Court of Tennessee acted, the ultimate vindication of any federal right lies with this Court.

The District Court was here without power to enjoin petitioner from further prosecuting its suit in the Tennessee state court.

Reversed.

The CHIEF JUSTICE, MR. JUSTICE ROBERTS and MR. JUSTICE REED, concurring:

The reasons which led to dissent in *Toucey* v. *New York Life Insurance Co.*, and *Phoenix Finance Corp.* v. *Iowa-Wisconsin Bridge Co.*, *ante*, p. 118, do not exist in this case. There is no federal decree and therefore no need of an injunction to protect the decree or prevent relitigation.

EDWARDS *v.* CALIFORNIA.

APPEAL FROM THE SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF YUBA.

No. 17. Argued April 28, 29, 1941. Reargued October 21, 1941.—Decided November 24, 1941.

1. Transportation of persons from one State into another is interstate commerce. P. 172.
2. A statute of California making it a misdemeanor for anyone knowingly to bring or assist in bringing into the State a nonresident "indigent person," *held* invalid as an unconstitutional burden on interstate commerce. P. 174.

   For the purposes of this case it is assumed that the term "indigent person," though not confined to the physically or mentally incapacitated, includes only persons who are presently destitute of property and without resources to obtain the necessities of life, and who have no relatives or friends able and willing to support them. P. 172.

   How far the regulatory power of Congress extends over such transportation, and whether the attempted state regulation is also prohibited by other provisions of the Constitution, are questions not decided in this case and upon which the majority of the Court expresses no opinion. Pp. 176, 177.

3. Remarks in *New York* v. *Miln*, 11 Pet. 102, and other cases, concerning the power of a State to exclude "paupers" are considered and the meaning of that term discussed. P. 176.

Reversed.

APPEAL from a judgment of the Superior Court of California which affirmed the conviction of Edwards under a California statute declaring it to be a misdemeanor for any person to bring, or assist in bringing, into the State any nonresident of the State, knowing him to be an indigent person. The court below was the highest court to which an appeal could be taken under the laws of California. The case was argued here, and reargument was ordered, at the 1940 Term, 313 U. S. 545.

Mr. Samuel Slaff for the appellant.

The transient unemployed comprise most of the nonresidents who come into California. The act of bringing or assisting in bringing almost any of these people into the State has been made a crime, for it is clear that practically all migratory-casual labor and transient unemployed fall within the classification of "indigent persons."

The passage of persons from State to State constitutes interstate commerce, *Gibbons* v. *Ogden*, 9 Wheat. 1; *Hoke* v. *United States*, 227 U. S. 308; *Gooch* v. *United States*, 297 U. S. 124; *United States* v. *Miller*, 17 F. Supp. 65; *Covington & Cincinnati Bridge Co.* v. *Kentucky*, 154 U. S. 204, whether they be moved by common carrier or otherwise. *Caminetti* v. *United States*, 242 U. S. 470; *United States* v. *Burch*, 226 F. 974.

The effect of the statute is to bar the movement of indigent persons into California, and to compel their removal therefrom at the pleasure of the authorities.

A natural tendency of the statute is to intimidate, under threat of criminal prosecution, not only one who would transport an indigent migrant, but also the migrants themselves. Its consequence often will be to leave the

latter substantially helpless to move, compelling them to remain at their place of origin where employment is wanting and opportunity lacking.

If the movement of indigent migrants into a State may be barred or impeded because of fear of the creation of a burden which may subsequently fall on the residents of that State, then migration out of a State might also be restrained where depopulation would increase the burden of governmental indebtedness on those remaining. If the principle of freezing population in areas of origin is constitutionally sound, there is legal sanction for the growth of an economic condition of virtual peonage, chaining people to that part of the land where accident of birth has first placed them.

By impeding the free movement of employables across state lines, the statute interposes a barrier against the competition of the labor of nonresidents with that of residents. Cf. *Best & Co.* v. *Maxwell,* 311 U. S. 454, 457. The absence of capital cannot serve to fetter the merchant or deny him a regional or national market. *Baldwin* v. *Seelig,* 294 U. S. 511, 527.

Poverty is not a "moral pestilence." *New York* v. *Miln,* 11 Pet. 102, 142. Migrants are not improper subjects of commerce. *Asbell* v. *Kansas,* 209 U. S. 251; *Baldwin* v. *Seelig, supra,* 525.

Interstate trade, the redistribution of population from marginal and sub-marginal areas, the right to migrate in pursuit of livelihood, freedom of opportunity, freedom of passage from State to State, the needs of national industry, the requirements of national defense—these are not merely local, internal affairs and matters on which the State may have some power to affect interstate commerce. They are matters affected with a vital national interest; they are the very fabric of national unity. Whether by the statute in question California seeks to bar the passage of indigents directly or indirectly, her

action in either event invades the power of the National Government over interstate commerce.

The statute is void on its face and operates to deprive the appellant of liberty without due process of law and to deny him the equal protection of the laws.

