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DAVID OUTLAW, } Editors.
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THOMAS J. LEMAY,
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TERMS.

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MR. CALHOUN'S REPORT ON INCENDIARY PUBLICATIONS.

In Senate, Feb. 4, 1836.

Mr. CALHOUN made the following report, with Senate bill, No. 122, which were read, ordered to be printed, and that 5,000 additional copies be furnished for the use of the Senate:

The select committee to whom was referred that portion of the President's message which relates to the attempts to circulate, through the mail, inflammatory appeals, to excite the slaves to insurrection, submit the following report:

The committee fully concur with the President as to the character and tendency of the papers which have been attempted to be circulated in the South, through the mail, and participate with him in the indignant regret which he expresses at conduct so destructive of the peace and harmony of the country, and so repugnant to the constitution and the dictates of humanity and religion. They also concur in the hope that, if the strong tone of disapprobation which these unconstitutional and wicked attempts have called forth, does not arrest them, the non-slaveholding States will be prompt to exercise their power to suppress them, as far as their authority extends. But, while they agree with the President as to the evil and its highly dangerous tendency, and the necessity of arresting it, they have not been able to assent to the measure of redress which he recommends—that Congress should pass a law prohibiting, under severe penalty, the transmission of incendiary publications, through the mail, intended to instigate the slaves to insurrection.

After the most careful and deliberate investigation, they have been constrained to adopt the conclusion that Congress has not the power to pass such a law; that it would be a violation of one of the most sacred provisions of the constitution, and subversive of reserved powers essential to the preservation of the domestic institutions of the slave-holding States; and, with them, their peace and security. Concurring, as they do, with the President, in the magnitude of the evil and the necessity of its suppression, it would have been the cause of deep regret to the committee, if they thought the difference of opinion, as to the right of Congress, would deprive the slave-holding States of any portion of the protection which the measure recommended by the President was intended to afford them. On the contrary, they believe all the protection intended may be afforded, according to the views they take of the power of Congress, without infringing on any provision of the constitution on one side, or the reserved rights of the States on the other.

The committee, with these preliminary remarks, will now proceed to establish the positions which they have assumed, beginning with the first—that the passage of a law would be a violation of an express provision of the constitution.

In the discussion of this point, the committee do not deem it necessary to inquire whether the right to pass such a law can be derived from the power to establish post offices and post roads, or from the trust "of preserving the relation created by the constitution between the States," as supposed by the President. However ingenious or plausible the arguments may be, by which it may be attempted to derive the right from these, or any other sources, they must fall short of their object. The jealous spirit of liberty which characterized our ancestors at the period when the constitution was adopted, forever closed the door by which the right might be implied from any of the granted powers, or any other source, if there be any other. The committee refer to the amended article of the constitution which, among other things, provides that Congress shall pass no law which shall abridge the liberty of the press—a provision which interposes, as will be hereafter shown, an insuperable objection to the measure recommended by the President. That the true meaning of this provision may be fully comprehended, as bearing on the point under consideration, it will be necessary to recur briefly to the history of the adoption of the constitution.

It is well known that great opposition was made to the adoption of the constitution. It was acknowledged, on all sides, at the time, that the old confederation, from its weakness, had failed, and that something must be done to save the country from anarchy and convulsion; yet, so high was the spirit of liberty—so jealous were our ancestors of that day, of power, that the utmost efforts were necessary, under all the then existing pressure, to obtain the assent of the States to the ratification of the constitution.—Among the many objections to its adoption, none were more successfully urged, than the absence in the instrument of those general provisions which experience had shown to be necessary to guard the outworks of liberty; such as the freedom of the press and of speech, the rights of conscience, of trial by jury, and others of like character. It was the belief of those jealous and watchful guardians of liberty, who viewed the adoption of the constitution with so much apprehension, that all these sacred barriers, without some positive provision to protect them, would, by the power of construction, be undermined and prostrated. So strong was this apprehension, that it was impossible to obtain a ratification of the instrument in many of the States, without accompanying it with the recommendation to incorporate in the constitution various articles, as amendments, intended to remove this defect, and guard against the danger apprehended, by placing these important rights beyond the possible encroachment of Congress. One of the most important of these, is that which stands at the head of the list of amended articles, and which, among other things, as has been stated, prohibits the passage of any law abridging the freedom of the press, and which left that important barrier against power under the exclusive authority and control of the States.

