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"These Great and Dangerous Powers"[1]: Postal Censorship of the Press

The post is protected by the First Amendment. To censor mail is to censor speech—the exchange of ideas between people.[2]

The First Amendment to the U.S. Constitution notwithstanding, freedom of speech and freedom of the press have always been tenuous rights—held sacred as a matter of rhetoric, but rarely extended to those struggling for fundamental social change. Scholars increasingly recognize the myriad of state and federal restrictions on press freedom that have been imposed both in peacetime and in war. An extensive literature exists on formal legal controls such as the Alien and Sedition Acts and the Espionage Laws (e.g., Levy, 1985; Chafee, 1967; Sloan and Schwartz, 1988). At least as important in determining the extent of actual freedom of expression, however, are institutional controls on circulation.

Kielbowicz (1989) demonstrates the extent to which postal policies shaped and fostered the press. The post office carried news to publishers, delivered papers to subscribers, and often acted as circulation agents—all at subsidized rates or for free. Yet important as these services were, they were not made available on an equal footing to all publishers. This paper examines one often-neglected aspect of government press controls—the postal system. Previous work in this area has tended to focus upon the exercise of postal powers to suppress 'pornography,' to exclude 'propaganda' mailed to this country from abroad, and to suppress antiwar and radical publications during the first World War (e.g., Hilton, 1948; Johnson, 1962; Fowler, 1977; Scheiber, 1960). Yet despite efforts by some scholars to treat it as an aberration, postal censorship has been sustained over many generations.

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Foundations of Postal Censorship

Writing in 1844, Lysander Spooner (1844, p. 15) warned of the dangers of allowing the government to exercise a monopoly over the mails, arguing that "*exclusive* power over the [mails] ...was capable of being made one of the most powerful engines of police[,] as efficient for purposes of despotism as a standing army."

Spooner was among the first to recognize the potential for suppression of freedom of expression intrinsic to governmental control of the mails, and to suggest structural reforms—however inadequate—to protect against it. "The word 'speech,'" he argued,

> does not mean simply utterance... but the communication of ideas.... 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....
>
> If the constitution had intended to give to Congress the exclusive right of establishing the mails, it would have prescribed some rules for the government of them, so as to have secured... the right of people to send what information they should please through them (Spooner, 1844, p. 16).

At least as early as 1800, the Federalist party used its control to suppress opposition papers altogether or to compel them to pay postage while Federalist papers were carried free of charge (Miller, 1951). In the 1830s, Whigs protested that the post office was administered by a "partisan corps... prevent[ing] the distribution of papers of the opposition" (Fowler, 1977, p. 24). In 1835, Postmaster Amos Kendall noted that the post office "has no legal authority to exclude newspapers from the mail... on account of their character or tendency," but that he had no objection to local postmasters barring abolitionist papers and pamphlets. His ruling was followed by an unsuccesful Presidential plea to legalize such censorship (Nelson, 1967, p. 212).

Few publishers spoke in favor of the abolitionists' right to freedom of the press (and the associated right of circulation), though some legislators objected to the notion that the post office had the right to censor the mails. A Senate committee chaired by South Carolina Senator Calhoun denounced the proposal, arguing that the First Amendment barred such action: "The object of publishing is circulation; and to prohibit circulation is, in effect, to prohibit publication." Calhoun, however, had no objection to individual states prohibiting circulation of abolitionist materials, and requiring postmasters to comply (Deutsch, 1938, p. 719).

Twenty years later, postal officials were still suppressing abolitionist literature. Yet when secessionist newspapers were barred from the mails during the Civil War, the House of Representatives instructed its Judiciary Committee

> to enquire and report to the House... by what authority of Constitution and law, if any, the Postmaster General undertakes to decide what newspapers may, and

> what shall not, be transmitted through the mails of the United States (Deutsch, 1938, p. 724).

The Postmaster explained that his actions were compelled by considerations of public safety.

