

UCLA

National Black Law Journal

Title

Abolitionism and Wooden Nutmegs: Repealing the Gag Rule

Permalink

<https://escholarship.org/uc/item/5zd914xg>

Journal

National Black Law Journal, 8(3)

Author

Biestman, Karen Williams

Publication Date

1983

Copyright Information

Copyright 1983 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

ABOLITIONISM AND WOODEN NUTMEGS: REPEALING THE GAG RULE

Editor's Note: While the *Black Law Journal*, generally does not publish historical pieces, an exception was made for the following article. We feel that the article dramatically illustrates the use of the political process to prevent the thwarting of the individual rights of freedom and justice of black Americans, a tactic implemented to obtain the civil rights gains in the sixties and a vehicle employed to prevent the erosion of those gains and to achieve a greater share of the political power in this country in the eighties.

Karen Williams Biestman*

Sir, if a Yankee was ever charged with manufacturing wooden nutmegs, that was the man to advance such a principle. [a laugh] Is this principle the wooden nutmeg of this House? It is that or it is nothing. . . .¹

Such was the response of John Quincy Adams to the House of Representative's adoption of the infamous "gag rule" of 1836, a rule designed to silence the voice of antislavery America. Just as wooden nutmegs are not really nutmegs, neither was the gag rule what its proponents claimed it to be; namely, a device implemented to free congressional machinery from acting upon highly controversial petitions from citizen groups demanding an end to slavery. In reality, the gag rule was used to perpetuate the institution of slavery by denying congressional consideration of its merit. The abolitionists' eight year campaign waged against the gag rule was also based on a pretextual justification. It was the brilliant strategies of these abolitionists that undermined the gag rule without confronting debate on the highly emotive issue of slavery itself. The abolitionists' attack was primarily directed at defenders of civil liberties; the appeal for protections of the first amendment fundamental right of the people to petition, and the tactic was agitation. By exposing and repudiating the pretextual reasons for the gag rule's existence, abolitionists were successful in transforming what could have sealed the fate of slaves into the instrument which prompted the rise of antislavery sentiments in the 1830's and 40's. The successful repeal of the gag rule in 1844 can be attributed, in large part, to the strategists' management of resources (both human and mechanical), political insights and stamina to persevere censure and majoritarian opposition threatening dissolution of the entire Union.

PRE-GAG RULE HISTORY

Antislavery groups were petitioning the House of Representatives a full

* Lecturer in Ethnic and Native American Studies at the University of California, Berkeley. J.D., Boalt Hall School of Law 1982.

1. JOHN QUINCY ADAMS, SPEECH OF JOHN QUINCY ADAMS UPON THE RIGHT OF THE PEOPLE TO PETITION 42 (Gales and Seaton 1838).

half century before the adoption of the gag rule. In 1790, the Pennsylvania Quakers and the Pennsylvania Society for the Abolition of Slavery petitioned the House to end the slave trade.² For several years thereafter, numerous antislavery petitions were presented and accepted, but few were actually acted upon or openly discussed on the House floor. The record suggests that they were summarily referred to select committees and "seldom heard of again."³ This inattention was based on the commonly held sentiment that slavery was too controversial an issue to debate, let alone legislate. The country was polarized and many dared to predict the dissolution of the Union.

The South's "naked economic necessity" for and dependence on slave labor was well established, as were the pro-slavery sentiments and voting patterns of most southern congressmen.⁴ In contrast, the North was experiencing a rise in abolitionism, as exhibited by the establishment of the American Antislavery Society in 1834.⁵ Legislators believed they were caught in the middle, so the solution remained to ignore the issue. For all practical purposes, antislavery petitions were already "gagged." However, it was not until the gag rule was officially recognized that it could be openly challenged.

