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Abolitionist Literature in the Mails

1835-1836

by

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A Thesis

Presented to the Faculty of the Graduate School
of the University of Oregon
in partial fulfillment of the requirements
for the degree of

Master of Arts

June, 1925.

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Abolitionist Literature in the Mails, 1835-1836

Introduction.

The question of abolitionist literature in the mails is one of great importance because it opens a new phase of the slave question and brings to the front a contest over fundamental rights guaranteed by the Constitution. The Compromise of 1820 was to have settled once for all the question of slavery, and all parties were satisfied. In 1830 this question came to the front again when a group of men demanded that slavery should be abolished immediately and unconditionally. They set about to accomplish this object by establishing newspapers, the purpose of which was to show the horrors of the institution and to develop sentiment against it. These papers were to be sent through the mails to instruct the people of the evils which slavery presented. The post office had been established to insure the circulation of the mails.

This action was opposed by the states where slavery was held as an interference with their domestic affairs which was exclusively in their own hands. The slave they considered as property which neither the Federal Government nor the fanatics of the North had a right to destroy by inciting him to insurrection. And lastly, they opposed the use of the mails because it made the national government an agent of the abolitionists who were doing so much for their destruction. The South demanded that these papers be prohibited and these

deluded men punished.

The free states were just as opposed to the abolitionist as the slave-holding states but could find no way to legally punish them. The free states and the Americans as a whole were dedicated to the freedom of speech and the press. They were willing to endure and forebear certain objectionable conditions that this sacred privilege might be preserved. Thus the question became one of rights guaranteed by the Constitution and its interpretation by the different interests concerned.

I Conditions in the Country.

There are times in the operation of governments when the forces of law and order seem to be out of gear and a period of disorder and lawlessness replace good order and stability. Such was the condition in the United States in 1834 and 1835. This disorder prevailed in every part of the country and occured over every conceivable thing. In New York and Indiana it was the Irish question. In Philadelphia it was the Negro question. In Washington it was an attack on Congressmen. In Mississippi it was the question of gamblers, and in Massachusetts and New York it was the attack on abolitionists.

This was a period of internal improvements. One of the most important of our internal improvements was the canal as another link in our transportation connecting the seaboard with the Ohio valley. The Irish were employed in large numbers on the construction of these undertakings. As is

so often the case with the working population, friction developed between these Irish workers and the American workers. In Indiana riots took place all along the Wabash Canal. A pitched battle was fought in Fort Wayne in which 250 or 300 men took part.[1] It was soon brought under control. In New York the Irish question gave some concern for here they were employed on the Erie Canal. At Munford a free for all fight took place and broke up the church service. These riots were general wherever the Irish were found in large numbers.

Members of Congress were not exempt from this wave of disorder which was abroad in the country, even though they were guaranteed protection under the federal law. Two members of the House were cruelly assaulted and a third fired upon in open day for words used upon the floor in the course of debate while many people looked on. A fourth was given to understand that he spoke of a public officer at his own peril. The result was these men who had caused this excitement were arrested. So little respect was held for the machinery of law and order that an attempt was made to rescue these violators of law and order not by storming the jails as is so common in such cases but by walking up to the magistrate with a dangerous weapon demanding that they be released at once.[2]

During this time a group of citizens called upon President Jackson and demanded that he dismiss the troops in and about

1 Niles Register, pp.48-439.
2 Ibid., Vol.48, p.440.

the city of Washington so as to bring peace and order to the national capital. The President, who was an army man, without hesitation refused such a request[3] to deliver the city over to the mobs by disbanding its protection in time of such excitement. The Alexander Gazette speaking of conditions in Washington said, "The excitement was fearful."

In Mississippi this disorder was used to clear the country of gamblers. The men were ordered to leave Vicksburg at once and when they refused they were driven out and some were murdered. The South waged a war on these undesirable members of society.

Another group which came under consideration was the Catholics. In Charlestown, a suburb of Boston, the people used this period of excitement as an opportunity to rid themselves of a convent which stood in the town and avenge the Catholics of the city. The citizens desired to parade in commemoration of the destruction of the convent but the selectmen refused to allow the parade. They ignored the selectmen and a scuffle followed in which no one was hurt.

Another faction against whom a great deal of this disorder was directed was the free Negro and the slave. The free Negro was not desired either in the North or the South. The reason for this decided reaction against the Negro was the Vesey plot and the Turner Insurrection. In 1822 Denmark Vesey, a free Negro, planned an uprising in Charleston, South Carolina.

3 Niles Register, Vol.48, p.440.
4 McMaster, J.B., History of the People of the U.S., Vol.VI, p.229.

He hoped by massacring the whites to gain control of the shipping in the harbor and if hard pressed to sail to the West Indies where he would be protected by the laws of France or England. This plot was only prevented because a slave betrayed Vesey to the authorities.[5]

Scarcely had this episode passed and the fear and excitement aroused by it subsided, when another affair, which was calculated to arouse hatred of the Negroes occured in South Hampton, Virginia. Nat Turner, a slave, felt that he had been called upon to lead the Negro race out of slavery. The result was an uprising in which sixty one whites lost their lives, mostly women and children. More than a hundred Negroes were either executed or killed in the uprising.[6] These acts could not but influence the public mind against the Negro, free and slave. The Richmond Whig says that another such insurrection would be followed by putting the whole black race to the sword.

When the legislature of Virginia met, Governor Floyd in his message called for legislation to remedy this evil. He placed the blame for the uprising at the door of the incendiary papers sent from the North and the Negro preacher. He says "the Negro preacher is the most active in stirring up revolt. He has a great ascendancy over the mind of his fellows The public good requires that the Negro preacher be silenced."[7]

5 Hart, A.B., Slavery and Abolition, p.163.
6 Wilson, H., Rise and Fall of Slave Power, p.190.
7 Niles Register, Vol.41, p.350. John Floyd's message to the legislature, December 6, 1831.

While the state legislature tried to deal with this question in an orderly way the people resorted to violence which became widespread at this time. In Philadelphia a large number of houses in the Negro section were torn down and a large amount of property destroyed. A spirit of lawlessness was evident throughout the city and the Negro section was the center of this excitement. It was only with the greatest difficulty that order was restored and the Negro section made safe from disturbances.[8] The anti-Negro feeling found expression in New York in a riot which occured over the use of a church. The Negroes had assembled to hear a sermon on a certain night. A musical organization of the city usually used the hall on this night for practice. An attempt was made to dislodge the Negroes;[9] the result was a riot which paralyzed the city for days. The condition was such that the house of Lewis Tappin was wrecked, the doors were broken open, windows smashed and the beds burned in the street.

The last phase of this lawlessness was directed against the abolitionists who were looked upon as the disturbers of the public peace. In New Haven Miss Prudence Crandall opened a school for girls and admitted one of the pupils she had taught in the district school, a certain Sarah Harris. This act

8 McMaster, J.B., History of the People of the U.S., Vol.VI, p.231.
9 Niles Register, Vol.46, p.357.

stirred up the community against Prudence Crandall. It was announced that at the beginning of the next year the school would open for Negroes. Excitement seized the citizens and a meeting was called at the city hall at which more than seven hundred persons were present. Resolutions were passed condemning the work of Prudence Crandall in attempting to establish a school for Negroes. The resolutions further state that establishing a college for Negroes is not consistent with the best interest of Yale College and the college for females. The resolution goes on: "We ought not to do anything that will destroy the tranquility of our sister states, neither have we or the United States the right to do this. We shall resist this in any lawful purpose." The resolutions were signed by the mayor of the city and the city council who called the meeting.[10]

In Worcester, one of the abolitionist leaders, was lectturing to a congregation and was called to task. The son of an ex-governor of Massachusetts assisted by an Irishman "destroyed his notes and offered him personal violence."[11]

In Boston it was advertised that George Thompson, an Englishman who had played a large part in the abolition of slavery in England, would speak to the New England Anti-Slavery Society on October 21. About noon the following hand-

10 Niles Register, Vol.41, p.88.
11 Goodell, Wm., Slavery and Anti-Slavery, p.45.

bill appeared: "That infamous foreign scoundrel, Thompson, will hold forth (this afternoon) at the Liberator office, No.48, Washington Street. The present is a fair opportunity for the friends of the union to 'snake Thompson out.' It will be a contest between the abolitionists and the friends of the union. A purse of $100 has been raised by a number of patriotic citizens to reward the individual who shall first lay violent hands on Thompson, so that he may be brought to the tar-kettle before dark. Friends of the union be vigilant."[12]

In response to this notice a large number of people appeared but Thompson did not. The crowd demanded Thompson but since he was not to be found they demanded Garrison. In the midst of this excitement the mayor entered the hall and advised the women to leave for he made it known that he could not guarantee their protection if they insisted on remaining. The women left the room and no violence was offered them, in fact the crowd opened the way so they might pass. Garrison for whom some excuse might be made, because the crowd was then seeking him, says they hissed and taunted the ladies. If the crowd was kind to the women the same consideration was not extended to Garrison. He was seized while making his way from the building by a back window. A rope was placed around his body and he was led through the streets. The mayor was able to save him by placing him in jail after great effort on the part of the police. The Boston Gazette in speaking of this

12 Garrison's Garrison, Vol.II, p.9.

affair says it was a good natured rabble.[13] It was more than a rabble when it attempted to take the place of law and order.

