

POSTMASTER GENERAL'S AUTHORITY OVER MAILABLE
MATTER.

JANUARY 20, 1863.—Ordered to be printed.

Mr. BINGHAM, from the Committee on the Judiciary, submitted the following

RESOLUTION:

Resolved, That the Judiciary Committee are authorized to print the resolution of inquiry heretofore submitted to said committee by this House, touching the authority of the Postmaster General over mailable matter, and also to print a report prepared thereon by Hon. William Kellogg.

Mr. KELLOGG, from the Committee on the Judiciary, submitted the following report:

The Committee on the Judiciary ask leave to report, that at an early day of the session the House adopted the following resolution:

“Resolved, That the Committee on the Judiciary be instructed to inquire and report to the House, at an early day, by what authority of Constitution and law, if any, the Postmaster General undertakes to decide what newspapers may, and what shall not, be transmitted through the mails of the United States.”

Your committee, not being in possession of any facts on which to base their action, deemed it advisable to address a note to the Postmaster General, requesting him to communicate to the committee what action had been taken by him, if any, in prohibiting the transmission of newspapers through the mails of the United States. In reply to which your committee received the following communication, which, from its full and able consideration of the subject of the above quoted resolution, it is thought eminently proper to embody in this report.

POST OFFICE DEPARTMENT,
January 5, 1863.

SIR: I have the honor to acknowledge the receipt of the communication signed by you in behalf of the Judiciary Committee, embracing a copy of the resolution of the House of Representatives, in the following words:

"Resolved, That the Committee on the Judiciary be instructed to inquire and report to the House at an early day by what authority of Constitution and law, if any, the Postmaster General undertakes to decide what newspapers may and what shall not be transmitted through the mails of the United States."

On the first day of the last session of Congress, being the earliest opportunity after the action to which the resolution relates, I submitted to Congress a statement of my action, and of the general reasons and authority for the same, in the following language:

"Various newspapers, having more or less influence within the sphere of their circulation, were represented to be, and were, in fact, devoting their columns to the furtherance of the schemes of our national enemies. These efforts were persistently directed to the advancement of hostile interests, to thwart the efforts made to preserve the integrity of the Union, and to accomplish the results of open treason without incurring its judicial penalties. To await the results of slow judicial prosecution was to allow crime to be consummated, with the expectation of subsequent punishment, instead of preventing its accomplishment by prompt and direct interference.

"The freedom of the press is secured by a high constitutional sanction. But it is freedom and not license that is guaranteed. It is to be used only for lawful purposes. It cannot aim blows at the existence of the government, the Constitution, and the Union, and at the same time claim its protection. As well could the assassin strike his blow at human life, at the same time claiming that his victim should not commit a breach of the peace by a counter blow. While, therefore, this department neither enjoyed nor claimed the power to suppress such treasonable publications, but left them free to publish what they pleased, it could not be called upon to give them circulation. It could not and would not interfere with the freedom secured by law, but it could and did obstruct the dissemination of that license which was without the pale of the Constitution and law. The mails established by the United States government could not, upon any known principle of law or public right, be used for its destruction. As well could the common carrier be legally required to transport a machine designed for the destruction of the vehicle conveying it, or an innkeeper be compelled to entertain a traveller whom he knew to be intending to commit a robbery in his house.

"I find these views supported by the high authority of the late Justice Story, of the Supreme Court of the United States. He says, in commenting on that clause of the Constitution securing the freedom of the press:

"That this amendment was intended to secure to every citizen an absolute right to speak, or write, or print whatsoever he might please, without any responsibility, public or private, therefor, is a supposition too wild to be indulged in by any rational man. This would be to allow to every citizen the right to destroy at his pleasure the reputation, the peace, the property, and even the personal safety of every other citizen. A man might, out of mere malice or revenge, accuse another of the most infamous crimes; might excite against him the indignation of all his fellow-citizens by the most atrocious calumnies; might disturb, nay, overturn all his domestic peace and embitter his parental affections; might inflict the most distressing punishment upon the weak, the timid, and the innocent; might prejudice all a man's civil, and political, and private rights; and might stir up sedition, rebellion, and treason, even against the gov-

ernment itself, in the wantonness of his passions, or the corruption of his heart. Civil society could not go on under such circumstances. Men would then be obliged to resort to private vengeance to make up the deficiency of the law; and assassinations and savage cruelties would be perpetrated with all the frequency belonging to barbarous and cruel communities. It is plain, then, that the language of this amendment imports no more than that every man has a right to speak, write, and print his opinions upon any subject whatever, without any prior restraint, so always that he does not injure any other person in his rights, person, property, or reputation; *and so always that he does not thereby disturb the public peace, or attempt to subvert the government.*'

"Of the cases presented for my action, upon the principles above named, I have by order excluded from the mails twelve of these treasonable publications, of which several had been previously presented by the grand jury as incendiary and hostile to constitutional authority."

