

**A HISTORY OF MAIL CLASSIFICATION
AND ITS UNDERLYING POLICIES AND PURPOSES**

by

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1. INTRODUCTION

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The postal system's functions have popularly been cast in the most sweeping and amorphous terms--for example, as "Bond of the Scattered Family," "Enlarger of the Common Life," "Carrier of News and Knowledge," and "Instrument of Trade and Industry."¹ Realizing such lofty goals, however, required highly particularistic judgments. The mail classification system, used to assign hundreds of billions of mail pieces to one or another category, developed as a major tool for translating the post office's grand goals into workable day-to-day operations.

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Mail classification does more than translate imprecise goals into tangible services. A classification plan also allows the post office to honor its obligation as a common carrier providing nondiscriminatory service to myriad customers. A design for classification makes constitutionally defensible and administratively workable distinctions among countless kinds of mail and mailers. Classification, finally, provides a basis for ratemaking; the inextricable connection between mail classes and rates has typically fueled the most heated postal controversies.

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Historically, the classification system has made distinctions among mail and mailers for a number of reasons:

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1. Some classes were designed to channel postal resources to further broad *public goals*--the dissemination of information and the advancement of nonprofit organizations, to name just two.

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¹Excerpts from the inscription on the former Washington, D.C., city post office, Massachusetts Avenue and North Capitol Street, now the site of the Smithsonian Institution's National Postal Museum. U.S. Postal Service, *History of the United States Postal Service, 1775-1993* (Washington, D.C.: U.S. Postal Service, 1993), 28.

1 2. The changing *needs of mailers*, particularly businesses,
2 lay behind some classification innovations. This, in turn, often
3 grew out of changes in business tactics and technologies (e.g.,
4 the application of computers in targeting customers).

5 3. A variety of mail classes enabled the post office to give
6 mailers a choice of different *levels of service*, notably speed and
7 security of delivery.

8 4. Closely related to the preceding point, mail classes have
9 been designed, in part, with the *physical characteristics* of mail
10 pieces--size, weight and shape--in mind.

11 5. Some boundaries between classes and subclasses reflected
12 differences in the *nature of mailers*, their motivations, and the
13 *purposes behind the matter they mailed*.

14 6. Mail classes were often calibrated to the post office's
15 *delivery costs*.

16 7. Postal officials pressed Congress for classification changes
17 to improve the *administration* of postal laws.

18 8. The existence of private-sector substitutes or *competition*
19 for mail services influenced some classification decisions.

20 Most mail classes are created from two or more of these factors.

21 The post office has not been alone in having to classify communication
22 messages. Nearly every attempt to tax printed matter has raised definitional
23 problems. When the British imposed stamp taxes in the 1700s, officials grappled
24 with the meaning of "newspaper."² More recently, revenue-hungry states have
25 targeted publications, often taxing magazines (largely out of state) but not
26 newspapers (predominantly local). Apart from questions of equity, this presents
27 the practical problem of distinguishing between these two types of periodicals.³
28 Also, state law typically defines newspapers for the purposes of deciding which

29 ²See generally C. D. Collett, *History of the Taxes on Knowledge: Their Origin and Repeal*
30 (London: T. Fisher Unwin, 1889).

31 ³See Randall P. Bezanson, *Taxes on Knowledge in America: Exactions on the Press from*
32 *Colonial Times to the Present* (Philadelphia: Univ. of Pennsylvania Press, 1994).

1 ones are eligible to carry legal notices.⁴ Even federal securities law requires some
2 publishers dispensing investment advice to register while exempting others.⁵

3 This study explores the history of domestic mail classes and subclasses
4 from colonial times through passage of the 1970 Postal Reorganization Act.⁶ It
5 emphasizes the reasons behind the creation of each class and major subclass.⁷ The
6 shifting relationships of classes and subclasses to each other are also traced. Some
7 mail categories have retained their outward form over time while the reasons
8 behind them changed substantially.

9 What is a mail class? Is every variation in rates a separate class? As a
10 practical matter, most discussions about mail classification occur as part of efforts
11 to change postal rates. To the extent possible, however, this study includes just
12 enough information about rates to make the discussion of classification
13 understandable. Also, this history largely ignores the long-standing efforts to
14 define certain types of mail for the purposes of enforcing the postal monopoly.⁸

15 ⁴James E. Pollard, *The Newspaper as Defined by Law* (Columbus, Ohio: Ohio State Univ.
16 Press, 1940).

17 ⁵Marc A. Franklin and David A. Anderson, *Mass Media Law* (Westbury, N.Y.:
18 Foundation Press, 1995), 155.

19 ⁶The Postal Rate Commission's statement of work for this study reads as follows:
20 Research legislative, Executive Branch, scholarly and other available
21 resources to develop a history of domestic mail classification in the United
22 States from the colonial era through passage of the Postal Reorganization Act
23 of 1970. Describe the evolution of domestic mail classification in this period,
24 treating both the establishment (or repeal) of categories of mail service, and of
25 classification distinctions between and among different types of mail. Analyze
26 and describe with particularity the influence of public policy considerations in
27 development of the domestic mail classification system during this period,
28 including responsiveness to perceived national needs, assessments of
29 appropriate commercial uses of the national postal system, and other pertinent
30 considerations.

31 ⁷This study did not examine franking, mail for the blind, and mail for military personnel.

32 ⁸There are a number of histories of the mail monopoly; see James I. Campbell, Jr., "An
33 Introduction to the History of the Postal Monopoly Law in the United States" (paper presented at
34 the Workshop in Postal Delivery Economics, June 7-10, 1995, Naantali, Finland); Roger P. Craig
35 and William T. Alvis, "The Postal Monopoly: Two Hundred Years of Covering Commercial as
36 Well as Personal Messages," *University of San Francisco Law Review*, 12 (Fall 1977): 57-87; Peter
37 J. Donnici et al., "The Recent Expansion of the Postal Monopoly to Include the Transmission of
38 Commercial Information: Can it be Justified?" *University of San Francisco Law Review*, 11 (Winter
39 1976): 243-316; Joseph F. Johnston, Jr., "The United States Postal Monopoly," *The Business
40 Lawyer*, 23 (January 1968): 379-405; George L. Priest, "The History of the Postal Monopoly in the
41 United States," *Journal of Law and Economics*, 18 (April 1975): 33-80.

1 This study divides the history of mail classification into six periods.
2 The next section traces rate classes from the colonial period to 1840; except for an
3 innovative policy toward newspapers, early U.S. postal policy followed patterns
4 established by the British. Part 3, covering 1840 to 1860, explores the
5 proliferation of printed material in various formats, all trying to qualify for
6 newspaper rates. Part 4 examines in some detail the origins of the 1879 Mail
7 Classification Act. Part 5 discusses how the post office applied the classification
8 system to mail typically connected with commerce. Part 6 shows how cost
9 ascertainment drove changes in classification. And part 7 covers the fifteen years
10 preceding postal reorganization.

1 tangible sign of a postal service in British North America consisted of bags hung in
2 taverns for the collection of letters to be transported by the next departing ship.
3 The captains customarily received a penny per letter, twice that for a packet.
4 Many of these letters conveyed intelligence about business matters.¹

5 Before 1692, inland mail service was arranged independently by
6 several colonies. Most of the services were launched to carry official
7 communications but the authorities made provisions for the couriers to carry
8 private letters and packets (packets were defined as four or more letter sheets). In
9 Massachusetts, for instance, Boston merchants prodded officials to appoint
10 someone to handle messages.²

11 British postal authorities apparently remained unconvinced of the need
12 for--or profit to be realized from--a postal service in the American colonies. The
13 potential of a unified service in the colonies was first recognized by a court
14 sycophant, Thomas Neale. He prevailed upon William and Mary in 1692 to grant
15 him a monopoly of the American colonial mails. The preamble to Neale's letter of
16 patent underscored the commercial benefits to be realized by his service: "there
17 never hath bin any post established for the conveyance of letters . . . [in the
18 American colonies] and that the want thereof hath been a great hindrance to the
19 Trade of those parts."³ Most of the colonies passed laws that supported Neale's
20 patent. The Crown repurchased Neale's patent in 1707, whereupon the colonial
21 mails began functioning as a department of the British post office.⁴

22 The legal underpinnings of the early American mail--the enactments of
23 colonial assemblies, Neale's patent, and a 1711 act that reorganized the empire's
24 postal system--recognized at least one distinction among letters. Certain
25 commercial messages were exempt from the postal monopoly that applied to the
26 colonies as early as 1692. Letters pertaining to cargo they accompanied were
27 exempt from the postal monopoly as long as the carriers did not profit from the
28 delivery of the message. The reason for this distinction among letters--and

29 ¹Wesley E. Rich, *The History of the United States Post Office to the Year 1829*
30 (Cambridge, Mass.: Harvard Univ. Press, 1924), 3. See generally Ian K. Steele, *The English*
31 *Atlantic, 1675-1740: An Exploration of Communication and Community* (New York: Oxford Univ.
32 Press, 1986).

33 ²Rich, *Post Office to the Year 1829*, 3-11.

34 ³Letters of Patent to Thomas Neale, Feb. 12, 1692, reprinted in Mary E. Woolley, *Early*
35 *History of the Colonial Post Office* (Providence: Rhode Island Historical Society, 1894), 27.

36 ⁴Rich, *Post Office to the Year 1829*, chap. 2.

1 exemption from the postal monopoly--is not clear; it may have simply reflected a
2 kind of precedence--bills of lading, invoices, and similar commercial papers had
3 been delivered along with goods before official mails were ever established.⁵

4 Capitalizing on improved transatlantic shipping, British postal law in
5 1765 created a category for letters sent by packet boats--fast, armed vessels
6 designed to carry only mail, plus a few passengers, on a regular schedule. Packet
7 service presumably offered greater security and speed to those willing to pay a
8 premium over the rate for letters sent by regular merchant vessels.⁶

9 *Newspapers' Mail Status.* For half a century, newspapers circulated
10 through the colonial mail with an indeterminate postal status. In the absence of
11 official guidelines, individual postmasters concocted *ad hoc* rules and rates, leaving
12 newspapers vulnerable to discriminatory treatment. For the most part, colonial
13 postmasters emulated their counterparts in England. Before the end of the
14 seventeenth century, the privilege of franking newspapers--sending them postage-
15 free under an official's signature--had been accepted in England as a way of
16 supplementing postmasters' meager salaries. Administrative orders recognized the
17 practice in 1737 and Parliament codified it in 1764. If charged postage, however,
18 colonial newspapers probably paid the steep letter rates. To avoid such charges,
19 printers naturally tried to prevail on postmasters--if they were not postmasters
20 themselves--to accept a paper postage-free or, alternatively, attempted to arrange
21 with postriders for unofficial delivery at something less than letter rates.⁷

22 In 1753, two newspaper publishers, Benjamin Franklin and William
23 Hunter, became deputy postmasters general for the American colonies. In a 1758
24 circular to postmasters, Franklin and Hunter attempted to regularize the postal
25 status of newspapers by putting them in a category with specified rates. According

26 ⁵Ibid., 26. The early history of classifying letters is closely connected with efforts to
27 enforce the government's mail monopoly. Of the several histories of the postal monopoly, the best
28 is George L. Priest, "The History of the Postal Monopoly in the United States," *Journal of Law*
29 *and Economics*, 18 (April 1975): 33-80.

30 ⁶Carl H. Scheele, *A Short History of the Mail Service* (Washington, D.C.: Smithsonian
31 Institution Press, 1970), 53-54.

32 ⁷William Smith, *The History of the Post Office in British North America, 1639-1870*
33 (1921; reprint New York: Octagon, 1973), 61; Jeremy Greenwood, *Newspapers and the Post*
34 *Office, 1635-1834* (Reigate, UK: Postal History Society, 1971); A. D. Smith, *The Development of*
35 *Rates of Postage* (London: George Allen & Unwin, 1917), 114-15; Kenneth Ellis, *The Post Office*
36 *in the Eighteenth Century: A Study in Administrative History* (London: Oxford Univ. Press, 1958),
37 47-77.

1 newspapers official recognition served two purposes: it increased postal revenue by
2 bringing newspapers into the system, where before postriders and postmasters had
3 kept all the money collected from carrying papers outside the mail; and it reduced,
4 at least slightly, the discrimination newspapers suffered at the hands of some
5 postmasters, especially those who published their own newspapers. In the same
6 instructions, Franklin and Hunter also ratified the custom of carrying newspapers
7 postage free when exchanged between editors as a means of transmitting news.⁸

8 **Postal Policy Under the Articles of Confederation**

9 Little changed as the American colonies moved into revolution. Law
10 recognized only letters and packets (defined as a multi-sheet letter), though
11 newspapers doubtless passed by post as well. When the Second Continental
12 Congress in 1775 absorbed the Constitutional Post that had been started by a
13 newspaper publisher, it laid the foundation for the new nation's post office.⁹ For
14 most of the war, the Continental Congress just adjusted rates using the framework
15 of British postal laws.

16 The Articles of Confederation forcefully asserted the government's
17 prerogative over postal communications, giving the Continental Congress "the sole
18 and exclusive right [of] . . . establishing and regulating post-offices."¹⁰ When the
19 exigencies of war permitted, Congress revised and codified postal regulations. The
20 Ordinance of October 18, 1782, articulated a rationale for governmental postal
21 services: "the communication of intelligence . . . from one part to another of the
22 United States is essentially requisite to the safety as well as the commercial interest
23 thereof. . . ." ¹¹ But the Ordinance, along with supplementary legislation adopted
24 later that year, largely continued provisions that had grown up under the British.

25 ⁸Circular reproduced in Ruth L. Butler, *Doctor Franklin, Postmaster General* (Garden
26 City, N.Y.: Doubleday, Doran, 1928), 58. On the colonial origins and uses of postage-free
27 printers' exchanges, see Richard B. Kielbowicz, *News in the Mail: The Press, Post Office, and*
28 *Public Information, 1700-1860s* (New York: Greenwood Press, 1918), 142-45.

29 ⁹The patriots' Committees of Correspondence began operating an intercolonial news
30 exchange in 1772. In early 1774, William Goddard, a newspaper publisher, launched a
31 intercolonial post that operated from New England to Virginia. The legal status of Franklin's and
32 Hunter's 1758 circular admitting newspapers to the mail was uncertain. Kielbowicz, *News in the*
33 *Mail*, 22-24.

34 ¹⁰Articles of Confederation, art. IX.

35 ¹¹*23 Journals of the Continental Congress*, 669-78, quote at 670.

1 In one early sign that rates and classes were established partly to counteract private
2 services, the Continental Congress authorized the postmaster general to "fix rates
3 per pound for the carriage of packets with a view to attracting these to the
4 mails."¹²

5 Postal law under the Articles of Confederation only definitively
6 recognized letters and packets; the carriage of newspapers, in contrast, was left to
7 the discretion of the postmaster general and his deputies. As Postmaster General
8 Ebenezer Hazard noted, "[N]ews-papers have never been considered as a part of
9 the *mail*, nor (until a very few years) admitted into the same portmanteau with it;
10 but were carried in saddle-bags, provided for that purpose, by the riders, at their
11 own expense."¹³ Mail contractors operating stage lines also indulged printers;
12 some apparently carried newspapers for free.¹⁴

13 Postal Policy and Practice in the Early Republic

14 Restructuring the federal government under the Constitution produced
15 no immediate changes in the U.S. postal system. The Constitution's postal
16 provision was even more economical than the language in the Articles of
17 Confederation. The postal clause simply noted that "Congress shall have [the]
18 Power . . . To establish Post Offices and post Roads."¹⁵ And neither the debates
19 at the Constitutional Convention nor those at state ratifying conventions offer much
20 help in construing the phrase.¹⁶

21 The encouragement given to newspapers through cheap postage was the
22 most striking innovation in early U.S. postal policy. With one type of mail
23 enjoying a substantial rate preference, problems arose in deciding what mail paid
24 which rate. Indeed, by 1832 if not before, postal instructions spoke of "three
25 classes of postage, viz.: Postage, 1st on Letters; 2d, on Newspapers[;] 3d on
26 Pamphlets." Anything "which is not either a newspaper, pamphlet or magazine, or

27 ¹²Rich, *Post Office to the Year 1829*, 64.

28 ¹³Letter from Hazard in *New York Journal*, Mar. 21, 1788.

29 ¹⁴Oliver W. Holmes and Peter T. Rohrbach, *Stagecoach East: Stagecoach Days in the East*
30 *from the Colonial Period to the Civil War* (Washington, D.C.: Smithsonian Institution Press,
31 1983), 124; Rich, *Post Office to the Year 1829*, 58.

32 ¹⁵U.S. Const., art I, sec. 8, cl. 7.

33 ¹⁶Priest, "History of the Postal Monopoly," 46.

1 classed with these articles by the Department, . . . is subject to letter postage."¹⁷
 2 The instructions offered crude definitions for newspapers and pamphlets but not for
 3 letters: by default, letters embraced everything else, at least for purposes of
 4 assessing postage.¹⁸

5 *Letters and Packets.* Letters sent by land were charged according to
 6 the number of sheets and the distance mailed; Congress reduced the nine zones set
 7 in 1792 to six in 1799 and five in 1816.¹⁹ For the purposes of determining
 8 postage, then, the rules mentioned letters as consisting of pieces of paper, but that
 9 was not all. A letter consisting of four sheets, or which contained articles
 10 weighing more than one ounce, were to be considered a packet.²⁰ In practice, the
 11 letter-packet category became a catchall: any mail matter not deemed a newspaper
 12 or pamphlet was rated as a letter or a packet, the most expensive class. Thus, the
 13 rules directed postmasters to charge letter postage "on all handbills, printed or
 14 written, proposals for new publications, circulars written or printed, lottery bills
 15 and advertisements, blank forms and manuscript copy for publication. . . ."²¹
 16 Packets up to 3 pounds were considered mailable.²²

17 The 1794 law created a category of drop letters--letters left at the office
 18 of delivery where the addressees picked them up.²³ Drop letters were not
 19 considered transmitted in the mail and hence paid less than regular letters. The

20 ¹⁷1832 *Postal Laws and Regulations* 34 [hereafter cited as *PL&R*].

21 ¹⁸1832 *PL&R* 34-35.

22 ¹⁹Act of Feb. 20, 1792, 1 Stat. 235; Act of March 2, 1799, 1 Stat. 734; Act of April 9,
 23 1816, 3 Stat. 264. These laws also slightly altered letter rates as well as the zones.

24 ²⁰1832 *PL&R* 35; U.S. Post Office Department, *United States Domestic Postage Rates,*
 25 *1789 to 1956* (Washington, D.C.: Post Office Department, 1956), 21, 50-52. For the 1790s, it is
 26 not clear whether the term "packet" meant four sheets of a single letter or possibly four separate
 27 letters; further confusion arises from the possibility that "packet" might have embraced mail matter
 28 other than correspondence, possibly even including newspapers. See James I. Campbell, Jr., "An
 29 Introduction to the History of the Postal Monopoly Law in the United States" (paper presented at
 30 the Workshop in Postal and Delivery Economics, Naantali, Finland, June, 1995), 6-8. The 1799
 31 law, for instance, stipulated that "no packet of letters conveyed by the water mails shall be charged
 32 with more than quadruple postage, unless the same shall actually contain more than four distinct
 33 letters." 1 Stat. 734.

34 ²¹1832 *PL&R* 35.

35 ²²1 Stat. 734.

36 ²³1 Stat. 360.

1 postal rate schedule set lower rates on drop and sometimes other locally delivered
2 letters until 1967.²⁴

3 Early postal law also recognized another category of letters and
4 packets--those sent by ship. To protect the government's mail monopoly, postal
5 law required that every shipmaster deliver letters or packets carried onboard to the
6 post office at the port of arrival. Once on shore, they were assessed a flat fee for
7 delivery in the seaport at which they arrived; if forwarded to another office, they
8 paid 2 cents plus the regular zoned letter rate.²⁵ When Congress reestablished the
9 postal system under the Constitution, it reasserted the government's mail
10 monopoly. The monopoly, however, exempted from its coverage letters that
11 accompanied packages or cargo.²⁶

12 *Policy Toward Newspapers.* When Congress considered the relative
13 merits of different kinds of mail matter in the 1790s, it decided that political
14 intelligence deserved the greatest encouragement. Hence, the 1792 post office act
15 fixed newspaper rates considerably below those for letters--a maximum of 1.5
16 cents for circulation anywhere in the country; many paid less.²⁷ Lawmakers
17 broadly concurred on the reasons for the favored treatment of newspapers. At a
18 time of fragile national cohesion, the widespread circulation of *public* information,
19 especially about politics, helped foster a national political community. Even
20 antagonistic political factions agreed on the desirability of preferential rates for
21 newspapers. Federalists assumed that the widespread circulation of news and
22 political discourse buttressed a strong central government by fostering nationalism
23 and promoting party cohesion. At the same time, their opponents, the Jeffersonian
24 Republicans, hoped that their party papers carried inexpensively through the mails
25 would inform constituents of Federalists' abuses. The newspaper provisions of the

26 ²⁴For an overview of the rates on drop letters, see *Domestic Postage Rates*, 21-23.

27 ²⁵This paragraph summarizes rates and practices established by the 1825 postal law; see
28 1832 *PL&R* 47-48. For slight variations in earlier years, see U.S. Post Office, *Domestic Postage*
29 *Rates*, 24.

30 ²⁶See, e.g., 1 Stat. 360; Act of March 3, 1825, 4 Stat. 107.

31 ²⁷Between 1792 and 1845, newspapers paid 1 cent postage for delivery in the state of
32 publication or outside the state but up to 100 miles and 1.5 cents for greater distances. The size and
33 weight of a paper was not considered. Furthermore, postal law permitted editors to exchange
34 newspapers with one another postage free. These free exchanges served as an important means of
35 gathering out-of-town news before the telegraph appeared in 1844. See Kielbowicz, *News in the*
36 *Mail*, chaps. 3, 4, 8.

1 first U.S. postal policy thus represented a conscious effort to create a national
2 political system.²⁸

3 With this rationale, Congress reserved the most privileged rate for
4 newspapers, many of them avowedly political journals. But even a thoroughgoing
5 political newspaper was something of an omnibus publication that conveyed
6 information on commodity prices, history, exploration, philosophy, and
7 agricultural practices. With the postage schedule highly skewed in favor of
8 newspapers, postal officials found themselves deciding which publications
9 qualified. In short, what was a newspaper? Did contents, format, or both render
10 some publications newspapers and others magazines, pamphlets, and books?

11 Answering these questions assumed an added urgency as publications
12 with a specialized editorial focus contributed ever more copies to the mail. As
13 Tocqueville and other 1830s observers noted, Americans were eagerly joining
14 associations of people sharing specialized interests that transcended their
15 hometowns. Many of these groups issued journals. Religious denominations and
16 social reform movements sent magazines to the faithful and potential recruits.
17 Businesses recognized the value of printed sheets giving commodity prices,
18 shipping intelligence and warnings of counterfeit currency. Occupational groups,
19 some exhibiting early traits of professionalism, launched journals. And individuals
20 with faddish interests in such topics as phrenology and medicinal water cures
21 coalesced in loosely knit associations through the pages of their magazines.

22 *Recognizing Magazines.* The 1792 post office law failed to mention
23 magazines, leaving them to pay letter rates if sent by post. Two Philadelphia
24 magazines, the *Columbian* and the *Museum*, suspended publication because of the
25 prohibitively high postage. But magazines in Boston, New York, and Baltimore
26 survived, either because they were less dependent on the mail, or because
27 sympathetic postmasters accorded them newspaper rates.²⁹

28 Two years later, Congress recognized magazines and pamphlets as
29 mailable matter but still left them in a precarious position. Magazines and
30 pamphlets could be transported in the mails "where the mode of conveyance and

31 ²⁸See Kielbowicz, *News in the Mail*, chap. 3, for a more detailed discussion of the reasons
32 for the preferential rates accorded newspapers. Another provision of postal law, the postage-free
33 printers' exchanges, served basically the same purpose. *Ibid.*, chap. 8.

34 ²⁹Frank Luther Mott, *A History of American Magazines* (Cambridge, Mass.: Harvard
35 University Press, 1930), 1:18-19.

1 the size of the mails will admit of it."³⁰ Their admission to the mails thus became
2 contingent on the judgment of thousands of postmasters. Magazines and pamphlets
3 paid considerably more than newspapers for the same service: 1 cent per sheet up
4 to 50 miles, 1.5 cents for 50 to 100 miles, and 2 cents for any greater distance. A
5 typical sixty-four-page magazine paid 4 cents, 6 cents, or 8 cents.³¹ Newspapers,
6 in contrast, paid no more than 1.5 cents per issue regardless of size.

7 The 1798 regulations issued by Postmaster General Joseph Habersham
8 further exemplified the casual attitude displayed toward nonnewspaper periodicals.
9 "It is probable very few [magazines] will be sent in the mail," he remarked, adding
10 that postmasters' account forms lacked space to record magazine postage.³² Six
11 years later, Postmaster General Gideon Granger reminded postmasters that "you
12 are not to receive" magazines and pamphlets if inconvenient to transport them.³³

13 Granger made the first half-hearted attempt to distinguish between
14 newspapers and magazines. "The words newspaper, magazine, and pamphlet, are
15 to be taken in their common acceptation," he told deputies. A newspaper gave
16 accounts of political and other occurrences and was published once a week or more
17 often; a magazine was any other publication issued at regular intervals.³⁴
18 Granger's successor elaborated: "[A] magazine is a monthly pamphlet containing
19 articles on science, politics, news &c. a [sic] pamphlet is a small stitched unbound
20 book, consisting of two or more sheets." Frequency and contents thus defined a
21 publication.³⁵

22 Exercising the discretion allowed by law, Postmaster General Return J.
23 Meigs decided in 1815 that magazines and pamphlets interfered with the mails and
24 should be excluded altogether.³⁶ Shortly thereafter, however, Meigs made an
25 exception for the publications of "the several Bible Societies." He tried to keep
26 this exception secret to discourage "application for the admission of many other

27 ³⁰Act of May 8, 1794, 1 Stat. 362.

28 ³¹Mott, *American Magazines*, 1: 119-20; James Playsted Wood, *Magazines in the United*
29 *States*, 2d ed. (New York: Ronald Press Co., 1956), 24.

30 ³²1798 *PL&R* 52.

31 ³³1804 *PL&R* 60.

32 ³⁴1808 *PL&R* 36.

33 ³⁵1817 *PL&R* 77.

34 ³⁶1817 *PL&R* 98; Neal L. Edgar, *A History and Bibliography of American Magazines,*
35 *1810-1820* (Metuchen, N.J.: Scarecrow Press, 1975), 15.

1 Pamphlets of no public utility whatever.³⁷ With the mail closed to them, most
 2 magazines of the early 1800s remained local in their scope and reach. Religious
 3 magazines, exempt from the ban, attained the largest national circulations,
 4 surpassing even newspapers.³⁸

5 Congress did little before 1845 to improve magazines' postal status
 6 relative to that of newspapers. In 1816, lawmakers defined how many pages
 7 constituted a single sheet, recognizing in statute what postmasters had determined
 8 in practice.³⁹ When Congress revamped postal laws in 1825, it raised magazine
 9 rates slightly.⁴⁰ More significantly, lawmakers subdivided pamphlets into two
 10 categories—periodical pamphlets, the old magazine category, and nonperiodical
 11 pamphlets, essentially small books (see below). Periodical pamphlets included
 12 magazines, legislative journals, government documents, college catalogues and the
 13 annual reports of societies.⁴¹ In 1827, Congress created a special rate for small
 14 magazines.⁴²

15 None of this fine tuning, however, expanded the *right* of magazines to
 16 be transported in the mails. The mailability of nonnewspaper publications was still
 17 left to the judgment of postmasters: "When the mode of conveyance, and size of
 18 the mail, will admit of it, such magazines and pamphlets as are published
 19 periodically, may be transported in the mail to subscribers."⁴³ Laboring with an
 20 uncertain postal status and higher rates, magazines styled themselves as newspapers
 21 to qualify for the lowest postage. The first issue of the octavo-size *Mechanics*

22 ³⁷Circular to postmasters, Mar. 3, 1815, Letterbook of the Postmaster General (microfilm
 23 ed.), roll 19, p. 118, Records of the Post Office Department, Record Group 28, National Archives
 24 [hereafter cited as Letterbook; citations are to the bound volumes unless designated as microfilm
 25 edition]; Meigs to Pickering, Mar. 11, 1815, *ibid.*, 118.

26 ³⁸Edgar, *American Magazines*, 15.

27 ³⁹The Act of Apr. 9, 1816, 3 Stat. 265, defined four folio pages, eight quarto pages or
 28 sixteen octavo pages as one sheet.

29 ⁴⁰Act of Mar. 3, 1825, 4 Stat. 105. This law also created a category for nonperiodical
 30 magazines, i.e. pamphlets; they paid 4 cents per sheet under 100 miles and 6 cents beyond.

31 ⁴¹1832 *PL&R* 34.

32 ⁴²Act of Mar. 2, 1827, 4 Stat. 238. Pamphlets and magazines printed on half or quarter
 33 sheets of royal-size papers paid half rates.

34 ⁴³4 Stat. 111.

1 *Register*, for example, reminded readers and postmasters that it "is a newspaper,
2 and is therefore chargeable with newspaper postage only."⁴⁴

3 The growing variety of periodical publications prompted the
4 postmasters general to refine their guidelines. Rules amplifying the 1825 law were
5 slightly more precise than before. Newspapers had to appear weekly or more often
6 and give "an account of political or other occurrences." And extras issued by
7 newspapers were considered regular newspapers and not magazines, an early sign
8 that the post office adapted to suit the increasing timeliness of the press. A
9 magazine was distinguishable from a newspaper by the frequency of publication--
10 monthly or less often--and by its contents--"articles on science, politics, news
11 &c."⁴⁵

12 The extent to which a publication dealt with *political* intelligence, a
13 somewhat narrow construction of news, could be pivotal. Business publications
14 thus added a column or more of news to qualify for the lower newspaper rates.⁴⁶
15 Postmaster General John McLean in 1828 outlined a process postmasters should
16 follow in reaching decisions:

17 When a paper is published periodically on a large sheet, in the
18 common form of a newspaper, it should be so considered.
19 Where the form is different, the subject matter must determine its
20 character. If it contains leading articles of intelligence, a
21 summary of political events, or what is generally termed news,
22 and is published weekly, or oftener, it should be called a
23 newspaper.

