

Sec. 2—Interstate Comity

Cl. 1—State Citizenship: Privileges and Immunities

wordier and a somewhat unclear¹⁴⁹ clause of the Articles of Confederation. "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 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" ¹⁵⁰ In the Convention, the present clause was presented, reported by the Committee on Detail, and adopted all in the language ultimately approved.¹⁵¹ Little commentary was addressed to it,¹⁵² and we may assume with Justice Miller that "[t]here 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 Articles of 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."¹⁵³ At least four theories have been proffered regarding the purpose of this clause. First, the clause is a guaranty of equal treatment by Congress to the citizens of the different states; in other words, it is a species of equal protection clause binding on the National Government. Though it received some recognition in the *Dred Scott* case,¹⁵⁴ particularly the opinion of Justice Catron,¹⁵⁵ this theory is now obsolete.¹⁵⁶ Second, the clause

¹⁴⁹ THE FEDERALIST, No. 42 (J. Cooke ed. 1961), 285–286 (Madison).

¹⁵⁰ 1 F. Thorpe ed., *The Federal and State Constitutions*, H. Doc. No. 357, 59th Cong., 2d Sess. (1909), 10.

¹⁵¹ 2 M. FARRAND, *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* 173, 187, 443 (rev. ed. 1937).

¹⁵² "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." THE FEDERALIST, No. 80 (J. Cooke ed. 1961), 537–538 (Hamilton).

¹⁵³ *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 75 (1873).

¹⁵⁴ *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

¹⁵⁵ 60 U.S. at 518, 527–29.

¹⁵⁶ Today, the Due Process Clause of the Fifth Amendment imposes equal protection standards on the Federal Government. *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Schneider v. Rusk*, 377 U.S. 163, 168 (1964); *Shapiro v. Thompson*, 394 U.S. 618, 641–42 (1969).