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CONSTITUTIONAL LAW - STATE CONTROL OF INTERSTATE MIGRATION OF INDIGENTS

Edward W. Adams
University of Michigan Law School

COMMENTS

CONSTITUTIONAL LAW — STATE CONTROL OF INTERSTATE MIGRATION OF INDIGENTS — The interstate migration of persons presents the United States with one of its most acute economic and social problems and carries in its wake a series of significant legal questions.[1] Of para-

[1] Pursuant to resolutions in the national House of Representatives, a select committee was set up to investigate interstate migration of destitute citizens. Hearings were held at New York City beginning in July, 1940, and continuing into early 1941, and are reported in ten parts. HEARINGS ON INTERSTATE MIGRATION, 76th Cong., 3d

mount importance is the constitutional question whether the migration of indigents is subject to state control. To lend understanding to this problem, attention will be called first to the basic economic and social urges underlying interstate migration and second to the position of the indigent as defined by traditional legal concepts. To complete the discussion, suggestions will be offered for corrective federal legislation.

1. *The Economic and Social Background*

A perusal of the history of the United States from the date when England controlled a few colonies to the date when the last state was admitted to the Union shows the importance of migration in settlement of the country. It is clear also that the main drive in all the migrations that took place during this extended period of time was the thought of new opportunity.[2]

As a result of economic depression in the 1930's, opportunities grew scarce. In certain areas there were years of drought with resultant crop failures and poverty. This period witnessed the beginning of a fresh migratory movement largely stimulated by the hope of finding new opportunities to rehabilitate lives and fortunes. Public attention was called to the migration of Oklahoma citizens to places more productive.[3] California was among the states affected by this migration.[4] Induced by thoughts of new opportunity and seduced by visions of high wages, low living costs, and fertile California land available on easy terms—visions attributable to the reports and advertisements of labor contractors and other persons seeking their own gain[5]—it was natural that the "Okies" should turn their "jallopies" in that direction. Families loaded

sess. The committee then was directed to hold hearings as to defense migration, said hearings beginning in Washington, D. C., in March, 1941, and continuing until November, 1941. These hearings are reported in an additional eleven parts, the pages being numbered consecutively from those on interstate migration, and reported in volumes numbered 11 to 21. HEARINGS ON DEFENSE MIGRATION, 77th Cong., 1st sess. In referring to these, the following means will be used: e.g., 13 HEARINGS 6413.

[2] "Most migration is in some measure a search for opportunity, an attempt to find new resources from which a livelihood may be gained, an effort to make new adjustments to the exigencies of life, and a quest for new experiences and for security." 5 HEARINGS 2029 (Governor Phillips of Oklahoma).

[3] STEINBECK, GRAPES OF WRATH (1939). "Migratory Labor: A Social Problem," FORTUNE, April, 1939, p. 90, gives a good and brief picture of the problems of the migrants, presenting to some extent the interests of the state.

[4] Estimates have been made as to the number of migrants that invaded California, one such estimate being 500,000. 40 COL. L. REV. 1032, note 6 (1940). As to the accuracy of this, no opinion is offered.

[5] Testimony by migrants who appeared before the Select Committee clearly shows the weight of such advertising in influencing the direction in which the migrants travelled. For a statement as to the labor contracting system, see 6 HEARINGS 2529 ff. (Carey McWilliams of California Department of Industrial Relations).

their most important belongings, crowded themselves into the car and sought a better place to live.

Study of the migration of indigents has revealed basic causes. Some general reasons for migration from rural areas are: the seasonal nature of agriculture in certain areas, the varying sizes of farms—now tending to larger farms, on the one hand and smaller farms, on the other, with fewer medium-sized farms—decreased labor needs caused by mechanization and depression, a decline in foreign markets, increased rural population, lessened productivity occasioned by drought, erosion, soil exhaustion and acts of God, increased and better transportation facilities, and misleading advertisements as to employment conditions.[6] To account for migration from industrial areas are added the factors of: industrial unemployment, lack of industrial expansion, withdrawal of industry to other localities followed by a migration of workers to the new situs, search for better wages or other opportunities promised by relatives or friends, and the search for national defense employment.[7] Of course this list is not all-inclusive, but it is of interest because of the opinion of many that the solution to the problem depends on removing the causes of indigent migration at the sources.

It may be thought that this problem is one of small importance, concerning only a few states such as Oklahoma and California. This is indeed a misconception, since nearly every state has in some way been affected. It has been estimated that four million persons were migrating during the 1930's, most of them indigent.[8] From Iowa and other Middle Western states, there was migration produced by mortgage foreclosures and forced sales, by a tendency towards larger farms and increased mechanization, and by a spread of tenant operated farms.[9] From industrial areas in the East and on the Great Lakes, there was migration caused by the closing of plants. Much of this migration was directed towards large cities or other places thought of as promised lands, and most of it was interstate.

That it is desirable to permit indigents to search for new places in the hope of finding adequate means of livelihood and opportunity for economic rehabilitation goes without question. But it is equally clear that the influx of indigent migrants vitally impinges upon the interests of the states affected. One such interest is keeping the relief funds of

[6] See 2 HEARINGS 727. 3 id. 997 ff. presents some reasons for migration from that midwestern farming area.

[7] 4 HEARINGS 1501. For some other causes of migration see 5 HEARINGS 2033 ff.

[8] This was estimated by Chairman Tolan of the Select Committee, 16 HEARINGS 6575.

[9] See statement of William G. Murray, Professor of Agricultural Economics at Iowa State College, 3 HEARINGS 997.

the state free for the use of needy residents.[10] Another such interest lies in preventing the spread of diseases and pestilence brought about by low wages, poor housing and improper sanitation.[11] Furthermore, the states wish to keep local jobs for local labor. On the other hand, when the state finds that these persons are within its borders, is it to allow them to starve and eventually by failure to provide for them create the same evils which it seeks to prevent? If a state does not give assistance when it is needed, the indigent will seek it from federal agencies, thereby forcing an extension of federal power which the state may find undesirable. Many of the indigents are destitute, but with rehabilitation they may become good citizens, useful to the state. Obviously the problem will not be solved unless the conflicts in interest are recognized and some degree of balance attained.

No discussion of the problem is complete without some mention of the effect of national defense and the war effort on migration. The defense program has created a demand for many laborers in defense areas. This has caused a migration of skilled and unskilled persons, both employed and unemployed, indigent and nonindigent, to areas of war production.[12] Perceptibly this has changed the problem of indigent migration.[13] However, it would seem that any change will be temporary and that after the war effort is completed, all of the problems concerning indigent migration will again arise.[14] Noteworthy is the fact that defense migrants create many of the same problems attributed to indigent migrants. Housing conditions are equally poor; there is a lack of sanitation facilities, and the possibility of epidemic disease is often acute. The two aspects of migration run parallel in many respects.

Whatever other conclusions are reached in this matter, at this point it does appear that the indigent migration problem is a national one, socially and economically. This should be kept in mind in attempting a solution to the constitutional issues and in suggesting legislation.[15]

[10] In New York, care of nonresidents from 1937 until 1940 cost an estimated $5,240,000. 1 HEARINGS 5 (Mayor La Guardia).

[11] The reports of the committee hearings are peppered with references to the sanitation and disease problems presented by interstate migration.

[12] The federal government under the national defense program encouraged migration to defense areas. 17 HEARINGS 6974 (Chairman Tolan).

