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Hamline University

The Slaughterhouse Cases:
“Unforeseen” Consequences and Public Reaction

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for graduation with honors in Department of History
from Hamline University

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Introduction: The Bench and Bar Cutting Floor

The Slaughterhouse Cases arose out of New Orleans during the late 1860s.¹ New Orleans had been experiencing a health crisis that had plagued the city for several decades. Many believed this health crisis was caused by the majority-French butchers of New Orleans; throwing gore and inedible flesh wherever they pleased. In response, Louisiana passed a law that centralized all butchers outside of New Orleans, creating a slaughterhouse monopoly that belonged to a handful of Northerners. Outraged, the butchers sued the company claiming their constitutional rights to labor and property had been infringed by the Louisiana legislature and the newly formed monopoly. Specifically, the butchers argued that by depriving them of their property that they used to ply their trade, Louisiana had violated the Privileges or Immunities Clause of the Fourteenth Amendment, which they thought guaranteed them the right to labor on their own property. The company and state of Louisiana replied, arguing that their state police power enabled them to create a monopoly for the sake of public health. Thus, the lines were drawn, the butchers claimed the right to practice their trade wherever they pleased, and the state of Louisiana claimed the right to regulate business for the sake of public health.

However, this case goes much deeper than what was initially at stake. The civil rights of African Americans and the powers of the states against the federal government were also on the chopping block. This would be the first time the Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution would be interpreted by the Supreme Court. The Thirteenth abolished slavery, the Fourteenth defined United States citizenship, and the Fifteenth gave male citizens, including African American men the right to vote. These amendments were

¹ The Slaughterhouse Cases are referred to “cases” because they started as several cases in Louisiana but were consolidated into a single case once it reached the Supreme Court. Although the “cases” became a single case - the Supreme Court still kept the plural “cases” in the official name.

ratified during the period known as Reconstruction (1865-1877). Reconstruction aimed at rebuilding the South in every facet of life; physically, socially, politically. The Reconstruction Era marked tense times for the United States and many important issues that would guide the country would be decided by the Judiciary.

The Slaughterhouse Cases was just one of the many landmark trials that would go before the Supreme Court during the Reconstruction Era. However, The Slaughterhouse Cases were of great significance; especially to historians and legal scholars. When the Slaughterhouse Cases are discussed today, they are usually focused on the decision passed down by Justice Miller. Justice Miller is infamous for his decision in Slaughterhouse because his decision effectively blotted out an entire clause of the Fourteenth Amendment; The Privileges or Immunities Clause. This clause, scholars speculate, could have secured civil rights enumerated under the Bill of Rights, for African Americans. Instead, Miller dismissed this idea as unthinkable and gave the states the power to decide what rights a citizen had as a citizen of that individual state.

This project seeks to reexamine the Slaughterhouse Cases, put the cases in a broader historical context, find out what people knew about, if at all, the consequences of the cases, and examine if the people and parties involved truly did not intend the consequences they wrought. In order to do this, newspaper sources will be examined to get the perspective of the public, journalists, and political figures. This paper will first discuss what scholars have said about the Slaughterhouse Cases and pertinent events. Then it will explore the background to the cases; the American Civil War, Reconstruction, and violent conflicts in the South during Reconstruction, especially in New Orleans, Louisiana. It will then move onto the Slaughterhouse Cases themselves, the lawyers and justices involved, and the decision handed down by the Supreme Court. Finally, this paper will discuss what the decision meant, the scholarly and public reactions

to the decision, and the significance of these reactions. The Slaughterhouse Cases effectively deprived African Americans of many of their civil rights; it is vital to understand how and why this was done and if the American people really grasped the reality of the decision.

What's Been Said

Randy E. Barnett is such an historian who stresses that other historians need to observe legal matters and cases not through single lenses but through multiple narratives. Barnett's work *The Three Narratives of the Slaughter-House Cases* discusses just that - three different narratives; a narrative of public health, public corruption, and race. Barnett tries to use his three narratives like pieces of a puzzle and emphasizes the importance of using multiple narratives when examining the process and outcomes of major trials. He scrutinizes each of the three narratives and how they either support or invalidate the Slaughterhouse Cases decision.² The public health narrative only supports the decision by showing a tremendous need for the Slaughterhouse Act and other serious health reform. However, the public corruption narrative completely invalidates the Slaughterhouse Act and the Supreme Court decision by making the Slaughterhouse Act out to be a production of legislative corruption. The narrative of race cuts in between supporting and invalidating the decision and is mostly inconclusive.

This is an example of how legal scholars and single-narrative or single-lens historians do not see the full picture when examining landmark trials. The attorneys and justices must be studied but the parties, clients, the legislators drafting the bills or amendments, and the people unintentionally impacted by decision, must also be examined by historians. This work aims at studying the unintended consequences of the Slaughterhouse Cases decision because it impacted

² Barnett E. Randy. *The Three Narratives of the Slaughter-House Cases*, Wiley-Blackwell. 2016 304.

much more than states' rights to legislate public health and the corruption of public officials. The Slaughterhouse Case decision also decided the future course of African American rights and freedoms in the reconstructed south for nearly a century.

Health Narrative

Jo Ann Carrigan, author of *The Saffron Scourge*, and Ronald Labbe and Jonathan Lurie, authors of *The Slaughterhouse Cases Regulation, Reconstruction, and the Fourteenth Amendment*, wrote extensively on yellow fever, cholera, and other health crises. In their records, New Orleans and Louisiana was particularly filthy and disease ridden.³ In the years between 1796 and 1869 New Orleans suffered thirty-six different outbreaks and epidemics of yellow fever followed with just as severe epidemics of cholera with one tenth of New Orleans entire population being wiped out in a single summer in 1853.⁴ According to Carrigan, the suspected primary cause of this filth and epidemic of disease in New Orleans were the butchers – concentrated in the populous center of the city.⁵ These butchers immigrated from the Gascony region of France in the early 1800s. These white butchers opened up slaughterhouses in the heart of New Orleans as well as in the wharves and beside the banks and shores of the Mississippi River. These slaughterhouses were French-traditional, sometimes open-air or in public view, and always disgusting. The slaughterhouse problem was increased exponentially by the absence of underground plumbing within New Orleans.⁶ Various health boards and city officials tried to help correct the health issues by creating waste-management services that would carry away the

³ Carrigan, Jo Ann. *The Saffron Scourge: A History of Yellow Fever in Louisiana 1796 – 1905*. University of Louisiana at Lafayette Press. 1994. 99-100.

⁴ Barnett, E. Randy. *The Three Narratives of the Slaughter-House Cases*, Wiley-Blackwell. 2016. 296.

⁵ *Ibid.*

⁶ Labbe M. Ronald, Lurie Jonathan. *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment*. University Press of Kansas. 2005. 25-7.

offal and animal waste. However, butchers were very reluctant to use services that would carry the animal waste away for them because of the cost, inconvenience, and how unorganized the services were. Instead, butchers would dump their waste wherever they could; in the rivers, streets, wharves, backyards, and empty lots.⁷ If they were caught, they would be fined but butchers would often dump at night to avoid being caught and the committee that created the fines were sympathetic to the butchers so the penalty was very minimal. Many of the slaughterhouses were located about a mile or two up the Mississippi River from New Orleans' main water-intake pipes. When the citizens of New Orleans turned on their taps or ran a bath it was not uncommon to find chunks of gore and viscera floating in the water. The populous of New Orleans considered the butchers to be a nuisance to say the least.

However, it would be discovered later that the butchers might have had less to do with the plagues of New Orleans. We now know that mosquitos were the main carrier and cause of yellow fever in New Orleans. This, however, does not excuse the butcher's from bearing some responsibility for the various epidemics of cholera.

Labor and Public Corruption Narrative

Barnett, Labbe, and Lurie are the only authors that have written a comprehensive book on the Slaughterhouse Cases. They write extensively on the labor practices of the New Orleans butchers and how the Louisiana legislature reacted to certain practices. Unfortunately, the Louisiana government was largely corrupt and ineffective at stopping the health crisis that the butchers were causing.

⁷ *Ibid.*

Without a willing and incorruptible government to set up regulations, the butchers were able to practice their trade wherever and however they pleased with very little interference from the local and state governments. Finally, in 1869, the newly elected Republican legislature passed “[An] act to protect the health of the city of New Orleans, to locate the stock-landings and slaughterhouses, and to incorporate the Crescent City Livestock Landing and Slaughter-House Company” - or the Slaughterhouse Act.⁸ This gave all exclusive privileges and rights of livestock landing and slaughtering of New Orleans to seventeen people; the owners of Crescent City Livestock Landing and Slaughter-House Company, for a period of twenty-five years.⁹ This was essentially a state-authorized slaughterhouse monopoly. State lawmakers thought that this act would finally clean the city’s water supply and stop the filth from being replenished in the streets and lots. Republicans thought that they would gain popularity for taking care of this health crisis that had been plaguing the city for decades. They could not have been more wrong.

According to Labbe and Lurie, most Southerners absolutely detested the Slaughterhouse Act which can be seen in certain newspaper reports published around that time.¹⁰ They claimed that it was just another way for rich carpetbaggers to steal money from southern working people under the facade of a “bona fide health measure.” The public and press had been weary for a while about giving tax breaks to businesses to stimulate economic growth, much of which were run by carpetbaggers or Southern Unionists. Much of the public, thinking that the biracial

⁸ *An act to protect the health of the city of New Orleans, to locate the stock-landings and slaughterhouses, and to incorporate the Crescent City Livestock Landing and Slaughter-House Company.* Louisiana Legislature, March 8, 1869.

⁹ Ronald M. Labbe, Jonathan Lurie. *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment.* University Press of Kansas. 2005. 41.

¹⁰ *Ibid.* at 56-7, 67.

Republican legislature was making this monopoly to drive the Southern butchers out of business, or their trade entirely, entirely rejected the Slaughterhouse Act.¹¹

Other more Democrat-leaning newspapers saw the benefits of the Slaughterhouse Act. They claimed that this act was a necessity because of the health conditions of the city. They also pointed out that the Slaughterhouse Act did not put butchers out of work but simply forced them to relocate their work outside of the city. But the Democrat-leaning papers were more than willing to drag the Republican legislature through the mud for giving the rights to a monopoly to a small group of carpetbaggers.

