

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

Chapter 5: The Jacksonian Era – Democratic Rights/Free Speech/Free Speech and Mob Violence

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James Birney, **Proceedings Against the Liberty of the Press** (1836)<sup>1</sup>

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James Birney (1792–1857) was a prominent anti-slavery journalist. The son of a prominent slave holder in Kentucky, Birney immediately emancipated every slave he inherited from his father. Facing mob violence after publishing an anti-slavery weekly in the south, Birney in 1836 moved to Cincinnati to start a new anti-slavery publication, *The Philanthropist*. Mob violence followed. The business community in Cincinnati, eager to appease southern customers, organized mobs bent on driving Birney and his publications out of town. Birney was lucky to escape the violence that followed only with the loss of a few printing presses. He continued to publish until injured in an accident in 1845. Elijah Lovejoy, another anti-slavery journalist, was not as fortunate. On November 7, 1837, Lovejoy was murdered by an anti-abolitionist mob in Alton, Illinois.

The following excerpt describes the mob violence directed at *The Philanthropist*. Mobs in the 1830s were not spontaneous. The mobs that attacked Birney were led by prominent officials who believed that violence was an appropriate means for restricting constitutionally unprotected speech. Consider the issues from the perspective of prominent Cincinnati elites concerned with maintaining good business relationships with southern customers. They no doubt sincerely believed Birney had no right to publish his anti-slavery articles. Why did they believe that? Why did they believe that private violence was a more suitable response to constitutionally unprotected speech than a legal proceeding? Is private violence ever a legitimate response to certain forms of constitutionally unprotected speech? Birney insisted that private violence violates the constitutional rights of anti-slavery advocates. Why did he make that claim? Do advocates of unpopular causes have a right to government protection?

...  
... [A] number of our fellow-citizens, from various States of the Union, assembled at Philadelphia in December, 1833, and formed what is now known as the American Anti-Slavery Society. The foundation principles of this Association are—that slave-holding, as it exists among us, is a violation of the plainest dictates of right and justice—that it contradicts all our professions as a people—that it is opposed to the spirit of our government—that it is a sin and ought, therefore, to be immediately and forever abandoned. In order to succeed in convincing their fellow-citizens of the justness of these views—deemed by them the only proper mode of attaining their object (emancipation), they have used, and continue to use, the natural and constitutional right, secured to every citizen, of freely discussing and exposing the false foundations on which slavery has been, heretofore, supported, and the multiplying and fast-hastening ills with which it threatens to overwhelm us as a people.

...  
... Although the Editor, in the temper of conciliation that he felt, and in the most respectful language he could use, offered to slave-holders the use of his columns for the defence of slavery, and gave, in his own manner of treating the subject, satisfactory proof of moderation and firmness—still, this did not shield him from a deliberately concerted attempt . . . to put down his press. . . .

*The Philanthropist* had not reached its fourth No. when more than fifty persons . . . called . . . a meeting, on the 22d January last, of the citizens opposed to abolition, &c. The Mayor of the city presided, assisted by four Vice Presidents—Judge Burke, a minister of the Gospel, and Postmaster of Cincinnati—

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<sup>1</sup> Excerpt taken from James Birney, *Narrative of the Late Riotous Proceedings Against the Liberty of the Press, in Cincinnati* (Cincinnati, OH: Ohio Anti-Slavery Society, 1836).

Judge Burnet, late a Senator of the United States, as well as member of the Supreme Court of Ohio. . . . Several of the resolutions were intended to convince the South of the high regard in which the meeting held their peculiar "rights." . . . [T]he resolution which was calculated to evince the purest devotion to the South, was that, by which, in effect, it was resolved to suppress, either in the city or in the neighborhood, any paper which might be established for the purpose of discussing the slavery question.

