

# The Law and Mob Law in Attacks on Antislavery Newspapers, 1833–1860

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Two months after a mob in Alton, Illinois, killed abolitionist editor Elijah Lovejoy and destroyed his fourth press, a jury acquitted several assailants accused of rioting. By the time that the trials commenced in January 1838, the defenses had all been publicly aired; indeed, they had been rehearsed in print and at well-attended meetings long before the attack occurred. The mob's leaders had taken special care over several months to lay a legal foundation for their action; most notably, the Illinois attorney general led the pre-attack rhetorical justification and the post-attack courtroom defense. In the end, the jury found that resorting to forcible measures in such circumstances did not clearly fall outside the law.<sup>1</sup>

For Lovejoy and a dozen other antislavery editors who faced mobs, antebellum law afforded little protection—but not because mobs ignored the law. Indeed, most mobs exhibited a hypersensitivity to the law. Communities pointed to legal principles that supported the suppression of unwanted newspapers in their midst, and they followed a quasi-legislative or -judicial process in which lawyers and civil authorities figured centrally.

These mobbings represented a clash between established and emerging strands of American legal doctrine and culture. On one side was the

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1. The Alton trials and the circumstances that led to them are discussed below.

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abolitionists' well-known and ultimately successful position: the "notion of individual rights, *enforceable against the community*."<sup>2</sup> According to this view, antislavery editors should be free to disseminate their views in communities that abhorred them and with government protection to do so. Michael Kent Curtis credits the abolitionists' free-speech efforts with breathing meaning into abstract notions of freedom of expression and laying the foundation for First and Fourteenth Amendment doctrines that matured in the twentieth century. Indeed, the eventual triumph of the abolitionists' free-speech arguments partly explains why their position has received considerable attention from historians.<sup>3</sup>

On the other side was the view that communities should have some control over ideas disseminated in their midst. Modern free-speech jurisprudence has largely rejected this position, and its association with anti-abolitionists (as well as later groups now viewed with disfavor) has further discredited it. Yet historians should not simply dismiss as mere sophistry the legal justifications mobs gave for attacking antislavery newspapers. Among the several variants of "lawless law" identified by Lawrence M. Friedman are the types that "take place 'inside' the legal system itself, or are aspects of that system."<sup>4</sup> The legal discourse of the mobs deserves attention so that we may recover antebellum communities' understanding of their latitude to regulate a significant expressive activity. The abolition editors targeted by mobs published in the communities they agitated, and their opponents naturally drew upon doctrines widely used to control other community activities. A few legal historians, most notably William

2. John P. Roche, "Civil Liberties in the Age of Enterprise," *University of Chicago Law Review* 31 (1963): 103.

3. Curtis has most recently and thoroughly documented the free-speech efforts of the abolitionists and the attacks on them in *Free Speech, "The People's Darling Privilege": Struggles for Freedom of Expression in American History* (Durham: Duke University Press, 2000); "The Curious History of Attempts to Suppress Antislavery Speech, Press, and Petition in 1835–37," *Northwestern University Law Review* 89 (1995): 785–870; and "The 1837 Killing of Elijah Lovejoy by an Anti-Abolition Mob: Free Speech, Mobs, Republican Government, and the Privileges of American Citizens," *UCLA Law Review* 44 (1997): 1109–84. Curtis and other scholars also argue that the abolitionists' legal and political claims ultimately altered jurisprudence well beyond free-speech theory. See Curtis, *No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights* (Durham: Duke University Press, 1986); Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* (New Haven: Yale University Press, 1998); William E. Nelson, "The Impact of the Antislavery Movement upon Styles of Judicial Reasoning in Nineteenth Century America," *Harvard Law Review* 87 (1974): 513–66; David A. J. Richards, "Abolitionist Political and Constitutional Theory and the Reconstruction Amendments," *Loyola of Los Angeles Law Review* 25 (1992): 1187–1205.

4. Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic-Books, 1993), 172–92, quote at 172; Carol Wilton, "'Lawless Law': Conservative Political Violence in Upper Canada, 1818–41," *Law and History Review* 13 (1995): 111–36.

J. Novak, have highlighted the vitality and pervasiveness of established common-law doctrines used to regulate public safety, economy, space, morals, and health. “Public regulation—the power of the state to restrict individual liberty and property for the common welfare—colored all facets of early American development,” he asserts. “It was the central component of a reigning theory and practice of governance committed to the pursuit of the people’s welfare and happiness in a well-ordered society and polity.”<sup>5</sup>

Key aspects of antebellum law reinforced the use of common-law doctrines in regulating community activities. One strand of constitutionalism that prevailed through the mid-1800s elevated majoritarian interests over individual rights. Mobs responded to abolitionist claims about individuals’ free-speech rights by asserting quite plausibly that constitutional charters were designed, at bottom, to protect the people’s collective interests. Another interpretive stance well established by the Jacksonian period, popular constitutionalism, served as a counterweight to assertions of judicial supremacy, according to Larry D. Kramer. The anti-abolition mobs espoused their right, independent of the courts’ authority, to determine expression appropriate for a community. Yet another pronounced feature of nineteenth-century law was its local orientation. With “early American rights and duties flow[ing] from the bottom up,” Novak has observed, states left many regulatory responsibilities to local authorities. Together, these overlapping and reinforcing presuppositions—the vitality of common-law regulatory doctrines, a majoritarian view of constitutional rights that accorded popular conceptions considerable weight, and a preference for handling disputes at the local level—furnished a powerful basis for controlling community newspapers.<sup>6</sup>

This study explicates the place of law as a substantive claim and as a tactical resource for mobs that attacked antislavery newspapers. When confronted with an abolition newspaper, antebellum communities could

5. William J. Novak, *The People’s Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996), 2. For one critique of this book that notes the importance of studying mob actions, see Harry N. Scheiber, “Private Rights and Public Power: American Law, Capitalism, and the Republican Polity in Nineteenth-Century America,” *Yale Law Journal* 107 (1997): 856 n. 174: “mob actions, for example actions against abolitionists, . . . represent a significant part of the story of how ‘well-regulated’ the society actually was, who was counted ‘in’ and who ‘out’ in defining community and enjoying its collective protection through law, and how effectively the law was actually mobilized in dealing with such incidents and movements.”

6. William J. Novak, “The Legal Transformation of Citizenship in Nineteenth-Century America,” in *The Democratic Experiment*, ed. Meg Jacobs, William J. Novak, and Julian E. Zelizer (Princeton: Princeton University Press, 2003), 85–119, quote at 101; Amar, *Bill of Rights*; Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (New York: Oxford University Press, 2004), 189–209.

credibly draw on established legal principles to limit objectionable expression. Although not everyone in a community accepted the legality of mob action, sizable segments did believe in the lawfulness of such measures. Law also served the tactical goals of mobs in several ways. First, legal arguments broadened support for mob action within the community. Second, justifying the actions in law helped mobs keep civil authorities at bay. Third, townspeople sensitive about their community's reputation in the eyes of outsiders trumpeted the legal basis of the mob actions and their careful attention to legal procedures. Fourth, by clothing their actions in law, mobs built up and rehearsed defenses for subsequent criminal prosecution and civil suits.

Attacks on antislavery newspapers constituted only a small portion of all antebellum mobbings and only one phase of anti-press violence throughout American history. Still, these mobbings are an especially fruitful source of insights into contending notions of legality in the antebellum era. Although most forms of American vigilantism folded legal elements into their discourse and actions, mobs that attacked antislavery editors were particularly dutiful in attending to the law.<sup>7</sup> Abolition editors—usually prominent citizens of the same race, ethnicity, and religion as other leading residents—lived among the people who constituted the mobs; hence, attacks on abolition editors typically involved calculated decisions, elaborate preparation, and public deliberations.<sup>8</sup> In contrast, the most common

7. Contributions to the considerable literature on mob violence and American vigilantism, especially works focusing on the Revolutionary Era and the frontier, discuss the use of law in justifying extralegal actions. Some of the more useful studies include John P. Reid, "Violence in American Law: A Review of Five Books," *New York University Law Review* 40 (1965): 1208–20; John P. Reid, "In a Defensive Rage: The Uses of the Mob, the Justification in Law, and the Coming of the American Revolution," *New York University Law Review* 49 (1974): 1043–91; Pauline Maier, "Popular Uprisings and Civil Authority in Eighteenth-Century America," *William & Mary Quarterly*, 3d ser., 27 (1970): 3–35; Michael Wallace, "The Uses of Violence in American History," *American Scholar* 40 (1970–71): 81–102; Richard M. Brown, "Legal and Behavioral Perspectives on American Vigilantism," *Perspectives in American History* 5 (1971): 93–144; Richard M. Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism* (New York: Oxford University Press, 1975), 95–133; Dirk Hoerder, "'Mobs, a Sort of Them at Least, are Constitutional': The American Revolution, Popular Participation, and Social Change," *Amerikastudien/American Studies* 21 (1976): 289–306; David A. Johnson, "Vigilance and the Law: The Moral Authority of Popular Justice in the Far West," *American Quarterly* 33 (1981): 558–86; Christian G. Fritz, "Popular Sovereignty, Vigilantism, and the Constitutional Right of Revolution," *Pacific Historical Review* 63 (1994): 39–61.

8. For a sociological analysis of the elaborate discourse produced to justify and oppose mob action against one antislavery paper, see Stephen Ellingson, "Understanding the Dialectic of Discourse and Collective Action: Public Debate and Rioting in Antebellum Cincinnati," *American Journal of Sociology* 101 (1995): 100–44.

types of antebellum mobs attacked outsiders or marginal members of the community, as the works of David Grimsted, Paul A. Gilje, and Michael Feldberg attest.<sup>9</sup> For similar reasons, the attacks on antislavery papers also stand out in the long tradition of anti-press violence. Most mobbings of newspapers in American history, according to John Nerone, occurred during wartime or targeted the publications of labor groups or racial and ethnic minorities; with some exceptions, they did not require a long build up during which the communities discussed the legality of their actions.<sup>10</sup> The incidents studied here, in contrast, reveal how the full range of the law's components—doctrines, procedures, language, personnel, symbolism, and political and social bases—reinforced one another to constrain publications in nineteenth-century communities.

This study unfolds in five parts. First, it presents a case study of the 1845 attack on the Lexington *True American* to illustrate how mobs combined multiple elements of the law into their campaigns to remove an unwanted newspaper. Next, it briefly locates each of about twenty similar incidents that occurred between 1833 and 1860 in the broader context of the anti-slavery movement and in the streams of antebellum mob violence. Third, it examines the mobs' substantive legal claims for suppressing antislavery newspapers. Fourth, it shows how the mobs styled their attacks as abatement actions by drawing on the law's procedures and personnel. Finally, it examines court cases that resulted from the attacks to further gauge how communities viewed the mobbings' legality.

### The Mob's Case in Brief: Attacking the True American

The abatement of the *True American* exemplifies how several aspects of the law, especially the nuisance doctrine, coalesced in a campaign to silence an antislavery newspaper. Finding editorial outlets closed to his antislavery ideas, Cassius M. Clay launched the *True American* in Lexington, Kentucky, in June 1845. For two months, Clay published essays dealing with religion, constitutional objections to slavery, and slaves as property. The

9. David Grimsted, "Rioting in Its Jacksonian Setting," *American Historical Review* 77 (1972): 361–97, esp. 364; Paul A. Gilje, *Rioting in America* (Bloomington: Indiana University Press, 1996), 60–91; Michael Feldberg, *The Turbulent Era: Riot and Disorder in Jacksonian America* (New York: Oxford University Press, 1980), 33–53, 87. See also David Grimsted, *American Mobbing, 1828–1861* (New York: Oxford University Press, 1998), though by design it excludes many of the mobs inspired by religious and ethnic tensions.

10. John Nerone, *Violence Against the Press: Policing the Public Sphere in U.S. History* (New York: Oxford University Press, 1994). Nerone studied many types of anti-press violence, of which mobs were one type.

*True American* tried to drive a wedge between Kentucky slaveholders and the non-slaveholding majority by underscoring the disadvantages to white workers of a plantation-based agrarian economy. Clay reported that his paper reached 700 subscribers in Kentucky and 2,700 outside the state.<sup>11</sup>

Clay's enemies began planning their abatement action after the *True American* carried an editorial that conjured up images of violence against slave owners and, most vividly, women. "But remember, you who dwell in marble palaces, that there are strong arms and fiery hearts and iron pikes in the streets, and panes of glass only between them and the silver plate on the board, and the smooth skinned woman on the ottoman," Clay's editorial warned in comparing slavery to the tyranny of pre-Revolutionary Europe. "[T]he day of retribution is at hand, and the masses will be avenged."<sup>12</sup> In response, about thirty men gathered at the courthouse on August 14. Stricken with typhoid, Clay nonetheless attended the meeting, observing that all but two of the people were bitter political and personal enemies. Later that day, Clay received a note asking him to discontinue publication of the *True American* because it endangered "the peace of our community." His reply: "Go tell your secret conclave of cowardly assassins that C. M. Clay knows his rights and how to defend them."<sup>13</sup>

During the next few days, the bed-ridden Clay made conciliatory gestures but his opponents continued to mobilize. On the morning of August 18, a city judge "issued a legal process enjoining the 'True American' office and all its appurtenances; and on demand I yielded up the keys to the city marshal," Clay reported.<sup>14</sup> That afternoon, a crowd of twelve hundred people gathered in the courthouse yard to discuss silencing the paper. In a note to the crowd, Clay almost apologized for the offending editorial. But "my constitutional rights I shall never abandon," he vowed.<sup>15</sup> Then

11. Prospectus for *True American*, n.d., reprinted in *The Writings of Cassius Marcellus Clay*, ed. Horace Greeley (New York: Harper and Brothers, 1848), 211–12 [hereafter *Clay's Writings*]; articles from the *True American*, 3 June–22 July 1845, reprinted in *ibid.*, 213–87; Cassius M. Clay, *Appeal of Cassius M. Clay to Kentucky and the World* (Boston: J. M. Macomber & E. L. Pratt, 1845), 4; David L. Smiley, *Lion of White Hall: The Life of Cassius M. Clay* (Madison: University of Wisconsin Press, 1962), 21–23, 86–88.