The butchers, who had been considered a source of filth, pestilence, and an overall nuisance, quickly became local heroes for standing up to the biracial Republican legislature and trying to protect their right to labor in whatever practice they pleased, wherever they pleased.¹² They were portrayed as defenders of freedom and the southern people against the impositions of a government run by “yankees” and “ignorant black men”.¹³ The butchers quickly filed injunctions to stop the monopoly from opening its doors - postponing the shutdown of their butcher shops. The butchers claimed that they had a natural right, a right given by the creator, to labor, and that their right to freely labor in any practice they wish was protected by the Privileges and Immunities Clause of the Fourteenth Amendment. The Fourteenth Amendment, ratified a year before the case began in 1868, was supposed to secure African Americans the same rights whites had but its first use would be to try to defend white butcher’s right to labor. This is why the fact that the butchers were French is important - they should not have been able to sue under

¹¹ *Ibid.* at 59.

¹² *Ibid.* at 69.

¹³ *Ibid.* at 47.

the Fourteenth Amendment in the first place because the amendment was intended to give freed slaves certain rights.

The Slaughterhouse Cases were supposed to be a battle between freedom to labor and the power of the state to stomp out labor and create a monopoly for the betterment of the people; “an octopus of a corporation” and the “cause of the working man.”¹⁴ Instead, the cases morphed into a monstrosity of bitter racism and a prolonging of issues that the Civil War was supposed to have settled. The Slaughterhouse Cases are riddled with great ironies. The Fourteenth Amendment, a Reconstruction Amendment, ratified to protect the rights of African Americans was first used to protect the rights of white, French, butchers. The butchers were using said Reconstruction Amendment to defeat an act passed by the Reconstructed, biracial, Republican, legislature in Louisiana. John Campbell, ex-United States Supreme Court justice, ex-assistant secretary of war for the Confederacy, known states’ rights advocate, and counsel for the butchers, had to get an extremely broad interpretation of the Fourteenth Amendment to get the federal government to limit Louisiana’s police power. Campbell opponents, conversely, had to argue for the narrowest interpretation of the Fourteenth Amendment so it excluded any citizen that was not African American.¹⁵

The French butchers wanted to protect their right to labor without interference and the right to use their property any way they saw fit. However, the butchers were not objectively the “good guys” nor entirely innocent. They were to blame for much of the filth in the city, purposefully dumping waste in convenient but illegal sites just to avoid paying cleaning fees. They also worked together to squeeze as much money out of the people of New Orleans. The

¹⁴ *Ibid.* at 69.

¹⁵ Ronald M. Labbe, Jonathan Lurie. *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment*. University Press of Kansas. 2005. 172.

butcher's association had conspired for years to act uncompetitively to raise prices on specialty meats and processing fees.¹⁶ This new monopoly would cause irreparable damage to their cornered market. The butchers were fighting for their livelihood, but they were also fighting to keep their prices high and their practices poor.

The Crescent City Livestock Landing and Slaughterhouse Company was not a benevolent organization either. Rumors and accusations of corruption and insider trading within the legislature that passed the Slaughterhouse Act were rampant. Indeed, many of the legislators did hold speculative stock in the Crescent City Company before the Slaughterhouse Act was passed.¹⁷ Many government officials, mainly Republicans, thought that they could both win the public approval by cleansing New Orleans of its filth, and become filthy rich in the process by purchasing stock in a monopoly that they would create.

The Louisiana legislature, blinded by their greed, failed to achieve both of their goals. The public, not seeing the Slaughterhouse Act as a public health measure but as a way of northerners keeping down Southern laborers to get rich quick off a monopoly, quickly turned against the legislature (albeit, the public never liked the biracial, reconstructed legislature). As for the stocks and bonds that were bought by legislative members, they soon lost most of their value as the monopoly was kept from starting production and the public, detesting the monopoly, threw their lot and their money in with the French butchers.

The French butchers, with the help and finances of the Butchers Benevolent Association, hired three law firms to sue the newly created monopoly with the most prominent attorney being John Campbell.¹⁸

¹⁶ *Ibid.* at 68.

¹⁷ *Ibid.* at 60-66.

¹⁸ *Ibid.* at 69.

Race Narrative

Some historians have found evidence that the Slaughterhouse Cases transcends public health, sanitation, and labor issues. This case was aimed squarely at Reconstruction and hindering African Americans from obtaining their civil rights. While the butchers and the monopoly were fighting a battle of right to labor versus a state mandated monopoly, the attorneys for each party were fighting a battle against the equality of races and bringing the South out of Reconstruction and back to the way things were before the war.¹⁹ The attorneys longed for the power over all of the south to swing back into the arms of white democrats and out of the hands of Northern invaders. They would make leaps and bounds towards this ultimate objective through the highest court in the land.

The Slaughterhouse Cases were not capable of being “won” in any sense. The attorneys were trying to dismantle Reconstruction; state enabled monopolies and the right to labor were secondary concerns. Campbell’s aim in taking of the Slaughterhouse Cases was to use the Fourteenth Amendment against the Radical Republicans by removing any unique protections for blacks and proving that the Republican Party was incapable of passing any legislation that could stand up to a Constitutional challenge.

Opposing Campbell was Jeremiah Black, an attorney for the Crescent City Livestock Landing and Slaughterhouse Company. Black, an anti-Reconstruction Democrat, had a goal similar to Campbell’s - weakening Reconstruction efforts - especially the Privileges and Immunities Clause of the Fourteenth Amendment. Why Black would face off against fellow Democrat John Campbell in defending the Slaughterhouse Act is obvious. Black, unlike

¹⁹ Barnett E. Randy. *The Three Narratives of the Slaughter-House Cases*, Wiley-Blackwell, 2016. 304.

Campbell, did not want to just weaken the clause or use it against the Radical Republicans; he wanted the despised Privileges and Immunities Clause completely dismantled and made a nullity; void of its original meaning.²⁰ Black's game was not one of health crises or labor rights but of using the highest court in the land to eradicate a clause to the Constitution.

Eric Foner is the author of *A Short History of Reconstruction* and ultimate authority on American Reconstruction history. Foner examines the activities of civil rights activists, freedmen, and Radical Republicans and is able to draw clear lines connecting those activities with the drafting of Reconstruction constitutional amendments.

In 1865, an impromptu meeting between Alabama Republicans gave way to a drafting of an African American/Republican declaration of rights. This document declared that African Americans should have the same "Privileges and Immunities" as white men uses the same language as the Privileges and Immunities Clause of the Fourteenth Amendment. It decries the Black Codes and states that "law no longer knows black nor white but simply men".²¹Historians draw a connection between this meeting and similar declarations to the Fourteenth Amendment to prove that the Privileges and Immunities Clause was supposed to give African American, albeit only men, the same rights, privileges, and immunities enjoyed by whites. Rights that had the full weight and force of the federal government behind it.

The American Civil War and New Orleans

The American Civil War started in the year 1861 after decades of turmoil and tension between the Northern and Southern states. The issues that the North and South fought over included states' rights, including the right to own slaves, versus centralized federal power, the

²⁰ *Ibid.* 303-4.

²¹ Foner, Eric. *A Short History of Reconstruction*, Harper and Row: Perennial, 1990. 127.

abolition of slavery, and the introduction of slavery to conquered western territories and new states introduced into the Union. For many years the South had threatened to leave the Union if the North did not stop interfering in their way of life. While the North was becoming much more industrialized during the mid-nineteenth century, the South's economy was still largely based around large plantations, many of which, like tobacco and cotton farms, needed slave labor in order to operate.

The election of President Abraham Lincoln was the boiling point. While Lincoln did not run on a platform of abolition of slavery, he did not want slavery to be spread westward into new lands.²² That was enough for the Southern states to finally act on their threats and in November of 1860 several southern states seceded from the Union with more states to follow shortly after that. Those states would go on to form their own union, a confederacy of states. It would not be until much later that Abraham Lincoln would be able to officially free all the slaves within the Union and the Confederacy after the Civil War was won by the Union. Slavery officially ended in the United States when the Thirteenth Amendment was ratified on December 6, 1865. The text of the Thirteenth Amendment reads as follows: "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."²³

Less than a year later, in April of 1861, the first shots of the American Civil War were fired on Fort Sumter by Confederate forces. The fort would be captured two days later after Union forces surrendered. The Confederacy took charge in the first parts of the Civil War by fighting on Union territory and staying on the offensive. However, staying on the offensive is

²² Rawley, James A. *Race and Politics: "Bleeding Kansas" and the Coming of the Civil War*. Lincoln: University of Nebraska Press, 1979. 268.

²³ U.S Const. Amend. XIII § I.

very costly and the Confederacy had to be supported by a large network of southern cities which supplied both manpower in the form of troops and supplies for the soldiers. New Orleans was a major economic force, a large trading port along the Mississippi River and close to the Gulf of Mexico.

New Orleans used its position and wealth to turn the city into a vital supply hub for the Confederates, providing military supplies and thousands of men to bolster the Confederate army. This made New Orleans an important target for the Union as (if the city was captured) it would cut off important support to the Confederacy. New Orleans was captured April 29th, 1862 after the Union Navy attacked from the Gulf of Mexico and smashed through the Confederate defenses. The Confederates built their entire defensive strategy around the Union Navy attack from the Mississippi River to the North of New Orleans. They were taken by surprise when the attack came from the south and their ships and forts defending the city were quickly captured or destroyed.²⁴

The attack from the Union was so swift and the Confederacy was so caught off guard that the Union troops were in New Orleans before the defenders could return from their northern positions causing the Confederacy to give up New Orleans entirely with hardly any resistance. Any local militias, including free colored-people's Confederate militias, were ordered to disband and advised to hide their uniforms before returning home.²⁵ New Orleans would enter a sort of reconstruction before the rest of the Confederacy fell to the Union Army.

General Benjamin Butler

²⁴ "Splendid Naval Triumph." *The Times-Picayune*. April 25, 1862.

²⁵ "An Important Expedition-The Weather, The First Louisiana Colored Regiment An Inspection The Utterances of Colored Bleu in L'Union-Hon. Reverdy Johnson's Visit." *The New York Times*. November 5, 1862.

General Benjamin Butler was put in charge of the military expedition by General McClellan to capture New Orleans from the Confederacy. General McClellan was Butler's colleague in spite of the fact that they fiercely hated each other. Ironically, McClellan put General Butler in charge of the expedition in order to get Butler far away from him and any potential spotlight he might have in Washington D.C. McClellan wanted to be more popular in the eyes of president Lincoln and he was at risk of getting surpassed by Butler who technically outranked him by time in grade.²⁶

When General Butler took over New Orleans the situation there was one of filth and pestilent horror. The bodies of various farm animals, cats, dogs, and vegetable waste created a thick and viscous layer above the ponds. The rotting reek by the swamps and rivers were so offensive that those who walked too closely were prone to fainting. The gutters, cracks, and potholes in the roads inside the city of New Orleans were filled with guts, gore, and offal.²⁷

General Butler was crude and brash in dealing with the New Orleans citizenry and rebels. General Butler was going to bring back law and order one way or another and he was prepared and willing to make it happen. Martial law was declared in New Orleans and Benjamin Butler and his Union troops would bring order back to the crescent city. Any citizens caught praising the Confederacy or its president, Jefferson Davis, was immediately sentenced to three months hard labor. His most notorious decree was that of Order No.28 which dictated that any woman in New Orleans caught harassing union troops would be dealt with as if they were a "woman who was plying their avocation" - soliciting prostitution.²⁸ Many citizens interpreted this as a

²⁶ Chester H. Hearn. *The Capture of New Orleans*. Louisiana State University Press. 1995. 133.

