AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 8: The New Deal/Great Society Era – Federalism/States and the Commerce Clause

**Edwards v. California, 314 U.S. 160 (1941)**

*In 1939, Fred Edwards, a citizen of California, drove to Texas to pick up his brother-in-law, Frank Duncan. Duncan was last employed by the Works Progress Administration and was currently indigent. Edwards returned with Duncan to Marysville, California. During the trip to California, Duncan spent the last of his cash. Duncan lived with Edwards for a few days until getting work with the Farm Security Administration.*

*Edwards was charged under the state “anti-Okie” law, which made it a misdemeanor offense to bring into the state of California “any indigent person who is not a resident of the State, knowing him to be an indigent person.” A version of the statute had been in place since the Civil War, but the state legislature had last adopted early in the Great Depression in an effort to prevent destitute individuals from migrating to the state. It is estimated that over a million people fled from Oklahoma and neighboring states to California during the Dust Bowl and droughts of the 1930s. John Steinbeck’s novel,* The Grapes of Wrath*, won the Pulitzer Prize in 1940 for its depiction of the Okie migration.*

*Edwards was convicted and sentenced to six months in county jail. The sentence was suspended pending appeal. A county court affirmed the conviction, and Edwards appealed to the U.S. Supreme Court. The Supreme Court unanimously struck down the state statute as beyond the scope of the state police power and a violation of the federal interstate commerce clause. Four of the justices would have also struck down the state statute as a violation of the privileges or immunities clause of the Fourteenth Amendment.*

JUSTICE BYRNES, delivered the opinion of the Court.

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Article I, § 8 of the Constitution delegates to the Congress the authority to regulate interstate commerce. And it is settled beyond question that the transportation of persons is "commerce," within the meaning of that provision. It is nevertheless true, that the States are not wholly precluded from exercising their police power in matters of local concern even though they may thereby affect interstate commerce. The issue presented in this case, therefore, is whether the prohibition embodied in § 2615 against the "bringing" or transportation of indigent persons into California is within the police power of that State. We think that it is not, and hold that it is an unconstitutional barrier to interstate commerce.

The grave and perplexing social and economic dislocation which this statute reflects is a matter of common knowledge and concern. We are not unmindful of it. We appreciate that the spectacle of large segments of our population constantly on the move has given rise to urgent demands upon the ingenuity of government. . . . The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not conceive it our function to pass upon "the wisdom, need, or appropriateness" of the legislative efforts of the States to solve such difficulties.

But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders. It is frequently the case that a State might gain a momentary respite from the pressure of events by the simple expedient of shutting its gates to the outside world. But, in the words of Mr. Justice Cardozo: "The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin v. Seelig* (1935).

It is difficult to conceive of a statute more squarely in conflict with this theory than the Section challenged here. Its express purpose and inevitable effect is to prohibit the transportation of indigent persons across the California border. The burden upon interstate commerce is intended and immediate; it is the plain and sole function of the statute. Moreover, the indigent non-residents who are the real victims of the statute are deprived of the opportunity to exert political pressure upon the California legislature in order to obtain a change in policy. We think this statute must fail under any known test of the validity of State interference with interstate commerce.

It is urged, however, that the concept which underlies § 2615 enjoys a firm basis in English and American history. This is the notion that each community should care for its own indigent, that relief is solely the responsibility of local government. Of this it must first be said that we are not now called upon to determine anything other than the propriety of an attempt by a State to prohibit the transportation of indigent non-residents into its territory. The nature and extent of its obligation to afford relief to newcomers is not here involved. We do, however, suggest that the theory of the Elizabethan poor laws no longer fits the facts. Recent years, and particularly the past decade, have been marked by a growing recognition that in an industrial society the task of providing assistance to the needy has ceased to be local in character. The duty to share the burden, if not wholly to assume it, has been recognized not only by State governments, but by the Federal government as well. The changed attitude is reflected in the Social Security laws under which the Federal and State governments cooperate for the care of the aged, the blind and dependent children. . . .

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What has been said with respect to financing relief is not without its bearing upon the regulation of the transportation of indigent persons. For the social phenomenon of large-scale interstate migration is as certainly a matter of national concern as the provision of assistance to those who have found a permanent or temporary abode. Moreover, and unlike the relief problem, this phenomenon does not admit of diverse treatment by the several States. The prohibition against transporting indigent non-residents into one State is an open invitation to retaliatory measures, and the burdens upon the transportation of such persons become cumulative. Moreover, it would be a virtual impossibility for migrants and those who transport them to acquaint themselves with the peculiar rules of admission of many States. . . .

