

## IV

Sorely disappointed by his Ohio prospects, Lysander Spooner sought out another avenue to wealth and freedom in the heart of America's expansive business world, New York City. While America's business had greatly expanded, the United States Postal Service had stagnated. Secure from competition and, with its vast patronage, a favorite child of politicians, the post office had remained untouched by the growth of the country. While canals, turnpikes, and even a few railroads had cheapened and hastened transportation, the cost of postage remained the same. During the 1840's people responded through political protests by groups of citizens and by several state legislatures. Another response was to violate the law. Although it was illegal for individuals to "take up, receive, order, dispatch, carry, convey or deliver any letter or letters, packet or packets, other than newspapers for hire or reward . . .," means were found to circumvent the government. One ingenious trick was to send a newspaper at the cheaper rate with a message indicated in underlined letters or words. Another method was to send a package of letters as merchandise by an express company.<sup>1</sup>

Postal inspectors attempted to prosecute violators, and in 1842, they thought they had a big catch, Adams & Company. Great care was taken in prosecuting the case in the hope it would discourage others. However, the feelings of both the court and of the people in New York City were against the Post Office. When the case of *United States vs. Adams & Company* went to the jury in November, 1843, the judge ruled that under postal law it was illegal for anyone to set up a stagecoach or other company to transport the mail, but the law had not forbidden commissioned passengers from carrying mail. The jury, therefore, found the company not guilty because "there is no law to convict them."<sup>2</sup> (The decision of this jury may have provided the seed for Spooner's subsequent *Trial by Jury*.)

In response to such a favorable decision, a number of companies formed to carry letters. Such companies required virtually no capital; an agent needed only to pay passage on a steamboat or a stage, and at half the government price of 12 cents a letter, he could make a profit and provide a better and speedier service. As America's cities were smaller then, an agent could personally deliver the letters, while the government required their customers to claim letters at the post office. These new companies understandably prospered.

Among companies responding to the opportunity was Lysander Spooner's

<sup>1</sup> John B. McMaster, *History of the People of the United States* (New York, 1910), VII, 114f.

<sup>2</sup> "Report of the Postmaster General, 1843," U. S. Documents, House Reports, 28th Congress, 1st Session. 431: 624.

American Letter Mail Company. His operation was similar to the other companies, but he went about his business more openly. Indeed, before beginning, he sent a personal letter, informing the Postmaster General (January 11, 1844), that he proposed "soon to establish a letter mail [company] from Boston to Baltimore. I shall myself remain in this city, where I shall be ready at any time to answer to any suit . . ." <sup>3</sup> Accompanying the letter was a copy of Spooner's pamphlet, *The Unconstitutionality of the Laws of Congress Prohibiting Private Mails*. When his company began business on the 23rd of January, Spooner openly advertised in all the major newspapers, soliciting business. The American Letter Mail Company printed its own stamps, hired agents, and was soon conducting a busy trade. Indeed, in a few short months, the private mail companies had engrossed the bulk of the service between Boston, New York, Philadelphia, and Baltimore.

In his advertisements, Spooner announced his intention to "test the constitutional right of free competition, in the business of carrying letters." And in his pamphlet of 1844, he argued that the people had "a *natural right*" to work and to acquire property, which no legislature could abrogate. (p. 6) Earlier Spooner had challenged the notion that the people had no rights and the government had all the rights when he argued against the licensing of lawyers by the state. A government's control of lawyers was made by usurpation, not by right. Similarly, in its control of the mail, the government usurped the rights of men.

Spooner's attack might appear quixotic today, because the post office survived his attack. But in 1844, the attack appeared feasible; only a few years before the United States Bank monopoly had been destroyed. Some states even instituted free banking systems. If banks were liberated, why not post offices?

The Congress and the Postmaster General were alarmed by this challenge. Although there was no political division on the issue, there was a sectional difference. President Tyler was a Virginian, and most of the Congressional committees as well as a majority of Congress came either from the South or from the newly developed West. The American Post Office used the lucrative revenues between the large Eastern cities to support the post offices in the South and West. These were never self-supporting because of the small volume of mail and great distances between settlements. Should Spooner's challenge be successful, postal service in these distant areas could be maintained only by increased postage or by increased taxes

<sup>3</sup> Lysander Spooner to Charles Wickliffe, January 11, 1844. Spooner Papers, New York Historical Society.

