AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 7: The Republican Era—Democratic Rights/Free Speech/Advocacy

**People v. Most, 16 N.Y. Crim. 555** (NY 1902)

*Johann Most was a German revolutionary socialist who fled to the United States in the 1880s, where he continued his work as a political activist and editor. He was particularly well-known for publishing a manual for making bombs, and anarchist bombings became a significant political issue during the period. As in Germany, he was in and out of prison in the United States.*

*In 1901, he was arrested in New York for publishing an article in his weekly paper advocating revolution and political assassination. The article in question was an old one and not one that he had written himself, and he had the misfortune of publishing it on the same day that President William McKinley was shot by an anarchist who was motivated by the same revolutionary ideology that Most promulgated. McKinley later died from his wounds.*

*The article had been authored by Karl Heinzen, with some editorial comments by Most. Heinzen was likewise a German radical who had fled to the United States just before the American Civil War and had died a few years before Most arrived in America himself. The article that Most published urged the “murder” of the “professional murderers,” which was to say government officials; “we know them all personally.”*

*“The greatest of all follies in the world is the belief that there exists a crime against despots and their myrmidons (meaning public rulers and their officers of justice); they are in human society what the tiger is among animals, to spare them is a crime; as despots permit themselves everything, betrayal, poison, murder, etc., in the same way, all this is to be employed against them. Yes, crime directed against them is not only right, but it is the duty of every one who has an opportunity to commit it, and it would be a glory to him if it was successful.”*

*“We say murder the murderers, save humanity, through blood and iron, poison, and dynamite.”*

*Most was charged with a misdemeanor for wrongfully committing an act “which seriously disturbs or endangers the public peace.” He was convicted, and his conviction was upheld on appeal by a unanimous New York supreme court as consistent with the state’s guarantee of liberty of the press. He served two months in prison.*

JUSTICE VANN delivered the opinion of the Court.

. . . .

 If the article advocates revolution and murder, it is not important that it should have been written by the defendant, but it is sufficient if he adopted the words of another to express his wishes. If he intended to convey the idea that the entire article was written by Karl Heinzen, he nevertheless adopted it by the statement in parenthesis, which was his own, that "this is true even to-day." He thus indorsed the sentiments expressed and ratified the advice given. Moreover the tone and tenor of his statements, arguments and exhortations apply to the present time and call for action on the part of his readers without delay. The article was published without quotation marks and without comment, criticism, or dissent, and a fair reading thereof leaves the impression upon the mind that only the opening sentence or sentences were written by Heinzen and that the remainder was the work of the publisher. This conclusion is strengthened by the internal evidence that the writing was of recent origin, such as the use of the word "dynamite," which occurs twice, yet that word was not in use fifty years ago when Heinzen is alleged to have written his dissertation on murder. . . .

The object of the article, as we interpret it, was not to criticize or discuss public officers, or public affairs, but to denounce government as "murder dominion" and to advocate the murder of those who govern. While it was written with special reference to rulers who wear crowns, it recommends the murder of all rulers, without exception, express or implied. The argument is that as the enforcement of law is murder, the assassination of those who enforce the law is not only justifiable, but to spare them would be a crime. It calls the constituted authorities murderers, and urges its readers to "murder the murderers." Its tendency is to incite and stimulate the destruction of government and its agents "through blood and iron, poison and dynamite." It teaches the doctrine that government is founded on murder, that all rulers are enemies of the human race and that "crime directed against them is not only right, but it is the duty of every one who has an opportunity to commit it and it would be a glory to him if it was successful." The publisher exhorts his readers to "let murder be our study, murder in every form," when directed against those who preserve order and enforce law. Government is described as "reaction" and not only is the murder of those having authority upheld and urged, but revolution against government as "the attacking party" is proclaimed as "nothing more than necessary defense."

Further analysis is unnecessary. While the publication was not addressed to any one in particular, it was impliedly addressed to the readers of the "Freiheit;" and while it did not urge the murder of any particular individual, it advocated the murder of all rulers and the destruction of all government.

