

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 5: The Jacksonian Era – Democratic Rights/Free Speech/States Debate Prohibiting Abolitionist Speech

State v. Worth, 7 N.C. 488 (1860)

Daniel Worth sold George Bowman a copy of Hinton Helper's The Impending Crisis of the South. Helper believed slavery was impoverishing the South and enabling affluent slave owners to dominate the slaveless majority. The Impending Crisis combined calls for greater free speech on slavery with advocacy of emancipation. Helper declared, "Give us fair-play, secure to us the right of discussion, the freedom of speech, and we will settle the difficulty at the ballot box . . . by force of reason, not force of arms." Another passage asserted, "We are determined to abolish slavery at all hazards – in defiance of all opposition, of whatever nature, which it is possible for the slavocrats to bring against us." Northerners cheered publication. Republicans in Congress endorsed the book and provided funds to circulate the work throughout the nation. Slaveholders were aghast. "Let every copy of Helper's book," the Raleigh Standard asserted, "be committed to the flames." Worth was a southern anti-slavery advocate who promoted Helper's work. For doing so, he was indicted under a North Carolina statute that forbade persons to circulate "any written or printed pamphlet or paper . . . the evident tendency whereof is to cause slaves to become discontented with the bondage in which they are held . . . and free negroes to be dissatisfied with their social condition." Worth was convicted and sentenced to a year in prison. He appealed that decision to the Supreme Court of North Carolina.¹

The Supreme Court of North Carolina sustained the sentence. Judge Manly insisted that the "inevitable tendency" of The Impending Crisis "would be to make blacks discontented." What relationship does Manly demand between the speech and the evil tendency? Does his standard permit any criticism of slavery in North Carolina? Suppose you had no particular objections to slavery. How would you draw the line between the concern with slave rebellions and the right to free speech?

JUDGE MANLY

...
... We suppose that a copy might be delivered from one person to another, in North Carolina, under such circumstances as to divest it of criminality, as when it is delivered, not approvingly and for the purpose of propagating its principles, but to gratify curiosity, both parties to the act being equally opposed to the design. The criminality consists in the intent, and this must be collected from the circumstances. Where the question is whether the defendant was justified by the occasion, or acted from malice, every circumstance is admissible which can elucidate the transaction, and enable the jury correctly to conclude whether the defendant acted fairly and honestly, or vindictively, for the purpose of causing evil consequences. . . .

...
It is not deemed necessary, as we conceive, that a party should put out, and then remove from hand to hand, incendiary matter, in order to make him guilty of circulating; nor is it necessary he should put out distinct copies to different individuals. Where a work is printed for public perusal, every one who

¹ For more information on *State v. Worth*, see Michael Kent Curtis, *Free Speech, "The People's Darling Privilege": Struggles for Freedom of Expression in American History* (Durham, NC: Duke University Press, 2000), 289–99.

delivers a copy, in furtherance of the design of publishing, is an actor in the work of publication, and, in the case of incendiary matter, forbidden by law, is guilty as a principal: provided, it be done willfully and with the evil intent.

The remaining exception, is to that part of the instruction to the jury, which declares that it was not necessary, in order to constitute the offence, that the sale should be to a slave or a free negro, nor that the matter should be read in the presence of either. We find no error in this. There is no such qualification of the offence, in the language of the statute, as that which is here supposed. It is made, by the Code, unlawful to circulate, or aid in circulating, written or printed matter, the evident tendency of which is to cause slaves to be discontented and free negroes dissatisfied. No license is given to circulate, amongst any class, by restricting the prohibitory provision to some particular ones. The circulation, within the State, is alike prohibited, whether it be amongst whites or blacks. The Legislature seems to have assumed, that if a circulation, within the State, was once established, that its corrupting influence would inevitably reach the black. The enemies to our peace act upon this assumption, and it is not unreasonable to ascribe to our Legislative Assembly the same amount of foresight.

It is clear to us, that in a mixed population, consisting of both whites and blacks, matter put into circulation, calculated to excite insubordination amongst the latter, would, ultimately, extend itself to them, and effect the object it was calculated to accomplish. Thus the inevitable tendency of a circulation, in whatever circle, would be to make blacks discontented. The language of the law, in regard to this point, is unrestricted. The spirit of the law can only be accomplished by giving it an unrestricted construction, and where both the letter and the spirit concur, there can be no doubtfulness as to the duty of the Court.

. . . Without going into a detailed consideration of the offensive matter, it is sufficient to say, the expressed object of the book, as disclosed by the extracts, is to render the social condition of the South odious, and to put an end to that which is held up as the odious feature, by force, and arms, if necessary. This object is constantly kept in view by the execution of the work, and the considerations resorted to, are manifestly designed to accomplish the object. The scope of the extracts, is to place slave holders and their slaves in antagonism and hostile array, and thus, by force, to bring about an extinction of slavery.

We do not perceive how there can be any difficulty in discovering the tendency of matter, every passage of which is a declaration, in the most inflammatory words, that the slave ought to be discontented with his condition, and the master deposed from his, and that the change should be effected, even at the cost of blood. The language, in direct terms, recommends the accomplishment of the object as a duty, and argues in favor of its rectitude. It would seem to follow, somewhat after the manner of a collatory, that the tendency is in accordance with the object and argument.

We conclude, the evident tendency is that which is attributed to it in the indictment; that it is against law, and is a mischievous attempt to disturb the happiness and repose of the country.