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Recommended Citation
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The Citizen's Obligations
Under The Constitution

By W. Lewis Roberts*

One listening to an address on our Constitution hears only of our privileges and immunities guaranteed by the Constitution. He very seldom or never hears mention of our obligations under that document. This seems in keeping with the too popular desire of our people to get something for nothing. They do not like to be reminded that a quid pro quo is required in every fair deal and that it is a common saying that one cannot get something for nothing.

Dean Pound has pointed out that “Even Bentham says that the function of government is to create and confer upon individuals ‘rights of personal security, rights of protection for honor, rights of property, rights of receiving aid in case of need.’”

The only express provision in the Constitution itself bearing on a citizen’s privileges is found in sec. 2 of Article IV. It reads as follows: “The citizens of each State shall be entitled to the Privileges and Immunities of citizens in the several States.”

Chief Justice John Marshall, the two hundredth anniversary of whose birthday was celebrated by the American Bar Association on September 24, 1955, is quoted as saying,

Constitutions do not create individual rights or impart them to those by whom constitutions are ordained. The rights of persons are original, not delegated.

Magna Charta, Bills of Right, the Petition of Rights and our State and Federal constitutions, are intended to guarantee, preserve and protect those attributes of men that are inherent and indefeasible.¹²

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¹ Liberty of Contract, 18 Yale L.J. 454, 455 (1909).
² 13 Green Bag 213 at 259 (1901).
He is also credited with setting out, in an opinion given in a case that arose in South Carolina, the duties and obligations of our citizens under the Constitution. A statement in Marshall's opinion in *McCullock v. Maryland* is in keeping with such an enumeration. He there says:

All admit that the government may legitimately punish any violation of its laws; and yet, this is not among the enumerated powers of Congress. . . . Congress is empowered 'to provide for the punishment of counterfeiting the securities and current coin of the United States' and 'to define and punish piracies and felonies committed on the high seas, and offences against the law of nations.'

Before considering our obligations under the Constitution, it seems worthwhile to briefly call to mind the citizen's privileges and immunities that have so often been urged in the past. Chapter X of *Cooley on Constitutional Limitations* covers the subject of personal liberty, considering the following privileges and immunities guaranteed in about the order shown: (1) unreasonable searches and seizures, (2) quartering soldiers in private houses in time of peace without the owner's consent, (3) criminal accusations, (4) trial by jury, (5) protection against excessive fines and cruel, unusual punishments, (6) the right to counsel, (7) the right to a writ of *habeas corpus*, (8) the right to discussion and petition, and (9) the right to bear arms.

The Supreme Court has refused to define the word privilege as used in the Constitution and has said, "It is safer, and more in accordance with the duty of a judicial tribunal, to leave its meaning to be determined, in each case, upon a view of the particular rights asserted and denied therein." However, it defined the word liberty in the case of *Allgeyer v. Louisiana*. It said:

The liberty mentioned in that (the 14th) amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; . . .

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*4 Wheaton (17 U.S.) 316 at 416, 4 L. Ed. 579 (1819).*

*Vol. 1, pp. 603-730.*

*Conner v. Elliott, 18 Howard 591 at 593, 15 L. Ed. 497 (1855).*

*165 U.S. 578 at 589, 17 S. Ct. 427, 41 L. Ed. 832 (1896).*
Dean Pound, in discussing liberty, has said:

Whatever liberty as a general term may mean today, the liberty guaranteed by our bill of rights is a reservation to the individual human being of certain fundamental reasonable expectations involved in life in civilized society and a freedom from arbitrary and unreasonable exercise of the power and authority of those who are delegated or chosen in a politically organized society to adjust relations and order conduct and so are able to apply the force of that society to individuals. Liberty under law implies a systematic and orderly application of that force so that it is uniform, equal, and predictable, so that it proceeds from reason and upon understood grounds rather than from caprice or impulse or zeal from a purely personal idea, so that it does not proceed without full and fair hearing of all to be affected and understanding of the facts in which official action is taken.7

