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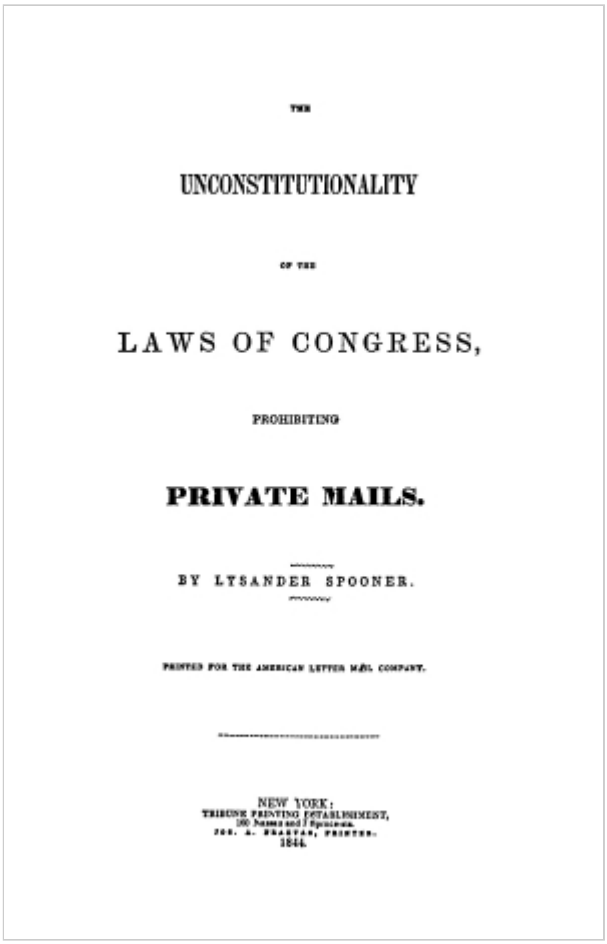

THE

UNCONSTITUTIONALITY

OF THE

LAWS OF CONGRESS,

PROHIBITING

PRIVATE MAILS.

BY LYSANDER SPOONER.

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Author: Lysander Spooner

About This Title:

Spooner challenged the US postal monopoly by starting his own mail company to deliver letters and by writing a short book arguing that it was wrong on legal and constitutional grounds.

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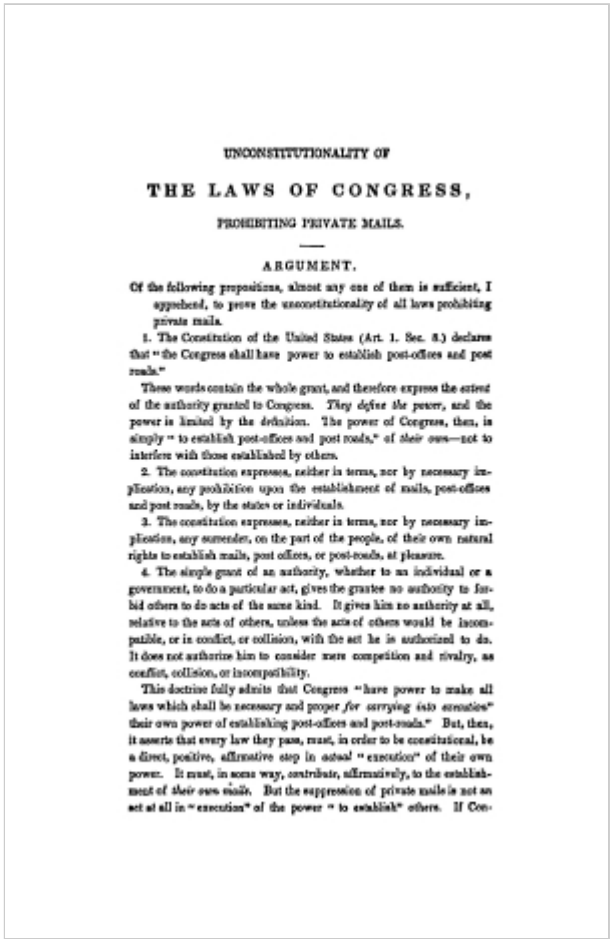

UNCONSTITUTIONALITY OF

THE LAWS OF CONGRESS,

PROHIBITING PRIVATE MAILS.

ARGUMENT.

Of the following propositions, almost any one of them is sufficient, I apprehend, to prove the unconstitutionality of all laws prohibiting private mails.

1. The Constitution of the United States (Art. 1. Sec. 8.) declares that "the Congress shall have power to establish post-offices and post roads."

These words contain the whole grant, and therefore express the *extent* of the authority granted to Congress. *They define the power*, and the power is limited by the definition. The power of Congress, then, is simply "to establish post-offices and post roads," of *their own*—not to interfere with those established by others.

2. The constitution expresses, neither in terms, nor by necessary implication, any prohibition upon the establishment of mails, post-offices and post roads, by the states or *individuals*.

3. The constitution expresses, neither in terms, nor by necessary implication, any surrender, on the part of the people, of their own natural rights to establish mails, post offices, or post-roads, at pleasure.

4. The simple grant of an authority, whether to an individual or a government, to do a particular act, gives the grantee no authority to forbid others to do acts of the same kind. It gives him no authority at all, relative to the acts of others, unless the acts of others would be incompatible, or in conflict, or collision, with the act he is authorized to do. It does not authorize him to consider mere competition and rivalry, as conflict, collision, or incompatibility.

This doctrine fully admits that Congress "have power to make all laws which shall be necessary and proper *for carrying into execution*" their own power of establishing post-offices and post-roads." But, then, it asserts that every law they pass, must, in order to be constitutional, be a direct, positive, affirmative step in *actual* "execution" of their own power. It must, in some way, *contribute*, affirmatively, to the establishment of *their own mails*. But the suppression of private mails is not an act at all in "execution" of the power "to establish" others. If Con-

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TO THE PUBLIC.

