SUPREME COURT OF THE UNITED STATES.

No. 42.—October Term, 1944.

144-19M-4

M. Claude Screws, Frank Edward Jones and Jim Bob Kelley, Petitioners,
vs.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 7, 1945.]

Mr. Justice Douglas delivered the opinion of the Court.

Black Stone Reed.

This case involves a shocking and revolting episode in law enforcement. Petitioner Screws was sheriff of Baker County, Georgia. He enlisted the assistance of petitioner Jones, a policeman, and petitioner Kelley, a special deputy, in arresting Robert Hall, a citizen of the United States and of Georgia. The arrest was made late at night at Hall's home on a warrant charging Hall with theft of a tire. Hall, a young negro about thirty years of age, was handcuffed and taken by car to the court house. As Hall alighted from the car at the court house square, the three petitioners began beating him with their fists and with a solid-bar blackjack about eight inches long and weighing two pounds. They claimed Hall had reached for a gun and had used insulting language as he alighted from the car. But after Hall, still handcuffed, had been knocked to the ground they continued to beat him from fifteen to thirty minutes until he was unconscious. Hall was then dragged feet first through the court house yard into the jail and thrown upon the floor dying. An ambulance was called and Hall was removed to a hospital where he died within the hour and without regaining consciousness. There was evidence that Screws held a grudge against Hall and had threatened to "get" him.

An indictment was returned against petitioners—one count charging a violation of § 20 of the Criminal Code, 18 U. S. C. § 52 and another charging a conspiracy to violate § 20 contrary to § 37 of the Criminal Code, 18 U. S. C. § 88. Sec. 20 provides:

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> "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both."

The indictment charged that petitioners, acting under color of the laws of Georgia, "willfully" caused Hall to be deprived of "rights, privileges, or immunities secured or protected" to him by the Fourteenth Amendment—the right not to be deprived of life without due process of law; the right to be tried, upon the charge on which he was arrested, by due process of law and if found guilty to be punished in accordance with the laws of Georgia; that is to say that petitioners "unlawfully and wrongfully did assault, strike and beat the said Robert Hall about the head with human fists and a blackjack causing injuries" to Hall "which were the proximate and immediate cause of his death." A like charge was made in the conspiracy count.

The case was tried to a jury.[1] The court charged the jury that due process of law gave one charged with a crime the right to be tried by a jury and sentenced by a court. On the question of intent it charged that

> ". . . if these defendants, without its being necessary to make the arrest effectual or necessary to their own personal protection, beat this man, assaulted him or killed him while he was under arrest, then they would be acting illegally under color of law, as stated by this statute, and would be depriving the prisoner of certain constitutional rights guaranteed to him by the Constitution of the United States and consented to by the State of Georgia."

The jury returned a verdict of guilty and a fine and imprisonment on each count was imposed. The Circuit Court of Appeals affirmed the judgment of conviction, one judge dissenting. 140 F. 2d 662. The case is here on a petition for a writ of certiorari

[1] A demurrer to the indictment alleging among other things that the matters charged did not constitute an offense against the United States and did not come within the purview of § 20 was overruled. At the end of the government's case petitioners' motion for a directed verdict on the grounds of the insufficiency of the evidence was denied.

which we granted because of the importance in the administration of the criminal laws of the questions presented.

I.

We are met at the outset with the claim that § 20 is unconstitutional, insofar as it makes criminal acts in violation of the due process clause of the Fourteenth Amendment. The argument runs as follows: It is true that this Act as construed in *United States* v. *Classic,* 313 U. S. 299, 328, was upheld in its application to certain ballot box frauds committed by state officials. But in that case the constitutional rights protected were the rights to vote specifically guaranteed by Art. I, § 2 and § 4 of the Constitution. Here there is no ascertainable standard of guilt. There have been conflicting views in the Court as to the proper construction of the due process clause. The majority have quite consistently construed it in broad general terms. Thus it was stated in *Twining* v. *New Jersey,* 211 U. S. 78, 101, that due process requires that "no change in ancient procedure can be made which disregards those fundamental principles, to be ascertained from time to time by judicial action, which have relation to process of law and protect the citizen in his private right, and guard him against the arbitrary action of government." In *Snyder* v. *Massachusetts,* 291 U. S. 97, 105, it was said that due process prevents state action which "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." The same standard was expressed in *Palko* v. *Connecticut,* 302 U. S. 319, 325, in terms of a "scheme of ordered liberty". And the same idea was recently phrased as follows: "The phrase formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights. Its application is less a matter of rule. Asserted denial is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial." *Betts* v. *Brady,* 316 U. S. 455, 462.