12. *True American*, 12 Aug. 1845, in *Clay's Writings*, 285; Stanley Harrold, "Violence and Nonviolence in Kentucky Abolitionism," *Journal of Southern History* 57 (1991): 15–38, esp. 23.

13. B. W. Dudley et al. to Clay, 14 Aug. 1845, *Clay's Writings*, 290; Clay to Dudley et al., 15 Aug. 1845, *ibid.*, 290–91; *True American*, 15 Aug. 1845, in *Clay's Writings*, 287–88; *Louisville Daily Journal*, 18 Aug. 1845.

14. *Appeal of Cassius M. Clay*, 15.

15. Clay to the chairman of the public meeting, 18 Aug. 1845, *Clay's Writings*, 298–300, quote at 300; Clay's handbills, 16 and 18 Aug. 1845, *ibid.*, 292–98; *Louisville Daily Journal*, 18 and 20 Aug. 1845; Smiley, *Lion of White Hall*, 92–96.

Thomas F. Marshall, a lawyer and nephew of Chief Justice John Marshall, stepped forward to deliver a lawyer's brief advocating mob action. Marshall crafted his remarks mindful that, in light of earlier attacks on antislavery editors in nearby states, the events in Lexington would attract nationwide attention.<sup>16</sup>

Marshall detailed "the facts and the principles upon which your [the people's] action this day is based, as forms in their judgment a complete defense in morals and in laws." The community would have tolerated the expression of antislavery views that originated locally, he averred. Clay, however, worked in concert with a national party of "desperately fanatical" abolitionists, serving as "the organ and the agent of an incendiary sect" based outside the state. Clay's actions, notably arming his office, signaled violent intentions, Marshall said. The *True American's* editorials also testified to the editor's bellicose stance: Clay expected "the non-slaveholding laborers along with the slaves, to flock to his standard, and the war of abolition to begin in Kentucky." In short, he incited both blacks and whites to violence.<sup>17</sup>

Marshall then proceeded to the legal basis for the community's action, first by noting the deficiencies in existing law. "Our laws may punish when the offense shall have been consummated; but they have provided no remedial process by which it can be prevented," he told the crowd. This remark probably referred to the state constitutional provision that "every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty." Prosecuting Clay for libel—an "abuse of that liberty"—would just give abolitionists a public platform, Marshall explained. Nor would traditional prior restraints work. "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."<sup>18</sup>

Next, Marshall synthesized a legal basis for silencing such a publication, grafting elements of the twentieth century's clear-and-present-danger test onto the traditional common law of public nuisances. "An Abolition paper in a slave State is a nuisance of the most formidable character—a public nuisance—not a mere inconvenience . . . but a blazing brand in the hand of an incendiary or madman, which may scatter ruin, conflagration, revolu-

16. "Removal of C. M. Clay's Press," in *Speeches and Writings of Hon. Thomas F. Marshall*, ed. W. L. Barre (Cincinnati: Applegate, 1858), 196–210. Marshall's speech received widespread attention through republication in *Niles' Weekly Register* 69 (6 Sept. 1845): 13–15.

17. Marshall, "Removal of C. M. Clay's Press," 198–206, quotes at 198, 200, 202, 206.

18. *Ibid.*, 207; Kentucky Constitution of 1799, article X, section 7.

tion, crime unnameable, over every thing dear.” Two considerations made publications such as Clay’s worse than a tolerable public annoyance—the severity of the damage that might result and the proximity of expression to the resulting action. Marshall established the severity of harm a community might suffer by enumerating possible consequences and by reiterating the word *irreparable*. Proximity was harder to show. Here, Marshall relied on the repetition of such phrases as “impending danger” and “inevitable tendency,” plus the allegation that Kentucky’s slaves, and maybe the state’s white laborers, regarded Clay as a leader and would act on his words. Together, these lines of reasoning established a community’s right to act directly: “[A]s in case of sudden invasion, or insurrection itself, the people have at once, independent of the magistrates, the right of defense, so when there be a well-grounded apprehension of great, and, it may be, irreparable injury, the use of force in the community is lawful and safe.”<sup>19</sup>

To successfully brand abolition newspapers a public nuisance, their antagonists had to establish how such publications harmed the community. Anti-abolition mobs relied on some combination of three main assertions: that tolerating an antislavery newspaper could incite slave insurrections, spark responses that caused public disorder, and disrupt commercial and political relations. Marshall’s chief argument—that the dissemination of abolition ideas could incite a slave insurrection—was plausible only in slave states. Although Clay published in a border state that had not by statute prohibited abolition discussions, the fear of a slave revolt still unsettled many inhabitants and the provocative editorial heightened that apprehension. An abolition newspaper might disrupt a community’s peace by provoking a violent response by white townspeople, Marshall asserted. The pugnacious Cassius Clay anticipated a violent response to his paper and had taken extraordinary measures to arm his print shop, fortifying his brick office with canons, lances, and guns. If a mob took the office, Clay wrote, he and a handful of defenders planned “to escape by a trap-door in the roof; and I had placed a keg of powder, with a match, which I could set off, and blow up the office and all my invaders.” Marshall regarded these defensive measures as a provocation. Another rationale for suppressing an antislavery newspaper—that it disrupted a community’s commerce—actuated some in the mob. Clay’s *True American* targeted white laborers with messages that urged them to overhaul the existing economic order.<sup>20</sup>

Besides detailing the substantive reasons for treating the paper as a nuisance, Marshall’s address emphasized how Lexington’s citizens re-

19. Marshall, “Removal of C. M. Clay’s Press,” 206–8.

20. Cassius M. Clay, *The Life of Cassius Marcellus Clay* (Cincinnati: J. F. Brennan, 1886), 105–7, quote at 107; Smiley, *Lion of White Hall*, 21–23, 86–88.

spected procedural niceties in abating the paper. First, Marshall said, the community did not prejudice Clay and try to prevent the establishment of the paper. Second, when the paper manifested its true temperament and became intolerable, community leaders warned Clay and negotiated with him. Third, “order, decorum, and dignity . . . have characterised all the previous steps in this great popular movement.” The citizens of Lexington carefully distinguished their abatement of the *True American* from a mob action—an “unauthorized crowd” that injured person or property “for the gratification of passion.” Finally, Marshall’s subtle modulations of tone and language endowed the proceeding with a sense of legitimacy. Although his rhetoric was calculated, in part, to excite, Marshall also conveyed the solemnity of the affair. More tangibly, he crafted phrases reminiscent of legislative and judicial proceedings, describing the crowd gathered outside the courthouse—a venue favored by mobs—as a “general assembly of the people” whose actions would be upheld at the “bar of . . . public opinion.”<sup>21</sup>

The mass meeting ended by adopting resolutions, without dissent, warning Clay and others that no abolition newspaper would be tolerated in the area. A Committee of Sixty, as it became known, went to the *True American* office. The mayor raised some objections but conceded that the authorities could not oppose such a sizable force and the city marshal surrendered the key to the newspaper’s print shop. As they went about their task, members of the committee acted formally in keeping with their presumed legal status. The committee decided to hold itself responsible for any property damage, then appointed members to disassemble the press and collect materials while a secretary compiled a packing list. The printing plant was shipped to Cincinnati and the packing list delivered to Clay. Also, to protect Lexington’s reputation in the eyes of the nation, the Committee of Sixty circulated a pamphlet detailing its side of the story. The strategy worked; newspapers commended the mob for its restraint.<sup>22</sup>

Subsequent court battles tested the legitimacy of the newspaper’s abatement. After recovering from his illness Cassius Clay sought prosecution of the Committee of Sixty that had guided the assault on his *True American*. Several members of the Committee were tried for rioting. The defendants claimed that their actions were justified in abating a public nuisance. The defense counsel offered, and the judge adopted, the following jury instruc-

21. Marshall, “Removal of C. M. Clay’s Press,” 197–98, 208.

22. *Ibid.*, 209–10; *Niles’ Weekly Register* 69 (Sept. 6, 1845): 14–15; *Louisville Daily Journal*, 20 Aug. 1845; [Committee of Sixty], *History and Record of the Proceedings of the People of Lexington and Its Vicinity in the Suppression of The True American* (Lexington: Virden, 1845); newspaper extracts, reprinted in *True American*, 30 Sept. and 21 Oct. 1845; *Marysville (Ky.) Eagle*, 15 Oct. 1845.

tions: "That if the jury believe that the True American press was a public nuisance, and could not exist in its then present location and condition, without being a nuisance, the defendants were justifiable in abating it."<sup>23</sup> A jury of Lexington citizens—"the same men who robbed me of my press," Clay cried—"declared there was no offence against the laws." He later complained that applying the English common law of nuisance to the *True American* violated state and federal constitutional guarantees.<sup>24</sup>

More than two years after the failed criminal prosecution of the *True American's* attackers, the courts vindicated Clay in a civil action. First, though, he had to refurbish his reputation. A volunteer in the war with Mexico, Clay distinguished himself with widely heralded acts of bravery. In an ironic twist, Lexington welcomed Clay as a hero in December 1847. Capitalizing on his newfound popularity, Clay sued James B. Clay, the son of Henry Clay who had acted as secretary of the Committee of Sixty. Cassius Clay secured a change of venue to an adjoining county and won a \$2,500 judgment. The Committee of Sixty paid the award with funds raised through public subscription.<sup>25</sup>

### The Attacks and Their Contexts

Cassius M. Clay was only one of a dozen antislavery editors who faced mobs that relied on common-law principles to justify a newspaper's abatement. Counting multiple assaults suffered by some publications, about twenty incidents occurred in northern or border states between 1833 and 1860 in which sizable segments of the community asserted a legal right to suppress a paper for its real or alleged antislavery stand (see Table 1). In most cases the violence or intimidation silenced, at least temporarily, an abolition voice.

The earliest antislavery periodicals, appearing shortly before 1820, attracted little notice as long as they circulated mostly among members of abolition societies. But around 1830 antislavery groups adopted a new communication strategy, aiming messages at the general public in both North and South. Several of the larger antislavery societies sponsored papers and their editors exchanged information with one another to coordinate activities. This created the appearance, more than the reality, of a

23. Lexington *Observer* report of the trial, including judge's comment, reprinted in *True American*, 11 Nov. 1845.

24. *Appeal of Cassius M. Clay*, 30; *Life of Cassius Marcellus Clay*, 108; "The Judicial Acquittal of the Mob," 4 Nov. 1845, in *Clay's Writings*, 336; *Liberator*, 17 Oct. 1845.

25. *Life of Cassius Marcellus Clay*, 165–66, 206; *National Anti-Slavery Standard*, 20 Apr. 1848; *Liberator*, 14 July 1848; Smiley, *Lion of White Hall*, 112–29, 262 n. 2.

Table 1. Summary of Mob Actions against Antislavery Newspapers

Date	Location	Newspaper	Nature of Attack	Legal Outcome
July 20, 1833	Jackson County, Mo.	<i>Evening and Morning Star</i>	Print shop destroyed, forced to move	Recovered minor property damages
Oct. 21, 1835	Boston	<i>The Liberator</i>	Office ransacked, editor assaulted	Editor cited for fomenting riot
Oct. 21, 1835	Utica, N.Y.	<i>Oneida Standard and Democrat</i>	Type thrown into street	Grand jury refuses to indict member of mob
July 12, 1836	Cincinnati	<i>Philanthropist</i>	Press destroyed	Nothing
July 21, 1836	St. Louis	<i>Observer</i>	Print shop damaged	One person acquitted of breach of peace
July 24, 1836	Alton, Ill.	<i>Observer</i>	Press tossed in river	Nothing
July 30, 1836	Cincinnati	<i>Philanthropist</i>	Print shop damaged, press thrown in river	Recovered property damages
Aug. 21, 1837	Alton, Ill.	<i>Observer</i>	Press destroyed	Trial ended inconclusively
Sept. 21, 1837	Alton, Ill.	<i>Observer</i>	Press destroyed	Nothing
Nov. 7, 1837	Alton, Ill.	<i>Observer</i>	Press destroyed, editor killed	Attackers and defenders acquitted of riot
May 17, 1838	Philadelphia	<i>Pennsylvania Freeman</i>	Print shop destroyed in general riot	Property damages recovered
Sept. 3, 1841	Cincinnati	<i>Philanthropist</i>	Print shop destroyed in general riot	Nothing
April 1843	Peoria, Ill.	<i>Register</i>	Intimidation ends coverage of abolitionism	Nothing
Aug. 18, 1845	Lexington, Ky.	<i>True American</i>	Print shop dismantled	Property damages recovered
Sept. 1847	Cambridge, Ohio	<i>Claron of Freedom</i>	Paper forced to move	Nothing
April 18–20, 1848	Washington, D.C.	<i>National Era</i>	Mob threatened editor	Nothing
Aug. 1851	Newport, Ky.	<i>News</i>	Print shop burned	Nothing
April 14, 1855	Parkville, Mo.	<i>Industrial Luminary</i>	Press and type thrown in river	Property damages recovered
May 21, 1856	Lawrence, Kans.	<i>Free State and Herald of Freedom</i>	Presses destroyed, editor detained	Nothing
Oct. 28–29, 1859	Newport, Ky.	<i>Free South</i>	Press damaged	Grand jury indicted rioters, reverses self

cohesive national movement. Thus, even a local editor might be seen as the agent of a much larger and distant group. One communication initiative confirmed for many the growing national power of abolitionists: In 1835 the American Anti-Slavery Society began mailing more than one million pamphlets to southern editors, clergy, business owners, and others. The two-year postal campaign provoked a backlash in the South, including bonfires fueled by abolition tracts.<sup>26</sup>

Mobbings of antislavery speakers and editors grew apace with the movement's organizational and communication efforts. Of the reported 134 attacks on abolitionists' communication activities, about 110 involved assaults on speakers; the rest targeted publications.<sup>27</sup> Ironically, the abolitionist press suffered more mobbings in the North than in the slaveholding South. But the irony is more apparent than real, for southern states made recourse to mobs unnecessary by banning antislavery discussions. Northern states considered but declined to enact laws restricting printed or spoken discussions about slavery. Ultimately, however, mobs or the threat of violence circumscribed antislavery editors' exercise of their freedom.<sup>28</sup>

The major mobbings of antislavery papers cluster in three general groupings defined partly by time (mainly the antislavery movement's maturity and the changing political climate), geography, and the dynamics of collective action involved. Law figured somewhat differently in the three types of situations.