24 According to this directive, format alone could qualify a periodical as a newspaper.
25 If content figured in the determination, "political events" was the only newspaper
26 subject specified. The postmaster general's circular cited *Niles' Weekly Register*,
27 published as a pamphlet, and the *American Farmer*, in quarto form, as examples of
28 the second category, newspapers in a nontraditional format.⁴⁷

29 ⁴⁴*Mechanics Register*, Feb. 8, 1837, p. 16, quoted in David P. Forsyth, *The Business*
30 *Press in America* (Philadelphia: Chilton, 1964), 331.

31 ⁴⁵1825 PL&R 29.

32 ⁴⁶Forsyth, *Business Press*, 331.

33 ⁴⁷Postmaster general's circular, June 10, 1828, published in *New Orleans Price-Current*
34 *and Commercial-Intelligencer*, Sept. 20, 1828, quoted in Forsyth, *Business Press*, 331.

1 When asked to determine whether a periodical should be charged
2 newspaper or magazine postage, the postmaster general usually resolved ambiguity
3 in favor of the publication.⁴⁸ Although postmasters still ruled on a magazine's
4 mailability, Postmaster General Amos Kendall told the House post office
5 committee in 1835 that the law had been construed so favorably that the mail was
6 opened to "a variety of printed matter under the name of periodicals, which was
7 scarcely entitled to admission."⁴⁹

8 In 1832, publishers in Boston, a leading magazine center, complained
9 to Congress that the distinctions between newspapers and magazines were
10 unwarranted. The petitioners contended that publishing in a magazine format
11 penalized them \$3,437 in postage above that assessed the same number of
12 newspapers. More important, they argued that the information contained in
13 magazines enriched society just as much as that in newspapers.

14 The discussion of the same topics in a newspaper and a periodical
15 work cannot be supposed to render their value essentially
16 different: the one being more direct and immediate, but more
17 transient, in its effects; the other less rapid, but more permanent,
18 in its influence. Nor is it maintained that those subjects of
19 *science and art, or literature and education*, which newspapers
20 *cannot fully discuss*, are not essential to our national character
21 and prosperity. Both classes of periodicals your memorialists
22 regard as *indispensable* to our national welfare, to prevent our
23 falling behind the rest of the world in *knowledge and*
24 *improvement*.

25 One other form of discrimination came under attack: magazine publishers were
26 denied the privilege of postage-free exchanges that newspaper editors depended on

27 ⁴⁸For example, the postmaster at Marietta, Pennsylvania, inquired whether *The Gospel*
28 *Herald* and *The Anvil* were newspapers. Of the *Gospel Herald*, the postmaster general replied,
29 "though of a rather doubtful character, [it] is published regularly, & it is so near the character of a
30 newspaper, that it may be considered as such." The preceding postmaster general had already
31 determined that *The Anvil* was a newspaper. To [?]evitt, Oct. 27, 1829, Letterbook, W: 332.

32 ⁴⁹H.R. Rep. No. 909, 25th Cong., 2d sess. 3-4 (1838).

1 to get nonlocal news.⁵⁰

2 *Books in the Mail.* Postal policy virtually excluded bound books from
3 the mail until the mid-1800s. The first major postal law failed to acknowledge
4 books, which left their postal status open to dispute. And in 1799, Congress
5 prescribed that no packet weighing more than 3 pounds would be accepted for
6 mailing, effectively barring some books and certainly packages of books.⁵¹

7 Although postal laws did not provide for books, some postmasters
8 apparently accepted them for mailing. In the absence of legislative guidance,
9 Postmaster General Return J. Meigs, Jr., exercised his administrative discretion
10 and directed postmasters to refuse books for mailing. Some postmasters had
11 erroneously accepted books as pamphlets, Meigs told Congress. "The consequence
12 was, that the mails were soon overloaded with novels and the lighter kind of books
13 for amusement." When properly construed, the law subjected books to the much
14 higher letter rates, he wrote. But Meigs believed the situation called for more
15 drastic action, and he "prohibit[ed] Postmasters from sending books, in any case,
16 through the mail."⁵²

17 Meigs objected to carrying books because they did not purvey timely
18 information, they burdened the primitive postal transports, they damaged fragile
19 letters and newspapers, and they could be carried by private freight companies. A
20 book, he explained,

21 is an article which is not, like letters and newspapers, valuable
22 only for its quick conveyance, and may well be sent by the usual
23 routes of many articles of merchandise. Books can, without
24 inconvenience, be sent from every place where they are printed
25 to some considerable commercial town, and from thence to any
26 settled part of the country. Hence there is no necessity of
27 burdening the mail with such as are intended either for public or
28 private use.

29 ⁵⁰Petition of Boston publishers, "Postage on Newspapers and Periodicals," Feb. 13, 1832,
30 *American State Papers: Post Office*, 341-43 [hereafter cited as *ASP*]. See also petition of
31 Philadelphia publishers, Jan. 23, 1832, Records of the House of Representatives, Record Group
32 233, file 22A-G16.3, National Archives [hereafter cited as *House Records*].

33 ⁵¹1 Stat. 238; 1 Stat. 738-40.

34 ⁵²R. J. Meigs, Jr., to Montfort Stokes, chairman of the Senate post office committee, Feb.
35 21, 1823, in "Postage on Books--Expense of Carrying Certain Mails," *ASP*, 112.

1 He added that bound books, with "the hardness of blocks of wood, . . . break the
2 bundles of letters and [news]papers to pieces. . . ." ⁵³ The postmaster general
3 regarded books more as merchandise--"blocks of wood"--than as vehicles for the
4 dissemination of intelligence and culture. Meigs assured Congress that cartage
5 firms could supply booksellers with adequate stock. Ten years later, Postmaster
6 General William T. Barry reaffirmed the prohibition on carrying books for
7 essentially the same reasons. ⁵⁴

8 Before 1845, no law excluded books from the mail, but a combination
9 of administrative rules and high rates discouraged their distribution. ⁵⁵ If accepted
10 for mailing, a book could be charged letter rates, or, more likely, as a pamphlet.
11 In fact, pamphlets were defined as small unbound books. Readers and booksellers
12 often bound copies that came by post. ⁵⁶ To the extent that book *material*
13 circulated by post, most appeared in pamphlets or newspapers.

14 ⁵³Ibid.

15 ⁵⁴Circular to postmasters, Apr. 11, 1833, Scrapbook of Circulars, Notices, Instructions,
16 Regulations, and Newspaper Clippings, 1823-1871, Records of the Post Office Department, Record
17 Group 28, National Archives.

18 ⁵⁵In defining mailable matter, the 1845 law, 5 Stat. 737, expressly excluded bound books
19 from the meaning of pamphlets and newspapers.

20 ⁵⁶1832 *PL&R* 35; 1843 *PL&R* 20, 22; William Charvat, *Literary Publishing in America,*
21 *1790-1850* (Philadelphia: Univ. of Pennsylvania Press, 1959), 46, 62; Frank E. Comparato, *Books*
22 *for the Millions* (Harrisburg, Pa.: Stackpole Co., 1971), 100-01.

1 subsidizing another.² A magazine writer recognized the implicit warfare among
2 types of mailers fostered by American postal law: the writer called "the
3 manufacturers of newspapers" a "privileged class . . . who have a right to the
4 proceeds of a tax on the writers and receivers of letters."³

5 Capitalizing on the merchants' dissatisfaction with letter postage and
6 the growing network of railroad and steamship lines, private firms emerged about
7 1839 to carry letters outside the mail. Some operated within commercial centers
8 and others provided intercity service; in either case, the most important customers
9 were businesses. The Post Office Department sought to shore up its monopoly by
10 prosecuting some of the private expresses. When it lost an 1843 case against
11 Adams Express, other firms rushed into the field.⁴

12 The 1845 Postal Reform Act addressed these issues. Congress
13 tightened the government mail monopoly to cripple private mail companies and it
14 reduced letter rates to make the public posts more attractive.⁵ The 1845 law also
15 began to define existing rate groups and to create new ones for transient
16 publications and for weekly newspapers delivered near the office of publication (a
17 progenitor of the in-county subclass).

18 Letters and the First Class, 1840-1870

19 The 1845 law offered the first tentative definition of a letter: a
20 "manuscript, or paper of any kind by or upon which information shall be asked for
21 or communicated in writing, or by marks and signs. . . ." ⁶ The references to
22 marks and signs targeted the practice of transmitting personal messages in
23 newspapers (see transient newspapers below). When Congress adopted a formal
24 classification system in 1863, it streamlined the 1845 definition: "[T]he first class

25 ²Richard R. John, Jr., "The Campaign for Cheap Postage, 1840-1852: A Neglected
26 Antebellum Reform Movement" (paper presented to the Society for Historians of the Early
27 American Republic, July 1987).

28 ³L. Bacon, "The New Post Office Law," *New Englander* 3 (October 1845): 540.

29 ⁴Richard R. John, Jr., "Private Mail Delivery in the United States During the Nineteenth
30 Century: A Sketch," *Business and Economic History* 15 (1986): 135-47.

31 ⁵George L. Priest, "The History of the Postal Monopoly in the United States," *Journal of*
32 *Law and Economics* 18 (April 1975): 60-68.

33 ⁶Act of March 3, 1845, 5 Stat. 733.

1 embraces all correspondence, wholly or partly in writing, except that mentioned in
2 third class."⁷ The letter rate class remained a catchall: mail that did not fit in
3 another specified group was assessed letter postage.

4 Postal laws of the mid-1800s continued some long-recognized
5 distinctions among letters--drop letters, letters traveling with cargo, ship letters--
6 and introduced one short-lived rate category. The Act of March 3, 1851,
7 distinguished between letters prepaid by senders and those that were not. Although
8 policymakers had long allowed postage to be paid at the office of mailing, in
9 practice most postage was collected--or should have been collected--from the
10 addressee. Of course, trying to collect postage after a letter had already been
11 delivered had long vexed postmasters and had hurt the department's revenues.⁸
12 Thus, the 1851 law charged 3 cents for a letter paid for at the mailing office or 5
13 cents at delivery. (The introduction of government stamps in 1847 had already
14 facilitated prepayment).⁹ The creation of this subclass, therefore, recognized
15 variations in the department's costs and overall revenue needs. To simplify
16 matters further, an 1855 law made prepayment by stamps compulsory, ending the
17 rate distinction among letters.¹⁰

18 Periodicals and the Second Class

19 Policymakers and administrators, especially the latter, grappled with an
20 influx of printed matter that no longer resembled the traditional political-mercantile
21 newspaper. Classification problems arose when magazine publishers challenged
22 the continuing rate distinctions that treated their periodicals as inferior to
23 newspapers; some began putting their magazine material in a newspaper format.

24 ⁷Act of March 3, 1863, 12 Stat. 705.

25 ⁸Ignoring admonitions from postal headquarters, local postmasters routinely extended
26 credit to addressees, who were often townspeople they knew. And if a recipient refused to accept a
27 letter, the department had already incurred the cost of transportation. A sense of the problems
28 collecting letter postage, and the divergence between policy and practice, can be gathered from the
29 1847 instructions to postmasters: "172. Postmasters are not authorized in any case to give credit for
30 postage." But then the next two sections cover several contingencies that arose from extending
31 credit. 1847 *Postal Laws & Regulations* 26-25 [hereafter *PL&R*].

32 ⁹Carl H. Scheele, *A Short History of the Mail Service* (Washington, D.C.: Smithsonian
33 Institution Press, 1970), 35.

34 ¹⁰Act of March 3, 1855, 10 Stat. 641. Prepaying newspaper and magazine postage
35 remained a problem until 1874.

1 Likewise, publishers who issued lists of business data asserted the right for their
2 materials to be treated as newspapers and not as circulars. These and kindred
3 administrative problems prompted legislative changes that culminated in the
4 creation of the second-class category in 1863. The 1863 definition specified
5 strictly technical, not content, characteristics: "The second class embraces all
6 mailable matter exclusively in print, and regularly issued at stated periods, without
7 addition by writing, mark, or sign."¹¹ This definition obviated the need to make
8 ever-finer distinctions based on differences in content or slight variations in format.
9 Improvements in transports, notably railroads which could handle bulkier mails,
10 permitted the Post Office Department to broaden the second-class category to
11 include most magazines.

12 *Business Publications.* The postal status of sheets that simply listed
13 business data--commodity prices, exchange rates, shipping intelligence, and the
14 like--particularly confounded the authorities. Were they newspapers, magazines,
15 or circulars? Price currents, also known as prices current, were the most important
16 of these materials. Some were internal, reporting the price of commodities
17 available within the city of publication; others were external, presenting price data
18 for the region or country. Many circulated through the mail to merchants who
19 used them to piece together a picture of national price levels.¹² Apparently
20 reversing a policy charging them newspaper rates, the post office decided in 1837
21 or 1838 that "all handbills, printed or written; prices current, sealed or unsealed;
22 proposals for new publications, circulars, lottery bills and advertisements" were to
23 pay letter rates.¹³ Shortly thereafter, a periodical list reporting the seaworthiness
24 of ships for insurance purposes was denied the newspaper rates at which it had
25 formerly passed and instead was charged as a letter. The publisher lost customers
26 when their postage jumped several-fold.¹⁴ Confronted with many such cases, the
27 postmaster general referred the matter of postal classification to the attorney
28 general.¹⁵

29 ¹¹Act of March 3, 1863, 12 Stat. 705.

30 ¹²See David P. Forsyth, *The Business Press in America* (Philadelphia: Chilton, 1964),
31 chaps. 2-5, for the development of price currents.

32 ¹³Post Office Department circular, 183[7 or 8], House of Representatives, Record Group
33 233, file 25A-G15.3, National Archives [hereafter cited as House Records].

34 ¹⁴Petition of Joseph Clackner, Feb. 14, 1838, and enclosed correspondence, House
35 Records, file 25A-G15.3.

36 ¹⁵1840 *Annual Report* 487.

1 In his analysis, Attorney General Hugh S. Legare, formerly editor of
2 the *Southern Review*, traced definitions of newspapers back to early British stamp
3 acts. "The question you propound is one of no ordinary difficulty," he informed
4 the postmaster general, "because neither any statute, nor any decision of our
5 courts, so far as I have been able to discover, furnishes the definition you seek."¹⁶

6 Legare arrived at four criteria that a publication must meet to qualify as
7 a newspaper: (1) that it is published for everybody's use, (2) that it is published on
8 a fairly regular basis, (3) that it conveys the news, "not mere dissertation and
9 discussion," and (4) that it is issued in sheets "in a rather cheap form." But
10 without more explicit legislative instructions, the attorney general predicted,
11 perplexing cases would continue to arise. Legare concluded that price currents met
12 the definition of a newspaper as long as they were mailed from the publisher to the
13 readers; copies distributed by commercial houses to their clients were not issued
14 for general use.¹⁷

15 Two years later, Attorney General John Nelson tackled a similar
16 question, when he advised Postmaster General Charles A. Wickliffe that the *New*
17 *York Bank-Note List* should be charged pamphlet postage rather than the newspaper
18 rate. His ruling, however, did not ring with confidence. He conceded that the
19 question "may be much more satisfactorily decided by a publisher than by a
20 lawyer." For guidance, Nelson simply turned to dictionaries for the common
21 construction of the word "newspaper."¹⁸

22 ¹⁶*The Shipping and Commercial List and New York Price Current's* own history illustrates
23 the somewhat arbitrary nature of decisions by postal officials: before 1837, the publication was
24 "rated by the Postmaster General to be a newspaper," but in December of that year the postmaster
25 general deemed it "not to be a newspaper, and since then has been charged with letter postage."
26 Likewise, the price currents of New Orleans, Savannah, and Charleston had been assessed letter
27 rates. 4 *Opinions of the Attorney General* 10-13, quotes at 11 (Mar. 18, 1842).

28 ¹⁷*Ibid.*, 13. See also 1843 *PL&R* 19-22.

29 ¹⁸4 *Opinions of the Attorney General* 302-03 (Jan. 22, 1844). The publisher of the *New*
30 *York Bank-Note List*, Edmund Charles and Son, retaliated with a pamphlet "Dedicated to Members
31 of the Post Office Committee and Members of Congress Generally," arguing that publications such
32 as theirs deserved the favorable treatment accorded newspapers. The *Bank-Note List*, if folded as a
33 newspaper, would pass in the mail for 1 or 1.5 cents. But the publication was meant to be
34 preserved, so its two sheets were folded and stitched into thirty-two papers, which subjected it to
35 pamphlet rates of 5 cents a copy. It occupied no more room in the mail than most newspapers, but
36 the "consequence of this excessive tax upon it is to shut it entirely out of the mails." The *Bank-*
37 *Note List* would have garnered a national circulation but for the high postage, its publishers
38 claimed. "[A]s it is the circulation is principally confined to the city of New York, while those
39 which are sent to other cities find their way through such channels as private expresses, &c, to the
40 prejudice of the Post Office Department." The situation was even worse for supplements of the *List*
41 published to announce bank failures and fraudulent bank notes. These specials, considered circulars

1 *Mammoth Literary Miscellanies*. An eclectic group of magazines,
 2 including *Ladies' Companion*, *Gentleman's Magazine*, the *Southern Agriculturist*
 3 and *Gospel Messenger*, *Hunt's Merchants' Magazine*, and *New York Review*,
 4 complained in 1840 that they paid "one-third per sheet more than Newspapers."
 5 They asked Congress if "their works be not, in general, of fully as elevating and
 6 improving a character as that of Newspapers, entitling them to all the privileges
 7 enjoyed by the latter?"¹⁹ They also railed against the inequity of inordinately large
 8 newspapers traveling anywhere in the country for a fraction of the postage assessed
 9 other print matter.²⁰

10 Instead of trying to change the law, an enterprising group of publishers
 11 shaped their magazine and book material to resemble newspapers. This genre of
 12 magazines, the mammoth literary miscellanies, became known as "Leviathians"
 13 because their dimensions sometimes exceeded six by four feet. Their publishers
 14 took pains to point out that at a single issue contained as much reading matter as
 15 six daily newspapers and more than many books. The most important of these
 16 publications were *Brother Jonathan* and *New World*. They filled many of their
 17 columns with serialized fiction; Dickens's *Nicholas Nickleby*, for instance, ran in
 18 sixteen installments soon after *Brother Jonathan* began publication.²¹

19 by postal officials, were charged 25 cents postage, virtually excluding them from the mails. See
 20 Edmund Charles & Son, *Suggestions upon the Nature and Disadvantages of the Present Post Office*
 21 *Tariff* (New York: Edmund Charles & Son, 1844). See also the petition of citizens of Richmond,
 22 Va., Feb. 8, 1844, House Records, 28A-G16.6, asking for postage of 2 cents on bank note lists and
 23 price currents. Forsyth, *Business Press*, chap. 5, discusses banking and financial publications.

24 ¹⁹Memorial of magazine publishers, Apr. 14, 1840, Records of the Senate, Record Group
 25 46, file 26A-G14.3, National Archives. See also *Congressional Globe*, 23d Cong., 1st sess. 396
 26 (1834) [hereafter *Cong. Globe*]; *ibid.*, 26th Cong., 1st sess. 321 (1840).

27 ²⁰See, e.g., Joshua Leavitt, "The Post Office Department," *Hunt's Merchants' Magazine* 9
 28 (November 1843): 438.

29 ²¹Frank Luther Mott, *A History of American Magazines*, 5 vols. (Cambridge, Mass.:
 30 Harvard Univ. Press, 1930-1968), 1: 358-63; Merle M. Hoover, *Park Benjamin: Poet and Editor*
 31 (New York: Columbia Univ. Press, 1948), 89-90, 100-05; Joy Bayless, *Rufus Wilmot Griswold:*
 32 *Poe's Literary Executor* (Nashville, Tenn.: Vanderbilt Univ. Press, 1943), 23-30. The literary
 33 miscellanies helped fill the demand for inexpensive popular fiction. Moreover, they exploited the
 34 absence of an Anglo-American copyright agreement, making royalty payments unnecessary. James
 35 J. Barnes, *Authors, Publishers and Politicians: The Quest for an Anglo-American Copyright*
 36 *Agreement* (London: Routledge & Kegan Paul, 1974), 15; John Tebbel, *A History of Book*
 37 *Publishing in the United States*, 3 vols. (New York: R. R. Bowker, 1972-1976), 1: 242.

1 The literary miscellanies thrived by taking advantage of the post
2 office's nebulous definitions and generous policy toward newspapers. No matter
3 how large, they passed through the mail at rates assessed a regular newspaper.²²
4 Identical material in the format of a traditional book would have been assessed
5 pamphlet or letter rates, thereby undermining efforts to attain the large circulations
6 of country readers necessary to make a profit from cheap subscriptions.
7 Therefore, some miscellanies issued two editions of the same material, one with
8 attractive covers for street sales and the other without covers for mailing at
9 newspaper rates.²³

10 Postmaster General Wickliffe began to exclude literary miscellanies
11 from newspaper rates in 1842, perhaps with the encouragement of established book
12 houses, which regarded them as competitors.²⁴ For authority, Wickliffe seized on
13 the attorney general's definition of newspapers. Occasional supplements issued by
14 literary miscellanies failed to qualify as newspapers because they did not appear
15 regularly, one element of the definition. More important, a true newspaper had to
16 "convey news, not mere dissertations and discussions, or literary and poetical
17 miscellanies."²⁵ Wickliffe first wielded the ruling against a supplement of *Brother*
18 *Jonathan* that reprinted Bulwer's *Zanoni*. He instructed the New York postmaster
19 to charge the supplement as a nonperiodical pamphlet, liable to 12 or 18 cents
20 postage instead of the maximum 1.5-cent newspaper rate. The reason for the
21 determination: the miscellany was published not in loose sheets but stitched and
22 with a paper cover. *New World*, however, escaped the same fate by issuing its
23 edition of *Zanoni* without a cover or stitches. Both publications converted to a

24 ²²In 1841, for example, Postmaster General Wickliffe complained that miscellanies, some
25 of which weighed nearly a pound, could be mailed from New York to Louisville for 1.5 cents; a
26 one-sheet letter sent the same distance paid 25 cents. 1841 *Annual Report* 460.

27 ²³Wayne E. Fuller, *The American Mail: Enlarger of the Common Life* (Chicago: Univ. of
28 Chicago Press, 1972), 124-25; Frank L. Schick, *The Paperbound Book in America* (New York: R.
29 R. Bowker, 1958), 48-50; Barnes, *Authors, Publishers and Politicians*, 1974), 6-8, 15; Tebbel,
30 *Book Publishing*, 1: 242.

31 ²⁴Barnes failed to find any evidence that book publishers lobbied for the imposition of
32 higher charges on the mammoth papers. Barnes, *Authors, Publishers and Politicians*, 21-29. But
33 compare Tebbel, *Book Publishing*, 1:245; Eugene Exman, *The House of Harper* (New York:
34 Harper and Row, 1967), 26; and Sheila McVey, "Nineteenth Century America: Publishing in a
35 Developing Country," *Annals of the American Academy of Political and Social Science* 421
36 (September 1975): 73.

37 ²⁵4 *Opinions of the Attorney General* 10-13 (Mar. 18, 1842).

1 newspaper format and passed again at the lowest rate.²⁶ In 1843, Wickliffe
2 clarified the status of such publications by looking to their *contents* rather than
3 their *form*: "Reprints of books or magazines in newspaper form" and "Extras of a
4 paper which contain mainly and chiefly a republication of books" were to be
5 charged with periodical pamphlet postage.²⁷

6 As Congress labored over postal reform between 1842 and 1845,
7 lawmakers repeatedly displayed *Brother Jonathan*, "a newspaper about ten feet
8 square, as a specimen of the abuse in relation to newspaper transmission."²⁸ The
9 centerpiece of the 1845 law, insofar as it affected newspapers, was the first
10 provision to calibrate rates partly to a publication's size. The law adopted 1,900
11 square inches as the ceiling for the standard rate. Congress carefully determined
12 that the large dailies issued from several cities would continue to qualify for the
13 lowest rate, while mammoth literary miscellanies paid a surcharge.²⁹

14 *More Equitable Magazine Postage, 1845-1863.* Despite the 1845
15 reforms, distinguishing between newspapers and magazines continued to vex
16 postmasters. The attorney general's guidance was again sought. John Y. Mason
17 first noted that his predecessors had grappled unsuccessfully with the same elusive
18 issue, as even they readily conceded. Mason then pinpointed what he considered
19 the essential feature of a newspaper: "it must be a *publication communicating to*
20 *the public intelligence of passing events.* And it is to the contents, rather than to
21 the form, that you must refer to determine the question." Some essays on moral,
22 literary, or political issues might be found in a newspaper, but its primary object
23 must be the collection and dissemination of news, he emphasized.³⁰ Although this
24 opinion probably reflected congressional intent, it hardly resolved the problem.
25 Ironically, the definition of magazines in the 1847 regulations recognized that they
26 too might contain some news articles, which suggests how blurred the distinction

27 ²⁶Barnes, *Authors, Publishers and Politicians*, 19.

28 ²⁷1843 *PL&R* 19.

29 ²⁸*Cong. Globe*, 27th Cong., 2d sess. 776 (1842). See also *ibid.* 781 (1842).

30 ²⁹*Ibid.* 796 (1842); House Report 1101, 27th Cong., 2d sess. 1 (1842); *Cong. Globe*, 28th
31 Cong., 1st sess. 422-23, 520, 547 (1844). See also *United States Postal Guide and Official*
32 *Advertiser* 1 (December 1850): 163 [hereafter cited as *Postal Guide*].

33 ³⁰*Opinions of the Attorney General* 408-10, quote at 410 (July 22, 1845). See also
34 *Postal Guide*, 1 (August 1850): 30.

1 had become.³¹ Thousands of postmasters now had to ascertain whether a given
2 publication included sufficient news to qualify for the most advantageous rate.

3 A more favorable rate category for newspapers rested on the
4 assumption that timely news was somehow more important and deserving of
5 government subvention than other kinds of public information. Reviewing the
6 1845 law, the *New Englander* acknowledged the "usefulness of newspapers, on the
7 whole, in diffusing information through society. But are newspapers exclusively
8 useful in their way?" the writer asked. "Are they more useful than books? or more
9 useful than periodicals in other forms? . . . What good reason is there for giving
10 these privileges to the publishers of the [New York] Courier and Inquirer, and
11 withholding them from the American Review?"³² A few years later, about forty
12 New York magazine publishers pressed their case in Congress for a 0.5-cent rate
13 that would apply to all periodicals. They called the discrimination against
14 magazines unjust and "impracticable, because, by a little ingenuity on the part of
15 Publishers, Periodicals of a certain size, are easily made to come within the
16 definition of a Newspaper."³³

17 Reviewing the unsuccessful efforts to distinguish between different
18 types of periodicals based on contents, Postmaster General Nathan K. Hall
19 concluded that magazines and newspapers should be treated the same:

20 ³¹According to the 1847 regulations:

21 A newspaper is defined to be any printed publication issued in numbers, and
22 published at stated intervals of not more than a month, conveying intelligence of passing
23 events. It generally consists of a sheet, but may be composed of two sheets, of paper. In
24 such case it is chargeable with only single newspaper postage; provided the two sheets, in
25 the aggregate, do not exceed nineteen hundred square inches. If it exceed [sic] that
26 superficial extent, it is to be rated as a pamphlet. . . .

27 160. A pamphlet is a small unbound printed book. A magazine is a pamphlet
28 published periodically, in numbers, containing articles on science, literature, politics,
29 news, &c. &c.

30 1847 *PL&R* 24-25.

31 ³²L. Bacon. "The New Post-Office Law," *New Englander* 3 (October 1845): 541.

32 ³³Petition from publishers on the subject of postage. Aug. 5, 1850, House Records, file
33 31A-G14.3.

1 It is difficult to assign a sufficient reason for charging upon such
2 periodicals as the reviews, the numerous magazines, and
3 theological, medical, and law journals, more than three times the
4 amount of postage charged for the same distance on an equal
5 weight of newspapers. Such periodicals are less ephemeral than
6 the ordinary newspapers, and certainly not less beneficial in their
7 influence. The same rates of postage, according to their weight,
8 would be just and equitable, would simplify the accounts of the
9 Department, and relieve it from the perplexing and often
10 invidious duty of discriminating between different publications,
11 and declaring one a newspaper and another *not* a newspaper, in
12 cases where little difference can be perceived, and where the
13 changed character of the next number might render it proper, in
14 respect to such numbers, to reverse both decisions.³⁴

15 The postmaster general's recommendation was hardly surprising as earlier that year
16 Attorney General John J. Crittenden had refused to distinguish between newspapers
17 and magazines. Crittenden said he had no opinion on the matter, and advised that
18 lexicographers and publishers were better suited to make such determinations.³⁵

19 Charging newspapers and magazines the same rates obviated "the
20 invidious duty of discriminating between different publications," and the 1852
21 postal law did just that. Under this law, both newspapers and magazines paid 1
22 cent for the first 3 ounces and 1 cent for each additional ounce for conveyance to
23 any part of the United States. Charges were reduced by half where postage was
24 paid in advance. Prepayment by publishers had been optional all along, although
25 certainly not common. Apparently more magazines began prepaying postage to
26 stimulate sales. Besides these general rates, Congress created a special category
27 for small newspapers and magazines circulating in the state of publication. Those
28 under 1.5 ounces could be mailed for half the regular rates.³⁶ Debates leading to
29 passage of the 1852 law were relatively muted. Simplifying the complex rate
30 schedule and eliminating zones, which discouraged the long-distance circulation of
31 publications, were the major reasons given for the new law.³⁷ Thus, eleven years

32 ³⁴1851 *Annual Report* 26.

33 ³⁵5 *Opinions of the Attorney General* 376-77 (June 13, 1851).

34 ³⁶Act of Aug. 30, 1852, 10 *Stat.* 38-39; Mott, *American Magazines*, 2: 13-19; Forsyth,
35 *Business Press*, 332; 1852 *PL&R* 7, 25, 49; *U.S. Mail and Post Office Assistant*, October 1860, 3.

36 ³⁷*Cong. Globe*, 32d Cong., 1st sess. 1725-28, 2268 (1852).

