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SECTION XXVI: THE FOURTEENTH AMENDMENT; THE SLAUGHTERHOUSE CASES

SLAUGHTER-HOUSE CASES (83 U.S. 36)

Remarks:

Slaughterhouse is an extraordinarily hard case to read, but extremely important for post-Civil War federalism. On the one hand, the case dictated a construction of the Fourteenth Amendment that allowed the states to continue as independent policy centers (with the benefits and burdens of that policy). On the other hand, it precluded the Privileges or Immunities Clause of the Fourteenth Amendment from handling all fundamental rights, reserving the possibility that the clause would still play a substantial but limited role in rights protections. Today, however, the Privileges or Immunities Clause plays no role at all: it is simply without any effect in constitutional law. Constitutional lawyers attribute that to Miller's opinion in Slaughterhouse; I attribute it to Waite's opinion in Cruikshank, in the next section. Constitutional lawyers see in Field's dissent a precursor of modern law; I see there a position that would be radical even today, when it is still the case that the level of liberties enjoyed by U.S. citizens varies greatly from state to state, although never going below the floor set by the federal courts. The result in Slaughterhouse stands today: the federal courts will not protect a citizen's right to work free from unreasonable monopolies.

Matters for discussion:

- 1. Did Miller and Field agree on the importance and effect of the citizenship clause?*
- 2. Did Miller and Field agree on the importance of the omission of the words "and of citizens of a state" at the end of the Privileges or Immunities Clause?*
- 3. Did they agree on the relevance of the Privileges and Immunities Clause of Article IV for the construction of the Fourteenth Amendment Privileges or Immunities Clause, as well as the importance of Corfield v. Coriel?*
- 4. Did they agree that the right to work free from unreasonable monopolies is a fundamental right?*
- 5. On what did they disagree?*

Note: At the end of the opinion I have given a synopsis of the four different constructions of the Privileges or Immunities Clause possible given 1860s and 1870s language.

Mr. Justice MILLER, now, April 14th, 1873, delivered the opinion of the court.

[The factual situation]

These cases are brought here by writs of error to the Supreme Court of the State of Louisiana. They arise out of the efforts of the butchers of New Orleans to resist the Crescent City Live-Stock Landing and Slaughter-House Company in the exercise of certain powers conferred by the charter which created it, and which was granted by the legislature of that State.

...

The records show that the plaintiffs in error relied upon, and asserted throughout the entire course of the litigation in the State courts, that the grant of privileges in the charter of defendant, which they were contesting, was a violation of the most important provisions of the thirteenth and fourteenth articles of amendment of the Constitution of the United States. The jurisdiction and the duty of this court to review the judgment of the State court on those questions is clear and is imperative.

The statute thus assailed as unconstitutional was passed March 8th, 1869, and is entitled "An act to protect the health of the city of New Orleans, to locate the stock-landings and slaughter-houses, and to incorporate the Crescent City Live-Stock Landing and Slaughter-House Company."

The first section forbids the landing or slaughtering of animals whose flesh is intended for food, within the city of New Orleans and other parishes and boundaries named and defined, or the keeping or establishing any slaughter-houses or abattoirs within those limits except by the corporation thereby created, which is also limited to certain places afterwards mentioned. Suitable penalties are enacted for violations of this prohibition.

The second section designates the incorporators, gives the name to the corporation, and confers on it the usual corporate powers.

The third and fourth sections authorize the company to establish and erect within certain territorial limits, therein defined, one or more stock-yards, stock-landings, and slaughter-houses, and imposes upon it the duty of erecting, on or before the first day of June, 1869, one grand slaughter-house of sufficient capacity for slaughtering five hundred animals per day.

It declares that the company, after it shall have prepared all the necessary buildings, yards, and other conveniences for that purpose, shall have the sole and exclusive privilege of conducting and carrying on the live-stock landing and slaughter-house business within the limits and privilege granted by the act, and that all such animals shall be landed at the stock-landings and slaughtered at the slaughter-houses of the company, and nowhere else. Penalties are enacted for infractions of this provision, and prices fixed for the maximum charges of the company for each steamboat and for each animal landed.

...

This statute is denounced not only as creating a monopoly and conferring odious and exclusive privileges upon a small number of persons at the expense of the great body of the community of New Orleans, but it is asserted that it deprives a large and meritorious class of citizens--the whole of the butchers of the city--of the right to exercise their trade, the business to which they have been trained and on which they depend for the support of themselves and their families, and that the unrestricted exercise of the business of butchering is necessary to the daily subsistence of the population of the city.

It is, however, the slaughter-house privilege, which is mainly relied on to justify the charges of gross injustice to the public, and invasion of private right.

[The Police Power]

It is not, and cannot be successfully controverted, that it is both the right and the duty of the legislative body--the supreme power of the State or municipality--to prescribe and determine the localities where the business of slaughtering for a great city may be conducted. To do this effectively it is indispensable that all persons who slaughter animals for food shall do it in those places and nowhere else.

The statute under consideration defines these localities and forbids slaughtering in any other. It does not, as has been asserted, prevent the butcher from doing his own slaughtering. On the contrary, the Slaughter-House Company is required, under a heavy penalty, to permit and person who wishes to do so, to slaughter in their houses; and they are bound to make ample provision for the convenience of all the slaughtering for the entire city. The butcher then is still permitted to slaughter, to prepare, and to sell his own meats; but he is required to slaughter at a specified place and to pay a reasonable compensation for the use of the accommodations furnished him at that place.

The wisdom of the monopoly granted by the legislature may be open to question, but it is difficult to see a justification for the assertion that the butchers are deprived of the right to labor in their occupation, or the people of their daily service in preparing food, or how this statute, with the duties and guards imposed upon the company, can be said to destroy the business of the butcher, or seriously interfere with its pursuit.

The power here exercised by the legislature of Louisiana is, in its essential nature, one which has been, up to the present period in the constitutional history of this country, always conceded to belong to the States, however it may now be questioned in some of its details.

"Unwholesome trades, slaughter-houses, operations offensive to the senses, the deposit of powder, the application of steam power to propel cars, the building with combustible materials, and the burial of the dead, may all," says Chancellor Kent, "be interdicted by law, in the midst of dense masses of population, on the general and rational principle, that every person ought so to use his property as not to injure his neighbors; and that private interests must be made subservient to the general interests of the community." This is called the police power; and it is declared by Chief Justice Shaw that it is much easier to perceive and realize the existence and sources of it than to mark its boundaries, or prescribe limits to its exercise.

This power is, and must be from its very nature, incapable of any very exact definition or limitation. Upon it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property. "It extends," says another eminent judge, "to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State; . . . and persons and property are subject to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the State. Of the perfect right of the legislature to do this no question ever was, or, upon acknowledged general principles, ever can be made, so far as natural persons are concerned."

The regulation of the place and manner of conducting the slaughtering of animals, and the business of butchering within a city, and the inspection of the animals to be killed for meat, and of the meat afterwards, are among the most necessary and frequent exercises of this power. It is not, therefore, needed that we should seek for a comprehensive definition, but rather look for the proper source of its exercise.

In *Gibbons v. Ogden*, Chief Justice Marshall, speaking of inspection laws passed by the States, says: "They form a portion of that immense mass of legislation which controls everything within the territory of a State not surrendered to the General Government--all which can be most advantageously administered by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, &c., are component parts. No direct general power over these objects is granted to Congress; and consequently they remain subject to State legislation."

The exclusive authority of State legislation over this subject is strikingly illustrated in the case of *the City of New York v. Miln*. In that case the defendant was prosecuted for failing to comply with a statute of New York which required of every master of a vessel arriving from a foreign port, in that of New York City, to report the names of all his passengers, with certain particulars of their age, occupation, last place of settlement, and place of their birth. It was argued that this act was an invasion of the exclusive right of Congress to regulate commerce. And it cannot be denied that such a statute operated at least indirectly upon the commercial intercourse between the citizens of the United States and of foreign countries. But notwithstanding this it was held to be an exercise of the police power properly within the control of the State, and unaffected by the clause of the Constitution which conferred on Congress the right to regulate commerce.

To the same purpose are the recent cases of *the License Tax* and *United States v. De Witt*. In the latter case an act of Congress which undertook as a part of the internal revenue laws to make it a misdemeanor to mix for sale naphtha and illuminating oils, or to sell oil of petroleum inflammable at less than a prescribed temperature, was held to be void, because as a police regulation the power to make such a law belonged to the States, and did not belong to Congress.

. . .

It may, therefore, be considered as established, that the authority of the legislature of Louisiana to pass the present statute is ample, unless some restraint in the exercise of that power be found in the constitution of that State or in the amendments to the Constitution of the United States, adopted since the date of the decisions we have already cited.

If any such restraint is supposed to exist in the constitution of the State, the Supreme Court of Louisiana having necessarily passed on that question, it would not be open to review in this court.

The plaintiffs in error accepting this issue, allege that the statute is a violation of the Constitution of the United States in these several particulars:

That it creates an involuntary servitude forbidden by the thirteenth article of amendment;

That it abridges the privileges and immunities of citizens of the United States;

That it denies to the plaintiffs the equal protection of the laws; and,

That it deprives them of their property without due process of law; contrary to the provisions of the first section of the fourteenth article of amendment.

This court is thus called upon for the first time to give construction to these articles.

...

[The Reconstruction Amendments in historical context: a racial, slavery context, not a general liberties context]

The most cursory glance at [Amendments 13, 14, 15] discloses a unity of purpose, when taken in connection with the history of the times, which cannot fail to have an important bearing on any question of doubt concerning their true meaning. Nor can such doubts, when any reasonably exist, be safely and rationally solved without a reference to that history; for in it is found the occasion and the necessity for recurring again to the great source of power in this country, the people of the States, for additional guarantees of human rights; additional powers to the Federal government; additional restraints upon those of the States. Fortunately that history is fresh within the memory of us all, and its leading features, as they bear upon the matter before us, free from doubt.

