

ABSTRACT

THE MOVEMENT FOR THE BRICKER

AMENDMENT: ITS ORIGINS,

GROWTH, AND FAILURE

The purpose of the movement for the Bricker amendment was to amend the Constitution relative to the making of treaties and executive agreements. This paper interprets the movement as part of a conservative reaction to the growth of internationalism and presidential power during and after World War II. Although this paper is concerned primarily with the politics of the movement, the legal aspects are described to the extent necessary to make the politics involved comprehensible.

The movement originated as a response to the fear that rights guaranteed in the Constitution could be forfeited by the government through the use of treaties and/or executive agreements. The Supreme Court allowed Congress to legislate in a formerly unconstitutional area in order to implement a treaty in the case of Missouri vs. Holland (1920). In the early 1950s, there were several UN proposals before the Senate concerning human rights. If they were adopted as treaties, it appeared that Congress could legislate on these rights in any way desired. Implementing legislation might

be acceptable to the Supreme Court, constitutional limitations notwithstanding.

The importance of the American Bar Association (ABA) as a leading force in developing the movement into one of national significance is emphasized. The ABA's support of the movement added credence to the idea that the Constitution needed to be amended to safeguard the rights of American citizens.

Despite the fact that Republican Senator John W. Bricker of Ohio introduced one of his proposals with more than two-thirds of the Senate as co-sponsors, it met with defeat in 1954. The failure of the movement is largely attributable to the final decision of the Eisenhower administration to oppose all of the proposals offered on the basis that they would unnecessarily restrict the President and the State Department in conducting foreign affairs.

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THE MOVEMENT FOR THE BRICKER AMENDMENT:
ITS ORIGINS, GROWTH, AND FAILURE

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INTRODUCTION

A decade-long movement to amend the Constitution resulted in the so-called "Bricker Amendments." The movement reached a climax in early 1954 when one of these proposed constitutional amendments failed passing the United States Senate by one vote. The various proposals were not identical; however, common to most were the concepts that: (1) a treaty could not be allowed to conflict with the Constitution; (2) a treaty could not be used to expand the constitutional scope of congressional domestic legislation; and (3) executive agreements would be similarly limited.

This paper will explore the movement's origins, its expansion into a significant national movement, and its defeat in the U.S. Senate. The legal debate on the Bricker amendment was esoteric, usually confined to lawyers, and remained unclear to the laymen of the country throughout the campaign to amend the Constitution. Although this is not a study primarily of the constitutional issue, the dispute on the Bricker amendment is incomprehensible without examination of the legal dimension. That the dispute had legal substance does not mean that it was devoid of politics. Indeed, the position of many disputants, including that of the Dwight D. Eisenhower administration, was based upon the political situation. The politics of the

Bricker amendment will also be considered herein.

The Constitution does not specifically limit the scope and content of treaties. It does declare that both the Constitution and treaties are the supreme law of the land. No provision is in the Constitution for deciding which is binding in case of conflict between them. In the opinion of amendment advocates, this was a situation that needed to be remedied. Several treaties then pending action in the Senate would have conflicted with the Constitution and expanded congressional power had they been ratified.

Some of the proposed United Nations treaties alarmed the Brickerites. It appeared that the treaties could affect an individual's relationship with his country's government (rights and liberties guaranteed in the Bill of Rights), the balance of power between the branches of the federal government, and between the states and the federal government. Could treaties legally regulate such subjects? The case of Missouri vs. Holland (1920), which is discussed in a later chapter, seemed to suggest that they could.

The case for amending the Constitution was based upon three main arguments: (1) treaties did not have to be made in pursuance of the Constitution; (2) many of the treaties then pending would, in fact, abridge the Constitution if they were adopted by the United States; and (3) Congress could enlarge its power to legislate on a formerly unconstitutional matter by first getting a treaty ratified on the subject.

The Bricker amendments were drafted to prevent the above circumstances. The amendments would halt congressional expansion of its legislative powers through the use of treaties and guarantee that no treaty could conflict with the Constitution. As for executive agreements, "To limit the scope of the treaty power without placing comparable limitations on the power to make executive agreements would be like locking the front door, but leaving the back door open."¹ The placing of limitations upon treaties and executive agreements seemed inextricable to most amendment advocates; one could not be done effectively without similar restrictions being placed upon the other.