Let us see what are these privileges and immunities of the citizen that have most often demanded the attention of our courts. An excellent summary of these is given in the *Columbia University Studies in History and Public Law*.8 The following list is there presented:

(1) The right to export.9
(2) Protection of government in foreign countries.10
(3) Access to all parts of the country.11
(4) a. Use of navigable waters;  
   b. Privilege of becoming citizen through residence.12
(5) Right of peaceable assembly and to petition Congress.13
(6) Exemption from race discrimination.14
(7) Right to vote for members of Congress and presidential electors.15

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8 Vol. LIV, p. 80.
9 Talbot v. Janson, 3 Dallas 133 (U.S.) 1 L. Ed. 540 (1795); and Murray v. Schooner Charming Betsy, 2 Cranch (U.S.) 64, 2 L. Ed. 208 (1804).
11 Crandall v. Nevada, 6 Wall. 35, 18 L. Ed. 745 (1868).
12 Dicta in Slaughter House Cases, 16 Wall. 36, 21 L. Ed. 394 (1872).
15 *Ex parte* Yarbrough, 110 U. S. 651, 4 S. Ct. 152, 28 L. Ed. 274 (1883).
(8) Right to access to and from residence upon a homestead where requirements for gaining title are being fulfilled.\textsuperscript{16}

(9) Protection from violence while in custody of the Federal Government.\textsuperscript{17}

(10) Right to inform government of violations of its laws.\textsuperscript{18}

(11) Freedom to migrate.\textsuperscript{19}

(12) Right to enter the country and, if questioned, to prove citizenship.\textsuperscript{20}

Even the privileges and immunities expressly set forth in the Constitution and its amendments may be subject to qualifications, as was shown by Mr. Justice Holmes in his opinion in the case of \textit{Schency v. United States},\textsuperscript{21} which raised the question of freedom of speech. He said:

We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. . . . The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court would regard them as protected by any constitutional right.

In \textit{Presser v. Illinois},\textsuperscript{22} the Court points out that the provision in the Second Amendment to the Constitution, that "the right of the people to keep and bear arms shall not be infringed applies to

\textsuperscript{16} United States v. Waddell, 112 U.S. 76, 5 S. Ct. 55, 28 L. Ed. 673 (1884).

\textsuperscript{17} Logan v. United States, 144 U.S. 263, 12 S. Ct. 617, 36 L. Ed. 429 (1892).

\textsuperscript{18} \textit{In re Quares}, 158 U.S. 532, 15 S. Ct. 959, 39 L. Ed. 1080 (1894).

\textsuperscript{19} Williams v. Fears, 179 U.S. 270, 21 S. Ct. 128, 45 L. Ed. 188 (1900).

\textsuperscript{20} Chin Yow v. United States, 208 U.S. 8, 28 S. Ct. 201, 52 L. Ed. 369 (1907).

\textsuperscript{21} 240 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470 (1919).

\textsuperscript{22} 116 U.S. 252, 6 S. Ct. 590, 29 L. Ed. 615 (1886).
the power of Congress and not to the States." A state law providing that no military organization should drill or parade with arms in any city of the state without license of the governor was upheld. In *Duncan v. Missouri*, the Court declared that "The privileges and immunities of citizens of the United States, protected by the Fourteenth Amendment, are privileges and immunities arising out of the nature and essential character of the Federal Government and granted or secured by the Constitution." Furthermore, it was pointed out in *Ex parte Virginia* that the quality of protection secured by this amendment extends only to civil rights as distinguished from those which are political, or those arising from the form of government and its mode of administration. It is to be noted in passing that the right to bear arms that is safeguarded to the people does not give them the right to bear concealed arms.

Among other privileges guaranteed a citizen of a state are access to and from his residence, and the right to pass through a state without paying a tax imposed by the state. Mr. Justice Miller, speaking for the Court in *Crandell v. Nevada*, said,

> The people of the United States constitute one nation. They have a government in which all of them are deeply interested. This government has necessarily a capitol established by law. Here its principal operations are conducted. . . . That government has a right to call to this point any and all of its citizens to aid in its service as members of the Congress, of the courts, of the Executive departments and to fill all its other offices; and this right cannot be made to depend upon the pleasure of any state over whose territory they must pass to reach the point where these services must be rendered.

