

**To the Slaughter:
The Establishment and Destruction
of Fundamental Privileges
and Immunities**

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Nineteenth-century New Orleans was a hot, disease-ridden swamp. With no public sewage system or trash collection, refuse remained in the streets and washed away into the city's water supply. One of the chief contributors to New Orleans' sanitary problems was the offal from the city's many scattered slaughterhouses.¹ After decades of inaction, hundreds of citizens petitioned the state legislature to relocate the slaughterhouses in 1866. The city finally passed an ordinance requiring all butchers to work in one slaughterhouse safely downstream from the city to allow for uniform regulation. Because the post-war legislature had insufficient funds to establish a public slaughterhouse, it granted a monopoly to the Crescent City Livestock Company to build and operate one for the entire city.² Although residents appreciated the public health benefits, they resented the grant of a monopoly. New Orleans butchers were the primary objectors and the first to claim that the Louisiana statute violated the privileges and immunities protections of national citizenship, as guaranteed by the recently ratified Fourteenth Amendment.³

Such was the question posed to the Supreme Court in 1873 in the *Slaughter-House Cases*, whether the Louisiana legislature had abridged the butcher's right to freely pursue their labor of choice, protected under the privileges or immunities clause of the Fourteenth Amendment. In light of the dire need for health reform in New Orleans, the Court could have denied the butcher's claim by validating the state's discretion to pass such a law under its police power. Instead with a 5-4 vote, the Court gave its first and most lasting interpretation of the Fourteenth Amendment. Writing for the slim majority, Justice Samuel Miller denied the national enforceability of fundamental privileges and immunities on the grounds that the Amendment's

Republican framers had never intended such a dramatic upheaval of traditional American federalism. But Miller was wrong.⁴ Republicans knew they were revolutionizing American constitutionalism and were willing to do it in order to recognize all Americans as free and equally possessive of their natural rights. In the wake of further southern recalcitrance after the war, Republicans went even further with the Fourteenth Amendment to recognize these fundamental rights as separate from state citizenship and enforceable by the national government. Such an amendment was radical but purposefully enacted to constitutionalize and nationalize a Republican theory of free persons, national sovereignty, and natural rights. Miller rejected these and therefore, his opinion should not be understood as an ultimate agreement on the principles of the Fourteenth Amendment but as a decisive departure from the Republican framers' intentions.

In order to understand the revolutionary nature of the Civil War and subsequent Reconstruction amendments, it is important to examine the traditional federalism Justice Miller wished to preserve. During the first half of the nineteenth-century, states had exclusive jurisdiction over their citizens' fundamental rights. Most states passed constitutions similar to the American constitution, but nothing required them to do so. In 1833 a citizen of Maryland, John Barron, challenged the discrepancy between state and national guarantees by arguing before the Supreme Court that Maryland had deprived him of his property without due process of law, as guaranteed by the Fifth Amendment. Chief Justice John Marshall stated for the unanimous Court that, "The fifth amendment must be understood as restraining the power of the general government, not as applicable to the states."⁵ If the states did not protect certain rights, citizens could not seek remedies against the state under the national Bill of Rights. Fourteen years later the Supreme Court further insulated state sovereignty by denying Congress' ability to grant

citizenship to blacks. In *Dred Scott v. Sandford*,⁶ the Court held that blacks were not part of “we the people,” were not citizens, and never could be. In a restrictive reading of the Constitution, Chief Justice Taney concluded that, “It is not a power to raise to the rank of a citizen any one born in the United States, who, from birth or parentage, by the laws of the country, belongs to an inferior and subordinate class.”⁷ Collectively, these two decisions vindicated a state’s rights theory of the Constitution and shielded a state’s ability to recognize rights and citizenship from any national interference. However, in a territorially expanding nation, this unrestricted state sovereignty appeared to justify the growing institution of slavery in southern territories and impaired any national ability to stop its expansion.

This impairment was especially abhorrent to a growing political party of Republicans in the North during the 1850’s. Although most Republicans acknowledged slavery’s presence in the South, they did not want the institution to extend into the territories. Republicans generally advocated “free soil, free labor, and free men” and resented slavery’s attack on free labor and individual liberties. Philosophically, Republicans rejected state sovereignty over a citizen’s rights and status because they believed rights were natural and unbridgeable by any government. In the wake of *Barron* and *Dred Scott*, Republican struggled to legally defend their opposition to the Court’s states’ rights interpretation of the Constitution. They did so by founding Republican principles on the Declaration of Independence and natural law. The Republican Platform of 1856 defined these principles, “Resolved: That, with our Republican fathers, we hold it to be a self-evident truth, that all men are endowed with the inalienable right to life, liberty, and the pursuit of happiness, and that the primary object and ulterior design of our Federal Government were to secure these rights to all persons.”⁸ Although southern Democrats used the Declaration of Independence as proof that the slave-holding founders supported the institution, Republicans

read the document as a statement of natural rights, endowed upon all, that the government was obligated to protect. Abraham Lincoln explained that past circumstances may not have allowed for their full realization, but the founders “meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for.”⁹ Although Republicans were willing to accept slavery in the South, at the prospect of its expansion they balked. Years of debate culminated in southern secession and civil war. In 1865 the causes of Union and emancipation won, and the future of the nation lay in the hands of a Republican-dominated Congress.

When the Thirty-ninth Congress reconvened in December, 1865, America found itself on the edge of a second constitutional revolution. Secession and states’ rights were defeated. With the passage of the Thirteenth Amendment, congressmen forever prohibited southern states from holding slaves. With this amendment Republicans assumed that they had solved the antebellum constitutional dilemma. Because Republicans felt they were reaffirming the constitutional principles of the Declaration of the Independence over the misapplied history of slavery, they interpreted the Thirteenth Amendment not simply as an abolition of slavery but as a guarantee of the free status of all Americans. It logically followed that as free Americans blacks were citizens and entitled to the natural rights shared by all. But five short years was not enough to eradicate seven decades of constitutionally sanctioned state sovereignty. Southerners continued to resist emancipation, allowed local officials to ignore violence against blacks, and passed Black Codes to virtually re-enslave blacks. Southern recalcitrance proved to the Republicans that states’ rights sentiment had indeed survived the war.¹⁰ In response Republicans hardened their resolve. As the *Chicago Tribune* observed, “to permit the State to come into the Union with such a record

uneffaced, would be a mockery to freedom.”¹¹ Republicans were unwilling to restore southern states who flaunted their subversion of hard-fought Republican principles.