It is said that the Act must be read as if it contained those broad and fluid definitions of due process and that if it is so read it provides no ascertainable standard of guilt. It is pointed out that in *United States* v. *Cohen Grocery Co.,* 255 U. S. 81, 89, an Act of Congress was struck down, the enforcement of which would

have been "the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury." In that case the act declared criminal was the making of "any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries." 255 U. S. p. 86. The Act contained no definition of an "unjust or unreasonable rate" nor did it refer to any source where the measure of "unjust or unreasonable" could be ascertained. In the instant case the decisions of the courts are, to be sure, a source of reference for ascertaining the specific content of the concept of due process. But even so the Act would incorporate by reference a large body of changing and uncertain law. That law is not always reducible to specific rules, is expressible only in general terms, and turns many times on the facts of a particular case. Accordingly, it is argued that such a body of legal principles lacks the basic specificity necessary for criminal statutes under our system of government. Congress did not define what it desired to punish but referred the citizen to a comprehensive law library in order to ascertain what acts were prohibited. To enforce such a statute would be like sanctioning the practice of Caligula who "published the law, but it was written in a very small hand, and posted up in a corner, so that no one could make a copy of it." Suetonius, Lives of the Twelve Caesars, p. 278.

The serious character of that challenge to the constitutionality of the Act is emphasized if the customary standard of guilt for statutory crimes is taken. As we shall see specific intent is at times required. Holmes, The Common Law, pp. 66 *et seq.* But the general rule was stated in *Ellis* v. *United States,* 206 U. S. 246, 257, as follows: "If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent." And see *Horning* v. *District of Columbia,* 254 U. S. 135, 137; *Nash* v. *United States,* 229 U. S. 373, 377. Under that test a local law enforcement officer violates § 20 and commits a federal offense for which he can be sent to the penitentiary if he does an act which some court later holds deprives a person of due process of law. And he is a criminal though his motive was pure and though his purpose was unrelated to

the disregard of any constitutional guarantee. The treacherous ground on which state officials — police, prosecutors, legislators, and judges — would walk is indicated by the character and closeness of decisions of this Court interpreting the due process clause of the Fourteenth Amendment. A confession obtained by too long questioning (*Ashcraft* v. *Tennessee,* 322 U. S. 143); the enforcement of an ordinance requiring a license for the distribution of religious literature (*Murdock* v. *Pennsylvania,* 319 U. S. 105); the denial of the assistance of counsel in certain types of cases (Cf. *Powell* v. *Alabama,* 287 U. S. 45 with *Betts* v. *Brady, supra*); the enforcement of certain types of anti-picketing statutes (*Thornhill* v. *Alabama,* 310 U. S. 88); the enforcement of state price control laws (*Olsen* v. *Nebraska,* 313 U. S. 236); the requirement that public school children salute the flag (*Board of Education* v. *Barnette,* 319 U. S. 624)—these are illustrative of the kind of state action[2] which might or might not be caught in the broad reaches of § 20 dependent on the prevailing view of the Court as constituted when the case arose. Those who enforced local law today might not know for many months (and meanwhile could not find out) whether what they did deprived some one of due process of law. The enforcement of a criminal statute so construed would indeed cast law enforcement agencies loose at their own risk on a vast uncharted sea.

If such a construction is not necessary, it should be avoided. This Court has consistently favored that interpretation of legislation which supports its constitutionality. *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 348; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 30; *Anniston Mfg. Co.* v. *Davis,* 301 U. S. 337, 351-352. That reason is impelling here so that if at all possible § 20 may be allowed to serve its great purpose—the protection of the individual in his civil liberties.

Sec. 20 was enacted to enforce the Fourteenth Amendment.[3] It derives[4] from § 2 of the Civil Rights Act of April 9, 1866. 14

[2] Moreover, federal as well as state officials would run afoul of the Act since it speaks of "any law, statute, ordinance, regulation, or custom." Comparable uncertainties will exist in the application of the due process clause of the Fifth Amendment.

[3] See Cong. Globe, 41st Cong., 2d Sess., pp. 3807-3808, 3881. Flack, The Adoption of the Fourteenth Amendment (1908) pp. 19-54, 219, 223, 227; Hague *v.* C. I. O., 307 U. S. 496, 510.

