B AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 7: The Republican Era – Separation of Powers

Bates & Guild Co. v. Payne, 194 U.S. 106 (1904)

Since 1879, the U.S. mail had been divided into four classifications, with "periodical publications" being second-class mail and "miscellaneous printed matter" being third-class mail. Third-class mail, which included "books, transient newspapers and periodicals, circulars," and the like, were charged at a rate that was eight times as high as the rate charged for second-class mail. The postmaster was charged with examining everything that was posted as second-class mail to determine whether they were correctly classified or whether they should be shipped at a higher rate.

Publishers soon learned to repackage books as "magazines" in order to take advantage of the lower rates, and the post office had long lobbied Congress to revise the statutes to close off this loophole. Congress refused, preferring to see the wide dissemination of inexpensive literature than higher revenue for the post office. Finally, in 1902, the postmaster general took matters into his own hands and instructed local postmasters to reclassify such books as third-class mail and to charge the higher rate.

Bates & Guild Co. published a "monthly magazine" called Masters in Music. *Each issue of the magazine was advertised as "complete in itself" and included a profile of an individual composer, critical commentary, and selected piano music from that composer. The postmaster general rejected the company's application to have the magazine classified as second-class mail, and the company sued and won an injunction from the Supreme Court of the District of Columbia preventing the postmaster general from charging the higher rate (Bates & Guild Co. was joined by Houghton, Mifflin, and Company, which was suing over the classification of its Riverside Literature Series, which was composed of abridged versions of its books). The government had this decision overturned in the Court of Appeals for the District of Columbia on the grounds that discretion for classifying the mail had been vested exclusively and finally in the postmaster. The publisher appealed to the U.S. Supreme Court. At stake was the degree of discretion that executive branch officials could exercise over the interpretation of statutes and whether the courts would intervene to provide an independent reading of the law. The post office, along with the treasury and the land office, had long been at the heart of the federal government's administrative apparatus, but in the early twentieth century the reach of the federal government and the size of the executive bureaucracy was rapidly expanding and the case had wide-ranging implications for the scope and independence of executive power.*

JUSTICE BROWN delivered the opinion of the court.

. . . .

The Postmaster General placed his refusal to allow this magazine to be transmitted as second class mail matter upon the ground that each number was complete in itself; had no connection with other numbers save in the circumstance that they all treated of masters in music, and that these issues were in fact sheet music disguised as a periodical, and should be classified as third class mail matter.

. . . . [W]e think that, although the question is largely one of law, determined by a comparison of the exhibit with the statute, there is some discretion left in the Postmaster General with respect to the classification of such publications as mail matter, and that the exercise of such discretion ought not to be interfered with unless the court be clearly of opinion that it was wrong. The Postmaster General is charged with the duty of examining these publications and of determining to which class of mail matter they properly belong; and we think his decision should not be made the subject of judicial investigation in every case where one of the parties thereto is dissatisfied. The consequence of a different rule would be

that the court might be flooded by appeals of this kind to review the decision of the Postmaster General in every individual instance. . . .

. . . .

The rule upon this subject may be summarized as follows: That where the decision of questions of fact is committed by Congress to the judgment and discretion of the head of a department, his decision thereon is conclusive; and that even upon mixed questions of law and fact, or of law alone, his action will carry with it a strong presumption of its correctness, and the courts will not ordinarily review it, although they may have the power, and will occasionally exercise the right of so doing.

. . . .

In the case of Masters in Music the question really is whether a pamphlet, complete in itself, treating of the works of a single master, with a greater part of the pamphlet devoted to specimens of his genius, shall be controlled by the cover, which declared that these numbers will be issued monthly, at a certain subscription price per year. Although a comparison of the exhibit with the statute may raise only a question of law, the action of the Postmaster General may have been, to a certain extent, guided by extraneous information obtained by him, so that the question involved would not be found merely a question of law, but a mixed question of law and fact. While, as already observed, the question is one of doubt, we think the decision of the Postmaster General, who is vested by Congress with the power to exercise his judgment and discretion in the matter, should be accepted as final. The decree of the Court of Appeals is therefore

Affirmed.

JUSTICE HARLAN (with whom concurred the CHIEF JUSTICE) dissenting.

. . . .

But there are some things in the opinion of the court in this case to which we shall advert. It is said that the case is one of doubt. Now, it was admitted at the bar by the Government that the publication known as "Masters in Music" would be carried in the mails as second class matter if the question be decided in accordance with the construction placed upon the statute by the Department for more than sixteen years continuously prior to the present ruling of the Department. We had supposed it to be firmly settled that the established practice of an Executive Department charged with the execution of a statute will be respected and followed -- especially if it has been long continued -- unless such practice rests upon a construction of the statute which is clearly and obviously wrong. In *United States* v. *Philbrick* (1887), which involved the construction placed by an Executive Department upon an act of Congress, this court said: "Since it is not clear that that construction was erroneous, it ought not now to be overturned." So in *United States* v. *Healey* (1895), the court said that it would accept the uniform interpretation by the Interior Department of an act relating to the public lands, "as the true one, if, upon examining the statute, we found its meaning to be at all doubtful or obscure." The authorities to that effect are numerous. . . . The rule of construction which this court has recognized for more than three-quarters of a century is now overthrown. For, it is adjudged that the practice of the Post Office Department, covering a period of sixteen years and more, need not be regarded in this case, although the construction of the statute in question is admitted to be doubtful. We cannot give our assent to this view.