A publication which instigates revolution and murder; which suggests the persons to be murdered through the positions occupied and the duties performed by them; which advises all to discharge their duty to the human race by murdering those who enforce the law; which denounces those who spare the ministers of public justice, as guilty of a crime against humanity and which names poison and dynamite as the agencies to be used to murder and destroy, necessarily endangers the public peace.

A breach of the peace is an offense well known to the common law. It is a disturbance of public order by an act of violence, or by any act likely to produce violence, or which, by causing consternation and alarm, disturbs the peace and quiet of the community. . . . It may be committed by written words, as a libel has been indictable for time out of mind because it tends to produce violence; or even by spoken words, provided they tend to provoke immediate violence.

The defendant was not charged with an actual breach of the peace, which is a distinct offense both at common law and by statute, but with an act alleged to seriously endanger it. The public peace is in danger when a breach thereof is likely to occur in the ordinary course of events. The publication of the defendant manifestly tended toward this result, for he held forth murder as a duty and exhorted his readers to practice it upon their rulers. What would be more apt to alarm the people and disturb the peace of society? If the words used by him would not, what words could? . . . He not only defended but advised the most serious crime known to the law. His language was an invitation to murder. He who counsels murder, becomes a murderer if his advice is taken. Such advice given to the 3,000 subscribers and to more than that number of readers of the defendant's paper, might naturally, as the history of the times shows, result in violence and murder. The courts cannot shut their eyes to the fact that there are elements in our population, small in number but reckless and aggressive, who are ready to act on such advice and to become the assassins of those whom the people have placed in authority. The public peace is seriously endangered when arguments are made and advice given which may naturally result even in a simple breach of the peace, and when the arguments and advice are of such an alarming and dangerous character as to naturally lead to the assassination of public officers, punishment and repression are essential to the welfare of society and the safety of the state. . . .

The Constitution of our state provides that "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

While the right to publish is thus sanctioned and secured, the abuse of that right is excepted from the protection of the Constitution, and authority to provide for and punish such abuse is left to the legislature. The punishment of those who publish articles which tend to corrupt morals, induce crime or destroy organized society, is essential to the security of freedom and the stability of the state. While all the agencies of government, executive, legislative and judicial, cannot abridge the freedom of the press, the legislature may control and the courts may punish the licentiousness of the press. "The liberty of the press," as Chancellor KENT declared in a celebrated case, "consists in the right to publish, with impunity, truth, with good motives, and for justifiable ends, whether it respects governments, magistracy or individuals." *People v. Croswell* (1804). Mr. Justice STORY defined the phrase to mean "that every man shall have a right to speak, write and print his opinions upon any subject whatsoever, without any prior restraint, so always, that he does not injure any other person in his rights, person, property or reputation; and so always, that he does not thereby disturb the public peace, or attempt to subvert the government."

The Constitution does not protect a publisher from the consequences of a crime committed by the act of publication. It does not shield a printed attack on private character, for the same section from which the above quotation is taken expressly sanctions criminal prosecution for libel. It does not permit the advertisement of lotteries, for the next section prohibits lotteries and the sale of lottery tickets. It does not permit the publication of blasphemous or obscene articles, as the authorities uniformly hold. *People v. Ruggles* (1811). . . . It places no restraint upon the power of the legislature to punish the publication of matter which is injurious to society according to the standard of the common law. It does not deprive the state of the primary right of self-preservation. It does not sanction unbridled license, nor authorize the publication of articles prompting the commission of murder or the overthrow of government by force. All courts and commentators contrast the liberty of the press with its licentiousness, and condemn as not sanctioned by the constitution of any state, appeals designed to destroy the reputation of the citizen, the peace of society or the existence of the government. We think that no constitutional right of the defendant was violated by his conviction and that the judgment pronounced against him was rendered in accordance with law.

*Affirmed*.