It is my great pleasure to introduce our talented speaker this year, Professor Michael Ross of the History Department at the University of Maryland. For such a young scholar, and I say he's young because he's about my age, Professor Ross [inaudible] achievement, a graduate of Skidmore College in New York, Professor Ross made a critical error in his youth. He attended law school but worse than that he attended Duke University Law School from which he graduated in 1989. He soon saw the error of his way however, and he entered the graduate program at the University of Massachusetts Amherst where he received his MA. Then he really made an amends by pursuing his doctorate in American History at the University of North Carolina in Chapel Hill. Go Tar Heels. After receiving his PhD. in 1999 from Carolina, he taught at Loyola University in New Orleans for a decade before accepting his current post at Maryland in 2009. Professor Ross has been a prolific author during his years in graduate school and after graduate school as a professor. He's written ten articles that have won major awards. He's been in numerous book reviews and his prize winning book "Justice of Shattered Dreams: Samuel Freeman Miller and the Supreme Court During the Civil War Era" of which tonight's talk is of our case, won numerous awards as I said including the Peter Seaborg Award for Civil War Scholarship in 2004 and 2005. That's two different years he won awards for the same book. In 2005 he won the Alpha Sigma Nu History Book Award of the Association of Jesuit Colleges and Universities. As a teacher he's won teaching awards at the University of North Carolina Chapel Hill, as well as at Loyola. He hasn't been at Maryland long enough yet to win a teaching award.
It would be unseemly to win a teaching award when you just get to an institution so he's waiting a little while before he does that. But here's what one Loyola student had to say about professor Ross's teaching and I got this of course from that great source, ratemyprofessor.com. "Hands down the best professor at Loyola. Expect to study for 12 hours before each mid-term and final. He actively makes class entertaining. I would recommend this guy to everyone and their mom. He knows how to keep it real."

Professor Ross: That was written by my mom.

Keeping it real tonight for us and making the Slaughterhouse Cases and the Fourteenth Amendment reality for us Professor Michael Ross.

Professor Ross: Thank you. It's great to be here and I am honored to be part of a tradition honoring Joanna Cowden and the Cowden Family lecture. I've heard great stories tonight at dinner about Joanna including her passion for history and I think this is a wonderful way to keep her memory alive each year, so I'm thrilled to be here. Thank you to Chico. This is a great college town by the way. I knew nothing about Chico until yesterday and it's awesome. And to Robert and Larry who as he talked about how great a series this is has been. I kept expecting him to say until tonight. Okay, now the lecture tonight might sound like a bit of an esoteric topic. To legal historians it's an important one. The Slaughterhouse Cases which you're going to learn about tonight--you're going to open this for me?
It's a trick. It's like those birthday candles that relight. Thank you Larry--is a case that remains incredibly controversial 150 years since it took place. And we're almost at 150 years and amongst constitutional scholars it has it is as infamous as the Dred Scott Cases, Plessy versus Ferguson, Lockner versus New York. It remains as controversial as Roe versus Wade, perhaps the recent Citizens United Decision that are constantly debated. And one of the reasons why it's so important is it is because it is the first case where the Supreme Court interpreted the language of the recently ratified Fourteenth Amendment. And we'll get to why that's important. But before I get to the case I want to place it in a Civil War context so you understand the historical context that made this case such a major case at the time.
Now as many of you know, the Civil War ends, well, it's said to end, it continues on into July on April 9, 1865 when Robert E. Lee surrenders his army to Ulysses S. Grant at Appomattox Court House in Virginia. But all that really was a surrender of one army to another and Grant gives Lee magnanimous terms. His army can stack their weapons and go home, take their horses and go home. But it wasn't a peace treaty to end the Civil War. The Civil War doesn't end with a signing on an aircraft carrier like World War II. The issues of the war are not resolved at Appomattox even though today when you say after Appomattox you mean after the Civil War. But the big questions, what's going to happen to the former slaves? Are you now just going to--they're now freed by the Emancipation Proclamation and the 13th Amendment? Are you now going to have people who it's been illegal to teach to read, who have no money, no land and just say you're on your own? What's going to happen to the Confederate leadership who once swore oath to uphold to constitution and then fought against the United States government?