An extensive body of legislation developed following the Civil War restricting use of the mails on grounds ranging from fraud and obscenity to unacceptable social and political views. This paper focuses upon three forms of postal censorship: prohibition of 'libelous matter' on covers or envelopes, discrimination in second-class mailing privileges, and suppression under Espionage and Indecency statutes. While millions of copies of foreign publications have been suppessed by postal authorities, an extensive literature on this aspect of postal censorship already exists (e.g., Schwartz and Paul, 1959; Clardy, 1966). Similarly, while laws and regulations barring fraud, lotteries and obscenity from the mails have historically served as an entering wedge for policies later directed against political speech (Deutsch, 1938), these are addressed only as they relate directly to the discussion at hand.

Criminal Libel on Covers and Envelopes

While Levy (1985) demonstrates that the First Amendment in no way protected editors from criminal or seditious libel proceedings initiated on a state level, it is generally agreed that (aside from the dark days of the Alien and Sedition Acts) such measures have been Constitutionally barred at the Federal level. However, Congress has enacted criminal libel statutes under cover of its postal powers since at least 1872. As amended in 1888, legislation prohibited

> delineations, epithets, terms, or language of an indecent... libelous, scurrilous, defamatory, or threatening character or conduct of another, ...written or printed, or otherwise impressed or apparent... upon the envelope or outside cover or wrapper (25 Statutes at Large, p. 1039).

The original language was less comprehensive, but prohibited "disloyal devices." Such writings were barred from the mails, with senders to be punished by not more than five years imprisonment at hard labor, a five thousand dollar fine, or both (ACLU v. Kiely, 1930).

The statute was later amended to treat the offense of mailing indecent or obscene material separately from libelous matter. In 1948, criminal penalties were reduced to a fine of up to $1,000, imprisonment of not more than one year, or both (18 USCS Subsection 1718). Under the law postmasters could refuse to accept material they deemed libellous, indecent or defamatory, and/or initiate criminal proceedings against the sender. Early cases (e.g., U.S. v. Bayle, 1889) predominantly involved bill collectors (whose warnings on the outside of envelopes were held to defame or threaten recipients), but there were several prosecutions against editors and others involving political speech.

In 1912, newspapers gained some protection from the statute when an appeals court ruled that the outside page of a newspaper, where the address was written upon the paper itself, could not properly be considered an "envelope, outside cover, or wrapper" (U.S. v. Higgins, 1912). Material printed on wrappers or outer covers of magazines continued to fall under the statute's purview until it was struck down, in the 1970s, as unconstitutional (Tollett v. U.S., 1973; U.S. v. Handler, 1974).

Prosecutions under this statute were relatively rare, but included some prominent editors of working-class newspapers. *Appeal to Reason* editor Fred Warren was indicted and convicted for mailing the *Appeal's* January 12, 1907 edition in a wrapper announcing a reward for the apprehension of indicted ex-Governor Taylor and his return to Kentucky officials for prosecution on an indictment for conspiracy to murder his Democratic opponent. Warren (who sought to expose "the hypocrisy of capitalist justice" following a Supreme Court decision upholding the abduction without extradition proceedings of three labor leaders to stand trial in Idaho) was convicted of sending material through the United States mails intended to "reflect injuriously on the character" of William Taylor and sentenced to six months in prison, a $1500 fine, and costs (Sterling, 1986; Warren, 1909).

The U.S. Court of Appeals upheld Warren's conviction. "It is immaterial," the Court ruled, "whether the objectionable language be true or false, or whether the accused was actuated by public spirit"—the sole issue was the unlimited authority of the government to regulate the mails:

> The statute under question is part of a body of legislation which is being gradually enlarged, and which is designed to exclude from the mails that which tends to debauch the morals of the people, or is contrived to despoil them of their property, or is an apparent, visible attack upon their good names (Warren v. U.S., 1910, p. 721).

