

Judge Baker, of Indianapolis. Judge Baker appears to have decided that a gas company which has a franchise from Indianapolis, one of the conditions of which is that the company shall turn its plant over to the city upon being fairly compensated, cannot be compelled to perform its contract in this respect because it owes a superior obligation to the State to continue its functions as a chartered corporation until the expiration of its corporate charter. The decision is doubtless well calculated to give aid and comfort to the public service pirates of all cities and States. Quite in the order of things, too, is it that it should have been so calculated; for the judge who rendered it is one of that large class of Federal judges who acquired their legal skill in the service of public service corporations, where the law is apt to take on a plutocratic discoloration. But whether this Indiana decision is only corporation law, or is what the older lawyers called "good law," and whether or not it may be a troublesome precedent for cities which, like Indianapolis, have no statutory right to take over such public service functions as the distribution of gas and the operation of street cars, the situation in Chicago is unaffected by it. For not only has Chicago the statutory right to take over such functions, but a variety of other differences in local circumstances render the Indianapolis precedent inapplicable to Chicago. Yet this very reason makes even more significant the activity with which the touters for the Chicago traction interests have exploited the Indianapolis case. Dunne's "contract plan" hurts them; it is the only official move that ever has hurt them; and they are eager to get it out of the way. For the first time, they are disturbed in their minds.

The passing of pass bribery.

Opposition to railroad-pass bribery has become so prevalent that it is difficult to realize to-day how heartily the press of two years ago

laughed at Congressman Robert Baker for refusing one of these bribes. "It will be a cause of wonder to the future historian," observes the Chicago Tribune of the 21st, "that a self-respecting people should have allowed this pass evil to persist year after year and decade after decade, when its corrupting purpose and effect were recognized and admitted." A more insidious species of bribery was never invented. If an official takes the bribe, a channel of corrupt communication is thereby opened, which may or may not be utilized, as circumstances dictate; if he refuses this overture quietly, he is "spotted" by corporation tools as probably unapproachable and certainly not friendly, and secretly he is suppressed. The only way in which the pass bribery system could have been exposed and broken up was that which Congressman Baker adopted. By making as notorious as possible his refusal to accept a pass which most Congressmen did accept, and the others refused quietly, he called public attention the country over to the abuse; and when public attention was centered upon it its doom was sealed. The public official—legislator, administrator or judge—who now accepts a railroad pass, places himself under a just suspicion of holding corrupt confidential relations with railroad corporations.

#### THE RIGHTS OF PERIODICALS.

Among the perils to American liberty, none more serious can be named than that arising from the insidious encroachments of the bureaucracy in control of the Post Office Department. The revelations of graft and robbery, which have aroused so much popular indignation, are but trifling ills, when compared to the deliberate misuse of the post office in order to check the free expression of ideas. Free speech is our greatest safeguard; and with the loss of it, all our liberties are doomed. Few of the people have yet realized the serious assault on their own freedom involved in the recent policy of the Post Office De-

partment with regard to periodical literature. It is not a mere matter involving the interest of a few publishers, but an issue of vital concern to all. The facts which follow deserve the closest attention.

The truth may be best served by a somewhat close examination of the current annual report of Edwin C. Madden, Third Assistant Postmaster General, the chief agent of the restrictive policy of the past few years. If his attempted defence breaks down, those who would decimate our periodical literature will not easily find another champion.

The report in question contains a remarkable discussion of second-class mail matter—remarkable alike for what it says, and for what it significantly omits to say. On pages 24-36, Mr. Madden is at great pains to point out the confusion of law regarding the qualifications of this class of mail matter, and the various rates to which it is subject. To take the latter topic first, the report shows that a publication entered as second-class mail matter may be subject to no less than seven distinct rates, according to the conditions under which it is mailed. Says Mr. Madden at page 25:

The difficulties and perplexities of publishers in arranging their business and mailings, and the corresponding difficulties of postmasters and other postal officials in endeavoring to administer these numerous and involved rates, will be manifest. Nor would it be difficult to imagine what a great improvement in the way of simplification would result to the postal system by substituting for this confused patchwork one or two flat rates based upon differences in the classes, inherent in them and independent of the accidents of time, place and manner of printing and publication. Under this system of rates and conditions disputes are constantly arising which must be settled by the Department, and the settlements are frequently attended with friction. This multifarious classification of rates is a relic of the days when the postal business was in a more or less primitive state. In this day of business methods in government service the lack of simplicity and uniformity is keenly felt.

