Blunders of the Supreme Court of the United States

Part 4

The author has written on three blunders of 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 has 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 fourth blunder of the Supreme Court of the United States is in the case of *Hague v. Committee for Industrial Organiztion et. al.* (307 U.S. 496, 1939). The blunder occurs at page 511:

" . . . The phrase 'privileges and immunities' [is] used in Article IV, § 2 of the Constitution, which decrees that 'The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.'

At one time it was thought that this section recognized a group of rights which, according to the jurisprudence of the day, were classed as 'natural rights'; and that the purpose of the section was to create rights of citizens of the United States by guaranteeing the citizens of every State the recognition of this group of rights by every other State. Such was the view of Justice Washington.

While this description of the civil rights of the citizens of the States has been quoted with approval, it has come to be settled view that Article IV, § 2 does not import that a citizen of one State carries with him into another fundamental privileges and immunities which come to him necessarily by the mere fact of his citizenship in the State first mentioned, but, on the contrary, that in any State every citizen of any other State is to have the same privileges and immunities which the citizens of that State enjoy. The section, in effect, prevents a State from discriminating against citizens of other States in favor of its own." **[Footnote 1]**

http://scholar.google.com/scholar_case?case=5456152533472609432&q

And at footnote 1 to the opinion of Justice Stone which states:

" . . . And [the *Slaughter-House Cases*] held that the protection of the privileges

and immunities clause did not extend to those 'fundamental' rights attached to state citizenship which are peculiarly the creation and concern of state governments and which Mr. Justice Washington, in *Corfield v. Coryell*, 4 Wash. C. C. 371, 6 Fed. Cas. No. 3230, mistakenly thought to be guaranteed by Article IV, § 2 of the Constitution.

http://scholar.google.com/scholar_case?case=5456152533472609432&q

According to this case, Article IV, Section 2, Clause 1 of the Constitution of the United States of America, gives to a citizen of any other State the same privileges and immunities which the citizens of a particular State enjoy. These privileges and immunities are common privileges and immunities. Special privileges and immunities granted by a particular State to its own citizens are not included.

It is concluded implicitly in this case that Article IV, Section 2, Clause 1 of the Constitution serves only one purpose. Two propositions are presented. On one hand is that Article IV, Section 2, Clause 1 of the Constitution is a provision that recognizes fundamental privileges and immunities. On the other hand, the clause grants common privileges and immunities to the citizens of sister States when they are in another State.

However, both are correct! Article IV, Section 2, Clause 1 is the source for common privileges and immunities as well as fundamental privileges and immunities.

The case of *Corfield v. Coryell* describes fundamental privileges and immunities under Article IV, Section 2, Clause 1 of the Constitution:

"The next question is, whether this Act infringes that section of the Constitution which declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States?'

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 fundamental." Corfield v. Coryell: 6 Fed. Cas. (Case No. 3230) 546, at 550 (1825). **[Footnote 2]**

http://books.google.com/books?id=pwA7AQAAIAAJ&pg=PA550#v=onepage&q&f=false

The case of the *State of Tennessee v. Claiborne* specifies common privileges and immunities under Article IV, Section 2, Clause 1:

" 'The citizens of each State shall be entitled to all the privileges and immunities

of citizens in the several States,' says the Constitution. The citizens here spoken of are those who are entitled to 'all the privileges and immunities of citizens.' . . .

. . . Hence, in speaking of the rights which a citizen of one State should enjoy in every other State . . . , it is very properly said that he should be entitled to all the 'privileges and immunities' of citizens in such other State. The meaning of the language is, that no privilege enjoyed by, or immunity allowed to, the most favored class of citizens in said State shall be withheld from a citizen of any other State." State of Tennessee v. Claiborne: 10 Tenn. (1 Meigs's) 255, at 261 thru 262 (1838).

http://books.google.com/books?id=yXcLAAAAYAAJ&pg=PA261#v=onepage&q&f=false

In *Ward v. State of Maryland*, the Supreme Court of the United States, writes the following, on fundamental privileges and immunities:

"Attempt will not be made to define the words 'privileges and immunities,' or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the State; and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens. **[Footnote 3]**

. . . [T]he Constitution provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Ward v. State of Maryland: 79 U.S. (12 Wall.) 418, at 430 (1870).

http://books.google.com/books?id=6X0-AAAAYAAJ&pg=PA430#v=onepage&q&f=false

In *Paul v. State of Virginia*, the Supreme Court states the following on common privileges and immunities:

"[T]he privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are common to the citizens in the latter States under their constitution and laws by virtue of their being citizens." Paul v. State of Virginia: 75 U.S. (8 Wall.) 168, at 180 (1868).

http://books.google.com/books?id=-bwGAAAAYAAJ&pg=PA180#v=onepage&q&f=false

In the *Slaughterhouse Cases*, it is written:

"The first occurrence of the words 'privileges and immunities' in our constitutional history, is to be found in the fourth of the articles of the old Confederation.

It declares 'that the better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively.'

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.'

There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the article of the Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase.

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. . . .'

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. The State of Maryland*, while it declines to undertake an authoritative definition beyond what was necessary to that decision. The description, when taken to include others not named, but which are of the same general character, embraces nearly every civil right for the establishment and protection of which organized government is

instituted. They are, in the language of Judge Washington, those rights which are **FUNDAMENTAL**. Throughout his opinion, they are spoken of as rights belonging to the individual as a citizen of a State. They are so spoken of in the constitutional provision which he was construing. And they have always been held to be the class of rights which the State governments were created to establish and secure.

