AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 7: The Republican Era – Equality/Race

**In re Parrott, 1 F. 481 (C.C.D.Ca. 1880)**

*The Burlingame Treaty of 1868 opened trade and immigration between the United States and China. The subsequent wave of Chinese immigration into California soon provoked an anti-immigrant backlash that roiled politics on the West Coast and eventually in the national government. The anti-Chinese fervor in California culminated in the inclusion of Article XIX in the state constitution of 1879. The state constitutional provision declared that “Asiastic coolieism” was a “form of human slavery” and “dangerous to the well-being of the state,” and it directed the state legislature to take steps to curb the practice. A great deal of Chinese immigration during the period took the particular form of contract laborers recruited in China by American corporations. Section Two of California’s Article XIX specifically provided that “no corporation now existing, or hereafter formed, under the laws of this state, shall, after the adoption of this constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian.” In 1880, the state legislature made it a misdemeanor punishable by fine or imprisonment against the director, stockholder, or employee of any corporation chartered in the state of California that employed any Chinese to perform work “in any manner or capacity.”*

*The president of the Sulpher Bank Quicksilver Mining Company was arrested for employing “certain Chinese citizens of the Mongolian race.” He filed suit for a writ of habeas corpus in the federal circuit court. The circuit court granted the writ and directed that the prisoner be released, holding that the state constitutional provision and statute were in conflict with a federal treaty that entitled Chinese residing in the United States to the same privileges and immunities as American citizens, with a federal civil rights statute that guaranteed all persons equal benefit of state laws, and with the Fourteenth Amendment’s equal protection clause. The court emphasized that the law’s otherwise unconstitutional aim could not be saved by framing it as a regulation of a state-chartered corporation.*

Judge HOFFMAN.

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The Fourteenth Amendment enacts that “no state shall 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.”

The civil rights bill provides that all persons within the jurisdiction of the United States shall have the same rights in every stale and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Section 2164 provides that no tax or charge shall be imposed or enforced by any state, upon any person immigrating thereto from a foreign country, which is not equally imposed and enforced upon every person immigrating thereto from a foreign country.

Article 5 of the Burlingame Treaty recognizes “the mutual advantage of the free immigration and emigration of the citizens and subjects” (of the United States and of the Emperor of China) “respectively, from the one country to the other for purposes of curiosity, or trade, or as permanent residents.” Article 6 provides that “reciprocally, Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities, and exemptions in respect to travel, or residence, as may there be enjoyed by the citizens or subjects of the most favored nation.”

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[I]t is urged that the article of the constitution of this state which permits corporations to be formed under general laws, reserves the right to repeal, alter, or amend those laws at the discretion of the legislature; that their repeal would at once put an end to the corporate existence of the corporations, and that the right to put an end to their existence involves the right to prescribe the conditions upon which their existence shall be continued; that this right is theoretically and practically without limit, and may be exercised by imposing upon corporations laws for the conduct of their business, and restrictions upon the use and enjoyment of their property, which would be unconstitutional and void if applied to private persons, and which may have the effect to defeat the object of the association, or to impair or even destroy the beneficial use of its property.

The state may, therefore, in the exercise of this reserved power, prescribe what persons may be employed by corporations organized under its laws, their number, their nationality, perhaps even their creed. It may determine what shall be their age or complexion, their height or their weight, the number of hours they shall work in a day, or the number of days in a week, and the rate of their wages.

These illustrations may seem extravagant, but they were all either recognized by counsel as within the scope of the reserved power, or else they are legitimate examples of the mode in which the reserved power, as claimed, might be exercised. For all such legislation the only remedy of the corporations is to disincorporate and cease to exist.

Such being the reserved power of the state over the creatures "of its laws, it is urged that the treaty was not intended, and cannot be construed, to impair that right any more than it could be deemed to abridge the right to enact laws in the interest of the public health, safety, or morals, usually known as police laws, or to regulate the making of contracts by providing who shall be incompetent to make them, as infants, married women, and the like.”

