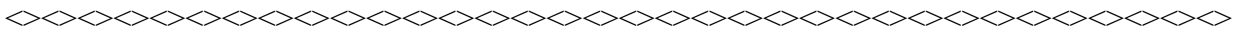
From Dred Scott to Slaughterhouse: a concise explanation



Author's Note:

Justice Taney, in the *Dred Scott* case, discussed how a State of the Union could indeed declare who may be a citizen. The State of Maine was referred to in the opinion as an example. However, such a citizen (in this case, a Negro of slave descent) could not qualify as a citizen of the several States under Article IV, Section 2, Clause 1 of the Constitution.

The only way a Negro of slave descent could become a citizen under the Constitution of the United States was through an amendment to the Constitution.

This was accomplished with the ratification of the Fourteenth Amendment. However, the Fourteenth Amendment also changed citizenship under the Constitution.

After the adoption of the Fourteenth Amendment, the Supreme Court of the United States 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 (and not the Fourteenth Amendment); a citizen of the United States and a citizen of the several States.

Before the Fourteenth Amendment there was only one class of citizens under the Constitution of the United States. A person, as such, was a citizen in three capacities: as a citizen of a State **[1]**, as a citizen of the several States **[2]**, and as a citizen of the United States **[3]**. Each was based on jurisdiction, that is, the jurisdiction of the appropriate government and under each a person had rights and privileges. As a citizen of the State, the constitution and laws of the individual state provided the rights and privileges. As a citizen of the several States, a citizen of a State had the same rights and privileges (in general) as the citizens of the State in which he was in. And, as a citizen of the United States, the Bill of Rights and constitutional provisions and amendments plus the laws and treaties of the United States contained them.

Chief Justice Taney, in the *Dred Scott* case, discussed how a State of the Union could indeed declare who may be a citizen. The State of Maine was referred to in the opinion as an example.

However, such a citizen (in this case, a Negro of slave descent) could not qualify as a citizen of the several States under Article IV, Section 2, Clause 1 of the Constitution. This being because a Negro of slave descent, was not considered a citizen of the several States when the Constitution was adopted. **[4]** And since he was not considered a citizen of the several States he was also not a citizen of the United States. **[5]** Thus, the only way a Negro of slave descent could become a citizen under the Constitution of the United States was through an amendment to the Constitution.

This was accomplished with the ratification of the Fourteenth Amendment. Now a Negro of slave descent could now become a United States citizen. However, the Fourteenth Amendment also changed citizenship under the Constitution.

After the adoption of the Fourteenth Amendment, the Supreme Court of the United States 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 (and not the Fourteenth Amendment); a citizen of the United States and a citizen of the several States. **[6], [7]**

A citizen of the several States is to be considered separate and distinct from a citizen of the United States. Privileges and immunities of a citizen of the United States (not to be abridged) were to be under the 14th Amendment and therefore, under the control of Congress. Privileges and immunities of a citizen of the several States were designated under Article IV, Section 2, **[8]** and thus, under the domains of the several States:

> "Having shown that the privileges and immunities relied on in the argument are those which belong to citizens of the States **[9]** as such, and that they are left to the State governments for security and protection, and not by this article (the 14th Amendment) placed under the special care of the Federal government, we may hold ourselves excused from defining the privileges **[page 79]** and immunities of citizens of the United States which no State can abridge, until some case involving those privileges may make it necessary to do so." *Slaughterhouse Cases*, pages 78 through 79.

Now if a State of the Union declares who are its citizens, then under Article IV, Section 2, Clause 1 of the Constitution, determined by the Supreme Court in the *Slaughterhouse Cases* and *Cole v. Cunningham*, the citizen of that state becomes also a citizen of the several States. A citizen of the United States, by force of the 14th Amendment, becomes a citizen of a State by residing therein.

So you have a citizen of the United States, who can become also a citizen of a state, by residing therein. And you have a citizen of a state who becomes under Article IV, Section 2, Clause 1 of the Constitution, a citizen of the several States. Therefore, under the Constitution of the United States, since the adoption of the Fourteenth Amendment, there are two citizens; a citizen of the several States and a citizen of the United States. And in each State of the Union, there are two types of state citizens; a citizen of the several States and a citizen of the United States.

Footnotes:

[1] Article III, Section 2 and Article IV, Section 2, Clause 1, Constitution of the United States:

> "The judicial Power shall extend . . . to Controversies between two or more States;-- (between a State and Citizens of another State [repealed by the Eleventh Amendment]);--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

Alexander Hamilton, Federalist Papers, no. 80, "The Powers of the Judiciary":

> "It may be esteemed the basis of the Union, that 'the *citizens of each State* shall be entitled to all the privileges and immunities of *citizens of the several States*.' And if it be a just principle that every government ought to possess the means of executing its own provisions by its own authority, it will follow, that in order to the inviolable maintenance of that equality of privileges and immunities to which the *citizens of the Union* will be entitled, the national judiciary ought to preside in all cases in which one State or its citizens are opposed to another State or its citizens. To secure the full effect of so fundamental a provision against all evasion and subterfuge, it is necessary that its construction should be committed to that tribunal which, having no local attachments, will be likely to be impartial between the different States and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which its is founded."

[2] Article IV, Section 2, Clause 1, Constitution of the United States:

> "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Joseph Story, Commentaries on the Constitution 3-§1800 (1833):

> "It is obvious, that, if the citizens of each state were to be deemed aliens to each other, they could not take, or hold real estate, or other privileges, except as other aliens. The intention of this clause was to confer on them, if one may say so, 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."