—both strongly opposed in those areas. Consequently, the government attack on Spooner was vigorous and prompt. Little effort was made to answer Spooner's legal arguments; it was simply assumed, without question, that the government rightly exercised its power. Precedent had established the monopoly, and those enjoying that monopoly saw no reason to question precedent.

Hoping to drive Spooner out of business without raising any constitutional questions, the Postmaster General resorted to some extra-legal measures. Transport companies were told that they would lose their government contracts unless they stopped carrying American Letter Mail Company mail. Although the case of an agent arrested in Baltimore was under appeal in the District Court, the government continued to arrest other agents. Under a barrage of such harassing legal actions, the company could not survive; for all practical purposes it had ceased to exist by July, 1844. Nonetheless, sitting in Circuit Court, Supreme Court Justice Story ruled in June, 1844, that it was an open question "whether the United States had any exclusive right to establish post office and post routes."<sup>4</sup>

The pressure on the Post Office for reform could not be ended by driving competition from the field. The revenues of the Post Office continued to decline while the population and commerce of the country rose. The English reform of 1840, which had reduced all postage to a penny an ounce anywhere in the British Isles, left Americans completely unhappy with rates which were as high as twenty-five cents for a single sheet going over four hundred miles. The English system had shown that the lower rate initially reduced the postal receipts, but that this was soon offset by the increased volume of mail, which hardly raised the cost of operations at all.

The American Congress responded to the depressing loss of customers to Spooner's company by reducing postage. In an act passed March 3, 1845 postal rates were nearly halved. The act was so successful in increasing the business of the Post Office and in eliminating competition, that Congress was able to reduce the postal rates again in 1851.

Driven out of business, Spooner lost interest in postal reform until his attention was called to a campaign launched in 1848, which ultimately led to the second reduction of postal rates in 1851.

In 1848, the Friends of Cheap Postage in the City of New York, not only launched a campaign to further reduce postal rates, but also to raise money to support Barnabas Bates as a leader among New York postal reformers. The friends of Bates argued that he should be rewarded in the

<sup>4</sup> Lindsay Rogers, *The Postal Power of Congress, A Study in Constitutional Expansion* (Baltimore, 1916), 41f.

same way the English had rewarded Rowland Hill, with a voluntary subscription.<sup>5</sup>

Lysander Spooner learned of the Bates subscription through his close friend, Samuel Sewall, a successful Boston businessman. At the time Spooner was living in total poverty, and after his role in reducing postal rates, he felt that he was more deserving than was Bates.

Early in 1849, Spooner had proof sheets of his pamphlet, *Who Caused the Reduction of Postage in 1845?*, and he sent these to five of the largest merchants in Boston, but without response. Somewhat discouraged, he wrote to his friend Gerrit Smith in hope of hiring several prominent lawyers to give their opinion on his constitutional argument, but Smith was unenthusiastic and unwilling to supply the needed two hundred dollars. Nonetheless, his Boston friends, Samuel Sewall, Robert Apthorp, and others encouraged Spooner and provided for publication of his pamphlet in 1850.<sup>6</sup>

*Who Caused the Reduction of Postage* seems to have had little effect. In Boston, few merchants supported Spooner; they were only encouraged not to support Bates. Spooner visited New York City in the spring of 1851, but Bates already had a head start there. Joshua Leavitt wrote that he and other New York reformers felt no obligation to Spooner; he had entered a business for profit, and lost. In May of 1851, somewhat discouraged, Spooner wrote a friend that Bates and his supporters had "acquaintances and friends in the city to aid them, before my claims were made known — That seems to be of a piece with all my fortune — The World seems determined to starve me to death, and I suspect it will succeed in doing so."<sup>7</sup>

<sup>5</sup> Barnabas Bates, *A Brief Statement of the Exertions of the Friends of Cheap Postage in the City of New York* (New York, 1848).

<sup>6</sup> Lysander Spooner to George Bradburn, November 8, 1849. Spooner Papers, New York Historical Society.

<sup>7</sup> Lysander Spooner to George Bradburn, May 11, 1851. Spooner Papers, New York Historical Society.