When we consider the vast number of corporations which have been formed under the laws of this state, the claim thus put forth is well fitted to startle and alarm. It amounts in effect to a declaration that the corporations formed under the laws of this state, and their stockholders, hold their property, so far as its beneficial use and enjoyment are concerned, at the mercy of the legislature, and that rights which in the case of private individuals would be inviolable, have for them no existence.

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Over all the rights, privileges and immunities conferred by the charter upon the corporation, and which are derived from the charter, the legislature has control. But, in the language of the Supreme Court, “the rights and interests acquired by the company, and not constituting a part of the contract of corporation, stand upon a different footing.” *Railroad Co. v. Maine* (1878).

The right to use a corporate name and seal, the right, under that name, to sue and be sued, to acquire property and to contract, are rights which owe their existence to the charter.

But when a contract has been made, or property acquired; by a lawful exercise of the granted powers, the contract is as inviolable, and the rigid of property, with everything incidental to that right, as sacred, as in the case of natural persons.

It is not merely the title to the property that is protected from legislative confiscation, but that which gives value to all property, the right to its lawful use and enjoyment.

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It need hardly be said that no reference is here intended to the power of the state to enact police laws — that is, laws to promote the health, safety, or morals of the public. To such laws corporations are amenable to the same extent as natural persons and no further.

The law in question does not affect to be a police law. Its validity, if applied to natural persons, was not contended for at the bar. The authority to pass it was sought to be derived exclusively from the reserved power over corporations.

It forbids the employment of Chinese. If the power to pass it exists, it might equally well have forbidden the employment of Irish, or Germans, or Americans, or persons of color, or it might have required the employment of any of these classes of persons to the exclusion of the rest.

It might, as avowed at the bar, have prescribed a rate of wages, hours of work, or other conditions destructive of the profitable use of the corporate property. Such an exercise of legislative power can only be maintained on the ground that stockholders of corporations have no rights which the legislature is bound to respect. Behind the artificial or ideal being created by the statute and called a corporation, are the corporators — natural persons who have conveyed their property to the corporation, or contributed to it their money, and received, as evidence of their interest, shares in its capital stock. The corporation, though it holds the title, is the trustee, agent, and representative of the shareholders, who are the real owners. And it seems to me that their right to use and enjoy their property is as secure under constitutional guarantees as are the rights of private persons to the property they may own. That the law in question, substantially and not merely theoretically, violates the constitutional rights of the owners of corporate property, can readily be shown.

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. . . . Can it be said to be in good faith — that is, in the fair and just exercise of the reserved power to regulate corporations for the protection of the stockholders, their creditors, and the general public? Is it not rather an attempt, “under the guise of amendment or alteration,” to attain quite a different, and, as I shall presently show, an unconstitutional object, viz.: To drive the Chinese from the state, by preventing them from laboring for their livelihood? I apprehend that, to these questions, but one candid answer can be given. I am therefore of opinion that, irrespective of the rights secured to the Chinese by the treaty, the law is void, as not being a “reasonable,” bona fide, or constitutional exercise of the power to alter and amend the general laws under which corporations in this state have been formed; that it would be equally invalid if the proscribed class had been Irish, Germans, or Americans; that the corporations have a constitutional right to utilize their property, by employing such laborers as they choose, and on such wages as may be mutually agreed upon; that they are not compelled to shelter themselves behind the treaty right of the Chinese, to reside here, to labor for their living, and accept employment when offered; but they may stand firmly on their own right to employ laborers of their choosing, and on such terms as may be agreed upon, subject only to such police laws as the state may enact with respect to them, in common with private individuals.

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But, even if the reserved power of the state over corporations were as extensive as is claimed, its exercise in the manner attempted in this case would be invalid, because in conflict with the treaty.

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If the effect and purpose of the law be to accomplish an unconstitutional object, the fact that it is passed in the pretended exercise of the police power, or a power to regulate corporations, will not save it. If a law of the state forbidding the Chinese to labor for a living, or requiring them to obtain a license for doing so, would have been plainly in violation of the constitution and treaty, the state cannot attain the same end by addressing its prohibition to corporations.