1 before the creation of a single category embracing all periodical publications,
2 postal law treated magazines and newspapers essentially the same.³⁸

3 *Newspapers.* Not all newspapers escaped problems involving their
4 format. A few enterprising newspaper publishers tried to reduce their already low
5 postage by printing more than one paper on a single sheet. The postmaster general
6 directed deputies to follow the letter of the law and to charge postage by the
7 newspaper--not the sheet--subjecting each paper to postage even though printed
8 together. As newspapers increasingly emphasized the timeliness of their reports,
9 they frequently issued extras between their regularly scheduled editions. Because
10 extras often looked a little different, some postmasters balked at giving them the
11 regular newspaper rate. Regulations clearly stipulated that newspaper supplements
12 and extras were to be accorded the lowest rate, which encouraged the publication
13 of speeches and other fare as newspaper extras. Postmasters, though, could still
14 find that publication in this format was intended to circumvent the law and charge
15 them as pamphlets.³⁹ Similarly, advertising handbills printed to resemble
16 newspapers were subject to letter postage.⁴⁰

17 *Free In-County Delivery.* As part of the 1845 postal reform, Congress
18 created a new category of newspaper postage: free delivery for weekly newspapers
19 within thirty miles of the office of publication.⁴¹ This measure intended to make
20 local papers more competitive by relieving subscribers of postage. This privilege
21 sparked considerable debate, especially over which regions stood to benefit the
22 most.⁴²

23 An across-the-board reduction in newspaper postage, as some
24 advocated, would have brought city papers into direct competition with the country
25 press. The people's interests were best served by encouraging local outlets for

26 ³⁸The Act of March 3, 1851, had extended other privileges formerly confined to
27 newspapers to magazines--the right to exchange copies postage free among publishers and the right
28 to enclose subscription bills without incurring extra postage charges. 9 Stat. 589.

29 ³⁹C. A. Wickliffe to W. G. Lyford, Aug. 16, 1843, reprinted in unidentified newspaper
30 clipping, Scrapbook of Circulars, Notices, Instructions, Regulations, and Newspaper Clippings,
31 1823-1871, Records of the Post Office Department, Record Group 28, National Archives [hereafter
32 cited as P.O. Scrapbook].

33 ⁴⁰1843 *PL&R* 18; Margaret Ross, *Arkansas Gazette: The Early Years, 1819-1866* (Little
34 Rock: Arkansas Gazette Foundation, 1969), 207.

35 ⁴¹5 Stat. 733.

36 ⁴²*Cong. Globe*, 28th Cong., 2d sess., appendix 307-8, 339-40 (1845); H.R. Rep. 483,
37 28th Cong., 1st sess. 17 (1844).

1 news and opinion, lawmakers concluded. Newspaper postal policy, which had
 2 encouraged the long-distance transmission of public information, was conceived at
 3 a time when most people lived in the country far from the nearest newspaper.
 4 Petitioners, mainly from rural areas, told Congress that most towns now supported
 5 their own publications. Underwriting the long-distance circulation of newspapers
 6 thus was less important in diffusing information and, in fact, threatened the
 7 nation's burgeoning small-town press.⁴³

8 Congress withdrew the provision of free local circulation in 1847
 9 because of declining revenues but restored it in a different form in 1851. Where
 10 the 1845 law had a thirty-mile postage-free zone, the new act permitted most
 11 weekly papers to circulate without charge in their county of publication. Some
 12 advocates underscored the cultural benefits of protecting the country press: "The
 13 poisoned sentiments of the cities, concentrated in their papers, . . . will invade the
 14 simple, pure, conservative atmosphere of the country, and, meeting with no
 15 antidote in a rural press, will contaminate and ultimately destroy the purity of
 16 sentiment and of purpose, which is the only true conservatism," said
 17 Representative Abraham W. Venable, a North Carolina Democrat.⁴⁴

18 In a more temperate vein, others emphasized how the provision
 19 compensated for the postal advantages city papers enjoyed. When home in Utica,
 20 a New York representative explained, he read local newspapers to keep abreast of
 21 developments in Washington. But dailies of twice the size could be obtained from
 22 New York City, 250 miles away, at the same postage it cost to take a paper carried
 23 only four or forty miles from Utica. "Is not this gross injustice?" he asked.
 24 "Ought these country or inland papers thus be compelled to submit not only to fair
 25 competition, but to struggle on with the aid of the Government extended virtually
 26 to the city journals against them in this manner?"⁴⁵

27 *Transient Publications.* Shortly after passage of the 1845 reform act,
 28 Congress created a special category for transient newspapers--those mailed at
 29 irregular intervals by someone other than a publisher. To avoid high letter

30 ⁴³*Cong. Globe*, 28th Cong., 1st sess. 423 (1844); petition from Harrison County, Va.,
 31 Mar. 19, 1838, House Records, file 25A-G15.3; petition from St. Lawrence County, N.Y.,
 32 December 1843, House Records, file 28A-G16.6.

33 ⁴⁴*Cong. Globe*, 31st Cong., 2d sess. 74 (1850).

34 ⁴⁵*Cong. Globe* 220 (1851). For further details on this debate, see Richard B. Kielbowicz,
 35 *News in the Mail: The Press, Post Office, and Public Information, 1700-1860s* (Westport, Conn.:
 36 Greenwood Press, Inc., 1989), 84-88.

1 postage, people sent newspapers to friends in lieu of letters. In fact, some clever
2 correspondents underscored words or pricked holes beneath characters in
3 newspapers to communicate a private message.⁴⁶ Regulations directed postmasters
4 to charge letter postage on any newspaper containing a private message other than
5 a printer's notice reminding the recipient of the amount due for a subscription.⁴⁷
6 To remedy such evasions, an 1847 law set postage for transient papers at 3 cents,
7 which had to be prepaid, about double the rate for papers mailed by publishers.⁴⁸
8 An 1851 postal law also stipulated that the basic newspaper rate applied only to
9 newspapers "sent from the office of publication to actual and *bona fide* subscribers.
10 . . ."⁴⁹ At this point, the *bona fide* subscriber rule played only a small part in
11 assigning publications to one rate category or another. Decades later, however, it
12 assumed a place of central importance in the classification process.

13 Nonperiodical Printed Matter and the Third Class

14 In the early nineteenth century, advertising circulars, pamphlets, and
15 books paid postage as either letters or nonperiodical pamphlets--the two most
16 expensive categories. Policy treated them less favorably for two reasons: first,
17 they were regarded as akin to merchandise and less deserving of public support
18 than the exchange of news or correspondence. Second, such species of mail matter
19 strained the postal system: they appeared irregularly (as opposed to periodicals),
20 burdened transports with their bulk, and complicated postmasters' postage-
21 collecting responsibilities. Postal law and practice became more accommodating
22 by mid-century, however, and this nonperiodical matter was consolidated into the
23 third-class in 1863: it embraced "all pamphlets, occasional publications, books,
24 book manuscripts," and small merchandise.⁵⁰

25 ⁴⁶Mill girls and factory hands corresponded with friends at home, or people in the East
26 with relatives in the West, by underscoring words in the column of a newspaper, or by pricking
27 holes under letters, which when put together, would form the words of a long communication."
28 John B. McMaster, *History of People of the United States*, 8 vols. (New York: D. Appleton, 1883-
29 1913), 7: 108. See also Postmaster General to a citizen of Kentucky, Nov. 10, 1842, in
30 unidentified newspaper clipping, P. O. Scrapbook.

31 ⁴⁷1843 *PL&R* 18.

32 ⁴⁸Act of March 3, 1847, 9 Stat. 202.

33 ⁴⁹9 Stat. 588.

34 ⁵⁰12 Stat. 705.

1 *Books.* Early nineteenth-century postal regulations defined a pamphlet
2 as "a small unbound printed book."⁵¹ Postal law made no provision for bound
3 books and, if admitted to the mails, they were charged letter postage. When
4 Congress finally recognized bound books as mailable matter it had little to do with
5 a sudden appreciation for the timeless information contained between hard covers.
6 The increasing use of steamships and railroads to transport mail alleviated concerns
7 about the bulkiness of postal matter. Also, Congress liberalized the law in 1851 to
8 undercut private express companies.⁵² Initially, Congress set the maximum
9 permissible weight at 32 ounces but within a year raised it to 4 pounds.⁵³

10 *Circulars.* Before 1845, postal regulations assigned "all handbills,
11 printed or written prospectuses, . . . circulars written or printed, lottery bills and
12 advertisements" and other miscellaneous printed matter to the letter-rate class.⁵⁴
13 Perhaps to draw more matter into the official mail, the 1845 Postal Reform Act
14 created a category for "circulars or handbills or advertisements" sent folded and
15 unsealed; its postage compared favorably to that assessed letters.⁵⁵ Within two
16 years, however, Congress raised the rate and mandated "payment in advance when
17 the circulars are deposited in the office."⁵⁶ Advertisements masquerading as
18 newspaper extras paid postage as a circular.⁵⁷

19 In 1852 Congress loosened the prepayment requirement, probably
20 inadvertently. This brought advertising circulars flooding into the mail. Congress
21 reimposed the prepayment requirement in 1857.⁵⁸ David Yulee, a senator from
22 Florida, explained that the alteration was needed to correct a growing abuse of the
23 postal laws. Great numbers of circulars, many promoting lotteries, were being
24 mailed without prepayment and thus subject to full postage. Some post offices
25 received forty bags of such matter, he said. Because recipients did not solicit the

26 ⁵¹1847 *PL&R* 25.

27 ⁵²Act of March 3, 1851, 9 Stat. 587, 588-89.

28 ⁵³Act of Aug. 30, 1852, 10 Stat. 38.

29 ⁵⁴1843 *PL&R* 18.

30 ⁵⁵5 Stat. 733. Circulars printed on paper no larger than single cap (also known as
31 foolscap, about 13 by 17 inches) paid 2 cents for delivery any distance; a half-ounce letter, in
32 contrast, paid 10 cents for delivery beyond 300 miles.

33 ⁵⁶1847 *PL&R* 23.

34 ⁵⁷1847 *PL&R* 24.

35 ⁵⁸Act of Jan. 2, 1857, 11 Stat. 153.

1 circulars, "very few of them are taken out at the offices, but they are transported at
2 great expense to the Government."⁵⁹

3 **The First Mail Classification Act, 1863**

4 In 1862, Schuyler Colfax, an Indiana Republican and former
5 newspaper editor, began laying the foundation for further postal reform. He
6 introduced a bill to simplify postage on printed matter.⁶⁰ Finding the correct rate
7 to assess publications was complicated by discounts for in-county and in-state
8 delivery of newspapers and varying frequencies and formats of publications.
9 Considering these variables, a postmaster had to determine which of 300 rates
10 applied to a given piece of mail, Colfax said. He proposed to reduce the various
11 rates to three.⁶¹ *The New York Times* endorsed Colfax's plan with a caricature of
12 postmasters' abilities and the existing taxonomy of mail matter: "To determine the
13 proper charge for a paper, a magazine, or a book, postmasters are obligated to
14 plunge into calculations of the most abstruse, and often insoluble character, the
15 result of which, in regard to any given article, never comes out the same for two
16 different and distant computers."⁶²

17 The principal architects of the 1863 law were Senator Jacob Collamer,
18 a Vermont Whig who had served as postmaster general from 1849 to 1850, and
19 Postmaster General Montgomery Blair.⁶³ With their combined expertise in postal
20 matters, they devised the three mail classifications. The Senate passed the bill as
21 reported from the post office committee without debate.⁶⁴ The House, too, dealt
22 with the legislation expeditiously. Colfax told his colleagues that the bill would
23 reduce the 300 or so mail rates to 12 or 15.⁶⁵

24 ⁵⁹*Cong. Globe*, 34th Cong., 1st sess. 1778-79 (1856).

25 ⁶⁰Sen. Misc. Doc. 50, 37th Cong., 2d sess. (1862).

26 ⁶¹*Cong. Globe*, 37th Cong., 2d sess. 494 (1862).

27 ⁶²*The New York Times*, Jan. 28, 1862. See *Cong. Globe*, 37th Cong., 2d sess., appendix
28 157-58 (1862), for a table comparing the existing and proposed rates.

29 ⁶³*U.S. Mail and Post Office Assistant*, 3 (March 1863): 2; *The New York Times*, Feb. 2,
30 1863; *New York Herald*, Mar. 5, 1863.

31 ⁶⁴*Cong. Globe*, 37th Cong., 3d sess. 839-40 (1863).

32 ⁶⁵*Cong. Globe*, 37th Cong., 3d sess. 839-40, 1149-51, 1170, 1181, 1225, 1343, 1371,
33 1454, 1494 (1863).

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**4. THE 1879 MAIL CLASSIFICATION ACT
(1860-1880)**

The Act of March 3, 1879, laid the foundation for modern mail classification by creating the four basic categories still used today. In reality, though, the act had a much narrower purpose: to erect a wall between print matter in the second class and that in the third. A precise demarcation of print matter, Congress hoped, would channel a public resource, cheap postage, to only those publications that disseminated the most socially useful information. The Post Office Department had more prosaic reasons for helping Congress establish a proper boundary line: it wanted to staunch the revenue losses caused by heavy use of the cheapest rate and it needed administratively workable rules to conduct day-to-day business. Thus, the legislative history of the classification act deals almost entirely with defining the second and third classes; the first class remained largely unchanged, and the fourth class became a catchall for nonprint matter formerly in the third class.

Amplifying the 1863 Definition

The spare definition of second-class mail adopted in 1863 relied strictly on technical matters: the material had to be "exclusively in print and regularly issued at stated periods. . . ." ¹ Other provisions of the same act--but not the basic definition--mentioned additional requirements to qualify for the lowest rates; periodicals had to be issued "from a known office of publication, and sent to regular subscribers. . . ." ² An 1872 law added the clause "known office of publication" to the definition of second class. ³

¹Act of March 3, 1869, 12 Stat. 705.
²12 Stat. 707.
³Act of June 8, 1872, 17 Stat. 300.

1 The phrase "regular subscribers" in the 1863 law ultimately proved
2 more important in classifying mail. Initially, the regular subscriber requirement
3 figured only in certain situations. Postmasters could require publishers to swear
4 that they never sent publications to nonsubscribers without first prepaying
5 postage.⁴ But in 1874 Congress established "regular subscribers" as a condition
6 for all publications sent at the lowest rates.⁵

7 The 1874 law also introduced the pound rate, which made the second
8 class vastly more attractive to all kinds of publications. Instead of assessing
9 postage on each copy of a newspaper or magazine, postmasters now weighed
10 periodicals in bulk. The change proved a boon to newspapers and magazines; no
11 longer would postage double when an issue exceeded, however slightly, the 4
12 ounces allowed for each copy. The new rates adopted by Congress charged
13 publications issued weekly or more often (mainly newspapers) 2 cents a pound,
14 and those issued less often (mainly magazines) 3 cents a pound.⁶ This new rate
15 structure widened the gulf between second and third class. The 1874 law set third-
16 class rates at 1 cent for each 2 ounces, at least four times the newspaper rate. The
17 next year Congress, reportedly acting at the behest of private carriers eager to

18 ⁴The following is the form of oath prescribed to be taken by publishers as to the
19 transmission of printed mail matter to other than *bona fide* subscribers: . . . The undersigned . . .
20 does swear (or affirm) that he, as publisher, has not sent, nor permitted to be sent by any clerk,
21 agent, or employe [sic], within his knowledge, any copies of the _____ without
22 prepayment of postage by postage stamps, except as the same were sent to *bona fide* and regular
23 subscribers." 1866 *Postal Laws & Regulations* 31-32 [hereafter cited as *PL&R*]. See also 12 Stat.
24 708.

25 ⁵Act of June 23, 1874, 18 Stat. 233.

26 ⁶Act of June 23, 1874, 18 Stat. 232. The pound rate was something of a concession on the
27 part of the Post Office to win a long-sought reform: mandatory prepayment of postage by
28 publishers. Previously, postage was supposed to have been prepaid quarterly in advance at either
29 the office of mailing (by the publisher) or delivery (by the subscriber). In most cases, publishers
30 expected subscribers to pay the postage, and collecting it vexed tens of thousands of postmasters.
31 In fact, much of the second-class postage--possibly half that owed the Department--went
32 uncollected. Collecting postage at the office of mailing also simplified the Department's
33 bookkeeping chores, according to the postmaster general. 1875 *Annual Report of the Postmaster*
34 *General* 20. See generally Richard B. Kielbowicz, "Origins of the Second-Class Mail Category and
35 the Business of Policymaking, 1863-1879," *Journalism Monographs*, No. 96 (April 1986), 6-13.

1 carry the merchandise in third class, doubled the rate to 1 cent per ounce.⁷ In one
2 other change with some implications for classification, the 1874 law allowed
3 newspapers enjoying the postage-free in-country privilege to be printed partly
4 outside the county of publication. This accommodated patent insides or outsides
5 provided by readyprint services, companies that printed one side of a newspaper
6 sheet and shipped it to publishers who added local news and ads.⁸

7 Protests from publishers prompted Congress to restore the lower rate to
8 most publications that fell in the third class. An 1876 law stated: "Transient
9 newspapers and magazines, regular publications designed primarily for advertising
10 purposes, or for free circulation, or for circulation at nominal rates, and all printed
11 matter of the third class, except unsealed circulars, shall be chargeable with
12 postage at the rate of 1 cent for every 2 ounces or fraction thereof."⁹
13 Significantly, the 1879 Mail Classification Act incorporated the 1876 language
14 about "publications designed primarily for advertising purposes" into the definition
15 of print matter expressly excluded from the second class.

16 Congress left the remaining third-class matter, mainly merchandise
17 weighing up to four pounds, paying 1 cent per ounce. This division of third-class
18 mail into two rate groups, one for miscellaneous printed matter and one for
19 merchandise, presaged the creation of a fourth class in 1879. Some lawmakers
20 insisted that they had approved the third-class rate hike in 1875 because they
21 believed that it fell only on merchandise. The chairman of the Senate post office
22 committee denied that anyone from the express companies had lobbied the

23 ⁷*The New York Times* and *American Newspaper Reporter* charged that the higher third-class
24 rates resulted from lobbying by private delivery companies. Doubling the rates on nonperiodical
25 publications and merchandise in the third class supposedly diverted business to the private carriers.
26 Lobbyists spent "a good deal of money there [Washington, D.C.] in dinners to Congressmen, and
27 in other approved devices for opening the eyes of the blind," the *Times* reported. *The New York*
28 *Times*, Mar. 15, 1875, p. 4. See also *ibid.*, Mar. 13, p. 10; Mar. 15, p. 1; *American Newspaper*
29 *Reporter*, 9 (May 17, 1875): 396, 400; *ibid.* 9 (June 7, 1875): 480, 485. Congress restored the old
30 rate, 1 cent for every 2 ounces, in 1876. Act of July 12, 1876, 19 Stat. 82.

31 ⁸See Richard B. Kielbowicz and Linda Lawson, "Protecting the Small-Town Press:
32 Community, Social Policy and Postal Privileges, 1845-1970," *Canadian Review of American*
33 *Studies*, 19 (Spring 1988): 27-28.

34 ⁹19 Stat. 82.

1 committee.¹⁰ Instead, he said, the postmaster general had recommended higher
2 merchandise rates to reduce the department's losses. "I did not turn to the statute
3 to see what was embraced in the third class. I did not think it increased the rates
4 on transient newspapers and magazines," the chairman explained.¹¹ Higher
5 postage on merchandise protected both the department's revenues and the safe
6 delivery of other mail matter, senators said.¹² Where railroads were not available,
7 merchandise-laden transports jeopardized the timely delivery of newspapers and
8 letters, the postmaster general informed Congress.¹³

9 **Administrative Rulings Address Advertising**

10 Two years before passage of the Mail Classification Act, printed
11 material went into two classes and three rate categories: in second class,
12 newspapers paid 2 cents a pound and magazines 3 cents; in third class, transient
13 periodicals and publications designed primarily for advertising purposes paid 1 cent
14 for each 2 ounces. With the advertising and magazine industries burgeoning,
15 administrators scrambled to figure out where various kinds of printed matter fit.
16 From 1876 to 1879, postal officials rendered administrative decisions and held
17 meetings with publishers in order to minimize the confusion. These efforts
18 culminated in the Mail Classification Act.

19 The impetus for an improved classification scheme, especially the
20 modernized second- and third-classes, originated with Arthur H. Bissell of the Post
21 Office Department's law division. In rendering legal decisions for the department,

22 ¹⁰Apparently he meant that no one from the express companies had approached the post
23 office committee in 1874, asking for higher third-class rates. He acknowledged that in 1876 the
24 Senate Post Office Committee had "the newspaper men," "the book men," "the publishers," and
25 "the card and envelope men before us. We have had the attorney of the express companies and who
26 sought to exclude all merchandise from the mail." *Cong. Rec.*, 44th Cong., 1st sess. 2222 (1876)
27 (quoting Sen. Hamlin).

28 ¹¹*Cong. Rec.*, 44th Cong., 1st sess. 2221 (1876).

29 ¹²*Cong. Rec.*, 44th Cong., 1st sess. 2217-24, 2257-65 (1876).

30 ¹³The Postmaster-General has been obliged to authorize the [mail] contractors upon some
31 routes to leave quantities of merchandise to enable them to forward the letter and newspaper mail,"
32 the chairman of the Senate committee told his colleagues. "Within a very few days past the
33 contractor upon the route from San Diego to Tucson informed your committee that on a single day
34 one hundred and sixty-five packages of merchandise of four pounds each were delivered to him for
35 transportation upon said route." *Cong. Rec.*, 44th Cong., 1st sess. 2221 (1876) (quoting Sen.
36 Hamlin).

1 Bissell had many occasions to rule on the nature of publications and the postage
2 they paid. In June 1877, filling in for the POD's assistant attorney general, Bissell
3 ruled that "[p]eriodicals intended primarily for advertising purposes should not be
4 mailed [at second-class] pound rates."¹⁴ His decision was "based upon the theory
5 that the government should not carry at a loss to itself publications which are
6 simply private advertising schemes."¹⁵ Bissell's ruling forced such publications to
7 pay third-class postage, denying them the much cheaper pound rates.

8 But this scarcely resolved the problem. In a five-month period, Bissell
9 had to determine the postal status of 300 to 400 publications. Enterprising
10 advertisers began issuing publications just frequently enough to qualify as
11 periodicals, he complained. The intent of postal legislation was clear, he wrote,
12 but the intent of many publications was not. Some of these publications had no
13 regular list of subscribers and subsisted entirely on advertising revenue.¹⁶

14 Bissell was confronting two parallel developments in publishing and
15 advertising. First was the appearance of mail-order magazines, pioneered by E.C.
16 Allen. Operating a mail-order business from Augusta, Maine, Allen bought liberal
17 amounts of advertising in newspapers and magazines until he developed his own
18 publication, the *People's Literary Companion*, a monthly first issued in 1869.
19 Nominally sold for 50 cents a year, it could be obtained for less when purchased
20 by clubs, and in fact much of its circulation was simply given away. It contained a
21 few stories and household hints, but mainly was a device to generate mail-order
22 sales. The *Companion* attained a circulation of half a million in its second year.
23 Success spawned imitators, and many did well enough to offer weekly publications
24 in the mid-1870s.¹⁷ At about the same time, traditional magazines, which

25 ¹⁴*Opinions of the Assistant Attorneys-General for the Post Office Department* 313-15
26 (June 7, 1877) [hereafter cited as *Op. Asst. Att'y Gen'l*]; *1877 Annual Report of the Postmaster*
27 *General* 242-45.

28 ¹⁵Bissell's testimony reprinted in *Argument of William E. Sheldon of Boston, before the*
29 *Committee on Post Office and Post Roads, U.S. Senate*. . . (Washington, D.C.: Government
30 Printing Office, 1878), 8.

31 ¹⁶Arthur H. Bissell, *Classification of Mail Matter. Letter to the Postmaster General*
32 (Washington, D.C.: Government Printing Office, 1878).

33 ¹⁷On the development of direct-mail marketing and the associated publications, see Frank
34 Presbrey, *The History and Development of Advertising* (Garden City, N.Y.: Doubleday, Doran &
35 Co., 1929), 284-86; George P. Rowell, *Forty Years an Advertising Agent* (New York: Franklin
36 Publishing Co., 1926), 201-02, 211; *Printers' Ink: Fifty Years, 1888-1938* (issue for July 28,
37 1938), Daniel J. Boorstin, *The Americans: The Democratic Experience* (New York: Vintage Books,
38 1973), 121-29; Frank Luther Mott, *A History of American Magazines*, vol. 1 (Cambridge: Harvard
39 Univ. Press, 1930), 37-40.

1 formerly had eschewed most advertising, discovered its rewards.¹⁸ Both the mail-
2 order journals and magazines needed the mail to reach their national audience of
3 reader-consumers.

4 A series of postal rulings in the mid-1870s tried to divert the flood of
5 newer publications to the more costly third class. The department repeatedly
6 reminded postmasters that a publication had to have a list of *bona fide* subscribers
7 to qualify for the second-class rate.¹⁹ Another criterion used in classifying printed
8 matter was the purpose of a publication. In 1876, rulings emphasized that pound
9 rates were to be accorded only to publications whose "prevailing characteristic and
10 purpose" was the dissemination of intelligence of passing events.²⁰ Magazines
11 jeopardized their second-class rate status if they inserted advertisements printed
12 separately. The department held that "Unless such advertisements are printed at
13 the same office, on paper of the same size, and regularly paged with other sheets
14 of the publication, third-class rates of postage must be prepaid thereon."²¹
15 Apparently some publishers colluded with those who would otherwise issue
16 separate advertising circulars. In 1878 the department prohibited advertisers from
17 inserting ads in publications, buying up the entire issue, and then using the low
18 second-class rates to reach reader-consumers.²²

19 Growing weary of endless ad hoc administrative rulings, Bissell sought
20 a more definitive means of coping with classification issues. In 1877 he proposed
21 registering publications in five categories, with postage at 2 to 3 cents a pound for
22 the most privileged, rising to 12 cents a pound for advertising circulars.
23 Postmaster General David M. Key mentioned the problem in his annual report, and

24 ¹⁸Mott, *A History of American Magazines* (Cambridge, Mass.: Harvard Univ. Press,
25 1938), 2:9-13.

26 ¹⁹See, e.g., 1873 *PL&R* 70; *U.S. Official Postal Guide*, October 1874, p. xix; *ibid.*,
27 January 1877, p. 56. Virtually every issue of the *Postal Guide* carried a ruling trying to define
28 what constituted a regular subscriber. The *Postal Guide* was a quarterly published privately by
29 authority of the Post Office Department. The first issue appeared in October 1874.

30 ²⁰See, e.g., *U.S. Official Postal Guide*, April 1876, p. 54.

31 ²¹*U.S. Official Postal Guide*, July 1877, p. 54.

32 ²²See, e.g., *U.S. Official Postal Guide*, April 1878, 60-61.

1 Congress considered a bill drafted by Bissell. The House post office committee
2 invited New York City publishers to comment on the plan.²³

3 New York publishers representing different segments of the industry
4 met at the city post office on January 26, 1878, and appointed a committee to
5 confer with Bissell. The committee consisted of representatives from *Scribner's*
6 *Monthly*, *Christian Union*, *The Grocer*, *American News Company*, *The New York*
7 *Times*, and Harper's magazine and book publishing house. Three spoke for the
8 well-established, respectable magazines that had awakened to the possibilities of
9 national advertising, while *The Grocer*, a trade journal, represented a class of
10 magazines that had problems convincing postal authorities of its legitimacy and
11 entitlement to the second-class rate.²⁴ After two days of consultations with Bissell,
12 the publishers committee unanimously endorsed a modified version of the bill then
13 before Congress.²⁵

14 When Bissell met with publishers in Philadelphia, he found
15 considerable opposition to the registration features of the bill. The Pennsylvania
16 Editorial Association unanimously opposed registration as creating the potential for
17 censorship, but it urged Congress "to remove the discrimination between
18 periodicals printed weekly and those issued at longer intervals."²⁶ The
19 Philadelphia *Public Ledger* also resisted registration because it would "superadd to

20 ²³These early steps toward the 1879 law can be traced in Bissell, *Classification of Mail*
21 *Matter*; *The New York Times*, Oct. 10, 1877, p. 1; *Printers' Circular*, February 1878, p. 273; and
22 *American Newspaper Reporter*, Jan. 21, 1878, p. 56.

23 ²⁴In 1877, the assistant attorney general for the Post Office Department ruled that a
24 Chicago trade magazine could not pass at the second-class rate. *The New York Times*, June 8, 1877,
25 p. 2. A trade journal for the printing industry, *Typo's Guide*, July-August, 1877, p. 32,
26 complained: "The Postmaster General having decided that the TYPO'S GUIDE is an advertising
27 sheet, coming under the head of third-class matter, and must, therefore, be prepaid at the rate of one
28 cent per copy. . . ." Bissell suspected that many trade journals were merely thinly disguised
29 catalogues for products sold by the publishers and editors with a few articles that amounted to
30 advertisements for their products. In making classification decisions, he sometimes directed POD
31 agents to investigate "first whether either publishers or editors are engaged or interested in the
32 business [connected with the subject of the magazines], and second, whether the descriptive articles
33 contained therein are paid for as advertisements?" Bissell to Jas. E. Stuart, special agent, Chicago,
34 June 19, 187[7 or 8], Letters Sent from the Office of the POD Solicitor, Records of the Post Office
35 Department, Record Group 28 (National Archives).

36 ²⁵*The New York Times*, Jan. 27, 1878, p. 7; *ibid.*, Jan. 29, 1878, p. 3; *Classification of*
37 *Mail Matter. Action of the Publishers of New York and Philadelphia, on the Bill Now Pending*
38 *Before Congress* (Washington, D.C.: Judd & Detweiler, 1878).

39 ²⁶Quoted in *Printers' Circular*, 12 (February 1878): 281.

1 the existing administrative machinery of the Postal Department a Bureau of Mail
2 Classification, under a superintendent at Washington, to which all such periodical
3 publications must be sent for examination and judgment before they can be passed
4 through the mails at the low rates of postage. . . ."²⁷ Bissell accepted all the
5 amendments suggested by the Philadelphia publishers except one permitting
6 appeals of adverse classification decisions to the federal courts.²⁸

7 As modified by the New York and Philadelphia publishers, the bill
8 retained the three classes of mail then in use. The proposed change involved
9 bringing all printed matter into the second class and reserving the third class for
10 merchandise. Within the second class, however, some distinctions would be made
11 among publications based on their purposes. Second-class matter could either be
12 "registered," enjoying the lowest rate, or "ordinary," subject to a higher charge.
13 Registered publications would have to meet four criteria, essentially those that
14 became law in 1879: they had to be (1) issued at regular, stated intervals; (2) sent
15 from a known office of publication; (3) made of printed paper without substantial
16 bindings such as books; and (4) "originated and published for the dissemination of
17 information of a public character, or devoted to literature, the sciences, arts, or
18 some special industry, and having a legitimate list of subscribers." Qualified
19 publications issued at least twice a year could be mailed at 2 cents a pound,
20 weighed in bulk. This proposed classification eliminated the rate differential
21 between newspapers and magazines and brought trade journals into the preferred
22 category.²⁹

23 A spokesman for New England publishers testified before the Senate
24 post office committee on February 28 and echoed his counterparts in New York
25 and Philadelphia. The comments of William E. Sheldon revealed why many
26 publishers joined with postal administrators in pushing for registration of printed
27 matter. Sheldon sprinkled his testimony with such phrases as "legitimate
28 publishers," "the honorable publishers," and the "legitimate press"--an implicit
29 subclass of all publishers. He asserted that the registration scheme was "without
30 opposition from the entire legitimate press of the country," but predicted that the
31 measure would probably be opposed by a "species of publications that are designed

32 ²⁷Philadelphia *Public Ledger*, Jan. 28, 1878, quoted in *Printers' Circular*, 12 (February
33 1878): 279.