What's going to happen to the common foot soldiers? And all those questions are still out there and five days after Appomattox on Good Friday, the President who would be the one who would steer the policy of the era that we'll come to know as Reconstruction is assassinated. He had given some speeches that week where we get some inkling of what Lincoln would have done in Reconstruction. Is this echoing? --what he would have done in Reconstruction but we don't know. He's assassinated. So it's kind of ending in complete chaos.
And the man who is now going to be in charge is one of the most complex figures in American history. And it's Lincoln's Vice President, Andrew Johnson who in many ways shouldn't have been Lincoln's Vice President. Lincoln thought he was going to lose the election of 1864 because the war wasn't going that well. When they held an election during the war and he fired his first Vice President Hannibal Hamlin who in many ways thought like Lincoln did and replaced him with a Vice President from the opposing party, the Democrats. Andrew Johnson the only southern senator to not leave with the confederacy and join the confederacy, he's from Tennessee and Lincoln rewards him for his loyalty and in hopes of getting border state votes by making him vice president. And Johnson is now going to be in charge for eight of the most critical months in American history. And he's in charge because Congress is not in session. In the 19th century, Congress met for a very brief time. The idea was you weren't supposed to be a permanent politician, so they came into session at the beginning of December after the fields were harvested and they left at the end of March so you can go home and sow your fields. And as you see the Civil War ends in April, so Congress isn't going to be back in town until the following December and Johnson is now at the helm. The same thing happened at the start of the war. Lincoln wanting Congress to support what he was doing called Congress back into special session. Johnson doesn't do it. Johnson wants to set the terms of all these questions we're talking about Reconstruction. And Johnson, that's actually Wilkes up there.
Johnson is a complex figure because he doesn't join the confederacy because he hated the planter class. He had come from a poor background. He had literacy issues. His manners were terrible. He was also worrying about which fork to use, food shooting out of his mouth while he talks and no matter how successful he was in life, the planter class, the Ashley Wilkes of the world, even though that's a fictional character had always snubbed him. And he saw the Civil War as a war led by the planter class. And he talked tough during the war as Vice President. I'm going to hang Jefferson Davis. Treason must be made odious.
So some people who were hoping that the President would now create a new day in The South to start the Old South anew and fill it with new possibilities thought Johnson might be tough on The South but what they didn't realize about Johnson is that Johnson, while he hated the planters was perfectly fine with slavery. And in fact, his racial views were quite in line with the leadership of the old confederacy and had said once, "I wish to God that every American could have at least one slave to relieve them of the drudgery of household work."
And when Frederick Douglas and other black leaders came to the White House to say you know maybe one way to bring a new day in The South is to give African-Americans men the right to vote Johnson after the meeting said, "This is a country for white men and by God as long as I'm President it will be a government for white men."
And Johnson a month into his presidency starts issuing sweeping Reconstruction policies. And he says, "I recognize slavery as destabilized and dead." That's fine and he kind of likes it because it means the planter class will no longer have the wealth that he thinks will keep them in charge. And he says, "We'll let the southern states back into the Union as soon as they ratify the 13th Amendment ending slavery and repudiate the southern war debt." All the money to South had borrowed to fight the war from banks, foreign and domestic, individuals not getting paid back because it was money for treason....
have to adopt the 13th Amendment.

Thirteenth Amendment
Approved by Congress February 1865, ratified by ¾ of the states December 1865

“Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”
What about the people who fought the war against the United States government? He says, you’re pretty much back in if you want to be in. If you’re a common foot soldier in the confederacy all you have to do to be back, just as if nothing had happened is swear an oath of future loyalty to the United States with one big or a couple big exceptions.
High ranking military, civil, and judicial officers of the confederacy, war criminals, and those who before the war held taxable property of more than $20,000. Who’s that? That’s the planters. They would have to apply to Johnson for a personal pardon which they do and Johnson loves it.
It's like everyone who ever snubbed you in junior high coming back to beg your favor and Johnson starts issuing pardons by the score. By the time he's done that some pardon brokers come in with the names of a whole bunch of people and Johnson is just signing them. And by the time he's done virtually the entire leadership class of the Old South and the planters are re-enfranchised by his pardons with a few exceptions, Robert E. Lee, Jefferson Davis, back in. And he allows the South now to hold state elections, create new state legislatures in the South, no African-Americans voting so it's the old Confederates voting, and they re-elect back to office a good portion of the leadership of the old, the people who were in charge that led the confederacy out in the first place.