[4] See United States *v.* Classic, 313 U. S. 299, 327, note 10.

Stat. 27.[5] Senator Trumbull, chairman of the Senate Judiciary Committee which reported the bill, stated that its purpose was "to protect all persons in the United States in their civil rights, and furnish the means of their vindication." Cong. Globe, 39th Cong., 1st Sess., p. 211. In origin it was an antidiscrimination measure (as its language indicated), framed to protect negroes in their newly won rights. See Flack, The Adoption of the Fourteenth Amendment (1908), p. 21. It was amended by § 17 of the Act of May 31, 1870, 16 Stat. 144,[6] and made applicable to "any inhabitant of any State or Territory."[7] The prohibition against the "deprivation of any rights, privileges, or immunities, secured or protected by the Constitution and laws of the United States" was introduced by the revisers in 1874. R. S. § 5510. Those words were taken over from § 1 of the Act of April 20, 1871, 17 Stat. 13 (the so-called Ku-Klux Act) which provided

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5 "That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court."

6 "That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by the last preceding section of this act, or to different punishment, pains, or penalties on account of such person being an alien, or by reason of his color or race, than is prescribed for the punishment of citizens, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court."

The preceding section referred to read as follows:

"That all persons within the jurisdiction of the United States shall have the same right in every State and Territory in the United States to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding. No tax or charge shall be imposed or enforced by any State upon any person immigrating thereto from a foreign country which is not equally imposed and enforced upon every person immigrating to such State from any other foreign country; and any law of any State in conflict with this provision is hereby declared null and void."

7 Its sponsor, Senator Stewart, stated that "It extends the operation of the civil rights bill, which is well known in the Senate and to the country, to all persons within the jurisdiction of the United States." Cong. Globe, 41st Cong., 2d Sess., p. 1536.

civil suits for redress of such wrongs.[8] See Cong. Rec., 43d Cong., 1st Sess., p. 828. The 1874 revision was applicable to any person who under color of law, etc., "subjects, or causes to be subjected" any inhabitant to the deprivation of any rights etc. The requirement for a "willful" violation was introduced by the draftsmen of the Criminal Code of 1909. Act of March 4, 1909, 35 Stat. 1092. And we are told "willfully" was added to § 20 in order to make the section "less severe". 43 Cong. Rec., 60th Cong., 2d Sess., p. 3599.

We hesitate to say that when Congress sought to enforce the Fourteenth Amendment[9] in this fashion it did a vain thing. We hesitate to conclude that for 80 years this effort of Congress, renewed several times, to protect the important rights of the individual guaranteed by the Fourteenth Amendment has been an idle gesture. Yet if the Act falls by reason of vagueness so far as due process of law is concerned, there would seem to be a similar lack of specificity when the privileges and immunities clause (*Madden* v. *Kentucky*, 309 U. S. 83) and the equal protection clause (*Smith* v. *Texas*, 311 U. S. 128; *Hill* v. *Texas*, 316 U. S. 400) of the Fourteenth Amendment are involved. Only if no construction can save the Act from this claim of unconstitutionality are we willing to reach that result. We do not reach it, for we are of the view that if § 20 is confined more narrowly than the lower courts confined it, it can be preserved as one of the sanctions to the great rights which the Fourteenth Amendment was designed to secure.

II.

We recently pointed out that "willful" is a word "of many meanings, its construction often being influenced by its context." *Spies* v. *United States*, 317 U. S. 492, 497. At times, as the Court held in *United States* v. *Murdock*, 290 U. S. 389, 394, the word denotes an act which is intentional rather than accidental. And

[8] That section provided in part:

"That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress;"

This section became § 1979 of the Revised Statutes and is now found in 8 U. S. C. § 43. See Hague *v.* C. I. O., *supra*, note 3, p. 510.

[9] Sec. 5 thereof provides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article."

see *United States* v. *Illinois Cent. R. Co.*, 303 U. S. 239. But "when used in a criminal statute it generally means an act done with a bad purpose." *Id.*, p. 394. And see *Felton* v. *United States*, 96 U. S. 699; *Potter* v. *United States*, 155 U. S. 438; *Spurr* v. *United States*, 174 U. S. 728; *Hargrove* v. *United States*, 67 F. 820. In that event something more is required than the doing of the act proscribed by the statute. Cf. *United States* v. *Balint*, 258 U. S. 250. An evil motive to accomplish that which the statute condemns becomes a constituent element of the crime. *Spurr* v. *United States*, *supra*, p. 734; *United States* v. *Murdock*, *supra*, p. 395. And that issue must be submitted to the jury under appropriate instructions. *United States* v. *Ragen*, 314 U. S. 513, 524.