[13] Whereas in the past few years there has been an oversupply of labor for agricultural needs in California, it seems that a shortage is feared now. 12 HEARINGS 4957 (Richard M. Neustadt, Regional Defense Coordinator, Federal Security Agency, San Francisco).

[14] Some of the cities in New England are especially worried about the problem of what to do with persons who become unemployed when the defense program is over.

[15] Most of the persons who testified before the Select Committee felt that the migrant problem is a national one, not merely to be controlled by the localities affected.

2. *Legal Concepts Defining the Role of the Indigent*

The concept of settlement as the test for fixing liability for the support of paupers has been the basis behind the granting of poor relief. For the purpose of discussing the relations of this to interstate migration of indigents, the problem can be divided into two parts: (1) the effect of settlement laws, and (2) the relation of the modern indigent to the traditional pauper.

The theory behind granting poor relief has been local liability. In order that liability may be affixed for the support of the person, it must be shown that he has a settlement at that locality which is to be made liable.[16] Statutes have dealt with settlement and poor relief for centuries, but the basic ideas have remained the same, and the present-day settlement laws and their analogies are derived from the old laws.

Settlement laws are of various kinds. Residence for a period of time varying from six months to five years within the state is requisite to gaining settlement.[17] During this period, public aid may not be received. Just as there are laws dealing with the acquisition of settlement, so are there laws dealing with loss of settlement. Some states require that a new settlement be gained before the old one is lost.[18] Other states provide that absence from the state for a period of time will cause a loss of settlement.[19]

Another type of settlement law is that which provides for intrastate removal of the person to the community which is his settlement.[20] This can be traced back to an English act of 1350.[21] A more modern type of law is the one which provides for interstate removal.[22] Many

[16] See 48 C. J. 448 (1929) and cases cited therein concerning the legal obligation fixed by settlement.

[17] A table of the residence requirements for settlement for all states as of October, 1939, is given in 1 HEARINGS 48.

[18] See chart in 1 HEARINGS 49 which shows provisions as to loss of settlement as of October, 1939.

[19] See chart, 1 HEARINGS 49.

[20] Iowa Code (1939), § 3828.090; Minn. Stat. Ann. (Mason, 1927), §§ 3162, 3186, are samples of the many state statutes. Lovell v. Seeback, 45 Minn. 465, 48 N. W. 23 (1891), upheld intrastate removal as constitutional.

[21] See 4 HOLDSWORTH, HISTORY OF ENGLISH LAW 390 (1924). This is the statute of 12 Richard II, cc. 3 & 7, and provided that poor persons remain where they had resided or that they be sent to the place of their birth. In 1662, an act, 14 Charles II, c. 12, provided that paupers be removed to their legal settlements. 6 HOLDSWORTH, HISTORY OF ENGLISH LAW 351 (1924).

[22] Iowa Code (1939), § 3828.090; 32A N. Y. Laws (McKinney, 1941), § 127 (formerly § 71 of Public Welfare Law). About thirty states have such laws. For a list of the states and citation to statutory provisions, see 10 HEARINGS 3972. The case of In re Chirillo, 103 N. Y. L. J. 270 (1940), argued in the Westchester County Court, upheld the New York statute. Appeal to the Court of Appeals was denied in In re Chirillo, 283 N. Y. 417, 28 N. E. (2d) 895 (1940). While the majority held that the court had no jurisdiction, three dissenting judges held that the court had

states have both kinds on the statute books. Another type of law analogous to these is the law which makes it a misdemeanor to bring an indigent person into the state.[23]

How do these laws affect interstate migration of indigents? In response to the increased volume of migration, the settlement laws have been changed to increase the amount of time necessary to gain a settlement; at the same time, the loss of settlement laws have been changed so that settlement can be more easily lost.[24] These changes have been made in part to discourage migration of indigents. The effect on the indigent of such a combination of laws results in his having no settlement because he lost the old one even before a new one could be gained.[25] Thus he cannot turn to state aid except in special cases where aid will be given if it will help in getting him out of the state. While intrastate removal affects interstate migration little if any, interstate removal certainly does markedly affect interstate migration. Statutes requiring an indigent to be returned to his previous residence in effect deny to the indigent any choice of residence in another state. Statutes making it a misdemeanor to bring indigents into the state tend to keep indigents out of the state.[26] Experts believe that these various settlement laws materially affect the problem of interstate migration of indigents, and they have urged uniformity in settlement laws as one element in the solution of the problem.[27]

Should the modern indigent be regarded in the same light as the traditional pauper? [28] It is true that each is in need of public aid. Many laws, including settlement laws, were founded on the belief that the

jurisdiction and that the statute was valid. A petition for an injunction against the enforcement of the removal order was denied by the federal district court. Chirillo v. Lehman, (D. C. N. Y. 1940) 38 F. Supp. 65.

[23] Iowa Code (1939), § 3828.091; Cal. Welfare & Inst. Code (Deering, 1937), § 2615. There are similar statutes in about 23 states. 10 U. S. L. WEEK 3140 (1941). Some of the statutes require intent to make the indigent a public charge. The California statute was recently held invalid, Edwards v. California, (U. S. 1941) 62 S. Ct. 164, on the ground that the statute violated the commerce clause of the Constitution.

[24] See the charts in 1 HEARINGS 48-49.

[25] For an instance of this, see the testimony of the Hulm family of North Dakota concerning a settlement dispute, involving them, between North and South Dakota. 4 HEARINGS 1377 ff.

[26] The Supreme Court, in holding invalid the California statute, thought that this was its necessary effect. Edwards v. California, (U. S. 1941) 62 S. Ct. 164.

[27] Numerous examples of such opinions may be found in reports of the Committee Hearings.

[28] There is little authority on this. 53 HARV. L. REV. 1031 at 1032 (1940) raises this question. Experts appearing before the Select Committee also raised the question. One statute provides that a person who receives public assistance shall not be deemed a pauper. W. Va. Acts (1st Ex. Sess. 1936), c. 1, art. xi, § 3.

pauper had few if any privileges or immunities or other dispensations.[29] The pauper was subject to the command of the community which gave him support, and as between that community and other communities, his own community had no alternative but to accept him once it had been established that such community was his settlement.[30] The pauper was regarded as a moral pestilence in the same class as criminals and vagabonds.[31] These concepts concerning paupers arose at a time when the pauper was usually a person who would not work or was a professional beggar. Now the circumstances are far different, since the modern indigent is a victim of depression and circumstances substantially beyond his control. The old legal concepts do not fit his situation, and yet action by the state is framed in the light of treating him as a pauper. In a recent decision the Supreme Court, in holding invalid a statute that made it a misdemeanor for a person to bring knowingly into the state an indigent, expressed the view that the modern indigent is not to be treated as the traditional pauper.[32] This conclusion can hardly be questioned.

3. *Constitutional Issues*

A number of constitutional issues are presented by a state statute which excludes persons from entering the state if they are indigent or are likely to become indigent.[33] Such legislation can be attacked on five constitutional grounds:[34] (1) that it violates the privileges and immunities clause of Article IV, section 2, clause 1; (2) that it violates the privileges or immunities clause of the Fourteenth Amendment; (3) that it denies due process under the Fourteenth Amendment; (4) that it denies equal protection of the laws; and (5) that it is void under the commerce clause. In the discussion of the various constitutional issues, no effort will be made to determine whether such a law would violate state constitutional provisions.