...  
At midnight [on July 12, 1835] a band of men, amounting to thirty or forty in number, including those who stood as sentries at different points on the street, made an assault on the premises of Mr. Pugh, the printer. . . . [They] tore up the paper that was prepared for that week's No. of the *Philanthropist*, as well as a large part of the impression of an omitted No. that had not yet been mailed—destroyed the ink—dismantled the press, and carried away many of its principal parts. . . . A remarkable feature in the transaction is this: . . . Mr. Pugh's premises lie on one of the principal streets of the city, and that the noise and confusion made by the rioters were loud enough to wake many of Mr. P's neighbors . . . still, no interference was offered by the night-watch of the city, to prevent the outrage. . . .

...  
The night succeeding: that on which the invasion of Mr. Pugh's premises was made, the following placard was stuck up on the corners of the streets. . . .

#### ABOLITIONISTS BEWARE.

The Citizens of Cincinnati, embracing every class, interested in the prosperity of the City, satisfied that the business of the place is receiving a vital stab from the wicked and misguided operations of the abolitionists, are resolved to arrest their course. The destruction of their Press on the night of the 12th instant, may be taken as a warning. As there are some worthy citizens engaged in the unholy cause of annoying our southern neighbors, they are appealed to, to pause before they bring things to a crisis. If an attempt is made to reestablish their press, it will be viewed as an act of defiance to an already outraged community, and on their own heads be the results which follow.

...  
[On July 17], the Executive Committee [Of the Anti-Slavery Society] published the following address to the people of Cincinnati.

Fellow Citizens:

. . . There is no longer any reason to doubt, that there exists among us a secret confederacy, whose bond of union is a covenant to put down the liberty of the press and the freedom of speech. These, the gifts of God to every man, no matter what his condition; at his birth—intended to be secured to him beyond the power of interruption, by the firmest and most sacred guards of Constitutional law; these, without which all abuses, and tyrannies, and usurpations, may riot without shame or restraint, and the weak continue, without hope, to be the prey of the powerful; these, which have been provided as the means of reforming every vice in our political and social organization, are the special object of assault and violence on the part of this secret association.

...  
The people of Ohio have said through their Constitution, that the Press "shall be open and free to every citizen"—"That every citizen has an indisputable right to speak, write or print upon any subject as he thinks proper, being liable for the abuse of that liberty." A band of lawless men array themselves against the Constitution, declaring that their will and not that of the People is paramount. What, Fellow Citizens, ought we to do in such a case! Ought we to yield to fear? Ought we basely to surrender a right pronounced by the highest law of the land to be "indisputable," to a band of men who

have entered into a treasonable combination to overthrow all law! No. . . . [W]e have embraced, with a full determination, by the help of God to maintain unimpaired the freedom of speech and the liberty of the press—the palladium OF OUR RIGHTS.

...

At a very large and respectable meeting of the citizens of Cincinnati, convened at the Lower Market House, in pursuance of a public call, on the 23d day of July, 1836, . . . [t]he following preamble and resolutions were then unanimously adopted;

Whereas, The citizens of Cincinnati are now laboring under a serious excitement, in consequence of the existence of an Abolition Press in this city, from the influence of which, the most deplorable results may be justly apprehended. And, whereas, although we deprecate the existence of slavery as a great evil, yet we hold it to be one for which the present generation is not responsible; and disclaiming all right to interfere with the regulations of our sister states on this subject, we regard the conduct of the abolitionists as justly calculated to excite unfriendly dispositions on their part, and thus to effect injuriously our own business and prosperity. And whereas. While we recognize the constitutional right of liberty of speech and of the press, in its utmost extent; yet, being anxious to preserve the peace and tranquility of our city, and continue those amicable relations which have hitherto existed between the States, we deem it our duty to utter a warning voice to those concerned in the promulgation of abolition doctrines, through the aforesaid press, because we believe their course calculated to influence to passions of one portion of our yet happy country against the other, and to lessen that moral influence upon which the perpetuity of our Union mainly depend. Be it therefore

Resolved, That the spirit exhibited by the immediate supporters of the abolition press in this city, is entirely at variance with the feelings and opinions of the great mass of our population, is as unjust to our sister states, as it is prejudicial to our own quiet and prosperity.

...