Although Republicans assumed the Thirteenth Amendment created a free status for all Americans, they realized more legislation was required to force southerners to recognize the natural rights and citizenship of blacks. Senator Wilson summed up the immediacy of the situation pressing Congress, “I believe our powers are full, ample, complete, to bring back those States, and Restore them, and preserve, also, the rights and liberties there.”¹² So on January 5, 1866, the conservative Republican, Senator Lyman Trumbull, proposed a bill that would stop southern abuse of the freedmen. The Civil Rights bill was the first congressional Reconstruction measure that attempted to explicitly guarantee natural rights to all Americans with support from the national government. The bill declared that “all persons born in the United States” were “citizens of the United States” and “have the same right, in every State and Territory in the United States, to make and enforce contracts...convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property.”¹³ Just as the Thirteenth Amendment nationalized the free status of all Americans, the Civil Rights bill nationalized citizenship and individual rights. The bill passed both houses on March 13 and was the first act passed over a presidential veto two weeks later.¹⁴

Yet the Civil Rights bill was just a bill and insufficient to incorporate the Republican principles of citizenship and natural rights into the Constitution. This necessity was met by the nine representatives and six senators of the congressional Joint Committee, entrusted with the duty to determine what measures would be required for the South’s restoration into the Union. An obvious measure was an amendment that would constitutionally require all states to recognize blacks as citizens and guarantee the fundamental rights possessed by all Americans.

After several months of conference, Ohio representative John Bingham proposed a section of the later Fourteenth Amendment that read, “Section 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens in 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 equal protection of the law.”¹⁵ The Republicans’ previous ideology as well as necessity to secure fundamental rights to former slaves culminated in a revolution of American constitutionalism with the proposal and ratification of the first section of the Fourteenth Amendment. With it Republicans attempted and succeeded in constitutionalizing their party’s principles of natural law, fundamental rights, free labor, national citizenship, national sovereignty, and an altered relationship between the United States and its citizens. This amendment did not pass with an ignorance of its implications, as Justice Miller would later suppose. Republicans were fully aware that this was a decisive moment for broader change, a chance to execute the founder fathers’ vision for “a more perfect union” where citizens could equally enjoy their natural rights.¹⁶ Senator Lot Morrill from Maine hailed the proposal as “the only hour since this Government began when it was possible to have enacted it...a declaration which typified a grand fundamental change...in harmony with the fundamental principles of the Government.”¹⁷ Most Republicans had always struggled with the contradiction between the Declaration of Independence’s principles and the existence of slavery. Although the ratification of the Constitution required a compromise on slavery, the founders assumed the institution would gradually become extinct. Its perseverance depended on a denial of constitutional rights to a growing slave population in the South. Union victory gave Congress the opportunity to amend the Constitution and inexplicitly secure fundamental rights to all Americans.¹⁸ For Minnesota representative William Windom it was the first effort “made since the formation of

the government to give practical effect to the principles of the Declaration of Independence.”¹⁹ Congress was therefore “writing a new chapter in American history,”²⁰ but a chapter in affirmation of America’s original principles.

Republicans shared this desire to reaffirm the principles of the Declaration of Independence because of the document’s deeper foundation in natural law. Antebellum Republican ideology strove to justify opposition to *Barron* and *Dred Scott* because of natural law. Fifteen years later Republicans continued to affirm that the ultimate purpose of government, both state and national, was to protect its citizens’ rights.²¹ Therefore the privileges or immunities clause of the Fourteenth Amendment was a long overdue constitutional guarantee of what good government was always obligated to do. Congress could rightfully fulfill this obligation because fundamental privileges and immunities were natural, inalienable, and anterior to the establishment of government. No person would ever willfully allow the government to deny their natural rights.²² Despite the principles of the Declaration of Independence and natural law, the Constitution prevented slaves from claiming their inalienable rights. But as congressman Washburne pointed out, “Governments were not instituted for the purpose of depriving men of their natural rights, but rather for the better protection of these rights.”²³ As representative Henry Raymond elaborated, with this first section of the amendment, Congress was giving “to all who live in the midst of their society all the rights and privileges by virtue of their common humanity, that they are entitled.”²⁴ Therefore the first section of the Fourteenth Amendment was not untraditional or unfounded, rather a reaffirmation of the principles of any free government.

Although the supporters of the privileges or immunities clause of the Fourteenth Amendment clearly established the legitimacy for passing such an act, Republicans also had to

determine what these fundamental privileges and immunities were. The phrase privileges and immunities was used interchangeably with natural, fundamental, and constitutional rights.²⁵ Although the Civil Rights bill specified protected rights, John Bingham deliberately left the language of his section open because he considered it to protect the indefinable canon of man's fundamental rights. He did so not to weaken the clause's importance, but rather to strengthen its ability to protect a changing people in changing circumstances. Senator Henry Wilson pointed out that the section's abstractedness allowed that "if the presence of a citizen in the witness box of a court is necessary to protect his personal liberty...he shall not be deprived of that protection."²⁶ The wording of the privileges or immunities clause was purposefully left open, but Republicans still gave their opinion on examples of these fundamental rights. Most agreed that they included the rights defined by Justice Washington on circuit in *Corfield v. Coryell*, the enjoyment of life, liberty, and property.²⁷ Senator Jacob Howard further suggested that "to these should be added the personal rights guaranteed and secured by the first eight amendments."²⁸ Whether Republicans meant to incorporate the Bill of Rights or not, it was clear that Republicans understood the clause to guarantee substantive fundamental rights.²⁹

Especially important to the Republicans were the fundamental rights to labor and property. From its inception, the Republican party had always called for free men and free labor. They considered the cheap labor of the dehumanized slave to be a direct affront to the value of a free man's labor. As the North and South polarized in their economies it became evident that slave and free labor could not coexist. The war, as it had proven with so many other aspects of Republican ideology, vindicated free labor.³⁰ As southern states began to practically re-enslave the newly freed men with the Black Codes, Republican responded with legislation to give blacks land and education to enable them to economically succeed. The Civil Rights bill specifically

guaranteed economic rights to contract, sue, inherit, purchase, lease, and hold property.

