



PROJECT MUSE®

Making Messages Private: The Formation of Postal Privacy and Its Relevance for Digital Surveillance

Efrat Nechushtai

Information & Culture: A Journal of History, Volume 54, Number 2, 2019,
pp. 133-158 (Article)

Published by University of Texas Press



➔ For additional information about this article

<https://muse.jhu.edu/article/726039>

Making Messages Private: The Formation of Postal Privacy and Its Relevance for Digital Surveillance

Efrat Nechushtai

Abstract: This article examines the establishment of privacy in mediated communications in the United States. The Post Office Act of 1792, which transformed the informational environment by formalizing a nationwide communications network, banned letter opening, a norm that became the cornerstone of American privacy law. The article analyzes the circumstances that led to the articulation of this norm, contending that it rested on two pillars: a civic rationale that rejected government interference in personal communications, and a commercial rationale that prioritized user trust and market expansion. A comparison between the eighteenth-century discourse and current debates over digital surveillance is offered.

Keywords: privacy, surveillance, postal service, encryption

On June 13, 1778, the Continental Congress confronted a moral dilemma. A messenger from the British government had dropped off a packet of letters from a British Navy officer. Each letter was sealed and addressed to a specific delegate. The United States was at war with Great Britain, and the British officer was an enemy combatant. Should the Congress deliver the letters to the individual delegates without breaking their seals, as was customary? Should the Congress confiscate the letters and read them aloud? Or should they return them to the messenger?

The president of Congress, Henry Laurens, weighed his options and decided that the potential value of the information that the letters contained outweighed any considerations of postal confidentiality. Accordingly, he began to read them aloud. Almost immediately, however, Laurens was greeted with a howl of protest from the delegates, who objected to this violation of a cherished civic norm. Laurens resealed the letters and sent them back. “The Idea of opening other people’s

Efrat Nechushtai is a PhD candidate in communications at the Columbia University Graduate School of Journalism. Her research has been published in Journalism, The International Journal of Press/Politics, and Computers in Human Behavior. Previously, she worked as a business journalist.

Letter's [*sic*] is exceedingly abhorrent to me," Laurens conceded in a letter to General George Washington that he wrote shortly thereafter. Even so, "I think Congress have a power over Letters equal at least to that which necessity obliges them sometimes to exercise over persons."¹

Laurens's dilemma is a pointed reminder that the current generation of Americans is by no means the first to confront the challenge of balancing civil liberties and collective security. Today public officials routinely justify the surveillance of digital communications as an inevitable response to an existential threat. The founders of the republic, however, saw things quite differently. In the Post Office Act of 1792—the first major postal law to be enacted following the adoption of the federal Constitution—lawmakers specifically rejected the time-honored presumption that the government had the right to surveil personal communications. Instead, lawmakers banned the opening of letters, establishing a precedent that would shape American communications policy from the 1790s to the present day.

The 1792 postal surveillance standard was what sociologist Paul Starr would call a constitutive choice; that is, it established a norm that would shape the civic, political, social, and business life in the United States for centuries to come.² Other, better-known legal provisions (e.g., the Fourth Amendment limits on search and seizure and the First Amendment guarantee of free expression) would not become influential in shaping American public policy until much later. In fact, one scholar has contended that the scope of the free expression guarantee in the First Amendment had been shaped by the postal confidentiality provision in the Post Office Act of 1792.³

The Post Office Act of 1792 is typically regarded as a key event in the history of American journalism, since it guaranteed the circulation of newspapers in the mail at low cost and on a nonpreferential basis while establishing an institutional mechanism that would lead to the rapid expansion of the postal network from the seaboard into the hinterland.⁴ Yet the law also ensured the privacy of personal communications. Lawmakers placed such a high priority on postal confidentiality that in an early version of the 1792 law they banned the opening not only of letters but also of newspapers. This provision, however, was not included in the final law. It passed the House yet was rejected by the Senate and removed from the final version of the law.⁵

Why the newspaper privacy clause was eliminated is a matter of speculation. Senators may have recognized that it would be impracticable to guarantee the inviolability of a class of items whose contents were not ordinarily concealed. Alternatively, it is possible that they wanted to retain some kind of a check on the circulation of news. Either way, this

exclusion should not obscure the basic point: the framers of the 1792 law regarded postal privacy as important and were careful to try to envision how it would be implemented in practice.

Shortly after lawmakers enacted the Post Office Act, Secretary of State Thomas Jefferson expressed his relief that the law was not a “revenue law” but rather “a law for the general accommodation of the citizens.”⁶ Among its provisions were a number of safeguards that had been designed with the needs of the country’s business community in mind. Lawmakers mandated stiff penalties for any postal officer who delayed or opened any letter sent through the post, but should the letter contain money—a major concern for the country’s merchants, who lacked an alternative mechanism to circulate items of value—the penalty set in law was death. While not, strictly speaking, revenue laws, these provisions had the effect in the years to come of increasing trust in the post and, in so doing, increasing the revenue that the institution generated. They also established the norm of postal confidentiality, or what we today call privacy, a term that was not used at the time. In this way, an eighteenth-century law that was designed primarily to improve trust in the post so as to facilitate the circulation of high-value commercial correspondence became a cornerstone of US communications policy—and a precedent for the present-day liberal norm of communicative privacy.

This study explores the history and legacy of postal privacy, showing how and why lawmakers came to regard it as a norm and highlighting certain parallels between this history and twenty-first-century debates over digital surveillance. It is based on a survey of published primary documents that include laws, newspaper articles, transcripts of congressional debates, speeches, and the personal papers of lawmakers and businesspeople. While congressional debates relating to other aspects of the 1792 law, like postal routes, have been documented in detail, the historical sources sketch the debates on confidentiality protections relatively roughly. This article cites the available materials on the legislative discussion, as well as other materials that shed light on the moment that created the newly expanded norm of privacy.

Postal privacy, for the founders of the United States, had two primary rationales. The first rationale was civic. The United States was a republic and, as such, rejected the surveillance of personal correspondence as a vestige of monarchical tyranny. The second rationale was commercial. To ensure that the post office would be financially sustainable, lawmakers found it expedient to encourage merchants to use its services. Postal confidentiality was a means to this end.

A norm of privacy was by no means preordained. Consider the case of John Jay, the first chief justice of the US Supreme Court. When Jay served

as a diplomat in France and Spain during the War of Independence, he bitterly complained about the detrimental effect of postal surveillance.⁷ Following Jay's appointment as secretary of foreign affairs in 1785, however, he shifted his tune. "There may be Occasions," Jay suggested in a letter to Congress president Richard Henry Lee, when postal surveillance might well be desirable in the United States.⁸ Within days, Jay received a copy of an act vesting in him the power to inspect "any letters in any of the post Offices."⁹

Privacy in mediated communications became the law of the land in 1792 not only, or even primarily, because it was a civic ideal but because it met a practical need. In Europe, postal networks were highly centralized, making the surveillance of correspondence relatively straightforward. Surveillance was so professionalized that it was seamlessly integrated into work routines: letters could be opened, inspected, and resealed quickly and efficiently without undermining faith in the system.¹⁰ In the United States, in contrast, the decentralized structure of the postal system militated against the creation of this kind of streamlined surveillance apparatus. Postal officers were harder to monitor, increasing the risk of embezzlement and the likelihood that letters might be slowed in transit or even destroyed. By controlling local post riders and officers, the federal government hoped to address concerns regarding the quality of service. And by doing so it established a new privacy standard on the national level. In the absence of such protections, it is entirely possible that the system might have broken down, imperiling long-distance commerce and undermining confidence in the country's political institutions.

The radical standard of protection from surveillance did not stem from an idyllic political reality: potential justifications for opening letters were abundant. As in Europe, postal surveillance could well have been used to mitigate what was perceived as threats to national security. War remained a constantly present fact of life, albeit on a smaller scale, as did political factionalism and rebellion. In 1792 alone, the United States was engaged in a war with Britain in the Northwest and a tax rebellion in the East while struggling to prevent further conflicts with European armies. Between 1792 and the Civil War, the government remained in constant friction with seceders and rebels and was involved in numerous international conflicts.¹¹

Yet in contrast to Europe, postal surveillance in the United States would have severely compromised trust in the quality of service, which would have had a grave impact on the development of economic life. The post was the only existing network that could facilitate long-distance business correspondence and exchange, and it could have been configured to support the safe transfer of information and payments between

geographically remote businesspeople. Privacy in communications was preserved, since it was understood as supporting the national interest rather than standing in opposition to it.