The constitutional provisions for making treaties will be delineated before the proposals or the rationale for making them are examined.

Notes

1. U.S., Congress, Senate, Senator John W. Bricker speaking for S.J. Res. 1, 83rd Congress, 1st session, March 13, 1953, Congressional Record vol. 99, pt. 2, p. 1952.

CHAPTER 1

TREATY POWER AND THE CONSTITUTION

A review of the constitutional provisions for making treaties and executive agreements is needed to understand the Bricker amendments. Article VI, paragraph 2 of the Constitution states:

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State notwithstanding.

This article specifically states that laws must be made in pursuance of the Constitution to be the supreme law of the land. Laws cannot conflict with the Constitution; acts of Congress inconsistent with the Constitution can be nullified. Treaties which either have been or will be made "under the Authority of the United States," however, are stated to be the supreme law of the land. That treaties must be made in pursuance of the Constitution is stipulated in neither this article nor elsewhere in the Constitution.

Prior to his appointment as Secretary of State for the Dwight D. Eisenhower administration, John Foster Dulles commented on the treaty-making power in a speech on April 11, 1952, before a regional meeting of the American Bar Association (ABA) in Louisville, Kentucky. The speech contributed

to the expanding dispute over whether or not the Constitution should be amended. Dulles said:

The treaty-making power is an extraordinary power liable to abuse. Treaties make international law and also they make domestic law. Under our Constitution treaties become the supreme law of the land. They are, indeed, more supreme than ordinary laws for congressional laws are invalid if they do not conform to the Constitution, whereas treaty-law can override the Constitution. Treaties, for example, can take powers from the States and give them to the Federal Government or to some international body, and they can cut right across the rights given the people by the constitutional Bill of Rights.¹

Although agreement was not unanimous among constitutional lawyers on the meaning of the phrase "under the Authority of the United States," many of them concluded that treaties could possibly rescind rights guaranteed by the Constitution and the Bill of Rights. Dulles was a well respected lawyer, and he said that this was possible.

Article II, section 2 of the Constitution states the President "shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur." Treaties may be implemented by an Act of Congress. Article I, section 8 empowers Congress "to make laws which shall be necessary and proper for carrying into execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof."

Article I, section 10 restricts the states. It provides that "No State shall enter into any Treaty, Alliance, or Confederation." It further prohibits them from entering "into any Agreement or Compact . . . with a foreign Power" without the consent of Congress.

In summary, the Constitution identifies who can make treaties and how treaty-making is to be done. The President can make treaties with the concurrence of two-thirds of the U.S. senators with a quorum present. Charles W. Engelland identifies four steps in the treaty process under the Constitution: (1) negotiation, which can be initiated either by the U.S. or by some other country; (2) the signing of the treaty by representatives of each government involved; (3) ratification of the treaty; and (4) promulgation of the treaty.² The "advice and consent" of the Senate is between steps two and three, since a treaty could not be ratified without two-thirds of a Senate quorum concurring. The Senate is not precluded from being more forceful than the Constitution indicates is necessary. In such cases, the Senate may maintain close control over the negotiations of the U.S. After the advice and consent of the Senate, an "instrument of ratification is signed and sealed by the President," and this instrument is exchanged with the other party.³

The treaty gains domestic effect when the President promulgates it by issuing a proclamation, setting forth the terms of the treaty and making it public 'to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.'⁴

Although it is easy to understand how a treaty is made, the subjects a treaty can encompass and whether a treaty has to conform to the Constitution to be the supreme law of the land is not so evident. This was the crux of the problem. Anti-amendment people claimed that the phraseology of the

Constitution with regard to treaties resulted from the fact that treaties made before the Constitution was ratified had to continue to be effective. The Treaty of Paris of 1783 was a prime example. This treaty with Great Britain not only recognized the independence of this country, but also defined the Mississippi River as its western boundary. The phrases: ". . . all Treaties made, or shall be made, under the Authority of the United States, shall be the Supreme Law of the land," meant only that treaties made under the Articles of Confederation would continue to be recognized as effective under the new Constitution.

The Brickerites did not deny that this was the original intent of the authors of the Constitution. They warned, however, that the original intent of words in a document are not always easy to uphold. The Supreme Court is not bound by one interpretation of phraseology in the Constitution. The Brickerites wanted it to be made clear beyond any doubt that these treaty-making phrases of the Constitution meant that a treaty had to be made in pursuance of the Constitution to be valid. They believed that the only way to guarantee that the Supreme Court would not interpret these phrases differently was to pass an amendment to the Constitution that stated in simple terms that a treaty must be made in pursuance of the Constitution to be valid.