Representative George Lawrence reminded that it was “idle to say that a citizen should have the right to life, yet to deny him the right to labor...to make a contract to secure the privilege and the rewards of labor.”³¹ Republican’s traditional value of free labor enabled them to recognize that the newly emancipated slaves could hardly enjoy their life and liberty with the ability to gain economic independence and security.

In order for Republicans to ensure that southerners did not restrict the rights of blacks, they had to make certain these fundamental rights were enforceable in the rebellious states by the national government. Republicans had always rejected *Dred Scott* and considered all persons born in the United States as American citizens. Republicans assumed, “all these immunities, privileges, rights...are secured to the citizen solely as a citizen of the United States.”³²

Ironically, this assumption was so common, the grant of national citizenship in section one was not even part of the amendment finally passed by the House in May, 1866. It was a last-minute addition of the Senate, who simply wished to clarify what Republicans had always considered true.³³ Now imbedded in the Constitution was the recognition that all persons born in American were naturally U.S. citizens. This national citizenship was superior to state citizenship, and states were now constitutionally required to respect Americans’ fundamental and national rights. The privileges or immunities clause transformed what states ought to have done to what the amendment required them to do. For as Bingham questioned, “Who ever before heard that any State had reserved to itself the right under the Constitution of the United States, to withhold from any citizen of the United States within its limits...the privileges of a citizen of the United States.”³⁴ With the Fourteenth Amendment, national citizenship was supreme. States could not restrict the fundamental rights of Americans and Americans, by virtue of their national

citizenship, could seek enforcement from the national government when the states unconstitutionally abridged their privileges and immunities.

Because all American-born persons were automatically U.S. citizens and guaranteed their natural rights, the state governments could no longer constitutionally abridge them. Just as the grant of U.S. citizenship repudiated *Dred Scott*, the requirement that states respect these national rights was a repudiation of *Barron*. For as Illinois representative Bromwell questioned, “Was it ever known in the world that a State could reserve a right or have a right...to do manifest injustice? The very object of establishing this Government was to make it sure that no Government should ever exist upon this continent capable of denying or have the power to deny these rights.”³⁵ Before this amendment the American citizens were incapable of seeking protection for state violations of their constitutional rights. In light of the Civil War, this was a failure of states’ rights federalism to Congressman Newell,

States rights was the liberty given to one man to oppress his fellow man...When the national authority found itself unable to protect the liberties of the people, it not only failed in the first principles of its organization, but degenerated into an instrument of oppression...The result of the rebellion, then, having made the principles of the Constitution not only theoretically but practically true, it is our duty to see that the principles of the Constitution are now carried out to the fullest extent.³⁶

States’ rights subverted the founding’s principles. Republicans remedied this by aligning the purposes of both the state and national government to the same ends of protecting citizen’s rights. This ultimatum of federal enforcement did not imply uniform interference into state authority, however. States had always had jurisdiction over individual rights and Congress wished to leave them there. They understood that the Ohio legislature was better suited to govern Ohioans’ rights than Congress. But Republicans were requiring that all states guarantee the fundamental rights of their citizens, who were American citizens foremost. If states complied with this, then national enforcement would never be necessary. Republicans did not

want to alter the traditional structure of the federalist system.³⁷ However, they did want to ensure “that no doubt should be left existing as to the power of Congress to enforce principles lying at the very foundation of all republican governments if they be denied or violated by the States.”³⁸

Republicans were quite clear on the understood implications of their argument. It was the amendment’s critics who conflated the text with a radical intention to alter the federalist structure of the government.³⁹ The conservatively biased *New York Times* sarcastically questioned, “What ulterior purpose is contemplated, that Congress should be invested with the right to override the legislation of States in matters of which, as the Constitution now stands, they are the competent and sole judges?”⁴⁰ Seven years later in the *Slaughterhouse Cases*, Justice Miller inherited this misunderstanding when he asked, “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 bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States?”⁴¹ This was not the amendment’s purpose and Republicans were clear in objecting to this accusation. Congressman Woodbridge reminded, “It does not destroy the sovereignty of a State...but merely keeps whatever sovereignty it may have in harmony with...the Constitution.”⁴² The Fourteenth Amendment was a constitutional revolution, not a structural one. Republicans grounded this revolution on a theory of natural law which demanded that all free governments protect the natural rights of all humans. The recent war had uncovered the abuses of states’ right federalism. Although Republicans valued federalism, they were unwilling to permit states to continue superseding the protection of Americans’ rights. This was not an invitation for Congress to uniformly obstruct the states’ ability to govern its citizens. The states

had traditionally held this role and they could continue governing independently as long as they guaranteed the fundamental privileges and immunities of American citizens. The clause affected only those states who failed to do so. One hundred and ten years before, the Declaration of Independence had acknowledged that all men were created equal with certain inalienable rights government was obligated to protect. The passage of the Fourteenth Amendment on June 13, 1866, was therefore not a radical departure from traditional American government but a reaffirmation of what it always ought to have done, guarantee to all its citizens their fundamental immunities and privileges.

