Slaughterhouse Cases

Mr. Justice MILLER delivered the opinion of the court.

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 cases named on a preceding page,11 with others which have been brought here and dismissed by agreement, were all decided by the Supreme Court of Louisiana in favor of the Slaughter-House Company, as we shall hereafter call it for the sake of brevity, and these writs are brought to reverse those decisions.

The records were filed in this court in 1870, and were argued before it as length on a motion made by plaintiffs in error for an order in the nature of an injunction or supersedeas, [83 U.S. 36, 58] pending the action of the court on the merits. The opinion on that motion is reported in 10 Wallace, 273.

On account of the importance of the questions involved in these cases they were, by permission of the court, taken up out of their order on the docket and argued in January, 1872. At that hearing one of the justices was absent, and it was found, on consultation, that there was a diversity of views among those who were present. Impressed with the gravity of the questions raised in the argument, the court under these circumstances ordered that the cases be placed on the calendar and reargued before a full bench. This argument was had early in February last.

Preliminary to the consideration of those questions is a motion by the defendant to dismiss the cases, on the ground that the contest between the parties has been adjusted by an agreement made since the records came into this court, and that part of that agreement is that these writs should be dismissed. This motion was heard with the argument on the merits, and was much pressed by counsel. It is supported by affidavits and by copies of the written agreement relied on. It is sufficient to say of these that we do not find in them satisfactory evidence that the agreement is binding upon all the parties to the record who are named as plaintiffs in the several writs of error, and that there are parties now before the court, in each of the three cases, the names of which appear on a preceding page, 12 who have not consented to their dismissal, and who are not bound by the action of those who have so consented. They have a right to be heard, and the motion to dismiss cannot prevail.

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 [83 U.S. 36, 59] 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 tood, 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 corporators, 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.

Section five orders the closing up of all other stock-landings [83 U.S. 36, 60] and slaughter-houses after the first day of June, in the parishes of Orleans, Jefferson, and St. Bernard, and makes it the duty of the company to permit any person to slaughter animals in their slaughter-houses under a heavy penalty for each refusal. Another section fixes a limit to the charges to be made by the company for each animal so slaughtered in their building, and another provides for an inspection of all animals intended to be so slaughtered, by an officer appointed by the governor of the State for that purpose.

These are the principal features of the statute, and are all that have any bearing upon the questions to be decided by us.

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.

But a critical examination of the act hardly justifies these assertions.

It is true that it grants, for a period of twenty-five years, exclusive privileges. And whether those privileges are at the expense of the community in the sense of a curtailment of any of their fundamental rights, or even in the sense of doing them an injury, is a question open to considerations to be hereafter stated. But it is not true that it deprives the butchers of the right to exercise their trade, or imposes upon them any restriction incompatible with its successful pursuit, or furnishing the people of the city with the necessary daily supply of animal food.

The act divides itself into two main grants of privilege,-the one in reference to stock-landings and stock-yards, and [83 U.S. 36, 61] the other to slaughter-houses. That the landing of livestock in large droves, from steamboats on the bank of the river, and from railroad trains, should, for the safety and comfort of the people and the care of the animals, be limited to proper places, and those not numerous, it needs no argument to prove. Nor can it be injurious to the general community that while the duty of making ample preparation for this is imposed upon a few men, or a corporation, they should, to enable them to do it successfully, have the exclusive right of providing such landing-places, and receiving a fair compensation for the service.

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.