In Utica, New York, an outbreak against the abolitionists occured when they attempted to hold a state-wide meeting. A crowd rushed in, broke up the meeting and destroyed the records of the society. The meeting was adjourned to Peterboro at the invitation of Garret Smith, who from this time on is identified with the Anti-Slavery cause, and assisted them in carrying on their work.

This wave of disorder against the abolitionist was general. The Lynchburg Democrat informs us that an Englishman was hanged near Lynchburg for commiting an act so inimical to the state of Virginia as being an abolitionist agitator. In Nashville, Amos Dreaser, a Bible salesman, was found to have abolitionist leterature in his possession and was arrested by the Vigilance Committee, given 20 lashes and told to leave town.[15] In Washington, Dr.Crandall, a brother of Prudence Crandall, while visiting Washington for the purpose of lecturing on science was arrested and thrown in prison as an Anti-Slavery agitator.[16] Thus it can be seen that disorder was general throughout the country and over almost every conceivable thing, from words spoken by Congressmen on the floor to abolitionist agitation.

13 Niles Register, Vol.49, p.145.
14 Hart, A.B., Slavery and Abolition, p.248.
15 McMaster, J.B., Ibid., Vol.VI, p.275.
16 Seward, W.H., Autobiography, Vol.I, p.291.

II Methods of the Abolitionist.

In the midst of this period of fear, lawlessness and excitement the abolitionist announced a new program, which demanded immediate and unconditional emancipation of the slaves. The leader of this movement was William Lloyd Garrison, the editor of the newly founded abolitionist paper the Liberator. He gives the principles of this new doctrine in the pages of his paper when he says, "Our country is the world, our countrymen are mankind."[17] Later in an address which he published and spread broadcast he says, "I am aware that many object to the severity of my language but is there not a cause for severity? I will be as harsh as truth, as uncompromising as justice. On this subject I do not wish to think, or speak, or write with moderation." Along with Garrison's statement the American Anti-Slavery Society gives its principle as follows:

1. We shall organize Anti-Slavery Societies, if possible, in every city, town and village in our land.
2. We shall send forth agents to lift up the voice of remonstrance, of warning, of entreaty and rebuke.
3. We shall circulate unsparingly and extensively Anti-Slavery tracts and periodicals.
4. We shall enlist the pulpit and the press in the cause of the suffering and the dumb.
5. We shall aim at a purification of the churches from all participation in the guilt of slavery.

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17 Garrison's Garrison, Vol.I, p.219.

6. We shall encourage the labor of freedmen rather than that of slaves by giving preference to their productions.

7. We shall spare no exertions nor means to bring the whole nation to a speedy repentance.[18]

With such bold and rash statements a new phase of the abolitionist movement was begun and the program set forth.

The purpose of this new movement was to stir up public opinion to the evils of the institution of slavery as may be seen from the declaration of the American Anti-Slavery Society. To help in this initial undertaking, George Thompson an Englishman, was brought to America. He had played a large part in the abolition of slavery in England. Lord Brougham, in speaking of the abolition of slavery in England and to whom the honor was due, said, "I rise to take the crown of this most glorious victory from every other head, and place it upon the head of George Thompson. He has done more than any other man to achieve it." However much Lord Brougham thought of Thompson the same was not held in America as has already been brought out. He did a great deal of speaking in this country and was a big factor in this new movement.

Another step in this new movement was an appeal to the public for funds to carry on the project. In June, 1835, Garrison sent out a pamphlet setting forth the needs of the

18 Wilson, H., Rise and Fall of Slave Power, p.257.

Liberator and the cause of the Anti-Slavery Society and at the same time, urged the raising of thirty thousand dollars to multiply agents, societies, periodicals and provide for gratuitous distribution of Anti-Slavery publications. According to the plan the first week in each month, a small folio paper "Human Rights" would be issued; second week, "Anti-Slavery Records," a small magazine with cuts; third week, the "Emancipation," an enlarged sheet; fourth week, "Slave's Friend," a juvenile magazine, all to be struck off by thousands.[19] The response to the demand for the thirty thousand dollars was all that could be desired. The New England Anti-Slavery Society provided one half and the other half was quickly provided by friends of the movement.

The bold and harsh statements of Garrison, the call for money and the ease with which it was secured meant only an attempt on the part of the North, as the South saw it, to destroy their property and to unnecessarily interfere with their rights, guranteed by the Constitution itself. Thus we find a response immediately to the challenge of Garrison. John Tyler, in a speech in Glouster County, Virginia, August 22, 1835, before a large gathering of Anti-Abolitionist said that when he held a prominent place in Washington two years ago this Anti-Slavery Society was a mere handful of men who were the subject of ridicule from one end of this country to the other. Now they have two hundred and fifty societies

19 Garrison's Garrison, Vol.I, p.483.

and at a single meeting $30,000 was contributed toward their scheme, some half of which was paid down promptly. "They have established numerous presses, four of which circulate from the city of New York. They have been kind enough to favor me with three of their publications through the mail. These papers were circulated gratuitously among us and are normal prices to actual subscribers."[20] Thus we see how important this movement was.

John Quincy Adams says of the effort of Garrison and the Anti-Slavery Society, "Anti-Slavery associations are forming in this country and England and they are already cooperating in concerted agency together. They have raised funds to support and circulate inflamatory newspapers and pamphlets gratuitously and they send multitudes of them into the southern country in the midst of swarms of slaves."[21] He continues, "Which is causing great excitement and fermentation in all parts of the union."

Objection came from other sources. In New York a number of Southern men met in Tammany Hall and passed a set of resolutions in which among other things were said whether slavery in our country be an evil or not it is a question belonging solely to the states in which it is tolerated, and whether it shall be abolished or continued is left solely to those states to determine. The South cannot indulge any serious apprehension that the efforts of the abolitionists on the subject of

20 Tyler's Tyler, Vol.I, p.576.
21 Adams, J.Q., Memoirs, Vol.IX, p.257.

slavery can even affect public opinion even in the North and we rely with confidence on the intelligence of our Northern brethern to frustrate and defeat the mischievous schemes of designing demagogues and deluded fanatics."[22]

There were other groups which did not have so much confidence in the people of the North. Georgia offered $5,000 for the person who would bring Garrison to that state to be judged for supposed crimes he had committed in Georgia.[23] Alabama went still further when the grand jury of Tuscalosa County returned a true bill against R.G.Williams, the editor of the Emancipator, a paper published in New York. He was accused of circulating within the state publications of a seditious character, tending to incite the slaves, to insurrection and murder. The statement upon which Williams was indited was, "God commands and all nature cries out that man should not be held as property. The system of making men property has plunged 2,500,000 of our fellow countrymen into the deepest physical and moral degradation and they are every moment sinking deeper."[24] He was demanded as a fugitive from justice. The absurdity of this demand is apparent for Williams had never been in the state of Alabama and could not be a fugitive from justice. This is only important in that it shows that in reference to handling the mails the southern states had taken matters in their own hands.

22 Niles Weekly Register, Vol.48, p.382.
23 Von Holst, Constitutional and Political History of the United States, p.114. (Vol. II)
24 Goodell, Wm., Slavery and Anti-Slavery, p.414.

The papers of the South expressed their opposition against the abolitionists by advocating a boycott of Northern trade so as to force the punishment of the disturbers of Southern tranquility. The Charleston Patriot says, "We call the attention of our Southern merchants to justice and propriety of extending their intercourse with Philadelphia. It is the only Northern city that has responded in proper spirit to the call of the South on the North for energetic action. Let non-importation agreements be entered into by proper combination among those engaged in the trade at the South, to cease all intercourse with places that show hostility or a criminal indifference to our rights and interest. Let us encourage our friends and cease all communication with our enemies. Let Lowell be among the first to be placed under the ban. Let us consume none of her manufactures."[25] The Richmond Whig says, "There is every prospect and probability that the South will refuse intercourse with Northern cities which allow incendiary publications to be printed within their limits."[26] In response to the papers, as unfortunately is too often the case, the people formed in some cities the non-intercourse associations. The New York Herald, speaking editorially, said that the question of incendiary publications is not a commercial but a political question and the non-intercourse agreements are only a step to separation in the Southern states. The question was one of politics and not

25 Niles Register, Vol.49, p.74.
26 Ibid.,

commerce and might better have been left in the field where it belonged.