One type of mob action occurred in northern cities experiencing considerable social stress during the rapid urban growth of the Jacksonian Era.<sup>29</sup>

26. Joseph A. Del Porto, "A Study of American Anti-Slavery Journals" (Ph.D. diss., Michigan State College, 1953); Richard R. John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge: Harvard University Press, 1995), 257–80; W. Sherman Savage, *The Controversy over the Distribution of Abolition Literature, 1830–1860* (Washington, D.C.: Association for the Study of Negro Life and History, 1938); Bertram Wyatt-Brown, "The Abolitionists' Postal Campaign of 1835," *Journal of Negro History* 50 (1965): 227–38.

27. Nerone, *Violence against the Press*, 93, 221–25.

28. Clement Eaton, *The Freedom-of-Thought Struggle in the Old South*, rev. ed. (New York: Harper and Row, 1964), 118–43, 162–95. For texts of the southern laws, see John C. Hurd, *The Law of Freedom and Bondage in the United States* (Boston: Little, Brown, 1862), 2:9–10 (Va.), 22–23 (Md.), 86 (N.C.), 97 (S.C.), 147 (Miss.), 161 (La.), 170 (Mo.), 173 (Ark.); George M. Stroud, *A Sketch of the Laws Relating to Slavery in the Several States of the United States*, rev. ed. (1856; reprint, New York: Negro Universities Press, 1968), 104–8. For examples of bills introduced in northern legislatures that would have limited antislavery discussions, see William Birney, *James G. Birney and His Times* (New York: D. Appleton, 1890), 192; Curtis, "Attempts to Suppress Antislavery Speech," 813–17.

29. Grimsted, "Rioting in Its Jacksonian Setting," 361–97; Feldberg, *Turbulent Era*, 5–6.

Antislavery newspapers and their editors suffered attacks during three such episodes of urban turmoil, though they were not necessarily the principal targets of the rioters. A mob of 5,000 Bostonians ransacked the offices of *The Liberator* and threatened William Lloyd Garrison, the nation's most zealous abolitionist editor, in 1835.<sup>30</sup> On the same day, a mob disrupted the organizational meeting of the state antislavery society in Utica, New York; that evening, a group broke into the office of the *Oneida Standard and Democrat*, a paper associated with abolitionism, and "threw the types, cases, &c., into the street."<sup>31</sup> Nearly three years later, an antislavery mob in Philadelphia destroyed the offices of the *Pennsylvania Freeman*, an abolition paper edited by poet John Greenleaf Whittier, during the dedication of Pennsylvania Hall.<sup>32</sup>

Another type of mobbing occurred in sizable midwestern cities where abolition newspapers often stood as the most visible manifestation of the antislavery movement. Because these antislavery editors enjoyed support in their communities, the mobs carefully planned their actions with considerable attention to the law before attacking. As a former slaveholder, editor James G. Birney was an exceptionally persuasive and nettlesome critic of slavery who could not be discredited as an uninformed outsider. The prospect of violence in his native Kentucky dissuaded him from publishing there so he moved across the Ohio River to Cincinnati, where his newspaper, the *Philanthropist*, was mobbed twice in 1836.<sup>33</sup> Five years later, with associate editor Gamaliel Bailey in charge, the *Philanthropist* was mobbed yet again as part of a citywide riot fueled by charges of slave stealing.<sup>34</sup> While Birney was contending with mobs in Cincinnati, Elijah P. Lovejoy faced similar opposition in St. Louis, Missouri, and then Al-

30. *Niles' Weekly Register* 49 (31 Oct. 1835): 145–46; Theodore Lyman, ed., *Papers Relating to the Garrison Mob* (Cambridge, Mass.: Welch, Bigelow, 1870).

31. Defensor [William Thomas], *The Enemies of the Constitution Discovered, or, An Inquiry into the Origin and Tendency of Popular Violence* (New York: Leavitt, Lord, 1835), 93–94, quote at 86; *Niles' Weekly Register* 49 (31 Oct. 1835): 146–48; Howard A. Morrison, "Gentlemen of Proper Understanding: A Closer Look at Utica's Anti-Abolitionist Mob," *New York History* 62 (1981): 61–82, which sketches the partisan context of the mobbing.

32. *History of Pennsylvania Hall, Which Was Destroyed by a Mob, on the 17th of May, 1838* (1838; reprint, New York: Negro Universities Press, 1969), 13–135; Ira V. Brown, "Racism and Sexism: The Case of Pennsylvania Hall," *Phylon* 37 (1976): 126–36.

33. Betty Fladeland, *James Gillespie Birney: Slaveholder to Abolitionist* (Ithaca: Cornell University Press, 1955); Daniel Aaron, "Cincinnati, 1818–1838: A Study of Attitudes in the Urban West" (Ph.D. diss., Harvard University, 1942), 451–76.

34. Stanley Harrold, *Gamaliel Bailey and Antislavery Union* (Kent: Kent State University Press, 1986), 17–19, 42–43; Patrick A. Folk, "'The Queen City of Mobs': Riots and Community Reactions in Cincinnati, 1788–1848" (Ph.D. diss., University of Toledo, 1978), 222–23.

ton, Illinois. Lovejoy eventually lost four printing presses and his life to mobs.<sup>35</sup> News of Lovejoy's death, especially after the widely publicized attacks on Birney, agitated the nation and prompted countless editorials, pamphlets, and sermons.<sup>36</sup> And the mob leaders who abated Clay's *True American* learned from the experiences in Cincinnati and Alton.

General anti-abolition violence declined after the 1830s.<sup>37</sup> But in the third type of mobbing, passions quickly became inflamed in border states on the eve of the Civil War. Mobs acting against antislavery newspapers in these circumstances still took pains to incorporate legal elements in their actions, though in a somewhat perfunctory fashion. The first newspaper victim of "Bleeding Kansas"—the conflict to determine whether Kansas Territory would enter the Union as a free or a slave state—was the Parkville *Industrial Luminary*, published across the Missouri River from Kansas.<sup>38</sup> In Kansas itself, the territorial legislature rode roughshod over the free-soil press. Mobs sacked two Lawrence newspapers in 1856, and free-soil printing facilities elsewhere in the territory narrowly escaped destruction.<sup>39</sup>

35. Lovejoy's martyrdom inspired many hagiographic accounts by contemporaries and historians. The best biographies are Merton L. Dillon, *Elijah P. Lovejoy, Abolitionist Editor* (Urbana: University of Illinois Press, 1961); John G. Gill, *Tide without Turning: Elijah P. Lovejoy and Freedom of the Press* (Boston: Starr King, 1959).

Participants and eyewitnesses left important book-length accounts. The American Anti-Slavery Society commissioned Lovejoy's brothers Joseph and Owen to write *The Memoir of the Rev. Elijah P. Lovejoy Who Was Murdered in Defence of the Liberty of the Press, At Alton, Illinois, Nov. 7, 1837* (1838; reprint, Freeport, N.Y.: Books for Libraries, 1970) [hereafter *Lovejoy's Memoir*]. Edward Beecher, a clergyman from a family of prominent clergy, left a thorough report, *Narrative of Riots at Alton*, ed. Robert Merideth (1838; reprint, New York: Dutton, 1965), of the public meetings that preceded the final battle. The vast majority of the primary sources are from the abolitionists' perspective. Although this might seem to diminish their evidentiary value, in this case, as well as virtually all the other mobbings, the adversaries rarely disputed facts; only interpretations and justifications were at issue.

36. For a summary of the reaction to Lovejoy's martyrdom that emphasizes how the attack galvanized support for the antislavery movement, see Curtis, "Killing of Elijah Lovejoy," 1142–64. For a summary of press coverage that finds a greater division in reactions, see Jeff Rutenbeck, "Partisan Press Coverage of Anti-Abolitionist Violence," *Journal of Communication Inquiry* 19 (1995): 126–41.

37. Leonard L. Richards, "Gentlemen of Property and Standing": *Anti-Abolition Mobs in Jacksonian America* (New York: Oxford University Press, 1970), 156–70.

38. *Industrial Luminary*, 30 Mar. 1855, reprinted in *National Anti-Slavery Standard*, 2 June 1855; George S. Park to St. Louis *Democrat*, 10 May 1855, reprinted in *ibid.*; Roy V. Magers, "Raid on the Parkville *Industrial Luminary*," *Missouri Historical Review* 30 (1935): 34–46.

39. James C. Malin, "Judge Lecompte and the 'Sack of Lawrence,' May 21, 1856," *Kansas Historical Quarterly* 20 (1953): 465–94, 553–97; David W. Johnson, "Freesoilers for God: Kansas Newspaper Editors and the Antislavery Crusade," *Kansas History* 2 (1979): 74–85; Alice Nichols, *Bleeding Kansas* (New York: Oxford University Press, 1954), 103–6.

In Newport, Kentucky, William S. Bailey labored in the face of intimidation for nearly ten years. Opponents burned down his print shop in August 1851 and eight years later the excitement aroused by John Brown's raid at Harper's Ferry brought renewed attacks.<sup>40</sup>

A few mobbings do not fit neatly into this three-part typology, though they also involved the use of nuisance law. The first paper to suffer at the hands of a mob for its supposed abolition sympathies, for instance, was published by Mormons. A remark about slavery in an 1833 issue of the *Evening and Morning Star* provided the pretext for people near Independence, Missouri, to act on their anxieties about the alien religion. A mob ejected the publisher's family from the print shop's living quarters, threw the press "from the upper story," scattered materials "through the streets," and pulled down the walls.<sup>41</sup> The Washington, D.C., *National Era* prematurely proclaimed in its 1847 inaugural issue that "The experience of the last fifteen years stamped mob violence against a free press an enormous absurdity."<sup>42</sup> Between April 18 and 20, 1848, mobs repeatedly visited the paper's office and editor's home to pressure the *Era* to cease publication.<sup>43</sup>

In at least two instances, mobs silenced antislavery papers without having to follow through on their threats of violence. The Peoria *Register* in 1843 bowed to public pressure and ceased running notices of abolition meetings.<sup>44</sup> Similarly, in an incident with overtones of a barroom brawl, townspeople forced the *Clarion of Freedom* out of Cambridge, Ohio, in September 1847, for its religiously inspired abolitionism.<sup>45</sup> Finally, between 1845 and 1858

40. William S. Bailey, *A Short Sketch of Our Troubles in the Anti-Slavery Cause* (Newport, Ky.: Newport News, 1858); Will F. Steely, "William Shreve Bailey, Kentucky Abolitionist," *Filson Club Historical Quarterly* 31 (1957): 274–81.

41. "A History of the Persecution of the Church of Jesus Christ, of Latter Day Saints in Missouri" (pt. 1), *Times and Seasons* 1 (Dec. 1839): 17–18 (*Times and Seasons* was a Mormon monthly published in Illinois, where many Mormons fled after their expulsion from Missouri); *Evening and Morning Star*, Dec. 1833, 114; Warren A. Jennings, "Factors in the Destruction of the Mormon Press in Missouri, 1833," *Utah Historical Quarterly* 35 (1967): 56–76.

42. *National Era*, 7 Jan. 1847. Editor Gamaliel Bailey had been assistant editor and then editor-in-chief of the *Philanthropist* when it was mobbed in 1836 and 1841.

43. Stanley C. Harrold, "The Pearl Affair: The Washington Riot of 1848," *Records of the Columbia Historical Society* 50 (1980): 140–60; Harrold, *Gamaliel Bailey*, 124–27; *New York Herald*, 21 Apr. 1848.

44. "Samuel H. Davis Was Pioneer in News Field in Ill.; Regarded As One of Best in the Midwest," Mt. Sterling (Ill.) *Democrat-Message*, 28 July 1948; Ernest East, "The First Decade of Journalism in Peoria" (paper presented to the Peoria Historical Society, 20 Jan. 1941, available in Special Collections Center, Cullon-Davis Library, Bradley University).

45. Zanesville (Ohio) *Gazette*, 8 Sept. 1847; Vernon L. Volpe, *Forlorn Hope of Freedom: The Liberty Party in the Old Northwest, 1838–1848* (Kent: Kent State University Press, 1990), 74, 77, 110, 122, 127.

loosely knit small groups that did not quite constitute mobs occasionally menaced newspapers for exhibiting antislavery sympathies. Law was often involved, but more peripherally than in the organized actions.<sup>46</sup>

### **The Legal Basis for Suppressing Antislavery Papers**

Some of the abolitionists' free-speech claims—notably the right to petition Congress and send literature through the mails—clearly raised federal constitutional issues. Their opponents conceded as much when they offered contrary constitutional interpretations.<sup>47</sup> For antebellum towns suffering an unwanted abolition newspaper, however, doctrines of public nuisance and breach of the peace constituted the foreground of relevant state law; constitutional claims about press freedom remained in the background, though of increasing symbolic import.

#### *The Vitality of Nuisance Law and Related Doctrines*

In justifying the suppression of antislavery newspapers, mobs customarily branded the offending publication a “nuisance” or “public nuisance.”