The institution of African slavery, as it existed in about half the States of the Union, and the contests pervading the public mind for many years, between those who desired its curtailment and ultimate extinction and those who desired additional safeguards for its security and perpetuation, culminated in the effort, on the part of most of the States in which slavery existed, to separate from the Federal government, and to resist its authority. This constituted the war of the rebellion, and whatever auxiliary causes may have contributed to bring about this war, undoubtedly the overshadowing and efficient cause was African slavery.

[And Miller continues thus to treat the Thirteenth Amendment as concerned with slavery proper, and not servitudes more broadly.]

The process of restoring to their proper relations with the Federal government and with the other States those which had sided with the rebellion, undertaken under the proclamation of President Johnson in 1865, and before the assembling of Congress, developed the fact that, notwithstanding the formal recognition by those States of the abolition of slavery, the condition of the slave race would, without further protection of the Federal government, be almost as bad as it was before. Among the first acts of legislation adopted by several of the States in the legislative bodies which claimed to be in their normal relations with the Federal government, were laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty, and property to such an extent that their freedom was of little value, while they had lost the protection which they had received from their former owners from motives both of interest and humanity.

They were in some States forbidden to appear in the towns in any other character than menial servants. They were required to reside on and cultivate the soil without the right to purchase or own it. They were excluded from many occupations of gain, and were not permitted to give testimony in the courts in any case where a white man was a party. It was said that their lives were at the mercy of bad men, either because the laws for their protection were insufficient or

were not enforced.

These circumstances, whatever of falsehood or misconception may have been mingled with their presentation, forced upon the statesmen who had conducted the Federal government in safety through the crisis of the rebellion, and who supposed that by the thirteenth article of amendment they had secured the result of their labors, the conviction that something more was necessary in the way of constitutional protection to the unfortunate race who had suffered so much. They accordingly passed through Congress the proposition for the fourteenth amendment, and they declined to treat as restored to their full participation in the government of the Union the States which had been in insurrection, until they ratified that article by a formal vote of their legislative bodies.

Before we proceed to examine more critically the provisions of this amendment, on which the plaintiffs in error rely, let us complete and dismiss the history of the recent amendments, as that history relates to the general purpose which pervades them all. A few years' experience satisfied the thoughtful men who had been the authors of the other two amendments that, notwithstanding the restraints of those articles on the States, and the laws passed under the additional powers granted to Congress, these were inadequate for the protection of life, liberty, and property, without which freedom to the slave was no boon. They were in all those States denied the right of suffrage. The laws were administered by the white man alone. It was urged that a race of men distinctively marked as was the negro, living in the midst of another and dominant race, could never be fully secured in their person and their property without the right of suffrage.

Hence the fifteenth amendment, which declares that "the right of a citizen of the United States to vote shall not be denied or abridged by any State on account of race, color, or previous condition of servitude." The negro having, by the fourteenth amendment, been declared to be a citizen of the United States, is thus made a voter in every State of the Union.

We repeat, then, in the light of this recapitulation of events, almost too recent to be called history, but which are familiar to us all; and on the most casual examination of the language of these amendments, no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. It is true that only the fifteenth amendment, in terms, mentions the negro by speaking of his color and his slavery. But it is just as true that each of the other articles was addressed to the grievances of that race, and designed to remedy them as the fifteenth.

[Context does not determine application, only selection among plausible meanings]

We do not say that no one else but the negro can share in this protection. Both the language and spirit of these articles are to have their fair and just weight in any question of construction. Undoubtedly while negro slavery alone was in the mind of the Congress which proposed the thirteenth article, it forbids any other kind of slavery, now or hereafter. If Mexican peonage or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void. And so if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent. But what

wedo say, and what we wish to be understood is, that in any fair and just construction of any section or phrase of these amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of continued addition to the Constitution, until that purpose was supposed to be accomplished, as far as constitutional law can accomplish it.

[The Fourteenth Amendment Citizenship Clause, defining both a federal and a state citizenship]

The first section of the fourteenth article, to which our attention is more especially invited, opens with a definition of citizenship--not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. It had been the occasion of much discussion in the courts, by the executive departments, and in the public journals. It had been said by eminent judges that no man was a citizen of the United States, except as he was a citizen of one of the States composing the Union. Those, therefore, who had been born and resided always in the District of Columbia or in the Territories, though within the United States, were not citizens. Whether this proposition was sound or not had never been judicially decided. But it had been held by this court, in the celebrated Dred Scott case, only a few years before the outbreak of the civil war, that a man of African descent, whether a slave or not, was not and could not be a citizen of a State or of the United States. This decision, while it met the condemnation of some of the ablest statesmen and constitutional lawyers of the country, had never been overruled; and if it was to be accepted as a constitutional limitation of the right of citizenship, then all the negro race who had recently been made freemen, were still, not only not citizens, but were incapable of becoming so by anything short of an amendment to the Constitution.

To remove this difficulty primarily, and to establish a clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States, and also citizenship of a State, the first clause of the first section was framed.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The first observation we have to make on this clause is, that it puts at rest both the questions which we stated to have been the subject of differences of opinion. It declares that persons may be citizens of the United States without regard to their citizenship of a particular State, and it overturns the Dred Scott decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States. That its main purpose was to establish the citizenship of the negro can admit of no doubt. The phrase, "subject to its jurisdiction" was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign States born within the United States.

The next observation is more important in view of the arguments of counsel in the present case. It is, that the distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union.

It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a

State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.

[Privileges or Immunities Clause does not mention privileges or immunities of a state citizen: thus two different categories of privileges or immunities]

We think this distinction and its explicit recognition in this amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several States. The argument, however, in favor of the plaintiffs rests wholly on the assumption that the citizenship is the same, and the privileges and immunities guaranteed by the clause are the same.

The language is, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." It is a little remarkable, if this clause was intended as a protection to the citizen of a State against the legislative power of his own State, that the word citizen of the State should be left out when it is so carefully used, and used in contradistinction to citizens of the United States, in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.

Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment.

If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the State as such the latter must rest for their security and protection where they have heretofore rested; for they are not embraced by this paragraph of the amendment.

[Influence of Article IV Privileges and Immunities Clause on Fourteenth Amendment Construction]

The first occurrence of the words "privileges and immunities" in our constitutional history, is to be found in the fourth of the articles of the old Confederation.

It declares "that the better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively."

In the Constitution of the United States, which superseded the Articles of Confederation, the corresponding provision is found in section two of the fourth article, in the following words: "The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States."

There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the article of the Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase.

Fortunately we are not without judicial construction of this clause of the Constitution. The first and the leading case on the subject is that of *Corfield v. Coryell*, decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1823.

[Article IV privileges and immunities (of state citizens) are "fundamental"]

"The inquiry," he says, "is, what are the privileges and immunities of citizens of the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would be more tedious than difficult to enumerate. They may all, however, be comprehended under the following general heads: protection by the government, 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 prescribe for the general good of the whole."

This definition of the privileges and immunities of citizens of the States is adopted in the main by this court in the recent case of *Ward v. The State of Maryland*, while it declines to undertake an authoritative definition beyond what was necessary to that decision. The description, when taken to include others not named, but which are of the same general character, embraces nearly every civil right for the establishment and protection of which organized government is instituted. They are, in the language of Judge Washington, those rights which are fundamental. Throughout his opinion, they are spoken of as rights belonging to the individual as a citizen of a State. They are so spoken of in the constitutional provision which he was construing. And they have always been held to be the class of rights which the State governments were created to establish and secure.

In the case of *Paul v. Virginia*, the court, in expounding this clause of the Constitution, says that "the privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are common to the citizens in the latter States under their constitution and laws by virtue of their being citizens."

[Article IV Privileges and Immunities Clause did not create new rights]

The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens.

Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction.

[The whole domain of fundamental rights not transferred to the federal government by the Fourteenth Amendment; states will continue to have some role in fundamental rights protection]

It would be the vainest show of learning to attempt to prove by citations of authority, that up to the adoption of the recent amendments, no claim or pretence was set up that those rights depended on the Federal government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the States--such, for instance, as the prohibition against ex post facto laws, bills of attainder, and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and legislative power of the States, and without that of the Federal government. Was it the purpose of the fourteenth amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the Federal government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States?

All this and more must follow, if the proposition of the plaintiffs in error be sound. For not only are these rights subject to the control of Congress whenever in its discretion any of them are supposed to be abridged by State legislation, but that body may also pass laws in advance, limiting and restricting the exercise of legislative power by the States, in their most ordinary and usual functions, as in its judgment it may think proper on all such subjects. And still further, such a construction followed by the reversal of the judgments of the Supreme Court of Louisiana in these cases, would constitute this court a perpetual censor upon all legislation of the States, on the civil rights of their own citizens, with authority to nullify such as it did not approve as consistent with those rights, as they existed at the time of the adoption of this amendment. The argument we admit is not always the most conclusive which is drawn from the consequences urged against the adoption of a particular construction of an instrument. But when, as in the case before us, these consequences are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions; when the effect is to fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character; when in fact it radically changes the whole theory of the relations of the State and Federal governments to each other and of both these governments to the people; the argument has a force that is irresistible, in the absence of language which expresses such a purpose too clearly to admit of doubt.

We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the States which ratified them.

[The fundamental right to work free from unreasonable monopolies depended in no way on the federal government, and thus now does not fall under the Fourteenth Amendment]

Having shown that the privileges and immunities relied on in the argument are those which belong to citizens of the States as such, and that they are left to the State governments for security and protection, and not by this article placed under the special care of the Federal government, we may hold ourselves excused from defining the privileges and immunities of citizens of the United States which no State can abridge, until some case involving those privileges may make it necessary to do so.