In the case of *Paul v. Virginia*, the court, in expounding this clause of the Constitution, says that 'the privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are **COMMON** to the citizens in the latter States under their constitution and laws by virtue of their citizens.'

The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens.

Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction.

It would be the vainest show of learning to attempt to prove by citations of authority, that up to the adoption of the recent amendments, no claim or pretence was set up that those rights depended on the Federal government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the States—such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligations of contracts. But with the exception of these and a few other restrictions***, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal government.***" Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 75 thru 77 (1873).

http://books.google.com/books?id=DkgFAAAAYAAJ&pg=PA75#v=onepage&q&f=false

The *Slaughterhouse* Court defined privileges and immunities under Article IV, Section 2, Clause 1 of the Constitution of the United States of America to include fundamental privileges and immunities AS WELL AS common privileges and immunities.

In addition, there is the following from the dissenting opinion of Justice Fields:

"The terms, privileges and immunities, are not new in the [Fourteenth]

amendment; they were in the Constitution before the amendment was adopted. They are found in the second section of the fourth article, which declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States,' and they have been the subject of frequent consideration in judicial decisions. In *Corfield v. Coryell*, Mr. Justice Washington said he had 'no hesitation in confining these expressions to those privileges and immunities which were, in their nature, **FUNDAMENTAL**; which belong of right to citizens of all free governments, and which have at all times been enjoyed by the citizens of the several States which compose the Union, from the time of their becoming free, independent, and sovereign. . . .

The privileges and immunities designated in the second section of the fourth article of the Constitution are, then, according to the decision cited, those which of right belong to the citizens of all free governments, and they can be enjoyed under that clause by the citizens of each State in the several States upon the same terms and conditions as they are enjoyed by the citizens of the latter States. No discrimination can be made by one State against the citizens of other States in their enjoyment, nor can any greater imposition be levied than such as is laid upon its own citizens. It is a clause which insures equality in the enjoyment of these rights between citizens of the several States whilst in the same State.

Nor is there anything in the opinion in the case of *Paul v. Virginia*, which at all militates against these views. . . . [T]he court observed, that the privileges and immunities secured by [Article IV, Section 2, Clause 1] were those privileges and immunities which were **COMMON** to the citizens in the latter States, under their constitution and laws, by virtue of their being citizens; that special privileges enjoyed by citizens in their own States were not secured in other States by the provision; that it was not intended by it to give to the laws of one States any operation in other States; that they could have no such operation except by the permission, expressed or implied, of those States; and that the special privileges which they conferred must, therefore, be enjoyed at home unless the assent of other States to their enjoyment therein were given. . . .

The whole purport of the decision was, that citizens of one State do not carry with them into other States any special privileges or immunities, conferred by the laws of their own States, of a corporate or other character. That decision has no pertinency to the questions involved in this case. The ~~common~~ (*should be*, fundamental) privileges and immunities which of right belong to all citizens, stand on a very different footing. These the citizens of each State do carry with them into other States. This equality in one particular was enforced by this court in the recent case of *Ward v. The State of Maryland*, reported in the 12 th of Wallace." Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 97 thru 100 (*dissenting opinion of Justice Fields*) (1873).

http://books.google.com/books?id=DkgFAAAAYAAJ&pg=PA97#v=onepage&q&f=false

Thus, Article IV, Section 2, Clause 1 of the Constitution of the United States of America has both common privileges and immunities as well as fundamental privileges and immunities.

_____

Footnotes:

1. This is reaffirmed in *Baldwin et. al v. Fish and Game Commission of Montana et. al.* (436 U.S. 371, 1978) at page 380.

http://scholar.google.com/scholar_case?case=10129499138166717934&q

2. The opinion in the case of *Corfield v. Coryell* was delivered in the year of 1825. The paragraph preceding the opinion states:

"This case was argued, on the points of law agreed by the counsel to arise on the facts, at the October term 1824, and was taken under advisement until April term 1825, when the following opinion was delivered." Corfield v. Coryell: 6 Fed. Cas. (Case No. 3230) 546, at 550 (1825).

http://books.google.com/books?id=pwA7AQAAIAAJ&pg=PA550#v=onepage&q&f=false

3. ". . . [I]n *Ward v. Maryland*, 12 Wall. 418, 430, the court, after referring to *Corfield v. Coryell*, above citied, and speaking by Mr. Justice Clifford, stated that the right 'to maintain actions in the courts of the State' was fundamental and was protected by the constitutional clause in question (Article IV, Section 2, Clause 1) against state enactments that discriminated against citizens of other States." Chambers v. Baltimore & Ohio Railroad Company: 207 U.S. 142, 151, at 154-157 (*Justice Harlan, Justice White and Justice McKenna;* ***concurring*** *in part, dissenting in part*) (1907). **[Footnote 4]**

http://books.google.com/books?id=huAGAAAAYAAJ&pg=PA156#v=onepage&q&f=false

4. At page 151, it states that the opinion of "Mr. Justice Harlan (with whom

concurred Mr. Justice White and Mr. Justice McKenna)" is dissenting. However, this is wrong. In the opinion Justice Harlan writes, at page 154:

" . . . I cordially assent to what is said upon this point in the opinion just delivered for the majority of the court."

http://books.google.com/books?id=huAGAAAAYAAJ&pg=PA154#v=onepage&q&f=false