46. The editor of the Indianapolis-based *Indiana Freeman* was assaulted by a city councilman and threatened by a mob on July 4, 1845, a holiday that traditionally uncorked political feelings. *Indiana State Journal*, 9 and 23 July 1845; *National Anti-Slavery Standard*, 21 Aug. 1845. Perhaps more typical was the experience of the Davenport, Iowa, *Gazette*, whose editor “became accustomed to have abusive epithets hurled at him as he went along the streets, and daily to be threatened with violence and death,” his son recalled. Shot at least once, the editor was “well aware of the fate of Lovejoy” and knew that the police would be of little help if needed. Charles E. Russell, *A Pioneer Editor in Early Iowa* (Washington, Iowa: Ransdell, 1941), 20–25. Up river in St. Cloud, Minnesota, a newspaper edited by feminist social critic Jane Grey Swisshelm provoked the wrath of the area's most powerful resident. Accompanied by his attorney and a friend, this proslavery Democrat broke into Swisshelm's office in 1858 and destroyed her press, leaving behind a note that read: “The citizens of St. Cloud have determined to abate the nuisance.” But not all citizens agreed: some outraged residents voted to purchase her a new press. *Crusader and Feminist: Letters of Jane Grey Swisshelm, 1858–1865*, ed. Arthur J. Larsen (St. Paul: Minnesota Historical Society, 1934), 5–19, quote at 16; Jane G. Swisshelm, *Half a Century*, 2d ed. (Chicago: Jansen, McClurg, 1880), 112–58, 171–95.

47. Curtis, “Attempts to Suppress Antislavery Speech,” 817–36; John, *Spreading the News*, 257–80; William M. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760–1848* (Ithaca: Cornell University Press, 1977), 173–83. For a vigorous defense of the abolitionists' right to use the mail, but one that expressed doubts about their free-press rights under state constitutions, see Richard R. John, “Hiland Hall's ‘Report on Incendiary Publications’: A Forgotten Nineteenth Century Defense of the Constitutional Guarantee of the Freedom of the Press,” *American Journal of Legal History* 41 (1997): 94–125.

Although the broad sweep and legitimacy once enjoyed by nuisance law might be hard to fathom today, Novak notes that it “was one of the most important public legal doctrines of nineteenth-century regulatory governance.”<sup>48</sup> Nuisance law emerged in thirteenth-century England to address situations in which a person’s seemingly warranted use of his or her property encroached upon others’ enjoyment of theirs. The principles that then developed as part of nuisance law found growing utility in a complex society where private actions impinged on other individuals and community interests. Nineteenth-century definitions of nuisance continued to focus on “unwarrantable or unlawful use by a person of his own property, real or personal,” according to H. G. Wood’s treatise on the subject. But the action also came to encompass “improper, indecent or unlawful personal conduct, working an obstruction of or injury to a right of another or of the public, and producing such material annoyance . . . that the law will presume a consequent damage.”<sup>49</sup>

Nuisance law originally developed two branches, private and public, and by the mid-nineteenth century it implicitly recognized mixed nuisances as well. Private nuisances harmed an individual or an identifiable group; public nuisances violated “public rights . . . producing no special injury to one more than another of the people”; mixed nuisances harmed many people while producing special injury for some.<sup>50</sup> For the most part, however, mobs ignored or were unaware of such precise distinctions.

Nuisance law, especially the public branch, formed the basis for a web of nineteenth-century regulations that sought to adjust colliding interests in an era of rapid social and economic developments. Its legitimacy derived from a “great social compact . . . that every person yields a portion of his right of absolute dominion and use of his own property . . . [to] the rights of others, so that others may also enjoy their property without unreasonable hurt or hindrance.” Nuisance law protected the community’s moral and social order. Even perfectly legitimate businesses could trigger nuisance law because of their byproducts—fire, fumes, smoke, pollutants, and more. In short, antebellum communities wielded public nuisance law where it appeared necessary to limit one person’s liberty on behalf of the common good.<sup>51</sup>

48. Novak, *People’s Welfare*, 60.

49. H. G. Wood, *A Practical Treatise on the Law of Nuisances in Their Various Forms*, 2d ed. (Albany: Parsons, 1883), 1–2. See also Francis Hilliard, *The Law of Torts*, 3d ed. (Boston: Little, Brown, 1866), 3:575–80.

50. Wood, *Law of Nuisances*, 24–25.

51. *Ibid.*, 26–82, quote at 3; Nathan Dane, *A General Abridgement and Digest of American Law* (Boston: Cummings, Hilliard, 1823), 3:39–70. For a good discussion of how nuisance law applied to a variety of nineteenth-century activities, see Novak, *People’s Welfare*, 66–71, 123–28, 133–42, 146–47, 157–70, 195–97, 212–15.

*Nuisance Law versus Freedom of the Press*

When mobs sought to extend nuisance law to antislavery newspapers they would have found, had they bothered to search, no formal legal precedents that expressly applied to the press. Anti-press mobs of the Revolutionary and Early Republic Eras had clothed their actions in nuisance law, but these incidents did not involve litigation that produced formal precedents.<sup>52</sup> Nuisance law, though, had long been applied to restrict other forms of communication. Obscene prints, pictures, and books were considered common nuisances, as were theaters “used for the exhibition of low and vicious plays that pander to the base passions of men.”<sup>53</sup> Rather than searching for particular precedents, however, anti-abolition mobs built their arguments on the underlying basis for nuisance actions—an activity’s ramifications for the community.

Communities seeking limits on publications could take comfort from such authorities as Joseph Story’s 1833 *Commentaries on the Constitution*. “Civil society could not go on” with absolute protection for freedom of the press, the Supreme Court justice wrote. “Men would then be obliged to resort to private vengeance, to make up for the deficiencies of the law.” Would state constitutional provisions for freedom of speech allow messages that encouraged slaves to revolt? No, he answered. In fact, Story’s general formulation of press freedom yoked it to the principle underlying nuisance law: “Common sense here promulgates the broad doctrine, *sic utere tuo, ut non alienum lædas*; so exercise your own freedom, as not to infringe the rights of others, or the public peace and safety.” This interpretation comported with most state constitutional guarantees of press freedom, which explicitly mandated the responsible exercise of the right.<sup>54</sup>

Mobs could match the abolitionists point-by-point in debating the legality of restricting some speech. Both appealed to a higher law, with abolitionists invoking their right to express their individual consciences while mob leaders argued that rights derived from a sovereign public. In terms of constitutional law, the First Amendment provided little tangible

52. Dwight L. Teeter, “‘King’ Sears, the Mob and Freedom of the Press in New York, 1765–76,” *Journalism Quarterly* 41 (1964): 539–44. For other incidents of anti-press mob violence during the Revolutionary and Early Republic Eras, see Nerone, *Violence against the Press*, 18–83.

53. Wood, *Law of Nuisances*, 67–68, quote at 57.

54. Joseph Story, *Commentaries on the Constitution of the United States* (Boston: Hilliard, Gray and Co., 1833), 3:732, 740–41. On the “movement toward this freedom-and-responsibility standard” in state constitutions’ free-press clauses, see Margaret A. Blanchard, “Filling in the Void: Speech and Press in State Courts Prior to *Gitlow*,” in *The First Amendment Reconsidered*, ed. Bill F. Chamberlin and Charlene J. Brown (New York: Longman, 1982), 17–25.

support for the abolitionists after the Supreme Court ruled in 1833 that the Bill of Rights constrained only federal interference with basic rights. The most proximate constitutional protections for the abolitionists, free-expression guarantees in state constitutions, had not been expanded much beyond the Blackstonian formulation of the 1700s. In short, while the mobs anchored their claims on an existing, albeit narrow, view of press freedom, the abolitionists pushed for an expansive reconception of that right.<sup>55</sup>

### *Nuisance Law in Silencing Abolition Newspapers*

Marshall's comprehensive brief against Clay's *True American* enunciated the key justifications for treating antislavery newspapers as public nuisances subject to abatement. These rationales—that such publications could inspire slave revolts, provoke a violent response in the community, and disrupt commerce—arose in other mobbings, though expressed with varying degrees of sophistication.

Slaveholding communities turned to violence against local abolition newspapers when they perceived, however unreasonably, a threat. The Mormon *Evening and Morning Star* became a target partly because Jackson County residents construed one of its articles as encouraging free African Americans to move to Missouri to join the church. The escape of slaves in Washington, D.C., heightened anxieties that precipitated attacks on the *National Era*. And John Brown's raid provided the context, or pretext, that stirred long-time enemies of the Newport, Kentucky, *Free South* to take action.<sup>56</sup> Fears that a provocative newspaper might spark insurrection also formed the basis for a nuisance action in an incident having nothing to do with the antislavery controversy. As part of New York state's 1842 anti-entailment war, the *Helderberg Advocate* championed tenants who challenged, sometimes with force, a semi-feudal land-owning oligarchy. A grand jury declared the paper "insurrectionary in its tendency," concluding that "we do hereby present the said newspaper as a *public nuisance*."<sup>57</sup>

Even if antislavery newspapers did not incite slave revolts, they still threatened to trigger a response by opponents that disrupted orderly life,

55. *Barron v. Baltimore*, 32 U.S. 243 (1833); Ferenc M. Szasz, "Antebellum Appeals to the 'Higher Law,' 1830–1860," *Essex Institute Historical Collections* 110 (1974): 33–48; Curtis, *Free Speech*, 195–97, 209–15.

56. *Evening and Morning Star*, July 1833, 109; Harrold, "Pearl Affair," 140–60; "Mob in Newport, Kentucky," *National Anti-Slavery Standard*, 12 Nov. 1859.

57. "The Presentation of *The Helderberg Advocate*," quoted in Ralph Frasca, "*The Helderberg Advocate*: A Public-Nuisance Prosecution a Century before *Near v. Minnesota*" (paper presented at the American Journalism Historians Association convention, 2000), 15.

the central basis for nuisance actions. Residents of Cambridge, Ohio, took this position when the *Clarion of Freedom* began agitating for abolitionism and temperance. Citizens gathered at the courthouse on August 28, 1847, to condemn the *Clarion* for pursuing a course that disturbed “the peace and harmony of the town.” Resolutions, “adopted with great unanimity,” requested that the editor cease publishing anything that impugned the reputation of individuals or held the town up “as a model of iniquity . . . in the estimation of the public abroad.” Townspeople further noted that “disorganizing publications have had their natural tendency in arousing a spirit of retaliation in the breasts of certain persons.” The meeting ended by proclaiming the virtues of Cambridge and affirming the town’s willingness to allow the advocacy of “all tolerable” ideas. Such ideas apparently did not include those found on the pages of the *Clarion*. One mid-September night, a mob stoned the newspaper office for several hours and demanded that the editor pack up his press and leave town. He did.<sup>58</sup>

Communities that supported silencing abolition papers anticipated the modern doctrine of a hostile audience that justifies cutting off speech before it provokes a violent response. In terms more familiar to the antebellum mobs, the abolition newspapers deserved to be treated as nuisances because they breached the peace. This rationale, for instance, underpinned criminal libel prosecutions of defamatory speech about groups or public measures regardless of the message’s truthfulness. Timothy Walker explained the reasoning in his 1837 treatise on American law: “[T]he criminality of a libel consists in its tendency to disturb the public peace, which tendency would be the same, whether the libel were true or false.”<sup>59</sup> As a rising young attorney in Cincinnati, Walker had served on the delegation of eminent citizens who pressured Birney to discontinue the *Philanthropist*, though he expressed ambivalence about resorting to mob action.<sup>60</sup>

Other abolition editors who published in slave territory—Lovejoy before moving to Alton, Gamaliel Bailey in Washington, D.C., George S. Park in Missouri, and William S. Bailey in Kentucky—lived among slave owners and their sympathizers. North of the Ohio River, in such cities as

58. Resolutions and proceedings reprinted in Zanesville (Ohio) *Gazette*, 8 Sept. 1847; *National Era*, 23 Sept., 14 Oct., and 2 Dec. 1847; *National Anti-Slavery Standard*, 7 Oct. 1847; Volpe, *Forlorn Hope of Freedom*, 74, 77, 110, 122, 127.

59. Timothy Walker, *Introduction to American Law* (Philadelphia: P. H. Nicklin & T. Johnson, 1837), 189. Criminal libel prosecutions were relatively rare in the early and mid-nineteenth century and courts were increasingly recognizing truth, often conditioned on the motives behind the message, as a defense in civil libel suits. Norman L. Rosenberg, *Protecting the Best Men: An Interpretive History of the Law of Libel* (Chapel Hill: University of North Carolina Press, 1986), 108–29.

60. Walter T. Hitchcock, *Timothy Walker: Antebellum Lawyer* (New York: Garland, 1990), 41.

Cincinnati and Alton, a sizable share of the residents had moved from the South. In both situations the possibility of the residents' violent response to an abolition newspaper was not far-fetched. Like Marshall in Lexington, Alton's city attorney blamed the violence on abolition editors who armed themselves in a manner "calculated greatly to excite the feelings of the community, and to lead to a breach of the peace."<sup>61</sup> The mobs' prophesy had a self-fulfilling quality: They needed to move forcibly against the offensive publication to keep the community from suffering more tumultuous disruptions. A relatively measured preemptive response, in short, prevented uncontrolled disorder.

This argument, of course, gave the mobs a "heckler's veto." Courts today generally expect the police to protect the speaker from a hostile audience, but "[w]hen clear and present danger of riot, disorder, . . . or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish [the speaker] is obvious," the U.S. Supreme Court ruled in 1951.<sup>62</sup> Among the antislavery newspapers facing mobs, only the *National Era* in Washington, D.C., could reasonably expect the authorities to protect it from a hostile audience. When the *Era* was threatened, city and federal officials collaborated closely over three days to dissuade mobs from attacking and planned to deploy forces if violence materialized. The authorities could mobilize federal forces whose ranks did not necessarily have strong local attachments.<sup>63</sup> Elsewhere, law enforcers—constables, sheriffs, and the day and night watch—were drawn from the very ranks of the people who wanted to suppress the papers. Mayors and sheriffs caught between an abolitionist editor and hostile townspeople commanded few police resources to prevent violence that enjoyed widespread community support. Silencing the marginalized newspaper seemed more reasonable, at least logistically.<sup>64</sup>

61. Francis P. Murdock quoted in William S. Lincoln, *Alton Trials* (1838; reprint, Miami, Fla.: Mnemosyne Publishing, 1969), 8.

