

The Borah Amendment

Senator Borah is proposing a change in our Federal law so as to require seven judges to concur in order to nullify any federal statute or any state statute or Constitution on the ground that it is unconstitutional. At present five judges can set aside an act of Congress or of a state. In an article recently published, Senator Borah presents arguments against the existing law and contends that the change can be made by statute. If, so, the evil can be corrected more quickly and more easily than by constitutional amendment.

It is very doubtful, however, whether the court will permit this change to be made by statute. Our governmental units are reluctant to surrender any power they are exercising and, for that reason, it is probable that an amendment will be necessary to secure a change.

Senator Borah is right, however, in first making an attempt by statute. If the court holds that the statute is unconstitutional, an attempt can then be made to secure the change by changing the Constitution. There are some who protest against any amendment to the Constitution (unless it is one which they personally desire) on the ground that the Constitution is a sacred instrument and scarcely subject to change. It is no reflection upon the wisdom of those who wrote the Constitution to say that our organic instrument needs amendment from time to time. No one can see far ahead and, therefore, no one, however wise, can write a constitution for subsequent generations. Jefferson, who understood popular government better than any one else of his day—or of any day before or since, for that matter—thought that each generation should make the Constitution suit its own needs. The wisest provision in the Constitution is the provision that provides a way in which it can be amended. The way provided is more difficult than it is in provisions for amendment in more recent constitutions. It is entirely probable that before another generation has passed we will make our constitution more easily amendable so that a minority cannot impede progress as it can under present constitutional provisions. When provision is made for sufficient deliberation the rights of the people are secure.

Any provision which permits a minority to permanently obstruct the will of the majority is out of harmony with our institutions. The same may be said of the provision against which Senator Borah protests. At present the one judge who casts a deciding vote exercises a power that is indefensible; when four of the judges support the constitutionality of a law, five judges should not be allowed to overturn it. To permit this gives to the one judge, whose vote decides the question, the power to override a majority of Congress, a majority of the Senate, and the President who concurred in the law.

W. J. BRYAN.

SENATOR ROBINSON DEFENDS SENATOR HEFLIN

In a statement given to the press of the country Senator Robinson said:

"In sustaining the decision of the vice president that Senator Heflin was out of order when, in discussing the British debt settlement, he declared: 'I am here to represent the people, to represent, in part, my state. I am not here to represent the bond sharks, the big financiers of Wall Street,' the Senate violated its own precedents and trespassed upon the freedom of debate.

"The Chair admitted, in his ruling, that the words used did not impute unworthy motives or conduct to other senators and justified his decision solely on the ground that the attitude and expression of the senator implied that other senators did represent bond sharks and gamblers of Wall Street and big financiers.

"This decision can be sustained by no other legislative precedent of the Senate.

"If this precedent should be applied impartially to all senators, it would end freedom of speech and debate in the Senate.

"No senator has earnestly defended this decision and, in my judgment, it will be regarded as a parliamentary monstrosity."

In speaking on the subject in the Senate, Senator Robinson said:

"If a senator cannot say 'I am here to represent the people,' if he cannot say 'I am not here to represent bond sharks or gamblers,' then I ask

senators what is the privilege of a senator of the United States?

"Of course, some one was sensitive about the matter because of something that he thought must have been in the mind of the senator from Alabama; but I respectfully suggest that the question of orderly debate is confined to the language employed by the senator. If senators will read the whole paragraph in which the words 'objected to' are found, they will find that there is not the slightest implication or imputation by the senator from Alabama. Let me read it:

"Mr. Heflin. I merely wanted to go on record as saying a word in behalf of some of the statements of my friend, the senator from Tennessee (Mr. McKellar)—I did not hear all of his speech—and to speak for the American people somewhat about a debt that is due to them. Does Wall Street want to collect her money from Great Britain and have this whole debt held up until she can collect it? She did have it held up, it seems, until she collected \$1,700,000,000 from France and Great Britain. Does she want to have this debt held up for 62 years so she can go on undisturbed and collect the other money due her from the various countries? I am here to represent the people, to represent in part my state; I am not here to represent the bond sharks, the big financiers of Wall Street. I want the American people to have a fair deal."

"When the connection in which the language objected to which was used by the senator from Alabama is considered one cannot arrive at the conclusion that it constituted a charge that other senators represented Wall Street or did not represent the people. It was a declaration that Wall Street had a motive to protect its interests; it was a declaration that the senator from Alabama was here to represent other interests than Wall Street. However much they may dislike the arguments made by a senator or the position taken by a senator on any subject, if senators write into the precedents of the Senate a decision that the representative of a sovereign state can not stand on this floor and declare that he represents or seeks to represent in part his state and does not represent interests which he thinks are obnoxious to the people of his state, then we shall have gone a long way toward suppressing free speech in the Senate of the United States."

WINE AND BEER UNPOPULAR

The returns of the city primary held in Chicago the twenty-sixth of February, will be very interesting reading to the wets. About three hundred thousand votes were cast in the Republican primary for four candidates. Lueder, who was nominated, had over 129,000; Litsinger, who came second, had 75,105; Millard, who came third, had 51,155; while Barasa who ran on a WINE and BEER platform, had only 47,513.