Although this guarantee was decimated by the *Slaughterhouse Cases* seven years later, ironically, the majority's interpretation of the Fourteenth Amendment was not even necessary to rule for the constitutionality of Louisiana's Slaughterhouse Act. States had always held wide discretion under their police power to ensure the health of their citizens, and the unsanitary situation in New Orleans was unquestionably a health matter. Every year the offal from 300,000 butchered animals made its way into the city's water supply.⁴³ Historically, butchery was an often regulated trade. In fact in the early nineteenth-century, butchers had worked outside the city, but as New Orleans became more populated and prosperous butchers moved back in to shorten transport time. With an increased demand for meat, the butchers became a unified and powerful group that obstructed any further regulation of their trade. But as the unsanitary conditions became increasingly overwhelming, hundreds of citizens petitioned the state legislature in 1866 to move the city's slaughterhouses across the Mississippi River and further downstream.⁴⁴ The legislature responded three years on March 8, 1869 with "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."⁴⁵

On its face the Slaughterhouse Act purported to reasonably remedy New Orleans' health problems, but the measure was not without its controversies. In accordance with Congress' requirements for readmission into the Union, Louisiana's legislature was comprised not of former Confederates, but antislavery whites, newly freed slaves, and Carpetbaggers. Most locals did not consider the newly elected legislature's laws legitimate or binding.⁴⁶ In addition to the unfavorable perception of Carpetbaggers in the South, the passing of the act was indeed suspicious. The law recognized seventeen people as the Crescent City Company and gave those individuals sole privilege for twenty-five years to operate the only legally recognized slaughterhouse in the city. Evidence of bribery and corruption ensured this exclusive grant. In addition many representatives, senators, and the governor were all shareholders in the Company. The act's claim as a police regulation diminished even further when the butchers joined together and formed the Butcher's Benevolent Association. The first action of the Association was to invest \$200,000 into a state-of-the-art slaughterhouse across the river that was far superior to the makeshift facility the Crescent City Company had shoddily built.⁴⁷ Evidence of bribery, profit, and exclusivity collectively complicated the perceived legitimacy of the act.

Disregarding the surrounding circumstances, the purpose of the Louisiana measure stemmed from a long tradition of accepted state police power. This power proceeded from a basic theory of government and society, that every citizen must forfeit some rights to regulation and restriction when in pursuance of the common good. Butchers had a right to practice their occupation, but when this practice was injurious to the public health the state had the rightful authority to regulate the injurious effects. Even the butchers did not deny the good intention of the health measure. Instead they balked at the monopoly. Rather than a regulatory measure, butchers believed the act was merely a corrupt contract legislators had with a favored company

made up of many of its own members. The butchers were willing to submit themselves to a fair regulation of their trade and a specific location but wanted to retain the ability to build and use slaughterhouses of their choice.⁴⁸ Essentially they believed the intention of regulation was fair but the monopoly unreasonable.⁴⁹ After the law's enactment, the Butcher's Benevolent Butcher's Association began a lengthy process of filing for injunctions to stop the progress of the Crescent City as well as appealing their case to the Louisiana State Supreme Court, the Federal Circuit Court, and ultimately before the United States Supreme Court. The merits of the case had especial significance because rather than resting the butcher's claim solely on the reasonableness of the state health measure, the lawyer for the butchers, John Campbell, attempted to undermine the act by proving it violated the recent Thirteenth and Fourteenth Amendments.

By deeming the act as unconstitutional as well as unreasonable, Campbell attempted to define the protections of the Reconstruction amendments for the first time in a court of law. Campbell framed his argument to the Supreme Court under the Thirteenth Amendment and the first section of the Fourteenth Amendment. For Campbell, the monopoly made butchers involuntarily servile to the Crescent City, "A peremptory command is given that all animals shall be sheltered, preserved, and protected by this corporation, and by none other, under heavy penalties. Is not this 'a servitude'?"⁵⁰ Campbell perhaps recognized that justices would find it difficult to consider the butchers in the same position of the recently emancipated slaves under the Thirteenth Amendment and alleged three additional violations of equal protection, due process, and privileges or immunities under the Fourteenth Amendment. Campbell argued that the monopoly denied his plaintiffs equal protection of the laws "by an act of legislative partiality" that enriched "seventeen persons and deprives nearly a thousand others of the same

class.” This deprivation destroyed the butcher’s property “not by due process of law, but by charter; a grant of privilege, of monopoly.”⁵¹ Campbell’s use of these two amendments still followed the traditional critique of the monopoly. The presence of corruption made true due process dubious. Because it clearly favored the Company’s stockholders, it discriminated against anyone else’s opportunity to run a regulated slaughterhouse. But the true significance of Campbell’s contention lay in its appeal to the privileges or immunities clause of the Fourteenth Amendment.

Campbell’s argued understanding of the fundamental privileges and immunities guaranteed by the Fourteenth Amendment was similar to Bingham’s. Ironically, Campbell used the northern congressmen’s principles not because he agreed with Republican rationale, but because he wanted to defeat the results of the Louisiana’s multiracial legislature. Campbell was a Democrat and former Supreme Court justice who had resigned to fight for the Confederacy. He resumed his legal practice in New Orleans after the war and devoted himself to fighting Louisiana’s Reconstruction government. For Campbell, the Slaughterhouse Act represented an illegitimate law passed by corrupt northerners and blacks with the intrusive vision of modernization and free labor. *The Slaughterhouse Cases* was important because the monopoly removed the economic barriers of becoming a butcher. Previously a butcher needed enough capital to own a small, personal slaughterhouse. With the small access fee to the municipal slaughterhouse, blacks could finally enter the trade. Such a prospect horrified the butchers and whites of New Orleans who enlisted Campbell’s legal skills to overturn the act. Campbell sought to undermine the legislature’s legitimacy by arguing that the act violated a person’s right to labor. He did so not in support of Republican free labor but in opposition to a legal monopoly that opened the butchery trade to blacks.⁵²

Whatever his motives, Campbell eloquently declared the Civil War to be a departure from the preexisting federal compact. Although the old federal doctrine conceded “that there was no citizenship in the whole United States, except *sub modo* and by permission of the States,” this principle had “received an indefinite enlargement.”⁵³ Campbell reaffirmed that the nation, not the states, was to be the chief protector of its citizens’ individual rights. After the ratification of the Fourteenth Amendment, the confederate features of the government were to be subservient to the national oversight of Congress. It was the purpose of the amendment that “the numerous State governments and the entire United States administered by a common government...might mutually sustain, support, and co-operate for the promotion of peace, security, and the assurance of property and liberty.”⁵⁴ In this new age of common purpose, the states could no longer abridge the privileges and immunities conferred upon people by virtue of their national citizenship. “State laws must be so framed as to secure life, liberty, and property from arbitrary violation.”⁵⁵ Rather than continuing to cite the act as unreasonable and arbitrary, Campbell used the privileges or immunities clause to describe fundamental rights that the state could never abridge. These privileges and immunities derived from national citizenship and guaranteed to all people, regardless of residence. The right to labor and freely use property for oneself was surely a fundamental right Republican congressmen intended to protect. Although states still possessed their traditional police power, they now had to legislate while recognizing certain fundamental and inviolable rights. The state could regulate the butcher’s fundamental right to labor to ensure the general welfare but could not confine them within the exclusive privilege of a corporation.

