THE STAR AND NORTH CAROLINA GAZETTE.

DAVID OUTLAW, } Editors.
THOS. J. LEMAY, }

RALEIGH, N. C. THURSDAY, MAY 12, 1836

VOL XXVII. NO. 21

THOMAS J. LEMAY,
PROPRIETOR AND PUBLISHER.

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SPEECH OF THE

HON. J. C. CALHOUN,

OF SOUTH CAROLINA.

On the Bill to prohibit Deputy Postmasters from receiving and transmitting through the mail to any State, Territory, or District, certain papers therein mentioned, the circulation of which is prohibited by the laws of said State, Territory or District.

Senate, March 1836.

I am aware, said Mr. Calhoun, how offensive it is to speak of oneself; but as the Senator from Georgia on my right (Mr. King.) has thought proper to impute to me improper motives, I feel myself compelled in self-defence, to state the reasons which have governed my course in reference to the subject now under consideration. The Senator is greatly mistaken in supposing that I was governed by hostility to General Jackson. So far is that from being the fact, that I came here at the commencement of the session with fixed and settled principles on the subject now under discussion, and which in pursuing the course that the Senator condemns, I have but attempted to carry into effect.

As soon as the subject of abolition began to agitate the South, last summer, in consequence of the transmission of incendiary publications through the mail, I saw at once that it would force itself on the notice of Congress at the present session; and that it involved questions of great delicacy and difficulty. I immediately turned my attention in consequence to the subject, and after due reflection arrived at the conclusion, that Congress could exercise no direct power over it, and that if it acted at all, the only mode in which it could act, consistently with the Constitution and the rights and safety of the slaveholding States, would be in the manner proposed by this bill. I also saw that there was no inconsiderable danger in the excited state of the feelings of the South; that the power, however dangerous and unconstitutional, might be thoughtlessly yielded to Congress, knowing full well how apt the weak and timid are, in a state of excitement and alarm, to seek temporary protection in any quarter, regardless of after-consequences, and how ready the artful and designing ever are to seize on such occasions to extend and perpetuate their power.

With these impressions I arrived here at the beginning of the session. The President's Message was not calculated to remove my apprehensions. He assumed for Congress direct power over the subject, and that on the broadest, most unqualified, and dangerous principles. Knowing the influence of his name, by reason of his great patronage and the rigid discipline of party, with a large portion of the country, who have scarcely any other standard of constitution, politics, and morals, I saw the full extent of the danger of having these dangerous principles reduced to practice, and I determined at once to use every effort to prevent it. The Senator from Georgia will, of course, understand that I do not include him in this subservient portion of his party. So far from it, I have always considered him as one of the most independent. It has been our fortune to concur in opinion in relation to most of the important measures which have been agitated since he became a member of this body, two years ago, at the commencement of the session, during which the deposite question was agitated. On that important question, if I mistake not, the Senator and myself concurred in opinion, at least as to its inexpediency, and the dangerous consequences to which it would probably lead. If my memory serves me, we also agreed in opinion on the connected subject of the currency, which was then incidentally discussed. We agreed too, on the question of raising the value of gold to its present standard, and in opposition to the Bill for the distribution of the proceeds of public land, introduced by the Senator from Kentucky (Mr. Clay.) In recurring to the events of that interesting session, I can remember but one important subject on which we disagreed, and that was the President's protest. Passing to the next, I find the same concurrence of opinion on most of the important subjects of the session. We agreed on the question of Executive patronage, on the propriety of amending the Constitution for a temporary distribution of the surplus revenue, on the subject of regulating the deposites, and in support of the Bill for restricting the power of the Executive in making removals from office. We also agreed in the propriety of establishing branch mints in the South and West—a subject not a little contested at the time.

Even at the present session we have not been so unfortunate as to disagree entirely. We have, it is true, on the question of receiving abolition petitions, which I regret, as I must consider their reception on the principle on which they were received, as a surrender of the whole ground to the Abolitionists, as far as this Government is concerned. It is also true, that we disagreed in part in reference to the present subject. The Senator has divided, in relation to it, between myself and General Jackson. He has given his speech in support of his Message, and announced his intention of giving his vote in favor of my Bill. I certainly have no right to complain of this division. I had rather have his vote than his speech. The one will stand forever on the records of the Senate *(unless expunged)* in favor of the Bill, and the important principles on which it rests, while the other is destined, at no distant day, to oblivion.

