between the privileges and immunities of citizens of the United States and those of citizens of the several States must be traced along the boundary of their respective spheres of action, and the two classes must be as different in their nature as are the functions of the respective governments. . . .”

(<http://books.google.com/books?id=SsfVDTkdPY4C&printsec=frontcover#PPA490,M1>)

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