



School of Public Policy

Study on Universal Postal Service and the Postal Monopoly

Appendix D

History of Universal Service and the Postal Monopoly

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1 Introduction

In December 2006, the U. S. Congress directed the Postal Regulatory Commission to prepare a “comprehensive review of the history and development of universal service and the postal monopoly.” This review was to include a discussion of the evolution over time of the “scope and standards of universal service” for the nation as well as for its urban and rural areas.¹ This review has been prepared in accordance with this directive. It is written from the standpoint of a historian rather than an economist or lawyer. That is, it tries to set the record straight, which is what I understand to be the primary obligation of the historian, rather than to test a hypothesis, as might an economist, or make a brief for a particular position, as might a lawyer. In this way, it complements other studies that are being prepared for the Postal Regulatory Commission.

This review has six sections, of which the introduction is the first. The second section is a historical overview of the theory of universal service as it pertains to the postal system.² This section explains that the policy ideal that lawmakers today call the “universal service obligation” is best understood from a historical standpoint as a variant on a civic mandate that dates back to the eighteenth century. It concludes with a survey of

¹ Postal Accountability and Enhancement Act of 2006, U. S. Statutes at Large, 120 (2006): 3243, sec. 702, “Report on Universal Postal Service and the Postal Monopoly.”

² A note on nomenclature: The postal system has undergone several name changes during its long history. In the period between 1775 and 1829, lawmakers often referred to it as the Post Office (sometimes uncapitalized); in the period between 1829 and 1970, as the Post Office Department. Not until 1970 would the institution become officially known as the “U. S. Postal Service”—its name today. It has for some time been customary even among historians to backdate this name change, and to call the postal system the “postal service” from the eighteenth century to the present. While this impulse is understandable, it is anachronistic. In the period before the Civil War, contemporaries only occasionally used the phrase “postal service” to refer to this institution; before 1850, this phrase was virtually unknown.

For this reason, I refer to the postal system in this report as not the “postal service” but the “postal system.” The phrase “postal system”—a phrase that antedates “postal service,” and which was widely used in the early republic by lawmakers and influential contemporaries—has the advantage of highlighting the extent to which the institution has always consisted of a constellation of interacting components. In addition, the phrase does not presume (as “postal service” does) that the facilities that the institution provides have always been a “service.” The term “service” has taken on a variety of meanings in recent decades, and is often linked with “service sector.” To presume that the postal system was part of the “service sector” is misleading, since it understates the extent to which contemporaries presumed it to be a governmental institution entrusted with a civic mandate. In addition, it encourages the presumption that the postal system has always provided home delivery, which is mistaken. In point of fact, the popularization of the phrase “postal service” in the mid-nineteenth-century coincided more-or-less precisely with the advent of home delivery, a major innovation that had previously been, at best, a minor feature of postal policy.

the evolution of this mandate in the period since the framing of the federal Constitution in 1787. The third section is a historical overview of universal service (understood as a civic mandate) in postal practice. The goal of this section is not to be exhaustive, but, rather, to highlight major trends.

The fourth section is a historical overview of the theory of postal monopoly. It opens with a historical discussion of the concept of monopoly as it relates to the postal system. This section explains that, from a historical standpoint, the postal monopoly is best understood as a regulatory mechanism. It concludes with a survey of the evolution of this regulatory mechanism in the period since the framing of the federal Constitution in 1787. The fifth section of this review is a historical overview of the postal monopoly (understood as a regulatory mechanism) in practice. The goal of this section is not to be exhaustive, but, rather, to highlight major trends. The review ends with a brief conclusion that summarizes its findings.

This review draws on existing historical scholarship, as well as various primary sources, including government documents, congressional debates, the annual reports of the postmaster general, legal cases, pamphlets, newspapers, and magazines.³

This review is comprehensive in the sense that it surveys the entire course of U. S. history. Yet it places special emphasis on the period between 1787 and 1914--a period that is sometimes called the "long nineteenth century." This focus is justified by the formative significance and enduring legacy of events that occurred in this period for postal policy today. The present-day debate over the future of the postal system is rooted in theories and practices that originated more than a century ago.

³ The history of the present-day debate over universal service in mail delivery is ably chronicled in Richard B. Kielbowicz, "Universal Postal Service: A Policy History, 1790-1970," Postal Rate Commission, 2002. Also useful is Kielbowicz, "Postal Enterprise: Post Office Innovations with Congressional Constraints, 1789-1970," Postal Rate Commission, 2000, and Kielbowicz, "A History of Mail Classification and its Underlying Policies and Purposes," Postal Rate Commission, 1995. The history of the postal monopoly is surveyed in George L. Priest, "The History of the Postal Monopoly in the United States," Journal of Law and Economics, 18 (April 1975): 33-80.

2 Universal service in theory

In recent years, lawmakers have assumed that the postal system has a “universal service obligation.” No consensus has yet emerged as to what this obligation entails. As recently as April 2008, for example, the Postal Regulatory Commission observed that the phrase “universal service” remains undefined in postal law.⁴

For a historian of the postal system, the single most remarkable fact about the phrase “universal service obligation” is its novelty. Prior to 2002, the phrase “universal service obligation” does not turn up in an electronic keyword search of the annual reports of the postmaster general.⁵ The related phrase “universal service” is only slightly more venerable. A variant (“universal postal coverage”) can be found in the annual report of a postmaster general as early as 1937.⁶ Yet it was not until 1996 that a postmaster general would deploy this phrase in an annual report in anything but an incidental way. The first occurrence of the phrase “universal service” was in the 1990 annual report. The first time it appeared more than once (two occurrences) was in the 1995 annual report. The phrase occurred four times in the 1996 annual report; it appeared at least twice in every report between 1995 and 2007.⁷

To be sure, the invocation of the phrase “universal service” in a postal context in the period before 1995 is by no means unknown. For example, the phrase appeared twice in the executive summary of Towards Postal Excellence, a major congressionally funded study of postal policy that President Lyndon Johnson commissioned in 1967. The postal system of the future, the executive summary declared, should be run by a board of directors charged with providing the nation “with a superb mail system, offering universal service at fair rates, paying fair wages to postal employees and giving full consideration to the public welfare” (italics added). The report added that postal workers

⁴ Postal Regulatory Commission, “Universal Service Obligation,” Federal Register, 73 (April 30, 2008): 23508.

⁵ This generalization is based on a keyword search of the annual reports of the postmaster general for the period between 1890 and 2007. Two reports were not included: 1969 and 1970.

⁶ Postmaster General, Annual Report (1937), p. xi.

⁷ This generalization is based on a keyword search of the annual reports of the postmaster general for the period between 1890 and 2007. Two reports were not included: 1969 and 1970.

already displayed a laudable “universal service orientation”: “The universal service orientation among postal workers encourages a belief that a high level performance can be attained if management is given the authority and incentive to respond to this urgent need” (italics added).⁸

It is impossible to know for certain why the authors of Towards Postal Excellence included the phrase “universal service” in their executive summary. One likely explanation can be found in the occupational background of the committee that headed up the commission. This commission included several business leaders who would have been familiar with the phrase “universal service” in a telecommunications context. The chair of the commission, Frederick R. Kappel, was himself the recently retired chair of AT&T, a corporation that had used the phrase “universal service” extensively in its public relations advertising since the early twentieth century, and whose management had for several decades proclaimed the attainment of “universal service” in the telephone business to be a key corporate goal.⁹

2.1 The concept of “universal service”

The novelty of the phrase “universal service” in a postal context poses a problem for the historian. Historians are trained to ferret out anachronism: that is, to warn against reading back into the past concepts that are in fact of more recent origin. To assume that something called “universal service” existed long before the phrase came into use can subtly distort our understanding of the pattern of the past. It would be analogous, as it

⁸ President’s Commission on Postal Organization, Towards Postal Excellence, (Washington, D. C.: Government Printing Office, 1968), pp. 2, 14.

⁹ The history and significance of universal service in a telecommunications context—as both a phrase and as a concept—has spawned a vast literature. For a history of the phrase universal service in telecommunications, see Milton L. Mueller, Universal Service: Competition, Interconnection, and Monopoly in the Making of the American Telephone System (Cambridge: The MIT Press, 1997). For different perspectives on the history of the concept, see Mueller, Universal Service; Richard R. John, “Theodore N. Vail and the Civic Origins of Universal Service,” Business and Economic History, 28 (Winter 1999), pp. 71-81; David F. Weiman, “Building ‘Universal Service’ in the Early Bell System: The Co-evolution of Regional Urban Systems and Long-Distance Telephone Networks,” in History Matters: Essays on Economic Growth, Technology, and Demographic Change, ed. Timothy W. Guinnane et al. (Stanford: Stanford University Press, 2004); Amy Friedlander, Natural Monopoly and Universal Service: Telephones and Telegraphs In the U.S. Communications Infrastructure, 1837-1940 (Reston, Va.: Corporation for Natural Research Initiatives, 1995); and Roland Marchand, Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business (Berkeley: University of California Press, 1998), chap. 2 (“AT&T: The Vision of a Loved Monopoly”).

were, to calling a horse a wheel-less automobile. A further complication is posed by the phrase itself: the words “universal” and “service” are both resonant metaphors with multiple meanings. For this reason, it would be misleading to presume that during most of its history the postal system has provided the citizenry with “universal service” or that its administrators have striven to meet a “universal service obligation.”¹⁰

To gain some perspective on “universal service” as a phrase and a concept, it is useful to briefly consider how both the phrase and the concept have been used in a telecommunications context. Telephone managers at AT&T—led by AT&T president Theodore N. Vail—first invoked the phrase “universal service” in the late 1900s to draw attention to a constellation of goals that AT&T—or Bell, as was then commonly known—was pursuing, but had yet to attain. These goals included: (1) the interconnection of every telephone in the Bell telephone network (Bell at this time had many rivals with whom it did not interconnect); (2) the integration into a single interconnecting system of the Bell telephone network and the telegraph network maintained by the nation’s largest telegraph company (Western Union); and (3) the extension of the Bell telephone network to underserved urban and rural areas. (At this time, every telephone was wired, and only a minority of U. S. homes had been wired.) The telephone, Vail proclaimed, should be extended to “every man’s door,” a metaphor that, like “universal service,” promised much yet specified little.¹¹

Vail intended the concept that “universal service” denoted to be capacious, evocative, and vague, and he succeeded. In fact, it was the very amorphousness of the concept that made it useful for Bell leaders. By invoking it, they trumpeted their public-mindedness—or, as they would have put it, their “social responsibility”—weakened public support for

¹⁰ Recent scholarship on the rationale for universal service in mail delivery often defines the concept quite narrowly. For example, some economists contend that the concept should refer exclusively to those facilities that, if no postal system existed, would be undersupplied by private carriers. In short, they equate universal service with what economists call “market failure.” From a historical standpoint, this equation is anachronistic. From the 1790s until the 1960s, the mandate that we today call universal service was far broader, more dynamic, and more open-ended. For the founders, this mandate embraced the circulation of information in order to sustain an educated citizenry on the presumption that an educated citizenry was necessary for the perpetuation of a republican form of government. To equate this mandate with “market failure” misses the point: how can one put a market value on an educated citizenry?

¹¹ American Telephone and Telegraph Company, Annual Report (1910), p. 23.

their rivals, and generated good will to forestall hostile government regulation.¹² To define the concept narrowly—that is, to presume that the phrase “universal service” referred to a corporate goal that could be precisely enumerated—would have been antithetical to the primary reason that Vail deployed it.

To understand how the phrase “universal service” was used in a telecommunications context, it is useful to review briefly its history before it came to be adopted by Vail.

The phrase “universal service” does not appear to have been used much in the United States before the 1870s. (This generalization is based on a keyword search of the machine-readable editions of the New York Times and the Chicago Tribune.) The first occurrences of the phrase in the New York Times referred to the establishment by several European countries of a nationwide military draft. For almost thirty years, the phrase was used almost exclusively in this context. The German military draft, in particular, received a good deal of coverage—almost all of which was admiring, a circumstance that did much to invest the phrase with positive associations. “It is argued,” one newspaper correspondent wrote, “that nothing carries the sympathy of the population to the German side like universal service. The thing has been proved in Hanover and Hesse. The young men acquire a certain enthusiasm, a military pride, and a feeling of comradeship” (italics added).¹³

One of the most revealing early occurrences of the phrase “universal service” in the Chicago Tribune can be found in a newspaper interview with Edward Bellamy. Bellamy was a popular writer whose utopian novel, Looking Backward (1888), was highly praised and widely read. In this interview, Bellamy used the phrase “universal service” in a military context in a highly approving way. The military draft (or “universal service”), in Bellamy’s view, anticipated the “industrial army” of the future, the institution that would realize the potential of industrialism. “The idea of committing the duty of maintaining the community to an industrial army precisely as the duty of protecting it is entrusted to a military army,” Bellamy explained, “was directly suggested to me by the grand object lesson of the organization of an entire people for national purposes presented by the

¹² John, “Civic Origins of Universal Service,” pp. 71-81.

¹³ “European Correspondence: The New Empire,” New York Times, Nov. 7, 1871.

military system of universal service for fixed and equal terms, which has been practically adopted by the nations of Europe and theoretically adopted everywhere else as the only just and only effectual plan of public defense on a great scale” (italics added).¹⁴

The phase “universal service” migrated from the military to business around 1900. At this time, the phase began to appear in newspaper advertisements of big-city department stores, such as Wanamaker’s. These advertisements boasted that certain items provided customers with “universal service” in the sense that these items could be used in a multitude of settings. For example, one Wanamaker’s advertisement promised that certain silks would provide “universal service all year ‘round.”¹⁵

It is impossible to know if department store copywriters borrowed from military usage, or, for that matter, if telephone publicists borrowed from department store copywriters. Had telephone publicists borrowed from department store copywriters, this would have been unsurprising: several early telephone publicists had a newspaper background. Yet it is suggestive that the first widespread non-military usage of the phrase “universal service” was in advertising copy, since it was as an advertising slogan for Bell that the phrase would soon become well known.

2.2 Universal service as civic mandate

No one used the phrase “universal service” in a postal context during the formative era of the postal system—a period that more-or-less coincided with what historians call long nineteenth century (1787-1914). Yet this fact does not mean that influential contemporaries—including, but by no means confined to, lawmakers—lacked an expansive understanding of the mandate of the postal system. In fact, the mandate of the postal system during this period (or what is today’s parlance is sometimes called its “mission”) had certain affinities with what lawmakers today call “universal service” and the “universal service obligation.” For this reason, it is useful to reconstruct how this mandate was understood.

¹⁴ “Why Bellamy Wrote His Book,” Chicago Tribune, July 7, 1889.

¹⁵ “Half the Comfort of Summertime,” New York Times, July 26, 1900.

In the long nineteenth century, the mandate of the postal system was neither spelled out with any clarity in a federal law nor articulated in detail in a congressional report. Indeed, it would not be until 1954 that Congress would issue a comprehensive report on the mandate of the postal system, and not until 1958 that Congress would enact a law spelling out the mandate of the postal system in any detail.¹⁶

It may seem puzzling today that the mandate of the postal system remained for such a long period of time undefined. Yet from a historical perspective, this lack of precision is understandable. The postal system obtained its legitimacy from article 1, section 8 of the federal Constitution. The language of this section was deliberately vague and said nothing about the mandate of the institution; indeed, the relevant passage consisted of a mere six words. Congress, this section read, had the power to “establish post offices and post roads.” The precise meaning of this section would be determined over time, partly by postal administrators, partly by the courts, and partly by Congress. This was in keeping with the founders’ intention. The Constitution, in their view, was supposed to be a flexible document that could evolve as circumstances changed.

The absence of a single authoritative text spelling out the mandate of the postal system in its formative era poses a challenge for the historian. To be sure, thousands of pages of learned commentary have been written on the rationale for specific postal policies. Yet relatively little has been written on the mandate of the institution: that is, on postal policy, as opposed to postal policies.

The most authoritative single book on the mandate of the postal system remains Clyde Kelly’s United States Postal Policy (1932), a book that is triply significant for the historian since it (1) was written by a sitting congressman who had himself drafted several important pieces of postal legislation; (2) included a discussion of a wide range of topics without becoming overwhelmed by detail; and (3) has influenced much subsequent historical writing on this topic, including Wayne E. Fuller’s American Mail (1972), the single best history of the postal system to date. No history of the mandate of the postal

¹⁶ Postal Policy Act of 1958, U. S. Statutes at Large, 72 (1958): 134-136; Kielbowicz, “Mail Classification,” p. 89. Prior to 1958, Kielbowicz observed, “Congress had never formally outlined the postal system’s goals, though some clues about the presumed objectives could be inferred from specific policies.”

system can pretend to be comprehensive that does not engage Kelly's thesis, as amplified and extended to the 1970s by Fuller, that lawmakers in 1851 embraced a "service-first" philosophy that would characterize postal policy from 1851 until 1970.¹⁷

Much has happened, of course, since Kelly published his United States Postal Policy. Historical interpretations evolve, and, with them, our understanding of issues and events. How, then, is the mandate of the postal system to be understood? To answer this question, it has seemed best to focus on the paper trail left behind by two groups of people: (1) lawmakers (defined broadly to embrace administrators and judges as well as legislators) and (2) influential contemporaries.¹⁸

This paper trail reveals that the mandate of the postal system has been for most of its history far broader, more dynamic, and more open-ended than the current debate over "universal service" might lead one to suppose. For example, in an important recent essay, the well-known and justly respected historian of postal policy Richard B. Kielbowicz has proposed defining "universal service" in a postal context as a "communication safety net."¹⁹ This definition provides a thoughtful solution to the problem of defining what "universal service" is or ought to be today. From a historical standpoint, however, a "safety net" is but one facet of the mandate of the postal system as it has been understood in the past. For most of its history, the mandate of the postal system had an emphatically

¹⁷ Wayne E. Fuller, The American Mail: Enlarger of the Common Life (Chicago: University of Chicago Press, 1972), p. 332.

¹⁸ This definition of "lawmaker" is somewhat broader than the definition favored by law-office legal historians who privilege the pronouncements of legislators in congressional debates and the rulings of judges in appellate courts. Yet it is in keeping with the longstanding convention of legal historians who have followed in the tradition of J. Willard Hurst, a pioneer in what has been aptly called the "external" tradition in legal history. For a lucid introduction to the Hurstian tradition in legal history, and a critique of the alternative, "internal" tradition, see Robert W. Gordon, "J. Willard Hurst and the Common Law Tradition in American Legal Historiography," Law and Society Review, 10 (Fall 1975): 9-55. "For the historian who restricts his source to the strictly legal," Gordon observes, in glossing the Hurstian critique of law office (or "internal") legal history, "there often is no explanation available other than the genetic": "History from the lawyer's perspective, if it pays any attention to the world outside the law-box, is bound to focus more closely on inputs than on outputs, and mostly on those inputs that the insiders consciously employ as materials of their craft. This is bound to leave out of consideration major (it is not necessary to argue primary) determinants of the shape and content of the law-box—the reasons for there being any law-box in the first place—i.e. what it is that people in society demand, or expect, of their legal order" (pp. 20, 44).

¹⁹ Richard B. Kielbowicz, "Preserving Universal Postal Service as a Communication Safety Net: A Policy History and Proposal," Seton Hall Legislative Journal, 30 (2006): 383-436.

civic cast. It presupposed, that is, that the postal system would maintain a communications network for the entire population that would promote certain political goals that included, but were by no means confined to, the circulation of information on public affairs. To equate this mandate with a “safety net” would have seemed to earlier generations of lawmakers (including the founders) unduly narrow: the mandate embraced everyone, and not merely those individuals who might find themselves marginalized by technological advances in the means of communication.