It is beyond the power of the State to make a crime of assisting another in the exercise of his constitutional rights. *De Jonge* v. *Oregon*, 299 U. S. 353, 357, 362 *et seq.* Could Duncan have been barred from California, solely because of his indigency, without being deprived of liberty without due process? Cf. *Schneider* v. *Irvington*, 308 U. S. 147, 161. The right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Fourteenth Amendment to secure. *Truax* v. *Raich*, 239 U. S. 33, 41. Implicit therein is the right to go to any place where those occupations may require.

Freedom of movement and of residence must be a fundamental right in a democratic State. Whether within the privileges and immunities clause of the Fourteenth Amendment or within the term liberty in the due process clause, it is a basic constitutional right, the more valuable to those who migrate because of economic compulsions.

The protection of our form of government may not be minified by reasons of temporary economic expediency. "Those who would enjoy the blessings of liberty must, like men, undergo the fatigues of supporting it." Thomas Paine, complete works, vol. 2, 135. The Fourteenth Amendment is no fair weather protection of the liberties of persons. Its operation is not limited to times of economic security when there is no pressure upon States to curtail liberty. It furnishes a "guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society." *United States* v. *Cruikshank*, 92 U. S. 542, 554.

By special leave of Court, *Mr. John H. Tolan,* with whom *Mr. Irwin W. Silverman* was on the brief, for the Select Committee of the House of Representatives of the United States (appointed pursuant to House Resolution No. 63, April 22, 1940, to investigate interstate migration of destitute citizens), as *amicus curiae,* urging reversal.

The statute contravenes the privileges and immunities clauses of the Constitution. Art. IV, § 2; Fourteenth Amendment.

Art. IV, § 2, like Art. IV of the Articles of Confederation, was intended to insure to each of the citizens of the several States the fundamental right to move about freely and easily from State to State in search of opportunity. Expressions of the courts confirm this conclusion. See *Corfield* v. *Coryell,* 6 Fed. Cas. 546, 551; *Passenger Cases,* 7 How. 283, 492; *Crandall* v. *Nevada,* 6 Wall. 35, 49; *Paul* v. *Virginia,* 8 Wall. 168, 180; *Ward* v. *Maryland,* 12 Wall. 418, 430; *Slaughter-House Cases,* 16 Wall. 36, 76; *United States* v. *Wheeler,* 254 U. S. 281, 290, 297; *Truax* v. *Raich,* 239 U. S. 33. Distinguishing cases dealing with quarantines of persons and products.

The proposition that a State, under its police powers, may exclude "paupers," is not sustained by the cases that have been cited for it. Distinguishing *New York* v. *Miln,* 11 Pet. 102, and other cases in this Court.

The *Miln* case was directly or impliedly overruled by *Henderson* v. *Wickham,* 92 U. S. 259.

This Court has never squarely passed upon the question whether a State may, in the exercise of its police power, exclude paupers from its limits. There is, however, ample authority in the state courts to the effect that a State may prevent persons who are lunatics, idiots, vagrants, aged, or infirm, and who are without any visible means of support, from coming within its limits. But, unfortunately, in most of these cases, the decisions do not turn on whether these persons are paupers or indigents, but rather on the question of a particular locality's support or nonsupport of these people.

In each of these cases, exclusion is narrowly limited to those who are physically or mentally handicapped and without some means of support; and, in no case has this doctrine been expanded to include persons who are not imbeciles, who are not drunkards, who are not vagrants or tramps, who are not diseased, who are not aged or infirm, nor as to persons who have always worked, persons who are willing to work, persons who are able to work and who are competent in every other respect, except that they are temporarily without work and without funds.

This state statute, applying to all modes of interstate transportation of persons into California, imposes the burden upon every carrier into that State, if it would avoid criminal liability, of determining for itself whether it has aboard any persons who may be deemed "indigent"; yet the content of that term is wholly undefined.

The statute is not sufficiently explicit. It fails to inform those subject to its penalties of what conduct will render them liable. It is therefore void for uncertainty. *Ex parte Leach,* 215 Cal. 536; *Hewit* v. *State Board of Medical Examiners,* 148 Cal. 590; *State* v. *Partlow,* 91 N. C. 550.

The Act obliges the carrier to conduct an investigation of its own into the health, morals, personal and financial position, of those aboard, in order to determine who is "indigent." Ignorance and mistake do not excuse. The statute makes no provision for its administration, or for a hearing, or for an appeal, as to whether the carrier has complied with its provisions. Upon arrival at the state border, the carrier will be subjected to an equally rigorous inspection by state officials, or will be required to stop at a quarantine station, or at some port of entry. This double investigation will involve the expenditure of enormous sums by the carriers, and will exclude from interstate passage on public convey-

ances thousands of citizens whom the carriers may regard as "poor risks."

The controlling factor is not whether such a law or regulation affects interstate or foreign commerce, but whether the type of commerce is within the exclusive jurisdiction of Congress.

