

THE POSTAL SYSTEM

THE TELEGRAPH AND TELEPHONE SHOULD BE A PART OF IT.

ITS LEGAL ASPECT DISCUSSED

An Inquiry Into the Constitutionality of the Government Ownership and Operation of these Means of Communication--Objections to the Proposition Answered--Franchises of the Telegraph Lines Already Belong to the Government by Act of Congress. From the American Law Review.

Many who admit the great advantages, nay, the necessity of the telegraph and telephone being operated as a part of the postal system, are deterred by the inquiry, is it constitutional? In truth it is unconstitutional for this essential branch of the postal system to be operated by a private monopoly, or in any other manner than by the government.

When the constitution placed the post office in the hands of the government, it conferred its exclusive operation, and with it all means of operating it to the best advantage, upon the government. The same clause of the Constitution of the United States (Art. 1, Sec. 8) which empowers Congress to declare war, raise and support armies and a navy, to coin money, regulate commerce and borrow money on the credit of the United States, includes the provisions to "establish post offices and post roads." If the power of the government is exclusive as to the other provisions it is so also to the post office for all these powers are conferred by the same clause and by the same words, in the same breath as it were. The numerous and decisions of the United States Supreme Court holding the power of Congress over the post office and the carrying of mails to be exclusive renders unnecessary any discussion of an undisputed point. It is interesting to note, however, that in 1836, Hon. John C. Calhoun, the leader of the strictest constructionists who denied to the general government all powers not already granted, in a report made by him as chairman of a committee of the United States Senate said "it must be borne in mind that the power of Congress over the postoffice and the mail is an exclusive power." These words have been cited and approved by the Supreme Court of the United States in the case of exparte Jackson so recently as the 96 United States Reports on page 734. The bestowal of the exclusive right and duty to operate the postoffice carried with it the exclusive right and duty to use all the agencies that would make the postoffice most highly efficient, as such agencies, from time to time, should be improved or invented. On this principle the first telegraph line was built by a congressional appropriation under a "strict construction" administration (Polk's) and the telegraph belonged to the government from 1844 to 1847, and when under mistaken notions of economy it was then turned over to private ownership, Henry Clay, the great leader, and Cave Johnson, the Democratic Postmaster General, were among the public men who went on record as earnestly protesting against such a step. Indeed, the Supreme Court of the United States, in an unanimous opinion, has held that the telegraph came within the grant of power to establish the postoffice. That opinion, delivered by Chief Justice

Wait, says: "The powers thus granted are not confined to the instrumentalities of the postal service, known or in use when the constitution was adopted; but they keep pace with the progress of the country and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stage coach; from the sailing vessel to the steamboat; from the coach and steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth." Pensacola vs. Tel. Co., 96 U. S., 1.

And Justice H. B. Brown, who is recognized as one of the ablest members of the United States Supreme Court, in the leading article in the August Forum says: "If the government may be safely intrusted with the transmission of our letters and papers, I see no reason why it may not also be intrusted with the transmission of our telegrams and parcels, as is almost universally the case in Europe." Congress placed the same construction on its powers, by chapter 230, Acts 1866, which provides that all telegraph lines thereafter built should be constructed under the notice, and only after the company signing a contract, that the government may at any time take over such telegraph lines upon paying the value of its material.

It will be noted just here that, so far as railroads are used for the transmission of mail, they were promptly, and from the beginning, adopted and used exclusively by the postoffice. Whether, in so far as railroads are used for the entirely different purpose of carrying passengers and freight, they shall be taken over by the government, is an entirely different question, standing on its own basis, which has never affected the undeniable right and duty of the government to use them exclusively, so far as they are used for the carriage of mails. But the telegraph and telephone (so far as used by the public for hire) are, and can be, only used for the transmission of mail, and unquestionably come within the exclusive grant to the government of operating the postoffice. The telegraph and telephone are simply the electric mail, or mail sent by electricity, just as the railway mail is sent by steam agency in preference to the horse power formerly used in the days of stage coaches and horseback riders and canal boats.

When the government shall assume its duty of sending the mail by electricity, railroad companies can still operate their own telegraph lines on their own business and private telephone lines will still exist, just as railroads and others may now send their own letters by their own agents, (U. S. Rev. Stat. 3984), but not carry them for others for hire, (U. S. Rev. Stat. 3982.) Then, as now, the government would only have the exclusive privilege of carrying mail for

hire, (U. S. Rev. Stat. 3990). This privilege of carrying mail for hire, whether sent by electricity or steam or stage coach, or on horseback, is an exclusive governmental function, and no corporation or monopoly can legally exercise any part of it. It is the duty of the government to do it, and to do it in the quickest and most efficient manner, and at the lowest possible rate consistent with the cost.

