

56 L Ed 2d 895 MEANING OF "PERSON"

SUPREME COURT'S VIEWS AS TO MEANING OF TERM "PERSON," AS USED IN STATUTORY OR CONSTITUTIONAL PROVISION

BY Athena Mueller, M.A., LL.B., J.D., LL.M.

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11 USCS § 1

15 USCS § 12

18 USCS § 1715

29 USCS § 152

29 USCS § 1002

42 USCS § 1857h-2

42 USCS § 1983

Civil Rights

Constitutional Law

Municipal Corporations

Restraints of Trade and Monopolies Corporations

Aliens

Constitutional Law

Municipal Corporations

Person

Restraints of Trade and MonopoliesAbortionAliensConstitutional LawCorporationsDue
ProcessEqual ProtectionJuvenilesPersonRestraints of Trade and
MonopoliesAbortionAliensConstitutional LawDue ProcessEqual ProtectionMonopolies and
Restraints of TradeMunicipal CorporationsPersonAntieau, Modern Constitutional LawVelvel,
Antitrust Suits by Foreign Nations. 25 Cath U L Rev 1, 1975Gordon, The Alien and the
Constitution. California Western L Rev 1, Fall, 1972

I. Prefatory Matters

§ 1. Introduction

[a] Scope

This annotation collects and analyses the pertinent decisions of the United States Supreme Court for the purpose of ascertaining the principles of interpretation used by the court in construing the word "person" or "persons" as used in the United States Constitution, and in both federal and state statutes. The decisions considered are limited to those in which the court construed the word "person" or "persons" alone, without regard to any other qualifying or descriptive provisions. Coverage is also restricted to include only cases in which the court expressly construed the word "person" or "persons," or declared that a particular entity was entitled to the benefit of, or liable under, a constitutional or statutory provision and was, therefore, by necessary implication, within the meaning of the word "person" or "persons" as used in such provision. The annotation, accordingly, does not deal with cases in which the court merely held that a constitutional or statutory provision was applicable, without interpreting the term "person" or "persons" as used therein, nor does it deal with any other substantive question in the case, such as the validity of the legislation involved.

[b]

§ 2. Summary

The Supreme Court has enunciated general principles regarding the status of various entities as "persons" for the purposes of the provisions of the Fifth Amendment, and of the equal protection and due process clauses of the Fourteenth Amendment, to the United States Constitution.

As regards the Fifth Amendment, the Supreme Court has established that an alien within the jurisdiction of the United States is a "person," and is accordingly entitled to the protection

afforded by that Amendment, and the court has observed that the protection of the due process clause of the Fifth Amendment is applicable to an alien even where the alien's presence in the United States is unlawful, involuntary or transitory (§3[a], *infra*). The court has, however, acknowledged that a state of the Union is not a person for the purposes of the due process of law clause of the Fifth Amendment (§3[b], *infra*). The Fifth Amendment privilege against self-incrimination has been stated by the court to be essentially a personal one applying only to natural individuals, and therefore excluding from its protection as a "person" any organization such as a corporation (§3[c], *infra*), while protecting natural entities such as lawyers, juveniles, and public employees (§3[d], *infra*).

In considering the equal protection clause of § 1 of the Fourteenth Amendment, the Supreme Court has declared that the term "person" as used in that clause includes aliens, as well as citizens, who are within the jurisdiction of the state concerned (§4[a], *infra*), corporations (§4[b], *infra*), and illegitimate children (§4[c], *infra*). Similarly, in relation to the due process clause of the Fourteenth Amendment, the Supreme Court has indicated that an alien within a state's jurisdiction is a "person" as that term is used in that clause, even where the alien's presence in the United States is unlawful, involuntary, or transitory (§5[a], *infra*), and that a corporation is also a "person" for the purposes of that portion of the clause which forbids deprivations of "property" without due process of law (§5[b], *infra*). Although some early Supreme Court cases indicated that a corporation was not a "person" for the purpose of the guaranty against deprivations of "liberty" contained in the due process clause of the Fourteenth Amendment, more recent decisions support the view that corporations are entitled to the protection of this guaranty (§5[b], *infra*). The court has specifically acknowledged that juveniles and prisoners are entitled to the protection of the due process clause of the Fourteenth Amendment, and that they are therefore necessarily persons within the meaning of that clause, but has held that the word "person" in that clause does not include an unborn fetus (§5[c], *infra*).

Although, as is apparent from the above summarization, the Court has formulated defined general principles regarding the status of various entities as "persons" for purposes of provisions of the United States Constitution, few general principles regarding the meaning of "person" can be gleaned from Supreme Court cases construing the term as used in statutory provisions. Indeed, the most general pronouncement made by the court on the subject has been that as used in statutes, the word "person" is not a term of art with a fixed meaning wherever it is employed.¹ Consistent with this reasoning, the court has said that whether the word "person" in a statute includes a corporation or association is essentially a matter of statutory construction,² and that whether the statutory term "person" encompasses a state depends upon its legislative environment, and thus cannot be answered in the abstract.³ Moreover, while it was indicated in an earlier Supreme Court decision that the word "person" in a statute does not apply to the sovereign, unless made applicable in specific terms to that effect,⁴ the court has subsequently

indicated that such is not a hard and fast rule of exclusion, and that resolution of the question is ultimately a matter of statutory construction.⁵

The Court has reached various determinations in cases in which it has construed the meaning of the term "person" as used in particular federal statutes. As used in provisions of the Sherman and Clayton Antitrust Acts, the term has been held to encompass foreign nations (§6[a], *infra*), the states of the Union (§6[c], *infra*), cities (§6[d], *infra*), unincorporated associations (see §6[e], *infra*), and corporate officers (see §6[e], *infra*), but not the United States itself (§6[b], *infra*). In relation to laws dealing with bankruptcy, the Supreme Court interpreted the term "person," in early federal law dealing with the priority of debts due to the United States, to include a corporation which became insolvent (§7, *infra*). The court has also held that the United States itself was not a "person," within the meaning of the definitions section of the Bankruptcy Act of 1898 which provides that the word "persons" should include corporations (this exclusion of the United States from the statutory definition of "person" has been followed in the most recent bankruptcy legislation, the Bankruptcy Act of 1978, effective October 1, 1979) (§7, *infra*). As regards civil rights legislation the Supreme Court has recognized that aliens are "persons," as that term is employed in the Civil Rights Act of 1870, and are therefore entitled to the protection against discrimination guaranteed by that provision (§8, *infra*), and has declared, in *Monell v Department of Social Services* (1978) 436 US 658, 56 L Ed 2d 611, 98 S Ct 2138, a landmark decision overruling *Monroe v Pape* (1961) 365 US 167, 5 L Ed 2d 492, 81 S Ct 473, that a municipality or other governmental entity qualifies as a "person" subject to liability for deprivations of civil rights under § 1 of the Civil Rights Act of 1871 (§9, *infra*). With respect to the criminal code, the Supreme Court has taken the view that a political party is a "person" for the purposes of a provision designed to prevent bribery in procuring appointive public office (§10, *infra*). The court also determined, in an early case, that a corporation was a "person" within the meaning of that term as used in a provision punishing fraud directed against marine insurers (§10, *infra*). In other miscellaneous determinations relating to federal statutes, the Supreme Court has held that municipalities are included within the meaning of the term "person" as employed in a provision of the Federal Power Act relating to sales of electricity for purposes of resale (§11, *infra*); that states of the Union, their agents, and corporations fell within the meaning of the term "person" as employed in various provisions of the Internal Revenue Code of 1954 or its predecessor statutes (§12, *infra*); that railroads are "persons" entitled to protection against secondary boycott activities under the National Labor Relations Act (§13, *infra*); that in relation to the Norris-LaGuardia Act, the term "person" as used in the Act does not encompass the United States as an employer (§14, *infra*); and that the United States is a "person" within the meaning of that term as used in a provision of the Shipping Act of 1916 dealing with the right to file a complaint (§15, *infra*).

The Supreme Court has also considered the meaning of the term "person" where it appeared in a number of state statutes which were considered by the court. In construing the term "person,"

the court has determined that the term as employed in a state limitations statute includes both a private and a municipal corporation (§16, *infra*); that the United States is a "person" within the meaning of that term as used in a state statute of limitations applicable to suits against "any person" claiming title to land by adverse possession, and was therefore entitled to take the benefit of the statute, and to acquire title by such means (§16, *infra*); and that the United States was not a "person" entitled by an early provision of a state Statute of Wills to take and hold real estate as a devisee (§17, *infra*).