The abolitionists considered in using the mail that they were using a right given them to distribute intelligence the purpose for which the post office was established. The right to publish their papers was guaranteed under the Constitution in its first amendment, the language of which is: "Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and petition the government for a redress of their grievance." Besides this federal protection upon which the Anti-Slavery Society depended, all the states had laws which guaranteed the freedom of the press and of speech.

In Maine - Every citizen may write and publish his sentiments on any subject being responsible for abuses of that liberty. No law shall be passed regulating or restraining the freedom of the press.

In Massachusetts - The liberty of the press is essential to the security of freedom in a state it ought not therefore be restrained in this commonwealth.

In New Hampshire - The liberty of the press is essential to the security of freedom in a state it ought, therefore, to be inviolably preserved.

In Vermont - The people have a right to a freedom of speech and writing and of publishing their sentiments concerning the transactions of government, and therefore the freedom of the press ought not to be restrained.

In Connecticut - Every citizen may freely speak, write, and publish his sentiments on all subjects being responsible for the abuse of that liberty. No law shall ever be passed to curtail or restrain the liberty of speech or the press.

In New York - Every citizen may freely speak, write, and publish his sentiments on all subjects being responsible for the abuse of that right and no law shall be passed to restrain or abridge their liberty of speech or of the press.

In Alabama - Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.[27]

The extracts of laws from every state in the union might be given but enough have been given to show how firmly the idea of the freedom of speech is engrafted in the life of the people and how they consider this fundamental right. Wherever the Anglo-Saxon settles and forms any kind of government he insists that the press shall be free and the right of distribution through the mails be maintained.

With the Constitution and the state laws both guaranteeing the freedom of the press, the abolitionists felt safe and

27 Niles Register, Vol.49, p.236. Extracts from all the states are given by Niles.

thus sent their papers through the mail. The post office offered an excellent agency to convey their propaganda to parts of the country where they could not go safely in person. There were other people than abolitionists who felt that the South was helpless in prohibiting the distribution of incendiary papers in their midst. The Richmond Compiler, after giving the laws of all the states as well as the federal law, says, "It can be seen that no law can ever be constitutionally passed for the purpose of restraining the famatics of the North in their crusade against our right."[28] The Compiler had overlooked the fact that in America, sometimes results are secured in other ways than constitutional means.

The Southern states began to pass laws to protect their interest and keep out incendiary literature. South Carolina passed a law which made it a crime to be caught with abolitionist literature, the punishment for which was a fine of one thousand dollars and imprisonment for a year. The free Negro for the same offense was fined one thousand dollars for the first offense, for the second offense fifty lashes and third offense, death.[29] Maryland passed a law in 1835 which declared it to be a high offense for any person to take part in printing or circulating any written matter knowingly which would create discontent among the slaves.[30] The city council of

28 This extract from Niles shows what the Southern people thought on this question.
29 Henry, H.M., Slavery in South Carolina, p.155.
30 Brackett, J.R., The Negro in Maryland, p.224.

Charleston offered one thousand dollars for the arrest of any person bringing incendiary publications to the city. What these states and cities mentioned had done every state and city in the South did. They did not share the opinion of the Richmond Compiler that nothing could be done to punish the abolitionists and prohibit circulation of their papers.

There was a general feeling that even these laws passed in the South were not sufficient and that the Northern states ought to punish the abolitionist within their borders for crimes committed against the Southern states by passing state laws. The way this should be done as Governor McDuffie of South Carolina put it, is for the Northern states to set forth a formal disclaimer by their legislature. The state of South Carolina legislature responded to the suggestion of its governor by sending a formal resolution to the Northern states demanding punishment of the abolitionists and the suppression of their societies.[31] Georgia and Alabama followed the lead set by South Carolina and demanded legislation against the abolitionist. In Virginia John Floyd was not sure that the abolitionist could be punished under the federal law but he said in his message to the legislature, "They tell us there is no law under the Constitution to punish these crimes. If this is not checked it will soon destroy this union."[32] Floyd further expresses himself as believing that these

31 Wilson, H., Rise and Fall of Slave Power in America, Vol.I, p.325.

32 Floyd, John, Diary, p.161.

crimes might be punished under the common law. What the federal law could not do the common law may do. It would have been of interest to see what would have been the charge Governor Floyd would have placed against these men. The Southern states felt that the North had a duty and obligation to prohibit the publishing of anything which would make the slaves discontented and which had a tendency to destroy the peace and tranquility of the union.

The governors of the Northern states referred these resolutions of their sister state to their legislatures, in some cases demanding that they be not complied with for it would destroy liberty which could never be sacrificed. In Massachusetts the resolutions were sent to a special committee of which Mr.Lunt was chairman.[33] Several hearings were held. The abolitionist leaders were called before the committee but nothing was done. In Rhode Island the special committee to which the subject was referred reported a bill in conformity to the demands of the resolutions. The bill was defeated in the legislature. This was the fate in all the Northern legislatures, laws were passed nowhere. These people were opposed to the abolitionist as the Northern press will show. The Northern press demanded that disturbers of the peace should be punished. William Sullivan published a pamphlet in Boston in which he sets forth the hope that Massachusetts would declare the printing, publishing, and circulating of

33 Goodell, Wm., Slavery and Anti-Slavery, p. 420.

pamphlets on slavery and also the holding of meetings to discuss slavery to be indictable offenses and provide punishment for them.[34] Leonard Wood, Jr., writing in the Literary and Theological Review, said, "The abolitionists were justly liable to the highest civil penalties and ecclesiastical censure."[35] These views are extreme ones but the fact that they could be advanced shows that in some ways they expressed public opinion. In spite of this demand by the press and the hatred of the abolitionist the Northern legislatures would not consent to violate a right so dear to the American people.

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34 Wilson, H., Rise and Fall of Slave Power in America, Vol.I, p.322.

35 Ibid.,

III Abolitionist Literature in the Southern Mails.

While the South was demanding legislation by the North against the abolitionist and the North was maintaining the sacred principle of the freedom of speech the abolitionists continued to send their literature South. These papers were sent gratuitously through the mails in large numbers. When prices were charged they were only nominal ones. "Human Rights, " twenty five cents per year; "Anti-Slavery Record," one dollar and fifty cents per hundred; "Emancipator," fifty cents per year; "Slave Friend," one cent per copy.[36] These papers were complained of in all the Southern and Middle states.

The Norfolk Herald of July 29 says,"A bundle of incendiary missles came from that abolitionist pandemonium a few days ago. The whole of the twenty were mailed to free Negroes. The papers were filled with matter which is calculated to overthrow the structure of the South and excite the slaves." The Charleston Patriot of the same date said, "The steamer Columbia came this morning not only laden but literally overburthened with newspapers called the 'Slaveholder' and 'Emancipator' and two tracts entitled the 'Anti-Slavery Record' and the 'Slave's Friend' for distribution over the southwestern country." And continuing, it said, "This is an abuse of the public's mails. Let some measure be adopted by requiring those whose interests are identical with ours

36 Tyler's Tyler, Vol.I,p.576. In Tyler's address before Glouster meeting.

in places where these papers and tracts are addressed to prevent their circulation within their limits."[37] The Patriot concluded by saying, if the general post office was not at liberty to act it would be impossible to answer for the security of the mails in the Southern states. A suggestion which unfortunately the people of Charleston took to heart that same night as we shall see later. The Augusta Chronicle carried an editorial notifying the people of that city of the presence of abolitionist literature in the mail.[38] The South was being literally flooded by the publications of Garrison and his associates, which was part of their avowed program.

The people began to take the law into their own hands and to do what the post office would not or had not done. In Philadelphia a bundle of these pamphlets were discovered on the wharf of that city. A group of citizens seized them and carried them to the middle of the Delaware and deposited them for safe keeping.