I am not aware that at any time, nor from any quarter, during that long session, any inquiry or complaint was made, or objection taken touching that action, or the considerations then presented in support of it. From this it was fairly inferred that Congress then unanimously recognized the action as not only in harmony with, but in direct aid of, the Constitution of the United States, then shaken by the assaults of its avowed enemies.

The immediate occasion of the orders excluding certain newspapers from the mails was a communication to this department of the action of a grand jury of the United States circuit court for the southern district of New York. Their presentment was in the following words:

To the Circuit Court of the United States for the Southern District of New York.

The grand inquest of the United States of America for the southern district of New York beg leave to present the following facts to the court, and ask its advice thereon: There are certain newspapers within this district which are in the frequent practice of encouraging the rebels now in arms against the federal government by expressing sympathy and agreement with them, the duty of acceding to their demands, and dissatisfaction with the employment of force to overcome them. These papers are the New York daily and weekly Journal of Commerce, the daily and weekly News, the daily and weekly Day Book, the Freeman's Journal, all published in the city of New York, and the daily and weekly Eagle, published in the city of Brooklyn.

The first named of these has just published a list of newspapers in the free States opposed to what it calls the "*present unholy war*"—a war in defence of our country and its institutions, and our most sacred rights, and carried on solely for the restoration of the authority of the government.

The grand jury are aware that free governments allow liberty of speech and of the press to their utmost limit, but there is nevertheless a limit. If a person in a fortress or an army were to preach to the soldiers submission to the enemy he would be treated as an offender. Would he be more culpable than the citizen who, in the midst of the most formidable conspiracy and rebellion, tells the conspirators and rebels that they are right, encourages them to persevere in resistance, and condemns the efforts of loyal citizens to overcome and punish them, as an "*unholy war.*"

If the utterance of such language in the streets or through the press is not a crime, then there is a great defect in our laws, or they are not made for such an emergency.

The conduct of these disloyal papers is, of course, condemned and abhorred

by all loyal men; but the grand jury will be glad to learn from the court that it is also subject to indictment and condign punishment.

All which is respectfully presented.

CHARLES GOULD, *Foreman*.
(Signed by all the grand jurors.)

NEW YORK, *August 16, 1861.*

This authoritative exhibition of the character of these papers, as disseminators of treason and instigators of the highest crime known to our laws, could not be disregarded, accompanied, as it was, by representations of their dangerous effect upon the military operations of the country. Entertaining the highest possible regard for the liberty of the press, distinguished from its uncontrolled and criminal license, I would not, except in time of war, have adopted the arguments of my predecessors in office, in justification of the non-delivery of printed matter sent through the mails. The question has been repeatedly presented to my predecessors in time of peace in relation to printed matter styled "incendiary," or "abolition in its character," and in respect to the States now in insurrection. While justifying postmasters in their refusal to receive or forward mail matter described by the general terms of the postal laws as "mailable matter," an eminent Postmaster General of the administration of General Jackson, under date of August 22, 1835, addressed a letter to the postmaster at New York, giving his views upon the question under discussion. The New York postmaster had assumed to decide that certain newspapers, placed in that post office for conveyance in the mails, were incendiary in their character, and calculated to promote insurrection. He refused to forward them. The Postmaster General, declining himself to decide upon the character of the publications in question, and refusing to make the orders thereon, justified his deputy postmaster in the decision made by him, and supported him by the following arguments, extracted from his letter of that date, to which the attention of Congress was subsequently called. That Congress, however, by its inaction, seemed to concur in the right and the policy of excluding such alleged treasonable and insurrectionary publications from the mails.

POST OFFICE DEPARTMENT, *August 22, 1835.*

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"Postmasters may lawfully know, in all cases, the contents of newspapers, because the law expressly provides that they shall be so put up that they may be readily examined; and if they know those contents to be calculated and designed to produce, and, if delivered, will certainly produce, the commission of the most aggravated crimes upon the property and persons of their fellow-citizens, it cannot be doubted that it is their duty to detain them, if not even to hand them over to the civil authorities. * * * * *

"If it be justifiable to detain papers passing through the mail, for the purpose of preventing or punishing isolated crimes against individuals, how much more important is it that this responsibility should be assumed to prevent insurrections and save communities? If, in time of war, a postmaster should detect a letter of an enemy or spy passing through the mail, which, if it reached its destination, would expose his country to invasion and her armies to destruction, ought he not to arrest it? Yet, where is the legal power to do so?