Several striking illustrations are given, which need not here be repeated. "If similar conditions," the report adds, "existed with regard to rates upon letters and other classes of mail matter, the

state of the postal service could be easily imagined."

But still worse is to come. "When we turn from them [the rates] to the law governing the preliminary question whether a publication is of the class entitled to such rates at all, we find that the difficulty and perplexities in respect of rates, pale into insignificance." Accordingly we find that in defining the requirements for second-class entry, "Congress dealt in terms having no precise legal signification." The whole matter is in a state of inextricable confusion; and until Mr. Madden appeared as a *deus ex machina*, no living man durst be so rash as to define the terms qualifying a publication to admission at "this highly favored rate." When, however, our present energetic Third Assistant appeared on the scene, a new era dawned. The Augean stables of abused privileges must be cleansed; and the Hercules of the Post Office Department proceeded to turn a torrent of rulings and decisions upon them. Out went the books hitherto published as "serial libraries," and characterized by Mr. Madden, in an outburst of virtuous indignation, as "the scandal of the service." Just why it should be scandalous to supply the American people with good literature at cheap rates, is nowhere made to appear.

News agents were next stopped from returning unsold copies at the pound rate; and institutions of learning, however valuable their educational service, were ruled out, if their shareholders received any return from their work of public enlightenment. Sample copies were restricted to fifty per cent of the circulation, this ruling being purely inferential, and without the slightest warrant of law.

But the chief fight has been on periodicals assumed by Mr. Madden to be "published primarily for advertising purposes." Here the main cutting and slashing has taken place, with striking results. There being no clear law, Mr. Madden has proceeded to manufacture his own as rapidly as needed. Contrary to a well known legal maxim, every publisher has been presumed guilty until proved innocent. In case of doubt, out went the paper, although a bona fide publication of many years'

standing. The obvious policy of the Department, under Mr. Madden, has been to reduce the number of admitted publications to the lowest possible limit. With a sublime self-confidence, he wishes to decide the whole matter himself. After his able presentation of the hopelessly entangled state of the law, he arrives at the "lame and impotent conclusion" that no legislative changes should be made; but that "government by official rulings" is greatly to be preferred to "precise legal signification." Possibly he is right—if Russian institutions are to be preferred to those of America.

The alleged motive for the grudging spirit manifested toward the periodical literature of the country is a desire for economy. The second-class matter is gravely charged with creating a continuing deficit in the postal service. Here is the crux of the whole matter; and a heavy burden of proof is laid on the shoulders of those who presume to dissent from Mr. Madden's revolutionary policy. There may be worse curses than a deficit; but, other things being equal, a surplus is much to be desired.

Let us, therefore, take a little look at this spectral deficit. On page 24 of the report under consideration, we are told that second-class matter constitutes "about 70 per cent of the bulk weight of all the mails upon which postage was [is] paid," and yields "about 4 per cent" of the postal revenue. Considered solely from the money standpoint, this, at first, looks bad. It has been said, however, that "while figures never lie, liars often figure." The term of opprobrium is not intended to be applied to Mr. Madden, but merely to express forcibly the fact that statistics frequently require a very searching analysis, before legitimate and unquestionable conclusions can be drawn from them. In the present instance, the figures given are hopelessly inconclusive. The cost of transmitting matter is dependent on many considerations besides that of mere bulk. At every stage of handling and transportation, the labor and expense of receiving, weighing, counting, postmarking, packing, forwarding, recording and otherwise deal-

