

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 4: The Early National Era – Democratic Rights/Free Speech/Free Speech in the
States/Defamation

Commonwealth v. Blanding, 20 Mass. 304 (MA 1825)

James Blanding published an article in the Providence Gazette in which he claimed that Enoch Fowler, a local innkeeper, was responsible for the death of a stranger who was staying at the inn. At Blanding's trial for criminal libel, the judge refused to allow him to present evidence that Fowler had, in fact, poisoned his guest. After Blanding was convicted, he appealed to the Supreme Judicial Court of Massachusetts.

Chief Justice Parker ruled that the Constitution of Massachusetts did not give Blanding the right to prove that his defamatory comments were true. Parker claimed that, if Blanding believed Fowler was a murderer, he should have complained to the appropriate authorities rather than airing his beliefs in the press. On what basis did Parker make this claim? Under what conditions did Chief Justice Parker believe that persons charged with libel have the right to prove the truth of their assertions? Do you believe that circumstances exist in which persons charged with libel should not be allowed to prove they spoke the truth?

CHIEF JUSTICE PARKER delivered the opinion of the Court.

...
The general principle decided is, that it is immaterial to the character of a libel *as a public offence*, whether the matter of it be true or false; not, as some have affirmed, because the law makes no distinction between truth and falsehood, but because the interest of the public requires, that men not invested with authority by the laws, shall not usurp the power of public accusation, and arraign before the public, with malicious motives, their neighbours and fellow citizens, exposing them to partial trials in forms not warranted by the constitution or laws, and condemning them to a species of ignominy which is often a heavier punishment than the law would inflict for the offences or misconduct of which they are thus officiously accused. And surely so long as preventive justice shall be deemed more salutary than vindictive, all wise governments will hold it necessary to curb the disposition, always too prevalent, to excite ill temper and ill blood by exposing the offences, faults or foibles of men, who, if guilty of any violation of law, are amenable to punishment in the ordinary way, and if liable to censure for private vices, irregularities of temper or unaccommodating manners, should be left, as the law leaves them, to the corrections of conscience and those silent but powerful punishments which their misconduct itself will supply.

No state of society would be more deplorable than that which would admit an indiscriminate right in every citizen to arraign the conduct of every other, before the public, in newspapers, handbills or other modes of publication, not only for crimes, but for faults, foibles, deformities of mind or person, even admitting all such allegations to be true. When the accusation is made by public bodies or officers whose duty it is by law to detect and prosecute offences, the charge and the investigation are submitted to, and no spirit of revenge is produced; but if private intermeddlers, assuming the character of reformers, should have the right to become public accusers, and when called to account, to defend themselves by breaking into the circle of friends, families, children and domestics, to prove the existence of errors or faults which may have been overlooked or forgiven where they were most injurious, the man

who is thus accused without lawful process might be expected to avenge himself by unlawful means, and duels or assassinations would be the common occurrences of the times. . . .

Nor does our constitution or declaration of rights abrogate the common law in this respect, as some have insisted. The 16th article declares, that "the liberty of the press is essential to the security of freedom in a state; it ought not, therefore, to be restrained in this commonwealth." The *liberty* of the press, not its *licentiousness*; this is the construction which a just regard to the other parts of that instrument, and to the wisdom of those who formed it, requires. . . . [I]t is well understood, and received as a commentary on this provision for the liberty of the press, that it was intended to prevent all such *previous restraints* upon publications as had been practised by other governments, and in early times here, to stifle the efforts of patriots towards enlightening their fellow subjects upon their rights and the duties of rulers. The liberty of the press was to be unrestrained, but he who used it was to be responsible in case of its abuse; like the right to keep fire arms, which does not protect him who uses them for annoyance or destruction.

. . . .
And yet there are some exceptions to this general rule, recognised by the common law; and others, which are rendered necessary by the principles of our government.

These exceptions are all founded in regard to certain public interests, which are of more importance than the character or tranquillity of any individual. All proceedings in legislative assemblies, whether by speech, written documents or otherwise, are protected from scrutiny elsewhere than in those bodies themselves, because it is essential to the maintenance of public liberty, that in such assemblies the tongue and the press should be wholly unshackled. So proceedings in courts of justice, in which the reputation of individuals may be involved, are to be free from future animadversions, because the investigation of right demands the utmost latitude of inquiry, and men ought not to be deterred from prosecuting or defending there by fear of punishment or damages. . . . The right also of complaining to any public constituted body, of the malversation or oppressive conduct of any of its officers or agents, with a view to redress for actual wrong, or the removal of an unfaithful officer, may be justified, because the case will show that the proceeding does not arise from malicious motives, or if it does, because the common interest requires that such representations should be free. And there are cases of mere private import, such as an honest though mistaken character of a servant, which, when requested by any one having an interest, the law considers innocent. These cases are all provided for by the common law, and they go far to render harmless that much decried rule, that the truth is no defence in a prosecution for libel. . . .

. . . . Had the inquisition been published without any defamatory comment, it certainly would not have furnished ground for this prosecution; for it does not of itself contain any libellous matter, and it is in the nature of a judicial inquiry, the publication of which would not be criminal, unaccompanied by direct proof of malice. The inquisition merely states that a deceased stranger, who was found dead in a tavern kept by Fowler, came to his death by intoxication. Now this may be true, without any implication against Fowler, for every innholder is liable to have drunken people come to his house, and if they die there, he may be entirely innocent of the cause of their death. But the remarks made by the defendant charge Fowler with having administered the *liquid poison*, and thus being the cause of the death of the stranger; and the public are warned against resorting to the house where such practice is allowed, and the municipal authorities are invoked to exert their power by taking away or withholding the license of Fowler to keep a public house. The matter of this publication is certainly libellous, as it insinuates gross misconduct against Fowler, and directly charges him with a violation of his duty, and exposes him to the loss of his livelihood, so far as that depends upon the reputation of his inn for regularity and order. Admitting the account of the inquisition to be correct as published, yet the addition of comments and insinuations tending to asperse Fowler's character renders it libelous.

But it is said, that this is a matter of public concern, and that the defendant was impelled by a sense of public duty to warn travellers and others from a house which was thus deservedly stigmatized. The answer is, that the defendant did not select a proper vehicle for the communication. The natural effect of a publication of this sort in a newspaper, is, to procure a condemnation in the public mind of the party accused, and his punishment, by bringing his house into disrepute, without any opportunity of

defence on his part; so that the accuser becomes judge and executioner at one stroke, and his purpose, if a malicious one, is answered, without any means of relief; for the mischief to the person libelled would be quite as great if he were innocent as if he were guilty. If it should be said in answer, that all this is right if the allegation be true, and if not true, he may recover his damages in an action of slander, it may justly be replied, that this remedy is uncertain and incomplete; for in many cases the slanderer will be unable to respond in damages, and the suffering party will be subjected to the additional injury of a troublesome and expensive lawsuit with little or no hope of recompense.



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