Notes

1. U.S., Congress, Senate, Committee on the Judiciary, Proposing an Amendment to the Constitution of the United States Relative to the Making of Treaties and Executive Agreements; and Proposing an Amendment to the Constitution of the United States, Relating to the Legal Effect of Certain Treaties. Hearings before a subcommittee of the Senate Committee on the Judiciary on S.J. Res. 1 and S.J. Res. 43. 83rd Congress, 1st session, 1953, p. 862.
2. Charles Wilbur Engelland, "The Bricker Amendment" (Ph.D. dissertation, Iowa State University, 1954), p. 5.
3. Ibid., p. 6.
4. Ibid.

CHAPTER II

THE PROPOSED AMENDMENTS

The multitude of proposed amendments makes it impossible to analyze all of them. An examination of the most important ones and the arguments of proponents and opponents should aid in understanding the movement to amend the Constitution and also its failure.

Senate Joint Resolution 1 will be considered because it was the last proposal, authored solely by John Bricker, that had an opportunity of receiving widespread support. Senator Arthur Watkins of Utah composed S.J. Res. 43, which was important because it provided the bulk of the text of the amendment that was favorably reported out of the Senate Judiciary Committee in 1953 as the revised version of S.J. Res. 1. Also, the George substitute was important because it failed Senate adoption by only one vote in February 1954.¹

With regard to S.J. Res. 1, Bricker said that the issue was clear: "Shall the supremacy of the Constitution of the United States over treaties be established beyond all doubts? Or, shall the President and the Senate in exercising the treaty power be trusted not to impair the fundamental rights of American citizens?"² Bricker claimed that his resolution would prohibit treaties from "cutting right across

the rights given the people by the constitutional Bill of Rights," as Dulles said was possible in his Louisville speech.

In general, the proponents of amending the Constitution objected to treaty law because: (1) it did not have the sanction of law; (2) national sovereignty was being surrendered by treaty; (3) our Federal System of government [was] being altered by expansion of the power of the national government at the expense of the reserve powers of the states; and (4) even the Bill of Rights might [have been] undermined by treaty-law.³

To the Brickerites treaty-law did not have the sanction of law. Because the Constitution did not specifically enumerate on treaty-law, they concluded that it did not have the sanction of, and should not be upheld by, the Constitution. The Brickerites advocated that in all instances, especially where there was doubt as to the exact powers of government, the government should be limited by law. They maintained that the Constitution limited the powers of the government and although it was obvious that treaty powers were limited, the document omitted a limitation on treaty powers, except that they be made under the authority of the United States; treaties could not be used to expand the authority and jurisdiction of government in the domestic sphere beyond what was permissible elsewhere in the Constitution.

Bricker claimed that the Founding Fathers never intended treaties to make law about purely domestic matters and that was why they wrote no limitation on the treaty powers into the Constitution. The absence of limitations on this power did not mean that treaties could be used to change the rights of American citizens. The Constitution, claimed

Bricker, could not be intelligently interpreted to be anything other than a guarantee of these political rights. The history of the United States, he continued, was essentially the history of the development of the documents that limit the powers of government. Although he had "the utmost trust in President Eisenhower and in [his] colleagues in the Senate," Bricker saw no guarantee that some future administration would not make a treaty that conflicted with the Constitution.⁴

The Brickerites believed that a guarantee prohibiting a treaty from conflicting with the Constitution should be in the Constitution itself. Even if one discounted the possibility of the President and the Senate deliberately making such a treaty, there was always the possibility that a treaty could inadvertently abridge some constitutional right of citizens. Two examples of this, they pointed out, were the Genocide Convention and the Covenant on Human Rights.