The American Letter Mail Company present the following exposition of the grounds on which they assert their right to establish mails and post offices, in competition with those of Congress.

If the public are satisfied of the correctness of the principle, the Company ask their patronage to enable them to sustain it.

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This doctrine also fully admits the absolute authority of Congress *over whatever mails they do establish.* It admits their right to forbid any resistance being offered to their progress, and to prohibit and punish depredations upon them. But it, at the same time,

asserts that the power of Congress is confined exclusively to the establishment, management, transportation and protection of their own mails.

5. It cannot be said to be necessary to prohibit competition, in order to obtain funds for establishing the government mail—because Congress, in order to carry out this power, as well as others, are authorized, if necessary, "to lay and collect taxes, duties, imposts and excises"—and this is the only *compulsory* mode, mentioned in the constitution, for providing for the support of any department of the government. They are under no more constitutional constraint to make the post-office support itself, than to make the army, the navy, the Judiciary, or the Executive support itself.*

6. The power given to Congress, is simply "to establish post-offices and post roads" of their own, not to forbid similar establishments by the States or people.

The power "to establish post-offices and post roads" of their own, and the power to forbid competition, are, in their nature, distinct powers—the former not at all implying the latter—any more than the power, on the part of Congress, to borrow money, implies a power to forbid the people and States to come into market and bid for money in competition with Congress. Congress could probably borrow money much more advantageously, if they could prohibit the people from coming into the market and bidding for it in competition with them. But the advantage to be derived by Congress from such a prohibition upon the people, would not authorize them to resort to it, even though the people were to offer so high a rate of interest, that Congress could not borrow a dollar in competition with them. Congress must abide the competition of the people in borrowing money, be the result what it may. And they must abide the same competition in the business of carrying letters; and for the same reason, viz:—because no power has been granted them to prohibit the competition.

7. The power granted to Congress, on the subject of mails, is, both in its *terms,* and in its *nature, additional to,* not destructive of, the pre-existing rights of the States, and the natural rights of the people.

The object of the grant to Congress undoubtedly was to enable the government, in the first place, to provide for its own wants, and then to contribute, *incidentally,* as far as it might, to the convenience of the people. But the grant contains no evidence of any intention to prohibit the States or people from using such means as they had, so far as those means might be adequate to their wants. Any other doctrine than this would imply that the people were made for the benefit of the department, and not the department for the benefit of the people.

8. In matters of government, the people are principals, and the government mere agents. And it is only as the servants and agents of the people, that Congress can "establish post-offices and post roads". Now it is perfectly clear that a principal, by simply authorizing an agent to carry on a particular business in his name, gives the agent no promise that he, (the principal,) will not also himself personally carry on business of the same kind. He plainly surrenders no *right* to carry on the same kind of business at pleasure. And the agent has no claim even to be *consulted,* as to whether

his principal shall set up a rival establishment to the one that is entrusted to the agent. The whole authority of the agent is limited simply to the management of the establishment confided *to him.*

9. It is a *natural right* of men to labor for each other for hire. This right is involved in the right to acquire property; a right which is guarantied by most of the State constitutions, and not forbidden by the national constitution. No law which forbids the exercise of this right in a particular case, can be constitutional, unless a clear authority be shown for it in the constitution. No authority is shown for prohibiting the labor of carrying letters.

10. If there were any doubt as to the legal construction of the authority given to Congress, that doubt would have to be decided in favor of the largest liberty, and the natural rights of individuals, because our governments, state and national, profess to be founded on the acknowledgment of men's natural rights, and to be designed to secure them; and any thing ambiguous must be decided in conformity with this principle.

11. The idea, that the business of carrying letters is, *in its nature,* a unit, or monopoly, is derived from the practice of arbitrary governments, who have either *made* the business a monopoly in the hands of the government, or granted it as a monopoly to individuals. There is nothing in the nature of the business itself, any more than in the business of transporting passengers and merchandise, that should make it a monopoly, either in the hands of the government or of individuals. Probably one great, if not the principal motive of despotic governments, for maintaining this monopoly in their own hands, is, that in case of necessity, they may use it as an engine of police, and in times of civil commotion, it is used in this manner. The adoption of the same system in this country shows how blindly and thoughtlessly we follow the precedents of other countries, without reference to the despotic purposes in which they had their origin.

12. An individual who carries letters, cannot be said to usurp, *or even to exercise,* an authority that is granted to Congress—for Congress have authority to carry only such letters as individuals *choose* to offer them for carriage. Whereas a private mail carries only those letters which individuals choose *not* to offer to the government mail. The authority of Congress over letters, does not commence until the letters are actually deposited with them for conveyance; and therefore the carrying of letters that have never been deposited with them for conveyance, does not conflict at all with the power of Congress to carry all the letters that they have any authority to carry.

13. It cannot be said that an individual who carries letters, is doing the *same thing* that Congress are authorized to do. He is not doing the *same thing,* but only a thing of the *same kind.* This distinction is material and decisive. There is no objection to his doing things of the same kind as Congress, (so far as he has the *natural* power and right to do them), unless the Constitution plainly prohibits it.

14. If Congress could forbid individuals doing a thing simply because it was *similar* to what the government had power to do, they might forbid his borrowing money, because "to borrow money," is one of the powers granted to Congress. They might

also, on the same grounds, forbid parties to settle their controversies by referring them to men chosen by themselves, because government has established courts, and given them authority to settle controversies, and references to other tribunals, chosen by the parties, is depriving this department of the government of a part of its business, and the marshals, clerks, and jurors of the opportunity of earning fees. There is just as much ground, in the constitution, for prohibitions upon the settlement of controversies, without the aid of the government courts, as there is for the prohibitions upon the transmission of letters without the aid of the government mail.

15. Suppose the Constitution had declared that Congress should have power "to establish roads and vehicles for the transportation of *passengers and merchandise*" (instead of letters). Would such a grant have authorized Congress to forbid either the States or individuals to establish roads and vehicles in competition with those of Congress? Clearly not. Yet that case would be a perfect parallel to the case of the post office.