[29] For a patent example of discrimination against paupers, see Article IV of the Articles of Confederation. FARRAND, THE FRAMING OF THE CONSTITUTION 211-212 (1913). This Article is discussed infra and is set out in note 37.

[30] See 48 C. J. 448 et seq. (1929). For instances of litigation between communities, see Town of Bristol v. Town of Fox, 159 Ill. 500, 42 N. E. 887 (1896); Juneau County v. Wood County, 109 Wis. 330, 85 N. W. 387 (1901).

[31] See the language of the Supreme Court in Mayor of New York v. Miln, 11 Pet. (36 U. S.) 102 at 143 (1837).

[32] Edwards v. California, (U. S. 1941) 62 S. Ct. 164 at 167.

[33] In Edwards v. California, (U. S. 1941) 62 S. Ct. 164, the Court construed the statute involved as operating to exclude indigents. No statute expressly providing for the exclusion of nonresident indigents has been found. California, Colorado, and Florida attempted to prevent indigents from entering the state by use of nonstatutory border patrols.

[34] For other treatments of the constitutional issues involved, see 53 HARV. L. REV. 1031 (1940); 40 COL. L. REV. 1032 (1940); and 26 CAL. L. REV. 603 (1938).

(a) *The Privileges and Immunities of a Citizen of a State*

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." So reads Article IV, section 2, clause 1 of the Federal Constitution.[35] While this language may leave room for a broader interpretation, the Court has limited it to mean that citizens of state *A* are entitled to stand on a footing of equality with citizens of state *B* in the enjoyment of privileges and immunities under the laws of state *B*.[36] But even under this restricted interpretation, it would seem that a citizen of Oklahoma could enter any state that he might choose, and that an attempted exclusion by a state is void. However, the matter is not so simple as that.

Article IV of the Articles of Confederation contained a privileges and immunities clause.[37] This provided in effect that free inhabitants of each state should enjoy the same privileges and immunities as citizens of the several states, excepting paupers, vagabonds, and fugitives from justice. The differences between this clause and Article IV, section 2, clause 1 of the Constitution are immediately noticeable; yet there is dictum in the cases which asserts that Article IV, section 2, clause 1 adopted Article IV of the Articles of Confederation in its entirety.[38] If this were so, why was it not included verbatim? This has been explained by further dicta declaring that the states could deal with paupers, etc., under their inherent police power and, therefore, it was unnecessary to write in the exception.[39] That a state has plenary police

[35] See Meyers, "The Privileges and Immunities of Citizens in the Several States," 1 MICH. L. REV. 286, 364 (1903).

[36] This language could be interpreted so as to give to a citizen in state *A* while in that state all the privileges that any citizen of any other state had in his own state. It has not been so interpreted. Nor can a citizen of state *A* claim that a privilege he has in state *A* follows him into state *B*. Paul v. Virginia, 8 Wall. (75 U. S.) 168 at 180 (1869).

[37] Articles of Confederation, Article IV: "The better to secure and perpetuate mutual friendship and intercourse among the people of the differest states in this union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have the free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively. . . ." FARRAND, THE FRAMING OF THE CONSTITUTION 212 (1913).

[38] Corfield v. Coryell, (C. C. Pa. 1823) 4 Wash. C. C. 371, 6 Fed. Cas. 546 at 552, No. 3,230; Dred Scott v. Sandford, 19 How. (60 U. S.) 393 at 418, 584 (1857); Slaughter-House Cases, 16 Wall. (83 U. S.) 37 at 77 (1873); United States v. Wheeler, 254 U. S. 281 at 294, 296, 41 S. Ct. 133 (1920). Charles Pinckney, who presented Article IV, section 2, clause 1 for adoption into the Constitution, believed that Article IV of the Articles was adopted. 3 FARRAND, RECORDS OF THE FEDERAL CONVENTION OF 1787, p. 106 at 112 (1911).

[39] See the dissenting opinion of Justice Curtis in Dred Scott v. Sandford, 19 How. (60 U. S.) 393 at 584 (1857).

power to deal with paupers is supported only in dictum.[40] In view of the succeeding sentence of Article IV of the Articles of Confederation, which provides in effect that people of the various states should have a right of free ingress and egress, paupers would have a right to migrate interstate.[41] However, all of this is indecisive of the privileges and immunities issue, and there is reason to believe that the present Court would interpret Article IV, section 2, clause 1 as though it were a completely new and independent clause.

The evolution of judicial thought under this clause is important in showing the limits imposed by the Court. In *Corfield v. Coryell*,[42] the first case concerning privileges and immunities, Circuit Judge Washington asserted a theory of "fundamental" privileges and immunities which limits protection to those considered "fundamental."[43] The Supreme Court did not follow this theory to the extent prescribed by Judge Washington, and no privilege or immunity can be listed authoritatively as being protected until the Supreme Court has passed upon it.[44] When the Court decides that a privilege or immunity is protected, it cannot be completely denied to a person not a citizen of the state. However, even as to privileges protected by the Constitution, the state may differentiate as to the extent to which they may be enjoyed by a citizen of another state, the limitation being that there must be reasonable grounds to support the qualification of the noncitizen's right.[45]

Whether there is a privilege of free ingress and egress which allows a citizen of one state to go anywhere he wishes has not been decided

[40] The Passenger Cases, 7 How. (48 U. S.) 283 at 382, 462 (1849); Hannibal & St. Joseph R. R. v. Husen, 95 U. S. 465 at 471 (1878); Plumley v. Massachusetts, 155 U. S. 461 at 478, 15 S. Ct. 154 (1894); and Missouri K. & T. Ry. v. Haber, 169 U. S. 613 at 629, 18 S. Ct. 488 (1898). See also 53 HARV. L. REV. 1031 at 1036, note 34 (1940).

[41] See the discussion in 40 COL. L. REV. 1032 at 1042 (1940).

[42] (C. C. Pa. 1823) 4 Wash. C. C. 371, 6 Fed. Cas. 546, No. 3,230.

[43] Judge Washington felt that there were certain rights that belonged to the citizens of any free government and which had existed since the time the states had become free and independent and sovereign. See Corfield v. Coryell, (C. C. Pa. 1823) 4 Wash. C. C. 371, 6 Fed. Cas. 546 at 551.

[44] See McCready v. Virginia, 94 U. S. 391 (1877) (noncitizen had no privilege to harvest oysters in river in Virginia); Canadian Northern R. R. v. Eggen, 252 U. S. 553, 40 S. Ct. 402 (1920) (noncitizen had no privilege to use the same statute of limitations as citizens used). See also Meyers, "The Privileges and Immunities of the Citizens in the Several States," 1 MICH. L. REV. 286, 364 (1903). On p. 364 et seq. there is a discussion of the privilege of ingress and egress.

