

THE DUST BOWL AND THE SUPREME COURT (PART I)

By John S. Caragozian

John Steinbeck's Great Depression epic *The Grapes of Wrath* narrates the fictional Joad family's journey from drought-stricken Oklahoma to California's San Joaquin Valley.

This journey was duplicated in real life, as 2.5 million people fled Oklahoma, Texas, Arkansas, Missouri and surrounding states during the 1920s and '30s. However, the destination states, California foremost, resisted this migration until the U.S. Supreme Court stopped the resistance.

To begin, devastating conditions rocked Oklahoma and nearby states beginning in the 1920s. The agricultural sector had suffered even before the 1929 stock market crash. Overproduction in the U.S. plus increased foreign competition resulted in plummeting crop prices and farm foreclosures.

The Great Depression worsened matters. Consumer demand plunged further, and credit tightened. Moreover, starting in 1933 in the Great Plains, dust storms turned millions of acres into a true dust bowl, burying crops, suffocating livestock, and stripping away the topsoil upon which the region depended.

Then, beginning in 1934, prolonged drought and drastic heat in the Midwest killed more crops, livestock and people.

In addition, mechanization began to reduce the need for farm labor. Many townspeople saw their livelihoods disappear, as the Midwest's entire economy withered. Out-migration, then, was unsurprising.

California was the migrants' most common destination, but it also was suffering – with one in five Californians depending on public relief. California's rural counties were hardest hit. For example, in just three years from 1929 to 1932, California's farm income fell by more than half.

Low crop prices and high foreclosures caused California farmland values to drop further which, in turn, led to lower property tax revenues. In sum, California's public sector, especially in rural counties, was being squeezed to do more, but with fewer resources. The arrival of poor Midwestern migrants worsened this imbalance.

Accordingly, California attempted to block the migrants. One of California's tools was a so-called "anti-Okie" law. California Welfare and Institutions Code section 2615 provided, "Every person ... that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be ... indigent ..., is guilty of a misdemeanor."

One person prosecuted under section 2615 was Fred Edwards, a lay preacher from rural Yuba County. In December 1939, Edwards drove to Texas, picked up his destitute brother-in-law Frank

Duncan and drove Duncan, Duncan's wife, and newborn daughter back to Yuba County to live in Edwards' house.

Edwards then learned that no good deed goes unpunished. He was convicted in a Justice Court of violating section 2615, the stipulated evidence being that he knowingly brought an indigent person – namely his brother-in-law Duncan – into California. Edwards was sentenced to six months in jail, sentence suspended.

Edwards appealed to the Yuba County Superior Court. The Superior Court conceded that the statute's constitutionality was a "close" question, but affirmed Edwards' conviction.

Under California procedure at the time, no further state appeal existed, so Edwards appealed the anti-Okie law's constitutionality to the U.S. Supreme Court. The civil liberties bar – embryonic in those days – had wanted to challenge California's law and the Supreme Court granted review.

Edwards' Supreme Court brief made two arguments. First, section 2615 unconstitutionally burdens interstate commerce. Second, freedom of movement within the U.S. is a fundamental privilege of national citizenship that cannot be abridged by a state.

The prosecution's brief cited 19th-century Supreme Court precedent that a state's police power to protect that state's citizens' "health, safety, morals, and general welfare" expressly includes the right to bar indigents from entry. The prosecution then demonized the migrants, referring to them as "poor white[s]" who "swarmed into California." Even worse, these migrants "send back home transportation for their relatives, generally the aged and infirm, and these immediately become and continue public charges."

The prosecution's brief devolved further, with slurs unsupported in the record. The migrants have been "[u]nderfed for many generations [and] bring with them various nutritional diseases [and] a constant threat of epidemics." Further, the migrants commonly suffer from "[v]eneral diseases," engage in "rape and incest" and "petty crime," and, based on "experience in agricultural strikes, are readily led into riots by agitators"

In sum, the prosecution argued that the migrants have "alarmingly increased our taxes and the cost of welfare outlays, old age pensions, and the care of the criminal, the indigent sick, and the insane. Therefore, how can it be said that California should not have the power ... to bar proven paupers ...?"

The Supreme Court questioned the meaning of "indigent" in section 2615 and ordered re-argument for October 1941.

There, the prosecution was represented by California's first-term attorney general and his staff. The attorney general defended the statute by arguing that "indigent" is narrowly defined. It only means that California may bar the bringing in of people who lack money and "who have no relatives or friends able and willing to support them."

On Nov. 24, 1941, the Supreme Court ruled: section 2615 was unconstitutional. *Edwards v. California*, 314 U.S. 160. All nine Justices concurred, though for fundamentally different reasons.

Justice James Byrnes – formerly a U. S. Senator and later to become President Harry Truman’s Secretary of State – wrote for the five-member majority. Justice Byrnes opined that California’s statute violated the commerce clause: “The Constitution was framed ... upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division.”

Justice Byrnes continued, “It is difficult to conceive of a statute more squarely in conflict with this theory than the Section challenged here. Its express purpose and inevitable effect is to prohibit the transportation of indigent persons across the California border. The burden upon interstate commerce is intended and immediate; it is the plain and sole function of the statute ...” He added, “[I]n an industrial society the task of providing assistance to the needy has ceased to be local in character ...” *Id.* at 166, 174-75.

While the majority limited itself to the commerce clause, it recognized two important concepts, which were modern in 1941. First, the nation’s people have become more mobile. Second, the Great Depression is recognized as a national calamity, with national causes and need for national solutions.

Justice William Douglas concurred. Writing for himself and two other Justices, he disdained the majority’s commerce clause rationale. “[T]he right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines.” Instead, Justice Douglas opined that the right to move from state to state is a right of national citizenship guaranteed by 14th Amendment’s privileges and immunities clause. *Id.* at 177-79.

Finally, newly appointed Justice Robert Jackson (later to become the United States’ chief prosecutor at the Nuremberg Trials) wrote a solo concurrence.

Justice Jackson agreed that California’s anti-Okie law violated the privileges and immunities clause, but went further with “the real crux of this case”: “Does ‘indigence’ ... constitute a basis for restricting the freedom of a citizen ...? We should say now, and in no uncertain terms, that a man’s mere property status, without more, cannot be used by a state to ... limit his rights as a citizen of the United States... The mere state of being without funds is a neutral fact -- constitutionally an irrelevance, like race, creed, or color....”

Justice Jackson’s eloquence grew. “Property can have no more dangerous, even if unwitting, enemy than one who would make its possession a pretext for unequal or exclusive civil rights....” Justice Jackson’s concurrence concluded with startling prescience (remember, he was writing in late November 1941): “If I doubted whether his federal citizenship alone were enough to open the gates of California to Duncan, my doubt would disappear on consideration of the obligations of such citizenship. Duncan owes a duty to render military service, and this Court has said that

this duty is the result of his citizenship.... A contention that a citizen's duty to render military service is suspended by 'indigence' would meet with little favor. Rich or penniless, Duncan's citizenship under the Constitution pledges his strength to the defense of California as a part of the United States, and his right to migrate to any part of the land he must defend is something she must respect under the same instrument...." *Id.* at 183-86.

Thus endeth the Supreme Court's *Edwards v. California* opinions. But our story is not ended, and Part II will set forth three ironic endings.

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