In Charleston a meeting was called in response to the suggestion made in the Patriot, as we noted above on the night of July 29, to take measures to cope with the objectionable mail. Nothing was done in the meeting. The lieutenant of the city guard observing the temper of the people advised them to go to their homes.[40] He hoped that by the next

37 Niles Register, Vol.48, p.402.
38 Ibid.
39 Schouler, J., History of the U.S., p.217.(Vol.IV)
40 McMaster, J.B., History of the People of the U.S.,Vol.VI, p.275.

morning they would be more reasonable and they would not commit an act against the federal government which it seemed they were bent upon doing. He promised them that the matter would receive consideration the next day. There were some in the crowd, as are to be found in any direct action crowd in a constituted government, who could not wait until the next day. They went to the post office, removed the shutters by force, entered and seized the bags of abolition literature intended for the South and West. The plan was to burn the abolitionist mail at 8 o'clock on the evening of July 30, with a public bonfire which the citizens might attend.[41]

The mail was being detained everywhere as a means of coping with this flood of incendiary papers. Charleston gets more prominence in this matter because it refused to depend upon the postmaster to keep the papers but took the matter in its own hands. This seems to have been unnecessary and uncalled for and gives the right to use the mail more prominence than it deserves. Such an inflamatory paper as the Charleston Patriot expresses the view that this action was premature for the postmaster had already asked for instruction from his chief, Amos Kendall. The Patriot goes on to say, "If the answer had been that there was no authority to intercept the objectionable mail through our post office then in that case those states whose peculiar institutions are involved must take the law into their own hands. Extreme

41 Niles Register, Vol.48, p.403.

cases require extreme remedies. Whatever be done in this way let it be done in open daylight and on the highway and that persons of responsibility and weight of character be deputed to act in the name and for all the people."[42]

The thing which the Patriot suggested happened in a very short time. On August 4th, a meeting was called and was presided over by the city intendant.[43] This meeting appointed a committee of twenty one to examine the question and also a vigilance committee whose business it was to meet every mail and accompany it to the post office and see that none of the objectionable papers were distributed. Another committee was appointed to make arrangements with the postmaster to see that none of the papers were distributed in any case whatsoever. This arrangement John Q.Adams calls the seizing of the mails by a mob of Southern gentlemen in cooperation with the postmaster.[44] The committee of twenty one made its report in a set of resolutions in which it said among other things, "We hold that slavery in all its forms is a domestic question." In the same resolutions the abolitionists were condemned. Robert J.Haynes presided at this meeting. Each resolution was taken up separately and voted upon. It was ordered that five thousand of these resolutions should be printed and sent broadcast.[45] The city of Charleston was not only determined to intercept the mail but let the world know the reason for its action.

42 Niles Register, Vol.48, p.403.
43 Jervey, T.D., Robert Haynes and His Times, p.379.
44 Adams, John Q., Vol.9, p.254.(Memoirs)
45 N.R., Vol.48, p.403. This could not [illegible] resolutions

August 3, a similar meeting was called in Richmond and Henrico County, Virginia, to consider the welfare of the people of that county and to halt the flow of Anti-Slavery literature. A vigilance committee was appointed and a set of resolutions were adopted. These resolutions stated that it was the duty of the non-slaveholding states to pass a law to protect the commonwealth of Virginia in her rights. The postmaster general was asked to use all the power granted under the law to prevent the use of the mails for incendiary purpose[46]

These meetings were held generally both in the North and in the South and resolutions passed calling upon the general post office to prevent the wholesale distribution of incendiary literature. There was an idea that the post office had the power to exclude what it desired to exclude and thus the reason for so many resolutions to the postmaster general and the general post office.

The officials of the post office were doing all in their power to appease the people and at the same time obey the law. The postmaster at Charleston, Mr.Huger, wrote to Postmaster General Kendall on July 29, when he felt that trouble might occur.[47] He had decided to detain objectionable mail until orders arrive from his chief. What happened while he waited we know already. On the 30th he wrote another letter to the postmaster general reporting the occurence in Charles-

46 Niles Register, Vol.48, p.445. Many grievances were put in these resolutions.

47 Jervey, T.D., Robert Haynes and His Times, p.379. This letter is not available but is inferred from the letter of postmaster general's of the 30th. Jervey says the letter was sent.

ton as follows: "Sir, it gives me great pain to inform you that my apprehensions yesterday for the safety of the mails have proven to be not without foundation. The excitement to which I allude was even greater than I had imagined and had taken possession of men of all parties and every grade of society. This outrage as fanatical and outrageous as it is, has not been in my opinion perpetrated by any ignorant or infuriated rabble. I do not see how this could have been prevented. My mind is made up to do my duty to the department, but it cannot be denied that this whole community is against me, though the respectable portion approve me in reprobating the extravagance that has been committed."[48] In the midst of this difficulty, when definite orders were needed so that this public servant might do his duty, his chief replied on August 3, in a letter which gives nor orders and evades the very question upon which Postmaster Huger desired information. The reply says,"Sir, your letter of the 29th just received, you informed me that by steamboat mail from New York, your office had been filled with pamphlets and tracts upon slavery; that the public mind was highly excited upon the subject. That you doubt the safety of the mail and that you have determined as the wisest course to detain these papers and you ask instruction from the department. Upon careful examination of the law I am satisfied that the postmaster general has no legal authority to exclude newspapers

48 Jervey, T.D., Robert Haynes and His Times, p.379. This letter gives a good idea of the confusion and excitement in Charleston.

from the mails or prohibit their carriage or delivery on account of their character or tendency real or supposed. I am not prepared to direct you to forward or deliver the papers of which you speak." If only the postmaster general had stopped here since he could give no advice all would have been well but he goes on to explain the nature of the post office and the purpose for which it was founded and concludes by setting in motion that dangerous doctrine "The Higher Law." He says"we owe an obligation to the laws but a higher one to the communities in which we live and if the former be prevented to destroy the latter, it is patriotism to disregard them. Entertaining these views I cannot sanction and I will not condemn the steps you have taken. Your justification must be looked for in the character of the papers detained, and the circumstances by which you are surrounded."[49]

The Postmaster General had said that the law was specific the papers were to be sent according to federal law and the postmaster had no choice than obey. The only way he could prevent the sending of these papers was to place the community above the Constitution. It takes no stretch of the imagination to see what would happen to such a government in which the community is placed above the central government. He had gone further than the states right men would go and

49 Parton, J., Life of Andrew Jackson, Vol.III, p.586. Niles Register, Vol.48, p.448. This letter is principle of Kendall's action. In reply the resolution from Petersburg, Virginia, he sent a copy of his letter to the Charleston postmaster.

every community was to determine its policy.

The fact was Postmaster General Kendall approved of the retention of the abolitionist literature by the local postmasters. He so framed his letter to the postmaster at Charleston as to approve his action. He used this letter as a model. When the postmaster at Petersburg, Virginia, called on the Postmaster General to stop the objectionable literature, he answered by sending a copy of the letter which he had sent to Postmaster Huger, in which the postmaster's duty to the community was stressed.

In New York we find Postmaster Gouverneur in trouble. The same day that Postmaster Huger wrote to Washington asking for instruction he wrote to his fellow worker in New York requesting that no more incendiary literature be sent until instruction be received from the general post office. Gouverneur, like Huger, used his own discretion and withheld the objectionable papers and asked the Postmaster General for instruction. He wrote the president and directors of the American Anti-Slavery Society on August 7, as follows: "Entertaining full confidence that you will duly appreciate my sincere desire to reconcile a just discharge of my official duties with all the delicate considerations which are involved in the case presented to me, I have respectfully to propose to you that the transmission of papers referred to be suspended until the views of the Postmaster General shall have been received."[50] With this letter

50 Niles Register, Vol.48, p.447. The correspondence is printed in full in Niles.

was an enclosed copy of the Charleston postmaster's letter. It was hoped that this letter from Charleston would show the Anti-Slavery Society the necessity of giving up their right if even for a while.

August 7, Arthur Tappin, in reply to Postmaster Gouverneur's letter, promised to place the request before the executive committee which he did the next day. The executive committee passed the following resolution: "Resolved, That while we are desirous to relieve public officers from any unnecessary difficulty and responsibility, we cannot consent to surrender any of the rights or privileges which we possess in common with our fellow citizens, in regard to the use of the United States mail." In reply to the Society's resolution Postmaster Gouverneur states his reason for his actions, as follows: "Placed as I was in a peculiarly delicate position; appealed to by an officer of the same department at a distance to lend my aid in preserving the public peace, securing the safe transmission of the important contents of that valuable branch of the mail department and arresting a course of excitement which could not fail to lead to the most disastrous results, I should not hesitate to adopt the course which, in my judgement the highest obligation imposed, had it even demanded in some degree a temporary 'surrender of the Rights and Privileges' you claim to possess." He went on to inform the Society that he assumed the responsibility for the action taken both before the law and his superior, the Postmaster General.

So there was no chance that the rights which were guaranteed the abolitionists under the Constitution and the state laws would be maintained unless they resorted to the courts. Kendall, speaking of the affair several years later, says that the abolitionists thought the postmasters were within their rights in withholding the incendiary papers from the mail for they never sued them.[50] Whether we take the view expressed by Postmaster General Kendall or the other that the abolitionists felt they would lose in any court makes little difference. The abolitionists were depending upon moulding public opinion and such a program as a lawsuit was not calculated to bring more converts to the cause of the Anti-Slavery Society.