16. If Congress can restrain individuals from carrying letters, on the ground that the *revenues* of the post office are diminished thereby, they may, by the same rule, prohibit any other labor, that tends to diminish the revenues derived from any other particular source. They may, for instance, forbid the manufacture, at home, of articles that come in competition with articles imported, on the ground that such home manufactures diminish the revenues from imports.

17. The extent of the power "to establish post offices and post roads," certainly cannot go beyond the meaning of the word "establish." This meaning is to be determined by regarding, first, the persons using the word, and, secondly, the object to which it is applied. The persons using it, are "*We the people*"—for the preamble to the constitution declares that "We the people do ordain and establish this constitution." The word then is used in its *popular* sense; in that sense in which it is ordinarily used *by the mass of the people.*[*] That such is the true meaning of all the language of the constitution, is obvious from the consideration that otherwise we should be obliged to suppose that the people entered into a compact or agreement with each other, without knowing what they themselves meant by the language they used. Besides, the word "establish" has no technical meaning whatever, nor had any, so far as we know, at the time the constitution was adopted. But, secondly, the meaning of the word is to be inferred also from the nature of the object to which it is applied. Thus, we "establish" a principle, by making it clear, proving it true, and thus fixing it in the mind. We "establish" a law, by giving it force and authority. A man "establishes" his character, by making it thoroughly known to the world. We "establish" a fact, by the evidence necessary to sustain it. In these, and other cases, the word "establish" has no exclusive meaning whatever, other than this. It excludes what is *necessarily* inconsistent with, contradictory to, or incompatible with, the establishment of the thing declared to be established. It does not exclude the establishment of any number of other things of the same kind, unless they would be *necessarily* inconsistent with the thing first established. Thus the establishment of one truth does not imply the subversion or suppression of any other truth; because all truths are consistent with each other. The establishment of one man's character, does not imply the destruction of any other man's character. When applied to matters of business, as for instance, to the

establishment of facilities for the transmission of letters, (and the transmission of letters is a mere matter of business), the word "establish" has no meaning that implies an exclusion of competition. Thus we speak of the establishment of a bank, a store, a hotel, a line of stages, or steamboats, or packets. But this expression does not imply at all that there are not other banks, stores, hotels, stages, steamboats, and packets "established" in competition with them. Neither does the establishment of certain roads as "*post roads,*" imply the exclusion of all other posts, than those of Congress, from those roads. Congress establishes a road as a "post road," by simply designating it as one over which their posts shall travel. This designation clearly does not exclude the passage of any number of private posts over the same road, (provided the government posts are not thereby actually obstructed or impeded in their progress,) because the establishment of any one thing implies the exclusion of nothing whatever, except what is absolutely inconsistent, or incompatible, with the thing established. The designation, therefore, or the establishment of a particular road as a post road, excludes nothing except obstacles to the progress of the posts over that road. The prohibition, therefore, of Congress upon the passage of other posts over the same roads travelled by their own, is going beyond the simple power of establishing those roads as post roads, and beyond the simple power of establishing their own posts upon those roads.*

If Congress *owned* the roads over which their posts travel, they would have a right to exclude all other posts from them; not, however, by virtue of their power to establish those roads as post roads, but by virtue of their power to control the use of their own property.

18. The word "establish," when applied to any particular thing, does not imply that the thing established contributes, either in whole, or even in part, to the necessary expenses of its own maintenance. For instance, Congress have power to establish forts, arsenals and lighthouses—but it does not follow that the forts, arsenals and lighthouses are expected to support themselves. Congress have power to establish courts, but it does not follow that the courts are to derive their support, either directly or indirectly, from the business done in them. The same is the case with the army, the navy, and all the departments of the Government.—None of these establishments are expected to derive their support from their business. Yet no *compulsory* process, except that of "laying and collecting taxes, duties, imposts and excises," is authorized for the support of any of them. If individuals *voluntarily* send letters enough by the government mail, to pay the expenses of the establishment—well—if not, the establishment must go down, or be sustained like all the other departments of the government, by general taxation—and not by restraints upon competition.

19. By the old articles of *Confederation,* it was declared that "the United States, in Congress assembled, shall have the *sole* and *exclusive* right and power of establishing and regulating post-offices from one State to another throughout all the United States."

When the constitution came to be adopted, this phraseology was altered, and the words "*sole* and *exclusive*" *were omitted.* This alteration of the power, from a "sole and exclusive" one, to a simple "power," must certainly have been intentional—and it

clearly indicates that the framers of the constitution did not intend to give to Congress, under the constitution, the same "*exclusive*" power, that had been possessed by the Congress of the Confederation.

20. The 10th Sec., of the 1st Art., of the constitution contains an enumeration of various prohibitions upon the State governments. They are prohibited from entering into any treaty, alliance or confederation—granting letters of marque and reprisal—coining money—emitting bills of credit—making any thing but gold and silver coin a tender in payment of debts—passing any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts—laying any imposts or duties on imports or exports, without the consent of Congress, except what may be necessary for executing their inspection laws—or, without the consent of Congress, laying any duty on tonnage, keeping troops or ships of war in time of peace, entering into any agreement or compact with other States, or with foreign powers, or engaging in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Among all these prohibitions, why is there none against establishing mails? The answer is obvious. The constitution did not intend to prohibit them.

21. If the right granted to Congress, to carry letters, be an exclusive right, it is, of necessity, an exclusive right *for the whole country,* and not merely for such roads and offices as Congress may see fit to establish. And it would, therefore, be as much unconstitutional for individuals to establish mails on routes where Congress had *not* established any, as where they *had.* And the consequence would be, that the people would have no constitutional right to have any mails at all, except such as Congress might please to establish for them.

22. If the constitution had intended to give to Congress the *exclusive* right of establishing mails, it would have *required,* and not merely *permitted,* Congress to establish them—so that the people might be sure of having mails. But now Congress are no more *obliged* to establish mails, than they are to declare war. And in case they should neglect or refuse to establish them, the people could have no mails, unless individuals or the states have now the right of establishing them.