There remains to be noticed only the contention that the limitation upon State power to interfere with the interstate transportation of persons is subject to an exception in the case of "paupers." It is true that support for this contention may be found in early decisions of this Court. In City of *New York v. Miln* (1837), it was said that it is “as competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against the physical pestilence, which may arise from unsound and infectious articles imported, .. ." This language has been casually repeated in numerous later cases up to the turn of the century. *Passenger Cases* (1849); *Plumley v. Massachusetts* (1894). . . . In none of these cases, however, was the power of a State to exclude "paupers" actually involved.

Whether an able-bodied but unemployed person like Duncan is a "pauper" within the historical meaning of the term is open to considerable doubt. But assuming that the term is applicable to him and to persons similarly situated, we do not consider ourselves bound by the language referred to. *City of New York v. Miln* was decided in 1837. Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a "moral pestilence." Poverty and immorality are not synonymous.

We are of the opinion that § 2615 is not a valid exercise of the police power of California; that it imposes an unconstitutional burden upon interstate commerce, and that the conviction under it cannot be sustained. In the view we have taken it is unnecessary to decide whether the Section is repugnant to other provisions of the Constitution.

*Reversed*.

JUSTICE DOUGLAS, with whom JUSTICE BLACK and JUSTICE MURPHY join, concurring.

I express no view on whether or not the statute here in question runs afoul of Art. I, § 8 of the Constitution granting to Congress the power "to regulate Commerce with foreign Nations, and among the several States." But I am of the opinion that the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines. While the opinion of the Court expresses no view on that issue, the right involved is so fundamental that I deem it appropriate to indicate the reach of the constitutional question which is present.

The right to move freely from State to State is an incident of *national* citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. Justice Moody in *Twining v. New Jersey* (1908) stated, "Privileges and immunities of citizens of the United States . . . are only such as arise out of the nature and essential character of the National Government, or are specifically granted or secured to all citizens or persons by the Constitution of the United States." And he went on to state that one of those rights of *national* citizenship was "the right to pass freely from State to State." Now it is apparent that this right is not specifically granted by the Constitution. Yet before the Fourteenth Amendment it was recognized as a right fundamental to the national character of our Federal government. It was so decided in 1867 by *Crandall v. Nevada*. . . . This is emphasized by his quotation from Chief Justice Taney's dissenting opinion in the *Passenger Cases*: "We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States." . . .

So, when the Fourteenth Amendment was adopted in 1868, it had been squarely and authoritatively settled that the right to move freely from State to State was a right of *national* citizenship. As such it was protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. . . .

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JUSTICE JACKSON, concurring.

I concur in the result reached by the Court, and I agree that the grounds of its decision are permissible ones under applicable authorities. But the migrations of a human being, of whom it is charged that he possesses nothing that can be sold and has no wherewithal to buy, do not fit easily into my notions as to what is commerce. To hold that the measure of his rights is the commerce clause is likely to result eventually either in distorting the commercial law or in denaturing human rights. I turn, therefore, away from principles by which commerce is regulated to that clause of the Constitution by virtue of which Duncan is a citizen of the United States and which forbids any State to abridge his privileges or immunities as such.

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While instances of valid "privileges or immunities" must be but few, I am convinced that this is one. I do not ignore or belittle the difficulties of what has been characterized by this Court as an "almost forgotten" clause. But the difficulty of the task does not excuse us from giving these general and abstract words whatever of specific content and concreteness they will bear as we mark out their application, case by case. That is the method of the common law, and it has been the method of this Court with other no less general statements in our fundamental law. This Court has not been timorous about giving concrete meaning to such obscure and vagrant phrases as "due process," "general welfare," "equal protection," or even "commerce among the several States." But it has always hesitated to give any real meaning to the privileges and immunities clause lest it improvidently give too much.

This Court should, however, hold squarely that it is a privilege of citizenship of the United States, protected from state abridgment, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing.

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The right of the citizen to migrate from state to state which, I agree with Justice Douglas, is shown by our precedents to be one of national citizenship, is not, however, an unlimited one. In addition to being subject to all constitutional limitations imposed by the federal government, such citizen is subject to some control by state governments. He may not, if a fugitive from justice, claim freedom to migrate unmolested, nor may he endanger others by carrying contagion about. These causes, and perhaps others that do not occur to me now, warrant any public authority in stopping a man where it finds him and arresting his progress across a state line quite as much as from place to place within the state.

It is here that we meet the real crux of this case. Does "indigence" as defined by the application of the California statute constitute a basis for restricting the freedom of a citizen, as crime or contagion warrants its restriction? We should say now, and in no uncertain terms, that a man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. "Indigence" in itself is neither a source of rights nor a basis for denying them. The mere state of being without funds is a neutral fact — constitutionally an irrelevance, like race, creed, or color. I agree with what I understand to be the holding of the Court that cases which may indicate the contrary are overruled.

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