34 ²⁸The text of the bill adopted by the Philadelphia publishers and Bissell is reproduced in
35 *Printers' Circular*, 12 (February 1878): 274-76.

36 ²⁹Text of bill reproduced in *Printers' Circular*, 12 (February 1878): 274-76.

1 to sell medicines, or are designed to influence the public to buy special goods; that
2 is, one class of trade journals that are not designed to convey intelligence to the
3 people."³⁰

4 Bissell reported to the Senate post office committee on his meetings
5 with postmasters and publishers.³¹ In questioning Bissell, Senator Samuel
6 Kirkwood of Iowa implied that there was no valid reason to discriminate against
7 advertising circulars when such magazines as *Scribner's*, *Harper's* and the *Atlantic*
8 carried several pages of advertising. Bissell admitted that, at the publishers'
9 insistence, a provision had been added to the bill permitting regular periodicals to
10 carry advertisements printed on separate pieces of paper. Bissell grappled with the
11 public policy goals of distinguishing between registered and ordinary publications.
12 First, he noted, a series of congressional acts, especially the 1876 law, had
13 established the "discrimination . . . against purely advertising sheets and in favor
14 of legitimate periodicals and newspapers." Regular publications dealt with public
15 business, he added, and "If there be a loss on their carriage, the general tax is
16 legitimate and will be paid cheerfully by the public at large." Advertising sheets,
17 in contrast, served private interests, making it "unfair to insist upon the public
18 paying a tax in support of [the] private business of individuals or companies." At
19 bottom, Bissell told Kirkwood, "The character of the reading matter overbalances"
20 the commercial motives of regular periodicals. The absence of such reading matter
21 in other publications disqualified them from the most-favored rate.³²

22 The Classification Act in Congress

23 After eighteen months of consideration, the House post office
24 committee on January 23, 1879, reported the bill that ultimately became law.
25 Alfred M. Waddell, a Democrat from North Carolina, explained that the bill

26 ³⁰*Argument of William E. Sheldon*, 2.

27 ³¹The only point of disagreement between some publishers and the department, Bissell told
28 the committee, was whether local postmasters or Washington-based officials should make judgments
29 about registration. He preferred to centralize the decisionmaking in Washington to assure greater
30 uniformity, but Philadelphia publishers wanted that power vested in the hands of local postmasters.
31 Bissell acceded to having the local postmasters issue the certificates of registration, though he
32 emphasized that their decisions would be made "under such regulations as the Postmaster-General
33 might prescribe." Bissell's testimony as reprinted in *Argument of William E. Sheldon*, 10 (emphasis
34 in original).

35 ³²Bissell's testimony as reprinted in *Arguments of William E. Sheldon*, 16-17.

1 reclassified mail matter but left rates largely unchanged. The only rate change
2 favored monthly and quarterly magazines by bringing them within the 2-cent-a-
3 pound postage rate newspapers enjoyed. He illustrated the discrimination in
4 existing law by comparing the weekly and monthly periodicals issued by Harper's
5 publishing house.³³ Joseph Cannon, later the powerful Speaker of the House,
6 vigorously opposed consolidating newspapers and magazines into one category.
7 "Newspapers," he said, "go to the masses of the people throughout the country, to
8 the poor people, to the laboring people; everybody takes them. It is the exclusive
9 few as a rule who take the monthlies."³⁴ Representative Hernando Money replied
10 that conferring the lowest rate on all second-class publications--dailies to
11 quarterlies--eliminated an unjust discrimination against magazines, many of which
12 represented "the very best class of periodical literature." The *Missionary Herald*,
13 "the oldest monthly in the United States, and a religious paper of the very first
14 class," paid 50 percent more postage than the *Police Gazette* because the latter
15 published weekly.³⁵

16 The registration of "legitimate" publications was the only other
17 noteworthy change in existing law proposed by the House committee. Waddell, in
18 explaining the bill to his colleagues, frequently resorted to the terms "legitimate"
19 and "illegitimate" to denote different types of publications. Where earlier versions
20 of the bill had only three classes of mail, the committee's report suggested four.
21 The second class would encompass regular publications, which would be registered
22 in order to receive the two-cent-a-pound rate. The third class covered books,
23 transient newspapers, and the so-called "illegitimate" publications--advertising
24 circulars expressly excluded from the second-class. Third-class material would be
25 admitted to the mail without registration at one cent for each two ounces--eight
26 times the second-class rate.³⁶

27 The House failed to act expeditiously on the bill, so on February 20,
28 1879, the classification scheme was revived in the Senate as an amendment to the
29 post office appropriations bill. The substance of the classification bill and the rates
30 excited little interest in the Senate; the half-hearted debate centered on whether

31 ³³*Cong. Rec.*, 45th Cong., 3d sess. 690 (1879).

32 ³⁴*Cong. Rec.* 692 (1879).

33 ³⁵*Cong. Rec.* 2135 (1879).

34 ³⁶*Cong. Rec.* 690-98 (1879).

1 such legislation should be considered late at night near the end of the session, and
2 whether it belonged as an attachment to an appropriations bill. It passed.³⁷

3 A conference committee then considered the post office appropriation
4 bill and retained the mail classification features and postage as they had been
5 shaped in the House. On the last day of Congress, March 3, 1879, the House and
6 Senate passed the bill without further debate, creating the mail classification system
7 that has lasted until today.³⁸

8 There was nothing in the law that major publishers had stridently
9 opposed and much they had approved. Postal administrators failed to get the
10 registration system they had sought, but prevailed in other respects. Printed matter
11 now fell into either the second or third class. Qualifications for admission to the
12 second class were those suggested by the department and approved by publishers in
13 a few large cities. A publication had to appear at regular intervals at least four
14 times a year; be issued from a known office of publication; formed of printed
15 sheets without substantial binding; and disseminate "information of a public
16 character, or be devoted to literature, the sciences, arts, or some special industry,
17 and having a legitimate list of subscribers." In addition, the definition specifically
18 excluded from the second class "publications designed primarily for advertising
19 purposes, or for free circulation, or for circulation at nominal rates."³⁹

20 The provisions governing the classification of second-class mail were
21 largely synthesized from earlier laws and some administrative rulings. In one
22 respect, however, the 1879 statutory language moved beyond earlier acts. For the
23 first time the law spoke directly about the purpose of publications admitted to the
24 second class--they had to disseminate information of a public character or serve a
25 specific industry (trade journals). This articulated lawmakers' understanding of the
26 public policy behind the low rate and, in fact, Bissell had begun applying a similar
27 standard administratively before 1879. The 1879 act made one other noteworthy
28 change in second class: Congress extended the free in-county privilege from
29 newspapers to all periodicals in the second class.⁴⁰

30 ³⁷*Cong. Rec.* 1662-65 (1879).

31 ³⁸*Cong. Rec.* 2372-73 (1879); 20 Stat. 358-61.

32 ³⁹20 Stat. 359.

33 ⁴⁰20 Stat. 362.

1 The Mail Classification Act assigned mail-order journals and
2 advertising circulars to the third-class, along with books, transient newspapers and
3 other printed matter. Third-class rates remained 1 cent for each 2 ounces, eight
4 times the 2 cents a pound second-class rate. Although the law was designed to
5 curtail use of the mail by advertising circulars, it explicitly provided that second-
6 class publications could carry ads as long as they were permanently attached.⁴¹

7 The act made few changes in the first class. Apart from letters and "all
8 matter wholly or partly in writing," the first class embraced postal cards.
9 Government-issued postal cards had been authorized in 1872 (as distinguished from
10 private post cards, admitted as first-class mail in 1898). The Post Office
11 Department allowed businesses to print messages on the one-cent cards and they
12 quickly became a popular, inexpensive advertising medium.⁴²

13 The new fourth class covered all mail matter other than printed
14 material formerly in the third class. Since 1876, this merchandise had been
15 segregated in a more expensive category.

16 ⁴¹20 Stat. 359.

17 ⁴²*Printers' Circular*, 12 (March 1877): 3.

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5. CLASSIFYING MAIL IN AN AGE OF COMMERCE

(1880-1920)

Congress intended the Mail Classification Act to assign informative periodicals to the second class and relegate advertising matter to the third. Since nearly all publications carried some advertising, making this classification decision often involved gauging the extent of a publisher's commercial motives. Toward this end, the Post Office Department developed a corpus of administrative law governing admission to the second class, while Congress continued to examine and reexamine the underlying public policy. Noting that almost all periodicals had become highly commercialized products, lawmakers wondered about the best use of public resources--in this case, cheap postage--to advance publishers' interests. In 1917, Congress restructured second-class postage by adopting zoned advertising rates. Although this legislation was not a classification matter *per se*, it was widely seen as restoring balance and integrity to the classification act.

At the same time, Congress reconsidered the post office's relation to commerce in another vein--parcel delivery. In 1912, lawmakers reinvented fourth-class mail by authorizing a parcel post. First-class mail remained largely untouched between 1880 and 1920.

Policing the Second- and Third-Class Mail

After 1879, postal administrators began developing a number of tests and rules to shore up the wall Congress had built between the highly preferential second class and the more expensive third. Lawmakers took note of the administrators' efforts and, around 1900, began considering plans to revise second-class rates and terms of eligibility. These deliberations culminated in zoned advertising postage and the creation of a new subclass for publications published by nonprofit groups.

1 *Elaboration of Administrative Rules.* Low second-class rates tantalized
2 publishers and advertisers looking for a way to reach the reader-consumer.
3 Second-class mail paid 2 cents a pound until 1885, when Congress reduced it to 1
4 cent, where it remained until 1917. With third-class postage set at 1 cent per 2
5 ounces--nominally eight times as much but actually more because third class paid
6 by the piece rather than in bulk--publishers of all kinds of printed matter naturally
7 tried to pass their wares at the subsidized rate.¹ The post office battled these
8 "Second Class Matter Fiends," the administrators' label for mailers who devised
9 ingenious schemes to qualify for the lowest possible rate.² In classifying a
10 periodical, postal administrators judged its intent or character to determine whether
11 it was primarily or incidentally designed for advertising purposes. The problem,
12 as a congressional commission recognized in 1907, was that "every periodical is
13 designed for advertising purposes or no periodical is so designed."³ Resolving this
14 dilemma propelled most of the major developments in mail classification between
15 1880 and 1920 and stimulated Congress to seek broader reforms of the second-
16 class mail category.

17 By the late 1800s, advertising was transforming almost all periodicals,
18 a development that vastly complicated application of the Mail Classification Act.
19 Before 1900, advertisers furnished less than half of periodicals' income; by 1920,
20 advertising's share approached two-thirds. The number of pages devoted to
21 advertising in monthly magazines more than doubled between 1888 and 1928; for
22 weekly magazines, it rose by a factor of twenty-five. Publishers came to regard
23 subscribers less as readers than as consumers to be delivered to merchandisers.
24 Entrepreneurs launched national magazines in the 1880s and 1890s expressly to
25 serve as vehicles for advertising brand-name consumer items featured by mass
26 retailers. This new genre of magazines, epitomized by Curtis Publishing
27 Company's *Saturday Evening Post*, *Ladies' Home Journal*, and *Country*
28 *Gentleman*, cut subscription rates to attract a mass middle-class audience. The
29 mail, of course, was crucial in delivering these publications. With advertising-

30 ¹H.R. Rep. No. 376, 56th Cong., 1st sess. 4 (1900).

31 ²"Second Class Matter Fiends" is a chapter in Marshall Cushing, *The Story of Our Post*
32 *Office* (Boston: A. M. Thayer & Co., 1893), 410-16.

33 ³H.R. Doc. No. 608, 59th Cong., 2d sess. xxxv-xliii, quote at xxvii (1907) [hereafter
34 cited as Penrose-Overstreet Commission].

1 filled periodicals blanketing the nation, second-class mailings grew twenty times
2 faster than population in the four decades after 1880.⁴

3 With the pages of most publications filled with ads, postal officials
4 looked for external evidence to judge their eligibility for a second-class permit.
5 Some publications sent excessive quantities of sample copies to nonsubscribers.
6 For example, the Appleton, Wisconsin, *Post* mailed an extraordinary number of
7 one issue marked "sample" to a list of nonsubscribers furnished by an advertiser.
8 In another case, the post office denied the second-class privilege to a publication
9 that issued 20,000 sample copies but had only 1,500 subscribers.⁵ Mail-order
10 journals posed another problem. Styled as magazines, these advertising-filled
11 publications devised countless schemes involving discounts, premiums, and
12 clubbing arrangements to give away subscriptions. Publishers compensated for
13 negligible subscription revenue by charging steep advertising rates based on
14 inflated circulations. Yet another target of postal administrators was the
15 publication conducted merely as an auxiliary to a business. Firms ranging from
16 agricultural implement manufacturers to insurance companies issued periodicals
17 advertising the owner's products along with a few stories that were little more than
18 disguised promotions for the products.⁶ When postal officials detected these
19 attempts to stretch the definition of legitimate second-class matter, they classified
20 the questionable publications as third-class mail.

21 Initially, any postmaster could grant a second-class permit. "There
22 were almost an endless variety of rulings; for there were almost as many judges as
23 there were postmasters," according to Marshall Cushing. After 1887, however,

24 ⁴On the role of advertising in magazines' transformation, see Daniel Pope, *The Making of*
25 *Modern Advertising* (New York: Basic Books, Inc., 1983), 22-38, 136; Bruce M. Owen, *Economics*
26 *and Freedom of Expression: Media Structure and the First Amendment* (Cambridge, Mass.:
27 Ballinger, 1975), 48-51, 79, 172; Frank Presbrey, *The History and Development of Advertising*
28 (Garden City, N.Y.: Doubleday, Doran & Co., Inc., 1929), 446-84; Frank Luther Mott, *A History*
29 *of American Magazines*, 5 vols. (New York and Cambridge, Mass.: Harvard Univ. Press, 1957,
30 1930-68), 4: 3-22; Theodore Peterson, *Magazines in the Twentieth Century*, 2d ed. (Urbana: Univ.
31 of Illinois Press, 1964), 1-43; Jan Cohn, *Creating America: George Horace Lorimer and The*
32 *Saturday Evening Post* (Pittsburgh: Univ. of Pittsburgh Press, 1989), 9, 16, 24-25.

33 ⁵1 *Opinions of the Assistant Attorney General for the Post Office Department* 564-66
34 (1881) [hereafter cited as *Op. Asst. Att'y Gen'*]; 1887 *PL&R* 144-45.

35 ⁶Sen. Doc. No. 89, 56th Cong., 2d sess. pt. 3: 56-57, 67 (1901); *Printers' Ink*, June 28,
36 1905, pp. 14-18; Mott, *American Magazines*, 4:364-68; 1908 *Annual Report of the Postmaster*
37 *General* 281 (1908) [hereafter cited as *Annual Report*]. A postal official enumerated the many
38 schemes used in stretching lists of subscribers. See Penrose-Overstreet Commission, 30-31, 51-80.

1 decision making was centralized in Washington, D.C., where the classification
2 division labored to maintain the integrity of the second-class mail category. Under
3 an 1885 opinion of the post office solicitor, publishers had to provide local
4 postmasters with sworn answers to a series of questions (nineteen by 1902, some
5 with several parts). Most delved into a periodical's business practices to ascertain
6 whether it disseminated information of a public character or was primarily intended
7 for advertising purposes. For instance, publishers had to provide details about
8 ownership, their other businesses and how they related to the publication,
9 advertising practices, and subscription terms--an extensive inquiry by federal
10 officials into the conduct of private enterprises. Applying the criteria set forth in
11 *Postal Laws and Regulations*, postmasters determined whether to issue a
12 provisional second-class mailing permit. The application, affidavit, sample copies,
13 and other evidence were then forwarded to the classification division in
14 Washington, D.C., for a final decision about admissibility. Difficult decisions and
15 appeals were referred to the solicitor (also known as the assistant attorney general)
16 for the department. His published opinions compiled by the headquarters staff,
17 along with the *Postal Laws and Regulations*, built a corpus of postal administrative
18 law. A monthly *United States Official Postal Guide* also communicated rulings,
19 orders, and sundry information to the nation's widely scattered postal staff. P-
20 rocedures for classifying mail were thus highly centralized in the hands of a
21 professional staff, counterbalancing the inexperienced politician-postmasters who
22 headed the thousands of offices throughout the nation.⁷

23 A principal figure behind stricter application of mail classification
24 standards was Third Assistant Postmaster General Edwin C. Madden, who served
25 from 1899 to 1907 under five postmasters general. The forty to forty-five clerks
26 in his classification division issued two to five hundred decisions, instructions, and
27 answers daily for postmasters, publishers, and citizens throughout the country. As
28 the workload increased, Madden appointed a superintendent of classification and a
29 few special agents to oversee the clerks. For the most part, these special agents
30 remained in their posts as the postmasters general came and went, thereby

31 ⁷Cushing, *Our Post Office*, 111, 372-73, 411-15, quote at 411; Lloyd M. Short, *The*
32 *Development of National Administrative Organization in the United States* (Urbana, Ill.: Institute of
33 Government Research, 1923), 344-57; 1902 *Postal Laws & Regulations* 198-203 [hereafter cited as
34 *PL&R*]; 2 *Op. Ass't. Att'y Gen'l* 72-74 (1885).

1 solidifying the institutional commitment to fight abuses of the second-class mail
2 privilege.⁸

3 Between 1901 and 1919, Madden and his successors expanded the paid
4 subscriber rule, which became the linchpin in determining whether mail fit in the
5 second or third class. Policymakers and administrators had grown increasingly
6 frustrated in determining second-class eligibility by looking at a publication's
7 content. "You can only draw a line between the subscriber and the
8 nonsubscriber," Congressman Eugene F. Loud concluded after investigating
9 second-class mail for several years. "[T]he only line you can draw is to permit the
10 rate to continue on such matter . . . that the people want to pay for. That is,
11 where a man pays money for anything, it is the assumption that he wants it."⁹ The
12 American Newspaper Publishers Association, Agricultural Press League, and
13 American Trade Press Association endorsed using this sign to differentiate between
14 second- and third-class matter.¹⁰

15 Applying the paid subscriber rule in the early 1900s, the department
16 cracked down on the practice of sending huge quantities of sample copies to
17 nonsubscribers.¹¹ The assistant attorney general advised in 1907 that the
18 postmaster general could exercise his administrative discretion to limit sample
19 copies as long as his action reflected congressional intent.¹² The department
20 thereupon limited sample copies to 10 percent of a publication's paid
21 subscriptions.¹³ Samples sent in excess of this limit had to pay transient second-
22 class rates, 1 cent per 4 ounces. The third assistant postmaster general boasted that
23 this "regulation has taken out of the mails since January 1 [1908] millions of copies
24 of publications whose 'circulation,' for advertising purposes, was swelled to the

25 ⁸*Printers' Ink*, July 5, 1905, pp. 10-19; *ibid.*, Feb. 15, pp. 18-19; Penrose-Overstreet
26 Commission, 47; *Official Register of the United States* (Washington, D.C.: Government Printing
27 Office, 1903), 2:4; *ibid.* (1911), 2:11.

28 ⁹Sen. Doc. No. 89, 56th Cong., 2d sess. (1901), pt. 3, pp. 67, quote at 56-67.

29 ¹⁰Letter from American Trade Press Association reprinted in *Cong. Rec.*, 54th Cong., 2d
30 sess. 187 (1896); *Report of the Proceedings of the Tenth Annual Convention of the American*
31 *Newspapers Publishers Association*, 1896, pp. 59, 66; Sen. Rep. No. 1517, 54th Cong., 2d sess.
32 25-26 (1897).

33 ¹¹1901 *Annual Report* 782-83; *The New York Times*, July 18, 1901, p. 2.

34 ¹²4 *Op. Asst. Att'y Gen'l* 445-48 (May 9, 1907).

35 ¹³Order No. 907, Dec. 4, 1907, Miscellaneous Orders of the Postmaster General, 12:311-
36 26, U.S. Postal Service Library, Washington, D.C.

1 limit."¹⁴ Ten years later, Congress recognized this administrative rule--the 10
2 percent limit on samples--in a statute.¹⁵

3 Scrutinizing how a publication obtained subscriptions helped postal
4 officials determine whether it was "designed primarily for advertising purposes, for
5 free circulation or for circulation at nominal rates." A number of monthly mail-
6 order journals ceased publication around 1908 because the Post Office Department
7 challenged the validity of their subscription lists.¹⁶ In 1915, the postmaster
8 general complained that the practice of offering premiums to induce subscriptions
9 flouted the law. He argued that the second class should be reserved for
10 publications that "circulated in response to a genuine public demand based on their
11 merits."¹⁷ Two years later he determined that rates would be deemed nominal
12 where the subscriber received a reduction of 50 percent or more from the
13 advertised price, whether through a direct discount or a premium. This
14 interpretation largely reaffirmed a test the department had been using for many
15 years. A second rule discounted subscriptions obtained through agents who kept
16 most of the money so that publishers received little or no payment.¹⁸

17 ¹⁴Sen. Doc. No. 270, 60th Cong., 1st sess. 9-10 (1908).

18 ¹⁵Act of Oct. 3, 1917, 40 Stat. 327.

19 ¹⁶Mott, *History of American Magazines*, 4:364-68, esp. 365 n.54.

20 ¹⁷1915 *Annual Report* 36-37.

21 ¹⁸1917 *Annual Report* 64-65. Two 1911 administrative decisions illustrate how postal
22 administrators applied the paid subscriber rule to determine eligibility for the second class. The
23 department denied the *Orange Judd Northwest Farmstead* second-class mailing privileges after
24 scrutinizing its subscription list. Postal officials found that many subscriptions had expired, had
25 been purchased by banks for readers at nominal rates, or had been claimed by the publishers without
26 any supporting evidence. Furthermore, the department surveyed a sample of the addressees and
27 only 52 percent considered themselves subscribers. Sen. Doc. No. 32, 62d Cong., 1st sess. (1911);
28 *5 Op. Asst. Att'y Gen'l* 493-502 (Nov. 8, 1911). In another case, the department curtailed the
29 *Woman's National Weekly's* use of its second-class permit. The post office decided that the *Weekly*
30 did not satisfy the paid subscriber test because many copies were undeliverable, a quarter of 3,000
31 readers contacted by the department did not consider themselves subscribers, and many
32 subscriptions were given as gifts. The department ruled that, until the *Weekly* purged its
33 subscription list, 24 percent of its circulation would not qualify as regular-rate second-class mail.
34 Sen. Doc. No. 26, 62d Cong., 1st sess. (1911).

1 In policing eligibility for the second class, the department ruled that
 2 paperbound books issued periodically as part of a series no longer qualified.¹⁹
 3 This was a particularly bold move for the post office as Congress had declined to
 4 act after considering the same remedy. Affected mailers protested the
 5 administrative initiatives. "Having failed repeatedly in its attempt to secure the
 6 legislation desired, the department has now arrogated to itself the right to gain its
 7 ends by arbitrary rulings calculated to cover the points which Congress has
 8 repeatedly refused to grant through legislation," the *Arena* complained.²⁰ A
 9 publisher challenged the book ruling in a 1904 U.S. Supreme Court case,
 10 *Houghton v. Payne*. Acknowledging that the rule reversed the department's own
 11 precedent and accomplished administratively what Congress had refused to do
 12 legislatively, the court nonetheless upheld the post office and gave it wide
 13 boundaries of administrative latitude.²¹

14 *Congress Reconsiders Second-Class Mail Policy.* While administrators
 15 applied and extended the rules governing second class, Congress reconsidered the
 16 merits of the underlying policy. Mounting postal deficits and mushrooming
 17 quantities of second-class mail kept lawmakers' attention focused on the issue
 18 almost every year from 1900 to 1920. Some questioned whether a policy devised
 19 during the early Republic still made sense in the twentieth century, especially when
 20 modern publications no longer resembled those of the 1790s. Was it necessary for
 21 government to help bind the nation together? If so, was subsidizing the circulation
 22 of advertising-filled newspapers and magazines the best way to do so? Did any
 23 distinction between publications in the second and third class make sense when the
 24 editorial content of the former existed largely to draw attention to the advertising?

25 ¹⁹The Post Office Department had tried to crack down on books masquerading as
 26 periodicals since the mid-1870s. After some inconclusive departmental rulings, officials sought
 27 guidance from the attorney general, who advised in 1877 that such series fit in the second class.
 28 The attorney general noted that the book series published literary material periodically and without
 29 substantial binding. Furthermore, the books were addressed to subscribers, both in the usual
 30 meaning of the term as well as news agents, who qualified under law as subscribers. 1 *Op. Assr.*
 31 *Att'y Gen'l* 163-64 (1875); 15 *Op. Att'y Gen'l* 346 (1877); *Cong. Rec.*, 53d, Cong., 2d sess. 4051
 32 (1884). Each postmaster general from 1889 to 1901 pleaded with Congress to adopt legislation
 33 removing book series from the second class; Congress considered the proposals but refused to act.
 34 On the controversy over paperback books passing as second-class mail, see Richard B. Kielbowicz,
 35 "Mere Merchandise or Vessels of Culture? Books in the Mail, 1792-1942," *Papers of the*
 36 *Bibliographical Society of America*, 82 (2d quarter 1988): 179-86.

37 ²⁰"Bureaucracy in America," *Arena*, 26 (December 1901): 659-61, quote at 660.

38 ²¹194 U.S. 88; John E. Semonche, *Charting the Future: The Supreme Court Responds to a*
 39 *Changing Society, 1890-1920* (Westport, Conn.: Greenwood, 1978), 174.

1 In 1906, an advertising agent told the Joint Commission of Congress on Second-
2 Class Mail as much:

3 There is still an illusion to the effect that a magazine is a
4 periodical in which advertising is incidental. But we don't look
5 at it in that way. A magazine is simply a device to induce people
6 to read advertising. It is a large booklet with two departments--
7 entertainment and business. The entertainment department finds
8 stories, pictures, verses, etc., to interest the public. The business
9 department makes the money.²²

10 Lawmakers searched for ways to bring the second-class mail category, and its
11 underlying policy, into line with publications' dual nature--commercial products
12 that conveyed public information and culture.²³

13 Congress, through the 1912 Newspaper Publicity Act, strengthened
14 administrators' hands in classifying mail. The act conditioned admission to the
15 second class on the disclosure of three kinds of information. First, the law
16 prescribed that periodicals publish the names of their owners and stockholders
17 twice a year; this provision addressed the concern that some publications advanced
18 private interests more than public. Second, the act required that daily newspapers
19 publish a sworn statement attesting to their paid circulation; this helped in applying
20 the paid subscriber rule. Third, the 1912 law directed editors to label as
21 "advertisement" any material inserted for payment that might be mistaken for a
22 story; this aimed at the widespread practice of disguising advertising as news
23 stories and editorials, which indicated whether a publication was designed
24 primarily for advertising purposes. The Supreme Court upheld the
25 constitutionality of the Newspaper Publicity Act in 1913, and, in slightly modified
26 form, these conditions for admission to the second-class mail remain today.²⁴

27 ²²James H. Collins quoted in Penrose-Overstreet Commission, xxxvii.

28 ²³For a detailed discussion of congressional debates about second-class mail at this time,
29 see Richard B. Kielbowicz, "Postal Subsidies for the Press and the Business of Mass Culture, 1880-
30 1920," *Business History Review*, 64 (Autumn 1990): 451-88.

31 ²⁴Act of Aug. 24, 1912 (Newspaper Publicity Act), 37 Stat. 551; *Lewis Publishing Co. v.*
32 *Morgan*, 229 U.S. 288 (1913). For a discussion of the act, see Linda Lawson, *Truth in Publishing:*
33 *Federal Regulation of the Press's Business Practices, 1880-1920* (Carbondale: Southern Illinois
34 Univ. Press, 1993). Lawson's book reviews the many abuses of the second-class mailing privilege
35 and details the responses of postal administrators.

1 Congress continued to seek a more fundamental reform, one that
2 calibrated a public resource--cheap postage--to the public benefits it produced.
3 Lawmakers devised zoned advertising postage, adopted as part of the 1917 War
4 Revenue Act.²⁵ Since 1885, periodicals in the second class had paid 1 cent a
5 pound regardless of their advertising content and distance mailed. The new law
6 charged low postage on periodicals' reading matter and higher rates on their
7 advertising contents, with postage for the latter rising in proportion to distance.
8 This creative solution combined three pricing theories: the flat, low rate for
9 editorial content continued public service pricing (charge less because of its societal
10 value); the distance component reflected cost-of-service pricing (charge more to
11 cover transportation expenses); and the advertising differential represented value-
12 of-service pricing (charge more for the private benefits it produced). Viewed
13 another way, zoned advertising postage narrowed the gap between the treatment of
14 advertising in the second and third classes.

15 *Exempting Nonprofit Publications in the Second-Class.* When
16 Congress adopted zoned advertising postage in 1917, it also created a subclass for
17 the publications of nonprofit organizations. Such publications, however, had been
18 battling over their place in the second class for nearly thirty years. In the early
19 1890s, the post office began excluding the publications of fraternal and benevolent
20 associations from the second class. Journals issued by organizations for their
21 members belonged in the more expensive third-class, postal administrators
22 concluded, because they were "devoted entirely and exclusively to advertising the
23 private interests of the owners. . . ." ²⁶ Also, collecting subscriptions through
24 membership assessments was "a compulsory collection and can not be considered
25 as constituting 'a legitimate list of subscribers'," the assistant attorney general
26 ruled.²⁷ At the behest of some of the affected organizations, Congress in 1894
27 amended the law to bring publications of fraternal and related societies into the

28 ²⁵Act of Oct. 3, 1917, 40 Stat. 327-28.

29 ²⁶1 *Op. Ass't. Att'y Gen'l* 882 (Nov. 10, 1883). See also 2 *ibid.* 960-61 (Oct. 15, 1891).
30 For a discussion of the post office's handling of fraternal publications, see Richard B. Kielbowicz,
31 "Development of the Paid Subscriber Rule in Second-Class Mail," 26-28 (1985) (unpublished report
32 prepared for the Postal Rate Commission in the Complaint of the Tri-Parish Journal, Docket C85-
33 2).