Article 10 of the UN Covenant on Civil and Political Rights made allowances for the citizens of the signatory states to be tried under certain circumstances without the benefit of the right to a public trial.⁵

Bricker thought that

The U.N. draft statute for an International Criminal Court nullifies in unmistakable language the constitutional protections of persons accused of crimes. Under the terms of this treaty, American citizens could be: tried abroad for crimes committed in the United States (Article 21); denied the right to trial by jury (Article 37); tried in secret (Article 41); convicted by a majority vote (Article 46); and denied any right to appeal (Article 50).⁶

The Brickerites claimed that there was no doubt that treaties did, in fact, make domestic laws, and the American people

needed their rights safeguarded against proposed UN and International Labor Organization (ILO) treaties. The political rights of American citizens were not proper subjects for treaties, the Brickerites maintained, but since such treaties had been proposed, the American people needed protection of S.J. Res. 1.

It was unclear as to whether treaties were self-executing as internal law. A self-executing treaty is one that takes effect without any action other than ratification. A non-self-executing treaty is one that needs other action, such as an act of Congress, to make it effective as internal law. Such judgments should not, argued the Brickerites, be made by non-elected officials (i.e., judges), but only by publicly elected officials. The amendment process allowed for the latter. The lack of clear guidelines as to what types of treaties were self-executing led to many differences of opinion between the Brickerites and those who felt that an amendment was unnecessary. At the time of the Senate debate, there was controversy within the courts over whether Articles 55 and 56 of the UN Charter were self-executing. These Articles were concerned with the human rights aspirations of the UN and pledged all members to cooperate and to take individual action to see that these aspirations were met.

The last section of S.J. Res. 1 addressed executive agreements and any other agreements made with a foreign power. Bricker wrote that these agreements should be subject to the same restrictions as treaties. He feared that if treaties

were to be limited by an amendment, executive agreements could be used in lieu of treaties. Without congressional (or some other type) of regulation, the Senate could be by-passed in foreign affairs matters. The Brickerites believed that the Senate should have some control over this area which could be done by regulating executive agreements. Some lawyers, both for and against the regulation of treaties, already interpreted the Constitution as giving Congress the power to regulate these agreements, but as was the case in other matters, the Brickerites wanted to make it clear beyond any doubt that the Congress did, indeed, have this power. The Korean War gave impetus to the rising demand for an amendment. This war, a war without congressional declaration, could have been averted if such an amendment had been in force, or so said the Brickerites. The fact that the war was conducted under the aegis of the UN without a formal declaration of war was emphasized by Senator Arthur Watkins of Utah in his statement during the 1953 amendment hearings that the UN Charter took the war making power away from Congress and gave it to the President.⁷

S.J. Res. 43, authored by Watkins, introduced the troublesome "which clause." It stated that ". . . A treaty shall become effective as internal law in the United States only through legislation which would be valid in the absence of treaty." The change here from earlier resolutions is that for a treaty to become effective as internal law, it must not only be done "through the enactment of appropriate legisla-

tion,"⁸ but also through "legislation which would be valid in the absence of treaty."⁹

This clause generated more disagreement and discussion than any other part of the proposed amendments. Watkins' proposal was largely the result of wording worked out by the ABA. The "which clause" was designed to protect the American people from the doctrine of Missouri vs. Holland which was the most used example of how legislative powers could be expanded by the use of treaties. In 1920 the U.S. Supreme Court ruled on this case. Congress enacted a law to protect migratory birds that was later ruled unconstitutional by the lower federal courts. The United States later entered into a treaty with Great Britain, with Canada responsible for implementing Great Britain's part of the treaty. To conserve migratory waterfowl, Congress thereupon passed another law on the subject. A game warden (Holland) threatened to enforce the new federal law in the State of Missouri. The State of Missouri claimed that the Congress was powerless to pass laws on migratory birds and took Holland to court in an attempt to enjoin him from enforcing the new law.

The State of Missouri argued that no explicit power to protect migratory birds had been delegated to Congress and that the law violated the Tenth Amendment which reserves the powers not delegated to the federal government to the states or the people. "The Supreme Court held, however, that since there was no constitutional prohibition against making a conservation treaty, and since the law enacted was a necessary

and proper means of carrying the treaty into effect, the law was constitutional."¹⁰

The significance of the doctrine of Missouri vs. Holland was that what was formerly an unconstitutional area for congressional action became constitutional by virtue of the fact that a treaty on the subject had been ratified. If Congress could legislate on migratory waterfowl after ratification of a treaty, could it not also legislate on the personal freedoms of American citizens if a treaty concerning them were also ratified? If Watkins' resolution had existed during the litigation of Missouri vs. Holland, the legislation on controlling the taking of migratory waterfowl would have continued to have been unconstitutional. The "which clause" would have made it clear beyond any doubt that a law that was unconstitutional before a treaty was ratified would have continued to be so afterwards.