American history is, of course, replete with violations of communicative privacy, from political committees intercepting letters during the War of Independence, through the federal government obtaining copies of telegrams from Western Union, to illegal wiretapping and mass internet surveillance. But the fact that the principle explored here has not always been honored does not render this policy choice less consequential. To the English, French, and Germans of the day, postal privacy seemed unlikely—similar, perhaps, to how expectations of privacy online would seem to many Americans today.¹² Yet despite a climate of wars, uncertainty, and factionalism, early lawmakers believed that failure to uphold civic norms, secure business communications, and generate public trust in the post would pose bigger risks. And the history of this policy choice offers a usable past for those interested in protecting digital privacy today.

Civic Rationale: Protecting Liberties from Tyranny

Throughout most of the British colonial presence in North America, residents of the American colonies used the services of the Royal Mail. Like other state-owned postal networks of the day, the British post was not only a system of communication but also a system of control and surveillance. Post offices in Europe were important hubs of intelligence work, and surveillance of letters was standard practice. Despite the early British recognition of a right to confidentiality, in the British postal system, as in the French, Dutch, Danish, and other postal networks, post and government officers habitually opened letters, read and sometimes copied their contents, then resealed and returned them to circulation. Post offices regularly employed cryptologists and mathematicians to break any codes and ciphers that might be used by those who suspected that their letters were being examined.¹³

The ease with which postal networks lent themselves to intelligence work might not have been incidental: some have speculated that the primary reason governments permitted citizens to use their previously internal communications networks in the fifteenth century was to gain advantage in the “endless struggle to keep one step ahead of restless subjects.”¹⁴ By the eighteenth century, however, as Europeans started to think of written letters as a uniquely intimate avenue for the development and revelation of a truer self, interception of letters came to be seen as an abuse of power, and the idea that post users have a right to confidentiality

became popular.¹⁵ As Britain prided itself on its liberal political culture, this notion was somewhat acknowledged in policy, and postal employees had been prohibited by law from meddling with letters since 1710.¹⁶

In practice, citing security concerns, postal interception was widely practiced. As was widely known at the time, the management of information in the British post did not differ much in practice from that in less liberal European monarchies.¹⁷ Following a period of political unrest and antimonarchical radicalism, British postal officers could easily obtain warrants for intercepting letters when public safety was purported to be at risk. In a striking resemblance to contemporary digital surveillance, warrants were used in a variety of contexts, from those we now call national security, through local law enforcement, to monitoring foreign diplomats, people suspected of involvement in subversive politics, and personal acquaintances (sometimes on so-called romantic grounds). In 1735 members of the House of Commons criticized the climate of mass surveillance. Prime Minister Robert Walpole defended the legality of interceptions “in times of public danger,” deeming them necessary for preventing “any bad practices against the government.”¹⁸

Postal networks were soon also used (with reduced efficacy) to facilitate and surveil communications with colonies and within them. As political tensions in North America increased, Britain intensified the surveillance of the local post. Consequently, American patriots came to see the post as a political organ and linked postal surveillance with British tyranny and overreach. In 1773 American rebels declared a boycott on the imperial post and started to develop independent postal routes and offices. “Theres two Post offices in New Port, the King’s and [Peter] Mumfords. . . . [T]he revenue of the last is the greatest,” British postal officer Hugh Finlay wrote in his journal in 1773. “It is next to impossible to put a stop to this practice in the present universal opposition to every thing connected with Great Britain.”¹⁹ This sentiment became more widespread when Britain dismissed Benjamin Franklin as postmaster general in 1774 due to his expressions of sympathy for American independence in leaked letters to Massachusetts governor Thomas Hutchinson and others (what later became known as the Hutchinson Affair). Franklin interpreted his own dismissal as a blunt expansion of British power over life in America, and the following month, Bostonians declared that the British post was “aiding the measures of tyranny.”²⁰

In 1775 Britain started a months-long dragnet operation in which the government opened and screened letters from North America en masse to comprehend the political sentiment.²¹ They made little effort to hide it: Esther Reed reported that year that a letter arrived from England “with the seal quite broke, as if it was done on purpose to show they

dare. . . . I take it for granted that I am writing to some curious person in office, and that my letter, insignificant as it is, will be opened before you get it.”²² Americans came to attack postmasters and seize mailbags, took physical control over postal routes and offices, and announced the establishment of an independent American post network named the Constitutional Post. By the end of 1775, the British post had formally ceased to operate in the North American colonies.

At least some of the anger Americans directed toward the Royal Mail stemmed from the notion that postal fees were a form of taxation without representation. But fees were not the only element that American patriots rejected. Questions regarding who controlled the routes of communication and the political advantages that could be gained from such control became increasingly pressing. The rejection of postal surveillance by the British Crown established a link between postal confidentiality and natural rights, an idea that fit well within the period’s broader intellectual climate.

These sensibilities were further enhanced by the experiences of American statesmen during and after the War of Independence, when they traveled to Europe as diplomats to advocate US sovereignty and felt the strain of epistolary surveillance much more strongly than under British colonialism. Unlike diplomats from established countries, Americans had yet to form a network of trusted carriers abroad and were dependent on local postal networks for communications with their governments. Of course, given their political status, their experience was likely somewhat different from that of the average post user in these countries. But the pervasiveness and conspicuousness of Continental European surveillance were a new experience and, for many of the American statesmen, an appalling one. In a 1780 letter from Paris, John Adams, then an American diplomat, wrote to Joshua Johnson, an American businessman living in London: “The Moment I should have Cause to believe that any Letter to me or from me is intercepted, I will carry my Complaint of it to the King. . . . [I]ntercepting Letters public or private . . . is too infamous and detestible [*sic*] . . . not to be punished by any Government.”²³

Early American diplomats reported that postal surveillance in Europe took a heavy toll on their work and well-being. Jay commented on this predicament extensively. “All my letters” sent by the public post, Jay wrote in 1780, “whether in France or Spain are opened. . . . [I]t would not always be proper to write . . . with that Freedom which would often be so useful and sometimes necessary.”²⁴ The knowledge that his letters were regularly surveilled (and sometimes also seized and “suppressed”) shaped Jay’s work routines and modes of communication.²⁵ Knowing that his outgoing communications would be surveilled, Jay considered

when he was writing that the interceptors would become a secondary readership, so he carefully refrained from literal and direct expression.²⁶ Occasionally, Jay hired expensive private couriers, but he usually made do by encrypting parts of his letters and asking his contacts to do the same.²⁷ After reporting that important letters addressed to him were seized again, Jay suggested to Congress that unless they considered paying couriers more frequently, his stay would “become a useless Expense to my Country.”²⁸ Adams wrote in 1779 to Benjamin Rush: “This Letter nor any other from you never reached me in France. . . . [I]n Europe I was terribly tormented for Want of Information from this Country.”²⁹

In the meantime, in the war-torn United States, prewar concerns over British surveillance were replaced by concerns over the increased unreliability of postal services, which will be examined in the following section. Yet civic sensibilities resurfaced in the public conversation in the late 1780s and early 1790s. At the time, the national post was slightly more stabilized in terms of operations, but in two different instances, newspaper publishers felt the need to voice a sense of civic and moral outrage over postal surveillance. These critiques were now aimed against the American government itself and, some have suggested, might have been strongly informed by the publishers’ own business interests in regard to the postal system.³⁰