An analysis of the cases in which "willfully" has been held to connote more than an act which is voluntary or intentional would not prove helpful as each turns on its own peculiar facts. Those cases, however, make clear that if we construe "willfully" in § 20 as connoting a purpose to deprive a person of a specific constitutional right, we would introduce no innovation. The Court, indeed, has recognized that the requirement of a specific intent to do a prohibited act may avoid those consequences to the accused which may otherwise render a vague or indefinite statute invalid. The constitutional vice in such a statute is the essential injustice to the accused of placing him on trial for an offense, the nature of which the statute does not define and hence of which it gives no warning. See *United States* v. *Cohen Grocery Co.*, *supra*. But where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law. The requirement that the act must be wilful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware. That was pointed out by Mr. Justice Brandeis speaking for the Court in *Omaechevarria* v. *Idaho*, 246 U. S. 343. An Idaho statute made it a misdemeanor to graze sheep "upon any range usually occupied by any cattle grower." The argument was that the statute was void for indefiniteness because it failed to provide for the ascertainment of boundaries of a

"range" or for determining what length of time was necessary to make a prior occupation a "usual" one. The Court ruled that "any danger to sheepmen which might otherwise arise from indefiniteness, is removed by § 6314 of Revised Codes, which provides that: 'In every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence.' " *Id.*, p. 348. A similar ruling was made in *Hygrade Provision Co.* v. *Sherman,* 266 U. S. 497. The charge was that a criminal statute which regulated the sale of "kosher" meat or products "sanctioned by the orthodox Hebrew religious requirements" was unconstitutional for want of any ascertainable standard of guilt. The Court speaking through Mr. Justice Sutherland stated, ". . . since the statutes require a specific intent to defraud in order to encounter their prohibitions, the hazard of prosecution which appellants fear loses whatever substantial foundation it might have in the absence of such a requirement." 266 U. S. pp. 502-503. In *United States* v. *Ragen, supra,* we took that course in a prosecution for willful evasion of a federal income tax where it was alleged that the defendant had deducted more than "reasonable" allowances for salaries. By construing the statute to require proof of bad faith we avoided the serious question which the rule of *United States* v. *Cohen Grocery Co., supra,* might have presented. We think a like course is appropriate here.

Moreover, the history of § 20 affords some support for that narrower construction. As we have seen, the word "willfully" was not added to the Act until 1909. Prior to that time it may be that Congress intended that he who deprived a person of any right protected by the Constitution should be liable without more. That was the pattern of criminal legislation which has been sustained without any charge or proof of *scienter. Shevlin-Carpenter Co.* v. *Minnesota,* 218 U. S. 57; *United States* v. *Balint, supra.* And the present Act in its original form would have been susceptible of the same interpretation apart from the equal protection clause of the Fourteenth Amendment, where "purposeful discriminatory" action must be shown. *Snowden* v. *Hughes,* 321 U. S. 1, 8-9. But as we have seen, the word "willfully" was added to make the section "less severe". We think the inference is permissible that its severity was to be lessened by making it applicable only where the requisite bad purpose was present, thus requiring specific intent not only where discrimination is claimed but in other situations as well. We repeat that the presence of

a bad purpose or evil intent alone may not be sufficient. We do say that a requirement of a specific intent to deprive a person of a federal right made definite by decision or other rule of law saves the Act from any charge of unconstitutionality on the grounds of vagueness.

Once the section is given that construction, we think that the claim that the section lacks an ascertainable standard of guilt must fail. The constitutional requirement that a criminal statute be definite serves a high function. It gives a person acting with reference to the statute fair warning that his conduct is within its prohibition. This requirement is met when a statute prohibits only "willful" acts in the sense we have explained. One who does act with such specific intent is aware that what he does is precisely that which the statute forbids. He is under no necessity of guessing whether the statute applies to him (see *Connally* v. *General Construction Co.*, 269 U. S. 385) for he either knows or acts in reckless disregard of its prohibition of the deprivation of a defined constitutional or other federal right. See *Gorin* v. *United States*, 312 U. S. 19, 27-28. Nor is such an act beyond the understanding and comprehension of juries summoned to pass on them. The Act would then not become a trap for law enforcement agencies acting in good faith. "A mind intent upon willful evasion is inconsistent with surprised innocence." *United States* v. *Ragen, supra*, p. 524.

