

Sec. 2—Interstate Comity

Cl. 1—State Citizenship: Privileges and Immunities

ing “clams, oysters or shells” in any of the waters of the state, on board any vessel “not wholly owned by some person, inhabitant of and actually residing in this State. . . . The inquiry is,” wrote Justice Washington, “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, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several States which compose this Union”¹⁸¹ He specified the following rights as answering this description: “Protection by the Government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government must justly prescribe for the general good of the whole. The right of a citizen of one State to pass through, or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefits of the writ of *habeas corpus*; to institute and maintain actions of any kind in the courts of the State; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State”¹⁸²

After thus defining broadly the private and personal rights which were protected, Justice Washington went on to distinguish them from the right to a share in the public patrimony of the state. “[W]e cannot accede” the opinion proceeds, “to the proposition . . . that, under this provision of the Constitution, the citizens of the several States are permitted to participate in all the rights which belong exclusively to the citizens of any particular State, merely upon the ground that they are enjoyed by those citizens; much less, that in regulating the use of the common property of the citizens of such State, the legislature is bound to extend to the citizens of all other States the same advantages as are secured to their own citizens.”¹⁸³ The right of a state to the fisheries within its borders he then held to be in the nature of a property right, held by the state “for the use of the citizens thereof”; the state was under no obligation to grant “co-tenancy in the common property of the State, to the citizens of all the other States.”¹⁸⁴ The holding of this case was confirmed in *McCready v. Virginia*;¹⁸⁵ the logic of *Geer v. Connecti-*

¹⁸¹ 6 Fed. Cas. at 551–52.

¹⁸² 6 Fed. Cas. at 552.

¹⁸³ 6 Fed. Cas. at 552.

¹⁸⁴ 6 Fed. Cas. at 552.

¹⁸⁵ 94 U.S. 391 (1877).