²⁷ Labbé, Ronald M., and Jonathan Lurie. *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment*. Lawrence, KS: University Press of Kansas, 2005. 41.

²⁸ Butler, Benjamin. General Order Number 28. May 15, 1862.

legalization of rape if a woman was caught harassing a Union man. Despite much uproar the order worked and much of the harassment done by the women of New Orleans all but ceased.

Butler may have had good intentions for New Orleans, but his ruthlessness eventually caught up to him and he was removed from his post. Some historians think he was removed from his post for Order No.28 while others think he was removed because he executed William B. Mumford, a rebel, for tearing down the Union flag that was newly raised at the New Orleans Mint.²⁹

Filth and Pestilence in the Crescent City

The “opulent” Crescent City was one of the dirtiest and disease-ridden cities in all of the United States during much of the nineteenth century. It was not unusual for ten percent of the population of New Orleans to die each year from outbreaks of Yellow Fever or cholera. The cause of this illness was the obvious sanitary conditions of the city. The cause of this filth undoubtedly stemmed from the butchers of New Orleans.

The butchers were notorious for throwing animal waste wherever they pleased. Inedible by-products, offal, guts, and gore were thrown into in streets and potholes or driven to the riverbanks where it was thrown downriver. However, the primary dumping place was one mile up-river from where the majority of New Orleans lived and their water-intake pipes. It was very common for people to turn on their taps and for gory water to come out the taps and fill their sinks and tubs. This water would obviously make people very sick with little chance for recovery since there was no untainted water available.

²⁹ Parton, James. *General Butler in New Orleans: History of the Administration of the Department of the Gulf in the Year 1862: With an Account of the Capture of New Orleans, and a Sketch of the Previous Career of the General, Civil and Military*. Boston, MA: Riverside Press, 1868.

The butchers of New Orleans thought they were doing the city a service by filling the cracks and holes and disposing of their waste in the rivers just outside of the city. These butchers were creating a horrible health crisis that escalated so quickly that by the 1850s one in every twelve citizens of New Orleans had either cholera or yellow fever.³⁰ Today we know that yellow fever is typically spread through mosquito bite. However, when yellow fever and cholera were plaguing New Orleans much of it was blamed on the water supply tainted by the butchers and the foul air surrounding piles of decomposing waste. This sort of “miasma” theory of epidemiology was more of a superstition than a science. However, blaming the butchers for the rampant sickness was not entirely wrong. The large deposits of animal waste around the city attracted mosquitos that then turned the waste into nests, creating more mosquitos that could spread out all over the crescent city.³¹

Plumbing had existed in New Orleans since 1836 but there was not a comprehensive system until 1915. There was no kind of underground drainage or functional sewage system in New Orleans to carry any slaughterhouse-related waste away from the inner-city. There were above-ground gutters and ditches along the streets but that had a slew of problems as well. The city itself is a mere fifteen feet above sea-level and the gutters and ditches typically had no direct, gradient path to moving water. Ditches often either eventually ran uphill or into marshes and swamps.³² This meant that the waste water would simply build up in the swamps, streets, underneath houses, and in vacant lots until someone cleaned it up or took it away. There was also no operational garbage disposal system or service at the time which offered additional challenges

³⁰ Carrigan, Jo Ann. *The Saffron Scourge: A History of Yellow Fever in Louisiana, 1796-1905*. 6,7,99-101.

³¹ *Ibid.*

³² Labbé, Ronald M., and Jonathan Lurie. *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment*. 21.

to the sanitation problem. It would take a powerful governing force to purge New Orleans of its filth.

Public Health

General Butler had a great public health policy even if it was enforced by barrel and bayonet. Butler cleaned up New Orleans by ordering soldiers and civilians employed by the US army to clean their streets, empty lots, wharves, and anywhere else filth and refuse would collect. General Butler also built a sewer that dumped refuse into the Mississippi River which helped alleviate the build-up of filth in the city and save many lives that may have been killed by sickness caused by the filthy streets. The results of these public-works was an exceptionally healthier New Orleans for the years General Butler occupied the city. The countless deaths the typically occurred each year ceased almost entirely with only a very low number of confirmed cases of Yellow Fever being reported during General Butler's time in New Orleans.

However, the city reverted back to its putrid state almost immediately after General Butler and his men gave up control of the city. The citizens refused to believe that General Butler and his actions had any impact on the health of the city and thought the sudden decrease in sickness was just a coincidence. Yankees would be given no credit for even the most humanitarian of deeds.

General Benjamin Butler's public health policies were not the first attempt at cleaning up the streets of New Orleans. Louisiana and New Orleans government officials had been trying for decades to implement policies that would clean the streets of New Orleans and keep them that

way. Benjamin Butler's public health measures were just the first successful attempt at cleaning the streets.³³

Louisiana officials were unsuccessful at keeping New Orleans clean. Louisiana had tried since 1804 to limit the slaughtering of animals and dumping of waste inside of New Orleans. Ironically Louisiana government officials were largely to blame for their own failure to clean the street of New Orleans. Attempts to pass laws to improve the health of the city or at least curb the amount of waste product being dumped around New Orleans by the butchers were either soundly defeated by corrupt officials getting bribes from the meat guilds or largely ineffective and unenforced.³⁴ One such law made it illegal to dump animal waste into the Mississippi River but the penalty for getting caught was such a low fine that the law was largely ignored and butchers became more sneaky with their dumping; often dumping at night or finding more secluded locations.

Even with all the sickness and death throughout the 19th century, New Orleans continued to grow, and with it came a higher demand for meat.³⁵ By 1869 New Orleans butchers were slaughtering over three-hundred-thousand animals each year. The increased demand for meat only exacerbated the health problems as more animals slaughtered created more waste dumped into the city and surrounding area.

In response to the health crisis in New Orleans, in the Spring of 1869, the Louisiana legislature passed "An Act to Protect the Health of the City of New Orleans, to Locate the Stock-Landings and Slaughterhouses, and to Incorporate the Crescent City Livestock Landing and

³³ *Ibid.* at 57.

³⁴ Labbé, Ronald M., and Jonathan Lurie. *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment*. 41.

³⁵ *Ibid.* at 38.

Slaughter-House Company” which is more commonly known as just - the Slaughterhouse Act.³⁶ The Slaughterhouse Act created an abattoir which gave absolute rights to all the slaughtering, processing, and inspecting of meats to the single company that was contracted to build said slaughterhouse - The Crescent City Livestock-Landing and Slaughterhouse Company. This act created a state-sponsored monopoly that was supposed to force all the New Orleans butchers to do their work in that one slaughterhouse. By forcing the butchers to work outside of the city they could control where the waste ended up. This would eliminate two issues plaguing the city with one political move. By keeping animal waste outside of the city, the city could clean up its already existing messes and improve the health of the citizens.

Seventeen men were in charge of the Crescent City Company, all of them came from the North to do business in the devastated South. The South needed to be rebuilt and Northerners had the resources to do it. The South was in a vulnerable state and Northerners were ready to exploit that to make a profit, opening up markets old and new. The fact that a handful of carpetbaggers were the sole beneficiaries of this new act outraged the people of New Orleans to say the least. They saw the Slaughterhouse Act as nothing more than Yankee profiteering that was enabled by the corrupt and now mixed-race reconstructed Louisiana legislature. The Slaughterhouse Act was also signed by the governor, Henry Clay Warmoth, who came to Louisiana from Illinois after the Civil War. Governor Warmoth, a Republican, was generally disliked by Democrats and Republicans. Democrats did not like him because he was a

³⁶ *An act to protect the health of the city of New Orleans, to locate the stock-landings and slaughterhouses, and to incorporate the Crescent City Livestock Landing and Slaughter-House Company.* Louisiana Legislature, March 8, 1869.

Northerner who reigned over them and Republicans did not like him because he held many democratic beliefs and appointed some ex-confederate to government positions.³⁷

It may have been convenient for ex-Confederates and sympathizers to distrust and even hate the new Reconstructed Louisiana legislature, but those feelings and suspicions were not completely unfounded. It is very likely that corruption and bribery played a very large part in the introduction and passage of the Slaughterhouse Act.³⁸ It was later discovered that many of the legislators that voted to pass the Slaughterhouse Act had been approached by the fourteen founders of the Crescent City Slaughterhouse Company. The company owners offered the legislators stock in the company in exchange for the passage of the Slaughterhouse Act, which included giving exclusive rights to all slaughtering to the Crescent City Company. The legislators obviously knew they stood to make a lot of money if they took stock in a company that would soon be a monopoly.

The Louisiana government was corrupt before Reconstruction, during Reconstruction, and after Reconstruction. The fact that this sort of bribery and corruption existed in Louisiana during the Reconstruction era says less about the reconstruction of the South and more about Louisiana's government and politics. What the government did may have not been surprising nor notable but the public reaction to the Slaughterhouse Act was entirely unexpected. However, this would not be the first, nor the last time Southerners fought against what was perceived as Northern intervention in their way of life.

³⁷ Tunnell, Ted. *Crucible of Reconstruction: War, Radicalism and Race in Louisiana; 1862-1877*. Baton Rouge: Louisiana State Univ. Press, 1997. 159-62.

³⁸ Vincent, Charles. *Black Legislators in Louisiana during Reconstruction*. Carbondale: Southern Illinois Univ. Press, 2011. 156.

Reconstruction Conflicts

During the period of time that the Slaughterhouse Cases was being decided it appeared that Reconstruction was going to last for decades to come. Ex-Confederates were barred from governmental positions and the Southern states biracial governments looked strong and healthy - immune from falling apart as long as they had bayonets and men to enforce their rule. Justice Miller's decision must be looked at through this lens of thinking that Reconstruction was going to last for a very long time. The thought of the longevity of Reconstruction is only reinforced by the shock and surprise of Louisiana after President Rutherford B. Hayes agreed to remove all federal troops from the south. This move by President Hayes prematurely ended Reconstruction efforts, both socially and economically, and threw the south back to the white democrats who were waiting to get back at the biracial Congresses that changed their beloved south.