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That the unrestricted immigration of the Chinese to this country is a great and growing evil, that it presses with much severity on the laboring classes, and that, if allowed to continue in numbers bearing any considerable proportion to that of the teeming population of the Chinese Empire, it will be a menace to our peace and even to our civilization, is an opinion entertained by most thoughtful persons. The demand, therefore, that the treaty shall be rescinded or modified is reasonable and legitimate. But while that treaty exists the Chinese have the same rights of immigration and residence as are possessed by any other foreigners. Those rights it is the duty of the courts to maintain, and of the government to enforce.

The declaration that “the Chinese must go, peaceably or forcibly,” is an insolent contempt of national obligations and an audacious defiance of national authority. Before it can he carried into effect by force the authority of the United States must first he not only defied, but resisted and overcome. The attempt to effect this object by violence will be crushed by the power of the government. The attempt to attain the same object indirectly by legislation will be met with equal firmness by the courts; no matter whether it assumes the guise of an exercise of the police power, or of the, power to regulate corporations, or of any other power reserved by the state; and no matter whether it takes the form of a constitutional provision, legislative enactment, or municipal ordinance.

I have considered this case at much greater length than the difficulty of the questions involved required. But I have thought that their great importance, and the temper of the public with regard to them, demanded that no pains should be spared to demonstrate the utter invalidity of this law.

Judge SAWYER, concurring.

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[T]he right of the Chinese to change their homes, and to freely emigrate to the United States for the purpose of permanent residence, is, in express terms, recognized [in the Burlingame Treaty]; and the next article in express terms stipulates that Chinese residing in the United States shall enjoy the same privileges, immunities, and exemptions, in respect to residence, as may there be enjoyed by the citizens and subjects of the most favored nation. The words “privileges and immunities,” as used in the constitution in relation to' rights of citizens of the different states, have been fully considered by the Supreme Court of the United States, and generally defined, and there can be no doubt that the definitions given are equally applicable to the same words as used in the treaty with China. In the Slaughterhouse Cases (1873), the Supreme Court approvingly cites and reaffirms from the opinion of Justice Washington, in Corfield v. Coryell (C.C.E.D.Pa. 1823), the following passage: “The inquiry is, what are the privileges and immunities of citizens of the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; which belong to the rights of citizens of all free governments, and which have at all times been enjoyed by citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are it would be more tedious than difficult to enumerate. They may all, however, he comprehended under the following general heads: Protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole.”

The court then adds: “The description, when taken to include others not named, but which are of the same general character, embraces nearly every civil right for the establishment tend protection of which organized government is established.” And in Ward v. Maryland (1871), the same court observes: “Beyond doubt those words [privileges and immunities] are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one state to pass into any other state of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation; to acquire personal property; to take and hold real estate,” etc. So, in the Slaughterhouse Cases, Justice Field remarks upon these terms: “The privileges and immunities designated are those which of right belong to citizens of all free governments. Clearly among those must be placed the right to pursue a lawful employment in a, lawful manner, without other restraint than such as equally affects all persons.”

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. . . . [I]t seems quite impossible that any definition of these terms could be adopted, or even seriously proposed, so narrow as to exclude the right to labor for subsistence. As to by far the greater portion of the Chinese, as well as other foreigners who land upon our shores, their labor is the only exchangeable commodity they possess. To deprive them of the right to labor is to consign them to starvation. The right to labor is, of all others, after the right to live, the fundamental, inalienable right of man, wherever he may be permitted to be, of which he cannot be deprived, either under the guise of law or otherwise, except by usurpation and force. . . . And this absolute, fundamental and natural right was guaranteed by the national government to all Chinese who were permitted to come into the United States, under the treaty with their government, “for the purposes of curiosity, of trade, or as permanent residents,” to the same extent as it is enjoyed by citizens of the most favored nation. It is one of the “privileges and immunities” which it was stipulated that they should enjoy in that clause of the treaty which says: “Chinese subjects, visiting or residing in the United States, shall enjoy the same privileges, immunities and exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation.” And any legislation or constitutional provision of the state of California which limits or restricts that right to labor to any extent, or in any manner, not applicable to citizens of other foreign nations visiting or residing in California, is in conflict with this provision of the treaty; and such are the express provisions of the constitution and statute in question.