With respect to statute that authorizes person to maintain particular claim for relief, qualification of sovereign as "person" who may properly maintain such claim depends not upon bare analysis of word "person," but on legislative environment in which word appears. *Inyo County v Paiute-Shoshone Indians of the Bishop Cmty. of the Bishop Colony (US) 155 L Ed 2d 933, 123 S Ct 1887.*

II. Meaning of term "person" as used in constitutional provisions

§ 3. Fifth Amendment

[a] Generally; alien as person

In a number of decisions, the Supreme Court has made express pronouncements indicating that an alien within the territory of the United States is a "person" as that term is employed in the Fifth Amendment, and is therefore entitled to the protection guaranteed by that Amendment. *Wong Wing v United States* (1896) 163 US 228, 41 L Ed 140, 16 S Ct 977; *Japanese Immigrant Case* (1903) 189 US 86, 47 L Ed 721, 23 S Ct 611; *United States v Pink* (1942) 315 US 203, 86 L Ed 796, 62 S Ct 552; *Bridges v Wixon* (1945) 326 US 135, 89 L Ed 2103, 65 S Ct 1443 (concurring opinion of Justice Murphy); *Kwong Hai Chew v Colding* (1953) 344 US 590, 97 L Ed 576, 73 S Ct 472; *Shaughnessy v United States* (1953) 345 US 206, 97 L Ed 956, 73 S Ct 625; *Galvan v Press* (1954) 347 US 522, 98 L Ed 911, 74 S Ct 737, reh den 348 US 852, 99 L Ed 671, 75 S Ct 17; *Brownell v We Shung* (1956) 352 US 180, 1 L Ed 2d 225, 77 S Ct 252; *Hellenic Lines, Ltd. v Rhoditis* (1970) 398 US 306, 26 L Ed 2d 252, 90 S Ct 1731, reh den 400 US 856, 27 L Ed 2d 94, 91 S Ct 23; *Mathews v Diaz* (1976) 426 US 67, 48 L Ed 2d 478, 96 S Ct 1883.

Thus, in his concurring opinion in *Bridges v Wixon* (1945) 326 US 135, 89 L Ed 2103, 65 S Ct 1443, Justice Murphy observed that the Fifth Amendment does not create any distinction between citizens and resident aliens, but extends its inalienable privileges to all "persons", and guards against any encroachment of those rights by federal authority.

In *Galvan v Press* (1954) 347 US 522, 98 L Ed 911, 74 S Ct 737, reh den 348 US 852, 99 L Ed 671, 75 S Ct 17, the court also acknowledged that an alien is a "person" for Fifth Amendment

purposes, stating that as a "person," an alien has the same protection for his life, liberty, and property under the due process clause of the Amendment as is afforded to a citizen.

Similarly, in *Hellenic Lines, Ltd. v Rhoditis* (1970) 398 US 306, 26 L Ed 2d 252, 90 S Ct 1731, reh den 400 US 856, 27 L Ed 2d 94, 91 S Ct 23, the court recognized that the provisions of the Fifth Amendment extend its inalienable privileges to all "persons," including resident aliens.

In protecting "persons" from deprivations of life, liberty, or property without due process of law, the Fifth Amendment protects aliens within the jurisdiction of the United States, observed the court, in *Mathews v Diaz* (1976) 426 US 67, 48 L Ed 2d 478, 96 S Ct 1883, adding that even an alien whose presence in this country is unlawful, involuntary, or transitory is entitled to such protection.

Resident aliens are considered "persons" for purposes of Fifth Amendment. *United States v Balsys* (1998, US) 141 L Ed 2d 575, 118 S Ct 2218.

Due process clause of Federal Constitution's Fifth Amendment applies to all "persons" within United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas v Davis* (2001, US) 150 L Ed 2d 653, 121 S Ct 2491.

* **OBSERVATION:** The court, in the *Mathews* decision, went on to say, however, that the fact that all persons, aliens and citizens alike, are protected by the due process clause does not mean that all aliens are entitled to enjoy all the advantages of citizenship or that all aliens must be placed in a single homogenous legal classification, since a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other.

[b] -State as person

The Supreme Court has expressly acknowledged that a state is not a person for the purposes of the due process of law clause of the Fifth Amendment.

Thus, in *South Carolina v Katzenbach* (1966) 383 US 301, 15 L Ed 2d 769, 86 S Ct 803, where the State of South Carolina claimed that the Voting Rights Act of 1965 abridged its due process rights under the Fifth Amendment by limiting litigation as to the termination of statutory coverage to a distant forum, the United States District Court for the District of Columbia, the Supreme Court rejected the challenge, observing that the word "person" in the context of the due process clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union.

[c] Self-incrimination clause; corporation or other organization as person

The Supreme Court has stated that the Fifth Amendment privilege against self-incrimination "is essentially a personal one, applying only to natural individuals"⁶ -thus appearing to limit the definition of the term "person" as it relates to the Amendment clause embodying this privilege. Consistent with this reasoning, the court has on several occasions expressed the view that the

Fifth Amendment privilege against self-incrimination does not extend to any sort of organization. *United States v White* (1944) 322 US 694, 88 L Ed 1542, 64 S Ct 1248, 152 ALR 1202; *George Campbell Painting Corp. v Reid* (1968) 392 US 286, 20 L Ed 2d 1094, 88 S Ct 1978; *California Bankers Asso. v Shultz* (1974) 416 US 21, 39 L Ed 2d 812, 94 S Ct 1494; *Bellis v United States* (1974) 417 US 85, 40 L Ed 2d 678, 94 S Ct 2179.

Thus, it was said by the court, in *United States v White* (1944) 322 US 694, 88 L Ed 1542, 64 S Ct 1248, 152 ALR 1202, that since the Fifth Amendment privilege against self-incrimination is a purely personal one, it cannot be utilized by or on behalf of any organization.

Similarly, the court observed, in *Bellis v United States* (1974) 417 US 85, 40 L Ed 2d 678, 94 S Ct 2179, that no artificial organization may utilize the personal privilege against compulsory self-incrimination embodied in the Fifth Amendment.



In the following cases, the Supreme Court expressly recognized that the Fifth Amendment privilege against self-incrimination is not applicable to corporations, thus inferring that a corporation cannot be considered a "person" within the meaning of that term as it relates to the Amendment's self-incrimination clause. *Wilson v United States* (1911) 221 US 361, 55 L Ed 771, 31 S Ct 538; *American Lithographic Co. v Werckmeister* (1911) 221 US 603, 55 L Ed 873, 31 S Ct 676; *Baltimore & O. R. Co. v Interstate Commerce Com.* (1911) 221 US 612, 55 L Ed 878, 31 S Ct 621; *Essgee Co. of China v United States* (1923) 262 US 151, 67 L Ed 917, 43 S Ct 514; *United States v Bausch & Lomb Optical Co.* (1944) 321 US 707, 88 L Ed 1024, 64 S Ct 805; *United States v White* (1944) 322 US 694, 88 L Ed 1542, 64 S Ct 1248, 152 ALR 1202; *Oklahoma Press Publishing Co. v Walling* (1946) 327 US 186, 90 L Ed 614, 66 S Ct 494, 166 ALR 531; *Curcio v United States* (1957) 354 US 118, 1 L Ed 2d 1225, 77 S Ct 1145; *George Campbell Painting Corp. v Reid* (1968) 392 US 286, 20 L Ed 2d 1094, 88 S Ct 1978; *United States v Kordel* (1970) 397 US 1, 25 L Ed 2d 1, 90 S Ct 763; *California Bankers Asso. v Shultz* (1974) 416 US 21, 39 L Ed 2d 812, 94 S Ct 1494.

Thus, in *Curcio v United States* (1957) 354 US 118, 1 L Ed 2d 1225, 77 S Ct 1145, the court regarded it as settled that a corporation is not protected by the privilege against self-incrimination found in the Fifth Amendment.

Similarly, emphasizing that the Fifth Amendment privilege against self-incrimination is essentially a personal one, applying only to natural individuals, the court, in *George Campbell Painting Corp. v Reid* (1968) 392 US 286, 20 L Ed 2d 1094, 88 S Ct 1978, noted that the privilege cannot be utilized by or on behalf of a corporation.

And the principle that a corporation is not entitled to the Fifth Amendment privilege against self-incrimination was said to be long established and without dispute, in *United States v Kordel* (1970) 397 US 1, 25 L Ed 2d 1, 90 S Ct 763.

[d] -Other entities as persons

In the following decisions, the Supreme Court recognized that various types of individuals fall within the meaning of the term "person" as used in the Fifth Amendment clause embodying the privilege against self-incrimination.

In *Spevack v Klein* (1967) 385 US 511, 17 L Ed 2d 574, 87 S Ct 625, the court stated that it found no room in the privilege against self-incrimination for classifications of people so as to deny it to some and extend it to others; that lawyers were not excepted from the words "no person . . . shall be compelled in any criminal case to be a witness against himself"; and that the court could imply no exception.

It was noted in *Re Gault* (1967) 387 US 1, 18 L Ed 2d 527, 87 S Ct 1428, 40 Ohio Ops 2d 378, that the Fifth Amendment, guaranteeing that no person shall be compelled to be a witness against himself when he is threatened with deprivation of his liberty, is as applicable to juveniles as it is to adults.

And in *Uniformed Sanitation Men Asso. v Commissioner of Sanitation* (1968) 392 US 280, 20 L Ed 2d 1089, 88 S Ct 1917, the court observed that public employees are entitled, like all other persons, to the benefit of the Federal Constitution, including the Fifth Amendment privilege against self-incrimination.

Resident aliens are considered "persons" for purposes of Fifth Amendment and are entitled to same protections under Fifth Amendment's self-incrimination clause as citizens. *United States v Balsys* (1998, US) 141 L Ed 2d 575, 118 S Ct 2218.

