
Burleson and *The Call*:

An Editorial in *The New Republic*, January 7, 1920.

Published in *The New Republic* [New York], v. 21, whole no. 266 (Jan. 7, 1920), pp. 157-158.

Even the conservative press has been unable to stomach the sweeping claim of arbitrary and unreviewable power of censorship which Mr. [Albert] Burleson has made in his answer to the *New York Call*'s mandamus proceedings. Such publications as the *New York Evening Post*, the *World*, the *Globe*, and even the *Review*, have roundly condemned the Postmaster General. It is not too much to say that if such a power exists, and is permitted to continue, there is hardly a publication in the country which is safe.

The case of the *New York Call* is an instructive one, for it shows how an autocratic and unscrupulous administrator acting under the barest shadow of legal right can successfully exercise powers which Congress has repeatedly and emphatically denied him.

The Call is a daily paper published in New York, on a cooperative non-profit-making basis, and is the official organ of the Socialist Party of New York, a party which at the last election polled over 100,000 votes. It threw its influence against the participation of the United States in the war, and published repeated and violent attacks upon the motives and policies of the Administration, and of the Allied governments, taking the position that the war was a

capitalists' war, and that political opposition to the war was to the best interests of the working class. It did not, however, advocate violation of law, or resistance to lawful authority. From time to time the Postmaster General declared particular issues of *The Call* nonmailable under the Espionage Law, and refused to transmit them to their subscribers.

If Mr. Burleson had contented himself with excluding particular issues of *The Call* from the mails, for specific and valid reasons, he would not have laid himself open to serious criticism. Congress had expressly given him this power, and it was a necessary one, although open to serious abuse in the hands of a Burleson. But the Postmaster General did not rest there.

The postal laws require the Postmaster General to grant second class mailing privileges to every newspaper or periodical publication issued at stated intervals, for the dissemination of public information, and having a legitimate list of subscribers, so long as it is

not designed primarily for advertising purposes. There is nothing in the postal laws which authorizes him to refuse or revoke the second class privileges of any newspaper because of its editorial opinions, or because it prints "seditious" or "radical" reading matter. If a newspaper violates any law, its editors can be indicted, tried



†- The editorial board of *The New Republic* at this time consisted of Herbert Croly, Francis Hackett, Alvin Johnson, Charles Merz, Walter Lippmann, and Philip Littell.

by jury, and fined or sentenced to prison. If any particular issue of the paper contains matter in violation of law, that issue can be held up, and refused passage through the mail, whether first class, second class, or third class. But a publication can be permanently refused second class privileges only on the ground that it is not a “newspaper” as defined in the postal laws.

These restrictions, carefully drawn by Congress around the postal censorship, have not troubled Mr. Burleson in the least. For more than 2 years he has excluded the *New York Call* from the second class mails, and he still, more than a year after the armistice, persists in his course. He has done so on the amazing ground that *The Call*, because it has in his opinion violated the Espionage Law, is not a newspaper at all! And this decision, that *The Call* is not a “newspaper,” he now claims to be unreviewable by any court of the United States. The result is that *The Call*, however law-abiding its policy may be in the future, is excluded by administrative fiat from the second class mails, for alleged violations of law for which it has never been indicted, and of which it has never been convicted by a jury. If *The Call* violated the Espionage Law, why are not its editors indicted, tried, and sent to prison? Is it because the government fears to put its case before an impartial jury of 12 citizens, and prefers to obtain a conviction from an arbitrary and partisan political appointee? If *The Call* is nonmailable, why is it not excluded from the mails completely, instead of being permitted to circulate by paying first class postage? Is it not because Mr. Burleson wishes to avoid the safeguards which congress has drawn around the power of exclusion, and prefers to act under a usurped power which congress refused to grant, and around which there are, therefore, no safeguards?

The preposterous claim of the Postmaster General that the *New York Call*, a daily paper with nearly 35,000 circulation, is not a newspaper at all, may safely be left to the courts to deal with. It is as if the Pennsylvania Railroad were to refuse to sell Victor Berger a railway ticket, on the ground that having been con-

victed of violating the Espionage Law, he was no longer a “person.” If Mr. Burleson can declare, without review by the courts, that *The Call* is not a newspaper, he can declare that the *New York Tribune*, or the *Washington Post*, or the *Boston Transcript* is not a newspaper, and no one will have any redress. It is apparent, however, that Mr. Burleson himself feels that he is on shaky legal ground. *The Call* lost its second class mailing privileges on November 13, 1917. Soon after the armistice, on January 9, 1919, *The Call* formally applied for readmission to the second class mails. For 5 months the Post Office Department held the application “under consideration,” and then gave *The Call* an oral hearing at Washington. Six months more elapsed without a decision, despite repeated demands on the part of *The Call*, which was in the meantime compelled, at great financial loss, to distribute its issues by hand, or in the first class mail. It was not until after mandamus proceedings had been instituted that a reply was received formally denying the application. It is apparent that Mr. Burleson was stalling for time, afraid to take affirmative action and thus invite a judicial contest.

The case of the *New York Call* is one that Congress will do well to investigate. That *The Call* happens to be a Socialist publication, and that it pursued a policy during the war which was, in our opinion, as mistaken as it was unpopular, does not affect the situation. A precedent which allows the reactionary Burleson to harass a Socialist paper may permit some future radical administration to harass a conservative newspaper whose policy it does not like. The conduct of the Postmaster General is driving all newspapers, whatever their political opinion, and all citizens who believe in the freedom of the press, to make common cause. We recommend it especially to the attention of those Senators and Congressmen who believe that when Congress expressly declines to give a dangerous and arbitrary power to an administrative official it means what it says, and is not to be circumvented by verbal legerdemain.

Edited by Tim Davenport.

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