An August 22, the long waited for letter from Amos Kendall arrived in New York and like its predecessor to the Charleston postmaster, it gave no instructions at all. Among other things he said: "Ought the postmasters of the department by thrusting these papers upon the Southern states now, in defiance of their laws to hasten a state of things deplorable? You prevent your government from being made the unwilling agent and abettor of crimes against the states which strike at its very existence.[51] While following the principles which patriotism demands, you have made it possible to transmit the other papers with safety." He admits in the same letter that the abolitionists have a

50 Kendall, Amos, Autobiography, p.648.
51 Niles Register, Vol.49, pp.8-9. This is a very long letter and is of great importance for it gives Kendall reason for action.

right to distribute their papers in New York but he says that it does not follow that they have the same right in Louisiana or Georgia where this privilege is denied by state laws. He, the Postmaster General, makes the federal law strong until it conflicted with state laws and then it must give way. This theory is all wrong as has been pointed out by Cooley and instead of the federal laws giving way the state laws must give way.[52] It would seem that this was not a good principle of constitutional law which the Postmaster General gives us.

In his letter to the New York postmaster and in his letter to the Morning Chronicle several years later he says that the United States had no right to circulate the incendiary literature where the state laws were against its circulation.[53] With these views of the Postmaster General so clearly in favor of the laws of the states, the wonder is why he did not give the order to retain the objectionable mail rather than leaving it to the local postmasters to act as they saw fit. Such an order for retention would have been an easy matter. Jackson had already set forth the principle that public servants were to execute the law as they interpreted it and not as someone else saw fit to interpret it. Burgess says the doctrine which the Postmaster General sets forth was nullification for it was the encouragement of the officers who were sworn to uphold the law to violate it. If we do not call this nullification

52 Cooley, T.M., Constitutional Limitations, p.416.
53 Kendall, Amos, Autobiography, p.648. The letter was written in 1863 and he states his belief.

it is clear that the idea was that the papers were to be retained.

There must be a reason for this indecision on the part of the Postmaster General backed by his chief the President. As Parton has pointed out this was not the Jackson of Nullification saying, "The federal laws they must be preserved." The reason for this dangerous doctrine is evident when we realize the political conditions of the country. Jackson had selected Van Buren his successor as president of the United States. Kendall had been a member of the "Kitchen Cabinet" and thus was well acquainted with the wishes of his chief. To say that the papers must be sent because the law was specific would have lost the South for Van Buren to Calhoun who was making an effort to get control of the South and to defeat Van Buren and Jackson. On the other hand, to say that the government had no power to send the papers and, that they would be retained in the post offices where they were deposited would have hurt Van Buren's chances in the Northern states.[55] So we have the reasons for Kendall's policy in handling the post office in this period of excitement He had ceased to be the statesman and public servant to whom his subordinates could apply for instruction and had become the politician working for the salvation of his party.

The argument was made often that the literature was being sent to the slaves and thus causing them to become restless and discontented. The Anti-Slavery Society set forth a

54 Burgess, J.W., The Middle Period, p.273.
55 Parton, J., Life of Andrew Jackson, Vol.III, p.587.

disclaimer in which it said that the object was not to stir up insurrection among the slaves. The slaves had not been addressed by anyone in the Anti-Slavery Society the disclaimer showed. "We have not interferred unless by stirring the consciousness of men; we stand upon our constitutional rights."[56] Probably some of this literature did reach the slave but it is hard to see how much could reach them when as the Society says none was addressed to them and the policy of the post office did not allow abolitionist literature which was sent to be distributed. It is significant that the Anti-Slavery Society disavows responsibility for this charge. It makes clear for us at this day the policy of the Society on this point.

56 Niles Register, Vol.48, p.456.

IV The Controversy in Congress.

The controversy over abolitionist literature in the mail was settled in the country at large by the middle of August. The abolitionists continued to put their papers in the mail standing upon their constitutional right and the postmasters continued to detain and destroy them in sections where they were prohibited by the state laws. It was but natural that this question would be one with which the Twenty Fourth Congress would be forced to deal.

The Postmaster General called attention to this part of our domestic policy in his report to the President. He said, "A new question has arisen in the administration of this department, Post Office. A number of individuals have established an association in the North and Eastern states and raised a large sum of money for the purpose of effecting the abolition of the slaves in the Southern states."[57] He goes on to restate the arguments which were used in his letter to Postmaster Gouverneur that the citizens of one state had no right to do a thing which was denied to the citizens of another state, that is a citizen of New York had no right to do a thing in Georgia which the law of Georgia denied to her citizens. This was a sound principle, only the Postmaster General forgot that the post office was under the Federal Government and not the states and could not fit this principle. He was willing to

57 Congressional Globe Appendix, 1835-1836. Niles Register, Vol.49, p.277. He devotes more than 1,000 words to this subject.

place the facts before Congress that it may determine whether legislation was necessary or not. The whole of his argument was that Congress had no right to interfere in the matter but it might make some regulations to restrain the papers but could not make any to force their distribution.

This subject came before Congress in another way on December 7, when the President sent Congress his seventh annual message. The section which refers to our subject follows: "In relation to the Post Office Department, I must also invite your attention to the painful excitement produced in the South by attempts to circulate through the mails inflamatory appeals addressed to the passions of the slaves, in prints and in the various sorts of publications calculated to stimulate them to insurrection and to produce all the horrors of a servile war. There is doubtless no respectable portion of our countrymen who can be so misled as to feel any other sentiment than that of indignant regret at conduct so destructive of the harmony and peace of the country and so repugnant to the principles of our national compact and to the dictates of humanity and religion. Our happiness and the prosperity essentially depend upon peace within our borders, and peace depends upon the maintainance in good faith of those compromises of the Constitution upon which the union is founded. It is fortunate for the country that the good sense, the generous feeling and deep-rooted attachment of the people of the now slave-holding

states, to the union and to their fellow citizens of the same blood in the South have given so strong and impressive a tone to the sentiments entertained against the proceeding of misguided persons who have engaged in these unconstitutional rights of the South, will be prompt to exercise their authority in suppressing so far as in them lies whatever is calculated to produce this evil.

In leaving the care of other branches of this interesting subject to the state authorities to whom it properly belongs, it is nevertheless proper for Congress to take such measures as will prevent the Post Office Department, which was designed to foster an amicable intercourse between all the members of the Confederacy from being used as an instrument of an opposite character. The general government to which the great trust is confided of preserving inviolate the relations created among the states by the Constitution, is especially bound to avoid in its own action anything that may disturb them. I would, therefore, call the special attention of Congress to the subject and respectfully suggest the propriety of passing such a law as will prohibit under severe penalties the circulation in the Southern states through the mails of incendiary publications intended to instigate the slaves to insurrection."[58]

By the President's message the controversy was formally introduced in Congress. This opened up a discussion which

58 Richardson, J.D., Messages and Papers of the Presidents, Vol.III, p.175. This section is given in full because of its importance in the discussion on the bill.

lasted several months. In the House Mr.Beardsley of New York on December 17, offered a resolution of twelve sections which disposed of the President's message. The ninth section made provision for sending that section dealing with incendiary literature to the committee on Post Office and Post Roads where it remained until the post office bill was reported.

On February 4, Mr.Wise of Virginia arose to make an inquiry of the chairman as to when a report would be made on the incendiary publications.[59] The chairman, Mr.Connors, replied he was not able to say for the committee was at work upon the question and would report when the majority of the committee so voted.

February 19, Mr.Ingersol asked the consent of the House to submit a resolution which provided for the printing of ten thousand copies of the report of the Senate Special Committee of which Calhoun was chairman. We shall hear more of his report later. This resolution was lost when the House refused to depart from its set policy.[60]

March 25, Mr.Hall of Vermont submitted a report from the committee on Post Offices and Post Roads dealing with the President's message on incendiary literature. This report was unusual in that it was a minority report before the majority report had been made. This was not received in the House because it was out of order.[61] These are only efforts

59 Congressional Globe, 1835-1836, 1st Session, p.166.
60 Ibid., p.195.
61 Congressional Globe, 1835-1836, 1st Session, p.291. These instances are given to show how the House acted.

to bring the question of incendiary literature before the House which were failures. This shows how determined the House was to keep out of this controversy. Thus we leave the House until its committee on Post Office and Post Roads reports later.

