

## Case 1: Slaughter-House Cases

The *Slaughter-House Cases* gave the Supreme Court its first opportunity to rule on the meaning of the post Civil War amendments.

In 1869, the Louisiana state legislature restricted livestock slaughtering in New Orleans to one area and one company on health grounds. It argued that butchering along the Mississippi River above the intake for the city's water supply was a pollution hazard which needed to be controlled. The incentive for such environmental consciousness was the bribery of the legislators by the powerful members of the corporation that was then given a near-monopoly by the legislature. Butchers whose livelihood was threatened by the law challenged it on the grounds that it interfered with the "privileges and immunities" of national citizenship given them under the Thirteenth and Fourteenth Amendments, and the latter's due process and equal protection clauses.

On April 14th, 1873, in its 5-4 decision against the butchers, the US Supreme Court sharply narrowed the Fourteenth Amendment, claiming it created *no new national rights* and that national citizenship was *not* supreme over state citizenship. Justice Samuel Miller, writing for the majority, denied that the Thirteenth and Fourteenth Amendments had altered federalism. Civil rights, he said, did not lie in the jurisdiction of the federal government, but "must rest for the security and protection where they have heretofore rested" – with the separate states. According to the Supreme Court, the "privileges and immunities" of national citizenship were limited to the right to petition the federal government for the redress of grievance, to travel to the seat of government, and to have protection on the high seas. It was up to the states to protect the civil rights of their citizens – if they choose to do so. Writing in dissent, Justice Stephen Field argued that if it is true that traditional federalism was not affected by the Fourteenth Amendment, then "it was a vain idle enactment, which accomplished nothing and most necessarily excited Congress and the people on its passage."

Later in the day, the Supreme Court issued its decision in *Bradwell v. State*, which was a foregone conclusion after the *Slaughter-House* judgment. Myra Bradwell, the publisher of a legal newspaper in Chicago, sought admission to the Illinois bar. The Illinois Supreme Court said she could not be admitted, claiming that it was the intent of the state legislature to prevent the entry of women. Ms. Bradwell took her case to the US Supreme Court on the grounds that her pursuit of her calling was a "privilege and immunity" of United States citizenship under the Fourteenth Amendment. She lost, 8-1. The court cited *Slaughter-House* and stated that "in the nature of this it is not every citizen of every age, sex, and condition that is qualified for every calling and position." It further argued that the paramount destiny and mission of women was to fulfill the noble and benign offices of wife and mother.

## Case 2: *US v. Cruikshank*

Background: April 13, 1873

This is the date of the single bloodiest event of Reconstruction. Freedmen in Grand Parish, Louisiana feared that white Democrats would take over the government after they refused to recognize the judge and sheriff commissioned by Louisiana's governor. For three weeks, the sheriff and his Black posse guarded the courthouse in the county seat of Colfax. Then, on Easter Sunday, a group of more than one hundred whites armed with rifles and cannon attacked the courthouse, set it on fire, and killed sixty members of the posse when they emerged from the burning building.

Eventually, ninety-six white attackers were identified by the US Department of Justice, and W.J. Cruikshank and eight others were arrested. They could not be charged with murder in the state court because the state government would not act. They could not be charged with murder in the federal courts since murder was not a federal crime. They were therefore charged under the Civil Rights Enforcement Act of 1870 with conspiring to interfere with the murdered African Americans' rights to assemble, and with depriving them of their right to "equal protection of the laws" with "due process of the law." They were convicted by the federal court, but appealed their conviction to the Supreme Court.

Three years later, the Supreme Court handed down its opinion in *US v. Cruikshank*, the case arising out of the 1873 Easter Sunday massacre. The court ruled unanimously in favor of Cruikshank and his fellow white plaintiffs. It rejected the view that it was the duty of the federal government to protect the rights of the Black posse. The court claimed that there was no proof that the attack was radically motivated, and that it was the sole obligation of the states – *not* the federal government – to protect rights guaranteed by the Bill of Rights such as the right of assembly. Chief Justice Morrison Waite then nullified the right of Congress to act to protect the rights of citizens if states refused to do so. He argued that the Fourteenth Amendment had nothing to do with private citizens whose rights might have been violated.

After this decision, the murderers were freed. A leader of the Louisiana Bar described local white reaction to the Supreme Court opinion in the following terms:

"When the decision was reached and the prisoners released, there was utmost joy in Louisiana, and with a return of confidence which gave best hopes for the future"  
(quoted in Howard Meyer, *The Amendment that Refused to Die*, p. 87)

For the rest of the nineteenth century and much of the next, federal prosecution of crimes against Black people was virtually impossible. The way had been paved by the courts for the rule of “lynch law.”

*Source: <http://www.rightsmatter.org/teachers/chapter9.html#cruikshank>*

### **Case 3: U.S v. Reese**

In January 1873, two election inspectors, Hiram Reese and Matthew Foushee, refused to allow William Garner, an African-American, to vote in a municipal election in Lexington, Kentucky. Reese and Foushee claimed Garner had failed to pay a tax of \$1.50, but Garner had attempted to pay the tax and was refused by a tax collector. The Enforcement Act of 1870, which defined penalties associated with violations of voting rights under the Fifteenth Amendment, stipulated that if an official refused to permit a citizen to perform an action required for voting, the citizen could present an affidavit that would qualify him. Reese and Foushee refused to accept Garner's affidavit. Reese and Foushee were charged with violating the Enforcement Act. On appeal, the Circuit Court of the United States for the District of Kentucky found the relevant sections of the Enforcement Act too broad, exceeding the bounds of the Fifteenth Amendment, and dismissed the indictments.

In an 8-1 decision authored by Chief Justice Morrison Waite, the Court concluded that the relevant sections of the Enforcement Act lacked the necessary, limiting language to qualify as enforcement of the Fifteenth Amendment. The Chief Justice first stated that the Fifteenth Amendment "does not confer the right of suffrage upon any one," but "prevents the States, or the United States, however, from giving preference...to one citizen of the United States over another on account of race, color, or previous condition of servitude." In examining the language of the Enforcement Act, the Court noted that, while the first two sections of the act explicitly referred to race in criminalizing interference with the right to vote, the relevant third and fourth sections refer only to the "aforesaid" offense. According to the Court, this language does not sufficiently tailor the law to qualify as "appropriate legislation" under the Enforcement Clause of the Fifteenth Amendment.

*Source: [http://www.oyez.org/cases/1851-1900/1874/1874\\_0](http://www.oyez.org/cases/1851-1900/1874/1874_0)*