Concerns over the impact of government surveillance on the quality of civic life reentered the political conversation in 1787, right after Postmaster General Ebenezer Hazard modified postal regulations to curtail the volume of newspapers carried due to their heavy weight and meager contribution to revenue. The result was long delays in the mailing of newspapers—while the Constitutional Convention was taking place. Publishers, heavily dependent on the post for the sourcing of news and the distribution of their own product across the country, framed the new rule as discrimination against newspapers due to their contents and argued that curtailing the transmission of newspapers on technical grounds was a new form of surveillance and censorship. Sifting through mailbags to categorize individual post items, they argued, was an assault on revolutionary ideals.³¹ “Real intelligence and a free communication of sentiments” were now arguably suppressed by the American government itself.³² “The conduct of Congress or the postmaster-general, in stopping the free circulation of the Newspapers at this critical juncture, is very alarming,” the *Philadelphia Freeman’s Journal* warned. “The freemen of America will never suffer such a bare faced violation of their liberties to pass with impunity. This is a stretch of arbitrary power, that even Britain never attempted before the Revolution.”³³ The *Philadelphia Independent Gazetteer* characterized the new policy as “an infernal violation of the

liberties of the people” and printed a statement by its publisher and former revolutionary soldier, Eleazer Oswald: “Not only all the *printers*, but every *freeman* in this country, will conceive themselves very deeply concerned. . . . [L]et any man in his sober senses say whether *Americans* are not degraded from their rank as *freemen*. . . . Such oppressions and atrocious exercises of power, were never expected in the morning of our peace and independency.”³⁴ The policy was eventually rolled back, and the 1792 Post Office Act granted newspaper publishers substantial benefits and subsidies.

When the act was debated in Congress in 1791–92, newspapers, uniquely invested in the outcome, covered the debates in depth, again strongly arguing in support of a civic norm.³⁵ The importance of epistolary confidentiality in a healthy republic was discussed primarily in relation to the punishment that the bill should bestow on those tampering with the mail. A particularly seething column was published in the *Federal Gazette* of Philadelphia, opining that these are “crimes of no trivial nature, but heinous breaches of trust by persons employed by the public.” Interception by postal employees was described as “theft,” one that “involves a much greater degree of criminality than the action of him who steals money.” The newspaper further suggested that “it should be remembered, that a letter passing from one merchant to another, although [it] contain no bills, may be of greater importance than another enclosing property. . . . [T]he person who would deliberately incur such guilt, must be a man so thoroughly depraved as to be unfit to live.”³⁶

Commercial Rationale: Establishing User Trust and Developing Markets

While concerns over civic spirit and protection from tyranny were assuaged after the transition to an independent postal system in 1775–76, as the War of Independence broke, problems with reliability and security—letters arriving late or visibly intercepted, mailbags being stolen, post riders stealing the letters they were entrusted with—grew exponentially. From 1775 until the stabilizing legislation of 1792, the designers of American postal policy faced a new challenge. With British control removed, they had to ensure that the post—expected to be one of the main drivers of income for the federal government—could offer sufficient standards of service to earn the trust of users.

The post played a significant part in this political conflict and was used by both revolutionaries and loyalists, and so the risk of politically motivated interceptions was almost ubiquitous.³⁷ Letters written in the 1770s and 1780s convey a pervasive sense that the post was completely

unreliable. This perception decreased the propensity of Americans to use the post and drove many to hand their correspondence over to private couriers.³⁸ Interception tended to be local, but strong national measures were required to curb it and restore trust.

Since the very first days of the Constitutional Post in 1775, letters transmitted within the colonies were regularly detained and inspected by revolutionaries to reveal who in the ranks appeared to be less than a true patriot. "Several of the Deputies of the Post office . . . most Scandalously abuse their Trust, and I am certain many Letters directed to me . . . are detained," Cornelius Harnett, a North Carolina businessman and delegate to the Continental Congress, wrote in 1777. "The Members of Congress complain generally of this villainous Practice."³⁹ In another letter dated two months later, Harnett concluded: "I fear there is little dependence on our Post office for the safe conveyance of Intelligence."⁴⁰ The same year, John Adams wrote to Abigail Adams: "You need not fear Writing in your cautious Way by the Post, which is now well regulated."⁴¹ But six months later, he wrote: "I dont incline to write, very particularly, least my Letters should be intercepted."⁴² Even Washington's letters could not always be secured: dozens of them were seized by British allies and published in the press.⁴³

Some of the most lurid political scandals of the time originated in letters falling into the wrong hands. Such was the case of letters by Silas Deane, intercepted during their transatlantic journey from France to the United States in a postal mailbag and published in 1781. They revealed that Deane, previously an envoy to France, suggested that reconciliation with Britain might be the best option. The letters were published by loyalist James Rivington in the *Royal Gazette*, and Deane was accused of treason. Angst over the fate of information put on paper became a defining feature of written communications at the time. "Mr. Rivington saith in his paper that some of their brave fellows have taken our post with his mail," wrote Ezekiel Cornell, a Rhode Island delegate to the Continental Congress, to Governor William Greene in 1780. "I suppose they will publish it. Either of letters contain some particulars I should by no means have wrote to the enemy."⁴⁴

In the lack of credible institutional protections from interception, postal users had to devise their own ways to reduce risks, even at the cost of slowing down communications and making them less efficient. The use of private carriers and the encryption of letters were the most common privatized means of protection. While sending letters via trusted acquaintances became increasingly prevalent, this method was not without its own risks. Numerous scandals, like the 1775 exposure of Benjamin Church, the first chief physician of the army, as a British spy or the 1773

Hutchinson Affair, which cost Franklin his position in the post, originated in letters being leaked by personal acquaintances.⁴⁵ It is now known that some of the letters published in the loyalist press were forged, and in some cases, modern scholars suggest, letters may have been intentionally leaked by the people involved rather than stolen or intercepted, but at the time, it was not always easy to tell who could be trusted.⁴⁶ The “private hand” method was also limited in its ability to ensure efficient regular communications on a large scale. In some cases, an acquaintance traveling directly to a destination could provide faster transmission of a letter or a package than the post rider. However, by definition, relying primarily on this method would curtail the possibilities for communication between people who were geographically remote. Sending letters with associates and relatives was sometimes fast and convenient, but it also meant that one could only use a limited pool of familiar and trusted couriers and could only send letters to the geographic destinations that they happened to have a personal connection to.

Simultaneously, the use of codes, ciphers, and insinuations to protect important information from prying eyes grew significantly.⁴⁷ Massachusetts delegate James Lovell invented a popular cipher and frequently urged his correspondents to employ it.⁴⁸ “The Post having been robbed of his mail . . . I hope your letter did not contain anything not in Cypher which is unfit for the public eye,” wrote James Madison, then Virginia delegate to the Continental Congress, to his colleague Edmund Randolph in 1782. “It will be proper for us . . . to extend the use of our Cypher.”⁴⁹

The constant risk to correspondences between high-ranking American statesmen and officers and the systemic costs and inefficiencies involved with the need to safeguard communications privately explains why, despite some useful revelations that originated in interception, the precariousness of written communications was considered a national problem. In October 1782 the Continental Congress enacted the first attempt to protect the security of messages sent by post. The Ordinance for Regulating the Post Office placed heavy fines on a postmaster general or postal officers who “knowingly or willingly open, detain, delay, secrete, embezzle or destroy” any letter, packet, or dispatch sent through the post or allow others to do so. Postal officers were required to swear that they would not break this ordinance, and those found guilty could never hold public office again. A provision was added later allowing the postmaster general to reward informants. However, opening letters was permitted if an express warrant was signed by the president of Congress or “in time of war” by a military authority. Franked letters of government officials were protected from some of these clauses.⁵⁰ Despite these regulations, public distrust and the use of private couriers remained commonplace.