In the Senate things were different. On December 21, Calhoun moved as much of the President's message as related to the transmission through the public mails of certain publications of a dangerous tendency be referred to a special committee.[62] Calhoun in explaining his reasons for a special committee said he considered the subject one of the greatest importance and one which required immediate and special attention. There was another reason which he gave for his objection to the regular committee. The committee was made up of members from other sections than the one most immediately concerned. There was only one Southern member on the Post Office and Post Roads, Felix Grundy of Tennessee, chairman of the committee. Senator King of Georgia said that he was as much interested in the subject as any man on the floor of the Senate but to send it to a special committee would be to give the subject more prominence than it deserved. He opposed on another ground that it showed disrespect for the regular committee to whom the subject belonged.

Senator Grundy, chairman of the committee on Post Office

62 Congressional Globe, 1835-1836.

and Post Roads, did not agree with Senator Calhoun as to the advisability of submitting a report to the committee as then constituted. He felt that the report would have more strength with the people if it came from a committee made up of members from other sections than the one most immediately concerned. He also made it plain that he did not seek the subject but if sent to his committee he would not avoid the responsibility.[63]

In spite of objections the section of the President's message treating incendiary literature was referred to a special committee. Calhoun was chairman of the committee with King of Alabama, Mangum of North Carolina, Davis of Massachusetts, and Linn of Missouri.

We find that the real reason for reference to a special committee was not given when the question was under discussion Jackson's influence was not calculated to give the South the protection she needed from Calhoun's point of view. When Senator King of Georgia accused Calhoun of bringing in a report to differ with the President the real reason came out. Calhoun said, "I came here with a fixed conviction. As soon as this subject began to agitate the public mind last summer I knew that it would come up before Congress at this session and I at once turned my mind to it, I know how the weak and timid are in a state of excitement and alarm to seek temporary protection in any quarter regardless of after consequences

63 Gale and Seaton Register of Debates, Vol.XII, Part I, p.27.

and how ready the artful and designing ever are to seize on such occasions to extend and perpetuate their power. Knowing the influence of General Jackson's name by reason of his great patronage and the rigid discipline of his party with a large part of the country who has scarcely any other standard of constitution, politics or morals. I saw the full extent of the danger of having these dangerous principles reduced to practice and I was determined to use every effort to prevent it."[64]

It would seem that Calhoun had formed an opinion on this question during the summer. We find that he states what he calls the principles of the South on August 30 in a letter to Duff Green which was the next day after the Charleston episode He says, "Since you passed through the South the excitement in relation to the Northern fanatics has greatly increased. The indications are that the South will be unanimous in their resistance, and that the resistances will be of the most determined character, even to the extent of disunion, if that be necessary to arrest the evil. I trust, however, it may be arrested far short of such extremity. Your early anticipation of the danger, and timely and continuous warning begins to be just appreciated."[65] In a letter to F.Carter, speaking of the railroad in the South he said on the question of the road and slavery the South must stand together even

64 Cralle, R.K., Calhoun 's Works, Vol.V, p.510.
65 American Historical Association Report, 1899, Vol.II, p.345.

if it differs on other questions.[66]

It can be seen that Calhoun had considered the question and had a solution for it. He was willing to give the subject undue prominence that he may protect his section of the country in his own way and not the way the President provided.

With that part of the President's message which relates to incendiary publications referred to a special committee the question of abolitionist literature in the mails was at rest for a while. On February 4, the special committee reported through its chairman, Senator Calhoun. Here an unusual thing happened. The report which the chairman read was only agreed to in whole by Mangum of North Carolina and the chairman, while the other members disented in whole or in part. This report at best could only be called a minority report.[67] The disenting members did not make a report but chose to speak against the bill.

The committee agreed with the President as to the character and tendency of the papers which were circulated in the South but could not agree to the method of redress which he recommen ed namely, that Congress should pass a law prohibiting incendiary publications intending to incite the slaves to insurrection. The committee went on, "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

66 American Historical Association Report, 1899, Vol.II,p.353.
67 Congressional Globe, 1835-1836, p.165.

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. On the contrary they believe that all protection intended may be afforded according to the views they take of the powers of Congress without infringing on any provision of the Constitution on the one side or the reserve rights of the states on the other."

The committee showed that the recommendation was contrary to the Constitution and would conflict with the first amended article of that instrument. Strange enough the report argued, this article places the mail and Post Office out of the reach of Congress. The right of prohibiting circulation through the mail would give Congress control over the press. The power over the Post Office and over the mail is an exclusive power, under it Congress may declare any road a post road as was the case in 1825. To give this subject over to Congress would be a dangerous precedent for Congress could decide what was and what was not incendiary and might close the door of the press against the people. This is one of the most sacred rights. It belongs then not to Congress to determine what is and what is not incendiary but to the states to determine what is calculated to destroy their peace and harmony.[68]

68 Cralle, R.K., Calhoun's Works, Vol. V, p.510. Niles Register, Vol.49, p.408. The argument in the report is nothing more than a state right argument. The report is a very large one.

Calhoun found himself in a difficult position he could not oppose a law for the South demanded it and he had made up his mind on a policy before Congress met as we have seen. He could not agree on the law as Jackson had called for, that would support the administration so thus the long report to show how he differs with the President. It is hard to see how the law which the President proposed would not have been just as effective as the one Calhoun reports. It would have been just as much a violation of the Constitution as the one Calhoun reported. There were some of the Senators who could find no difference as Senator King of Georgia points out.

The bill reported contained five sections.

It shall not be lawful for any deputy postmaster knowingly to receive and put into the mail any pamphlet, newspaper, handbill, or other printed, written or pictorial representation touching the subject of slavery, directed to any person or post office where by laws thereof their circulation is prohibited; nor to deliver to any person whatsoever, except such persons as may be authorized by proper authority of such states.

The second section made it the duty of the Postmaster General to both dismiss the deputy postmasters and fine them for violation of section one.

The third section made it the duty of postmasters to cooperate to see that incendiary literature was not circulated.

Nothing in Congress was to be construed to protect violaters of section one of the bill.

Section four made it the duty of the Postmaster General to furnish to the deputy postmasters copies of the laws of all the states which prohibited the circulation of incendiary literature.

The fifth section provided that the deputy postmasters sould give notice to the Postmaster General where pamphlets had been deposited. They might be withdrawn within a month by the person or persons depositing them, if not withdrawn by the end of that time they were to be burned or otherwise destroyed.[69]

Senator Mangum a member of the committee, moved that five thousand copies of the bill be printed. This opened up a new discussion on the incendiary literature. The motion was rejected. The bill brought the subject definitely before Congress.

The debate on this question lasted several months steadily and was participated in by several Senators. Senator Davis, a member of the special committee, was the first to speak on the bill. He tells us, what Mr.Rich explains later in his "History of the Post Office," that the purpose of Congress in establishing the Post Office was to transmit intelligence. It is justly reckoned among the surest means of preventing

69 Gale and Seaton Register of Debates, Vol.XII, Part I, p.384. Niles Register, Vol.49, p.391.

the degeneracy of a free government, as well as of recommending every salutary public measure to the confidence and cooperation of all virtuous citizens.[70] The bill as proposed by the Senator from South Carolina makes the laws of the state the law of the United States in that it would turn the Post Office, which is under the exclusive control of the Federal Government, over to the states. It would be a violation of the freedom of the press which the Constitution forbid as we have already related.

The power given under the bill Senator Davis thought too broad for it forbade anything which touched the question of slavery. Such a law could consider the Declaration of Independence as touching slavery and tending to excite the slaves to insurrection in that it declared "All men are created equal." It would exclude those papers against slavery as well as those for slavery and thus all could be excluded from the mails. The argument was concluded by showing that the bill gave the deputy postmasters and clerks judicial power in that they might prohibit the circulation of any paper which they judged to be incendiary.[71] The power placed in the hands of the postmaster would be dangerous in a free government as can readily be seen.