[45] For example, a state may not close its courts to a noncitizen, and yet it can require him to post bond for appearance and costs, differentiate as to the statute of limitations period to be used, etc. See Canadian Northern R. R. v. Eggen, 252 U. S. 583, 40 S. Ct. 402 (19203; Chambers v. Baltimore & Ohio R. R., 207 U. S. 142, 28 S. Ct. 34 (1907); Chemung Canal Bank v. Lowery, 93 U. S. 72 (1876).

directly by the Court.[46] However, there is dictum to the effect that such a privilege exists.[47] State courts have squarely decided that such a privilege exists, but have based their decisions on the Supreme Court dicta.[48] These cases are no more authoritative than are the dicta on which they are based. Nevertheless, there are several arguments that an indigent can make in support of the contention that he has a privilege of free ingress and egress. One protected privilege is the right to free access to the courts of the several states.[49] If an indigent can be stopped at the border of the state, how can he exercise this right to use the courts of that state? It has also been asserted that a state cannot prevent a non-citizen from coming into the state to carry on business,[50] but if the indigent could be excluded at the border, how could he carry on business within the state? Granting that these privileges and immunities are protected by the Constitution, it does not follow that a state cannot prevent an indigent from entering the state when he is not entering for the purpose of suing in the courts of the state, or for the purpose of carrying on a business within the state. Since an indigent would hardly be entering the state to exercise either of these privileges, the argument has but little weight. A discrimination which would deny to indigents the right to enter the state would seem reasonable under the privileges and immunities clause. Even though such a discrimination would be made because of the financial standing of the indigent, that fact does not make it unreasonable, since financial ability has been recognized as a basis for qualifying other privileges.[51]

[46] In Edwards v. California, (U. S. 1941) 62 S. Ct. 164, the privileges and immunities clause of Art. IV, § 2, cl. 1 was not raised.

[47] Corfield v. Coryell, (C. C. Pa. 1823) 4 Wash. C. C. 371, 6 Fed. Cas. 546, No. 3,230; Paul v. Virginia, 8 Wall. (75 U. S.) 168 (1868); Ward v. Maryland, 12 Wall. (79 U. S.) 418 (1871); Crandall v. Nevada, 6 Wall. (73 U.S.) 35 (1867); McCready v. Virginia, 94 U. S. 391 (1877); Blake v. McClung, 172 U. S. 239, 19 S. Ct. 165 (1898); Maxwell v. Dow, 176 U. S. 581, 20 S. Ct. 448, 494 (1900); Twining v. New Jersey, 211 U. S. 78, 29 S. Ct. 14 (1908); United States v. Wheeler, 254 U. S. 281, 41 S. Ct. 133 (1920). See also Meyers, "The Privileges and Immunities of the Citizens in the Several States," 1 MICH. L. REV. 286, 364 (1903).

[48] Smith v. Moody, 26 Ind. 299 (1866) (state constitutional provision which denied to Negro the right to enter the state or make a contract held invalid as denial of privilege of free ingress and egress); Joseph v. Randolph, 71 Ala. 499 (1882) (state statute providing that a labor contractor who employed persons within the state for purpose of removing them from state to carry on a job must have expensive license held invalid).

[49] See Canadian Northern R. R. v. Eggen, 252 U. S. 583, 40 S. Ct. 402 (1920); Chambers v. Baltimore & Ohio R. R., 207 U. S. 142, 28 S. Ct. 34 (1907).

[50] La Tourette v. McMaster, 248 U. S. 465, 39 S. Ct. 160 (1919); Blake v. McClung, 172 U. S. 239, 19 S. Ct. 165 (1898); Ward v. Maryland, 12 Wall. (79 U. S.) 418 (1871).

[51] Ownbey v. Morgan, 256 U. S. 94, 41 S. Ct. 433 (1921). Since the state has vital interests at stake in the exclusion of indigent migrants, the Court might be more liberal.

Inasmuch as the privileges and immunities clause refers to "citizens," it may be argued that a statute excluding the entrance of indigents worded so as to apply only to "nonresidents" would be valid.[52] But in view of the trend evident in modern decisions, it is believed that the Court would find that the statute tended to discriminate against those not citizens in favor of citizens[53] and judge its validity on that basis.

The Court could establish the privilege of free ingress and egress independent of other considerations, on the basis of the above-mentioned dicta uttered in previous cases. However, in view of the minor role played by the equal privileges and immunities clause under Article IV and because of the cogency of other constitutional arguments, it is neither surprising nor cause for criticism that this clause was not mentioned by any member of the Court in *Edwards v. California*[54] as a basis for decision.

(b) *The Privileges and Immunities of United States Citizens*

Section 1 of the Fourteenth Amendment provides that "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. . . ." The first sentence was adopted as a definition of United States citizenship. From the language of the second sentence, it seems that there was clearly contemplated a category of privileges and immunities appurtenant to federal citizenship which would receive constitutional protection. Before considering whether there exists a privilege of ingress and egress, it is necessary to review briefly the judicial history of this clause.

Adopted in 1868, this clause was first construed in the *Slaughter-House Cases*,[55] in which the dissenting minority asserted a theory of "fundamental" privileges and immunities. The majority recognized that citizens of the United States might have privileges or immunities which would receive constitutional protection, but refused to define them until a case arose wherein a proper privilege or immunity was presented.[56] According to the decisions of the Court, the privilege or

[52] See La Tourette v. McMaster, 248 U. S. 465, 39 S. Ct. 160 (1919). In Edwards v. California, (U. S. 1941) 62 S. Ct. 164 at 170, the argument is suggested that the California statute did not discriminate against noncitizens in favor of citizens, but against nonresidents in favor of residents.

[53] See Travis v. Yale & Towne Mfg. Co., 252 U. S. 60, 40 S. Ct. 228 (1920).

[54] (U. S. 1941) 62 S. Ct. 164.

[55] 16 Wall. (83 U. S.) 36 at 83, 111, 124 (1873). Generally see McGovney, "Privileges or Immunities Clause, Fourteenth Amendment," 4 IOWA L. BUL. 219 (1918); Bowman, "The United States Citizen's Privilege—State Residence," 10 UNIV. BOST. L. REV. 459 (1930); and 38 MICH. L. REV. 720 (1940).

[56] Slaughter-House Cases, 16 Wall. (83 U. S.) 36 at 79 (1873).

immunity has to be one arising under another part of the Constitution, or under federal statutes or treaties.[57] Subsequently, many cases arose in which a privilege or immunity of a United States citizen was asserted to exist, but in none was such a privilege or immunity found.[58] This section of the Fourteenth Amendment was thrust into oblivion for a period of over sixty years only to be renovated surprisingly as the basis for the Court's decision in *Colgate v. Harvey*.[59] In dissenting, Justice Stone adhered to the prior decisions and felt that the privileges or immunities clause of the Fourteenth Amendment should continue in oblivion.[60] What seemed to be a new trend received some further impetus in *Hague v. Committee for Industrial Organization*,[61] where Justices Roberts and Black contended that to meet and discuss the National Labor Relations Act was a privilege of national citizenship. The majority of the Court found the due process clause an adequate protection for freedom of expression. In later cases involving freedom of expression the effort of Justices Roberts and Black was abandoned.[62] Any impetus of renewed strength that the privileges or immunities clause had gained was cut short by the decision of *Madden v. Kentucky*,[63] in which the Court expressly overruled *Colgate v. Harvey*, thus returning the clause to its former innocuous position.

But like Banquo's ghost this clause cannot be kept down, and it forced itself upon the Court's attention again in the recently decided case of *Edwards v. California*.[64] Whether citizens of the United States enjoy a privilege of free ingress and egress was the question directly presented to the Court. A California statute made the bringing, knowingly, of an indigent person into the state a misdemeanor.[65] The issue was squarely raised for the first time. Such a privilege had been asserted in dicta,[66] and in the case of *Crandall v. Nevada*[67] (a case not arising

[57] Twining v. New Jersey, 211 U. S. 78 at 97, 29 S. Ct. 14 (1908).