I now put to the Senator from Georgia two short questions. In the numerous and important instances in which we have agreed, I must have been either right or wrong. If right, how could he be so uncharitable as to attribute my course to the low and unworthy motive of inveterate hostility to Gen. Jackson? But if wrong, in what condition does his charge against me place himself, who has concurred with me in all these measures? *(Here Mr. King disclaimed the imputation of improper motives to Mr. C.)* I am glad to hear the gentleman's disclaimer, said Mr. C. but I certainly understood him as asserting, that such was my hostility to Gen. Jackson, that his support of a measure was sufficient to insure my opposition; and this he undertook to illustrate by an anecdote borrowed from O'Connell and the pig, which I must tell the Senator was much better suited to the Irish mob to which it was originally addressed, than to the dignity of the Senate, where he has repeated it.

But to return from this long digression. I saw, as I have remarked, that there was reason to apprehend that the principles embraced in the Message might be reduced to practice—principles which I believed to be dangerous to the South, and subversive of the liberty of the press. The report fully states what those principles are, but it may not be useless to refer to them briefly on the present occasion.

The Message assumed for Congress the right of determining what publications are incendiary and calculated to excite the slaves to insurrection, and to prohibit the transmission of such publications through the mail; and of course it also assumes the right of deciding what are not incendiary, and of enforcing the transmission of such through the mail. But the Senator from Georgia denies this inference, and treats it as a monstrous absurdity. I had (said Mr. C.) considered it so nearly intuitive, that I had not supposed it necessary in the Report to add any thing in illustration of its truth; but as it has been contested by the Senator, I will add in illustration a single remark.

The Senator will not deny that the right of determining what papers are incendiary and of preventing their circulation, implies that Congress has jurisdiction over the subject; that is, of discriminating as to what papers ought or ought not to be transmitted by the mail. Nor will he deny that Congress has a right, when acting within its acknowledged jurisdiction, to enforce the execution of its acts; and yet the admission of these unquestionable truths admits the consequence asserted by the Report, and so sneered at by the Senator. But lest he should controvert so plain a deduction, to cut the matter short I shall propound a plain question to him. He believes that Congress has the right, to say what papers are incendiary, and to prohibit their circulation. Now, I ask him if he does not also believe that it has the right to enforce the circulation of such as it may determine not to be incendiary, even against a law of Georgia that might prohibit their circulation? If the Senator should answer in the affirmative, I then would prove by his admission the truth of the inference for which I contend, and which he has pronounced to be so absurd: but if he should answer in the negative, and deny that Congress can enforce the circulation against the law of the State, I must tell him he would place himself in the neighborhood of nullification. He would in fact go beyond. The denial would assume, the right of nullifying what the Senator himself must, with his views, consider a constitutional act, when nullification only assumes the right of a State to nullify an unconstitutional act.

But the principle of the Message goes still farther. It assumes for Congress jurisdiction over the liberty of the press. The framers of the Constitution (or rather those jealous patriots who refused to consent to its adoption without amendments to guard against the abuse of power) have by the first amended article, provided that Congress shall pass no law abridging the liberty of the press; with the view of placing the press beyond the control of congressional legislation. But this cautious foresight would prove in vain, if we should concede to Congress the power which the President assumes of discriminating in reference to character, what publications shall, or shall not be transmitted by the mail. It would place in the hands of the General Government an instrument more potent to control the freedom of the press than the Sedition Law itself, as is fully established in the Report.

Thus regarding the Message, the question which presented itself on its first perusal was how to prevent powers so dangerous and unconstitutional from being carried into practice? To permit the portion of the Message relating to the subject under consideration to take its regular course, and be referred to the Committee on post offices and post roads, would, I saw, be the most certain way to defeat what I had in view. I could not doubt, from the composition of the committee, that the Report would coincide with the Message, and that it would be drawn up with all that tact, ingenuity, and address, for which the Chairman of the Committee and the head of the Post Office department are not a little distinguished. With this impression, I could not but apprehend that the authority of the President, backed by such a Report, would go far to rivet in the public mind the dangerous principles which it was my design to defeat, and which could only be effected by referring the portion of the Message in question to a select committee, by which the subject might be throughly investigated, and the result presented in a report. With this view I moved the Committee, and the Bill and Report which the Senator has attacked so violently, are the result.