The mandate of the postal system embraced at different times a variety of values, of which the most enduring were openness and inclusivity. Openness and inclusivity are, like “universal” and “service,” notoriously hard to define and almost impossible to measure with any precision. Yet they were and are nonetheless real. For example, if we take the printed reports of congressional debates as a proof text, it is evident that the lawmakers who framed the Post Office Act of 1792 (the first major piece of postal legislation to be enacted following the adoption of the federal Constitution) presumed that the federal government had a duty to provide the entire population with access to information on public affairs. In the 1820s, lawmakers expanded this mandate to embrace information on market trends; and by 1845, to personal matters. Influential contemporaries concurred. Few limited the civic mandate of the postal system to a mere “communication safety net.” On the contrary, lawmakers and influential contemporaries alike presumed that the postal system had a mandate to attain, or try to attain, what one might call the “equal access ideal.”

No one in the formative era of the postal system used the phrase “equal access ideal” to describe the civic mandate of the postal system. Yet similar phrases did recur in a postal context in the pronouncements of lawmakers and influential contemporaries, including “equal accommodations” and the “post office principle.” In 1843, for example, the prominent Congregationalist minister Leonard Bacon invoked the phrase “equal accommodations” to describe the mandate of the postal system in a magazine essay on “The Post Office System as an Element of Civilization.”²⁰ By “equal accommodations,”

²⁰ Leonard Bacon, “The Post Office System as an Element of Modern Civilization,” *New Englander*, 1 (Jan. 1843): 16. Bacon almost certainly borrowed his subtitle--“element of modern civilization”--from the German-born jurist Francis Lieber. Several years earlier, Lieber had ranked the postal system with the

Bacon meant that the postal system had a mandate to provide facilities for the circulation of information that would be accessible not only to merchants, who could afford high postage fees, but also the entire population, including people of modest means. The egalitarian dimension of postal policy received an even more forceful expression in 1917, when postal administrator Daniel C. Roper underscored the political significance of what he termed “free communication on equal conditions.” The struggle for human rights, Roper declared, presupposed “free communication on equal conditions,” while “progress in the facilities for such communication” had made the postal system a “democratic institution.”²¹

The phrase “post office principle” surfaced as early as 1866 in a speech by Missouri Senator B. Gratz Brown. By “post office principle,” Brown meant the transfer of postal revenue generated in thickly settled regions to thinly settled regions in order to provide a basic level of postal facilities for the entire population.²²

The phrase “post office principle” eventually found its way into economics textbooks as a convenient shorthand for the systematic reallocation by any government agency of revenue to promote a civic goal. In 1918, for example, the much-admired political economist Henry C. Adams used the phrase in this way in an introductory economics textbook. For any “service” to aspire to be “universal,” Adams contended, the government would necessarily have to intervene. To make his point, Adams pointed to the mandate of the postal system. The postal system, Adams observed, did not provide postal facilities merely for those localities in which it made a profit. Rather, it served the entire country. If the federal government transferred the “mail business” to a private corporation, however, this corporation would convey letters only on those routes that generated a profit. The “post office principle,” Adams concluded, presupposed that “every citizen in the country should have the use of mails on equal terms, and that the

printing press and the mariner’s compass as “one of the most effective elements of civilization.” Francis Lieber, Encyclopedia Americana (Philadelphia: Carey & Lea, 1832), vol. 10, p. 289.

²¹ Daniel C. Roper, The United States Post Office: Its Past Record, Present Condition, and Potential Relation to the New World Era (New York: Funk & Wagnalls Company, 1917), p. 79.

²² Congressional Globe, 39th Cong., 1st sess., Feb. 23, 1866, p. 979.

profit made in those parts of the country where the traffic is dense should be used to make good the loss where traffic is sparse” (italics added).²³

In describing the mandate of the postal system, both lawmakers and influential contemporaries assumed that it had a mandate to provide certain facilities for the entire population, whether they were rich or poor, and no matter where they happened to live. None assumed that this mandate could be quantified. In this regard, they were different from those policy analysts today who are trying to define “universal service” and the “universal service obligation.”

2.3 The evolving civic mandate

The postal system, declared one lawmaker in 1792, in the course of a debate over the first major piece of postal legislation to be enacted following the adoption of the federal Constitution, had been established for “no other purpose” than the “conveyance of information” into “every part of the Union.”²⁴ This lawmakers’ claim highlighted the breadth and the limits of the founders’ understanding of postal policy.

The origins of the civic mandate for postal policy antedated the adoption of the federal Constitution in 1787. At its most basic, this mandate presupposed that the existence of the United States was dependent on the circulation by the government of certain kinds of information from state to state. The “communication of intelligence...from one part to another of the United States,” declared a postal law enacted by Congress in 1782, was “essentially requisite” to the “safety as well as the commercial interest thereof.”²⁵

To put this mandate in a historical perspective, it is useful to know a bit about what contemporaries meant by information. In recent years, the word “information” has acquired a wealth of meaning that none of the founders of the republic could possibly have anticipated. Indeed, since the Second World War, an entire branch of scientific

²³ Henry C. Adams, Description of Industry: An Introduction to Economics (New York: Henry Holt and Co., 1918), p. 258.

²⁴ Cited in Julian P. Bretz, “Some Aspects of Postal Extension into the West,” American Historical Association, Annual Report, 5 (1909): 145.

²⁵ “An Ordinance for Regulating the Post Office in the United States,” Oct. 18, 1782, Journals of the Continental Congress, 1774-1789, ed. Worthington C. Ford et al. (Washington, D. C., 1904-1937), vol. 23, p. 670.

inquiry--known today as information theory--has emerged to define the properties of information and to predict its behavior.

In the nineteenth century, the meaning of the word “information” was a good deal more precise. It referred neither to data, a word that had yet to be coined, nor even to the insights that one might glean from a book. Rather, it denoted the time-sensitive “intelligence” about public affairs and market trends that was commonly called news. Information was news for unknown others, and its circulation presupposed the establishment of institutional arrangements to keep these unknown others well informed.²⁶

For most of human history, political, religious, and military leaders have labored mightily, often with considerable success, to prevent ordinary people from securing access to information about the wider world. Not until the sixteenth century would large numbers of lay people successfully challenge the authority of the Catholic Church to limit their access to the Bible. And as late as the eighteenth century, the suppression of popular access to information about public affairs remained a cornerstone of government policy in France.²⁷ Few indeed were the individuals who, like the sixteenth-century Spanish monarch, Phillip II, could be plausibly said to have suffered from “information overload.”²⁸ The United States was organized on a different set of assumptions.

2.3.1 Preserve the union

The founders of the United States presumed that, if the people were truly sovereign, as the federal Constitution famously proclaimed, then the people had a right to receive regular broadcasts from the seat of power. The realization of this goal in a country as geographically extensive as the United States entailed the establishment of what sociologists would later call a bureaucracy. In the United States, this bureaucracy was the

²⁶ Theodore M. Porter, “Information, Power, and the View from Nowhere,” in Information Acumen: The Understanding and Use of Knowledge in Modern Business, ed. Lisa Bud-Frierman (London: Routledge, 1994), pp. 217-230.

²⁷ “Simplifying radically,” the French historian Robert Darnton observed, “I would insist on a basic point: information about the inner workings of the power system was not supposed to circulate under the Old Regime in France.” Robert Darnton, “An Early Information Society: News and the Media in Eighteenth-Century Paris,” American Historical Review, 105 (Feb. 2000): 4.

²⁸ Geoffrey Parker, The Grand Strategy of Phillip II (New Haven: Yale University Press, 1998), p. 74.

postal system. For the beginning of the republic, this organization was not an investor-funded corporation, but a government-supported agency.

The founders of the republic regarded the circulation of information on public affairs by the postal system—primarily in the form of newspapers and government documents—as necessary to the preservation of the union. Today there are many ways to circulate information over long distances. For the founders of the United States, however, the only instrumentality that could circulate information with regularity throughout the length and breadth of the United States was the postal system. The statesman Benjamin Rush underscored this basic truth in 1787. The postal system, in Rush’s view, was the “true non-electric wire of government” and the “only means” (italics added) of “conveying light and heat to every individual in the federal commonwealth.” For Rush, the function of the postal system extended well beyond commerce and public safety—that is, the rationale that Congress had set forth in 1782. In addition, and even more importantly, it was indispensable to circulate the information that was necessary to educate the American people so that they might become vigilant citizens. In the absence of a vigilant citizenry, Rush did not believe that the republic could survive. To adapt the “principles, morals, and manners of our citizens” to our “republican forms of government,” Rush explained, it is “absolutely necessary” that the government circulate “knowledge of every kind...through every part of the United States.”²⁹ Rush proposed, in short, what one today might call an experiment in social engineering.

Rush’s presumption that the federal government had a mandate to facilitate the circulation of information—and even, as Rush hoped, knowledge--was shared by James Madison, one of the most thoughtful, perceptive, and far-sighted lawmakers of the period. Of all the founders of the republic, Madison is the single individual whose views on public issues are held in the highest regard by present day students of constitutional law. It is thus of more than incidental interest that, in December 1791, Madison, who was then a Virginia congressman, recommended in an anonymous editorial in a Philadelphia newspaper that the federal government encourage “the circulation of newspapers through the entire body of the people” by admitting newspapers into the mail at extremely low

²⁹ Benjamin Rush, "Address to the People of the United States," American Museum, 1 (1787): 9-10.

rates.³⁰ Madison reiterated his position the following November. “The operation of the law establishing the post office, as it relates to the transmission of newspapers,” Madison declared in a public address to President George Washington, “will merit our particular inquiry and attention, the circulation of political intelligence through these vehicles being justly reckoned among the surest means of preventing the degeneracy of a free people; as well as recommending every salutary public measure to the confidence and cooperation of all virtuous citizens.”³¹

While Madison conceived of the postal system as an engine of reform, President Washington envisioned it as a bulwark against disunion. Like Madison, Washington supported the extensive circulation of newspapers through the postal system. Washington endorsed this position because he presumed that the widespread circulation of newspapers would promote obedience to the laws—and, in this way, help to persuade a far-flung population to remain loyal to the still-fragile republic. There is “no resource so firm for the government of the United States,” Washington declared in a public address in 1793, as the “affections of the people, guided by an enlightened policy; and to this primary good, nothing can conduce more than a faithful representation of public proceedings, diffused without restraint, throughout the United States.” For this reason, Washington went so far as to urge the repeal of the recently enacted section of the Post Office Act of 1792 that imposed a modest fee, or what Washington termed a “tax,” on the circulation of newspapers in the mail.³² In effect, Washington proposed that the federal government circulate newspapers through the postal system at no cost—a proposal that Madison rejected, in part because Madison feared that, since postmasters were paid by the piece, if newspapers were circulated postage-free, postmasters would lack a financial incentive to ensure their delivery.

³⁰ James Madison, “Public Opinion,” National Gazette, Dec. 19, 1791, in Papers of James Madison, ed. Robert A. Rutland, et al (Charlottesville: University Press of Virginia, 1983), vol. 14, p. 170. Italics are in the original.

³¹ Madison, “Address of the House of Representatives to the President,” Nov. 9, 1792, in Papers of James Madison, vol. 14, p. 404.

³² George Washington, “Fifth Annual Address,” Dec. 3, 1793, in Compilation of the Messages and Papers of the Presidents, 1789-1897, ed. James D. Richardson (Washington: Government Printing Office, 1896-1899), vol. 1, p. 134.

While the postal system continues to circulate millions of newspapers today, this task is no longer as central to its mandate as it was for the founders of the republic. Both Madison and Washington took-it-for-granted that the postal system would circulate both letters and newspapers, yet both placed a special emphasis on the circulation of newspapers. In modern parlance, they envisioned that the postal system would be both a broadcast medium and a point-to-point medium. This is worth underscoring, if only because it has become common in the twentieth century for lawmakers to contend that the central mandate of the postal system has been from its inception the circulation of letters, or what was long known as first-class mail. This contention is erroneous. It is incorrect to contend, as a postmaster general did in 1930, that that the “whole machinery” of the postal system had been “built about the transportation of sealed mail, which was the first and is still the primary post office function.”³³ For Madison, Washington, and the lawmakers and influential contemporaries who followed their lead, the circulation of newspapers became a “primary” postal function following the enactment of the Post Office Act of 1792.

Neither Madison nor Washington commented in writing on how the cost of transporting newspapers would be paid for. Yet there seems little reason to doubt that they assumed that the cost would be borne by the recipients of letters. In effect, they anticipated that the fees generated by the facilities that the postal system provided as a point-to-point medium--that is, by circulating letters--would underwrite the cost of the facilities that the postal system provided as a broadcast medium--that is, by circulating newspapers. Newspapers were far heavier than letters, increasing the cost of their transportation, and both Madison and Washington presumed that newspapers should be circulated through the mail either for a minimum fee, as Madison proposed, or for no fee at all, as Washington proposed. While Madison prevailed, the important point historically is that no one seriously proposed calibrating the fees that postal patrons would pay to obtain newspapers through the mail with the cost of their circulation.

Postage on letters had been the major source of revenue in the colonial postal system, as well as in the postal system that the fledgling American government maintained

³³ Postmaster General, Annual Report (1930), pp. 3-4.

between 1775 and 1792. To be sure, not all letters paid postage: During the War of Independence, the letters of lawmakers, military officers, and soldiers were conveyed in the mail free of charge. Merchants' letters, however, were different. As a consequence, it seems fair to infer that Madison and Washington presumed that merchants would pay the cost of maintaining the postal system. Neither envisioned that the cost of circulating newspapers in the mail might be paid for out of the general treasury: indeed, it was far more likely that they presumed, with Treasury Secretary Alexander Hamilton, that the postal system might one day transfer a substantial surplus to the government as the British postal system had in Great Britain, and as the American postal system would for several decades after 1787.

2.3.2 Foster commerce

Lawmakers were by no means unmindful of the benefits to commerce that would accrue from the circulation of information throughout the country and around the world. Yet, if the postal system was to be self-supporting, its expenses would have to be paid for in some way, and merchants' correspondence seemed the most likely source. In this period, merchants' correspondence accounted for the vast majority of all letters sent through the mail: ordinary Americans would not begin to write letters in large numbers until after the enactment of the Post Office Act of 1845.³⁴

The massive subsidies that merchants paid to newspaper subscribers occasioned little concern until they became manifest during the 1840s. Even so, it would be a mistake to assume that influential contemporaries were unmindful of the myriad ways in which postal policy could foster trade. Particularly influential in highlighting the commercial implications of the postal system was Francis Wayland, the president of Brown University and the author of a widely used, oft-reprinted, and highly regarded college

³⁴ For a good introduction to the history of letter writing in the nineteenth century that emphasizes the sea-change that occurred beginning in 1845, see David Henkin, *The Postal Age: The Emergence of Modern Communications in Nineteenth-Century America* (Chicago: University of Chicago Press, 2007). Prior to 1845, Henkin emphasized, newspapers, rather than letters, were the single most important class of items sent in the mail.

textbook on political economy, the first edition of which appeared in 1837.³⁵ Unlike most twentieth-century economists, Wayland did not make a sharp distinction between economics and morality; rather, much like the eighteenth-century Scottish political economist Adam Smith, he considered them inextricably linked.

Lawmakers, Wayland explained in 1837 in the first edition of his textbook, had at their disposal only a limited number of tools to stimulate in individuals a desire for “exchange.” The most important of these tools was government support for the “universal diffusion of the means of common education.” For Wayland, the benefits of education were not only economic but also moral. That is, he assumed that education would promote the health of the republic even as it increased the wealth of its citizenry. It was for this combination of economic and moral reasons that Wayland enthusiastically endorsed the “dissemination of knowledge and intelligence” through the establishment of an “efficient and cheap post office system.” The mandate of the postal system, in Wayland’s view, should embrace the delivery to “every man’s door” of “information circulating throughout the civilized world.”³⁶

Wayland’s expansive vision of the mandate of the postal system was remarkable for several reasons. Most obviously, it updated for a new generation the broad, dynamic, and open-ended civic mandate that had been articulated in the 1790s by Madison and Washington. In addition, it implied that the mandate of the postal system should extend to the delivery of information to “every man’s door.”

Wayland used this phrase metaphorically: “every man’s door” meant every locality; not every doorstep. This was in and of itself an expansive mandate: the United States was huge, thinly peopled, and rapidly expanding. Prior to the Civil War, it was customary, with a few relatively minor exceptions, for postal patrons to pick up their mail at the post office in person. To borrow a metaphor from present-day telecommunications analysts, the “last mile”—that is, the all-important, and almost always expensive, final link in the communications circuit—was navigated on foot.

³⁵ On the enormous influence of Wayland on nineteenth-century legal thought, see Herbert Hovenkamp, *Enterprise and American Law, 1836-1937* (Cambridge, Mass.: Harvard University Press, 1991), pp. 101, 174-77.

³⁶ Francis Wayland, *The Elements of Political Economy* (New York: Leavitt, Lord & Co., 1837), p. 200.

Wayland's expansive understanding of the mandate of the postal system was perfectly in keeping with a central tenet of nineteenth-century American political economy. In contrast to the utilitarian philosophy that was popularized in Great Britain by Jeremy Bentham—and, eventually, John Stuart Mill—American political economy remained rooted in Scottish common sense philosophy, which presupposed that moral truths could be readily discerned by ordinary people using their “common sense.” As a consequence, nineteenth-century American political economists refused to regard economic issues as value-neutral, as was, for example, becoming fashionable in Great Britain. Or to put it somewhat differently, the fact-value distinction that most mainstream economists embrace today had yet to be embraced by Wayland and the many nineteenth-century American political economists who followed his lead.

Wayland's formulation had many imitators. The phrase “every man's door,” for example, recurred repeatedly in subsequent debates not only over postal policy, but also over the telegraph and telephone. Lawmakers and influential contemporaries also echoed Wayland's presumption that the federal government had a uniquely important role in the circulation of information. When, for example, Congress debated a bill to subsidize a transatlantic telegraph in 1857, Illinois Senator Stephen A. Douglas justified federal funding by making an analogy between the telegraph and the mail. The proposed legislation was a “post office arrangement,” Douglas explained: “It is for the transmission of intelligence, and that is what I understand to be the function of the Post Office Department.”³⁷

Wayland's expansive rationale for postal policy elicited admiration even after the Civil War had eliminated the threat of disunion. The deliberate subsidization by the postal system of certain geographical sections (e.g. the South and West) and classes of information (e.g. newspapers and magazines) remained relatively non-controversial; indeed, it was often praised. The “complete transmission” of “intelligence” between the “most distant points,” posited the eminent jurist C. C. Nott in 1873, was one of the “conditions of civilization.” By “intelligence,” Nott meant information not only on market trends, but also on public affairs. “One could hardly imagine what would be the

³⁷ Congressional Globe, 34th Cong., 3rd sess., Jan. 22, 1857, p. 421.

condition of national affairs,” Nott elaborated, “if the greater part of our population, cut off from letters and newspapers, knew little more of the affairs in Washington than the returning members chose to tell them.” The postal system for this reason could never be dispensed with: it was, Nott added, in an echo of Wayland, the “one agency of government that comes impartially to every man’s door.”³⁸

The elaborate cross subsidies upon which the civic mandate for the postal system rested elicited praise from political economists throughout the nineteenth century. Congress had laid a tax on a large proportion of the mail, observed political economist H. T. Newcomb in 1900, in order to encourage the “distribution of intelligence” in the many thinly settled parts of the country in which remunerative rates would be prohibitively high. The existence of this tax, Newcomb added, had the “unanimous approval” of the people. There was “scarcely a scintilla of evidence,” Newcomb concluded, that New Yorkers objected to the diversion of postage originating in New York City to cover the cost of mail facilities in Texas or Alaska, even though New Yorkers paid far more in postage than they received in postal facilities. To drive his point home, Newcomb estimated that the average cost of sending a letter from New York City to Circle City, Alaska, was \$450—while the postage on this letter was a mere 2 cents.³⁹

2.3.3 Forestall speculation

For a brief period in the first half of the nineteenth century, lawmakers and influential contemporaries justified the circulation of economic information not only as a stimulus to exchange, but also as a check on speculation.