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 is 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 [83 U.S. 36, 62] 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, 13 '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 Shaw14 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 aminent judge,15 '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.' [83 U.S. 36, 63] 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,16 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. 17 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. [83 U.S. 36, 64] To the same purpose are the recent cases of the The License Tax18 and United States v. De Witt. 19 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 cannot be denied that the statute under consideration is aptly framed to remove from the more densely populated part of the city, the noxious slaughter-houses, and large and offensive collections of animals necessarily incident to the slaughtering business of a large city, and to locate them where the convenience, health, and comfort of the people require they shall be located. And it must be conceded that the means adopted by the act for this purpose are appropriate, are stringent, and effectual. But it is said that in creating a corporation for this purpose, and conferring upon it exclusive privileges-privileges which it is said constitute a monopoly-the legislature has exceeded its power. If this statute had imposed on the city of New Orleans precisely the same duties, accompanied by the same privileges, which it has on the corporation which it created, it is believed that no question would have been raised as to its constitutionality. In that case the effect on the butchers in pursuit of their occupation and on the public would have been the same as it is now. Why cannot the legislature confer the same powers on another corporation, created for a lawful and useful public object, that it can on the municipal corporation already existing? That wherever a legislature has the right to accomplish a certain result, and that result is best attained by means of a corporation, it has the right to create such a corporation, and to endow it with the powers necessary to effect the desired and lawful purpose, seems hardly to admit of debate. The proposition is ably discussed and affirmed in the case of McCulloch v. The State of Maryland, 20 in relation to the power of Congress to organize [83 U.S. 36, 65] the Bank of the United States to aid in the fiscal operations of the government.

It can readily be seen that the interested vigilance of the corporation created by the Louisiana legislature will be more efficient in enforcing the limitation prescribed for the stock-landing and slaughtering business for the good of the city than the ordinary efforts of the officers of the law.

Unless, therefore, it can be maintained that the exclusive privilege granted by this charter to the corporation, is beyond the power of the legislature of Louisiana, there can be no just exception to the validity of the statute. And in this respect we are not able to see that these privileges are especially odious or objectionable. The duty imposed as a consideration for the privilege is well defined, and its enforcement well guarded. The prices or charges to be made by the company are limited by the statute, and we are not advised that they are on the whole exorbitant or unjust.

The proposition is, therefore, reduced to these terms: Can any exclusive privileges be granted to any of its citizens, or to a corporation, by the legislature of a State?

The eminent and learned counsel who has twice argued the negative of this question, has displayed a research into the history of monopolies in England, and the European continent, only equalled by the eloquence with which they are denounced.

But it is to be observed, that all such references are to monopolies established by the monarch in derogation of the rights of his subjects, or arise out of transactions in which the people were unrepresented, and their interests uncared for. The great Case of Monopolies, reported by Coke, and so fully stated in the brief, was undoubtedly a contest of the commons against the monarch. The decision is based upon the ground that it was against common law, and the argument was aimed at the unlawful assumption of power by the crown; for whoever doubted the authority of Parliament to change or modify the common law? The discussion in the House of Commons

cited from Macaulay clearly [83 U.S. 36, 66] establishes that the contest was between the crown, and the people represented in Parliament.

But we think it may be safely affirmed, that the Parliament of Great Britain, representing the people in their legislative functions, and the legislative bodies of this country, have from time immemorial to the present day, continued to grant to persons and corporations exclusive privileges-privileges denied to other citizens-privileges which come within any just definition of the word monopoly, as much as those now under consideration; and that the power to do this has never been questioned or denied. Nor can it be truthfully denied, that some of the most useful and beneficial enterprises set on foot for the general good, have been made successful by means of these exclusive rights, and could only have been conducted to success in that way.

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. [83 U.S. 36, 67] This court is thus called upon for the first time to give construction to these articles.

We do not conceal from ourselves the great responsibility which this duty devolves upon us. No questions so far-reaching and pervading in their consequences, so profoundly interesting to the people of this country, and so important in their bearing upon the relations of the United States, and of the several States to each other and to the citizens of the States and of the United States, have been before this court during the official life of any of its present members. We have given every opportunity for a full hearing at the bar; we have discussed it freely and compared views among ourselves; we have taken ample time for careful deliberation, and we now propose to announce the judgments which we have formed in the construction of those articles, so far as we have found them necessary to the decision of the cases before us, and beyond that we have neither the inclination nor the right to go.