And that leadership and those state legislatures started in Mississippi, others following, then pass a series of laws designed to, in essence, restore slavery in fact if not in name, to make sure that the former slaves will stay on the plantations where they had once lived and work for their former masters. Now the Black Codes had a few thing in them that gave slaves, the freed men and women rights they didn’t have during slave. They could now get married. They could now sue in court. They could now own property.
But the Black Codes would contain laws apply ing specifically to African-Americans that would say that African-Americans can't own firearms. You can't sell alcohol to African-Americans, no meetings and groups larger than six after sundown, can't testify in a legal case between two white people. Insulting gestures and language by former slaves now working for their masters were subject to fine by the government.
And each January former slaves had to be able to show to the satisfaction of government officials a contract saying where they were going to work for the coming year. And if they couldn't show that labor contract they would be fined, taken to court, convicted of vagrancy, fined, and to pay off the fine assigned to work on one of the plantations for the coming year. You get the idea. You get the idea of the Black Codes. Apprentice statutes were statutes where they had officials go around to African-American families and if they concluded that they were not taking care of their teen children correctly they could be taken forcibly and apprenticed to work on a plantation.
And if you look at the letters Andrew Johnson receives that summer at the Library of Congress, filled with outraged people from the North whose views on race and slavery have changed during the war or who had always been antislavery, who say my son is dead. He's of the 750 thousand killed in the Civil War and slavery is restored, in fact if not in name. Now, I'll come back to that in a second. You might say, okay, well what's Congress going to do when they return? Because Congress is overwhelmingly filled with members of the Republican Party who were looking for a much more rigorous Reconstruction they come back in December. Some people say it was too late. The South say this is isn't going to be too bad. The African-Americans are in their place. Our old leadership is elected. We've got a President who seems to be on our side and any kind of resignation that you could—that they we're going to be forced to change. They had lost that. But Congress comes back in and they do a few things. Number one, Johnson had allowed not only state legislatures to hold elections but he had allowed federal elections to take place and the people of the South reelected Alexander Stevens the Vice President of the confederacy to his congressional seat from Georgia. So when Congress comes back into session all the old Confederate politicians are lining up to take their seats. And Congress says that's not going to happen. Under the Constitution Congress, not the President decides when their elections are going to be held. And they don't let those people take their seats. They say, maybe we'll try to work with Johnson's state legislatures but we're not going to admit the South back into the union until we have some say in what the terms will be. And now I'm going to condense a lot of material that I can go on for many lectures into a short period but a titanic struggle then ensues between Johnson and the members of Congress over Reconstruction policy. And Johnson is going to veto everything Congress does. Congress is
going to override the vetoes. There had been 60 vetoes in American history, only I think, in any case, Johnson has an extraordinary number of vetoes.
This is veto Gallup. The cruel uncle vetoing the measures that Congress is going to pass. In the end, Congress does a few major things that shape the context of the Slaughterhouse Cases.
Number one, they pass through Congress and send to the states for ratification the Fourteenth Amendment and we're going to come back to the Fourteenth Amendment in a moment, but they're going to make that, they're going to say to Johnson's state legislatures, you have to ratify this or you don't get backseats in Congress. Johnson tells them not to do it. When Johnson--when the southern states refuse to ratify the Fourteenth Amendment the Congress goes even further.
So the Fourteenth Amendment will be sitting out there and they say, you know what, we're going to have to do what we should have done in the first place, rather than have the state legislatures that Johnson created while we weren't around, over his vetoes they passed the Military Reconstruction Act of 1867. And the Military Reconstruction Act essentially said, we are going to treat the South like conquered provinces, return them to territorial status and when they're territories like Utah was at the time, Congress has the right, under the constitution to pass laws for the territories. And they say we're going to disband Johnson's legislatures, appoint military generals, and the military generals will have the task of enforcing Congress' Reconstruction policy which is now also going to include the 15th Amendment.
And the 15th Amendment will give African-American men the right to vote. "No state shall deprive any citizen the right to vote based on race, color, or previous condition of servitude." And they say we’re going to rebuild the South, elect new state legislatures and amongst the people who will be able to vote for those new state legislatures will be African-American men.
And as this struggle goes on, as Johnson starts firing, as Commander-in-Chief, the generals who were enforcing Congress's Reconstruction policy, as Johnson is telling the South not to follow the laws passed by Congress they final impeach and try and attempt to remove President Johnson entirely. An impeachment process that failed by, a removal process that fails by one vote in his trial in the Senate.