Washington continuously hinted to legislators that policy had to be enacted to make the post a strong and prosperous part of public life.⁵¹ In January 1790 the House began debating permanent legislation regarding the post. The extent of public distrust was considered a serious problem. A report by Secretary of the Treasury Alexander Hamilton and Postmaster General Samuel Osgood, read in the House, suggested that “the smallness of the revenue arising [from the post] . . . may have been the effect of various causes,” including that “stage drivers and private post riders may have been the carriers of many letters which ought to have gone in the mail.” Better regulation and renewed trust, Hamilton and Osgood estimated, could have multiplied the post’s annual revenue by as much as 1,100 percent, providing resources for nation building. The added income, they concluded, would be considerable “if the department is well regulated.”⁵²

The 1790 effort to reach a permanent Post Office Act was not successful, and in 1791 Washington instructed Congress again that strengthening the post could not “fail to be of material utility.”⁵³ Material utility was emphasized not only in relation to revenue from postal services but also in relation to the role that the post was to play in the country’s economic life. Exchanging messages, payments, and goods through the post was a central mechanism of commerce, and it had been hoped that the reliance of businesspeople on the post to conduct business could not only improve revenues but also turn the post into a stronger vehicle for national economic development.

While commerce in colonial societies had expanded and diversified throughout the eighteenth century, the institutional infrastructure supporting business activity not sponsored by the empire remained peripheral: outside of Europe, banking was local and rudimentary.⁵⁴ In the absence of long-distance banking networks, there was no national system in place directly aimed at enabling the development and expansion of commercial markets. The new American government saw the value in adapting the post, which was the best-developed national network of communications at the time, to fill that void.⁵⁵ The language of the law indicates that this consideration was eventually the decisive one in securing postal confidentiality.

Merchants were already among the heaviest users of the post, and since the other primary group of users—political representatives—enjoyed free postage, acquiring the trust of the business community was crucial for the sustainability of the post.⁵⁶ To businesspeople, security and confidentiality were of utmost concern. A packet that was lost or stolen could represent a severe financial loss. Much like politicians, businesspeople were also uniquely sensitive to reputation risks. They were public figures

in their communities who operated in markets that were often based on personal relationships, so honesty in correspondence was sometimes in tension with their public image.⁵⁷

Reports by American businesspeople from the 1770s and 1780s reveal their dependency on the post yet also contain frequent complaints about its unreliability. Letters exchanged between members of the Beekman family, a prominent New York-based family of merchants, reveal pervasive distrust of the post.⁵⁸ Money and bonds were typically entrusted to a “safe hand” or a “good hand,” a reliable acquaintance who was traveling at the time. Between 1778 and 1788, the terms “safe hand” and “good hand” appear forty-eight times in the Beekman family mercantile papers, alongside many other references to acquaintances delivering or carrying letters, attesting to the centrality of the practice in the conduct of family business during these years. For example, a 1779 letter from Gerard W. Beekman to his brother William states that “I Shall . . . Send you Money and Notes per furst Good Safe hand.”⁵⁹ A year later, Gerard wrote to William: “Send Contenettel Dollars per Good Safe hand Henry Ramsen is a Comming heare Next Week he Will be a Good hand.”⁶⁰ In 1788 James Beekman wrote to the Philadelphia-based firm Nottmangel, Montmollin and Co.: “We shall therefore exchange said Sum for you as soon as possible . . . and . . . forward it by a safe Hand.”⁶¹ In 1790 Philadelphia merchant Michael Gratz wrote to his brother Barnard: “*It* was intended to go by post, but the mail being made up, *I* troubled that gentleman with it, who was in the stage for Richmond and Petersburg, and *he* promised to deliver it. So *I* hope *it* got safe to your hands.”⁶²

Three days after Washington’s 1791 speech on the post, the House of Representatives appointed a committee to prepare a bill. The Post Office Act was debated for roughly three months, with discussions revolving primarily around the location of post roads, the question of who would get discretionary power to determine new roads, and the preservation of franking privileges. By January 1792 the House had passed a bill, which was approved by the Senate in February. Within a week, Washington signed it into law.

The Post Office Act of 1792 created a comprehensive and binding framework that overcame some of the problems faced by the Beekmans and Gratzs and their associates. Alongside regulations regarding management, routes, and newspaper subsidies, the act enhanced the commitment to postal confidentiality and put in place strong protections from tampering and surveillance. That these protections were now part of a landmark bill promoted and cherished by Washington made them all the more powerful. The 1792 act determined that postal officers who will “detain, delay, or open, any letter, packet, bag or mail of letters . . .

which are intended to be conveyed by post” or “secrete, embezzle or destroy” any post item that does not contain securities relating to money would be fined up to \$300 (roughly \$7,300 in 2017 dollars), or imprisoned for up to six months, or both.⁶³

However, the law set a much higher value on the security and confidentiality of letters that pertained to business transactions. The act states that officers guilty of secreting, embezzling, destroying, or stealing any letter, packet, or mailbag containing items of business and financial utility—“any bank note, or bank post bill, bill of exchange, warrant of the treasury of the United States, note of assignment of stock in the funds, letters of attorney for receiving annuities or dividends, or for selling stocks in the fund, or for receiving the interest thereof, or any letter of credit, or note for, or relating to the payment of money, or other bond or warrant, draft, bill, or promissory note whatsoever, for the payment of money”—shall “suffer death.”

Some representatives argued that interceptors of noncommercial letters deserved equally harsh punishments. An early draft suggested that postal officers found guilty of opening, detaining, or embezzling any letters “shall be deemed guilty of felony, and shall suffer death.”⁶⁴ The committee that worked on the bill, chaired by William S. Smith (South Carolina), erased these words. James Hillhouse (Connecticut) suggested “imprisonment for life, or for a term of years, at the discretion of the court, before whom such conviction shall be had; and shall ever after be rendered incapable of holding any office under the United States.” Elias Boudinot (New Jersey) suggested the softer formula that was accepted: “Shall forfeit and pay a fine not exceeding _____ dollars, and suffer imprisonment for a term not exceeding _____ years.” In the final version of the bill, tampering with any post item was a serious offense. But as the language of the law makes clear, the security and confidentiality of post items related to business conduct was substantially prioritized.

Practice did not immediately meet the legal standard, but there is some anecdotal evidence that businesspeople had quickly updated certain routines: references to a “safe hand” or “good hand” no longer appear in the Beekman family papers after 1788. By the early 1800s, the post gradually had come to be seen as completely safe, especially for money transfers.⁶⁵ Only a decade after the Post Office Act, Postmaster General Gideon Granger wrote, “The mail has become the channel of remittance for the commercial interest of the country.”⁶⁶ By the 1820s, Postmaster General John McLean estimated that the post facilitated the exchange of “no inconsiderable amount of the active capital in the country.”⁶⁷ In 1855 the money transmitted through the post was estimated as almost twice the federal budget.⁶⁸

Alongside the penalties set in the 1792 act, the post office made continuous efforts to entrench the commitment to confidentiality. Post offices were architecturally designed to facilitate the surveillance of officers to ensure proper conduct, and the post appointed special agents to prevent interception.⁶⁹ Memoirs published by two special agents in the 1870s indicate that some eighty years after the 1792 legislation, the principle of confidentiality continued to be understood as an amalgam of civic and commercial goals: “No interest concerns the public more vitally than the security of the mails. To correspondence are intrusted not only money . . . but also the most important personal and business secrets.”⁷⁰ “The laws of the land are intended not only to preserve the person and material property of every citizen sacred from intrusion, but to secure the privacy of his thoughts. . . . [I]t is as important that everyone . . . should be at liberty to utter his thoughts without restraint. Now the post-office undertakes to maintain this principle.”⁷¹

A Usable Past for Digital Privacy

The rhetoric used from the 1770s to the 1790s to discuss what we now call privacy is remarkably reminiscent of present-day conversations about digital surveillance. The early discourse on postal privacy echoes prevalent themes in debates over internet privacy: values of liberty and personal autonomy, suspicion of government overreach, concerns over security and trust, and incentives to design a new communications network as a platform for commerce over geographic distances.⁷² Although the internet is relatively young and the technical details of the debate are ever changing, some of the ongoing negotiations on privacy in this mediated space are far from new.

The state’s obligation to protect privacy has been consistently eroding with the introduction of every new media, from telegraphy to telephony.⁷³ As Edward Snowden revealed in 2013, after 9/11 the Bush administration created secret programs that enabled mass surveillance of internet communications; at one point, it has been estimated that “75 percent of all U.S. internet traffic is vacuumed by the U.S. surveillance programs.”⁷⁴ These policies continued under the following administrations. Surveillance justified by security concerns is not unique to the digital era, but the massive scope of digital surveillance and the automated capabilities of intelligence agencies amount to substantive change.