34 ²⁷2 *Op. Ass't. Att'y Gen'l* 960-61 (Oct. 15, 1891).

1 second class along with publications issued by educational institutions, labor
2 unions, and professional, literary, historical, and scientific societies.²⁸

3 In administering the 1894 law, the post office discovered that many
4 such publications carried general consumer advertising unrelated to the sponsoring
5 groups' special missions.²⁹ When administrators began denying second-class
6 permits on this basis, the affected mailers pointed out to lawmakers that advertising
7 both informed readers and generated funds for charitable works.³⁰ Congress in
8 1912 clarified the law by expressly permitting fraternal, professional and
9 benevolent periodicals to carry all kinds of advertisements.³¹

10 The 1894 and 1912 laws did not establish special rates, but they did
11 anticipate the policy of treating certain kinds of organizations preferentially.
12 Congress went a step further in 1917, bestowing special rates on some of the
13 groups already admitted to the second-class mail. The legislative history of this
14 provision in the War Revenue Act of 1917 law is spare, for debate about the
15 commercial press overshadowed all other considerations.³² The law establishing
16 zoned advertising postage exempted the publications of prescribed nonprofit
17 organizations. Hence, these periodicals became known as "exempt publications"
18 or "exempt second-class matter." Specifically, the law provided

19 That in the case of newspapers and periodicals entitled to be
20 entered as second-class matter and maintained by and in the
21 interest of religious, educational, scientific, philanthropic,
22 agricultural, labor, or fraternal organizations or associations, not
23 organized for profit and none of the net income of which inures
24 to the benefit of any private stockholder or individual, the
25 second-class postage rates shall be, irrespective of the zone in
26 which delivered . . . 1 1/8 cents a pound or fraction. . . .

27 ²⁸Act of July 16, 1894, 28 Stat. 104, 105. For a legislative history, see *5 Op. Asst. Att'y*
28 *Gen'l* 214-21 (July 27, 1909).

29 ²⁹1894 *Annual Report* 481; 1901 *Annual Report* 772-86; Penrose-Overstreet Commission,
30 304.

31 ³⁰*Cong. Rec.*, 61st Cong., 2d sess. 2913-14 (1910); Sen. Doc. No. 648, 61st Cong., 2d
32 sess. 4 (1910); Sen. Doc. No. 815, 61st Cong., 3d sess. (1911).

33 ³¹Act of Aug. 24, 1912, 37 Stat. 551.

34 ³²For scattered discussions of the nonprofit rate, see *Cong. Rec.*, 65th Cong., 1st sess.
35 2352, 2357, 2773-75, 6399 and appendix 247, 493 (1917).

1 The act phased in higher rates for regular second-class matter, establishing
2 preferential treatment. It also required organizations using this subclass to provide
3 "satisfactory evidence that none of the net income of such organization inures to
4 the benefit of any private stockholder or individual."³³

5 Parcel Post

6 The radical potential originally envisioned for parcel post, and the
7 controversy that surrounded its inauguration, is hard to appreciate from today's
8 vantage point. Yet parcel post marked a dramatic departure in public-sector
9 initiatives: it put the federal government in the transportation business to compete
10 with well-established private firms. That the United States started parcel post so
11 late--it was the last major industrialized nation to do--suggests the extent to which
12 the service raised fundamental questions about the proper sphere of state action.
13 More narrowly, parcel post made the post office a full-fledged auxiliary of the
14 nation's commercial system. Advertisements on the pages of publications and in
15 circulars had long reached consumers through second- and third-class mail.
16 Customers submitted orders by first class. But any order above 4 pounds had to be
17 delivered by private express companies--if one served a customer's town. After
18 1913, much larger parcels could be delivered by the government's service--the post
19 office--which went everywhere.³⁴

20 Before the inauguration of parcel post on January 1, 1913, the post
21 office charged the exorbitant postage of 1 cent an ounce for any parcel weighing
22 less than 4 pounds and refused to deliver heavier packages. This amounted to \$320

23 ³³40 Stat. 328.

24 ³⁴Only one postal historian, Wayne E. Fuller, noted the extent to which parcel post
25 intruded into the private sector. See Fuller, *RFD: The Changing Face of Rural America*
26 (Bloomington, Ind.: Indiana Univ. Press, 1964), 199-233. This book provides the best overview of
27 parcel post's general history, though Fuller focuses mainly on rural life, not parcel post's
28 implications for political economy. See also Fuller, *The American Mail: Enlarger of the Common*
29 *Life* (Chicago: Univ. of Chicago Press, 1972), 181-88; Daniel J. Boorstin, *The Americans: The*
30 *Democratic Experience* (New York: Random House, 1973), 109-45.

31 For an analysis of the debate about government getting into the parcel delivery
32 business, see Richard B. Kielbowicz, "Government Goes Into Business: Parcel Post in the Nation's
33 Political Economy, 1880-1915," *Studies in American Political Development*, 8 (Spring 1994): 150-
34 72; and on the implications of parcel post for rural America, see Richard B. Kielbowicz, "Rural
35 Ambivalence Toward Mass Society: Evidence from the U.S. Parcel Post Debates, 1900-1913,"
36 *Rural History* 5 (Spring 1994): 81-102.

1 a ton when the same haul cost \$1.90 at railroad freight rates or about \$28 as
2 railway express. Montgomery Ward and Co. estimated in 1911 that it shipped
3 about 82 percent of its orders by freight, 10 percent by express, and only 8 percent
4 by mail. The express companies expedited packages; alternatively, the slower but
5 cheaper freight services handled loads above 100 pounds.³⁵

6 Express companies' parcel business burgeoned in the late 1800s as
7 various mail-order merchandisers, most notably the big catalogue houses--
8 Montgomery Ward (1872) and Sears, Roebuck and Company (1887)--began
9 offering their wares to the nation. From the start of the parcel post campaign,
10 proponents, notably the Grange, accurately predicted that a government service
11 would particularly help rural Americans. Small-town residents often had only one
12 or two modestly stocked general stores at which they could conveniently shop;
13 farm families living along country lanes had trouble reaching even these. Rural
14 Americans began to demand that the post office carry parcels at a competitive rate
15 because express companies refused to serve isolated regions and, where service
16 existed, the absence of real competition led to high and uneven rates. Also, the
17 people's growing resentment of railroads and railway expresses as powerful and
18 abusive institutions fueled the parcel post movement.³⁶

19 The Populists' expansive view of federal postal powers appealed to
20 some postal administrators. Ironically, perhaps, the most far-reaching proposals
21 were put forward by a businessman-turned-postmaster general. John Wanamaker,
22 founder of the Philadelphia department store, worked to put the post office on a
23 more businesslike footing by expanding into fields heretofore left to the private
24 sector. Appointed head of the Post Office Department in 1889, Wanamaker
25 repeatedly urged the establishment of rural free delivery, parcel post, postal
26 telegraphs, and postal telephones. "[P]arcel post is a success wherever it is in
27 operation" around the world, he proclaimed, blaming the "four great express
28 companies" for blocking it in the United States. Wanamaker's immediate

29 ³⁵Sen. Doc. No. 485, 62d Cong., 2d sess. 3 (1912); *Parcel Post: Hearings Before the*
30 *Subcommittee on Parcel Post of the Senate Committee on Post Offices and Post Roads under S.*
31 *Resolution 56*, 62d Cong., 2d sess. (1911-12), 882 (testimony of Ward's general manager)
32 [hereafter cited as 1912 *Senate Hearings*].

33 ³⁶Charles M. Gardner, *The Grange: Friend of the Farmer* (Washington, D.C., 1949), 116-
34 17; Thomas J. Schlereth, "Country Stores, County Fairs, and Mail-Order Catalogues," in
35 *Consuming Visions: Accumulation and Display of Goods in America, 1880-1920*, ed. Simon J.
36 Bronner, (New York: Norton, 1989), 339-75; see generally Kielbowicz, "Rural Ambivalence
37 Toward Mass Society."

1 successors varied in their commitment to parcel post, but a growing cadre of postal
2 officials saw advantages in capitalizing on the department's unrivaled nationwide
3 infrastructure. In a related vein, foreign governments and international postal
4 congresses repeatedly asked the United States to provide parcel post on the same
5 terms as other industrial nations to facilitate cross-border package exchanges.³⁷

6 Although the Populists failed to win a parcel post during their heyday,
7 they did secure an equally important postal service, Rural Free Delivery (RFD).
8 Apart from its own merits, RFD enlarged the constituency for parcel post and
9 proved to many rural residents and postal officials that the government could offer
10 a viable package delivery service. As RFD routes multiplied after 1896, families
11 living along country lanes gradually found themselves tied into the national
12 communication and marketing network. Reader-consumers in the countryside
13 received advertising-filled periodicals and mail-order catalogues and remitted their
14 orders by letter. They found, however, that the government, which had promoted
15 such transactions, would not carry the fruits of all this mail--packages.
16 Unofficially, however, RFD carriers used extra space in their mail wagons to
17 deliver parcels for patrons along their routes until postal officials and Congress
18 curtailed the practice. Nonetheless, this unplanned test heartened parcel post
19 advocates and strengthened claims that the postal system's underutilized capacity
20 could efficiently accommodate additional services. Proponents saw parcel post as
21 the capstone in a postal communication and transportation system that already
22 promoted marketing on a national scale.³⁸

23 When a consumer movement emerged in the early twentieth century,
24 parcel post advocates appropriated its tenets. The phrase "cost of living" and cries
25 of "Eliminate the middleman!" echoed throughout parcel post hearings, articles,
26 petitions, and correspondence.³⁹ "The women of the country are very much
27 concerned in getting articles for their homes cheaper than they can get them now,
28 and they believe the parcel post will help them in that direction," Harriette J.
29 Hifton told Congress. Hifton belonged to the Consumer's League as well as
30 suffrage associations, the Women's Trade Union League, and other groups.

31 ³⁷1891 *Annual Report* 7, 113-14 quote at 114; 1890 *Annual Report* 7-8.

32 ³⁸Wayne E. Fuller, "The Populists and the Post Office," *Agricultural History* 65 (Winter
33 1991): 1-16; see generally Fuller, *RFD*.

34 ³⁹According to a flier, "The tendency of the time is to eliminate middlemen." Retail
35 Merchants' Association of Illinois, "Why Parcels Post Should be Opposed," Nov. 18, 1907; Senate
36 Committee on Post Office and Post Roads, Records of the U.S. Senate, RG 46 (National Archives)
37 file S62A-F20 [hereafter cited as Senate Records]. See also Fuller, *RFD*, 219-21.

1 Capitalizing on such sentiments, the Mail Order Association sponsored a pro-parcel
2 post tract entitled *A Practical Way to Reduce the High Cost of Living*.⁴⁰

3 Popular magazines, which stood to benefit from parcel post, filled their
4 columns with approving articles and editorials. "As civilization develops,
5 commerce divides itself more and more into parcels and the carrying of packages
6 must play a constantly increasing part," the Hearst-owned *Cosmopolitan*
7 maintained in 1904, the year William Randolph Hearst, a congressman from New
8 York, introduced parcel post legislation. Magazines spotlighted the success of
9 foreign parcel posts in articles replete with photographs of tidy post offices, food-
10 filled wicker baskets, and modern delivery vehicles. *Good Housekeeping*
11 propagandized on behalf of parcel post in a gushing article, "Housekeeping by
12 Parcels Post: its Advantages and Satisfactions, as Witnessed by an American
13 Housewife." An American woman accompanies her English friend on a multi-city
14 shopping expedition; the Englishwoman ships her purchases home via parcel post.
15 The American marvels at the reasonable cost and fast service; she laments that the
16 United States lacks a similar service. "Let every woman write to her husband's
17 congressman and speak her mind!" the editor commands in a postscript.⁴¹

18 The peculiar organization of express companies, "a distinctive
19 American institution," did much to keep the parcel post campaign alive.⁴²
20 Although largely offshoots of railroads, the express companies maintained separate

21 ⁴⁰1912 *Senate Hearings* 765-79, quote at 765 (Hifton); Frank A. Selah, *A Practical Way to*
22 *Reduce the High Cost of Living* (N.p., 1911). See also "Practical Effects of the Parcel Post,"
23 *Literary Digest* 45 (Dec. 18, 1912): 1210-11; David Thelen, "Patterns of Consumer Consciousness
24 in the Progressive Movement: Robert M. La Follette, the Antitrust Persuasion, and Labor
25 Legislation," in the *The Quest for Social Justice*, ed. Ralph M. Aderman (Madison, Wis., 1983),
26 26-27.

27 ⁴¹John Brisben Walker, "The Aid Which the Post-Office Department Might Render to
28 Commerce," *Cosmopolitan* 36 (February 1904): the three unnumbered pages following p. 378 (this
29 was the first of a three-part series); J. Henniker Heaton, "Governmental Parcel-Post in Great
30 Britain," *Cosmopolitan* 35 (May 1903): 3-10; Frank Parker Stockbridge, "When We Get the
31 Parcels Post," *World's Work* 24 (June 1912): 161-72; Isabel Gordon Curtis, "Housekeeping by
32 Parcels Post: Its Advantages and Satisfactions, as Witnessed by an American Housewife," *Good*
33 *Housekeeping* 53 (July 1911): 2-10.

34 ⁴²Isaiah L. Sharfman, *The Interstate Commerce Commission: A Study in Administrative*
35 *Law and Procedure* (New York: The Commonwealth Fund, 1931), 2:58-82, quote at 59.

1 corporate structures that allowed them to sidestep regulation until 1906.⁴³ When
2 the Interstate Commerce Commission finally scrutinized the industry, its report
3 basically corroborated what the pro-parcel post muckrakers had been telling
4 magazine readers for several years: express companies double charged and over
5 charged, refused to tell customers about free delivery areas beyond rail depots, sent
6 shipments by circuitous routes to inflate costs, discriminated among customers, and
7 more.⁴⁴

8 With findings such as these, Congress could no longer put off acting on
9 parcel post. For twenty years, repeated attempts to push legislation through had
10 usually died in committee, and popular magazines attributed this to the influence of
11 railroad-express interests and their legislative allies. An 1897 parcel post bill
12 failed when railway interests "seized the Chairmanship of the Postal Committee of
13 the U.S. House," according to James L. Cowles, the chief parcel post lobbyist.
14 House Speaker Joseph Cannon stacked later post office committees against parcel
15 post and kindred proposals. Post office committee chairmen appointed by Cannon
16 bottled up parcel post legislation as long as possible and then watered down
17 proposals.⁴⁵ The House leadership kept parcel post from receiving a hearing until
18 April 1910; it took a petition from a majority of the representatives to get that
19 proceeding started.⁴⁶ "The railway domination of Congress closed with the

20 ⁴³Allan L. Benson, "Why We Have No Parcels Post," *Pearson's Magazine* 25 (March
21 1911): 388-97, esp. 390; Nathan B. Williams, *The American Post-Office: A Discussion of Its*
22 *History, Development, and Present-Day Relation to Express Companies*, published as Sen. Doc.
23 No. 542, 61st Cong. 2d sess. (1910).

24 ⁴⁴*In re Express Rates, Practices, Accounts, and Revenues*, 24 I.C.C. 380-541 (1912). For
25 one example of the journalistic attack on railroad-express ties, see Frederick F. Ingram, "The
26 Parcels Post," *Twentieth Century Magazine*, 3 (March 1911): 514-22.

27 ⁴⁵James L. Cowles to Vice President Charles Warren Fairbanks, Feb. 22, 1906, Senate
28 Records, file S59A-J88; advance proof from *American Agriculturist* to unnamed editors, Apr. 7,
29 190[6?], House Committee on Post Office and Post Roads, Records of the U.S. House of
30 Representatives, RG 233 (National Archives) file H59A-F29.4 [hereafter cited as House Records];
31 M. A. DeWolfe Howe, *George von Lengerke Meyer: His Life and Public Services* (New York:
32 Dodd, Mead and Co., 1919), 376-77.

33 ⁴⁶James L. Cowles, *What Women Might Do with the Ballot: Reasonable Postal Laws* (New
34 York: National American Woman Suffrage Association, n.d. [ca. 1911]), 6. *Parcels Post:*
35 *Hearings Before the House Comm. on the Post-Office and Post-Roads*, 61st Cong., 2d sess. (1910),
36 3 (remarks of Rep. Thomas W. Hardwick) [hereafter cited as *1910 House Hearings*].

1 Parcels Post hearing of April, 1910," Cowles cheerfully told the Woman Suffrage
2 Association.⁴⁷

3 By 1911, some sort of parcel post seemed inevitable--the adoption of
4 postal savings had opened the door to government enterprise; a new Congress, one
5 more amenable to such initiatives, had convened; muckraking exposes of railroads
6 and express companies had cultivated considerable popular sympathy; and
7 preliminary findings from the ICC's investigation had documented the magnitude
8 of the problem with private-sector services. But what form should the government
9 parcel post take, what principles of political economy should it express?

10 Much of the campaign for parcel post turned on beliefs about the
11 capacity of the Post Office Department to handle new tasks. The size, complexity,
12 and reach of the Post Office had earned the department accolades as "the greatest
13 business concern in the world." In this view, the department possessed the
14 requisite logistical expertise to successfully manage a parcel delivery business.⁴⁸
15 Of course, critics of the department, usually big mailers complaining about their
16 high postage bills, impugned the POD's business acumen and managerial skill. A
17 1908 essay in the *Journal of Political Economy* identified features of the post office
18 that distinguished it from for-profit businesses and concluded "that the Postal
19 Department as now organized and operated would be utterly unable to compete
20 with express companies upon purely a business basis."⁴⁹

21 Another argument for parcel post presumed that business imperatives
22 should drive the POD; therefore, entrepreneurial-minded postal managers had an
23 obligation to add services that capitalized on the system's unmatched infrastructure.
24 Proponents had long argued that parcel post would take advantage of rural carriers'
25 underutilized capacity, their partly loaded wagons. And some pointed out that the
26 post office already had the unprofitable business, delivering parcels under four

27 ⁴⁷Cowles, *What Women Might Do with the Ballot*, 6.

28 ⁴⁸Postmaster General Charles E. Smith, *Greatest Business Organization in the World: The*
29 *United States Postal Service* (N.p.: n.p., 1899), 3; "A National Opportunity--A Business Postal
30 Department," *World's Work*, 19 (March 1910): 12643-44; *1912 Senate Hearings* 202 (testimony of
31 Postmaster General Hitchcock).

32 ⁴⁹Don C. Seitz, "The Post-Office: An Obstructive Monopoly," *World's Work*, 21
33 (February 1911): 13978-86 (Seitz was a newspaper editor and spearheaded the publishers' campaign
34 to protect low second-class rates); Albert N. Merritt, "Shall the Scope of Governmental Functions
35 be Enlarged So as to Include the Express Business?" *Journal of Political Economy*, 16 (July 1908):
36 417-35.

1 pounds to sparsely settled parts of the country, leaving the more lucrative
 2 shipments to the express firms. A full-fledged parcel post would develop
 3 profitable routes that compensated for the unprofitable ones found in any system
 4 promising universal service. Parcel post, in sum, would improve the department's
 5 finances. Opponents, of course, argued forcefully that any extension of service
 6 would just increase the postal deficit.⁵⁰

7 As the parcel post debate crested, Congress considered four options:
 8 (1) leave the parcel delivery business entirely to private-sector competition; (2)
 9 subject private carriers to stricter regulation by the Interstate Commerce
 10 Commission; (3) launch a public service to compete with the private sector; and
 11 (4) invoke the Constitution's postal clause to establish an outright public
 12 monopoly. The upshot of the debate--joining ICC regulation of private firms with
 13 state-sponsored competition--straddled competing visions of political economy.

14 Some proponents of a government monopoly were pragmatists.
 15 Without a government monopoly, Postmaster General Frank H. Hitchcock told
 16 Congress, the expresses would skim off the lucrative business, leaving revenue-
 17 losing routes to the department. Others believed in the inexorable expansion of
 18 state functions. The most ideologically driven proponents of a government
 19 monopoly--the Grange, Farmers' Union, small businesses upset with private
 20 carriers, and the Knights of Labor, exhibited a deep-seated resentment of private
 21 transportation companies, especially railroads.⁵¹

22 The alternative was government-sponsored competition, and its chief
 23 exponent was Senate post office committee chairman Jonathan Bourne. He
 24 believed that public-private competition in the package delivery business would
 25 maximize service and minimize rates. The most likely outcome, he predicted, was
 26 "decreased cost to the public whenever the Government can operate as cheaply and
 27 efficiently as a private individual." Outright government ownership "tends toward

28 ⁵⁰Fremont Rider, "The Parcels Post and the Retailer," *World's Work*, 21 (April 1911):
 29 14248-51; Henry A. Castle, "Defects and Abuses in Our Postal System--I," *North American*
 30 *Review*, 174 (June 1902): 807-19.

31 ⁵¹1912 *Senate Hearings* 191-242 (testimony of Hitchcock); 1911 *House Hearings* 82-108,
 32 esp. 85 (testimony of A. C. Shuford for the Farmers' Union); 1912 *Senate Hearings* 1260-67 (T.
 33 C. Atkinson of the National Grange testifying for the eventual absorption of the express companies
 34 but willing to accept intermediate measures in the meantime); *ibid.*, 1039-41 (testimony of I.S.
 35 Chamberlain for the Knights of Labor). *Speech in Part of George J. Kindel on the Relation of*
 36 *Parcels Post to the Business Man and the Farmer Before the Trans-Mississippi Commercial*
 37 *Congress (Kansas City, Mo.: the author, 1911).*

1 paternalism and bureaucracy," Bourne argued, though he held it out as "a dernier
2 resort, where regulation has been demonstrated to be a failure."⁵² Others who
3 supported postal competition with private expresses invariably applauded its value
4 in making "express companies come to a just price in sending articles."⁵³ As
5 passage of parcel post in some form appeared inevitable by late 1911, even the
6 express companies grudgingly endorsed the idea of public-private competition to
7 head off government absorption of their business.⁵⁴

8 Years of investigations and exposes had by 1911 destroyed railroads'
9 and expresses' public credibility in fighting parcel post. Fearing a public backlash,
10 the express companies remained in the background throughout the congressional
11 debates. Much more persuasive were the forecasts of small-town businesses and
12 allied interests that parcel post would divert patronage to mail-order merchandisers,
13 undermining the economic and social foundation of their communities. Small-town
14 merchants and their suppliers lobbied directly and through their trade associations,
15 which in turn pooled resources in the 300-member American League of
16 Associations (ALA). One line of attack was to cast doubts on the financial
17 viability of parcel post.⁵⁵ The ALA and allied groups, however, quickly moved
18 beyond the practicality of parcel post to matters of principle. Letters, petitions,
19 pamphlets, articles, and testimony warned against government intrusions into the
20 realm of private enterprise, either as a monopolist or as a competitor.⁵⁶

21 Long before the last round of hearings concluded in April 1912, public
22 opinion had crystallized in favor of parcel post. The Republican, Democratic, and
23 Progressive parties, along with their presidential nominees, all endorsed parcel

24 ⁵²Jonathan Bourne, Jr., *Parcels Post*: Report Submitted to the Subcommittee on Parcel
25 Post of the Senate Committee on Post Offices and Post Roads (Washington, D.C.: Government
26 Printing Office, 1912), 12. See also *1912 Senate Hearings* 235 (remarks of Sen. Bourne).

27 ⁵³R. W. Lynn, Agency, Iowa, to Sen. William B. Allison, Dec. 30, 1908, Senate Records,
28 file S60A-J110.

29 ⁵⁴Bureau of Railway Economics, *A Study of the Proposed Parcel Post as Affecting the*
30 *Railways* (Washington, D.C.: the Bureau, 1912).

31 ⁵⁵For details on the ALA, see *1912 Senate Hearings* 541-88 (testimony of E. B. Moon of
32 the ALA); on small-town merchants' opposition, see Kielbowicz, "Rural Ambivalence."

33 ⁵⁶*42 Cong. Rec.* 2846 (1908) (remarks of Rep. Smith of Calif.); *1912 Senate Hearings*
34 541-88, esp. 543, 563, 572 (testimony of E. B. Moon of the ALA).

1 post; the Socialists subsumed it among more radical proposals.⁵⁷ Most of the floor
2 debate dealt with parliamentary maneuvers, the merits of appropriating express
3 companies versus competing with them, and the fine points of parcel post zones
4 and rates. The parcel post legislation was attached as a rider to the post office
5 appropriation bill, passed, and signed by President Taft on August 24, 1912.⁵⁸

6 As passed, the law raised the fourth-class weight limit to 11 pounds,
7 the International Postal Union's standard, and charged postage graduated according
8 to distance. With only an 11-pound limit, and relatively high rates for the near
9 zones, the original parcel post posed only modest competition in areas served by
10 private carriers. Parcel post, though, reached twenty million people outside
11 express companies' markets and early tests comparing the two showed that the
12 government service was generally faster.⁵⁹ A unique feature of the parcel post law
13 granted the postmaster general considerable latitude to modify rates and zones. In
14 contrast, Congress had always set postage and the basic terms for every other mail
15 class. Agrarian groups had insisted upon a provision empowering the postmaster
16 general to change rates and weight limits, subject to the consent of the ICC.⁶⁰ The
17 law provided that rate and weight adjustments could be made "in order to promote
18 the service to the public or to insure the receipt of revenue from such service
19 adequate to pay the cost thereof."⁶¹ Requiring ICC consent was intended to keep
20 rates and service roughly in line with the private carriers the commission regulated.

21 ⁵⁷"A Parcel Post An Assured Fact," *Mail Order Journal* 15 (Apr. 1912): 25; "The Fight
22 Against the Parcels Post," *ibid.*, 15 (Dec. 1911): 22. For platform statements, see Arthur M.
23 Schlesinger, Jr., ed., *History of U.S. Political Parties* (New York: Chelsea House, 1973), 3:1845,
24 2488, 2594.

25 ⁵⁸Key congressional players and their philosophies are discussed in Anna M. Moon and Joe
26 Phillips, *John A. Moon: Father of the Parcel Post* (N.p., 1941), chap. 11; Albert H. Pike,
27 "Jonathan Bourne, Jr., Progressive" (Ph.D. dissertation, Univ. of Oregon, 1957), 1-3, 190-96,
28 248-49. House discussion of parcel post can be found at 48 *Cong. Rec.*, 62d Cong., 2d sess.,
29 5641-52, 11749-61, and appendix 107-109, 137-57, 156-57, 194-95, 254-55, 583-86, 669, 742-45,
30 918-20 (1912). Senate deliberations are at *Cong. Rec.*, 9448-65, 11673-77, and appendix 128-30,
31 254-55, 669-75 (1912).

32 ⁵⁹Fuller, *RFD*, 230; 1912 *Annual Report* 7-8.

33 ⁶⁰Statement of Provisions Essential to a System of Parcel Post Adequate to Meet the
34 Service Requirements of Producers and Consumers by the Farmers National Committee on Postal
35 Reform, June 1, 1912, Senate Records, file S62A-F20.

36 ⁶¹37 Stat. 558.

1 Almost immediately the new postmaster general exercised the
2 discretion granted by law. Woodrow Wilson appointed as postmaster general
3 Albert S. Burleson, a member of Congress from Texas who, though conservative
4 on social issues, subscribed to most of the old Populist agenda on government
5 enterprise. Within a year, Burleson had cut rates for all zones, most sharply for
6 the first two, and dramatically increased the weight limit. He also admitted books
7 over four pounds to the mail, long a goal of the nation's librarians that Congress
8 had repeatedly ignored.⁶²

9 The farm-to-table food service that parcel post's proponents had touted
10 never came close to realizing their expectations. Shortly after parcel post started in
11 1913, the agriculture and post office departments began promoting food sales by
12 mail. A modest farm-to-city food service, involving mainly eggs, butter, cheese,
13 and fruits, did grow out of parcel post but withered after World War I, except in
14 the citrus industry.⁶³ But within a few years the catalogue houses were the
15 dominant parcel post mailers.⁶⁴

16 ⁶²Adrian N. Anderson, "Albert Sidney Burleson: A Southern Politician in the Progressive
17 Era" (Ph.D. diss., Texas Tech, 1967), 166-77; Jane Kennedy, "United States Postal Rates, 1845-
18 1951" (Ph.D. dissertation, Columbia Univ., 1955), 75-78.

19 ⁶³See, e.g., Lewis B. Flohr, "Shipping Eggs by Parcel Post," *U.S. Department of*
20 *Agriculture Farmers' Bulletin No. 594* (Washington, D.C., 1914); Grover C. Tarman and Lawrence
21 Leer, *The Producer's Marketing Guide: The Connecting Link Between Producer and Consumer*
22 (New Paris, Ind., 1915); Hamilton H. West, *Parcel Post Profit from Farm Produce* (Rockford, Ill.,
23 1915); St. Louis Post Office, *United States Parcel Post Produce List: The Farm to Table Plan* (St.
24 Louis, 1917).

25 ⁶⁴Sen. Doc. No. 944, 63 Cong., 3d sess. 5-7 (1915).

1 subclasses sought by mailers. In contrast, the value of mail--to senders, recipients
2 and, ultimately, society--could not be measured so easily. This criterion remained
3 the most elusive in setting rates and adjusting classifications.

4 The creation of new subclasses after 1920 reflected implicit shifts in
5 policy that were ratified in 1958. Foremost, the post office recognized the
6 importance of supporting business enterprise, as demonstrated by the creation of
7 categories for bulk third-class mail, business replies, controlled-circulation
8 publications, and catalogue shipments. At the same time, Congress continued the
9 basic commitment to the diffusion of socially and culturally useful information by
10 the creation of subclasses for library materials, books, and the third-class mail of
11 nonprofit organizations. Also, Congress created a category for premium service--
12 airmail.

13 First Class

14 The basic definition of first-class mail remained unchanged through the
15 early and mid-1900s: "letters, postal cards, and all matter wholly or partly in
16 writing. . . . [And] matter sealed or otherwise closed against inspection. . . ." ² A
17 slight rate distinction remained between nonlocal letters and drop letters at offices
18 without carrier service. ³ Other than the perennial complaints about high letter
19 rates, few controversies swirled around first-class mail. The most significant
20 developments in classification occurred as business mailers and postal
21 administrators worked quietly to meet each other's needs. One result was the
22 authorization of business reply cards and letters in 1928. The advent of airmail
23 also offered postal patrons a premium service.

24 *Permit and Business Reply Mail.* Early in the twentieth century,
25 businesses began organizing to make better use of the mails. Countless firms used
26 the first class for correspondence, billing, and direct-mail advertising. The

27 ²1924 *Postal Laws & Regulations* 155 [hereafter cited as *PL&R*]; 1948 *PL&R* 187-88.

