

Handout C: Court Cases

Slaughterhouse Cases – Background

Only five years after the Fourteenth Amendment was ratified, the Supreme Court took the opportunity to interpret it. Upstream from New Orleans, butchers often dumped animal processing waste into backwaters of the Mississippi River. Among the ensuing problems was repeated outbreaks of cholera in the city. In 1869, the Louisiana legislature required the city to create a corporation that centralized slaughterhouse operations downstream, resulting in a monopoly. The Butchers' Benevolent Association sued to stop this takeover of their business, referring to the three clauses of the Fourteenth Amendment. They argued that they had been deprived of their right to exercise their trade and earn an honest living. The question before the Court was whether the creation of the monopoly violated the Thirteenth and Fourteenth Amendments. In a 5-4 decision, the Court majority focused its ruling on only the Privileges or Immunities Clause and interpreted it narrowly, applying it to national, but not state, citizenship. Justice Samuel Freeman Miller wrote in the majority opinion that the Fourteenth Amendment did not restrict the police powers of the state. The right to earn a living in one's chosen trade was not included in the Fourteenth Amendment's protections.

Slaughterhouse Cases (1873) – Excerpt from Majority Opinion, Justice Miller

...We venture to suggest some [privileges and immunities] which owe their existence to the Federal government, its National character, its Constitution, or its laws.

...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.”

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. ...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...

- 1. Did this decision define the “privileges or immunities” of U.S. citizens narrowly or broadly? Explain.**
- 2. What effect did this have on the overall interpretation of the Fourteenth Amendment?**

Handout C: Page 2

Civil Rights Cases (1883)

[Federal civil rights] legislation cannot properly cover the whole domain of rights appertaining to life, liberty, and property, defining them and providing for their vindication. That would ... make congress take the place of the state legislatures and to supersede them.

It is absurd to affirm that, because the rights of life, liberty, and property ... are by the [Fourteenth] Amendment sought to be protected against invasion on the part of the state without due process of law, Congress may, therefore, provide due process of law for their vindication in every case; and that, because the denial by a state to any persons of the equal protection of the laws is prohibited by the amendment, therefore congress may establish laws for their equal protection.

- 1. Which level of government does this opinion imply has the power to correct state violations of rights to life, liberty and property?**

Gitlow v. New York (1925)

Background: Benjamin Gitlow, the son of Russian immigrants, published left-wing newspapers and pamphlets that called for the overthrow of the U.S. government, but did not call for immediate violence. Gitlow was charged and convicted under New York criminal law stating law stating that anyone who “By word of mouth or writing advocates... overthrowing or overturning organized government by force or violence...” was guilty of a felony. His case eventually went to the Supreme Court. Since he had been convicted under a state law, the Court had to decide two questions. First: Did the First Amendment’s protection of free speech and press apply to the states? Second: If so, did the New York law violate the First Amendment? The Court answered yes to the first question, and no to the second.

The Court applied the First Amendment to the states through the Fourteenth Amendment’s Due Process Clause. Freedom of speech and press were fundamental “liberty” protected by the amendment from state action. The Court held, however, that the New York law was constitutional. States could ban speech that created a “dangerous tendency” even if the expression did not present a “clear and present danger.” (The “clear and present danger” test was the one used by the Court before its ruling in Gitlow.) Though Gitlow’s conviction was upheld, the Court ruled that the First Amendment did apply to the states. Applying the Bill of Rights to the states is called incorporation. The governor of New York later pardoned Gitlow, who later condemned Stalin and went on to write many anti-Communist speeches and articles.

Gitlow v. New York Majority Opinion—Excerpt, Justice Sanford

The precise question presented, and the only question which we can consider under this writ of error, then is whether the statute [law], as construed and applied in this case by the state courts, deprived the defendant of his liberty of expression in violation of the due process clause of the Fourteenth Amendment...

For present purposes, we may and do assume that freedom of speech and of the press which are protected by the First Amendment from abridgment by Congress are among the fundamental personal rights and “liberties” protected by the due process clause of the Fourteenth Amendment from impairment by the States...

Handout C: Page 3

It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom...

That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical [harmful] to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question...

Freedom of speech and press...does not protect disturbances to the public peace or the attempt to subvert the government. It does not protect publications or teachings which tend to subvert or imperil the government or to impede or hinder it in the performance of its governmental duties. ...It does not protect publications prompting the overthrow of government by force...In short, this freedom does not deprive a State of the primary and essential right of self-preservation...

We cannot hold that the present statute is an arbitrary or unreasonable exercise of the police power of the State unwarrantably infringing the freedom of speech or press, and we must and do sustain its constitutionality...

[I]t has been held that the general provisions of the statute may be constitutionally applied to the specific utterance of the defendant if its natural tendency and probable effect was to bring about the substantive evil which the legislative body might prevent...

***Gitlow v. New York* Dissenting Opinion - Excerpts, Justice Holmes**

The general principle of free speech, it seems to me, must be taken to be included in the Fourteenth Amendment, in view of the scope that has been given to the word "liberty" as there used...

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that [the State] has a right to prevent...

... The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration.

- 1. Although Gitlow's conviction was upheld, what did the Court consider for the first time in this case?**
- 2. What is the relevance of the Fourteenth Amendment to this case?**