But in 1868 Johnson who had hoped the Democratic Party would now pick him as their nominee for President does not. They run a guy named Horatio Seymour. The great Civil War hero, Ulysses S. Grant who favored Congress' policy of Reconstruction is elected President.
And for a time in the South we get a world that we will not see again until the Civil Rights Era. Legislatures across the South will include African-American officials, about a third of the elected officials during Reconstruction, during the period known as Radical Reconstruction are African-American. African-Americans will be elected to the United States Senate 14 to the House, two to the Senate. In Mississippi Hiram Revels, African-American takes Jefferson Davis's Senate seat in a dramatic moment as he walks on to the floor of the Senate. And across the South, African-Americans will serve as jurors, policemen, detectives solving high profile crimes, serving in government positions, which brings us to the context of the Slaughterhouse Cases.
As you know, you amend the Constitution but the Constitutional amendments are often written in very broad language, subject to interpretation by the Supreme Court. And the Supreme Court is now going to face, the language of the 15th Amendment made it fairly clear although lawyers are later going to find loopholes big enough to drive a truck through in the 15th Amendment, but they're going to have to face the language of the Fourteenth Amendment passed by Congress, ratified by the Reconstruction legislators and other legislators across the country.
1868 becomes part of the constitution. Here's the language. "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; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Birthright citizenship, if you're born here you're a citizen. As you know this is a topic that's been controversial recently but the idea here was to overcome the infamous Dred Scott Decision from 1857 which had said African-Americans are not citizens of the United States and never could be because Roger Taney wrote in that decision, "At the time of the framing of the Constitution the framers weren't thinking, weren't writing about African-Americans." In fact, he said, "At that time African-Americans had quote, 'No rights a white man was bound to respect.'" It wasn't true. African-Americans were voting in many states but that's what Taney said in Dred Scott. First part of the Fourteenth Amendment gets rid of that. Second part says, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." We'll come back to that, "Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny that any person within its jurisdiction the equal protection of the laws." What do you think that last part is? No state shall deny any person the equal protection of the laws. What does the Fourteenth Amendment get rid of by doing that? What do you think? What did we refer to earlier tonight? Yeah, the Black Codes. If you want to have--you are such a teacher Robert. I want to have a law that says people can't meet in groups of six after sun down, have at it, but it has to apply to everyone. Okay, now if you're thinking about your travel plans or whatever, I need to you focus now or the rest of the lecture won't make any sense.
What many Americans don't recognize is that for the first half of American history your Bill of Rights rights, your First Amendment rights, Second Amendment rights, Fifth Amendment rights, did not apply to your state government. When they added the Bill of Rights to the constitution it was because the framers, some framers feared that this new central government they were creating would run amuck and they add the Bill of Rights which applied only to the federal government. For protection of those rights from your state government you had to look to your state constitution and short of that, states could do whatever they wanted. If they wanted to declare a state religion, make Quakerism the religion of Pennsylvania they could do it. The Fourteenth Amendment began to change that because it says things that states can't do. But it brings us to this question of, does everyone understand that concept? Where we are right now, you could not say I have a constitutional right to do that and be protected by your state government. 1873 did not have that protection. This piece here, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." What are the privileges or immunities of the citizens of the United States? It is clear that some of the framers of the Fourteenth Amendment, a guy name John Bingham, another named Jacob Howard intended that language to include your Bill of Rights rights. No state shall infringe your Bill of Rights rights but not everybody who ratified the Fourteenth Amendment agreed with that. But that language was up for interpretation. Would that now include your Bill of Rights rights? So that when African-Americans were in the South, if their state government got taken over by white supremacists their Bill of Rights rights would be protected against the state government because of the Privileges or Immunities Clause. And nobody knew.