28 ³Drop letters were deposited at the office of delivery; hence, they involved no
29 transportation between offices. There were two categories of drop letters--those left at carrier
30 offices (hence delivered by carrier) and those at noncarrier offices (hence the addressee called for
31 them). Beginning in the late 1800s, drop letters at *carrier* offices generally paid the same rate as
32 nonlocal letters; from 1933 until 1944, however, Congress granted a 1-cent discount from regular
33 rates on drop letters delivered by carrier. Drop letters left at *noncarrier* offices generally paid 1 or
34 2 cents less than the regular rate. U.S. Post Office Department, *United States Domestic Postage*
35 *Rates, 1789 to 1956* (Washington, D.C.: Government Printing Office, 1956), 22-23.

1 introduction of postal cards in 1873 and private post cards in 1898 provided new
2 vehicles for merchants sending advertisements to customers; the post office
3 generally cooperated in allowing the cards to be used for this purpose. The
4 National One-Cent Letter Postage Association, a coalition of retailers, chambers of
5 commerce and business leagues, emerged as the principal champion of cheaper
6 letter rates. The department discovered that working with businesses increased
7 revenue from first-class postage and produced efficiencies in handling mail.⁴

8 After World War I, businesses sought new postal services and
9 improvements in old ones; the department sought the cooperation of businesses to
10 hold down costs and to attract revenue-generating mail. Between 1917 and 1920,
11 the New York City Merchants' Association monitored the delivery time, locally
12 and nationally, of first-class business correspondence and third-class circular mail.
13 The association carried their complaints to the postmaster general and Congress.⁵
14 Formal cooperation between businesses and the post office spread: the U.S.
15 Chamber of Commerce appointed a seven-person committee to work with the
16 department to improve service and asked its affiliates in fifty cities to consult with
17 local postmasters.⁶ The post office also exhibited interest in marketing postal
18 services. In 1919, for instance, the department sent letters to more than 50,000
19 business organizations soliciting "suggestions and criticisms."⁷

20 To make first-class mail more attractive to businesses, the post office in
21 1920 pressed Congress to extend the permit privilege. Since 1904, third- and
22 fourth-class mail users could deposit without stamps 2,000 or more identical pieces
23 of mail.⁸ Printing the word "paid" on each piece rather than affixing stamps
24 simplified mail preparation for the businesses. Moreover, the department told
25 Congress in 1920 that permit mail brought in remunerative letter mail while cutting

26 ⁴*One-Cent Drop-Letter Postage: Hearings Before the Senate Committee on Post Offices*
27 *and Post Roads*, 64th Cong., 2d sess. (1917).

28 ⁵See, e.g., "Business Men and Banks Complain of Post Office," *Greater New York*, Dec.
29 24, 1917, pp. 11-14; "How the Postoffice Delays Business Men's Mail," *ibid.*, Mar. 3, 1919, p. 4;
30 Merchants' Association of New York, *Inquiry Concerning Mail Delays: Report by the Committee*
31 *on Postal Affairs* (New York: The Association, 1918).

32 ⁶"Businesses Men to Improve Mail," *Fourth Estate*, Apr. 19, 1919, p. 4.

33 ⁷John C. Koons, "The Co-Operation the Post Office Department Wants from Business,"
34 *Printers' Ink*, Dec. 9, 1920, p. 118; Koons was first assistant postmaster general.

35 ⁸Act of Apr. 28, 1904, 33 Stat. 440. For regulations implementing this law, see 1912
36 *Postal Laws & Regulations* 245-47 [hereafter cited as *PL&R*].

1 costs; for example, the post office printed fewer stamps.⁹ The postmaster of
 2 Washington, D.C., also noted that it saved labor costs by eliminating the need to
 3 face and cancel each piece. "Another thing is this: I think we would be able in
 4 Washington, if this is extended to first-class matter, to get the gas company, and
 5 the electric-light company to use this mail. They deliver their bills by hand. We
 6 would get more business."¹⁰ Congress agreed.¹¹

7 In 1928, the post office proposed another change to accommodate
 8 businesses and help itself. Business reply cards and envelopes would facilitate
 9 companies' exchanges with customers, generating revenue for the department, a
 10 post office witness told Congress.¹² The House post office committee
 11 enthusiastically endorsed the business reply proposal and another boon for
 12 business--a bulk third-class rate (discussed below).¹³ Apart from championing
 13 such legislative changes, the post office worked directly with businesses to revise
 14 and better administer "the regulations governing the various classes of mail,
 15 conditions of acceptance, methods of handling, and other allied subjects." At
 16 conferences, the post office and mailers searched for ways to reduce costs and
 17 expedite delivery.¹⁴

18 *Airmail.* After 1918, mailers had a truly expedited service--airmail.
 19 Although most closely associated with letters, airmail transportation in fact cut
 20 across the mail classes. In 1918, Congress gave the postmaster general the
 21 discretion to transport mail by airplane at a maximum rate of 24 cents per ounce.¹⁵
 22 For the next ten years, the postmaster general adjusted rates and terms of service in
 23 accordance with the rapidly changing conditions of transportation by air. Rates
 24 stabilized after 1928. In 1948 Congress established air parcel post by extending

25 ⁹*Permit Privilege for First-Class Mail: Hearings Before Subcommittee No. 6 of the House*
 26 *Committee on the Post Office and Post Roads, 66th Cong., 2d sess. 4 (1920).*

27 ¹⁰*Ibid.*, 12 (testimony of Merritt O. Chance).

28 ¹¹Act of Apr. 24, 1920, 41 Stat. 583.

29 ¹²*Regulating Postal Rates: Hearings on H.R. 9296 Before the House Committee on the*
 30 *Post Office and Post Roads, 70th Cong., 1st sess. 10 (1928).*

31 ¹³H.R. Rep. No. 1006, 70th Cong., 1st sess. 5-6 (1928).

32 ¹⁴U.S. Post Office Department, *Conference of Mail Users on Postal Regulations*
 33 (Washington, D.C.: Government Printing Office, 1930), 1. This 1929 conference was probably the
 34 first such structured meeting between the department and participants drawn from across the nation.

35 ¹⁵Act of May 10, 1918, 40 Stat. 548.

1 the zone system to pieces over 8 ounces.¹⁶ And, effective the next year, the public
2 could send airmail post and postal cards at the flat rate of 4 cents.¹⁷

3 Second Class

4 Although second-class mail was perennially embroiled in controversies
5 over costs and rates, Congress made relatively minor classification changes in this
6 category between 1920 and 1960. It established a per piece charge in lieu of
7 pound rates for some publications, it enlarged the list of organizations admitted to
8 the nonprofit subclass, and it created special rates for classroom publications.

9 *Regular-Rate and In-County Second Class.* Advances in postal
10 delivery required adjustments in the in-county subclass, yet the basic subsidy
11 remained intact. Free in-county delivery had originally applied just to publications
12 in towns without carrier service. With the advent of village and city carrier
13 services and rural free delivery, some in-county periodicals were assessed postage.
14 Rates established in 1885, however, remained basically the same until 1962.¹⁸
15 Even when regular second-class rates faced greater scrutiny, few recommended
16 abolishing or adjusting the in-county subclass. This reflected, first, the belief that
17 the department did not lose much revenue for the short hauls involved and, second,
18 the solicitude Congress showed rural postal services in general and country
19 newspapers in particular.

20 In 1946, Charles A. Heiss, special consultant to the post office,
21 prepared a report on the second-class mails that included an incisive study of the
22 in-county subclass.¹⁹ Heiss concluded that several improvements in
23 communication--telephones, automobiles, radio, and more--had substantially
24 reduced rural isolation since the creation of a special category for local circulation
25 in the mid-1800s. The "time is ripe for revision in line with present conditions and

26 ¹⁶Act of June 29, 1948, 62 Stat. 1097.

27 ¹⁷Act of July 3, 1948, 62 Stat. 1260-67.

28 ¹⁸For the in-county rate structure, see U.S. Post Office Department, *United States*
29 *Domestic Postage Rates, 1789 to 1956* (Washington, D.C.: Government Printing Office, 1956), 32.
30 Beginning with the 1917 rate hike--the first since 1885--Congress exempted in-county delivery from
31 general postage increases. Second-class rate adjustments in 1928, 1932, 1934, 1952, 1953, 1954,
32 and 1955 did not materially affect papers paying for in-county carrier delivery.

33 ¹⁹Charles A. Heiss, *Report on Second-Class Mail* (Washington, D.C.: Government
34 Printing Office, 1946), 29-35.

1 requirements," Heiss observed.²⁰ But the only noteworthy change in the subclass
 2 was the imposition of a minimum per-piece charge in 1951 that applied to both in-
 3 county and regular-rate second class.²¹ Requiring a minimal postage payment per
 4 copy reflected the cost characteristics discovered through the ascertainment
 5 studies--that the post office incurred substantial handling costs in processing small
 6 second-class publications beyond that recovered through a pound rate.²²

7 Even as Congress raised rates on regular second-class mail in the
 8 1950s, it took pains to exempt in county. When critics observed that protecting
 9 locally delivered publications had become an anachronism in an age of modern
 10 communciations, lawmakers and small-town editors rebuffed the argument with
 11 two points. First, they noted, the costs of production for rural newspapers were
 12 rising and profits falling, especially in relation to those of metropolitan dailies and
 13 magazines.²³ For instance, small newspapers paid more for newsprint and
 14 syndicated features than larger, often chain-owned, newspapers.²⁴ Second, the
 15 pervasiveness of national media, especially television, heightened the need for
 16 government to protect small, rural voices in the national marketplace of ideas.²⁵

17 *Nonprofit Second Class.* Between 1920 and 1960 Congress only
 18 slightly modified the subclass for publications issued by nonprofit organizations.
 19 In 1951, when it created a similar category for third-class mailings, lawmakers

20 ²⁰Heiss, *Report on Second-Class Mail*, 51.

21 ²¹The per-piece charge did not apply to the relatively few periodicals that still qualified for
 22 *free* in-county delivery--those in towns without any carrier service.

23 ²²The Act of Oct. 30, 1951, 65 Stat. 672-73, set a one-eighth-cent minimum for mailings
 24 both within and outside the county.

25 ²³House Committee on Post Office and Civil Service, *Postal Rate Revision: Hearings on*
 26 *H.R. 6052*, 83rd Cong., 1st sess. 2:501 (1953); Senate Committee on Post Office and Civil Service,
 27 *Adjustment of Postal Rates: Hearings on S. 1046, S. 1335, S. 1369*, 82d Cong., 1st sess. 457-67
 28 (1951).

29 ²⁴Special Senate Committee to Study Problems of American Small Business, *Survival of a*
 30 *Free, Competitive Press: The Small Newspaper, Democracy's Grass Roots*, 80th Cong., 1st sess. 51
 31 (committee print 1947).

32 ²⁵*Cong. Rec.*, 82d Cong., 1st sess. 11046, 11555 (1951); House Committee on Post Office
 33 and Civil Service, *Readjustment of Postal Rates*, 82d Cong., 1st sess. (1951); Senate Committee on
 34 Post Office and Civil Service, "Transcript of Executive Session Hearings on S. 1046, S. 1335, S.
 35 1369," 82d Cong., 1st sess. 57 (1951) (Congressional Information Service Unpublished Senate
 36 Hearings, 82 Poc-T.54).

1 added veterans organizations to the list of eligible mailers (see discussion of
2 nonprofit third class below).

3 The most enduring criticism and administrative headache involving the
4 special second-class rate arose from the quantity and nature of advertising carried
5 in some publications. The mailing privilege for nonprofit organizations was a
6 byproduct of legislation that, for the first time, assessed postage on most
7 periodicals partly by the quantity of advertising. Nonprofit periodicals, on the
8 other hand, continued to pay a flat rate regardless of their advertising content,
9 which gave them a competitive edge as advertising vehicles, some lawmakers
10 complained in the 1920s. Moreover, the publications made hefty profits paid as
11 salaries to editors, the critics asserted.²⁶

12 The nonprofit rate, raised slightly in 1925, survived thirty-eight years
13 without change. Until 1951, classification problems were minimized in two ways:
14 construing eligibility broadly obviated disagreements with mailers and centralizing
15 decisionmaking in Washington, D.C., assured more consistency than would have
16 been possible had it been left to thousands of local postmasters. Regulations
17 offered no guidance as to eligibility beyond that given in the statute.²⁷ Proposals
18 to raise the special rate in the 1950s revived and publicized long-held concerns
19 about this subclass. In 1958, for example, Senator A.S. (Mike) Monroney decried
20 the expansive interpretation of eligibility. He noted that almost all groups qualified
21 for the special second-class rate "except the Rotary Clubs, the United States
22 Chamber of Commerce, and the National Association of Manufacturers, which
23 have been excluded because they were definitely mentioned in a House report."
24 He singled out the publications of such wealthy organizations as the American Bar
25 Association, the American Medical Association and the teamsters union as
26 undeserving of the subsidized rate.²⁸

27 *Classroom Publications.* Congress quietly created a new subclass for
28 classroom publications in 1951. In approving a three-step rate increase on regular
29 rate publications, lawmakers exempted both the second-class mail of nonprofit
30 organizations and "any religious, educational, or scientific publication designed

31 ²⁶*Cong. Rec.*, 68th Cong., 2d sess. 2502-08, 3664-65; *Congressional Digest*, February
32 1925, pp. 153-79.

33 ²⁷Richard B. Kielbowicz and Linda Lawson, "Reduced-Rate Postage for Nonprofit
34 Organizations: A Policy History, Critique, and Proposal," *Harvard Journal of Law & Public*
35 *Policy*, 11 (Spring 1988): 383.

36 ²⁸*Cong. Rec.*, 85th Cong., 2d sess. 3114-16, quote at 3115 (1958).

1 specifically for use in school classrooms or in religious instruction classes."²⁹
2 Classroom publications did not have to qualify as nonprofit.³⁰

3 *Controlled-Circulation Publications.* Under the 1879 Mail
4 Classification Act, controlled-circulation publications originally fit in the third
5 class. Although the second class accommodated publications devoted to a
6 particular industry, the law also stipulated that they must have paid subscribers and
7 not be available for free or for a nominal subscription. In the early 1900s, as
8 discussed in part 5, the post office wielded the paid subscriber rule, tests of
9 nominal subscription rates, and other regulations to keep many trade publications
10 out of the second class. Those that required readers to signify their interest by
11 remitting a real payment could usually qualify, but those that subsisted almost
12 entirely on advertising revenue were considered third-class mail.

13 In 1934, however, Congress shifted larger controlled-circulation
14 publications to the fourth class. In part, the move simply continued the general
15 policy of treating mail over 8 ounces as fourth-class matter. But in reclassifying
16 free-circulation publications, Congress accorded them a more favorable status than
17 regular parcel post. Where parcel post paid zone rates, the controlled-circulation
18 publications paid 1 cent for each 2 ounces regardless of distance, the same as the
19 lowest third-class rate. The conditions for admission excluded strictly advertising
20 matter: free-circulation publications had to appear regularly at least twelve times a
21 year and devote a minimum of 25 percent of their pages to text or reading
22 matter.³¹ The regulations also required that the publications be "separated to
23 States, cities, and routes, in the same general manner as prescribed for second-
24 class matter. . . ."³²

25 In fact, Congress reclassified controlled-circulation publications as
26 second-class matter in 1948.³³ The reclassification allowed regularly issued
27 publications circulating free or mainly free to pay a pound rate or minimum
28 postage per piece. The change also dropped the 8-ounce minimum weight limit,

29 ²⁹Act of Oct. 30, 1951, 65 Stat. 672.

30 ³⁰For testimony about the need for this subclass, see *Postal Rate Revision, Part 1:*
31 *Hearings Before the House Committee on Post Office and Civil Service*, 82d Cong., 1st sess. 336
32 (1951).

33 ³¹Act of June 5, 1934, 48 Stat. 880.

34 ³²1940 *PL&R* 292.

35 ³³Act of July 3, 1948, 80 Stat. 1262.

1 which admitted smaller controlled-circulation publications to this subclass. Some
2 free newspapers or shoppers qualified if they carried enough editorial matter.³⁴
3 Congress added one new restriction that reflected the policy underlying this
4 subclass: the publication could not be "conducted as an auxiliary to and essentially
5 for the advancement of the main business or calling" of its owners.³⁵ Thus, house
6 organs would not qualify. Trade publications, even if given away, had to contain
7 information that served their readers' interests and did more than advance the
8 business concerns of the publishers.

9 Third Class

10 In 1925, Congress redrew the line separating third and fourth class
11 mail. When designed in 1879, third class embraced printed matter excluded from
12 the second class. The adoption of parcel post, however, introduced "flagrant
13 inconsistencies in the rates for third and fourth class matter over 8 ounces," the
14 House post office committee stated.³⁶ With only slight changes, the same material
15 paid widely varying third- or fourth-class rates. "A 4-pound package of printed
16 matter is third class and the charge is 32 cents," a congressman told his colleagues.
17 "By adding an ounce of ballast it can be sent [as parcel post] to the first and second
18 zone for 9 cents."³⁷ Furthermore, "Postal employees have considerable difficulty
19 in discriminating between third and fourth class matter." Books in 1914 had been
20 classified as parcel post regardless of weight, "but in many instances it is very
21 difficult to determine at what point the change takes place from a pamphlet [in
22 third class] to a book."³⁸

23 Congress originally considered consolidating the two classes. Instead,
24 it adopted weight as the dividing line: everything under 8 ounces became third
25 class mail; everything heavier, fourth. The nature of the mail no longer
26 complicated this classification decision. Lawmakers also established a distinction
27 within third class. They retained the existing rate, 1 cent per 2 ounces, on books,

28 ³⁴H.R. Rep. No. 2358, 80th Cong., 2d sess. 5 (1948); see generally George Brandsberg,
29 *The Free Papers* (Ames, Iowa: Wordsmith Books, 1969).

30 ³⁵1948 PL&R 227.

31 ³⁶H.R. Rep. No. 1384, 68th Cong., 2d sess. 6 (1925).

32 ³⁷*Cong. Rec.*, 68th Cong., 2d sess. 3402 (1925).

33 ³⁸*Ibid.*

1 catalogues, seeds and cuttings in the third class, but raised the rate by half a cent
2 on everything else--notably circulars.³⁹

3 This seemingly small rate adjustment ignited a campaign that quickly
4 culminated in the creation of a category for bulk third-class mailings. Businesses
5 found it so attractive that the resulting volume of direct-mail advertising fueled the
6 controversy over so-called junk mail, especially when the post office in 1953
7 experimented with a special subclass to help local merchants. Third-class bulk
8 mail also appealed to nonprofit organizations that sought, and won, a special
9 subclass in 1951.

10 *Advent of Bulk Third-Class.* The half-cent rate hike on circulars
11 galvanized business mailers as never before. They felt particularly aggrieved
12 because this round of rate increases was ostensibly predicated on the 1923-24 cost
13 ascertainment report. Although the report had found the widest gap between
14 second-class costs and revenues, the bill put forth by Congress asked for
15 proportionally greater increases in first and third.

16 The Direct Mail Advertising Association (DMAA) (now the Direct
17 Marketing Association) complained about the differential treatment of advertising
18 in the second and third classes: "Is the Government being asked not only to create
19 a subsidy through rates, but to express a preference for one advertising medium
20 over another as well?"⁴⁰ More than 200,000 merchants and retailers extensively
21 used the third class, according to DMAA. Its 1,100 members mailed "advertising
22 matter such as circulars, letters, broadside booklets, and such literature as is used
23 by practically every type of business."⁴¹

24 DMAA's postal committee took the lead in organizing allied interests
25 into a new group, the National Council of Business Mail Users (NCBMU)
26 representing major patrons of first-, third-, and fourth-class mail.⁴² The new
27 alliance scored a dramatic victory in 1928--the creation of a bulk mailing category

28 ³⁹Act of Feb. 28, 1925, 43 Stat. 1067.

29 ⁴⁰*Postal Rates: Hearings on S. 3674 Before the Subcommittee of the Senate Committee on*
30 *Post Offices and Post Roads*, 68th Cong., 2d sess. 286-300, quote at 289 (1924) (testimony of
31 Richard H. Lee).

32 ⁴¹*Ibid.*, 300-06, quote at 300 (testimony of Charles W. Collier for DMAA).

33 ⁴²"Mail Users Organize for Battle," *The Mailbag* 9 (May 1925): 247-49; "Mail Users vs.
34 New Postal Rates." *ibid.*, 9 (June 1925): 321-24; "Postal Rate Hearings Begun," *ibid.*, 9 (Aug.
35 1925): 435-36.

1 in third class. The House post office committee that crafted this provision noted
2 that third-class mail had dropped by 400 million pieces after the 1925 rate hike.
3 The U. S. Chamber of Commerce reported that the 1925 rate increase had driven
4 some circulars out of the mail altogether and others had shifted to the first class to
5 take advantage of the narrow rate difference, especially considering the superior
6 service accorded first class.⁴³

7 NCBMU explained to Congress how advertising circulars served
8 different markets: in the countryside, direct mail might be the only way to reach
9 potential customers; in cities, stores serving a single neighborhood found circulars
10 more cost effective than buying ads in a metropolitan daily; and, nationally,
11 manufacturers used direct mail to reach a particular class of clients.⁴⁴ Many
12 lawmakers echoed these remarks as they shaped the 1928 law. Simply rolling back
13 rates, the House post office committee concluded, would prove less useful to
14 businesses than a "concession to users of third-class mail of bulk pound rates on
15 separately addressed pieces in quantities of not less than 20 pounds or of not less
16 than 200 pieces. . . ."⁴⁵ Publishers had availed themselves of a bulk rate for fifty
17 years. As one representative predicted during the floor debate, retailers would
18 discover that Congress "had given them great advantages in this measure."⁴⁶

19 Congress initially paid only passing attention to two of the defining
20 characteristics of bulk third class--the pre-mailing preparation by senders and its
21 deferred status. One lawmaker observed that bulk third-class "is really fill-in mail
22 and should be so considered in cost-keeping." Third-class, he explained, was
23 processed only after clerks finished with other mail and was not entitled to services
24 accorded higher cost mail.⁴⁷ Of greater concern to mailers were the post office's
25 preparation requirements. Regulations prescribed that mail be separated by state

26 ⁴³*Postal Rates: Hearings Before the Special Joint Subcommittee on Postal Rates*, 69th
27 Cong., 1st sess. 40-42 (1926) (testimony of Lucius Teter, chairman of the postal service committee,
28 U.S. Chamber of Commerce).

29 ⁴⁴*Regulating Postal Rates: Hearings on H.R. 9296 Before the House Committee on the*
30 *Post Office and Post Roads*, 70th Cong., 1st sess. 147-49 (1928) (testimony of Richard H. Lee,
31 National Council of Business Mail Users). For extensive testimony about the value of all classes of
32 mail, particularly third, see *Postal Rates: Hearings Before the Special Joint Subcommittee on Postal*
33 *Rates* (1926). The indexed hearing record, in twenty-seven parts, runs about 1,700 pages.

34 ⁴⁵H.R. Rep. No. 1006, 70th Cong., 1st sess. 10 (1928).

35 ⁴⁶*Cong. Rec.*, 70th Cong., 1st sess. 5787 (1928) (remarks of Rep. Clyde Kelly).

36 ⁴⁷*Ibid.* 5790 (1928) (remarks of Rep. Blanton).

1 and town where there were sufficient pieces. Small mailers complained that the
2 time and labor for such sorting exceeded the savings realized from using the bulk
3 rate. Post office savings from deferred service and the mailers' extensive
4 preparation had implications for cost accounting and ratemaking, the NCBMU
5 emphasized. "It should be borne in mind that this is an expense which is in the
6 nature of a rate imposed upon mail users but for which the mail user gets no credit
7 when it comes to the question of a profit or a loss to the department."⁴⁸

8 *The Patron Mail Experiment and Origins of the Junk Mail Controversy.*
9 Questions about the value of mail--to the sender, recipient, and society--arise most
10 frequently and vigorously in connection with so-called junk mail. Before the
11 1950s, *public* attacks on the value of third-class mail were rare.⁴⁹ A 1917
12 magazine editorial, "A Plague of Circulars," however, anticipated many of the
13 later arguments against junk mail:

14 [A] pestiferous circular, weighing quite as much [as a letter], is
15 carried through the mails for a cent. . . . More than ninety per
16 cent of the mail matter passed as third class is sheer waste and
17 promptly goes, unopened, unread and unconsidered, into the
18 wastebasket. . . . To contend that the printed circular is a
19 necessary or even valuable adjunct to the business of the country
20 is absurd. . . . Mail solicitation of business by printed circular
21 has become an intolerable annoyance, to which all are subjected
22 whose addresses appear in the directory or the telephone books.⁵⁰

23 The junk mail controversy ignited when the post office experimented
24 with a new subclass in the early 1950s. When Arthur E. Summerfield became
25 postmaster general in 1952, he began searching for ways to cut the postal deficit.
26 Summerfield believed that allowing locally delivered third-class mail to use a

27 ⁴⁸U.S. Post Office Department, *Conference of Mail Users on Postal Regulations*
28 (Washington, D.C., 1920), 62-84, quote at 70 (remarks of Richard H. Lee for NCBMU).

29 ⁴⁹Although relations between second- and third-class mailers had never been warm, their
30 relatively esoteric disputes had been largely confined to the halls of Congress and the pages of trade
31 journals before the 1950s. For the most part, mailers testifying in legislative hearings concentrated
32 on promoting their own interests and rarely denigrated, at least directly, other classes. Direct
33 mailers, for instance, did not so much challenge the value of the second-class mail subsidy as they
34 pointed out how increasing third-class rates put them at a competitive disadvantage in competing
35 with newspapers to deliver similar kinds of advertising. Mailers in each class also disputed the
36 findings of the cost ascertainment reports and argued that their mail paid its way.

37 ⁵⁰"A Plague of Circulars," *The Bellman*, 23 (Nov. 10, 1917): 511.

1 simplified address system would stimulate mailings and would reduce the
2 department's sorting costs. Under the experiment launched August 21, 1953,
3 advertisers simply delivered to their local post office enough mail bundled for each
4 carrier's route covering the targeted areas. Patron mail, as it was known, omitted
5 names and addresses. Eliminating the costly task of maintaining and updating
6 mailing lists proved to be a boon for small businesses. When a writer for the
7 direct-mail trade magazine explained patron mail to some retailers, "They fell for it
8 like a ton of bricks; admitted their advertising had slipped because they couldn't
9 keep up their mailing list and newspapers were not giving them the concentrated
10 coverage they wanted." For its part, the post office benefited by eliminating
11 several costly steps in sorting. Carriers simply left one of the identical pieces at
12 each address.⁵¹

13 Simplified address systems had seen limited and noncontroversial use
14 since 1924. Originally they had been limited to post offices without village or
15 carrier service, about 32 percent of the population. The advent of patron mail in
16 1953 allowed advertisers to reach the remaining 68 percent using only a simplified
17 address.⁵²

18 Some newspapers saw patron mail as a threat to their local retail
19 advertising. To scuttle the experiment, newspapers raised several questions about
20 the nature and value of third-class mail, wielding the term "junk mail" regularly
21 for the first time. First, critics claimed that ad circulars unduly burdened postal
22 carriers; however, federal law limited carriers' bags to a maximum of 35 pounds.
23 Second, some asserted that patron mail would delay letter deliveries even though
24 postal regulations gave first class priority in processing. Third, others charged that
25 the postage direct mail paid was too low, especially in relation to letter rates; in
26 response, advertisers pointed to the pre-mailing preparation and deferred delivery
27 that reduced the post office's handling costs. Fourth, and most elusive, was
28 justifying the value--to senders, recipients, and the economy--of third-class

29 ⁵¹*The Postal Bulletin*, Aug. 25, 1953, pp. 1-2; "Ground Rules for New, Simplified
30 Addressing," *Reporter of Direct Mail Advertising*, Sept. 1953, pp. 70-72, quote at 70 [hereafter
31 cited as *RDMA*]; "Junk Mail to End," *Editor & Publisher*, Jan. 1, 1955, pp. 7-8.

32 ⁵²Before 1953, third-class mail could be addressed simply "Rural or Star-route box
33 holder," "Post Office box holder," or "Postal patron" in towns without carrier service. The post
34 office noted how many pieces were needed to cover a rural route or boxes and the mailers supplied
35 the correct number. No names or addresses were needed for this saturation mail, making it
36 attractive to advertisers striving to reach every potential customer in a community. 1924 *PL&R*
37 189, 225; 1948 *PL&R* 262-63; Virgil E. Harder, "A History of Direct Mail Advertising" (Ph.D.
38 dissertation, Univ. of Illinois, 1958), 156.

1 advertising mail. Was junk mail indeed junk? Critics of direct-mail advertising
2 dwelled on the fact that it was not requested by addressees.⁵³

3 In December 1954, Postmaster General Summerfield announced the
4 discontinuation of the patron mail experiment effective March 31, 1955. The
5 official statement explained the decision in only the most general terms: The
6 department had started patron mail "to reduce the huge losses incurred in handling
7 third-class mail and to provide additional service to the public. The results have
8 not satisfactorily met these objectives and the only possible solution is increased
9 postage rates which will be sought in the next session of the Congress." The
10 direct-mail industry instead blamed newspapers and magazines for pressuring the
11 post office to kill the experiment. Patron mail's opponents pronounced it a failure
12 even though no evaluation was ever conducted.⁵⁴

13 *Nonprofit Bulk Rates.* Congress created the nonprofit third-class rate
14 by indirection. In 1951, it exempted the bulk mailings of nonprofit organizations
15 from a rate increase applied to commercial mailers. At 1949 congressional
16 hearings, nonprofit groups dependent on direct-mail fund raising lobbied against
17 higher postage proposed for the third class. Philip G. Rettig, director of research
18 services for the National Society for Crippled Children and Adults, argued
19 persuasively that any rate hike would undercut the society's charitable services.
20 The society received almost all of its annual funds from responses to 25-million
21 appeal letters mailed as part of its Easter Seal campaign. Congress declined to act
22 in 1949 and 1950.⁵⁵

23 ⁵³Harder, "History of Direct Mail," 137, 153, 165; "Mur-Durr!!," *RDMA*, October 1954,
24 pp. 41-45; "The War Is On," *ibid.*, October 1954, pp. 17-20; "H.R. 2988," *RDMA*, February
25 1955, pp. 23-28; "Deluge of 'Junk Mail' Angers Taxpayers," *Pittsburgh Press*, Oct. 21, 1954, p.
26 21; *The New York Times*, Feb. 7, 1953, p. 56; *ibid.*, April 21, 1953, p. 26; *ibid.*, June 20, 1953,
27 p. 48; *ibid.*, Dec. 13, 1953, p. 26.