"As a measure of great public necessity, therefore, you and the other postmasters who have assumed the responsibility of stopping these inflammatory papers will, I have no doubt, stand justified in that step before your country and all mankind.

* * * * *

“Are the officers of the United States compelled by the Constitution and laws to become the instruments and accomplices of those who design to baffle and make nugatory the constitutional laws of the States; to fill them with sedition, murder, and insurrection; to overthrow those institutions which are recognized and guaranteed by the Constitution itself?

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“In these considerations there is reason to doubt whether the abolitionists have a right to make use of the mails of the United States to convey their publications into States where their circulation is forbidden by law, and it is by no means certain that mail-carriers and postmasters are secure from the penalties of that law, if they knowingly carry, distribute, or hand them out.

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“As well may the counterfeiter and robber demand the use of the mails for consummating their crimes, and complain of a violation of their rights when it is denied.

“Upon these grounds a postmaster may well hesitate to be the agent of the abolitionists in sending their incendiary publications into States where their circulation is prohibited by law; and much more may postmasters residing in those States refuse to distribute them.

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“I do not desire to be understood as affirming that the suggestions here thrown out ought, without the action of higher authority, to be considered as the settled construction of the law, or regarded by postmasters as the rule of their future action. It is only intended to say that in a sudden emergency, involving principles so grave and consequences so serious, the safest course for postmasters and the best for the country is that which you have adopted.

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“You prevent your government from being the unwilling agent and abettor of crimes against the States which strike at their very existence, and give time for the proper authorities to discuss the principles involved and digest a safe rule for the future guidance of the department.

“While persisting in a course which philanthropy recommends and patriotism approves, I doubt not that you and the other postmasters who have assumed the responsibility of stopping these inflammatory papers in their passage to the south will perceive the necessity of performing your duty in transmitting and delivering ordinary newspapers, magazines, and pamphlets, with perfect punctuality. Occasion must not be given to charge the postmasters with carrying their precautions beyond the necessities of the case, or capriciously applying them to other cases in which there is no necessity; and it would be the duty, as well as the inclination, of the department to punish such assumption with unwonted severity. This suggestion I do not make because I have any apprehension that it is needed for your restraint, but because I wish this paper to bear upon its face a complete explanation of the views which I take of my own duty in the existing emergency.”

The question was afterwards repeatedly presented to this department. In February, 1857, it was brought before Postmaster General Campbell, in connexion with the exclusion of the “Cincinnati Gazette” from postal privileges in Mississippi. A certain postmaster at Yazoo had denied it the privileges of his post office. Mr. Campbell referred the question to the Attorney General of President Pierce’s administration. Under date of March 2, 1857, the Attorney General, as the law officer of the government, replied officially to the Postmaster General, justifying such action on the part of postmasters, and asserting, among others, the following arguments and conclusions:

"ATTORNEY GENERAL'S OFFICE, *March 2, 1857.*

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"With these premises we have the main question very much simplified. It is this: Has a citizen of one of the United States plenary indisputable right to employ the functions and the officers of the Union as the means of enabling him to produce insurrection in another of the United States? Can the officers of the Union lawfully lend its functions to the citizens of one of the States for the purpose of promoting insurrection in another State?

"Taking the last of these questions first, it is obvious to say that, inasmuch as it is the constitutional obligation of the United States to protect each of the States against 'domestic violence,' and to make provision to 'suppress insurrections,' it cannot be the right of the United States, or of any of its officers, and, of course, it cannot be their duty, to promote, or be the instrument of promoting, insurrection in any part of the United States.

"As to the first question, likewise, it seems obvious to say, that, as insurrection in any one of the States in violation of law, not only so far as regards that State itself, but also as regards the United States, therefore, no citizen of the Union can lawfully incite insurrection in any one of the States. * * * It would be preposterous to suppose that any citizen of the United States has lawful right to do that which he is bound by law to prevent when attempted by any and all others; and monstrous to pretend that a citizen of one of the States has a moral right to promote or commit insurrection or domestic violence, that is, robbery, burglary, arson, rape, and murder, by wholesale, in another of the States.

"These considerations, it seems to me, are decisive of the question of the true construction of the act of Congress. Of that it is impossible for me to doubt. Its enactment is, that 'if any postmaster shall unlawfully detain,' he shall be subject to fine, imprisonment, and disqualification. Then, if the thing be of lawful delivery, it cannot be lawfully detained; while, on the other hand, it cannot be unlawful to detain that which it is unlawful to deliver. Such is the plain language and the manifest import of the act of Congress.

