

Slaughterhouse Cases

Mr. Justice BRADLEY, dissenting:

I concur in the opinion which has just been read by Mr. Justice Field; but desire to add a few observations for the purpose of more fully illustrating my views on the important question decided in these cases, and the special grounds on which they rest.

The fourteenth amendment to the Constitution of the United States, section 1, declares that no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States.

The legislature of Louisiana, under pretence of making a police regulation for the promotion of the public health, passed an act conferring upon a corporation, created by the act, the exclusive right, for twenty-five years, to have and maintain slaughter-houses, landings for cattle, and yards for [83 U.S. 36, 112] confining cattle intended for slaughter, within the parishes of Orleans, Jefferson, and St. Bernard, a territory containing nearly twelve hundred square miles, including the city of New Orleans; and prohibiting all other persons from building, keeping, or having slaughter-houses, landings for cattle, and yards for confining cattle intended for slaughter within the said limits; and requiring that all cattle and other animals to be slaughtered for food in that district should be brought to the slaughter-houses and works of the favored company to be slaughtered, and a payment of a fee to the company for such act.

It is contended that this prohibition abridges the privileges and immunities of citizens of the United States, especially of the plaintiffs in error, who were particularly affected thereby; and whether it does so or not is the simple question in this case. And the solution of this question depends upon the solution of two other questions, to wit:

First. Is it one of the rights and privileges of a citizen of the United States to pursue such civil employment as he may choose to adopt, subject to such reasonable regulations as may be prescribed by law?

Secondly. Is a monopoly, or exclusive right, given to one person to the exclusion of all others, to keep slaughter-houses, in a district of nearly twelve hundred square miles, for the supply of meat for a large city, a reasonable regulation of that employment which the legislature has a right to impose?

The first of these questions is one of vast importance, and lies at the very foundations of our government. The question is now settled by the fourteenth amendment itself, that citizenship of the United States is the primary citizenship in this country; and that State citizenship is secondary and derivative, depending upon citizenship of the United States and the citizen's place of residence. The States have not now, if they ever had, any power to restrict their citizenship to any classes or persons. A citizen of the United States has a perfect constitutional right to go to and reside in any State he chooses, and to claim citizenship therein, [83 U.S. 36, 113] and an equality of rights with every other citizen; and the whole power of the nation is pledged to

sustain him in that right. He is not bound to cringe to any superior, or to pray for any act of grace, as a means of enjoying all the rights and privileges enjoyed by other citizens. And when the spirit of lawlessness, mob violence, and sectional hate can be so completely repressed as to give full practical effect to this right, we shall be a happier nation, and a more prosperous one than we now are. Citizenship of the United States ought to be, and, according to the Constitution, is, a sure and undoubted title to equal rights in any and every State in this Union, subject to such regulations as the legislature may rightfully prescribe. If a man be denied full equality before the law, he is denied one of the essential rights of citizenship as a citizen of the United States.

Every citizen, then, being primarily a citizen of the United States, and, secondarily, a citizen of the State where he resides, what, in general, are the privileges and immunities of a citizen of the United States? Is the right, liberty, or privilege of choosing any lawful employment one of them?

If a State legislature should pass a law prohibiting the inhabitants of a particular township, county, or city, from tanning leather or making shoes, would such a law violate any privileges or immunities of those inhabitants as citizens of the United States, or only their privileges and immunities as citizens of that particular State? Or if a State legislature should pass a law of caste, making all trades and professions, or certain enumerated trades and professions, hereditary, so that no one could follow any such trades or professions except that which was pursued by his father, would such a law violate the privileges and immunities of the people of that State as citizens of the United States, or only as citizens of the State? Would they have no redress but to appeal to the courts of that particular State?

This seems to me to be the essential question before us for consideration. And, in my judgment, the right of any citizen to follow whatever lawful employment he chooses to adopt (submitting himself to all lawful regulations) is one of [83 U.S. 36, 114] his most valuable rights, and one which the legislature of a State cannot invade, whether restrained by its own constitution or not.

The right of a State to regulate the conduct of its citizens is undoubtedly a very broad and extensive one, and not to be lightly restricted. But there are certain fundamental rights which this right of regulation cannot infringe. It may prescribe the manner of their exercise, but it cannot subvert the rights themselves. I speak now of the rights of citizens of any free government. Granting for the present that the citizens of one government cannot claim the privileges of citizens in another government; that prior to the union of our North American States the citizens of one State could not claim the privileges of citizens in another State; or, that after the union was formed the citizens of the United States, as such, could not claim the privileges of citizens in any particular State; yet the citizens of each of the States and the citizens of the United States would be entitled to certain privileges and immunities as citizens, at the hands of their own government—privileges and immunities which their own governments respectively would be bound to respect and maintain. In this free country, the people of which inherited certain traditional rights and privileges from their ancestors, citizenship means something. It has certain privileges and immunities attached to it which the government, whether restricted by express or implied limitations, cannot take away or impair. It may do so temporarily by force, but it cannot do so by right. And these privileges and immunities attach as well to citizenship of the United States as to citizenship of the States.