ing with twenty periodicals is enormously less than that which must be devoted to two hundred letters aggregating the same weight. It may be questioned whether in view of the immense proportion of large and heavy papers and magazines to the whole number, the estimate of ten letters to make up the weight of one periodical is not much too small. A statement of the average weight of each piece of first-class and each piece of second-class matter that circulates through the mails would throw a flood of light on Mr. Madden's otherwise misleading statistics. It is also to be noted (see table, page 39) that nearly one-seventh of all the second-class matter is "mailed free within county of publication." This includes a large percentage of the most bulky newspapers and weekly publications. Even with regard to the remainder, it is a well known fact that the average piece of second-class matter travels a far shorter distance than the average letter, and hence costs less for transportation. As if this were not sufficient, the work of sorting second-class matter is nearly all done by the publishers, thus removing a large item of labor and expense, to which other classes of mail matter are subject. When all these important facts are given full consideration, it is easily seen that Mr. Madden's figures prove absolutely nothing as to the relation between the cost of carrying second-class matter and the revenue received from it. So far from being an object of charity, this class of matter may well claim to be entirely self-supporting.

A very significant confirmation of this conclusion is the fact that the express companies, which are most assuredly not in the charity business, actually underbid the Post Office, and carry periodicals at less than a cent a pound. That this matter pays the cost of its own transportation, is indisputable, since the express companies would otherwise never dream of competing for it. No possible escape from this conclusion can be found, save by veering from Scylla to Charybdis by admitting that the government is so outrageously robbed and cheated in the matter of the rental of railway cars that private express corporations can

secure lower rates over the railroads. Regarding this matter, neither affirmation nor denial is at present necessary. If it be a truth, the remedy is to defy the railroad lobby at Washington, and to enforce honest and economical agreements in the matter of carrying the mails. If not, there is no possible ground for alleging that the government can lose money by carrying periodical matter at a higher rate than that which the express companies find profitable. Those who join Mr. Madden in the demand that the second-class matter be cut down cannot avoid impaling themselves on one horn or the other of this dilemma.

The positive evidence, however, is not yet exhausted. On page 7 of the report so often cited, the postal deficit is laid wholly to another cause, as expressed in the following significant sentences:

The increase in the expenditures on account of the Rural Free Delivery service each year for the last three fiscal years approximated the increase in the deficiency in the postal revenue for each of those years.

It is therefore evident that were it not for this extraordinary expenditure on account of the Rural Free Delivery service the postal service would now be about self-sustaining.

Mark this well. Mr. Madden has here forgotten all his diatribes against the unlucky second-class matter. Despite his pruning efforts, the total amount of second-class matter carried during the past year shows (p. 23) an increase of over 64,000,000 pounds. Now where is the correspondingly increased deficit in the postal revenues? Echo sadly answers: "Where?" According to Mr. Madden's own statement, the Rural Free Delivery service is the real sinner; and the increase in second-class matter has drawn nothing from the Treasury.

Still more can be proved in favor of this much abused class of mail matter. Its opponents vociferously declare that the burden created by it is borne by the first-class matter, on which a large profit is made, and which brings in the bulk of the postal revenue. That this is a grossly inaccurate claim has already been shown. Assuming its substantial truth, however, it is hard to perceive

good faith in the deliberate suppression of the vital fact that every issue of a periodical, sent out at second-class rates, initiates the circulation of a large amount of the highly profitable first-class matter, which would otherwise never appear in the mails. This includes not merely letters from remitting subscribers, but numerous communications relative to the editorial department, publisher's announcements, manuscripts sent and returned, business and editorial correspondence of an extent realized by none who have not sat in the publisher's or the editorial chair, correspondence with advertisers, and above all, the enormous correspondence between advertisers and their customers. It is indeed a notable fact that the very publications chiefly condemned by Mr. Madden, as "published primarily for advertising purposes," are the most profitable of all to the Post Office Department, and earn the so-called "subsidy" of the second-class rate, several times over. That the increase of periodical literature promotes industrial prosperity, by stimulating trade, creating employment, gaining a market for products, and causing a wider circulation of money, is so obvious as to require no demonstration; and the foregoing considerations prove, to the very point of superfluity, that when all things are taken into account, the Post Office Department, far from losing money, is actually the gainer in dollars and cents, by the most liberal extension of "this highly favored rate" to periodical publications.