The gag rule was proposed in two forms—both were introduced by southern congressmen and both were principally directed at petitions to abolish slavery in the District of Columbia. The first was introduced by Henry L. Pinckney, a Whig from South Carolina, on February 4, 1836. It established a policy of referring all petitions for the abolition of slavery to a select committee with instructions to report that "Congress should not interfere with the subject of slavery."⁶ Pinckney argued that such action was necessary to "allay excitement, repress agitation, sustain the rights of the slaveholding states and establish harmony and tranquility within the Union."⁷ The House agreed with him by a vote of 221-75. This action was initially perceived to be a compromise; and even "Old Man Eloquent," John Quincy Adams, then representing the state of Massachusetts, voted for it in the interest of preserving the Union.

However, it soon became clear that Pinckney's resolution was no truce, but was a "gag" in every sense of the word. Noting the illogic of accepting petitions without intent to act upon them, James Hammond of South Carolina foresaw only "infinite mischief by keeping alive the present excitement."⁸ Upon a motion from Albert Hawes of Kentucky, the select committee thereafter called for the adoption of the official "gag rule," also known as House Rule 21, which contained much of Pinckney's original language: "Resolved that all petitions, memorials, resolutions, propositions or papers, relating in any way, or to any extent whatsoever, to the subject of slavery, shall without being either printed or referred, be laid upon the table,

2. RICHARD H. SEWELL, JOHN P. HALE AND THE POLITICS OF ABOLITION 42 (1965).

3. *Id.*

4. Ludlum, *The Antislavery "Gag Rule": History and Argument*, 26 THE J. OF NEGRO HIST. 203, 242 (1941) [hereinafter cited as *The Antislavery Gag Rule*].

5. SAMUEL FLAGG BEMIS, JOHN QUINCY ADAMS AND THE UNION 333 (1956).

6. 6 THE LIBERATOR No. 7, at 28 (Boston Feb. 13, 1836).

7. *Id.* at 27. CONG. GLOBE, 24th Cong., 1st Sess. 170-72 (1836).

8. *Id.*

and that no further action whatsoever shall be had thereon."⁹ The House adopted the revised resolutions on May 18, 1836 by a vote of 117-68.¹⁰

The gag rule was re-adopted in subsequent congressional sessions, although the comfortable margin of the proponent majority declined to 129-69 in 1837,¹¹ 126-78 in 1838,¹² 114-108 in 1840,¹³ 106-102 in 1842 and 95-91 in 1843,¹⁴ until it was repealed by a vote of 108-80 in 1844.¹⁵

THE ANTI-GAG CAMPAIGN

From its inception in 1836 to its repeal in 1844, the gag rule consumed much of the House's time, not in the form of debate over the merits of slavery, nor in discussion of the rule itself, but in the flood of antislavery petitions provoked by the rule's adoption.

This flood was the result of carefully planned and extensively organized efforts by abolitionists. In order to successfully repeal the gag rule, abolitionists had to counter the rule's proponents' rationale for adopting the rule and to expose the pretextual motivations behind it. This effectively undermined the proponent's argument that the gag rule would free the machinery of Congress by clogging the congressional docket with antislavery petitions. Second, it was necessary to reframe the issue of the gag rule so that it was seen as an attack on civil liberties; specifically, the constitutional right to petition so as to avoid addressing the controversial issue of slavery altogether. Third, public sympathy and support had to be rallied. This feat was accomplished by enlisting the efforts of influential orators and politicians, such as John Quincy Adams, to popularize the cause. In addition, a relatively untapped, but wealthy, resource was called upon and maximized: contributions from the nation's women. Finally, abolitionists directed the anti-gag campaign at the ballot boxes and were successful in defeating many slavery advocates in public elections.

Furthermore, widespread circulation of antislavery newspapers and other literature were essential to the successful repeal of the gag rule. It was through this medium that abolitionists publicized their strategies. Notices soliciting antislavery petitions from readers and appealing to other publications to solicit the same were the most common form of publicity. An illustration is contained in the December 10, 1836 edition of *The Liberator* which carried the following announcement:

The undersigned citizens of _____ regarding the existence of slavery and the slave trade in the District of Columbia over which Congress has exclusive jurisdiction, as a reproach to a Christian people, and a violation of the fundamental principle of our republican government, earnestly request your honorable body, in the name of and on behalf of the people of _____ to instruct the Senators and request the Representatives in Congress from this Commonwealth, to use their utmost exertions to procure the repeal of all these laws, now sanctioned and adopted by the Gov-