Editors charged under this statute could not raise truth as a defense, or raise any other defense beyond the narrow factual questions of whether the words in question "reflected injuriously upon the character or conduct of another," whether they appeared on the "outside cover or wrapper," and whether they had mailed them or caused them to be mailed. Warren escaped prison through a presidential pardon (Sterling, 1986), but this unfortunate body of legislation continued to be enlarged.[3]

A similar indictment resulted when Henry Tichenor, editor of the *Melting Pot*, published a page one cartoon lampooning evangelist Billy Sunday. "Those who remember the trial of Warren and the *Appeal to Reason*," warned Socialist Party leader Eugene V. Debs, "will not need to be told about the chance for justice [*Melting Pot* publisher] Wagner and Tichenor will have as revolutionary culprits in a hostile capitalist court." Faced with an adverse body of law, they ultimately negotiated a plea bargain (Wyllie, 1952, pp. 75-77). And *Masses* editor Max Eastman was prosecuted for a front-cover cartoon depicting the Associated Press's Frank Noyes as poisoning the news (Thayer, 1944, p. 245).

Other prosecutions brought under this statute raise similar press and speech freedom questions. In Stevens versus Summerfield (1957), the Postmaster's right to bar from the mails envelopes printed by the National Liberal League was upheld. The inscription argued that a recently-issued postage stamp proclaiming "In God We Trust" was "a deliberately contrived and unlawful act of assistance to religion." This, the Court held, implicitly criticized the Postmaster General, and was thus unmailable.

Similarly, Shoemaker versus Burke (1937) upheld the postmaster's ruling that envelopes bearing a sticker containing the words "I don't read Hearst" were unmailable. "This inscription," the court ruled,

> was a purely gratuitous intrusion of an expression of opinion by the writer denunciatory in its nature of Hearst and the Hearst publications. It was an effort to induce others to join in the same opinion (p. 206).

In Hardy v. Goldman (1936) the court held that stickers urging the public not to read particular newspapers because they practiced "yellow journalism" rendered envelopes to which they were affixed unmailable. In 1927, postal authorities refused to allow stickers reading "Protest Against Marine Rule in Nicaragua" to be placed on the back of envelopes (Labor Research Department, 1928, p. 188). Yet the Post Office regularly suspended its ban on affixing stickers to envelopes for Red Cross seals and similarly uncontroversial stickers, despite their "purely gratuitous" character (*New York Times*, 1908a; 1912). The constitutionality of the statute was upheld as late as 1965 (McCrossen v. U.S., 1965).

The Post Office used the statute to close the mails to general criticism of the government as well, but was rebuffed by the Second Circuit Court of Appeals in American Civil Liberties Union versus Kiely (1930). Postmaster General John Kiely was enjoined from excluding from the mails envelopes and pamphlets advocating the pardon of imprisoned labor activist Tom Mooney. The Post Office objected, or so it claimed, not to the pamphlets themselves but to the envelopes in which they were mailed, bearing the words: "Pardon Tom Mooney—Innocent," "The Horror of 13 Years Unjust Imprisonment," and around the border: "Tom Mooney Frame-up," "A Terrible Indictment," "California's Shame," and "Justice California Style."

The Post Office contended that the envelope was—to quote the decision of the District Judge who first heard and dismissed the case—"certainly defamatory of the State of California and of some undefined persons therein who have had to do with the Mooney case." The Appeals Court, however, held that "while there can be no doubt that the United States may prohibit the carriage by mail of such things as it pleases," only identifiable individuals were protected by the statute as written (ACLU v. Kiely, 1930).

The right to include editorial comment on wrappers or envelopes (whether of newspapers, pamphlets, or individual letters) may seem of secondary importance. Yet this right was vital for magazines whose front

and back covers, unless enclosed in a wrapper, were covered under the statute. And, as the Court summarized the ACLU's argument,

> its purpose is aided by having on the envelopes... sensational inscriptions which will attract the attention of the public... Such things aid its propaganda and may in some cases prevent the envelopes and their contents from being thrown into waste baskets unread by the recipients (ACLU v. Kiely, 1930, p. 452).

Yet for more than 100 years, successive criminal libel statutes of this sort were allowed to stand by the courts.

Deprivation of Second-Class Mailing Privileges

Ever since the introduction of subsidized mailing rights to newspapers and magazines at second-class rates, the ability to receive and maintain these rates has been of vital importance to publishers (Kielbowicz, 1989)—especially given the government's postal monopoly and the consequent lack of viable alternative delivery methods. Even where alternative carriers such as freight and express companies existed, the added expense placed excluded periodicals at a decided disadvantage.