[3] Article II, Section 5, Constitution of the United States:

> "No person except a natural born citizen, or a citizen of the United States, *at the time of the adoption of this Constitution*, shall be eligible to the office of President."

[4] Civil Rights Cases: 109 U.S. 3, 30-31 (1883): (after *Slaughterhouse Cases*)

"The only other case, prior to the adoption of the recent amendments, to which reference will be made, is that of *Dred Scott v. Sanford*, 19 How. 399. That case was instituted in a circuit court of the United States by Dred Scott, claiming to be a citizen of Missouri, the defendant being a citizen of another State. Its object was to assert the title of himself and family to freedom. The defendant pleaded in abatement that Scott -- being of African descent, whose ancestors, of pure African blood, were brought into this country and sold as slaves -- was not a citizen. The only matter in issue, said the court, was whether the descendants of slaves thus imported **[page 31]** and sold, when they should be emancipated, or who were born of parents who had become free before their birth, are citizens of a State in the sense in which the word 'citizen' is used in the Constitution of the United States.

In determining that question, the court instituted an inquiry as to who were *citizens of the several States* at the adoption of the Constitution and who at that time were recognized as the people whose rights and liberties had been violated by the British government. The result was a declaration by this court, speaking by Chief Justice Taney, that the legislation and histories of the times, and the language used in the Declaration of Independence, showed 'that neither the class of persons who had been imported as slaves nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that instrument.' " (*dissenting opinion* of Justice Harlan)

[5] Minor v. Happersett: 88 U.S. 162, 167 (1874): (after *Slaughterhouse Cases*)

> "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.
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> *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.**"

[6] Slaughterhouse Cases: 83 U.S. 36, 74 (1872):

> 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 (second clause of the first section), 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."

[7] The *Slaughterhouse* court most probably got their concept of separate and distinct for citizenship of the United States and citizenship of the several States from the following. It is the dissenting opinion of Justice Curtis, in the *Dred Scott* case:

> "The first clause of the second section of the third article of the Constitution is
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> > 'The judicial power shall extend to controversies between a State and citizens of another State, between citizens of different States, between citizens of the same State, claiming lands under grants of different States, and between States, or the citizens thereof, and foreign States, **[page 580]** citizens, or subjects.'
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> I do not think this clause has any considerable bearing upon the particular inquiry now under consideration. Its purpose was to extend the judicial power to those controversies into which local feelings or interests might to enter as to disturb the course of justice, or give rise to suspicions that they had done so, and thus possibly give occasion to jealousy or ill will between different States, or a particular State and a foreign nation. At the same time, I would remark in passing that it has never been held -- I do not know that it has ever been supposed -- that any citizen of a State could bring himself under this clause and the eleventh and twelfth sections of the Judiciary Act of 1789, passed in pursuance of it, who was not a citizen of the United States. But I have referred to the clause only because it is one of the places where citizenship is mentioned by the Constitution. Whether it is entitled to any weight in this inquiry or not, *it refers only to citizenship of the several States; it recognises that, but it does not recognise citizenship of the United States as something distinct therefrom.*
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> **As has been said, the purpose of this clause did not necessarily connect it with *citizenship of the United States, even if that were something distinct from citizenship of the several States in the contemplation of the Constitution.*** This cannot be said of other clauses of the Constitution, which I now proceed to refer to." Dred Scott v. Sanford: 60 U.S. 393, 579 – 580 (dissenting opinion of Justice Curtis) (1856).

[8] Cole v. Cunningham: 133 U.S. 107, 113-114 (1890): (after *Slaughterhouse Cases*)

> "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 citizen of the same State would be entitled to under like circumstances."

[9] "Citizens of the States" is equivalent to "citizens of the several States." To wit:

> 'We do not conceal from ourselves the great responsibility which this duty devolves upon us. No questions so far reaching and pervading in their consequences, so profoundly interesting to the people of this country, and so important in their bearing upon the relations of the United States and of the several States to each other, and to **the citizens of the states and of the United States**, have been before this court during the official life of any of its present members. We have given every opportunity for a full hearing at the bar; we have discussed it freely and compared views among ourselves; we have taken ample time for careful deliberation, and we now propose to announce the judgments which we have formed in the construction of those articles, so far as we have found them necessary to the decision of the cases before us, and beyond that we have neither the inclination nor the right to go.' Slaughterhouse Cases: 83 U.S. 36, at 67 (1873).

And:

> "The next observation is more important in view of the arguments of counsel in the present case. It is, that the distinction between citizenship of the United States and citizenship of a state is clearly recognized and established. . . .
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> 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 (2nd clause of the 1st section), 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, 73-74.

Also:

> 'Fortunately we are not without judicial construction of this clause of the Constitution (that is, Article IV, Section 2, Clause 1). 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. 4 Wash C. C. 371.
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> > "The inquiry," he says, "is, what are **the privileges and immunities of citizens of the several States**?. . . "
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> This definition of the **privileges and immunities of citizens of the states** is adopted in the main by this court in the recent case of *Ward v. Maryland*. . . .

> Having shown that **the privileges and immunities relied on in the argument are those which belong to citizens of the states** as such, and that they are left to the state governments for security and protection, and not by this article placed under the special care of the Federal government, we may hold ourselves excused from defining **the privileges and immunities of citizens of the United States** which no state can abridge, until some case involving those privileges may make it necessary to do so.' Slaughterhouse Cases: 83 U.S. 36, 75-76, 78-79.

It is to be observed that the terms "citizens of the states" and "citizens of the several states" are used interchangeably by the *Slaughterhouse* court.