This argument was answered by Calhoun much along the same

70 Rich, W.E., History of the U.S.Post Office to 1829, p.91.
71 Congressional Globe, 1835-1836, 1st Session.

lines as his report of the special committee. It is the right of the national government to exert its delegated power to respect the right of the slave-holding states in the protection of their property. He might have made this doctrine more general so that it would apply to all the states. For if it was the right of the national government to respect the property of the slave-holding states, it was equally the duty of Congress to protect the property of all the states. He showed by an elaborate argument that the control over the mails was prohibited by the 10th Amendment of the Constitution which says, "The powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively, or to the people." And he concluded by showing that the national government ought to yield.[72] Thus we have a state right argument. Senator King of Georgia spoke for the bill on the ground which Kendall had stressed in his letter to the New York postmaster namely, that Congress has no right to be a party to the plans of the abolitionists. He says that the state laws prohibit the circulation and to him that is sufficient. The national government has no alternative but should do all in its power to carry out the laws of the states. He finds no constitutional ground for the law as recommended by the President. If such a law were passed it would be by application of the

72 Gale and Seaton Register of Debates, Vol.XII, Part II, p.1133.

Constitution and thus contrary to the organic law.[73]

Senator Buchanan spoke for the passage of the bill on very different ground from that advanced by Calhoun and King. While they plead for the laws of the states he staked his reason for the law on necessity. The naked question as he saw it was that the states have found it necessary to pass laws making the circulation of incendiary literature a penal offense Under the bill Congress will not protect postmasters who violated knowingly the law nor will the United States laws protect them. Buchanan agrees that the law can be passed but denies that the power to pass such a law is in the state. He says that the authority for such a law is in the Constitution. Buchanan stood for the passage of the bill on the grounds which the President had recommended and not on the ground which Calhoun sponsored. This can be easily understood when we remember that Buchanan was strictly a party man and stood by the President while Calhoun as has already been shown opposed the President. Buchanan informs us that this bill would not violate the freedom of the press for under it any one could print or write whatever he pleased. All the bill proposed was that the United States would not be forced to circulate what is printed through its mails. The right to publish without the right to circulate would have been a barren right which would have then as now been of little

73 Congressional Globe Appendix 1835-1836, p.284.

value to the people. He closes his argument with a sympathetic appeal to the Senate showing that the federal government should not do anything to destroy peace among the states.

Clay opposed the bill because he considered it was unnecessary and indefinite. He said that the Congress of the United States should not pass a law to regulate the mails in the states for the states could best regulate such a matter. The law if passed he showed would be indefinite and might mean anything. He followed the line of argument which Davis had used on this point. The law if passed might be applied to future laws as well as the laws then in force. The states which did not then have laws might be charged with violation of the act by passing a law against abolitionist literature. Clay pointed out that this might become an abuse of the privilege of circulation not only in the Southern states but in the whole union. He further opposed the bill because it would make a state law the law of the federal government. It is of interest to note that such an argument was of importance then but now it has become a principle of constitutional law that where the national government has no law it follows the state law then in operation. This is clearly seen in the attempt to cope with the railroad situation. He closed his argument by showin that the law was easy to evade. The words knowingly made it easy for the postmasters to excuse himself on a lack of

74 Buchanan, J., Works, Vol.II, p.83.

knowledge of the contents of the mail.[75] It was difficult for the postmaster to know the contents. The postal law was specific on this point so we are told by Postmaster General Kendall. If a postmaster opened the mail he violates the law at his own risk[76] and the department could do nothing in his behalf. The law which was destined to relieve the situation did not make it possible for the postmaster to do his duty and comply with the law without the violation of a law of the United States.

The argument which Clay made was a telling one and was hard to answer.

The last argument on this phase of the question to be noted here was made by Webster. He opposed the bill on the ground that it was complicated and vague and at the same time destroyed property which the Constitution holds sacred. A piece of mail placed in the post office becomes the property of the person addressed and is not subject to destruction by anyone. In our own day we do not hold such a view for the government excludes and destroys a large number of articles even though they are addressed to individuals.

The bill would place an unnecessary hardship on the deputy postmaster. He must make himself acquainted with the laws

75 Gale and Seaton Register of Debates, Vol.XII, p.1728.
76 Kendall, Amos, Autobiography, p.648.

of all the states where the laws forbid circulation of abolitionist literature so that he can comply with the law. It was a crime to send abolitionist literature where it was forbidden. The postmasters in the South were punished if they sent the abolitionist papers while the postmasters in the North were punished for the opposite offense, if they kept the mail from circulation. This Webster held at least to be inconsistent for it punished one citizen for not doing what it forbade another to do.[77] He closes his argument by showing that this destroyed constitutional rights and the frredom of the press. The reasons were very much those given by Senator Davis on this point.

The arguments made by Clay and Webster were telling and those in favor of the bill found themselves in a difficult position. In order to remedy the defects which had been shown so clearly to exist, Grundy moved on June 8 to strike out all after the enacting clause and substitute the following:

"Be it enacted: That it shall not be lawful for any deputy postmaster in any state, territory, or district of the United States knowingly to deliver to any person whatsoever any pamphlet, newspaper, handbill, or printed paper, or pictorial representation touching the subject of slavery, whereby the laws of the said state, territory or district their circulatio

77 Congressional Globe Appendix 1835-1836, p.453.

is prohibited and any deputy postmaster who shall be guilty thereof shall be forwith removed from office.

"2nd, Be it further enacted: That nothing in the act of Congress to establish and regulate the post Office Department; shall be construed to protect any deputy postmaster, mail carrier or other officer or agent of said Department, who shall knowingly circulate in any state, territory, or district as aforesaid any pamphlet, newspaper, handbill or other printed paper or pictorial representation forbidden by the laws of such states, Territory, or districts.

"3d, An be it further enacted by the authority aforesaid: That the deputy postmasters of the offices where the pamphlets newspapers, or other printed papers, or pictorial representation aforesaid, may arrive for delivery shall under the instruction of the Postmaster General, from time to time, give notice of the same so that they may be withdrawn by the person who deposited them originally to be mailed and if the same shall not be withdrawn in one month thereafter, shall be burnt or otherwise destroyed."[78]

This substitute was very much like the original bill and contain some of its objectionable features but it was less complicated. It made it possible for the deputy postmasters to acquaint himself with the law of his own state and thus

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78 Congressional Globe Appendix 1835-1836, p.453.

comply with the law or the proposed law of Congress. This would do a great deal to simplify the law. It would comply with the existing national law which said that the papers must be sent. It was an attempt on the part of Mr.Grundy to legalize what had been the practice of every Southern state, since the beginning of the controversy, to refuse to distribute the objectionable papers. It destroyed one of the most telling arguments against the bill which had been made by Webster in the course of debate. The substitute bill changed the responsibility from sending to the receiving office. The Northern postmaster under the proposed law could no longer refuse to send the objectionable literature as Gouverneur had done in New York. But their duty was clear they must send the literature through the mail. This substitute was consistent with the postal laws then in force.

The substitute cleared another point which Webster had made that Congress punish one postmaster for doing a thing which it compelled the other not to do. Now they would all be on the same footing, all must forward the mail.

It can be seen that this controversy in the Senate is one over the authority of the state by its police power to control the action of the Federal Government. It is not surprising that the question was one of difference for it is not clear in our own day just how far the state may interfere with the mails.[79]

79 Lindsay, R., The Postal Power of Congress, John Hopkins Study, p.34.

Calhoun realized that the bill could not pass and decided to force Van Buren to show his attitude on the question before the Senate.[80] Benton for whom some allowance must be made because of his opposition to Calhoun, tells us that Calhoun arranged three ties so as to force Van Buren to vote upon the bill. There was a majority against the bill but by skillful management a tie was brought about.[81] It would be of interest to know just how it was arranged.

The bill came up for engrossement and a tie developed. The vice-president was not in his chair when the vote was taken. Calhoun called to the seargent-at-arms to find the vice-president. The vice-president was not hard to find he had been walking behind the columns back of his desk. He walked up to his desk and cast his vote for the bill and definitely showed how he stood. He explained that he considered it a political vote and accepted the responsibility as such.

It is evident that Calhoun understood the political conditions in the North in his attempt to force Van Buren to show his colors. This is brought out by Seward in a letter to Weed. He says, "I trust in God that the Van Buren men in the North will not attempt to enact a 'potent legal restraint' (aginst anti-slavery publications); but if they do, their name will from that moment be 'Ichabod'". Those laws bring a question of awful import home to every man's understanding

80 Shepard, E.M., Martin Van Buren, p.277.
81 Benton, T.H., Thirty Years View, Vol.I, p.588.

and heart, and no party in the North can sustain itself after enacting such measures. It is dangerous so far to encourage the abominable demands of the South."[82] This gives an idea of the attitude of the people of the North, from one who was far from abolitionist on this question. On this same day June 8 this bill after more than six months before the Senate and much debating for and against it, it was placed on its final passage.[83] The vote stood 25 against and 19 for. The vote followed largely sectional lines the free state senators voting against the bill while the slave state senators voted for it. There were some variations to this rule. Buchanan of Pennsylvania, Robinson of Illinois, Tallmage and Silas Wright Jr. of New York, voted for the measure - while Benton of Missouri voted against it. Here again the political motive comes in. We would have expected Benton to vote for the measure for the interest of Missouri was identified with the South. Benton was also a devoted follower of Jackson and we should have expected him to have voted for a bill to regulate the circulation of incendiary literature because his chief recommended it. But Calhoun had opposed the bill as the President recommended and Benton voted against it. He explained the reason for his vote against the bill for the benefit of the people of Missouri, his home state. He said

82 Seward, F.W., Autobiography of W.H.Seward, Vol.I, p.293.
83 Congressional Globe 1835-1836, 1st Session, p.539.

he had grown tired of the cry of disunion and he would not give a vote to prevent it.[84] This was a way of explaining why he had voted against the interest of his section.