[58] The dissenting opinion of Justice Stone in Colgate v. Harvey, 296 U. S. 404 at 445, note 2, 56 S. Ct. 252 (1935), lists those cases which have raised this question before the Court. See also McGovney, "Privileges or Immunities Clause, Fourteenth Amendment," 4 IOWA L. BUL. 219 at 222, note 3 (1918).

[59] 296 U. S. 404, 56 S. Ct. 252 (1935).

[60] Id., 296 U. S. 404 at 444.

[61] 307 U. S. 496 at 500, 59 S. Ct. 954 (1939), reviewed in 38 MICH. L. REV. 57 (1939).

[62] See Schneider v. New Jersey, 308 U. S. 147, 60 S. Ct. 146 (1939); Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736 (1940); Cantwell v. Connecticut, 310 U. S. 296, 60 S. Ct. 900 (1940).

[63] 309 U. S. 83, 60 S. Ct. 406 (1940). A comment in 38 MICH. L. REV. 720 (1940) discusses this case and its effect.

[64] (U. S. 1941) 62 S. Ct. 164.

[65] Cal. Welfare & Inst. Code (Deering, 1937), § 2615.

[66] Slaughter-House Cases, 16 Wall. (83 U. S.) 36 at 79 (1873); Twining v. New Jersey, 211 U. S. 78 at 97, 29 S. Ct. 14 (1908); Williams v. Fears, 179 U. S. 270 at 274, 21 S. Ct. 128 (1900).

[67] 6 Wall. (73 U. S.) 35 (1867).

under the Fourteenth Amendment) Justice Miller decided that a right of national derivation—to move freely—was violated by a tax on persons leaving the state by common carrier. What force this case now has is questionable.[68] In the *Edwards* case four members of the Court concurred in holding the statute invalid, but based their decision on the ground that it denied a national privilege of free ingress and egress.[69] Justice Douglas cited the dicta of the previous cases and placed great reliance on *Crandall v. Nevada*.[70] Justices Murphy and Black concurred with Justice Douglas, while Justice Jackson wrote a separate opinion expressing the same views. The majority of the Court, however, based the result of the case entirely on the commerce clause, failing even to mention the privileges or immunities clause, or any other constitutional grounds.[71] Thus is recorded another unsuccessful attempt to induce the Court by a piecemeal and empiric process to define the privileges of national citizenship protected under the Fourteenth Amendment.

Whether this result is correct is hard to say. At least it is consistent with the judicial trend of immobilizing the privileges and immunities clause. The policy of the Court in all the cases since the *Slaughter-House Cases* has been to refrain from using the clause as a vehicle of judicial aggrandizement in passing upon state action alleged to impinge upon national privileges and immunities.[72] As a practical matter, however, this policy has not precluded considerable nationalization of right and privilege in view of the fact that the due process clause of the Fourteenth Amendment has been expanded to include many rights claimed to be privileges or immunities. So, too, has the effective use of the commerce clause served to offset the restrictive and possibly harsh interpretation of the citizenship clause.

There seem to be some reasons why the Court should have recognized the asserted privilege as one within the ambit of the Fourteenth Amendment privileges or immunities clause. To a layman it may seem that a privilege of free ingress and egress is inherent in national citizenship. Certainly a peculiar situation would be created if every state could prevent outsiders from entering its boundaries. However, any fears that arise from the denial of such a privilege are quelled because of the adequate protection under the commerce clause extended to interstate ingress and egress by the majority of the Court in the *Edwards* case.

This leaves to be considered the argument that an alien enjoys the

[68] See the dissenting opinion of Justice Stone in Colgate v. Harvey, 296 U. S. 404 at 444, 56 S. Ct. 252 (1935); and see Helson v. Kentucky, 279 U. S. 245 at 251, 49 S. Ct. 279 (1929) which purports to overrule Crandall v. Nevada.

[69] Edwards v. California, (U. S. 1941) 62 S. Ct. 164 at 167-168.

[70] Id. at 169.

[71] Other constitutional grounds were argued before the Court. Arguments of counsel are summarily presented in 10 U. S. L. WEEK 3140 (1941).

[72] See the cases cited in notes 56, 57, and 58 supra.

privilege of entering any state of his choice. *Truax v. Raich*[73] is cited as authoritative of this proposition. But the case is not decisive on this point, since all that was involved was whether a state could prohibit employment of more than a certain percentage of aliens. Certainly it must be conceded that the rights of aliens arise from no higher source than those of citizens. But the argument loses relevancy when it is remembered that in the *Edwards* case the commerce clause was the basis of the decision and that it would be equally effective as to both aliens and citizens, barring legislation by Congress which puts aliens in a special category.

In view of the past history of the privileges or immunities clause of the Fourteenth Amendment and in view of the ample protection that was afforded to indigents in the *Edwards* case, it is believed that the decision of the Court in ignoring the privileges or immunities clause is sound.

(c) *The Due Process Clause of the Fourteenth Amendment*

Amendment XIV, section 1, provides "nor shall any state deprive any person of life, liberty, or property, without due process of law. . . ." Does this clause give to a person the right of free ingress and egress? Because the constitutional question is close, it would seem that if there were any better ground for decision, it should be used, and the Court has correctly done this.[74] However, it is proposed to discuss this clause and see if it does protect the asserted right.

A wealth of concrete meaning has been given to this clause. Not only are procedural rights protected by due process,[75] but so are substantive rights.[76] The state may act, for most purposes concerning substantive due process, as long as there is a reasonable relation between the means employed and the end in view.[77] However, where civil liberties such as freedom of expression are involved, the Court at present scrutinizes more carefully the action of the state to see whether the means employed unreasonably impinge upon basic right.[78]

[73] 239 U. S. 33, 36 S. Ct. 7 (1915). See also Bowman, "The United States Citizen's Privilege—State Residence," 10 UNIV. BOST. L. REV. 459 at 462 (1930); 26 CAL. L. REV. 603 at 605 (1938); Edwards v. California, (U. S. 1941) 62 S. Ct. 164 at 169.

[74] Edwards v. California, (U. S. 1941) 62 S. Ct. 164.

[75] Powell v. Alabama, 287 U. S. 45, 53 S. Ct. 55 (1932); Palko v. Connecticut, 302 U. S. 319, 58 S. Ct. 149 (1937).

[76] Schneider v. New Jersey, 308 U. S. 147, 60 S. Ct. 146 (1939); Nebbia v. New York, 291 U. S. 502, 54 S. Ct. 505 (1934).

[77] Nebbia v. New York, 291 U. S. 502, 54 S. Ct. 505 (1934).

[78] Schneider v. New Jersey, 308 U. S. 147, 60 S. Ct. 146 (1939), and Cantwell v. Connecticut, 310 U. S. 296, 60 S. Ct. 900 (1940), show this clearly. See also the opinion of Justice Stone in United States v. Carolene Products Co., 304 U. S. 144 at 152, note 4, 58 S. Ct. 778 (1937).