Congress, in 1879, provided that subsidized second-class rates should be available to regularly-issued periodicals published at least four times a year, issued from a known office of publication, without substantial binding (such as is found on books), and

> published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers;

but excluding publications designed primarily for advertising purposes or for free circulation (cited in Milwaukee Social Democratic Pub. Co. v. Burleson, 1921, p. 425). While these provisions may seem straightforward on their face, the post office often interpreted them to discriminate against working-class and radical publications.

In 1901, for example, Gaylord Wilshire's socialist weekly, *Challenge*, lost its second-class rates after moving from Los Angeles to New York on the grounds that it was a medium established to advertise and promote Wilshire's ideas. "This means," Wilshire informed his readers in his last weekly edition,

> that instead of my paying the regular newspaper rate of one cent per pound, or say posting ten papers for a cent, that I must pay one cent for every paper... My postage expenses will be increased over one thousand dollars per month.... Up to today I had thought, and so had nearly everyone else, that a paper "designed primarily for advertising" meant advertising some concrete, material thing, like, say Armour's Hams... but [Asst. Postmaster] Madden has enlarged the scope of postal law so that "ideas" are included (Wilshire, 1901, p. 8).

Even the "millionaire Socialist" could hardly afford to publish under such constraints. Instead, *Challenge* moved to Canada, where there was no

postal penalty for "advertising" ideas (Wilshire, 1902). (At that time publishers could mail across the border without paying additional postage. The Post Office later reversed its decision at the behest of a Congressman concerned that a constituent had lost Wilshire's extensive printing business.) But few publishers had the resources to pick up and move to another country in order to escape capricious postal rate-setting.

At the same time, the Post Office was also challenging the mailing rights of the *Appeal to Reason* and attempting to prohibit labor journals published from printing advertisements (*Cleveland Citizen*, 1901). The right of labor unions, fraternal societies and educational organizations to mail their publications at second-class rates had been unquestioned until 1893, when the Post Office ruled that they were not disseminating information of a public character and hence must pay the higher third class rates. In the eleven months before Congress restored its right to mail at second-class rates, the *Modern Woodman* paid $5423.62 in additional postage (later refunded) over the $793.11 that would have been due at second-class rates (Clerk's Office, Court of Claims, 1900).

Between 1901 and 1903, postal policy was revised to deny many labor and fraternal publications the right to carry advertising on the grounds that the 1894 Act allowed only editorial and advertising matter directly furthering the objects of the sponsoring organization (*United Mine Workers Journal*, 1901; Williams, 1910). Other journals, entered under the 1879 Act, were able to continue carrying advertising. Postal policies as to what constituted a "legitimate list of subscribers" changed as well, with the Post Office refusing to consider dues-paying members to be subscribers.

Speaking before the House Postal Committee to support legislation to once again "place the labor and fraternal organization on an equal footing with all other bona fide publications," American Federation of Labor president Samuel Gompers (*Second Class Mail*, 1910, p. 408) asked: "Who is going to determine that which is germane and that which is foreign to the purposes and objects of the organization?" The National Fraternal Press Association contrasted its press, "whose highest duty it is to promote the general welfare," to newspapers published primarily for commercial purposes but granted rights and privileges denied their nonprofit counterparts (*Second Class Mail*, 1910, p. 898).

Although the ban on advertisements was subsequently lifted, the Post Office continued to claim the right to arbitrarily deny second-class rates to periodicals and thereby to effectively bar them from distribution. During World War I, scores of socialist and radical periodicals had their second-class mail privileges revoked through administrative proceedings which the courts proved reluctant to review (Baldwin, 1920). The final issue of *The Jeffersonian*, whose mailing privileges were revoked in retaliation for its criticisms of conscription, protested:

> Without specification of alleged wrongdoing, and without trial by jury...a publisher's business is outlawed...and his presses stopped; still this is not press-censorship. What is it then? (Fowler, 1977, p. 115)

The *Milwaukee Leader* appealed its denial of second-class rates all the way to the Supreme Court, and was rebuffed each step of the way. In this and several similar cases, the Postmaster General contended that past publication of material determined by the post office to be unmailable under the Espionage Act justified revocation of the second-class 'privilege' for future issues. Although no statute provided for the revocation of second-class rates on such grounds (the acts dealt at some length with use of the mails, but provided only for complete suppression of non-mailable matter, and for criminal prosecution of violators), the Court held that the rate

> is a frank extension of special favors to publishers because of the special contribution to the public welfare which Congress believes is derived from the newspaper (Milwaukee Social Democratic Pub. Co. v. Burleson, 1921, p. 410).