No one can deny that this Act imposes a definite, arbitrary interference and burden on interstate commerce, over which Congress has exclusive jurisdiction.

The question of interstate migration is not for each State to regulate individually and without regard to the regulations enacted by the other States. Nor is it a problem which each State in intercourse with all others can settle for itself, without interfering with the power over interstate commerce delegated to Congress by the Constitution.

The statute must also fall for the reason that it violates the Equal Protection Clause of the Fourteenth Amendment, *Barbier* v. *Connolly*, 113 U. S. 27, 31. It declares, in effect, that a person, competent and able and willing to work and who can afford to pay for his transportation on a public carrier, is not an indigent; while a person who possesses like qualifications, but who can not afford to pay for his transportation, is an indigent. See *Truax* v. *Raich*, 239 U. S. 33.

Mr. Charles A. Wetmore, Jr. submitted on the original argument for appellee.

The statute is a valid exercise of the police power of the State.

In *New York* v. *Miln*, 11 Pet. 102, this Court recognized the right of a State to exclude paupers from its boundaries. See also, *Hannibal & St. Joseph R. Co.* v. *Husen*, 95 U. S. 465; *In re Ah Fong*, 3 Saw. 144, 1 Fed. Cas. 213; *Henderson* v. *Wickham*, 92 U. S. 259; *Chy Lung* v. *Freeman*, 92 U. S. 275; *Passenger Cases*, 7 How. 283; *Plumley* v. *Massachusetts*, 155 U. S. 461; *Missouri, K. & T. Ry.* v. *Haber*, 169 U. S. 613.

In *Kaoru Yamataya* v. *Fisher* (the "Japanese Immigrant Case"), 189 U. S. 86, the Court held that the exclusion of paupers was a police measure properly to be exercised by the Federal Government. Similarly, exclusion by the States is but the States' exercise of the same kind of power, and is valid under the reservation of such power by the several States under the Constitution.

Many other States have statutes similar to the California statute. *State* v. *Cornish,* 66 N. H. 329; *Pitkin County* v. *Law,* 3 Colo. App. 328; *Superintendents of the Poor* v. *Nelson,* 75 Mich. 154; *Coe* v. *Smith,* 24 Wend. 341.

Although in 1901, when the statute under consideration was originally enacted, there was no acute pauper immigration to California, the last decade has developed from this source a problem staggering in its proportions.

A social problem in the South and Southwest for over half a century, the "poor white" tenants and share croppers, following reduction of cotton planting, droughts and adverse conditions for small-scale farming, swarmed into California. These unfortunate people were usually destitute when they arrived. Their ordinary routine upon coming to California has been, first to go on federal relief for one year, and then on to state and county relief rolls indefinitely. After they earn a little money in the harvests, they send back home transportation for their relatives, generally the aged and infirm, and these immediately become and continue to be public charges.

They avoid our cities and even our towns by crowding together, in the open country and in camps, under living conditions shocking both as to sanitation and social environment. Underfed for many generations, they bring with them the various nutritional diseases of the South. Their presence here upon public relief, with their habitual unbalanced diet and consequently lowered body resistance, means a constant threat of epidemics. Venereal diseases

and tuberculosis are common with them, and are on the increase. The increase of rape and incest are readily traceable to the crowded conditions in which these people are forced to live. Petty crime among them has featured the criminal calendars of every community into which they have moved.

As proven by experience in agricultural strikes, they are readily led into riots by agitators; although, it must be said, they stubbornly resist all subversive influences, being loyal Americans whose only wish is for a better chance in life.

Their coming here has alarmingly increased our taxes and the cost of welfare outlays, old age pensions, and the care of the criminal, the indigent sick, the blind and the insane.

Should the States that have so long tolerated, and even fostered, the social conditions that have reduced these people to their state of poverty and wretchedness, be able to get rid of them by low relief and insignificant welfare allowances and drive them into California to become our public charges, upon our immeasurably higher standard of social services? Naturally, when these people can live on relief in California better than they can by working in Mississippi, Arkansas, Texas or Oklahoma, they will continue to come to this State.

If a statute be a proper police measure, it is valid even though interstate commerce may be incidentally affected. *Bayside Fish Flour Co.* v. *Gentry*, 297 U. S. 442; *Great Northern R. Co.* v. *Washington*, 300 U. S. 154; *Denver & R. G. R. Co.* v. *Denver*, 250 U. S. 241. A state regulation declaring that paupers, indigents, and vagabonds are not legitimate subjects of interstate commerce is not violative of the commerce clause. *License Cases*, 5 How. 504; *Passenger Cases*, 7 How. 283.

The Fourteenth Amendment protects the life, liberty and property of persons within the boundaries of the

United States, but this protection is subject to reasonable police regulation by the States. *Nebbia* v. *New York,* 291 U. S. 502; *Lacoste* v. *Department of Conservation,* 263 U. S. 545; *Keller* v. *United States,* 213 U. S. 138.

