Supplementary Material

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

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U.S. v. Hall, 26 F.Cas. 79 (C.C.Ala 1871)

Hall participated in a Ku Klux Klan raid that violently disrupted a Republican Party meeting in Eutaw, Alabama organized by former slaves. Hall and his confederates fired weapons into the meeting hall, killing two persons and injuring fifty others. A grand jury indicted Hall for violating the Enforcement Act of 1870. The first count in the indictment charged that Hall and his confederates

> *did unlawfully and feloniously band and conspire together, with intent to injure, oppress, threaten and intimidate Charles Hays and others, naming them, citizens of the United States of America, with intent to prevent and hinder their free exercise and enjoyment of the right of freedom of speech, the same being a right and privilege granted and secured to them by the constitution of the United States.*

Hall's lawyer claimed that Hall could not be constitutionally punished. He claimed the indictment was defective because the freedom of speech was not a privilege and immunity of United States citizens under the Fourteenth Amendment.

Judge William Woods ruled that the indictment was valid. His opinion maintained that the freedom of speech was one of the privileges and immunities of United States citizenship and that Congress had power under section 5 of the Fourteenth Amendment to punish private conspiracies to invade fundamental rights. What reasons did Judge Woods give for his conclusion that the Fourteenth Amendment protected the freedom of speech? What reasons did he give for his conclusion that Congress had power to punish private conspiracies aimed at preventing citizens from enjoying their right to freedom of speech? Judge Woods in his opinion never mentioned race or noted that Hall was a Klan member committed to securing white supremacy by violence. Is this a strength or weakness of the opinion?

CIRCUIT JUDGE WOODS

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. . . [T]he right of freedom of speech and the right peaceably to assemble, and other rights enumerated in the first eight articles of amendment are protected by the constitution only against the legislation of congress, and not against the legislation of the states. Nevertheless, it is true that these rights are secured to the people of the United States. The security may not be perfect and complete. These rights may be impaired by state legislation, yet they are secured against the action of congress. Can it be said, with truth, that the right of trial by jury, the right of the accused to be confronted with the witnesses against him, the right to be deprived of life, liberty or property without due process of law, are not secured by the constitution of the United States? We think that all rights which are protected against either national or state legislation may fairly be said to be secured rights. If we assume, then, that the right of freedom of speech and the right peaceably to assemble are rights secured by the constitution of the United States, then the first two grounds of demurrer must be overruled, for the indictment alleges that the defendants did conspire together to injure and oppress the parties named with intent to prevent

and hinder their free exercise and enjoyment of rights secured by the constitution, to wit: the right of freedom of speech and the right peaceably to assemble, and this the statute declares to be an offense.

. . . It is claimed that when congress is prohibited from interfering with a right by legislation, that does not authorize congress to protect that right by legislation; that as the states are not prohibited by the constitution from interference with the rights under consideration, congress, although prohibited itself from impairing these rights, has no grant of power to interfere for their protection as against the states. . . . We are of opinion, therefore, that under the original constitution and the first eight articles of amendment, congress had not the power to protect by law the people of a state in the freedom of speech and of the press, in the free exercise of religion, or in the right peaceably to assemble. . . .

We have thus far considered this demurrer, and it seems to have been argued for the defense, without reference to the recent amendments to the constitution. . . . By the original constitution citizenship in the United States was a consequence of citizenship in a state. By this clause this order of things is reversed. Citizenship in the United States is defined; it is made independent of citizenship in a state, and citizenship in a state is a result of citizenship in the United States. So that a person born or naturalized in the United States, and subject to its jurisdiction, is, without reference to state constitutions or laws, entitled to all the privileges and immunities secured by the constitution of the United States to citizens thereof. . . . What are the privileges and immunities of citizens of the United States here referred to? They are undoubtedly those which may be denominated fundamental; which belong of right to the citizens of all free states, and which have at all times been enjoyed by the citizens of the several states which compose this Union from the time of their becoming free, independent and sovereign. Corfield v. Coryell [Case No. 3,230]. Among these we are safe in including those which in the constitution are expressly secured to the people, either as against the action of the federal or state governments. Included in these are the right of freedom of speech, and the right peaceably to assemble.

To recur now to the first ground of demurrer: are these rights secured to the people by the constitution of the United States? We find that congress is forbidden to impair them by the first amendment, and the states are forbidden to impair them by the fourteenth amendment. Can they not, then, be said to be completely secured? They are expressly recognized, and both congress and the states are forbidden to abridge them. Before the fourteenth amendment, congress could not impair them, but the states might. Since the fourteenth amendment, the bulwarks about these rights have been strengthened, and now the states are positively inhibited from impairing or abridging them, and so far as the provisions of the organic law can secure them they are completely and absolutely secured. The next clause of the fourteenth amendment reads: 'Nor shall any state deny to any person within its jurisdiction the equal protection of the laws.' Then follows an express grant of power to the federal government: 'Congress may enforce this provision by appropriate legislation.' From these provisions it follows clearly, as it seems to us, that congress has the power, by appropriate legislation, to protect the fundamental rights of citizens of the United States against unfriendly or insufficient state legislation, for the fourteenth amendment not only prohibits the making or enforcing of laws which shall abridge the privileges of the citizen, but prohibits the states from denying to all persons within its jurisdiction the equal protection of the laws. Denying includes inaction as well as action, and denying the equal protection of the laws includes the omission to protect, as well as the omission to pass laws for protection. The citizen of the United States is entitled to the enforcement of the laws for the protection of his fundamental rights, as well as the enactment of such laws. Therefore, to guard against the invasion of the citizen's fundamental rights, and to insure their adequate protection, as well against state legislation as state inaction, or incompetency, the amendment gives congress the power to enforce its provisions by appropriate legislation. And as it would be unseemly for congress to interfere directly with state enactments, and as it cannot compel the activity of state officials, the only appropriate legislation it can make is that which will operate directly on offenders and offenses, and protect the rights which the amendment secures. The extent to which congress shall exercise this power must depend on its discretion in view of the circumstances of each case. If the exercise of it in any case should seem to interfere with the domestic affairs of a state, it must be remembered that it is for the purpose of protecting federal rights, and these must be protected even though it interfere with state laws or the administration of state laws. We think, therefore, that the right of freedom of speech, and the other rights enumerated in the first eight articles of

amendment to the constitution of the United States, are the privileges and immunities of citizens of the United States, that they are secured by the constitution, that congress has the power to protect them by appropriate legislation. We are further of opinion that the act on which this indictment is founded applies to cases of this kind, and that it is legislation appropriate to the end in view, namely, the protection of the fundamental rights of citizens of the United States. . . .