"I do not mean to be understood that the word 'unlawfully' of the act determines the case; on the contrary, my conclusion would be the same, though that word had not been here inserted. By employing it, indeed, the act expressly admits that there may be lawful cause of detention. But such lawful cause would not the less exist, although its existence were not thus expressly recognized. And, of all conceivable causes of detention, there can be none more operative than treasonableness of character, for in every society the public safety is the supremest of laws.

"Nay, if, instead of expressly admitting lawful causes of detention, the act had undertaken to exclude them—if, for instance, it had in terms required the postmasters to circulate papers, which, in tendency and purpose, are of character to incite insurrection in any of the States—still my conclusion would be the same. I should say of such a provision of law it is a nullity, it is unconstitutional; not so by reason of conflict with any State law, but because inconsistent with the Constitution of the United States.

"The Constitution forbids insurrection; it imposes on Congress and the President the duty of suppressing insurrection; this obligation descends through Congress and the President to all the subordinate functionaries of the Union, civil and military; and any provision of an act of Congress requiring a federal functionary to be the agent or minister of insurrection in either of the States would violate palpably the positive letter, and defeat one of the primary objects, of the Constitution.

"These, my conclusions, apply only to newspapers, pamphlets, or other printed matter, the character of which is of public notoriety, or is necessarily

brought to the knowledge of the postmaster by publicity of transmission through the mails unsealed, and as to the nature of which he cannot plead ignorance.

* * * * * "It is intimated in one of the documents before me that to permit a deputy postmaster to detain a newspaper because of its imputed unlawfulness would be to erect him into a censor of the press. These are but words of rhetorical exaggeration. Public journals are a necessary part of our social life, just as much as the steamboat, the railway train, or the telegraph. There is not the least reason to apprehend that we shall suffer ourselves to be deprived of them by the interposition of unlawful impediments to their circulation.

* * * * * "We shall appreciate the true legal relation of the whole question if we consider a supposition which has more than once heretofore been actual fact, and may be such again. Suppose that some European government—whether in the prosecution of war or induced by hostility of purpose not yet become war, but tending towards it, or in the spirit of misdirected propagandism of its own particular social or political opinions—should undertake to produce revolution or insurrection in the United States. Would it, in that case, be the duty—would it be the right of the government or officers of the Union to aid the foreign government in its inimical machinations? To this general inquiry, of course, there can be but one possible answer. It would be the manifest duty of every officer of the United States—nay, of every officer of each State—nay, of every citizen of the United States, to resist, and to do everything in his power to defeat all such machinations; for every citizen of the United States is under engagement, express or implied, to uphold and maintain the Constitution.

"In the general contingency supposed it is quite immaterial whether foreign attempts to produce revolution consist of exhortations to insurrection by word of mouth—that is, the introduction of emissaries of sedition into the country—or of exhortations to insurrection in the form of handbills, newspapers, or pamphlets. In whatever manner attempted, the thing itself would be an act of wrongful or hostile attack on our sovereignty and on our national and private peace; defensible as an act of war on the part of an enemy government, but otherwise against natural law, against public law, against municipal law; and therefore, on all these accounts, requiring to be manfully withstood and counteracted by every sound-hearted and true-minded citizen of the United States, and more especially by all officers, civil and military, of the federal government, from the President down to the humblest village postmaster in the land.

"The general supposition includes printed, equally with oral, exhortations to insurrection. Take now, by itself, the case of printed matter of that description. Is it the legal duty of the Post Office Department knowingly to circulate such matter? Is it the legal duty of deputy postmasters? Or reducing the general supposition down to its narrowest expression in the limited exigencies of the present case, is a deputy postmaster required knowingly to circulate such matter under penalty of indictment, removal from office, and disqualification? Is the inconvenience which the foreign government or its emissary may suffer, in not being able to effect the free circulation of such treasonable matter—or the inconvenience which the disaffected person to whom it was addressed suffers, in his not being able to receive and to circulate further such treasonable matter—are these inconveniences to outweigh the inconvenience to the whole country, as well as to individuals, of insurrection, and of civil or servile war? Is that the true construction of the act of Congress? I think no legal expositor could hesitate to say, no.

"Now in what does the general case supposed, with its all but self-evident conclusions, differ from the specific case under consideration? Simply, that any European government possesses the sovereign right, as an act of war, to attack us with attempts to excite insurrection as well as with cannon—subject to be

repelled by the sovereign power of the Union—but no citizen of the United States possesses legal right to promote rebellious acts in any part of the country, whether as against the authority of the United States or of the particular State in which he is, or of any other of the States.

* * * * * “In fine, the proposition may be made universal to the effect that no person in the United States, whether he be citizen, subject, or alien, has the legal right to promote rebellion.