These are the reasons which governed me in the course I took, and not the base and unworthy motive of hostility to General Jackson. I appeal with confidence to my life to prove, that neither hostility nor attachment to any man or any party, can influence me in the discharge of my public duties; but were I capable of being influenced by such motives, I must tell the Senator from Georgia, that I have too little regard for the opinion of General Jackson, and, were it not for his high station, I would add his character too, to permit his course to influence me in the slightest degree, either for or against any measure.

Having now assigned the motives which governed me, it is with satisfaction I add that I have a fair prospect of success. So entirely are the principles of the Message abandoned, that not a friend of the President has ventured, and I hazard nothing in saying will venture, to assert them practically, whatever they may venture to do in argument. They well know now that since the subject has been investigated, that a bill to carry into effect the recommendation of the message would receive no support even from the ranks of the Administration, devoted as they are to their chieftain.

The Senator from Georgia made other objections to the Report beside those which I have thus incidentally noticed, to which I do not deem it necessary to reply. I am content with his vote, and cheerfully leave the Report and his speech to abide their fate, with a brief notice of a single objection.

The Senator charges me with what he considers a strange and unaccountable contradiction. He says that the freedom of the press, and the right of petition are both secured by the same article of the Constitution, and both stand on the same principle; and yet I who decidedly opposed the receiving of Abolition petitions, now as decidedly support the liberty of the press. To make out the contradiction he assumes that the Constitution places the right of petitioners to have their petitions received, and the liberty of the press on the same ground. I do not deem it necessary to show that in this he is entirely mistaken, and that my course on both occasions is perfectly consistent. I take the Senator at his word and put to him a question for *his decision.* If, in opposing the receiving of the Abolition petitions, and advocating the freedom of the press, I have involved myself in a palpable contradiction, how can he escape a similar charge, when his course was the reverse of mine on both occasions? Does he not see that if mine be contradictory, as he supposes, his too must necessarily be so? But the Senator forgets his own argument, of which I must remind him, in order to relieve him from the awkard dilemma in which he has placed himself in his eagerness to fix on me the charge of contradiction. He seems not to recollect that in his speech on receiving the Abolition petitions, that he was compelled to abandon the Constitution and to place the right not on that instrument, as he would now have us believe, but expressly on the ground that the right existed anterior to the Constitution, and that we must look for its limits, not to the Constitution, but to the Magna Charta and the Declaration of Rights.

Having now concluded what I intended to say in reply to the Senator from Georgia, I now turn to the objections of the Senator from Massachusetts (Mr. Davis,) which were directed, not against the Report, but the bill itself. The Senator confined his objections to the principles of the bill which he pronounces dangerous and unconstitutional. It is my wish to meet his objections fully, fairly, and directly. For this purpose, it will be necessary to have an accurate and clear conception of the principles of the bill, as it is impossible without it to estimate correctly the force either of the objections or the reply. I am thus constrained to re-state what the principles are, at the hazard of being considered somewhat tedious.

The first and leading principle is, that the subject of slavery is under the sole and exclusive control of the States where the institution exists. It belongs to them to determine what may endanger its existence, and when and how it may be defended. In the exercise of this right, they may prohibit the introduction or circulation of any paper or publication, which may, in their opinion, disturb or endanger the institution. Thus far all are agreed. To this extent no one has questioned the right of the States; not even the Senator from Massachusetts in his numerous objections to the bill.

The next and remaining principle of the bill is intimately connected with the preceding; and, in fact, springs directly from it. It assumes that it is the duty of the General Government, in the exercise of its delegated rights, to respect the laws which the slaveholding States may pass in protection of its institutions; or, to express it differently, it is its duty to pass such laws as may be necessary to make it obligatory on its officers and agents to abstain from violating the laws of the States, and to co-operate, as far as it may consistently be done, in their execution. It is against this principle that the objections of the Senator from Massachusetts have been directed, and to which I now proceed to reply.

His first objection is, that the principle is new; by which I understand him to mean, that it never has heretofore been acted on by the government. The objection presents two questions: is it true, in point of fact; and if so, what weight or force properly belongs to it? If I am not greatly mistaken, it will be found wanting in both particulars; and that so far from being new, it has been frequently acted on; and that if it were new, the fact would have little or no force.