The people of this country brought with them to its shores the rights of Englishmen; the rights which had been wrested from English sovereigns at various periods of the nation's history. One of these fundamental rights was expressed in these words, found in Magna Charta: 'No freeman shall be taken or imprisoned, or be disseized of his freehold or liberties or free customs, or be outlawed or exiled, or any otherwise destroyed; nor will we pass upon him or condemn [83 U.S. 36, 115] him but by lawful judgment of his peers or by the law of the land.' English constitutional writers expound this article as rendering life, liberty, and property inviolable, except by due process of law. This is the very right which the plaintiffs in error claim in this case. Another of these rights was that of habeas corpus, or the right of having any invasion of personal liberty judicially examined into, at once, by a competent judicial magistrate. Blackstone classifies these fundamental rights under three heads, as the absolute rights of individuals, to wit: the right of personal security, the right of personal liberty, and the right of private property. And of the last he says: 'The third absolute right, inherent in every Englishman, is that of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution save only by the laws of the land.'

The privileges and immunities of Englishmen were established and secured by long usage and by various acts of Parliament. But it may be said that the Parliament of England has unlimited authority, and might repeal the laws which have from time to time been enacted. Theoretically this is so, but practically it is not. England has no written constitution, it is true; but it has an unwritten one, resting in the acknowledged, and frequently declared, privileges of Parliament and the people, to violate which in any material respect would produce a revolution in an hour. A violation of one of the fundamental principles of that constitution in the Colonies, namely, the principle that recognizes the property of the people as their own, and which, therefore, regards all taxes for the support of government as gifts of the people through their representatives, and regards taxation without representation as subversive of free government, was the origin of our own revolution.

This, it is true, was the violation of a political right; but personal rights were deemed equally sacred, and were claimed by the very first Congress of the Colonies, assembled in 1774, as the undoubted inheritance of the people of this country; and the Declaration of Independence, which [83 U.S. 36, 116] was the first political act of the American people in their independent sovereign capacity, lays the foundation of our National existence upon this broad proposition: 'That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.' Here again we have the great threefold division of the rights of freemen, asserted as the rights of man. Rights to life, liberty, and the pursuit of happiness are equivalent to the rights of life, liberty, and property. These are the fundamental rights which can only be taken away by due process of law, and which can only be interfered with, or the enjoyment of which can only be modified, by lawful regulations necessary or proper for the mutual good of all; and these rights, I contend, belong to the citizens of every free government.

For the preservation, exercise, and enjoyment of these rights the individual citizen, as a necessity, must be left free to adopt such calling, profession, or trade as may seem to him most conducive to that end. Without this right he cannot be a freeman. This right to choose one's calling is an essential part of that liberty which it is the object of government to protect; and a

calling, when chosen, is a man's property and right. Liberty and property are not protected where these rights are arbitrarily assailed.

I think sufficient has been said to show that citizenship is not an empty name, but that, in this country at least, it has connected with it certain incidental rights, privileges, and immunities of the greatest importance. And to say that these rights and immunities attach only to State citizenship, and not to citizenship of the United States, appears to me to evince a very narrow and insufficient estimate of constitutional history and the rights of men, not to say the rights of the American people.

On this point the often-quoted language of Mr. Justice Washington, in *Corfield v. Coryell*,⁴¹ is very instructive. Being [83 U.S. 36, 117] called upon to expound that clause in the fourth article of the Constitution, which declares that 'the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States,' he says: 'The inquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments, and which have at all times been enjoyed by the citizens of the several States which compose this Union from the time of their becoming free, independent, and sovereign. What these fundamental privileges are it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole; the right of a citizen of one State to pass through, or to reside in, any other State for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the State; to take, hold, and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State, may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental.'

It is pertinent to observe that both the clause of the Constitution referred to, and Justice Washington in his comment on it, speak of the privileges and immunities of citizens in a State; not of citizens of a State. It is the privileges and immunities of citizens, that is, of citizens as such, that are to be accorded to citizens of other States when they are found in any State; or, as Justice Washington says, 'privileges and immunities which are, in their nature, fundamental; [83 U.S. 36, 118] which belong, of right, to the citizens of all free governments.'