It is, however, wrong to rest the matter on the comparatively low ground of commercial advantage. Even were it true that some form of statistical juggling could reduce a clear gain to a heavy loss, the strongest reasons exist for regarding this as the last place for retrenchment. The people of the United States can afford to take higher ground. They have never grudged money for educational purposes; and as long as the value of intelligence to good citizenship is recognized, it is certain that they never will. The rapid growth of periodical publications in this country is an admirable token of alert and open minds. The great

need of civilization is individualized thinking; and there can be no more effective agencies for the diffusion of thought than an independent press and the wide circulation of periodical literature. The widely divergent standpoints of the different publications force the mind out of its ruts of thought and compel continual readjustment. A literary taste is encouraged, and becomes, in varying degrees, the property of the whole people. Knowledge, in every department, is spread broadcast over the land. What our public schools do in part, during a few years of the child's life, the newspapers and magazines are doing all the time for the adult. If there is any feature of American life which deserves the strongest possible encouragement, it is this. Corruption and vice shrink back from the calcium light of publicity; while all that is high and honorable is immeasurably strengthened by it.

While every great Department of the Federal government demands and receives many millions of dollars annually, which are returned to the people in service, not in cash, it is amazing that men should be found to declare that the Post Office, the mighty instrument for the transmission of intelligence, is a failure, if it be not kept self-supporting. The cost of one battle ship, the utility of which is wholly problematical, amounts to the entire postal deficit of last year. The people of the United States can far better afford money for instructive, than for destructive purposes.

From yet another point of view, the efforts of Mr. Madden to curtail second-class matter are fraught with the gravest perils to the liberties of our people. The power assumed by the Department of continually framing new rulings, in order to cut down the number of admitted publications, invests Post Office officials with an autocratic prerogative impossible to reconcile with democratic ideals. Government by official rulings threatens to become as serious and reprehensible a practice as the much-censured "government by injunction." The assumption of legislative functions by executive departments strikes at the root of the fundamental safe-

guards of a Federal republic. No matter how extreme or how well deserved our confidence in our public officers, no thoughtful American can give his assent to the proposition that they be invested with the irresponsible functions of a Russian bureaucrat.

Even with the most honest-intentioned officials, the power of discriminating between periodicals, in the absence of fixed legislative provisions, is almost certain to be misapplied. It is well nigh impossible not to be swayed by prejudice in applying what Mr. Madden calls the "purely ideal considerations," by which the fate of a paper is to be arbitrarily determined. Mr. Madden himself, however careful he may have endeavored to be, has by no means escaped the charge of unfair partiality. Take, for example, the case of Wilshire's Magazine, a periodical of a literary and socialistic tendency. This publication was denied second-class rates, on the peculiar ground that it advertised the ideas of its editor! In spite of its large list of bona fide subscribers, and the clearest evidence that it contained no more self-laudation (an offence not recognized by any law bearing on the subject) than dozens of other highly respected publications, the Department was adamant to argument and appeal. Thereupon the editor quietly took his magazine to Canada, where he experienced no difficulty in securing its entry. The sequel is even more extraordinary. After about three years, a New York printer, desiring to secure the job of printing the magazine, asked Senator Platt to use his influence to have it entered as second-class matter in the United States. The influence of the "Easy Boss" was at once successful, securing in an hour what years of petition and demonstration had failed to accomplish. This can hardly be regarded as a healthy or ideal state of affairs. If Mr. Madden can lay himself open to so serious a charge of abuse of his assumed judicial function, what might be expected of a less conscientious official? Who does not see the tremendous possibilities of discrimination on religious or political grounds? The opportunities for arbitrary partiality are so im-

mense, that no mere money scandal can compare with the mischief of thus tampering with the free expression of public opinion.