Mr. W. T. Sweigert, Assistant Attorney General of California, with whom *Messrs. Earl Warren,* Attorney General, and *Hiram W. Johnson, 3rd,* Deputy Attorney General, were on the brief, on the reargument, for appellee.

Section 2615 does not in terms exclude any indigent person, nor does it in effect exclude any indigent family. It applies only to other persons, whether citizens of California or not, who, as volunteers and without any tie of legal support to the indigent, knowingly bring, or assist in bringing, indigent persons into the State.

Such act of stimulating, promoting or assisting an influx of destitute persons, over and above a normal entry of indigents themselves, is, in itself, related to a local problem affecting the health, safety, welfare and economic resources of the State.

The statute, in its reference to indigent persons, contemplates only a limited class of persons, *i. e.,* persons so destitute of means for the support of themselves and their families as to be dependent on public aid.

Congress has not acted in the field of regulating the movement of such persons between States but has merely made available some funds to assist in their care after arrival, and even in this respect the aid consists merely in the permissive use by certain federal agencies of such appropriations as may be available, there being no permanent or comprehensive federal plan for the purpose.

Congress has acted to exclude alien "paupers," "professional beggars," "vagrants," "persons likely to become a public charge" and "persons whose ticket or passage is paid for by the money of another, or who are assisted by

others to come . . ." (U. S. C. Tit. 8, § 3), but has not provided any similar legislation for interstate migration.

Section 2615 does not contravene the privileges and immunities clause of Article IV, § 2 of the Constitution. The Articles of Confederation expressly excepted "paupers, vagabonds, and fugitives from justice" from those inhabitants of each State entitled to all privileges and immunities of the citizens of the several States; and Article IV, § 2 of the Constitution was drawn with reference to the corresponding clause of the Articles of Confederation and was intended to perpetuate the limitations of the former. *United States* v. *Wheeler,* 254 U. S. 281, 296.

The right of persons to move across state boundaries is not referable to the privileges and immunities clause of the Fourteenth Amendment. Even if that clause covers the right of ingress and egress between States, it does not, when read in the light of the exception implied in Article IV, § 2, in respect to paupers, and in the light of the reiterated pronouncements of this Court with respect to paupers, apply to ingress and egress of paupers, persons so destitute as to be dependent on public aid.

In any event, appellant is in no position to assert the invalidity of § 2615 under these particular constitutional provisions, because he has not been deprived of any privilege or immunity thereby secured, even if it be assumed that an indigent nonresident could rely upon them in a proper case.

MR. JUSTICE BYRNES delivered the opinion of the Court.

The facts of this case are simple and are not disputed. Appellant is a citizen of the United States and a resident of California. In December, 1939, he left his home in Marysville, California, for Spur, Texas, with the intention of bringing back to Marysville his wife's brother, Frank Duncan, a citizen of the United States and a resident of Texas.

When he arrived in Texas, appellant learned that Duncan had last been employed by the Works Progress Administration. Appellant thus became aware of the fact that Duncan was an indigent person and he continued to be aware of it throughout the period involved in this case. The two men agreed that appellant should transport Duncan from Texas to Marysville in appellant's automobile. Accordingly, they left Spur on January 1, 1940, entered California by way of Arizona on January 3, and reached Marysville on January 5. When he left Texas, Duncan had about $20. It had all been spent by the time he reached Marysville. He lived with appellant for about ten days until he obtained financial assistance from the Farm Security Administration. During the ten day interval, he had no employment.

In Justice Court a complaint was filed against appellant under § 2615 of the Welfare and Institutions Code of California, which provides: "Every person, firm or corporation or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor." On demurrer to the complaint, appellant urged that the Section violated several provisions of the Federal Constitution. The demurrer was overruled, the cause was tried, appellant was convicted and sentenced to six months imprisonment in the county jail, and sentence was suspended.

On appeal to the Superior Court of Yuba County, the facts as stated above were stipulated. The Superior Court, although regarding as "close" the question of the validity of the Section, felt "constrained to uphold the statute as a valid exercise of the police power of the State of California." Consequently, the conviction was affirmed. No appeal to a higher state court was open to appellant. We noted probable jurisdiction early last

term, and later ordered reargument (313 U. S. 545) which has been held.

At the threshold of our inquiry a question arises with respect to the interpretation of § 2615. On reargument, the Attorney General of California has submitted an exposition of the history of the Section, which reveals that statutes similar, though not identical, to it have been in effect in California since 1860. (See Cal. Stat. (1860) 213; Cal. Stat. (1901) 636; Cal. Stat. (1933) 2005). Neither under these forerunners nor under § 2615 itself does the term "indigent person" seem to have been accorded an authoritative interpretation by the California courts. The appellee claims for the Section a very limited scope. It urges that the term "indigent person" must be taken to include only persons who are presently destitute of property and without resources to obtain the necessities of life, and who have no relatives or friends able and willing to support them. It is conceded, however, that the term is not confined to those who are physically or mentally incapacitated. While the generality of the language of the Section contains no hint of these limitations, we are content to assign to the term this narrow meaning.