Lawmakers justified the circulation of information on market trends through the postal system on egalitarian grounds. It was unfair, lawmakers contended, for certain merchants to have access to information on market trends in advance of other merchants. To equalize conditions, the postal system undertook to outpace non-postal carriers—who lawmakers derided as “speculators.” This new mandate was proposed in 1825 by Postmaster General John McLean in response to a recent speculative coup in the cotton

³⁸ C. C. Nott, “The Defects of the Postal Service,” *Nation*, 17 (Dec. 4, 1873): 157-158.

³⁹ H. T. Newcomb, *The Postal Deficit* (Washington: William Ballantyne & Sons, 1900), p. 9.

market. It was essential, McLean declared in a public statement that he issued shortly after the speculation became known, that the postal system prevent insiders from defrauding others who lacked the “same means of information.”⁴⁰ “On all the principles of fair dealing,” McLean elaborated shortly thereafter, “the holder of property should be apprised of its value before he parts with it”: “To purchase an article at one-half or two-thirds of its value, which is known to the buyer, but carefully concealed from the seller, is in opposition both to the principles of law and sound morality.”⁴¹ McLean’s gospel of speed received the endorsement of several legislators, including Felix Grundy, a prominent supporter of Andrew Jackson. It “should not be permitted”—Grundy proclaimed in 1835, in defending this expanded rationale for postal policy--“that an individual should establish a mode of communication and continue it by which intelligence should be received and acted upon by him before the community at large can have the benefit if it through the medium of the government mails.”⁴²

McLean’s gospel of speed received a legal imprimatur in 1843 when the attorney general issued an open letter in which he explicitly defined news to embrace information not only on public affairs, but also on all manner of “passing events,” including market trends.⁴³ For a brief moment, it looked as if the postal system might gain control of the electric telegraph—enabling it to remain, at least in theory, the fastest means of communication in the United States. Several lawmakers, for example, endorsed a congressional buy-out of Samuel F. B. Morse’s telegraph patent—including the 1844 Whig presidential candidate Henry Clay. Government ownership of the telegraph, these lawmakers contended, would forestall speculation. Congress demurred, the telegraph was commercialized as a private enterprise, and McLean’s gospel of speed was abandoned.⁴⁴

⁴⁰ National Intelligencer (Washington, D. C.), May 24, 1825.

⁴¹ John McLean, “The Express Mail” [1827], McLean Papers, Library of Congress, Washington, D. C.

⁴² Senate Committee on Post Offices and Post Roads, Condition and Proceedings of the Post Office Department, 23rd Cong., 2nd sess., 1835, S. doc. 86 (serial 268), p. 113.

⁴³ Laws and Regulation for the Government of the Post Office Department (Washington, D. C.: Alexander and Barnard, 1843), p. 21.

⁴⁴ For a more extensive discussion of this episode, see Richard R. John, “Private Enterprise, Public Good? Communications Deregulation as a National Political Issue, 1839-1851,” in Beyond the Founders: New Approaches to the Political History of the Early American Republic, ed. Jeffrey L. Pasley, Andrew W. Robertson, and David Waldstreicher (Chapel Hill: University of North Carolina Press, 2004), pp. 328-354.

The high-speed circulation of information was expensive and its benefits redounded primarily to the few. Not surprisingly, not everyone believed that it was worth the cost, especially if it limited options for other postal patrons. The cost-quality trade-off was recognized early on. “The design of the post,” contended Portsmouth, New Hampshire, postmaster Jeremiah Libbey in 1792, “is for the convenience of the inhabitants of the state in general, and the more persons it accommodates the better it answers the end design’d.” In writing specifications for mail contracts, Libbey added, postal administrators should not limit postal facilities to those postal patrons who lived along the coast. “Expedition,” Libbey postulated, was “not of equal consequence with convenience,” and postal administrators should oblige contractors to take whatever route served the “largest number of inhabitants,” even if the route happened to be circuitous and therefore slow.⁴⁵

The cost-quality tradeoff was explored in detail by Leonard Bacon in an unusually thoughtful essay on the “post office system” that he published in 1843. The proper mandate of the postal system, Bacon contended, was the “equal accommodations” of “all the members” of society. “It is not necessary,” Bacon added, in elaborating upon his position, “that the mails should outstrip every possible conveyance.” The speed of the “most rapid ordinary traveling” on a given route was all the public required: “If a more rapid transmission is attempted, it will be found that cheapness is sacrificed to speed, and the mail, instead of affording equal accommodations to all the members of society, is a convenience only to those who can afford to pay high postage.”⁴⁶

The cost-quality tradeoff recurred in a different guise in the mid-twentieth century. The postal system, declared a postmaster general in 1942, in a deliberate echo of his nineteenth-century forbears, had a mandate to circulate the mail with “certainty, security, and celerity.”⁴⁷ “Certainty, security, and celerity” had been for much of the nineteenth century the performance standard that postal administrators mandated for the conveyance of the mail in thinly settled parts of the country. The presumption that the mail should be

⁴⁵ Jeremiah Libbey to Josiah Bartlett, July 25, 1792, in *The Papers of Josiah Bartlett*, ed. Frank C. Meyers (Hanover, N. H.: University Press of New Hampshire, 1979), p. 381.

⁴⁶ Bacon, “Post Office System,” pp. 15-16.

⁴⁷ Postmaster General, *Annual Report* (1942), p. 1.

circulated at a certain speed led, in the 1950s, to the declaration by another postmaster general that the postal system would strive to insure next-day delivery of business mail in any two cities in the United States.⁴⁸

High-speed mail delivery has long had a cherished place in postal iconography. For example, a mounted post rider dominated the official seal of the postal system from 1836 until 1970. This image had been chosen by Postmaster General Amos Kendall to boost a short-lived horse-express that Kendall had organized in the conviction that the horse, and not the railroad, remained the fastest known means of transportation.⁴⁹ Even so, high-speed mail delivery received no special emphasis in the mandate for the postal system that Congress set forth in the Postal Reorganization Act of 1970. The mandate of the postal system, Congress decreed, was to “bind the nation together through the personal, educational, literary, and business correspondence of the people.” Though Congress added in the next sentence that the postal system had a mandate to provide “postal services” that were “prompt, reliable, and efficient,” it nowhere committed it to outpacing other carriers, or to provide the kind-of high-speed express services that have become so ubiquitous today.⁵⁰

2.3.4 Promote the general welfare

The mandate of the postal system gradually expanded during the nineteenth century beyond the circulation of information on public affairs (to preserve the Union) and the high-speed circulation of information on market trends (to forestall speculation). By 1920, it had also come to embrace the circulation of information on personal matters (to

⁴⁸ Postmaster General, Annual Report (1957), p. 4. “The ultimate goal of the present postal management,” postmaster general Arthur E. Summerfield declared in his 1957 annual report, was to “provide next-day delivery of first-class mail between any two cities in the United States, at a fair price to the mail users.”

⁴⁹ Kendall’s denigration of the railroad owed something to the enormous difficulty that he had had, during his tenure as postmaster general, in obtaining favorable contracts from railroads to carry the mail. Kendall’s frustration with the railroad was so great that, following his resignation as postmaster general, he went so far as to propose in a signed editorial that the postal system abandon the railroad as a mode of conveyance. If the postal system abandoned the railroad on the route between New York and Washington, D. C., Kendall observed, and left the transportation of letters and newspapers on this route to “private enterprise,” this would rid the postal system of the “enormous” charges it paid railroads, and end the “agency of the government in the business of the country” on routes on which it was “no longer needed.” “Postage,” Kendall’s Expositor, 2 (June 13, 1843): 193-195, quotation on p. 195.

⁵⁰ Postal Reorganization Act of 1970, U. S. Statutes at Large, 84 (1970): 719.

encourage sociability), the circulation of packages large and small (to foster commerce), and the establishment of a government-operated savings bank (to protect small savers). Taken together, these functions came to be known as “postal services”—a capacious phrase that was long synonymous with whatever tasks the postal system performed.

One major expansion in the mandate of the postal system occurred in 1845, when Congress significantly lowered the basic letter rate by enacting the Post Office Act of 1845. This law, as well as a subsequent law that lowered the letter rate still further in 1851, ushered in what contemporaries called an age of “cheap postage.” Cheap postage encouraged sociability, explained Rhode Island Senator James F. Simmons in a congressional speech in February 1845, just prior to the enactment of the Post Office Act of 1845. Consider how social relationships would be strengthened, Simmons exulted, if every obstacle to “intercourse” that was at present “interposed” by distance and expense could be eliminated, and “every parent who has a child away from the family could inquire of their welfare, and receive at once an answer.” What mother would not send her child a message at the dawn of every morning? “With these facilities, there would constantly circulate a current of affection through every inhabited portion of this extended country, producing such harmony as has not been witnessed by created beings since ‘the morning stars sang together.’”⁵¹

The extension in the mandate of the postal system to include the low-cost circulation of letters met with opposition from two groups: (1) certain lawmakers mostly in the South and West and (2) postal administrators. Hostile lawmakers warned that the reduction in the cost of letter postage would almost certainly decrease the revenue that the postal system obtained—which, in turn, would lead to (1) either a reduction in the level of service (especially in the South and West) or (2) an increase in the tariff (since any postal deficit would have to be paid for out of general revenue, and the bulk of general revenue in

⁵¹ James F. Simmons, Remarks of Mr. Simmons, of Rhode Island, in Support of his Proposition to Reduce Postages to a Uniform Rate of Five Cents for a Single Letter, for All Distances (Washington: J. & G. S. Gideon, Printers, 1845), p. 12.

It is conceivable that Simmons was here envisioning that the mandate of the postal system might expand to embrace not only the circulation of letters at low cost, but also the low-cost circulation of telegraphic dispatches: in February 1845, the possible congressional buyout of Morse’s electric telegraph patent remained on the public agenda.

this period came from the tariff).⁵² Postal administrators feared that a reduction in the fees that they obtained for letter postage would reduce the revenue that they relied on to transport the mail and strenuously opposed any reduction in the basic letter rate that was not accompanied by sweeping legislation to eliminate competition from rival letter carriers.⁵³

These fears prompted several rudimentary attempts to measure the magnitude of the various postal cross subsidies. Opponents of cheap postage were, in general, more reluctant than its supporters to buttress their position by marshalling quantitative data. In part, this was because they feared that quantitative data could be easily manipulated; and, in part, because they were wary of revealing the magnitude of the subsidies that underwrote the circulation of the mail in the South and West. These subsidies included not only the cost of conveying the mail, but also the cost of maintaining (via federal subsidies) a rudimentary nationwide network of passenger stagecoaches—the country’s first public transportation network. At this time, mail contracts underwrote much of the cost of the stagecoach business—especially in the South and West.⁵⁴

⁵² House Committee on the Post Office and Post Roads, Post Office Department—Rates of Postage &c., 28th Cong., 1st sess., 1844, H. Rpt. 377 (serial 446), pp. 1-15.

Virginia Congressman George W. Hopkins was especially adamant in his condemnation of the non-governmental letter carriers: “To content the man dwelling remote from towns with his more lonely lot, by giving him regular and frequent means of intercommunication; to assure the emigrant who plants his new home on the skirts of the distant wilderness, or prairie, that he is not forever severed from the kindred and society that still share his interest and love; to prevent those whom the swelling tide of population is constantly pressing to the outer verge of civilization from being surrendered to surrounding influences, and sinking into the hunter or savage state; to render the citizen, how far soever from the seat of his government, worthy, by proper knowledge and intelligence, of his important privileges as a sovereign constituent of the government; to diffuse, throughout all parts of the land, enlightenment, social improvement, and national affinities, elevating our people in the scale of civilization, and binding them together in patriotic affection;—these are considerations which the advocates of the right of individual enterprise to the conveyance of the mails disregard” (p. 2).

⁵³ “Franklin,” An Examination of the Probable Effect of the Reduction of Postage: As Proposed to be made by the Bill Introduced into the Senate of the United States by the Hon. Mr. Merrick, of Maryland (n. p., 1844).

Though this pamphlet was published anonymously, postal reformer Barnabas Bates would later reveal that it originated within the Post Office Department, and that it reflected the views of senior postal management. Barnabas Bates, A Brief Statement of the Exertions of the Friends of Cheap Postage in the City of New York (New York: William C. Bryant & Co., 1848), p. xi.

⁵⁴ Post Office Department—Rates of Postage &c., p. 15.

The presumption that the postal system had a mandate to circulate information of all kinds posed an obvious challenge for postal administrators, since it was up to them to figure out how it would be paid for. This challenge led several postmasters general to oppose any augmentation in the mandate of the institution. The “diffusion of intelligence,” Postmaster General Jacob Collamer reminded Congress in 1849, while undeniably laudable, was not the only object of the postal system; if it were, its outlays would be unlimited—since the demand for information was insatiable. Rather, Collamer recommended that the postal system pursue a “middle course” that would promote the “diffusion of intelligence” to an extent that was “consistent with other public interests, which means judicious activity and liberal economy.”⁵⁵

While Collamer feared that the mandate to circulate information might be unduly expansive, others cited this mandate to prevent the postal system from expanding its ambit. In 1875, for example, railway mail service administrator George S. Bangs publicly opposed the circulation of books in the mail. Book publishers, Bangs explained, were not “primarily motivated” by a desire to “disseminate intelligence”—which Bangs regarded as the “primary purpose of a postal system.”⁵⁶ Books contained information, but not “intelligence,” by which Bangs meant time-specific information on public affairs, market trends, and personal matters.⁵⁷

A similar logic lay behind the opposition of certain influential contemporaries to the extension of the mandate of the postal system to embrace the conveyance of packages weighing up to four pounds. The postal system had conveyed packages of various kinds since the early nineteenth century. Until 1874, however, it had not as a matter of principle expanded its mandate to embrace the circulation not only of information but also of goods. In that year, Congress enacted legislation expanding the weight limit to four

⁵⁵ “Good Sense,” Public Ledger (Philadelphia), April 12, 1849.

⁵⁶ George S. Bangs, “Burdening the Mails with Merchandise,” Expressman’s Monthly, 1 (Jan. 1876): 9-10. Shortly thereafter, Bangs left his position in the postal system to take a position with the package carrier American Express.

⁵⁷ For a more extensive discussion of the mandate of the postal system with regard to the conveyance of books, see Richard B. Kielbowicz, “Mere Merchandise or Vessels of Culture? Books in the Mail, 1792-1942,” Papers of the Bibliographical Society of America, 82 (June 1988): 169-200.

pounds—enabling the government to go into the package business, in direct competition with non-governmental package carriers.

Opponents of the expansion of the postal system to embrace package carriage emphasized that the package business fell outside of what they understood to be the proper mandate of the postal system. There was no reason for the postal system to become a “common carrier” for packages, declared the respected jurist C. C. Nott in 1873. After all, its “original function” was simply that of a “public agency for the universal transmission of intelligence.” Nott opposed the establishment of a postal savings bank for an analogous reason.⁵⁸ The 1874 act that increased the weight limit to four pounds, warned postal analyst Gardiner G. Hubbard in 1875, had transformed the postal system into a “great express company”—a “perversion” of its original mandate. The transportation of packages was not a “normal development of our postal service, but is borrowed from foreign governments.”⁵⁹

Rival package carriers were more pragmatic. “The sharp competition of the U. S. mail for the carriage of packages of four pounds and under,” declared the general superintendent of Wells Fargo in a published circular in 1877, “renders a modification of the three first entries under freight classification on our graduated tariff card...”⁶⁰

Any lingering doubts about the constitutionality of the expanding mandate of the postal system were squelched in 1877, when, in a celebrated case involving telegraph giant Western Union, Supreme Court Chief Justice Morrison R. Waite declared that the mandate of the postal system was not confined to the “instrumentalities” that existed at the time the federal Constitution had been adopted. Waite intended his ruling to open the way for the postal system to operate an electric telegraph network. In so doing, he

⁵⁸ Nott, “Defects of the Postal Service,” pp. 157-158.

⁵⁹ Gardiner G. Hubbard, “Our Post Office,” *Atlantic Monthly*, 35 (Jan. 1875): 96. Hubbard was doubtless sincere in his conviction that the mandate of the postal system should remain limited to the conveyance of letters. It is at least worth noting, however, that he hoped to be paid by certain private carriers for espousing their cause. Hubbard to Gertrude Hubbard, May 19, 1876, July 10, 1876, Oct. 8, 1876, Hubbard Papers, Library of Congress, Washington, D. C.

⁶⁰ John J. Valentine, *To Agents*, April 2, 1877, Wells Fargo corporate archive, San Francisco, Cal.

affirmed the longstanding presumption that the constitutional mandate of the postal system was broad, dynamic, and open-ended.⁶¹

The expanding mandate of the postal system received the wholehearted endorsement of influential contemporaries in the years between 1893 and 1917, a period often dubbed the “progressive” era. (While these dates are arbitrary, they marked two landmarks in American public life: the economic downturn that began in 1893 and U. S. entry in the First World War in 1917.) “The commanding and paramount characteristic in our constructive civic work is the spread of intelligence,” declared postal administrator Daniel C. Roper in 1916, and the “fundamental factor in this progress is the postal service.”⁶² Roper’s admiration for the postal system knew few bounds. “The history of civilization is the history of the struggle for human rights,” Roper declared in a detailed, well informed, and often eloquent book-length overview of the past, present, and future of the postal system published in 1917: “Basic in this struggle is free communication on equal conditions. Progress in the facilities for such communication has made the United States postal service a democratic institution.”⁶³ Other tributes were equally effusive. “Our whole economic and political system,” declared economist and Yale University president Arthur Hadley at around the same time, “has become so dependent upon free and secure postal communication that the attempt to measure its specific effects can be little less than a waste of words.”⁶⁴

Expansive paeans to the postal system recurred after 1917. Yet in the following decades lawmakers and influential contemporaries gradually narrowed the mandate of the postal system to focus primarily on the circulation of certain kinds of information—including, in particular, letters. To be sure, newspapers and magazines would continue to circulate in the mail in large numbers. Even so, only rarely would postal administrators hail their circulation as indispensable to the mandate of the institution.

⁶¹ *Pensacola v. Western Union*, 96 US 1 (1877).

⁶² Daniel C. Roper, *The Democracy of the Postal Service* (n. p., 1916), p. 13.

⁶³ Roper, *Post Office*, p. 79.

⁶⁴ Cited in Roper, *Post Office*, p. 258.

This narrowing in the mandate of the postal system was a response to changing circumstances. The emergence of a host of new media—radio, movies, and, eventually, television and the internet—altered popular perceptions regarding the low-cost circulation through the postal system of information on public affairs and market trends. As early as 1932, a postmaster general could confidently assert that the “chief interest of the people in the postal service” lay in the “facilities which it affords for the transmission of letter mail.”⁶⁵ No longer, in short, was the “chief interest” of the people in the postal system its role in circulating newspapers, as it had been for much of the previous century.

The narrowing in the mandate of the postal system was reflected in the increasing propensity of postal administrators to distinguish between two kinds of postal facilities: business and public service. The postal system, declared Postmaster General Harry S. New in 1923, was not confined to the “instrumentalities” that had been in existence when the federal Constitution had been framed in 1787. (Here New echoed Waite’s celebrated 1877 Supreme Court ruling.) Even so, New did not believe that there was any “sound reason” why parcel post, which performed a task that was analogous to a non-governmental package carrier, should be conducted on any basis other than “sound business.”⁶⁶

New’s faith in business principles was by no means universally shared. In 1932, for example, Congressman Clyde Kelly probed what he termed the “philosophy” of the postal system in a wide-ranging and vigorously argued book entitled, simply, United States Postal Policy. Kelly was a member of the Senate post office committee, and, as the title page announced, the “author of postal legislation.” In this book, Kelly provided a cogent overview of American postal policy as it had come to be understood by lawmakers and influential contemporaries in the preceding decades, and as it would continue to be understood by lawmakers and influential contemporaries for several decades to come.