23. It would have been as unconstitutional for individuals to establish mails, if Congress had neglected to do it altogether, as it is to establish them *in competition* with those established by Congress—for the unconstitutionality of private mails, (if they are unconstitutional,) consists, *not in the competition,* but in the exercise of a right that belongs exclusively to Congress.

24. If the power granted to Congress, be an exclusive right of establishing mails, then Congress have no authority even to *permit* individuals to establish mails on their own account, either on routes where Congress have, or on those where they have not established them. Such permission would be, *so far,* abdicating government in favor of such individuals. Congress have no more right to abdicate any power of this kind, than to abdicate, to an individual, the power of making laws.

25. If the exclusive right of carrying letters, has been granted to Congress, then it is unconstitutional for a person even to carry a single letter for a friend. And Congress are bound to punish such an act as an offence against the constitution.

26. No one, I presume, has ever doubted that individuals would have a right to establish mails, *but for the law of Congress forbidding them.* Yet if the constitution had given Congress the *exclusive* right, private mails would have been unconstitutional, *without the law.* On the other hand, if the constitution have *not* given Congress the exclusive right, then the law prohibiting private mails, is without any constitutional authority. It is certain, therefore, that Congress, the courts, and the country have always been in an error, either as to the grant in the constitution, or the constitutionality of the law—if not as to both.

27. It may, perhaps, be pretended that an exclusive authority to establish mails, is a *prerogative of sovereignty,* and, therefore, of the government. But this is a notion borrowed wholly from arbitrary governments. *Our governments have no prerogatives* of *sovereignty,* except such as are granted to them by our constitutions. And these prerogatives are limited by the terms of the grants, without any regard to the extent of similar prerogatives under monarchical or despotic governments.

28. The only rules of interpretation, so far as I know, that have ever been laid down for determining whether a power granted to Congress, is to be held by them exclusively, or only concurrently with the states or people, are those laid down by Hamilton and Madison, who, above all other men, were the fathers of the constitution. Those rules are given by them, in the Federalist, and are there treated by them, as being infallible *criteria* by which all questions of this nature may be settled. The essays of the Federalist have ever, from the adoption of the constitution, been considered the very highest authority, on questions of constitutional law, next to the decisions of the Supreme Court of the United States. And these particular rules of interpretation are constantly cited, in discussions before that tribunal, and have never, so far as I am aware, been overruled by them. Judge Story emphatically affirmed them in the case of *Houston vs Moore,* and said he did "not know that they had ever been seriously doubted." (5 Wheaton 48 to 50.) The rules are these.

That *none* of the powers granted to Congress, are held by them exclusively, except in these three cases, 1*st.* "*Where an exclusive authority is, in express terms, granted to the union:*" (The grant of "exclusive legislation" over the seat of government, is an instance of this kind,) *or,* 2*d.* "*where a particular authority is granted to the union, and the exercise of a like authority is prohibited to the states.*" (An instance of this kind is furnished in the grant to Congress of a power "to coin money," and the collateral prohibition "no state shall coin money,")—*or* 3*d. where an authority is granted to the union, with which a similar authority in the states would be utterly incompatible.*" (The power to pass "*uniform* laws on the subject of bankruptcies throughout the United States," is an instance of this kind. Bankrupt laws by the states would necessarily destroy the *uniformity* of the laws on this subject, and hence would be incompatible with the power given to Congress to establish uniformity.

Tried by these rules, the power "to establish post offices and post roads," has not a shadow of claim to be considered an exclusive one. The terms of the grant are not exclusive—the states or people are not prohibited by any other clause, from exercising a similar power—there is no incompatibility in the simultaneous exercise of such a power by each of the governments and by individuals.

The rules of interpretation here stated, are treated at length in the Federalist, in connexion with the power of taxation, and the judicial power, and it is mainly, if not solely, by the application of them, in construing the constitution, that the authority of Congress to prohibit all state taxes, is controverted.

The power of taxation, (except upon exports,) is granted to Congress, not only in as ample terms, but in precisely the same terms, as the power "to establish post offices and post roads." The taxation of the states may often interfere with the taxes of Congress, by rendering them less fertile, or more difficult of collection; and hence it was argued, by the opponents of the constitution, that congress might assume to forbid the states to collect their taxes—But the authors of the Federalist replied, that although "inconveniences" and "interferences of policy" might possibly arise from this rival taxation, yet, inasmuch as the power of taxation had not been granted to Congress in exclusive terms, and the exercise of a similar power had not been prohibited to the states, and there was no incompatibility, or necessary conflict in the co-existence of such a power in each of the governments, therefore it could not be considered an exclusive one in Congress—and that Congress could therefore no more prohibit the state taxes, than the states could prohibit the taxes of Congress. That each government must submit to the competition of the other, as best it might. Such were the opinions of these fathers of the constitution—and unless these principles are correct, every tax, that has been levied for the support of the state governments, since the adoption of the constitution, has been unconstitutional, as infringing the exclusive authority of Congress.*

If, then, the power of taxation is not an exclusive one, the power of establishing post offices and post roads, clearly is not—for both powers are granted in precisely the same terms. The words of the grant are simply, "The Congress shall have power to lay taxes, to establish post offices" &c. Neither power is granted to Congress in exclusive terms—neither is prohibited to the states—nor is there any incompatibility in the existence of such powers in different governments at the same time. The operations of rival mails do not necessarily *conflict,* but only *compete,* with each other.

If there be any powers whatever, granted to the general government, and yet held by it concurrently either with the states or individuals, the power of establishing mails is one of them, according to every principle of interpretation that has ever been laid down by any respectable authority. And those who hold that this power is *not* held concurrently, either with the states or individuals, or both, must hold that Congress holds *no* power concurrently, either with the states or individuals.

Again—The 42d number of the Federalist specially notices the post-office power; and notices it in such language as to show conclusively that the authors considered it a concurrent, and not an exclusive power.