28 ⁵⁴Post Office Department press release no. 3242, Dec. 30, 1954 (U.S. Postal Service
29 Library, Washington, D.C.); *The New York Times*, Dec. 27, 1954, p. 28; *ibid.*, Dec. 31, 1954, p.
30 1. As the newspaper campaign against direct mail crested, the postmaster general was developing a
31 bill to raise postage rates; direct mailers suggested that scuttling the patron mail experiment may
32 have been a gambit to curry favor with publishers. "The December 30th Story," *RDMA*, Jan. 1955,
33 pp. 14-16; "H.R. 2988," *ibid.*, 23-28.

34 ⁵⁵*Adjustment of Postal Rates, Part 2: Hearings on S. 1103 Before a Subcommittee of the*
35 *Senate Committee on Post Office and Civil Service, 81st Cong., 1st sess. 236-39, 477-81, 801-2*
36 *(1949); Postal Rate Increases: Third- and Fourth-Class Mail and Special Services: Hearings on*
37 *H.R. 2945 Before the House Committee on Post Office and Civil Service, 81st Cong., 1st sess.*
38 *1051-52 (1949).*

1 The Senate committee warmly received the nonprofit groups in 1951.
2 After hearing testimony on behalf of twenty-one national voluntary health and
3 welfare organizations, the committee chairman said, "[W]e ought not to do
4 anything that would handicap any of the organizations you mentioned here."⁵⁶
5 Supporters argued, as they had before, that (1) nonprofit groups devoted any
6 income earned from mailings to their charitable activities; (2) the organizations
7 might have to curtail some of their services to cover higher postal costs while the
8 post office would gain little revenue; (3) these groups were helping people who
9 would otherwise be forced to depend on government aid; and (4) in the midst of
10 the Korean and Cold Wars, voluntary associations had added responsibilities and
11 expenses.⁵⁷ The conference committee adopted Senate language exempting certain
12 nonprofit organizations from increases in third-class rates; the prescribed types of
13 organizations were identical to those in the preferred second-class.⁵⁸

14 The creation of the nonprofit third-class category in 1951 opened the
15 floodgates, both in numbers of applicants and in administrative problems. Barely
16 eighteen months after Congress enacted the special third-class rate, the department
17 had processed 38,000 applications, denied 6,250, and was still receiving several
18 hundred a week.⁵⁹ Because Congress did not specify how to determine eligibility,
19 the post office simply adapted the procedure that it was using for the preferred
20 second-class rates.⁶⁰ Usually eligibility depended on two elements: the principal

21 ⁵⁶*Adjustment of Postal Rates: Hearings on S. 1046, 1335, 1369 Before the Senate*
22 *Committee on Post Office and Civil Service, 82d Cong., 1st sess. 150 (1951) (remarks of Sen.*
23 *Johnston).*

24 ⁵⁷See, e.g., *ibid.* 139-50 (testimony for 21 groups), 166-73 (Elks Clubs), 227-30 (Veterans
25 of Foreign Wars), 438-43 (religious magazines), 479-92 (Easter Seals).

26 ⁵⁸*Cong. Rec.*, 82d Cong., 1st sess. 13,585 (1951); Act of Oct. 30, 1951, 65 Stat. 673-74.

27 ⁵⁹*Authorizing Educational Films and Related Material to be Transmitted at Book Rates:*
28 *Hearings on S. 971 Before Senate Committee on Post Office and Civil Service, 83d Cong., 1st sess.*
29 *18 (1953).*

30 ⁶⁰An organization gave the local postmaster evidence that it was "not organized for profit
31 and none of its net income inures to the benefit of any private stockholder or individual." 16 *Fed.*
32 *Reg.* 13,092, 13,094 (1951); 26 *Fed. Reg.* 11,543, 11,547 (1961). The classification division in
33 Washington, D.C., then rendered a decision. The flood of applications for the special third-class
34 rate necessitated one procedural change. Beginning in 1957, local postmasters decided the
35 eligibility of applicants for the privileged third-class rate, with appeals going to the mail
36 classification division. 22 *Fed. Reg.* 4500 (1957). Later, to attain a more uniform application of
37 the law, initial determinations were shifted from local postmasters to the sixty-two postal service
38 centers. Appeal was still available to the Classification and Special Services Division. 27 *Fed. Reg.*
39 1417 (1962); 30 *Fed. Reg.* 2313-14 (1965).

1 activity of the organization and its nonprofit status.⁶¹

2 Initially, the department attached the greatest weight to whether an
3 organization fit one of the specified categories.⁶² But workable definitions proved
4 elusive. As Postmaster General Arthur E. Summerfield told the House post office
5 committee in 1953, "We probably need a little help from this committee in
6 definitions as to what is educational and what is religious."⁶³ Earlier he had
7 complained that "many nonprofit organizations not included in the groups
8 designated by the law have applied for exemption."⁶⁴ The educational category
9 proved most troubling, and the department developed as a test whether the
10 organization offered instruction through a student-teacher relationship.⁶⁵

11 The other dimension of eligibility focused on an applicant's nonprofit
12 status, which seemed more in tune with the legislative history of the 1951 law. In
13 1955, the post office solicitor recommended discarding the primary activities test--
14 that is, whether an organization was primarily educational, scientific or the like.
15 Instead, he advised that the post office defer to the Internal Revenue Service's
16 decisions dealing with an applicant's tax exempt status. He suggested that where
17 the statutory standards in . . . [the corresponding sections of the Internal Revenue
18 Code] are at least as high, or higher, than those contained in the postal statutes, the
19 department should follow the lead of the Internal Revenue Service. This would be
20 in all cases except those involving labor, agricultural, and veterans'
21 organizations.⁶⁶

22 ⁶¹Neal S. McCoy, "Report on Preferential Second and Third Class Postal Rates for
23 Nonprofit Organizations" (unpublished study submitted to the associate general counsel, Post Office
24 Department), 7 (available in U.S. Postal Service Library).

25 ⁶²Sen. Rep. No. 1086, 83d Cong., 2d sess. 182 (1954).

26 ⁶³*Postal Rate Revision; Statement and Testimony of the Postmaster General and Staff:*
27 *Hearings on H. R. 6052 Before the House Committee on Post Office and Civil Service, 83d Cong.,*
28 *1st sess. 1:29 (1953).*

29 ⁶⁴1952 *Post Office Department Annual Report* 62.

30 ⁶⁵Sen. Rep. No. 1086, 83d Cong., 2d sess. 189 (1954).

31 ⁶⁶Letter from Abe M. Goff to Edwin A. Riley, May 9, 1955, reprinted in McCoy, "Postal
32 Rates for Nonprofit Organizations," 137-40.

1 **Fourth Class**

2 Although Congress originally designed the fourth-class to accommodate
3 merchandise, it also became the home for much printed material. In 1928,
4 Congress created a special subclass for library materials, and ten years later
5 President Franklin D. Roosevelt established a category for books sent by mail.
6 Catalogues and controlled-circulation publications also were assigned to their own
7 categories in the fourth class.

8 *Library Rate.* The American Library Association (ALA) launched a
9 faltering movement to secure a special rate for library books in the 1880s. The
10 ALA and its allies argued that printed matter contained between hard covers
11 produced the same social benefits--and deserved the same rates--as newspapers and
12 magazines in the second class. In 1886 Congress considered an ALA-backed bill
13 admitting library books to the second class, but the timing proved impropitious.
14 Lawmakers and the post office were then working to remove books disguised as
15 periodicals (the so-called library series discussed earlier) from the second-class
16 mail. With policymakers laboring to restrict rather than expand this category, the
17 ALA's proposal died.⁶⁷

18 Thus, before 1914, libraries rarely used the mail; rather, they shipped
19 materials, usually interlibrary loans, by private express companies. The post office
20 became more hospitable to the circulation of library materials in 1914 when the
21 postmaster general shifted books to fourth class. Parcels of books weighing 8
22 ounces or less paid 1 cent per 2 ounces, the same as third-class rates. For heavier
23 parcels, rates were substantially less per ounce and assessed according to parcel-
24 post zones.⁶⁸ This reclassification stimulated various library extension services.
25 Most notably, state and city libraries began offering their resources to patrons,
26 especially readers in the countryside, through parcel post.⁶⁹

27 ⁶⁷W. A. Scott, *A Cheap Library Post* (Cambridge, Mass.: The People, 1901), 1; H.R.
28 Rep. No. 177, 50th Cong., 1st sess. (1888); *Cong. Rec.*, 50th Cong., 1st sess. 911-14 (1888). For
29 a more detailed history of the library rate, see Linda Lawson and Richard B. Kielbowicz, "Library
30 Materials in the Mail: A Policy History," *Library Quarterly*, 58 (January 1988): 29-51.

31 ⁶⁸Postmaster General Order No. 7705, Dec. 6, 1913; Order No. 7706, Dec. 6, 1913;
32 Order No. 7800, Jan. 31, 1914.

33 ⁶⁹Marion Humble, *Rural America Reads: A Study of Rural Library Service* (New York:
34 American Association for Adult Education, 1938); Laura Janzow, ed., *Library Without Walls* (New
35 York: H. W. Wilson Co., 1927).

1 The movement for a library subclass gained many adherents in the
2 early 1920s as Congress considered it along with other rate and service changes.
3 Representatives from the ALA, American Federation of Labor (AFL), National
4 Grange, Library of Congress, League of American Penwomen, National Education
5 Association (NEA), PTA, and the General Federation of Women's Clubs testified
6 about the advantages a low library rate would bring to rural America. Several
7 witnesses claimed that 40 to 50 million rural Americans had no library services.
8 "[I]t was an essential matter of good public policy that in this wide country, with
9 the far-separated populations, that all classes in all sections should have regular and
10 reliable access to the same sources of information," one witness said.⁷⁰

11 The breakthrough finally came in 1928 when the post office embraced
12 a special library rate as a small part of a plan to overhaul postage in all classes of
13 mail except the first. During House hearings, Joseph Stewart, speaking for the
14 department, recommended a library rate of 3 cents for the first pound and 2 cents
15 for each additional pound (reduced during deliberations to 1 cent); this rate would
16 apply up to 300 miles or within a state. He also indicated the department's
17 willingness to consider an even lower library rate on rural routes that did not
18 require the use of expensive railway transportation. The library rate, limited to use
19 by libraries and nonprofit organizations and their patrons, provoked no debate as it
20 wound through Congress. The library rate adopted in 1928 was among the
21 provisions Representative Clyde Kelly of Pennsylvania called "not in the least
22 controversial, since they have been approved without qualification by every party
23 concerned."⁷¹

24 In the early 1950s, Congress heeded librarians' pleas and extended the
25 library privilege to include films. Schools rarely purchased films, educators and
26 librarians explained, and relied on the mail to exchange them among one another.
27 And, the educators noted, a single film was typically viewed by--and benefited--
28 dozens of people. Both the Senate and House committees strongly supported the

29 ⁷⁰*Postage Rates on Books to and from Certain Public Libraries: Hearings on H.R. 7218*
30 *Before the House Committee on the Post Office and Post Roads. Subcommittee No. 6., 68th Cong.,*
31 *1st sess. 7 1924 (remarks of Alfred L. Spencer). For a more detailed discussion of the arguments*
32 *advanced in the 1920s, see Lawson and Kielbowicz, "Library Materials in the Mail," 33-35.*

33 ⁷¹*Regulating Postal Rates: Hearings on S. 808, 843, 1459, 2040 and H.R. 12030 Before*
34 *the Senate Committee on Post Office and Post Roads, 70th Cong., 1st sess. (1928); Cong. Rec.,*
35 *70th Cong., 1st sess. 5788 (1928) (remarks of Rep. Kelly). The law provided that books sent at the*
36 *library rate could contain no advertising other than incidental announcements of books. Libraries*
37 *and nonprofit organizations were eligible to use it along with readers returning books to such*
38 *organizations. Act of May 29, 1928, 45 Stat. 943.*

1 bill. Only the post office testified against it, estimating that the proposal would
2 reduce revenues more than the \$3 million one proponent had mentioned. But, as
3 South Carolina Senator Olin Johnston told the department's witness, "I am
4 convinced this is just as important as the subsidies in other classes." The 1953 law
5 also specified that schools, colleges, and universities could use the preferred rate.⁷²

6 *Book Rate.* The development of the library and book rates were
7 closely entwined. The National Association of Book Publishers (NABP) endorsed
8 the proposed library post in 1926 but went further, suggesting that Congress create
9 a fifth mail class for all books, not just those sent to and from libraries. The
10 NABP argued, first, that leaving books in the eight-zone parcel post discouraged
11 their long-distance transmission and injured booksellers and readers far from
12 publishing centers. Second, NABP asserted that books deserved the same
13 treatment--a flat rate--as the reading portion of newspapers and magazines. Other
14 appeals were directed to fiscally minded lawmakers and postal officials who
15 appreciated ease in administering the law.⁷³

16 With two measures before Congress in the mid-1920s--one for all
17 books, the other restricted to library books--key interests gravitated toward the
18 latter. The Post Office Department joined congressional opponents of a fifth class
19 for all books, testifying that it would hurt postal revenues. Even library groups,
20 notably the ALA, concentrated on the more politically attainable library rate while
21 quietly supporting the broader privilege. After congressional committees rejected a
22 mail class for books, its principal congressional backer tried one last compromise--
23 a two-level book rate, a higher one for commercial enterprises and a lower one for
24 nonprofit libraries. This version addressed complaints that commercial publishers,
25 not the reading public, would reap the benefits of a new postal subsidy. Congress
26 declined to create a general book post in 1928.⁷⁴

27 ⁷²*Authorizing Educational Films and Related Material to be Transmitted at Book Rates:*
28 *Hearings on S. 971 Before the Senate Committee on Post Office and Civil Service, 83rd Cong., 1st*
29 *sess. 17 (1953) (remarks of Sen. Johnston); Sen. Rep. No. 293, 83rd Cong., 1st sess. (1953); H.R.*
30 *Rep. No. 668, 83rd Cong., 1st sess. (1953); Act of July 20, 1953, 67 Stat. 184.*

31 ⁷³The NABP's testimony can be found in *Postal Rates: Hearings Before the Special Joint*
32 *Subcommittee on Postal Rates, 69th Cong., 1st sess. 398-412 (1926); Regulating Postal Rates:*
33 *Hearings Before the Senate Committee on Post Offices and Post Roads, 70th Cong., 1st sess. 17-*
34 *28, 46-53 (1928).*

35 ⁷⁴*Regulating Postal Rates, 17, 21-30, 53-54; Cong. Rec., 69th Cong., 2d sess. 3672-73*
36 *(1927); ibid., 70th Cong., 1st sess. 5788, 7607-09 (1928).*

1 Ten years later, proponents of a book post organized the National
2 Committee to Abolish Postal Discrimination Against Books and quickly obtained
3 their objective. In a strategic move, the committee retained attorney Morris L.
4 Ernst to present its case to his friend President Franklin D. Roosevelt. Ernst
5 recalled how he dramatized the discrimination against books by sending "the
6 President a package of books including the Bible and Shakespeare, and in another
7 package of equal weight I sent some of our most tawdry magazines. The book
8 package had cost 60 cents to mail from New York to Washington; the magazines
9 cost less than 15 cents." Ernst also sent Roosevelt a brief on postal laws and
10 economics and then visited the president. Acting under a Depression-era law, the
11 president reduced book postage to 1.5 cents a pound regardless of distance--the
12 same flat rate that applied to the reading portions of second-class mail.⁷⁵

13 Roosevelt renewed his proclamation into 1942 while the national book
14 committee kept pressing Congress to put the book post on a firmer statutory
15 footing. With a broad consensus on the desirability of a permanent book post,
16 much of the debate centered on technical adjustments in the legislation. During the
17 trial period, the post office had developed regulations to keep catalogues and book-
18 like items, such as checkbooks, annual corporate reports, calendars and the like,
19 from sneaking into the book post. The several House and Senate bills agreed that
20 books should pay a flat rate regardless of distance. The legislation enacting a
21 permanent book post excited little opposition on the floor of Congress and became
22 effective on July 1, 1942.⁷⁶

23 ⁷⁵Ernst, a New York lawyer, had long been active in liberal causes, especially those
24 dealing with freedom of expression. But the credential that best qualified him for his mission was
25 the entree he enjoyed at the White House. Ernst was a friend of Franklin Roosevelt; the two had
26 worked together when Roosevelt was governor of New York and Ernst remained a stalwart
27 champion of the president and his policies. Morris L. Ernst, *The Best Is Yet...* (New York: Harper
28 & Brothers, 1945), 124-25; Ernst, *The First Freedom* (New York: Macmillan, 1946), 258. An
29 obscure, ambiguous provision in a 1933 revenue law empowered the president to temporarily
30 modify postal rates by proclamation. Act of June 16, 1933, 48 Stat. 254. The president's order
31 lowering postage on books was signed Oct. 31, 1938 and can be found at 3 *Fed. Reg.* 2755. For
32 details of this episode, see Richard B. Kielbowicz, "Mere Merchandise or Vessels of Culture?:
33 Books in the Mail, 1792-1942," *Papers of the Bibliographical Society of America*, 82 (2d quarter,
34 1988): 194-99.

35 ⁷⁶*Book Rate Bill: Hearings Before the House Committee on the Post Office and Post*
36 *Roads*, 77th Cong., 1st sess. (1941); *To Provide for a Permanent Postage Rate on Books: Hearings*
37 *Before the Senate Committee on Post Offices and Post Roads*, 77th Cong., 1st sess. (1941); Sen.
38 Rep. No. 477, 77th Cong., 1st sess. (1941); H.R. Rep. No. 2261, 77th Cong., 2d sess. (1942);
39 H.R. Rep. No. 2239, 77th Cong., 2d sess. (1942); *Cong. Rec.*, 77th Cong., 2d sess. 5309-11,
40 5482-83, 5533 (1942). Act of June 30, 1942, 56 Stat. 462.

1 *Catalogues.* In 1939 the postmaster general created a subclass for
2 larger catalogues. Effective July 1, individually addressed catalogues consisting of
3 24 or more pages and weighing less than 10 pounds passed at about half the regular
4 zone rates.⁷⁷ The postmaster general was acting under his authority to adjust
5 fourth-class mail if he determined that rates or other conditions discouraged
6 beneficial uses of parcel post or that the service cost more than it earned. In
7 seeking the Interstate Commerce Commission's consent, the postmaster general
8 stated that increasing numbers of catalogues were being diverted from the mail to
9 private channels. The department predicted that the new subclass would recapture
10 this business, "lower the unit cost of handling, and increase the demand for other
11 post office services."⁷⁸ More catalogues in circulation, the post office believed,
12 would generate demand for first-class mail, money orders, and parcel post
13 shipments.⁷⁹

14 ⁷⁷Postmaster General Order No. 13098, June 29, 1939.

15 ⁷⁸"New Postal Rates for Catalogs," *Publishers' Weekly*, 136 (July 8, 1939): 106.

16 ⁷⁹1939 *Annual Report* 54.

1 *Assessing the Value of Mail.* The Senate post office committee
2 commissioned studies by the National Industrial Conference Board and the
3 National Education Association.² The former gathered evidence about the postal
4 system's relation to business operations and the economy; the latter focused on its
5 contributions to cultural life.

6 Assessing the post office's influence on the economy was "an excursion
7 into unexplored territory," the conference board noted, but it nonetheless
8 concluded that

9 The invaluable economic functions and utilities the postal service
10 performs in our present-day economic system--whether in
11 transporting goods and services, facilitating a variety of financial
12 transactions, distributing advertising and affording a major
13 channel for promotion of sales, general business communication
14 and correspondence, to say nothing of a variety of other
15 services--virtually constitute a truism. Their total impact is so
16 pervasive and fundamental in a complex modern economy as to
17 bar precise or comprehensive documentation or quantification.³

18 The board estimated that at least three-fourths of the post office's revenues came
19 from business activities, including advertising. The study treated equally the
20 advertising found in different subclasses--newspapers in regular second class, trade
21 magazines sent as regular second class or controlled circulation, and direct mail in
22 the third class.⁴

23 Working with nearly twenty organizations, the National Education
24 Association prepared a report that "define[d] and classifie[d] educational benefits
25 derived from the use of the mails." The study examined a spectrum of mailers that
26 contributed to the nation's education. The groupings loosely corresponded to mail
27 classes and subclasses: educational institutions, institutions promoting education,
28 commercial enterprises supplying educational materials, and commercial publishers
29 distributing printed material to the public. The study concluded that "*educational*
30 *benefits derived from the use of the mails consist primarily in the benefits to the*
31 *consumer or recipient of mail rather than to the producer or mailer.*" Therefore,

32 ²The Senate committee's report and those of the contributing groups can be found in Sen.
33 Rep. No. 1086, 83rd Cong., 2d sess. (1954).

34 ³Ibid., 47-48.

35 ⁴Ibid., 49, 53, 64.

1 even though commercial firms profited from the post office's distribution of their
2 products, such mail still deserved favorable consideration for its contribution to
3 "the general welfare."⁵ According to the advisory committee overseeing the
4 studies, the general welfare benefits justified "the low postal charges for the
5 editorial portion of periodicals and newspapers, books. . . [and] preferential rates
6 for matter mailed on a nonprofit basis. . . ."⁶

7 *The Postal Policy Act of 1958.* The Postal Policy Act of 1958 grew out
8 of the 1953-54 studies.⁷ It was certainly the most important congressional
9 statement on the postal system in decades and probably the most comprehensive to
10 that time.⁸ The 1958 law formally delineated the goals of the postal system. Most
11 strikingly, it elevated the postal system's economic contributions to a level roughly
12 equal to the mail's long-acknowledged cultural contributions. The act opened with
13 six congressional findings, and the first three, in a contrapuntal fashion, balanced
14 statements about the traditionally recognized social and cultural externalities of the

15 ⁵The National Education Association's report is in *ibid.*, 177-234, quotes at 224, 227
16 (emphasis in original).

17 ⁶*Ibid.*, 19, quoting the remarks of the advisory council to the Senate committee.

18 ⁷Key legislative documents that evolved into the Postal Policy Act include Sen. Rep. No.
19 1321, 85th Cong., 2d sess. (1958); and the conference report, H.R. Rep. No. 1760, 85th Cong., 2d
20 sess. (1958).

21 ⁸Congress had never formally outlined the postal system's goals, though some clues about
22 its presumed objectives could be inferred from specific policies. The post office had originally been
23 lodged in the Treasury, which some historians interpreted as a sign that Congress emphasized its
24 revenue-making potential. One delegate to the Constitutional Convention did express the opinion
25 that the postal clause would "give the Federal Government a power, not only to exact as much
26 postage, as will bear the expense of the Office, but also, for the purpose of raising a revenue."
27 Charles Pickney, "Observations on the Plan of Government Submitted to the Federal Convention,"
28 in Max Farrand, ed. *The Records of the Federal Convention of 1787* (New Haven: Yale Univ.
29 Press, 1937), 3: 117. At the same time, however, Congress extended below-cost services to
30 newspapers, which cancelled any expectation of making money from carrying the mail. In 1851
31 Congress legislated a policy of extending postal services even when it diminished revenues. Act of
32 Mar. 3, 1851, 9 Stat. 590. The only other general statement of policy adopted by Congress before
33 1958 was the 1930 Kelly Act. The act enumerated certain classes of mail that, because of their
34 public value, did not have to produce revenues covering their costs. Act of June 9, 1930, 46 Stat.
35 523. Apart from franked mail and free matter for the blind, the law identified free in-county and
36 second-class nonprofit mail as public service functions. Sen. Rep. No. 619, 71st Cong., 2d sess. 2
37 (1930); Clyde Kelly, *United States Postal Policy* (New York: D. Appleton and Co., 1932), 88-106.

1 postal system (e.g., promoting unity, fostering social intercourse, etc.) with
2 statements about its service to business and the economy.⁹

3 The act reaffirmed that a public service philosophy had guided the post
4 office in general and certain classifications of mail in particular:

5 [H]istorically and as a matter of public policy there have
6 evolved, in the operations of the postal establishment authorized
7 by the Congress, certain recognized and accepted relationships
8 among the several classes of mail. It is clear . . . that the postal
9 establishment performs many functions and offers its facilities to
10 many users on a basis which can only be justified as being in the
11 interest of the national welfare. . . .¹⁰

12 The act specifically included four subclasses--in county, second-class nonprofit,
13 classroom publications, and third-class nonprofit--among the public service
14 functions of the post office. Below-cost postage accorded these classes was to be
15 paid from the Treasury and not assessed to other classes, the law prescribed.¹¹

16 ⁹The first three of the six congressional findings follow:

17 SEC. 102. The Congress hereby finds that--

18 (1) the postal establishment was created to unite more closely the
19 American people, to promote the general welfare, and to advance the national
20 economy;

21 (2) the postal establishment has been extended and enlarged through the
22 years into a nationwide network of services and facilities for the
23 communication of intelligence, and the dissemination of information, the
24 advancement of education and culture, and the distribution of articles of
25 commerce and industry. Furthermore, the Congress has encouraged the use of
26 these broadening services and facilities through reasonable and, in many cases,
27 special postal rates;

28 (3) the development and expansion of these several elements of postal
29 service, under authorization by the Congress, have been the impelling force in
30 the origin and growth of many and varied business, commercial, and industrial
31 enterprises which contribute materially to the national economy and the public
32 welfare and which depend upon the continuance of these elements of postal
33 service;

34 Ibid. at 134.

35 ¹⁰72 Stat. 134, 135.

36 ¹¹72 Stat. 136-37.

1 The 1958 act also enumerated several criteria to be considered in
2 adjusting "the postal-rate structure" and, presumably, the classification system.
3 First was "the promotion of social, cultural, intellectual, and commercial
4 intercourse." Other criteria required the maintenance of an "efficient postal
5 service" with "equitable rates." Any adjustments should consider their impact on
6 mailers. And the act recognized such factors as pre-mailing preparation, "the
7 value of mail," "the value of time of delivery," and the "quality and character of
8 the service rendered." The act applied these criteria to first-class mail, declaring it
9 "a preferred service of the postal establishment." But apart from the four public
10 service subclasses identified above, the act remained silent about other categories
11 of mail.¹²

12 **Classification on the Eve of Reorganization**

13 Although architects of the postal policy act believed it would rectify
14 long-standing problems, it became apparent that annual postal appropriations
15 battles would be fought with undiminished ferocity. Concerns about rates and
16 ratemaking formulas triggered most disputes, but some had implications for mail
17 classification. Several changes involved tinkering with classification--for instance,
18 lengthening the list of mailers eligible to use the preferred subclasses. Others
19 reflected technical developments--improvements in transportation and the advent of
20 ZIP codes, for example. Two of the most contentious issues surrounding
21 classification were social acceptability considerations in third class and private-
22 sector competition with parcel post in the fourth.

23 *First Class.* Shortly before reorganization, a number of changes
24 occurred in first-class mail. First, the greater use of airplanes for mail
25 transportation allowed the post office to begin merging first-class and airmail into a
26 single priority class. Second, a 1967 postal act abolished the category of drop
27 letters. Third, the same act classified all "bills and statements of account" as first-
28 class mail. This prevented such mail from qualifying for the much cheaper third-
29 class bulk rate.¹³

30 ¹²72 Stat. 135-36.

31 ¹³Postal Revenue and Salary Act of 1967, 81 Stat. 613-14; Foster Associates, Inc., *Rates*
32 *and Rate-Making: A Report to the President's Commission on Postal Organization*, in *Towards*
33 *Postal Excellence: The Report of the President's Commission on Postal Organization* (Washington,
34 D.C.: Government Printing Office, 1968), 2:2-21 to 2-23 [hereafter cited as *Rates and Rate-*
35 *Making*].

1 *Second Class.* Although regular-rate periodicals labored to defeat rate
2 hikes in the 1960s, the basic classification for this group remained unchanged.

3 The 1960s brought two changes in the in-county second class. First, in
4 1962, Congress eliminated *free* in-county delivery, which applied only in towns
5 without village or city carrier service. Some rural publishers seemed willing to
6 sacrifice the free in-county privilege to retain other favorable rates.¹⁴ One
7 concession granted the small papers proved troubling later. The 1962 law dropped
8 the long-standing requirement that a periodical enjoying in-county rates had to be
9 *printed*, at least in part, in the county of publication.¹⁵ This accommodated the
10 increasingly common practice of printing rural papers at a centralized plant, often
11 one outside the county.¹⁶

12 Accommodating rural newspapers' out-of-county printing inadvertently
13 proved beneficial to large magazines. In 1966, the postmaster general reported
14 that large-circulation magazines used their reentry privilege to qualify for the in-
15 county rate across the country. By trucking magazines to cities where they had
16 second-class permits, publishers avoided zone rates and paid the comparatively low
17 in-county postage.¹⁷ In 1967, Congress amended the law to restrict the low per
18 copy in-county rates to the office of original entry.¹⁸

19 The same 1967 law substantially restructured the subclass for nonprofit
20 publications. Responding to criticisms that nonprofit periodicals carried excessive
21 amounts of advertising, Congress extended zoned postage to the subclass.¹⁹
22 Previously, the entire contents had paid a flat rate. The House post office
23 committee pointed out that nonprofit publications laden with advertising gained an
24 unfair postal advantage over taxpaying commercial publishers.²⁰ As a preferred
25 subclass, however, the nonprofit publications continued to pay postage well below
26 that charged commercial publications.

27 ¹⁴H.R. Rep. No. 2511, 85th Cong., 2d sess. 3-4 (1958).

28 ¹⁵Act of Oct. 11, 1962, 76 Stat. 832-33, 836.

29 ¹⁶*Cong. Rec.*, 87th Cong., 2d sess. 771 (1962).

30 ¹⁷1974 *Annual Report* 99.

31 ¹⁸81 Stat. 616-17.

32 ¹⁹81 Stat. 616.

33 ²⁰H.R. Rep. No. 722, 90th Cong., 1st sess. 31 (1967).