Kelly’s theme was the longstanding preference of the American people for a postal policy that favored “service-first” over “profits.” The “lawmaking power,” Kelly

⁶⁵ Postmaster General, Annual Report (1932), p. xi.

⁶⁶ Postmaster General, Annual Report (1923), p. 5.

contended, had enacted more than one hundred laws based on the “steadfast belief that public service is the primary objective and that all other considerations are secondary.” The “public service” mandate, in Kelly’s view, triumphed in 1851, when Congress rejected the longstanding presumption that the postal system should remain self-supporting. From that moment forward, the “voice of the people” prevailed and the “postal idealists” triumphed over the “hard-headed guardians of postal receipts.” The key to success, in Kelly’s view, was the combination of high-volume throughput and low unit costs. If a package carrier had the option of lowering its rates by 50 percent and doubling its volume without increasing its profits, it would “instantly” retain the existing high rates; the postal system, in contrast would risk the lower rates. In this way, the postal system combined the “service motive” with the “quantity production idea”—the “basic principle underlying the second great industrial revolution.”⁶⁷

Kelly’s book remains today, many decades after it was published, the single most elaborate defense of the civic mandate of the postal system to have been written by a sitting member of Congress. For those analysts (including lawyers) who accord the testimony of legislators privileged status in discerning the intention of legislation, it can serve as a proof text for the contention that, for much of the history of the United States, lawmakers have regarded the mandate of the postal system to be broad, dynamic, and open-ended.

By the mid-twentieth century, it was conventional for lawmakers and influential contemporaries to divide the mandate of the postal system into two different categories. Certain functions that the postal system performed were “business,” while others were “public service.” This distinction found its way into an important 1954 congressional report on postal rates and postal policy.⁶⁸ The postal system, the report declared, articulating what was by now a common view, had been established primarily for the handling of first-class mail. Yet the postal system was not able to perform this task as a business might. Instead, it remained a “government monopoly” that had been “designed

⁶⁷ Clyde Kelly, United States Postal Policy (New York: D. Appleton & Co., 1932), pp. vii, viii, 9, 61, 66, 88, 93, 185, 232.

⁶⁸ The distinction between “business” and “public service” was congenial to newspaper publishers, magazine publishers and mass mailers, all of whom hoped to persuade lawmakers that the fixed costs of operating the postal system should be covered by letter mail.

primarily to offer a needed service to the entire public”; as a consequence, it had incurred many costs that “no pure business would or could assume.” Among these costs was the maintenance of a huge network of post offices in small towns and the provisioning of nationwide postal facilities at uniform rates. No one, the report added, had ever attempted to quantify in monetary terms the value of the public services that the postal system performed for its patrons and the public.⁶⁹

The business-public service divide that had been featured in the 1954 congressional report became codified a few years later in the Postal Policy Act of 1958. The postal system, this act declared, had been established to “unite more closely the American people, to promote the general welfare, and to advance the national economy.” This act stipulated that the postal system should be efficient, but emphasized that it “clearly is not a business enterprise conducted for profit or for raising general funds.”⁷⁰ Instead, the postal system was a “public service”—and, thus, in determining the postal rate structure, Congress should be mindful of its historical role in the “promotion of the social, cultural, intellectual, and commercial intercourse among the people of the United States.”⁷¹ In addition, the act stipulated that those tasks that the postal system performed that were of a “public service nature” and that had a “public service aspect” should be paid for not out of postal revenue, but, rather by a direct appropriation from the general treasury.⁷²

The relative merits of “business” and “public service” as mandates for the postal system changed decisively with the publication of 1968 of Towards Postal Excellence, a comprehensive report on the postal system that was headed up by a distinguished group of business executives under the direction of former AT&T chair Frederick R. Kappel. The tenor of the Kappel report differed markedly from virtually every prior report on the postal system to have been issued under the auspices of the federal government.

⁶⁹ Postal Rates and Postal Policy of the Post Office Department: Report of the Committee on Post Office and Civil Service Pursuant to S. Res. 49: A Resolution to Investigate Certain Matters Respecting Postal Rates and Charges in Handling Certain Mail Matter, 83rd Cong., 2nd sess., 1954, Sen. Rpt. 1086 (serial 11734), pp. 7, 241.

⁷⁰ Postal Policy Act of 1958, p. 134.

⁷¹ Postal Policy Act of 1958, p. 135.

⁷² Postal Policy Act of 1958, pp. 135-136.

The most basic difference between the Kappel report and its predecessors lay in its characterization of the facilities that the postal system provided. “Mail service,” the report declared, was “principally a utility service not unlike the electronic communication system and the transportation system” (italics added).⁷³ Unfortunately, at present, the postal system was not managed as a public utility; indeed, the report implied at several times that the postal system was not managed at all. (Interestingly, the authors went out of their way not to blame postal administrators for this state of affairs; instead, they emphasized that it could be explained by the subordination of the postal system to congressional mandates.) To rectify this alarming situation, the report recommended that Congress transform the postal system from an executive department into a government-owned corporation. With the supreme self-confidence of the managerial class in the heyday of the post-Second World War economic boom, the report concluded that professional business management held the answer to virtually all of the problems the postal system faced. Professional management could eliminate the postal deficit, improve working conditions for postal employees, and create opportunities for career advancement within the organization. In his annual report for 1968, the postmaster general struck a similar note. “Management” the postmaster general declared, “is to the twentieth-century what industrialization was to the nineteenth-century.”⁷⁴

It might perhaps be worth noting in passing that the Kappel report did not recommend the abandonment of the postal monopoly. In part, this can be explained by the common presumption at the time among economists that large network enterprises like the postal system were “natural monopolies” that were best coordinated as a single organization. In addition, it almost certainly reflected Kappel’s own personal convictions. Kappel was a former chair of AT&T, which was at this time a highly regulated monopoly. Under the circumstances, it was not surprising that the committee that Kappel headed up to reorganize the postal system recommended that the postal system be restructured so that

⁷³ President’s Commission, Towards Postal Excellence, vol. 1, p. 48.

⁷⁴ Postmaster General, Annual Report (1968), p. ix. The postmaster general’s reference to “industrialization” was telling, since it underscored the extent to which government administrators had by this time come to regard industrialization as an unmoved first mover. In so doing, they obscured the extent to which American industrialization—and the evolution of the postal system—occurred in a specific political economic context. For a corrective, see Richard Bense, The Political Economy of American Industrialization, 1877-1900 (Cambridge: Cambridge University Press, 2000).

it would more closely resemble AT&T. If nothing else, this restructuring would enhance the legitimacy of the regulated monopoly for which Kappel himself had long worked. Had Kappel urged Congress to abolish the postal monopoly, he might conceivably have inadvertently emboldened critics of AT&T to weaken the considerable array of legal privileges that AT&T currently enjoyed. Or to put it a bit differently, the Kappel report preached the virtues of management expertise--rather than the virtues of competition--as the solution to the problems the postal system faced.

The novelty of the Kappel report, it should be underscored, did not lie in its contention that the postal system was a business. By 1968 it has become a commonplace to contend, as the Kappel report did, that the postal system was a “big business” that operated the “largest retail chain” in the United States.⁷⁵ The conceptual innovation of the Kappel report lay, rather, in the implications of this claim. Not only was the postal system a business; in addition, it should be operated like a business. In venturing this claim, the report challenged the longstanding consensus among lawmakers that the postal system should be operated not as a business but, rather, as a public service—a consensus that had been affirmed by Congress as recently as 1958. In effect, the Kappel report envisioned the postal system becoming more like AT&T—that is, a much admired organization operated by professional managers that was widely praised as a business even though it enjoyed a panoply of legal protections that guaranteed it a large and lucrative market.

By no means the least remarkable feature of the Kappel report was its ingenious re-envisioning of the costs associated with the provisioning of postal service in the nation’s far-flung hinterland. These costs, the report insisted, were not cross-subsidies, but, rather, a “proper expense of the service as a whole.”⁷⁶ The presumption that rate averaging made good economic sense had a long history in the context of telecommunications policy. Indeed, it had been a cornerstone of AT&T’s business strategy for over half a century. In the past, nationwide mail delivery had been often hailed as a civic ideal that was valued despite its economic cost; in the Kappel report, this civic ideal became transmogrified into an economic truism. Henceforth, the benefits of spatial expansion (benefits that

⁷⁵ President’s Commission, Towards Postal Excellence, vol. 1, p. 26.

⁷⁶ President’s Commission, Towards Postal Excellence, vol. 1, p. 50.

economists would dub “network externalities”) were stripped of their morally praiseworthy attributes and redefined as value-neutral properties of a large-scale, geographically extensive network.

The Kappel report’s valorization of postal rate averaging reached its apotheosis in the executive summary, in which, at several points, it dignified rate averaging as “universal service,” a phrase that had been used for many decades in a telecommunications context, but that had rarely if ever been used previously in a postal context. For example, the executive summary referred at one point to “universal service at fair rates” and at another to the “universal service orientation” of postal workers.⁷⁷ In this way, the Kappel report parried one of the most forceful arguments that critics of the business-first ethos (such as Clyde Kelly) had made—that is, that a business-first strategy exacerbated disparities between urban and rural areas. In so doing, the Kappel report narrowed to the point of invisibility the once robust business-public service divide.

The Kappel report’s narrowing of the business-public service divide found expression in certain provisions of the Postal Reorganization Act of 1970. Though this act nowhere used the phrase “universal service,” it did declare in its preamble that the postal system had an “obligation” to “provide postal services to bind the nation together through the personal, educational, literary, and business correspondence of the people.” In addition, and like the Kappel report, the act proclaimed that the postal system would “provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.” To drive the point home, the act stipulated that “no small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.”⁷⁸

The statutory language of the Postal Reorganization Act of 1970 echoed the longstanding presumption that the postal system had an obligation to provide “postal service” to both urban and rural areas. While this presumption was traditional, the rationale for it was not. Beginning in 1970, lawmakers would begin to justify network

⁷⁷ President’s Commission, Towards Postal Excellence, vol. 1, pp. 2, 14.

⁷⁸ Postal Reorganization Act of 1970, p. 719.

expansion primarily as an economic truism and only secondarily as a civic ideal. Here lay the real novelty of the Kappel report, a novelty that is easily obscured by its endorsement of rate averaging and its rejection of competition.

3 The civic mandate in practice

3.1 Rate structure

The regulatory regime that the Postal Reorganization Act of 1970 brought to a close had its origins almost two centuries earlier when Congress enacted the Post Office Act of 1792, a landmark in postal policy and one of the most important pieces of legislation in the early republic. The postal system assumed its modern form immediately following its enactment. Among the innovations that the Post Office Act of 1792 institutionalized was the establishment of a rate structure that subsidized the conveyance of newspapers, then the principal source of time-specific information on public affairs. Newspapers retained a privileged status in postal policy for well over one hundred years. So too, would magazines—though their privileged status would not be codified until somewhat later.⁷⁹ The favored postal status of newspapers and magazines owed something to the political clout of newspaper and magazine publishers. Yet it rested in the civic mandate for postal policy that had been articulated by Madison and Washington, and that would be reiterated by countless lawmakers and influential contemporaries in the decades to come.

The rate differential between the cost of sending a newspaper in the mail and the cost of mailing a letter was enormous. Though newspapers weighed much more than letters, they paid much less in postage. For example, in 1831—the year the French traveler Alexis de Tocqueville visited in the United States—it cost a mere 1.5 cents to send a newspaper from New York to New Orleans and a whopping 50 cents to send a two-page

⁷⁹ Newspapers and magazines were by no means the only privileged classes of postal items. Also privileged were a large variety of items—including letters, pamphlets, and newspapers—that Congress permitted certain government officers (including congressmen) to circulate without charge. These items, which were known as “franked” mail, significantly increased postal costs. In the run-up to certain elections in the early nineteenth century, franked mail constituted a large percentage of the total weight of the mail. Party leaders relied on franked mail to publicize candidates and get out the vote. In this way, the federal government helped finance election campaigns.

letter the same distance. Tocqueville was enormously impressed with the huge circulation of newspapers in the American hinterland. And no wonder: In the year he visited the United States, far more newspapers circulated in the United States than in any of the nations of Europe. Yet to an extent that Tocqueville did not fully appreciate, this circulation was a product of postal policy—that is, of the deliberate subsidization of information on public affairs. If an ordinary American received anything in the mail in the period before 1845, it was more likely to be a newspaper than a letter.

Early on, no one knew precisely how much it cost to circulate newspapers through the mail. Though a succession of postmasters general made rough estimates of the size of the newspaper subsidy, it would not be until well into the twentieth century that Congress authorized a formal cost analysis. Even so, no one doubted that letter-recipients were subsidizing newspaper recipients and that this subsidy provided an enormous boost to newspaper publishers. According to one early estimate, newspapers never generated more than 12 percent of postal revenue, while making up as much as 95 percent of the weight of the mail.⁸⁰

The newspaper subsidy troubled certain editors who did not enjoy it. Among its critics was Leonard Bacon, the editor of the New Englander—a magazine whose subscribers paid the higher magazine rate if they received the New Englander in the mail. During a particularly acrimonious policy debate in the 1840s, Bacon aptly referred to newspaper publishers as a “privileged class.” There “does not appear to have been a man in Congress,” Bacon sputtered, “who suspected that newspaper publishers had not a divine right to some exclusive privileges at the post office.”⁸¹

The circulation of such an enormous number of newspapers in the mail had major implications for American public life. To be specific, it hastened the establishment of a nationwide market, fostered the proliferation of nationally oriented voluntary associations, created the technical preconditions for the rise of the mass political party,

⁸⁰ Kielbowicz, “News in the Mail, 1690-1863: The Technology, Policy, and Politics of a Communication Channel,” Ph.D. diss., University of Minnesota, 1984, p. 151.

⁸¹ Leonard Bacon, “The New Post Office Law,” New Englander, 3 (Oct. 1845): 541.

and encouraged a far flung population to conceive of themselves as Americans—and, in so doing, shaped an emergent American national identity.⁸²

Between 1792 and 1970, Congress set postal rates. Beginning in 1926, Congress directed the postmaster general to prepare annual “cost ascertainment” studies to determine the magnitude of the cross-subsidies for certain favored classes of mail matter (e.g. newspapers and magazines) and certain favored modes of conveyance (e.g. airplanes and the merchant marine).⁸³ While these cost ascertainment studies were sometimes quite elaborate, their efficacy was limited, since Congress was under no obligation to base postal rates on the data that postal administrators generated. As late as 1977, a respected consulting firm could plausibly conclude that every prior attempt to analyze postal costs had been seriously deficient not only in methodology, but also in effectiveness, since none had had a more than incidental influence on either the appropriations Congress authorized or the rates postal patrons paid.⁸⁴

This situation would not change in a fundamental way until 1970, when direct control over the rate structure shifted from Congress to the Board of Governors of the postal system (which Congress now renamed the “U. S. Postal Service”). The Board of Governors derived its authority from the Postal Reorganization Act of 1970. It consisted of eleven members: of whom the president appointed nine (with the advice and consent of the Senate), and the board the remaining two (the postmaster general and the deputy postmaster general).⁸⁵

The Postal Reorganization Act also established the Postal Rate Commission (PRC), which has since been renamed the Postal Regulatory Commission. The precise role of the

⁸² David Paul Nord, “Newspapers and American Nationhood, 1776-1826,” in Nord, Communities of Journalism: A History of American Newspapers and their Readers (Urbana: University of Illinois Press, 2001), pp. 80-91.

⁸³ Kielbowicz, “Mail Classification,” chaps. 6-7.

⁸⁴ National Economic Research Associates, “Report to the Commission on Postal Service” (March 1977), p. 717. Prior to 1970, the consulting firm concluded, “neither definitions nor estimating approaches had any effect on either total appropriations to the Post Office Department or the rates paid by postal customers.” A leading student of postal rate making, the historian Richard B. Kielbowicz, concurs: “cost ascertainment didn’t figure in legislative overhauls of rates in a major way until the 1960s and maybe not even then.” Kielbowicz to John, email, in author’s possession, Oct. 25, 2008. Quoted with permission.

⁸⁵ Postal Reorganization Act of 1970, pp. 720-721.

Postal Rate Commission in the rate-setting process remains controversial. The Kappel report opposed the establishment of a separate rate commission. It recommended, rather, that the rate-setting power be vested exclusively in the Board of Governors. Congress rejected the Kappel report's recommendation, and, as a consequence, the ultimate authority for rate setting since 1970 remains divided between the postal system, the postal regulatory commission, and Congress.⁸⁶

The role of Congress in postal rate setting is vestigial. Prior to 1970, it had final authority over rate making; since 1970, it continues to receive appeals from individuals and groups who are troubled by rate changes, even though it no longer has any formal authority in the rate-setting process (though, of course, it retains ultimate control over the postal system, since the postal system owes its legal existence to federal law).

From a broader standpoint, the Postal Reorganization Act of 1970 shifted the locus of authority for postal rate making from Congress (which has traditionally been highly responsive to popular pressure) to the postal system itself (which is considerably more insulated from popular pressure). In this way, Congress reversed a decision that it had made in 1792, when it transferred control over rate setting from the postal system to Congress. Predictably, this shift has encouraged well-organized business lobbies, including mass mailers and rival carriers, to assume a more prominent role in the rate-making process.

3.2 Development strategy

3.2.1 Link localities (1792-present)

The civic mandate for postal policy shaped not only the rate structure but also the development strategy. Here, too, the Post Office Act of 1792 cast a long shadow. In addition to admitting newspapers into the mail at extremely low rates, the act shifted

⁸⁶ President's Commission, *Towards Postal Excellence*, vol. 1, p. 5; Murray B. Comarow, *A Member of Congress Repents*, National Academy of Public Administration, 2008. "Were we to recommend a privately-owned post office," the Kappel report declared, "regulation by an independent federal commission would be a natural corollary": "We see no advantages, however, and serious problems, in proposing regulation of a government corporation by another government body. We recommend, instead, that proposals for rate changes made by the postal corporation become effective after sixty days unless vetoes by concurrent resolution of Congress" (p. 5).

control over the designation of new post routes--and, in practice, new post offices—from the postmaster general to Congress. This seemingly minor shift in jurisdiction had major consequences, since it hastened the rapid extension of the postal network from the seaboard to the hinterland.

The Post Office Act of 1792 lacked a ringing preamble setting forth its rationale. For this reason, its significance is sometimes overlooked. Yet it would be hard to exaggerate its long-term impact on American public life. At a stroke, as the noted postal historian Wayne E. Fuller observed in 1972, it transformed the postal system into a “people’s post office” that was far more responsive to popular pressure than the postal systems in Britain or France.⁸⁷ Congressional control over the designation of post roads, Fuller astutely observed, would have “far-reaching effects upon the nation’s postal service,” since it meant that the American people, both collectively and as special interests, would “shape the American mail system” to a greater degree than “any other single factor.”⁸⁸

Congressional control over the designation of new post routes had far-reaching consequences. Americans had long been accustomed to petition the government for various things. Beginning in 1792, they began to petition it to expand the postal network by designating a particular road a post route.⁸⁹ Thousands of these petitions survive today in the National Archives, mute yet tangible witnesses to the determination of generations of ordinary American to improve their access to information about the wider world. Before 1792, Americans had lacked a forum in which they could shape the character of what today might be called the information infrastructure. After 1792, the petition process provided them with such a forum. No comparable forum existed in Britain, France, or any other major European country.

In the period before the Civil War, post routes linked localities. The vast majority of postal patrons sent and received their mail by traveling on foot to the post office or by

⁸⁷ Fuller, *American Mail*, chap. 2.