If our government had been in operation for centuries, and had been exposed to the various changes and trials to which political institutions, in a long protracted existence, are exposed in the vicissitudes of events, the objection under such circumstances that a principle had never been acted upon, if not decisive, would be exceedingly strong; but when made in reference to our government, which has been in operation for less than half a century, and which is so complex and novel in its structure, it is very feeble. We all know that new principles are daily developing themselves under our system, with the changing condition of the country, and doubtless will long continue so to do, in the new and trying scenes through which we are destined to pass. It may I admit, be good reason even with us for caution—for thorough and careful investigation, if a principle proposed to be acted upon be new; for I have long since been taught by experience, that whatever is untried is to be received with caution in politics, however plausible. But to go farther in this early stage of our political existence, would be to deprive ourselves of means that might be indispensable to meet future dangers and difficulties.

But I take higher grounds in reply to the objection. I deny its truth in point of fact, and assert, that the principle is not new. The Report refers to two instances in which it has been acted on, and to which for the present I shall confine myself; one in reference to the quarantine laws of the States, and the other more directly connected with the subject of this bill. I propose to make a few remarks in reference to both, beginning with the former, with the view of showing that the principle in both cases is strictly analogous, or rather identical with the present.

The health of the State, like that of the subject of Slavery, belongs exclusively to the States. It is a reserved and not delegated; and of course, each State has a right to judge for itself, what may endanger the health of its citizens, what measures are necessary to prevent it, and when and how such measures are to be carried into effect. Among the causes which may endanger the health of a State, is the introduction of infectious, or contagious diseases through the medium of commerce. The vessels returning with a rich cargo, in exchange for the products of a State, may also come freighted with the seeds of disease and death. To guard against this danger, the States at a very early period, adopted quarantine, or health laws. These laws it is obvious, must necessarily interfere with the power of Congress to regulate commerce—a power as expressly given as that to regulate the mail, and, as far as the present question is concerned, every way analogous; and acting accordingly on the principles of this bill, Congress, as far back as the year '96, passed an act making it the duty of its civil and military officers to abstain from the violation of the health laws of the States, and to co-operate in their execution. This act was modified and repealed by that of '99, which has since remained unchanged on the statute book.

But the other precedent referred to in the Report, is still more direct and important. That case, like the present, involved the right of the slaveholding States to adopt such measures as they may think proper, to prevent their domestic institutions from being disturbed, or endangered. They may be endangered, not only by introducing and circulating inflammatory publications, calculated to excite insurrection, but also by the introduction of free people of color from abroad, who may come as emissaries, or with opinions and sentiments, hostile to the peace and security of those States. The right of a State to pass laws to prevent danger from publications, is not more clear than the right to pass those which may be necessary to guard against this danger. The act of 1803, to which the Report refers, as a precedent, recognizes this right to the fullest extent. It was intended to sustain the laws of the States against the introduction of free people of color from the West India Islands. The Senator from Massachusetts, in his remarks upon this precedent, supposes the law to have been passed under the power given to Congress by the Constitution to suppress the slave trade. I have turned to the journals in order to ascertain the facts, and find that the Senator is entirely mistaken. The law was passed on a memorial of the citizens of Wilmington, North Carolina, and originated in the following facts:

After the successful rebellion of the slaves of St. Domingo, and the expulsion of the French power, the Government of the other French West India islands, in order to guard against the danger from the example of St. Domingo, adopted rigid measures to expel and send out their free blacks. In 1803, a brig, having five persons of that description who were driven from Guadaloupe, arrived at Wilmington. The alarm which this caused gave birth to the memorial, and the memorial to the act.

I learn from the journals, that the subject was fully investigated and discussed in both Houses, and that it passed by a very large majority. The first section of the bill prevents the introduction of any negro, mulatto, or mustee, into any State by the laws of which they are prevented from being introduced, except persons of the description from beyond the Cape of Good Hope, or registered sea-men, or natives of the United States. The second section prohibits the entry of vessels having such persons on board, and subjects the vessels to seizure and forfeiture for landing, or attempting to land, them contrary to the laws of the States; and the third and last section makes it the duty of the officers of the General Government to co-operate with the States in the execution of their laws against their introduction. I consider this precedent to be one of vast importance to the slaveholding States. It not only recognizes the right of those States to pass such laws as they may deem necessary to protect themselves against the slave population, and the duty of the General Government to respect those laws, but also the very important right, that the States have the authority to exclude the introduction of such persons as may be dangerous to their institutions—a principle of great extent and importance, and applicable to other States as well as slaveholding, and to other persons as well as blacks, and which may hereafter occupy a prominent place in the history of our legislation.