§ 4. Fourteenth Amendment; equal protection clause

[a] Alien as person

The Supreme Court has on several occasions made express pronouncements indicating that the term "person," as used in the equal protection clause of § 1 of the Fourteenth Amendment, includes aliens who are within the jurisdiction of the state. *Yick Wo v Hopkins* (1886) 118 US 356, 30 L Ed 220, 6 S Ct 1064; *Truax v Raich* (1915) 239 US 33, 60 L Ed 131, 36 S Ct 7; *Terrace v Thompson* (1923) 263 US 197, 68 L Ed 255, 44 S Ct 15; *Hines v Davidowitz* (1941) 312 US 52, 85 L Ed 581, 61 S Ct 399; *Takahashi v Fish & Game Com.* (1948) 334 US 410, 92 L Ed 1478, 68 S Ct 1138; *Graham v Richardson* (1971) 403 US 365, 29 L Ed 2d 534, 91 S Ct 1848; *Sugarman v Dougall* (1973) 413 US 634, 37 L Ed 2d 853, 93 S Ct 2842; *Re Griffiths* (1973) 413 US 717, 37 L Ed 2d 910, 93 S Ct 2851.

Thus, in *Yick Wo v Hopkins* (1886) 118 US 356, 30 L Ed 220, 6 S Ct 1064, the court held that a lawfully admitted resident alien is a "person" within the meaning of the Fourteenth Amendment's directive that a state must not "deny to any person within its jurisdiction the equal

protection of the laws." Invalidating a municipal ordinance regulating the operation of laundries on the ground that the ordinance was discriminatorily enforced against Chinese operators, the court declared that the provisions of the Fourteenth Amendment are not confined to the protection of citizens, but are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality.

Similarly, in *Graham v Richardson* (1971) 403 US 365, 29 L Ed 2d 534, 91 S Ct 1848, the court said that the term "person" in the context of the Fourteenth Amendment, which provides, "nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws," encompasses lawfully admitted resident aliens as well as citizens of the United States, and entitles both citizens and aliens to the equal protection of the laws of the state in which they reside.

For purposes of the Fourteenth Amendment's equal protection clause which prohibits states from denying equal protection to "any person within its jurisdiction," undocumented aliens, despite their immigration status, are persons "within the jurisdiction" of a state entitled to the equal protection of its law, use of the phrase "within its jurisdiction" confirming that the protection of the Fourteenth Amendment extends to anyone, citizen or stranger, who is subject to the laws of a state, and reaches into every corner of a state's territory, and that until he leaves the jurisdiction, either voluntarily or involuntarily in accordance with the Constitution and laws of the United States, a person is entitled to the equal protection of the laws that a state may choose to establish. *Plyler v Doe* (1982) 457 US 202, 72 L Ed 2d 786, 102 S Ct 2382, reh den (1982) 458 US 1131, 73 L Ed 2d 1401, 103 S Ct 14.

[b] Corporation as person

The court, upon numerous occasions, has indicated that a corporation is a "person" for the purposes of the equal protection clause of the Fourteenth Amendment. *Santa Clara County v Southern P. R. Co.* (1886) 118 US 394, 30 L Ed 118, 6 S Ct 1132; *Pembina Consol. Silver Mining & Milling Co. v Pennsylvania* (1888) 125 US 181, 31 L Ed 650, 8 S Ct 737; *Missouri P. R. Co. v Mackey* (1888) 127 US 205, 32 L Ed 107, 8 S Ct 1161; *Minneapolis & S. L. R. Co. v Beckwith* (1889) 129 US 26, 32 L Ed 585, 9 S Ct 207; *Charlotte, C. & A. R. Co. v Gibbs* (1892) 142 US 386, 35 L Ed 1051, 12 S Ct 255; *Covington & Lexington Turnpike Road Co. v Sanford* (1896) 164 US 578, 41 L Ed 560, 17 S Ct 198; *Gulf, C. & S. F. R. Co. v Ellis* (1897) 165 US 150, 41 L Ed 666, 17 S Ct 255; *Smyth v Ames* (1898) 169 US 466, 42 L Ed 819, 18 S Ct 418, mod 171 US 361, 43 L Ed 197, 18 S Ct 888; *Blake v McClung* (1898) 172 US 239, 43 L Ed 432, 19 S Ct 165, later app 176 US 59, 44 L Ed 371, 20 S Ct 307; *Southern R. Co. v Greene* (1910) 216 US 400, 54 L Ed 536, 30 S Ct 287; *Atchison, T. & S. F. R. Co. v Vosburg* (1915) 238 US 56, 59 L Ed 1199, 35 S Ct 675; *Louis K. Liggett Co. v Baldridge* (1928) 278 US 105, 73 L Ed 204, 49 S Ct 57, overruled on other grounds *North Dakota State Board of Pharmacy v Snyder's Drug Stores, Inc.* 414 US 156, 38 L Ed 2d 379, 94 S Ct 407; *Frost v Corporation Com. of*

Oklahoma (1929) 278 US 515, 73 L Ed 483, 49 S Ct 235; Klein v Board of Tax Supervisors (1930) 282 US 19, 75 L Ed 140, 51 S Ct 15, 73 ALR 679; Grosjean v American Press Co. (1936) 297 US 233, 80 L Ed 660, 56 S Ct 444.

Thus, in Pembina Consol. Silver Mining & Milling Co. v Pennsylvania (1888) 125 US 181, 31 L Ed 650, 8 S Ct 737, the court stated that there is no doubt that a private corporation is included under the designation "person" in the equal protection clause of the Fourteenth Amendment, since such corporations are merely associations of individuals united for a special purpose and permitted to do business under a particular name, and the great object of a corporation is to bestow the character and properties of individuality on a collective and changing body of men.

Similarly, it was observed in Gulf, C. & S. F. R. Co. v Ellis (1897) 165 US 150, 41 L Ed 666, 17 S Ct 255, that corporations are "persons" for purposes of the Fourteenth Amendment, and that a state accordingly has no more power to deny corporations the equal protection of the laws than it has to deny such protection to individual citizens.

In Smyth v Ames (1898) 169 US 466, 42 L Ed 819, 18 S Ct 418, mod 171 US 361, 43 L Ed 197, 18 S Ct 888, the court noted that the fact that corporations are persons within the meaning of the equal protection clause of the Fourteenth Amendment is well settled.

And in Grosjean v American Press Co. (1936) 297 US 233, 80 L Ed 660, 56 S Ct 444, the court stated that a corporation, though not a "citizen" within the meaning of the privileges and immunities clause, is a "person" within the meaning of the equal protection clause of the Fourteenth Amendment.

[c] Illegitimate child as person

It has been recognized by the Supreme Court that an illegitimate child is a "person" entitled to the equal protection of the laws under the Fourteenth Amendment. Levy v Louisiana (1968) 391 US 68, 20 L Ed 2d 436, 88 S Ct 1509, reh den 393 US 898, 21 L Ed 2d 185, 89 S Ct 65; Weber v Aetna Casualty & Surety Co. (1972) 406 US 164, 31 L Ed 2d 768, 92 S Ct 1400; Gomez v Perez (1973) 409 US 535, 35 L Ed 2d 56, 93 S Ct 872; New Jersey Welfare Rights Organization v Cahill (1973) 411 US 619, 36 L Ed 2d 543, 93 S Ct 1700; Jimenez v Weinberger (1974) 417 US 628, 41 L Ed 2d 363, 94 S Ct 2496; Trimble v Gordon (1977) 430 US 762, 52 L Ed 2d 31, 97 S Ct 1459, 4 Ohio Ops 3d 296.

Thus, it was concluded in Levy v Louisiana (1968) 391 US 68, 20 L Ed 2d 436, 88 S Ct 1509, reh den 393 US 898, 21 L Ed 2d 185, 89 S Ct 65, that an illegitimate child is a "person" within the meaning of the provision of the Fourteenth Amendment that no state shall deny to any "person" within its jurisdiction the equal protection of the laws.

Similarly, in Gomez v Perez (1973) 409 US 535, 35 L Ed 2d 56, 93 S Ct 872, the court held that under the equal protection clause of the Fourteenth Amendment, a state may not discriminate against illegitimate children by denying them substantial benefits accorded children in general.

§ 5. -Due process clause

[a] Alien as person

In several decisions, the Supreme Court has made express pronouncements indicating that an alien within a state's jurisdiction is a "person" as that term is used in the clause of the Fourteenth Amendment providing that a state shall not deprive any person of life, liberty, or property without due process of law. *Terrace v Thompson* (1923) 263 US 197, 68 L Ed 255, 44 S Ct 15; *Home Ins. Co. v Dick* (1930) 281 US 397, 74 L Ed 926, 50 S Ct 338, 74 ALR 701; *Hines v Davidowitz* (1941) 312 US 52, 85 L Ed 581, 61 S Ct 399; *Galvan v Press* (1954) 347 US 522, 98 L Ed 911, 74 S Ct 737, reh den 348 US 852, 99 L Ed 671, 75 S Ct 17; *Hellenic Lines, Ltd. v Rhoditis* (1970) 398 US 306, 26 L Ed 2d 252, 90 S Ct 1731, reh den 400 US 856, 27 L Ed 2d 94, 91 S Ct 23; *Graham v Richardson* (1971) 403 US 365, 29 L Ed 2d 534, 91 S Ct 1848; *Mathews v Diaz* (1976) 426 US 67, 48 L Ed 2d 478, 96 S Ct 1883.

Thus, it was observed by the court, in *Hellenic Lines, Ltd. v Rhoditis* (1970) 398 US 306, 26 L Ed 2d 252, 90 S Ct 1731, reh den 400 US 856, 27 L Ed 2d 94, 91 S Ct 23, that the provisions of the due process clause of the Fourteenth Amendment extend its inalienable privileges to all "persons," including resident aliens.