Article I, § 8 of the Constitution delegates to the Congress the authority to regulate interstate commerce. And it is settled beyond question that the transportation of persons is "commerce," within the meaning of that provision.[1] It is nevertheless true, that the States are not wholly precluded from exercising their police power in matters of local concern even though they may thereby affect inter-

[1] *Gloucester Ferry Co.* v. *Pennsylvania,* 114 U. S. 196, 203; *Leisy* v. *Hardin,* 135 U. S. 100, 112; *Covington Bridge Co.* v. *Kentucky,* 154 U. S. 204, 218; *Hoke* v. *United States,* 227 U. S. 308, 320; *Caminetti* v. *United States,* 242 U. S. 470, 491; *United States* v. *Hill,* 248 U. S. 420, 423; *Mitchell* v. *United States,* 313 U. S. 80. Cf. The Federal Kidnaping Act of 1932, U. S. C., Title 18, §§ 408a–408c. It is immaterial whether or not the transportation is commercial in character. See *Caminetti* v. *United States, supra.*

state commerce. *California* v. *Thompson,* 313 U. S. 109, 113. The issue presented in this case, therefore, is whether the prohibition embodied in § 2615 against the "bringing" or transportation of indigent persons into California is within the police power of that State. We think that it is not, and hold that it is an unconstitutional barrier to interstate commerce.

The grave and perplexing social and economic dislocation which this statute reflects is a matter of common knowledge and concern. We are not unmindful of it. We appreciate that the spectacle of large segments of our population constantly on the move has given rise to urgent demands upon the ingenuity of government. Both the brief of the Attorney General of California and that of the Chairman of the Select Committee of the House of Representatives of the United States, as *amicus curiae,* have sharpened this appreciation. The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not conceive it our function to pass upon "the wisdom, need, or appropriateness" of the legislative efforts of the States to solve such difficulties. See *Olsen* v. *Nebraska,* 313 U. S. 236, 246.

But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders. It is frequently the case that a State might gain a momentary respite from the pressure of events by the simple expedient of shutting its gates to the outside world. But, in the words of Mr. Justice Cardozo: "The Constitution was

framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin* v. *Seelig*, 294 U.S. 511, 523.

It is difficult to conceive of a statute more squarely in conflict with this theory than the Section challenged here. Its express purpose and inevitable effect is to prohibit the transportation of indigent persons across the California border. The burden upon interstate commerce is intended and immediate; it is the plain and sole function of the statute. Moreover, the indigent non-residents who are the real victims of the statute are deprived of the opportunity to exert political pressure upon the California legislature in order to obtain a change in policy. *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 185, n. 2. We think this statute must fail under any known test of the validity of State interference with interstate commerce.

It is urged, however, that the concept which underlies § 2615 enjoys a firm basis in English and American history.[2] This is the notion that each community should care for its own indigent, that relief is solely the responsibility of local government. Of this it must first be said that we are not now called upon to determine anything other than the propriety of an attempt by a State to prohibit the transportation of indigent non-residents into its territory. The nature and extent of its obligation to afford relief to newcomers is not here involved. We do, however, suggest that the theory of the Elizabethan poor laws no longer fits the facts. Recent years, and particularly the past decade, have been marked by a growing recognition that in an industrial society the task of pro-

[2] See Hirsch, H. M., *Our Settlement Laws* (N. Y. Dept. of Social Welfare, 1933), *passim*.

viding assistance to the needy has ceased to be local in character. The duty to share the burden, if not wholly to assume it, has been recognized not only by State governments, but by the Federal government as well. The changed attitude is reflected in the Social Security laws under which the Federal and State governments coöperate for the care of the aged, the blind and dependent children. U. S. C., Title 42, §§ 301–1307, esp. §§ 301, 501, 601, 701, 721, 801, 1201. It is reflected in the works programs under which work is furnished the unemployed, with the States supplying approximately 25% and the Federal government approximately 75% of the cost. See, *e. g.*, Joint Resolution of June 26, 1940, c. 432, § 1 (d), 54 Stat. 611, 613. It is further reflected in the Farm Security laws, under which the entire cost of the relief provisions is borne by the Federal government. *Id.*, at §§ 2 (a), 2 (b), 2 (d).

Indeed, the record in this very case illustrates the inadequate basis in fact for the theory that relief is presently a local matter. Before leaving Texas, Duncan had received assistance from the Works Progress Administration. After arriving in California he was aided by the Farm Security Administration, which, as we have said, is wholly financed by the Federal government. This is not to say that our judgment would be different if Duncan had received relief from local agencies in Texas and California. Nor is it to suggest that the financial burden of assistance to indigent persons does not continue to fall heavily upon local and State governments. It is only to illustrate that in not inconsiderable measure the relief of the needy has become the common responsibility and concern of the whole nation.

What has been said with respect to financing relief is not without its bearing upon the regulation of the transportation of indigent persons. For the social phenomenon of large-scale interstate migration is as certainly a matter of national concern as the provision of assistance to those who have found a permanent or temporary abode.