[But there are some changes; the clause is not meaningless]

But lest it should be said that no such privileges and immunities are to be found if those we have been considering are excluded, we venture to suggest some which owe their existence to the Federal government, its National character, its Constitution, or its laws.

[Those rights necessary for the operation of the national government: Crandall rights]

One of these is well described in the case of *Crandall v. Nevada*. It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, "to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the subtreasuries, land offices, and courts of justice in the several States." And quoting from the language of Chief Justice Taney in another case, it is said "that for all the great purposes for which the Federal government was established, we are one people, with one common country, we are all citizens of the United States;" and it is, as such citizens, that their rights are supported in this court in *Crandall v. Nevada*.

[Other rights: Question: how could a state infringe these so as to be limited by the Fourteenth Amendment?]

Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States. The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of habeas corpus, are rights of the citizen guaranteed by the Federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States, and not citizenship of a State. One of these privileges is conferred by the very article under consideration. It is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a bona fide residence therein, with the same rights as other citizens of that State. To these may be added the rights secured by the thirteenth and fifteenth articles of amendment, and by the other clause of the fourteenth, next to be considered.

[Conclusion about Privileges or Immunities Clause]

But it is useless to pursue this branch of the inquiry, since we are of opinion that the rights claimed by these plaintiffs in error, if they have any existence, are not privileges and immunities of citizens of the United States within the meaning of the clause of the fourteenth amendment under consideration.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 its laws."

[Fourteenth Amendment Due Process Clause]

The argument has not been much pressed in these cases that the defendant's charter deprives the plaintiffs of their property without due process of law, or that it denies to them the equal protection of the law. The first of these paragraphs has been in the Constitution since the adoption of the fifth amendment, as a restraint upon the Federal power. It is also to be found in some form of expression in the constitutions of nearly all the States, as a restraint upon the power of the States. This law then, has practically been the same as it now is during the existence of the government, except so far as the present amendment may place the restraining power over the States in this matter in the hands of the Federal government.

We are not without judicial interpretation, therefore, both State and National, of the meaning of this clause. And it is sufficient to say that under no construction of that provision that we have ever seen, or any that we deem admissible, can the restraint imposed by the State of Louisiana upon the exercise of their trade by the butchers of New Orleans be held to be a deprivation of property within the meaning of that provision.

[Fourteenth Amendment Equal Protection Clause]

"Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

In the light of the history of these amendments, and the pervading purpose of them, which we have already discussed, it is not difficult to give a meaning to this clause. The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden.

If, however, the States did not conform their laws to its requirements, then by the fifth section of the article of amendment Congress was authorized to enforce it by suitable legislation. We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other. But as it is a State that is to be dealt with, and not alone the validity of its laws, we may safely leave that matter until Congress shall have exercised its power, or some case of State oppression, by denial of equal justice in its courts, shall have claimed a decision at our hands. We find no such case in the one before us, and do not deem it necessary to go over the argument again, as it may have relation to this particular clause of the amendment.

[The survival of separate spheres of state and federal authority]

In the early history of the organization of the government, its statesmen seem to have divided on the line which should separate the powers of the National government from those of the State governments, and though this line has ever been very well defined in public opinion, such a division has continued from that day to this.

The adoption of the first eleven amendments to the Constitution so soon after the original instrument was accepted, shows a prevailing sense of danger at that time from the Federal power. And it cannot be denied that such a jealousy continued to exist with many patriotic men until the breaking out of the late civil war. It was then discovered that the true danger to the

perpetuity of the Union was in the capacity of the State organizations to combine and concentrate all the powers of the State, and of contiguous States, for a determined resistance to the General Government.

Unquestionably this has given great force to the argument, and added largely to the number of those who believe in the necessity of a strong National government.

But, however pervading this sentiment, and however it may have contributed to the adoption of the amendments we have been considering, we do not see in those amendments any purpose to destroy the main features of the general system. Under the pressure of all the excited feeling growing out of the war, our statesmen have still believed that the existence of the State with powers for domestic and local government, including the regulation of civil rights--the rights of person and of property--was essential to the perfect working of our complex form of government, though they have thought proper to impose additional limitations on the States, and to confer additional power on that of the Nation.

But whatever fluctuations may be seen in the history of public opinion on this subject during the period of our national existence, we think it will be found that this court, so far as its functions required, has always held with a steady and an even hand the balance between State and Federal power, and we trust that such may continue to be the history of its relation to that subject so long as it shall have duties to perform which demand of it a construction of the Constitution, or of any of its parts.

The judgments of the Supreme Court of Louisiana in these cases are

AFFIRMED.

Mr. Justice FIELD, dissenting:

I am unable to agree with the majority of the court in these cases, and will proceed to state the reasons of my dissent from their judgment.

[Elucidation of the damage caused by the Louisiana statute]

...

But it is only the special and exclusive privileges conferred by the act that this court has to consider in the cases before it. These privileges are granted for the period of twenty-five years.

...

In order to understand the real character of these special privileges, it is necessary to know the extent of country and of population which they affect. The parish of Orleans contains an area of country of 150 square miles; the parish of Jefferson, 384 square miles; and the parish of St. Bernard, 620 square miles. The three parishes together contain an area of 1154 square miles, and they have a population of between two and three hundred thousand people.

...

The substance of the averments of the plaintiffs in error is this: That prior to the passage of the act in question they were engaged in the lawful and necessary business of procuring and

bringing to the parishes of Orleans, Jefferson, and St. Bernard, animals suitable for human food, and in preparing such food for market; that in the prosecution of this business they had provided in these parishes suitable establishments for landing, sheltering, keeping, and slaughtering cattle and the sale of meat; that with their association about four hundred persons were connected, and that in the parishes named about a thousand persons were thus engaged in procuring, preparing, and selling animal food. And they complain that the business of landing, yarding, and keeping, within the parishes named, cattle intended for sale or slaughter, which was lawful for them to pursue before the first day of June, 1869, is made by that act unlawful for any one except the corporation named; and that the business of slaughtering cattle and preparing animal food for market, which it was lawful for them to pursue in these parishes before that day, is made by that act unlawful for them to pursue afterwards, except in the buildings of the company, and upon payment of certain prescribed fees, and a surrender of a valuable portion of each animal slaughtered. And they contend that the lawful business of landing, yarding, sheltering, and keeping cattle intended for sale or slaughter, which they in common with every individual in the community of the three parishes had a right to follow, cannot be thus taken from them and given over for a period of twenty-five years to the sole and exclusive enjoyment of a corporation of seventeen persons or of anybody else. And they also contend that the lawful and necessary business of slaughtering cattle and preparing animal food for market, which they and all other individuals had a right to follow, cannot be thus restricted within this territory of 1154 square miles to the buildings of this corporation, or be subjected to tribute for the emolument of that body.

[The extent of the police power]

No one will deny the abstract justice which lies in the position of the plaintiffs in error; and I shall endeavor to show that the position has some support in the fundamental law of the country.

It is contended in justification for the act in question that it was adopted in the interest of the city, to promote its cleanliness and protect its health, and was the legitimate exercise of what is termed the police power of the State. That power undoubtedly extends to all regulations affecting the health, good order, morals, peace, and safety of society, and is exercised on a great variety of subjects, and in almost numberless ways. All sorts of restrictions and burdens are imposed under it, and when these are not in conflict with any constitutional prohibitions, or fundamental principles, they cannot be successfully assailed in a judicial tribunal. With this power of the State and its legitimate exercise I shall not differ from the majority of the court. But under the pretence of prescribing a police regulation the State cannot be permitted to encroach upon any of the just rights of the citizen, which the Constitution intended to secure against abridgment.

In the law in question there are only two provisions which can properly be called police regulations--the one which requires the landing and slaughtering of animals below the city of New Orleans, and the other which requires the inspection of the animals before they are slaughtered. When these requirements are complied with, the sanitary purposes of the act are accomplished. In all other particulars the act is a mere grant to a corporation created by it of special and exclusive privileges by which the health of the city is in no way promoted. . . .

It is also sought to justify the act in question on the same principle that exclusive grants for ferries, bridges, and turnpikes are sanctioned. But it can find no support there. Those grants are of franchises of a public character appertaining to the government. Their use usually

requires the exercise of the sovereign right of eminent domain. It is for the government to determine when one of them shall be granted, and the conditions upon which it shall be enjoyed. It is the duty of the government to provide suitable roads, bridges, and ferries for the convenience of the public, and if it chooses to devolve this duty to any extent, or in any locality, upon particular individuals or corporations, it may of course stipulate for such exclusive privileges connected with the franchise as it may deem proper, without encroaching upon the freedom or the just rights of others. The grant, with exclusive privileges, of a right thus appertaining to the government, is a very different thing from a grant, with exclusive privileges, of a right to pursue one of the ordinary trades or callings of life, which is a right appertaining solely to the individual.

...

[The danger and history of monopolies]

The act of Louisiana presents the naked case, unaccompanied by any public considerations, where a right to pursue a lawful and necessary calling, previously enjoyed by every citizen, and in connection with which a thousand persons were daily employed, is taken away and vested exclusively for twenty-five years, for an extensive district and a large population, in a single corporation, or its exercise is for that period restricted to the establishments of the corporation, and there allowed only upon onerous conditions.

If exclusive privileges of this character can be granted to a corporation of seventeen persons, they may, in the discretion of the legislature, be equally granted to single individual. If they may be granted for twenty-five years they may be equally granted for a century, and in perpetuity. If they may be granted for the landing and keeping of animals intended for sale or slaughter they may be equally granted for the landing and storing of grain and other products of the earth, or for any article of commerce. If they may be granted for structures in which animal food is prepared for market they may be equally granted for structures in which farinaceous or vegetable food is prepared. They may be granted for any of the pursuits of human industry, even in its most simple and common forms. Indeed, upon the theory on which the exclusive privileges granted by the act in question are sustained, there is no monopoly, in the most odious form, which may not be upheld.

