AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 6: The Civil War and Reconstruction—Equality/Race/Implementing the Fourteenth Amendment

---

U.S. v. Cruikshank, 92 U.S. 542 (1875)

William (Bill) Cruikshank was a prominent planter in Grant Parish, Louisiana. On April 13, 1873, Cruikshank and other prominent white citizens in Grant Parish led an attack on the leading African-American citizens of the parish, who took refuge in the Colfax city courthouse. More than thirty African-Americans were murdered, many after they attempted to surrender. Cruikshank and several other men were almost immediately arrested and charged with violating the Enforcement Act of 1870. Cruikshank's indictment alleged that he and others had formed a conspiracy to "injure, oppress, threaten or intimidate" named persons of color in ways that would "prevent or hinder" their "exercise or enjoyment" of constitutional rights. The first trial ended when the hung jury could not agree on a verdict, but three defendants, including Cruickshank, were convicted at a second trial of conspiracy. Supreme Court Justice Joseph Bradley, riding circuit, immediately reversed those convictions on the ground that the indictment was either too vague or did not specify a crime that Congress could constitutionally punish. The local federal attorney, James Beckwith, immediately appealed to the Supreme Court of the United States.[1]

The Supreme Court by a unanimous vote sustained Justice Bradley's decision that the indictment against the perpetrators of the Colfax massacre was invalid. The immediate consequence of this decision was that no persons responsible for the slaughter of African-Americans in Louisiana were ever prosecuted. The long-term consequence was to make more difficult, if not impossible, efforts to prosecute under federal law members of the Klan and other white supremacists who murdered persons of color in the Reconstruction South. As you read Chief Justice Waite's opinion, consider the following questions. To what extent was this a legal response to a defective indictment or a self-conscious effort to abandon efforts to protect former slaves? Did the court set a near absolute bar against prosecuting white supremacists who murdered persons of color? Was the bar more political? In this view, given the inherent difficulties of prosecuting white supremacists in the South, any increased legal difficulties were likely to lead to the abandonment of those prosecutions. For this reason, should the Court have been inclined to overlook legal technicalities in the service of greater justice? Is that an appropriate role for the Court?

CHIEF JUSTICE WAITE delivered the opinion of the court.

. . .

The people of the United States resident within any State are subject to two governments: one State, and the other National; but there need be no conflict between the two. The powers which one possesses, the other does not. They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. . . .

The government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people. No rights can be acquired under the constitution or laws of the United States, except such as the government of the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States.

We now proceed to an examination of the indictment, to ascertain whether the several rights, which it is alleged the defendants intended to interfere with, are such as had been in law and in fact granted or secured by the constitution or laws of the United States.

The first and ninth counts state the intent of the defendants to have been to hinder and prevent the citizens named in the free exercise and enjoyment of their 'lawful right and privilege to peaceably assemble

[1] For a powerful account of these events, see Charles Lane, *The Day Freedom Died: The Colfax Massacre, the Supreme Court, and the Betrayal of Reconstruction* (New York: Henry Holt and Company, 2008).

together with each other and with other citizens of the United States for a peaceful and lawful purpose.' The right of the people peaceably to assemble for lawful purposes existed long before the adoption of the Constitution of the United States. In fact, it is, and always has been, one of the attributes of citizenship under a free government. It 'derives its source,' . . . 'from those laws whose authority is acknowledged by civilized man throughout the world.' It is found wherever civilization exists. It was not, therefore, a right granted to the people by the Constitution. The government of the United States when established found it in existence, with the obligation on the part of the States to afford it protection. As no direct power over it was granted to Congress, it remains . . . subject to State jurisdiction. Only such existing rights were committed by the people to the protection of Congress as came within the general scope of the authority granted to the national government.

The first amendment to the Constitution prohibits Congress from abridging 'the right of the people to assemble and to petition the government for a redress of grievances.' This, like the other amendments proposed and adopted at the same time, was not intended to limit the powers of the State governments in respect to their own citizens, but to operate upon the National government alone. . . .

The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the national government, is an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances. If it had been alleged in these counts that the object of the defendants was to prevent a meeting for such a purpose, the case would have been within the statute, and within the scope of the sovereignty of the United States. Such, however, is not the case. The offence, as stated in the indictment, will be made out, if it be shown that the object of the conspiracy was to prevent a meeting for any lawful purpose whatever.