Some historians argue that Reconstruction was never going to work in Louisiana with or without federal troops. Kurt Lash and Richard Zuczek point out that only a year after federal troops occupied much of the South, bloody race riots and massacres occurred. New Orleans was an especially bad offender when it came to racially charged conflicts, violent clashes, and ruthless massacres.

New Orleans had been the battleground for some of the bloodiest conflicts after the Civil War had already ended. In the summer of 1866, a mere year after the Civil War ended, New Orleans had one of the bloodiest race riots of the Reconstruction Era. The Louisiana Legislature had just passed "Black Codes" and were putting them into effect over the entire state. The Black Codes were sets of laws that discriminated against African Americans. The Codes allowed people to deny African Americans the right to vote, to gain public education, or even choose their own line of employment in some cases; keeping them in indentured servitude on farms or as

petty laborers. Some laws even allowed police to arrest African Americans for minor infractions and subject them to forced labor as penance.³⁹ The goal was to keep African Americans beneath the white population like they were when they were still subject to slavery.

In response to these Black Codes being enacted a group of black and white delegates from Louisiana marched to the Mechanics Institute in New Orleans to hold a Constitutional Convention that would make these Black Codes null and void as well as give African American men the vote. The mayor of New Orleans, along with many ex-Confederates and white supremacists, saw this Constitutional Convention as illegal and marched to the Mechanics Institute to stop the convention from taking place. The mob, led by New Orleans Mayor John Monroe, stormed the institute, indiscriminately shooting through windows and into the crowd of delegates, even running out of ammunition at one point. After the smoke cleared two-hundred and thirty-eight men lay dead, the vast majority of them African American delegates and Union Army veterans.⁴⁰

In Memphis, a similar event occurred with another bloody race-riot. Historians are conflicted about this riot, however, because it is not entirely clear whether it was motivated by race, bitter Civil War feelings, a clash of lower classes, or a combination of these things. South Memphis policemen were ordered to break up an impromptu street dance started by African American Union soldiers who had been mustered out of the army the day before. Four Irish officers ordered the soldiers to go back to their homes and military base, but the soldiers refused.⁴¹

³⁹ Louisiana Black Code. 1865.

⁴⁰ Hollandsworth, James G. *An Absolute Massacre: The New Orleans Race Riot of July 30, 1866*. Baton Rouge, LA: Louisiana State University Press, 2004. 113.

⁴¹ Ash, Stephen V. *A Massacre In Memphis: The Race Riot That Shook the Nation One Year After the Civil War*, Hill and Wang, 2013. 98.

The policemen, noticing they are vastly outnumbered, retreated up the street. Some African American soldiers, filled either with alcohol or disdain for the white officers, followed on the heels of the retreating officers. Twenty or so African American soldiers fired their pistols into the air, undoubtedly trying to rush the officers away. The officers, thinking the soldiers had starting firing on them pulled their revolvers and leveled them at the soldiers to return fire. During the volley, officer John Stevens, frantically pulling his revolver out accidentally discharged his service pistol into his leg.⁴² The fighting momentarily stopped once the soldiers were immediately sobered by the reality and seriousness of the situation. Few soldiers knew that there would be reprisals coming and they would not outnumber their opponent for much longer while others were sent into a frenzy by the fighting and started to riot. Two of the remaining policemen escaped back to their station as some sympathetic soldiers helped the remaining policeman tend to his wounded comrade.

The officers that retreated reported the murders, but they did not have a reserve police force to handle a serious domestic disturbance. The police went around finding as many policemen as they could muster to put down the riots, but their efforts were useless. Rumor of a riot and killed officers quickly spread through Memphis, summoning a horde of curious and angry whites, most if not all poor Irishmen.⁴³ The mob went around Memphis looking for the rioting soldiers who killed an officer but soon settled on ransacking African American neighborhoods and businesses, attacking their residents, looting, and burning down what was left.

⁴² *Ibid.*

⁴³ Ash, Stephen V. *A Massacre In Memphis: The Race Riot That Shook the Nation One Year After the Civil War*, 100.

These are only a few examples of the many riots and violent clashes that happened during the years shortly following the Civil War. The Confederates may have been defeated on the battlefield, but the skirmishes did not simply cease because Robert E. Lee surrendered to the Union. Many Southerners were still willing to rebel and fight against what they saw as Northerners interfering in their way of life.

The people of New Orleans had been under martial law and the thumb of the Union Army for several years. They were not about to let Northerners, Union soldiers, and African Americans, a class of people that had been considered less than human mere years before, trample on their way of life. New Orleans was not as prosperous and powerful as it was before the Civil War; the economy was in shambles and social life was chaotic. The mighty Mississippi was now flowing north away from the once immaculate port city. Northern states were going through an industrial and economic boom and southerner were not ready to accept their inferior status. The meat industry was still powerful because of their position along a popular railroad which kept Texas cattle moving into New Orleans for processing. The fact that the meat industry was now “under attack” meant that another avenue of economic rebound was being cut short. Southerners felt that Reconstruction was more about tearing apart their society rather than rebuilding it in the Union vision.

At the times of its passage, the citizens of New Orleans thought that the Slaughterhouse Act would cost the butchers their property and way of life in order to make way for a monopoly run by carpetbaggers, exploiting the butchers and making a lot of profit off of their labor. The citizens of New Orleans decided very quickly that they would much rather suffer under their own people than be controlled by the North.

Between the general ill-will felt towards Northerners and outrage at the Reconstruction government of Louisiana, it was easy for the Slaughterhouse Act to be misconstrued and demonized by its opponents. The Butchers' Benevolent Association claimed that the Slaughterhouse Act deprived butchers of their property and their right to labor as a butcher. This was not entirely true. In theory, the Slaughterhouse Act made it easier than ever before to be a butcher in New Orleans. The Slaughterhouse Act enabled the Crescent City Slaughterhouse Company to build a grand slaughterhouse outside of New Orleans and down the Mississippi River, away from water intake pipes for the city. This slaughterhouse would have many stalls that the company could rent out to any butchers that wished to slaughter animals there. There were protections put in the Slaughterhouse Act that prevented the Crescent City Company from discriminating against anyone that wished to rent out a slaughtering stall. In fact, the company would get penalized with a two-hundred and fifty dollars fine if they were caught turning anyone away that wished to use their facilities.

The Case and Lawyers

May 26, 1869, the Butchers' Benevolent Association brought their first petition to Judge William H. Cooley of the Sixth District Court seeking an injunction to prevent the monopoly from asserting any of its powers under the Slaughterhouse Act. An injunction is a legal order that either stops or prevents a person or party from doing a specific action. The petition charged that the Slaughterhouse Act was an attack on the butchers' "God-given right" to use their property and labor to earn a living and forcing the butchers to work at the Crescent City Company's grand slaughterhouse was akin to slavery or indentured servitude. The Butchers Benevolent Association claimed that the Slaughterhouse Act passed through legislature, not for the health of

the public, but for the financial gain of the legislators.⁴⁴ If the Louisiana legislation really intended this act to be a health measure why would they not limit where slaughtering could be done or put the grand slaughterhouse in the control of the government instead of a private company? Most importantly, the butchers claimed that the Slaughterhouse Act violated the Privileges and Immunities Clause of the Fourteenth Amendment which “secures to all protection from the state legislation that involves the right of property the most valuable of which is to labor freely in an honest avocation.”⁴⁵ Ironically, Campbell, an ardent opponent of Reconstruction, was arguing in favor of a strong national government to protect civil rights and curtail state authority.

The most notable council for the Crescent City Company was Jeremiah Sullivan Black, an advisor to ex-President Andrew Johnson. It was Black that drafted President Johnson's veto of the Reconstruction Act of 1867. Black was a passionate believer in the authority of the states and criticized Reconstruction as akin to the Russian occupation of Poland during the early 1800s. Black thought the federal government should have a miniscule say over what the states can and cannot do.

Black had previously focused his legal power on defeating Reconstruction in the courts. He was on the defense in *Ex Parte McCordle*, where McCordle was being imprisoned for his publications against Reconstructions. Black’s idea was that if he could get the courts to strike against any military authority in the South, then that would open up the rest of Reconstruction to attack from the judiciary. To Black the Slaughterhouse Cases were no different. By defeating the butchers, he could weaken the Fourteenth Amendment which he saw as the most dangerous risk

⁴⁴ Labbé, Ronald M., and Jonathan Lurie. *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment*. 71.

⁴⁵ Labbé, Ronald M., and Jonathan Lurie. *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment*. 133.

to state sovereignty. Black knew that the Privileges and Immunities Clause of the Fourteenth Amendment could be used by the federal government to protect all citizens from the authority of state governments.

The inferior courts of Louisiana were riddled with countless efforts by counsel on both sides to defeat their opponent without actually arguing the merits of their own case. Countless injunctions, motions, and exceptions were filed with neither side willing to cooperate with each other or cut any kind of deal. As soon as one judge would stop the monopoly from moving forward with their plans, another judge would file their own injunction to stop the butchers from interfering with the monopoly. Six cases would be on appeal in Louisiana before the Slaughterhouse Cases finally reached the Louisiana Supreme Court.

The Slaughterhouse Cases were moved up to the Louisiana Supreme Court in late 1869. The oral arguments for the Slaughterhouse Cases did not start until January 27th of 1870. Both parties were to give oral argument in front of five justices, all of which were appointed by the governor Warmoth, the unpopular Reconstruction governor of Louisiana. Mr. Campbell would speak on behalf of the butchers and Randell Hunt, brother of William Hunt who was one of the justices on the Louisiana Supreme Court, would speak on behalf of the Crescent City Company. Campbell opened his arguments with a tirade against the Louisiana legislature; claiming the legislature was corrupt and only passed the Slaughterhouse Act because of bribes made by the company and the potential for financial gain if they created a monopoly instead of socializing slaughtering.⁴⁶ Campbell also took an improper-procedure approach and made the argument that the Slaughterhouse Act was entirely invalid because; first, it was not signed into law by Governor Warmoth within the mandated five day period. Second, it had been signed by the

⁴⁶ Live-Stock Dealers' & Butchers' Ass'n v. Crescent City Live-Stock Landing & Slaughter-House Co., 15 F. 649 (La. 1870).

governor after the legislature had adjourned, and finally, by creating a monopoly the legislature was in violation of the Privileges and Immunities Clause of the Fourteenth Amendment. The Fourteenth Amendment, Campbell argued, was designed by the federal government to create a “new declaration of rights” one right being the freedom from monopoly. Campbell concluded by stating “monopolies cannot be granted by a state legislature without violating that article.”⁴⁷

Most of the justices were not at all persuaded by Campbell’s arguments. Justice Hunt was the first justice to criticize Campbell’s arguments; “you skulk behind generously railing [sic] and informal accusation. You say members of the legislature were bribed. Tell us who they are... Name any one... Who are the witnesses?”⁴⁸ Ultimately the Louisiana Supreme Court was not interested in the prospect of bribery but the actual merits of the Slaughterhouse Act.

