

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 6: The Civil War and Reconstruction—Equality/Equality Under Law

In re Opinion of the Justices, 58 Me. 590 (1871)

The state legislature of Maine in 1871 asked the Supreme Court of Maine, “Has the legislature authority under the constitution to pass laws enabling towns, by gifts of money . . . to assist individuals or corporations to establish or carry on manufacturing of various kinds, within or without the limits of said towns?” Similar constitutional issues were debated in other states. Many states and localities sought to create favorable business climates by providing subsidies for various commercial enterprises, most notably railroads. Proponents insisted that such special benefits were constitutional means for promoting commercial prosperity. Opponents insisted that subsidies violated state constitutional commitments to due process and equality under law.

The Supreme Judicial Court of Maine rejected any state power to provide special assistance to individuals or corporations. The justices maintained that such assistance was class legislation that violated the general constitutional commitment to equality and the due process clause of the state constitution. When reading the excerpt below, notice how the justices integrated due process and equal protection concerns. Why did the court integrate due process and equal protection? If the opinion below had been the governing law of the United States, would the Fourteenth Amendment have included both an equal protection and a due process clause?

To the House of Representatives of the State of Maine.

As the proposed gifts can only be raised by taxation, the question really is, can the legislature constitutionally authorize towns to assess taxes upon their inhabitants and collect the same, for the purpose of giving the proceeds to some favored manufacturer or manufacturing corporation. And as some of the inhabitants may be indisposed to such generosity, the inquiry will arise, whether the legislature can authorize the majority by vote to give away the estates of the minority or any portions thereof, not merely without but against their consent?

Taxation, by the very meaning of the word, is for public purposes, and for those the right of the government to impose taxes is unlimited. . . .

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Individuals and corporations embark in manufactures for the purposes of personal and corporate gain. Their purposes and objects are precisely the same as those of the farmer, the mechanic, or the day laborer. They engage in the selected branch of manufactures for the purpose and with the hope and expectation, not of loss, but of profit. By the very assumption of the interrogatory, they are engaged in private and corporate undertakings for private and corporate emolument. . . .

...

... If the manufacturing be gainful, there seems to be no public purpose to be accomplished by assessing a tax on reluctant citizens and coercing its collection to swell the gains of successful enterprise. If the business be a losing one, it is not readily perceived what public or governmental purpose is attained by taxing those who would have received no share of the profits, to pay for the loss of an unprosperous manufacturer, whether arising from folly, incapacity, or other cause. . . .

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The general benefit to the community resulting from every description of well-directed labor is of the same character, whatever may be the branch of industry upon which it is expended. All useful

laborers, no matter what the field of labor, serve the State by increasing the aggregate of its products,—its wealth. There is nothing of a public nature any more entitling the manufacturer to public gifts than the sailor, the mechanic, the lumberman, or the farmer. Our government is based upon equality of rights. All honest employments are honorable. The State cannot rightfully discriminate among occupations, for a discrimination in favor of one branch of industry is a discrimination adverse to all other branches. The State is equally to protect all, giving no undue advantages or special and exclusive preferences to any.

The constitution provides that “private property shall not be taken for public uses without just compensation, nor unless the public exigencies require it.” But here the question is, whether private property can be taken for private purposes without just or any compensation. No public exigency can require private spoliation for the private benefits of favored individuals. If the citizen is protected in his property by the constitution against the public, much more is he against private rapacity. If the public cannot take private property against the consent of the owner without just compensation, and only when it is required by some public exigency, most assuredly private property cannot be taken for private purposes without just or any compensation, and when it is not needed to meet any public exigency.

If it were proposed to pass an act enabling the inhabitants of the several towns by vote to transfer the farms or the horses or oxen, or a part thereof, from the rightful owner or owners to some manufacturer whom the majority might select, the monstrosity of such proposed legislation would be transparent. But the mode by which property would be taken from one or many and given to another or others can make no difference in the underlying principle. It is the taking that constitutes the wrong, no matter how taken. Whether the cow or ox be taken from the unwilling owner and given to a manufacturer, or the gift be of the money obtained by a sale made by the collector, or by the payment of the tax to avoid such sale, does not and cannot change the principle. In either case the cow or the ox, or the value thereof, is taken from the owner, and is given away by others without the owner’s consent. If a part of one’s estate may be given away, another and another portion may upon the same principle be given away, until all is gone. What is this but manifest and undisguised spoliation?

By the declaration of rights, “all men . . . have certain natural, inherent, and unalienable rights, among which are those of acquiring, possessing, and protecting property,” etc. But what inducement is there to acquire property, if the tenure of the acquisition is the will of others? How can one possess and protect property if the legislature can enable a majority to transfer by gift, through the medium of direct taxation for that end, such portions or the whole of one’s estate as it may deem expedient? Such a law may be for the benefit of the donee, but it cannot be for that of the people. Grant this power to the legislature and let it be exercised, and all security for property is at an end. The motive to acquire is destroyed. The enjoyment of possession is taken away. The power to protect is gone.

The constitution provides, that no person shall “be deprived of his life, liberty, property, or privileges, but by judgment of his peers or the law of the land.” Property taken by taxation is not taken by the judgment of our peers. A statute in direct violation of the primary principles of justice is not “the law of the land” within the meaning of the constitution. Every citizen holds life, liberty, and property by the law and under its protection. Every enactment is not of itself and necessarily a law or the law of the land. Such is not a statute passed for the very purpose of working a wrong and in violation of the constitution. To declare it to be so would render this part of the constitution nugatory and nonsensical. . . .

The objects for which money can rightfully be raised must be such as conduce to the public interest, and are for the well being of the people. . . . It would be simply an act of despotic power to sequester the property of an individual or individuals directly or indirectly by the means of taxation, for the purpose of giving it away against the will of the owner, and to those whom others than he may select.