It is said, however, that this construction of the Act will not save it from the infirmity of vagueness since neither a law enforcement official nor a trial judge can know with sufficient definiteness the range of rights that are constitutional. But that criticism is wide of the mark. For the specific intent required by the Act is an intent to deprive a person of a right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them. Take the case of a local officer who persists in enforcing a type of ordinance which the Court has held invalid as violative of the guarantees of free speech or freedom of worship. Or a local official continues to select juries in a manner which flies in the teeth of decisions of the Court. If those acts are done willfully, how can the officer possibly claim that he had no fair warning that his acts were prohibited by the statute? He violates the statute not merely because he has a bad purpose but because he acts in

definance of announced rules of law. He who defies a decision interpreting the Constitution knows precisely what he is doing. If sane, he hardly may be heard to say that he knew not what he did. Of course, willful conduct cannot make definite that which is undefined. But willful violators of constitutional requirements, which have been defined, certainly are in no position to say that they had no adequate advance notice that they would be visited with punishment. When they act willfully in the sense in which we use the word, they act in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite. When they are convicted for so acting, they are not punished for violating an unknowable something.

The Act so construed has a narrower range in all its applications than if it were interpreted in the manner urged by the government. But the only other alternative, if we are to avoid grave constitutional questions, is to construe it as applicable only to those acts which are clearly marked by the specific provisions of the Constitution as deprivations of constitutional rights, privileges, or immunities, and which are knowingly done within the rule of *Ellis* v. *United States, supra.* But as we have said that course would mean that all protection for violations of due process of law would drop out of the Act. We take the course which makes it possible to preserve the entire Act and save all parts of it from constitutional challenge. If Congress desires to give the Act wider scope, it may find ways of doing so. Moreover, here as in *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, we are dealing with a situation where the interpretation of the Act which we adopt does not preclude any state from punishing any act made criminal by its own laws. Indeed, the narrow construction which we have adopted more nearly preserves the traditional balance between the States and the national government in law enforcement than that which is urged upon us.

United States v. *Classic, supra,* met the test we suggest. In that case we were dealing merely with the validity of an indictment, not with instructions to the jury. The indictment was sufficient since it charged a willful failure and refusal of the defendant-election officials to count the votes cast, by their alteration of the ballots and by their false certification of the number of votes cast for the respective candidates. 313 U. S. pp. 308-309. The right so to vote is guaranteed by Art. I, § 2 and § 4 of the

Constitution. Such a charge is adequate since he who alters ballots or without legal justification destroys them would be acting willfully in the sense in which § 20 uses the term. The fact that the defendants may not have been thinking in constitutional terms is not material where their aim was not to enforce local law but to deprive a citizen of a right and that right was protected by the Constitution. When they so act they at least act in reckless disregard of constitutional prohibitions or guarantees. Likewise, it is plain that basic to the concept of due process of law in a criminal case is a trial—a trial in a court of law, not a "trial by ordeal". *Brown* v. *Mississippi*, 297 U. S. 278, 285. It could hardly be doubted that they who "under color of any law, statute, ordinance, regulation, or custom" act with that evil motive violate § 20. Those who decide to take the law into their own hands and act as prosecutor, jury, judge, and executioner plainly act to deprive a prisoner of the trial which due process of law guarantees him. And such a purpose need not be expressed; it may at times be reasonably inferred from all the circumstances attendant on the act. See *Tot* v. *United States*, 319 U. S. 463.

The difficulty here is that this question of intent was not submitted to the jury with the proper instructions. The court charged that petitioners acted illegally if they applied more force than was necessary to make the arrest effectual or to protect themselves from the prisoner's alleged assault. But in view of our construction of the word "willfully" the jury should have been further instructed that it was not sufficient that petitioners had a generally bad purpose. To convict it was necessary for them to find that petitioners had the purpose to deprive the prisoner of a constitutional right, e. g. the right to be tried by a court rather than by ordeal. And in determining whether that requisite bad purpose was present the jury would be entitled to consider all the attendant circumstances—the malice of petitioners, the weapons used in the assault, its character and duration, the provocation, if any, and the like.