Campbell’s arguments on improper timing and thus the passage of the Slaughterhouse Act was also rejected completely by the court. The justices claimed that Campbell was misquoting the law which prohibits a prolonged delay to veto a bill but not to pass a bill. Finally, the justices addressed Campbell’s claim that the Slaughterhouse Act violated the Fourteenth Amendment. Campbell had fiercely argued his position that the act robbed one class of citizens, the French butchers, of their livelihood for the private gain of a few individuals. The justices held that with the construction of the grand slaughterhouse it was easier than ever to be a butcher. You would not have to own property or transport your animals across long distances. There was also a clause in the Slaughterhouse Act that prevented the company from denying anyone from slaughtering in one of their stalls. If they turned any butcher away for any unreasonable purpose, they would be fined two hundred and fifty dollars. If you had the capital to buy livestock and pay the slaughtering fee, you could work as a butcher in New Orleans.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

As for the legislature's motives, the justices accepted the arguments made by Randell Hunt. The Slaughterhouse Act, according to the Louisiana Supreme Court, was a bona fide public health measure aimed at fixing the health crisis that had plagued New Orleans for a century. In the end the Louisiana Supreme Court upheld the Slaughterhouse Act as a sanitary reform measure, not an infringement on individual rights and liberties. The parties agreed before the Louisiana Supreme Court case began that this would be the last time the case would be contested. However, as soon as the battle was lost the butchers went back on their agreement and wasted no time making an appeal to the United States Supreme Court. The first interpretation of the Fourteenth Amendment would soon be fought over in the highest court in the country.

The Fourteenth Amendment

Before delving into the decision of the Slaughterhouse Cases it is vital to note what was at stake, specifically, the Fourteenth Amendment and its Privileges or Immunities Clause. The Slaughterhouse Cases was the first case where the justices had to interpret what the Fourteenth Amendment meant and how it could be applied to the governments and citizens of the United States.

July 28, 1868, the Thirteenth and Fourteenth Amendments had just been ratified by the states. It was positively accepted that the Thirteenth Amendment was intended to abolish slavery and involuntary servitude. However, no one understood what the first section of the Fourteenth Amendment really meant. The first section of the Fourteenth Amendment reads;

“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 the laws.”⁴⁹

So, what does this section of the Fourteenth Amendment mean broken down by just its plain language? The first sentence clearly defines who is a United States citizen and a citizen of a state; “[All] persons born or naturalized in the United States... are citizens of the United States and of the State wherein they reside.”⁵⁰ But the first clause of the next sentence immediately calls into question the difference between state and federal citizenship and how this amendment is supposed to be applied to the federal government and the states. This clause is known as the Privileges or Immunities Clause and it has been the subject of historical and legal debate since its first writing.

The Privileges or Immunities Clause states “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”⁵¹ The first part of this seems simple enough - “No State” means that this applies to only the state and not the federal government. However, this clause gets very vague when describing what the state government cannot infringe upon. Put frankly, “Privileges or Immunities” does not mean anything out of context. It could mean rights under the Bill of Rights, it could mean rights secured by the individual state, it could be referring to article four of the Constitution, or it could be much broader than any of those. To truly understand the meaning of the Privileges or Immunities Clause we must understand it from the perspective of the time it was written.

The next two clauses are fairly simple and of little consequence to this project. “[No] State [shall] deprive any person of life, liberty, or property, without due process of law”⁵² is

⁴⁹ US Const. amend. XIV, § 1.

⁵⁰ US Const. amend. XIV, § 1. Cl. 1.

⁵¹ US Const. amend. XIV, § 1. Cl. 2.

⁵² US Const. amend. XIV, § 1. Cl. 3.

better known as the Due Process Clause. The plain language simply explains that a state cannot kill someone, take away freedom, or seize property, without going through the proper legal procedure. Finally, a state cannot “deny to any person within its jurisdiction the equal protection of the laws.”⁵³ This clause very clearly prohibits states from discriminating when prosecuting its own citizens under state law. It is important to understand the entirety of the Fourteenth Amendment, but the Privileges or Immunities Clause will be the focus for the purposes of this project.

The United States Supreme Court

The Slaughterhouse Cases spent two years in legal-limbo in the Louisiana courts while it was on appeal to the United States Supreme Court. By the time the Supreme Court finally took up the case the justices were aware of the health crisis in New Orleans, the sanitary conditions, and the proposed slaughterhouse monopoly being pushed by the Louisiana Legislature. At face value this case looked like a battle between state authority and the rights of laborers to pursue their trade. However, the Slaughterhouse Cases were about much more than the right to work and the health of a city. The rights of every American citizen rode on the back on this case. The Privileges or Immunities Clause of the Fourteenth Amendment was on the chopping block and attorneys representing both parties and even a Supreme Court Justice were aiming for its destruction.

John Campbell had a duality to his representation of the New Orleanian butchers. As an ex-Confederate, Campbell wanted to use the Reconstruction amendments to bring about Reconstruction’s downfall. Campbell wanted the justices to give a narrow interpretation on the

⁵³ US Const. amend. XIV, § 1. Cl. 4.

Fourteenth Amendment to end Reconstruction and gets the south back to the way it used to be before the Civil War.⁵⁴

The first part of Campbell's argument attacked the exclusivity of the Thirteenth Amendment to African Americans. Campbell argued that the Thirteenth Amendment was meant to apply to all citizens and not just the newly freed African slaves. By forcing the butchers to work in a centralized abattoir was akin to slavery or involuntary servitude "the prohibition of slavery and involuntary servitude in every form and degree... comprises much more than the abolition or prohibition of African slavery."⁵⁵ Campbell was making the argument that by making a centralized slaughterhouse and forcing butchers to work there if they wanted to continue their trade that is akin to state sponsored slavery.

Campbell then argued that if men have guaranteed freedom due to the Thirteenth Amendment then they must possess a number of Privileges or Immunities courtesy of the Fourteenth Amendment. Free men must have an immunity from forced work or work for the profit of another, freedom to choose employment and freedom from imposed employment, and full entitlement to the fruits of their labor subject only to taxation.⁵⁶ Campbell realized that his slavery argument had come off as a little extreme so he backed down slightly; "[We] do not contend that... plaintiffs... have been placed in handcuffs and carried to the houses, pens and yards [sic] of this corporation, with violence, to labor for this corporation of seventeen as African slaves might have been."⁵⁷ However, Campbell insisted that the butchers had been prohibited from doing their work except on the property and for the profit of the Crescent City Company. Campbell was comparing the butchers working at the Crescent City Company to involuntary

⁵⁴ Slaughter-House Cases, 83 U.S. 394 (1872).

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

servitude because the Crescent City Company was making money off of the labor of others and the butchers were no longer legally able to work for themselves.

Campbell asserted that the Fourteenth Amendment was written so that a “man has a right to labor for himself... not under the constraint of another” but he also pointed out that by not granting these Constitutional protections on a state level it would “go very far to determine that the Constitution of the United State creates a national government and is not a federal compact.”⁵⁸ Campbell was warning the justices that the Fourteenth Amendment was deadly to state sovereignty and rights. That the power to protect life, liberty, property, privilege, and immunity, which used to belong to the states, were put into the hands of the federal government via the Fourteenth Amendment. This meant that state legislatures cannot subvert nor destroy the rights of their citizens because the federal government could protect these rights using the Fourteenth Amendment. The Fourteenth Amendment could be used by the federal government to protect citizens of any color, race, religion, or creed from state authority infringing upon their rights.

This was an interesting argument for Campbell to make because in order for his clients to win their case the Supreme Court would have to believe that the Fourteenth Amendment was written in order to protect citizens and their rights from infringement by the states. In a way, he was arguing for a very strong centralized government to keep the state governments on a much shorter leash or, at least, limit the amount of power a state can have.

As for any legal authority, the butchers had one case to rely upon; *City of Chicago v. Rumpff*. The facts of that case nearly mirrors that of the *Slaughterhouse Cases*. Chicago prohibited butchers from operating slaughterhouses within Chicago and gave all the rights of

⁵⁸ *Ibid.*

slaughtering to a single business. This was done to help correct health and pestilence issues in Chicago. The Illinois Supreme Court found the actions taken by Chicago to go beyond a reasonable public health regulation. They saw this rather as a contract to monopolize the meat industry and that a reasonable health regulation would be to relocate the butchers instead of building a centralized abattoir.⁵⁹

Jeremiah Sullivan Black was the lead council representing the state of Louisiana. Black was a staunch believer in the authority of the states. Black thought that the states should reign well above the national government and only be slightly limited in what they can do. Black thought that when the United States successfully gained their independence from Great Britain the powers of parliament shifted, not onto the national government, but onto each individual state.⁶⁰ The idea that the national government be given a tremendous amount of power over the states was a ludicrous notion to Black.

Jeremiah Black knew that the butchers, seeking to recover from the deprivation of their livelihood, denied recovery in their own state of Louisiana, and taking their case before the Supreme Court, could be disastrous for the power of the states. If the butchers could recover by means of a federal body, it could bring the private lives of every citizen under the eyes of the United States Congress. The Privileges or Immunities Clause could essentially nationalize every civil right enumerated in the Bill of Rights and make federal power supreme over all of the states.⁶¹ However, if these butchers were unable to recover under the Privileges or Immunities

⁵⁹ *City of Chicago v. Rumpff*, 45 Ill. 90, 97 (1867).

⁶⁰ Sandefur, Timothy. "Jeremiah Black and the Slaughterhouse Cases." Pacific Legal Foundation. Nov 12, 2009.

⁶¹ Brigance, William Norwood. "Jeremiah Sullivan Black: A Defender of the Constitution and the Ten Commandments." New York, NY: Da Capo Press, 1971. 200-201.

Clause of the Fourteenth Amendment that would have a lasting opposite effect; completely destroying the intent of the Radical Republicans in drafting the Privileges or Immunities Clause.

