



UNITED STATES v. CRUIKSHANK
SUPREME COURT OF THE UNITED STATES
92 U.S. 542
March 27, 1876

OPINION: Chief Justice Waite...This case...presents for our consideration an indictment containing sixteen counts, divided into two series of eight counts each, based upon §6 of the Enforcement Act [which states:]

"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 provision 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 question [is]...whether "the...sixteen counts...contain charges of criminal matter indictable under the laws of the United States."

The general charge in the first eight counts is that of "banding," and in the second eight, that of "conspiring" together to injure, oppress, threaten, and intimidate Levi Nelson and Alexander Tillman, citizens of the United States, of African descent and persons of color, with the intent thereby to hinder and prevent them in their free exercise and enjoyment of rights and privileges "**granted and secured**" to them "in common with all other good citizens of the United States by the **constitution and laws of the United States.**"

...To bring this case under the operation of the statute...it must appear that the right, the enjoyment of which the conspirators intended to hinder or prevent, was one granted or secured by the constitution or laws of the United States. If it does not so appear, the criminal matter charged has not been made indictable by any act of Congress...

Experience made the fact known to the people of the United States that they required a national government for national purposes. The separate governments of the separate States, bound together by the articles of confederation alone, were not sufficient for the promotion of the general welfare of the people in respect to foreign nations, or for their complete protection as citizens of the confederated States. For this reason, the people of the United States, "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty" to themselves and their posterity (Const. Preamble), ordained and established the government of the United States, and defined its powers by a constitution, which they adopted as its fundamental law, and made its rule of action.

The government thus established and defined is to some extent a government of the States in their political capacity. It is also, for certain purposes, a government of the people. Its powers are limited in number, but not in degree. **Within the scope of its powers, as enumerated and defined, it is supreme and above the States; but beyond, it has no existence.**

This concept of "Federalism" is easily passed by. We will likely run into its meaning several times on this journey.

It was erected for special purposes, and endowed with all the powers necessary for its own preservation and the accomplishment of the ends its people had in view. It can neither grant nor secure to its citizens any right or privilege not expressly or by implication placed under its jurisdiction.

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. True, **it may sometimes happen that a person is amenable to both jurisdictions for one and the same act.** Thus, if a marshal of the United States is unlawfully resisted while executing the process of the courts within a State, and the resistance is accompanied by an assault on the officer, the sovereignty of the United States is violated by the resistance, and that of the State by the breach of peace, in the assault. So, too, if one passes counterfeited coin of the United States within a State, it may be an offence against the United States and the State: the United States, because it discredits the coin; and the State, because of the fraud upon him to whom it is passed. This does not, however, necessarily imply that the two governments possess powers in common, or bring them into conflict with each other. It is the natural consequence of a citizenship which owes allegiance to two sovereignties, and

claims protection from both...

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 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.**

Pro-gun-rights groups suggest that this case is often quoted out of context by gun-control groups who claim that *Cruikshank* holds that the Second Amendment **does not grant a right** to keep and bear arms to an individual not in the militia. If gun-control groups are correct, what do we make of the very next sentence in *Cruikshank*?

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**. This is one of the amendments that has no other effect than to restrict the powers of the national government, leaving the people to look for their protection against any violation by their fellow-citizens of the rights it recognizes, to what is called, in *The City of New York v. Miln*, the "powers which relate to merely municipal legislation, or what was, perhaps, more properly called internal police," "not surrendered or restrained" by the Constitution of the United States...

Is the "right to bear arms" a "natural right"? The Court decided that the Second Amendment did not apply to the states, but represents limitations on Congress only.

We are, therefore, of the opinion that the...second...[and] tenth...counts do not contain charges of a criminal nature made indictable under the laws of the United States, and that consequently they are not good and sufficient in law. **They do not show that it was the intent of the defendants, by their conspiracy, to hinder or prevent the enjoyment of any right granted or secured by the Constitution...**[The defendants are discharged.]

DISSENT: Justice Clifford...[Not Provided.]