Justice Samuel Miller disagreed and on April 14, 1873, handed down his opinion, joined by Justices Nathan Clifford, David Davis, William Strong, and Ward Hunt, in the *Slaughterhouse Cases*. Miller, known for his pragmatic and moderate opinions, was implored by

his brethren to write six hundred decisions over his judicial career.⁵⁶ As a northern Republican and Lincoln appointee, he encouraged efforts to improve and modernize the South and resisted Campbell's efforts to undermine the Reconstruction legislature. In addition Miller lived as a doctor in a busy slaughtering town in Iowa and recognized the need to regulate the trade.⁵⁷ Understandably, Miller believed the Louisiana law was a reasonable and appropriate exercise of state police power. He stated that, "it is both the right and the duty of the legislative body...to prescribe and determine the localities where the business of slaughtering for a great city may be conducted."⁵⁸ He continued by questioning the butcher's repulsion for the monopoly. The act restricted location of slaughter but in no way prevented a butcher from fulfilling his occupation. Miller reminded the plaintiffs that "the state legislatures of this country have always exercised the power of granting exclusive rights when they were necessary and proper to effectuate a purpose which had in view the public good."⁵⁹ Unlike Campbell, Miller recognized the legitimacy of Louisiana's new legislature, and wished to grant it considerable freedom in carrying out its state police power. Miller believed if the 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...to effect the desire and lawful purpose."⁶⁰ Unless proven that Louisiana lacked such a right, then the validity of any regulation or exclusive measure stood.

Miller's decision could have ended here by determining the act to be a reasonable and routine exercise of the police power. The Thirteenth and Fourteenth Amendments were not even applicable, for whatever they did protect, it was not the butchers' right to elude a legitimate police power regulation.⁶¹ But Campbell had raised questions under the Reconstruction Amendments, and the dissenting minority was focusing its opinions on these constitutional claims. Miller had to justify why these constitutional guarantees did not protect the butchers.

Miller's subsequent decision was not a conscious intention to undermine the freedmen's rights in the South. Miller recognized Campbell's motives and was unwilling to allow the Fourteenth Amendment to be used as a tool to overrule a Reconstruction legislature and vindicate a group of white butchers. In order to achieve this commendable result, Miller focused on the specific application of the amendment in New Orleans and ignored the ideological principles of Republicans and the constitutional change they meant to accomplish. Although decided in good faith, his opinion misinterpreted Republican understanding of national citizenship and privileges and immunities, and ultimately rejected any meaningful reading of the section. Miller inserted his own view of how American government should operate and regrettably destroyed any future opportunity for Americans to claim protection for fundamental privileges and immunities from abridgement by the states.

Miller began by examining the history and purpose of ratifying the amendment. He recognized Republican principles but restricted his interpretation of the Thirteenth and Fourteenth Amendment to the conditions that required such an enactment, that of the former slaves.⁶² After the emancipation of the Thirteenth Amendment, "circumstances... forced upon the statesmen...the conviction that something more was necessary in the way of constitutional protection to the unfortunate race...They accordingly passed through Congress the proposition for the fourteenth amendment."⁶³ But abolition of slavery was not the only evil Republicans desired to remedy. Equally offensive was the South's suppression of individual rights.⁶⁴ Miller refused to fully interpret the amendment's principles and only considered its "one pervading purpose...the slave race."⁶⁵ Unfortunately after specifically interpreting the amendment in terms of its purpose to preserve the free condition of former slaves, he left their protection to those least likely to protect them, the southern states.

After clarifying the limited application of the Fourteenth Amendment, Miller expounded on a limited classification of national and state citizenship. He had already undermined the common principles of Republicans by applying the amendment to former slaves only. Miller continued by reviving Chief Justice Taney's theory of dual citizenship the Republican framers' had passionately repudiated. During the congressional debates, Senator Luke Poland argued that the privileges or immunities clause of section one was a reaffirmation of the guarantee of fundamental rights recognized but unrealized in the Constitution's Article IV.⁶⁶ Miller also compared section one of the Fourteenth amendment to the second section of Article IV, but did so narrowly. Miller presented the two as textually identical. In fact the section in Article IV reads, "The Citizens of each State shall be entitled to all privileges and immunities of Citizens **in** the several States," but Miller willfully misquoted it to read, "The Citizens of Each State shall be entitled to all privileges and immunities of Citizens **of** the Several States."⁶⁷ Section two of Article IV guarantees equal treatment to non-state residents in every state of the nation. Miller wished to similarly interpret section one and by mis-reading it as "of the several states" in the original Article so that he could easily compare it to citizens "of the state" in section one of the Fourteenth Amendment, he was able to present a clear textual similarity. Had he quoted the Constitution faithfully, he could not have equalized the two sections in words or purpose.⁶⁸ Because citizens of the states only meant a guarantee of equal rights in any other state, Miller denied the superiority of one, national citizenship.

Instead Miller deduced that "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."⁶⁹ The following section spoke only of privileges and immunities of the United States and not of the numerous states. Because there was a distinction of citizenship, then there must be a distinction of privileges and

immunities. Miller distinguished the two based on tradition and not the Republican framers' new understanding. Rather than recognize fundamental rights as belonging to all and to be guaranteed to all by the national government, Miller pointed out that "those rights which are fundamental...have always been held to be the class of rights which the State governments were created to establish and secure."⁷⁰ Because the butchers were claiming rights traditionally granted to state authority, their claims must "rest for their security and protection where they have heretofore rests; for they are not embraced by this paragraph of the amendment."⁷¹ The butchers could not seek protection for their fundamental rights from the government of the United States. The Fourteenth Amendment, therefore, only offered protection from the national government for those privileges and immunities that only owe their existence to national citizenship. These Miller defined as free access to sea ports, protection on the high seas, use of the navigable waters, and petition for redress of grievances.⁷² Although Republicans described these national protections as the right to life, liberty, pursuit of happiness, property, labor, etc. as privileges and immunities possessed by all free Americans and protected by both the state and national government. Miller in turn recognized these fundamental rights but stripped them from their national place and returned them to the sole discretion of the states.