⁸⁸ Fuller, *American Mail*, p. 45.

⁸⁹ Richard R. John and Christopher J. Young, “Rites of Passage: Postal Petitioning as a Tool of Governance in the Age of Federalism,” in *The House and Senate in the 1790s: Petitioning, Lobbying, and Institutional Development*, ed. Kenneth R. Bowling and Donald R. Kennon (Athens, Ohio: Ohio University Press, 2002), pp. 100-138.

authorizing someone to pick up their mail. As a consequence, in many localities the local post office became an excellent place to meet face-to-face with neighbors, friends, and colleagues—a convention that persists in certain small towns to the present.

The social significance of the local post office as a meeting place is highlighted by two well known nineteenth-century genre paintings: John Lewis Krimmel's "Village Tavern" (1814) and Richard Caton Woodville's "War News from Mexico" (1848). Both of these genre paintings are set in a post office; both highlighted the intense political discussions that occurred in these settings during times of national crisis—the War of 1812 for Krimmel, the Mexican-American War for Woodville.⁹⁰

The threatened closing of a small-town post office can hasten a highly visible protest: a case in point was the journalistic campaign that the writers Bill McKibben and Sue Halpern launched in 2008 to block the closing of a tiny post office in Ripton, Vermont. In opposing the post office closing, one lawmaker underscored its role as a community center. "The Ripton General Store and the post office," the lawmaker declared, "is a center and a primary gathering place for residents."⁹¹

While facilities where local delivery was rare, they were not altogether unknown. In several cities—including New York, Philadelphia, and Boston—postal administrators in the pre-Civil War period established local delivery services (known colloquially as "penny posts") that enabled certain postal patrons to receive their mail at their business office or personal residence in return for the payment of an additional fee. The penny posts remained restricted to central business districts, where they were patronized by an exclusive clientele of merchants and the well-to-do.

In several cities, including New York and Philadelphia, entrepreneurs established rival city posts. The most successful non-governmental letter carrier in New York was Boyd's City Dispatch; in Philadelphia, Blood's Penny Post. In the pre-Civil War decades these carriers circulated millions of letters. They remained legal until 1861, when Congress overturned an 1860 court ruling—*U. S. v. Kochersperger*—that had upheld the right of

⁹⁰ Richard R. John and Thomas C. Leonard, "The Illusion of the Ordinary: John Lewis Krimmel's *Village Tavern* and the Democratization of Public Life in the Early Republic," *Pennsylvania History*, 65 (Winter 1998): 87-96.

⁹¹ Bill McKibben and Sue Halpern, "Breaking a Town from the Center," *Boston Globe*, June 30, 2008.

Blood's Penny Post to operate within the city by ruling that it had not violated any existing federal law.⁹²

It has often been contended that congressional control over the designation of new post routes was one of the first great "pork-barrel" project in the history of the federal government.⁹³ Strictly speaking, this is correct. The postal network after 1792 did expand far more rapidly than it had before 1792—in large part due to the transfer of control over the designation of new routes from the postmaster general to Congress. And Congress did routinely establish post routes in thinly settled parts of the country that could not possibly cover their cost.

Yet it would be a mistake to dismiss the resulting network expansion as government waste. The routes that Congress established facilitated the widespread circulation of information on public affairs, market trends, and personal matters. In so doing, Congress translated from theory to practice the civic mandate for postal policy that had been championed by Madison and Washington. "Probably nothing has been more effective as a civilizing and consolidating agency"—declared the notoriously acerbic journalist E. L. Godkin in 1883, in a rare burst of enthusiasm—"than the way in which the American post-office has followed the settlers into the western wilderness, and kept every backwoodsman and squatter within easy reach of the world he had left behind him."⁹⁴ Godkin was, at the time, editor of the Nation, a magazine more influential in the post-Civil War era than its descendent is today, and Godkin's editorial opinions (which were often highly skeptical of governmental activism) carried great weight with a large portion of the educated middle class.⁹⁵

To be sure, a few eccentric radicals like William Leggett condemned postal cross subsidies in principle. Writing in the 1830s, Leggett derided all postal subsidies as a "tax on postage" that ought to fall "equally on the community" rather than disproportionately

⁹² United States v. Kochersperger, 26 F. Cas. 803 (C.C.E.D. Pa. 1860).

⁹³ See, for example, David P. Currie, The Constitution in Congress: The Federalist Period, 1789-1801 (Chicago: University of Chicago Press, 1996), p. 149.

⁹⁴ E. L. Godkin, "The Telegraph and the Post Office," Nation, 37 (Aug. 2, 1883): 90.

⁹⁵ William M. Armstrong, "Godkin's Nation as a Source of Gilded Age History: How Valuable?" South Atlantic Quarterly, 72 (Autumn 1973): 476-493.

on merchants living along the Atlantic seaboard. Should Congress abandon these “stimulants,” Leggett predicted, the “solitary squatter” might no longer “hear the forest echoes daily awakened by the postman’s horn.” Yet this would be all to the good, since the current “forcing system” was unjust, unfair, and environmentally unsound.⁹⁶ (The postal cross-subsidies were environmentally unsound, in Leggett’s view, because they hastened the too-rapid settlement of the hinterland.)

Leggett, however, was unusual. Most informed contemporaries hailed postal cross-subsidies as a manifestation of the sectional compromises necessary to perpetuate the Union.

Congress retained an abiding interest in the maintenance of small-town post offices long after it stopped designating individual post routes in 1884. Even today, legislators are routinely bombarded with angry letters from their constituents should a postal administrator shut down a favorite post office in their district. Indeed, in certain parts of the country, the local post office retains its time-honored place in civic life. As recently as 1992, for example, the journalist Mickey Kaus hailed the existence of a local post office as public good. Since the local post office was open to all, Kaus contended, it helped to encourage a laudable sense of social equality.⁹⁷ Three years later, social critic Christopher Lasch bewailed the decline of the postal system from a forum for face-to-face discussions of public affairs (at the once ubiquitous local post office) into a distributor of the advertising flyers commonly known as junk mail.⁹⁸

The extension of the postal network was predicated on the transfer of revenue from thickly settled districts to thinly settled districts. The magnitude of these transfers was considerable: how large, it is impossible to say, since no one measured them in a systematic way. Taken together, they help explain why contemporaries like Leonard Bacon came to refer to the postal system as a system. Like the celebrated “American System” that had been championed by Senator Henry Clay, the postal system balanced

⁹⁶ Cited in Richard R. John, Spreading the News: The American Postal System from Franklin to Morse (Cambridge, Mass.: Harvard University Press, 1995), p. 253.

⁹⁷ Mickey Kaus, The End of Equality (New York: HarperCollins, 1992), pp. 21, 98, 138, 149.

⁹⁸ Christopher Lasch, The Revolt of the Elites and the Betrayal of Democracy (New York: W. W. Norton & Co, 1995), p. 174.

different interests to perpetuate a geographically extensive republic. In this way, the very process by which the network expanded was--in and of itself--a civics lesson. "The post office," explained postal historian Wayne E. Fuller, "was the first agency of the central government to teach them [the American people] the difficult lesson that money raised in one part of the Union must be used to help those in another part: that surplus postal money taking from the busy, productive mail routes be used to extend mail service over sparsely populated and nonpaying mail routes."⁹⁹

3.2.2 Reach out to urban households (1861-present)

Many of the thinly settled districts that failed to break even were located in the South. It was, thus, unsurprising that the secession in 1861 of eleven southern states had a decisive effect on postal policy. Now that southern lawmakers were no longer in Congress, northern lawmakers moved swiftly to provide their constituents with the postal facilities that, prior to 1861, their southern colleagues had blocked. Foremost among them was free mail delivery in the nation's major cities.

Prior to the Civil War, city delivery was extremely limited. In the nation's major cities, the most important local delivery services were provided not by the government, but, rather, by non-governmental letter carriers: Boyd's in New York; Blood's in Philadelphia. The relationship between these letter carriers and the government was often vexed. In San Francisco, for example, postmaster Charles Weller waged a long, ruthless, and ultimately successful campaign in the 1850s against a would-be rival letter carrier, Henry Leavitt Goodwin, who struggled valiantly, yet ultimately unsuccessfully, to improve local mail delivery by diverting incoming mail from postal patrons' letter boxes (where it might languish for days) to a letter box that could be opened by his own agents.¹⁰⁰ In 1861, Congress drove the largest of these carriers out of business by extending the postal monopoly to intra-city and well as inter-city routes. From that year onward, it became possible in many cities for postal patrons to receive mail at their home

⁹⁹ Fuller, *American Mail*, p. 85.

¹⁰⁰ *Papers, Documents, and Correspondence in Relation to the Case of Charles L. Weller, Deputy Postmaster at San Francisco, Cal.* (Washington: William A. Harris, 1859). See also Leonard Woolsey Bacon, *Commemorative Discourse on Henry L. Goodwin, Together with the Story of a Suppressed Document* (Norwich, Conn.: Cranston & Co., 1899).

or office without paying an additional fee. Before long, the uniformed mail carrier became ubiquitous in the nation's major cities, while rapid in-city mail delivery became for city postmasters a point of pride.

3.2.3 Reach out to rural households (1896-present)

Americans who lived in rural areas naturally coveted the postal facilities that city dwellers enjoyed. Following an intense lobbying campaign by farmers, postal administrators rolled out in 1896 an ambitious new initiative known as “Rural Free Delivery” (or RFD). Thereafter, rural dwellers obtained postal facilities that were roughly comparable to the postal facilities that urban households had enjoyed since 1861. Though RFD proved to be expensive, it enjoyed widespread popular support. In 1913—a year that marked, in retrospect, the apogee of the civic mandate for the postal system—Congress expanded the ambit of parcel post to embrace the circulation of packages weighing up to 11 pounds, a postal initiative known as “Parcel Post.” (Shortly thereafter, the weight limit was raised even further.) Proponents of parcel post contended that the federal government had both the organizational capabilities and the public service vision to provide the American people with low-cost package carriage at a fraction of the cost of the non-governmental package carriers. Non-governmental package carriers, postal enthusiasts contended, followed a business model that generated high profits by providing a low-volume service at a high cost to the user; the government-backed postal system, in contrast, followed a public service model that relied on low margins to provide a high-volume service at a low cost to the user. Here, as in several other realms, the civic mandate for postal policy justified a major expansion in postal facilities.¹⁰¹

In retrospect, parcel post was a remarkable augmentation of federal power. After all, it drove from the field a large and well-established business—the package carrier business—that had previously coordinated the movement of millions of packages throughout the length and breadth of the United States. Interestingly, the establishment of

¹⁰¹ Kielbowicz, "Government Goes into Business: Parcel Post in the Nation's Political Economy," Studies in American Political Development, 8 (Spring 1994): 150-172; Kielbowicz, "Testing the Boundaries of Postal Enterprise in the U. S. Free-Market Economy, 1880-1920," in More than Words: Readings in Transport, Communication, and the History of Postal Communication, ed. John Willis (Gatineau, Quebec: Canadian Museum of Civilization, 2007), pp. 85-100.

parcel post prompted little protest. Package carriers were notoriously unpopular: they charged high rates widely derided as capricious and failed to reach large swaths of the country. The primary opponents of parcel post, other than the package carriers themselves, were small-town merchants terrified of the competition from big-city merchants that parcel post would bring. Here was one instance in which almost everyone agreed that a public enterprise operated a business—package delivery—far more successfully than the private enterprise it supplanted.¹⁰²

The unpopularity of the late-nineteenth-century package delivery business is worth underscoring, since it is often assumed that Americans in this period reflexively preferred private enterprise to public enterprise. In fact, parcel post was supported by many businesses, large and small. The mail-order houses Sears Roebuck and Montgomery Ward were but two of its many beneficiaries. Other beneficiaries included the millions of rural Americans who now for the first time found it possible to obtain low-cost access to goods manufactured in the nation's burgeoning industrial centers.

3.2.4 Meet statutory obligations (1958-present)

During the twentieth century, the civic mandate for postal policy has been subtly recast by a combination of external and internal factors. The most important external factors included the proliferation of new media—including radio, movies, television, and, most recently, the internet—that have made it harder for publishers to contend credibly that low postal rates for newspaper and magazines that carried a substantial editorial content were a public good. As a consequence, there has been mounting pressure to quantify the various postal cross-subsidies—a project that began in a modest way with the cost ascertainment studies in the 1920s, and that has accelerated since the establishment of the Postal Rate Commission in 1970.¹⁰³

¹⁰² The reform movement that led to the establishment of parcel post remains largely overlooked by political and cultural historians, which is unfortunate, since it offers intriguing parallels to current debates over postal policy. For an introduction to this topic, see Wayne E. Fuller, *RFD: The Changing Face of Rural America* (Bloomington: Indiana University Press, 1964), chaps. 8-12, and, especially, Kielbowicz, "Government Goes into Business," pp. 150-172.

¹⁰³ The first federal law to require the postmaster general to enumerate the cost of certain services that were presumed to increased the postal deficit was "An Act to Provide for the Classification of Extraordinary Expenditures Contributing to the Deficiency of Postal Revenues," 71st Cong, 2nd sess., 1930, chap. 413, p.

The first federal law to try to enumerate the mandate of the postal system was the Postal Policy Act of 1958. Though this act unequivocally declared that the postal system was a “public service” rather than a profit-making business, the very act of specifying just what this “public service” consisted of had the ironic effect of narrowing its ambit. No longer was the civic mandate of the postal system broad, dynamic, and open-ended. Henceforth, this mandate was carefully bounded by statute—a necessary first step in the process of making it amendable to quantitative analysis.

The quantitative analysis of postal costs is customarily dated to the annual “cost ascertainment” studies that Congress required the postmaster general to prepare beginning in 1926. Yet these studies had relatively little influence on postal policy until after the establishment of the Postal Rate Commission in 1970. Beginning in 1970, postal accounting began to have a major influence on the making of postal policy. This shift has worked to the advantage of certain postal stakeholders (e.g. mass mailers and package carriers) and to the disadvantage of others (e.g. specialized magazines). With the enactment of Postal Accountability and Enhancement Act of 2006, it is likely that the influence of postal accounting will increase. In part, this is because Congress has authorized the Postal Regulatory Commission for the first time to analyze the “scope and standards of universal service.”¹⁰⁴ While this task that might seem narrowly technical, it has potentially major consequences for various postal stakeholders—including postal unions, mass mailers, package carriers, newspaper and magazine publishers, and the residents of small towns.

These stakeholders have long jostled for power and influence over postal affairs. What is new is the extent to which this jostling is taking place within the postal system and the Postal Regulatory Commission rather than within Congress—as had been the norm in the period between 1792 and 1970. If current trends continue, it is likely that postal policy henceforth will be increasingly subjected to the same kinds of cost-benefit analysis that has come to exert such a pervasive influence on corporate planning. Such an exercise

523. On the history of postal cost accounting, see Richard B. Kielbowicz, “Cost Accounting in the Service of Policy Reform: Postal Rate Making, 1876-1926,” *Social Science Quarterly*, 75 (June 1994): 284-299, and Kielbowicz, “Origins of the Junk-Mail Controversy: A Media Battle over Advertising and Postal Policy,” *Journal of Policy History*, 5, no. 2 (1993): 248-272.

¹⁰⁴ Postal Accountability and Enhancement Act of 2006, p. 3243.

raises the distinct possibility that certain benefits that Americans have traditionally obtained from the postal system will be ignored, since they are hard to quantify, and, thus, to measure.

4 The postal monopoly in theory

The character and limits of the legal privileges that the postal system enjoys under the federal Constitution has sparked controversy since the early nineteenth century. The language of the enabling clause of the federal Constitution (article 1, section 8) provided little guidance. The clause read, in its entirety: “Congress shall have the power...to establish post offices and post roads.” Nowhere did the federal Constitution explicitly grant the postal system exclusive control over letter carriage—or, for that matter, any other postal facilities; nowhere did it proscribe it.

Equally unrevealing is the documentary record of the framing and ratification of the federal Constitution. Of the many thousands of pages of original documents from this period that have been published, none enumerate the legal privileges that the framers intended the postal system to enjoy. This neglect can be explained in part by the relatively minor role that the postal system played in the 1780s in American public life.

All this would change in the years immediately following the adoption of the federal Constitution in 1788. In the winter of 1787-1788, James Madison declared the postal clause in the federal Constitution a “harmless power.” By 1792, Madison had changed his mind. The circulation of newspaper in the mail, Madison now contended (an innovation that had been institutionalized in the Post Office Act of 1792), deserved to be “justly reckoned” among the “surest means of preventing the degeneracy of a free people.”¹⁰⁵ Unfortunately, it was Madison’s dismissive characterization of the postal power in 1787-1788, rather than his admiring characterization of its political significance in 1792, that

¹⁰⁵ Madison, “Address of the House of Representatives to the President,” Nov. 9, 1792, in Papers of James Madison, vol. 14, p. 404.

Madison’s position in 1792 had evolved considerably from his position in 1787-1788, when, in an essay that would later become one of the Federalist papers, he had proclaimed the enabling clause for the postal system a “harmless” power. In 1787-1788, Madison was trying to persuade recalcitrant New Yorkers to approve the federal Constitution; in 1792, he was determined to expand the ambit of the postal system to foster the kind of civic engagement that he had come to believe was essential to the perpetuation of the republic.

has attracted the attention of legal scholars. In his Commentaries on the Constitution, for example, Supreme Court justice Joseph Story declared Madison's characterization of the postal system as a "harmless power" to be "perhaps, one of the most striking proofs, of how much the growth and prosperity of the country have outstripped the most sanguine anticipations of our most enlightened patriots."¹⁰⁶ Nowhere in his Commentaries did Story reflect on Madison's later observations about the role of the postal system in sustaining the republic.

One of the only congressional debates in the 1790s to focus specifically on the precise scope of the legal privileges that the postal system enjoyed concerned the constitutionality of permitting mail contractors to transport passengers along with the mail. If mail contractors operated stagecoaches (that carried passengers as well as the mail) instead of post riders (that carried only the mail) they could reduce their costs. In so doing, however, they sometimes infringed on the monopoly grants over passenger conveyance that state governments had granted stagecoach operators. Predictably enough, some lawmakers sided with the states. "That clause of the Constitution which empowers the federal government to establish post offices and post roads," one lawmaker declared, "cannot, it was said, be understood to extend farther than the conveyance of intelligence, which is the proper object of the post office establishment. It gives no power to send men and baggage by post."¹⁰⁷

The early nineteenth-century debate over the character and limits of the legal privileges that the postal system enjoyed under the federal Constitution focused on two main issues. The first issue was the relationship of the enabling clause in the federal Constitution to the enabling clause in the Articles of Confederation; the second issue was the relationship of the post-1792 American postal system to the pre-1792 American postal system and the British postal system.

¹⁰⁶ Alexander Hamilton, James Madison, and John Jay, The Federalist, ed. Jacob E. Cooke (1787-1788; Middletown, Conn.: Wesleyan University Press, 1961), p. 287; Joseph Story, Commentaries on the Constitution of the United States (Boston: Hilliard, Gray, and Company, 1833), vol. 3, p. 22.

¹⁰⁷ Cited in The Founders' Constitution, ed. Philip B. Kurland and Ralph Lerner (Chicago: University of Chicago Press, 1987), vol. 3, p. 25.

The federal Constitution nowhere specified that the powers that it delegated to Congress to establish a postal system were exclusive. This lacuna prompted contemporaries intent on limiting the scope of the legal privileges that the postal system enjoyed to conclude that the founders had construed its legal privileges narrowly.