It is true that no exception was taken to the trial court's charge. Normally we would under those circumstances not take note of the error. See *Johnson* v. *United States*, 318 U. S. 189, 200. But there are exceptions to that rule. *United States* v.

Atkinson, 297 U. S. 157, 160; *Clyatt* v. *United States,* 197 U. S. 207, 221-222. And where the error is so fundamental as not to submit to the jury the essential ingredients of the only offense on which the conviction could rest, we think it is necessary to take note of it on our own motion. Even those guilty of the most heinous offenses are entitled to a fair trial. Whatever the degree of guilt, those charged with a federal crime are entitled to be tried by the standards of guilt which Congress has prescribed.

III.

It is said, however, that petitioners did not act "under color of any law" within the meaning of § 20 of the Criminal Code. We disagree. We are of the view that petitioners acted under "color" of law in making the arrest of Robert Hall and in assaulting him. They were officers of the law who made the arrest. By their own admissions they assaulted Hall in order to protect themselves and to keep their prisoner from escaping. It was their duty under Georgia law to make the arrest effective. Hence, their conduct comes within the statute.

Some of the arguments which have been advanced in support of the contrary conclusion suggest that the question under § 20 is whether Congress has made it a federal offense for a state officer to violate the law of his State. But there is no warrant for treating the question in state law terms. The problem is not whether state law has been violated but whether an inhabitant of a State has been deprived of a federal right by one who acts under "color of any law". He who acts under "color" of law may be a federal officer or a state officer. He may act under "color" of federal law or of state law. The statute does not come into play merely because the federal law or the state law under which the officer purports to act is violated. It is applicable when and only when some one is deprived of a federal right by that action. The fact that it is also a violation of state law does not make it any the less a federal offense punishable as such. Nor does its punishment by federal authority encroach on state authority or relieve the state from its responsibility for punishing state offenses.[10]

[10] The petitioners may be guilty of manslaughter or murder under Georgia law and at the same time liable for the federal offense proscribed by § 20. The instances where "an act denounced as a crime by both national and state sovereignties" may be punished by each without violation of the double jeopardy provision of the Fifth Amendment are common. United States *v.* Lanza, 260 U. S. 377, 382; Hebert *v.* Louisiana, 272 U. S. 312.

We agree that when this statute is applied to the action of state officials, it should be construed so as to respect the proper balance between the States and the federal government in law enforcement. Violation of local law does not necessarily mean that federal rights have been invaded. The fact that a prisoner is assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States. Cf. *Logan* v. *United States,* 144 U. S. 263, dealing with assaults by federal officials. The Fourteenth Amendment did not alter the basic relations between the States and the national government. *United States* v. *Harris,* 106 U. S. 629; *In re Kemmler,* 136 U. S. 436, 448. Our national government is one of delegated powers alone. Under our federal system the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States. *Jerome* v. *United States,* 318 U. S. 101, 105. As stated in *United States* v. *Cruikshank,* 92 U. S. 542, 553-554, "It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State, than it would be to punish for false imprisonment or murder itself." And see *United States* v. *Fox,* 95 U. S. 670, 672. It is only state action of a "particular character" that is prohibited by the Fourteenth Amendment and against which the Amendment authorizes Congress to afford relief. *Civil Rights Cases,* 109 U. S. 3, 11, 13. Thus Congress in § 20 of the Criminal Code did not undertake to make all torts of state officials federal crimes. It brought within § 20 only specified acts done "under color" of law and then only those acts which deprived a person of some right secured by the Constitution or laws of the United States.

This section was before us in *United States* v. *Classic,* 313 U. S. 299, 326, where we said: "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." In that case state election officials were charged with failure to count the votes as cast, alteration of the ballots, and false certification of the number of votes cast for the respective candidates. 313 U. S. pp. 308-309. We stated that those acts of the defendants "were committed in the course of their performance of duties under the Louisiana statute re-

quiring them to count the ballots, to record the result of the count, and to certify the result of the election." *Id.*, pp. 325-326. In the present case, as we have said, the defendants were officers of the law who had made an arrest and who by their own admissions made the assault in order to protect themselves and to keep the prisoner from escaping, i.e. to make the arrest effective. That was a duty they had under Georgia law. *United States* v. *Classic* is, therefore, indistinguishable from this case so far as "under color of" state law is concerned. In each officers of the State were performing official duties; in each the power which they were authorized to exercise was misused. We cannot draw a distinction between them unless we are to say that § 20 is not applicable to police officers. But the broad sweep of its language leaves no room for such an exception.