* * * * * “In the foregoing series of suppositions we have reasoned out a conclusion from the premises of the attempt of a foreign government, by the use of our mails and post offices, to promote insurrection in the United States.

* * * * * “And shall not the citizens of one of the States of the Union be held entitled to the same security from attempts to promote insurrection among them, on the part of their fellow-citizens of other States?

* * * * * “On the whole, then, it seems clear to me that a deputy postmaster, or other officer of the United States, is not required by law to become knowingly the enforced agent or instrument of enemies of the public peace, to disseminate, in their behalf, within the limits of any one of the States of the Union printed matter, the design and tendency of which are to promote insurrection in such State.”

Again, in 1859, Mr. Holt, then at the head of this department, in a letter dated the 5th of December of that year, addressed to a postmaster in Virginia, adhered to the precedents, and said:

“One of the most solemn constitutional obligations imposed on the federal government is that of protecting the States against ‘insurrection’ and ‘domestic violence;’ of course none of its instrumentalities can be lawfully employed in inciting, even in the remotest degree, to the very crime which involves in its train all others, and with the suppression of which it is especially charged.”

These citations show that a course of precedents has existed in this department for twenty-five years—known to Congress, not annulled or restrained by act of Congress—in accordance with which newspapers and other printed matter, decided by postal officers to be insurrectionary, or treasonable, or in any degree inciting to treason or insurrection, have been excluded from the mails and post offices of the United States solely by authority of the executive administration. This, under the rules settled by the Supreme Court of the United States, as applicable to executive construction of laws with whose execution the departments are specially charged, would establish my action as within the legal construction of the postal acts authorizing the transportation of printed matter in the United States mails. It would settle the right of this department and its various officers to resist all efforts to make them *particeps criminis* of treason and rebellion, by compelling them to circulate and distribute with their own hands the moral weapons which are to bring civil war to their firesides, with its horrible train of barbarities in the destruction of life and property.

Upon the like considerations I have, at different times, excluded from the mails obscene and scandalous printed matter on exhibition of its criminal immorality. If an unsealed printed publication were offered to the mails, instigating murder, arson, destruction of railroads, or other crimes, and advocating an organization for such purposes, I should, upon the same principles, without hesitation, exclude it from the mails as unlawful matter, in the absence of a contravening act of Congress.

I do not wish to be understood, however, as indorsing, but rather as distinctly dissenting from, some of the arguments and conclusions, and from the extent to which preceding administrations have gone, as indicated by some of the foregoing citations. The precedents and arguments go far beyond any action which I have taken, or would be willing to take, under the like circumstances.

1st. I reject that portion of the precedents which allows twenty-eight thousand

postmasters of the country to judge, each for himself, what newspapers are lawful and what unlawful; what may go in the mails and what shall be excluded. I have refused to allow postmasters to sit in final judgment upon all the interests involved, subject as they are to conflicting local prejudices. The Postmaster General, who is more directly responsible to Congress, and more accessible to their inquiries, should alone exercise such authority, in whatever degree it exists, and should not devolve it on subordinates. Whatever control can be lawfully exercised over the mails by a postmaster may always be exercised or ordered by the chief, under whose direction the law expressly subordinates the postmaster. This is a self-evident proposition. It has, however, been sustained by the official opinion of the Attorney General of the United States, dated March 2, 1857.

2d. I dissent from the extent to which the doctrine has been carried by late administrations, that in time of peace, and in the absence of all hostile or criminal organizations, operating against Constitution or law, either a Postmaster General, or any postmaster, can at will exclude from the mails newspapers and other printed matter which contain discussions obnoxious to some special interest, but not aimed against government, law, or the public safety. It is too dangerous a discretion to be exercised or desired by any executive officer attached to the constitutional freedom of the press. Such has been, in some cases, the action of this department in late years, and I take this occasion to break the too great uniformity of its decisions in this respect. Even in time of war, the power so long conceded should be used with great care and delicacy. I say in time of war, because the executive department has powers then which do not attach to it in time of peace. The Constitution provides that no person shall "be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation." Yet, in time of war, the life, liberty, and property of persons in the United States, being also insurrectionary enemies of the United States, are necessarily taken without any process except that of powder and the bayonet. And no man denies the right as an incident of war. Yet, in peace, it could not be done. These acts are as thoroughly constitutional in war as they are unconstitutional in peace. In harmony with this principle, I would give far greater latitude to alleged wrongful and obnoxious printed matter in a period of peace than would be justifiable in a time of war.

This reply to the inquiry transmitted to me by the committee embraces the following conclusions:

First. That the exercise of the authority inquired of rests upon the Constitution of the United States, and the definition of mailable matter given in the postal law, as construed by past administrations of this department, enforced by the official opinion of a late Attorney General of the United States, and known to and recognized by former Congresses of the United States.