By implication, the Court held, this privilege can be withdrawn at any time. Justice Holmes dissented, arguing that the government was under no obligation to operate a postal system, but that

> while it carries it on the use of the mails is almost as much a part of free speech as the right to use our tongues.... To refuse the second-class rate to a newspaper is to make its circulation impossible (p. 437).

While the suppression and harassment of the radical press during World War I (through denial of second-class rates, under the Espionage and Sedition Acts, and through vigilante action) is well known (e.g., Chafee, 1967; Mock, 1941; Murphy, 1979), it has generally been viewed merely as a war measure—an unfortunate result of war hysteria. The historical record suggests that such a view is woefully inadequate.

Suppression of working-class newspapers continued well after the war's conclusion. Two months after the Armistice, the *New York (daily) Call* petitioned for reinstatement of its second-class mailing rights. The Postmaster General refused, citing the editors' declaration that "the *Call* has not changed its policy one bit since it was barred from the mails, and is not going to change," and legislation declaring unmailable "matter of a character tending to incite arson, murder or assassination." The Court of Appeals agreed (overturning a lower court) in 1921, pointing to the *Call's* editorial support for the Russian Revolution and articles urging workers to "take possession of the world... [and to] proclaim themselves part of the free children of earth" (Burleson v. U.S. ex rel. Workingmen's Co-op. Pub. Assn., 1921, pp. 750-51). In May of 1921, New York City's postmaster declared the Amalgamated Food Workers' official organ, the *Free Voice*, unmailable (Hilton, 1948). President Harding's administration subsequently restored second-class rates to the *Leader* and *Call*, but publishers henceforth were on clear notice that they circulated their papers through the mails only on government sufferance.

In 1932, the American Civil Liberties Union reported that seven radical newspapers had been denied second-class mailing rights (Labor Research Dept., 1932, p. 164). The government again withdrew second-class mailing rights during World War II. Some seventy periodicals were deprived of second-class rates between May 1942 and May 1943, prompting one Senator to protest the "undemocratic and arbitrary" character of the proceedings (Fowler, 1977; Chafee, 1967). Among the papers hit with higher postal charges were Father Couglin's *Social Justice* and the Socialist Workers Party's weekly *Militant*. *Social Justice* was ultimately supressed altogether. Each issue from April 6, 1942 was declared unmailable without hearing. The Attorney General then stopped street sales, relying on the Trading with the Enemy Act. Dissatisfied with these results, Representative Dickstein (1943, p. 1820) called for new legislation "to prevent misuse of the mails by groups which organize themselves for the sole purpose of disseminating propaganda amongst the American people."

Court challenges remained futile, and the victims were unable to arouse public concern. The *Militant*, at least, was suppressed solely on account of its radical views. When Attorney General Francis Biddle wrote the Post Office seeking suppression of the *Militant* he frankly stated his reasons:

> It is permeated with the thesis that the war is being fought solely for the benefit of the ruling groups... The lines in the publication also include derision of democracy and the "four freedoms" as hypocritical shams... stimulation of race issues and other material deemed divisionary in character (quoted in *Fourth International*, 1943).

The *Militant*'s second-class mailing rights were revoked in March of 1943, and not restored until a year later.

In the meantime the paper was sent by slower, more expensive classes of mail, and was frequently impounded. Some issues were seized and burned by postal authorities (Evans, 1975). Writing after the Post Office suppressed two issues of the *Militant*, SWP leader James Cannon (1942, p. 356) argued:

> The Administration claims that it is waging this war to defend democracy... But what are they actually doing? They attack free speech. They attack the free press...
>
> If *The Militant* can be suppressed, any CIO or AFL paper can likewise be suppressed.... Workers have already been denied the right of collective bargaining and the right to strike. Are they now to be deprived ...of the elementary right to express their convictions, ... to defend their interests *even in words*?