It is true the courts have usually regarded the clause referred to as securing only an equality of privileges with the citizens of the State in which the parties are found. Equality before the law is undoubtedly one of the privileges and immunities of every citizen. I am not aware that any case has arisen in which it became necessary to vindicate any other fundamental privilege of citizenship; although rights have been claimed which were not deemed fundamental, and have been rejected as not within the protection of this clause. Be this, however, as it may, the language of the clause is as I have stated it, and seems fairly susceptible of a broader interpretation than that which makes it a guarantee of mere equality of privileges with other citizens.

But we are not bound to resort to implication, or to the constitutional history of England, to find an authoritative declaration of some of the most important privileges and immunities of citizens of the United States. It is in the Constitution itself. The Constitution, it is true, as it stood prior to the recent amendments, specifies, in terms, only a few of the personal privileges and immunities of citizens, but they are very comprehensive in their character. The States were merely prohibited from passing bills of attainder, ex post facto laws, laws impairing the obligation of contracts, and perhaps one or two more. But others of the greatest consequence were enumerated, although they were only secured, in express terms, from invasion by the Federal government; such as the right of habeas corpus, the right of trial by jury, of free exercise of religious worship, the right of free speech and a free press, the right peaceably to assemble for the discussion of public measures, the right to be secure against unreasonable searches and seizures, and above all, and including almost all the rest, the right of not being deprived of life, liberty, or property, without due process of law. These, and still others are specified in the original Constitution, or in the early amendments of it, as among the privileges and immunities [83 U.S. 36, 119] of citizens of the United States, or, what is still stronger for the force of the argument, the rights of all persons, whether citizens or not.

But even if the Constitution were silent, the fundamental privileges and immunities of citizens, as such, would be no less real and no less inviolable than they now are. It was not necessary to say in words that the citizens of the United States should have and exercise all the privileges of citizens; the privilege of buying, selling, and enjoying property; the privilege of engaging in any lawful employment for a livelihood; the privilege of resorting to the laws for redress of injuries, and the like. Their very citizenship conferred these privileges, if they did not possess them before. And these privileges they would enjoy whether they were citizens of any State or not. Inhabitants of Federal territories and new citizens, made such by annexation of territory or naturalization, though without any status as citizens of a State, could, nevertheless, as citizens of the United States, lay claim to every one of the privileges and immunities which have been enumerated; and among these none is more essential and fundamental than the right to follow such profession or employment as each one may choose, subject only to uniform regulations equally applicable to all.

II. The next question to be determined in this case is: Is a monopoly or exclusive right, given to one person, or corporation, to the exclusion of all others, to keep slaughter-houses in a district of nearly twelve hundred square miles, for the supply of meat for a great city, a reasonable regulation of that employment which the legislature has a right to impose?

The keeping of a slaughter-house is part of, and incidental to, the trade of a butcher—one of the ordinary occupations of human life. To compel a butcher, or rather all the butchers of a large city and an extensive district, to slaughter their cattle in another person's slaughter-house and pay him a toll therefor, is such a restriction upon the trade as materially to interfere with its prosecution. It is onerous, unreasonable, arbitrary, and unjust. It has none of the [83 U.S. 36, 120] qualities of a police regulation. If it were really a police regulation, it would undoubtedly be within the power of the legislature. That portion of the act which requires all slaughter-houses to be located below the city, and to be subject to inspection, &c., is clearly a police regulation. That portion which allows no one but the favored company to build, own, or have slaughter-houses is not a police regulation, and has not the faintest semblance of one. It is one of those arbitrary and unjust laws made in the interest of a few scheming individuals, by which some of the Southern States have,

within the past few years, been so deplorably oppressed and impoverished. It seems to me strange that it can be viewed in any other light.

The granting of monopolies, or exclusive privileges to individuals or corporations, is an invasion of the right of others to choose a lawful calling, and an infringement of personal liberty. It was so felt by the English nation as far back as the reigns of Elizabeth and James. A fierce struggle for the suppression of such monopolies, and for abolishing the prerogative of creating them, was made and was successful. The statute of 21st James, abolishing monopolies, was one of those constitutional landmarks of English liberty which the English nation so highly prize and so jealously preserve. It was a part of that inheritance which our fathers brought with them. This statute abolished all monopolies except grants for a term of years to the inventors of new manufactures. This exception is the groundwork of patents for new inventions and copyrights of books. These have always been sustained as beneficial to the state. But all other monopolies were abolished, as tending to the impoverishment of the people and to interference with their free pursuits. And ever since that struggle no English-speaking people have ever endured such an odious badge of tyranny.

It has been suggested that this was a mere legislative act, and that the British Parliament, as well as our own legislatures, have frequently disregarded it by granting exclusive privileges for erecting ferries, railroads, markets, and other establishments of a public kind. It requires but a slight [83 U.S. 36, 121] acquaintance with legal history to know that grants of this kind of franchises are totally different from the monopolies of commodities or of ordinary callings or pursuits. These public franchises can only be exercised under authority from the government, and the government may grant them on such conditions as it sees fit. But even these exclusive privileges are becoming more and more odious, and are getting to be more and more regarded as wrong in principle, and as inimical to the just rights and greatest good of the people. But to cite them as proof of the power of legislatures to create mere monopolies, such as no free and enlightened community any longer endures, appears to me, to say the least, very strange and illogical.