They say, "The power of establishing post-roads, *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". And this is all they say on the subject.

Now mark his language—"Nothing that tends to *facilitate* the intercourse between the States can be deemed unworthy of the public care." "It *may, perhaps,* by *judicious management,* become productive of great public conveniency." "It *must,* in *every view, be a harmless power.*" All this language evidently refers to a power, that might, if judiciously managed, add to existing facilities, but which, at any rate, could not do harm, by taking those facilities away. It applies, therefore, to a concurrent, and not to an exclusive power.

But mark again the strength of this expression—"It *must, in every view,* (that is in a political, as well as practical one,) *be a harmless power.*" Did not Mr. Madison and Mr. Hamilton know the despotic purposes, to which an *exclusive* power over the transmission of all commercial social and political intelligence might be applied? That it was capable of being made one of themost powerful engines of police? As efficient for purposes of despotism as a standing army? Certainly they did. Are they, then, chargeable with the effrontery of telling the people of this country, that an *exclusive* power, of this sort, "*must,* in *every view, be a harmless power?*" No. Their characters forbid such an idea, and they had no motive for such a deception. The conclusion, then, is inevitable, that *they* did not consider it an exclusive one.

Moreover if any of the *opponents* of the constitution, by whom the lurking dangers to liberty were hunted through every line and word of the instrument, had considered this power an exclusive one, they would have exposed it; and the authors of the Federalist would not then have treated it in this manner—but would have obviated the objection by showing that the power was only a concurrent one. And they would have shown this, by the same rules of interpretation by which the power of taxation and certain judicial powers are shown to be concurrent. But that it was merely a concurrent power, seems to have been taken for granted, both by the advocates and opponents of the constitution.

But if all the preceding considerations have failed of establishing the unconstitutionality of the laws against private mails, there is still another which alone would be decisive.

The first article of amendment to the constitution, declares that "Congress shall make *no* law abridging the freedom of speech, or of the press."

"The freedom of speech," which is here forbidden to be abridged, is the *natural* freedom, or that freedom to which a man is entitled of *natural right.* And the word "speech" does not mean simply utterance with voice, *but the communication* of *ideas.* And the right of speech includes a right to communicate ideas in any of the various modes, in which ideas may be conveyed. A man has the same natural right to speak to another on paper, as *viva voce.* And to speak to a person a thousand miles distant, as

to one who is present. Any law, which compels a man to pay a certain sum of money to the government, for the privilege of speaking to a distant individual, or which debars him of the right of employing such a messenger as he prefers to entrust with his communications, "abridges" his "his freedom of speech."

"The freedom of the *press,*" too, which is forbidden to be "abridged," is not the freedom of barely *printing* books and papers, (for that kind of freedom alone would be of no value, either to the printer or the public,) but it includes the freedom of selling and circulating. And the freedom of selling and circulating, involves the right of conveying them to purchasers by such messengers as one pleases to employ.

If any one is disposed to deny that manuscript correspondence comes under the denomination of "speech," as that term is used in the constitution, he must adopt the alternative of including it in the term "the press"—for it certainly must be embraced by one or the other.

Finally. If the constitution had intended to give to Congress, the exclusive right of establishing mails, it would have prescribed some rules for the government of them, so as to have secured their privacy, safety, cheapness, and the right of the people to send what information they should please through them. But the constitution has done nothing of this kind. On the contrary, the grant is entirely unqualified—and it has made the power of Congress *over such mails as they do establish,* entirely absolute. They may say what shall go in them, and what shall not—whether they will carry sealed papers, or only open ones—and even whether sealed papers, deposited in their offices, shall be sacred from the espionage of the government. Their power over their own mails is unqualified in every respect. And if the people have no power to establish mails of their own, their whole rights, both of private correspondence, and of transmitting printed intelligence, are at the feet of the government.

If this power, so absolute over its own mails, were also an exclusive one over all mails, it would be incomparably the most tyrannical, if not the only purely tyrannical feature of the government. The other despotic powers, such as those of unlimited taxation, and unlimited military establishments, may be *perverted* to purposes of oppression. Yet it was necessary that these powers should be entrusted to the government, for the defence of the nation. But an exclusive and unqualified power over the transmission of intelligence, has no such apology. It has no adaptation to facilitate any thing but the operations of tyranny. It has no aspect whatever, that is favourable either to the liberty or the interests of the people. It is a power that is impossible to be exercised at all, without being exerted unjustifiably. The very maintenance of the exclusive principle involves a tyranny, and a destruction of individual rights, that are now, and ever must be, felt through every ramification of society. The power is already exerted to the great obstruction of commercial intelligence, and nearly to the destruction of all social correspondence, except among the wealthy. But that we are accustomed to such fetters, we would not submit to them for a moment.

To what further extent of tyranny and mischief, this power, in the future growth of the country, may be exerted, we cannot foresee. But the only absolute *constitutional*

guaranty, that the people have against all these evils and dangers, is to be found in the principle, that they have the right, at pleasure, to establish mails of their own. And if the people should now surrender this principle, they would thereby prove that their minds are most happily adapted to the degradation of slavery.

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THE POSTMASTER GENERAL'S ARGUMENT.

The argument of the Postmaster General is as follows:—

"This grant of power" (that is, "to establish post offices and post roads,") "is found in the same clause, (should be "section,") and is expressed in the same words and language of the grants of power to coin money, to regulate commerce, declare war, &c."

No argument, in favour of the exclusiveness of the power, can be drawn from the fact here stated. Nearly all the powers granted to Congress, are included in the same section—but who before ever argued that all the powers mentioned in that section, were therefore exclusive?

The power "to lay and collect taxes," and the power "to borrow money," are "found in the same clause," (section), and "expressed (substantially) in the same words and language of the grants to coin money, to declare war, &c." But the powers to borrow money, and to lay and colject taxes, are not therefore exclusive.