Other council for the state of Louisiana opened their arguments by citing legal authority establishing the extent of state police power; notably *Gibbons v. Ogden* where Chief Justice Marshall acknowledged the power of the state to enact laws to protect the health of their citizens.⁶²

Justice Miller's Decision

Justice Samuel Miller was on the Supreme Court when John Campbell left the court to join the Confederacy. Miller never forgave Campbell for leaving the Supreme Court to commit treason by joining the Confederacy.⁶³ Justice Miller started off his opinion by restating Campbell's arguments against the Slaughterhouse Act; that it deprives butchers of their right to work of their own accord, forcing them to labor for one corporation, creating a monstrous monopoly. But Miller dismantled Campbell's arguments on the act with a single sentence - "a critical examination of the act hardly justifies these assertions."⁶⁴ Miller thought the act did not deprive the butchers of their trade but made it easier than ever before to work as a butcher. You would not have to own your own slaughterhouse but simply have enough capital to buy cattle and pay the fee to use the Crescent City's facilities.

As for the Slaughterhouse Act, Miller thought it was a bona fide public health measure well within the police powers of the state of Louisiana; recalling near identical measures made by many other states regulating their slaughterhouses. Miller could have ended his opinion right

⁶² *Gibbons v. Ogden*, 22 U.S. 1 (1824).

⁶³ Labbe, Ronald M. Lurie, Jonathan. *The Slaughterhouse Cases, Regulation, Reconstruction, and the Fourteenth Amendment*. Lawrence, KS: University Press of Kansas. 2005. 89.

⁶⁴ *Slaughter-House Cases*, 83 U.S. 394 (1872).

here, but he knew that four dissenting justices were preparing their own opinions heavily citing the Fourteenth Amendment. Even then he could have ruled on the Fourteenth Amendment issue without going into a critical examination of its clauses. He may have simply ruled that whatever the amendment meant it certainly was not ratified to prevent states from passing health regulations.

Justice Miller started his interpretation of the Reconstruction Amendments by examining the short history behind them. Miller thought it absurd that the Thirteenth Amendment applied to anyone except former slaves. The American Civil War had just been fought and “undoubtedly the overshadowing and efficient cause of African slavery,”⁶⁵ The Slaughterhouse Act was not in violation of the Thirteenth Amendment because the amendment was not written to protect the labor rights of French butcher but to secure the freedom of former black slaves. Because the emancipation of the slaves was connected to the Thirteenth Amendment so was the Thirteenth Amendment connected to the Fourteenth and Fifteenth Amendments.

According to Justice Miller, the Fourteenth Amendment was ratified to give African Americans the same civil rights that whites enjoyed, and the Fifteenth Amendment was there to ensure that one of those civil rights was the right to vote. But to truly grasp the full extent of the Fourteenth Amendment Justice Miller would have to look beyond the plain language and the surface level history of its passage.

Justice Miller started off his interpretation of the Fourteenth Amendment by examining the first clause - the Citizenship Clause.⁶⁶ For precedent, Miller went back to the infamous Dred Scott case. Dred Scott dictated that slaves were not and could not be United States citizens.⁶⁷

⁶⁵ *Ibid.*

⁶⁶ US Const. amend. XIV, § 1. Cl. 1.

⁶⁷ Dred Scott v. Sandford, 60 U.S. 393 (1856).

Justice Miller used this case to interpret the Citizenship Clause as a measure to reverse the Dred Scott decision and ensure that freed slaves had the same citizenship status as everyone else born in the United States. Indeed, with the precedent that Dred Scott set, anything less than a constitutional amendment would be futile to securing the citizenship of freed slaves.

The Thirteenth Amendment may have released African slaves from slavery, but that amendment alone did not make them United States citizens. However, the wording of the Citizenship Clause of the Fourteenth Amendment was still vital to Miller's understanding; "it is obvious... that there is a citizen of the United States and a citizen of a State, which are distinct from each other." In other words - Justice Miller saw citizenship as a duality. Being a citizen of a state would grant you different rights than being a citizen of the United States. Therefore, the rights granted to a citizen by the United States could only be applied to the federal government while being a state citizen meant that the state legislature could control what greater rights or privileges could be granted a state citizen. Justice Miller's understanding of citizenship is vital to understanding how he next interpreted the Privileges or Immunities Clause.

John Campbell's argument that the Privileges or Immunities Clause was meant to protect citizens from the legislation of the state irritated Justice Miller. Miller was a staunch Republican, an avid supporter of Lincoln, and a true believer in keeping the Union together. However, he believed in pre-war federalism and preserving the power of the states over the power of the federal government. He thought it absurd that the writers of the Fourteenth Amendment would make freed slaves' citizens of their birth state and distinguish federal citizenship from state citizenship just to protect said citizens from the legislation of that state. Miller also struggled with what "privileges or immunities" meant. On their own "privileges or immunities" do not mean anything without proper context or history; something that the drafters of the Fourteenth

Amendment neglectfully left out of the clause. The Constitution mentions “privileges and immunities”⁶⁸ but even there it does not explicitly say what “privileges or immunities” means either. The only answer that Justice Miller could find set in precedent was found in *Corfield v. Coryell*.⁶⁹

Corfield v. Coryell was the case that interpreted Article IV Section Two of the United States Constitution. It laid out which rights all citizens had regardless of their state citizenship. However, it made it clear that a state need not give a citizen every right they had in their previous state. *Corfield v. Coryell* defined the principles of the Privileges and Immunities Clause as enumerated rights that all citizens could enjoy; “[Protection] by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole.”⁷⁰ Also, a state could not discriminate against a citizen of another state and must afford that person that same rights as any citizen of that state. However, affording a citizen of another state the same rights as that state had been hotly contested in the courts. Some people thought the “rights of another state” meant civil rights but the prevailing thought was that “rights” only meant economic rights like the rights discussed in *Corfield v. Coryell*.

Even though state citizens had the right to property under the precedent set by *Corfield*, it still included the clause allowing the government to “restrain” or regulate said property for the good of the whole. Miller saw this case as definitive proof that a state citizen’s rights only go as far as is good for all citizens; property rights end where a public health or safety regulation

⁶⁸ U.S. Const. Art. IV § II.

⁶⁹ *Corfield v. Coryell*, 6 F. 546 (Pa. 1823).; US Const. art. IV, § 2. Cl. 1.; *Crandall v. State of Nevada*, 73 U.S. 745. (1867).

⁷⁰ *Corfield v. Coryell*, 6 F. 546 (Pa. 1823).

begins.⁷¹ And because the rights enumerated in *Corfield* were only to be protected by the state government, it reinforced Miller's idea that "privileges or immunities" were not found on the federal level but the state level. Miller never believed that the Fourteenth Amendment was written just to take the "entire domain of civil rights" away from the states to deliver it into the hands of the federal government.⁷² Miller added that by taking a strengthened federal power position "would constitute this court a perpetual censor upon all legislation of the states, on the civil rights of their own citizens."⁷³ Miller was worried that the Fourteenth Amendment could create a slippery slope leading to the degradation of state governments by subjecting them to control by Congress.⁷⁴ The privileges or immunities of a state citizen "must rest for their security and protection where they have heretofore rested," in the hands of the several states and their governments. What then are the privileges or immunities of a federal citizen? They included the right of a citizen to:

"come to the seat of the government to assert any claim he may have upon that government"; the "right of free access to its seaports"; and the right "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."⁷⁵

These were the great privileges or immunities protected by the federal government under the Privileges or Immunities Clause of the Fourteenth Amendment. The Civil War had been fought and won just for these few modest rights to be guaranteed to all citizens of the Union. The newly freed slaves would be left at the mercy of the southern states and their legislatures. Their civil, private, and Bill of Rights protections would not be protected under the Fourteenth

⁷¹ *Ibid.*

⁷² *Slaughter-House Cases*, 83 U.S. 394. (1872).

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

Amendment. Justice Miller had just written the Privileges or Immunities Clause out of the Fourteenth Amendment. The consequences would be felt immediately and last for over a century.

The Lost Clause

The Privileges or Immunities Clause has confounded legal scholars since its conception "[That] clause has been a mystery since its adoption and in consequence has, quite properly, remained a dead letter."⁷⁶ John Campbell, the ex-Confederate with disdain for Reconstruction, ironically, got the Privileges or Immunities Clause mostly right. The Privileges or Immunities Clause was written to keep state legislatures from violating our civil and private rights; even our Bill of Rights protections.

The Reconstruction Amendments signaled a new era of constitutional thought. The Confederacy had just fought a war over what they saw as states' rights being infringed upon by the federal government. The right to do what, exactly? The right to enslave human beings, hold them in that position, and force them to labor for another's profit.⁷⁷ Those people had no freedom of speech or expression, no rights to bear arms, and no right to trial if they had been wronged. The power to inflict such damage onto other people is what the Confederacy was trying to protect. The answer to such egregious abuses of state power was meant to be the Fourteenth Amendment; especially the Privileges or Immunities Clause. This clause was meant to guarantee our civil rights and safeguard them against infringement by the states.

⁷⁶ Bork, Robert H. *The Tempting of America: The Political Seduction of the Law*. New York: Touchstone Book, 1991. 166.

⁷⁷ Morris, D. Thomas, *Southern Slavery and the Law, 1619-1860*, 1996. 17.

Yet, one must recognize the shortcomings of this argument against state power and protection of individual rights. In the first Congress, James Madison proposed an amendment stating that “no state shall violate the equal right of conscience, freedom of the press, or trial by jury in criminal cases; which trench upon those particular rights.”⁷⁸ This proposal would have placed restrictions upon the states instead of the federal government and so it was soundly rejected.⁷⁹

This is fairly clear evidence that the founders of U.S. government never wanted to put any Bill of Rights restrictions onto the state governments. However, they never foresaw the Civil War occurring and the United States Constitution was not equipped to deal with such things as secession from the Union. Reconstruction required a strong centralized government, if only temporarily, to maintain peace, order, and security. By restricting the state governments, it may have changed federalism, but it would have carried our collective values held within the Bill of Rights, forward into the future.

Corfield and The Civil Rights Act of 1866

Miller cited *Corfield v. Coryell* in his opinion, but he drew the wrong conclusion from his reasoning. Because of the Citizenship Clause, Miller believed that the Fourteenth Amendment was trying to make a distinction between state and national citizenship.⁸⁰ This notion was misguided. There is a clear connection from *Corfield v. Coryell* to the Civil Rights Act of 1866 and finally to the Fourteenth Amendment.⁸¹

⁷⁸ Debates in Congress, Amendments to the Constitution, June 8, 1789, *The Debates and Proceedings in the Congress of the United States*, Volume I, 1789. 457.

⁷⁹ *Ibid.* at 457-8.

⁸⁰ Slaughter-House Cases, 83 U.S. 394 (1872).

⁸¹ *Corfield v. Coryell*, 6 F. 546, 551–52 (Pa. 1823).; Civil Rights Act § 1 (1866).