Moreover, and unlike the relief problem, this phenomenon does not admit of diverse treatment by the several States. The prohibition against transporting indigent non-residents into one State is an open invitation to retaliatory measures, and the burdens upon the transportation of such persons become cumulative. Moreover, it would be a virtual impossibility for migrants and those who transport them to acquaint themselves with the peculiar rules of admission of many States. "This Court has repeatedly declared that the grant [the commerce clause] established the immunity of interstate commerce from the control of the States respecting all those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation must be prescribed by a single authority." *Milk Control Board* v. *Eisenberg Farm Products,* 306 U. S. 346, 351. We are of the opinion that the transportation of indigent persons from State to State clearly falls within this class of subjects. The scope of Congressional power to deal with this problem we are not now called upon to decide.

There remains to be noticed only the contention that the limitation upon State power to interfere with the interstate transportation of persons is subject to an exception in the case of "paupers." It is true that support for this contention may be found in early decisions of this Court. In *City of New York* v. *Miln,* 11 Pet. 102, at 143, it was said that it is "as competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against the physical pestilence, which may arise from unsound and infectious articles imported, . . ." This language has been casually repeated in numerous later cases up to the turn of the century. See, *e. g., Passenger Cases,* 7 How. 283, 426 and 466–467; *Railway Company* v. *Husen,* 95 U. S. 465, 471; *Plumley* v. *Massachusetts,* 155 U. S. 461, 478; *Missouri, K. & T. Ry.*

Co. v. *Haber*, 169 U. S. 613, 629. In none of these cases, however, was the power of a State to exclude "paupers" actually involved.

Whether an able-bodied but unemployed person like Duncan is a "pauper" within the historical meaning of the term is open to considerable doubt. See 53 Harvard L. Rev. 1031, 1032. But assuming that the term is applicable to him and to persons similarly situated, we do not consider ourselves bound by the language referred to. *City of New York* v. *Miln* was decided in 1837. Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a "moral pestilence." Poverty and immorality are not synonymous.

We are of the opinion that § 2615 is not a valid exercise of the police power of California; that it imposes an unconstitutional burden upon interstate commerce, and that the conviction under it cannot be sustained. In the view we have taken it is unnecessary to decide whether the Section is repugnant to other provisions of the Constitution.

Reversed.

MR. JUSTICE DOUGLAS, concurring:

I express no view on whether or not the statute here in question runs afoul of Art. I, § 8 of the Constitution granting to Congress the power "to regulate Commerce with foreign Nations, and among the several States." But I am of the opinion that the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines. While the opinion of the Court expresses no view on that issue, the right involved is so fundamental that I deem it appropriate to indicate the reach of the constitutional question which is present.

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The right to move freely from State to State is an incident of *national* citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. Mr. Justice Moody in *Twining* v. *New Jersey*, 211 U. S. 78, 97, stated, "Privileges and immunities of citizens of the United States . . . are only such as arise out of the nature and essential character of the National Government, or are specifically granted or secured to all citizens or persons by the Constitution of the United States." And he went on to state that one of those rights of *national* citizenship was "the right to pass freely from State to State." *Id.*, p. 97. Now it is apparent that this right is not specifically granted by the Constitution. Yet before the Fourteenth Amendment it was recognized as a right fundamental to the national character of our Federal government. It was so decided in 1867 by *Crandall* v. *Nevada*, 6 Wall. 35. In that case this Court struck down a Nevada tax "upon every person leaving the State" by common carrier. Mr. Justice Miller writing for the Court held that the right to move freely throughout the nation was a right of *national* citizenship. That the right was implied did not make it any the less "guaranteed" by the Constitution. *Id.*, p. 47. To be sure, he emphasized that the Nevada statute would obstruct the right of a citizen to travel to the seat of his national government or its offices throughout the country. And see *United States* v. *Wheeler*, 254 U. S. 281, 299. But there is not a shred of evidence in the record of the *Crandall* case that the persons there involved were en route on any such mission any more than it appears in this case that Duncan entered California to interview some federal agency. The point which Mr. Justice Miller made was merely in illustration of the damage and havoc which would ensue if the States had the power to prevent the free movement of citizens from one State to another.

This is emphasized by his quotation from Chief Justice Taney's dissenting opinion in the *Passenger Cases*, 7 How. 283, 492: "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." Hence the *dictum* in *United States* v. *Wheeler, supra*, p. 299, which attempts to limit the *Crandall* case to a holding that the statute in question directly burdened "the performance by the United States of its governmental functions" and limited the "rights of the citizens growing out of such functions," does not bear analysis.

So, when the Fourteenth Amendment was adopted in 1868, it had been squarely and authoritatively settled that the right to move freely from State to State was a right of *national* citizenship. As such it was protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. *Slaughter House Cases*, 16 Wall. 36, 74, 79. In the latter case Mr. Justice Miller recognized that it was so "protected by implied guarantees" of the Constitution. *Id.*, p. 79. That was also acknowledged in *Twining* v. *New Jersey, supra*. And Chief Justice Fuller in *Williams* v. *Fears*, 179 U. S. 270, 274, stated: "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution."