Second. That a power and a duty to prevent hostile printed matter from reaching the enemy, and to prevent such matter from instigating others to co-operation with the enemy, by the aid of the United States mails, exist in time of war, and in the presence of treasonable and armed enemies of the United States, which do not exist in time of peace, and in the absence of criminal organizations.

Third. That the present Postmaster General has restricted the exercise of the power during this war far within the scope claimed and allowed by former administrations in periods of national peace.

I have the honor to be, very respectfully, your obedient servant,

M. BLAIR,

Postmaster General.

Hon. WILLIAM KELLOGG,

Of the Judiciary Committee, House of Representatives.

It appears from the foregoing orders of the Post Office Department, sustained by the opinions of the law officer of the government in 1857, that for the last twenty-five years the continued practice of the department has been, by its chief officer or its subordinates, to decide, in a summary way, what were and what were not proper communications to be transmitted through the mails. While your committee assume that the power rests in Congress to ordain and establish rules and regulations to limit and control the discretion of the Post Office Department in its action in the premises, yet, until Congress shall have acted in the matter, your committee are of the opinion that the Postmaster General, under the law establishing the postal system of the United States, has the right, and should exercise it, to prevent the transmission through the mails of papers or other communications which manifestly tend to the disruption of the government, or the destruction of the life or property of its people. This discretion should in all cases be exercised with great caution, the department being at all times responsible to the government for a due and proper exercise of so delicate and yet important duty.

Your committee believe that to deny the Post Office Department that power would, in the absence of any direct action of Congress, (and your committee are not aware that Congress has ever prescribed any rules or regulations on that subject, declaring what is and what is not lawful mailable matter,) throw open the mails to the use of the most guilty and abandoned, and thus enable them, through the very machinery of the government, to carry on this work of treason and destruction of life. A proposition so abhorrent to a sense of common justice your committee do not deem it necessary to discuss.

The committee are fully aware of the difficulty attending the discrimination of what is and what is not of the character that should be excluded from the mails, but it is believed that this important and difficult duty can be safely intrusted to an officer worthy to preside over a department so important as that which has charge of the postal system of the country, and who is subject to removal by the President, and at all times subject to the supervision of Congress by the enactment of laws enlarging or restraining his powers. And the acquiescence of Congress in the exercise of this power for twenty-five years, by the omission to prohibit its exercise or to make any regulation in regard thereto, is a strong indication of the approval of that department of the government of the exercise of that power.

Your committee can well see how so difficult a trust could be abused, and public and private interests suffer, by an arbitrary and unjust discrimination in excluding matter from the mails; but they are equally aware that from necessity, in all departments of the government, when discretion is to be exercised, an unfaithful officer may do an injury to public and private interests. But, perhaps, in none of the several departments are these wrongs less likely to accrue than in the Post Office Department; and when it is remembered that at no time can more than a few months elapse before Congress would have an opportunity to correct any unjust or erroneous action of the Post-

master General in this regard, there can be but little, if any, danger of much wrong being done, while by a due and proper exercise of this power much of wrong and crime may be prevented, and the interests of the republic guarded.

Your committee will not attempt to indicate the cases proper for the action of the Postmaster General, or to suggest general rules for his action, believing it their duty to make a responsive report to the resolution adopted by the House.

But they cannot refrain from expressing their decided opinion that, certainly, not in the time of peace has the Postmaster General, by himself or subordinates, the authority to exclude from the mails publications canvassing the merits of the various institutions of the country, in which no disloyalty to the government, general or State, is recommended or advised.

In responding to the resolution of the House, above copied, it is important to know whether certain newspapers were excluded from the mails; and if so, their character, and under what circumstances.

By referring to the communication from the Postmaster General, embodied herein, it will be seen that certain newspapers therein specified were refused transmission through the mails, in the latter part of the summer of 1861, for the alleged reason that all and each of said papers, having considerable circulation as public journals at the time when the government was engaged in suppressing a most formidable rebellion by the powers of war, were in the constant and daily habit of declaring opposition to the war, and publicly teaching the duty of the federal government to accede to the demands of the rebels in arms, which was then well known to be (and is now a matter of history) the disruption of the government of the United States and the acknowledgment of the independence of the rebellious and seceding States, and by expressing sympathy with the rebels in arms, discouraging voluntary enlistments in the loyal States, and encouraging the people in the rebel States to persist and continue their efforts to destroy the government; thus, as it was alleged, aiding and advising treason. So constant and persistent were these papers believed to be in the dissemination of these opinions and doctrines, in a time when the very existence of the government was threatened, and its only power depended upon the voluntary enlistment of its citizens in its defence; at a time, too, when reverses had attended our army, and our brave countrymen were being sacrificed on many well-contested battle-fields, that the grand jury of the United States circuit court of the southern district of New York felt it their duty to inquire into their power to suppress what they esteemed such treasonable practices, and therefore made to the court the formal presentment set forth at large in the letter of the Postmaster General, which presentment was laid before the Post Office Department. Upon this action, and in the exercise of his discretionary power in the premises, the Postmaster General prohibited the transmission of the above-mentioned papers through the mails for a time, but what length of time your committee are not advised. Nor is it material, from the view the committee entertain of this subject. Nor are they advised