The second and tenth counts are equally defective. The right there specified is that of 'bearing arms for a lawful purpose.' This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress. . . .

The third and eleventh counts are even more objectionable. They charge the intent to have been to deprive the citizens named, they being in Louisiana, 'of their respective several lives and liberty of person without due process of law.' This is nothing else than alleging a conspiracy to falsely imprison or murder citizens of the United States, being within the territorial jurisdiction of the State of Louisiana. The rights of life and personal liberty are natural rights of man. 'To secure these rights,' says the Declaration of Independence, 'governments are instituted among men, deriving their just powers from the consent of the governed.' The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these 'unalienable rights with which they were endowed by their Creator.' Sovereignty, for this purpose, rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State, than it would be to punish for false imprisonment or murder itself.

. . .

The fourteenth amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it, and which we have just considered, add an thing to the rights which one citizen has under the Constitution against another. The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty.

No question arises under the Civil Rights Act of April 9, 1866 . . . which is intended for the protection of citizens of the United States in the enjoyment of certain rights, without discrimination on account of race, color, or previous condition of servitude, because . . . it is nowhere alleged in these counts that the wrong contemplated against the rights of these citizens was on account of their race or color.

. . .

The sixth and fourteenth counts state the intent of the defendants to have been to hinder and prevent the citizens named, being of African descent, and colored, 'in the free exercise and enjoyment of their several and respective right and privilege to vote at any election to be thereafter by law had and held by the people in and of the said State of Louisiana, or by the people of and in the parish of Grant aforesaid.' In *Minor* v. *Happersett*, we decided that the Constitution of the United States has not conferred the right of suffrage upon any one, and that the United States have no voters of their own creation in the States. In

United States v. *Reese et al.* . . . , we hold that the fifteenth amendment has invested the citizens of the United States with a new constitutional right, which is, exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. From this it appears that the right of suffrage is not a necessary attribute of national citizenship; but that exemption from discrimination in the exercise of that right on account of race, &c., is. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States; but the last has been.

Inasmuch, therefore, as it does not appear in these counts that the intent of the defendants was to prevent these parties from exercising their right to vote on account of their race, &c., it does not appear that it was their intent to interfere with any right granted or secured by the constitution or laws of the United States. We may suspect that race was the cause of the hostility; but it is not so averred. . . .

. . .

We come now to consider the fifth and thirteenth and the eighth and sixteenth counts, which may be brought together for that purpose. The intent charged in the fifth and thirteenth is 'to hinder and prevent the parties in their respective free exercise and enjoyment of the rights, privileges, immunities, and protection granted and secured to them respectively as citizens of the United States, and as citizens of said State of Louisiana,' 'for the reason that they, . . . being then and there citizens of said State and of the United States, were persons of African descent and race, and persons of color, and not white citizens thereof;' and in the eighth and sixteenth, to hinder and prevent them 'in their several and respective free exercise and enjoyment of every, each, all, and singular the several rights and privileges granted and secured to them by the constitution and laws of the United States.' The same general statement of the rights to be interfered with is found in the fifth and thirteenth counts.

According to the view we take of these counts, the question is not whether it is enough, in general, to describe a statutory offence in the language of the statute, but whether the offence has here been described at all. The statute provides for the punishment of those who conspire 'to injure, oppress, threaten, or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the constitution or laws of the United States.' These counts in the indictment charge, in substance, that the intent in this case was to hinder and prevent these citizens in the free exercise and enjoyment of 'every, each, all, and singular' the rights granted them by the Constitution, &c. There is no specification of any particular right. The language is broad enough to cover all.

In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right 'to be informed of the nature and cause of the accusation.' . . . [T]he indictment must set forth the offence 'with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged. . . ' It is an elementary principle of criminal pleading, that where the definition of an offence, whether it be at common law or by statute, 'includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition; but it must state the species,—it must descend to particulars. . . .

. . .

. . .

The conclusion is irresistible, that these counts are too vague and general. They lack the certainty and precision required by the established rules of criminal pleading. It follows that they are not good and sufficient in law. They are so defective that no judgment of conviction should be pronounced upon them.

JUSTICE CLIFFORD dissenting.

I concur that the judgment in this case should be arrested, but for reasons quite different from those given by the court.

[Justice Clifford's opinion focused on technical defects in the indictment]