An Avenging Government

May God have mercy on them, for they need expect none from ... an avenging government.
—Attorney General Gregory, November 1917[4]

The suppression of publications under the Espionage and Sedition Acts is inextricably intertwined with the question of second-class mailing rights discussed above, particularly since the withdrawal of second-class rates has generally been based (despite the lack of any statutory authority for such action) upon claimed violations of these World War I-era laws. While relatively few criminal prosecutions were brought against journalists, editors or publishers under the espionage and sedition acts, at least seventy-five periodicals were barred from the mails under its provisions and hundreds more were interfered with (Baldwin, 1920). Some organizations and periodicals were blocked from either sending or receiving mail of any sort. Indeed, the government extended its policing powers beyond the realm of the mails to bar distribution through any means whatsoever of material the Postmaster General deemed unmailable (Ameringer, 1983; Chafee, 1967; Preston, 1963).

Nor were newspapers and magazines the only victims. Hundreds of books and pamphlets were suppressed under the Espionage and Sedition Acts, including every pamphlet issued by the National Civil Liberties Bureau. In ordering the suppression of a NCLB pamphlet entitled *Freedom of Speech and of the Press*,

> the postal inspector who read it made it clear that the subject of free speech was not an appropriate issue for public debate, that the government's wartime policy on it was not to be questioned, and that any organization which did so was disloyal (Murphy, 1979, p. 168).

Federal Judge Augustus Hand subsequently ordered the Post Office Department to deliver the Bureau's suppressed pamphlets—one of very few successful appeals against post office censorship during this period.

Not only did World War I-era legislation give postal officials a virtually open hand in suppressing pacifist and socialist views from the mails, they were granted weapons against the foreign-language press that permitted their total suppression (even from local distribution), essentially at whim. Under the Trading with the Enemy Act it was unlawful

> to print... or cause to be printed, published or circulated in any foreign language, any... matter respecting the Government of the United States, or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war, or any matter pertaining thereto... [except] where the publisher... has filed with the postmaster ... a true and complete translation of the entire article.... Any print, newspaper or publication in any foreign language which does not comply... is hereby declared to be nonmailable, *and it shall be unlawful for any person, firm, corporation or association to transport, carry or otherwise publish or distribute the same* (Fowler, 1977, pp. 116-17).

Postmasters could, however, exempt particular newspapers. This requirement placed great financial strain upon many newspapers that could ill-afford it, and many were forced either to adopt a pro-governmental policy or to remain entirely silent on a wide range of questions (Miller, 1985; Murphy, 1979; Petersen, 1920).

Even publications which never circulated a single copy through the mails were brought under the jurisdiction of post office censorship. Oscar Ameringer (1983), for example, was indicted under the Trading with the Enemy Act as titular publisher of the Milwaukee Socialist Party's Polish-language campaign sheet, distributed door-to-door in a language he could not even read. Ironically, one of the justifications cited by various courts in upholding censorship of the mails was that "transportation in any other way as merchandise is not forbidden" (Masses Pub. Co. v. Patten, 1917, p. 27). But such constitutional and legal niceties were of little avail to hapless editors unable to secure the imprimatur of the Postmaster General.

Even papers which (at least formally) escaped suppression under the Espionage and Sedition Acts and retained their second-class mailing rates could be practically destroyed. Morris Hillquit (1934), a socialist lawyer who represented many publishers in such proceedings, reports that all socialist papers were affected—either through outright suppression and delays or by the de facto requirement to maintain silence about the major issues of the day.

Nor was this the extent of the Post Office's powers. Without so much as a hearing, the post office imposed sweeping censorship on all incoming mail received by the *Milwaukee Leader* and all mail sent to or from offices of the Industrial Workers of the World. The *Leader* was permitted to receive only government press releases. Business correspondence, advertising, subscription payments, and other materials essential to the running of a newspaper were stamped "Undeliverable Under Espionage Act" and returned (Ameringer, 1983).