The Citizenship Clause takes its language almost directly from the Civil Rights Act of 1866; “[That] all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States...”⁸² People who are born in the United State are citizens of the country, not the several states. The Civil Rights Act of 1866 then goes on to enumerate the privileges and immunities that belong to a citizen of the United States. A citizen of the United States

“shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens...”⁸³

The rights enumerated by the Civil Rights Act of 1866 were not original ideas. Most of the rights listed in the act came from *Corfield v. Coryell*.⁸⁴ While deciding whether it was constitutional to let a state prohibit a resident of another state from collecting oysters and clams on public land, Justice Washington interpreted and enumerated the rights given to all United States citizens by article four, section two of the Constitution;

“Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind... and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state; may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental: to which may be added, the elective franchise, as regulated and established by the laws or constitution of the state in which it is to be exercised. These, and many others which might be mentioned, are, strictly speaking,

⁸² Civil Rights Act § 1 (1866).

⁸³ *Ibid.*

⁸⁴ *Corfield v. Coryell*, 6 F. 546, 551–52 (Pa. 1823).

privileges and immunities...’⁸⁵

Notice that Justice Washington included many of the rights seen forty-three years later in the Civil Rights Act of 1866.⁸⁶ He dictates that United States citizens have the right to bring any court action, hold and dispose of property, not be taxed higher than other citizens (equal protection of the law), and Washington even suggests that the clause gives all citizens the right to vote.⁸⁷ It is very clear that the Civil Rights Act of 1866 took and expanded upon the rights already given to national citizens under *Corfield v. Coryell*.

The Civil Rights Act of 1866 is tied even tighter to the Fourteenth Amendment than it is to *Corfield*. The Civil Rights Act of 1866 includes a citizenship clause; finally reversing the *Dred Scott* decision and giving freed slaves their citizenship.⁸⁸ The Citizenship Clause of the Fourteenth Amendment was never supposed to make a distinction between state and national citizenship like Justice Miller believed. The Fourteenth Amendment was supposed to be an extension of the Civil Rights Act; a way of enforcing its provisions in a way the South could not get around nor escape from - by an amendment to the Constitution. By virtue of the Civil Rights Act and *Corfield*, the Privileges or Immunities Clause was supposed to protect the rights enumerated within the Civil Rights Act, giving all citizens their rights and protection of said rights by the federal government.

Solutions from Dissent

The best arguments for the Privileges or Immunities Clause being utilized as a safeguard for our Bill of Rights protections are found in the Slaughterhouse Case dissenting opinions.

⁸⁵ *Ibid*; *See Also*, Civil Rights Act of 1866.

⁸⁶ *Corfield v. Coryell*, 6 F. 546, 551 (Pa. 1823).

⁸⁷ *Ibid*.

⁸⁸ *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

Chief Justice Chase would have spoken for the dissenting justices but unfortunately, he was ill and would die less than a month later.⁸⁹ It would be up to Justice Stephen Field to speak on behalf of the dissenters.

Field, a ten-year veteran of the Supreme Court, disagreed with Justice Miller on nearly every aspect of his opinion. Field thought the monopoly created by the Slaughterhouse Act was an abuse of police power. Only the provisions of the act requiring inspection, landing, and slaughtering of animals below the city of New Orleans could be considered proper use of police power.⁹⁰ Field also asserted that Miller's duality of citizenship doctrine was entirely incorrect and that there were no privileges or immunities separate from those protected by the federal government. As for the Fourteenth Amendment, Field believed that the Privileges or Immunities Clause was meant to "protect the citizens of the United States against the deprivation of their common rights by state legislation."⁹¹ These rights included those protected on the federal level - our Bill of Rights protections. However, Field conceded that although the Privileges or Immunities Clause should cover the United States citizens' civil and private rights, it "does not attempt to confer any new privileges or immunities upon citizen..."⁹² But the Fourteenth Amendment assumes that there are rights that already exist that shall not be abridged by a state legislature.

Then Field targeted Miller's incredibly narrow definition of the Privileges or Immunities Clause, Field argued that "if this inhibition... only refers... to such privileges and immunities as were before its adoption specially designated in the Constitution or necessarily implied... it was

⁸⁹ "Obituary of Salmon P. Chase." *The Brooklyn Daily Eagle*, May 7, 1873.

⁹⁰ Slaughter-House Cases, 83 U.S. 394 (1872).

⁹¹ *Ibid.*

⁹² *Ibid.*

a vain and idle enactment, which accomplished nothing...’’⁹³ Why would the United States Congress bother to write and pass an amendment to secure rights that we already had secured by the Constitution? Miller’s opinion and arguments made no logical sense and hardly addressed this issue. It should have been obvious that the Fourteenth Amendment, as an extension of the Thirteenth Amendment,⁹⁴ was written to secure our freedoms, rights, privileges, and immunities from the state legislatures.⁹⁵

Public Reaction to the Slaughterhouse Decision

The reaction of the public is vital in understanding how people saw the cases and their subsequent decision. Today, scholars consider the Slaughterhouse Cases a “landmark trial,” a case of great importance to American jurisprudence. However, in April of 1873 when the Slaughterhouse Cases were decided, the decision did not generate a whole lot of interest on a national level, especially in the Northern states.⁹⁶ The New York Times for example, a journalistic powerhouse, did not write a single article covering the Slaughterhouse Cases. This fact is very telling about the attitude of the North towards important issues of the South. Either the New York Times did not care about what they saw as a Southern problem or they did not understand how important this case really was to the entire country.

The New York Times did, however, write several articles about violence and political unrest in Louisiana. In fact, The New York Times published an article about the Colfax

⁹³ *Ibid.*

⁹⁴ Civil Rights Act. 1866.

⁹⁵ Kelly, Alfred H., Winfred A. Harbison, and Herman Belz. *The American Constitution: Its Origins and Development*. New York, NY: Norton, 1991. 504-5.

⁹⁶ M. F. Taylor, "The Slaughter-house Cases," *Southern Law Review* 3, no. 3 (July 1874): 476-483; William L. Royall, "The Fourteenth Amendment: The Slaughter-House Cases," *Southern Law Review (New Series)* 4, no. 4 (October 1878): 558-584.

Massacre where up to one-hundred and fifty African Americans were murdered by whites during a contested mayoral election, in the few days following the Slaughterhouse decision being passed down.⁹⁷ The New York Times was very quick to cover the racially and politically charged violence happening in Louisiana but did not devote any writings to an important Supreme Court decision being handed down around the same time.

White Democratic-leaning newspapers were besides themselves with spiteful joy when the Slaughterhouse decision was passed down. Journalists and interested citizens jumped on the decision and the implications that they thought were unforeseen, or perhaps, intentionally overlooked, by the Supreme Court. Ex-Confederates and general opponents of the Radical Republicans in Congress saw this decision as a victory for states' rights or at the very least a huge defeat for the Radicals in Congress. Southerners largely believed that the Fourteenth Amendment was designed to oppress them and only ratified because the federal government threatened the use of force if they did otherwise.⁹⁸

Some of the public were outraged at the decision because of how narrowly the case was decided. It seemed as though the Supreme Court made it so the Fourteenth Amendment was not applicable at all to non-African Americans. A group of African Americans reported that they did not like the decision because of a double-standard issue. They argued that the decision would have been different if a group of white men were depriving African American men of their trade. Following that logic, no group of people, regardless of race, should be deprived of their right to

⁹⁷ "The Exact Condition of Affairs in That Distracted State." *The New York Times*. May 24, 1873; "The War of Races: Three-Hundred Negroes Burned to Death by Whites in Louisiana." *The New York Times*, April 16, 1873; *The New York Times*. May 23, 1873.

⁹⁸ Adams, Eva D. "The Slaughterhouse Cases: The First Interpretation of the Fourteenth Amendment." Miami University; 1992. 120-21.

labor in the way they wish to work.⁹⁹ It is a great irony that a set of amendments meant to grant and protect the rights of African Americans were first interpreted in a case surrounding white laborers. Yet, it was an extremely wise observation by certain African Americans that the Fourteenth Amendment should not be limited to only African Americans. They thought that the Amendment should extend federal protections of certain civil rights to all Americans, not just African Americans. To them, it was a horrifying notion that their civil rights be kept in the hand of the governments that had allowed them to be slaves mere years prior. They did not assume that the South would bring back slavery, but they were weary that they would try everything else to keep African Americans in an inferior position.

There was also cheering from those who wished to keep certain rights out of the hands of women. There were multiple newspapers that drew a connection between the Slaughterhouse Cases and the plights of Susan B. Anthony and Myra Bradwell.^{100 101} Myra Bradwell was the first woman who attempted to be admitted to the Illinois BAR. She wished to practice as an attorney, but the Illinois BAR turned her away because of her sex. Her case was decided by the Supreme Court mere days after the Slaughterhouse decision was passed down. The Supreme Court decided that she could not practice as an attorney because, according the Slaughterhouse decision, the states could decide what rights you had as a state citizen. This decision was applauded by some as a victory for states' rights.

Susan B. Anthony was also discussed alongside the Slaughterhouse decision. Susan B. Anthony was a woman who is most commonly known for fighting for a woman's right to vote.

⁹⁹ "The Opinion of the Supreme Court Not a Precedent Against Us." *New National Era*, May 22, 1873.

¹⁰⁰ "Speech of John M. Bright." *Fayetteville observer*, January 29, 1874.

¹⁰¹ "Woman Suffrage." *New Orleans Republican*, June 19, 1873.

She was arrested in 1872 for voting in New York, a year before the Slaughterhouse decision was passed down. With the Slaughterhouse decision, many opponents of women's suffrage now had a legal basis as to why women should have the vote kept from them. People concluded that nothing except a Constitutional Amendment or state choice could give women the vote.

A Virginian newspaper was unusually insightful in their interpretation of the Slaughterhouse decision. They thought that the decision was only beneficial to the South and damaging to the Republicans in the federal government. To them, this decision meant that the federal government would be without the power to expand southern Reconstruction. Specifically, they were afraid that the Radical Republicans would appoint other Radical Republicans to state governments under the guise of protecting the civil rights of citizens. They rejoiced that the power of the state had been maintained at a Constitutional level through this decision; "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."¹⁰² The authors of this particular article also expressed concern that, if the case had been decided differently, the Radical Republicans would use their expanded federal power to desegregate, buses, schools, every southern institution, and bankrupt the South to make sure they would stay weakened.¹⁰³

A Texas newspaper had a similar position when they reported on a national convention of African Americans. The paper states that the convention of colored people will, no doubt, adopt a resolution that the federal government step in to make sure that not only colored men, but also colored women, would get the same civil rights as white men.¹⁰⁴ The African Americans

¹⁰² "Address of the State Conservative Committee." *Staunton Spectator*, October 07, 1873.