However, security-based government surveillance is only one element in the increasingly surveillance-heavy digital ecosystem. In addition to historically familiar intelligence and law enforcement activity, privacy online breaks from the historical norm in that the law grants those operating

the commercial channels on which online communication takes place—internet service providers (ISPs) and internet platforms and services—unfettered access to the content transmitted on their networks. In contrast to the foundational principle of 1792, in 2017 President Trump signed a bill into law that allows ISPs to sell individual internet browsing histories to advertisers without the customer’s consent.⁷⁵

Similar to what letter writers did before confidentiality was credibly institutionalized in the post, contemporary internet users are turning to encryption to safeguard communications from prying eyes.⁷⁶ As they did in the eighteenth century, governments are striving to break these codes if they suspect information could be of interest. Concerned that digital technology could produce truly unbreakable encryption, the US government tried repeatedly to ban the use of powerful encryption in the mid-1990s and mid-2010s. These attempts have failed, and in these cases too, liberal civic arguments proved largely insufficient. Ultimately, the economic interest in facilitating commercial transactions online and securing the ability of US companies to compete globally were the decisive concerns that kept sophisticated encryption tools legal.⁷⁷

However, it is important to note that encryption is not the same as privacy: it represents the *privatization* of privacy due to a strong presumption of interception. Without legal and institutional protections for the confidentiality of information, securing privacy is once again the personal responsibility of the sender and receiver alone—a state highly reminiscent of preprivacy postal systems. The implications of surveillance in the twenty-first century are substantially greater than they were in the eighteenth century, since the information produced in contemporary online activities is much more personal and sensitive than that produced in early modern postal exchanges, and, unlike handwritten pages, digital records are stored indefinitely. Access to internet use is much broader and more egalitarian than the early post, but awareness and access to effective security measures are not distributed equally between internet users of different backgrounds. Transferring the onus of responsibility for privacy from the state to citizens creates a new divide between the individuals and organizations well positioned to ensure the privacy and security of their communications and those that are less so.⁷⁸

Clearly, some differences complicate any comparison between the successful implementation of confidentiality in the early post and challenges for privacy online today. Two differences seem particularly relevant. First, while the postal network was created as a unified federal institution, the internet is fragmented and profit driven, with a multitude of private actors providing different services. This market structure creates a schism between two different types of privacy: privacy from the

government and privacy from commercial entities. Second, while the post benefited financially from a reputation of confidentiality, in the digital economy, surveillance drives revenue.⁷⁹ Surveillance-based advertising is now largely considered a more sophisticated business model than the traditional model (still used in the post) of payment by users per service. This different structure of economic incentives must be acknowledged when comparing the two systems.

Yet contemporary conversations about privacy online pertaining to surveillance both by the state and by the market would benefit from an introduction to the usable past of the post. This study suggests several potential takeaways for those currently thinking about digital privacy and the circumstances under which it could be enhanced.

The primary takeaway is that the privatization of privacy should be considered a substantial shift in US communications policy. In some ways, abdicating the historic commitment to uphold privacy takes communication systems back by more than two hundred years, returning to early modern norms of insecurity and distrust and having a chilling effect on speech. It is not only the character of mediated communications that is at stake but the very understanding of what civic ideals stand to mean and the proper relationship between the private and public aspects of citizenship.

Second, security concerns have not always topped all other considerations. American legislators in 1792 rejected government surveillance due to an amalgam of civic and commercial considerations, despite ongoing international tensions, internal rebellions, and political factionalism. While real and present, security concerns were not seen as the only worthwhile consideration. They were among a multitude of factors, and eventually, the collective benefit in guaranteeing confidentiality was deemed greater than the benefit of regular surveillance.

Third, discussions on privacy in communications can (and perhaps tend to) conflate normative and pragmatic considerations, with the relative weight of each of these concerns changing over time. The confidentiality of post items might have been established primarily due to fiscal and developmental concerns, but a few decades later, when usage of the post expanded and the network became an important channel for interpersonal communications for large parts of society, the enforcers of this policy considered the protection of civic liberties as the justification for their work. And while not originally understood in the context of either the First or Fourth Amendment, protection from postal interception was later conflated with the rights granted by both. Similarly, calls to apply the frameworks of the First and Fourth Amendments to mass digital surveillance have been increasing in recent years.⁸⁰

The eighteenth-century emphasis on security and operability and their importance for economic growth, more than personal privacy, makes this history particularly pertinent to contemporary discussions. The discourse on digital privacy is as broad and varied as the debates described here regarding the post, with normative arguments (protecting personal privacy) and pragmatic arguments (securing digital commerce and payment) complementing each other. The depth and scope of personal information communicated via the internet today could potentially make normative arguments uniquely powerful. Yet at least thus far, arguments relating to pragmatic and practical concerns tend to resonate more strongly in regard to the internet as well. In the 1990s, when Congress debated the Clipper Chip—a failed suggestion by the Clinton administration that all digital encryption products would deposit “keys” with third parties, and the keys would be available to law enforcement upon judicial authorization—the discussion was primarily market centered.⁸¹

Market-centered rhetoric is even more potent today, as the internet has become so essential for the operations of virtually every business. In 2015 the Obama administration expressed keen interest in reshaping digital security standards to make all information accessible to law enforcement agencies by installing “backdoors” in encryption systems. A report published in 2015 by fifteen prominent security experts responded to the proposed policy with a blend of security-based, economic, and moral arguments highly reminiscent of those expressed in the discourse around the 1792 act.⁸² Throughout the report, the authors emphasized the potential economic costs to innovation and business if the state weakened digital security and privacy across the board. Like the key escrow, the suggested backdoors had not materialized.

The fact that market-based arguments for privacy are consistently supported by academic findings could make this line of argumentation all the more consequential. Multiple studies have found that trust in the security and privacy of data is a primary factor in decisions regarding e-banking and shopping.⁸³ A 2015 report attempted to quantify the economic benefits of encryption. According to the authors, e-commerce grew “from total annual sales of \$100 million in 1994 to over \$250 billion as of 2009. . . . It’s not possible to say precisely how much of this growth is due specifically to the wide availability and use of secure encryption. However, it is exceedingly unlikely that these sectors would have boomed as they did without the assurance of security that encryption provides.”⁸⁴ The prominence of market-based rhetoric is likely to further grow as the Internet of Things (IoT) expands, situating a larger share of internet-mediated communications not between humans but between objects in profit-driven infrastructures and networks.⁸⁵

The final takeaway from the discourse leading to the establishment of postal privacy in 1792 is that personal experiences matter. Individuals and groups, this history suggests, become more sensitive to surveillance, and more indignant about it, following a negative personal experience of being singled out as an object of interest. In the case of the post, this proved relevant for revolutionary US statesmen at home and abroad and for newspaper publishers. Their reactions to experiences of differential treatment on a communications network suggest that informing individuals and organizations on how they specifically are being surveilled is likely to enhance their commitment to locking privacy into networks and policies—and their willingness to advocate for it. Some creative attempts at raising awareness of the scale and pervasiveness of contemporary apparatuses of surveillance are evident in popular culture and art.⁸⁶ This can also be achieved by pressing companies, either through legislation, advocacy, or pressure from users, to make practices of data collection, processing, and sharing transparent to users, as the European General Data Protection Regulation purports to do.

The establishment of privacy in the US post is a story about the implementation of progressive privacy standards in a new communication network. Despite some significant differences between the early post and the internet, the discourse described here constitutes a highly usable past for present-day discussions on privacy. In the 1790s, setting the strongest standard of confidentiality known at the time was seen by Americans as a morally just national pride, a necessity in order to gain their trust, and a boon for the economy as a whole. Confidentiality in communications was considered an essential national interest and was prioritized over the potential gains that surveillance could bring. This pioneering choice was made in one capital city when in others, postal communications were considered synonymous with state surveillance. Similar choices today should not be viewed as being outside the realm of possibility.

