AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 5: The Jacksonian Era—Democratic Rights/Free Speech

*Thomas F. Marshall***, Removal of Cassius M. Clay’s Press** (1845)[[1]](#footnote-1)

*Cassius M. Clay was a cousin of Whig party leader Henry Clay. Inspired by William Lloyd Garrison while a student at Yale University, the younger Clay became a prominent antislavery advocate. In June 1845, he launched the antislavery newspaper,* True American*, in Lexington, Kentucky. In September 1845, a “Committee of Sixty” demanded the keys to the print shop from the city marshal and then disassembled the printing press and shipped it to Cincinnati, Ohio, where the paper resumed publication.*

*The destruction of abolitionist newspapers by mobs was common in both the North and the South during the Jacksonian era. The demolition of Clay’s press was unusual mostly in the care his enemies took in closing him down with minimal property damage or injury. The raid on Clay’s print shop had been preceded by a public assembly that adopted resolutions condemning the press as an illegal establishment and a lengthy series of exchanges between Clay and his antagonists over his right to publish in Lexington. A Lexington jury refused to convict anyone on criminal charges for attacking Clay’s press. In 1848, after a change of venue to a different county, Clay won a civil case against the secretary of the Committee of Sixty, his cousin James B. Clay. Donations were collected to pay the judgment.*

*One of the leaders of the “Committee of Sixty” was Thomas F. Marshall, a nephew of Chief Justice John Marshall and local Whig politician. Marshall developed the legal argument to support the mob’s action, contending that a press issuing incendiary publications was a “public nuisance” that fell outside constitutional protections. Clay’s editorials announcing that the “day of retribution is at hand” and the “smooth-skinned woman at the ottoman” in the slaveowner’s house would soon experience the “fiery hearts” of the revolting masses had crossed the line of inciting violence. Unfortunately, only extralegal action by the public itself could sufficiently deal with the threat. Why would an abolitionist press in a slave state be a public nuisance? Why might such a press not receive constitutional protection? Is Marshall right to think that some speech is too dangerous to be tolerated? Does he offer a reasonable standard for identifying such speech?*

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You know, you all know, that this assemblage of the people has been convened upon a published notice, to take into consideration the safety of this community, and to adopt such measures as may secure your peace, and guard from the threatened danger your homes and families. . . .

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To have prevented the establishment of this press by legal means would have been impossible. There is no regular judicial process by which it could have been achieved. To have resorted to means like the present would have been premature, and perhaps indefensible. The liberty of the press and the freedom of political discussion, are essential elements of our social system. An effort to establish a press in Kentucky devoted to the discussion of the question of domestic slavery and the propriety and practicality of emancipation by law, as an individual enterprise, might, in this simple view of the proposition, have been tolerated by the people, as it is in all probability not prohibited by our laws. . . .

The institution of slavery existed in a portion of the States of the Union before the adoption of the Federal Constitution, by force of the municipal constitution of the particular States. The institution itself is clearly recognized and guaranteed by the articles of the Union, and left where it was found, under the exclusive control of State governments and laws. . . .

A formidable party has arisen within a few years in the United States, who seek actively and practically to disturb these guarantees, to change the constitution in relation to some of them, and who deny its palpable import, or wrest to fearful purpose its powers in relation to others.

They aim at the Abolition of Slavery in America and halt not at the means. They are organized, active, united in pursuit of this object, and desperately fanatical. They have found thir way into the National Legislature, and already exercise a threatening influence there. They command a powerful press in the United States. They have among them a burning zeal, commanding talent, and a large amount of political influence and monied capital. . . . They maintain for [the negro slave] the right of insurrection and exhort him to its exercise . . . .With this party, we believe, from the fullest evidence of which the nature of the case is susceptible, the Editor of the “True American” to be connected by sympathy of opinion, burning and fanatical zeal, and concert of effort. With his speculative opinions we presume not to interfere; with his practical exertions, in our midst, to disturb the settled order of our domestic life, to inflame to discontent and rebellion our household slaves, we have the most direct and incontestable connection. In proceeding by force and without judicial process, to arrest the action of a free citizen, to interfere in any degree with his private property, and if the necessity of the case and the desperation of the man require it, to proceed to extremities against his person, we owe it to our fame, and the good name of our community to set forth the facts, upon which arises in our justification the highest of all laws, the law of self-defense and preservation from great and manifest danger and injury.

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. . . . Communities may be endangered as well as single individuals. A great and impending danger over the life or personal safety of a single man, justifies his employment of his own force immediately in his own defense, and to any extent that may be necessary to his protection. He whose aim it is, or the inevitable tendency of whose conduct is to bring about intense convulsions and servile war, threatens to inflict upon society the greatest horror it can endure. Our laws may punish when the offense shall have been consummated; but they have provided no remedial process by which it can be prevented. To war with an Organ of Abolition by action or indictment for libel, would make that powerful party smile. To injoin the publication of the “True American” would only change its name. A perpetual injunction against the publication of any paper whatever by Mr. C.M. Clay, were beyond the power of the chancellor. The danger continues. An Abolition paper in a slave State is a nuisance of the most formidable character – a public nuisance – not a mere inconvenience, which may occasion delay in business or proves hurtful to health or comfort, but a blasting brand in the hand of an incendiary or madman, which may scatter ruin, conflagration, revolution, crime, unnameable, over everything dear in domestic life, sacred in religion, or respectable in modesty. . . . Who shall say that when the case of danger – real danger, of great and irreparable injury to a whole community, really occurs – that it is not armed legally with the right of self-defense? . . . When [the Abolitionists] bring their doctrines and their principles into the bosom of a slave State, they bring fire into a magazine. The “True American” is an Abolition paper of the worst stamp! As such, the peace and safety of this community demand its instant and entire suppression.

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1. Excerpt taken from Thomas F. Marshall, *Speeches and Writings of Honorable Thomas F. Marshall*, ed. W.L. Barre (Cincinnati: Applegate & Company, 1858), 196-210. [↑](#footnote-ref-1)