This clause was also supposed to be a safeguard against various UN and ILO treaties and conventions. It would keep them from becoming effective internally unless Congress acted in a way that was constitutional prior to the ratification of the treaties or conventions in question. As has been mentioned, Watkins' resolution was important because it was largely the wording of his resolution that was used in the revised version of S.J. Res. 1 when reported out of the Judiciary Committee.

The adoption of the "which clause" either in S.J. Res. 43 or in the revised version of S.J. Res. 1 would have

made it clear that treaties were not self-executing as far as internal law was concerned, and would have prevented the doctrine of Missouri vs. Holland from operating when legislation was needed to make a treaty effective internally.

The George substitute was the shortest of the Bricker amendments.¹¹ It was also the one that came closest to passing the Senate. Section 1 provided that treaties and other international agreements could not conflict with the Constitution. Section 2 prohibited an international agreement other than a treaty from becoming effective as internal law without an act of Congress. No absolute prohibition against treaties becoming effective internally was made in this proposal. The lack of a "which clause" in this proposal may have contributed to its popularity, at least making it preferable to the revised version of S.J. Res. 1 to many senators.

A discussion of the content of the proposed amendments alone does not explain why the phenomenon of a nation-wide movement to amend the Constitution developed. Many of the supporters were of high standing and office. Frank Holman, a past president of the ABA, was one of the earliest voices calling out passionately for amendment. President Eisenhower, himself, recognized Holman as "the prime mover in this whole business."¹²

Concerning his devotion to the cause, Eisenhower stated that, "He [Holman] is a fanatic on the subject."¹³ Not only were influential people in support of amendment, many of them were willing to expend great time and energy in their

efforts. Largely as a result of Holman's work, the ABA became involved in the drive to amend the Constitution.

Notes

1. U.S., Congress, Senate. S.J. Res. 1, 83rd Congress, 1st session, January 7, 1953. Congressional Record, vol. 99, pt. 1, p. 160 (hereafter cited as Cong. Record). The complete text of this proposal can be found in the appendix, p. 70; U.S., Congress, Senate, Committee on the Judiciary, Proposing an Amendment to the Constitution of the United States Relating to the Legal Effect of Certain Treaties and Other International Agreements. Hearing before a subcommittee of the Senate Committee on the Judiciary on S.J. Res. 3. 85th Congress, 1st session, 1957, S.J. Res. 43 can be found on the fold out following p. 372. Hereafter cited as Hearing, 1957. The complete text of this proposal can be found in the appendix, p. 71; U.S., Congress, Senate, Committee on the Judiciary, Constitutional Amendment Relative to Treaties and Executive Agreements. S. Rep. 412, 83rd Congress, 1st session, 1953, Senate Miscellaneous Reports on Public Bills, vol. 2, p. 6. The complete text of the revised S.J. Res. 1 can be found in the appendix, p. 72; U.S., Congress, Senate. The George substitute proposal for S.J. Res. 1, 83rd Congress, 2nd session, February 2, 1954. Cong. Record, vol. 100, pt. 1, p. 1103. The complete text of this proposal can be found in the appendix, p. 74.
2. U.S., Congress, Senate, Senator John W. Bricker speaking for S.J. Res. 1, 83rd Congress, 1st session, March 13, 1953, Cong. Record, vol. 99, pt. 2, p. 1948.
3. Charles Wilbur Engelland, "The Bricker Amendment" (Ph.D. dissertation, Iowa State University, 1954), p. 5.
4. U.S., Congress, Senate. Cong. Record, 83rd Congress, 1st session, March 13, 1953, vol. 99, pt. 2, p. 1949.
5. Ibid.
6. Ibid.
7. U.S., Congress, Senate, Committee on the Judiciary, Proposing an Amendment to the Constitution Relative to the Making of Treaties and Executive Agreements; and Proposing an Amendment to the Constitution of the United States, Relating to the Legal Effect of Certain Treaties. Hearings before a subcommittee of the Senate Committee on the Judiciary on S.J. Res. 1 and S.J. Res. 43. 83rd Congress, 1st session, 1953, statement of Senator Arthur Watkins while questioning John Foster Dulles, p. 885.