Miller reversed the framers' understanding not because he was foolish or irresponsible, but because he truly could not conceive of such a changed, nationalist government. Miller questioned:

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?...All this and more must follow, if the proposition of the plaintiffs in error be sound.⁷³

The answer to his question is of course. The framers of the amendment meant to forbid the states from ever abridging a citizen's fundamental rights. But Miller was afraid the consequences of such an understanding would radically depart from the theory of state and federal relations the country had traditionally relied upon. Miller was not alone in this fear. The *New York Times* praised his decision as a "severe blow to that school of constitutional lawyers who have been engaged, ever since the adoption of the Fourteenth Amendment, in inventing impossible consequences."⁷⁴ To permit Campbell's and the butchers' claim was to permit the impossible consequence of destroying traditional American government.⁷⁵ After a brief stint of national vindication for fundamental rights, citizen-state relations returned to their antebellum condition.

Four dissenting justices, however, vehemently disagreed with Miller's own interpretation and futilely argued for Bingham's envisioned America. Like Campbell and Miller, dissenting Justice Stephen Field had his own motives that affected his interpretation of the Slaughterhouse Act. Field was a northern Democrat who opposed Reconstruction, had no interest in blacks' rights, and wanted to restrain his perception of increasing unwise state actions.⁷⁶ Personally Field hoped the decision would undermine the freedom of Reconstruction legislatures, but principally Field argued in accordance with the framer's intentions. Field conceded that the states had wide discretion in enacting health regulations, and the Court should only be concerned with the exclusive privileges conferred by the act. In accordance with Campbell's argument, Field distinguished the mandatory location and inspections for the butchers from the grant of the monopoly. Voluntary compliance to the former requirements could easily accomplish the health purposes of the act. Although Miller deferred to the Reconstruction legislature to determine appropriate means to carry out and appropriate end, Field scrutinized the monopolistic means

and determined that under this pretense the state legislature “cannot be permitted to encroach upon any of the just rights of the citizen, which the Constitution intended to secure against abridgment.”⁷⁷ In his dissenting opinion Justice Joseph Bradley, a New Jersey Republican passionately opposed to northern railroad monopolies, likewise reminded that the state “may prescribe the manner of their exercise, but it cannot subvert the rights themselves.”⁷⁸ Bradley’s statement reveals the principle difference between the dissenting justices and Miller. Miller completely deferred to the means the legislature chose to accomplish their purpose because he would not interpret the Fourteenth Amendment as destroying state jurisdiction over individual rights. Because Bradley considered them fundamental, he argued that no government could ever constitutionally subvert them.⁷⁹ Therefore, the monopoly did indeed violate the Fourteenth Amendment.

While Miller only interpreted the amendment in terms of its specific purpose, Field considered its language to be “general and universal in its application.”⁸⁰ Miller felt only freed slaves could justifiably seek protection under the amendment because it existed only to protect their condition. For Field and Bradley, freed slaves may have been the initial concern, but the amendment’s remedy was not just for their protection but was an answer to the spirit of disloyalty shown by the southern states against the American government. This was a national, not specific, remedy and achievable by recognizing the fundamental privileges and immunities shared by all persons in the United States. Field, like the Republicans, argued that the amendment’s reach was universal in time and application because it “was intended to give practical effect to the declaration of the 1776 inalienable rights.”⁸¹ All Americans possessed the fundamental right to liberty, property, and labor therefore, the butchers were perfectly just in appealing their case under the Fourteenth Amendment.⁸²

Unlike Miller, the dissenting justices acknowledged the harsh lessons taught by the recent war. States could no longer be the sole protector of fundamental rights. As Field stated, the Fourteenth Amendment recognized fundamental privileges and immunities and permanently placed these “common rights of American citizenship under the protection of the National government.”⁸³ Field and Bradley went into a comprehensive discussion about the nature of the amendment’s privileges and immunities. In great contrast to the Miller’s limited rights to use the navigable waters and access to sea ports, Field considered the privileges and immunities to be fundamental liberties derived from human nature, not the government, and incapable of being destroyed by any legislature. Like Senator Howard’s earlier citation, Field believed Justice Washington specified the amendment’s privileges and immunities decades earlier as belonging “of right to citizens of all free governments.”⁸⁴ The dissenting opinions established the privileges and immunities as naturally shared, and unlike Miller, believed the butcher’s fundamental right to pursue their labor of choice was included in these natural rights of life, liberty, property, and the pursuit of happiness. The butchers had rightfully sought the protection guaranteed them by the Constitution for enforcement of their natural and fundamental rights as citizens of the United States. In Field’s eyes they were now capable of doing this because the Fourteenth Amendment declared that, “A citizen of a State is now only a citizen of the United States...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 in any State.”⁸⁵ Such was the significant distinction between the five man majority and four man minority. According to Miller the butchers had no remedy from the national government if the states chose to impinge upon their fundamental rights. But for Bradley, citizenship of the United States was primary and citizenship of the states was only

derivative from national citizenship. It was logical that under the amendment that classified the supremacy of national citizenship, “every citizen of the United States should be able to plead his citizenship of the republic as a protection against invasion of his privileges and immunities.”⁸⁶ The right to freely pursue a labor of choice was a fundamental privilege and enforceable by the federal judiciary or Congress.

This new assumption that the national government could be concerned about state action over citizens’ affairs was a prominent fear of Miller, whose opinion maintained the importance of preserving the original federal compact. Field and Bradley did not share his overly exaggerated concern because they acknowledged the nuances of the framers’ understanding. Both men knew the amendment did not obliterate the federal relations between nation and state.⁸⁷ But as the recent war had proven something further was necessary to align state laws with the ends of the American government. The Constitution had always restricted governmental oppression of the Union “but little was given against wrong and oppression by the States. That want was intended to be supplied by this amendment.”⁸⁸ This did not create an overarching national authority. In fact the protection of fundamental privileges and immunities was to entirely remain with the states “unless actually invaded by the unconstitutional act of delinquency of the State governments.”⁸⁹ As Miller adjudicated his conception of federalist government, Field and Bradley attempted to acquiesce to the framers’ understanding. Rather than doubt that the congressmen knew what they were doing, Bradley wrote, “It is objected that the power conferred is novel and large. The answer is that the novelty was known and the measure deliberately adopted.”⁹⁰ In a valiant but futile effort, the four dissenting justices attempted to prove Miller’s limited conception wrong and vindicate the fundamental privileges

and immunities the butchers naturally possessed as humans and Americans. They were unsuccessful and a century and a half later, the *Slaughterhouse Cases* is still good law.