The question presented is, therefore, one of the gravest importance, not merely to the parties here, but to the whole country. It is nothing less than the question whether the recent amendments to the Federal Constitution protect the citizens of the United States against the deprivation of their common rights by State legislation. In my judgment the fourteenth amendment does afford such protection, and was so intended by the Congress which framed and the States which adopted it.

[Field then proceeds to examine the Thirteenth Amendment, omitted here.]

But if the exclusive privileges conferred upon the Louisiana corporation can be sustained, it is not perceived why exclusive privileges for the construction and keeping of ovens, machines, grindstones, wine-presses, and for all the numerous trades and pursuits for the prosecution of which buildings are required, may not be equally bestowed upon other corporations or private individuals, and for periods of indefinite duration.

[Purpose of the Fourteenth Amendment: nationalization of all common rights]

It is not necessary, however, as I have said, to rest my objections to the act in question upon the terms and meaning of the thirteenth amendment. The provisions of the fourteenth amendment, which is properly a supplement to the thirteenth, cover, in my judgment, the case before us, and inhibit any legislation which confers special and exclusive privileges like these under consideration. The amendment was adopted to obviate objections which had been raised and pressed with great force to the validity of the Civil Rights Act, and to place the common rights of American citizens under the protection of the National government. It first declares that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." It then declares 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."

[The Revolutionary Nature of Fourteenth Amendment Citizenship]

The first clause of this amendment determines who are citizens of the United States, and how their citizenship is created. Before its enactment there was much diversity of opinion among jurists and statesmen whether there was any such citizenship independent of that of the State, and, if any existed, as to the manner in which it originated. With a great number the opinion prevailed that there was no such citizenship independent of the citizenship of the State. Such was the opinion of Mr. Calhoun and the class represented by him. In his celebrated speech in the Senate upon the Force Bill, in 1833, referring to the reliance expressed by a senator upon the fact that we are citizens of the United States, he said: "If by citizen of the United States he means a citizen at large, one whose citizenship extends to the entire geographical limits of the country without having a local citizenship in some State or Territory, a sort of citizen of the world, all I have to say is that such a citizen would be a perfect nondescript; that not a single individual of this description can be found in the entire mass of our population. Notwithstanding all the pomp and display of eloquence on the occasion, every citizen is a citizen of some State or Territory, and as such, under an express provision of the Constitution, is entitled to all privileges and immunities of citizens in the several States; and it is in this and no other sense that we are citizens of the United States."

In the Dred Scott case this subject of citizenship of the United States was fully and elaborately discussed. The exposition in the opinion of Mr. Justice Curtis has been generally accepted by the profession of the country as the one containing the soundest views of constitutional law. And he held that, under the Constitution, citizenship of the United States in reference to natives was dependent upon citizenship in the several States, under their constitutions and laws.

The Chief Justice, in that case, and a majority of the court with him, held that the words "people of the United States" and "citizens" were synonymous terms; that the people of the respective States were the parties to the Constitution; that these people consisted of the free inhabitants of those States; that they had provided in their Constitution for the adoption of a uniform rule of naturalization; that they and their descendants and persons naturalized were the only persons who could be citizens of the United States, and that it was not in the power of any State to invest any other person with citizenship so that he could enjoy the privileges of a citizen under the Constitution, and that therefore the descendants of persons brought to this country and sold as slaves were not, and could not be citizens within the meaning of the Constitution.

[Omission of mention of privileges or immunities of a state citizen means that all important

privileges or immunities have been transferred to the arena of privileges or immunities of U.S. citizens]

The first clause of the fourteenth amendment changes this whole subject, and removes it from the region of discussion and doubt. It recognizes in express terms, if it does not create, citizens of the United States, and it makes their citizenship dependent upon the place of their birth, or the fact of their adoption, and not upon the constitution or laws of any State or the condition of their ancestry. A citizen of a State is now only a citizen of the United States residing in that State. The fundamental rights, privileges, and immunities which belong to him as a free man and a free citizen, now belong to him as a citizen of the United States, and are not dependent upon his citizenship of any State. The exercise of these rights and privileges, and the degree of enjoyment received from such exercise, are always more or less affected by the condition and the local institutions of the State, or city, or town where he resides. They are thus affected in a State by the wisdom of its laws, the ability of its officers, the efficiency of its magistrates, the education and morals of its people, and by many other considerations. This is a result which follows from the constitution of society, and can never be avoided, but in no other way can they be affected by the action of the State, or by the residence of the citizen therein. They do not derive their existence from its legislation, and cannot be destroyed by its power.

[Impugning the majority opinion, saying that it guts the Fourteenth Amendment]

The amendment does not attempt to confer any new privileges or immunities upon citizens, or to enumerate or define those already existing. It assumes that there are such privileges and immunities which belong of right to citizens as such, and ordains that they shall not be abridged by State legislation. If this inhibition has no reference to privileges and immunities of this character, but only refers, as held by the majority of the court in their opinion, to such privileges and immunities as were before its adoption specially designated in the Constitution or necessarily implied as belonging to citizens of the United States, it was a vain and idle enactment, which accomplished nothing, and most unnecessarily excited Congress and the people on its passage. With privileges and immunities thus designated or implied no State could ever have interfered by its laws, and no new constitutional provision was required to inhibit such interference. The supremacy of the Constitution and the laws of the United States always controlled any State legislation of that character. But if the amendment refers to the natural and inalienable rights which belong to all citizens, the inhibition has a profound significance and consequence.

[Definition of privileges or immunities of United States citizens]

What, then, are the privileges and immunities which are secured against abridgment by State legislation?

In the first section of the Civil Rights Act Congress has given its interpretation to these terms, or at least has stated some of the rights which, in its judgment, these terms include; it has there declared that they include the right "to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property." That act, it is true, was passed before the fourteenth amendment, but the amendment was adopted, as I have already said, to obviate objections to the act, or, speaking more accurately, I should say, to obviate objections to legislation of a similar character, extending the protection of the National government over the common rights of all citizens of the United States. Accordingly,

after its ratification, Congress re-enacted the act under the belief that whatever doubts may have previously existed of its validity, they were removed by the amendment.

[Fourteenth Amendment privileges or immunities will be the same as Article IV privileges and immunities were: all rights of any importance]

The terms, privileges and immunities, are not new in the amendment; they were in the Constitution before the amendment was adopted. They are found in the second section of the fourth article, which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in these several States," and they have been the subject of frequent consideration in judicial decisions. In *Corfield v. Coryell*, Mr. Justice Washington said he had "no hesitation in confining these expressions to those privileges and immunities which were, in their nature, fundamental; which belong of right to citizens of all free governments, and which have at all times been enjoyed by the citizens of the several States which compose the Union, from the time of their becoming free, independent, and sovereign;" and, in considering what those fundamental privileges were, he said that perhaps it would be more tedious than difficult to enumerate them, but that they might 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." This appears to me to be a sound construction of the clause in question. The privileges and immunities designated are those which of right belong to the citizens of all free governments. Clearly among these must be placed the right to pursue a lawful employment in a lawful manner, without other restraint than such as equally affects all persons. In the discussions in Congress upon the passage of the Civil Rights Act repeated reference was made to this language of Mr. Justice Washington. It was cited by Senator Trumbull with the observation that it enumerated the very rights belonging to a citizen of the United States set forth in the first section of the act, and with the statement that all persons born in the United States, being declared by the act citizens of the United States, would thenceforth be entitled to the rights of citizens, and that these were the great fundamental rights set forth in the act; and that they were set forth "as appertaining to every freeman."

The privileges and immunities designated in the second section of the fourth article of the Constitution are, then, according to the decision cited, those which of right belong to the citizens of all free governments, and they can be enjoyed under that clause by the citizens of each State in the several States upon the same terms and conditions as they are enjoyed by the citizens of the latter States. No discrimination can be made by one State against the citizen of other States in their enjoyment, nor can any greater imposition be levied than such as is laid upon its own citizens. It is a clause which insures equality in the enjoyment of these rights between citizens of the several States whilst in the same State.

. . .

[Relative Nature of Fourteenth Amendment like Article IV: but now, any two U.S. citizens will have identical rights]

What the clause in question did for the protection of the citizens of one State against hostile and discriminating legislation of other States, the fourteenth amendment does for the protection of every citizen of the United States against hostile and discriminating legislation against him in favor of others, whether they reside in the same or in different States. If under the fourth

article of the Constitution equality of privileges and immunities is secured between citizens of different States, under the fourteenth amendment the same equality is secured between citizens of the United States.

It will not be pretended that under the fourth article of the Constitution any State could create a monopoly in any known trade or manufacture in favor of her own citizens, or any portion of them, which would exclude an equal participation in the trade or manufacture monopolized by citizens of other States. She could not confer, for example, upon any of her citizens the sole right to manufacture shoes, or boots, or silk, or the sole right to sell those articles in the State so as to exclude non-resident citizens from engaging in a similar manufacture or sale. The non-resident citizens could claim equality of privilege under the provisions of the fourth article with the citizens of the State exercising the monopoly as well as with others, and thus, as respects them, the monopoly would cease. If this were not so it would be in the power of the State to exclude at any time the citizens of other States from participation in particular branches of commerce or trade, and extend the exclusion from time to time so as effectually to prevent any traffic with them.

[Monopolies as abridgements of fundamental rights]

Now, what the clause in question does for the protection of citizens of one State against the creation of monopolies in favor of citizens of other States, the fourteenth amendment does for the protection of every citizen of the United States against the creation of any monopoly whatever. The privileges and immunities of citizens of the United States, of every one of them, is secured against abridgment in any form by any State. The fourteenth amendment places them under the guardianship of the National authority. All monopolies in any known trade or manufacture are an invasion of these privileges, for they encroach upon the liberty of citizens to acquire property and pursue happiness, and were held void at common law in the great Case of Monopolies, decided during the reign of Queen Elizabeth.