The Postmaster General is certainly very unfortunate in his analogies. The exclusiveness of the powers "to coin money," and "to declare war," does not result from the terms of the grants, as his argument supposes, but from the special prohibitions in another section, to wit,—"no State shall coin money," and "no state shall declare war." *But for these express prohibitions upon the States,* the powers to coin money, and declare war, would have been concurrent powers—else why were these prohibitions inserted? There being no such prohibition in regard to establishing post offices and post roads, that power *is* concurrent, as those would have been, but for the prohibitions.

Besides, there is no analogy, *in principle,* between an exclusive power "to declare war," or "to coin money," and an exclusive power to establish post offices and post roads; because an individual has a *natural* power and right to establish post offices and post roads; but he has no natural power or right "to declare (*public*) war." He has power only to speak and act for himself. Neither has he any natural power or right "to *coin* money," because "to *coin*" signifies, (according to lexicographers), an act of government, as distinguished from the acts of individuals.

But the powers of Congress "to declare war," and "to coin money," are in reality exclusive, *only as against the State governments.* They are not exclusive of any *natural* rights on the parts of individuals. The constitutional prohibition upon individuals, to coin money, extends no farther than to prohibitions upon "*counterfeiting* the securities and current coin of the United States." Provided individuals do not "*counterfeit*" or *imitate* "the securities or current coin of the United States," they have a perfect right, and Congress have no power to prohibit them, to weigh and assay pieces of gold and silver, mark upon them their weight and fineness,

and sell them for whatever they will bring, in competition with the coin of the United States.

It was stated in Congress a few years since, by Mr. Rayner, I think, of North Carolina, that in some parts of the gold region of that State, a considerable portion of their local currency consisted of pieces of gold, weighed, assayed, and marked by an individual, in whom the public had confidence. And this practice was as unquestionably legal, as the sale of gold in any other way. It was no infringement of the rights of Congress.

The same is true in regard to war. Individuals have no *natural power* to declare *public* war. But the natural *right* of individuals to make *private* war is secured to them by that clause of the constitution, that secures to them the right to keep and bear arms. It is true, the natural *right* of individuals to make war, extends no farther than is necessary for purposes of defence. Their natural *power,* however, goes beyond this limit—and if an individual were to exercise his natural power of making war for other purposes than defence, he would be punished only as a murderer or pirate, and solely on the ground of his having transcended his natural right—certainly not on the ground of his having infringed the exclusive power of Congress.

The power of Congress "to regulate commerce," (which is quoted by the Postmaster General as a parallel case to the post office power), is held to be exclusive solely on the ground of the *unity* of the subject. In the case of Gibbons vs. Ogden, (9 Wheaton,) Mr. Webster's argument in favor of the exclusive power of Congress over commerce, was this—that "commerce was a unit," and that regulations by the States, operating upon the identical thing that was under the regulation of Congress, would *necessarily conflict* with the regulations of Congress—because, he said, the regulations of Congress may consist as much in leaving some parts free, as in regulating others. And the court concurred in this opinion.

That "commerce" is a unit, is obvious. There is but *one* "*commerce* with foreign nations," into however many parts and varieties it may be subdivided. "Commerce" is a word that has no plural. It embraces every variety, part and parcel of all the different kinds of commerce that are carried on by individuals.

But there is no *unity* in the term "post offices" or "post roads"—any more than there is in the term stage coaches or steamboats. Suppose the constitution had said that "Congress shall have power to establish stage coaches and steamboats"—would any one have imagined that Congress had thereby acquired the *exclusive* right of establishing stage coaches and steamboats?

But there is a lack of analogy, in another particular, between the power "to *regulate* commerce" and the power "to *establish* post offices and post roads." The power to "*regulate*" and the power to "*establish,*" are, *in their nature,* very different powers. No power is granted to Congress, *to carry on or* "*establish*" *commerce* on their own account—but only to "*regulate*" that which is carried on by others. Their post office power is directly the reverse of this. It is a power "to *establish* post offices" of their own—but *not* to "*regulate*" the offices or business of others.

But the Postmaster General says further, that the grant of power "to establish post offices and post roads" "is *ample, full, and consequently exclusive.*"

According to this reasoning, the power of Congress "to borrow money" is exclusive—for it is both "ample" and "full"—precisely as ample and full as the power to establish post offices and post roads. The power of taxation (except upon exports) is also "ample, full, and (according to the argument of the Postmaster General) consequently exclusive."

Such are the absurdities into which men are obliged to run, in order to find apologies for claiming that a simple "power to establish post offices and post roads" is an exclusive one.

But the Post Master General says further: "If a doubt could exist as to the exclusiveness of this grant, that doubt must vanish upon a reference to the 10th article of the amendments to the constitution, which declares 'The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people.' The power to establish post offices and post roads, is plainly and distinctly delegated to the United States. It is, therefore, not a power reserved to the states respectively, or to the people."

This implication is as unfounded, as it is far-fetched and unnatural. The language quoted by the Post Master General is not contained in the original constitution, but constitutes an amendment, that was subsequently adopted. It is one of the ten amendments, that were adopted soon after the original constitution had gone into operation. These amendments were all adopted for the avowed purpose of quieting the fears of those who thought that too great powers had already been given to the government. Not one of the whole ten purports to grant any new power to Congress, or to enlarge any of the powers that had been previously granted. On the contrary, *every one of them,* without an exception, purports either to prohibit Congress from stretching their powers beyond the terms of the original grants, or to secure some principle of civil liberty against all pretences of power on the part of Congress. And the very amendment, quoted by the Postmaster General, was obviously designed, and designed solely, as a prohibition upon the usurpation of any power not previously granted. Yet now the Postmaster General, by a back-handed and unnatural implication, would draw, from a simple amendatory prohibition of this kind, a warrant for enlarging all the original powers, and making those exclusive and despotic, which were before harmless and concurrent.