62. *Feiner v. New York*, 340 U.S. 315, 320 (1951) (quoting *Cantwell v. Connecticut*, 310 U.S. at 308 [1940]). In *Feiner*, the Court upheld the arrest of a sidewalk speaker whose remarks were provoking a violent response from the crowd.

63. On the efforts by the mayor, board of aldermen, and president to marshal city and federal resources to forestall violence, see handbill addressed "To the Citizens of Washington," 20 Apr. 1848, reprinted in *National Intelligencer*, 21 Apr. 1848; *The Diary of James K. Polk*, ed. Milo M. Quaife (Chicago: A. C. McClurg, 1910), 3:429; report of the Board of Aldermen and Board of Common Council, 20 Apr. 1848, reprinted in *National Intelligencer*, 21 Apr. 1848; *National Era*, 27 Apr. 1848; *Liberator*, 28 Apr. 1848; Harrold, "Pearl Affair," 152–53.

64. Feldberg, *The Turbulent Era*, 104–19; Robert Reinders, "Militia and Public Order in Nineteenth-Century America," *Journal of American Studies* 11 (1977): 81–101; Samuel Walker, *Popular Justice: A History of American Criminal Justice* (New York: Oxford University Press, 1980), 56–60.

Another rationale for suppressing an antislavery newspaper—that it disrupted a community's commerce—moved some to mob action. Antislavery newspapers in slave states, of course, existed to challenge a major underpinning of their communities' economy. Two of the papers in particular, Clay's *True American* and Bailey's *Free South*, targeted white laborers with messages that urged them to overhaul the existing economic order.<sup>65</sup> In towns such as Cincinnati and Alton, just a river's breadth from slave states, the threat to commerce was a central concern. The first major meeting to consider action against the *Philanthropist* attracted speakers who denounced the paper for jeopardizing commercial relations with the South. The second gathering—the first-ever public meeting at the Lower Market House—drew one thousand people and was held at a time and place calculated to attract shipyard and foundry workers whose jobs depended on southern trade.<sup>66</sup> The argument about threats to a community's economy, however, could be turned against mobs. Forced by public pressure to resign for his abolitionist sympathies, Peoria editor Samuel H. Davis warned that mob violence ruined a town's economy more surely than tolerating discomfiting ideas; he pointed to the Lovejoy tragedy as evidence.<sup>67</sup>

### Legal Procedures and Personnel in Abatement Actions

What remedy should be pursued if a community, or some part of it, determined that an abolition paper presented a serious threat to its well-being? Communities could try several forms of suasion. For instance, during several years preceding the 1859 attack on the *Free South*, proslavery townspeople encouraged the papers' printers to drink excessively, urged businesses to withhold advertising, sponsored a series of competing publications, filed libel suits, and caned the editor. William S. Bailey nonetheless persisted, relying on his wife and daughters to set type and solicit advertising while his sons operated the presses. Opponents could seek a prior restraint, though American law offered no major precedents at that time. Members of the crowd who attacked Garrison's *Liberator* lamented the absence of prior restraint and Marshall, in justifying abatement of the *True American*, predicted that a permanent injunction would simply force an offending paper to reappear under a new name.<sup>68</sup>

65. Smiley, *Lion of White Hall*, 21–23, 86–88.

66. Folk, "'Queen City of Mobs,'" 108–9; Aaron, "Cincinnati, 1818–1838," 466; Birney, *James G. Birney*, 210–15.

67. Samuel H. Davis, *Free Discussion Suppressed in Peoria* (Peoria: n.p., 1843), 4.

68. Bailey, *Sketch of Our Troubles*; Marshall, "Removal of C. M. Clay's Press," 207.

When townspeople collectively suppressed an abolition newspaper, they viewed their action as a community-based adjudication that justified abatement. People might prefer “a law for the punishment of an editor who should commit an offence against society” with the offence “judged of by the community, through its law, administered by its judges and jurors,” a congressman said in connection with the threatened mobbing of the *National Era*. This approach would respect press liberties by avoiding prior restraint, he said. But in the absence of such a law “to protect the community in the enjoyment of its rights, . . . the community would be remitted to its natural right of self-preservation.”<sup>69</sup>

### *General Abatement Law*

Legal works commonly available in antebellum communities, such as *Blackstone's Commentaries* or Nathan Dane's *Digest of American Law*, counseled that public nuisances “are indictable only.”<sup>70</sup> Abatement was supposedly a valid remedy solely for private nuisances. “[W]hatever annoys or damages another is a nuisance, and may be taken away or removed by the party aggrieved, in a peaceable manner,” Dane wrote, closely following Blackstone.<sup>71</sup> However precise this distinction might have appeared to legal commentators, the courts before mid-century failed to draw a sharp line that separated circumstances justifying abatement from those that did not. Reviewing decades of cases, Wood lamented the “many loose expressions that have been incorporated into the opinions of courts” and “the gross errors committed by nearly all of the elementary writers” that led to the commonly held view that “a public nuisance may be abated by any person.”<sup>72</sup>

Wood's own discussion, however, suggests the issue was not so clear cut: “The question as to how far a private person may go in the abatement of a public nuisance is one which has been the subject of much perplexity and apparent conflict of doctrine in the courts.” His next comment suggests the ambiguity that surrounded this question: “[A]lthough many of

69. *Congressional Globe*, 30th Cong., 1st sess. (1848), 649–73, quote at 662 (remarks of Thomas H. Bayly).

70. *Blackstone's Commentaries*, ed. St. George Tucker (1803; reprint, South Hackensack, N.J.: Rothman Reprints, 1969), 5:166 (this edition was published in Philadelphia with notes applicable to American law); Dane, *Digest of American Law*, 3:50.

71. Dane, *Digest of American Law*, 3:39; *Blackstone's Commentaries*, 4:5. See also Timothy Walker, *Introduction to American Law*, 2d ed. (Cincinnati: Derby, Bradley & Co., 1846), 474, who agrees that law permitted a person who suffers from a nuisance “to abate it,” but without riot or violence.

72. Wood, *Law of Nuisances*, 795.

the elementary writers upon the subject have laid it down as the law that any person may abate a public nuisance, and *dicta* to that effect is to be found in many of the cases, yet I do not think that any cases really warrant this statement in the sense in which it is generally understood.” The uncertainty stemmed from the notion of a mixed nuisance. If a person sustained a special injury from an otherwise public nuisance, that person “may abate the same of his own motion, doing no more damage than is necessary to protect his rights and prevent a recurrence of damage from the nuisance abated.”<sup>73</sup>

A leading case from the 1830s, *Meeker v. Van Rensselaer*, shows that little special injury or threat was needed to confer on an individual or group the right to abate a public nuisance. Meeker, an Albany, New York, alderman, participated in the destruction of a tenement during the city’s 1832 cholera epidemic. An unsanitary tenement posed a threat to public health during an epidemic, the court ruled, and Meeker, as a resident and the ward’s alderman, “was fully justified in every act done by him” when he helped a mob pull down the building.<sup>74</sup> Such reasoning must have emboldened the anti-abolition mobs, for almost all had the support—if not the participation—of “gentlemen of property and standing” such as the alderman in *Meeker*.<sup>75</sup> Precedents also supported the abatement of public nuisances to remedy a wide range of private infringements on the public good.<sup>76</sup>

#### *Abatement with an Indictment*

Only twice did opponents of antislavery papers seek indictments before proceeding with abatement. In 1835, as the antislavery movement gained strength in upstate New York, the Oneida County grand jury resolved that antislavery organizers were guilty of sedition and urged the public “to destroy all such [abolition] publications whenever and wherever they may be found.”<sup>77</sup> A month later, a mob attacked one such paper, the *Oneida Standard and Democrat*.

In 1856 a Kansas grand jury “report[ed] to the Honorable Court” that the *Herald of Freedom* and *Free State*, two free-soil papers published in Lawrence, had “issued publications of the most inflammatory and seditious character—denying the legality of the territorial authorities; addressing and commanding forcible resistance to the same.” The jury “respectfully

73. *Ibid.*, 795–97.

74. 115 Wend. 397, 399 (N.Y., 1836).

75. The phrase was often used derisively by abolitionists to describe some of their opponents.

76. Novak, *People’s Welfare*, 61–62, 71, 65, 123–24, 155, 180, 212–15, 226–27.

77. Quoted in *Liberator*, 24 Oct. 1835. See also Defensor, *Enemies of the Constitution Discovered*, 57–58.

recommend[ed] their abatement as a nuisance.” Most observers referred to these recommendations as indictments and reported that Judge Samuel D. Lecompte issued orders for the destruction of the two newspapers and the hotel housing one.<sup>78</sup>

To serve the warrants, a U.S. marshal assembled a posse of several hundred men, many of them ruffians who had come from the South spoiling for a fight. The marshal entered Lawrence accompanied by deputies and arrested a few free-soil leaders without resistance. The posse was about to disband when a sheriff arrived and brandished documents, identifying them as writs issued by Judge Lecompte for the demolition of the free-soil newspapers and the hotel. The posse degenerated into a mob and attacked the *Free State*'s office. “The press and other articles were first broken, so as to be rendered perfectly useless, and then thrown into the Kansas river,” according to the New York *Tribune*'s correspondent. “As this was some distance to carry the articles, they got tired of it, and began throwing the remainder in the street.” Another contingent of rioters assaulted the brick building housing the *Herald of Freedom* after ascertaining that it was not mined or booby-trapped. The mob broke two hand presses and one power press, destroyed printing supplies, pillaged the library, and set fire to the building.<sup>79</sup> For public relations purposes, both the proslavery and free-soil factions claimed that the abatement of the newspaper had occurred pursuant to a judicial order. The former wished to show that it had acted with proper legal authority; the latter to illustrate for easterners the bankruptcy of proslavery law. Both sides knew that the platoon of reporters covering the Kansas imbroglio would file stirring dispatches.<sup>80</sup>

78. Grand jury statement reprinted in Sara T. L. Robinson, *Kansas: Its Interior and Exterior Life* (Boston: Crosby, Nichols, 1856), 243–44. See also James C. Malin, *John Brown and the Legend of Fifty-Six* (Philadelphia: American Philosophical Society, 1942), 50. For an analysis that sifts the evidence and examines the legal dimensions of the court's role, see Malin, “Sack of Lawrence,” 465–94, 553–97. The judge's supposed orders became accepted facts in serious Kansas histories. The judge later denied that he had issued such an order. “A Defense by Samuel D. Lecompte,” *Transactions of the Kansas State Historical Society* 8 (1903–4): 389–405. At most, “[t]here may have been issued by the clerk of the court citations to the owners [of the newspapers and hotel] to appear and show cause why they should not be abated as nuisances,” the judge recalled. *Ibid.*, 395.

79. William A. Phillips, *The Conquest of Kansas by Missouri and Her Allies* (Boston: Phillips, Sampson, 1856), 290–92, 305, quotes at 298–99; *Herald of Freedom*, 1 Nov. 1856; George W. Brown to Eli Thayer, 4 June 1856, Thayer Collection, Kansas Historical Society; letter from eyewitness, 26 May 1856, reprinted in *Liberator*, 27 June 1856; Malin, “Sack of Lawrence,” 581; Nichols, *Bleeding Kansas*, 103–7.

80. Bernard A. Weisberger, “The Newspaper Reporter and the Kansas Imbroglio,” *Mississippi Valley Historical Review* 36 (1950): 633–56, points out that many of the eastern reporters covering the Kansas disturbances were antislavery partisans writing for Republican newspapers.

In the other incidents, mobs summarily abated the abolition newspapers. Why did they resort to abatement-by-mob rather than seek a court-sanctioned removal of the offending publication? Most obviously, many in the mobs believed in the legality of summary abatement; legal texts and popular experiences furnished precedents. But the mobs also had practical considerations. Judicial proceedings would have given abolitionists yet another forum for their publicity, as Marshall noted in justifying the removal of Clay's *True American*. Also, individual judges, though personally supporting removal, might have been reluctant to formally declare that a newspaper should be destroyed. Had such cases gone to a jury, prosecutors could not guarantee the outcome since all the abolition editors enjoyed at least limited support in their communities. Any court proceeding against an antislavery newspaper thus risked an adverse judgment that would have further legitimized abolitionists' free-speech claims.

#### *Legal Procedures and Personnel in Abatement by Mob*

Most of the mobs that attacked antislavery editors followed measures that corresponded to the legal requirements for an abatement action. Mobs honored due process by giving fair warning and by showing that the action was taken after community deliberation. In enforcing the community's decision, most mobs emphasized the proportionality of their remedy—the removal of offending property with minimal looting, collateral damage, or personal injury. Establishing these points of congruence with the formal legal system also served the mobs' tactical interests. They broadened community support, sidelined civil authorities who might intervene, and mitigated the public relations damage towns suffered from disorderly episodes.

The role of leading citizens, elected officials, police, lawyers, and judges in crafting a legal process was most evident in the situations that underwent a long gestation—Birney in Cincinnati and Lovejoy in Alton—as well as in Lexington, a community sensitized to the consequences of the earlier anti-press mob violence. This process amounted to the indictment that legal commentators said was needed to abate a public nuisance. Communities following this path customarily took several steps: general agitation prompted a call for a public meeting; the assembly selected a chairman and sometimes a resolutions committee; people debated the issues, often—though not always—permitting a rebuttal on behalf of the newspaper; the meeting concluded by approving resolutions and delegating a committee to negotiate with the editor or to enforce the assembly's decision. Where the deliberations extended over weeks or months, local newspapers became forums for additional discussion.

The 1836 attacks on the *Philanthropist* followed this process perfectly.