The question sometimes arises as to who is entitled to these privileges and immunities provided for in the Constitution. Section 2 of Article IV reads: "The citizens of each State shall be entitled to all Privileges and Immunities of Citizens of the several States." The Fourteenth Amendment defines the term *citizens*...
as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside." A case involving this clause came before a Federal court in 1825 where residents of another state were prosecuted under a New Jersey statute forbidding any person not an inhabitant of the state from gathering oysters within the state on board any vessel not wholly owned by an inhabitant. The Court ruled that the act was void on the ground that the right to take creatures *ferae naturae* was a right within the Constitutional prohibition.\(^{28}\)

The protection assured by due process under the Fourteenth Amendment is not confined to citizens but extends to any person, as was held in *Yick Wo v. Hopkins*.\(^{29}\) In *Talbot v. Jansen*,\(^{30}\) Judge Paterson laid down the rule that "whatever right a man might have to renounce his State-citizenship under the provisions of a State statute, no State could by legislation effect renunciation of United States citizenship..." It is provided by a federal statute\(^{31}\) "that any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."

The question naturally arises as to whether the privileges and immunities guaranteed by our Constitution are extended to any others than citizens. Mr. Justice Cardozo said that a state's control of public works does not allow it to deny aliens benefits so intimately related to "health and comfort" that it would be a denial of equal protection of the laws. It was held in the particular case under consideration that an act barring Chinese alone from fishing was a denial of equal protection of the laws.\(^{32}\) A note-writer in the *New York University Law Quarterly Review*\(^{33}\) summarizes the law as to aliens as follows: (1) States cannot exclude aliens from foreign commerce; (2) provisions of the Fourteenth Amendment protect *all persons*; and (3) they come under the treaty power of the United States which limits the state police power.

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\(^{28}\) *Canfield v. Cargell* (1825), Fed. Cases No. 3230.

\(^{29}\) *118 U.S. 357* at 368, 6 S. Ct. 1064, 30 L. Ed. 220 (1886).

\(^{30}\) *Supra* note 9.

\(^{31}\) Section 2 of the Act of March 2, 1907.

\(^{32}\) *In re Al Chang*, 2 Fed. 733 (C.C.D. Cal. 1880).

\(^{33}\) Vol. 17, 242-254 (1940).
The interstate comity clause of the Constitution, as a well-known authority states, does not give to citizens of other states the political privileges a state grants to its own citizens. Mr. Chief Justice Waite, in giving the opinion of the Court in *McCready v. Virginia* declared "that the citizens of one State are not invested by this clause of the Constitution with any interest in the common property of the citizens of another state." The question involved in the case was the right of a citizen of another state to take oysters from state-owned oyster beds. A similar view was expressed by Mr. Justice Harlan in the opinion in *McKane v. Durton* where it was emphasized that the Constitution of the United States does not make the privileges and immunities enjoyed by the citizens of one state under the constitution and laws of that state the measure of the privileges and immunities to be enjoyed, as of right, by a citizen of another state under its constitution and laws. An appeal from a judgment of conviction is not a matter of absolute right, independently of constitutional or statutory provisions allowing such appeal. The Court held that it is wholly within the discretion of the state to allow or not to allow such a review. The right of appeal may be granted by the state to the accused upon such terms as it may deem proper.

The rule, as worked out by the Supreme Court in *Ward v. Maryland* and *Blake v. McClung*, it has been suggested, is that although a citizen of one state has a right to pass into other states of the Union to engage in business, to acquire personal property, to hold real estate, to bring suits in the courts of the states and to pay no higher taxes than are imposed on the citizens of those states, he does not have the right to vote or hold state offices nor to exercise political rights in those states. If a person is a fugitive from justice, he does not have a right of refuge in another state. In fact, the Constitution requires such a one to be returned to the state from which he has fled, upon demand being made by the proper authorities.

