

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 6: The Civil War and Reconstruction—Democratic Rights/Citizenship

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**Crandall v. State of Nevada, 73 U.S. 35 (1867)**

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*Crandall was employed by the Pioneer Stage Company in Carson, Nevada. In 1865, Nevada passed a law imposing a one dollar tax “upon every person leaving the State by railroad, stage, coach or other vehicle engaged or employed in the business of transporting passengers for hire.” Crandall was arrested for refusing to pay the tax. At trial, he asserted that the tax was unconstitutional. The trial court rejected his plea, as did the Supreme Court of Nevada. Crandall appealed his conviction to the Supreme Court of the United States.*

*The Supreme Court unanimously overturned Crandall’s conviction. Justice Miller’s majority opinion insisted that American citizens have a constitutional right to travel throughout the United States. What is the source of that constitutional right? Is this a right inherent in being a citizen of the United States? If so, what other rights do persons have by virtue of being citizens of the United States? Crandall was decided before the Fourteenth Amendment was ratified. In the Slaughter-House Cases (1873) (reprinted in Vol. II), Justice Miller claimed that the privileges and immunities clause protected the right to travel. Reread his Slaughter-House opinion. Did Justice Miller assert that the privileges and immunities clause of the Fourteenth Amendment protected any rights not already protected by Crandall?*

JUSTICE MILLER delivered the opinion of the Court.

...  
The people of these United States constitute one nation. They have a government in which all of them are deeply interested. This government has necessarily a capital established by law, where its principal operations are conducted. Here sits its legislature, composed of senators and representatives, from the states and from the people of the states. Here resides the President, directing through thousands of agents the execution of the laws over all this vast country. Here is the seat of the supreme judicial power of the nation, to which all its citizens have a right to resort to claim justice at its hands. Here are the great executive departments, administering the offices of the mails, of the public lands, of the collection and distribution of the public revenues, and of our foreign relations. These are all established and conducted under the admitted powers of the federal government. That government has a right to call to this point any or all of its citizens to aid in its service, as members of the Congress, of the courts, of the executive departments, and to fill all its other offices, and this right cannot be made to depend upon the pleasure of a state over whose territory they must pass to reach the point where these services must be rendered. The government also has its offices of secondary importance in all other parts of the country. On the seacoasts and on the rivers it has its ports of entry. In the interior it has its land offices, its revenue offices, and its subtreasuries. In all these it demands the services of its citizens and is entitled to bring them to those points from all quarters of the nation, and no power can exist in a state to obstruct this right that would not enable it to defeat the purposes for which the government was established.

...  
If this right is dependent in any sense, however limited, upon the pleasure of a state, the government itself may be overthrown by an obstruction to its exercise. Much the largest part of the transportation of troops during the late rebellion was by railroads, and largely through states whose people were hostile to the Union. If the tax levied by Nevada on railroad passengers had been the law of

Tennessee, enlarged to meet the wishes of her people, the Treasury of the United States could not have paid the tax necessary to enable its armies to pass through her territory.

But if the government has these rights on her own account, the citizen also has correlative rights. He has the right to come to the seat of government to assert any claim he may have upon that government or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions. He has a right to free access to its seaports, through which all the operations of foreign trade and commerce are conducted, to the subtreasuries, the land offices, the revenue offices, and the courts of justice in the several states, and this right is in its nature independent of the will of any state over whose soil he must pass in the exercise of it.

...  
In *The Passenger Cases* [1849], [Justice Wayne wrote]

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. And a tax imposed by a state for entering its territories or harbors is inconsistent with the rights which belong to citizens of other states as members of the Union and with the objects which that Union was intended to attain. Such a power in the states could produce nothing but discord and mutual irritation, and they very clearly do not possess it."

Although these remarks are found in a dissenting opinion, they do not relate to the matter on which the dissent was founded. They accord with the inferences which we have already drawn from the Constitution itself and from the decisions of this Court in exposition of that instrument.

JUSTICE CLIFFORD

I agree that the state law in question is unconstitutional and void, but I am not able to concur in the principal reasons assigned in the opinion of the Court in support of that conclusion. On the contrary, I hold that the act of the state legislature is inconsistent with the power conferred upon Congress to regulate commerce among the several states, and I think the judgment of the Court should have been placed exclusively upon that ground. Strong doubts are entertained by me whether Congress possesses the power to levy any such tax, but whether so or not, I am clear that the state legislature cannot impose any such burden upon commerce among the several states. Such commerce is secured against such legislation in the states by the Constitution, irrespective of any Congressional action.

THE CHIEF JUSTICE . . . concurs in the views I have expressed.