Two months before the first issue came off the press, the mayor, city marshal, and county sheriff warned Birney his plans would precipitate violence. After a second visit from the mayor, Birney decided to establish the *Philanthropist* beyond the jurisdiction of the city's authorities, where he could "print without being mobbed." After the *Philanthropist* appeared in January 1836, a public meeting at the courthouse considered suppressing the offensive sheet. Among those chairing the meeting, which attracted 500 people, were the mayor and a justice of the state supreme court, who was also a former U.S. senator. Birney's eloquent, conciliatory forty-five-minute speech did not dissuade those gathered from adopting several resolutions, including one insisting on the community's right to suppress abolition publications through all lawful means.<sup>81</sup> Three of the city's four leading newspapers also denounced Birney's plans in articles using a discursive style patterned on a legal brief. Partisan journalism, the predominant genre through the mid-1800s, attracted editors who blended careers in law and journalism. "As a result, argument on issues in the press tended to be legalistic, with the editors presenting evidence for the consideration of the electorate as jury," John Nerone observes.<sup>82</sup>

Two months of relative quiet emboldened Birney to move the *Philanthropist* office into Cincinnati in March 1836. "I am going to try Cin'i with my Press," he wrote the leading financial backer of the abolitionist movement. "It will be difficult to mob it—yet it may be done." Without further resolutions or public warnings, a group committed about \$150 damage to the press. Indicating the possible complicity of the authorities, the city watch either silently observed the attack or had been moved out of the area earlier that evening.<sup>83</sup> Under pressure from Birney, the mayor reluctantly offered a \$100 reward—using the abolitionists' own money—for the apprehension of the vandals. The proclamation also advised the populace to remain calm, directed the police to maintain peace—but closed by blaming the abolitionists for the incident. The next day a handbill appeared on the

81. Birney to Gerritt Smith, 11 and 25 Nov. 1835, in *Letters of James Gillespie Birney, 1831–1837*, ed. Dwight L. Dumond (New York: D. Appleton-Century, 1938), 1:259 n. 4, quote at 273 [hereafter *Birney's Letters*]; Birney, *James G. Birney*, 207–19; Fladeland, *James Gillespie Birney*, 127–33; Folk, "'Queen City of Mobs,'" 69–70, 78; Richards, "Gentlemen of Property and Standing," 40–43, 94–95.

82. John Nerone, *The Culture of the Press in the Early Republic: Cincinnati, 1793–1848* (New York: Garland, 1989), 152–53, quote at 164; Folk, "'Queen City of Mobs,'" 66–69.

83. Birney to Lewis Tappan, 17 Mar. 1836, *Birney's Letters*, 1:310–12, quote at 311; Birney, *James G. Birney*, 240–41; Fladeland, *James Gillespie Birney*, 136. Aaron, "Cincinnati, 1818–1838," 462, claims that the night watch silently witnessed the vandalism, while Folk, "'Queen City of Mobs,'" 91, asserts that the mayor, forewarned, had ordered police patrols away from the site.

streets mocking the abolitionists' reward offer by extending its own \$100 bounty "for the delivery of the body of one JAMES G. BIRNEY."<sup>84</sup>

The midnight raid prompted a citywide meditation on mobs, popular will, and the rule of law. Even newspapers and citizens hostile to the antislavery cause feared that civil disturbances would hurt Cincinnati's reputation—and commerce—as much as harboring abolitionists. A common theme was that violence, once unleashed, tended to escalate and endanger all public order.<sup>85</sup> On July 23, about one thousand people gathered to decide whether Cincinnati should tolerate the continued publication of an antislavery paper. The crowd quickly adopted five resolutions prepared by lawyer Nicholas Longworth and his friends. The resolutions stopped just short of calling for the violent suppression of the *Philanthropist*. Instead they called for the appointment of a committee to negotiate with Birney for the discontinuation of the paper.<sup>86</sup>

Among the twelve prominent men appointed to negotiate with Birney were seven of Cincinnati's foremost attorneys. With sizable investments in real estate, banking, and insurance, these lawyers stood to suffer from either declining trade with the South or the social disorder and property damage that attended mob actions. They thus shared an interest in silencing the *Philanthropist* without resorting to uncontrolled violence. Meeting with Birney and executives from the Ohio Anti-Slavery Society, the delegation insisted that only the removal of the *Philanthropist* would suffice. Otherwise "a mob unusual in its numbers, determined in its purpose, and desolating in its ravages" would destroy the abolition paper, the committee predicted. The committee asked for a written reply the next day.<sup>87</sup>

Birney answered by distributing the next issue of the *Philanthropist*. At 9 p.m., a crowd estimated at several thousand gathered. A group of men, who had met earlier that evening, "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," the Cincinnati

84. Folk, "'Queen City of Mobs,'" 97, 100 (quoting handbill); Birney to Lewis Tappan, 15 and 22 July 1836, *Birney's Letters*, 1:342–47.

85. The newspaper commentary is conveniently summarized in Folk, "'Queen City of Mobs,'" 93–100. See also Ellingson, "Discourse and Collective Action," 110–35, for a close analysis of the different positions represented in the newspaper discussions and popular meetings. Ellingson finds that the discourse clustered in three camps: abolition, law and order, and anti-abolition.

86. Birney, *James G. Birney*, 243–46; Aaron, "Cincinnati, 1818–1838," 464–65; Folk, "'Queen City of Mobs,'" 107–22; Fladeland, *James Gillespie Birney*, 138–39. The resolutions are reproduced in James G. Birney, *Narrative of the Late Riotous Proceedings against the Liberty of the Press in Cincinnati* (Cincinnati: Ohio Anti-Slavery Society, 1836), 24.

87. Committee's remarks reported in Birney, *Late Riotous Proceedings*, 35; Aaron, "Cincinnati, 1818–1838," 465–67, 476; Fladeland, *James Gillespie Birney*, 139–40.

*Gazette* reported. “From the printing office the crowd went to the house of [printer] A. Pugh, where they supposed there were other printing materials, but found none, nor offered any violence.” Out of town lecturing, Birney escaped tar and feathers. The disappointed mob returned to the *Philanthropist* office and, amid cheers and songs, dragged the press through the streets, finally depositing it in the Ohio River.<sup>88</sup>

The two mobs that attacked the *Philanthropist* in 1836 were clearly composed of “gentlemen of property and standing,” in the abolitionists’ parlance. But the 1841 attack occurred as part of a general race riot that frightened the city’s propertied elite, and the authorities made a considerable show of force. This mob did not feel bound to drape its actions in the language and procedures of the law, as had the lawyers and businessmen five years earlier. A comparison of two Boston mobs underscores this point. By all accounts, the mob that attacked William Lloyd Garrison was composed of middle- and upper-class Bostonians. Perhaps for that reason, the city’s newspapers almost uniformly applauded the action. In contrast, the mobbing of a Catholic convent fourteen months earlier by laborers and youthful hooligans was widely denounced as falling outside the bounds of the law. The Garrison mob expressed the community’s will—especially that of its leaders—and was deemed extralegal at worst, justifiable at best.<sup>89</sup>

Like Birney, Lovejoy enjoyed support from a sizable segment of his community. And, as in Cincinnati, the Alton anti-abolitionists used a long preparatory period, replete with assemblies and resolutions, to undermine the respect accorded a white, native-born, Protestant newspaper publisher. Even before relocating to Alton, Lovejoy suffered at the hands of a mob fortified by dicta in a judge’s decision. Presiding over a grand jury investigating a mob that had murdered a free African American, Judge Luke E. Lawless declared that such actions by “the many—of the multitude, in the ordinary sense of these words—not the act of numerable and ascertainable malefactors, . . . transcends your jurisdiction—it is beyond the reach of human law!” Even though the case did not directly involve Lovejoy, Lawless made it clear that he blamed abolitionist agitators, particularly the editor, for the sorry affair.<sup>90</sup> With this judicial encouragement, vandals entered the *Observer* office on three or four occasions, taking composing sticks and damaging equipment. Lovejoy editorially denounced the willingness

88. *Cincinnati Gazette* report reprinted in Birney, *Late Riotous Proceedings*, 39–40; Birney, *James G. Birney*, 246–47; Folk, “Queen City of Mobs,” 141–42; Fladeland, *James Gillespie Birney*, 140–41.

89. Richards, “Gentlemen of Property and Standing,” 99–100, 113, 134–50, quote at 149; Folk, “Queen City of Mobs,” 197; Theodore M. Hammett, “Two Mobs of Jacksonian Boston: Ideology and Interest,” *Journal of American History* 62 (1976): 845–68.

90. Lawless quoted in *St. Louis Observer*, 21 July 1836.

of Judge Lawless and community leaders to countenance lawlessness. Prophetically, he pointed out that Lawless's reasoning would allow a mob to destroy the *Observer*, kill its editor, and escape punishment. A mob damaged the *Observer's* equipment yet again.<sup>91</sup>

Once he relocated across the Mississippi River in Alton, Lovejoy appeared to enjoy significant support from the community. When nighttime raiders pushed Lovejoy's first printing press into the Mississippi in July 1836, Alton's leading citizens protested this violation of property rights and reassured the editor of the city's law-abiding and progressive nature. The *Observer* and city prospered until mid-1837. Then, trade with the South slumped and Lovejoy began advocating formation of a state antislavery society and touting the benefits of immediate emancipation. Lovejoy's opponents laid a legal foundation for the *Observer's* abatement at public meetings held between July and early November at which participants adopted resolutions putting the editor on notice. Candidates for mayor ominously hinted that Lovejoy would be held accountable for his irresponsible publication. Attempts by Lovejoy and his friends to cultivate support for the rights of free expression among non-abolitionists fell short.<sup>92</sup>

Although the mayor, city authorities, and leading citizens provided some support for Lovejoy's right to publish, on balance their largely equivocal stance did little to deter the mobs. On August 21 a group of men accosted Lovejoy outside of town. Later that evening, the same individuals broke into the *Observer* office, destroyed the press, and injured one worker—all while a large group of respectable citizens watched. When Lovejoy's new press reached Alton, Mayor John M. Krum posted a constable. After the guard retired for the night, about a dozen men broke into the store housing the press. Called to the scene, the mayor asked them to disperse, but they remained long enough to finish destroying the press. Lovejoy estimated that four-fifths of the city's residents approved of the mob's actions.<sup>93</sup>

Lovejoy and his comrades, joined by a few non-abolitionist friends, formed a militia company to defend the next press, the fourth, coming from Cincinnati. To give this armed defense the color of the law, Lovejoy asked

91. St. Louis *Observer*, 5 May, 2 and 9 June, 21 July, 10 Aug. 1836; *Lovejoy's Memoir*, 168–79; Gill, *Tide without Turning*, 60–77, 228–29 n. 4; Dillon, *Elijah P. Lovejoy*, 81–87.

92. *Missouri Republican*, 26 July 1836; *Alton Observer*, 8 Sept. 1836; *Lovejoy's Memoir*, 180–234, 268–82; Beecher, *Narrative of Riots*, 27–60; Norman D. Harris, *Negro Servitude in Illinois* (Chicago: A. C. McClurg, 1904), 83; Dillon, *Elijah P. Lovejoy*, 90–114; Gill, *Tide without Turning*, 79, 87–97, 110–22.

93. St. Louis *Commercial Bulletin*, 23 Aug. 1837; *Missouri Argus*, 25 Aug. and 27 Sept. 1837; *Lovejoy's Memoir*, 231–34, 245–67; Dillon, *Elijah P. Lovejoy*, 114–42, 159, 161; Gill, *Tide without Turning*, 126–64.

the mayor to lead their company. In an ambiguous response, the mayor declined. Even with violence imminent, the city council refused the mayor's request for the appointment of special constables.<sup>94</sup> The night of the final assault, the mayor was called to the scene after one of the attackers was killed in an exchange of gunfire. He entreated the mob to disperse; it agreed only to let him negotiate for the surrender of the press. Lovejoy and his defenders refused to relinquish it, and the mob, now swollen by news of a death, renewed its attack and set the warehouse roof ablaze. Amid further volleys, Lovejoy was hit by four or five shots and died; several others fell wounded. Lovejoy's comrades surrendered the press. Like those before it, this press was smashed and consigned to the river.<sup>95</sup>

Abolitionists exploited abatements of their newspapers to expand their base of supporters by redefining the issue. Rather than focusing on slavery they emphasized freedom of the press. "[L]et them mob it—as sure as they do, it will instantly make throughout this State *Five* abolitionists to one that we now have," Birney wrote supporters in sketching plans to launch the *Philanthropist*. Abolition organizers immediately capitalized on Lovejoy's martyrdom, though pacifists in the movement regretted that he resorted to arms. Many commentators in the partisan press seemed more concerned with property destruction than murder or freedom of the press. At a minimum, the fallout from these mobbings alerted other communities that contemplated such actions about the possible public relations damage that could follow.<sup>96</sup>

The other mobbings also exhibited attributes of an abatement action—giving notice, attempting to minimize property damage, and involving the authorities—though in a less sophisticated and more telescoped form than in the attacks on Birney's *Philanthropist*, Lovejoy's *Observer*, and Clay's *True American*.

94. The state legislature had recently given the mayor authority "to call on every male inhabitant of said city over the age of eighteen years, and in cases of riot, to call out the militia to aid him in carrying the same into effect." Act to Incorporate the City of Alton, sec. 7, *Illinois Laws Passed at Special Session*, 10–22 July 1837, 17, 20. Beecher, *Narrative of Riots*, 27–60; *Lovejoy's Memoir*, 268–83; Dillon, *Elijah P. Lovejoy*, 159–63; Gill, *Tide without Turning*, 164–69, 189.

95. Winthrop S. Gilman to Chandler R. Gilman, 8 Nov. 1837, in "The Alton Riot," *Mississippi Valley Historical Review* 4 (1918): 491–94; Beecher, *Narrative of Riots*, 60–66; *Lovejoy's Memoir*, 283–93; Dillon, *Elijah P. Lovejoy*, 163–70; Gill, *Tide without Turning*, 3–8, 182–201; Richards, "Gentlemen of Property and Standing," 108–10.

96. Birney to Lewis Tappan, 17 Mar. 1836, *Birney's Letters*, 1:310–12, quote at 311. See Russell B. Nye, *Fettered Freedom: Civil Liberties and the Slavery Controversy, 1830–1860*, 2d ed. (Urbana: University of Illinois Press, Illini Books, 1972), 149–52, who anticipated Curtis and other scholars in arguing that attacks on abolitionists' civil liberties, particularly the widely reported mobbings, redefined an unpopular issue, freedom for slaves, and broadened it to a larger public as freedom of the press.