Under the police power of the states a great many of the rights

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34 Willoughby—United States Constitutional Law, 285 ( ).
35 94 U.S. 391, 14 S. Ct. 1205, 38 L. Ed. 1090 (1876).
37 19 S. Ct. 165, 43 L. Ed. 432 (1898).
and liberties granted to the citizen by the Constitution are restricted and even denied in many instances. His use of property, which is likely to cause the spread of disease may be curtailed; his animals, trees and plants having contagious diseases may be seized and destroyed. His buildings may be destroyed to prevent the spread of fire. He and the members of his family may be required to submit to vaccination. He may be prevented from selling adulterated food and drugs. His cattle may be tested for tuberculosis. He may be arrested for speeding or driving without a license on the highways.  

A legislature may prohibit assigning claims for workmen's compensation. Persons desiring to practice certain professions or follow certain businesses may be required to take examinations to test their qualifications to pursue such professions. The height of buildings may be regulated, and building lines on the street may be fixed. Laws fixing the hours of work for women were passed and held valid, as were acts regulating hours of labor in dangerous employments. Minimum wage legislation has also been sustained, and businesses affected with a public interest have been subject to state regulation.  

A nonresident may be required to appoint an agent in a state to receive service. A noticeable instance of this is the case of a nonresident automobile owner operating his car on the highways. Statutes may provide that his use of the highways is conditioned upon making a state officer, usually the Secretary of State, his agent to receive service arising from the operation of his car upon the state highways.  

A legislative authority can regulate the orderly and sanitary

40 Burdick, supra, n. 39, pp. 559-585.
41 Workmen's Compensation Board of Kentucky v. Abbott, 212 Ky. 123, 278 S.W. 533 (1925).
44 Gorick v. Fox, 274 U.S. 603, 47 S. Ct. 675, 71 L. Ed. 1228 (1927).
45 Ritchie v. People, 155 Ill. 98, 40 N.E. 454 (1895); Miller v. Wilson, 236 U.S. 373, 35 S. Ct. 342, 59 L. Ed. 628 (1915).
47 Simpson v. O'Hara, 70 Ore. 261, 141 Pac. 158 (1914).
48 Chas. Wolff Packing Co. v. Court of Industrial Relations, 262 U.S. 522, 43 S. Ct. 630, 67 L. Ed. 1105 (1922).
49 Scott—Jurisdiction over Non-residents Doing Business within a State, 32 Harv. L. Rev. 37 (1919).
disposal of garbage\textsuperscript{50} and the removal of ashes.\textsuperscript{51} It has further been held that a municipal land owner may be required to keep the sidewalks in front of his premises in repair and free from obstruction.\textsuperscript{52}

A writer in the *American Law Review*\textsuperscript{53} gives an excellent summary of the privileges and immunities guaranteed under the Constitution. He says:

The blessings of the liberty secured by our constitutional law were not merely freedom from imprisonment or freedom of locomotion, but the highest freedom that could be allowed in all the affairs of life. It included the right of every person to use his brains, to employ or sell his labor, in every honest employment, occupation or pursuit, to freely contract with respect thereto and to retain all that he could honestly acquire and all without government interference. It was thought then that human justice was not and could not be accorded to every member of society if its constitutional law did not make this principle basic and all-controlling.

We have thus far considered some of the many limitations that it has been found necessary to place upon the citizen’s exercise of his liberties guaranteed him by the Constitution, in order that his fellow citizens may not be deprived of their guarantees under the same constitutional document. Let us next consider some of the positive duties or obligations the citizen owes under the Constitution.