That it was the object of this provision to place the freedom of the press beyond the possible interference of Congress, is a doctrine not now advanced for the first time. It is the ground taken, and so ably sustained by Mr. Madison, in his celebrated report to the Virginia Legislature, in 1799, against the alien and sedition law, and which conclusively settled the principle that Congress has no right, in any form, or in any manner, to interfere with the freedom of the press.* The establishment of this principle not only overthrew the sedition act, but was the leading cause of the great political revolution which, in 1801, brought the republican party, with Mr. Jefferson at its head, into power.

With these remarks, the committee will turn to the sedition act, in order to show the identity in principle between it and the act which the message recommends to be passed, as far as it relates to the Freedom of the press. Among its other provisions, it inflicted punishment on all persons who should publish any false, scandalous, or malicious writing against the Government, with intent to defame the same, or bring it into contempt or disrepute. Assuming this provision to be unconstitutional, as abridging the freedom of the press, which no one now doubts, it will not be difficult to show that if, instead of inflicting punishment for publishing, the act had inflicted punishment for circulating through the mail, for the same offence, it would have been equally unconstitutional. The one would have abridged the freedom of the press as effectually as the other. The object of publishing is circulation; and to prohibit circulation is, in effect, to prohibit publication. They both have a common object—the communication of sentiments and opinions to the public; and the prohibition of one may as effectually suppress such communication as the prohibition of the other, and, of course, would as effectually interfere with the freedom of the press, and be equally unconstitutional.

But to understand more fully the extent of the control which the right of prohibiting circulation through the mail would give to the Government over the press, it must be borne in mind, that the power of Congress over the Post Office and the mail is an exclusive power. It must also be remembered that Congress, in the exercise of this power, may declare any road or navigable water to be a post road; and that, by the act of 1825, it is provided "that no stage, or other vehicle which regularly performs trips on a post road, or on a road parallel to it, shall carry letters." The same provision extends to packets, boats, or other vessels, on navigable waters.—Like provision may be extended to newspapers and pamphlets; which, if it be admitted that Congress has the right to discriminate in reference to their character, what papers shall or what shall not be transmitted by the mail, would subject the freedom of the press, on all subjects, political, moral, and religious, completely to its will and pleasure. It would, in fact, in some respects, more effectually control the freedom of the press than any sedition law, however severe its penalties. The mandate of the Government alone would be sufficient to close the door against circulation through the mail, and thus, at its sole will and pleasure, might intercept all communication between the press and the people; while it would require the intervention of courts and juries to enforce the provisions of a sedition law, which experience has shown are not always passive and willing instruments in the hands of Government, where the freedom of the press is concerned.

From these remarks, it must be apparent that to prohibit publication on one side, and circulation through the mail on the other, of any paper, on account of its religious, moral, or political character, rests on the same principle, and that each is equally an abridgment of the freedom of the press, and a violation of the constitution. It would indeed have been but a poor triumph for the cause of liberty, in the great contest of 1799, had the sedition law been put down on principles that would have left Congress free to suppress the circulation, through the mail, of the very publications which that odious act was intended to prohibit. The authors of that memorable achievement would have had but slender claims on the gratitude of posterity, if their victory over the encroachment of power had been left so imperfect.

It will, after what has been said, require but few remarks to show that the same principle which applied to the sedition law, would apply equally to a law punishing, by Congress, such incendiary publications as are referred to in the message, and of course, to the passage of a law prohibiting their transmission through the mail. The Principle on which the sedition act was condemned as unconstitutional, was a general one, and not limited in its application to that act. It withdraws from Congress all right of interference with the press, in any form or shape whatever; and the sedition law was put down as unconstitutional, not because it prohibited publications against the Government, but because it interfered, at all, with the press. The prohibition of any publication on the ground of its being immoral, irreligious or intended to excite rebellion or insurrection, would have been equally unconstitutional; and from parity of reason, the suppression of their circulation through the mail would be no less so.

But, as conclusive as these reasons are against the right, there are others not less so, derived from the powers reserved to the States, which the committee will next proceed to consider.