In all cases, mobs gave some notice of the possible abatement. For instance, two days before assembling at the courthouse, citizens of Jackson County, Missouri, issued a manifesto warning the Mormons. The manifesto owed its legal tone to its author, a county clerk and attorney, who painted abatement as a lawful action. The document constituted fair warning and hundreds of signatures—including those of county and federal officials, even those of judges—ratified the measure as expressing popular will.<sup>97</sup> Newspapers targeted during a general anti-abolition riot, as in Boston and Philadelphia, received more oblique notice such as criticism in public petitions and meetings.<sup>98</sup> A preliminary attack on the *Free South* served notice that a more thoroughgoing abatement would ensue, as it did the next night.<sup>99</sup>

Notice could be given summarily, as when members of the Platte County (Missouri) Self-Defensive Association, “about ten or fifteen of our most respectable country acquaintances,” according to a newspaper, rode into Parkville and read resolutions from the steps of the *Industrial Luminary’s* office. They first declared the newspaper “a nuisance, which has been endured too long, and should now be abated.” Another resolution demanded that the editors leave town, threatening punishment if they remained after three weeks.<sup>100</sup> The mob, now enlarged, paraded the *Luminary’s* press and type through town and disposed of them in the Missouri River. The Self-Defensive Association planned to tar and feather co-editor W. J. Patterson until his wife interceded. Mimicking legislative style, the group “moved a vote to be taken to remit the tar, feathers, &c., and set Mr. Patterson at large, for the present,” an eyewitness reported.<sup>101</sup>

From a community’s vantage, notice of a possible abatement ideally accomplished its purpose without more forceful measures. Two hundred people assembled at the Peoria courthouse in 1843 to protest antislavery

97. *Morning and Evening Star*, Dec. 1833; Jennings, “Destruction of the Mormon Press,” 68.

98. Hammett, “Two Mobs of Jacksonian Boston,” 845–68; Brown, “Racism and Sexism,” 126–36.

99. *Cincinnati Daily Gazette*, 29 Oct. 1859; *Cincinnati Daily Commercial*, 29 Oct. 1859; Eliza Wigham, *The Anti-Slavery Cause in America and Its Martyrs* (1863; reprint New York: Negro Universities Press, 1970), 46–50.

100. *Platte Argus* Extra, 16 Apr. 1855, reprinted in *Cincinnati Daily Gazette*, 26 Apr. 1855; resolutions quoted in letter from eyewitness to *Platte Argus*, 14 Apr. 1855, reprinted in *National Anti-Slavery Standard*, 5 May 1855. The Platte County Self-Defensive Association had been formed to stop the New England aid societies from settling Kansas. Perry McCandless, *A History of Missouri, 1820 to 1860* (Columbia: University of Missouri Press, 1972), 2:271–73.

101. Letter from eyewitness to *Platte Argus*, 14 Apr. 1855, reprinted in *National Anti-Slavery Standard*, 5 May 1855; Magers, “Raid on the Parkville *Industrial Luminary*,” 41.

material in the Peoria *Register*. After meeting with a delegation appointed at the assembly, the publishers acquiesced: "Notices of anti-slavery meetings and anti-slavery communications, connected with political abolitionism, will not be published in this paper."<sup>102</sup>

Containing destruction to the offending materials enhanced a mob's claim to have acted in a measured fashion in keeping with the law of abatement. One witness to the destruction of Pennsylvania Hall commented on the mob's restraint: "All individual rights were scrupulously respected—and the only aim seemed to be to destroy the building in question. A Quaker mob could not have been more orderly."<sup>103</sup> And, as the anti-Lovejoy mob made its final rush into the warehouse, which contained \$20,000 to \$30,000 in goods, one of the leaders ordered that "he did not want any property injured, nor anything taken away." Similarly, during the attack on Kansas free-soil newspapers, officers discouraged the mob from looting. "These Yankees will tell stories enough about us for this, without our stealing from them," one remarked.<sup>104</sup>

Another tactic to enhance the legitimacy of summary abatement was to liken a mob's action to that of Revolutionary War patriots. During a citywide gathering in Cincinnati, for instance, one person exhorted the group to take direct action against the *Philanthropist* "in imitation of the noble and fearless example set us by those true-hearted Americans," the perpetrators of the Boston Tea Party. The crowd adopted a resolution to this effect.<sup>105</sup> Indeed, the mobs in Cincinnati, Alton, and Lawrence imitated the Boston Tea Party by dumping the antislavery presses in a river. Also echoing themes of the Revolutionary Era, residents of Jackson County, Missouri, issued a manifesto two days before abating the offending Mormon newspaper: "[T]he undersigned, citizens of Jackson county, believing that an important crisis is at hand, as regards our civil society, . . . deem it expedient to form ourselves into a company for the better and easier accomplishment of our purpose, a purpose which we deem it almost superfluous to say, is justified as well by the law of nature, as by the law of self preservation."<sup>106</sup>

102. *Register* announcement quoted in Presbytery of Peoria, *The History of the Presbytery of Peoria and Its Churches from 1828 to 1888* (Peoria: H. S. Hill, 1888), 16; Davis, *Free Discussion Suppressed in Peoria*.

103. Letter reprinted in *Pennsylvania Freeman*, 21 June 1838.

104. Testimony of Samuel L. Miller quoting Dr. Horace Beal as warning against property damage, Lincoln, *Alton Trials*, 111; officer quoted in Phillips, *Conquest of Kansas*, 298.

105. Wilson N. Brown offered this resolution, quoted in Birney, *Late Riotous Proceedings*, 25. Brown explained it further in a letter to the Cincinnati *Whig*; see Folk, "'Queen City of Mobs,'" 129.

106. Manifesto reprinted in *Evening and Morning Star*, Dec. 1833, 114.

### The Mobbings in Court

By invoking legal principles, adhering to legal processes, and courting the legal system's personnel, mobs built up defenses for civil suits and criminal prosecutions that followed some attacks. Mob leaders rehearsed arguments in public before invoking them in court; prospective jurors thus knew the merits of a case long before legal proceedings began. Although criminal prosecutions for riot or breach of the peace were rarely instituted, and juries never convicted, they did respond more sympathetically to editors' property losses. Such legal victories all came months or years after passions had subsided.

#### *The Alton Trials*

Of the several attacks on Lovejoy's newspaper, at least three produced court actions. One person from a St. Louis mob of 100 to 200 people that inflicted about \$700 in damages was tried and acquitted for breach of the peace.<sup>107</sup> The second of the Alton attacks, in August 1837, also led to court. One of the men who had accosted Lovejoy, destroyed the press, and injured a worker was charged with rioting. After a three-day trial, the jury found him guilty "but at the same time denied the jurisdiction of this Court over the case" because the mobbing had occurred before the town was incorporated. The court freed the defendant.<sup>108</sup>

The third set of Alton trials left the most complete record of litigation that resulted from the mobbing of an abolitionist newspaper. For the community, the trials afforded an opportunity to grapple with legal questions in a formal setting. For historians, the trials afford rare insights into such matters as the authorities' place in curbing violence, the informality of legal procedure, jury decisions as expressions of community sentiment, and popular respect for property rights. Historians have long mined the trials for details about the Alton tragedy but have largely ignored what they revealed about the workings of the law itself.<sup>109</sup>

In January 1838 the Alton grand jury indicted leaders on both sides for violating a state statute outlawing riots. The code defined a riot as two or more people committing "an unlawful act with force or violence against the person or property of another, with or without a common cause of quarrel, or even do a lawful act, in a violent and tumultuous manner." The grand

107. St. Louis *Observer Extra*, 10 Aug. 1836; (St. Louis) *Missouri Republican*, 23 July 1836.

108. *Alton Spectator*, 11 Jan. 1838.

109. The trials were reported by a member of the Alton bar from notes he took during the proceeding. See Lincoln, *Alton Trials*. See also John D. Lawson, ed., *American State Trials* (St. Louis: F. H. Thomas Law Book Co., 1916), 5:528–644, for an annotated version.

jury indicted twelve abolitionists on two counts: the riotous use of force to defend the printing press and the use of force to defend the warehouse. The judge granted the request of Winthrop S. Gilman, co-owner of the warehouse, for a separate trial. Gilman's trial began on January 16 and ended the next day. The jury acquitted Gilman after deliberating only fifteen minutes. Expecting the same outcome in the trial of Gilman's co-defendants, the prosecutors dropped the case. The other indictment named eleven members of the mob for violently entering the warehouse to destroy the press. Evidence in the trial of Lovejoy's attackers was taken on January 19; the jury retired overnight and announced its decision—not guilty—the next morning.<sup>110</sup>

Illinois Attorney General Usher F. Linder figured centrally in the case, both in the events that led to the trial and the trial itself. Linder, born in Kentucky, had been Lovejoy's chief antagonist in the weeks before the final battle. Linder was out of town during the mobbing that killed Lovejoy, but he returned to insinuate himself into the trial—in fact, both trials. Linder assisted the city attorney in prosecuting Gilman and then joined the defense in opposing the city attorney for the mob's trial. Much of his posturing seemed calculated to boost his political fortunes. During the trial, Linder styled himself as a frontier democrat fighting eastern Yankees; he delighted in disparaging his courtroom adversaries when they “resorted to the books” for legal authority.<sup>111</sup>

Jurors in both trials faced a thankless task in deciding cases that so divided the community. Counsel for both sides exhausted their peremptory challenges in selecting jurors, while others were dismissed for cause. “The facts . . . it is unnecessary for me to detail to you,” city attorney Francis P. Murdock told jurors in his opening remarks. “You are all familiar with the melancholy history.” In fact, in the trial of Lovejoy's attackers, the jury foreman and the presiding judge both testified as defense witnesses. The foreman, moreover, had led July and October meetings that denounced Lovejoy and, according to one account, had been wounded during the riot as one of the attackers. Jurors also asked the witnesses a few questions.<sup>112</sup>

110. *Alton Trials*, 5, 6 (quoting sec. 117, Illinois Criminal Code), 81, 91–92, 158.

111. *Ibid.*, 13–14, 75; *Philanthropist*, 28 Nov. 1837; *Alton Spectator*, 22 Mar. 1838; Gill, *Tide without Turning*, 147–64; Dillon, *Elijah P. Lovejoy*, 134–40, 151–52, 154–58. There was some doubt whether Linder was legally eligible to serve as attorney general at the time. Usher F. Linder, *Reminiscences of the Early Bench and Bar of Illinois* (Chicago: Legal News, 1879), 56–58, 395; Mason Newell, “The Attorneys-General of Illinois,” *Transactions of the Illinois State Historical Society for the Year 1903* (Springfield: The Society, 1904), 217. Most contemporary accounts identify Linder as attorney general. See, e.g., Lincoln, *Alton Trials*, 5.

112. *Alton Trials*, 5, 9 (quoting Murdock). Jury foreman Alexander Botkin claimed during voir dire that he had not formed an opinion as to the defendants' guilt even though he had

In the abolitionists' trial, the prosecutor labored to prove that Gilman had "unlawfully, riotously, and in a violent and tumultuous manner . . . resisted and opposed an attempt made by divers persons to break up and destroy a printing press." Murdock conceded that Gilman had a right to defend his property, but not by arming himself and his allies in a manner "calculated greatly to excite the feelings of the community, and to lead to a breach of the peace." Gilman's attorneys countered with testimony that the mayor had authorized the active defense of the press and warehouse. As the mayor testified, he had told the abolitionists that "they were justified in defending their property; but I told them so as a lawyer." Here and elsewhere in his testimony, the mayor distinguished between offering an advisory opinion as a lawyer and definitive pronouncements as a public official.<sup>113</sup>

In the more straightforward trial of the mob for attacking the warehouse, the defense argued that, given the confusion, none of the defendants could be positively connected with key actions that constituted violent rioting—mounting the ladder to set fire to the warehouse, breaking into the building, or smashing the press. The presiding judge attested to the confusion and the inability of the authorities to stop the battle. Though he could recall seeing some of the defendants milling about the streets the night of November 7, he could not distinguish participants from bystanders. The judge also noted that he had seen about one hundred "spectators, all, or most of whom being owners of property had a deep interest in the preservation of good order; that he applied to many people to aid him, but that he found no one who was willing to assist in the suppression of the mob." In his closing remarks, Linder invoked an argument reminiscent of Judge Lawless's charge to the St. Louis jury: "Are you to select these eight out of a hundred men who entered the building with them, and say that these, and these only, are guilty?"<sup>114</sup>

Freedom of the press formed only a subtext in the trials. In prosecuting Gilman, Linder told the jury that the abolitionists violated the law by arming themselves to protect a printing press "which was intended to preach insurrection, and to disseminate the doctrines which must tend to disorganization and disunion." He added, "Society esteems good order more than such a press: sets higher value upon the lives of its citizens than upon a

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witnessed some of the action on the streets preceding the assault on the warehouse. *Ibid.*, 15, 89; Dillon, *Elijah P. Lovejoy*, 133–37; Gill, *Tide without Turning*, 117–18. Linder later sponsored Botkin for membership in the bar. *Ibid.*, 239 n. 2.

113. Lincoln, *Alton Trials*, 8 (quoting prosecutor), 41 and 45 (mayor); mayor's report, reprinted in *Alton Spectator*, 9 Nov. 1837.