1 Between 1962 and 1967, Congress added four types of publications to
2 the nonprofit subclass--magazines issued by rural electric cooperatives (1962), state
3 highway magazines (1962), the program guides of educational broadcasting
4 stations (1967) and one publication of each state's development agency (1967).
5 For the most part, an individual lawmaker pushed for each of these additions and
6 they passed with little debate.²¹

7 *Third Class.* The last general rate increase before reorganization did
8 not spare users of third-class mail, but the direct marketing industry could find
9 some consolation in the 1967 act. The House report proclaimed that "The postal
10 service is the key link of the Nation's commerce."²² Other language in the report
11 treated third-class mail's contributions to the nation's commercial life as co-equal
12 with second class's advancement of education and culture.²³ In recognition of this
13 role, Congress created a subcategory within the bulk rate. The act gave a slight
14 discount in the minimum piece rate for the first 250,000 third-class pieces mailed
15 in a year. Small businesses were the intended beneficiaries.²⁴

16 Direct mailers' sense of victory was short-lived, however, as the post
17 office urged Congress to consider the social acceptability of mail along with cost
18 coverage in setting rates. James W. Hargrove, assistant postmaster general for
19 finance and administration, contended that bulk third-class mail should pay a
20 premium because of its opprobrium. Explaining his reasoning to the Direct Mail

21 ²¹For more details and citations to the debates and acts, see Richard B. Kielbowicz and
22 Linda Lawson, "Reduced-Rate Postage for Nonprofit Organizations: A Policy History, Critique,
23 and Proposal," *Harvard Journal of Law & Public Policy*, 11 (Spring 1988): 374-75.

24 ²²H.R. Rep. No. 722, 90th Cong., 1st sess. 4 (1967).

25 ²³Specifically, the House report said that ratemaking should consider that

26 3. All classes of mail, particularly second and third-class mail, have been
27 instrumental in providing one or more of the following--communication of intelligence,
28 dissemination of information, the advancement of education and culture, the
29 distribution of articles of commerce and industry, and the growth of many commercial
30 enterprises which contribute materially to the national economy and to the public
31 welfare.

32 *Ibid.* at 15.

33 ²⁴The lower rate applied to "a person who mails for himself, or on whose behalf there is a
34 mailing. . . ." 81 Stat. 613, at 619. This permitted mail preparation firms working on behalf of
35 retailers to qualify for the lower rate. On the origins of this rate break, see H.R. Rep. No. 1013,
36 90th Cong., 1st sess. 44 (1967); *Cong. Rec.*, 90th Cong., 1st sess. 35,836 (1967).

1 Advertising Association, he said that ratemakers should consider a mail class's
2 demonstrably related and institutional costs as well as "other factors."

3 Now, one of the "other factors" in a public operation, and
4 particularly a government operation, has got to be the worth
5 which the recipient public (not the sender) places upon a
6 particular service. As long as the public is directly influential in
7 determining the rate policy of the postal system, the value to the
8 recipient will reflect itself ultimately and inexorably in the price
9 of the service.

10 The general view of the public benefit or detriment will
11 surface just as it will in the form of taxes, even punitive taxes on
12 such public-policy controversies as cigarettes, leaded gasolines,
13 over-powered automobiles, and so forth. In such an
14 environment, users of advertising mail will find it more effective
15 to spend their dollars on public relations than on lobbying.²⁵

16 Direct mailers saw Hargrove's suggestion as the long-feared denouement of the
17 campaign against direct mail advertising.

18 Some lawmakers took up the call to treat third-class mail differently
19 than others because of its supposed social undesirability. Representative Ken
20 Hechler, a West Virginia Democrat, spearheaded a campaign to assess direct mail
21 higher postage because it was supposedly not desired by its recipients.²⁶ Like-
22 thinking colleagues in the Senate voiced similar objections.²⁷ Opposing lawmakers
23 noted the value of direct mail for small businesses and the deferred service it
24 received.²⁸ "[S]ome people use the term 'junk mail' and maybe that is popular in
25 some areas," a Nebraska republican told a postal forum. "But this is advertising
26 mail. It is the little grocery store, the drug store, that only wants to reach maybe a

27 ²⁵Hargrove, "New Cost Analysis Figures," 26-30, quote at 30. See also his testimony in
28 *Postal Rates and Revenue and Cost Analysis: Hearings Before the Subcommittee on Postal Rates of*
29 *the House Committee on Post Office and Civil Service*, 91st Cong., 2d sess. 1-22 (1970).

30 ²⁶*Cong. Rec.*, 90th Cong., 1st sess. 28,418-25, 28,614 (1967).

31 ²⁷See, e.g., *Cong. Rec.* 33,984 (1967).

32 ²⁸See, e.g., *Cong. Rec.* 34,242-48 (remarks of Sen. Carlson).

1 two-mile area for his customers, where his customers live. He can't afford to take
2 an ad in a big metropolitan newspaper."²⁹

3 The controversy surrounding advertising circulars spread beyond third
4 class when newspapers began seeking the same material. Bundling separately
5 printed ad circulars with newspapers was increasingly popular.³⁰ The American
6 Newspaper Publishers Association instructed its members on *How to Comply with*
7 *Postal Regulations on Pre-Printed Advertising Supplements*, noting that third-class
8 material could often be sent under a publication's second-class permit.³¹ Postal
9 officials and lawmakers tried to discourage the practice by pushing--unsuccessfully
10 this time--for surcharges on ad circulars bundled with newspapers.³²

11 *Fourth Class.* After the Second World War, parcel post faced
12 increasing competition from private carriers. Congress made a number of
13 adjustments in this class to assure that parcel post did not unduly compete with the
14 private services. The basic law governing this class stipulated that the postmaster
15 general adjust rates or size-weight limits to promote service or to produce enough
16 revenue to cover costs. When the cost coverage on parcel post dropped to about
17 80 percent, Congress in a 1950 law strengthened the break-even objective. This
18 law effectively relegated the promotion of service objective to a secondary
19 position.³³

20 To further insulate private carriers from competing with parcel post,
21 Congress in 1951 lowered the size-weight maximums for parcels delivered at first-
22 class post offices. The law, however, retained the much higher size-weight ceiling
23 for second-, third-, and fourth-class post offices.³⁴ This change diverted parcel
24 business to private carriers and confused the public. Postal clerks had to explain

25 ²⁹National Postal Forum, *Superlative Postal Service: How Likely, When...* (n.p.: n.p.,
26 1967), 39 (remarks of Rep. Cunningham).

27 ³⁰*The Postal Revenue Act of 1967: Hearings on H.R. 7977 and 7978 Before the*
28 *Subcommittee on Postal Rates of the House Committee on Post Office and Civil Service*, 90th
29 Cong., 1st sess. 627 (1967); Bob Stone, "Direct Mail/Mail Order Marketing--Newspapers May be
30 Biting the Hand That Feeds Them," *Advertising Age*, May 11, 1970, p. 60.

31 ³¹American Newspapers Publishers Association, *Special Report: How to Comply with*
32 *Postal Regulations on Pre-Printed Advertising Supplements* (c. 1965).

33 ³²In 1967, a conference committee dropped a House proposal to charge more for
34 advertising inserts in second-class mail. H.R. Rep. No. 1013, 90th Cong., 1st sess. 44 (1967).

35 ³³Act of Sept. 27, 1950, 64 Stat. 1050; *Rates and Rate-Making*, 2-49.

36 ³⁴Act of Oct. 24, 1951, 65 Stat. 610.

1 "to outraged mail patrons why a 21-pound package might be mailed from New
2 York City to Alaska but not to Chicago."³⁵ In 1966, Congress responded to
3 pressure from the post office and from businesses seeking a more uniform parcel
4 delivery service by raising the size-weight ceiling on packages delivered at larger
5 post offices.³⁶

6 Congress broadened the library subclass in several ways during the
7 1950s and 1960s. First, lawmakers lifted the 300-mile (or within state) limit on
8 materials in the subclass in 1958. The subclass had originally been created to serve
9 library extension programs within states; witnesses told Congress that researchers
10 now needed interlibrary loans to use specialized regional and national collections
11 throughout the nation.³⁷ The 1958 law also added bound magazines,
12 bibliographies and other educational materials and eliminated the need to obtain a
13 permit from the postmaster.³⁸ In the ten years before postal reorganization,
14 Congress expanded the subclass by adding sound recordings and scientific kits as
15 well as by enlarging the list of eligible mailers to include museums and herbaria.³⁹

16 Mail Classification and Postal Reorganization

17 The failings of the Post Office Department and the events that
18 generated momentum for reform have been widely recounted and generally do not
19 bear repeating here.⁴⁰ Whatever the reasons for reform, the sweeping

20 ³⁵*Rates and Rate-Making*, 2-51.

21 ³⁶*Parcel Post: Hearings on H.R. 12367 and Related Bills Before the Subcommittee on*
22 *Postal Rates of the House Committee on Post Office and Civil Service*, 89th Cong., 2d sess. (1966).

23 ³⁷*To Readjust Postal Classification on Education and Cultural Materials: Hearings on*
24 *H.R. 5139 and H.R. 5142 Before the House Committee on Post Office and Civil Service*, 84th
25 Cong., 1st sess. (1955).

26 ³⁸Postal Policy Act of 1958, 72 Stat. 141.

27 ³⁹For details about these changes, see Linda Lawson and Richard B. Kielbowicz, "Library
28 Materials in the Mail: A Policy History," *Library Quarterly*, 58 (January 1988): 41-43.

29 ⁴⁰For the Postal Reorganization Act's background, see generally Harold Dolenga, "An
30 Analytical Case Study of the Policy Formulation Process (Postal Reform and Reorganization)"
31 (Ph.D. dissertation, Northwestern Univ., 1973); Alan L. Sorkin, *The Economics of the Postal*
32 *System* (Lexington, Mass.: Lexington Books, 1980), 25-27; John T. Tierney, *Postal*
33 *Reorganization: Managing the Public's Business* (Boston: Auburn House, 1981), 8-26. From 1966
34 to 1970, the weekly news magazines and business publications also charted the post office's decline
35 and reorganization's progress. *U.S. News and Weekly Report* was particularly diligent in following
36 postal affairs; see also *Newsweek* and *Business Week*.

1 reorganization of the department represented one of the most dramatic
2 transformations of a long-established federal institution in the nation's history.
3 Although perennial dissatisfaction with postal costs and price formulas and
4 ratemaking procedures was a major impetus for the overhaul, mail classification
5 *per se* rarely warranted discussion. Most participants in the transformation of the
6 post office--mailers, lawmakers, postal administrators, and others--apparently
7 regarded ratemaking and classification matters as nearly one in the same. The
8 principles and framework of mail classification received modest attention at three
9 points in the steps leading to reorganization: in some mid-1960s reports, in the
10 report of the President's Commission on Postal Organization, and in discussions of
11 the provisions that Congress ultimately enacted.

12 *Mid-1960s Reports.* In a report that presaged many elements of
13 reorganization, a special panel in 1965 discussed classification as an issue distinct
14 from ratemaking. This had occurred only twice before: in 1879 when Congress
15 devised the Mail Classification Act and, obliquely, in deliberations over the Postal
16 Policy Act of 1958. A seven-member advisory panel on postal rates, including
17 four business leaders, prepared a report for Postmaster General John Gronouski.
18 The panel's recommendations touched on the most controversial postal topics of
19 the day--Treasury funding of preferential rates, the cost of rural facilities, cost
20 ascertainment and a cost allocation scheme, ratemaking guidelines, and plans for
21 rate increases that imposed a "basic piece handling charges for each copy" of
22 second-class mail. But its last recommendation was more novel: "Revise the
23 Department's mail classification system."⁴¹

24 The report reserved its last section, coincidentally or not, for mail
25 classification, a matter "closely related to rates." "The postal classification system
26 is no longer a logical grouping of mails," the panel concluded. "It is a patchwork
27 of subclasses, each subject to a different rate." Classification's chief merit "is that
28 it is an expedient means of extending rate concessions in the least obtrusive
29 manner." If every rate difference represented a different class, "it would lift much
30 of the mystery that now envelopes the classification structure." The panel,
31 however, stopped short of making such a recommendation.⁴²

32 ⁴¹House Committee on Post Office and Civil Service, 89th Cong., 1st sess., *Report of the*
33 *Advisory Panel on Postal Rates 1* (Committee Print 1965) [hereafter *Advisory Panel on Postal*
34 *Rates*]; "End Subsidies, Hike Rates, Panel Urges Post Office," *Advertising Age*, May 24, 1965, pp.
35 1, 159.

36 ⁴²*Advisory Panel on Postal Rates*, 7.

1 The report critiqued the existing classification. "[A] wide assortment
2 of inconsistent principles and rules" pervaded the design. Some classes and
3 subclasses were defined by physical characteristics of the mail, others required
4 specified pre-mailing preparation. Most classes, though, "are determined by the
5 contents of the mail, irrespective of their physical characteristics or the processing
6 required. In other cases, subclasses are defined by the economic and social
7 function of the mailer, or . . . that of the recipient." The report recognized that
8 the "present system reflects numerous political and economic realities. Many
9 businesses and institutions have been built and nurtured with sustenance from rate
10 concessions."⁴³

11 Most of the guideposts the panel offered in reforming classification
12 dealt with technical characteristics and not the content of the mail or the purposes
13 of the mailers.

14 A key objective of reclassification should be the harnessing of
15 business and institutional capacities, putting them to work to
16 simplify postal operations and to improve postal productivity.
17 Incentive rates and improved mail classifications could serve as
18 inducements for large mailers to extend their premailing
19 preparation: sorting, bagging, palletizing, transporting, etc. The
20 payoff in reduced operating costs and lower capital outlays for
21 the postal service would make a significant contribution toward
22 meeting the current revenue deficiency. Also incentive rates may
23 enable volume mailers to cut their own mail costs.⁴⁴

24 Some of these suggestions were revived when reorganization gathered momentum a
25 few years later, but in the meantime they were overshadowed by more immediate
26 concerns.

27 The Postal Revenue and Federal Salary Act of 1967, the last major
28 legislation under the old regime, still adhered to some of the principles enunciated
29 in the 1958 policy act. A 1967 House report proclaimed that "Historically, and as
30 a matter of public policy, the Congress has recognized and accepted certain
31 relationships among the several classes of mail." First class was deemed a
32 "preferred service" with a correspondingly high cost coverage to reflect "the
33 quality and character of the service rendered in terms of priority, secrecy, security,

34 ⁴³Ibid., 7-8.

35 ⁴⁴Ibid., 8.

1 and speed of transmission." In discussing second- and third-class mail, however,
 2 the report emphasized their role in communicating intelligence, disseminating
 3 information, advancing education and culture, distributing articles of commerce,
 4 and stimulating the growth of commercial enterprises. The report did note that
 5 most second- and third-class mailers perform "at least one-half of the mail-
 6 handling steps."⁴⁵

7 *The Kappel Commission.* In a 1967 speech by Postmaster General
 8 Lawrence O'Brien, the Johnson administration called for an overhaul of the
 9 nation's postal establishment.⁴⁶ Within ten days, President Lyndon B. Johnson
 10 had appointed a commission to investigate postal reform.⁴⁷ The commission itself
 11 offered only tentative recommendations about the nature of a classification design,
 12 though the thrust of its report elevated economic considerations over matters of
 13 public welfare and social acceptability. One of the commission's contractors
 14 examined classification more closely.

15 Headed by the former chairman of A.T.&T., Frederick R. Kappel, the
 16 President's Commission on Postal Organization drew most of its members from the
 17 upper echelons of the corporate world.⁴⁸ "[T]oday the Post Office is a business,"
 18 the commission proclaimed after assaying the composition of the mails and
 19 analyzing the varied postal services. "Like all economic functions it should be
 20 supported by revenues from its users. The market should decide what resources
 21 are to be allocated to the postal service."⁴⁹ The postal system, according to the
 22 commission, operated as a public utility, and "A utility is not allowed to
 23 discriminate unduly among its users in the pricing of its services. . . ."⁵⁰ Much of
 24 the complexity in classification and the rate structure derived from "legislative
 25 judgments of public benefit--the social contribution of the mailer or of the matter
 26 mailed."⁵¹ The commission's proposed rate-making standards would allow for

27 ⁴⁵H.R. Rep. No. 722, 90th Cong., 1st sess. 15 (1967).

28 ⁴⁶L. O'Brien, "A New Design for the Postal Service," *Vital Speeches of the Day*, 33
 29 (1967): 418-21.

30 ⁴⁷"Crisis Coming in the Mails," *U.S. News & World Report*, Apr. 24, 1967, pp. 58-62.

31 ⁴⁸*Towards Postal Excellence: The Report of the President's Commission on Postal*
 32 *Organization* (Washington, D.C.: Government Printing Office, 1968) [hereafter cited as *Towards*
 33 *Postal Excellence*].

34 ⁴⁹*Ibid.*, 48.

35 ⁵⁰*Ibid.*, 129.

36 ⁵¹*Ibid.*, 123.

1 narrowly drawn, congressionally designated subsidies, but the overarching
2 consideration was for each class to pay its demonstrably related costs.⁵²

3 The commission did not dwell on classification *per se*, though it
4 certainly touched on classification matters in its extensive discussions of rates. The
5 commission delineated each of the principal mail categories, identifying its
6 contents and subclasses, legal requirements for admission, and handling.⁵³ The
7 commission used 10 copies of a 4-ounce monthly publication to illustrate anomalies
8 in the existing design. Such publications could fit into two categories of the in-
9 county subclass, three categories of preferred second-class, regular zone,
10 controlled circulation, third-class nonprofit or in two categories of regular-rate
11 third class. The proper classification depended "on the mix of advertising and
12 editorial matter, the pages it contained and whether or not it had a paid
13 subscription list. The 10 copies would be delivered for a price ranging from 3.25
14 cents to 55 cents."⁵⁴

15 As part of a discussion about standards to be applied in ratemaking, the
16 commission presented an alternative classification system "based on major cost and
17 service considerations." This alternative broke mail into three categories receiving
18 either regular or priority service. General message mail embraced letters, post and
19 postal cards, and some non-private messages; merchandise and miscellaneous mail
20 covered small pieces and parcel post; and bulk mail included bulk message mail
21 (circulars), various kinds of books, periodicals sent by publishers, and small pieces
22 sent bulk. In addition, the commission noted a fourth possible category--
23 "preference mail," classes for which Congress had authorized a subsidy. In the
24 end, however, the commission did not "necessarily endorse each classification in
25 this proposal, but reclassification along some such lines appears a highly desirable
26 first step until postal market analysis can begin to develop information on true
27 postal service needs."⁵⁵

28 The Kappel Commission based its assessment of the classification
29 design largely on a report, *Rates and Rate-Making*, prepared by a contractor,
30 Foster Associates, Inc. "The starting point in rate structure design is the

31 ⁵²Ibid. at 148.

32 ⁵³The commission produced a lucid table that nicely outlines the principal mail categories
33 as of 1968. Ibid., 124-25.

34 ⁵⁴Ibid., 123, quote at 126.

35 ⁵⁵Ibid., 135-36.

1 establishment of a logical, equitable, and practicable scheme for classifying the
2 services for which differential rates are desirable," its report asserted.⁵⁶ Foster
3 Associates suggested the four-class design--general message mail, bulk mailings,
4 merchandise and miscellaneous, and preference mail--noted with approval by the
5 Kappel Commission. In offering its classification design, the contractor
6 emphasized how it reflected standards of service, which were linked to cost, and
7 differential pricing to accommodate market sectors.⁵⁷

8 *Classification in the Congressional Deliberations.* The Kappel
9 Commission's recommendations, introduced in Congress, underwent numerous
10 legislative transmutations over two years.⁵⁸ The more far-reaching proposals
11 contemplated changes in virtually every aspect of the postal establishment. Two
12 questions had particular relevance for mail classification--where to vest the
13 authority to classify mail and set rates, and what criteria to use? For the most part,
14 classification matters were subsumed and overshadowed by discussions of
15 ratemaking.

16 The administrative structure--the Postal Rate Commission--and the
17 criteria to be used in ratemaking and classification grew from proposals of the
18 Senate post office committee. Thus, the Senate committee's report provides the
19 best insights into classification principles.⁵⁹ Throughout the report, references to
20 classification are entwined with discussions of ratemaking. The section specifically
21 devoted to the classification criteria, one of five topics subsumed under "Postal
22 Ratemaking," tracked closely with those ultimately adopted. The Senate report
23 stated that

24 In making recommendations concerning the classification of
25 mail, the [Postal Rate] Commission must act in accordance with
26 the postal policy set forth in section 101 (a) and section 102, and
27 must give due recognition to the factors set forth in section
28 3704(b), including the relative value to the people of the different
29 kinds of mail matter; the desirability of and justification for

30 ⁵⁶*Rates and Rate-Making*, 7-1.

31 ⁵⁷*Ibid.*, 7-5 to 7-10.

32 ⁵⁸For an examination of three major bills, see generally *Postal Reform: Hearings on H.R.*
33 *17070 and Similar Bills Before the House Committee on Post Office and Civil Service*, 91st Cong.,
34 2d sess. (1970).

35 ⁵⁹Sen. Rep. No. 912, 91st Cong., 2d sess. 13 (1970).

1 special mail classifications and services; the importance of
2 providing classifications that recognize different degrees of speed
3 in delivery and in the reliability of such speed; and such other
4 factors as the Commission may deem appropriate.⁶⁰

5 Finally, the Senate post office committee underscored the importance
6 of making rate and classification decisions "on the basis of expert consideration of
7 the overall value of the service provided and the allocation of costs on a scientific
8 or quasi-scientific basis. . . ." The committee expressly disapproved of basing
9 classification decisions on judgments of social acceptability. "[I]f postal rates and
10 postal classification are going to be established on a basis of . . . "social
11 acceptability,' then Congress is clearly better qualified to make such judgments
12 than the Postal Service or any expert commission. Such purely political judgments
13 are the province of Congress," the Senate report insisted.⁶¹

14 ⁶⁰Ibid., 15. Compare the language of the Senate report with the section ultimately
15 adopted, Postal Reorganization Act, 84 Stat. 761: "The Commission shall make a recommended
16 decision on establishing or changing the schedule in accordance with the policies of this title and the
17 following factors:

- 18 (1) the establishment and maintenance of a fair and equitable
19 classification system for all mail;
20 (2) the relative value to the people of the kinds of mail matter
21 entered into the postal system and the desirability and justification for special
22 classifications and services of mail;
23 (3) the importance of providing classifications with extremely high
24 degrees of reliability and speed of delivery;
25 (4) the importance of providing classifications which do not require
26 an extremely high degree of reliability and speed of delivery;
27 (5) the desirability of special classifications from the point of view
28 of both the user and of the Postal Service; and
29 (6) such other factors as the Commission may deem appropriate.

30 ⁶¹Ibid., 11.

1

8. SUMMARY AND CONCLUSIONS

2 Only twice in the nearly 200-year history of the Post Office
3 Department did Congress look beyond particular classes and rates to seriously
4 examine the general classification design. Even then, the 1879 Mail Classification
5 Act dealt almost entirely with the problem of demarcating second from third class,
6 while the Postal Policy Act of 1958 largely articulated a vision in statutory
7 language. To be sure, most congressional rate adjustments carried implications for
8 mail classification, but the press of legislative business or the political currents
9 swirling around ratemaking prevented an exploration of overall design. Congress
10 thus erected the mail classification framework one class and subclass at a time.

11 **Mail Classes and Public Policies**

12 The legislative process naturally used rates and classifications as
13 instruments to advance various public policies--binding the nation, cultivating rural
14 communities, aiding education and culture, supporting the charitable works of
15 nonprofit organizations, boosting businesses and the economy, and promoting
16 personal communication. Not surprisingly, problems arose in using mail
17 classifications in pursuit of such goals. Tailoring a mail category to fit a broad,
18 diffuse policy proved troublesome. Also, some policy objectives collided with one
19 another, which introduced tensions in the classification scheme. And mail classes
20 continued decade after decade even as the conditions that created them changed.

21 Binding the nation was the first and most enduring objective of mail
22 classes and subclasses. Justifiably concerned about the political unity of the young
23 nation, the first Congresses created a mail class for newspapers. This signaled a
24 notable departure from colonial policy, which had treated the delivery of
25 newspapers as tangential to the main business of the post office. When Congress
26 created the newspaper class, it intended to promote the circulation of political
27 journals by adopting a largely flat rate in contrast to steeply zoned letter postage.
28 Encouraging the long-distance circulation of newspapers, however, collided with

1 the goal of protecting small-town culture. In response, Congress created a subclass
2 for the in-county circulation of newspapers. Moreover, newspapers changed in
3 appearance and purpose much more rapidly than their mail class, complicating the
4 post office's administration of the laws (discussed below). The flat rate for
5 periodicals' editorial content adopted in 1917 continued the commitment to bind
6 the country through the long-distance circulation of the printed word.

7 Since the creation of a category for the in-county delivery of
8 newspapers, the mail classification system has shown particular solicitude for rural
9 communities. For instance, parcel post was long sought by agrarian interests;
10 small-town merchants, however, feared it would divert their business to mail-order
11 centers. The original library subclass was also designed to help rural residents.
12 With a limit of 300 miles or a state's borders, the library category allowed rural
13 residents to obtain materials from a nearby city or the state capital.

14 The original rate classes only modestly encouraged the dissemination of
15 educational and cultural fare. The newspaper category, from which second-class
16 grew, favored political information from the start. Slowly but significantly
17 Congress added categories for various kinds of materials because of their
18 educational and cultural benefits. In roughly chronological order, the categories
19 were for periodical pamphlets, magazines, nonprofit publications, library
20 materials, and books.

21 In 1917, Congress singled out the publications of nonprofit
22 organizations as worthy of special support beyond that accorded second-class
23 matter in general. In creating this subclass, Congress distinguished between
24 commercial publications and those issued by organizations engaged in some kind of
25 noncommercial work. Similarly, Congress created a third-class category for the
26 same organizations; this subclass assisted fund raising through direct-mail appeals.

27 While the postal system has long boosted businesses and the economy,
28 the mail *classification* structure has not always been as accommodating. Through
29 the mid-1800s, businesses contributed most of the nation's letter mail. The
30 original letter rate class was used for business correspondence, financial
31 transactions, and advertising and not much changed when the category was
32 reincarnated as the first class. First class, however, was not specifically tailored to
33 business needs. The third class, of course, embraced advertising and other matter
34 circulated by businesses. And the fourth class provided a channel for the
35 distribution of merchandise. Not until the twentieth century, however, did
36 Congress make particular changes in classification expressly in the interests of

1 business mailers. Businesses welcomed permit mail, bulk third class, and reply
2 cards and envelopes.

3 Promoting the exchange of personal messages was often mentioned as a
4 desirable goal but rarely addressed through classification. Post cards, of course,
5 served this end, though businesses also found them helpful. Maintaining a
6 classification for sealed messages delivered promptly has abetted social intercourse,
7 though this category has long--if not always--attracted as much business mail.

8 Elements of Classification Design

9 A number of elements in classification design have developed along
10 with the effort to use the post office to further broad public policy goals.

11 Classification design and administration have often accommodated the
12 *needs of mailers*, particularly publishers and businesses. When newspapers rushed
13 to provide more timely news by issuing extras, postal administrators decided that
14 they qualified for the regular rates; indeed, the rules governing second-class mail
15 allowed quite a few practices that help publishers (e.g., sample copies,
16 supplements, enclosing subscription reminders). In the twentieth century,
17 classification innovations have often been driven by the changing needs of business
18 mailers. For instance, a category in third class for bulk mailings proved quite a
19 boon for merchants.

20 Concerns about *levels of service* have both led to the creation of some
21 mail classes and delayed the creation of others. Until railroads were widely used
22 in the transportation of mail, the post office preferred not to carry books; the same
23 was true of merchandise. Postal officials believed that hard, bulky items would
24 burden small-capacity transports, damaging letters and publications. Conversely,
25 improvements in technology and the demand of mailers created opportunities for
26 new levels of service, notably airmail, air parcel post, and the merger of airmail
27 and first class. One classification reform suggested on the eve of reorganization
28 was to *subdivide every class into regular and premium services*.

29 The *physical characteristics* of mail--size, weight, shape--obviously
30 affected classification. The size or bulk of mail made some transportation
31 difficult. At times, classification decisions hinged almost entirely on weight as, for
32 instance, in the dividing line between third and fourth class. Basing classification
33 decisions largely on physical characteristics relieves administrators of examining
34 content or inquiring into a mailer's motives.

1 The *nature of mailers*, their motivations, and the purposes behind the
2 matter they mailed frequently were used as guideposts in classification decisions
3 despite the obvious pitfalls in administration. Historically, the nature of mailers
4 created a kind of classification hierarchy, corresponding loosely to lawmakers'
5 perceptions of the mail's social utility. The implicit hierarchy is evident in the
6 following examples of different types of publications:

7 First, and atop the hierarchy, are the periodicals issued by
8 nonprofit organizations; presumably they made no profit or used
9 any revenue for charitable purposes.

10 Second, Congress regarded regular-rate periodicals in the
11 second-class as producing noteworthy public benefits because
12 they offered enough reading matter to "overbalance" their
13 commercial content.

14 Third, in creating a separate category for controlled-circulation
15 publications, lawmakers appreciated that trade journals with at
16 least 25 percent editorial content ably served their specialized
17 audiences even if their circulation were largely free.

18 Fourth, publications designed primarily for advertising purposes
19 mostly benefited their proprietors even if their ads incidentally
20 aided businesses or consumers.

21 Fifth, transient second-class mail was seen as serving private
22 interests, as when individuals in the early nineteenth-century
22 forwarded publications to friends or relatives to convey a
23 message.

24 Basing classification partly on the motives of senders or the purposes of their mail
25 increased problems for administrators.

26 Indeed, refinements in the design of classification were often intended
27 to improve the *administration* of postal laws. For example, to minimize the
28 subjective judgments about the motives of mailers or their mail, administrators
29 preferred to look at tangible indicators. In judging eligibility for the second class,
30 administrators looked outside a publication's contents to see if its subscribers
31 valued it enough to pay for a subscription.

32 The post office's handling and *delivery costs* have been reflected in the
33 classification schedule. Beginning around the First World War, the post office
34 worked with larger mailers to achieve efficiencies that helped both. In creating

1 bulk subclasses, for instance, Congress expected the senders to do more pre-
2 mailing preparation--facing, sorting, bundling and the like. Using zones for parcel
3 post and the advertising portions of second class corresponded to costs the
4 department incurred in transportation. Also, mail that was presented to the post
5 office on a regular basis--periodicals--allowed for advance planning not possible
6 for nonperiodical mail.

7 Finally, some classification features related to the existence of private-
8 sector alternatives or *competition*. This consideration most directly affected the
9 first and fourth classes. For the first class, the post office tried to maintain its
10 monopoly while accommodating some exemptions (e.g., in allowing messages to
11 accompany cargo). And competition pulled fourth class, notably parcel post, in
12 two directions. Congress launched parcel post partly to compete with private
13 expresses; however, lawmakers expected the postmaster general to adjust rates,
14 weights and other conditions so parcel post would break even and not unfairly
15 compete with private carriers.