Similarly, in *Graham v Richardson* (1971) 403 US 365, 29 L Ed 2d 534, 91 S Ct 1848, the court said that the term "person" in the context of the Fourteenth Amendment, which provides, "nor shall any State deprive any person of life, liberty, or property without due process of law," encompasses lawfully admitted resident aliens as well as citizens of the United States.

In protecting persons from deprivation of life, liberty, or property without due process of law, the Fourteenth Amendment protects aliens, according to the court in *Mathews v Diaz* (1976) 426 US 67, 48 L Ed 2d 478, 96 S Ct 1883. The court added that even an alien whose presence in the United States is unlawful, involuntary, or transitory is entitled to such protection.

[b] Corporation as person

The Supreme Court has frequently recognized that corporations are persons for purposes of that portion of the Fourteenth Amendment forbidding deprivations of "property" without due process of law. *Santa Clara County v Southern P. R. Co.* (1886) 118 US 394, 30 L Ed 118, 6 S Ct 1132; *Pembina Consol. Silver Mining & Milling Co. v Pennsylvania* (1888) 125 US 181, 31 L Ed 650, 8 S Ct 737; *Missouri P. R. Co. v Mackey* (1888) 127 US 205, 32 L Ed 107, 8 S Ct 1161; *Minneapolis & S. L. R. Co. v Beckwith* (1889) 129 US 26, 32 L Ed 585, 9 S Ct 207; *Chicago, M. & S. P. R. Co. v Minnesota* (1890) 134 US 418, 33 L Ed 970, 10 S Ct 462; *Home Ins. Co. v New York State* (1890) 134 US 594, 33 L Ed 1025, 10 S Ct 593; *Charlotte, C. & A. R. Co. v Gibbes* (1892) 142 US 386, 35 L Ed 1051, 12 S Ct 255; *Covington & Lexington Turnpike Road*

Co. v Sanford (1896) 164 US 578, 41 L Ed 560, 17 S Ct 198; Smyth v Ames (1898) 169 US 466, 42 L Ed 819, 18 S Ct 418, mod 171 US 361, 43 L Ed 197, 18 S Ct 888; Blake v McClung (1898) 172 US 239, 43 L Ed 432, 19 S Ct 165; Kentucky Finance Corp. v Paramount Auto Exchange Corp. (1923) 262 US 544, 67 L Ed 1112, 43 S Ct 636; Louis K. Liggett Co. v Baldridge (1928) 278 US 105, 73 L Ed 204, 49 S Ct 57, overruled on other grounds North Dakota State Board of Pharmacy v Snyder's Drug Stores, Inc. 414 US 156, 38 L Ed 2d 379, 94 S Ct 407; Grosjean v American Press Co. (1936) 297 US 233, 80 L Ed 660, 56 S Ct 444; Connecticut General Life Ins. Co. v Johnson (1938) 303 US 77, 82 L Ed 673, 58 S Ct 436; First Nat. Bank v Bellotti (1978) 435 US 765, 55 L Ed 2d 707, 98 S Ct 1407, reh den (US) 57 L Ed 2d 1150, 98 S Ct 3126.

Thus, the court acknowledged, in Minneapolis & S. L. R. Co. v Beckwith (1889) 129 US 26, 32 L Ed 585, 9 S Ct 207, that corporations are "persons" within the protection of the Fourteenth Amendment ban on deprivations of property without due process of law, and can hence invoke the benefits of this provision, as well as the benefits of laws which guarantee to persons the enjoyment of property, afford to them the means for its protection, or prohibit legislation injuriously affecting it.

Similarly, in Covington & Lexington Turnpike Road Co. v Sanford (1896) 164 US 578, 41 L Ed 560, 17 S Ct 198, the court stated it to be settled that corporations are persons within the meaning of the provisions of the Fourteenth Amendment forbidding the deprivation of property without due process of law.

The court, in Louis K. Liggett Co. v Baldridge (1928) 278 US 105, 73 L Ed 204, 49 S Ct 57, overruled on other grounds North Dakota State Board of Pharmacy v Snyder's Drug Stores, Inc. 414 US 156, 38 L Ed 2d 379, 94 S Ct 407, acknowledged that the property rights of a corporation are entitled to protection against state legislation in contravention of the Constitution, since a corporation is a "person" within the meaning of that term as used in the due process clause of the Fourteenth Amendment.

And in First Nat. Bank v Bellotti (1978) 435 US 765, 55 L Ed 2d 707, 98 S Ct 1407, reh den (US) 57 L Ed 2d 1150, 98 S Ct 3126, the court recognized that a corporation has a constitutional right, as a "person" under the Fourteenth Amendment, not to be deprived of property without due process of law.



Although there is early Supreme Court authority indicating that a corporation is not a person for purposes of the guaranty against deprivations of "liberty" contained in the Fourteenth Amendment's due process clause, later court pronouncements support the view that corporations are entitled to the protection of this guaranty.

Thus, rejecting the contention that a state statute operated to deprive a corporation of the liberty guaranteed by the due process clause of the Fourteenth Amendment, the court, in Northwestern Nat. Life Ins. Co. v Riggs (1906) 203 US 243, 51 L Ed 168, 27 S Ct 126, stated that the liberty guaranteed by the Fourteenth Amendment is the liberty of natural, not artificial,

persons.

Similarly, in *Western Turf Asso. v Greenberg* (1907) 204 US 359, 51 L Ed 520, 27 S Ct 384, the court pointed out that the liberty guaranteed by the Fourteenth Amendment against deprivation without due process of law is the liberty of natural, not artificial, persons, and accordingly held that a corporation could not complain that a state statute had deprived it of its liberty without due process of law.

However, stating broadly that a corporation is a "person" for the purposes of the due process clause of the Fourteenth Amendment, and indicating that the First Amendment's freedom of the press is applicable to the states through the guaranty of "liberty" contained in the due process clause, the court, in *Grosjean v American Press Co.* (1936) 297 US 233, 80 L Ed 660, 56 S Ct 444, held that a state statute imposing a license tax based on gross receipts, for the privilege of engaging in the business of publishing and advertising in publications of more than a stated number of copies per week, abridged a corporation's freedom of the press in contravention of the due process clause of the Fourteenth Amendment.

See also *NAACP v Button* (1963) 371 US 415, 9 L Ed 2d 405, 83 S Ct 328, where the court, citing its decision in *Grosjean v American Press Co.* (1936) 297 US 233, 80 L Ed 660, 56 S Ct 444, *supra*, held that a corporation which claimed that a state statute unconstitutionally infringed its rights, and the rights of its members and lawyers, to associate for the purpose of assisting persons who seek legal redress for infringement of their rights, had standing to assert its rights and the corresponding rights of its members under the First and Fourteenth Amendments, thereby implying that such a corporation is a "person" in relation to a claim of "liberty" under the Fourteenth Amendment.

More recently, in *First Nat. Bank v Bellotti* (1978) 435 US 765, 55 L Ed 2d 707, 98 S Ct 1407, reh den (US) 57 L Ed 2d 1150, 98 S Ct 3126, the court observed that freedom of speech and the other freedoms encompassed by the First Amendment always have been viewed as fundamental components of the "liberty" safeguarded by the due process clause, and held that speech that is otherwise within the protection of the First Amendment does not lose that protection because its source is a corporation.

[c] Other entities as persons

The Supreme Court has acknowledged that juveniles and prisoners are entitled to the protection of the due process clause of the Fourteenth Amendment, and hence are persons within the meaning of that clause.

On the other hand, the court has held that as used in the due process clause of the Fourteenth Amendment, the word "person" does not include an unborn fetus.

Adverting to Justice Douglas' opinion announcing the judgment of the court in *Haley v Ohio* (1948) 332 US 596, 92 L Ed 224, 68 S Ct 302, 36 Ohio Ops 530, where it was observed that a child cannot be allowed to stand condemned by methods which flout constitutional requirements

of due process, the court, in *Re Gault* (1967) 387 US 1, 18 L Ed 2d 527, 87 S Ct 1428, 40 Ohio Ops 2d 378, subscribed to the view that juveniles are persons for purposes of the Fourteenth Amendment's due process clause, stating that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."

Thus, rejecting the argument that a pregnant woman has no right to procure an abortion since an unborn fetus is a "person" whose life is entitled to protection under the due process clause of the Fourteenth Amendment, the court, in *Roe v Wade* (1973) 410 US 113, 35 L Ed 2d 147, 93 S Ct 705, reh den 410 US 959, 35 L Ed 2d 694, 93 S Ct 1409, noted that the Constitution fails to define the term "person" in so many words, and that none of the contexts in which the term is used in the Constitution indicates that it has any possible prenatal application. This consideration, together with the fact that at common law, at the time of the adoption of the United States Constitution, and throughout the major portion of the nineteenth century prevailing legal abortion practices were far freer than they are today, led the court to conclude that the word "person," as used in the Fourteenth Amendment, does not include the unborn. The court added that its decision in *United States v Vuitch* (1971) 402 US 62, 28 L Ed 2d 601, 91 S Ct 1294, was inferentially to the same effect, since it there indulged in a statutory interpretation favorable to abortion in specified circumstances—an interpretation which would not have been reached if the necessary consequence was the termination of life entitled to Fourteenth Amendment protection.