A monopoly is defined "to be an institution or allowance from the sovereign power of the State by grant, commission, or otherwise, to any person or corporation, for the sole buying, selling, making, working, or using of anything, whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty they had before, or hindered in their lawful trade." All such grants relating to any known trade or manufacture have been held by all the judges of England, whenever they have come up for consideration, to be void at common law as destroying the freedom of trade, discouraging labor and industry, restraining persons from getting an honest livelihood, and putting it into the power of the grantees to enhance the price of commodities.

...

[English law is hostile to monopolies]

The common law of England, as is thus seen, condemned all monopolies in any known trade or manufacture, and declared void all grants of special privileges whereby others could be deprived of any liberty which they previously had, or be hindered in their lawful trade. The statute of James I, to which I have referred, only embodied the law as it had been previously declared by the courts of England, although frequently disregarded by the sovereigns of that country.

[Early America was likewise hostile to monopolies]

The common law of England is the basis of the jurisprudence of the United States. It was brought to this country by the colonists, together with the English statutes, and was established here so far as it was applicable to their condition. That law and the benefit of such of the English statutes as existed at the time of their colonization, and which they had by experience found to be applicable to their circumstances, were claimed by the Congress of the United Colonies in 1774 as a part of their "indubitable rights and liberties." Of the statutes, the benefits of which was thus claimed, the statute of James I against monopolies was one of the most important. And when the Colonies separated from the mother country no privilege was more fully recognized or more completely incorporated into the fundamental law of the country than that every free subject in the British empire was entitled to pursue his happiness by following any of the known established trades and occupations of the country, subject only to such restraints as equally affected all others. The immortal document which proclaimed the independence of the country declared as self-evident truths that the Creator had endowed all men "with certain inalienable rights, and that among these are life, liberty, and the pursuit of happiness; and that to secure these rights governments are instituted among men."

[Louisiana law has been hostile to monopolies]

If it be said that the civil law and not the common law is the basis of the jurisprudence of Louisiana, I answer that the decree of Louis XVI, in 1776, abolished all monopolies of trades and all special privileges of corporations, guilds, and trading companies, and authorized every person to exercise, without restraint, his art, trade, or profession, and such has been the law of France and of her colonies ever since, and that law prevailed in Louisiana at the time of her cession to the United States. Since then, notwithstanding the existence in that State of the civil law as the basis of her jurisprudence, freedom of pursuit has been always recognized as the common right of her citizens. But were this otherwise, the fourteenth amendment secures the like protection to all citizens in that State against any abridgment of their common rights, as in other States. That amendment was intended to give practical effect to the declaration of 1776 of inalienable rights, rights which are the gift of the Creator, which the law does not confer, but only recognizes. If the trader in London could plead that he was a free citizen of that city against the enforcement to his injury of monopolies, surely under the fourteenth amendment every citizen of the United States should be able to plead his citizenship of the republic as a protection against any similar invasion of his privileges and immunities.

[State law generally is hostile to monopolies]

So fundamental has this privilege of every citizen to be free from disparaging and unequal enactments, in the pursuit of the ordinary avocations of life, been regarded, that few instances have arisen where the principle has been so far violated as to call for the interposition of the courts. But whenever this has occurred, with the exception of the present cases from Louisiana, which are the most barefaced and flagrant of all, the enactment interfering with the privilege of the citizen has been pronounced illegal and void. When a case under the same law, under which the present cases have arisen, came before the Circuit Court of the United States in the District of Louisiana, there was no hesitation on the part of the court in declaring the law, in its exclusive features, to be an invasion of one of the fundamental privileges of the citizen. The presiding justice, in delivering the opinion of the court, observed that it might be difficult to enumerate or define what were the essential privileges of a citizen of the United States, which a State could not by its laws invade, but that so far as the question under consideration

was concerned, it might be safely said that "it is one of the privileges of every American citizen to adopt and follow such lawful industrial pursuit, not injurious to the community, as he may see fit, without unreasonable regulation or molestation, and without being restricted by any of those unjust, oppressive, and odious monopolies or exclusive privileges which have been condemned by all free governments." And again: "There is no more sacred right of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more nor less than the sacred right of labor."

In the *City of Chicago v. Rumpff*, which was before the Supreme Court of Illinois, we have a case similar in all its features to the one at bar. That city being authorized by its charter to regulate and license the slaughtering of animals within its corporate limits, the common council passed what was termed an ordinance in reference thereto, whereby a particular building was designated for the slaughtering of all animals intended for sale or consumption in the city, the owners of which were granted the exclusive right for a specified period to have all such animals slaughtered at their establishment, they to be paid a specific sum for the privilege of slaughtering there by all persons exercising it. The validity of this action of the corporate authorities was assailed on the ground of the grant of exclusive privileges, and the court said: "The charter authorizes the city authorities to license or regulate such establishments. Where that body has made the necessary regulations, required for the health or comfort of the inhabitants, all persons inclined to pursue such an occupation should have an opportunity of conforming to such regulations, otherwise the ordinance would be unreasonable and tend to oppression. Or, if they should regard it for the interest of the city that such establishments should be licensed, the ordinance should be so framed that all persons desiring it might obtain licenses by conforming to the prescribed terms and regulations for the government of such business. We regard it neither as a regulation nor a license of the business to confine it to one building or to give it to one individual. Such an action is oppressive, and creates a monopoly that never could have been contemplated by the General Assembly. It impairs the rights of all other persons, and cuts them off from a share in not only a legal, but a necessary business. Whether we consider this as an ordinance or a contract, it is equally unauthorized, as being opposed to the rules governing the adoption of municipal by-laws. The principle of equality of rights to the incorporators is violated by this contract. If the common council may require all of the animals for the consumption of the city to be slaughtered in a single building, or on a particular lot, and the owner be paid a specific sum for the privilege, what would prevent the making a similar contract with some other person that all of the vegetables, or fruits, the flour, the groceries, the dry goods, or other commodities should be sold on his lot and he receive a compensation for the privilege? We can see no difference in principle."

It is true that the court in this opinion was speaking of a municipal ordinance and not of an act of the legislature of a State. But, as it is justly observed by counsel, a legislative body is no more entitled to destroy the equality of rights of citizens, nor to fetter the industry of a city, than a municipal government. These rights are protected from invasion by the fundamental law.

In the case of the *Norwich Gaslight Company v. The Norwich City Gas Company*, which was before the Supreme Court of Connecticut, it appeared that the common council of the city of Norwich had passed a resolution purporting to grant to one Treadway, his heirs and assigns, for the period of fifteen years, the right to lay gas-pipes in the streets of that city, declaring that no other person or corporation should, by the consent of the common council, lay gas-pipes in the streets during that time. The plaintiffs having purchased of Treadway, undertook to assert an exclusive right to use the streets for their purposes, as against another company which was

using the streets for the same purposes. And the court said: "As, then, no consideration whatever, either of a public or private character, was reserved for the grant; and as the business of manufacturing and selling gas is an ordinary business, like the manufacture of leather, or any other article of trade in respect to which the government has no exclusive prerogative, we think that so far as the restriction of other persons than the plaintiffs from using the streets for the purpose of distributing gas by means of pipes, can fairly be viewed as intended to operate as a restriction upon its free manufacture and sale, it comes directly within the definition and description of a monopoly; and although we have no direct constitutional provision against a monopoly, yet the whole theory of a free government is opposed to such grants, and it does not require even the aid which may be derived from the Bill of Rights, the first section of which declares "that no man or set of men are entitled to exclusive public emoluments or privileges from the community," to render them void."

In the *Mayor of the City of Hudson v. Thorne*, an application was made to the chancellor of New York to dissolve an injunction restraining the defendants from erecting a building in the city of Hudson upon a vacant lot owned by them, intended to be used as a hay-press. The common council of the city had passed an ordinance directing that no person should erect, or construct, or cause to be erected or constructed, any wooden or frame barn, stable, or hay-press of certain dimensions, within certain specified limits in the city, without its permission. It appeared, however, that there were such buildings already in existence, not only in compact parts of the city, but also within the prohibited limits, the occupation of which for the storing and pressing of hay the common council did not intend to restrain. And the chancellor said: "If the manufacture of pressed hay within the compact parts of the city is dangerous in causing or promoting fires, the common council have the power expressly given by their charter to prevent the carrying on of such manufacture; but as all by-laws must be reasonable, the common council cannot make a by-law which shall permit one person to carry on the dangerous business and prohibit another who has an equal right from pursuing the same business."

In all these cases there is a recognition of the equality of right among citizens in the pursuit of the ordinary avocations of life, and a declaration that all grants of exclusive privileges, in contravention of this equality, are against common right, and void.

[Fourteenth Amendment Privileges or Immunities Clause will protect equality of right]

This equality of right, with exemption from all disparaging and partial enactments, in the lawful pursuits of life, throughout the whole country, is the distinguishing privilege of citizens of the United States. To them, everywhere, all pursuits, all professions, all avocations are open without other restrictions than such as are imposed equally upon all others of the same age, sex, and condition. The State may prescribe such regulations for every pursuit and calling of life as will promote the public health, secure the good order and advance the general prosperity of society, but when once prescribed, the pursuit or calling must be free to be followed by every citizen who is within the conditions designated, and will conform to the regulations. This is the fundamental idea upon which our institutions rest, and unless adhered to in the legislation of the country our government will be a republic only in name. The fourteenth amendment, in my judgment, makes it essential to the validity of the legislation of every State that this equality of right should be respected. How widely this equality has been departed from, how entirely rejected and trampled upon by the act of Louisiana, I have already shown. And it is to me a matter of profound regret that its validity is recognized by a majority of this court, for by it the right of free labor, one of the most sacred and imprescriptible rights of man, is violated. As stated by the Supreme Court of Connecticut, in the case cited, grants of exclusive privileges,

such as is made by the act in question, are opposed to the whole theory of free government, and it requires no aid from any bill of rights to render them void. That only is a free government, in the American sense of the term, under which the inalienable right of every citizen to pursue his happiness is unrestrained, except by just, equal, and impartial laws.