Now the Slaughterhouse Cases which we’re talking about tonight, 1873, it’s the first case that we see the Supreme Court where the Supreme Court is going to be assigned the tasks, have the task of telling us what that language means. And in the process, the Supreme Court did not, did not say that the Privileges or Immunities Clause includes your Bill of Rights rights, therefore, shrinking the power of the Fourteenth Amendment and for that the Slaughterhouse Cases decision has been forever criticized by people from all political spectrum, gun rights people, civil rights people that the Supreme Court didn’t do that. Now I was taught in law school and many history textbooks to this day portray the Slaughterhouse Cases as something that’s known as the retreat from Reconstruction. That Americans in the North over time grew tired of trying to Reconstruct the South kind of like some people are tired of trying to build a new society in Afghanistan today. And that by 1873 the North was kind of tired of the whole effort and that the Supreme Court will deliberately, in a series of cases will culminate in Plessy versus Ferguson that sanctions separate but equal in Jim Crow, lead the nations against the Reconstruction that it's nine white men who decided they d had enough and issue one decision after another shrinking what the Fourteenth Amendment could do in effort to allow white supremacy to be restored in the South. And as I began to research my book which began as a book about Lincoln’s Supreme Court appointments and then boiled down to one person, it struck me as odd that you would have nine justices, seven of whom were appointed by Republican Presidents, four by Lincoln, three by Grant, many of whom had antislavery views like Salmon Chase, before the war, would that quickly start issuing decisions that were restoring white supremacy. But that's what I’d been taught so, I dug in but then you read the Slaughterhouse Cases themselves.
This is a typical account. This is a book called "The Supreme Court's Retreat from Reconstruction." And it says, "However, during the 1870s the Supreme Court backed away from Reconstruction. The process began with the Slaughterhouse decision of 1873 and on and on and on. The Slaughterhouse Decision effectively gutted the Fourteenth Amendment."
You get the idea. But when you read the Slaughterhouse Cases written by the Justice I wrote about, Samuel Miller, it's full of language about how the Black Codes were evil, about the heroic efforts of black soldiers during the Civil War. And he's talking about how those changed people's views of black citizenship. That on various issues, he says, "No one can fail." This is in the Slaughterhouse majority opinion, "No one can fail to be impressed with the one pervading purpose of the Fourteenth Amendment. We mean the freedom of the slave race, the security and establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him." And that didn't sound to me like folks who were backing away from Reconstruction. So then I said well, maybe if the whole thing, as some people have suggested, was a plot to use ringing language, but behind the scenes known nefariously what you're doing that had to show up in Miller's letters. In private he's saying, you know, I don't really like Reconstruction but I'll throw some language in the majority opinion. But his letters are full of ringing language about the need to enforce Reconstruction.
He has a former slaveholder brother-in-law named William Pitt Ballinger and Miller was frustrated. Let me give you the context here with the growing anti-black violence in The South by the Klu Klux Klan, the Knights of the White Camellia, Crescent City White League. There had been race riots which were essentially former Confederates attacking African-Americans in Memphis and New Orleans, and Miller had written to his brother-in-law and his brother-in-law had written back and said the people that do that aren't the best men of the community. We don't approve of what's going on. Those are the thugs that are always around. And this is what Miller says back to his brother-in-law. "You say that the killings, beatings, and shooting are done by low and degraded individuals and that the leading men disapprove of it. Show me how you disapprove of it!"
Show me that you or any of the best men of the South have gone ten steps to prevent the recurrence of such things. Show me the first public address in which the massacres of New Orleans and Memphis have been condemned. You may say there are two sides to those stories, but there was one side that suffered, and the single truth is undeniable that not a rebel or secessionist was hurt in either case, while from thirty to fifty negroes and Union white men were shot down precludes all doubt as to who did it and why it was done. We cannot in the face of events that have occurred since the war trust the South with the power of governing the Negro and the Union white man without such guarantees in the federal Constitution as secure their protection. White southerners have proven themselves incapable of forgiving or learning.” So I said, all right, well, if this is the case maybe I'd better start with the case, with the Slaughterhouse Cases and where they began in the slaughter houses of New Orleans.
And here kind of unravel this paradox for you. The Slaughterhouse Cases came after legislation passed in New Orleans that forced the slaughtering operations of New Orleans to move across the Mississippi River from the city, where they were scattered in the area now known as kind of uptown New Orleans, over to Algiers Point where they would be told they had to slaughter, everyone has admitted, told to slaughter in a new state-of-the-art slaughter house that would have meat inspectors inspecting the meat. This was a public health regulation that was modeled on what they had done in New York and Philadelphia and most importantly dispose of the waste in what was seen as a healthy way. Previously, the slaughterers had just thrown all the carcasses into the Mississippi River and because it was uptown it was above the giant intake pipes where the city got its water supply and when you'd pump that water into New Orleans there would be all kinds of pieces of flesh, etcetera in the glass of water. The Algiers Point facility, which is also going to dump the stuff into the Mississippi River, was downriver from the city, so it would go away.