It is said that we should abandon the holding of the *Classic* case. It is suggested that the present problem was not clearly in focus in that case and that its holding was ill-advised. A reading of the opinion makes plain that the question was squarely involved and squarely met. It followed the rule announced in *Ex parte Virginia,* 100 U. S. 339, 346, that a state judge who in violation of state law discriminated against negroes in the selection of juries violated the Act of March 1, 1875, 18 Stat. 336. It is true that that statute did not contain the words under "color" of law. But the Court in deciding what was state action within the meaning of the Fourteenth Amendment held that it was immaterial that the state officer exceeded the limits of his authority. ". . . as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it." 100 U. S. at p. 347. And see *Virginia* v. *Rives,* 100 U. S. 313, 321. The *Classic* case recognized, without dissent, that the contrary view would defeat the great purpose which § 20 was designed to serve. Reference is made to statements[11] of Senator Trumbull in his discussion of § 2 of the Civil Rights Act of 1866, 14 Stat. 27, and to statements of Senator Sherman concerning the 1870 Act[12] as supporting the conclusion that "under color of any law"

[11] Cong. Globe, 39th Cong., 1st Sess., p. 1759.
[12] Cong. Globe, 41st Cong., 2d Sess., p. 3663.

was designed to include only action taken by officials pursuant to state law. But those statements in their context are inconclusive on the precise problem involved in the *Classic* case and in the present case. We are not dealing here with a case where an officer not authorized to act nevertheless takes action. Here the state officers were authorized to make an arrest and to take such steps as were necessary to make the arrest effective. They acted without authority only in the sense that they used excessive force in making the arrest effective. It is clear that under "color" of law means under "pretense" of law. Thus acts of officers in the ambit of their personal pursuits are plainly excluded. Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it. If, as suggested, the statute was designed to embrace only action which the State in fact authorized, the words "under color of any law" were hardly apt words to express the idea.

Nor are the decisions under § 33 of the Judicial Code, 28 U. S. C. § 76, in point. That section gives the right of removal to a federal court of any criminal prosecution begun in a state court against a revenue officer of the United States "on account of any act done under color of his office or of any such (revenue) law." The cases under it recognize that it is an "exceptional" procedure which wrests from state courts the power to try offenses against their own laws. *Maryland* v. *Soper* (*No. 1*), 270 U. S. 9, 29, 35; *Colorado* v. *Symes*, 286 U. S. 510, 518. Thus the requirements of the showing necessary for removal are strict. See *Maryland* v. *Soper* (*No. 2*), 270 U. S. 36, 42, saying that acts "necessary to make the enforcement effective" are done under "color" of law. Hence those cases do not supply an authoritative guide to the problems under § 20 which seeks to afford protection against officers who possess authority to act and who exercise their powers in such a way as to deprive a person of rights secured to him by the Constitution or laws of the United States. It is one thing to deprive state courts of their authority to enforce their own laws. It is quite another to emasculate an Act of Congress designed to secure individuals their constitutional rights by finely spun distinctions concerning the precise scope of the authority of officers of the law. Cf. *Yick Wo* v. *Hopkins*, 118 U. S. 356.

But beyond that is the problem of *stare decisis*. The construction given § 20 in the *Classic* case formulated a rule of law which

has become the basis of federal enforcement in this important field. The rule adopted in that case was formulated after mature consideration. It should be good for more than one day only. We do not have here a situation comparable to *Mahnich* v. *Southern S. S. Co.*, 321 U. S. 96, where we overruled a decision demonstrated to be a sport in the law and inconsistent with what preceded and what followed. The *Classic* case was not the product of hasty action or inadvertence. It was not out of line with the cases which preceded. It was designed to fashion the governing rule of law in this important field. We are not dealing with constitutional interpretations which throughout the history of the Court have wisely remained flexible and subject to frequent reexamination. The meaning which the *Classic* case gave to the phrase "under color of any law" involved only a construction of the statute. Hence if it states a rule undesirable in its consequences, Congress can change it. We add only to the instability and uncertainty of the law if we revise the meaning of § 20 to meet the exigencies of each case coming before us.

Since there must be a new trial, the judgment below is

Reversed.