The message, as has been stated, recommends that Congress should pass a law to punish the transmission, through the mail, of incendiary publications intended to instigate the slaves to insurrection. It of course assumes for Congress a right to determine what papers are incendiary and intended to excite insurrection. The question then is, has Congress such a right? A question of vital importance to the slaveholding States, as will appear in the course of the discussion.

After examining this question with due deliberation, in all its bearings, the committee are of opinion, not only that Congress has not the right, but to admit it, would be fatal to those States. Nothing is more clear than that the admission of the right, on the part of Congress, to determine what papers are incendiary, and as such to prohibit their circulation through the mail, necessarily involves the right to determine what are not incendiary, and to enforce their circulation. Nor is it less certain that to admit such a right, would be virtually to clothe Congress with the power to abolish slavery, by giving it the means of breaking down all the barriers, which the slaveholding States have erected for the protection of their lives and property. It would give Congress, without regard to the prohibition laws of the States, the authority to open the gates to the flood of incendiary publications which are ready to break into those States, and to punish all who dare resist as criminals. Fortunately, Congress has no such right. The internal peace and security of the States are under the protection of the States themselves, to the entire exclusion of all authority and control on the part of Congress. It belongs to them, and not to Congress, to determine what is, or is not, calculated to disturb their peace and security, and of course, in the case under consideration, it belongs to the slaveholding States to determine, what is incendiary and intended to incite to insurrection, and to adopt such defensive measures, as may be necessary for their security, with unlimited means of carrying them into effect, except such as may be expressly inhibited to the States by the constitution. To establish the truth of this position, so essential to the safety of those States, it would seem sufficient to appeal to their constant exercise of this right, at all times, without restriction, or question, both before and since the adoption of the constitution. But, on a point of so much importance, which may involve the safety, if not the existence itself, of an entire section of the Union, it will be proper to trace it to its origin, in order to place it on a more immoveable foundation.

That the States which form our Federal Union are sovereign and independent communities, bound together by a constitutional compact, and are possessed of all the powers belonging to distinct and separate States, excepting such as are delegated to be exercised by the General Government, is assumed as unquestionable. The compact itself expressly provides that all powers not delegated, are reserved to the States and the people. To ascertain, then, whether the power in question is delegated or reserved, it is only necessary to ascertain whether it is to be found among the enumerated powers or not. If it be not among them, it belongs, of course, to the reserved powers. On turning to the constitution, it will be seen that, while the power of defending the country against external danger is found among the enumerated, the instrument is wholly silent as to the power of defending the internal peace and security of the States, and, of course, reserves to the States this important power, as it stood before the adoption of the constitution, with no other limitation, as has been stated, except such as are expressly prescribed by the instrument itself. From what has been stated, it may be inferred that the right of a State to defend itself against internal dangers is a part of the great, primary, and inherent right of self-defence, which, by the laws of nature, belongs to all communities; and so jealous were the States of this essential right, without which their independence could not be preserved, that it is expressly provided by the constitution,* that the General Government shall not assist a State, even in case of domestic violence, except on the application of the authorities of the State itself; thus excluding by a necessary consequence, its interference in all other cases.

Having now shown that it belongs to the slaveholding States, whose institutions are in danger, and not to Congress, as is supposed by the message, to determine what papers are incendiary and intended to excite insurrection among the slaves, it remains to inquire, in the next place, what are the corresponding duties of the General Government, and the other States, from within whose limits and jurisdiction their institutions are attacked; a subject intimately connected with that with which the committee are immediately charged, and which, at the present juncture, ought to be fully understood by all the parties. The committee will begin with the first.

It may not be entirely useless to premise that rights and duties are reciprocal; the existence of a right always implying the corresponding duty. If, consequently, the right to protect her internal peace and security belongs to a State, the General Government is bound to respect the measures adopted by her for that purpose, and to co-operate in their execution, as far as its delegated powers may admit or the measure may require. Thus, in the present case, the slaveholding States having the unquestionable right to pass all such laws as may be necessary to maintain the existing relation between master and slave in those States, their right, of course, to prohibit the circulation of any publication or any intercourse calculated to disturb or destroy that relation is incontrovertible. In the execution of the measures which may be adopted by the States for this purpose, the power of Congress over the mail, and of regulating commerce with foreign nations and between the States may require co-operation on the part of the General Government; and it is bound, in conformity to the principle established, to respect the laws of the State in their exercise, and so to modify its acts as not only to violate those of the States, but, as far as practicable, to co-operate in their execution. The practice of the Government has been in conformity to these views.