114. Lincoln, *Alton Trials*, 93–117, 118–20 (testimony of judge), 139 (Linder).

thousand such presses.” Alfred Cowles, one of the prosecutors in the trial of the mob, alone framed the jury’s decision in terms of free expression. The mob, he argued, usurped the authority of duly constituted tribunals, such as juries, and arrogated to itself the power to destroy a publication. “[T]his is the question you are to decide. . . . [I]f you acquit these individuals, you admit that they were justified in the commission of this crime; and you say that a portion of the people may declare and determine what principles may be promulgated through the press, and what shall not.”<sup>115</sup>

Abolitionists parlayed the acquittals into a propaganda windfall, second only to Lovejoy’s murder. Antislavery papers charged that the civil authorities and the jurors had sided with the mob. Abolitionists also practically chortled over the news that three persons connected with the Alton mob—two of the defendants and one of their attorneys—shortly thereafter ran afoul of the law.<sup>116</sup> Within days of the Alton verdicts, Abraham Lincoln, then a young attorney in Springfield, lamented the “mobocratic spirit . . . now abroad in the land.” In a prophetic speech, Lincoln identified the “growing disposition to substitute the wild and furious passions, in lieu of the sober judgement of Courts” as the principal threat to the survival of American political institutions. Although Lincoln referred to Lovejoy only once, and then obliquely—chastising those who “throw printing presses into rivers, [and] shoot editors”—the audience surely appreciated the context of his remarks.<sup>117</sup>

### *Other Criminal Prosecutions*

Criminal prosecutions in the other mobbings yielded no convictions the few times they were attempted, attesting to the attackers’ success in presenting their actions as lawful. Suspects in the vandalism of Utica’s *Oneida Standard and Democrat* were brought before a grand jury, but jurors “acting upon their oaths, had reported no bills against them,” according to Senator Silas Wright. The mob’s activities evidently did not harm the leaders’ popular standing—all soon moved into higher public posts, which Wright construed as an unmistakable sign of public approbation.<sup>118</sup> In Philadel-

115. *Ibid.*, 75 (quoting Linder), 77, 145–46 (Cowles).

116. *Philanthropist*, 28 Nov. 1837; *Pennsylvania Freeman*, 5 July 1838; Harris, *Negro Servitude*, 95 n. 2; Gill, *Tide without Turning*, 10.

117. “Address Before the Young Men’s Lyceum of Springfield, Illinois,” 27 Jan. 1838, *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler (New Brunswick: Rutgers University Press, 1953) 1:108–15, quote at 111.

118. *Register of Debates*, 24th Cong., 1st sess. (1836), 203–5, quote at 205; *Utica Observer Extra*, 21 Oct. 1835, reprinted in *Niles’ Weekly Register* 49 (31 Oct. 1835): 147–48; Morrison, “Utica’s Anti-Abolitionist Mob,” 72–74.

phia, an investigation by the city's Committee on Police largely blamed the abolitionists and absolved the mayor and sheriff of responsibility for failing to protect Pennsylvania Hall. A proclamation by the governor calling on all Pennsylvania police and judges to apprehend and prosecute those responsible led to the trials of two young men, but the disposition of their cases is not known.<sup>119</sup> Ironically, the 1835 Boston mobbing of the *Liberator* prompted the mayor to charge abolitionist William Lloyd Garrison with fomenting the riot; the editor was also jailed overnight for his own protection.<sup>120</sup>

Some mob leaders in the attack on the Newport, Kentucky, *Free South* were nearly indicted for riot. The county grand jury heard evidence for about two days and "found a true bill against about a score of persons for engaging in a riot," according to a Cincinnati newspaper. Outraged by the indictment, the state's attorney hurried before the grand jury to explain "that it was law that where a nuisance existed that could not be reached by process of law, it was the prerogative of the people to assemble and peaceably abate that nuisance." No evidence, he claimed, showed that force had been used in abating the *Free South*. Questioning this construction of the law, the jurors sought the judge's opinion. "[T]he Judge told them the law was as had been laid down by the Attorney, whereupon the jury reconsidered the action taken, and quashed the bill."<sup>121</sup>

### *Recovering Property Damages*

Juries proved more sympathetic to civil suits seeking property damages. Returning to Jackson County, Missouri, in February 1834 under armed escort, the publisher of the Mormons' *Morning and Evening Star* learned from the district attorney and state attorney general that a criminal pros-

119. Report of the Committee on Police, 31 May 1838, reprinted in *Pennsylvania Hall*, 175–99; governor's proclamation, 22 May 1838, in *Pennsylvania Archives*, 4th ser., *Papers of the Governors*, ed. George E. Reed (Philadelphia: J. Severns, 1901), 6:426–33; *Pennsylvania Freeman*, 24 May, 21 June, and 8 Nov. 1838; Brown, "Racism and Sexism," 131 n. 26, 134–35. On the popular pressures Philadelphia law faced in the Jacksonian period, see Robert R. Bell, *The Philadelphia Lawyer: A History, 1735–1945* (Selinsgrove, Pa.: Susquehanna University Press, 1992), 106–19; Gary B. Nash, "Philadelphia Bench and Bar, 1800–1861," *Comparative Studies in Society and History* 7 (1965): 203–20.

120. Lyman, *Garrison Mob*; Hammett, "Two Mobs of Jacksonian Boston," 845–68; "Recollections of Ellis Ames," *Proceedings of the Massachusetts Historical Society* 18 (1881): 340–44 (reproducing the complaint charging Garrison with causing a riot and the warrant for Garrison's arrest).

121. Cincinnati *Daily Commercial*, 25 Jan., 13 and 21 (quote) Feb. 1860; *Annual Report of the American Anti-Slavery Society for the Year Ending May 1, 1860* (1861; reprint, New York: Kraus, 1969), 168.

ecution would be fruitless. He nonetheless filed a civil suit against forty of the mob leaders and paid nearly \$300 to obtain a change of venue. None of the defendants disputed what had happened; they simply claimed that the owner of the building housing the print shop, never identified, told them to tear it down. From a complaint alleging \$5,500 in property losses and \$50,000 in lost business, the publisher recovered \$750 in 1836, not enough to cover his \$1,000 attorneys' fees. The embittered plaintiff believed that his lawyers had managed the cases to subvert the Mormons' best interests.<sup>122</sup>

The antislavery owners of Pennsylvania Hall, which housed the *Pennsylvania Freeman*, recovered damages after several years of litigation. An 1836 state law permitted the owners of property destroyed by mobs to recover damages from a city after a panel of six disinterested persons ascertained the extent of the loss. The first panel deadlocked on the question of whether the owners' actions had encouraged the riot. The second split five-to-one in favor of awarding \$33,000 in damages, but a court refused to confirm its finding. The decision of a third panel, absolving the owners of responsibility for the Hall's destruction, set the loss at \$22,658.27; this finding was appealed. Nine years after the fire, the Pennsylvania Supreme Court upheld the third award.<sup>123</sup>

Two suits grew out of the 1836 Cincinnati mobbings. The Ohio Anti-Slavery Society sought \$300 for damage to papers, pamphlets, and books when its offices, housed with the *Philanthropist* print shop, were sacked the night of July 30. The case, delayed by witnesses' absences, came to trial in February 1838. The defendants' attorneys "endeavored with great ingenuity to operate on the prejudices of the Jury, by exaggerated, distorted and false representations of the doctrines, measures and designs of abolitionists," the *Philanthropist* reported. The plaintiff's attorney, Salmon P. Chase, future Chief Justice of the United States, provided "an earnest vindication of the character of abolitionists." (Birney's mobbing shifted Chase's sympathies toward the antislavery movement and influenced his politics and legal ideology.) On the central issue, the defendants' role in orchestrating the vandalism, the testimony established the direct participation of two, the *Philanthropist* asserted. The judge reminded jury members "of their grave responsibilities in maintaining the efficiency and majesty

122. Letter from Gov. Daniel Dunklin to W. W. Phelps, 19 Oct. 1833, reprinted in *Evening and Morning Star*, Dec. 1833, 115; "History of the Persecution" (pts. 1, 3), 19, 50; Edwin B. Firmage and Richard C. Mangrum, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830–1900* (Urbana: University of Illinois Press, 1988), 67–70.

123. *In re Pennsylvania Hall*, 5 Pa. 204 (1847); Act of June 16, 1836, sec. 13, Pennsylvania Laws (1835–36), 711.

of the laws.” After deliberating five hours, the jury “returned a verdict of \$50 for the plaintiff.”<sup>124</sup>

The *Philanthropist*'s printer, Achilles Pugh, named many of the same defendants in seeking compensation for damages to his press and office. A three-day trial in June 1838 ended with a hung jury. The suit was retried in July 1839. “Yesterday concluded the trial of the last case against the Cin'i mobocrats of July 1836,” Birney wrote an associate. “There was no excitement on either side; A calm ascertainment of damages—was followed by a ‘submission,’ without argument, to the Jury, who in a little while rendered a verdict in favor of the Plaintiff (Pugh, the printer) of \$1500.” Birney believed that the jury verdict in Pugh's suit signified that the “mobocrats” had lost “public sympathy.” Pugh, however, was not an abolitionist; he had printed the *Philanthropist* to make money, not propagate ideology. The jury verdict simply acknowledged Pugh's property loss. Prominent citizens behind the mobbings escaped without penalty.<sup>125</sup>

In Missouri, not all of Parkville's citizens approved of county residents forcibly expelling one of their townspeople. Town leaders entreated Park to return and issued a circular asserting Parkville's right to handle such affairs itself. This affront to the town, as well as Park's stature as its founder, enabled him to eventually recover \$2,500 from the mob's leaders for his property loss.<sup>126</sup>

In Newport, Kentucky, Bailey unsuccessfully filed a \$15,000 damage suit. Doubting that he could get a fair hearing in Kentucky, Bailey withdrew his initial suit and refiled it in Cincinnati, where he had business interests. This brash action elicited further threats from the mob's leaders, but also gave them second thoughts about venturing into Ohio. Bailey resumed publication in Kentucky until imprisoned on charges of publishing incendiary material. Northern supporters raised bail for his release, and the charges were dropped during the Civil War.<sup>127</sup>

124. *Philanthropist*, 27 Feb. 1838; Gamaliel Bailey to Birney, 27 May 1837, *Birney's Letters*, 1:385; Stephen Middleton, *Ohio and the Antislavery Activities of Attorney Salmon Portland Chase, 1830–1849* (New York: Garland, 1990), 50–85; Frederick J. Blue, *Salmon P. Chase: A Life in Politics* (Kent: Kent State University Press, 1987), 27–31.

125. Birney to Lewis Tappan, 17 July 1839, *Birney's Letters*, 1:496–97; *Philanthropist*, 26 June 1838; Blue, *Salmon P. Chase*, 31. Richards, “Gentlemen of Property and Standing,” 98 n. 30, reports that the records in these cases burned in a courthouse fire.

126. Report from Chicago *Press* correspondent, 9 Nov. 1855, reprinted in *Liberator*, 14 Dec. 1855; Magers, “Raid on the Parkville *Industrial Luminary*,” 44–45; letter from Park, 23 Apr. 1855, reprinted in *Liberator*, 1 June 1855.

127. Cincinnati *Daily Commercial*, 25 Jan., 13 and 21 Feb., 8 and 12 Mar. 1860; Cincinnati *Enquirer*, 12 and 19 Feb., 11 Mar. 1860; Cincinnati *Daily Times*, 8 Mar. 1860; Bailey to William L. Garrison, 13 March 1860, reprinted in *Liberator*, 23 March 1860; Steely, “William Shreve Bailey,” 279.

## Conclusion

An Englishman touring the United States in the mid-1830s observed that the actions of many community-based mobs represented “a species of *common law*” and “not, properly speaking, an opposition to the established laws of the country.”<sup>128</sup> Indeed, mobs that attacked abolition newspapers operated with rationales, language, personnel, and procedures deeply indebted to the law. And this close attention to the legality of forcible removal was much more than a ruse to make the exercise of raw power palatable. Many of the people constituting or supporting the mobs believed that communities should be able to regulate locally produced publications, just as towns constrained many other activities for the common good. Nuisance and kindred laws provided a legitimate basis for doing so. The highly local nature of most people’s lives reinforced this vision of the law and collided with the nationalizing tendencies of communication systems. Indeed, the battle between abolition newspapers and mobs was emblematic of this fundamental tension in nineteenth-century life: The newspapers stood as outposts of networks bringing new ideas into town, and some communities responded by using the powers, notably locally oriented law, still under their control.

Those bent on silencing antislavery newspapers simultaneously addressed legal arguments to three publics. First, the legal discourse sustained the resolve of those who genuinely believed that law justified the abatement of a publication deemed unsuitable by the community. Second, it reassured members of the community who believed in legal limits on some expression but who also harbored doubts about resorting to force; this segment appeared willing to tolerate summary abatement as long as the organizers contained disorder, an intermediate position that might explain the occasional success of publishers in recovering property damages. Finally, the legal discourse served those who, whatever their beliefs about the legality of their actions, recognized the tactical value of consistently invoking the law. Legal arguments and procedures proved instrumental in mobilizing support, sidelining the authorities who might interfere, minimizing damage to civic pride, and establishing defenses for subsequent court actions.

Not until 1931 did the U.S. Supreme Court, in *Near v. Minnesota*, rule out the use of public nuisance as the basis for silencing a publication that agitated a community. Coincidentally or not, this also marked the Court’s first application of the Fourteenth Amendment to strike down state restric-

128. Francis J. Grund, *The Americans in Their Moral, Social and Political Relations* (London: Longman, Rees, Orme, Brown, Green & Longman, 1837), 1:323.

tions that violated the First Amendment's press clause.<sup>129</sup> With this case, and other mid-twentieth-century decisions, the abolitionists' free-speech assertions were formally enshrined in American constitutional law and made applicable throughout the nation. But vestiges of the mobs' position—that law supports a local community's efforts to delineate boundaries of appropriate expression—survive today. Most notably, community standards have been the touchstone in obscenity prosecutions since 1973. And nuisance law, now applied in a content-neutral manner, continues to underpin a variety of regulations imposed by communities on expressive activities.<sup>130</sup>

129. *Near v. Minnesota*, 283 U.S. 697 (1931). Six years earlier, in *Gitlow v. New York*, 268 U.S. 652 (1925), the Court in dicta accepted the premise that the Fourteenth Amendment prohibited states from impairing First Amendment rights.

130. *Miller v. California*, 413 U.S. 15 (1973); Jennifer L. Radner, "Phone, Fax, and Frustration: Electronic Commercial Speech and Nuisance Law," *Emory Law Review* 42 (1993): 359–417.