The Army and Navy and the Department of Justice are departments of exclusive governmental functions, in the same manner and to exactly the same extent as the postoffice. But suppose that some branch of the Department of Justice (as by turning in the fines, penalties and tax fees), or of the War or Navy, could be made a source of revenue, would it not be singular to turn over that revenue paying part of those departments to a private monopoly, leaving the people to support the non profitable part? Yet that is exactly what is done with the Postoffice Department. Though the Postoffice is as exclusively a governmental function as the Army or Navy or the Department of Justice, the government operates only the slow, antiquated non-paying part of the postoffice, leaving the tax payers to make up an annual deficit of six or eight millions; while the rapid, improved, up to date part of the postoffice, the rapid or electric mail, is operated by a private monopoly and pays a heavy dividend on its watered stock of 150 millions--ten times the actual value of its plant.

Besides, this system is unjust, for the private monopoly naturally selects the best paying districts, and a large part of the people are denied the advantages of a modern postoffice. In every country, save ours alone, the power of the monopoly has failed to maintain a system so unconstitutional and so opposed to the best interests of the public. Hence, in every country except ours, the telegraph and telephone are constituent parts of the postoffice, with the double result that the postoffice facilities of the telegraph and telephone are extended to the country postoffices and the postal revenues show a profit instead of a loss. Notably Great Britain, which has most widely extended the use of the telegraph and telephone as a part of its postoffice, shows a large annual profit from its postoffice instead of the deficit which was usual before the telegraph and telephone were added to that department by Mr. Gladstone in 1870.

But there are those who say that the telegraph and telephone would centralize the government. Yet it would be hard to see why an efficient postal service is more centralizing than an inefficient one, or why mail sent by electricity or pneumatic tubes (which should be adopted in the large cities) is more centralizing than mail sent by horseback or by steam. It is a puzzle to understand why ownership of telegraph or telephone wires costing less than \$10 per mile should imperil the government more than the ownership of gunboats, or postoffice buildings, or postal cars. If it were the question of adding new functions to the government, as the ownership of railroads and the carrying of freight and passengers, this argument would be a legitimate one for debate. But when the constitution has already turned over the exclusive duty of the transmission of mail to the government, there can be no argument of this kind properly used against the introduction of the most improved methods for the transmission of the mail, whether by electricity or pneumatic tubes.

Telegraphic dispatches would be sacred in the hands of government employes as other mail is now, or as the telegrams are in the hands of the employees of a private corporation. Besides, government employes, especially under civil service rules and subject to the supervision of public opinion, would be less capable of using the telegraph for partisan purposes, as has been done under corporation ownership, and as was flagrantly attempted to be done in the first Cleveland election, as every one remembers.

With telephones at all country postoffices and all villages and the smaller towns, few additional employes would be required, and those few would be added at centers which require the telegraph and where civil service rules obtain. The telephones and telegraphs would be put in the postoffice buildings already owned or rented by the government, thus saving the rent of all the buildings now used by the private companies. This, and the saving of the salaries of the officials of the present corporations and the dividends on their largely watered stock, would enable the government to reduce its tolls to the uniform rate of ten cents per message independently of the large increase in business.

In Great Britain (by the official report made to this government in the United States Consular Reports for April, 1895) the increase since the government has taken over the telegraph and telephone has been tenfold in private messages and thirtyfold in press messages; and the improvement in promptness of

delivery has been from an average of two to three hours under private ownership to an average of nine minutes under government. This wonderful increase in business has been due to the threefold cause of cheap rates, extension of the lines to all postoffices and greater promptness in delivery. With wire costing less than \$10 per mile, there is no reason why the government should not own a line to every postoffice in the Union.

There should be no dicker with private companies about leasing or purchasing. In 1866 they only asked for five years to close up, but when the five years were out they had formed the present great trust and have ever since defied the public. They have had thirty years notice to abandon their use of a branch of the governmental functions. In that time they have received hundreds of millions of profits illegally extorted from the toiling masses. They have no claim to extract another dollar by lease or sale of their antiquated or worn out instruments. Let the government give the actual value of such wires and poles as it may wish to use and take complete and exclusive possession of the duties of a postoffice. Certainly the corporations are entitled to no compensation for franchise, or loss of expected profits, since under the act of 1866 every telegraph line has been built under a contract that it should be turned over to the government upon payment of the assessed value of the material. The franchise has always been the property of the government and was only temporarily permitted to be used by the private corporations.

Every postmaster who can talk can use the telephone; and where a telegraph office is required, the government can employ an assistant as operator as easily as any other clerk. Other countries, without exception, are doing this good work of furnishing electric mail facilities at cheap rates to all its people, in the country as well as in the town. Why should this government, alone of all the world, which claims, par excellence, to be a government of the people and for the people, fail in this constitutional duty of furnishing proper postal facilities and to all its people? The only proper postal facilities for the American people are those which shall extend to every nook and corner of the republic, which shall be the best which the latest advances in science can offer, and which are furnished as near the exact cost of the service as is possible and without profit. Such postal facilities the American people are entitled to demand as a right. They should rest contented with nothing short of this.

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