8. U.S., Congress, Senate. S.J. Res. 1, 83rd Congress, 1st session, January 7, 1953. Cong. Record, vol. 99, pt. 1, p. 160.
9. Hearing, 1957, S.J. Res. 43 is on the fold out following p. 372.
10. Thorold J. Deyrup, "The Executive Agreements Under the Bricker Amendment," Social Research, 20 (Winter 1953), p. 389.
11. U.S., Congress, Senate. The George substitute proposal for S.J. Res. 1, 83rd Congress, 2nd session, February 2, 1954. Cong. Record, vol. 100, pt. 1, p. 1103.
12. Dwight D. Eisenhower to John J. McCloy, January 19, 1954, Dwight D. Eisenhower, Papers as President, Ann Whitman Files, Dwight D. Eisenhower Diary Series, Box 4, folder entitled "Bricker Amendment," Eisenhower Presidential Library, Abilene, Kansas.
13. Ibid.

CHAPTER III

THE ROLE OF THE AMERICAN BAR ASSOCIATION IN THE MOVEMENT TO AMEND THE CONSTITUTION

The ABA played a significant role throughout the Bricker amendment controversy and was particularly important as a major source of leadership early in the movement's history. On January 7, 1944, the ABA "created a commission to study proposals for organization of nations designed to maintain peace and law."¹ This was prior to, but with knowledge of, the Dumbarton Oaks Conference that laid the plans for an organization later to be called the United Nations.²

Frank E. Holman, an original member of the ABA's committee on Peace and Law Through the United Nations was the first crusader of this movement to attempt to amend the Constitution.³ In April 1946, Holman became concerned with the proposed Declaration on Human Rights then being drawn up by the United Nations Commission on Human Rights, a sub-organ of the Economic and Social Council of the United Nations. The Economic and Social Council had the authority to implement the human rights obligations of the United Nations.⁴

The Commission on Human Rights, while Mrs. Eleanor Roosevelt was chairman, introduced an international bill of

rights consisting of three parts. The Commission was first to declare "in the nature of aspirations" what it wanted done.⁵ This was the Declaration on Human Rights, whose preamble claimed it was to be "a common standard of achievement for all peoples and all nations." The long, twenty-eight article declaration enumerated "personal, civil, and political rights, such as the right to work, the right to social security, and the right to education. . . ."6

The Declaration on Human Rights was to be followed by multinational treaties covering what Holman believed were internal concerns of the various countries. General George C. Marshall advised Holman not to worry about the Declaration on Human Rights since it was not legally binding on the signatories.⁷ Holman, however, "feared that racial equality as set forth in a Covenant on Human Rights would ultimately alter the existing social patterns on the American domestic scene."⁸ His concern about the Declaration on Human Rights was based upon his belief that the Economic and Social Council of the United Nations was where "the socialists and communists and international planners and 'do-gooders' propose to reform and remake the world along the lines of so-called social and economic equality."⁹

The second part of the international bill of rights was the Covenant on Human Rights. The Covenant

called for an enlargement of governmental powers to provide for such human rights as 'healthy development of the child, environmental hygiene,' the right of everyone

to a job, fair wages, adequate housing, education and a continuous improvement of living conditions, goals that Time magazine declared could be provided for everyone only by making the government even more totalitarian than, say, the Soviet Union.¹⁰

The Covenant on Human Rights was one of the proposed multi-national treaties of the UN and "once signed and ratified by member states, [would have] become a legally binding instrument."¹¹ The third part of the international bill of rights was to consist of measures of implementation.

In February 1948, Holman was elected President of the ABA, thus gaining an office where his political views could be more easily espoused to a larger audience. In a speech before the California Bar Association at Santa Barbara in October 1948, he gave his first public warning against the dangers of "treaty-law." "Treaty-law" was a phrase that was much used by amendment advocates. The Brickerites meant one of two things when they used this phrase. If a treaty was self-executing and became effective as internal law in the United States without the use of legislation, that was treaty-law. The second type of treaty-law was legislation enacted to implement or enforce the provisions of a non-self-executing treaty.