By the act of the 28th February, 1803, entitled "An act to prevent the importation of certain persons into certain States," where, by the laws of those States, their importation is prohibited, masters or captains of ships or vessels are forbidden, under severe penalty, "to import or bring, or cause to be imported or brought, any negro, or mulatto, or person of color, not be a native, or citizen, or registered seaman of the United States, or seamen, natives of countries beyond the Cape of Good Hope, into any port or place which shall be situated in any State which, by law, has prohibited, or shall prohibit, the admission or importation of such negro, mulatto, or other person of color." This provision speaks for itself, and requires no illustration. It is a case in point, and fully embraces the principle laid down. To the same effect is the act of the 25th of February, 1799, respecting quarantine and health laws, which, as belonging to the internal police of the States, stand on the same ground.—The act, among other things, "directs the collectors and all other revenue officers, the masters and crews of the revenue cutters, and the military officers in command on the station, to co-operate faithfully in the execution of the quarantine and other restrictions which the health laws of the State may establish."

The principles embraced by these acts, in relation to the commercial intercourse of the country, are equally applicable to the intercourse by mail. There may, indeed, be more difficulty in co-operating with the States in the latter than in the former, but that cannot possibly affect the principle. Regarding it then as established both by reason and precedents, the committee, in conformity with it, have prepared a bill, and directed their chairman to report the same to the Senate, prohibiting, under the penalty of fine and dismission from office, any deputy postmaster, in any State, Territory, or District, from knowingly receiving and putting into the mail any letter, packet, pamphlet, paper, or pictorial representation, directed to any post office or person in a State, Territory or District, by the laws of which the circulation of the same is forbidden; and also prohibiting, under a like penalty, any deputy postmaster in said State, Territory, or District, from knowingly delivering the same, except to such persons as may be authorised to receive them by the civil authority of said State, Territory or District.

It remains next to inquire into the duty of the States, from within whose limits and jurisdiction the internal peace and security of the slaveholding States are endangered.

In order to comprehend more fully the nature and extent of their duty, it will be necessary to make a few remarks on the relations which exist between the States of our Federal Union, with the rights and obligations reciprocally resulting from such relations.

It has already been stated that the States which compose our Federal Union are sovereign and independent communities, united by a constitutional compact. Among its members the laws of nations are in full force and obligation, except as altered or modified by the compact; and, of course, the States possess, with that exception, all the rights, and are subject to all the duties, which separate and distinct communities possess, or to which they are subject. Among these are comprehended the obligation which all States are under to prevent their citizens from disturbing the peace or endangering the security of other States; and in case of being disturbed or endangered, the right of the latter to demand of the former to adopt such measures as will prevent their recurrence, and if refused or neglected, to resort to such measures as its protection may require. This right remains, of course, in force among the States of this Union, with such limitations as are imposed expressly by the constitution. Within their limits, the rights of the slaveholding States are as full to demand of the States within whose limits and jurisdiction their peace is assailed, to adopt the measures necessary to prevent the same, and, if refused or neglected, to resort to means to protect themselves, as if they were separate and independent communities.

Those States, on the other hand, are not only under all the obligations which independent communities would be, to adopt such measures, but also under the obligation which the constitution superadds, rendered more sacred, if possible, by the fact that, while the Union imposes restrictions on the right of the slaveholding States to defend themselves, it affords the medium through which their peace and security are assailed. It is not the intention of the committee to inquire what those restrictions are, and what are the means which, under the constitution, are left to the slaveholding States to protect themselves. The period has not yet come, and they trust never will, when it may be necessary to decide those questions; but come it must, unless the States whose duty it is to suppress the danger shall see in time its magnitude and the obligations which they are under to adopt speedy and effectual measures to arrest its further progress. That the full force of this obligation may be understood by all parties, the committee propose, in conclusion, to touch briefly on the movements of the abolitionists, with the view of showing the dangerous consequences to which they must lead if not arrested.