from any facts before the committee of other papers being refused transmission through the mails.

Your committee cannot entertain a doubt as to the authority of the head of the Post Office Department, or its duty, to prevent the passage through the mails of all treasonable matter or publications calculated and intended to prevent enlistments into the army in a time of war; to strengthen the enemy or to weaken the power of the government to suppress this wicked and powerful rebellion, in which are engaged so many of the people of the United States owing allegiance to the federal government. Every government, unless by its constitution restricted, has the most ample power of self-preservation, and it is by no means essential to that power that it should be enumerated among its expressly granted powers. It springs from the essential elements of government itself, and the exercise of a power or means of the destruction of the government is as effectually prohibited by the very nature and character of our institutions as if it had been expressly written in the Constitution. The Post Office Department, not less than any other department of government, in the due and proper discharge of its functions, is charged with guarding the interests of the government and preserving the integrity of the nation. Established for the immediate convenience and benefit of the people, and forming an important part of our government, it would be more than strange if its machinery could be converted lawfully into the means of their direct injury and the destruction of that government of which it forms so important a part.

It is doubtless the duty of every citizen to prevent the commission of crime, and especially of all officers of the government, either State or national, and to aid in the execution of the laws, in the arrest and punishment of offenders; and so high is this duty regarded, that, should a person know of a crime about being perpetrated, and did not use his best efforts to prevent it, he would meet the merited scorn and condemnation of his fellow-citizens; or should an officer fail to discharge his duty by the prevention of crime, and through his negligence or culpable want of diligence a robbery or murder should be committed, if not criminally punished, he would be esteemed unworthy the fellowship of all good men. Should, however, through the agency, however slight, of such citizen or officer, a crime be committed, doubtless they would be amenable to the criminal law. How, then, could the Postmaster General, who, having charge of the mail service of the country, knowingly permit a newspaper, letter, or other message to be carried in the mails, advising and conspiring the destruction of life or property, or knowingly permit the passage of obscene and unlawful publications, destructive of public morals? Certainly his duty would be to prevent, in either case, such message or publication entering the mails; otherwise the postal system, established and sustained for the benefit of the people, might be turned into the means of the destruction of life, property, and morals—a proposition totally at war with the spirit and letter of the postal law. Suppose the postmaster at New York should know of an effort to transmit through the mails a communication advising and conspiring

the destruction of the city of Chicago by fire—disclosing the means and manner of its accomplishment, and the vile purpose of its authors to effect their object; your committee believe that there is no sane man who would not at once declare it the duty of the postmaster not only to prevent, by all means within his power, its passage through the mails, but at once to take possession of such message or publication and place it in the hands of the proper officer, so as to secure the immediate arrest of such guilty parties, and that he who would fail in that regard would be criminally derelict in duty. If this be true when persons, property, and morals are concerned, how infinitely more important is it that this rule and doctrine should be enforced when the injury sought to be done is in giving encouragement to rebels in arms, weakening the confidence of our armies in the field in the justice of the cause in which they were most nobly and gallantly fighting, inducing dissensions among the people, thereby preventing ready help and succor to the then rapidly thinning ranks of our army, by voluntary and rapid enlistments, and by thus informing the leaders of the rebellion that efforts were being made in the loyal States to defeat the government in its efforts to compel the rebellious citizens of the rebel States to submit to the Constitution and laws; thus practically, and in the most dangerous and insidious manner, declaring treason in the northern States, and aiding the southern rebels to work the ultimate destruction of the government. It is difficult to conceive how the most devoted friend of the present rebellion could have devised a scheme better calculated to aid this nefarious war upon the Constitution and Union, now in progress, than by the establishment of newspapers in the northern States promulgating continually the doctrine of the want of power in the Constitution to enforce in any State obedience to its provisions, the injustice of a war to compel an observance of the allegiance of the citizen to the government, advising and urging the justice of the alleged cause of the rebellion, and indirectly, if not directly, endeavoring to prevent enlistments to recruit the army of the federal government.