Similar censorship was applied against the Industrial Workers of the World (IWW) based upon Federal indecency statutes prohibiting "matter... tending to incite arson, murder or assassination," the Espionage and Sedition acts, and the Trading with the Enemy Act. As early as 1917, before the Espionage Act's passage, postal officials were seizing IWW literature as "indecent" and barring IWW papers from the mails. The post office screened all incoming and outgoing mail, suppressing any solicitations to strike, reprints of the IWW Preamble, advocacy of industrial unionism, anti-capitalist remarks, objectionable illustrations, the phrase "An Injury to One Is An Injury to All," assertions of the impossibility of receiving a fair trial from the courts, reports of the Chicago espionage trial of scores of IWW leaders, and calls to organize workers. Such 'unmailable matter' appeared on almost all IWW literature, including union membership cards and stationery, making the conduct of union business well-nigh impossible. Even where items were approved for mailing, it often required eight to twelve months before postal officials ordered delivery. Barred from the mails and, effectively, from the express companies, the IWW was severely hampered in its efforts to organize and to finance its legal defense against federal espionage charges (Preston, 1963; Johnson, 1962; Murphy, 1979).

Some of these statutes lapsed with the war, but others continued in full force. In 1927, four editors of the Communist Party's *Daily Worker* were prosecuted for publishing and mailing indecent matter: a poem entitled "America" (Labor Research Dept., 1928). In 1930, the July 15th edition of *Revolutionary Age*, organ of the Communist Party "Majority Group" (Lovestonites), was barred from the mails. The issue was largely devoted to a protest of the Post Office's suppression of an earlier issue under the Espionage Act and as indecent matter "tending to incite arson, murder or assassination."

The offending copy called for the overthrow of capitalism, provision of unemployment relief, recognition of the Soviet Union and organization of a mass communist party. In an extended lexicographic exposition of the words "fight," "revolutionary," "war," and "militant," the District Court held that such words demonstrated the indecent and unlawful character of these writings, and "fully justified" the Post Office Department's action to bar the disputed issue from the mails (Gitlow v. Kiely, 1930, pp. 232-33).

Issued nearly a dozen years after the Armistice, this ruling demonstrates that postal censorship cannot be attributed to war hysteria, nor to the arbitrary abuse of power by postal authorities, as has been argued by scholars such as Zechariah Chafee. For if it were merely a matter of individual office holders run amok, how can one explain the persistent character of these violations of freedom of the press, and the repeated judicial rulings (from several jurisdictions) upholding them?

And complaints of postal interference against radical journals continue to this day. In 1973 copies of *Akwesasne Notes* were held up by the Post Office for several weeks, and released only after intervention by U.S. senators (Murphy and Murphy, 1981, pp. 86-87). More recently, issues of the *Industrial Worker* were held up for weeks at a time, while a historian researching the Sanctuary movement reports confiscation of documentary material from the mails (Industrial Workers of the World, 1989, p. 48; Jeffrey, 1989).

Indecent Revolutionaries

Obscenity and indecency statutes have often been used against radical publications. In 1908, the anarchist *La Question Sociale* was barred from the mails at the request of President Roosevelt as "immoral, pernicious, and harmful to the interests and welfare of the people" (*New York Times*, 1908b). The Post Office ruled the paper's views rendered it "not a newspaper within the meaning of the law" (*New York Times*, 1908c; 1908d). On July 4, 1908, the *Appeal to Reason* reported that the Post Office intended to use indecency statutes to bar socialist papers from the mails. The editor of a South Dakotan socialist weekly was jailed the next month for mailing an editorial suggesting that a young girl's suicide after giving birth to an illegitimate child was caused by a fundamentally flawed society (Schroeder, 1922; *Chicago Daily Socialist*, 1908). Three years later the

Appeal to Reason staff was indicted for mailing its April 29, 1911 issue as a result of an expose on conditions (including sexual abuse of prisoners) in the Leavenworth prison (Sterling, 1986).