And New Orleans was a distinctly unhealthy place wracked every summer by cholera and yellow fever. The yellow fever epidemic of 1853 alone kills ten thousand people in New Orleans. We don't have to go into what happens to people who get cholera from drinking water. What happens to people who get cholera, it's not pretty.
And ever since the Spanish Colonial Period there had been efforts to move the butchers across the river. In fact, the butchers, who many of whom were from Gascony, had a tight monopoly on the slaughtering trade that they defended with violence. And they were some of the most hated people in New Orleans because that kept meat prices high and their operations were so foul and there had been repeated attempts to move them across the river. The Spanish actually got them across once and then they infiltrated their way back in but they were not popular. But now that during Reconstruction they're being told to move across the river, suddenly the population of New Orleans is the going to rally around them.
They become a popular cause and the answer to why suddenly three become popular is because the law that asked them to move across the river was passed by Louisiana's biracial Reconstruction legislature. About a third of the members of the Louisiana legislature were African-American. About a third were scallywags, as their political opponents called them. Poor whites from the dirt parishes who saw Reconstruction as their chance to be on top for once and then the so-called carpetbaggers who we'll talk about in a moment. But those, that legislature was passing bills designed to bring improvements that they thought everyone would like. But now that it's them passing it, the white citizens of New Orleans in newspapers, letters, rallies, mass meetings are going to rally around the once-hated butchers.
The governor of Louisiana at this time, this is an older, a picture of him when he was older was a 28 year-old Union army officer named Henry Clay Warmoth. And Henry Clay Warmoth well his name will become attached to carpetbaggery and carpetbaggers was a pejorative term, attached to white politicians from the North, particularly, former Union soldiers who stayed and got elected to southern legislatures after the war. The carpet bag, in the era when people really were able to travel, in the era of railroad transportation, a carpet bag was a cheap piece of luggage made out of carpet remnants that people without a lot of money used and the idea was that carpetbaggers were people who were poor in the North, came south with all their possessions in a carpet bag, and made themselves wealthy by exploiting the white population of the South from positions to which they were elected by former slaves. That image of carpetbaggers and carpetbaggers is still a term you here at all times for politicians running for office in places that are not from has been dispelled over time by historians who say perhaps you could find an individual who fits that profile, but many of the carpetbaggers were people who deeply believed they were doing God's work. And in particular, and you might see why this would chafe some people in the South, in particular, thought that the best thing that could happen for the country is if the North could teach the South economic development. That the North could come down, northerners could come down and by building factories and railroads and schools. There were no public schools in the South. They could reshape the South in the North's image.
And some of them would call it the Gospel of Prosperity. You people are backward. You've had this backward slave system. We're going to come down and show you how it's done. Warmoth was one of those. And Warmoth believed that if they could move the butchers across the river, rebuild the destruction of the war, fix the levies, fix river channels so there's more commerce, build railroads, build schools that suddenly a lot of people in the South would say, you know what, they're right and get carried into the Republican fold. And again, anytime the United States has tried to nation build ever since you're trying to do the same thing. Build schools, build roads, and convince people that this is the way to do it. Enter the evil genius of our story.
This is John Archibald Campbell. He used to be a justice on the United States Supreme Court. He's from Alabama originally, but he moves to New Orleans after the war and he had resigned when the war began from the Court to become the Assistant Secretary of War for the confederacy under Jefferson Davis. And Campbell, during Reconstruction becomes the lawyer who launches the lawsuits to block anything Warmoth does. They want to fix the levies. He finds a way to sue about it. They want though integrate theatres. He finds a way to sue about it. As Campbell said about his disgust with Reconstruction, "We have Africans in place all about us. They are jurors, post office clerks, policemen, and day by day they barter away their obligations and duties. The southern communities will be a desolation until there is a thorough change of affairs in all departments of government. Discontent, dissatisfaction, complaints, even insurrection would be better than the insensitivity that prevails." And Campbell is going to become the lawyer for the New Orleans butchers who are the ones arguing against the Slaughterhouse Law. His legal campaign will be funded by the elite families from the Garden District who would also join is Crescent City White League.
This is again, some people have suggested at the time and ever since that this campaign against anything positive that might come out of the Reconstruction government was a "Rule or Ruin" Strategy. They were doing things that people have long wanted and this cartoon is reflecting that. Here you have a freed person holding on to the Tree of Liberty. And it says, "Give me your hand master. Now that I have a good hold of this tree, Liberty, I can help you out of your trouble." And as this guy is going over the waterfall, he says, "You go to thunder. Do you think I'll let an infernal, N-word, take my hand? No siree, this is a white man's government." And there's Grant standing over there saying, "My friend I think you had better make all means to get ashore even if it's a black man that saves you."