Your committee cannot for a moment adopt the idea that newspapers of the character above referred to should be permitted, by the aid of the postal service, to be scattered broadcast through the land at any time, and especially at a period when the government is putting forth all its powers to increase its armies to strike down the power of the armed enemies of the nation. If this be permitted, the very machinery of the government would be turned into an engine of its own destruction; a condition of things never contemplated by the patriots who founded the Constitution and moulded and formed the institutions of the country.

It will hardly be disputed that it is the duty of every citizen and every department of the government to suppress treason, and in proportion as it is his duty to obey the laws and sustain the Constitution, so it is his duty to prevent its destruction. And if publications are treasonable in their character, or directly tend to the disruption of the government, they cannot lawfully find transit through the mails.

Should at any time, and especially during a rebellion, any department of the government find that through any of its subordinates or agencies treasonable publications were transmitted to the enemy or distributed to the people, it would, unquestionably, be the duty of the head of such department, and all subordinates cognizant of such acts, to prevent, in all possible manner, the publication and transmission of all such treasonable matter; and certainly the Post Office Department owes no less duty, in that regard, to the government than any other. The War and Navy Departments are no more bound to be loyal through their agencies and subordinates than the Post Office Department, or to guard more carefully and diligently against treason or treasonable practices. The whole measure of the abilities of each department is required to protect and secure intact the nation and its Constitution and laws, and your committee know of no prohibition of the necessary means to accomplish that purpose.

The Constitution provides for the suppression of rebellion by the armed power of the government, and charges that duty on the President as commander-in-chief of the army and navy; and in the prosecution of that duty he was, by all the means within his control, embracing the services and the co-operation of the principal officers in the executive departments. Engaged at the time of the action of the Postmaster General, above referred to, in suppressing one of the most gigantic rebellions known in the history of the world, requiring the united and determined action of the people of the loyal States, charged with that high and responsible duty by the express letter of the Constitution, and acting through the executive departments of the government, it became his duty and the duty of each department to see that no act was committed through the agency of the government inconsistent with the overthrow of the rebellion. Had the Postmaster General then, as one of the executive officers of the government, permitted transmission through the mails of communications or publications of a treasonable character, or giving information to the enemy of the condition of the government forces, encouraging the rebels in their rebellion, or preventing voluntary enlistments, or in any other manner weakening the power and force of the government to put down the rebellion, it would have been in direct conflict with the duty required of the President and executive departments of the government by the express provisions of the Constitution. It was, therefore, the duty of the Postmaster General to deny the use of the mails for such unlawful and criminal purposes. Were it not so, he who would concoct treason and conspire against the life of the government could use for the accomplishment of his purpose the very means which the Constitution dedicates for its own protection, in despite of the officer charged with their control.

Your committee, therefore, find ample authority not only in the character and elements of the government, and the laws and objects of the postal service, but in the express provisions of the Constitution, to warrant and require the Postmaster General to exclude from the mails all treasonable matter, and all papers and publications in aid of the rebellion, or that advise a dismemberment of the Union.

Your committee are not unmindful of the fact that too great caution cannot be exercised in arriving at a conclusion as to what is and what is not lawful mailable matter; or, in other words, what papers, publications, or messages are treasonable in their character, or for other reasons unlawful, and should, therefore, be excluded from the mails.

In the case now before the committee the grand jury of one of the federal courts in the State of New York concurred in opinion with the head of the Post Office Department in the construction of the character of the publications, and the purposes of the publishers, it being, too, in a time when extreme vigilance was demanded in the executive department of the government to preserve the integrity of the Union. And the object being to secure that noble and patriotic object, your committee believe the act of the Postmaster General was not only within the scope of his powers, but induced solely by considerations of the public good.

In conclusion, your committee cannot refrain from the expression of their conviction that the unhappy condition of the country has been and now is being prolonged by dissensions and divisions in the northern States; that the moral and physical force of the federal government is crippled and diminished by partisan conflicts and an intolerance of political opinions, considerations unworthy of statesmen and patriots, and should be forgotten and unknown in the great work of saving the Constitution and Union from spoliation and ruin. They cannot but believe that the people of the nation will see and appreciate the fact that the only real danger to be feared in this great struggle for the preservation of a free and constitutional government is the continued, persistent, and acrimonious divisions of the councils and energies of the loyal portion of the nation. But it is most confidently hoped and believed that the dangers to which we seem to be drifting will, in due time, arouse the patriotism of the nation and induce a union of councils and the natural elements of governmental strength, so that the well-directed energies of the government will ere long crush this desolating rebellion and restore peace and prosperity to our now sadly distracted country.