Even after the Post Office finally admitted to the mails most of the books and pamphlets suppressed by Burleson, the deported anarchist Alexander Berkman's *Prison Memoirs of an Anarchist* was still barred under federal obscenity statutes (*Milwaukee Leader*, 1922). Copies of *Il Martello*'s September 8, 1923 issue were held up under obscenity statutes after the Italian Ambassador requested the paper's suppression, purportedly for publishing a two-line advertisement for a book on birth control. Editor Carlo Tresca had been arrested the month before for sending obscene matter through the mails—one of the offending articles compared the Italian fascists to the Ku Klux Klan. (Tresca was convicted and served four months of a one year sentence.) Four years later, Il *Martello* was again temporarily banned from the mails as indecent (Gallagher, 1988).

Even capitalistic editors were not safe. In 1944, Postmaster General Frank Walker revoked *Esquire*'s second-class mailing permit on the grounds that itpandered to base impulses instead of making the "special contribution to the public welfare" that justified lower postal rates (Fowler, 1977, p. 168). This, however, was going too far, and the Supreme Court—which had proven quite willing to allow similar actions against radical publications—overturned the decision.

Conclusion

Writing in 1941, Zechariah Chafee (1967, p. 549) concluded:

> The post office has great power to limit the liberty of the press... It can exclude publications from the mail altogether, or it can deprive a newspaper or magazine of its second-class postal rates, thereby virtually driving it out of business... There is a very inadequate legal check on the legal machinery of the post-office... [and] there is no satisfactory hearing.

This power has extended even beyond control over the mails themselves—absolutely essential for the distribution of any periodical of more than local circulation, and for the conduct of even local newspapers—to suppress publications circulated door-to-door or through private express carriers. While criminal libel proceedings, at least on a federal level, have long been seen as an outrageous infringement upon the rights of a free press, the government has used its control over the mails in pursuit of the same ends.

Yet postal censorship has attracted relatively little attention, except as seemingly isolated instances (such as the controversy over the exclusion of foreign propaganda from the mails, and after-the-fact debates over the suppression of the socialist and radical press during World War I). Those authors who have discussed the problem have tended to view it as a matter of individual or administrative abuse, of deviations from established prin-

ciples (e.g., Fowler, 1977) or have implied that the victims of postal censorship were to blame because of their non-pragmatic, incautious opposition to government policy (Walker, 1986). Zechariah Chafee (1967, p. ix), writing in 1942, argued that "This tendency toward suppression will be immensely strengthened if speakers and writers use their privilege of free discussion carelessly or maliciously," urging dissidents to "think long and hard before they express themselves" lest they lose the right to free speech by exercising it.

Yet the record indicates that postal censorship has been a persistent feature of government policy, pursued in peacetime as well as in time of war, often with avid support from other sectors of the press. During World War I, for example, the *New York Times* (1918) called upon the government to act to outlaw "disloyalty manifested in speech... [including] any words calculated to bring the government or its institutions into contempt or disrepute." Twenty years in prison, the *Times*' editors concluded, was "proportionate to the magnitude of the crime." Associated Press general manager Melville Stone called upon the government to shoot "disloyal editors" (*Milwaukee Leader*, 1918b). And *The Living Age* concluded that restrictions on the press imposed on the press under the Espionage Act "were not very drastic... and speedily proved to be inadequate" (Rogers, 1918). Countless similar examples—from liberal and conservative publications alike; before, during and after the war—could easily be cited.

Postal censorship has been condoned by all three branches of the government; only in the last two decades—as economic barriers to free expression have increasingly foreclosed the possibilities for divergent perspectives in the press (Barron, 1990)—have the courts begun to extend freedom of speech and of the press to the mails. Lysander Spooner (1844) saw clearly the dangers of allowing the government a monopoly over the means of communication, and the need for protective measures and vigilance if such a monopoly was not to become an instrument of despotism. His concerns have proven well founded indeed.

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NOTES

1. Woodrow Wilson, October 1917, quotes in Chafee (1967).
2. American Civil Liberties Union (1971).
3. Five years later, the *Appeal* again ran afoul of the statute when it mailed envelopes with an anti-war statement printed on their backs (Graham, 1990, pp. 256-58).
4. Quoted from Murphy (1979, p. 95).

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