The well-regarded Virginia jurist St. George Tucker denied the exclusivity of the postal power in a legal treatise that he published in 1803. The federal government had no right, Tucker opined, to raise a “constitutional objection” if a state government established a state postal system on any road within a state that had yet to be incorporated into the federal postal system. This state-established postal system had a right to remain in operation, Tucker added, until Congress should “think proper” to exert its “constitutional right” to “establish a communication by post, between the same places.”¹⁰⁸

The lens through which Tucker viewed the legal privileges that the federal Constitution accorded the postal system was primarily fiscal. Like several of the founders—including, most prominently, treasury secretary Alexander Hamilton—Tucker regarded the postal system as a source of revenue for the federal government. In fact, Tucker went so far as to quote the celebrated observation of the eighteenth-century English jurist William Blackstone that there could not be devised a “more eligible method” for raising revenue than to tax the fees postal patrons paid. After all, in this transaction, “both the government and the people find a mutual benefit.”¹⁰⁹

The legal status of the postal laws that limited competition between the postal system and rival non-governmental letter carriers occasioned a good deal of litigation. The most celebrated court case occurred in 1844. In this case, the Philadelphia lawyer John Sergeant challenged the constitutionality of the prohibition on mail delivery by a non-governmental letter carrier. To make his point, Sergeant compared the enabling clause in the federal Constitution (1787) with the enabling clause in the Articles of Confederation (1781)—the legal framework that the federal Constitution supplanted. Article 9 of the

¹⁰⁸ St. George Tucker, Blackstone’s Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States (Philadelphia: William Young Birch and Abraham Small, 1803), vol. 1, p. 264.

¹⁰⁹ Tucker, Blackstone’s Commentaries, vol. 1, p. 323.

Articles of Confederation granted the “United States in Congress assembled” the “sole and exclusive right and power” of “establishing or regulating post offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office.” Had the framers of the federal Constitution wished to perpetuate this exclusive grant, Sergeant contended, they would have inserted similar language in the federal Constitution. Yet they did not. The framers, Sergeant concluded, did not wish to grant to postal administrators the “sole and exclusive right and power” to establish a postal system, adding that the “right of the citizen to convey letters”--with the notable exception of those citizens who happened to be the owners and agents of the vehicles that transported the mail, or who procured, advised, or assisted “such owners or agents to do so”--remained “untouched and uncircumscribed.”¹¹⁰

To this day it is hard to say for certain if Sergeant’s historical analysis was correct, or if, alternatively, the framers of the federal Constitution intended the postal power to be exclusive. The documentary record is thin and inconclusive. Yet there can be no doubt but that many influential contemporaries doubted the exclusivity of the postal power—or what was popularly known as the postal monopoly. Among the skeptics were a few self-proclaimed radicals such as Lysander Spooner.¹¹¹ Yet it would be a mistake to assume that the skeptics were confined to the lunatic fringe. The eminently respectable congregationalist minister Leonard Bacon opposed the postal monopoly.¹¹² So, too, did the sober-minded lawmaker John Bell. It was neither “expedient nor justifiable,” Bell contended in 1839, for the federal government to maintain the “public post” as a monopoly. On the contrary, the business of carrying letters should be “thrown open to the enjoyment of all the citizens of the United States,” so that the public might realize the advantages of “increased regularity, cheapness, security, and expedition” that were “sure

¹¹⁰ “The Private Mail,” Public Ledger, Sept. 9, 1844.

¹¹¹ Lysander Spooner, The Unconstitutionality of the Laws of Congress, Prohibiting Private Mails (New York: Tribune Printing Establishment, 1844).

¹¹² Bacon, “New Post Office Law,” p. 546. Bacon opposed the postal monopoly, yet assumed that, if Congress dropped postal rates far enough, the postal system could drive the non-governmental carriers out of business. New York congressman Amasa Dana reached a similar conclusion. In effect, reformers like Bacon and Dana hoped that the threat of competition would goad Congress into lowering the basic letter rate.

to follow from a free competition of private capital enterprise in this as in all other pursuits.” If a route that Congress wished to maintain did not offer a “present inducement to private competition,” this route should be funded by an appropriation from the general treasury, or from revenue arising from “other sources.”¹¹³ Another critic of postal exclusivity was Joshua Leavitt, a postal reformer who emerged in the 1840s as one of leading authorities on postal policy in the United States.¹¹⁴

Bacon, Bell, and Leavitt all shared the conviction that competition between the postal system and non-governmental carriers would force postal administrators to improve the level of service for postal patrons. Yet none advocated the abandonment of the postal system, in part because they recognized the postal system to be the only organization in the country with the organizational capabilities to extend and maintain postal facilities in the thinly settled hinterland.

The second issue that attracted the attention of early nineteenth-century contemporaries intent on probing the framers’ original intentions regarding the postal power concerned the relationship of the federal Constitution to the Articles of Confederation. The post-1792 postal system enjoyed certain legal privileges; so, too, did the pre-1792 postal system and the British postal system that preceded it. Did it not make sense to assume, these contemporaries contended, that the framers of the federal Constitution presumed that the postal system would enjoy the same panoply of legal privileges under the federal Constitution?

This argument was plausible for three reasons. First, it seemed indisputable that no organization other than the federal government had the organizational capabilities to operate on a nationwide scale—and, if necessary, to draw on the general treasury should its funds run low. This would remain true until the emergence of a rudimentary railroad network in the 1830s. Second, even if such an organization had existed, it remained uncertain if it had the legal authority to operate in each of the individual states. The legal authority to operate in any U. S. jurisdiction was a valuable privilege in an age when even

¹¹³ Resolutions of John Bell, Public Post and Conveyance of Letters, 25th Cong., 3rd sess., 1839, H. Res. 16 (serial 352), p. 1.

¹¹⁴ Joshua Leavitt, “Our Post Office,” New Englander, 6 (July 1848): 404.

large corporations often had trouble operating across state lines. Third, everyone knew that the federal Constitution had been intended to strengthen, rather than weaken, the federal system, including, it stood to reason, the postal system.

The Pennsylvania jurist William Rawle defended the exclusivity of the postal power in a legal treatise he published in 1829. If the postal system returned a revenue to the general treasury, Rawle contended, then no state ought to be permitted to compete with it.¹¹⁵

Supreme Court justice Joseph Story steered a middle course between Tucker and Rawle. In his much admired Commentaries (1833), Story emphasized that the federal Constitution had considerably augmented the mandate of the postal system. It did this in two ways. First, it gave Congress the power to establish post roads as well as post offices, a power the postal system had not been granted under the Articles of Confederation. And second, it gave Congress the power to establish post offices on routes that fell entirely inside the boundaries of the individual states—another power that Congress had been denied under the articles. (The Articles of Confederation had referred merely to the “establishing or regulating post offices from one state to another.”¹¹⁶) The 1782 law that authorized the establishment of the postal system under the Articles of Confederation, Story explained, had referred only to post offices that linked states, leaving “perhaps, though not intended, the whole interior post offices in every state to its own regulation.”¹¹⁷

Story did not, however, go so far as to characterize the augmented authority of the postal power under the federal Constitution as an exclusive grant. Indeed, there is good reason to think that Story regarded this interpretation as mistaken. For example, in a public letter to the postmaster general that Story wrote in 1844, Story broadly hinted that he questioned the constitutionality of the claim that the postal system enjoyed a

¹¹⁵ William Rawle, A View of the Constitution of the United States (Philadelphia: Philip H. Nicklin, 1829), p. 103.

¹¹⁶ Story, Commentaries, vol. 3, pp. 26, 47. Story’s analysis rang true. In the 1780s, lawmakers in at least two states—Vermont and Maryland—established their own state-operated post offices to extend postal facilities within their borders.

¹¹⁷ Story, Commentaries, vol. 3, p. 25.

monopoly under the federal Constitution. There were “many difficulties,” Story declared, in maintaining that the power of the postal system was “exclusive” in the sense that it could exclude rivals from the field.¹¹⁸

Interestingly, in a lecture that Story delivered at Harvard Law School in 1844, Story predicted—or so one law student (the future U. S. president Benjamin Harrison) recorded in his diary—that the “post office question” would soon be reopened. It had long been assumed, Story observed in his lecture, that the right to carry letters outside of the mail had been “considered settled.” Even so, Story anticipated that in the following winter the Supreme Court would be called upon to decide the question.¹¹⁹

Why Story presumed that the “post office question” would be reopened is an intriguing question. Story died in September 1845 and, in the final months of his life, does not seem to have written out his thoughts on this issue in any detail. It seems plausible that Story, like many New Englanders of his social background, recognized that the private mail delivery boom of the 1840s had put great pressure on Congress to significantly lower postal rates, a development that was widely regarded in this part of the country as long overdue, and that Story was eager to do his part to help bring about the long-desired reform. Like many thoughtful students of political economy, Story seems to have instinctively recognized that competition (or even the threat of competition) can have a salutary effect on the level of service.

The position of Story’s fellow Supreme Court justice Levi Woodbury was even more nuanced. In 1845, prior to his appointment to the Supreme Court, Woodbury had declared, as a New Hampshire congressman, that he did not believe that Congress would grant the postal system a monopoly had it found itself in 1845 considering the question for the first time.¹²⁰ Two years later, following his appointment to the Supreme Court, Woodbury apparently had a change of heart. In a widely reprinted jury charge that Woodbury issued in a case involving a non-governmental letter carrier, Woodbury left

¹¹⁸ “The Private Mail Question,” Public Ledger, June 20, 1844.

¹¹⁹ Charles Richard Williams, The Life of Rutherford Birchard Hayes (Boston: Houghton Mifflin, 1914), vol. 1, p. 43.

¹²⁰ Congressional Globe, 28th Cong., 2nd sess., Feb. 6, 1845, p. 253.

little doubt that, regardless of what he might once have believed, he now regarded the power of the federal government over the postal system to be exclusive.

Woodbury based his defense of the exclusivity of the postal power on considerations of expediency. In no other way, Woodbury declared, could the postal system be “efficient, universal, economical, national.” If Congress permitted individuals to establish private letter carriers on lucrative routes, the government would find itself saddled with the unprofitable routes, with the result that the postal system would find itself “utterly incapable of maintaining itself”—let alone generating a surplus that could be a “source of public revenue.”¹²¹

4.1 The concept of “monopoly”

The postal system has for much of its history enjoyed a bundle of legal privileges that included the exclusive right to circulate on a regular schedule certain items long known as first-class mail. Today, it enjoys exclusive access to millions of mailboxes. These legal privileges are often called the “postal monopoly”—a power that some defend and others revile.

From a historical perspective, what is perhaps most notable about the postal monopoly is how anomalous it is. In Anglo-American law, a monopoly is an exclusive government grant that is awarded in return for the performance of a specific task. The builders of a bridge, for example, might be awarded a monopoly grant to collect tolls at a particular river crossing if they promised to build the bridge over the crossing and keep it in order.

The postal monopoly was different. The federal government never awarded the postal system a charter spelling out its rights and responsibilities—as it did, for example, for the Second Bank of the United States and the Union Pacific Railroad. As a consequence, it was by no means self-evident how expansive the legal privileges were that the postal system enjoyed, or even whether the states might possess concurrent powers to establish a state-chartered postal system.¹²²

¹²¹ Judge Woodbury’s Charge on the Post Office Laws,” Daily Union (Washington, D. C.), June 19, 1847.

¹²² Story, Commentaries, vol. 3, p. 26.

The precarious legal foundation of the postal monopoly rendered the postal system extremely vulnerable to criticism. If, for example, a rival carrier provided a superior level of service, as several did on selected routes in the 1840s that were mostly located along the Atlantic seaboard, it was hard to explain why the postal monopoly should be maintained. The editor of the New York Herald made this point with particular force in 1843: “If private enterprise can do better than the government arrangements, the latter must cease.”¹²³ The editors of the Journal of Commerce reached an analogous conclusion. Non-governmental letter carriers, the editors concluded, had as much right to convey letters on a regular basis on routes located within the postal network as did the postal system. Furthermore, the government was wrong to claim that it possessed a monopoly over the conveyance of the mail: “The people believe the law by which Congress has attempted to establish a monopoly of the mails, to be impolitic and unconstitutional.”¹²⁴

Not everyone found these arguments compelling. In large part, this was because the postal monopoly was so anomalous. Unlike most government-sanctioned monopolies, the postal system routinely failed to generate a surplus. The editor of the Public Ledger made this point with particular force in 1842. The postal system, the editor declared, was “no monopoly in the ordinary signification of the term”: “Monopoly, in its ordinary acceptance, means the appropriation, by government, of some branch of business, for the purpose of revenue, like the monopoly of tobacco by the French government; or it means the grant of some branch of business, by government, to some person or persons exclusively. We can hardly say that the post office is a monopoly according to the first definition; for it has rarely afforded an income equal to its expenditure, and from its commencement, has cost the government a large sum” (italics added). True, the postal system occasionally returned a surplus, yet this surplus was almost always matched, and sometimes exceeded by a large margin, by a deficit in the succeeding year: “If then it be a monopoly, it is a monopoly of burden, or loss; and if the government consulted economy, it would abandon the post office entirely. But revenue was not the object. The object was

¹²³ New York Herald, Oct. 2, 1843.

¹²⁴ “The Mails,” Journal of Commerce (New York), Feb. 2, 1844.

public convenience; and in a country like ours, a nation comprehending twenty-six or more different communities, all united by mutual interest in all the business of life, internal communication is as much a necessity, and consequently as much the duty of the whole, whose representative is the government, as internal defense” (italics added).¹²⁵

4.2 The postal monopoly as regulatory mechanism

The Public Ledger editor highlighted a facet of the postal monopoly that was evident to nineteenth-century lawmakers, but that is often forgotten today: namely, that it was best understood as a regulatory mechanism, rather than as a statutory grant. The function of this regulatory mechanism had changed over time. In the early nineteenth century, it facilitated the transfer of revenue from postage-payers to the general treasury. In the late nineteenth century and most of the twentieth century, it limited the size of the postal deficit. Either way, it was a regulatory mechanism.

If the postal monopoly was a regulatory mechanism, what did it regulate? In part, it prevented non-governmental letter carriers from maintaining a rival letter-carrying business that would deprive postal administrators of the revenue they needed to cover their costs. In addition, it provided legislators with a simple yet effective way to keep postal costs from spiraling out of control. The kinds of facilities that the postal system provided were enormously popular with ordinary Americans, and legislators were hard-pressed to deny their constituents requests for new post routes, lower rates, or higher levels of service. Postal patrons were by no means the only postal claimants: mail contractors and would-be mail contractors—e. g. stagecoaches, steamboats, railroads, and eventually airlines and the merchant marine--demanded postal facilities too. No obvious metric existed to determine how much a particular postal facility increased postal costs or which claimant ought to be rewarded. Had the postal system been entirely dependent on general treasury, which it almost certainly would have been in the absence of restrictions on rival carriers, legislators would have found it far more difficult to balance competing interests. By limiting entry into certain markets, legislators limited postal outlays—and,

¹²⁵ “The Post Office,” Public Ledger, Dec. 14, 1842.

in this way, increased the political feasibility of providing postal claimants with at least some of the facilities that they demanded.

4.3 The evolving regulatory mechanism

4.3.1 Generate revenue

The regulatory mechanism that was popularly known in the nineteenth century as the postal monopoly was initially designed to fill the coffers of the general treasury. The fiscal rationale for postal policy was championed for a brief period in the 1790s by Alexander Hamilton, the first secretary of the treasury. Hamilton posited that the postal system, like the customs, should generate revenue that could help to service the huge debt that the government had run up during the War of Independence. The British postal system routinely returned a surplus to the British treasury; why, Hamilton wondered, should not the U. S. postal system as well?¹²⁶ Unfortunately for Hamilton, the increased costs occasioned by the Post Office Act of 1792 rendered this expectation unrealistic. By 1795, even Hamilton rejected it.¹²⁷ The postal system continued to return a modest surplus to the treasury until the 1830s. Yet from 1795 onward, it was expected merely to break even, which, for the next few decades, it did.

4.3.2 Protect revenue

The abandonment of the fiscal rationale for postal policy did not bring to an end the presumption the postal system should enjoy a privileged legal status. Instead, its rationale was redefined. No longer did lawmakers presume that the postal system should generate a surplus; rather, they merely presumed that it should remain self-supporting. Self-support, as postal historian Wayne E. Fuller has observed, was for lawmakers the “great commandment.”¹²⁸ Prior to the 1830s, this presumption helped to ensure that the postal system ran a surplus. Beginning in the 1830s, it minimized the size of the annual postal

¹²⁶ Martin J. Daunton, *Royal Mail: The Post Office since 1840* (London: Athlone Press, 1985), p. 339.

¹²⁷ John, *Spreading the News*, pp. 47-48.

¹²⁸ Fuller, *American Mail*, p. 43.

deficit. (The existence of a postal deficit remained controversial for several years: only after 1851 would it become more-or-less routine.)

Among the staunchest defenders of postal exclusivity was the Massachusetts lawyer Charles M. Ellis. For the first time, Ellis warned in 1850, a “high source” had questioned the “legal existence” of the postal system under the federal Constitution as a monopoly. (Whoever the “high source” that Ellis alluded to is a matter of speculation. It was probably not Story, since Story had died in 1845.) Ellis found this assertion to be outrageous, since he doubted that non-governmental carriers could be enlisted to extend postal routes into the hinterland, and, in so doing, “advance our widening civilization.” The challenge to the postal monopoly, Ellis understood, owed much to the opprobrium with which monopolies were regarded. Ellis found this unfortunate. “Monopoly,” Ellis explained, “is a term which cannot justly be applied, in its odious sense, to the action of government.” The postal system, Ellis added, should be operated to the “exclusion” of private individuals—since it was a “sacred trust” reposed in the government, and of “such vital moment that no men or companies ought to make money out of it; it must be surely, safely, promptly, universally done, as no men or bodies or men would or could do it.”¹²⁹

4.3.3 Outperform investor-funded corporations

It is not easy today to regard as successful an organization that racked up annual deficits year after year. Yet this was precisely how many influential contemporaries viewed the postal system in the decades between 1870 and the 1940. Today economists often contend that monopolies limit output. In the late nineteenth century, however, a different consensus prevailed. Government monopolies like the postal system, many social scientists contended, favored high volume and low margins, with low prices for users, while corporate monopolies like telegraph giant Western Union favored low volume and high margins, with high prices for users.

The anti-corporate bias of late-nineteenth century economic theory helps explain why the mid-nineteenth-century critique of the postal monopoly lost its bite. The postal

¹²⁹ Charles M. Ellis, “The Postal System Exclusive,” *Massachusetts Quarterly Review*, 10 (March 1850): 262, 268, 270, 271. The essay was unsigned; Ellis was listed as the author on an errata slip tipped into the copy of the *Massachusetts Quarterly Review* at the American Antiquarian Society, in Worcester, Massachusetts.

system was so large, and its operations so complex, that even laissez-faire economists concluded that it was best coordinated by the government. The postal system, declared the eminent English economist William S. Jevons in 1867, was a “vast co-ordinated system, such as no private capitalists could maintain, unless, indeed, they were in undisputed possession of the field by virtue of a government monopoly.”¹³⁰

Similar sentiments recurred often in public pronouncements on the postal system in the United States. Throughout the entire “civilized world,” explained one close student of postal affairs in 1869, the transportation of the mail was an exclusive government monopoly, “for the simple reason that no statutes could so regulate and control the institution in private hands as to give fit and proper accommodation, confidence, and security to the public.”¹³¹ The enormous scale and scope of the postal system reinforced the growing admiration for government administration. “It is difficult,” observed one political commentator in 1874, in a typically effusive tribute, to “get too exaggerated an idea of the vastness of this great governmental institution for the diffusion of intelligence among the people.”¹³²

Jurist C. C. Nott concurred. The object of the postal system, Nott explained in 1874, was the “impartial and general dissemination of intelligence”—a task that was best performed by the government. The postal system at present, Nott explained, worked extremely well: it “gives every man an amount of service at an almost fabulously economic rate of cost.” In his view, this could be explained by its legal status as a monopoly. “Monopoly enables it to act for all without acting against any”: its “object” was “not the acquisition of wealth, but the public good.”¹³³

Even critics of government largesse made an exception for the postal system. In a textbook for children that he published in 1876, for example, journalist Charles Nordhoff questioned the growing reliance of Americans on the government to perform public services. “I wish you to remember,” Nordhoff observed “that private enterprise would

¹³⁰ W. Stanley Jevons, Methods of Social Reform (1883; New York: Augustus M. Kelley, 1965), p. 280.