And what Campbell is going to do is pretty savvy. Fourteenth Amendment doesn't say anything about who it's designed to protect. There's nothing about race in there. And he says, you know what, this is new language in the constitution. Maybe I'll look in there for ways that I can use this language of the hated Fourteenth Amendment for the cause of the butchers. And he even does it with the 13th Amendment. He's going to argue in his legal briefs that forcing the butchers across the river is slavery in violation of the 13th Amendment. He's going to argue that the Slaughterhouse Law violates the equal protection clause because it's only forcing one type of business to go across the river. And most importantly for our story, he is going to argue, where it says, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" he's going to argue that amongst the privileges and immunities of the United States citizen is not only your Bill of Rights rights but natural law rights like the right that people have had since governments were formed to practice an occupation unfettered by unnecessary government regulation. And he's going to argue that the butchers' rights to practice an occupation, a right he says is protected by the privileges or immunities clause has been harmed by the Slaughterhouse Legislation and he goes to court making 13th and Fourteenth Amendment claims on behalf of the butchers and he starts to win. And it works its way to the Supreme Court who is now going to decide if Campbell's version of the Fourteenth Amendment that includes the natural law rights that protect white butchers from health regulation is what the Fourteenth Amendment means.
And at the Supreme Court, oh, and this is good. Campbell supporters in town said this man is a genius. And the New Orleans Times Picayune will say, because they hated the Fourteenth Amendment, he says this guy was using one poison as an antidote to another, using the Fourteenth Amendment to thwart the hated biracial legislature. But at the Supreme Court, he runs into my man Samuel Freeman Miller.
Miller is a former doctor. He was a general practitioner, got his medical degree from Transylvania University where he wrote his dissertation on water-borne cholera, so he knows the need for keeping water clean. He'd moved out to Iowa to a slaughtering town. Keokuk, Iowa was the fifth largest slaughtering town in the nation so he knew how foul slaughter houses were and he hated Campbell. He would say about Campbell,
"I have never seen nor heard of any action of Judge Campbell's since the rebellion which was aimed at healing break he contributes so much to make. He has made himself an active leader of the worst branch of the New Orleans Democrats, writing their pronouncements, arguing their cases, and showing all the evidences of being a discontented and bitter old man."
I think no man that has survived the rebellion is more saturated today with its spirit. He deserves all the punishment he can receive, not so much for joining the rebellion as for the persistency with which he continues to fight when all men ought to forget as much as possible."
But Campbell has done something tricky here and sadly outmaneuvered the subject of my book because there is what Campbell's done. He said, well what's the Supreme Court going to do? I'm arguing for if broadest possible interpretation of the Fourteenth Amendment, taking the privileges and immunity clause and making it an extraordinary clause that will defend economic rights, natural rights, Bill of Rights rights and they could do that. Fourteenth Amendment, let's make it as powerful as possible. But if they do that and overturn the legislation of the biracial Louisiana legislature that's passing a health law that Miller knows is necessary they will feed into the critique of the New Orleans white press that these legislators were corrupt, full of ignorant former slaves, and can't even pass any legislation that could pass constitutional muster. So either way, Miller loses here. Campbell wins.