But again. The language of this amendment is simply that: "The powers, not delegated to the United States, *by the constitution,*" (as distinct from the amendments,) "nor prohibited by it to the states, are reserved to the states respectively, or to the people." Now the inference of the Postmaster General from this language, might, safely to the argument, be admitted to be correct, if it were also considered *what kind of a power,* (on the subject of post offices and post roads,) had really been "delegated to the United States *by the constitution.*" What was that power? It was, as has been shown, merely a power concurrent with that of the states and people, "to establish post offices and post roads." Only a concurrent power, then,

having been delegated, and a like power not having been prohibited to the states or people, it necessarily follows, from the terms of the amendment itself, that a concurrent power to establish them is "reserved" to the states respectively, or to the people—or to both.

But the Postmaster General reasons as if none but *exclusive* powers had been either delegated or reserved. His whole argument hangs upon this idea. He cannot conceive of concurrent powers. It is probably a mystery to him how even two individuals can have concurrent rights to establish business of any kind in competition with each other.

If the implication of the Postmaster General were correct, the powers of Congress "to lay and collect taxes," and "to borrow money," are now exclusive powers—for they are "plainly and distinctly delegated to the United States," and "therefore" (according to his argument) are "not reserved to the states respectively, or to the people."

Nearly all the plausibility of the Postmaster General's argument, (if it have any plausibility,) is derived from the unauthorized use of the article "*The.*" He says that "*The* power," (as if there were, or could be, but *one* power of the kind, in the country,) "is plainly and distinctly delegated to the United States"—and then infers that it cannot of course be reserved to the states or people—because that would involve an impossibility. Now it happens that the power delegated to the United States, on this subject, is not described, in the constitution, as "*the* power," (meaning thereby a *sole* power)—but it is described simply as "power." The constitution does not say that Congress shall have "*the* power"—but only that they shall have "*power*"—that is, *a* power—or (more properly still) *sufficient* power—"to establish post offices and post roads." He might, with the same propriety, have said that "*The* power," (instead of *a* power,) "to borrow money," had been delegated to the United States, and that therefore no similar power could be reserved to the states or people—as if there were, or could be, but one power, in the whole country, constitutionally capable of borrowing money. Or he might, with the same propriety, have said that "*The* power" of taxation—instead of *a* power of taxation—had been delegated to Congress—and that therefore no similar power had been reserved to the states or people.

When, in common parlance, we use the article "*The,*" in connexion with a power granted to Congress—as, for instance, in the expression, "The power of congress to borrow money," or "The power of congress to lay and collect taxes," or "The power of Congress to establish post offices, and post roads"—we do not use it to designate certain *sole* powers, or units, but to designate the powers existing in congress, as distinguished from similar or other powers existing in the states or individuals. But the Postmaster General has not only substituted the language of common parlance for the language of the constitution, but has also given to it a different meaning from what, even in common parlance, is attached to it.

The whole argument of the Postmaster General, as has already been said, rests upon the assumption that there is, or can be, but one power of any one kind, in the whole country—and that if this one power be granted to Congress, it cannot, of course, remain with the states or people. If this doctrine were correct, *all* the powers granted

to Congress, would necessarily have been exclusive, without any express prohibitions either upon the states or individuals—and consequently all the express prohibitions, in the constitution, would have been mere surplussage.

But there is still another oversight in the argument of the Postmaster General.

A simple power "to *establish* post offices and post roads," and the power of prohibiting similar establishments by others, *are, in their nature, distinct powers.* The former alone having been delegated to Congress, the latter necessarily remains, and is declared, by the amendment cited, to remain with the states, or the people. Neither the states, nor the people, have seen fit to exercise this prohibitory power, that is thus reserved to them—and they probably never will. They *cannot* exercise it, without abridging the freedom of speech and the press, and infringing a fundamental principle of civil liberty.

Still further. No implication, natural or unnatural, logical or illogical, necessary or unnecessary, can prevail against an express provision. The provision is express, that "Congress shall make *no* law" (post office law, or any other,) "abridging the freedom of speech, or of the press." The power of Congress, then, on this subject, is just what it would have been, and only what it would have been, if the two clauses had stood in connexion, in this wise. "Congress shall have power to establish post offices and post roads," but "shall make no law abridging the freedom of speech, or of the press."

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EXPEDIENCY.

The whole argument of expediency in favor of maintaining an exclusive power in the government over mails, may be summed up in this. It enables the government to throw upon those who live in the populous portions of the country, and who have been at the expense of constructing extraordinary facilities for transportation, the burden of all the government postage, and a portion of the expense of carrying mails to those who have voluntarily gone beyond the reach of those facilities, and who have no more claim that their letters shall be carried to them at the expense of other people, than that their food or clothing shall be.

Palpably unjust and tyrannical as are these objects of the law, they are in reality the only arguments that can be invented in support of it.

The policy of the law is on a par with its morality. A law for defraying expenses of government, by a tax upon, and consequently by obstructing the dissemination of, commercial, social and political information, probably combines as many of the elements of barbarism as any law that parverted ingenuity or political depravity has ever devised.

The extortion also of money from individuals in the populous portions of the country, in order to support the present expensive mode of carrying mails to the less populous portions, is, in one respect, like “filching from one his good name”—it is robbing one without enriching another. If the business were open to free competition, there probably is not a man, who lives fairly within the limits of civilization, that would not receive his letters at less cost than he now pays. And if any man has chosen to go beyond those limits, he certainly has no right to claim that we, who remain behind, shall be taxed to carry civilization to him. If, however, the government chooses to pursue such men with its generosity, it should at least have the decency to be generous with means honestly obtained, instead of obtaining them by so unequal and mischievous a tax as that upon the diffusion of knowledge. The progress of the whole civilized portion of the country, certainly ought not to be retarded, in order that the government may show that its partiality for those few individuals, who, by going beyond the limits of civilization, give strong evidence that they do not appreciate its benefits.

But, in reality, the inmates of the farthest cabins on our frontier, are interested in free competition, as a constitutional principle—for even if they should not at once, under that system, (although they probably would soon,) have as good facilities as they now enjoy, it will yet be but a few years before these same cabins will be in the midst of a numerous population, all of whom will be benefitted by the free principle. The inhabitants of the frontier are also, (for their posterity, if not for themselves,) equally interested with other portions of the country, in maintaining the freedom of speech and the press, and the free principles generally of our constitution.