¹³¹ George Sauer, The Telegraph in Europe: A Complete Statement of the Rise of Progress of Telegraphy in Europe (Paris: Printed for Private Circulation, 1869), p. 144.

¹³² “Our Postal System,” Republic, 3 (July 1874): 28.

¹³³ C. C. Nott, “Monopolies,” International Review, 1 (May 1874): 382, 383.

probably perform all these offices, as well, and many better than the government.” In certain localities, this was true even of letter delivery. For many years, Nordhoff reminded his readers, it was not the postal system, but a non-government letter carrier--Wells Fargo—that had carried the bulk of the letter-mail in California. In fact, the people of California had come to believe that Wells Fargo would carry their mail more rapidly and more securely than the postal system, and were willing to pay a premium for the service. Even so, Nordhoff did not believe the postal system could be dispensed with: “But over the whole country it is doubtful if the mails would be delivered with the same genuine uniformity of speed and regularity and cheapness by private persons as by the government; and this is the legitimate excuse for the existence of the post office.”¹³⁴

In the public mind, the postal system was both a public service and a big business. As a “piece of administration,” exulted the popular essayist Edward Everett Hale in 1889, the postal system was “one of the marvels of this century.” The postal system, Hale elaborated shortly thereafter, was the “most majestic system of public education which was ever set on foot anywhere.” There was a “grandeur” in the ability of a miner in Montana to receive a large book at nominal cost, Hale added: “If such things are done anywhere else in world they are so done because a republic pointed the way.”¹³⁵ The federal government had “made the grandest business success in the world of its postal system,” opined one Missouri newspaper around the same time, “not excepting any other private or public enterprise in the history of the world.”¹³⁶ Even sober minded academics were inclined to agree. The postal system, declared one political economist in 1907, was “without doubt the largest business in the world.”¹³⁷

The growing prestige of the postal system was particularly evident in the publications of jurists. In the 1830s and 1840s, Joseph Story had raised questions about the postal monopoly. In the 1880s and 1890s, Christopher G. Tiedeman did not. The assumption by

¹³⁴ Charles Nordhoff, *Politics for Young Americans* (New York: Harper & Brothers, 1876), p. 22.

¹³⁵ Edward Everett Hale, “The Best Government,” *Nationalist*, 1 (June 1889): 39; Hale, “A Public Telegraph,” *Cosmopolitan Magazine*, 12 (Dec. 1891): 249, 251.

¹³⁶ Cited in John Wanamaker, *An Argument in Support of the Limited Post and Telegraph* (Washington: Government Printing Office, 1890), p. 35. The newspaper was the *St. Joseph Herald* (St. Joseph, Missouri).

¹³⁷ Albert N. Merritt, “Shall the Scope of Governmental Functions be Enlarged So as to Include the Express Business,” *Journal of Political Economy*, 16 (July 1907): 430.

the government of the management of the postal system, Tiedeman declared in 1886, was “so universal at the present day that the objections to this monopoly are hardly worthy of a serious consideration, for it is firmly rooted in public opinion that this is a legitimate exercise of governmental authority.”¹³⁸ The absence of a legal challenge to the postal monopoly impressed Tiedeman as particularly revealing. “The right of the national government to make an exclusive government monopoly of the postal service,” Tiedeman asserted in 1900, “has never been questioned in any judicial proceeding.”¹³⁹

Postal administrators were particularly quick to trumpet the contrast between government administration and corporate management to the advantage of the former. “The fact that the government exercises a monopoly over the receipt, transmission, and delivery of mail,” declared one particularly expansion-minded postmaster general in 1914, “carries an obligation to perform this function for all its citizens, hence the postal service may not be operated wholly upon the lines of private enterprise.”¹⁴⁰ The fact that the postal system was owned by the American people rather than by investors prompted postal administrator Daniel C. Roper to conclude that it operated on a higher, more ethical plane. Though the postal system bore a “striking resemblance” to the “great business institutions” that were owned and operated by “private citizens,” Roper declared in 1917, there was a “fundamental difference” between them. “It is a difference of origin, ideals, policy, and purpose; and this difference colors every function and activity, changes the relationship of every patron, and alters the status of every employee of the

¹³⁸ Christopher G. Tiedeman, A Treatise on the Limitations of Police Power in the United States (1886; New York: Da Capo, 1971), p. 326.

In the late nineteenth century, the legal historian Michael Les Benedict has observed that, notwithstanding the notoriously anti-interventionist ethos of late nineteenth-century jurists (an ethos often labeled “laissez-faire”), no prominent jurist advocated the privatization of the postal system. Michael Les Benedict, “Laissez-Faire and Liberty: A Re-Evaluation of the Meaning and Origins of Laissez-Faire Constitutionalism,” Law and History Review, 3 (Autumn 1985): 293-331.

In explaining the reluctance of jurists to make the case for privatization, Benedict emphasized that late-nineteenth-century common law was concerned far less with economics than with morality. The “heart” of the jurists’ anti-interventionist ethos, Benedict observed, lay in certain moral convictions about right and wrong rather than in a “doctrinaire belief” in the “inefficiency of government economic intervention” (p. 305). It remained, that is, more indebted to the moral philosophy of Francis Wayland than to the social science of Herbert Spencer.

¹³⁹ Christopher G. Tiedeman, A Treatise on State and Federal Control of Persons and Property in the United States (St. Louis: F. H. Thomas Law Book Co., 1900), vol. 1, p. 595.

¹⁴⁰ Postmaster General, Annual Report (1914), p. 9.

postal service as compared with the private corporation.” Corporations, Roper added, had, it was said, no souls, yet the “genius” of the American government was the “soul of postal service, which is a common cooperative endeavor of the people.” Its mandate was not to make a profit for its investors, but to serve the people: “It is purpose is not in any sense selfish, but purely and entirely unselfish.”¹⁴¹

The superiority of government administration to corporate management seemed particularly obvious during the Great Depression. The postal system, declared Pennsylvania Congressman Clyde Kelly in 1931, was a “national agency of communication and a civic institution belonging to every community:” “There are still tremendous obstacles in the accomplishment of America's task of building a community through communication.”¹⁴² Corporate management had failed the American people; government administration had not.

The presumption that government administration was superior to corporate management faded following the Second World War as the economy boomed and the limitations of government administration became increasingly manifest. This presumption reached its nadir in 1966, when, due to a combination of circumstances, the Chicago post office proved unable for three weeks to process the mail that piled up in its huge sorting facility—a crisis that did much to lay the groundwork for the Postal Reorganization Act of 1970.¹⁴³ Even so, it is worth recalling that it has been only quite

¹⁴¹ Roper, Post Office, p. 287.

¹⁴² Kelly, United States Postal Policy, p. 289.

¹⁴³ President’s Commission, Towards Postal Excellence, p. 11. “Breakdowns in management authority and in physical plant paralyzed service in one of the nation’s biggest cities and delayed millions of cross-country letters and parcels normally routed through Chicago,” the Kappel report declared: “Railroad cars and trailer trucks clogged approaches to the post office. Millions of citizens were inconvenienced; hundreds of businesses suffered financial losses” (p. 11).

This nightmare scenario had much in common with dystopian visions of the future that well respected social commentators had voiced in the 1880s. In that decade, social commentators brooded about the huge societal cost of a large-scale breakdown in communications networks (such as the mail and the telegraph). In the 1880s, however, it was customary for social commentators--such as, for example, Nation editor E. L. Godkin--to look to government administration to solve the problems that corporate management had wrought. By the 1960s, social commentators (including the authors of the Kappel report) were more likely to regard government administration as the problem and corporate management as the solution. For Godkin’s concern, see E. L. Godkin, “The Threatened Strike of the Telegraphers,” Nation, 37 (July 19, 1883): 46. For the broader historical context, see William M. Armstrong, “The Godkin-Schurz Feud, 1881-83, Over Policy-Control of the Evening Post,” New-York Historical Quarterly, 48 (Jan. 1964): 5-29.

recently that postal administrators have begun to contrast “business” and “public service” to the advantage of the former. In annual report after annual report, mid-twentieth century postmasters general ritualistically denied that the postal system was a business and affirmed that it remained a public service. In so doing, they were, in part, reflecting reality. For much of this period, the postal system relied on congressional appropriations to balance its books. Yet they were also reiterating the longstanding distrust of the profit motive that had been such a conspicuous feature of public pronouncements about postal policy in the progressive era. The postal system should not be conducted for profit, declared one postmaster general in a typical statement of this position in 1921: its only purpose should be to serve the people faithfully and efficiently.¹⁴⁴ A similar sentiment found its way into a postal statute as recently as 1958.¹⁴⁵

4.3.4 Capitalize on network externalities

The presumption that the government should operate the postal system because of its superior organizational capabilities made sense in the first half of the nineteenth century even to critics of the postal monopoly. “The only imperious reason why, in such a country as ours, the government should have any thing to do with the conveyance of letters, more than with the conveyance of passengers or of merchandise,” declared Leonard Bacon in 1843, “lies in the necessity of giving to the system of mails the quality of ubiquity.”¹⁴⁶ Though Bacon opposed the postal monopoly, he recognized that the cross subsidies that they helped to make possible did have their benefits: “The great advantage of a national post office system is, that the routes on which there is little communication, and which are therefore unable to maintain themselves, shall be maintained by the more profitable routes on which there is continually a large surplus revenue.”¹⁴⁷

The cross subsidies that occasioned so much comment among students of postal policy helped inspire, and to justify, the adoption of somewhat analogous rate-averaging

¹⁴⁴ Postmaster General, *Annual Report* (1921), p. 9.

¹⁴⁵ *Postal Policy Act of 1958*, p. 135.

¹⁴⁶ Bacon, “Post Office System,” p. 15.

¹⁴⁷ Bacon, “Post Office System,” p. 19.

schemes in the telephone business.¹⁴⁸ Beginning around 1900, for example, Bell leaders began to rely on postal analogies to justify telephone rate averaging to investors, regulators, and the public.

The first Bell leader to endorse the postal principle was probably John I. Sabin, who invoked a postal-telephonic analogy to build support for rate averaging in Chicago in 1901. Sabin's unabashed defense of network expansion proved controversial and may well have hastened his forced resignation shortly thereafter. Sabin's successors were more restrained. The extension of telephone facilities to thinly settled districts, posited operating company president Union N. Bethell in 1906, was essential, even if it was not "apparently" remunerative: "As with the postal service and most other public utilities, so with the telephone service, some branches or routes must be conducted apparently at the expense of the other branches or routes."¹⁴⁹

Over time the rationale for rate averaging became increasingly explicit. By 1910, it had become commonplace for telephone managers throughout the country to hail the postal principle as a more-or-less unqualified good. "Our business," explained the president of a Colorado-based operating company in that year, "in a considerable degree resembles that of the government postal service": "One post office serving a single community, without reference to or exchanging letters with other post offices serving other communities, would be of little value; it is the relationships between post offices, the exchange of information between communities, that makes the service valuable." A particular individual might not wish to mail a letter to another city every day, yet when the need arose, the need for and the advantage of a "universal system" with "free

¹⁴⁸ Whether or not the extension of post routes into thinly settled regions enhanced the value of the postal network was much debated issue in the late nineteenth century. The political economist H. T. Newcomb concluded that that it did not—and, thus, that rate-averaging should be treated as a subsidy. Newcomb, *Postal Deficit*, pp. 8-9. Political economist George G. Tunell vigorously disagreed. The extension of post routes into thinly settled regions, Tunell contended, increased mail volume in cities, and, thus, was not, as Newcomb contended, a cause of the deficit, but, rather, an instance of what later economists would call a "network externality." George G. Tunell, "The Postal Deficit," *Journal of Political Economy*, 9 (March 1901): 299-300.

¹⁴⁹ Chesapeake and Potomac Telephone Company, *Report* (1906), p. 10.

interchange of intelligence” became “absolutely essential”: “so it is with us—our horizon must always widen to meet the utmost needs of all.”¹⁵⁰

Bell leaders sometimes even invoked the postal principle to justify future expansion. The rate structure that the Colorado state public utilities commission had approved, Bell statistician Chester I. Barnard informed one lawmaker in 1918, had been designed not only to ensure a reasonable return on the existing level of telephone service, but also to encourage its extension into the states’ thinly settled hinterland: “The principle largely resembled that governing the federal postal rates and the record and decision by this committee is recommended to the careful perusal of all state commissions, as being one of the most recent decisions based upon a careful and scientific investigation and probably being less discriminatory than any other rates covering so large a territory.”¹⁵¹

The postal principle also appealed to the municipal reformer Delos F. Wilcox. The rapid expansion of urban public utilities, Wilcox contended in 1911, anticipated the demands of citizens and gave the city a symmetrical and healthy development: “It is believed that, following the example of the Post Office Department, cities would try to equalize conditions and make the most profitable parts of a street-railway or gas system support the less profitable.”¹⁵²

5 The regulatory mechanism in practice

5.1 A path not taken: monitor subversive activity

The postal systems of Great Britain, France, and other European countries were initially established in part to promote national security. Government ministers feared subversion, and reasoned that one way to nip it in the bud would be to monitor the messages that their inhabitants sent. Surveillance was one rationale for a postal monopoly that was never seriously proposed in the United States. To be sure, the founders were familiar with postal espionage: during the 1780s, James Madison, Thomas Jefferson, and John Jay all

¹⁵⁰ Colorado Telephone Company, *Annual Report* (1910), p. 9.

¹⁵¹ Chester I. Barnard to David J. Lewis, Dec. 10, 1918, box 102, Office of the Solicitor, RG 218, Post Office Department Records, National Archives, Washington, D. C.

¹⁵² Delos F. Wilcox, *The American City: A Problem in Democracy* (New York: Macmillan, 1911), p. 84.

sent messages in code. Yet the founders never seriously considered turning the postal system into a gigantic spy apparatus. Indeed, in 1792, Congress made it illegal for anyone other than the recipient to open a personal letter.¹⁵³ (The only exception was a specially designated group of postal administrators, known as the “dead letter” clerks, who had the authority to open letters that had failed to reach their intended destination in order to determine if they contained banknotes or other valuables; if they did, the dead letter clerks made every effort to return them to the sender.) The rejection of surveillance as a postal mandate distinguished the postal policy of the United States from the postal policy of the nation-states of Europe, and strengthened the presumption that the government had no right to monitor the kinds of information that postal patrons received.¹⁵⁴

5.2 Self-support (1792-1851)

The presumption that the postal system should be, at the very least, self-supporting became increasingly difficult to sustain following the emergence of alternative channels of communication. As late as 1815, a package carriage business had yet to be established in the United States.¹⁵⁵ Beginning around 1840, non-governmental letter carriers began to cut significantly into postal revenue; by 1843, it seemed altogether conceivable that these rival carriers (known as “private expresses”) would engross a large percentage of the letter-mail business on the most heavily traveled routes. Not until the rise of the internet had postal administrators found themselves confronted with such a potentially devastating revenue loss.

¹⁵³ John, Spreading the News, pp. 42-44.

¹⁵⁴ For a related discussion, see Anuj C. Desai, “The Transformation of Statutes into Constitutional Law: How Early Post Office Policy Shaped Modern First Amendment Doctrine.” Hastings Law Journal, 58 (March 2007): 671-727. Desai contends that postal policy helped to operationalize the first amendment free press clause by establishing the precedent that Americans had a “right to receive” printed information in the mail. For a related discussion, see Kielbowicz, News in the Mail: The Press, Post Office, and Public Information, 1700-1860s (New York: Greenwood Press, 1987), chap. 1.

¹⁵⁵ “To the Editor, “ North American Review, 1 (May 1815): 15-16. The absence of an arrangement for “transmitting small parcels,” observed one traveler in 1815, was a serious problem: “In England, this is found to be a lucrative branch of the business; every town has a coach office, where parcels are booked, and are transmitted daily to all parts of the kingdom for a trifling charge....Such an appendage attached to any of our lines of coaches, would not fall of meeting with encouragement, as every person has experienced the difficulty of transmitting small packages from one city to another.”

The postal crisis of the 1840s challenged the longstanding presumption that the postal system should, at the very least, remain self-supporting. The crisis originated during the Panic of 1837, when cash-strapped merchants intent on saving money began to employ young men to carry letters on certain highly traveled routes (Boston-New York-Washington; New York-Albany-Buffalo) at rates considerably lower than the government charged. Postal administrators relied on the revenue generated on these routes to subsidize the rest of the postal network. Almost overnight, this revenue dropped significantly. For postmaster general Charles Wickliffe, this situation was nothing short of outrageous. All clamor about the evils of the postal monopoly, in his view, was senseless: the rival letter carriers were nothing more than smugglers. To justify his position Wickliffe echoed the traditional defense of the postal monopoly as a regulatory mechanism. What would happen, Wickliffe warned, if the postal monopoly were dispensed with? “Individual enterprise would not penetrate the mountains and forests of the East and West” and bring to the “door” of almost every citizen the “rapid regular intelligence of business and the blessings of private epistolary correspondence” that it was the “purposes and business of the present United States mail system to do.”¹⁵⁶

To maintain the government’s prerogatives, Wickliffe instituted a vigorous legal campaign to enforce the existing laws that proscribed non-governmental carriers from establishing their own postal facilities. In the three years between 1841 and 1844, postal administrators documented 1,934 violations of postal law and arrested 100 carriers.¹⁵⁷

Wickliffe’s campaign ran into two roadblocks. The first roadblock concerned a disagreement about means. Legislators were divided as to whether Congress should enact new legislation to shut down the rival letter carriers, while judges remained uncertain as to whether the rival letter carriers violated existing federal law. The rival letter carriers took advantage of the new communications channel that had been created by the railroad and the steamboat. In so doing, they exploited an ambiguity in postal law. Prior to 1845, it remained a matter of dispute as to whether existing postal law banned a non-governmental letter carrier from transporting “mailable matter” such as letters on a

¹⁵⁶ Charles Wickliffe, public letter, Aug. 1842, RG 28, Post Office Department records, National Archives, Washington, D. C.

¹⁵⁷ “Judge Woodbury’s Charge,” Daily Union, June 19, 1847.

common carrier such as a railroad or steamboat. Wickliffe thought it did; several judges demurred. Thus, until Congress enacted new legislation, it remained an open question whether the federal government had the legal authority to prosecute non-governmental letter carriers for violating federal law. Supreme Court Justice Joseph Story, for example, regarded the precise legal standing of the rival letter carriers to be sufficiently uncertain that he hoped it would soon find its way to the U. S. Supreme Court.