I am authorized by the CHIEF JUSTICE, Mr. Justice SWAYNE, and Mr. Justice BRADLEY, to state that they concur with me in this dissenting opinion.

CONSTRUCTIONS OF THE PRIVILEGES OR IMMUNITIES CLAUSE OF THE FOURTEENTH AMENDMENT

[Privileges or Immunities Clause:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."]

I. Radical Nationalization: transformation of the federal system (Field in *Slaughterhouse*)

The provision omits protection of "privileges or immunities of citizens of the states" because the states are now insignificant governmental bodies. All important privileges or immunities have now become privileges or immunities of United States citizenship, so that living in one state rather than another will be no different in terms of governmentally protected rights than living in one town rather than another in the same state had been prior to the 14th Amendment. An example of the difference still possible: weather.

II. Federal Enforcement of state privileges or immunities (derived from congressional debate)

The specification "privileges or immunities of citizens of the United States" serves not to distinguish between those and privileges or immunities of state citizens, but to indicate that any privilege or immunity that any given U.S. citizen happened to have, whether vis-a-vis state or federal government, would now be protected against state legislation. The equal protection clause would have seemed repulsive to racists, who could have moved to cut back on previously acknowledged and enforced privileges or immunities within a state, knowing that whites would lose little, but that blacks would lose massively. The equal protection clause would guarantee that whites and blacks would be treated equally at law; the privileges or immunities clause would assure that the sphere in which they would be treated equally would not shrink. The list of the privileges or immunities thus protected would therefore vary from state to state, since the federal government was only protecting pre-existing privileges or immunities that citizens had.

III. Incorporation (Miller in *Slaughterhouse*, 1873)

Those privileges or immunities that could be ascertained as belonging to United States citizens prior to the Fourteenth Amendment or as designated in the U.S. Constitution before or after the Fourteenth Amendment (as in the Fifteenth Amendment) would now be restrictions also as against the states. That is, considering any given inherent right protected in part by the federal government, the individual would now enjoy the same privilege or immunity against state action as he had against federal action. In a sense, federal authority to protect was "filled up" by incorporation of bill of rights provisions and Article I section 9 provisions against the states.

IV. Status Quo (*Cruikshank*, 1876)

Rights can be considered as jurisdictionally defined, instead of inherent. Thus, instead of one right of free speech in an individual, one can define three rights of free speech: the right of free speech free from congressional legislation (1st Amendment); the right to free speech for a federal purpose (a *Crandall v. Nevada* right enforceable against state and individual action); and the general right of free speech. The Fourteenth Amendment protected only the category of privileges or immunities of U.S. citizens and thus only protected individuals from state action abridging the first two kinds of rights, leaving the general right solely under state control. That, however, was precisely the situation prior to the Fourteenth Amendment. Under this view, the privileges or immunities clause did nothing at all, except uselessly re-state the Supremacy Clause.

SECTION XXVII: CRUIKSHANK

UNITED STATES v. CRUIKSHANK ET AL. (92 U.S. 542) (1875)

Matters for Discussion:

1. *This is a case whose subject matter had to handle explicitly the relationship between the Privileges or Immunities Clause of the Fourteenth Amendment and the subject matter of the Bill of Rights; Slaughterhouse had not involved a subject matter of the Bill of Rights. Is the perception of the action of the Privileges or Immunities Clause the same as in Slaughterhouse?*

2. *Does Waite's political theory take into account any change since the Civil War or is it the political theory of the ante-bellum United States? Does this case actually build on Slaughterhouse? Does it purport to do so? Does it analyze the words and working of the Fourteenth Amendment?*

3. *What does this case do to the Privileges or Immunities Clause? For subsequent courts, if they are to stop short of reversing Cruikshank (and thus, by current perception, reversing also Slaughterhouse), what are the alternatives for making the Fourteenth Amendment protect a reasonable ambit of civil rights?*

ERROR to the Circuit Court of the United States for the District of Louisiana.

This was an indictment for conspiracy under the sixth section of the act of May 30, 1870, known as the Enforcement Act (16 Stat. 140), and consisted of thirty-two counts.

The first count was for banding together, with intent "unlawfully and feloniously to injure, oppress, threaten, and intimidate" two citizens of the United States, "of African descent and persons of color," "with the unlawful and felonious intent thereby" them "to hinder and prevent in their respective free exercise and enjoyment of their lawful right and privilege to peaceably assemble together with each other and with other citizens of the said United States for a peaceable and lawful purpose."

The second avers an intent to hinder and prevent the exercise by the same persons of the "right to keep and bear arms for a lawful purpose."

The third avers an intent to deprive the same persons "of their respective several lives and

liberty of person, without due process of law."

The fourth avers an intent to deprive the same persons of the "free exercise and enjoyment of the right and privilege to the full and equal benefit of all laws and proceedings for the security of persons and property" enjoyed by white citizens.

The fifth avers an intent to hinder and prevent the same persons "in the exercise and enjoyment of the rights, privileges, immunities, and protection granted and secured to them respectively as citizens of the said United States, and as citizens of the said State of Louisiana, by reason of and for and on account of the race and color" of the said persons.

The sixth avers an intent to hinder and prevent the same persons in "the free exercise and enjoyment of the several and respective right and privilege to vote at any election to be thereafter by law had and held by the people in and of the said State of Louisiana."

The seventh avers an intent "to put in great fear of bodily harm, injure, and oppress" the same persons, "because and for the reason" that, having the right to vote, they had voted.

The eighth avers an intent "to prevent and hinder" the same persons "in their several and respective free exercise and enjoyment of every, each, all, and singular and several rights and privileges granted and secured" to them "by the constitution and laws of the United States."

...

On this motion the opinions of the judges were divided, that of the presiding judge being that the several counts in question are not sufficient in law, and do not contain charges of criminal matter indictable under the laws of the United States; and that the motion in arrest of judgment should be granted. The case comes up at the instance of the United States, on certificate of this division of opinion.

Sect. 1 of the Enforcement Act declares, that all citizens of the United States, otherwise qualified, shall be allowed to vote at all elections, without distinction of race, color, or previous servitude.

Sect. 2 provides, that, if by the law of any State or Territory a prerequisite to voting is necessary, equal opportunity for it shall be given to all, without distinction, &c.; and any person charged with the duty of furnishing the prerequisite, who refuses or knowingly omits to give full effect to this section, shall be guilty of misdemeanor.

Sect. 3 provides, that an offer of performance, in respect to the prerequisite, when proved by affidavit of the claimant, shall be equivalent to performance; and any judge or inspector of election who refuses to accept it shall be guilty, &c.

Sect. 4 provides, that any person who, by force, bribery, threats, intimidation, or other unlawful means, hinders, delays, prevents, or obstructs any citizen from qualifying himself to vote, or combines with others to do so, shall be guilty, &c.

Sect. 5 provides, that any person who prevents, hinders, controls, or intimidates any person from exercising the right of suffrage, to whom it is secured by the fifteenth amendment, or attempts to do so, by bribery or threats of violence, or deprivation of property or employment,

shall be guilty, &c.

The sixth section is as follows:----

"That if two or more persons shall band or conspire together, or go indisguise upon the public highway, or upon the premises of another, with intentto violate any provisions of this act, or to injure, oppress, threaten, orintimidate any citizen with intent to prevent or hinder his free exercise andenjoyment of any right or privilege granted or secured to him by theconstitution or laws of the United States, or because of his having exercisedthe same, such persons shall be held guilty of felony, and, on convictionthereof, shall be fined or imprisoned, or both, at the discretion of thecourt,--the fine not to exceed \$5,000, and the imprisonment not to exceed tenyears; and shall, moreover, be thereafter ineligible to, and disabled fromholding, any office or place of honor, profit, or trust created by theconstitution or laws of the United States."

This case was argued at the October Term, 1874, by Mr. Attorney-GeneralWilliams and Mr. Solicitor-General Phillips for the plaintiff in error; and byMr. Reverdy Johnson, Mr. David Dudley Field, Mr. Philip Phillips, and Mr. R. H.Marr for the defendants in error.

1. Citizens are the members of the political community to which they belong.They are the people who compose the community, and who, in their associatedcapacity, have established or submitted themselves to the dominion of agovernment for the promotion of their general welfare and the protection oftheir individual as well as their collective rights. The duty of a governmentto afford protection is limited always by the power it possesses for thatpurpose.
2. There is in our political system a government of each of the severalStates, and a government of the United States. Each is distinct from theothers, and has citizens of its own, who owe it allegiance, and whose rights,within its jurisdiction, it must protect. The same person may be at the sametime a citizen of the United States and a citizen of a State; but his rights ofcitizenship under one of these governments will be different from those he hasunder the other.
3. The government of the United States, although it is, within the scope ofits powers, supreme and beyond the States, can neither grant nor secure to itscitizens rights or privileges which are not expressly or by implication placedunder its jurisdiction. All that cannot be so granted or secured are left tothe exclusive protection of the States.
4. The right of the people peaceably to assemble for lawful purposes, withthe obligation on the part of the States to afford it protection, existed longbefore the adoption of the Constitution. The first amendment to theConstitution, prohibiting Congress from abridging the right to assemble andpetition, was not intended to limit the action of the State governments inrespect to their own citizens, but to operate upon the national governmentalone. It left the authority of the States unimpaired, added nothing to thealready existing powers of the United States, and guaranteed the continuance ofthe right only against Congressional interference. The people, for theirprotection in the enjoyment of it, must, therefore, look to the States, wherethe power for that purpose was originally placed.
5. The right of the people peaceably to assemble, for the purpose ofpetitioning Congress for a redress of grievances, or for any thing elseconnected with the powers or duties of the national government, is an attributeof national citizenship, and, as such, under the protection of and guaranteedby the United States. The very idea of a government republican in form impliesthat

right, and an invasion of its presents a case within the sovereignty of the United States.