9. CONG. GLOBE, 24th Cong., 1st Sess. 383 (1836).

10. *Id.*

11. CONG. GLOBE, 24th Cong., 2d Sess. 106 (1837).

12. CONG. GLOBE, 25th Cong., 3d Sess. 26 (1838).

13. CONG. GLOBE, 26th Cong., 1st Sess. 150-51 (1840).

14. LUDLUM, *supra* note 4, at 219-20.

15. CONG. GLOBE, 28th Cong. 2d Sess. 2, 7 (1844).

ernment of the United States which authorize or license slavery and the domestic slave trade within the limits of the District of Columbia.¹⁶

The petitions did not address the merits of slavery at length. The goal was not to suppress slavery by expounding upon its evils (as advocated by ecclesiastical groups), but to attack the "internal piracy" eroding civil liberties with the hope that the issue of slavery would be indirectly addressed. In fact, no one contemplated that the petitions would even be read, but the call remained: "Send them in even though they lie on the table unprinted, un-referred, undebated—they will have resurrection."¹⁷

Although the form of antislavery petitions appeared somewhat mechanical, the underlying motivations were intensely emotional. Abolitionists called on their readers to flood the House with the "great reservoir of public sentiment. . .til its proud waves whiten as they. . .pour down. . .over the polluted territories of slavery. . .Petitions! These are the channels for the flood!"¹⁸

The strategy worked. Thousands of petitions loaded the tables of the House. Within one year after the gag rule was implemented, the number of petitions had increased five-fold.¹⁹ Thousands of petitions bearing millions of signatures poured into Congress in 1837 and 1838. Some 141 petitions bearing more than 18,000 names were introduced from Massachusetts's antislavery societies alone in the 1839-40 session.²⁰ Often the House spent entire days listening to presentations of petitions, voting on whether to receive them, and laying them on the table in accordance with the gag rule. One day it is reported that some 400 petitions were so presented.²¹ The increased number of petitions further inspired abolitionists. Noting the 34,000 petitions that went before the House in 1836, writers of *The Liberator* beckoned its readers to submit one million in the next session.²²

In its 11th Annual Report, the Massachusetts Antislavery Society proudly reported that there had been a "great amount of wholesome agitation on the subject throughout the country, of which we daily see the happy effects."²³ The machinery was truly clogged.

The successful repeal of the gag rule also required appealing to the intellects and sympathies of the majority of the House. Throughout the reign of the gag rule, representatives from slaveholding states outnumbered those whose constituents held antislavery sentiments. However, there always existed a large group whose loyalties were not clearly aligned with either side.²⁴ Abolitionists realized that the issue of slavery was not necessarily defined in accordance with geographical boundaries separating the North and South, as was popularly believed. Admittedly, the institution of slavery was more deeply rooted in the economy of the South than in the North. However, dependence on southern slave production was also critical to the

16. 6 THE LIBERATOR No. 50, at 197 (Boston Dec. 10, 1836).

17. 8 THE LIBERATOR No. 49, at 194 (Boston Dec. 7, 1838).

18. 9 THE LIBERATOR No. 2, at 6 (Boston Jan. 11, 1839).

19. ADAMS, *supra* note 1, at 3.

20. 9 THE LIBERATOR No. 11, at 50 (Boston March 15, 1839).

21. Ludlum, *The Antislavery Gag Rule*, *supra* note 4, at 211.

22. 6 THE LIBERATOR No. 28, at 110 (Boston July 9, 1836).