Similarly, express support for the view that a prisoner is a person within the meaning of that term as used in the due process clause of the Fourteenth Amendment appears in *Wolff v McDonnell* (1974) 418 US 539, 41 L Ed 2d 935, 94 S Ct 2963, 71 Ohio Ops 2d 336, where the court stated that although lawful imprisonment necessarily makes unavailable many rights and privileges of the ordinary citizen, prisoners may nevertheless claim the protection of the Fourteenth Amendment, and may therefore not be deprived of life, liberty, or property without due process of law. The court added, however, that the prisoner's retention of due process rights does not imply that these rights are not subject to restrictions imposed by the nature of the regime to which he has been lawfully committed.

III. Meaning of term "person" as used in statutory provisions

A. Federal statutes

§ 6. Antitrust statutes (Sherman and Clayton Acts)

[a] Foreign nation as person

The Supreme Court has expressly held that a foreign sovereign is to be considered a "person" as that term is employed in the Sherman and Clayton Antitrust Acts.

Thus, holding that a foreign nation is a "person" within the meaning of § 4 of the Clayton Act (15 USCS § 15), which authorizes "any person" injured by antitrust violations to sue for treble damages in the Federal District Courts, the court, in *Pfizer, Inc. v Government of India* (1978) 434 US 308, 54 L Ed 2d 563, 98 S Ct 584, reh den 435 US 910, 55 L Ed 2d 502, 98 S Ct 1462, declared that under the provisions of the Sherman Act (15 USCS § 7) and the Clayton Act (15 USCS § 12) (which defines the word "person," as used in the Acts, to include corporations and associations existing under or authorized by the laws of either the United States, any of the territories, any state, or any foreign country), the definition of "person" is inclusive rather than exclusive, and does not by itself imply that a foreign government, any more than a natural person, falls without its bounds. Noting that the word "person" is not a term of art with a fixed meaning whenever used in a statute, and had no such fixed meaning when it was used in 1890 when the Sherman Act was passed, the court emphasized that a foreign corporation is entitled to sue for treble damages for antitrust violations, since the definition of "person" found in both the Sherman Act and the Clayton Act explicitly includes corporations existing or authorized by the laws of any foreign country, and the court said that Congress thus clearly did not intend to make the treble damage remedy available only to consumers in our own country. Observing that even if Congress' foremost concern in passing the antitrust laws was the protection of Americans, treble damage suits by foreigners who have been victimized by antitrust violations clearly may contribute to the protection of American consumers, the court added that to deny a foreign plaintiff the right to sue would defeat the two purposes of § 4 of the Clayton Act—to deter violators and deprive them of the fruits of their illegality and to compensate victims of antitrust violations for their injuries—since it would permit a price fixer or a monopolist to escape full liability for his illegal actions and would deny compensation to certain of his victims, merely because he happens to deal with foreign customers. It was further noted that if foreign plaintiffs were not permitted to seek a remedy for their antitrust injuries, persons doing business both in this country and abroad might be tempted to enter into anticompetitive conspiracies affecting American consumers in the expectation that the illegal profits they could safely extort abroad would offset any liability to plaintiffs at home. The court also rejected the contention that the status of a foreign nation as a sovereign should preclude it from suing under § 4 of the Clayton Act, noting that in *Georgia v Evans* (1942) 316 US 159, 86 L Ed 1346, 62 S Ct 972, *infra* §6[c], it had rejected the proposition that the word "person" as used in the antitrust laws excludes all sovereign states. Observing that when a foreign nation enters our commercial markets as a purchaser of goods or services, it can be victimized by anticompetitive practices just as surely as a private person or a domestic state, the court concluded that a foreign nation, like a domestic state, is entitled to pursue the remedy of treble damages when it has been injured in its business or property by antitrust violations.

* **COMMENT:** Bills to overturn *Pfizer, Inc. v Government of India*, (1978) 434 US 308, 54 L Ed 2d 563, 98 S Ct 584, reh den 435 US 910, 55 L Ed 2d 502, 98 S Ct 1462, *supra*, were introduced in both Houses during the 95th Congress, but died after being reported out of

Committee. House bill 11942, which was reported out of the House Judiciary Committee on July 26, 1978 and out of the House International Relations Committee on August 11, 1978, would have amended § 4 of the Clayton Act (15 USCS § 15) to provide specifically that it "shall not authorize suits by a foreign sovereign government, a department or agency thereof." Senate bill 1874, which was reported out of the Senate Judiciary Committee on June 14, 1978, would have amended § 4 of the Clayton Act by limiting foreign sovereign governments suing under the section to actual damages, and by prohibiting any such suit by a foreign sovereign unless the Attorney General has certified to the relevant court, or the relevant court has otherwise found, that (1) the United States is entitled to sue in its own name and on its own behalf on a civil claim in the courts of such foreign sovereign, and (2) such foreign sovereign by its laws prohibits restrictive trade practices.

[b] United States as person

In the following decision, the Supreme Court held that the United States could not be considered a "person" for purposes of a section of the Sherman Act which was the predecessor of § 4 of the Clayton Act (14 USCS § 15), providing for the recovery of treble damages for antitrust violations.

Thus, although careful to point out that while the term "person" in a statute is not ordinarily construed to include the sovereign, such is not a hard and fast rule of exclusion, but may be negated by resort to aids to construction indicating a contrary intent, the court, in *United States v Cooper Corp.* (1941) 312 US 600, 85 L Ed 1071, 61 S Ct 742, nevertheless held that the United States was not a "person" entitled to maintain an action for treble damages within the meaning of § 7 of the Sherman Anti-Trust Act (later superseded by § 4 of the Clayton Act (15 USCS § 15)) providing that any person injured by reason of anything forbidden by the act may sue therefor and recover threefold the damages sustained by him. The court stated that this conclusion was supported by the fact that if the purpose was to include the United States, "the ordinary dignities of speech would have led" to its mention by name.

United States Postal Service was not "person" subject to antitrust liability under Sherman Act (15 USCS §§ 1 et seq.)-and thus, private corporation whose contract to make mail sacks for Postal Service had been terminated could not sustain, against Postal Service, antitrust action alleging that Postal Service had sought to suppress competition and monopolize mail-sack production-as Supreme Court determined that: (1) While, in Postal Reorganization Act (39 USCS §§ 101 et seq.), Congress had generally waived Postal Service's sovereign immunity from suit, Congress had not stripped Postal Service of its governmental status. (2) Federal entity's absence of immunity did not result in liability if substantive law in question was not intended to reach entity. (3) Sherman Act, Supreme Court's decisions interpreting it, and statutes that had created and organized Postal Service led to conclusion that Postal Service was not subject to antitrust liability. *United States Postal Serv. v Flamingo Indus. (USA) Ltd.* (2004) 540 US 736, 158 L Ed

2d 19, 124 S Ct 1321.

* **COMMENT:** After the decision in *United States v Cooper, Corp.* (1941) 312 US 600, 85 L Ed 1071, 61 S Ct 742, *supra*, legislation was passed (15 USCS § 15a) giving the United States the right to maintain actions for injury to business or property by reason of anything forbidden in the antitrust laws, and allowing for recovery of actual damages sustained and the cost of suit.

[c] State as person

The Supreme Court has determined that a state of the Union is a "person" for the purposes of provisions of the federal antitrust laws authorizing the recovery of treble damages by, and the awarding of injunctive relief to, persons victimized by antitrust violations.

Thus, noting that whether the statutory word "person" includes a state depends upon its legislative environment, there being no hard and fast rule of exclusion, the court, in *Georgia v Evans* (1942) 316 US 159, 86 L Ed 1346, 62 S Ct 972, held that the state of Georgia was a "person" within the meaning of § 7 of the Sherman Act (later superseded by § 4 of the Clayton Act, 15 USCS § 15) providing that any person who shall be injured in his business or property by reason of anything made unlawful by the Act may bring suit for treble damages. The court noted that if the State was not a "person", the Act left it without any redress for injuries resulting from practices outlawed by that Act, and the court could perceive no reason for believing that Congress wanted to deprive a state, as purchaser of commodities shipped in interstate commerce, of the civil remedy of treble damages which is available to other purchasers who suffer through violation of the Act. The court added that nothing in the Act, its history, or its policy, could justify so restrictive a construction of the word "person" as to exclude a state.

Similarly, in *Hawaii v Standard Oil Co.* (1972) 405 US 251, 31 L Ed 2d 184, 92 S Ct 885, the court stated that whether a state sues in its proprietary capacity or as *parens patriae*, it qualifies as a "person" under both § 4 of the Clayton Act (15 USCS § 15), which authorizes any "person" to recover treble damages for injuries to his business or property by reason of violations of the federal antitrust laws, and § 16 of the Clayton Act (15 USCS § 26), which authorizes any "person" to obtain injunctive relief against threatened loss or damage by a violation of the antitrust laws.

[d] City as person

The Supreme Court has declared that a city is a "person" within the meaning of that word as used in the federal antitrust laws.

