CONSTITUTIONAL LAW—EQUAL PROTECTION CLAUSE—DISCRIMINATION—In a recent decision,[1] the Supreme Court of the United States affirmed the decision of the New York Court of Appeals,[2] which upheld a statute of the state making it unlawful for anyone to knowingly attend a meeting of an oath-bound organization which had not filed a copy of its constitution, oath, etc., with the secretary of state, but specifically exempting certain organizations of the character named from the operation of the statute.

It was contended that the statute violated the equal protecion of laws clause of the Fourteenth Amendment. The statute looks, at first blush, as though it might so offend. It excepted from its operation labor unions and "benevolent orders." [3] This included the Masonic Order, I. O. O. F., G. A. R., and K. of C., all named in the other statute. Plaintiffs in the present action (habeas corpus proceedings) were members of the Ku Klux Klan. It will be worth while to notice the basis upon which the legislature has been permitted to classify.

Mr. Justice Holmes has said, "Legislation may begin where the evil begins."[4] So, by necessary corollary, legislation may leave off where the evil leaves off. When we are talking in terms of "classification," we are talking in terms of groupings with reference to something of particular significance for certain purposes. The "classification" involved in the designation "oath bound organizations," is obviously a grouping or selection, as the object of the legislation in question, with reference to the form and nature of the organization. This is necessary as a convenient and expedient method of identification and designation. There is no doctrine of Constitutional Law nor any theory of policy of the common law that demands that any legislation enacted for the purpose of regulating some of such organizations should be equally applicable to all. Such is not the meaning of the Fourteenth Amendment.

The "legislation may begin where the evil begins," and here we find the rationale of any further "classification." What the legislature in New York has done in the statute involved in the principal case is to proceed to a further classification, making the statute applicable only to such organizations as were responsible for the evil which the statute seeks to attack. Here, then, we find the clue to the equal protection problem. We are to look to the purpose of the act. It is obvious that this purpose is to afford protection against organizations and associations, avowedly pledged to practices and objectives inconsistant with our notions of law and government. Plaintiff involved in the principal case was a member of the Ku Klux Klan, notorious for its lawlessness and un-American character. The real question involved is whether a statute aimed at curbing and regulating such associations is a reasonable object of legislative solicitude and whether the alleged evils have any basis in fact and experience. The proper method of solving such a problem is obviously, to look to experience for the answer, and this is the

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[1] People v. Zimmerman, 49 Sup. Ct. Rep. 61 (1928). See post, p. 295. for the facts in this case.

[2] People v. Zimmerman, 241 N. Y. 405, 150 N. E. 497, 43 A. L. R. 909.

[3] N. Y. Laws, 1923, p. 1110, ch. 664; article 5-A, Civil Rights Law.

[4] Holmes, dissenting, Truax v. Corrigan, 257 U. S. 312, 66 L. Ed. 254, 42 Sup. Ct. 124.

principle which has gradually emerged as the correct standard for the "equal protection" guarantee.

Thus the court, in the principal case, quotes from *Patsone* v. *Pennsylvania.*[5] "The question is a practical one, dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named."

Does the application of this principle help us in the present instance? The activities of the Ku Klux Klan are no closed book, in spite of the secret nature of the organization. Its long and shameful record of outlawry, crime, defiance of law, intolerance and biggotry constitute one of the darkest chapters in the history of American institutions. "The question is a practical one." The law need not be applied equally to all members of the designated class, for all members are not responsible for the evils which the statute aims to correct. In this way, persons or objects may be selected from a class to form what, in fact, constitutes another class, based upon the purpose and object of the legislation in question. The fact that all but a few or even one member of the larger designated class are excluded by the selection is no objection. As said by Mr. Justice Holmes, "it is the usual last resort of constitutional arguments to point out shortcomings of this sort."[6] But so long as the statute is drafted upon experience which has a reasonable relation to a decent end and objective, there can be nothing in the Fourteenth Amendment to condemn it. —Fowler V. Harper.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—The state of Louisiana, by legislative act, declared that the shrimp in the state were to be conserved for the use of the people of the state; that under certain regulations one might secure a license to take the shrimp, to be canned within the state; that after they were canned they might be shipped out of the state. Prior to the taking effect of the act X, a Louisiana corporation, had been taking shrimp and shipping them to Y, a Mississippi corporation, operating a canning factory in Mississippi. The enforcement of the act would destroy this arrangement, and make it impossible for Y to can Louisiana shrimp, except in Louisiana. X and Y, in the federal court in Louisiana, sought to enjoin the enforcement of parts of the act on the theory that they were invalid under the commerce clause. The Supreme Court of the United States reversed the decree of the lower courts which had refused a temporary injunction.[1]

It seems to have been conceded that the plaintiffs could not have been successful had they relied on the 14th amendment. In fact, there is no dissent in the authorities on that score. The state owns the wild life of the state for the benefit of its people; one can only then deal with this wild life, (the property of the state) with the consent of the state. The state may grant a license to take the game upon such conditions as it sees fit, but the licensee acquires no property right protected by the "due process clause," for the

[5] 232 U. S. 138, 144, 58 L. Ed. 539, 34 Sup. Ct. 281 (1913).

[6] Buck v. Bell, 274 U. S. 200, 207, 71 L. Ed. 1000, 47 Sup. Ct. 584 (1926).

[1] Foster-Fountain Packing Co. v. Haydel, 49 Sup. Ct. 1 (Oct., 1928).