The second roadblock Wickliffe confronted stemmed from the hostility of postal patrons—including newspaper editors--toward his legal campaign. In many large cities—including New York, Philadelphia, and Boston—rival letter carriers routinely underbid the postal system on the most heavily trafficked intercity routes while providing a comparable if not superior level of service. Until Wickliffe could provide comparable facilities, postal patrons saw little reason to stop patronizing his rivals. The prevalent view of postal patrons in these cities was nicely summarized by an editorial in the Philadelphia Public Ledger in October 1843. The editor found it outrageous that Wickliffe had instituted a suit against a non-governmental letter carrier, William Harnden, for carrying newspapers outside of the mail. Never before, the editor contended, had such a power been exercised by the federal government. If Wickliffe's lawsuits were illegal, the courts should uphold Harnden; if they were legal, the people should change the law. "The time has arrived," the editor declared, "for an explicit definition of the powers possessed by the federal government in the post office, either by the judiciary or the people": "for at present, in default of any such definition, it seems disposed to grasp all powers over the subject quite too despotic for a democracy." The editor himself opposed the postal monopoly and supported the non-governmental carriers, whether or not they violated federal law. "Therefore we say," the editor declared, "that common carriers, single or associate, may convey letters, newspapers, anything which they choose to receive, forbidden by no criminal law, in spite of all the acts of Congress for regulating the mails."¹⁵⁸

The editor's hostility toward the government owed much to the recent decision by Wickliffe to force into the mail cheaply priced newspapers--like the Public Ledger—that

¹⁵⁸ "The Post Office," Public Ledger, Oct. 2, 1843.

had for several years been distributed to customers via non-postal channels. “The safe, easy and rapid transportation of newspapers by public conveyances”—the editor declared, in defying the postmaster general’s directive—“is not only a right, but a right of immense importance to the American people.” Wickliffe’s determination to force newspapers like the Ledger into the mail, the editor explained, would increase their cost to such an extent that it would effectually stop their circulation outside of the county in which they were published. Was the gain of a few thousand dollars to the general treasury, the editor asked rhetorically, “adequate compensation” for the public injury that this policy would cause? To pose the question was to answer it: in the editor’s opinion, it most emphatically was not. What, then, was to be done? The editor urged Congress to make a “good” law that would lower postal rates sufficiently to enable the government to compete successfully with its rivals. In the interim, the editor contended that anyone should be free to carry newspapers without regard to any edicts that might be issued by the postmaster general. The editor denied that he was preaching civil disobedience; rather, he was merely urging the people to “peacefully disregard” laws that were “of immense public injury” until the “legal right can be ascertained.” The postal system, the editor conceded, should have an “exclusive right” to convey letters in order to furnish “all parts of the country alike with the same facilities”—provided the rates were sufficiently low; newspapers, however, in his view should remain free from constraint.¹⁵⁹

The widespread popular hostility toward Wickliffe’s clumsy attempt to enforce the postal laws barring private carriers complicated his legal strategy. Wickliffe lost several key cases and found himself faced with the distinct possibility that the Supreme Court might rule on the constitutionality of the postal monopoly—a highly risky eventuality that he did his best to forestall.

The relevant issues were canvassed in *United States v. Hale*, an 1844 case that had been instituted by the private letter carrier James W. Hale to recover \$2,000 in fines that he had accumulated for establishing a highly successful non-governmental letter carrier between New York and Philadelphia. Hale’s express relied on the Camden & Amboy

¹⁵⁹ “The Post Office,” Public Ledger, Oct. 2, 1843.

Railroad as its mode of transportation: each day, one of his agents purchased a seat on the train so that he might carry from city to city a bundle of letters.

Hale's legal counsel was John Sergeant, a prominent Philadelphia lawyer who had been Henry Clay's vice presidential running mate in 1832.¹⁶⁰ Sergeant attacked the postal monopoly as unconstitutional. In Sergeant's view, a postal monopoly might suit a despotism though not a republic. The public had long assumed that the postal system enjoyed a monopoly, Sergeant observed, yet the legal proceedings that had occurred in 1843-45 as well as the public discussion that these legal proceedings had occasioned had "greatly weakened the public confidence in the infallibility of this axiom." If the postal system needed money to extend mail delivery into thinly settled regions, it should borrow the necessary funds from the general treasury. Self-support was an "impracticable dogma" and Wickliffe was to be despised for doing everything in this power to keep the issue from going to the Supreme Court.¹⁶¹

Arguing the case for the government was George M. Dallas—an equally prominent lawyer who was, at the time, running for vice president on a ticket headed up by James K. Polk. The federal government, Dallas contended, had the power to fine either Hale or the Camden and Amboy Railroad—the common carrier that Hale had relied on. Hale, Dallas charged, has violated the law prohibiting common carriers from transporting the mail by himself occupying—and, in this way, becoming the temporary owner of—the railroad car in which had carried the mail.¹⁶²

The "people," Dallas added, would never permit the postal system to be left in the control of non-governmental carriers. Consider, Dallas added, what might happen if they did: "The firms might fail, the individuals die, and the public be compelled to wait until other individuals, with sufficient enterprise, skill and means, could be found to revive and

¹⁶⁰ The case was *United States v. Hale*, 9 Am. Law Reg. 232, 26 Fed. Ca. 75. The court stenographer mis-transcribed Hale's name as "Hall"; unfortunately, this error found its way into the printed version of the judge's ruling. Thus, the case is officially known as "*United States v. Hall*."

¹⁶¹ *Public Ledger*, Sept 9, 1844, Sept. 10, 1844.

¹⁶² "Cheap Postage," *North American and Daily Advertiser* (Philadelphia), Sept. 9, 1844.

renew the business—a state of things which no man in his senses would consent or submit to.”¹⁶³

From the outset, the litigants regarded this lawsuit as a test case to hasten a comprehensive ruling on the postal monopoly issue by the Supreme Court. In his closing statement, the judge made this plain. The case, the judge declared, had been adjudicated with “a view (whatever may be the result here) of removing it for reconsideration to the Supreme Court of the United States, whose decision will hereafter insure a uniform course in all the courts of the Union.”¹⁶⁴

In the fall of 1844, it seemed likely that the Supreme Court would take up the constitutionality of the postal monopoly. The situation changed the following spring when Congress enacted the Post Office Act of 1845: with the stroke of a pen, Congress mollified postal patrons by lowering postal rates, and appeased postal administrators and sympathetic lawmakers by plugging the legal loophole that the non-governmental letter carriers had exploited. The much-anticipated Supreme Court showdown never occurred, and, thus, it remains unknown how the Supreme Court might have ruled if it had. In 1851, the Supreme Court declared in a different case that the Post Office Act of 1845 was a revenue law, since it “acts upon the rates of postage and increases the revenue by prohibiting and punishing fraudulent acts which lessen it.”¹⁶⁵ In so doing, it implicitly affirmed the constitutionality of the restrictions on non-governmental letter carriers that Congress had written into law. Yet the Supreme Court did not go any further than this. At least in part, this was because it did not need to: the constitutionality of the postal monopoly had by this time become less pressing since Congress had already substantially lowered the basic letter rate.

Legal scholar George L. Priest has implicitly discounted these spirited challenges to the postal monopoly by contending that they amounted to little in the end. “There is so little doubt that the authors of the Constitution intended to authorize a postal monopoly,”

¹⁶³ “The Private Mail,” Public Ledger, Sept. 9, 1844.

¹⁶⁴ *United States v. Hale*, 79.

¹⁶⁵ *United States v. Bromley*, 53 U. S. 88 (1851).

Priest declared, “that the issue has never again appeared worth litigating.”¹⁶⁶ There is much merit in Priest’s conclusion. Yet it would be more accurate to contend that the postal monopoly was a regulatory mechanism that lawmakers adjusted to suit changing circumstances. It was, in short, a means to an end: no other legal expedient could enable Congress as easily and unobtrusively to maintain a rough balance between postal revenue and postal expenditures.

The congressional debate that preceded the enactment of the Post Office Act of 1845 is of special importance in any history of the postal monopoly since it constituted, as Priest has observed, the “only major congressional consideration of the postal monopoly in the nation’s history.”¹⁶⁷

Among the lawmakers to play a major role in this debate was Congressman Amasa Dana of New York. Dana was outraged at the high cost of letter postage and contended that, if the government wished to subsidize certain postal facilities, such as the low-cost conveyance of newspapers, it should pay for these facilities out of the general treasury. Though Dana plainly admired the rival letter carriers, he did not regard them as a permanent rival to the postal system. The “first object” of the reform bill, Dana explained, was to get rid of them.¹⁶⁸ To do this, Dana believed it imperative to significantly lower the basic letter rate. At present, Dana calculated, Americans sent 53 million letters annually; of these letters, Dana estimated that only 28 million—or slightly more than half--went in the mail. The remainder went either by the non-governmental letter carriers, which charged substantially less than the government, or the occasional traveler, who charged nothing at all. That so many Americans patronized carriers of questionable legality was, for Dana, understandable. Americans, he explained, had a right to “oppose and evade laws which they consider as unjust and oppressive.”¹⁶⁹ Lower

¹⁶⁶ Priest, “Postal Monopoly,” p. 46.

¹⁶⁷ Priest, “Postal Monopoly,” p. 65.

¹⁶⁸ Congressional Globe, 28th Cong., 2nd sess., Feb. 25, 1845, p. 228.

¹⁶⁹ House committee on the post office and post roads, Franking Privilege and Rates of Postage, 28th Cong., 1st sess., 1844, H. Rpt. 483 (serial 446), p. 11. This report was issued by a three-member minority of the House committee headed up by Amasa Dana of New York.

rates, and only lower rates, could lure letter writers away from rival letter carriers and back to the mail.

Rhode Islander James F. Simmons made an analogous argument in the Senate. To eliminate the non-governmental carriers, Simmons argued, Congress should institute a flat five-cent letter rate, independent of distance. Simmons had read about the success of Rowland Hill's uniform one-cent postage rate in Great Britain (the so-called "penny post") and was convinced that an analogous reform could succeed in the United States. The ten-cent rate that Simmons's Senate colleague, William Merrick, had proposed, Simmons predicted, was too high to win over postal patrons who had defected to the rival carriers. If Congress merely tightened the laws prohibiting private mail carriage without substantially lowering postal rates, the postal system was doomed: "Do you expect to induce the people to patronize your mail by commencing prosecutions against [its rivals]?....If an individual should propose to do any such thing, he would be thought a fit subject for a madhouse."¹⁷⁰

It is often contended that in the 1840s the postal monopoly was but feebly defended.¹⁷¹ In part, this is because the much-anticipated Supreme Court case never took place. Had the Supreme Court considered the issue, it might well have found an ally in Supreme Court Justice Levi Woodbury. Woodbury set forth his brief in favor of the postal monopoly in a long, detailed, and remarkably expansive jury charge that he prepared in 1847.

Woodbury's jury charge is one of the most thorough and carefully argued defenses of the postal monopoly to have been prepared by a sitting Supreme Court justice in the nineteenth century. It is, thus, deserving of the most serious consideration. The circulation by the postal system of so much "knowledge," Woodbury contended in his jury charge, was "one of the great peculiarities of our form of government." Should the courts abolish the postal monopoly, Woodbury instructed the jurors, postage costs would

¹⁷⁰ Simmons, Remarks, p. 8.

¹⁷¹ The legal scholar George L. Priest has identified only two cases from the 1840s in which the courts upheld the postal monopoly: *U. S. v. Hale* (1844) and *U. S. v. Thompson* (1846). These two cases, Priest concluded, constituted the "sum of judicial support for the [postal] monopoly" during the 1840s—which he characterized as "feeble." Priest, "Postal Monopoly," p. 46. Had Priest known about Woodbury's stirring jury charge, he might well have qualified his generalization.

increase for two-thirds of the American people who lived in seven-eighths of its territory. Rival letter carriers might thrive along the thickly settled Atlantic seaboard --but what about the interior? To presume that “individual enterprise” might pick up the slack was nothing short of fantasy: “To dream that such a system can be set in motion and kept in motion by individual enterprise, and can act as cheaply and regularly for the whole country, and for all mailable matter, without great central regulations, armed with official power, and penalties, is to dream as wildly as in the tales of the Arabian Nights. Private enterprise might succeed in a compact territory, with forty or fifty people to the square mile, or two or three hundred, and, in some places, thousands--amid the din of spindles and the rattle of pavements--and for light and small letters; but what could it do for the county of Coos, or Tioga, or for Iowa, and Florida, and Oregon.” The conveyance of letters, Woodbury concluded, was not the “ordinary business” of common carriers--and had never been in any age or country--while, from “public considerations” it never could be “so safely, regularly, systematically, and cheaply, for the whole community, as when made a matter of public authority by public regulation.”¹⁷²

5.3 Service first (1851-1970)

Woodbury’s appeal fell on deaf ears. By the late 1840s, it was becoming obvious to lawmakers that the break-even philosophy that Woodbury implicitly championed--a philosophy that had been a cornerstone of postal policy for several decades--had become unworkable. If the postal system ran a deficit, lawmakers begrudgingly concluded, this deficit should be paid for out of the general treasury. As a consequence, service-first supplanted self-support as a fiscal rationale. “In our republican country”-- explained one Philadelphia editorialist in 1847, in justifying the emerging consensus--“popular accommodation, and not revenue, should be the principal object of governmental monopoly of the mails. Therefore the department should be sustained so far as public convenience demands, even by an annual tax on the treasury.”¹⁷³ The “idea of monopoly,” conceded a jurist in the Monthly Law Review in 1849—which the jurist defined as the presumption that the postal system must “pay for itself” despite the

¹⁷² “Judge Woodbury’s Charge,” Daily Union, June 19, 1847.

¹⁷³ “Good Sense,” Public Ledger, April 12, 1849.

“extraordinary expenses” with which it was saddled to extend postal facilities to the “unsettled parts of the country”—was “generally prevalent.” Even so, the jurist regarded it as “wholly incorrect”: “If the government provides satisfactorily for the accommodation of the public, an opposition could not be sustained. If it does not, the people ought to have the benefit of an opposition. It is, after all, a clear principle of constitutional law as well as of popular feeling, that the post office is made for the public, and not the public for the post office.”¹⁷⁴ The presumption that the postal system should not be obliged to “pay for itself,” as the jurist put it, would remain a pillar of postal policy from 1851 until 1970.

In 1851, Congress officially signaled the demise of the self-support policy when it mandated a still-further reduction in postal rates while explicitly proscribing postal administrators by compensating for the lost revenue by reducing the level of service. From 1851 until 1970, the postal system obtained an appropriation from the general treasury in almost every year. The documentary record spawned by these debates occupies thousands of pages of the Congressional Record, as well as countless pages of congressional hearings and congressional reports. No one has ever studied these documents systematically to determine if, on some occasion, the monopoly issue was once again seriously debated. In 1859, a House committee would briefly take up the issue of the possible “abolishment” of the postal system. After what seems to have been an extremely brief debate, the committee rejected both the abolition of the postal system and the repeal of existing laws that “restrain individuals or corporations from carrying mails or mail matter.”¹⁷⁵ This outcome seems to have been the norm. (Though, in the absence of a systematic investigation of the documentary record, it is impossible to say for certain.) A combination of circumstances--of which by no means the least important was the growing suspicion of unchecked corporate power--dimmed whatever enthusiasm lawmakers might have had to open up the postal system to “private enterprise.”

Not until after the Second World War would the pendulum begin to swing back, and, by that time, the monopoly issue had come to seem positively quaint. When the issue was

¹⁷⁴ “The Post Office Monopoly,” Monthly Law Reporter, 1 (Jan. 1849): 399.

¹⁷⁵ “Post Office Department—Proposed Abolishment Of,” 35th Cong., 2nd sess, 1859, H. Rpt. 135 (serial 1018), p. 1.

reopened, lawmakers focused largely on the arcane questions of “cost ascertainment”—that is, on the extent to which certain classes of mail matter, such as advertising flyers, were subsidizing other classes of mail matter, such as magazines.¹⁷⁶

The enforcement of the postal monopoly has been equally lax. With the conspicuous exception of Wickliffe’s legal campaign in the 1840s, carriers violating postal laws limiting competition have only rarely been prosecuted in court. In the seventy-five year period between 1900 and 1975, legal scholar George L. Priest could identify only a single instance in which a non-governmental carrier had been successfully prosecuted for violating the postal monopoly.¹⁷⁷

5.4 Business first (1970-present)

In the decades since the reorganization of the postal system in 1970, non-governmental carriers have occasionally raised the monopoly issue in an attempt to secure entry to certain markets in which the postal system retained certain legal prerogatives. This is unsurprising. Yet from a historical perspective, what is most remarkable is what has not occurred. For much of the twentieth century, most telephone users had no choice but to lease the telephones in their homes and offices. Since the breakup of the Bell System in 1984, it has become conventional to own one’s own telephone, to negotiate with a variety of telephone carriers, and to tailor calling plans to individual needs and desires. Mail boxes, in contrast, remain closed to all non-postal carriers, while many if not most postal patrons remain oblivious to the rights that they possess under current law to refuse certain classes of mail matter. Why this is so is something of a mystery. From a historical perspective, it may well be best explained by the relative absence in U. S. history of a grass-roots popular movement to restrict the prerogatives of the postal system. Only in the 1840s did such a grass-roots movement emerge, and it disappeared quickly after its organizers’ principal demands had been met. For much of U. S. history, there is scant evidence that more than a small minority of Americans wanted the postal system to operate like a business corporation as opposed to the government agency. More than any

¹⁷⁶ Kielbowicz, “Mail Classification”; National Economic Research Associates, “Report to the Commission on Postal Service” (March 1977).

¹⁷⁷ Priest, “Postal Monopoly,” p. 78.

other single circumstance, it may well be this fact that best explains how it is that the postal monopoly had for so long endured.

6 Conclusion

This review has surveyed the history of universal service and the postal monopoly over the entire course of U. S. history. It has highlighted the relative novelty of the widespread presumption that the postal system was best operated like a business corporation rather than a government agency. As late as 1958, Congress upheld the traditional civic mandate for postal policy that dated back to the earliest days of the republic. Not until 1968 did a governmental commission unequivocally proclaim that the postal system was a business that--like a for-profit telephone or electric company--should be operated as a public utility.

The postal monopoly rests on a foundation that is more tenuous than its champions admit, while its mandate is broader, more dynamic, and more open-ended than its critics concede. The mandate of the postal system is not only economic but also civic, which makes it more capacious than the policy ideal today known as “universal service.” There is, for example, clear precedent for the longstanding policy of circulating certain classes of mail matter at unusually favorable rates--such as, for example, magazines with high editorial content--on the rationale that these publications promote the kind of civic engagement that generations of lawmakers going all the way back to Madison and Washington regarded as a primary rationale for the postal system.

The eclipse of this civic mandate has been comparatively recent. Not until after 1970 was it challenged in a major way by one might call a market imperative. It endures, albeit in an attenuated fashion, even today. For example, in an October 2008 New York Times editorial, social critic Michael Lind proposed that Congress revive the postal savings system, a venerable early twentieth-century policy innovation that, until recently, had been considered a relic of an earlier age. Following the financial crisis of 2008, however, a postal savings system has suddenly come to seem, at least to Lind, to be one relic that is

worth dusting off. The plausibility of his proposal owes much to the continuing relevance of the civic mandate of the postal system in meeting the challenges of the present.¹⁷⁸

The market imperative has improved the relative position of mass mailers, advertisers, and package carriers. Even so, there has never been a “free market”: competition in the provisioning of mail delivery, like competition in the provisioning of electricity, gas, telephony, and other public utilities, has always been contrived. The postal monopoly has been equally contrived, and for a similar reason. From the outset it was less of a statutory grant than a regulatory mechanism designed to balance rival interests while checking the cupidity of lawmakers, their constituents, and other postal claimants.

Certain policy innovations that are currently being discussed, such as, for example, the abolition of the mailbox monopoly, might well hasten a cycle of innovation in certain respects comparable to the innovations in telecommunications that followed the breakup of the Bell System in 1984. Such an experiment is by no means without historical precedent. Lawmakers, after all, have long hailed competition in mail delivery as a catalyst for innovation. Even so, any legislation that would cut into postal revenue would bring with it an increased risk of uncertainty and, conceivably, even financial collapse. In an age in which even the most venerable of financial institutions have gone bankrupt, it is by no means inconceivable that a privatized postal system might lead inexorably to yet another massive taxpayer bailout. If it did, this would be new. The postal system has not always been innovative, yet it has performed a wide range of tasks for millions of people for several hundred years--an impressive and underrated achievement in an uncertain age.

¹⁷⁸ Michael Lind, “Mailing Our Way to Solvency,” New York Times, Oct. 6, 2008, p. A25.

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