This is what the Supreme Court in an opinion wrote by Justice Miller decides in the Slaughterhouse Cases. They say number one, Campbell's 13th Amendment claim that this is slavery is ridiculous. It's a health regulation. Number two, Campbell's claim that this violated the equal protection clause they say, no the equal protection clause, when we look at the legislative intent, this is an exercise in what today we would call either original intent or originalism, we know why the equal protection clause was in there, to get rid of the Black Codes. And the one pervading purpose was to help African-Americans not white butchers trying to fight a health law. But then here's the problem, Miller also says the privileges or immunities clause does not include protections of natural rights. No one who was framing it thought it would protect the right to an occupation. For protections of those kind of rights, if there are any, you have to look to your state constitution. But what about the Bill of Rights? Remember, that's the thing. Will your Bill of Rights rights now be protected against the state? Miller doesn't say. The Slaughterhouse Cases doesn't say the Bill of Rights, the privilege and immunities clause doesn't include the Bill of Rights but this is what he does say. And I don't want to get too technical but he says this,
"So that you don't think the privileges and immunities clause protects some rights, I'll list a few." We don't have to really decide this now because it's not at issue but lest if, he said, no such privileges or immunities are to be found, I'll name some. "Amongst your privileges or immunity as a natural citizen which you are now protected by the Fourteenth Amendment against action of your state government
are the right to make and enforce contracts, the right to peaceably assemble, petition for the redress of grievances, your privilege of a writ of habeas corpus if you're thrown in jail, because that was included in original body of the constitution, you're right to become a citizen of the state of one's choosing." But it does not say explicitly that you're Bill of Rights rights are protected. He doesn't rule it out but he doesn't put it in. And here's what's happened by not coming out and saying that the Bill of Rights were protected by the privileges or immunity clause it gave the suggestion that the Court didn't think it the because if it did the Court would have said it. If John Bingham's intent in writing Section 1 was what the Court was seizing on they would have said it and they don't. And when you take the Slaughterhouse Cases and add them up with subsequent cases by the Supreme Court, the most infamous of which were courts after Miller had died, like Plessy versus Ferguson in the 1890's you can do a connect the dot lines from the Slaughterhouse Cases to Plessy and subsequent decisions that make it look like the Supreme Court is trying to restore white supremacy. And they botched it here by not saying the privileges or immunities clause protects the Bill of Rights.
And the reason that's so important is because shortly after 1873, Reconstruction comes to an end. The Compromise of 1877, the contested election of 1876 they don't know who won. The election was so close between Rutherford B. Hayes and Samuel Tilden they don't know who won.

**Audience:** Florida.

**Professor Ross:** What's that?

**Audience:** Florida.

**Professor Ross:** Well, yes, you could say Florida without the dah. But there's a problem of contested results coming out of Louisiana, South Carolina, Florida, and a question about an elector in Oregon and they set up an electoral commission to decide the results of the election. Five members of Supreme Court, five members of House, five members of Senate, and everyone ends up on the commission voting along their party affiliations. And they make Hayes President, the Republican. And the supporters of Samuel Tilden who feel cheated are threatening war, Tilden or blood. They want Winfield Scott Hancock another Democratic Civil War veteran to ride into Washington to take control of what they say is an election that was stolen. Hayes sends out emissaries to meet with key Democrats and one of the deals he cuts is that if you allow me to win, as the electoral commission says I have, I will pull the remaining Union troops out of the South and allow essentially white supremacy to be restored, which he does and with white supremacists back in charge in southern legislatures.
And the biracial legislatures disappearing and the white supremacist legislatures starting to pass laws that seem neutral on their face but designed to undermine black rights then African-Americans needed the Fourteenth Amendment. And then they needed today Fourteenth Amendment to be as broad as possible including protecting their Bill of Rights rights and perhaps even including protecting natural rights against legislatures that were trying to constrict their freedom. And then the Slaughterhouse Case in retrospect starts to look pretty bad. And in the end, Campbell wins. Miller loses, outmaneuvered.
All right, the Slaughterhouse Cases as America moves towards the civil rights era and starts to look for how Jim Crow came about, how do we get an America South with separate water fountains, separate blood supplies, separate bibles to swear on in court, separate segregated buses and trains and they start to connect the dots, the Slaughterhouse Cases become infamous as the case where the Supreme Court, as you saw in that textbook I showed you, gutted the Fourteenth Amendment. Still to this day economic libertarians say the Slaughterhouse Cases were a disaster because the Supreme Court should have embraced the idea that your right to practice an occupation unfettered by regulation is protected by the privileges or immunities clause of the Fourteenth Amendment and if you go online there’s all kinds of Cato Institute Papers about how they should overturn Slaughterhouse and make the privileges or immunities clause protect your right to have a business without regulation. In the recent gun decisions, Heller and McDonald that decided that you do have an individual right to own a firearm and cities can't regulate you, many of the lawyers for the gun rights groups were arguing that that should have been decided a long time ago in the Slaughterhouse Cases and that in making those decisions the Supreme Court should have overturned Slaughterhouse which they didn't. Slaughterhouse still stands. So I have a biography about a justice, whose personal views I admire, who authors this notorious opinion that in the end has effects that he did not intend because he's outmaneuvered by John Campbell. And that's the story of the Slaughterhouse Cases.