In the face of this history I cannot accede to the suggestion (*Helson & Randolph* v. *Kentucky*, 279 U. S. 245, 251; *Colgate* v. *Harvey*, 296 U. S. 404, 444) that the commerce clause is the appropriate explanation of *Crandall* v. *Nevada, supra*. Two of the Justices in that case expressly

put the decision on the commerce clause; the others put it on the broader ground of rights of *national* citizenship, Mr. Justice Miller stating that "we do not concede that the question before us is to be determined" by the commerce clause. *Id.*, p. 43. On that broader ground it should continue to rest.

To be sure, there are expressions in the cases that this right of free movement of persons is an incident of *state* citizenship protected against discriminatory state action by Art. IV, § 2 of the Constitution. *Corfield* v. *Coryell*, 4 Wash. C. C. 371, 381; *Paul* v. *Virginia*, 8 Wall. 168, 180; *Ward* v. *Maryland*, 12 Wall. 418, 430; *United States* v. *Wheeler, supra*, pp. 298–299. Under the *dicta* of those cases the statute in the instant case would not survive, since California is curtailing only the free movement of indigents who are non-residents of that State. But the thrust of the *Crandall* case is deeper. Mr. Justice Miller adverted to *Corfield* v. *Coryell*, *Paul* v. *Virginia*, and *Ward* v. *Maryland*, when he stated in the *Slaughter House Cases* that the right protected by the *Crandall* case was a right of *national* citizenship arising from the "implied guarantees" of the Constitution. 16 Wall. at pp. 75–79. But his failure to classify that right as one of *state* citizenship protected solely by Art. IV, § 2, underscores his view that the free movement of persons throughout this nation was a right of *national* citizenship. It likewise emphasizes that Art. IV, § 2, whatever its reach, is primarily concerned with the incidents of residence (the matter involved in *United States* v. *Wheeler, supra*) and the exercise of rights within a State, so that a citizen of one State is not in a "condition of alienage when he is within or when he removes to another State." *Blake* v. *McClung*, 172 U. S. 239, 256. Furthermore, Art. IV, § 2, cannot explain the *Crandall* decision. The statute in that case applied to citizens of Nevada as well as to citizens of

other States. That is to say, Nevada was not "discriminating against citizens of other States in favor of its own." *Hague* v. *Committee for Industrial Organization,* 307 U. S. 496, 511 and cases cited. Thus it is plain that the right of free ingress and egress rises to a higher constitutional dignity than that afforded by *state* citizenship.

The conclusion that the right of free movement is a right of *national* citizenship stands on firm historical ground. If a state tax on that movement, as in the *Crandall* case, is invalid, *a fortiori* a state statute which obstructs or in substance prevents that movement must fall. That result necessarily follows unless perchance a State can curtail the right of free movement of those who are poor or destitute. But to allow such an exception to be engrafted on the rights of *national* citizenship would be to contravene every conception of national unity. It would also introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. The result would be a substantial dilution of the rights of *national* citizenship, a serious impairment of the principles of equality. Since the state statute here challenged involves such consequences, it runs afoul of the privileges and immunities clause of the Fourteenth Amendment.

MR. JUSTICE BLACK and MR. JUSTICE MURPHY join in this opinion.

MR. JUSTICE JACKSON, concurring:

I concur in the result reached by the Court, and I agree that the grounds of its decision are permissible ones under

applicable authorities. But the migrations of a human being, of whom it is charged that he possesses nothing that can be sold and has no wherewithal to buy, do not fit easily into my notions as to what is commerce. To hold that the measure of his rights is the commerce clause is likely to result eventually either in distorting the commercial law or in denaturing human rights. I turn, therefore, away from principles by which commerce is regulated to that clause of the Constitution by virtue of which Duncan is a citizen of the United States and which forbids any State to abridge his privileges or immunities as such.

This clause was adopted to make United States citizenship the dominant and paramount allegiance among us. The return which the law had long associated with allegiance was protection. The power of citizenship as a shield against oppression was widely known from the example of Paul's Roman citizenship, which sent the centurion scurrying to his higher-ups with the message: "Take heed what thou doest: for this man is a Roman." I suppose none of us doubts that the hope of imparting to American citizenship some of this vitality was the purpose of declaring in the Fourteenth Amendment: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . ."

