

### The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment

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## Review

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**Labbe, Ronald M. and Lurie, Jonathan.** *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment.* University Press of Kansas, \$34.95 ISBN 700612904

Trashing rights

The Supreme Court and the clean up of New Orleans

The 1873 decision by the United States Supreme Court known as **The Slaughterhouse Cases** was the first case in which the high court expressed its views on the meaning and enforcement of the 14th Amendment, passed in the wake of Union victory in the Civil War to assure equality of civil rights for the freed slaves. It was, therefore, a legal precedent that was closely watched and fiercely argued by some of the most noted legal minds of mid-19th century America. Somewhat surprisingly, Ronald Labbe and Jonathan Lurie are the first authors to devote an entire monograph to the origins, legal arguments, and consequences of the case that did so much to shape the legal landscape of Reconstruction.

The authors begin with an in-depth study of the public health problems of New Orleans, which was unquestionably among the filthiest and unhealthiest cities in antebellum America. New Orleans' semi-tropical weather; its high water table and extensive areas of stagnant water; and the *laissez faire* attitudes that city leaders took toward the problem of sanitation all contributed to the serious nature of this threat. Before the Civil War, epidemics of yellow fever periodically swept through the population, sometimes killing tens of thousands and forcing those who survived to flee the city. Until the Union Army occupied it under the command of Benjamin Butler in 1862, plans to clean the city and prevent the spread of disease mostly remained wishful thinking.

Labbe and Lurie make it clear that Butler and the thousands of New England Yankees in blue uniforms initiated a new era, due in no small part to the power

of military compulsion. They hired a new sanitation force that cleaned the streets, dredged the shallow drainage canals, and began to rigorously police the river levees to prevent the inhabitants from indiscriminately dumping refuse. The first so-called carpetbagger governor of Louisiana, Henry C. Warmoth, who had been a Union Army officer in New Orleans during the war, signed a bill in 1869 creating a slaughterhouse company that removed all butchering in the city to a central site downstream from New Orleans, on the reasonable assumption that this would curtail the spread of disease and improve the quality of drinking water taken from the Mississippi.

In what is probably the most insightful part of their book, Labbe and Lurie lay out how former Supreme Court justice Joseph Campbell, who had concurred with Roger Taney's infamous 1857 *Dred Scott* decision and subsequently became a staunch supporter of the Confederacy, decided to use a legal challenge to Warmoth's slaughterhouse company charter to attack the Grant Administration's enforcement of the 14th amendment's provisions for federal protection of equal rights. Acting as an attorney for white butchers opposed to the state mandated slaughterhouse company, Campbell claimed that a legislature dominated by corrupt carpetbaggers and ignorant blacks had created an illegal monopoly that denied his clients their constitutionally protected rights to earn a living under the new amendment's equal protection clause. A bewildering series of state and federal court cases ensued, punctuated by exhausting rounds of injunctions and counter-injunctions by both sides. In 1872 and 1873 the high court heard oral arguments in the case before handing down its decision.

The decision itself was, at first blush, a defeat for Campbell and the opponents of the slaughterhouse company. By a 5-4 margin, the high court upheld the right of the Louisiana state legislature to exercise its police powers in creating the slaughterhouse company. In an unnecessary *obiter dicta*, however, Justice Samuel Miller defined federally protected rights so narrowly that it dealt a serious blow to the Grant administration's efforts to use the federal courts to protect the freedmen from white supremacist violence.

This is the central consequence of the decision for the outcome of Reconstruction, and one that the authors appear neither to recognize nor adequately address. Among the assertions they make is the astounding conclusion on page 9 that race is one of the less important factors in the *Slaughterhouse* story. It certainly did not seem that way to either black or white Louisianans at the time. Warmoth's successor, Governor William Pitt Kellogg, in

his report to a Congressional committee investigating Reconstruction violence in Louisiana, noticed how carefully white supremacist leaders in New Orleans followed the Campbell's first legal victory in federal appeals court, remarking that it was hailed with the wildest demonstrations of approval; it was regarded as establishing the principle that hereafter no white man could be punished for killing a negro, and as virtually wiping the Ku Klux laws off the statute books. Defense attorneys preparing for the federal prosecutions in the massacre of black militiamen at Colfax in 1873, R. H. Marr and E. John Ellis, immediately seized upon the legal reasoning in **The Slaughterhouse Cases** decision. They argued against the indictment and trial of their clients by challenging the constitutionality of the 1871 Enforcement Act, better known as the Ku Klux Klan Act, which had been passed to uphold the 14th Amendment's Equal Protection Clause. Robert J. Kaczorowski, in *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice and Civil Rights, 1866-1876* (1985), demonstrates that the case led to yet another Supreme Court decision in *United States vs. Cruikshank* in 1876, which voided all the enforcement acts, making it practically impossible for African Americans to use the federal court system to protect themselves from white terrorist attacks. For most historians of Reconstruction today, the connection between **The Slaughterhouse Cases** decision and the explosion of white supremacist campaigns against black and white Republicans in the South after 1873 is unmistakable, and forms a tragic milestone in the end of Reconstruction and a descent into the era of Jim Crow.

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