A strange feature of the recent Department policy has been the refusal to give specific rulings or to answer questions, which would enable legitimate publishers to make sure of complying with the law as interpreted by the Post Office officials. Lucifer, of Chicago, was notified that it carried too much personal advertising, and must show cause why its second-class privilege should not be taken from it. To the request of the publisher for a decision as to how large a proportion of personal advertising would be allowed, the answer was made that the Department refused to rule on the subject. The unfortunate publisher was simply called on to conform to an unknown standard existing solely in the mind of Mr. Madden. Few despots have ever gone so far as this. While ignorance of law is held to excuse no one, the law must at least exist in some accessible form. Except in the most violent tyranny, no man has ever been punished for violating the terms of a secret edict, which has never left the closet of the autocrat who drew it up. To term such a monstrous injustice unconstitutional, is to use a very mild term. More than one publisher has complained of a similar experience. The standard, which must be obeyed by instinct, without being known, is evidently an elastic one, since the Delineator, using seventy pages of a single issue to describe and advertise the patterns made by the firm issuing the periodical, as clearly for "advertising purposes" as any of the papers Mr. Madden has attacked on this pretext, has never had the slightest trouble with the authorities. The Demonstrator, entered at Lakebay, Wash., was notified that its exchanges formed too large a percentage of its circulation list. An inquiry as to what percentage would be deemed "legitimate" was met with a refusal to give any information. The publisher must guess at it, under the penalty of losing his privilege if he happens to guess incorrectly, in a matter in no way defined by law, and depending on the mere whim of a single individual. This

extraordinary method of suspending a sword of Damocles above the heads of publishers, who ask nothing better than to obey the strictest letter of the law, hardly falls under any recognized principle of jurisprudence.

Another apparent indication of bad faith is an unwillingness to make the obvious application of judicial decisions. For example, The Pocket Life, a quarterly manual of railroad information, being denied second-class rates, took the matter to the Supreme Court, and secured a favorable decision. The Department, however, refused to reinstate other periodicals clearly comprehended in the language of the Court, unless each one of them should make a separate appeal, and win its case. It is hard to escape the conclusion that this mode of procedure denotes an animus against periodical literature, rather than a simple desire to ascertain and administer the actual law on the subject. Obviously, the great expense of an appeal to the Supreme Court could not be borne by the less wealthy publishers, and would have the effect of barring them from the mails, contrary to their legal rights, regardless of the merits of the case.

Another blow to the less heavily capitalized publications is dealt by a policy of extreme delay in the announcement of decisions. The poor publisher, delayed from month to month by petty objections, pretences of insufficient information on trivial points, and long intervals of unexplained silence, finds the required advance of a cent an ounce for each issue too great a drain to be borne for five or six consecutive months, and gives up in despair, accepting the loss of the money already paid in. The rich publisher can afford to endure these unreasonable delays; the poor publisher cannot, especially when the uncertainty of ultimate admission is so great. Here is a glaring discrimination on the worst possible basis, if not deliberately intended as such, at least having that effect, and open to reasonable suspicion.

There are yet deeper issues, which may well be considered as at stake in this matter. Progress

and civilization depend largely on opening all the avenues of expression, to the minority as well as the majority, to the poor as well as the rich, to the radical as well as the conservative. The one thing which a nation cannot afford to do is to curtail free speech. No pretext, however plausible, is capable of justifying an attempt to undermine this main stronghold of liberty. If the legislative and judicial functions are to be usurped by executive officials, power is dangerously concentrated; and abuses are inevitable under even the most honest administration. If corruption be superadded, as is too often the case, in spite of all safeguards, no man's rights are secure. The specious plea of economy being admitted, and little publicity being possible, it is fatally easy for an official clique to juggle with the second-class matter in such a way as practically to strangle the expression of unpopular or independent opinion. What more simple method could be devised by a self-perpetuating political ring, in order to make truckling sycophancy the price of admission to the mails, and exposure of rascality an offence visited with speedy vengeance? These lines do not charge Mr. Madden with any such criminality. It is sufficient to point out that the policy of which he is the conspicuous exponent is pregnant with the deadliest peril to American institutions, and that the petty peculations of Beavers and Machens sink into insignificance in comparison with the gigantic evils certain to flow from a postal autocracy. May the good judgment of all the people avert the disaster.