23. MASSACHUSETTS ANTI-SLAVERY SOC'Y, 1843 ANNUAL REPORT 181 (1843).

24. JOHN QUINCY ADAMS, ADAMS DIARY: 1794-1845 537 (1928).

economic survival of many northern commercial centers. The billions of dollars generated from southern cotton crops did not all remain in the South. Through such avenues as the tariff and banking systems and the large cotton manufacturing industry in the North, such commercial centers as New York, Philadelphia and Boston were inextricably bound to the economics of slavery.²⁵

Further, not all southerners were advocates of slavery. Many held the constitutional right to petition more dear than the economic utility of slavery claimed by their neighbors. Others swayed in response to fellow southerners' dogged obstinance and perceived unreasonableness in confronting the issue. Some thought that the gag rule showed "mismanagement calculated to put their friends in the North in a delicate and dangerous position at home and . . . of no manner of advantage to the South."²⁶ Still others were not among the elite plantation owners whose economic survival depended on the existence of slave labor.

Nonetheless, abolitionists could reasonably rely on the support of most northern free-state representatives and discount cooperation from those who advocated the gag rule because they felt Congress lacked the authority to abolish slavery. However, these groups were relatively small. The majority represented either southern slaveholders or opponents of the gag rule with only mild antislavery convictions.²⁷ This group became the target of abolitionists' persuasion.

The tactic was simple: appeal to their sense of civil liberties. Few free white males, regardless of their notions on slavery, could deny that the right to petition was a fundamental one guaranteed by the first amendment. It had not been long since the cries of revolution and independence had echoed in the very same halls of Congress. The right to petition, argued one unidentified writer of *The Liberator*, was a reserved right, "our last and only place of refuge" which, if denied, was "the first step towards depotism."²⁸ Further, because the gag rule required that all antislavery petitions be tabled and forbade discussion of slavery issues, the citizenry were also deprived of fair representation. Elected representatives could not voice constituents opinions on the subject. The 1838 Massachusetts Antislavery Society Report notes this phenomenon: "[Our] representatives are gagged upon the floor of Congress. . . O servile degradation!"²⁹ These arguments were compelling and struck at the hearts of many patriots.

Raising the nation's consciousness and passions to the gag rule was not an easy task in light of the heated controversy over slavery. However, identification with a prominent and popular public figure provided abolitionists with the very vehicle they needed for publicity. Ironically, the person who inherited the greatest burden in publicly combating the gag rule was not himself an abolitionist, but a bulwark of constitutional freedoms, "Old Man Eloquent," John Quincy Adams. In fact, Adams was torn on the issue of abolition due to strong anti-abolitionists sentiments held by both his wife

25. Ludlum, *The Antislavery Gag Rule*, *supra* note 4, at 240-41.

26. *Id.* at 230-31, *citing* CONG. GLOBE, 28th Cong., 1st Sess. 114 (1844).

27. *Id.* at 211.

28. 7 THE LIBERATOR No. 6, at 28 (Boston Feb. 13, 1836).

29. MASSACHUSETTS ANTI-SLAVERY SOC'Y, 1838 ANNUAL REPORT 55 (1838).

and son. His own sentiments were mixed: "I walk on the edge of a precipice in every step that I take."³⁰ He initially opposed the abolition of slavery in the District of Columbia, and criticized abolitionists' "senseless and overbearing clamor."³¹ Nonetheless, he accepted their support because of his strong convictions concerning the fundamental constitutional right to petition. In so doing, he also emerged as a champion in the antislavery movement.

Adams was president between the years of 1825 and 1829. He joined the House in December of 1831 as a representative from the state of Massachusetts.³² He was in his seventies and already experiencing poor health when the gag rule was adopted. Still, Adams adopted the war against the gag rule as his own personal battle, and fought with such vigor that the nation could not help but notice. Wendell Phillips, a prominent Massachusetts abolitionist, wrote: "On that gray, discrowned head were fixed, in awful suspense, the eyes of the nation."³³

Adams became the spokesman for the entire crusade, presenting petitions most often from non-constituents. "Was he not a man of the whole nation?," wrote Joshua Giddings, a Whig from Ohio.³⁴ Adams' stylistic presentation of antislavery petitions went unmatched. On one occasion, he introduced a single memorial of greater than one-half mile in length which outraged Adams' opponents.³⁵ On February 16, 1838, Adams asked the House speaker whether a petition signed by twenty-two slaves fell within the prohibition of the gag rule.³⁶ The House was furious with him for suggesting that slaves might possess the right to petition, and several members called for his censure and expulsion. It was later discovered that the petition was forged by southern slaveholders who sent it to Adams for the purpose of mocking him, not thinking he would present it.³⁷ Adams successfully defended himself against censure, and in so doing, attracted further publicity to anti-gag efforts.