6. The right to bear arms is not granted by the Constitution; neither is it in any manner dependent upon that instrument for its existence. The second amendment means no more than that it shall not be infringed by Congress, and has no other effect than to restrict the powers of the national government.

7. Sovereignty, for the protection of the rights of life and personal liberty within the respective States, rests alone with the States.

8. The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws; but it adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty.

9. In *Minor v. Happersett*, 21 Wall. 178, this court decided that the Constitution of the United States has not conferred the right of suffrage upon any one, and that the United States have no voters of their own creation in the

States. In *United States v. Reese et al.*, supra, p. 214, it held that the fifteenth amendment has invested the citizens of the United States with a new constitutional right, which is, exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been.

10. The counts of an indictment which charge the defendants with having banded and conspired to injure, oppress, threaten, and intimidate citizens of the United States, of African descent, therein named; and which in substance respectively allege that the defendants intended thereby to hinder and prevent such citizens in the free exercise and enjoyment of rights and privileges granted and secured to them in common with other good citizens by the constitution and laws of the United States; to hinder and prevent them in the free exercise of their right peacefully to assemble for lawful purposes; prevent and hinder them from bearing arms for lawful purposes; deprive them of their respective several lives and liberty of person without due process of law; prevent and hinder them in the free exercise and enjoyment of their several right to the full and equal benefit of the law; prevent and hinder them in the free exercise and enjoyment of their several and respective right to vote at any election to be thereafter by law had and held by the people in and of the State of Louisiana, or to put them in great fear of bodily harm, and to injure and oppress them, because, being and having been in all things qualified, they had voted at an election theretofore had and held according to law by the people of said State,--do not present a case within the sixth section of the Enforcement Act of May 31, 1870 (16 Stat. 141). To bring a case within the operation of that statute, it must appear that the right the enjoyment of which the conspirators intended to hinder or prevent was one granted or secured by the constitution or laws of the United States. If it does not so appear, the alleged offence is not indictable under any act of Congress.

11. The counts of an indictment which, in general language, charge the defendants with an intent to hinder and prevent citizens of the United States, of African descent, therein named, in the free exercise and enjoyment of their rights, privileges, immunities, and protection, granted and secured to them respectively as citizens of the United States, and of the State of Louisiana, because they were persons of African descent, and with the intent to hinder and prevent them in the several and free exercise and enjoyment of every, each, all, and singular the several rights and privileges granted and secured to them by the constitution and laws of the United States, do not specify any particular right the enjoyment of which the conspirators intended to hinder or prevent, are too vague and general, lack the certainty and precision required by the established rule of criminal pleading, and are therefore not good and sufficient in law.

12. In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right "to be informed of the nature and cause of the accusation." The indictment must set forth the offence with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged; and every ingredient of which the offence is composed must be accurately and clearly alleged. It is an elementary principle of criminal pleading, that, where the definition of an offence, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition, but it must state the species,--it must descend to particulars. The object of the indictment is,--first, to furnish the accused with such a description of the charge against him as will enable him to make his defence, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances.

13. By the act under which this indictment was found, the crime is made to consist in the unlawful combination with an intent to prevent the enjoyment of any right granted or secured by the Constitution, &c. All rights are not so granted or secured. Whether one is so or not is a question of law, to be decided by the court. The indictment should, therefore, state the particulars, to inform the court as well as the accused. It must appear from the indictment that the acts charged will, if proved, support a conviction for the offence alleged.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This case comes here with a certificate by the judges of the Circuit Court for the District of Louisiana that they were divided in opinion upon a question which occurred at the hearing. It presents for our consideration an indictment containing sixteen counts, divided into two series of eight counts each, based upon sect. 6 of the Enforcement Act of May 31, 1870. That section is as follows:----

"That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten, or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court,--the fine not to exceed \$5,000, and the imprisonment not to exceed

ten years; and shall, moreover, be thereafter ineligible to, and disabled from holding, any office or place of honor, profit, or trust created by the constitution or laws of the United States." 16 Stat. 141.

The question certified arose upon a motion in arrest of judgment after a verdict of guilty generally upon the whole sixteen counts, and is stated to be, whether "the said sixteen counts of said indictment are severally good and sufficient in law, and contain charges of criminal matter indictable under the laws of the United States."

The general charge in the first eight counts is that of "banding," and in the second eight, that of "conspiring" together to injure, oppress, threaten, and intimidate Levi Nelson and Alexander Tillman, citizens of the United States, of African descent and persons of color, with the intent thereby to hinder and prevent them in their free exercise and enjoyment of rights and privileges "granted and secured" to them "in common with all other good citizens of the United States by the constitution and laws of the United States."

The offences provided for by the statute in question do not consist in the mere "banding" or "conspiring" of two or more persons together, but in their banding or conspiring with the intent, or for any of the purposes, specified. To bring this case under the operation of the statute, therefore, it must appear that the right, the enjoyment of which the conspirators intended to hinder or prevent, was one granted or secured by the constitution or laws of the United States. If it does not so appear, the criminal matter charged has not been made indictable by any act of Congress.

We have in our political system a government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a State, but his rights of citizenship under one of these governments will be different from those he has under the other. Slaughter-*House Cases*, 16 Wall. 74.

Citizens are the members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights. In the formation of a government, the people may confer upon it such powers as they choose. The government, when so formed, may, and when called upon should, exercise all the powers it has for the protection of the rights of its citizens and the people within its jurisdiction; but it can exercise no other. The duty of a government to afford protection is limited always by the power it possesses for that purpose.

Experience made the fact known to the people of the United States that they required a national government for national purposes. The separate governments of the separate States, bound together by the articles of confederation alone, were not sufficient for the promotion of the general welfare of the people in respect to foreign nations, or for their complete protection as citizens of the confederated States. For this reason, the people of the United States, "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty" to themselves and their posterity (Const. Preamble), ordained and established the government of the United States, and defined its powers by a constitution, which they adopted as its

fundamental law, and made its rule of action.

The government thus established and defined is to some extent a government of the States in their political capacity. It is also, for certain purposes, a government of the people. Its powers are limited in number, but not in degree. Within the scope of its powers, as enumerated and defined, it is supreme and above the States; but beyond, it has no existence. It was erected for special purposes, and endowed with all the powers necessary for its own preservation and the accomplishment of the ends its people had in view. It can neither grant nor secure to its citizens any right or privilege not expressly or by implication placed under its jurisdiction.

The people of the United States resident within any State are subject to two governments: one State, and the other National; but there need be no conflict between the two. The powers which one possesses, the other does not. They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amenable to both jurisdictions for one and the same act. Thus, if a marshal of the United States is unlawfully resisted while executing the process of the courts within a State, and the resistance is accompanied by an assault on the officer, the sovereignty of the United States is violated by the resistance, and that of the State by the breach of peace, in the assault. So, too, if one passes counterfeited coin of the United States within a State, it may be an offence against the United States and the State: the United States, because it discredits the coin; and the State, because of the fraud upon him to whom it is passed. This does not, however, necessarily imply that the two governments possess powers in common, or bring them into conflict with each other. It is the natural consequence of a citizenship which owes allegiance to two sovereignties, and claims protection from both. The citizen cannot complain, because he has voluntarily submitted himself to such a form of government. He owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts for disobedience to its laws. In return, he can demand protection from each within its own jurisdiction.

The government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people. No rights can be acquired under the constitution or laws of the United States, except such as the government of the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States.

We now proceed to an examination of the indictment, to ascertain whether these several rights, which it is alleged the defendants intended to interfere with, are such as had been in law and in fact granted or secured by the constitution or laws of the United States.

The first and ninth counts state the intent of the defendants to have been to hinder and prevent the citizens named in the free exercise and enjoyment of their "lawful right and privilege to peaceably assemble together with each other and with other citizens of the United States for a peaceful and lawful purpose." The right of the people peaceably to assemble for lawful purposes existed long before the adoption of the Constitution of the United States. In fact, it is, and always has been, one of the attributes of citizenship under a free government. It "derives its source," to use the language of Chief Justice Marshall, in *Gibbons v. Ogden*, 9 Wheat. 211, "from those laws whose authority is acknowledged by civilized man throughout the world." It is found wherever civilization exists. It was not, therefore, a right granted to the people by the Constitution. The government of the United States when established found it in existence, with

the obligation on the part of the States to afford it protection. As no direct power over it was granted to Congress, it remains, according to the ruling in *Gibbons v. Ogden*, id. 203, subject to State jurisdiction. Only such existing rights were committed by the people to the protection of Congress as came within the general scope of the authority granted to the national government.

The first amendment to the Constitution prohibits Congress from abridging "the right of the people to assemble and to petition the government for a redress of grievances." This, like the other amendments proposed and adopted at the same time, was not intended to limit the powers of the State governments in respect to their own citizens, but to operate upon the National government alone. *Barron v. The City of Baltimore*, 7 Pet. 250; *Lessee of Livingston v. Moore*, id. 551; *Fox v. Ohio*, 5 How. 434; *Smith v. Maryland*, 18 id. 76; *Withers v. Buckley*, 20 id. 90; *Pervear v. The Commonwealth*, 5 Wall. 479; *Twitchell v. The Commonwealth*, 7 id. 321; *Edwards v. Elliott*, 21 id. 557. It is now too late to question the correctness of this construction. As was said by the late Chief Justice, in *Twitchell v. The Commonwealth*, 7 Wall. 325, "the scope and application of these amendments are no longer subjects of discussion here." They left the authority of the States just where they found it, and added nothing to the already existing powers of the United States.