Miller's opinion in the *Slaughterhouse Cases* destroyed the heart of section one of the Fourteenth Amendment. By repudiating fifteen years of Republican ideology that recognized the natural law principles of the Declaration of Independence, Miller ruled in favor of historical constitutionalism and restored the sovereignty of the states and their jurisdiction over the fundamental rights of Americans. Although Miller misunderstood the original intent of the privileges or immunities clause, he did attempt a faithful understanding of the amendment's history and purpose. The *Slaughterhouse Cases* is so vital to the understanding of constitutional law because it reveals the dissonance between motives, principles, and applications. Miller sympathized with Republican Reconstruction efforts yet unconsciously limited their principles in order to uphold the Slaughterhouse Act. Campbell and Field resented the freedom of Reconstruction legislatures but used Republican principles to undermine the party's goals. It is important to remember that this country is not beholden to unrealized principles and their misapplications. Fortunately, the Fourteenth Amendment permanently memorializes "more of justice and more of freedom and more of magnanimity than the world has ever seen."⁹¹ And it is the recognition and application of this truth that we must constantly labor to accomplish.

- ¹ Ronald Labbé and Jonathan Lurie, *The Slaughterhouse Cases* (Lawrence, Kansas: University Press of Kansas, 2005) 16.
- ² Michael Ross, “Justice Miller’s Reconstruction: The Slaughter-House Cases, Health Codes, and Civil Rights in New Orleans, 1861-1873.” *The Journal of Southern History*, Vol. 64, No. 4. (Nov., 1998) 655-659.
- ³ *Slaughter-House Cases*, 77 U.S. 273 (1873), 33.
- ⁴ Recent critics of Miller’s opinion on fundamental privileges and immunities include Richard Aynes, “Unintended Consequences of the Fourteenth Amendment and What They Tells us About its Interpretation,” 39 *Akron Law Review* 289; Michael Kent Curtis, *No State Shall Abridge* (Durham, NC: Duke University Press, 1986); and Michael Kent Curtis, “Resurrecting the Privileges or Immunities Clause and Revising the *Slaughter-House Cases* Without Exhuming *Lochner*,” 38 *Boston College Law Review* 1. For scholarship more sympathetic to Miller see, Charles Fairman, *The Fourteenth Amendment and the Incorporation Theory* (New York: De Capo Press, 1970) and Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* (Cambridge, MA: Harvard University Press, 1977).
- ⁵ *Barron v. Baltimore*, 32 U.S. 243 (1833), 10.
- ⁶ *Dred Scott v. Sandford*, 60 U.S. 393 (1857).
- ⁷ *Ibid.*, 58.
- ⁸ As quoted in Michael Kent Curtis, *No State Shall Abridge* (Durham, NC: Duke University Press, 1986) 47.
- ⁹ As quoted in Michael Kent Curtis, “Resurrecting the Privileges or Immunities Clause and Revising the *Slaughter-House Cases* without Exhuming *Lochner*.” 38 *Boston College Law Review* 1, 16.
- ¹⁰ Robert Kaczorowski, “To Begin the Nation Anew: Congress, Citizenship, and Civil Rights after the Civil War.” *The American Historical Review*, Vol. 92, No. 1. (Feb., 1987) 48, 51.
- ¹¹ Donna Dickerson, *The Reconstruction Era , Primary Documents on Events from 1865-1866* (Westport, CT: Greenwood Press, 2003) 49.
- ¹² Congressional Globe, 39th Congress, 1st session, 111.
- ¹³ As quoted in Curtis, *No State Shall Abridge*, 71.
- ¹⁴ Patrick Riddleberger, *1866: The Critical Year Revisited* (Carbondale, Illinois: Southern Illinois University Press, 1979) 86. President Johnson opposed the bill because he felt Congress lacked the constitutional authority to legislate on rights “hitherto been considered as exclusively belonging to the States” (*New York Times*, April 7, 1866, p. 4).
- ¹⁵ Benjamin Kendrick, *The Journal of the Joint Committee of Fifteen on Reconstruction, 39th Congress, 1865-1867* (New York, 1914) 106.
- ¹⁶ Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: Harper and Row Publishers, 1988) 230.
- ¹⁷ Cong. Globe, 39th Cong., 1st sess, 570. See also speeches by Howe, Shellabarger, Newell and Hale at 163, 406, 867, and 1063.
- ¹⁸ Kaczorowski, “To Begin the Nation Anew,” 47.
- ¹⁹ Cong. Globe, 39th Cong., 1st sess., 1159.
- ²⁰ *Ibid.*, 2883.
- ²¹ Curtis, “Resurrecting the Privileges or Immunities Clause,” 34.
- ²² Douglas Smith, “Natural Law, Article IV, and Section One of the Fourteenth Amendment,” 47 *American University Law Review* 351, 389.
- ²³ Cong. Globe, 39th Cong., 1st sess., 174.
- ²⁴ *Ibid.*, 3247.
- ²⁵ Curtis, *No State Shall Abridge*, 64.
- ²⁶ Cong. Globe, 39th Cong., 1st sess., Appendix 157.
- ²⁷ *Corfield v. Coryell*, 6 F. Cas. 546 (1823). Within his opinion Justice Washington stated, “We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments...What these fundamental principles are...the enjoyment of life and liberty, with the right to acquire and possess property of every kind.”
- ²⁸ Cong. Globe, 39th Cong., 1st sess., 2756.
- ²⁹ Justice Miller explained the new importance of the amendment as a restriction upon states from passing laws that affected classes unequally. Republicans, however, intended to confer substantive rights on American citizens. Any law, not just a discriminatory law, could abridge these substantive rights. Even the amendment’s critics had the same understanding for they feared that with its passage “we will carry the title and enjoy” all substantive rights “in common with the negroes” (2939).