More recently, in *Lafayette v Louisiana Power & Light Co.* (1978) 435 US 389, 55 L Ed 2d 364, 98 S Ct 1123, the court held that as defined in the federal antitrust laws, including § 8 of the Sherman Act (15 USCS § 7), the terms "person" or "persons" include cities as municipal utility operators, whether suing as plaintiffs or being sued as defendants. The court went on to say that as there is no implied exclusion, based on public policy, of cities as municipal utility operators

from coverage as "persons" under the federal antitrust laws (15 USCS §§ 1 et. seq.), such an exclusion cannot be inferred on the grounds that (1) it would be anomalous to subject municipalities to the liabilities imposed upon violators of the antitrust laws, (2) the antitrust laws are intended to protect the public only from abuses of private power and not from actions of municipalities that exist to serve the public weal, or (3) federal antitrust regulation is unnecessary because government is subject to political control and the welfare of its citizens is thus assured through the political process.

In *Chattanooga Foundry & Pipe Works v Atlanta* (1906) 203 US 390, 51 L Ed 241, 27 S Ct 65, the court held that a municipality is a "person" within the meaning of § 8 of the Sherman Act (15 USCS § 7), the general definitional section, and that the city of Atlanta therefore could maintain a treble-damage action under § 7 of the Sherman Act (the predecessor of § 4 of the Clayton Act, 15 USCS § 15), against a supplier from whom the city purchased water pipe which it used to furnish water as a municipal utility service.

[e] Other entities as persons

In the following decisions, the Supreme Court interpreted the term "person," as employed in various provisions of the federal antitrust laws, to encompass entities of a type different from those discussed in §6[a-d], *supra*.

Thus, in *United Mine Workers v Coronado Coal Co.* (1922) 259 US 344, 66 L Ed 975, 42 S Ct 570, 27 ALR 762, later app 268 US 295, 69 L Ed 963, 45 S Ct 551, the court concluded that, for purposes of liability for treble damages based on antitrust violations, unincorporated labor unions are comprehended within the definition of the term "person" found in § 8 of the Sherman Act (15 USCS § 7), which specifically includes corporations and associations existing under or authorized by the laws of either the United States or the laws of any of the territories, the laws of any state, or the laws of any foreign country.

See *Brown v United States* (1928) 276 US 134, 72 L Ed 500, 48 S Ct 288, where the court reached the identical determination with respect to an unincorporated association of manufacturers.

And holding that a corporate officer falls within the definition of a "person" subject to prosecution under § 1 of the Sherman Act (15 USCS § 1) whenever he knowingly participates in effecting the illegal contract, combination, or conspiracy-be he the one who authorizes, orders, or helps perpetrate the crime and regardless of whether he is acting in a representative capacity-the court declared, in *United States v Wise* (1962) 370 US 405, 8 L Ed 2d 590, 82 S Ct 1354, that the mere fact that the term "person" is given a broad construction does not alter its basic meaning, and that no inference that corporate officers are to be excluded from the operation of 15 USCS § 1 can be drawn from the express inclusion of corporations as persons in § 8 of the Sherman Act (15 USCS § 7).

A union is not a person injured by reason of a violation of the antitrust laws within the

meaning of § 4 of the Clayton Act (15 USCS § 15), which authorizes the award of damages to those injured in their business or property by antitrust violations, based on the allegations of its complaint that a multiemployer association and its members coerced certain third parties, as well as some of the association's members, to enter into business relationships with nonunion firms, allegedly adversely affecting the trade of certain unionized firms and thereby restraining the business activities of the union. *Associated Gen. Contractors v Carpenters* (1983) 459 US 519, 74 L Ed 2d 723, 103 S Ct 897.

The use of the terms "persons" and "purchasers" in the statutory language of the Robinson-Patman Act (15 USCS § 13) is sufficiently broad to cover governmental bodies. *Jefferson County Pharmaceutical Assn. v Abbott Laboratories* (1983) 460 US 150, 74 L Ed 2d 882, 103 S Ct 1011, reh den 460 US 1105, 76 L Ed 2d 371, 103 S Ct 1808.

§ 7. Bankruptcy statutes

In the following decisions, the Supreme Court interpreted the term "person" as it appeared in various provisions of earlier federal laws dealing with bankruptcy.

In *Beaston v Farmers' Bank of Delaware* (1838) 37 US 102, 9 L Ed 1017, the court held that a corporation was a "person" within the meaning of that term as used in § 5 of the Act of Congress of March 3, 1797-the predecessor of the first Bankruptcy Act. The provision in question specified that when any revenue officer, or other "person" becoming indebted to the United States, by bond or otherwise, should become insolvent, or where the estate of any deceased person, in the hands of executors or administrators should be insufficient to pay all the debts due from the deceased, the debt due to the United States should be first satisfied. The court observed that no authority had been adduced to show that a corporation might not, in the construction of statutes, be regarded as a natural person, while, on the contrary, authorities had been cited which showed that corporations were to be deemed persons, when the circumstances in which they were placed were identical with those of natural persons, expressly included in such statutes.

* **COMMENT:** The Bankruptcy Act of 1898, which is effective until October 1, 1979 and the Bankruptcy Act of 1978, which is effective thereafter, do not employ the term "person" in describing the debtor in the provision granting priority to debts or claims of the United States. See § 64(a)(4) and (5) of the 1898 Act (11 USCS § 104(a)(4) and (5)) and § 507(a)(6) of the 1978 Act (11 USCS § 507(a)(6)). Note, however, that in both the 1898 Act (11 USCS § 1(23)) and the 1978 Act (11 USCS § 101(30)), the general definition of the term "person" specifically includes corporations.

In *Davis v Pringle* (1925) 268 US 315, 69 L Ed 974, 45 S Ct 549, the court held that the United States was not a "person" within the meaning of that part of the definitions section of the Bankruptcy Act of 1898 which provided that the word "persons" should include corporations (then § 1(19) of the Act and later the basis for § 1(23) (11 USCS § 1(23))). The court rejected the

government's contention that the United States was a corporation, and was therefore within the meaning of the word "person," was of the opinion that to extend the definition of "person" to the United States would be inconsistent with the context, and, therefore, held that the United States was not entitled to priority under § 64 of the Act (the predecessor section to 11 USCS § 104).

* **COMMENT:** Under the current version of the Bankruptcy Act of 1898, which is effective until October 1, 1979, the United States is not included within the general definition of the term "person" (11 USCS § 1(23)), but the provision on priorities (11 USCS § 104(a)(5)) now specifically states that it applies to "debts owing to any person, including the United States." Under the 1978 Bankruptcy Act, which is effective October 1, 1979, governmental units (defined elsewhere to include the United States) are expressly excluded from the general definition of the term "person" as used in the Act (11 USCS § 101(30)), but there is a separate provision specifically granting priority to certain unsecured claims of governmental units (11 USCS § 507(a)(6)).

And the court, in *Lincoln v Ricketts* (1936) 297 US 373, 80 L Ed 724, 56 S Ct 507, held that a municipal corporation was a "person" entitled to the priority accorded by § 64b(7) of the Bankruptcy Act of 1898 (a predecessor section, since repealed, to 11 USCS § 104), which provided that the debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, were, ranking seventh in order of payment, any debts owing to any "person" who, by the laws of the states or the United States, was entitled to priority, and which provided that the term "person" as used in that section should include corporations.

* **COMMENT:** While the current version of the 1898 Bankruptcy Act priority provision involved in the *Lincoln* decision, 11 USCS § 104(a)(4)(5)-which is effective until October 1, 1979-does not contain the proviso specifying that corporations are persons, the result is presumably the same, since the general definition of "person" appearing in the 1898 Bankruptcy Act (11 USCS § 1(23)) now expressly states that the term includes corporations. The 1978 Bankruptcy Act, which supersedes the 1898 Act and becomes effective October 1, 1979, specifically excludes governmental units (defined elsewhere to include municipalities) from the general definition of the term "person" (11 USCS § 101(30)), but the 1978 Act also contains an express provision granting priority to certain unsecured claims of governmental units (11 USCS § 507(a)(6)). The law regulating the adjustment of debts of a municipality is the subject of Chapter 9 of the 1978 Act (11 USCS §§ 901 et. seq.).

§ 8. Civil Rights Act of 1870

Superseded by 105 L Ed 2d 737

§ 9. Civil Rights Act of 1871

§ 10. Criminal Code

The court has taken the view that a political party is a "person" for purposes of a provision of the Criminal Code designed to prevent bribery in procuring appointive public office.

Thus, pointing out that the Republican Party is not a legal entity, but is an amorphous group of individuals that acts and only can act through persons, the court, in *United States v Shirey* (1959) 359 US 255, 3 L Ed 2d 789, 79 S Ct 746, held that it is a "person" within the meaning of the Act of Congress (formerly 18 USCS § 214 and since redesignated as 18 USCS § 210) making it a criminal offense to offer money to "any person" in consideration of the promise to use influence to procure an appointive office under the United States. Noting that whether the term "person" in a statute includes a particular body, such as a corporation or association is essentially a matter of construction, aided where possible, by general statutory definitions, and that if the purpose of a statute is such as to dictate the inclusion of a particular body within its scope, then the statute is generally so interpreted, the court observed that since the content and manifest purpose of the statute in question confirmed such a construction, it would unjustifiably contract the law to withdraw gifts to the Republican Party from its scope.



In the following Supreme Court decision, it was determined that a corporation was a "person" within the meaning of that term as used in a provision of the Criminal Code punishing fraud directed against marine insurers.