The particular amendment now under consideration assumes the existence of the right of the people to assemble for lawful purposes, and protects it against encroachment by Congress. The right was not created by the amendment; neither was its continuance guaranteed, except as against congressional interference. For their protection in its enjoyment, therefore, the people must look to the States. The power for that purpose was originally placed there, and it has never been surrendered to the United States.

The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for any thing else connected with the powers or the duties of the national government, is an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances. If it had been alleged in these counts that the object of the defendants was to prevent a meeting for such a purpose, the case would have been within the statute, and within the scope of the sovereignty of the United States. Such, however, is not the case. The offence, as stated in the indictment, will be made out, if it be shown that the object of the conspiracy was to prevent a meeting for any lawful purpose whatever.

The second and tenth counts are equally defective. The right there specified is that of "bearing arms for a lawful purpose." This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government, leaving the people to look for their protection against any violation by their fellow-citizens of the rights it recognizes, to what is called, in *The City of New York v. Miln*, 11 Pet. 139, the "powers which relate to merely municipal legislation, or what was, perhaps, more properly called internal police," "not surrendered or restrained" by the Constitution of the United States.

The third and eleventh counts are even more objectionable. They charge the intent to have

been to deprive the citizens named, they being in Louisiana, "of their respective several lives and liberty of person without due process of law." This is nothing else than alleging a conspiracy to falsely imprison or murder citizens of the United States, being within the territorial jurisdiction of the State of Louisiana. The rights of life and personal liberty are natural rights of man. "To secure these rights," says the Declaration of Independence, "governments are instituted among men, deriving their just powers from the consent of the governed." The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these "unalienable rights with which they were endowed by their Creator." Sovereignty, for this purpose, rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State, than it would be to punish for false imprisonment or murder itself.

The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. As was said by Mr. Justice Johnson, in *Bank of Columbia v. Okely*, 4 Wheat. 244, it secures "the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." These counts in the indictment do not call for the exercise of any of the powers conferred by this provision in the amendment.

The fourth and twelfth counts charge the intent to have been to prevent and hinder the citizens named, who were of African descent and persons of color, in "the free exercise and enjoyment of their several right and privilege to the full and equal benefit of all laws and proceedings, then and there, before that time, enacted or ordained by the said State of Louisiana and by the United States; and then and there, at that time, being in force in the said State and District of Louisiana aforesaid, for the security of their respective persons and property, then and there, at that time enjoyed at and within said State and District of Louisiana by white persons, being citizens of said State of Louisiana and the United States, for the protection of the persons and property of said white citizens." There is no allegation that this was done because of the race or color of the persons conspired against. When stripped of its verbiage, the case as presented amounts to nothing more than that the defendants conspired to prevent certain citizens of the United States, being within the State of Louisiana, from enjoying the equal protection of the laws of the State and of the United States.

The fourteenth amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it, and which we have just considered, add any thing to the rights which one citizen has under the Constitution against another. The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty.

No question arises under the Civil Rights Act of April 9, 1866 (14 Stat. 27), which is intended for the protection of citizens of the United States in the enjoyment of certain rights, without discrimination on account of race, color, or previous condition of servitude, because, as has already been stated, it is nowhere alleged in these counts that the wrong contemplated against

the rights of these citizens was on account of their race or color.

Another objection is made to these counts, that they are too vague and uncertain. This will be considered hereafter, in connection with the same objection to other counts.

The sixth and fourteenth counts state the intent of the defendants to have been to hinder and prevent the citizens named, being of African descent, and colored, "in the free exercise and enjoyment of their several and respective right and privilege to vote at any election to be thereafter by law had and held by the people in and of the said State of Louisiana, or by the people of and in the parish of Grant aforesaid." In *Minor v. Happersett*, 21 Wall. 178, we decided that the Constitution of the United States has not conferred the right of suffrage upon any one, and that the United States have no voters of their own creation in the States. In *United States v. Reese et al.*, supra, p. 214, we hold that the fifteenth amendment has invested the citizens of the United States with a new constitutional right, which is, exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. From this it appears that the right of suffrage is not a necessary attribute of national citizenship; but that exemption from discrimination in the exercise of that right on account of race, &c., is. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States; but the latter has been.

Inasmuch, therefore, as it does not appear in these counts that the intent of the defendants was to prevent these parties from exercising their right to vote on account of their race, &c., it does not appear that it was their intent to interfere with any right granted or secured by the constitution or laws of the United States. We may suspect that race was the cause of the hostility; but it is not so averred. This is material to a description of the substance of the offence, and cannot be supplied by implication. Every thing essential must be charged positively, and not inferentially. The defect here is not in form, but in substance.

The seventh and fifteenth counts are no better than the sixth and fourteenth. The intent here charged is to put the parties named in great fear of bodily harm, and to injure and oppress them, because, being and having been in all things qualified, they had voted "at an election before that time had and held according to law by the people of the said State of Louisiana, in said State, to wit, on the fourth day of November, A.D. 1872, and at divers other elections by the people of the State, also before that time had and held according to law." There is nothing to show that the elections voted at were any other than State elections, or that the conspiracy was formed on account of the race of the parties against whom the conspirators were to act. The charge as made is really of nothing more than a conspiracy to commit a breach of the peace within a State. Certainly it will not be claimed that the United States have the power or are required to do mere police duty in the States. If a State cannot protect itself against domestic violence, the United States may, upon the call of the executive, when the legislature cannot be convened, lend their assistance for that purpose. This is a guaranty of the Constitution (art. 4, sect. 4); but it applies to no case like this.

We are, therefore, of the opinion that the first, second, third, fourth, sixth, seventh, ninth, tenth, eleventh, twelfth, fourteenth, and fifteenth counts do not contain charges of a criminal nature made indictable under the laws of the United States, and that consequently they are not good and sufficient in law. They do not show that it was the intent of the defendants, by their conspiracy, to hinder or prevent the enjoyment of any right granted or secured by the Constitution.

We come now to consider the fifth and thirteenth and the eighth and sixteenth counts, which may be brought together for that purpose. The intent charged in the fifth and thirteenth is "to hinder and prevent the parties in their respective free exercise and enjoyment of the rights, privileges, immunities, and protection granted and secured to them respectively as citizens of the United States, and as citizens of said State of Louisiana," "for the reason that they, . . . being then and there citizens of said State and of the United States, were persons of African descent and race, and persons of color, and not white citizens thereof;" and in the eighth and sixteenth, to hinder and prevent them "in their several and respective free exercise and enjoyment of every, each, all, and singular the several rights and privileges granted and secured to them by the constitution and laws of the United States." The same general statement of the rights to be interfered with is found in the fifth and thirteenth counts.

According to the view we take of these counts, the question is not whether it is enough, in general, to describe a statutory offence in the language of the statute, but whether the offence has here been described at all. The statute provides for the punishment of those who conspire "to injure, oppress, threaten, or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the constitution or laws of the United States." These counts in the indictment charge, in substance, that the intent in this case was to hinder and prevent these citizens in the free exercise and enjoyment of "every, each, all, and singular" the rights granted them by the Constitution, &c. There is no specification of any particular right. The language is broad enough to cover all.

In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right "to be informed of the nature and cause of the accusation." Amend. VI. In *United States v. Mills*, 7 Pet. 142, this was construed to mean, that the indictment must set forth the offence "with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged;" and in *United States v. Cook*, 17 Wall. 174, that "every ingredient of which the offence is composed must be accurately and clearly alleged." It is an elementary principle of criminal pleading, that where the definition of an offence, whether it be at common law or by statute, "includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition; but it must state the species,--it must descend to particulars. 1 Arch. Cr. Pr. and Pl., 291. The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defence, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances.

It is a crime to steal goods and chattels; but an indictment would be bad that did not specify with some degree of certainty the articles stolen. This, because the accused must be advised of the essential particulars of the charge against him, and the court must be able to decide whether the property taken was such as was the subject of larceny. So, too, it is in some States a crime for two or more persons to conspire to cheat and defraud another out of his property; but it has been held that an indictment for such an offence must contain allegations setting forth the means proposed to be used to accomplish the purpose. This, because, to make such a purpose criminal, the conspiracy must be to cheat and defraud in a mode made criminal by statute; and as all cheating and defrauding has not been made criminal, it is necessary for the indictment to state the means proposed, in order that the court may see that they are in fact

illegal. State v. Parker, 43 N. H. 83; State v. Keach, 40Vt. 118; Alderman v. The People, 4 Mich. 414; State v. Roberts, 34 Me. 32. In Maine, it is an offence for two or more to conspire with the intent unlawfully and wickedly to commit any crime punishable by imprisonment in the State prison (State v. Roberts); but we think it will hardly be claimed that an indictment would be good under this statute, which charges the object of the conspiracy to have been "unlawfully and wickedly to commit each, every, all, and singular the crimes punishable by imprisonment in the State prison." All crimes are not so punishable. Whether a particular crime be such a one or not, is a question of law. The accused has, therefore, the right to have a specification of the charge against him in this respect, in order that he may decide whether he should present his defence by motion to quash, demurrer, or plea; and the court, that it may determine whether the facts will sustain the indictment. So here, the crime is made to consist in the unlawful combination with an intent to prevent the enjoyment of any right granted or secured by the Constitution, &c. All rights are not so granted or secured. Whether one is so or not is a question of law, to be decided by the court, not the prosecutor. Therefore, the indictment should state the particulars, to inform the court as well as the accused. It must be made to appear--that is to say, appears from the indictment, without going further-- that the acts charged will, if proved, support a conviction for the offence alleged.

But it is needless to pursue the argument further. The conclusion is irresistible, that these counts are too vague and general. They lack the certainty and precision required by the established rules of criminal pleading. It follows that they are not good and sufficient in law. They are so defective that no judgment of conviction should be pronounced upon them.

The order of the Circuit Court arresting the judgment upon the verdict is, therefore, affirmed; and the cause remanded, with instructions to discharge the defendants.