The present expensive, dilatory and exclusive system of mails, is a great national nuisance—commercially, morally and socially. Its immense patronage and power, used, as they always will be, corruptly, make it also a very great *political* evil.

The moral, social and political evils of the system are of a nature not to be estimated in money. The commercial ones, although incapable of any accurate estimate, are yet of a nature more susceptible of calculation. Let us look at them for a moment.

The importance of despatch in commercial correspondence, may be, in some measure, conceived of, when it is considered that every day's and hour's delay, in the sale and transmission of merchandize, (whose sale and transmission wait on correspondence,) involves a loss, during the time of such delay, of the interest, insurance and storage of such merchandize, and also a lapse, in part, of the season when particular kinds of merchandize are most valuable to consumers, and of course command the best prices in the hands of the merchant. Delays in business correspondence of all other kinds, as well as that strictly commercial, are also attended with losses more or less important.

Suppose now that, on an average throughout the whole country, one *fifth* of the time that is now occupied in the transmission of commercial and other letters, should be saved by opening the business to competition, what would be the aggregate saving, *in dollars and cents,* to the whole country? Is not *twelve thousand dollars a day* a moderate estimate? Undoubtedly (I think) the real saving would be very much, probably several times, greater than this sum. But I have mentioned this amount, because it is (in round numbers) the actual expenses of the present establishment. If, then, this sum only could be saved by opening the business to competition, the country, as a whole, could actually afford, as a matter of mere dollars and cents, to let the present establishment retire upon an annual pension, equal in amount to the whole of its present receipt, as a compensation for its simply getting out of the way of private enterprize. In other words, the country could afford to support the establishment in idleness, for the sake of getting rid of its services.

We should also gain, in the bargain, the social benefits of cheap postage, and the political benefits of a very material purification of the government.

The question, then, is, would one fifth of the time now occupied in the transmission of letters, be saved by a system of free competition? There can be but one answer to this question. That amount of saving might not be accomplished at the outset—but it speedily would be. Universal experience attests that government establishments cannot keep pace with private enterprize in matters of business—(and the transmission of letters is a mere matter of business.) Private enterprise has always the most active physical powers, and the most ingenious mental ones. It is constantly increasing its speed, and simplifying and cheapening its operations. But government functionaries, secure in the enjoyment of warm nests, large salaries, official honors and power, and presidential smiles—all of which they are sure of so long as they are the partisans of the President—feel few quickening impulses to labor, and are altogether too independent and dignified personages to move at the speed that commercial interests require. They take office to enjoy its honors and emoluments, not to get their living by the sweat of their brows. They are too well satisfied with

their own conditions, to trouble their heads with plans for improving the accustomed modes of doing the business of their departments—too wise in their own estimation, or too jealous of their assumed superiority, to adopt the suggestions of others—too cowardly to innovate—and too selfish to part with any of their power, or reform the abuses on which they thrive. The consequence is, as we now see, that when a cumbrous, clumsy, expensive and dilatory government system is once established, it is nearly impossible to modify or materially improve it. Opening the business to rivalry and free competition, is the only way to get rid of the nuisance.

But even if the government establishment were to continue its operations, competition is still an important principle to its utility; for it is the only principle that can always compel it to adapt its speed and prices to the convenience of the public.

[*] There is not even a *propriety* in making the post-office support itself, any more than in making any other department of the government support itself. An important portion of the expenses of the department are incurred for public objects—such as the transmission of official correspondence, the private correspondence of official men, and of tons, and hundreds of tons, of political documents. If the government are bound to provide for all these things, it should be done at the general charge, and not by the partial and unequal mode of levying double or triple charges upon the private correspondence of individuals. If Congress cannot carry the letters of individuals as cheaply as individuals would do it, there is no propriety in their carrying them at all. The correspondence of private individuals, which is now sent through the public mails, could probably, on an average, be sent through private mails, for one third of the present expense. The overplus, demanded by the government, is an extortion for which there is no justification.

[*] In the case of Ogden vs. Saunders (12 Wheaton 332) Chief Justice Marshall said, that in construing the Constitution, “the intention of the instrument must prevail; that this intention must be collected from its words; that its words are to be understood in that sense in which they are generally used by those for whom the instrument was intended.”

Mr. Webster, also, in a speech made in the Senate, in 1840, on the Bankrupt Bill, declared the same principle of interpretation to be the true one. He said:

“What, then, is ‘the subject of bankruptcies?’ or, in other words, what are ‘bankruptcies?’ It is to be remembered that the Constitution grants the powers to Congress, by particular or specific enumeration; and, in making this enumeration it mentions bankruptcies as a head of legislation, or as one of the subjects over which Congress is to possess authority. Bankruptcies are the subject, and the word is most certainly to be taken in its common and popular sense; in that sense in which the people may be supposed to have understood it, when they ratified the Constitution. This is the true rule of interpretation. And I may remark, that it is always a little dangerous, in construing the Constitution, to search for the opinions or understanding of members of the Convention in any other sources than the Constitution itself, because the Constitution owes its whole force and authority to its ratification by the People, and the People judged of it by the meaning most apparent on its face. How

particular members may have understood its provisions, if it could be ascertained, would not be conclusive. The question would still be, how did the People understand it? And this can be decided only by giving their usual acceptation to all words not evidently used in a technical sense, and by inquiring, in any case, what was the interpretation or exposition presented to the People, when the subject was under consideration."

[*] Congress themselves have uniformly adopted the above construction, as being the true meaning of the word "establish," when applied to post roads; for, in addition to their laws "establishing" certain roads as post roads, they have passed other laws specially to exclude other posts than their own. If the simple "establishment" of a road by Congress as a post road, excluded, *ipso facto,* all other posts, all their special laws of exclusion would be unnecessary.

[*] See the Federalist Nos. 31. 32. 33. 34. 35. 36. and 72.