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- ³⁰ Adam Rosen, “Slaughtering Sovereignty: How Congress can Abrogate State Sovereign Immunity to Enforce the Privileges or Immunities Clause of the Fourteenth Amendment,” 11 *Temple Political and Civil Rights Law Review* 111, 135.
- ³¹ Cong. Globe, 39th Cong., 1st sess., 1756.
- ³² Senator Howard, *Ibid.*, 2765
- ³³ Trisha Olson, “The Natural Law Foundation of the Privileges or Immunities Clause of the Fourteenth Amendment.” 48 *Arkansas Law Review* 347, 415.
- ³⁴ Cong. Globe, 39th Cong., 1st sess., 1089.
- ³⁵ *Ibid.*, 2905.
- ³⁶ *Ibid.*, 867.
- ³⁷ Curtis, *No State Shall Abridge*, 64.
- ³⁸ Senator Luke Poland, Cong. Globe, 39th Cong., 1st sess., 2961.
- ³⁹ *Ibid.*, Appendix 135. New Jersey representative Rogers warned that the words of the section empowered “the Federal Government to exercise an absolute, despotic, uncontrollable power of entering the domain of the States.”
- ⁴⁰ “The Reconstruction Committee and the Constitution.” *New York Times*. Feb. 19, 1866, 4.
- ⁴¹ *Slaughter-House Cases*, 76-77.
- ⁴² Cong. Globe, 39th Cong., 1st sess., 1088. See also Bingham’s speech at 1090.
- ⁴³ Labbé and Lurie, *The Slaughterhouse Cases*, 4, 15, 25.
- ⁴⁴ Ross, “Justice Miller’s Reconstruction,” 655-656.
- ⁴⁵ *Slaughter-House Cases*, 43.
- ⁴⁶ Labbé and Lurie, *The Slaughterhouse Cases*, 44.
- ⁴⁷ *Ibid.*, 47, 53, 70.
- ⁴⁸ *Ibid.*, 28.
- ⁴⁹ The recent Illinois Supreme Court case, *City of Chicago v. Rumpff* (45 Ill. 90, 1867) supported the butchers’ argument. The recent Illinois case had likewise repealed a legislative act that created a monopoly to run a municipal slaughterhouse that all city butchers were required to use.
- ⁵⁰ *Slaughter-House Cases*, 28.
- ⁵¹ *Ibid.*, 38.
- ⁵² Ross, “Justice Miller’s Reconstruction,” 656-666.
- ⁵³ *Slaughter-House Cases*, 32.
- ⁵⁴ *Ibid.*, 33.
- ⁵⁵ *Ibid.*
- ⁵⁶ Labbé and Lurie, *The Slaughterhouse Cases*, 116.
- ⁵⁷ Ross, “Justice Miller’s Reconstruction,” 668-670.
- ⁵⁸ *Slaughter-House Cases*, 47.
- ⁵⁹ *Ibid.*, 14.
- ⁶⁰ *Ibid.*, 53.
- ⁶¹ Labbé and Lurie, *The Slaughterhouse Cases*, 147.
- ⁶² Curtis, “Resurrecting the Privileges or Immunities Clause,” 72.
- ⁶³ *Slaughter-House Cases*, 69.
- ⁶⁴ Curtis, “Resurrecting the Privileges or Immunities Clause,” 72.
- ⁶⁵ *Slaughter-House Cases*, 65.
- ⁶⁶ Cong. Globe, 39th Cong., 1st sess., 2961.
- ⁶⁷ *Ibid.*, 72.
- ⁶⁸ Richard Aynes, “Unintended Consequences of the Fourteenth Amendment and What They Tell Us About Its Interpretation,” 36 *Akron Law Review* 289, 299.
- ⁶⁹ *Slaughter-House Cases*, 70.
- ⁷⁰ *Ibid.*, 74.
- ⁷¹ *Ibid.*, 71.
- ⁷² *Ibid.*, 79.
- ⁷³ *Slaughter-House Cases*, 76.
- ⁷⁴ “The Scope of the Thirteenth and Fourteenth Amendments.” *New York Times*; April 16, 1873. p. 4.
- ⁷⁵ This was the primary fear of Republican opponents like Rep. Davis. Although Republicans wanted to keep regulation of citizens’ rights under state authority but in accordance with a national standard, their opponents feared

a slippery slope that would make the national government a permanent censure on state legislation. This fear, however important, was unfounded (see footnote 45).

⁷⁶ Foner, *Reconstruction*, 530.

⁷⁷ *Slaughter-House Cases*, 87.

⁷⁸ *Ibid.*, 141.

⁷⁹ David Bogen, "Slaughter-House Five: Views of the Case," *55 Hastings Law Journal* 333, 352.

⁸⁰ *Slaughter-House Cases*, 98.

⁸¹ *Ibid.*, 127.

⁸² Ironically Field's committal to property rights did not pertain to women. Decided one day after *Slaughterhouse, Bradwell v. Illinois* (83 U.S. 130, 1873) denied Myra Bradwell's claim that an Illinois law forbidding any female attorney abridged her constitutional right to enter a labor of her choice. This decision, however, did not further explore principles of the Fourteenth Amendment. The eight man majority simply revealed the sexism of their times in refusing to understand Bradwell's case as a substantial abridgement.

⁸³ *Slaughter-House Cases*, 105.

⁸⁴ *Ibid.*, 112.

⁸⁵ *Ibid.*, 108.

⁸⁶ *Ibid.*, 127.

⁸⁷ Bogen, "Slaughter-House Five," 383-384.

⁸⁸ *Slaughter-House Cases*, 169.

⁸⁹ *Ibid.*, 155.

⁹⁰ *Ibid.*, 168.

⁹¹ Henry Bromwell, *Cong. Globe*, 39th Cong., 1st sess., 2905.

Appendix

Article IV, Section Two, Clause One of the Constitution of the United States of America

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Section One of the Fourteenth Amendment

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 protections of the laws.

Preamble of the Declaration of Independence

We hold these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator, with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, that whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

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