In many ways, Adams was the sacrificial lamb of the cause. The burden tolled heavily on his age and health, as he was the target of much hostility. On more than one occasion, his life was threatened. His diary notes the words of an anonymous writer: "Who in the space of one revolving moon, is statesman, poet, babbler and buffoon?"³⁸ Nevertheless, his presence turned the tide. Many who had never identified themselves as abolitionists found themselves allied with the antislavery cause.³⁹

Inadvertently, abolition made women's rights an issue by enlisting the support of women's groups in the antislavery campaign. In fact, some writers contend: "Were it not for the superior benevolence, zeal and activity of the women, the antislavery cause would languish and expire."⁴⁰ The record

30. ADAMS, *supra* note 24, at 483.

31. BEMIS, *supra* note 5, at 382.

32. WENDELL PHILIPS, ON CIVIL RIGHTS AND FREEDOM 23 (1965).

33. *Id.* at 27.

34. BEMIS, *supra* note 5, at 382.

35. 64 NILES NATIONAL (WEEKLY) REGISTER, Ser. 5, No. 1640, at 14 (Baltimore 1843).

36. 7 THE LIBERATOR No. 2, at 27 (Boston Feb. 11, 1837).

37. MASSACHUSETTS ANTI-SLAVERY SOC'Y, 1838 ANNUAL REPORT 6 (1838).

38. ADAMS, *supra* note 24, at 536.

39. 9 THE LIBERATOR No. 2, at 6 (Boston Jan. 11, 1839).

40. MASSACHUSETTS ANTI-SLAVERY SOC'Y, 1841 ANNUAL REPORT 39 (1841).

abounds with references to rallies, fairs, writings and antislavery petitions in large numbers which were sponsored by female antislavery societies, and by such able spokespersons as Lucretia Mott and the Grimke sisters. Their involvement prompted heated opposition from northern conservatives who felt that using women as "instruments of propaganda" was both immoral and unlawful.⁴¹ In response, David O'Connell, a popular abolitionist and member of the Massachusetts Antislavery Society, wrote to Lucretia Mott in 1841: "Mind has no sex. . .we are engaged in a strife, not of strength, but of argument. . .We rely entirely on reason and persuasion common to both sexes, and on the emotions of benevolence and charity, which are more lovely and permanent amongst women than amongst men."⁴² There was a powerful and significant political resource that had gone untapped until inspired by abolitionism. The "feminine sensitivities" of the fairer sex were especially effective in arousing the public sympathies to the cause. More important, however, were the less visible and gender-blind organizational and monetary bases established by women upon which the anti-gag campaign could progress.

The slavery controversy was never clearly defined by party lines. Jackson's Democratic administration in the 1830's was less than receptive to abolitionism, and many Democrats feared the antislaverys were out to destroy the Union. Jackson himself authorized the postmaster general to fine local postmasters who did not destroy all "unconstitutional and wicked" abolitionist literature.⁴³ Some Democrats perceived the flood of antislavery petitions to be a Whig tactic to undermine Democratic programs and mock the administration.⁴⁴

The Whig Party fared only slightly better. Many of its leaders in the North, Joshua Giddings in particular, were strong supporters of Adams in his campaign against the gag rule. However, later party leaders such as Henry Clay were champions of slavery. By 1842, neither the Whigs nor Democrats had denounced slavery as a party platform.