Thus, observing that there was no settled course of decisions holding a contrary view in criminal cases, and that the mischief intended to be reached by the statute was the same, whether it respected private or corporate persons, the court, in *United States v Amedy* (1826) 24 US 392, 6 L Ed 502, held that a corporation was a "person" within the meaning of the Crimes Act of 1801 (upon which 18 USCS § 2272 is now based), which provided that any person who, on the high seas, should willfully and corruptly cast away any ship or vessel, of which he is owner, with intent or design to prejudice any person or persons that had underwritten, any policy or policies of insurance thereon, would incur criminal penalties.

§ 11. Federal Power Act

It was determined in the following Supreme Court decision that municipalities are included within the meaning of the term "person" as employed in a provision of the Federal Power Act relating to sales of electricity for purposes of resale.

The court in *United States v Public Utilities Com.* (1953) 345 US 295, 97 L Ed 1020, 73 S Ct 706, reh den 345 US 961, 97 L Ed 1380, 73 S Ct 935, held that the word "person," as used in the

provision of the Federal Power Act extending Federal Power Commission jurisdiction to the sale of electric energy at wholesale in interstate commerce "to any person for resale" (16 USCS § 824(d)), should be interpreted to include municipalities, notwithstanding the absence of any reference to municipalities in the definition of "person" found in the definitions provision of the Act (16 USCS § 796(4)), and the definition of "municipality" in the same provision without reference to the word "person" (16 USCS § 796(7)). In arriving at this conclusion, the court looked to the statutory scheme as a whole, and noted that while 16 USCS § 796(7) contemplated municipalities as users rather than as purchasers of power, 16 USCS §§ 825e and 825l(a), provided for complaints and petitions for rehearing by municipalities. It was said that to accept the contention that a municipality, as a purchaser of power, was excluded would thwart the premise of these provisions-that such political subdivisions of the states can be aggrieved by the failure of a public utility selling power to them to satisfy the requirements of the Act.

§ 12. Internal Revenue Code

In the following Supreme Court decisions, states or their agents were determined to fall within the meaning of the term "person" as employed in various provisions of the Internal Revenue Code of 1954 or its predecessor statutes.

Thus, in *South Carolina v United States* (1905) 199 US 437, 50 L Ed 261, 26 S Ct 110, the court held that liquor dispensers serving as agents of the state of South Carolina were to be considered persons fairly within the scope of provisions of the Revised Statutes of 1901-since recodified as part of the Internal Revenue Code (26 USCS §§ 5121(a) and 5122(a))-under which a special tax was imposed upon any retail liquor dealer, defined generally as a "person" selling or offering for sale distilled spirits or wine.

Similarly, in *Ohio v Helvering* (1934) 292 US 360, 78 L Ed 1307, 54 S Ct 725, the court found no merit in the contention that a state was not embraced within the meaning of the word "person," as used in provisions of the Revised Statutes-now embodied in the Internal Revenue Code of 1954 (26 USCS § 5111(a) and 5112(a), (b))-imposing a special tax upon any wholesale liquor dealer, such a dealer being defined in terms of a "person" engaged in the sale, or offering for sale, of distilled spirits or wines. The court stated that whenever a state engages in a business of a private nature it exercises nongovernmental functions, and the business, though conducted by the state, is not immune from the exercise of the power of taxation which the Constitution vests in the Congress. Accordingly, the court held that when the state of Ohio became a dealer in intoxicating liquors, it fell within the reach of the tax.

And noting that the question whether the term "person," when used in a federal statute, includes a state cannot be abstractly declared, but depends upon its legislative environment, the court, in *Sims v United States* (1959) 359 US 108, 3 L Ed 2d 667, 79 S Ct 641, held that although the definition of "person" in § 6332 of the Internal Revenue of 1954 (26 USCS § 6332), defining the duties of "any person" in possession of property subject to levy for assessed and

unpaid taxes upon which a levy has been made, does not mention states or any sovereign or political entity or their officers among those it "includes" within the definition, states nevertheless fall within the meaning of the term "person" as used in the section, given the subject matter, the context, the legislative history, and the executive interpretation of the provision. In reaching this determination, the court emphasized that pursuant to § 7701(b) of the Code (26 USCS § 7701(b)), the terms "includes" and "including", when used in a definition contained in the Code, shall not be deemed to exclude other things otherwise within the meaning of the term defined.



The statutory term "person" has been held by the Supreme Court to apply to a corporation for the purposes of record-keeping requirements prescribed by a statute, now repealed, which was formerly incorporated into the Internal Revenue Code.

Thus, the court in *United States v Union Supply Co.* (1909) 215 US 50, 54 L Ed 87, 30 S Ct 15, held that a corporation was a "person" within the meaning of that term as used in § 6 of the Act of May 9, 1902 (32 Stat 193)-the predecessor of § 4597(a) of the Internal Revenue Code of 1954, which was itself repealed in 1976-requiring wholesale dealers in oleomargarine to keep certain books and make certain returns, and providing for the mandatory punishment by fine and imprisonment of "any person" who should willfully violate the section. The court noted that although § 5 of the same Act applied in express terms to corporations, and gave courts discretionary power to punish either by fine or imprisonment, or both, it was impossible to believe that corporations were intentionally excluded from the operation of § 6, since they were as much within the mischief aimed at as private persons and were just as capable of a willful breach of the law.

§ 13. National Labor Relations Act

Railroads have been held by the court to be "persons" entitled to protection against secondary boycott activities under the National Labor Relations Act (29 USCS §§ 151 et. seq.).

Thus, rejecting the argument that railroads are not entitled to relief from unfair labor practices in the nature of secondary boycotts under the National Labor Relations Act, the court, in *International Brotherhood of Teamsters, etc. v New York, N. H. & H. R. Co.* (1956) 350 US 155, 100 L Ed 166, 76 S Ct 227, reh den 350 US 977, 100 L Ed 847, 76 S Ct 429, emphasized that railroads are not excluded from the Act's general definition of the term "person" (29 USCS § 152(1)), and acknowledged that, such being the case, railroads are entitled to the protection of the National Labor Relations Board from the kind of unfair labor practices proscribed by § 8(b)(4)(A) of the Act (29 USCS § 158(b)(4)(A)), which expressly proscribes secondary boycott activities directed against "any person" engaged in commerce or in an industry affecting commerce.

§ 14. Norris-LaGuardia Act

In relation to the Norris-LaGuardia Act (29 USCS §§ 101 et. seq.), governing the issuance of restraining orders or injunctions in cases involving or growing out of labor disputes, the court has held that the term "person" as used in the Act does not encompass the United States as an employer.

Thus, noting that the statutory term "person" does not normally include the sovereign, the court, in *United States v United Mine Workers* (1947) 330 US 258, 91 L Ed 884, 67 S Ct 677, concluded that the provisions of the Norris-LaGuardia Act defining who may be a "person" for purposes of participation or interest in a labor dispute, and thus who may fall within the coverage of the Act, are not to be interpreted as applying to the United States as an employer. Emphasizing that the provisions in question (29 USCS §§ 113(a) and (b)) specify that a labor dispute covered by the Act is one which involves "persons" who are engaged in the same industry, trade, craft, or occupation, have direct or indirect interests therein, are employees of the same employer, or are members of the same or an affiliated organization of employers or employees, the court pointed out that every one of these qualifications relates to an economic role ordinarily filled by a private individual or corporation, and not by a sovereign government, and that none of them is at all suggestive of any part played by the United States in its relations with its own employees. It was said that Congress' failure to refer to the United States or to specify any role which it might commonly be thought to fill was strong indication that it did not intend that the Act should apply to situations in which the United States appears as employer.

§ 14.5. Religious Freedom Restoration Act

Provision of Religious Freedom Restoration Act of 1993 (42 U.S.C.S. § 2000bb-1(b))-which prohibits Federal Government from substantially burdening person's exercise of religion, unless government demonstrates that application of burden to "the person" represents least restrictive means of advancing compelling interest-requires government to demonstrate that compelling-interest test is satisfied through application of challenged law to "the person," that is, particular claimant whose sincere exercise of religion is being substantially burdened. *Gonzales v O Centro Espirita Beneficente Uniao do Vegetal* (2006) 546 US 418, 126 S Ct 1211, 163 L Ed 2d 1017.

§ 15. Shipping Act of 1916

The Supreme Court has ruled that the United States is a "person" within the meaning of that term as used in a provision of the Shipping Act of 1916 dealing with the right to file a complaint.

Specifically, it was held by the court, in *Far East Conference v United States* (1952) 342 US 570, 96 L Ed 576, 72 S Ct 492, that the United States is clearly to be deemed a "person" who, by the express terms of § 22 of the Shipping Act of 1916 (46 USCS § 821), is entitled to file a complaint with the Federal Maritime Board charging a violation of the Act. In reaching this determination, the court emphasized that the United States was one of the largest shippers in the

trade area involved in the case, the Far East, and that it would be frivolous to suggest that the Federal Maritime Board would deny standing to the United States as a complainant, since it had consistently treated the United States as a "person" within the meaning of its rule for intervention.

B. State statutes

§ 15.5. Other statutes

In 33 USCS § 1365(a) and 42 USCS § 6972(a)-which authorize actions by private citizens, including states, to enforce Clean Water Act (CWA) (33 USCS §§ 1251 et. seq.) and Resource Conservation and Recovery Act of 1976 (RCRA) (42 USCS §§ 6901 et. seq.), respectively-inclusion of United States as person must go no further than to clauses subjecting United States to suit, since (1) within CWA and RCRA there is contrast between drafting that merely redefines "person" when it occurs within particular clause or sentence, and drafting that expressly alters definition for any and all purposes of entire section in which special definition occurs, (2) such differences in treatment within given statutory text are reasonably understood to reflect differences in meaning intended, and (3) inference can be only that special definition not described as being for purposes of section or subchapter in which special definition occurs was intended to have more limited application to special definition's own clause or sentence alone. *United States Dept. of Energy v Ohio* (1992) 503 US 607, 118 L Ed 2d 255, 112 S Ct 1627.