The Associated Press dispatch sent out from Chicago said, "Judge Bernard P. Barasa, who ran on a platform of light wines and beer, finished fourth on the Republican mayoralty ticket." One vote out of six does not furnish a very strong argument for a wine and beer platform.

What explanation will the wets give? It does not seem that the other candidates had any liquor planks in their platforms. It will now be in order for the friends of Mr. Barasa to explain. Can it be possible that the other candidates favored whisky as well as wine and beer? Can it be that Barasa was beaten because he wanted ONLY light wine and beer without the admixture of whisky, while the others wanted the old fashioned saloon with all its accessories? If the three leading candidates favored law enforcement and only Barasa stood for wine and beer, the wets ought to cease their vociferous assertions that the people want wine and beer.

W. J. BRYAN.

Replying to a questionnaire, students of Northwestern university recently said, by a majority vote, that the things they read in the newspapers are editorials, news, humor, sport and cartoons. Only a minority expressed a preference for crime news. It is too bad that the results of this survey cannot be conveyed in some emphatic way to the city editors of our metropolitan newspapers.

STONY BROOK SCHOOL

Stony Brook School at Stony Brook, N. Y. (53 miles from New York City) is a preparatory school for boys in which the Bible has a prominent place. This item is given not as an advertisement but in response to inquiries that come from parents who have boys to educate and are anxious that they shall have a religious environment.

A Justifier of Crime

The Chicago Tribune of February tenth published the following dispatch:

"Jail sentences for bootlegging were imposed today on four La Montagne brothers, distillers, all of them socially prominent and one internationally known as a polo player. Bail of \$15,000 each was continued until Thursday that they might wind up their business affairs before entering the Essex county, N. J. penitentiary. The quartet recently were indicted by a federal grand jury which investigated a dinner at the fashionable Racquet and Tennis club on Park Ave., at which liquor was alleged to have flowed freely.

"Then the pleas for the defense began: Joseph Auerbach asked the court to consider the recent pronouncement of Dr. Nicholas Murray Butler of Columbia University that the prohibition laws did not represent the common will and that, therefore violation of them was not a crime against society.

"Col. Hayward, U. S. Attorney is reported to have said: 'Col. Hayward said it was not his duty to debate prohibition in or out of court with Dr. Butler, whom he described as a justifier of crime.' He urged jail sentences on the ground that the people must be taught that the majesty of the law must not be defied."

Wonder if Dr. Nicholas Murray Butler is proud of the position that he now occupies as a "justifier of crime." Does it please him to have an attorney for criminals quote him against enforcement of the law; and does he feel flattered when the prosecuting attorney answers by calling him a "justifier of crime?" Can Dr. Butler find a precedent for his position. Did any other president of a great university ever get down so low or adopt so unpatriotic a course?

Is he a teetotaler? Does he by his own life set an example to the students who attend the university over which he presides? Or does he want them to understand that he by his example advises the use of intoxicating liquors?

He talks about wine and beer; will he take the public into his confidence and state whether he confines his drinking to wine and beer? Or does he favor the old fashioned saloon that sells everything and, in addition to the sale of all kinds of liquors, had a gambling house and a disorderly house as accessories? What did he ever do to abolish the old saloon?

If Dr. Butler is going to take the leadership of the soaking wets he ought to resign from the presidency of the university so that he can give his whole time to opposing the enforcement of prohibition. He knows that the amendment cannot be taken out of the Constitution and he knows that while the amendment remains in the Constitution, Congress is powerless to legalize the sale of any intoxicating liquor, whether it be wine, beer, or whisky. His speeches, therefore, can have only one purpose now—the encouraging of lawlessness. Is he willing to have conferred upon him as a title, Knight of the Bottle?

W. J. BRYAN.

THOMAS E. BARKWORTH

The death of Thomas E. Barkworth, report of which will be found on another page, marks the end of a very useful career. Mr. Barkworth represented a type of man to be found in every land and more abundantly in this country than elsewhere. He had a civic conscience and felt that participation in public affairs was a duty he owed to his country in return for the opportunities it gave him. Sometimes this sense of obligation is developed to a greater extent in some of the foreign born than in some born under the American flag—probably because the former are able to contrast our government with others. At any rate, Mr. Barkworth was always mindful of his responsibilities as a citizen and, with that moral courage which distinguishes the truly great, fought for his principles without asking whether the party would win or lose.

The fearlessness that characterized him in his dealings with governmental problems distinguished him along all lines of thought and no work of importance failed to appeal to him. His convictions in religion controlled him as completely as did his convictions in politics. He recognized man's relation to God as the most important into which the human being can enter and exemplified in his life the doctrines that he proclaimed by tongue and pen.

Such a man is an asset to any country—such men are indispensable to the communities in which they live. I counted it an honor to be a collaborator with him and share the sorrow that his death has brought to his family and friends.

W. J. BRYAN.