¹⁰³ *Ibid.*

¹⁰⁴ "The National Convention of Colored Men." *The Weekly Democratic Statesman*, December 25, 1873.

convention was a group that would, unfortunately, be many decades ahead of its time. However, this article shows that at least some people in the South were aware of the fact that the Slaughterhouse Cases prevented African American from attaining the equality and civil rights they longed for.

Opponents of Reconstruction saw the Slaughterhouse Cases decision as a way to nullify certain federal laws that tried to advance federal control over ex-rebel states. Specifically, journalists asserted that the Slaughterhouse Cases decision made the Enforcement Acts unenforceable.¹⁰⁵

The Enforcement Acts, including the Ku Klux Klan Act, were a series of Acts passed by the United States Congress that aimed at ensuring the voting rights of all American citizens and preventing people from interfering in the voting process.¹⁰⁶ The Acts used the Fourteenth and Fifteenth Amendments as justification. However, multiple journalists from rebel states argued that the Slaughterhouse Cases made the Fourteenth and Fifteenth Amendments exclusively apply to African Americans and thus could not be used against Whites or non-Africans. If that was the case, then Whites, including state actors, could ignore the Enforcement Acts and determine who had the right to vote and who did not.

Multiple newspaper articles came out condemning the Slaughterhouse Cases decision but only examined what was at the very surface of the issues. Democrat-leaning papers saw the decision as just another slight against the south. It was another insult coming from the federal government; taking away the property and labor rights of southerners and giving them to a handful of Northern men.¹⁰⁷

¹⁰⁵ “A Little Leaven of Truth.” *Lexington weekly intelligencer*, April 30, 1873.

¹⁰⁶ The Enforcement Acts. 1870-71.

¹⁰⁷ “Three Important Cases Under the Fourteenth Amendment.” *Nashville Union and American*, April 16, 1873; “The Slaughterhouse Decision.” *Nashville Union and American*, April 16, 1873.

Many opponents of the Slaughterhouse Cases decision looked to the dissenting opinions to base their arguments. Most people who looked to the dissent for a rebuttal to the majority opinion focused on Justice Field's dissent. Justice Field's dissent emphasized the need for a strong centralized government to prevent the states from depriving United States Citizens of their rights granted to them by the Constitution.¹⁰⁸ Mostly Republican publications made similar arguments that, in order for the United States to prevent another catastrophe like the Civil War from repeating, the federal government needs to be strong enough to act as a censor on what laws the states pass that could impact citizens' Constitutional Rights.¹⁰⁹ Others argued for something similar except that the federal government would not oversee all laws passed by the states, but instead would only intervene when a group of citizens made an appeal to the federal government. Although, it is unclear if the appeal would be made to the Supreme Court or Congress.

Others opposed the idea of the federal government acting as a censor on laws passed by the states. They argued that this idea of censoring every law passed by the states would put an enormous burden on an already overworked Supreme Court. They argued that this move would destroy federalism, a separation between the powers of the states and the federal government.

Opponents of increasing federal power were not alone as Justice Miller also deliberately addressed this in his opinion, anticipating this argument from the dissenters. Miller argued that turning the Supreme Court into a censor of state laws was a ridiculous notion and would have been unthinkable when the Reconstruction Amendments were being drafted and ratified. Miller was also concerned that by giving the federal government a huge amount of power to control

“Superior Court Thronged.” *New Orleans Republican*, April 19, 1873; “The Slaughterhouse Case in the Supreme Court.” *New Orleans Republican*, April 15, 1873.

¹⁰⁸ Slaughter-House Cases, 83 U.S. 394 (1872).; “Justice Field’s Opinion in the New Orleans Case” *Chicago Daily Tribune*, May 23, 1873.

¹⁰⁹ “Justice Field’s Opinion in the New Orleans Case.” *Chicago Daily Tribune*, May 23, 1873.

what the states can and cannot do, it could easily be extended to squash state power down to nothing. Miller had served on the Supreme Court during the Civil War and had seen the horrors wrought by the rebel states. Yet, Miller was still a true believer in the separation of powers between the states and the federal government.

Miller may not have been so thoughtless when making a clear distinction between state and federal citizenship. He may have knowingly given back power to the states to make their own decisions on the civil rights of their citizens. It is more likely than not that the so-called “unintended consequences” of the Slaughterhouse decision may not have been unintended after all. Miller makes it perfectly obvious that the Fourteenth Amendment secures African Americans’ right to be considered citizens and the Fifteenth Amendment grants them the right to vote in federal elections. However, by making the distinction between state and federal citizenship, Miller enabled the states to discriminate freely against whichever state citizens they desired to.

Some Conclusions

The Slaughterhouse Cases were, and in some cases still are, crammed and confused. As for the grand slaughterhouse, eventually their monopoly rights were revoked, and many butchers returned to their old slaughterhouses - New Orleans had come full circle and left a trail of legal troubles behind them.¹¹⁰ Troubles that are still being contested today.

Initially, the Slaughterhouse decision was a victory for the ex-rebel states but at the end of the day, the dissenters prevailed. Civil rights that were intended for all Americans were withheld from African Americans for nearly one-hundred years after the Slaughterhouse Cases

¹¹⁰ Labbe, Ronald M. Lurie, Jonathan. *The Slaughterhouse Cases, Regulation, Reconstruction, and the Fourteenth Amendment*. Lawrence, KS: University Press of Kansas. 235-9.

first started. However, instead of using the Privileges or Immunities Clause like the drafters intended, the Bill of Rights were slowly incorporated over many years on a case-by-case basis into the Due Process Clause. Not only were civil rights withheld from African Americans but, because of the Slaughterhouse decision, the idea of “individual rights” had to be slowly developed over a century. Before the idea of individual rights became prevalent - rights were something a state could bestow upon an individual. An individual had no rights outside of what the state said they had.

The public reactions to the Slaughterhouse Cases are very telling about the general feelings towards the social and political movements of the time. It is quite apparent that most people did not fully grasp the entire meaning of the Slaughterhouse Cases and the subsequent decision. They were either ignorant to the deep racial and Constitutional issues or they were so blinded by their disdain for Reconstruction that they could only see the issues that they had been dealing with since the end of the Civil War; federal forces intervening in their lives for example. However, it must be conceded that people did not see civil rights issues back then as people do today. Very few individuals thought that people should have certain rights just on the fact that they were citizens of their country. up to that point, citizens only had the rights that their state said they had - including the elective franchise. The Slaughterhouse decision may look like a tragedy to people today, but to people back then - giving power back to the states and allowing them to determine rights was upholding the status quo. The reaction of the public must be seen in that light. Only African Americans, who had been and still were being deprived of any rights, would have wanted to circumvent the powers of the states and have rights bestowed upon them - protected from state intervention by the federal government. This is partially why examining the public reaction to Slaughterhouse is so important.

Some of the most thoughtful analysis came from the people who were impacted the most negatively by the decision. At least one group of African Americans were able to recognize the racial implications of the Justice Millers decision. However, not only did these African Americans want their civil rights guaranteed by the full force of the federal government, they wanted the same protections for all citizens, including white men.

Civil rights for African Americans also meant economic rights. African Americans wanted the same chance at a piece of the pie as every other white citizen and the Fourteenth Amendment could have been what they needed to level the playing field. They wanted to be able to work, make money in the same occupations as whites, share in the prosperity that others had, and live their own American dream. Civil rights, making African Americans socially equal to white citizens, was an avenue to economic rights.

It is a tragedy that it took so long for all Americans to receive what rights they should have been guaranteed since the ratification of the Reconstruction Amendments. There has only been one comprehensive book written about the Slaughterhouse Cases, but the authors attribute the withholding of civil rights to the attorney for the butchers, John Campbell, and a bad interpretation from Justice Miller. I disagree with their conclusions about the decision of the case causing “unintended” consequences. All parties are partially to blame for the failure to protect the civil rights of African Americans. This includes John Campbell but also Jeremiah Black and even Justice Miller may bear some of the responsibility.

John Campbell has been given credit as the “mastermind” behind attacking the federal government’s attempt at reconstructing the South by publicizing the corruption of the Louisiana government and the evils of the Slaughterhouse Act. However, Campbell was arguing for, and not against, leveling federal power against state action. Campbell may have intended to harm

Reconstruction efforts but if he had succeeded, he may have ended up helping Reconstruction succeed in the South.

Jeremiah Black, attorney for the state of Louisiana and a true opponent of expanding federal power, deserves more credit for the consequences of the Slaughterhouse decision. It was Black that fought against the federal government to ensure Louisiana could have the power to enact health measures and create monopolies, even if those measures abridged the rights of citizens.

It is more than likely that Justice Miller knew the intention of Congress when they passed the Fourteenth Amendment. In fact, Justice Miller went on tour with a drafter of the Fourteenth Amendment, John Bingham, who spoke on multiple occasions about what was intended by the Fourteenth Amendment.¹¹¹ Bingham is directly quoted stating that the intent of the Fourteenth Amendment intended to ensure “no State will attempt to set up an authority in opposition to human rights.”¹¹² Yet, Miller’s contempt for Congress led him to restricting the amendment.¹¹³ Justice Miller had spent some time the year before the Slaughterhouse Cases decision on the Senate Judiciary Committee. A committee which he had nothing but disdain for because, as Miller saw it, every member thought themselves a genius when it came to the Constitution and no real progress was made on what Miller thought was much needed Judicial reform.¹¹⁴ Miller also did not hold a positive opinion of Reconstruction which he saw as nothing more than irresponsible politics.¹¹⁵

¹¹¹ “Our Visitors” *Portland Oregonian*, July 19, 1871.

¹¹² *Ibid.*

¹¹³ Samuel Miller to William P. Ballinger, April 23, 1872.

¹¹⁴ Aynes, Richard L. “Constricting the Law of Freedom: Justice Miller, The Fourteenth Amendment, and the Slaughterhouse Cases - Freedom: Constitutional Law.” *Chicago-Kent Law Review* Volume 70 (1994): 664.

¹¹⁵ *Ibid.*

Miller's contempt for the Radicals in Congress who ignored the plights of the Supreme Court may have had an impact on his Slaughterhouse decision. Miller acknowledges the plight of African Americans as ex-slaves and confirms the need for their civil rights and even the right to vote. However, by differentiating between federal and state citizenship, Justice Miller sold the rights of African Americans in exchange for maintaining the old balance of power between the states and the federal government. Miller may have had good intentions by giving powers back to the states and helping end Reconstruction; but it is probable that he knew what he was doing when he voided the Privileges or Immunities Clause. If he had not given power back to the states, we can only imagine what could have happened with states power becoming nullified and the federal government reigning supreme.

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