

# THE COLFAX MASSACRE AND US V. CRUIKSHANK

The Colfax Massacre took place on Easter Sunday, April 13, 1873, in Colfax Louisiana. The 1872 Louisiana election was hotly contested by the Democrats who favored a return to antebellum conditions as fully as possible, and Republicans who worked to bring Freedmen to full citizenship. Wikipedia has a long entry on the Colfax Massacre, including a history of the build-up to that bloody Sunday.

The Louisiana militia, many of whom were Black, a mob of former Confederates and KKK members showed up with cannon and guns, and attacked. The militia surrendered or escaped. The mob caught and killed them, including those who surrendered, between 62 and 153 men; the exact number is unknown. There was only one survivor.

Eventually a few of the attackers were tried and convicted in federal court in New Orleans under the Enforcement Act of 1870. They appealed to the Supreme Court, which overturned the verdict in *US v. Cruikshank*. On appeal, the Circuit Court was divided on the question of whether the indictments charged a crime, or as we would say today, the constitutionality of the Enforcement Act.

The opinion is by Morrison Waite, the chief. The syllabus describes the indictment. It was based on §6 of the Enforcement Act of 1870:

'That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provisions of this act, or 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, or because of his having exercised the same, such persons shall be held guilty of felony....

The Court says that this provision applies only to rights that arise under the Constitution or laws of the United States. It cites the Slaughterhouse Cases for the proposition that people are citizens of the US and of a state, and that one's rights as a citizen of the US are different from ones rights as a citizen of each of the several states.

Next the Court gives us a short version of the theory we've seen before, that people form governments to promote their general welfare and protect their rights. The role of every government is the protection of the inhabitants, but they may only do so to the extent of their powers.

This, I think, is the key argument, given without explanation:

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.

Waite knows this isn't exactly true. The same act may offend the laws of both the state and the US. He gives examples: counterfeit coins, and assaults on a federal officer. Each may be an offense against both the laws of the state and the US.

He notes that the US government only has the powers in the Constitution. He says his job is to find out whether the rights the defendants allegedly interfered with are granted by the Constitution or the laws of the US.

Counts 1 and 9 relate to the right of peaceable assembly. These are not granted by the Constitution, says Morrison Waite. They are the

natural rights of any free government.

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 1st Amendment is couched in the negative, prohibiting US government from interfering with the right to assemble, while leaving the states free to regulate it as they saw fit. The right to assemble to petition Congress or the federal government is a federal right, and if the indictment alleged that that was the purpose of the assembly, this would be a crime. But it didn't.

Counts 2 and 10 concern the right to keep and bear arms. This also is not given by the Constitution. The 2nd Amendment merely "... is one of the amendments that has no other effect than to restrict the powers of the national government..." leaving citizens to seek the protection of the states under their police powers.

Counts 3 and 11 assert the right not to be deprived of life or liberty without due process. The Court is offended by this charge, which it says is nothing more than a standard murder charge. The right to life is a natural right, obviously not granted by the Constitution. Waite says that the 14th Amendment doesn't add to the powers of the US government. It's merely an additional guarantee of the right every citizen has under state protection.

Counts 4 and 12 claim that the defendants conspired to deprive black citizens of their right to equal treatment with white citizens as

respects their various rights. Waite says this is merely one group of citizens killing another. The 14th Amendment doesn't add to the powers of the US to protect one group of citizens from another.

Counts 6 and 14 allege violation of rights connected with voting. The Court says that suffrage is a right granted by the states. All the 15th Amendment does is to prohibit discriminate in granting the right to vote on account of race. Thus the right to vote is not a right granted by the US.

Counts 7 and 15 concern voting. Waite says that elections were state elections, and so the US isn't involved.

Counts 5, 12, 8 and 16 all involve direct allegations that the defendants acted together to deprive the dead of their rights as citizens on account of their race. Waite asserts that the pleading of these counts is defective because it doesn't specify the facts sufficiently. It merely recites the statutory language. In order to be adequate, it must describe the facts in sufficient detail for the defendants to protect themselves, and to insure that they are not tried twice for the same offense.

### **Discussion**

1. The attitude of the Court is summed up by this quote: "The charge as made is really of nothing more than a conspiracy to commit a breach of the peace within a State." The New York Times noted this in its headline. That's bullshit. This was a race riot, the exact thing Congress was aiming at.

2. Like *The Slaughterhouse Cases*, this case takes up issues unnecessary for the decision, as the dissent points out, and as Waite does with several counts. The case can and should be decided on the limited ground that the indictment is insufficient. There was no need to reach constitutional questions.

3. The Court doesn't look at whether the

Reconstruction Amendments changed the powers of the states and the US as regards race, why they don't give the federal government the power to protect at least Black citizens, as an additional safeguard of their rights as citizens. This would be an example of the powers of the two governments do deal with the same events on different grounds.

4. The Court thinks the important thing about this case is the line between the powers of the states and the US. It protects the power of the states to control the lives of their citizens, regardless of the consequences for Black citizens.

There is no indication that Louisiana took any interest in the murder of 150 Black people. As best I can tell, the locals didn't even investigate the murders. Everyone knows this, including the members of the Supreme Court. Waite offers some worthless words about the responsibility of the states, but he doesn't care whether they do or not.

This case sets the Court on the road to allowing both both federal and state governments to ignore mob violence against Black citizens, and outright denial of their rights, the result the Reconstruction Amendments were intended to prevent.