Having now, I trust, fully and successfully replied to the first objection of the Senator from Massachusetts, by showing that it is not true, in fact, and if it were, that it would have had little or no force, I shall now proceed to reply to the second objection, which assumes that the principles for which I contend, would, if admitted, transfer the power over the mail from the General Government to the States.

If the objection be well founded, it must prove fatal to the Bill. The power over the mail is, beyond all doubt, a delegated power; and whatever would divest the Government of this power, and transfer it to the States, would certainly be a violation of the Constitution. But would the principle if acted on, transfer the power?—If admitted to its full extent, its only effect would be to make it the duty of Congress, in the exercise of its power over the mail, to abstain from violating the laws of the States in protection of their slave property, and to co-operate where it could with propriety, in their execution. Its utmost effect would then be a modification and not a transfer, or destruction of the power; and surely the Senator will not contend that to modify a right, amounts either to its transfer, or annihilation. He cannot forget that all rights are subject to modifications, and all, from the highest to the lowest, are held under one universal condition—that their possessors should so use them as not to injure others. Nor can he contend that the power of the General Government over the mail is without modification, or limitation. He himself admits that it is subject to a very important modification, when he concedes that the Government cannot discriminate in reference to the character of the publications to be transmitted by the mail, without violating the first amended article of the Constitution, which prohibits Congress from passing laws abridging the liberty of the press. Other modifications of the right might be shown to exist, not less clear nor of much less importance. It might be easily shown, for instance, that the power over the mail is limited to the transmission *of intelligence,* and that Congress cannot consistently with the nature and the object of the power, extend it to the ordinary objects of transportation, without a manifest violation of the Constitution, and the assumption of a principle which would give the government control over the general transportation of the country both by land and water. But if it be subjected to these modifications, without either annihilating or transferring the power, why should the modification for which I contend, and which I shall show hereafter to rest upon unquestionable principles, have such effect? That it would not in fact, might be shown if other proof were necessary, by a reference to the practical operation of the principle in the two instances already referred to. In both, the principle which I contend for in relation to the mail, has long been in operation in reference to commerce, without the transfer of the power of Congress to regulate commerce to the States, which the Senator contends would be its effect if applied to the mail. So far otherwise; so little has it affected the power of Congress to regulate the commerce of the country, that few persons, comparatively, are aware that the principle has been recognized and acted on by the general government.

I come next *(said Mr. Calhoun)* to what the Senator seemed to rely upon as his main objection. He stated that the principles asserted in the Report were contradicted by the bill, and that the latter undertakes to do indirectly what the former asserts that the general government cannot do at all.

Admit *(said Mr. Calhoun)* the objection to be true in fact, and what does it prove, but that the author of the Report is a bad logician, and that there is error some where, but without proving that it is in the bill, and that it ought therefore to be rejected, as the Senator contends. If there be error, it may be in the report instead of the bill, and till the Senator can fix it on the latter, he cannot avail himself of the objection. But does the contradiction which he alleges exist? Let us turn to the principles asserted in the Report, and compare them with those of the bill in order to determine this point.

What then are the principles which the report maintains! It asserts that Congress has no right to determine what papers are incendiary, and calculated to excite insurrection, and as such to prohibit their circulation; but on the contrary, that it belongs to the States to determine on the character and tendency of such publications, and to adopt such measures as they may think proper to prevent their introduction or circulation. Does the bill deny any of these principles? Does it not assume them all? Is it not drawn up on the supposition that the general government have none of the powers denied by the Report, and that the States possess all for which it contends? How then can it be said that the bill contradicts the Report? But the difficulty, it seems, is, that the general government would do through the States under the provisions of the bill, what the Report denies that it can do directly; and this, according to the Senator from Georgia, is so manifest and palpable a contradiction, that he can find no explanation for my conduct, but an inveterate hostility to General Jackson, which he is pleased to attribute to me.

I have, I trust, successfully repelled already the imputation, and it now remains to show that the gross and palpable errors, which the Senator perceives, exist only in his own imagination, and that instead of the cause he supposes, it originates on his part, in a dangerous and fundamental misconception of the nature of our political system—particularly of the relation between the States and General Government. Were the States the agents of the General Government, as the objection clearly presupposes, then what he says would be true, and the Government in recognising the law of the States would adopt the acts of its agents. But the fact is far otherwise.