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But the provisions in question are also in conflict with the Fourteenth Amendment of the national constitution, and with the statute passed to give effect to its provisions. The Fourteenth Amendment, among other things, provides that “no state shall make or enforce any law which shall abridge the privileges and 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.”

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It will be seen that in the latter clause the words are “any person,” and not “any citizen,” and prevents any state from depriving “any person” of life, liberty or property without due process of law, or from denying to “any person within its jurisdiction the equal protection of the law.” In the particulars covered by these provisions it places the right of every person within the jurisdiction of the state, be he Christian or heathen, civilized or barbarous, Caucasian or Mongolian, upon the same secure footing and under the same protection as are the rights of citizens themselves under other provisions of the constitution; and, in consonance with these provisions, the [federal civil rights] statute enacts that “all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and, enforce contracts, . . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens.” Chinese residing in California, in pursuance of the treaty stipulations, are “persons within the jurisdiction of the state,” and “of the United States,” and therefore within the protection of these provisions. And contracts to labor, such as all others make, are contracts which they have a, “sight to make and enforce,” and the laics under which others’ rights are protected, are the laws to which they are entitled to the “equal benefit,” “as is enjoyed by white citizens.”

It would seem that no argument should be required to show that the Chinese do not enjoy the equal benefit of the laws with citizens, or “the equal protection of the laws,” where the laws forbid their laboring, or making and enforcing contracts to labor, in a very large field of labor which is open, without limit, let or hindrance, to all citizens, and all other foreigners, without regard to nation, race, or color. Yet, in the face of these plain provisions of the national constitution and statutes, we find, both in the constitution and laws of a great state and member of this Union, just such prohibitory provisions and enactments discriminating against the Chinese. Argument and authority, therefore, seem still to be necessary, and fortunately we are not without either. From the citations already made, and from many more that might be made from Justices Field, Bradley, Swayne, and other judges, it appears that to deprive a man of the right to select and follow any lawful occupation — that is, to labor, or contract to labor, if he so desires and can find employment —is to deprive him of both liberty and property, within the meaning of the Fourteenth Amendment and the act of Congress.

Says Justice Bradley: “For the preservation, exercise, and enjoyment of these rights, the individual citizen, as a necessity, must be left free to adopt such calling, profession, of trade, as may seem to him most conducive to that end. Without this right he cannot be a freeman. This right to choose one’s calling is an essential part of that liberty which it is the object of government to protect; and a calling, when chosen, is a man’s property and right. Liberty and property are not protected where those rights are arbitrarily assailed.” Slaughterhouse Cases (1873). Whatever may be said as to this clause of the amendment, there can be no doubt as to the effect of the act. With respect to the last clause, Justice. Bradley says, of a law which interferes with a man’s right to choose and follow an occupation: “Such a law also deprives those citizens of the equal protection of the laws, contrary to the last clause of the section.” And Justice Swayne: “The equal protection of the laws places all upon an equal footing of legal equality, and gives the same protection to all for the preservation of life, liberty and property, and the pursuit of happiness.”

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. . . . Upon reason and these authorities, then, it seems impossible to doubt that the provisions in question are both, in letter and spirit, in conflict with the constitution and laws of the United States, as well as with the stipulations of the treaty with China. And this constitutional right is wholly independent of any treaty stipulations, and would exist without any treaty whatever, so long as Chinese are permitted to come into and reside within the jurisdiction of the United States. The protection is given by the constitution itself, and the laws passed to give it effect, irrespective of treaty stipulations.

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The object, and the only object, to be accomplished by the state constitutional and statutory provisions in question is manifestly to restrict the right of the Chinese residents to labor, and thereby deprive them of the means of living, in order to drive those now here from the state, and prevent others from coming hither; and this abridges their privileges and immunities, and deprives them of the equal protection of the laws, in direct violation of the treaty and constitution —the supreme law of the land. . . .

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