Resolved, That in the opinion of this meeting nothing short of the absolute discontinuance of the publication of the said abolition paper in this city, can prevent a resort to violence, which may be as disastrous to its publisher and supporters, as it must be to the good order and fair fame of our city.

Resolved, That we will use all lawful means to discountenance and suppress every publication in this city which advocates the modern doctrines of abolitionism.

...

[The Anti-Slavery Society delivered the following responses on July 29]

1. We decline complying—not so much from the fear that the particular cause in which our press is employed may be injured—but because compliance involves a tame surrender of the Freedom of the Press—the Right to Discuss.

2. *The Philanthropist* is the acknowledged organ of some twelve thousand, or more, of our fellow citizens of Ohio, who believe that slavery, as it exists in our country, is altogether incompatible with the permanency of her institutions; who believe that the Slavery of the South or the Liberty of the North must cease to exist; and who intend to do, what in them lies, to bring about a happy and a peaceful termination of the former—and this as speedily as facts, and arguments, and appeals to the consciences and understandings of the slave-holders can be made instrumental to effect it.

3. . . . To discontinue such a paper under existing circumstances, would be a tacit submission to the exorbitant demand of the South, that Slavery shall never more be mentioned among us.

...

6. We decline complying—because the demand is virtually the demand of slave-holders, who, having broken down all the safe-guards of liberty in their own States, in order that slavery may be perpetuated, are now, for the fuller attainment of the same object, making the demand of us to follow their example.

...

7. We decline complying—because the attempt is now first made in our case, formally and deliberately to put down the freedom of speech and of the press. We are, to be sure, the object of the attack—but there is not a freeman in the State whose rights are not invaded, in any assault which may be made on us, for refusing to succumb to an imperious demand to surrender our rights.

...

Thus terminated one of the most singular negotiations . . . that has yet been recorded in the annals of our country. 1. The subject matter was, the right to investigate and discuss Truth—a right bestowed by the Creator on Man as his intelligent creature, to use as freely as he walks the earth, or breathes the air—the exercise of which is required of him as a duty—a right which, as an accountable being, he has no power voluntarily to relinquish, any more than he has voluntarily to sell his liberty, or to part with his life—a right so clear that the people of Ohio have, in their constitution, pronounced it “indisputable”—so inestimable, they have adopted it as one of the elements of their government, and so liable to be invaded by power that they have attempted to secure its freest exercise by the most stable, the most solemn sanctions. 2. The reasons for demanding its surrender—slave-holders called for it—oppression in the South having prostrated there, all legal barriers of individual right and personal safety; having overthrown within her own limits the freedom of the press and of speech—the right to discuss—in order that her reign might be perpetuated, demanded it; a mob of three or four hundred—a mere fragment of our population—the very feculence of the city, countenanced and encouraged to the deed by leading and influential men among us, to whom the exercise of the right of discussion was displeasing, demanded it. 3. The parties to it—on the one hand, ten thousand of our fellow-citizens, not, to be sure [with but few exceptions] leading and influential but yet of the freemen, the plain and honest yeomanry of Ohio, who, within the limits of the Constitution are contending for its very citadel—who are fighting, only with the weapons of truth, for that liberty which becomes the more precious the more it is endangered by the assaults of its enemies. On the other—there are merchants and manufacturers, closely united with the slave-holder—lawyers and judges—officers of the government, and ministers of the Gospel—there are wealth and influence, slave-holding servility and aristocratic pride—all, marshaling into their service for the work, a band fearless of God and regardless of man. Surely, such an attempt to trample under foot the liberties of our people—so deliberate—so carefully matured, and backed by such an amount of moral, intellectual, and pecuniary power, has rarely been made in this country! . . .

...

The following account of the subsequent disturbances is taken from the Cincinnati Gazette. . . .

On Saturday night, July 30, very soon after dark, a concourse of citizens assembled at the corner of Main and Seventh streets, in this city, and upon a short consultation, broke open the printing office of the Philanthropist, the abolition paper, scattered the type into the streets, tore down the presses, and completely dismantled the office. . . .



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