



AMERICAN CONSTITUTIONALISM  
 VOLUME I: STRUCTURES OF GOVERNMENT  
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Supplementary Material

Chapter 5: The Jacksonian Era – Powers of the National Government

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**U.S. v. Haun, 26 F.Cas. 227 (C.C.Ala. 1860)**

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*John W. Haun was indicted for violating a federal law that forbade persons from “hold[ing], sell[ing], or otherwise “dispos[ing]” any “negro, mulatto, or person of color” who was illegally imported into the United States to be enslaved. Haun’s attorney asked the federal Circuit Court of Alabama to quash the indictment. He claimed that Congress had constitutional power only to prevent slaves from being illegally imported into the United States. Congressional power over illegally imported slaves ended, Haun insisted, once the slave resided in a slaveholding state.*

*Supreme Court Justice John Campbell, acting as a circuit judge, ruled that the indictment was constitutional. The congressional power to prohibit illegally imported slaves, he declared, included the congressional power to prohibit persons from buying, selling, or holding illegally important slaves. Campbell in *United States v. Haun* broadly construes congressional power over slavery. You might compare this opinion to the Supreme Court’s opinions in *Prigg v. Pennsylvania* (1842) and *Dred Scott v. Sandford* (1857). Are these opinions united by any common themes? What are those themes?*

JUSTICE CAMPBELL delivered the opinion of the Court.

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 . . . . It may be admitted that property or persons introduced or entering the United States by their consent; and mingling with property and persons in the states, in some manner and to some extent, fall under state authority, and in some manner and to some extent, are not subject to federal control. . . . But [past cases on this point] only prove when state authority may begin to operate, and not when the federal authority terminates, upon property or persons legally introduced into the country. But suppose the case of merchandise imported contrary to law, or smuggled, would it be contended that the federal authority was at an end when the property became mingled with the property of the state, and had gone into the hands of bona fide purchasers? This is not an open question. . . . The power of congress to provide for the seizure and removal of persons coming to the country illegally and without their consent, has been asserted as fully in judicial decisions as it has been in regard to property.

. . . . [I]f congress might provide for the arrest and removal of foreigners who had evaded the justice of a foreign nation, by flight to the United States, notwithstanding his domicil within any of the states, they might provide for the removal of those who had been imported, or had entered the United States contrary to their own laws, and that state authority could afford such a person a sanctuary or shelter. . . . The case before the court is one in which the power of congress to pass laws to prohibit the importation of Africans, or slaves, cannot be denied. The subject entered into the debates of the continental congress, and forms one of the compromises on which the constitution rests. Under the constitution the ‘migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited (by congress) prior to the year 1808.’ On the first day of the year 1808, by an act of congress made to meet the approach of their plenary authority, the importation of Africans as slaves, or the purchasing of them from the importer, became illegal. . . . No system of measures exists in our legislation that has been more carefully considered, or which obtained more completely the deliberate, impartial and conscientious approbation of states and statesmen. It requires no small measure of moral and intellectual intrepidity to impugn them.



. . . . [C]onsidered merely as a commerce that the congress may suppress or prevent, they are clothed with powers adequate to the accomplishment of their policy. They are not dependent upon the state governments for ancillary legislation, nor can they be obstructed by their inaction or opposition. 'No trace,' say the supreme court of the United States, 'no trace is to be found in the constitution of an intention to create a dependence of the government of the Union on those of the States, for the execution of the great powers assigned to it. Its means are adequate to its ends; and on those means alone was it expected to rely for the accomplishment of its ends. To impose on it the necessity of resorting to means which it cannot control, which another government may furnish or withhold, would render its course pernicious, the result of its measures uncertain, and create dependence on other governments, which might disappoint its most important designs, and is incompatible with the language of the constitution.' No more striking illustration of the force and accuracy of this opinion of the supreme court can be adduced than might be afforded by the concession that the power of congress over the slave trade terminates after the introduction and sale of the Africans in the states. The slave trade might be as a matter of fact reopened, by the neglect or refusal of a state to enact or enforce prohibitory laws, for it can hardly be supposed that every port and inlet of the United States will always be properly guarded, so as to prevent their introduction and sale.

The expectations of the states which framed the constitution, and stipulated that after 1808 congress might abolish the trade at once and forever: the solemn treaties, binding the nation to employ moral and material force to effect throughout the world the closing of slave markets for Africans forever: the acts of congress prohibiting the trade, and confiscating the implements and machines employed in it, as if they were accomplices in the guilt- acts passed with unanimity, and sanctioned by an approving people, might be frustrated and defeated if the African could be held, sold, or otherwise disposed of, without responsibility to those in whom the constitution has conferred the power of making these laws and treaties. No such consequences can follow. The constitution has not left the power of the federal government to employ the means requisite to fulfill its obligations, and to execute its authority to cavil or question. It confers upon congress the power 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the constitution in the government of the United States, or in any department or officer thereof.' . . . Before the enactments under consideration had been made, philosophic and practical statesmen had discovered 'that the true origin of the slave trade was not in the place it was begun at, but at the place of its final destination.' If there were not men who held, sold, or otherwise disposed of Africans, after the termination of the slave voyage, and the act of importation completed, there would be no building, equipping and manning of ships, no voyages to the African coast for slaves, no barracoons to supply American vessels, no piratical seizures, no confinements or detentions of Africans as slaves, no mortuary lists of the victims of such acts to startle and shock humanity, no need of African squadrons, or slave trade treaties, no illegal entries or importations. A complete preventive of the holding, selling or disposing of Africans within the limits of the United States, or by the citizens thereof, would remove the stain which has fallen upon our country by the abuse of its flag. This legislation of congress, then strikes at the root of this evil. If enforced it would extirpate a large share of the mischief. Such being the case, I am unable to bring myself to the conclusion that the means congress have selected by imposing penalties upon an offender against their laws are not necessary and proper to the end. I cannot assent to the conclusion, that they cannot execute their obligations to suppress a trade which they have declared to be contrary to humanity and justice, by punishing the citizens who hold and dispose of the subjects of that trade anywhere within their jurisdiction.