Some writers believe that the due process clause should be construed to allow any person the right of free ingress and egress and the right to reside where he pleases.[79] However, the question is an open one since it is admitted that there is little in case law to support such a proposition with the exception of some dicta by the Supreme Court.[80] On the other hand, there is dicta to the effect that the state in exercising its police power may exclude paupers.[81]

The question ultimately is whether an indigent person may be excluded or expelled from the state.[82] The interests of the state—prevention of crime, retention of higher levels of health and sanitation, protection of local labor markets for local labor, etc.—are very real and substantial. Thus, if the means used bear a reasonable relation to the end, it would seem that the state action would meet the requirements of due process. That the legislature may adopt exclusion or expulsion as the means of enforcing the state's interests would appear clear, unless free ingress and egress were considered to be a civil liberty.[83]

Is the privilege of free ingress and egress a civil liberty? Authority is lacking.[84] To date, the Court's protection of civil liberties under the due process clause has been piecemeal, and it continues to explore its way. Freedom of expression,[85] freedom of religion,[86] freedom to picket[87] have all been protected.[88] It is possible to argue that the common interests of the country are aided by allowing indigents free ingress

[79] Bowman, "The United States Citizen's Privilege—State Residence," 10 UNIV. BOST. L. REV. 459 at 464 et seq. (1930); 40 COL. L. REV. 1032 at 1044 et seq. (1940).

[80] Palko v. Connecticut, 302 U. S. 319 at 325, 58 S. Ct. 149 (1937); Allgeyer v. Louisiana, 165 U. S. 578 at 589, 17 S. Ct. 427 (1897).

[81] See cases in note 40, supra.

[82] If statutes providing for the exclusion or expulsion of indigents who were nonresidents would stand the tests under the due process clause, it seems obvious that any statute less stringent would be equally good. Therefore, it is proposed to discuss this problem as if only exclusion or expulsion statutes were involved.

[83] Nebbia v. New York, 291 U. S. 502, 54 S. Ct. 505 (1934). The philosophy of the Court is that the legislature knows local conditions and necessity better than the Court does; consequently if the legislature reasonably believes a particular end to be desirable, and in light of this, adopted this particular statutory means, the Court should be very slow to overrule it. This has even been carried into commerce clause cases. South Carolina State Highway Dept. v. Barnwell Bros., 303 U. S. 177, 58 S. Ct. 510 (1938).

[84] 40 COL. L. REV. 1032 at 1044 (1940) suggests that this might be a civil liberty.

[85] Schneider v. New Jersey, 308 U. S. 147, 60 S. Ct. 146 (1939).

[86] Cantwell v. Connecticut, 310 U. S. 296, 60 S. Ct. 900 (1940).

[87] Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736 (1940).

[88] In Minersville School District v. Gobitis, 310 U. S. 586, 60 S. Ct. 1010 (1940), the Court refused to recognize the refusal of Jehovah's Witnesses to salute the flag as a case of constitutional immunity. Here the interest of the state was the promotion of common sentiments of patriotism and loyalty.

and egress.[89] Still, it is doubted whether this would elevate free ingress and egress to the stature of a civil liberty. The argument overlooks the interest which the state seeks to protect. The civil liberties that have been protected are personal. On the other hand, interests very little different in nature from that asserted here have not been protected. Absolute freedom to contract,[90] absolute freedom to carry on a business as one wishes,[91] absolute freedom to use property in any way[92] have not been recognized. These rights are commercial in nature. The right of an indigent person to go into any state, if there be such a right, is exercised mainly for commercial purposes, and thus, it is arguable, is similar to those freedoms that the state can control.

In *Edwards v. California*,[93] the due process clause was raised as an objection to the legislation there involved. However, the Court failed to mention it at all. Perhaps from this silence it may be inferred that the Court attached little weight to the argument.

(d) *The Equal Protection Clause*

The equal protection clause of Article XIV, section 1 of the amendments provides: "nor [shall any state] deny to any person within its jurisdiction the equal protection of the laws." This "guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality on the other. It sought an equality of treatment of all persons. . . ."[94] However, the Court has not given to all persons an absolute equality, and has allowed the state to treat various classes of persons unequally.[95] In exercising the police power states may make discriminations between various classes, so long as there is a rational basis for the classifications.[96]

Whether the equal protection clause would intervene to invalidate

[89] Justice Douglas seems to hint at this in his concurring opinion in Edwards v. California, (U. S. 1941) 62 S. Ct. 164 at 169.

[90] West Coast Hotel Co. v. Parrish, 300 U. S. 379 at 391, 57 S. Ct. 578 (1937); Schmidinger v. Chicago, 226 U. S. 578, 33 S. Ct. 182 (1913).

[91] Nebbia v. New York, 291 U. S. 502, 54 S. Ct. 505 (1934); Weaver v. Palmer Bros. Co., 270 U. S. 402, 46 S. Ct. 320 (1926).

[92] Walls v. Midland Carbon Co., 254 U. S. 300, 41 S. Ct. 118 (1920); Euclid v. Amber Realty Co., 272 U. S. 365, 47 S. Ct. 114 (1926).

[93] (U. S. 1941) 62 S. Ct. 164.

[94] Truax v. Corrigan, 257 U. S. 312 at 332-333, 42 S. Ct. 124 (1921).

[95] State of Ohio ex rel. Clarke v. Deckebach, 274 U. S. 392, 47 S. Ct. 630 (1927), and Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064 (1886), concern natural persons. Borden's Farm Products Co. v. Ten Eyck, 297 U. S. 251, 56 S. Ct. 453 (1936), and Metropolitan Casualty Ins. Co. v. Brownell, 294 U. S. 580, 55 S. Ct. 538 (1935), concern associations.

[96] State of Ohio ex rel. Clarke v. Deckebach, 274 U. S. 392, 47 S. Ct. 630 (1927).

state legislation excluding or expelling nonresident indigents would depend on whether there is any rational basis for classification. It would seem that there is. The proposed exclusion does not operate as to all who are not residents, but only as to those who are indigents. Thus for the purposes of exclusion the classification is into two groups of nonresidents. If the person seeking to come into the state is financially capable, then injury to the state's asserted interests is not probable. On the other hand, if the person is indigent, danger to the state's interests is very imminent. The basis for classification as to exclusion seems to meet the requirements prescribed. As to expulsion of indigents, the state is seeking to expel one class of indigents from its boundaries; yet the basis for classification seems reasonable when it is remembered that because of concepts of settlement and poor relief the state is obligated only to resident indigents for support. The reasonableness of the classification is further strengthened because of the fact that paupers and indigent persons have for centuries been treated in special classes. In *Edwards v. California*,[97] the equal protection clause was argued by counsel, but it too failed to merit any attention in the Court's opinion.

(e) *The Commerce Clause*

By Article I, section 8 of the Constitution, Congress is given power "To regulate commerce . . . among the several states." This section has been litigated constantly, and a rather complete body of rules has been laid down.

To bring the case within the commerce clause, the Court must find that the transportation or movement of persons—here indigent persons —is interstate commerce.[98] By hypothesis the movement is interstate, but is it commerce? In some early cases, it was questioned whether movement of persons could be commerce,[99] but these cases seem to rest on the premise that something of a monetary nature has to be involved. However, later cases ignore this element and lay down as the sole criterion the physical movement across state lines.[100] To foreclose the question, there are numerous authoritative decisions in which the Court

[97] (U. S. 1941) 62 S. Ct. 164. Arguments of counsel are summarily presented in 10 U. S. L. WEEK 3140 (1941).

[98] See City of Bangor v. Smith, 83 Me. 422, 22 A. 379 (1891), where a statute provided that if a common carrier brought an indigent person who had no settlement into the state, the carrier would have to remove such person if he fell into distress. This was held void under the commerce clause as an exercise of police power to prevent commerce.

[99] Boyce v. Anderson, 2 Pet. (27 U. S.) 150 at 155 (1829); Mayor of New York v. Miln, 11 Pet. (36 U. S.) 102 at 136 (1837).