At that point, a third political group, the Liberty Party, emerged as an alternative. It professed pro-abolition principles, declared slave fugitive laws "utterly null and void," and maintained that slavery "should never be extended beyond its existing limits but should gradually, and yet, at no distant day, [be] wholly abolished by state authority."⁴⁵ However, none of the above pledges materialized as planned because the states failed to take decisive action to abolish slavery and the number of slaveholding states admitted to the Union grew.⁴⁶

Members of the Liberty Party have also been criticized as being charitable and philanthropic in regards to the Negro "plight," but ultimately, only concerned with the well-being of the white race. "The negro's pick of corn at week, his stripes and the sundering his family are legitimate subjects for the discussion of the Liberty Party man only in so far as they may be preju-

41. BEMIS, *supra* note 5, at 341.

42. MASSACHUSETTS ANTI-SLAVERY SOC'Y, 1841 ANNUAL REPORT vi-vii (1841).

43. THOMAS P. MORRIS, FREE MEN ALL 62 (1974).

44. SEWELL, *supra* note 2, at 42.

45. MORRIS, *supra* note 43, at 107-08, 186.

46. *Id.*

dicial to the interests of the white man."⁴⁷

Although some historians credit the Liberty Party's role in the 1844 election with the repeal of the gag rule, critical abolitionists thought otherwise. At its convention of October 5, 1843, the Liberty Party denounced the practices of the American Antislavery Society and implemented its own gag rule to secure that end.⁴⁸ Prominent Libertarians were alleged to publicly support abolition, but in fact align with slavers. One such leader was charged with abusing his position in the American Antislavery Society Executive Committee to undermine its financial well-being and cause the death of *The Emancipator*, the Society's official publication.⁴⁹

Thus, combating slavery forces was not as simple as attacking a particular party. Abolitionists appealed to their readers to only vote for individual pro-abolitionists—do not vote by party!⁵⁰ One by one, the selective endorsements put more abolitionists into the House, and the scales of representation tipped away from support of the gag rule.

CONCLUSION

Because of the factors discussed above, House support for the gag rule had been steadily declining. What actually prompted the gag rule's defeat in the winter of 1844, however, is highly speculative. It appears that the embroiling passions and politics surrounding the gag rule simply shifted to new and more immediate national concerns.

At the opening of the 28th Congressional Session in December of 1844, John Quincy Adams motioned to rescind the gag rule just as he had done in years past. This time, without debate, the motion passed by a vote of 108-80.⁵¹ "Blessed, forever blessed, be the name of God!" he triumphed.⁵² Others were less emphatic about this truly anticlimactic victory: "The anti-slavery forces did not carry the citadel of the gag rule by a hard well-fought assault. Instead, their keyed up soldiers charged bravely upon the ramparts only to find the defenders withdrawn, and to take possession of an empty fortress."⁵³ With none of the fanfare which characterized its life in the House, the gag rule exited quietly. Its demise was clouded by the presence of more threatening battles on the horizon. Antislavery forces turned their attention to the territories where the United States had gone to war with Mexico and to such issues as the foreseeable annexation of Texas and the extension of slavery westward. At home, problems of "power and national perspectives" remained, as did the institution of slavery.⁵⁴

Although it was not an emancipating victory, the repeal of the gag rule paved the road for freedom by rallying antislavery forces and heightening antislavery sentiments throughout the nation. Laying the fate of a young nation's civil liberties at the threshold of slavery swayed many towards abo-

47. LOUIS FILLER, *THE CRUSADE AGAINST SLAVERY, 1830-1860* 153 (1960).

48. MASSACHUSETTS ANTI-SLAVERY SOC'Y, 1839 ANNUAL REPORT 62 (1844).

49. *Id.* at 68.

50. 9 *THE LIBERATOR* No. 45, at 179 (Boston Nov. 8, 1839).

51. FILLER, *supra* note 47, at 173.

52. SEWELL, *supra* note 2, at 47.

53. Ludlum, *The Antislavery Gag Rule*, *supra* note 4, at 221.

54. FILLER, *supra* note 47, at 173.

litionism. Victory was in the process—a process credited to the engineering genius and stamina of abolitionists. They not only exposed the “wooden nutmeg” justifications offered for the gag rule, but fashioned their own superior wooden nutmeg, which was equally pretextual, from the people’s fundamental right to petition.