

**THE POSTAL POWER OF
CONGRESS; A STUDY IN
CONSTITUTIONAL
EXPANSION. A DISSERTATION**

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The postal power of Congress; a study in constitutional expansion. A dissertation by Lindsay Rogers

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LINDSAY ROGERS

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CONSTITUTIONAL
EXPANSION. A DISSERTATION**

THE POSTAL POWER OF CONGRESS

A STUDY IN CONSTITUTIONAL EXPANSION

BY
LINDSAY ROGERS

A DISSERTATION

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PREFACE

The purpose of this essay is to trace the legislative and judicial history of the grant to Congress of the power "to establish postoffices and postroads," and to discuss the constitutionality of the proposals that, under this clause, federal control may be extended to subjects over which Congress has no direct authority. The essay is thus one in constitutional expansion, and does not consider the history or efficiency of the postoffice as an administrative arm of the government. A treatment of this subject, which has as yet received scant notice, I may some day attempt.

Portions of Chapters IV and VII have appeared as articles on "Federal Interference with the Freedom of the Press," and "The Extension of Federal Control through the Regulation of the Mails," in the *Yale Law Journal* (May, 1914) and the *Harvard Law Review* (November, 1913) respectively. They have been thoroughly revised for publication in their present form. Chapter V appeared in substantially the same form in the *Virginia Law Review* (November, 1915).

I am under great obligations to Professor W. W. Willoughby, not only for much direct assistance in the preparation of this essay, but for the inspiration of his productive scholarship.

L. R.



THE POSTAL POWER OF CONGRESS

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."¹

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."²

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

¹ *The Federalist*, No. 42.

² Story, *Commentaries on the Constitution*, vol. iii, p. 22.