Willoughby, in his treatise on the Constitution, says:

\ldots{} the supreme purpose of our Constitution is the establishment and maintenance of a State which shall be nationally and internationally a sovereign body, and, therefore, that all the limitations of the Constitution, express or implied, whether relating to the reserved rights of the States or to the liberties of the individual, are to be construed as subservient to this one great fact."\textsuperscript{54}

He further adds that in the exercise of its treaty-making or

\textsuperscript{50} Euclid-Doan Bldg. Co. v. Cunningham, 97 Ohio St. 130, 119 N.E. 361 (1918); Bebb-Jordon, 111 Wash. 73, 157 Pac. 410 (1916).
\textsuperscript{52} Anderson v. Ocala, 67 Fla. 204, 64 So. 775 (1914).
\textsuperscript{53} Vol. 50, 871 at 875 (1916).
\textsuperscript{54} ON THE CONSTITUTION OF THE UNITED STATES, 2d Ed., Vol. 1, p. 91.
other powers, with foreign nations, the exercise of these powers is to be applied in the light of the general doctrine that in its foreign relations the United States is a sovereign state except where it "is expressly limited by the Constitution itself or impliedly by the nature of the Government for which that instrument provides."

First among the duties of the citizen under our Constitution is allegiance. In tracing the origin of the duty of allegiance, a contributor to the Virginia Law Review has quoted the following statement from Professor Holdsworth: "... that in the case of both the navy and military forces of the Crown, the duty of the subject to defend the Kingdom had by the 14th Century come to be based, not on the feudal principles of tenure, but on the national duty to allegiance."

As Chief Justice Marshall pointed out in United States v. Wiltberger, treason is a breach of allegiance and can be committed only by one who owes allegiance, either perpetual or temporary. An alien who is within the territorial limits of the United States, it has been held, owes a temporary allegiance to its government in the sense that he is amenable to its laws and may be convicted of treason.

It follows from the fact that the citizen owes allegiance to his government that he has the obligations of defending that government. In other words, he is subject to the call to military duty. This duty is necessary to maintain freedom of the citizen.

The citizen is under the obligation to keep records required by law. As to freedom of speech, it is hardly necessary to say that the citizen is under obligation to carefully avoid abusing this right, especially in times of war. Professor Oppenheimer

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57 5 Wheaton 76, 97 (1820).
58 Carlisle v. United States, 16 Wall. 147, 21 L. Ed. 426 (1872), and Radich v. Hutchins, 95 U. S. 210, 24 L. Ed. 409 (1877).
59 Cooley, Constitutional Limitations, 710 ( ).
gives us an interesting observation on Holmes on this point that seems well worth repeating. He says Holmes believed “Freedom of thought and speech were primarily among those to be protected and should be carefully guarded unless some pressing need of protecting the security of the nation was present.”

A citizen is also under the obligation of allowing his property of every kind to be taken by the government under eminent domain whenever it is needed for a public purpose, and this too at a price not of his own fixing.

Finally, to mention one more obligation of a citizen under the Constitution, the citizen must pay the bills incurred in running the government. A much-cited definition of taxes is that attributed to Cooley, which is in these words: “Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs.” A shorter definition is found in *Geren v. Gruber*, which states that “Taxes are forced contributions for the support of the body politic.” The Supreme Court in giving its opinion in the case of *Union Refrigerator Transit Co. v. Kentucky* quoted from Cooley the following: “The power of taxation . . . is exercised upon the assumption of an equivalent rendered to the taxpayer in the protection of his person and property, in adding to the value of such property, or in the creation and maintenance of public conveniences in which he shares.”

In conclusion, after considering some of the privileges and immunities guaranteed the citizen under our Constitution and seeing how many of these rights and immunities are subject to qualifications, one may find himself in full agreement with Dean Pound. He says he found liberty is freedom to do what the government will allow you to do.

It has been the purpose of the writer to consider several instances in which it is clear that the citizen has obligations as well

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62 *The Civil Liberties Doctrine of Mr. Justice Holmes and Mr. Justice Cardozo*, 20 Tulane L. Rev. 177 at p. 201 (1945).
63 *Kennebec Water Dist. v. Waterville*, 96 Me. 234, 52 Atl. 774 (1902).
66 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905).
67 *Supra* note 7, at p. 56.
as benefits under the Constitution. There are doubtless many other instances that may come to the mind of the reader. It is hoped that it has been made clear that there rests upon the citizen the necessity of fulfilling his obligations imposed upon him by the Constitution, either expressly or impliedly, if his privileges and immunities under that instrument are long to endure.