[100] See Thornton v. United States, 271 U. S. 414 at 425, 46 S. Ct. 585 (1926); International Text-book Co. v. Pigg, 217 U. S. 91, 30 S. Ct. 481 (1910).

has held that movement of persons is commerce,[101] and that the person may be both the subject and the means of the commerce.[102]

Possibly, argument could be made that the movement of indigents was not intended to be within the commerce clause. This argument, regardless of its validity, would have to be based on the theory that since the states had exclusive control of paupers and could legislate freely concerning them at the time the Constitution was adopted, it was never intended that Congress should have any control over paupers, and thus even though a pauper was a person, yet he was not properly within interstate commerce. While no case has been found in which this theory was presented,[103] it does seem to be running through the minds of persons who have considered the problem.[104] However, the argument must be rejected, since technically commerce is shown. Also the modern indigent is not a pauper, unless the concept "pauper" is a flexible one. Whatever doubts may have existed, it is now clear in light of *Edwards v. California*[105] that indigent persons are subjects of interstate commerce.

If interstate commerce is shown, Congress can regulate it. As to indigent migration, there has been no regulation by Congress. Does the state then have any right to regulate? This involves the broader question whether the state can regulate in any case where interstate commerce is concerned and where Congress has not acted. After some judicial indecision and turmoil,[106] *Cooley v. Board of Wardens*[107] established the principle that if the matter was one of national concern, the state could not regulate, but if the matter was primarily local, the

[101] Covington & C. Bridge Co. v. Kentucky, 154 U. S. 204 at 218, 14 S. Ct. 1087 (1894); Hoke v. United States, 227 U. S. 308 at 321, 33 S. Ct. 281 (1913); Camenitti v. United States, 242 U. S. 470, 37 S. Ct. 192 (1917). There are many other cases that have come up under the Mann Act and under the Federal Kidnapping Act.

[102] Hoke v. United States, 227 U. S. 308, 33 S. Ct. 281 (1913).

[103] This may have been the basis of the dicta in Mayor of New York v. Miln, 11 Pet. (36 U. S.) 102 at 143 (1837), and in Passenger Cases, 7 How. (48 U. S.) 283 at 426, 466-467 (1849). The later cases to the same effect, that states could regulate as to paupers, may have been based on the former cases. See cases cited in note 40, supra.

[104] In no discussion of this problem has this argument been discussed, but see 40 COL. L. REV. 1032 at 1035 et seq. (1940).

[105] (U. S. 1941) 62 S. Ct. 164.

[106] The development of the commerce clause began with Gibbons v. Ogden, 9 Wheat. (22 U. S.) 1 (1824). Through Brown v. Maryland, 12 Wheat. (25 U. S.) 419 (1827); Willson v. Black-Bird Creek Marsh Co., 2 Pet. (27 U. S.) 245 (1829); Mayor of New York v. Miln, 11 Pet. (36 U. S.) 102 (1837); Passenger Cases, 7 How. (48 U. S.) 283 (1849); and License Cases, 5 How. (46 U. S.) 504 (1847), there was dispute as to what power the state had. See Frankfurter, "Taney and the Commerce Clause," 49 HARV. L. REV. 1286 (1936).

[107] 12 How. (53 U. S.) 299 (1851).

state could act, provided that Congress had not legislated on the matter. The cases subsequent to the *Cooley* case have for the most part subscribed to this rule.[108] The theory is that there must be but one rule where the matter is national, since many varied rules would cause commerce to be burdened, and this burden might often be cumulative, to say nothing of the parochial range of local policy set off against the perspective of national interest. That is the approach to be followed here.

Because of the fact that states have always legislated concerning paupers and poor persons, the states have argued that the matter is local.[109] However true this may have been in the past, the argument has little validity at present. Viewing all the economic and social factors and the widespread results of this interstate migration, it would seem that the matter is primarily national in scope. This is so also as to relief of the poor. Here, unless there is one rule, the results would be burdensome to the migrant, and thus to commerce. A migrant going from one place to another would be subject to many different rules with which he might not be acquainted. If a state could regulate, licensing might be the means adopted. Or the state might exclude entirely, or provide for expulsion. In any case, it would seem that if many different rules were allowed, the results would be bad so far as the migrant was concerned. Since the problem is so widespread and of such great social and economic importance, it would seem that one rule is after all the best solution and that Congress should have the sole right to control.

The above conclusion was reached in *Edwards v. California*,[110] involving a California statute which made it a crime to bring an indigent into the state and which the Court construed as operating to exclude migrants. The Court found that such commerce among the states concerned a matter primarily national in nature, and that Congress alone, not the states, could regulate. While it is believed that the Court is correct in the result reached, yet there is some room for criticism and comment. The argument that the operation of the statute prevented nonresident indigents from coming into the state to create political pressure for its repeal seems doubtful, for actually, the statute did not exclude indigents.

[108] Milk Control Board v. Eisenberg Farm Products, 306 U. S. 346 at 351, 59 S. Ct. 528 (1939), stating "This court has . . . declared that the grant established the immunity . . . 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."

[109] In other cases, the Court has declared that if something has been regulated traditionally by the states, this is some reason for saying this regulation may continue. See Port Richmond & Bergen Point Ferry Co. v. Board of Chosen Freeholders, 234 U. S. 317, 34 S. Ct. 821 (1914). As to the effect of silence of Congress, see Biklé, "The Silence of Congress," 41 HARV. L. REV. 200 (1927).

[110] (U. S. 1941) 62 S. Ct. 164.

While, under the *Edwards* case, exclusion or expulsion statutes, such as exist in many states, are void as unconstitutional regulations by the states of interstate commerce, at least where the only ground for exclusion or expulsion is indigency, yet the decision should not stand for the proposition that the indigent has a blanket right to go where he pleases, no matter what other factors are present. The state should be able to establish a reasonable quarantine against indigents, or any other persons, who are diseased.[111] Whether disease alone would be ground for exclusion is not within the scope of this discussion. At least, it is felt that the indigent is not given an absolute right of egress and ingress by the *Edwards* decision.

4. *Some Suggestions as to Corrective Legislation*[112]

The results reached under the Constitution mean that the problem of interstate migration of indigents is one primarily for Congress. Of course, states may to some extent control this migration. A source-state of migration could promulgate plans for rehabilitation that would necessarily decrease emigration. But economically such a plan is not feasible. A state such as Oklahoma could not undertake such a rehabilitation plan of any spread without fear of bankruptcy. A state to which migrants flocked could repeal or lower its settlement law requirements and provide relief funds for the migrants. This would be in state hands, but again a state, California for example, could not administer such a plan, or a plan of rehabilitation, without fear of financial disaster.[113]

Relief through Congressional action offers much more promise. The financial burden would be spread throughout the country. Although the states least affected by migration, both in and out, would feel that it was unfair that they should have to bear the burden of

[111] The right of the state to exclude or temporarily detain persons in the exercise of the quarantine power has not been directly determined. Some cases imply this. See Morgan's Louisiana & T. R. & Steamship Co. v. Louisiana Board of Health, 118 U. S. 455 at 460, 6 S. Ct. 1114 (1886); Gilman v. Philadelphia, 3 Wall. (70 U. S.) 713 at 726 (1866); Hannibal & St. Joseph R. R. v. Husen, 95 U. S. 465 at 472 (1878). It would indeed be difficult to estimate how many indigents this would affect, but many of the experts who testified before the Select Committee commented on the poor health of many of the indigents, seeming to point to the conclusion that malnutrition and other defects, more or less serious, were not unusual. See 9 HEARINGS 3584 ff. (Dr. Coffee of the U. S. Public Health Service). As to how great the defect would have to be before the state would have any right to impose the quarantine, no comment is made.