Notes

I am immensely indebted and grateful to Richard R. John for the generous mentorship, encouragement, and advice he provided. I am grateful to Elizabeth Nuxoll, Heidi Tworek, and Anuj C. Desai for their suggestions and to this journal's anonymous reviewers for their thoughtful comments.

1. Henry Laurens to George Washington, June 18, 1778, in *Letters of Delegates to Congress: 1774–1789*, vol. 10, ed. Paul H. Smith, Gerard W. Gawalt, Rosemary Fry Plakas, and Eugene R. Sheridan (Washington, DC: Library of Congress, 1983), 131, quoted in Robert G. Parkinson, *The Common Cause: Creating Race and Nation in the American Revolution* (Chapel Hill: University of North Carolina Press,

2016), 395. For a discussion of this incident, see Konstantin Dierks, *In My Power: Letter Writing and Communications in Early America* (Philadelphia: University of Pennsylvania Press, 2009).

2. Richard R. John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge, MA: Harvard University Press, 1995); Paul Starr, *The Creation of the Media: Political Origins of Modern Communications* (New York: Basic Books, 2004); Anuj C. Desai, "Wiretapping before the Wires: The Post Office and the Birth of Communications Privacy," *Stanford Law Review* 60, no. 2 (2007): 553–94; Desai, "The Transformation of Statutes into Constitutional Law: How Early Post Office Policy Shaped Modern First Amendment Doctrine," *Hastings Law Journal* 58 (2006–7): 671–727; Colin Agur, "Negotiated Order: The Fourth Amendment, Telephone Surveillance, and Social Interactions, 1878–1968," *Information & Culture* 48, no. 4 (2013): 419–47.

3. Desai, "Wiretapping before the Wires"; Desai, "The Transformation of Statutes."

4. John, *Spreading the News*.

5. *Journal of the First Session of the Senate of the United States of America* (Washington, DC: Gales & Seaton, 1820), 368, 383.

6. Memoranda of Conversations with the President, March 1, 1792, in *The Papers of Thomas Jefferson*, vol. 23, ed. Charles T. Cullen, Eugene R. Sheridan, George H. Hoemann, Ruth W. Lester, and J. Jefferson Looney (Princeton, NJ: Princeton University Press, 1990), 184.

7. On Jay's sensitivity to privacy, see Elizabeth M. Nuxoll, "The Joys and Occasional Sorrows of Editing the Papers of John Jay," talk at the semiannual meeting of the regional chapter of the Jamestown Society. Given at the John Jay Homestead, Katonah, New York, June 2015.

8. John Jay to Richard Henry Lee, September 2, 1785, in *The Selected Papers of John Jay*, vol. 4, ed. Elizabeth M. Nuxoll, Mary A. Y. Gallagher, Robb K. Haberman, and Jennifer E. Steenshorne (Charlottesville: University of Virginia Press, 2015), 170.

9. Ralph E. Weber, *Masked Dispatches: Cryptograms and Cryptology in American History, 1775–1900* (Fort George G. Meade, MD: Center for Cryptologic History, National Security Agency, 1993), 176.

10. Howard Robinson, *The British Post Office: A History* (Princeton, NJ: Princeton University Press, 1948); Weber, *Masked Dispatches*.

11. For an overview of the security issues that confronted Americans in the colonial era and the early republic that is sensitive to both normative and military considerations, see William O. Walker III, *National Security and Core Values in American History* (Cambridge: Cambridge University Press, 2009), 13–38.

12. Pew Research Center, *Americans' Attitudes about Privacy, Security and Surveillance*, May 20, 2015; Bobbie Johnson, "Privacy No Longer a Social Norm, Says Facebook Founder," *Guardian*, January 11, 2010.

13. John, *Spreading the News*; Starr, *Creation of the Media*; Kenneth Ellis, *The Post Office in the Eighteenth Century: A Study in Administrative History* (London: Oxford University Press, 1958); Paul S. Fritz, "The Anti-Jacobite Intelligence System of the English Ministers, 1715–1745," *Historical Journal* 16, no. 2 (1973): 265–89; Karl de Leeuw, "Cryptology in the Dutch Republic: A Case Study," in *The History of Information Society: A Comprehensive Handbook*, ed. Karl de Leeuw and Jan Bergstra (Amsterdam: Elsevier, 2007), 327–68; Nadine Akkerman, "The Postmistress, the

Diplomat, and a Black Chamber? Alexander of Taxis, Sir Balthazar Gerbier and the Power of Postal Control,” in *Diplomacy and Early Modern Culture*, ed. Robyn Adams and Rosanna Cox (Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2011), 172–88; Sune Christian Pedersen, “Postal Espionage in the 18th Century Denmark,” in *Post Offices of Europe, 18th–21st Century: A Comparative History*, ed. Muriel Le Roux and Sébastien Richez (Brussels: Peter Lang, 2014), 319–30.

14. Andrew Pettegree, *The Invention of News: How the World Came to Know about Itself* (New Haven, CT: Yale University Press, 2014), 36. See also Ronald H. Coase, “The Postal Monopoly in Great Britain: An Historical Survey,” in *Economic Essays in Commemoration of the Dundee School of Economics, 1931–1955*, ed. J. K. Eastham (Coupar Angus: William Culross & Son Ltd., 1955).

15. David Vincent, *Privacy, a Short History* (Malden, MA: Polity Press, 2016); David H. Flaherty, *Privacy in Colonial New England* (Charlottesville: University Press of Virginia, 1972); Toby L. Ditz, “Secret Selves, Credible Personas: The Problematics of Trust and Public Display in the Writing of Eighteenth-Century Philadelphia Merchants,” in *Possible Pasts: Becoming Colonial in Early America*, ed. Robert Blair St. George (Ithaca, NY: Cornell University Press, 2000), 219–42. On the development of modern concepts of privacy, see also Daniel J. Solove, *Understanding Privacy* (Cambridge, MA: Harvard University Press, 2008), esp. chap. 2; James B. Rule, *Privacy in Peril* (Oxford: Oxford University Press, 2007); David Vincent, *I Hope I Don't Intrude: Privacy and Its Dilemmas in Nineteenth-Century Britain* (Oxford: Oxford University Press, 2015).

16. Vincent, *Privacy*; David J. Seipp, “English Judicial Recognition of a Right to Privacy,” *Oxford Journal of Legal Studies* 3, no. 3 (1983): 325–70.

17. Robinson, *The British Post Office*; Howard Robinson, *Britain's Post Office: A History of Development from the Beginnings to the Present Day* (London: Oxford University Press, 1953).

18. Robinson, *The British Post Office*, 122, 121.

19. Hugh Finlay, *Journal Kept by Hugh Finlay, surveyor of the post roads on the continent of North America, during his survey of the post offices between Falmouth and Casco Bay in the province of Massachusetts, and Savannah in Georgia; begun the 13th Sept. 1773 and ended 26th June 1774* (Brooklyn: Frank Henry Norton, 1867), 32.

20. Benjamin Franklin to Thomas Cushing, February 15, 1774, in *The Papers of Benjamin Franklin*, vol. 21, ed. William B. Willcox, Douglas M. Arnold, Dorothy W. Bridgwater, Mary L. Hart, Claude A. Lopez, C. A. Myrans, and Catherine M. Prelinger (New Haven, CT: Yale University Press, 1978), 94; Boston Committee of Correspondence to Portsmouth Committee of Correspondence, March 24, 1774, in Boston Committee of Correspondence, Minute Books 1772–74, reel 1, 734–36, quoted in Dierks, *In My Power*, 196.

21. Julie M. Flavell, “Government Interception of Letters from America and the Quest for Colonial Opinion in 1775,” *William and Mary Quarterly* 58, no. 2 (2001): 403–30; David J. Seipp, *The Right to Privacy in American History* (Cambridge, MA: Harvard University Program on Information Resources Policy, 1978).

22. Esther Reed to Dennis de Berdt, September 8, 1775, in *The Life of Esther de Berdt, afterwards Esther Reed, of Pennsylvania*, by William B. Reed (Philadelphia: C. Sherman, 1853), 230, quoted in Dierks, *In My Power*, 214–15.

