Supplementary Material

Chapter 6: The Civil War and Reconstruction—Individual Rights/Personal Freedom and Public Morality

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State v. Gibson, 36 Ind. 389 (1871)

Thomas Gibson married Jennie Williams on April 13, 1870. Williams was a white woman. Gibson was described by the Supreme Court of Indiana as "having one-eighth part or more of negro blood." Their marriage violated a state law which declared, "No person having one-eighth part or more of negro blood shall be permitted to marry any white woman of this State, nor shall any white man be permitted to marry any negro woman, or any woman having one-eighth part or more of negro blood." The trial court quashed Gibson's indictment on the ground that the Indiana ban on interracial marriage violated the Fourteenth Amendment. The prosecuting attorney appealed that decision to the state supreme court.

The Supreme Court of Indiana ruled that the state ban on interracial marriages was constitutional. Judge Samuel H. Buskirk insisted that the Fourteenth Amendment was not designed to interfere with state power to pass domestic regulations. How did he reach that conclusion? What state laws did Buskirk think might violate the post–Civil War constitution? Why do you think Indiana in 1871 reached a more illiberal conclusion on the right to marriage than Alabama in 1872?

JUDGE BUSKIRK

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The fourteenth amendment contains no new grant of power from the people, who are the inherent possessors of all power, to the federal government. It did not enlarge the powers of the federal government, nor diminish those of the states. The inhibitions against the states doing certain things have no force or effect. They do not prohibit the states from doing any act that they could have done without them. . . . The only effect of the amendment under consideration was to extend the protection and blessings of the constitution and laws to a new class of persons. When they were made citizens they were as much entitled to the protection of the constitution and the laws as were the white citizens, and the states could no more deprive them of privileges and immunities than they could citizens of the white race. Citizenship entitled them to the protection of life, liberty, and property, and the full and equal protection of the laws. Nor has the ratification of this amendment in any manner or to any extent impaired, weakened, or taken away any of the reserved rights of the states, as they had existed and been fully recognized by every department of the national government from its creation. This amendment conferred citizenship upon persons of the African race, but we will hereafter inquire and decide whether citizenship conferred on them the right to intermarry with persons of the white race.

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There can be no doubt that Congress possesses the power to determine who may, or may not, make contracts, and prescribe the manner of their enforcement, in the District of Columbia, and in all other places where the federal government has exclusive jurisdiction; but we deny the power and authority of Congress to determine who shall make contracts or the manner of enforcing them in the several states. Nor is there any doubt that Congress may provide for the punishment of those who violate the laws of Congress; but we utterly deny the power of Congress to regulate, control, or in any manner to interfere with the states in determining what shall constitute crimes against the laws of the state, or the manner or extent of the punishment of persons charged and convicted with the violation of the criminal

laws of a sovereign state. In this State marriage is treated as a civil contract, but it is more than a mere civil contract. It is a public institution established by God himself, is recognized in all Christian and civilized nations, and is essential to the peace, happiness, and well-being of society. In fact, society could not exist without the institution of marriage, for upon it all the social and domestic relations are based. The right, in the states, to regulate and control, to guard, protect, and preserve this God-given, civilizing, and Christianizing institution is of inestimable importance, and cannot be surrendered, nor can the states suffer or permit any interference therewith. If the federal government can determine who may marry in a state, there is no limit to its power. It can legislate upon all subjects connected with, or growing out of this relation. It can determine the rights, duties, and obligations of husband and wife, parent and child, guardian and ward. It may pass laws regulating the granting of divorces. It may assume, exercise, and absorb all the powers of a local and domestic character. This would result in the destruction of the states. The federal government cannot exist without the states, but the states could exist without the federal government, as they did before its creation. There is no necessity for the destruction of either. The authority of the federal government begins where the authority of the state ceases. The state government controls all matters of a local and domestic character. The federal government regulates matters between the states and with foreign governments. There is, and can be no conflict between the state and federal governments, if each will act within the sphere assigned to each. The necessity for states and local self-government is shown by the character of our people. The customs, habits and thoughts of the people in one state differ widely from those of the people in another state, and this results in different laws.

The laws of this state provide that males of the age of seventeen, and females of the age of fourteen years, not within the prohibited degrees of consanguinity, are capable of entering into the contract of marriage. The statute provides that the following marriages are void: when one of the parties is a white person, and the other possessed of one-eighth or more of negro blood; and when either party is insane or idiotic, at the time of the marriage. Under the police power possessed by the states, they undoubtedly have the power to pass such laws. The people of this State have declared that they are opposed to the intermixture of races and all amalgamation. If the people of other states desire to permit a corruption of blood, and a mixture of races, they have the power to adopt such a policy. When the legislature of the State shall declare such policy by positive enactment, we will enforce it, but until thus required we shall not give such policy our sanction.

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