

# THE POSTAL POWER OF CONGRESS

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## CHAPTER I

### INTRODUCTORY: THE ANTECEDENTS OF THE POWER

It is, perhaps, not insignificant that *The Federalist* contains but a single reference to the power lodged in Congress "to establish postoffices and postroads." The writers of that incomparable collection of political papers which discussed in such exhaustive detail the disputed points of the proposed governmental frame-work for the United States of America, hardly needed to argue that the proposed delegation could not be deemed dangerous and was admittedly one of national concern. "The power of establishing postroads," said Madison, "must, in every view, be a harmless power, and may, perhaps, by judicious management, become productive of great public conveniency. Nothing which tends to facilitate the intercourse between the states can be deemed unworthy of the public care."<sup>1</sup>

Half a century later, Story prefaced the discussion of this power in his *Commentaries*, with the remark that, "One cannot but feel, at the present time, an inclination to smile at the guarded caution of these expressions, and the hesitating avowal of the importance of the power. It affords, perhaps, one of the most striking proofs, how much the growth and prosperity of the country have outstripped the most sanguine anticipations of our most enlightened patriots."<sup>2</sup>

At the time Story wrote, the postal power had, of course, already achieved a "commercial, political, intellectual and

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<sup>1</sup> *The Federalist*, No. 42.

<sup>2</sup> Story, *Commentaries on the Constitution*, vol. iii, p. 22.

private" importance, "of incalculable value to the permanent interests of the Union," vital both to the government and to individuals. But there was also the problem, lately acute, as to whether Congress had simply the power "to designate, or point out, what roads shall be mail roads, and the right of passage or way along them when so designated," or the larger power "to construct any roads which Congress may deem proper for the conveyance of the mail, and to keep them in due repair for such purpose."<sup>3</sup> The remarkable benefits already achieved and the disputed extensions were the developments which excited Story's surprise at the unprophetic remark of *The Federalist*.

But for some time the postoffice has been a common carrier and is now supplanting the express companies; it exercises banking functions not only for facilitating exchange but for savings deposits, and other collectivist activities are most strongly urged. The Supreme Court of the United States has upheld a broad power in Congress to prevent and punish interference with the carriage of the mails, and it is thus possible to make further extensions of federal authority.<sup>4</sup> The right to incorporate railways and build postroads is firmly established, and assertions are made that it is both competent and advisable for federal authority to assume control of the telephone and telegraph systems and perhaps the railways themselves. It is, finally, argued that Congress may solve problems of purely local origin, and of primary sectional concern, through the simple expedient of denying the use of the mails unless certain regulative conditions are complied with. Viewing these extensions as either definitely upheld by the Supreme Court, or seriously urged, one cannot now but smile at the "guarded caution" of Story's description and his "hesitating avowal" that postroads might, with certain restrictions, be constructed under federal auspices. The distinguished jurist, however, wrote more prophetically than he knew, when he empha-

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<sup>3</sup> Story, *Commentaries on the Constitution*, vol. iii, p. 26.

<sup>4</sup> In *Re Debs*, 158 U. S. 564 (1895).

sized the importance of this power, "both theoretically and practically."

Yet it is not unnatural that at the time the Constitution was framed, the importance of the postal power should have been inadequately estimated, since, inherently, it must be conditioned by the existing mechanical means of intercourse and communication. It seemed that the nation would be sufficiently fortunate were it to be born with promise of maintaining existence, and it was neither possible nor advisable to scrutinize its powers of which future necessity or expediency might require an extension for the purposes of the nation. And, moreover, the growth of postal facilities, from their first manifestation up to the adoption of the Constitution was not sufficiently pronounced to augur a great deal for the future. Travel and intercourse were extremely difficult; and the cognate questions were to come only with the development of society.

The maintenance of postal facilities has always been a recognized function of the state, and this was true even in early Rome. In England, the sixteenth century saw the first definite steps for the establishment of a service, but even before this communications were carried by royal messengers compensated by the Crown. Private posts were, of course, used, but official letters on state matters constituted so large a bulk of the correspondence and the problem was one so fitted for solution by the state that it was inevitable that the postal establishment should be conducted under the auspices of, and supported directly by the government.<sup>5</sup>

In the American colonies the first attempt to establish a mail service was made in 1639 by the General Court of Massachusetts. "For preventing the miscarriage of letters, . . . It is ordered that notice bee given, that Richard Fairbanks, his house in Boston, is the place appointed for all letters, which are brought from beyond the seas, or are to bee sent thither; . . . are to bee brought to him and hee is to

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<sup>5</sup> Hemmeon, *The History of the British Post Office*, p. 3 ff.

take care, that they bee delivered or sent according to their directions and hee is allowed for every such letter *1d.* and must answer for all miscarriages through his owne neglect in this kind; provided no man shall bee compelled to bring his letters thither except hee please." So runs the entry in the court records.<sup>6</sup>

This, however, applied only to foreign mail, and it was not until December, 1672 that there was an effort to establish a domestic post, Francis Lovelace, governor of New York, taking the initiative, and his messenger going to Connecticut. Soon afterwards the General Court of Massachusetts appointed a postmaster and a proclamation was issued by the home government calling for the establishment of postoffices at convenient places on the American continent.<sup>7</sup>