While Dictionary Act (1 USCS § 1) generally provides that, in determining meaning of any act of Congress, unless context indicates otherwise, word "person" includes artificial entities such as associations, artificial entity such as association is not "person" for purposes of 28 USCS § 1915-providing that indigent "person" is eligible to proceed in forma pauperis in federal courts-due to considerations including contextual features of § 1915, and thus, only natural person may qualify for treatment in forma pauperis under § 1915. *Rowland v California Men's Colony, Unit II Men's Advisory Council* (1993, US) 121 L Ed 2d 656, 113 S Ct 716.

For purposes of § 402(b)(3) of Employee Retirement Security Act of 1974 (ERISA) 29 USCS § 1102(b)(3), requiring that employee benefit plan provide procedure for identifying person with authority to amend plan, term "person" includes company. *Curtiss-Wright Corp. v Schoonejongen* (1995, US) 131 L Ed 2d 94, 115 S Ct 1223.

For purposes of federal statutory construction with regard to 25 USCS § 194 which allocates burden of proof in real property litigation between Indians and white persons, word "person" is normally construed to include corporations, companies, associations, firms, partnerships, societies and joint stock companies, as well as individuals, but to exclude sovereign. *Wilson v Omaha Indian Tribe*, 442 US 653, 61 L Ed 2d 153, 99 S Ct 2529.

State was not "person" subject to qui tam liability under False Claims Act (31 USCS §§ 3729-3733). *Vermont Agency of Natural Resources v United States ex rel. Stevens* (2000, US) 146 L Ed 2d 836, 120 S Ct 1858.

Local government such as county was potentially liable "person" subject to qui tam action brought, under civil provisions of False Claims Act (31 USCS §§ 3729 et seq.), by private party in name of Federal Government and with hope of sharing in any recovery. *Cook County v United States ex rel. Chandler*, 538 US 119, 155 L Ed 2d 247, 123 S Ct 1239.

For purposes of determining in which Federal District Court habeas corpus petition should be filed under 28 USCS § 2241, with respect to challenge to present physical confinement within United States, default immediate-custodian rule is that proper respondent is warden of facility where prisoner is being held, not Attorney General or some other remote supervisory official, for: (1) Given that 28 USCS § 2242 straightforwardly provides that proper respondent is "the person who has custody"-and that 28 USCS § 2243 refers to "the person having custody"-consistent use of definite article in reference to custodian indicates that there is generally only one proper respondent to given prisoner's federal habeas corpus petition. (2) This custodian is "the person" with ability to produce prisoner's body before District Court. *Rumsfeld v Padilla* (2004, US) 159 L Ed 2d 513, 124 S Ct 2711.

See *United States v Atl. Research Corp.* (2007, US) 127 S Ct 2331, 168 L Ed 2d 28, in which Supreme Court-in holding that plain language of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 provision (42 U.S.C.S. § 9607(a)(4)(B)) authorized cost recovery actions by any private party, including potentially responsible party-observed that (1) it was natural to read phrase "any other person" in § 9607(a)(4)(B) by referring to immediately preceding 42 U.S.C.S. § 9607(a)(4)(A), which permitted suit only by United States, state, or Indian tribe; (2) phrase "any other person" therefore meant any person other than those three; and (3) 42 U.S.C.S. § 9601(21) defined "person" to include United States and states.

See *Taylor v Sturgell* (2008) 553 US 880, 128 S Ct 2161, 171 L Ed 2d 155, where Supreme Court observed that-even though it had several times said that Freedom of Information Act (FOIA) (5 U.S.C.S. § 552) vindicated public interest-(1) FOIA instructed agencies receiving request to make information available not to public at large, but rather to "person" making request; and (2) thus, successful FOIA action resulted in grant of relief to individual plaintiff, not decree benefiting public at large.

See *FCC v AT&T Inc.* (2011, US) 131 S Ct 1177, 179 L Ed 2d 132, in which Supreme Court held that corporations lacked "personal privacy" for purposes of Freedom of Information Act's Exemption 7(C) (5 U.S.C.S. § 552(b)(7)(C)), which exempted from mandatory public disclosure law enforcement records, disclosure of which could reasonably be expected to constitute unwarranted invasion of personal privacy. *FCC v AT&T Inc.* (2011, US) 131 S Ct 1177, 179 L Ed 2d 132.

See *Mohamad v Palestinian Auth.* (2012, US) 182 L Ed 2d 720, 132 S Ct 1702, where Supreme Court (1) held that that term "individual" in Torture Victim Protection Act of 1991 (note following 28 U.S.C.S. § 1350) (which authorized cause of action against individual for acts of torture and extrajudicial killing committed under authority or color of law of any foreign

nation) encompassed only natural persons; and (2) indicated that court had recognized that term "person" often had broader meaning in law than "individual" and frequently included nonnatural persons.

§ 16. Limitations statutes

The term "person" as employed in a state limitations statute has been construed by the Supreme Court to include both a private and municipal corporation.

Noting that corporations are "persons" in the law, the court, in *Metropolitan R. Co. v District of Columbia* (1889) 132 US 1, 33 L Ed 231, 10 S Ct 19, concluded that there was no apparent reason why corporations should not be included within the scope of a Maryland statute which provided that all the specified actions sued on or brought by any "person" or "persons" should be commenced within 3 years. The court also stated that municipal corporations could not claim to be excluded from the operation of the statute on the ground that they were not "persons," noting that although municipal corporations are considered public agencies exercising public duties, there are many cases which hold that such corporations are not exempt from the operation of limitation statutes, but that such statutes, at least as respects all real and personal actions, run in favor of and against municipalities in the same manner and to the same extent as against natural persons. The court also observed that the prerogative expressed by the maxim "nullum tempus occurrit reipublicae" is that of the state as sovereign alone, and that her grantees, though artificial bodies created by her, are in the same category with natural persons.



The Supreme Court has held that the United States is a "person" within the meaning of that term as used in a state statute of limitations applicable to suits against "any person" claiming title to land by adverse possession.

Specifically, in *Stanley v Schwalby* (1893) 147 US 508, 37 L Ed 259, 13 S Ct 418, later app 162 US 255, 40 L Ed 960, 16 S Ct 754, the court held that although the United States was not bound by a Texas statute of limitations which provided that every suit to recover real estate as against "any person" in peaceable and adverse possession thereof, under title or color of title, should be instituted within 3 years after the cause of action accrued, the word "person" in the statute would include the United States, enabling it to take the benefit of the statute and acquire title to land through adverse possession.

§ 17. Wills statutes

In the following decision, which involved an early provision of the New York Statute of Wills, the Supreme Court determined that the United States was not a "person" entitled by the provision to take and hold real estate as a devisee.

Specifically, in *United States v Fox* (1877) 94 US 315, 24 L Ed 192, the court held that the

United States did not come within the meaning of the term "person" as used in a provision of the New York Statute of Wills, which became part of the law of New York upon the adoption of its Constitution in 1777, and which provided that a devise of lands might be made to "any person" capable by law of holding real estate, but that no devise to a corporation should be valid unless such corporation was expressly authorized by its charter or by statute to take by devise. The court stated that the term "person" as there used applied to natural persons, and also to artificial persons-bodies politic deriving their existence and powers from legislation-but could not be so extended as to include within its meaning the Federal Government, since such would require an express definition to that effect. The court also observed that the term "corporation" in the statute applied only to such corporations as were created under the laws of the state. A devise to the United States of real property situated in the state of New York, for the purpose of assisting discharge of the debt created by the Civil War, was therefore declared void.

Footnote 1

Pfizer, Inc. v Government of India (1978) 434 US 308, 54 L Ed 2d 563, 98 S Ct 584, reh den 435 US 910, 55 L Ed 2d 502, 98 S Ct 1462, *infra* §6[a].

Footnote 2

United States v Shirey (1959) 359 US 255, 3 L Ed 2d 789, 79 S Ct 746, *infra* §10.

Footnote 3

Georgia v Evans (1942) 316 US 159, 86 L Ed 1346, 62 S Ct 972, *infra* §6[c]; Sims v United States (1959) 359 US 108, 3 L Ed 2d 667, 79 S Ct 641, *infra* §12.

Footnote 4

United States v Fox (1877) 94 US 315, 24 L Ed 192, *infra* §17.

Footnote 5

United States v Cooper Corp. (1941) 312 US 600, 85 L Ed 1071, 61 S Ct 742, *infra* §6[b]. See also United States v United Mine Workers (1947) 330 US 258, 91 L Ed 884, 67 S Ct 677, *infra* §14.

Footnote 6

United States v White (1944) 322 US 694, 88 L Ed 1542, 64 S Ct 1248, 152 ALR 1202; George Campbell Painting Corp. v Reid (1968) 392 US 286, 20 L Ed 2d 1094, 88 S Ct 1978; Bellis v United States (1974) 417 US 85, 40 L Ed 2d 678, 94 S Ct 2179.