23. John Adams to Joshua Johnson, July 1, 1780, in *Papers of John Adams*, vol. 9, ed. Gregg L. Lint, Joanna M. Revelas, Richard Alan Ryerson, Celeste Walker, and Anne M. Decker (Cambridge, MA: Belknap Press of Harvard University Press, 1996), 493.

24. John Jay to the President of Congress (Samuel Huntington), May 26, 1780, in Nuxoll et al., *The Selected Papers of John Jay*, 2:134.

25. Nuxoll et al., *The Selected Papers of John Jay*, 2:xxii–xxiii.

26. Nuxoll, “The Joys and Occasional Sorrows.”

27. On Jay’s copious methods of encryption, see Nuxoll et al., *The Selected Papers of John Jay*, 2:7–13.

28. John Jay to the President of Congress (Samuel Huntington), November 6, 1780, in Nuxoll et al., *The Selected Papers of John Jay*, 2:341.

29. John Adams to Benjamin Rush, September 10, 1779, in Lint et al., *Papers of John Adams*, 8:140.

30. Joseph M. Adelman, “‘A Constitutional Conveyance of Intelligence, Public and Private’: The Post Office, the Business of Printing, and the American Revolution,” *Enterprise & Society* 11, no. 4 (2010): 709–52.

31. Ibid.; Robert Allen Rutland, “The First Great Newspaper Debate: The Constitutional Crisis of 1787–1788,” *Proceedings of the American Antiquarian Society* 97 (1987): 43–58.

32. *Philadelphia Freeman’s Journal*, April 2, 1788, in *The Documentary History of the Ratification of the Constitution, Digital Edition*, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber, and Margaret A. Hogan (Charlottesville: University of Virginia Press, 2009), accessed February 24, 2017, <http://rotunda.upress.virginia.edu/founders/RNCN-03-16-03-0002-0035-0003>.

33. *Philadelphia Freeman’s Journal*, January 16, 1788, in Kaminski et al., *The Documentary History*, <http://rotunda.upress.virginia.edu/founders/RNCN-03-16-03-0002-0005>.

34. *Philadelphia Independent Gazetteer*, January 31, 1788, in Kaminski et al., *The Documentary History*, <http://rotunda.upress.virginia.edu/founders/RNCN-03-16-03-0002-0015>; Eleazer Oswald’s statement, *Philadelphia Independent Gazetteer*, March 12, 1788, in Kaminski et al., *The Documentary History*, <http://rotunda.upress.virginia.edu/founders/RNCN-03-16-03-0002-0031>.

35. Adelman, “‘A Constitutional Conveyance.’”

36. “Congress of the United States, House of Representatives: Sketch of Friday’s Debates,” *Federal Gazette and Philadelphia Daily Advertiser*, December 26, 1791.

37. Russ Castronovo, *Propaganda 1776: Secrets, Leaks, and Revolutionary Communications in Early America* (Oxford: Oxford University Press, 2014), 118.

38. See, for example, Samuel Ward to Benjamin Franklin, August 12, 1775, in *Letters of Delegates to Congress: 1774–1789*, vol. 1, ed. Paul H. Smith, Gerard W. Gawalt, Rosemary Fry Plakas, and Eugene R. Sheridan (Washington, DC: Library of Congress, 1976), 701; Francis Lightfoot Lee to Landon Carter, December 12, 1775, in Smith et al., *Letters of Delegates*, 2:480; William Whipple to John Langdon, January 21, 1777, in Smith et al., *Letters of Delegates*, 6:128; Samuel Huntington to Jonathan Trumbull Sr., November 9, 1780, in Smith et al., *Letters of Delegates*, 16:317. On notable robberies, see John, *Spreading the News*, 299n126.

39. Cornelius Harnett to Richard Caswell, October 10, 1777, in Smith et al., *Letters of Delegates*, 8:97.

40. Cornelius Harnett to William Wilkinson, December 8, 1777, in Smith et al., *Letters of Delegates*, 8:390.

41. John Adams to Abigail Adams, April 8, 1777, in *Adams Family Correspondence*, vol. 2, ed. Lyman Henry Butterfield, Wendell D. Garrett, and Marjorie E. Sprague (Cambridge, MA: Belknap Press of Harvard University Press, 1963), 203.

42. John Adams to Abigail Adams, October 15, 1777, in Butterfield et al., *Adams Family Correspondence*, 2:353.
43. Dierks, *In My Power*, 209.
44. Ezekiel Cornell to William Greene, October 31, 1780, in Smith et al., *Letters of Delegates*, 16:291.
45. See Bernard Bailyn, *The Ordeal of Thomas Hutchinson* (Cambridge, MA: Belknap Press of Harvard University Press, 1976); Walter Isaacson, *Benjamin Franklin: An American Life* (New York: Simon and Schuster, 2003).
46. Castronovo, *Propaganda 1776*; Julian P. Boyd, "Silas Deane: Death by a Kindly Teacher of Treason?," *William and Mary Quarterly* 16, no. 2 (1959): 165–87; Boyd, "Silas Deane: Death by a Kindly Teacher of Treason?," *William and Mary Quarterly* 16, no. 3 (1959): 319–42; Boyd, "Silas Deane: Death by a Kindly Teacher of Treason?," *William and Mary Quarterly* 16, no. 4 (1959): 515–50.
47. Weber, *Masked Dispatches*. See also Ralph E. Weber, *United States Diplomatic Codes and Ciphers, 1775–1938* (Chicago: Precedent Publishing Co., 1979); David Kahn, *The Codebreakers: The Story of Secret Writing* (New York: Macmillan, 1967).
48. Weber, *Masked Dispatches*, 15–23.
49. James Madison to Edmund Randolph, June 18, 1782, in *The Papers of James Madison Digital Edition*, ed. J. C. A. Stagg (Charlottesville: University of Virginia Press, Rotunda, 2010), accessed January 11, 2016, <http://rotunda.upress.virginia.edu/founders/JSMN-01-04-02-0161>.
50. Gaillard Hunt, ed., *Journals of the Continental Congress 1774–1789*, vol. 23 (Washington, DC: Government Printing Office, 1914), 670.
51. *Journal of the House of Representatives of the United States*, vol. 1 (Washington, DC: Gales & Seaton, 1826), 135.
52. Thomas Lloyd, ed., *The Congressional Register; Or, History of the Proceedings and Debates of the First House of Representatives of the United States of America*, vol. 3 (New York: Printed for the editor by Hodge, Allen and Campbell, 1789–90), 157–58.
53. Presidential Address to the United States Senate and House of Representatives, October 25, 1791, in *The Papers of George Washington: Presidential Series*, vol. 9, ed. Philander D. Chase (Charlottesville: University of Virginia Press, 2000), 115–16. See also John, *Spreading the News*, 61.
54. William T. Baxter, "Credit, Bills, and Bookkeeping in a Simple Economy," *Accounting Review* 21, no. 2 (1946): 154–66; Dierks, *In My Power*, chap. 6; Ditz, "Secret Selves."
55. *The Debates and Proceedings in the Congress of the United States*, vol. 2, ed. Joseph Gales (Washington, DC: Gales & Seaton, 1834), 1936; John, *Spreading the News*, 33.
56. John, *Spreading the News*; Dierks, *In My Power*.
57. Ditz, "Secret Selves."
58. James Beekman to Nottmagel, Montmollin and Co., April 10, 1788, in *The Beekman Mercantile Papers, 1746–1799*, vol. 3, trans. and ed. Philip L. White (New York: New York Historical Society, 1956), 1150; Gerard W. Beekman to William Beekman, September 26, 1780, in White, *The Beekman Mercantile Papers*, 3:1374.
59. Gerard W. Beekman to William Beekman, August 26, 1779, in White, *The Beekman Mercantile Papers*, 3:1334.
60. Gerard W. Beekman to William Beekman, March 29, 1780, in White, *The Beekman Mercantile Papers*, 3:1357.