The office of postmaster general for America was created in 1692, permission being granted Thomas Neale and his executors by the Lords of Trade and Plantations to establish "an office or offices for the receiving and dispatching letters and pacquets, and to receive, send and deliver the same under such rates and sums as the planters shall agree to give."<sup>8</sup>

The next forty years saw some extensions of postal facilities, but the improvement was slight. In 1683 William Penn established a postoffice in Pennsylvania, and in 1736 a weekly mail was begun between Boston and New York, but intercolonial communication was very restricted, and it was not until 1737, with the appointment of Benjamin Franklin as postmaster general at Philadelphia and postmaster general of the Colonies in 1753 that there were any noticeable gains, or any signs of important developments

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<sup>6</sup> Mass. Historical Collections, 3d Series, vol. vii, p. 48; quoted by Mary E. Wooley in her monograph on "Early History of the Colonial Post Office," Publications of the Rhode Island Historical Society, New Series, vol. i, p. 270 ff.

<sup>7</sup> Hemmeon, p. 32; Joyce, *The History of the Post Office from its Establishment down to 1836*, p. 196.

<sup>8</sup> Wooley, *Early History of the Colonial Post Office*, p. 275; Hemmeon, p. 33. See also Pliny Miles, "History of the Post Office," *American Bankers' Magazine*, n. s., vol. vii, p. 358 (November, 1857).

for the state function of which he was placed in charge. Franklin was active in establishing new posts as far as was possible and began the practice of sending newspapers through the mails free of charge. When he was turned out of office in 1774, he wrote that "before I was displaced by a freak of the ministers, we had brought it [the postoffice] to yield three times as much clear revenue to the crown as the postoffice in Ireland. Since that impudent transaction they have received from it not one farthing."<sup>9</sup>

After Franklin's dismissal the new postmaster at Philadelphia raised the rates on newspapers to such proportions that William Goddard, an editor of Baltimore and Philadelphia, was forced to discontinue the publication of his journal. In March, 1774 Goddard began a lengthy journey through the New England States to gain support for the "Constitutional American Post Office" which he hoped to establish.<sup>10</sup> A tentative line was inaugurated between Baltimore and Philadelphia, but this was gradually extended so as to provide tolerably adequate facilities for all of the colonies, Goddard having secured the support of the assemblies in New Hampshire, Massachusetts, Rhode Island, New Jersey, and New York.<sup>11</sup> He realized from the first that the facilities he was seeking should be furnished under the auspices of the Continental Congress, and when this body acted on July 26, 1775 and agreed to the establishment of a post, Goddard's plans were accepted.<sup>12</sup>

The establishment of postal facilities was one of the very first problems taken up by the Continental Congress when it began to exercise sovereign powers which it did not legally possess, but which of necessity it had to assume. On May 29, 1775 the Congress resolved that, "As the present critical situation of the colonies renders it highly desirable that ways and means should be devised for the speedy and secure conveyance of Intelligence from one end

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<sup>9</sup> Miles, p. 361.

<sup>10</sup> American Archives, Fourth Series, vol. i, pp. 500-504.

<sup>11</sup> *Ibid.*, vol. ii, p. 536 ff.

<sup>12</sup> See Jameson (Ed.), *Essays in Constitutional History*, p. 168 ff.

of the Continent to the other," a committee be appointed to consider the best means of establishing a post,<sup>13</sup> and on July 26, 1775 the Congress took up the committee's report, appointed Benjamin Franklin postmaster general for the United Colonies, established a line of communication from Falmouth to Savannah and recommended the inauguration of cross posts within the discretion of the postmaster general.<sup>14</sup> Franking privileges were almost immediately established for the members of Congress and for the army commanders, and were later extended, with some limitations, to private soldiers in the service.<sup>15</sup>

As yet the Congress had not aimed to make its postal establishment a monopoly and so it was a question of war policy rather than of the unrestricted exercise of a governmental function which inspired the motion that the parliamentary posts be stopped. Richard Henry Lee, for example, argued that "the Ministry are mutilating our correspondence in England, and our enemies here are corresponding for our ruin;" but the better opinion prevailed that the measure was an offensive one not proper at that particular juncture. In fact the ministerial post had been of service to the colonists in giving them information which they could not otherwise have obtained, and so it was recommended that the people use the constitutional establishment as much as possible. Before the end of the year, as it turned out, this problem was settled without the intervention of Congress for the British postoffice stopped its service in the colonies.<sup>16</sup>

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<sup>13</sup> Journals of the Continental Congress (edited by Ford), ii, p. 71. (References up to 1781 are to this edition, Washington, 1904 . . . Since the sixteenth volume, the editor has been Gaillard Hunt.)

<sup>14</sup> *Ibid.*, vol. ii, p. 208.

<sup>15</sup> *Ibid.*, vol. iii, p. 342; vol. iv, p. 43.

<sup>16</sup> *Ibid.*, vol. iii, p. 488. In the discussion referred to Paine remarked that the "ministerial post will die a natural death; it has been under a languishment a great while; it would be cowardice to issue a decree to kill that which is dying; it brought but one letter last time and was obliged to retail newspapers to pay its expenses." Lee was more facetious, saying: "Is there not a Doctor, Lord North, who can keep this creature alive?" On December 25, 1775, it was announced that incoming mail would not be sent to the various colonies but would be held in New York and advertised.