Lastly: Can the Federal courts administer relief to citizens of the United States whose privileges and immunities have been abridged by a State? Of this I entertain no doubt. Prior to the fourteenth amendment this could not be done, except in a few instances, for the want of the requisite authority.

As the great mass of citizens of the United States were also citizens of individual States, many of their general privileges and immunities would be the same in the one capacity as in the other. Having this double citizenship, and the great body of municipal laws intended for the protection of person and property being the laws of the State, and no provision being made, and no machinery provided by the Constitution, except in a few specified cases, for any interference by the General Government between a State and its citizens, the protection of the citizen in the enjoyment of his fundamental privileges and immunities (except where a citizen of one State went into another State) was largely left to State laws and State courts, where they will still continue to be left unless actually invaded by the unconstitutional acts or delinquency of the State governments themselves.

Admitting, therefore, that formerly the States were not prohibited from infringing any of the fundamental privileges and immunities of citizens of the United States, except [83 U.S. 36, 122] in a few specified cases, that cannot be said now, since the adoption of the fourteenth amendment. In my judgment, it was the intention of the people of this country in adopting that amendment to provide National security against violation by the States of the fundamental rights of the citizen.

The first section of this amendment, after declaring that all persons born or naturalized in the United States, and subject to its jurisdiction, are citizens of the United States and of the State wherein they reside, proceeds to declare further, that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws;' and that Congress shall have power to enforce by appropriate legislation the provisions of this article.

Now, here is a clear prohibition on the States against making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States.

If my views are correct with regard to what are the privileges and immunities of citizens, it follows conclusively that any law which establishes a sheer monopoly, depriving a large class of citizens of the privilege of pursuing a lawful employment, does abridge the privileges of those citizens.

The amendment also prohibits any State from depriving any person (citizen or otherwise) of life, liberty, or property, without due process of law.

In my view, a law which prohibits a large class of citizens from adopting a lawful employment, or from following a lawful employment previously adopted, does deprive them of liberty as well as property, without due process of law. Their right of choice is a portion of their liberty; their occupation is their property. Such a law also deprives those citizens of the equal protection of the laws, contrary to the last clause of the section.

The constitutional question is distinctly raised in these cases; the constitutional right is expressly claimed; it was [83 U.S. 36, 123] violated by State law, which was sustained by the State court, and we are called upon in a legitimate and proper way to afford redress. Our jurisdiction and our duty are plain and imperative.

It is futile to argue that none but persons of the African race are intended to be benefited by this amendment. They may have been the primary cause of the amendment, but its language is general, embracing all citizens, and I think it was purposely so expressed.

The mischief to be remedied was not merely slavery and its incidents and consequences; but that spirit of insubordination and disloyalty to the National government which had troubled the country for so many years in some of the States, and that intolerance of free speech and free discussion which often rendered life and property insecure, and led to much unequal legislation. The amendment was an attempt to give voice to the strong National yearning for that time and that condition of things, in which American citizenship should be a sure guaranty of safety, and in which every citizen of the United States might stand erect on every portion of its soil, in the

full enjoyment of every right and privilege belonging to a freeman, without fear of violence or molestation.

But great fears are expressed that this construction of the amendment will lead to enactments by Congress interfering with the internal affairs of the States, and establishing therein civil and criminal codes of law for the government of the citizens, and thus abolishing the State governments in everything but name; or else, that it will lead the Federal courts to draw to their cognizance the supervision of State tribunals on every subject of judicial inquiry, on the plea of ascertaining whether the privileges and immunities of citizens have not been abridged.

In my judgment no such practical inconveniences would arise. Very little, if any, legislation on the part of Congress would be required to carry the amendment into effect. Like the prohibition against passing a law impairing the obligation of a contract, it would execute itself. The point would [83 U.S. 36, 124] be regularly raised, in a suit at law, and settled by final reference to the Federal court. As the privileges and immunities protected are only those fundamental ones which belong to every citizen, they would soon become so far defined as to cause but a slight accumulation of business in the Federal courts. Besides, the recognized existence of the law would prevent its frequent violation. But even if the business of the National courts should be increased, Congress could easily supply the remedy by increasing their number and efficiency. The great question is, What is the true construction of the amendment? When once we find that, we shall find the means of giving it effect. The argument from inconvenience ought not to have a very controlling influence in questions of this sort. The National will and National interest are of far greater importance.

In my opinion the judgment of the Supreme Court of Louisiana ought to be reversed.