[112] The approach to this problem has been intended to be objective with an eye to that which would best cure the problem of interstate indigent migration. The views and suggestions given herein are framed with that approach in mind and do not necessarily represent the personal views of the writer.

[113] Moreover, as a practical matter such a plan would cause enmity between the migrants and the taxpayers who would feel the increased burden.

keeping "Okies" in Oklahoma or of providing relief or rehabilitation for them in California, it is undeniably a problem of national interest. And viewed as a national problem it is proper that each individual state and its components should have to bear some share of the cost of correcting it.

The suggestions as to corrective measures will be brief and obviously not all-inclusive.[114] From the opinions of experts, one controlling idea has evolved: namely, that primarily migration must be controlled at the source with correction at the point of destination as the secondary purpose.[115] This means that a plan for correction should be twofold. Control of migration at the source would be effected by elimination of migration-producing factors in so far as possible, followed by a plan for rehabilitating the migrant. Control at the destination should primarily be concerned with rehabilitation of the migrant there, and secondarily concerned with temporary relief funds to be available while rehabilitation was being achieved.

In meeting the problem Congress may appropriate and direct the use of funds under either a grants-in-aid or an outright federal spending program. Under a grants-in-aid program the states would have the administration of actual spending. This would preserve to the states some control and would be politically popular. A straight federal spending program would virtually preclude state control and would be unpopular for this reason, and yet such a plan might have administrative advantages. Possibly both methods should be used, say grants-in-aid for relief, and the other for rehabilitation.

Among the many suggestions made, some seem worthy of consideration. An extension of the efforts of the Farm Security Administration has been suggested. In view of the past efforts of this agency, it would seem that a comprehensive plan should include something on the order of the Farm Security Administration. An examination of this agency's work shows that it meets both primary and secondary purposes of correction.[116] As to rehabilitation at the source, there is provided a system under which a depressed farmer may secure a loan for seed, fertilizer, machinery, and even to buy a farm.[117] As to secondary purposes, temporary relief may be obtained.[118] Also there is rehabilitation at the destination in the form of sanitary camps where indigent migrant

[114] Full treatment of this aspect would be subject matter for another comment.

[115] This and the other suggestions set out were frequently made by experts who appeared before the Select Committee.

[116] Numerous reports on the Farm Security Administration are contained in the Committee Hearing Reports. For one, see 2 HEARINGS 698 et seq.

[117] 2 HEARINGS 698 at 704; 3 id. 1142 et seq.

[118] Duncan, the indigent involved in the Edwards case, was a recipient of such relief. There are numerous instances where relief has been given.

workers can live for a small cost.[119] The work of this agency seems commendable, and such work might well be expanded and encouraged. Another suggestion frequently made is that the Social Security Act should be revised to include agricultural workers within the system of benefits, both unemployment and old age, that it offers.[120] This may be criticized in that relief based on unemployment is merely a tiding-over program and does not offer constructive rehabilitation. However, as to old age benefits, the plan seems desirable in that it would extend security to another class of persons. A further suggestion dealing with the agricultural aspects of migration calls for extension of the soil conservation plan.[121]

So far, the suggestions considered have been concerned mainly with rehabilitation of agricultural areas or farm laborers. But rehabilitation of industrial workers is likewise of great importance. The main objective to be obtained here is re-employment and continued employment. However, during unemployment, workers should be given temporary relief. Old age benefits should be provided, and there should be disability relief. The Social Security Act provided for the first two forms of relief, but it is believed that it should be extended to include more persons. Workmen's compensation acts of the various states have dealt with disability, as have several federal acts, but these should be given a more extensive scope. Giving the worker aid in finding employment when he is unemployed is the primary objective. There has been established a federal employment service,[122] but this has not been widely used. Co-operation between state and federal employment agencies seems desirable. The federal service should be extended in scope and in its means of operation. Because of the interstate contacts that the federal service has and can establish, the possibility of placement makes it very desirable. Important also as an element in the picture is the problem of encouraging new industry during depressed financial conditions.[123] An intelligently administered plan of public works would aid

[119] See 7 HEARINGS 2950. How many of these camps exist now is not known. Certainly the advantages they offer in increased sanitation, greater self respect, and decreased living costs, among others, make them far superior to the housing in "jungle towns" or labor camps.

[120] 9 HEARINGS 3562 et seq.; 6 id. 2381 et seq. Extension of the Fair Labor Standards Act is urged as a corrective measure. This is of the same type as Social Security extension—to include more and new classes of workers. See 8 id. 3377 et seq.

[121] 4 HEARINGS 1623. The triple A program has taken some steps along this line. Id. 1663.

[122] See 17 HEARINGS 6727 and 12 id. 4947 concerning the Bureau of Employment Security, which is the federal employment service. For a list of federal agencies concerned with labor supply, see 16 id. 6343.

[123] Possibly subsidies or grants to businesses could be given from federal funds. The Reconstruction Finance Corporation has done this in the past. As to the effectiveness of this and the economic soundness of the plan, no opinion is offered.

employment. Such a plan has been in use, and in connection with it a program of vocational guidance and training so that the indigent could eventually be placed in private industry.

Since the Select Committee Hearings have clearly shown the need for housing programs, Congress would have to consider this phase of the problem in formulating a comprehensive bill.[124] The good derived from a housing program would be multifold. The rents would be subject to federal control, and thus should not reach the exorbitant figures attained in many localities for the most meager housing.[125] Because modern housing would include proper sanitation equipment, problems concerning sanitation and disease should be diminished. Such a plan would be rehabilitative at both the source and destination of migration. Control of rentals has been suggested as desirable in aiding defense migration and indigent migration as well. At least it should be considered as a temporary measure.[126]

The suggestions made are but a few of many possible ones. They at least should serve to show the broad scope of the legislative problem involved, and how comprehensive a corrective program must be. Only a sweeping legislative enactment would reach to any extent the many social and economic problems here involved. It is to be hoped that Congress will be able to face this problem in the near future.

Edward W. Adams

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[124] The suggestion of some housing program to be undertaken by the federal government has been as frequently made as any. The defense program was a chief source in causing widespread housing shortages. However, even before the war, indigent migrants in California found that there was a housing shortage. Since housing shortages have increased rents, it has been suggested that rents be regulated. These two suggestions will be discussed more or less together. In general on housing shortages: 9 HEARINGS 3626; 3650-a et seq. (pictures); 6 id. 2541 et seq.; 11 id. 4568-a et seq. (pictures); 13 id. 5188 et seq.; 15 id. 6237 et seq.; 17 id. 6878 et seq.; 18 id. 7240 et seq. Rentals: 15 id. 6249 et seq; 16 id. 6626 et seq.; 18 id. 7240 et seq.

[125] In one instance, the charge for one room in Hartford was $60 per month. 13 id. 5275 et seq. Often the rents paid will be as high as 50% of the wages received. Rent increases have varied greatly, sometimes going as high as 95%. Not only have they varied, but there often have been successive increases.

[126] Control of the sort suggested here should be an emergency measure and not permanent.