61. James Beekman to Nottmagel, Montmollin and Co., April 19, 1788, in White, *The Beekman Mercantile Papers*, 3:1151.

62. Michael Gratz to Barnard Gratz, May 30, 1790, in *B. and M. Gratz, Merchants in Philadelphia, 1754–1798; Papers of Interest to Their Posterity and the Posterity of Their Associates*, ed. William Vincent Byars (Jefferson City, MO: Hugh Stephens Printing Co., 1916), 236.

63. Richard Peters, ed., *The Public Statutes at Large of the United States of America, 1789–March 3, 1845*, vol. 1 (Boston: Charles C. Little and James Brown, 1845), 236.

64. “Congress of the United States, House of Representatives: Sketch of Friday’s Debates,” *Federal Gazette and Philadelphia Daily Advertiser*, December 26, 1791.

65. John, *Spreading the News*, 43; Starr, *Creation of the Media*, 96; Seipp, *Right to Privacy*, 11–16; David M. Henkin, *The Postal Age: The Emergence of Modern Communications in Nineteenth-Century America* (Chicago: University of Chicago Press, 2006).

66. Gideon Granger to James Jackson, March 23, 1802, *American State Papers: Post Office*, 22, quoted in John, *Spreading the News*, 54.

67. John McLean to John Quincy Adams, November 17, 1828, in *ASP: PO*, 183, quoted in John, *Spreading the News*, 54.

68. *Ibid.*

69. Anna Vemer Andrzejewski, *Building Power: Architecture and Surveillance in Victorian America* (Knoxville: University of Tennessee Press, 2008).

70. Patrick Henry Woodward, *Guarding the Mails; Or, The Secret Service of the Post Office Department* (Hartford, CT: Dustin, Gilman & Co., 1876), 9.

71. James Holbrook, *Ten Years among the Mail Bags: Notes from the Diary of a Special Agent* (Philadelphia: Cowperthwait & Co., 1874), 6. Holbrook too uses the term *surveillance* not in reference to the interception of letters but in reference to the oversight of postal officers themselves. Today, of course, it is the interception that is typically referred to as surveillance. The different nomenclature might be related more to the institutionalized character of supervision than to the nature of oversight conducted.

72. See Whitfield Diffie and Susan Landau, *Privacy on the Line: The Politics of Wiretapping and Encryption* (Cambridge, MA: MIT Press, 1998); Susan Landau, *Surveillance or Security? The Risks Posed by the New Wiretapping Technologies* (Cambridge, MA: MIT Press, 2011); Harold Abelson, Ross Anderson, Steven M. Bellovin, Josh Benaloh, Matt Blaze, Whitfield Diffie, John Gilmore, Matthew Green, Susan Landau, Peter G. Neumann, Ronald L. Rivest, Jeffrey I. Schiller, Bruce Schneier, Michael Specter, and Daniel J. Weitzner, “Keys under Doormats: Mandating Insecurity by Requiring Government Access to All Data and Communications,” *MIT Open Access Articles*, 2015, accessed March 2, 2017, <http://dspace.mit.edu/bitstream/handle/1721.1/97690/MIT-CSAIL-TR-2015-026.pdf?sequence=8>.

73. Agur, “Negotiated Order,” 2013.

74. Ronald Goldfarb, ed., *After Snowden: Privacy, Secrecy, and Security in the Information Age* (New York: Thomas Dunne’s Books, St. Martin’s Press, 2015), 21. See also Glenn Greenwald, *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State* (New York: Metropolitan Books / Henry Holt, 2014); Barton Gellman, *Dark Mirror: Edward Snowden and the American Surveillance State* (New York: Penguin Press, 2018); David Lyon, *Surveillance after Snowden* (Malden, MA: Polity Press, 2015).

75. See Steve Lohr, “Trump Completes Repeal of Online Privacy Protections from Obama Era,” *New York Times*, April 3, 2017; Brian Fung, “Trump Has Signed

Repeal of the FCC Privacy Rules. Here's What Happens Next," *Washington Post*, April 4, 2017.

76. See, for example, Brian Barrett, "The Year Encryption Won," *Wired*, December 23, 2016.

77. Steven Levy, *Crypto: How the Code Rebels Beat the Government, Saving Privacy in the Digital Age* (New York: Viking, 2001); Diffie and Landau, *Privacy on the Line*; Landau, *Surveillance or Security*, 2011.

78. Yong Jin Park, "Digital Literacy and Privacy Behavior Online," *Communication Research* 40, no. 2 (2013): 215–36; Joseph W. Jerome, "Buying and Selling Privacy: Big Data's Difference Burdens and Benefits," *Stanford Law Review* 66, no. 47 (2013–14): 47–54.

79. Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York: PublicAffairs Books, 2019); Zuboff, "Big Other: Surveillance Capitalism and the Prospects of an Information Civilization," *Journal of Information Technology* 30 (2015): 75–89; Sarah Myers West, "Data Capitalism: Redefining the Logics of Surveillance and Privacy," *Business & Society*, July 5, 2017, doi:10.1177/0007650317718185.

80. See, for example, Stephen Rushin, "The Judicial Response to Mass Police Surveillance," *Journal of Law, Technology & Policy* 2011 2 (2011): 281–327; Sunny Skye Hughes, "US Domestic Surveillance after 9/11: An Analysis of the Chilling Effect on First Amendment Rights in Cases Filed against the Terrorist Surveillance Program," *Canadian Journal of Law and Society / La Revue Canadienne Droit et Société* 27, no. 3 (2012): 399–425; Katherine J. Strandburg, "Freedom of Association in a Networked World: First Amendment Regulation of Relational Surveillance," *Boston College Law Review* 49, no. 3 (2008): 741–821; Christopher Slobogin, *Privacy at Risk: The New Government Surveillance and the Fourth Amendment* (Chicago: University of Chicago Press, 2007).

81. Karina Rider, "The Privacy Paradox: Privacy, Surveillance, and Encryption" (MA thesis, University of Washington, 2016).

82. Abelson et al., "Keys under Doormats."

83. Rafi M. Goldberg, Giulia McHenry, Luis E. Zambrano Ramos, and Celeste Chen, "Trust in Internet Privacy and Security and Online Activity," September 27, 2016, SSRN, <https://ssrn.com/abstract=2757369>; Candy Lim Chiu, Jason Lim Chiu, and Somkiat Mansumittrchai, "Privacy, Security, Infrastructure and Cost Issues in Internet Banking in the Philippines: Initial Trust Formation," *International Journal of Financial Services Management* 8, no. 3 (2016); Ankit Kesharwani and Shailendra Singh Bisht, "The Impact of Trust and Perceived Risk on Internet Banking Adoption in India: An Extension of Technology Acceptance Model," *International Journal of Bank Marketing* 30, no. 4 (2012): 303–22; Tiago Oliveira, Matilde Alinho, Paulo Rita, and Gurpreet Dhillon, "Modelling and Testing Consumer Trust Dimensions in E-commerce," *Computers in Human Behavior* 71 (2017): 153–64; Tomás Escobar-Rodríguez and Rocío Bonsón-Fernández, "Analysing Online Purchase Intention in Spain: Fashion E-commerce," *Information Systems and e-Business Management* 15, no. 3 (2017): 599–622.

84. Ryan Hagemann and Josh Hampson, *Encryption, Trust, and the Online Economy: An Assessment of the Economic Benefits Associated with Encryption*, Niskanen Center, November 2015, 1–2, accessed June 8, 2017, https://niskanencenter.org/wp-content/uploads/2015/11/RESEARCH-PAPER_EncryptionEconomicBenefits.pdf.

85. Samuel Greengard, *The Internet of Things* (Cambridge, MA: MIT Press, 2015); Philip N. Howard, *Pax Technica: How the Internet of Things May Set Us Free or Lock Us Up* (New Haven, CT: Yale University Press, 2015).

86. For example, *Astro Noise*, exhibition by Laura Poitras at the Whitney Museum of American Art, February–May 2016; *Last Week Tonight with John Oliver*, April 5, 2015, https://www.youtube.com/watch?v=XEVlyP4_11M; *Exposed: Voyeurism, Surveillance and the Camera*, exhibition at the Tate Modern, May–October 2010.

Reproduced with permission of copyright owner.
Further reproduction prohibited without permission.