But the hope proclaimed in such generality soon shriveled in the process of judicial interpretation. For nearly three-quarters of a century this Court rejected every plea to the privileges and immunities clause. The judicial history of this clause and the very real difficulties in the way of its practical application to specific cases have been too well and recently reviewed to warrant repetition.[1]

[1] See dissenting opinion of Mr. Justice Stone in *Colgate* v. *Harvey*, 296 U. S. 404, 436, *et seq.*

While instances of valid "privileges or immunities" must be but few, I am convinced that this is one. I do not ignore or belittle the difficulties of what has been characterized by this Court as an "almost forgotten" clause. But the difficulty of the task does not excuse us from giving these general and abstract words whatever of specific content and concreteness they will bear as we mark out their application, case by case. That is the method of the common law, and it has been the method of this Court with other no less general statements in our fundamental law. This Court has not been timorous about giving concrete meaning to such obscure and vagrant phrases as "due process," "general welfare," "equal protection," or even "commerce among the several States." But it has always hesitated to give any real meaning to the privileges and immunities clause lest it improvidently give too much.

This Court should, however, hold squarely that it is a privilege of citizenship of the United States, protected from state abridgment, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing.

The language of the Fourteenth Amendment declaring two kinds of citizenship is discriminating. It is: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." While it thus establishes national citizenship from the mere circumstance of birth within the territory and jurisdiction of the United States, birth within a state does not establish citizenship thereof. State citizenship is ephemeral. It results only from residence and is gained or lost therewith. That choice of residence was subject to local approval is contrary to the inescapable implications of the westward movement of our civilization.

Even as to an alien who had "been admitted to the United States under the Federal law," this Court, through Mr. Justice Hughes, declared that "He was thus admitted with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union." *Truax* v. *Raich*, 239 U. S. 33, 39. Why we should hesitate to hold that federal citizenship implies rights to enter and abide in any state of the Union at least equal to those possessed by aliens passes my understanding. The world is even more upside down than I had supposed it to be, if California must accept aliens in deference to their federal privileges but is free to turn back citizens of the United States unless we treat them as subjects of commerce.

The right of the citizen to migrate from state to state which, I agree with MR. JUSTICE DOUGLAS, is shown by our precedents to be one of national citizenship, is not, however, an unlimited one. In addition to being subject to all constitutional limitations imposed by the federal government, such citizen is subject to some control by state governments. He may not, if a fugitive from justice, claim freedom to migrate unmolested, nor may he endanger others by carrying contagion about. These causes, and perhaps others that do not occur to me now, warrant any public authority in stopping a man where it finds him and arresting his progress across a state line quite as much as from place to place within the state.

It is here that we meet the real crux of this case. Does "indigence" as defined by the application of the California statute constitute a basis for restricting the freedom of a citizen, as crime or contagion warrants its restriction? We should say now, and in no uncertain terms, that a man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. "Indigence" in itself is neither a source of rights nor a basis for denying them. The mere

state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color. I agree with what I understand to be the holding of the Court that cases which may indicate the contrary are overruled.

Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but is also a short-sighted blow at the security of property itself. Property can have no more dangerous, even if unwitting, enemy than one who would make its possession a pretext for unequal or exclusive civil rights. Where those rights are derived from national citizenship no state may impose such a test, and whether the Congress could do so we are not called upon to inquire.

I think California had no right to make the condition of Duncan's purse, with no evidence of violation by him of any law or social policy which caused it, the basis of excluding him or of punishing one who extended him aid.

If I doubted whether his federal citizenship alone were enough to open the gates of California to Duncan, my doubt would disappear on consideration of the obligations of such citizenship. Duncan owes a duty to render military service, and this Court has said that this duty is the result of his citizenship. Mr. Chief Justice White declared in the *Selective Draft Law Cases*, 245 U. S. 366, 378: "It may not be doubted that the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need and the right to compel it." A contention that a citizen's duty to render military service is suspended by "indigence" would meet with little favor. Rich or penniless, Duncan's citizenship under the Con-

stitution pledges his strength to the defense of California as a part of the United States, and his right to migrate to any part of the land he must defend is something she must respect under the same instrument. Unless this Court is willing to say that citizenship of the United States means at least this much to the citizen, then our heritage of constitutional privileges and immunities is only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will.

UNITED STATES *v.* KALES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 35. Argued November 14, 1941.—Decided December 8, 1941.

1. A taxpayer who had paid a 1919 income tax on the profits of a sale of stock computed on the basis of a March 1, 1913, valuation of the stock sold, and who later had been subjected by the Commissioner of Internal Revenue to a jeopardy assessment for an additional tax on the profits of the same transaction computed upon a lower 1913 valuation, paid the additional tax and accompanied the payment with a letter protesting against it upon the ground that the Commissioner had no authority to reopen and set aside the 1913 valuation as made by his predecessor, but also asserting that the first 1913 valuation was itself too low, and that if it were to be set aside by administrative action, or in the courts, the taxpayer would insist that the earlier tax was therefore excessive and would claim a refund of the excess paid. *Held*, that the letter sufficed as a claim to stay the running of the statute of limitations on the taxpayer's right to a refund of an excess in the earlier tax. P. 193.
2. A notice fairly advising the Commissioner of the nature of the taxpayer's claim, which the Commissioner could reject because too general or because it does not comply with formal requirements of the statute and regulations, will nevertheless be treated as a claim where formal defects and lack of specificity have been remedied by amendment filed after the lapse of the statutory period. This is