Their professed object is the emancipation of slaves in the Southern States, which they propose to accomplish through the agency of organized societies, spread throughout the non-slaveholdig States, and a powerful press, directed mainly to excite, in the other States, hatred and abhorrence against the institutions and citizens of the slaveholding States, by addresses, lectures, and pictoral representations, abounding in false and exaggerated statements.

If the magnitude of the mischief affords, in any degree, the measure by which to judge of the criminality of a project, few have ever been devised to be compared with the present, whether the end be regarded, or the means by which it is proposed to be accomplished. The blindness of fanaticism is proverbial. With more zeal than understanding, it constantly misconceives the nature of the object at which it aims, and towards which it rushes with headlong violence, regardless of the means by which it is to be effected. Never was its character more fully exemplified than in the present instance. Setting out with the abstract principle that slavery is an evil, the fanatical zealots come at once to the conclusion that it is their duty to abolish it, regardless of all the disasters which must follow. Never was conclusion more false or dangerous. Admitting their assumption, there are innumerable things which, regarded in the abstract, are evils, but which it would be madness to attempt to abolish. Thus regarded, Government itself is an evil, with most of its institutions intended to protect life and property, comprehending the civil as well as the criminal and military code, which are tolerated only because to abolish them would be to increase instead of diminishing the evil. The reason is equally applicable to the case under consideration, to illustrate which, a few remarks on slavery, as it actually exists in the Southern States, will be necessary.

He who regards slavery in those States simply under the relation of master and slave, as important as that relation is viewed merely as a question of property to the slaveholding section of the Union, has a very imperfect conception of the institution, and the impossibility of abolishing it without disasters unexampled in the history of the world. To understand its nature and importance fully, it must be borne in mind that slavery, as it exists in the Southern States, (including under the Southern all the slaveholding States,) involves not only the relation of master and slave, but, also, the social and political relations of two races, of nearly equal numbers, from different quarters of the globe, and the most opposite of all others in every particular that distinguishes one race of men from another. Emancipation would destroy these relations—would divest the masters of their property, and subvert the relation, social and political, that has existed between the races from almost the first settlement of the Southern States.

It is not the intention of the committee to dwell on the pecuniary aspect of this vital subject; the vast amount of property involved, equal at least to $950,000,000; the ruin of families and individuals; the impoverishment and prostration of an entire section of the Union, and the fatal blow that would be given to the productions of the great agricultural staples, on which the commerce, the navigation, the manufactures, and the revenue of the country, almost entirely depend. As great as these disasters would be they are nothing, compared to what must follow the subversion of the existing relation between the two races, to which the committee will confine their remarks.

Under this relation, the two races have long lived in peace and prosperity, and if not disturbed, would long continue so to live. While the European race has rapidly increased in wealth and numbers and at the same time has maintained an equality, at least morally and intellectually, with their brethren of the non-slaveholding States, the African race has multiplied with not less rapidity, accompanied by great improvement, physically and intellectually, and the enjoyment of a degree of comfort with which the laboring class in few countries can compare, and confessedly greatly superior to what the free people of the same race possess in the non-slaveholding States. It may, indeed, be safely asserted, that there is no example in history in which a savage people, such as their ancestors were when brought into the country, have ever advanced in the same period so rapidly in numbers and improvement.

To destroy the existing relations, would be to destroy this prosperity, and to place the two races in a state of conflict, which must end in the expulsion or extirpation of one or the other. No other can be substituted, compatible with their peace or security. The difficulty is in the diversity of the races. So strongly drawn is the line between the two, in consequence of it, and so strengthened by the force of habit and education, that it is impossible for them to exist together in the same community, where their numbers are so nearly equal as in the slaveholding States, under any other relation than which now exists. Social and political equality between them is impossible. No power on earth can overcome the difficulty. The causes resisting lie too deep in the principles of our nature to be surmounted. But, without such equality, to change the present condition of the African race, were it possible, would be but to change the form of slavery. It would make them the slaves of the community, instead of the slaves of individuals, with less responsibility and interest in their welfare on the part of the community than is felt by their present mas-

*The article is in the following words:
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

*See 4th article 4th section of the constitution.