Twelve articles of amendment were added to the Federal Constitution soon after the original organization of the government under it in 1789. Of these all but the last were adopted so soon afterwards as to justify the statement that they were practically contemporaneous with the

adoption of the original; and the twelfth, adopted in eighteen hundred and three, was so nearly so as to have become, like all the others, historical and of another age. But within the last eight years three other articles of amendment of vast importance have been added by the voice of the people to that now venerable instrument.

The most cursory glance at these articles 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; [83 U.S. 36, 68] 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.

In that struggle slavery, as a legalized social relation, perished. It perished as a necessity of the bitterness and force of the conflict. When the armies of freedom found themselves upon the soil of slavery they could do nothing less than free the poor victims whose enforced servitude was the foundation of the quarrel. And when hard pressed in the contest these men (for they proved themselves men in that terrible crisis) offered their services and were accepted by thousands to aid in suppressing the unlawful rebellion, slavery was at an end wherever the Federal government succeeded in that purpose. The proclamation of President Lincoln expressed an accomplished fact as to a large portion of the insurrectionary districts, when he declared slavery abolished in them all. But the war being over, those who had succeeded in re-establishing the authority of the Federal government were not content to permit this great act of emancipation to rest on the actual results of the contest or the proclamation of the Executive, both of which might have been questioned in after times, and they determined to place this main and most valuable result in the Constitution of the restored Union as one of its fundamental articles. Hence the thirteenth article of amendment of that instrument. [83 U.S. 36, 69] Its two short sections seem hardly to admit of construction, so vigorous is their expression and so appropriate to the purpose we have indicated.

- '1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.
- '2. Congress shall have power to enforce this article by appropriate legislation.'

To withdraw the mind from the contemplation of this grand yet simple declaration of the personal freedom of all the human race within the jurisdiction of this government-a declaration designed to establish the freedom of four millions of slaves-and with a microscopic search endeavor to find in it a reference to servitudes, which may have been attached to property in certain localities, requires an effort, to say the least of it.

That a personal servitude was meant is proved by the use of the word 'involuntary,' which can only apply to human beings. The exception of servitude as a punishment for crime gives an idea of the class of servitude that is meant. The word servitude is of larger meaning than slavery, as the latter is popularly understood in this country, and the obvious purpose was to forbid all shades and conditions of African slavery. It was very well understood that in the form of apprenticeship for long terms, as it had been practiced in the West India Islands, on the abolition of slavery by the English government, or by reducing the slaves to the condition of serfs attached to the plantation, the purpose of the article might have been evaded, if only the word slavery had been used. The case of the apprentice slave, held under a law of Maryland, liberated by Chief Justice Chase, on a writ of habeas corpus under this article, illustrates this course of observation. 21 And it is all that we deem necessary to say on the application of that article to the statute of Louisiana, now under consideration. [83 U.S. 36, 70] 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 [83 U.S. 36, 71] 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, [83 U.S. 36, 72] 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.

We do not say that no one else but the engro 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 we do 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 first section of the fourteenth article, to which our attention is more specially 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 [83 U.S. 36, 73] 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. [83 U.S. 36, 74] 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.

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. [83 U.S. 36, 75] 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.

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 1823.22 [83 U.S. 36, 76] '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,23 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 the 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,24 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 [83 U.S. 36, 77] States under their constitution and laws by virtue of their being citizens.'

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.

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 [83 U.S. 36, 78] 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.

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 [83 U.S. 36, 79] 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 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 own their existence to the Federal government, its National character, its Constitution, or its laws.

One of these is well described in the case of Crandall v. Nevada. 25 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.

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, [83 U.S. 36, 80] 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 bon a 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.

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.'

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 [83 U.S. 36, 81] 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.

'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.

In the early history of the organization of the government, its statemen 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 [83 U.S. 36, 82] never 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 statemen 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. [83 U.S. 36, 83] The judgments of the Supreme Court of Louisiana in these cases are

AFFIRMED.