This vote closed the contest in the Senate over the freedom of speech and the press. The Senate had developed no policy even after an attempt of more than six months. The postmasters went on as before. The Northern postmasters refused to send the literature when they felt so inclined.

While all this discussion was going on in the Senate the House was dealing with the question in quite another way. In only a few cases did this question come to the floor of the House and then it was not considered. The House held to its regular committee, as we ahve seen and refused to consider in any other way and thus the difference in the amount of attention given in the two houses.

On May 19 the committee of Post Office and Post Roads of the House reported a bill for the organization of the Post Office containing forty six sections much along the line suggested by the Postmaster General in his report to the President.[85] The thirty second section dealt with the question over which the Senate had been excited, namely, the power of Congress over the mails.[86] The section follows: "That if any postmaster shall unlawfully detain in his office any

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84 Benton, T.H., Thirty Years View, p.587.
85 Congressional Globe, 1st Session, 1835-1836, p.475.
86 Report referred to above.

letter, package, pamphlet, or newspaper with intent to prevent the arrival and delivery of the same to the person or persons to whom such letter, package, pamphlet or newspaper may be addressed or directed in the usual course of the transportation of the mail along the route or if any postmaster shall with intent as aforesaid give a preference to any letter, package, pamphlet, or newspaper over another, which may pass through his office by forwarding the one and retaining the other he shall on conviction thereof be fined in a sum not exceeding five hundred dollars and imprisoned for a term not exceeding six months and shall moreover be forever incapable of holding the office of postmaster in the United States."

This bill passed the House on June 2 and was sent to the Senate where it opened up a new controversy over the power Congress had over the mail. The Senate agreed to the bill with some changes and it passed that House on June 21. It Was then sent to conference to bring the two Houses in agreement. The conference report was made July 2 to which both houses agreed.

This bill had settled the question of the postmaster's duty to his country. He must send the mail even though in his mind it was objectionable. This bill had maintained the freedom of speech and the press. It closed one of the great

87 Statute at Large, No.5, 1836-45, p.87.

contests of the period and gave the government a policy in the handling of the mail where it had not had any before. The Postmaster General could no longer give an indefinite order and leave the postmasters to do as they pleased. He must direct them to forward the mails. They could not even give preference to one paper or pamphlet over another, they must all be sent.

This bill passed in the closing days of Congress allowed the President to sign the bill at his own pleasure. He waited seven months to sign this bill which was so contrary to his message and his idea of the power given to Congress by the Constitution. He finally signed it because it conferred a great benefit on the Post Office and thus this controversy had come to a close after nearly two years.

It is needless to say that the law was not obeyed fully. Where the distribution of the abolitionist mail was contrary to the supposed interest of the community the mail most likely was not delivered any more than before the law was enacted. But legally the controversy was closed and the fundamental right of freedom of press and speech maintained.

86 Von Holst, E.H., Constitutional History of the United States, Vol.II, p.139.

V Summary and Conclusion.

During the year 1835 and 1836 there was a temporary failure of law and order. It was a time of extreme excitement over almost every conceivable thing, from abolitionist activities to words spoken by Congressmen in the course of debate. In the midst of this lawlessness the abolitionists announced a new method of educating the public and developing public sentiment. This could not help exciting the people of the South as an interference with a domestic institution which was exclusively under their control. The objection to the abolitionists and their methods was not confined wholly to the South. They had very little standing in the North and the question was not a sectional one.

The power of Congress over the mail was one of great concern. When the abolitionist papers began to flood the Southern mails the postmasters did not know how to cope with the situation. Some wrote to the Postmaster General for instruction while others took the law in their own hands and refused to deliver the objectionable literature. Those who wrote were no better advised than those who did not write so that in any case the postmasters were left to their own discretion.

The Southern states made an attempt to cope with this situation by passing laws to punish those found with abolition ist literature in their borders. They demanded legislation from the Northern states to punish these men who so wilfully

violated their rights. The North was opposed to the abolitionist but did not pass the law as asked by the South. They were willing to endure these men that the freedom of speech and the press might be maintained.

The President in his annual message introduced this subject to Congress asking that something might be done to cope with this evil. Congress handled this question in quiet a different way from that required by the President. It demanded that the literature be sent to its destination and thus closed the controversy.

This affair is of great importance for it is a contest over the freedom of speech and the press. This is a fundamental right which the American people held dear at this period and which they did not wish to surrender.

The contest over the mails is magnified out of all proportion to its importance. While it is important as an attack on a fundamental right there are other rights which were denied of which we hear very little. It was a crime to be found with abolitionist literature on one's person in some states which was denying one the right to have property belonging to him yet it gets no such prominence as the mail question.

The policy of the Post Office was developed out of this controversy. When the controversy began it was possible for

the postmasters to decide for themselves as to their policy but when it closed a definite policy had developed which has come down to the present day. The postmaster must send whatever is put in the Post Office unless it is denied by the law or is not mailable.

Lastly it helped develop a party in the North which was dedicated to the preservation of all the right guaranteed under the Constitution. This affair did much to build up a sentiment for union. Without that idea of union the Civil War might have been a different story. It would be wrong to say that without this affair there would not have been a sentiment for union but it did a great deal to save the union and maintain fundamental rights in that it built up a party dedicated to the maintenance of the Constitution.

Appendix I

Autobiography of Amos Kendall
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Responsibilities of Postmasters

To the Morning Chronicle

My attention has been attracted to some comments on my official action when Postmaster General, touching the circulation of printed matter through the mails, in one of your editorials this morning, and in a report of the present Postmaster General. The principles involved in the action do not appear to be distinctly understood.

You say, "Under the strong appeals of the slaveholders and their Northern Democratic friends, and in utter defiance of the abolitionists of that day, the most drastic measures of prevention were enforced for a long period of time.

Now if it be intended to mean that I as Postmaster General enforced any "measure of prevention" it is an entire misapprehension. I did indeed express the opinion that the United States had no rightful power to circulate through their mails and postmasters incendiary documents (prohibited by the laws of the states), and I declined taking any measures to punish postmasters for refusing to be made instrumental in violating those laws. Of course, the abolitionist had as little regard for state laws then as they have for the Constitution of the United States now, and abused me most soundly, but I survived

it.

Prima facie, it is the legal duty of every postmaster to forward all newspapers placed in his office to be mailed and if he refuses to do so, he is liable in damages to the party aggrieved. The Postmaster General cannot excuse him from the performance of that duty, nor shield him from damages if he refuses. The law prohibits postmasters and others from opening letters not addressed to them under a heavy penalty. On one occasion the Washington postmaster came to me with a police officer, bringing a letter they asked authority to open, believing it woul lead to the detection of a criminal. My reply was that I had no lawful power to open the letter myself or authorize them to open it; but if he did so, he would expose himself to the penalty of the law from which I had no power to screen him. He opened the letter, and it fully verified his suspicions. Of course nobody complained of him.

So in reference to the circulation of incendiary papers and documents prohibited by the laws of the states. I had no rightful power to authorize the violation of these laws, or screen postmasters from punishment for so doing. I therefore practically left them in that, as in the first instance, to their legal responsibilities, with only this difference, that when called on I expressed the opinion that they were right. An the abolitionist thought so too; for they never

ventured to sue the postmaster at New York for refusing to mail their documents to the South.

There is certainly a wide difference between my action and that of the present Postmaster General, and it is a little singular that he first quotes me as a precedent, and afterwards repudiates the precedent altogether.

While I left the postmasters to forward the obnoxious papers or not under their responsibility to the law, he preremptorily forbids their mailing them, without regard to the law. My opinions even justified them only in refusing to mail incendiary papers into states where their circulation was prohibited by law. The orders of the present Postmaster General prohibits the mailing of certain obnoxious papers into any states, law or no law.

I do not write to censure the Postmaster General, who however, must look for full justification to an extreme political necessity not within the horizon of my limited vision. That there are papers claiming to be Democratic which ought to be suppressed, I have no doubt. Being now and forever a Democrat of the Jackson school, I have no affinity with those who, under that honored name, cry for peace by the sacrifice of the Union and quite as little with those who seek to save the Union by the destruction of the Constitution. When the Democratic party becomes a secession party, and the Republican

party becomes an abolition party, I shall seek for new political affinities, or remain a party by myself.

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