JAMES F. MORTON, JR.

### NEWS NARRATIVE

Week ending Thursday, Aug. 24.

#### The Norwegian referendum.

Complete revised returns from the referendum in Norway on the question of separating from Sweden (p. 308) were reported from Christiania on the 17th, as follows:

For separation .....	368,200
Against separation .....	184
Majority for separation.....	368,016

As the total vote at the elections of 1903 was 457,551, the majority for separation noted above is approximately 80 per cent of the entire voting population.

When the Storthing met on the 21st, the Ministry offered a proposal to communicate the result of the referendum to the Swedish government and ask it to accept the abrogation of the act of union and to cooperate in negotiations for a pacific settlement of the questions connected with the separation. The proposal was resisted by the Socialist members, though upon what ground does not clearly appear in the dispatches; but it was adopted on the 22d by the vote of 104 to 11, and the Ministry was empowered to appoint delegates to conduct the negotiations.

#### The Russian national assembly.

The long expected call by the Czar of Russia of a national assembly (p. 308) was promulgated on the 19th. The assembly is distinguished as the Douma. It is to be composed of 412 delegates from all the 50 departments of Russia and the military province of the Don, and is to meet by the middle of January next. Finland, Poland and the Caucasus are excluded. So are cities in which Jews are in the majority; and as Jews are not allowed to live in the country, where the peasants are to be represented indirectly through local bodies, the Jews get no representation at all. The popular suffrage for delegates is based upon property qualifications which extensively disfranchise the working classes. Five years is the term of the Douma, subject however to prior dissolution in the discretion of the Czar. It is designed to be only a consultative body, the powers of the Czar remaining absolute, and is to constitute the lower house of a legislature of which the present Council of the Empire is to be the upper house. Legislative measures within the scope of the Douma's consideration are limited to the following subjects:

Questions relating to new laws or to the modification, amplification, or temporary suspension or repeal of existing laws, and also relating to appointments made on the staff of ministers and the expenditures thereby involved; departmental, ministerial, and national budgets, and expenditures not provided

therein; the financial report of the controller of the Empire; the expropriation of any portion of the public revenues or property; the construction of railways by the government; questions regarding the organization of stock companies, involving exceptions from existing legislation; and matters submitted by Imperial decree.

Bills passing the Douma must also pass the Council and be approved by the Czar. The only check upon the absolutism of the Czar that appears from the dispatches is a provision that any legislative decree shall be inoperative if rejected by a two-thirds vote of the Douma and also a two-thirds vote of the Council.

In his manifesto proclaiming the constitution of this national assembly the Czar announces that the time has come—

to summon elected representatives from the whole of Russia to take constant and active part in the elaboration of the laws, thereby attaching to the higher state institutions a special consultative body intrusted with the preliminary elaboration and discussion of measures and with the examination of the state budget. It is for this reason that, while preserving the fundamental law regarding the autocratic power, we have deemed it well to form a gosudarstvennaia douma [lower house of the assembly] and to approve the regulations for elections to this douma, extending the validity of these laws to the whole territory of the Empire, with such exceptions only as may be considered necessary in the case of some regions in which special conditions obtain. . . . We reserve to ourselves entirely the care of perfecting the organization of the gosudarstvennaia douma; and when the course of events shall have shown the necessity for changes corresponding completely to the needs of the times and the welfare of the Empire we shall not fail to give it at the proper moment the necessary directions.

Subsequent dispatches indicate that the proposed Douma has not met with any popular enthusiasm.

#### Progress of the Russian-Japanese peace negotiations.

Contrary to the expectations of last week (p. 309) the Russian and Japanese envoys failed to come to a complete understanding on the 17th. From the beginning of their meeting on that day until the present hour, they have been at a deadlock.

#### The American reciprocity conference.

At the second day's meeting of