An example of the first type of treaty-law was the effect of the UN Charter on the outcome of Fujii vs. California.¹² In this case California land laws prohibiting alien ownership of land, previously held to be valid, were overturned because of certain provisions in the UN Charter and the Universal Declaration on Human Rights. Neither of these documents had had implementing legislation, yet they certainly

exerted an influence on the courts of California. It was feared that court interpretations of this kind might affect "immigration laws and other laws based upon race or nationality."¹³ The case of Missouri vs. Holland exemplified how legislation was construed as making treaty-law.¹⁴

In 1949 Holman began writing articles in the American Bar Association Journal advocating an amendment to the Constitution pertaining to the restriction of treaty-law. A host of other articles ensued by several authors both for and against amendment.¹⁵ These propelled the issue into prominence at least within the ABA.

John P. Humphrey, the director of the UN Commission on Human Rights, announced in 1948 that:

Human rights are largely a matter of relationship between the state and individuals, and therefore a matter which has been traditionally regarded as being within the domestic jurisdiction of states. What is now being proposed is, in effect, the creation of some kind of supranational supervision of this relationship between the state and its citizens.¹⁶

The ramification of this statement was obvious to Moses Moskowitz, who wrote that "once a matter has become . . . the subject of regulation by the United Nations, . . . that subject ceases to be a matter being 'essentially within the domestic jurisdiction of the member states.'"¹⁷ Holman and others agreed that this interpretation rendered meaningless Article 2 of the UN Charter which prohibited UN intervention in matters "essentially within the domestic jurisdiction" of a state. The State Department in September 1950 accepted this interpretation in a publication that concluded

". . . there is no longer any real distinction between domestic and foreign affairs."¹⁸

The statements that there was no longer any difference between domestic and foreign affairs alarmed those who supported an amendment. The alarm stemmed from the fact that they believed there was less constitutional control over the federal government's treaty-making power than over its power to adopt domestic law.

Alfred J. Schweppe, then the chairman of the ABA's Committee on Peace and Law through the United Nations, gave his statement before the subcommittee hearings on February 18, 1953. Since he was chairman of this committee, which played such an influential role in agitating for an amendment, his views deserve attention. At the beginning of his testimony, he agreed that the treaty clause of the Constitution was a Trojan horse. Besides making treaties enforceable nation wide (the superficial purpose of the clause), it also ushered in hidden possibilities akin to the hidden soldiers in the Trojan horse.¹⁹ Schweppe clarified the analogy by using the case of Missouri vs. Holland as an example. A treaty was made to protect migratory waterfowl, and the result was that the treaty pushed state laws and the Constitution aside and allowed Congress to legislate in a formerly unconstitutional area.

The possible consequences of the present treaty clause were pointed out by Eberhard P. Deutsch, another member of the ABA's Committee on Peace and Law Through the United Nations. He asserted that "the United Nations Charter . . . has un-

doubtedly, under Missouri vs. Holland, already conferred on Congress the unlimited power to implement by legislation treaties on all matters, including individual rights, covered by that instrument."²⁰

Schwepe agreed that the Missouri vs. Holland decision, when viewed in conjunction with the United Nations Charter, could legally enable the President and two-thirds of a Senate quorum to take over "the entire area of internal law reserved to the states."²¹ This could have been done under Articles 55 and 56 of the United Nations Charter which were concerned with the human rights program of the UN. A treaty could be adopted on any of these human rights programs and the Missouri vs. Holland decision would allow domestic legislation to implement the treaty regardless of whether such legislation would have been constitutional prior to the adoption of the amendment.

Next Schwepe addressed the argument that Congress, under the then current laws, could repudiate the internal effects of a treaty by legislation. It was possible that a majority of both Houses could pass such legislation to repudiate the internal effects of a treaty, but it was also possible that the occasion could arise whereby a two-thirds majority of both Houses would be necessary to pass such legislation over the President's veto. If a presidential veto of such legislation occurred, it would be much harder to repudiate the internal effects of the treaty than to make the treaty in the first place. To make a treaty, the President needed only the concurrence of two-thirds of a Senate quorum.

Scheweppe argued that the best way to avoid unwanted internal effects of a treaty was to adopt an amendment that would preclude any treaty from becoming effective as internal law without legislation by Congress. This would be preferable to the process of repudiation described above.

To further support their position, the Brickerites called upon George A. Finch, another member of the ABA's Committee on Peace and Law through the United Nations, who claimed that:

Article VI of the United States Constitution was the first instance of any government declaring that treaties are to be the supreme law of the land. With a few minor exceptions, other governments have not followed the example. It is not a requirement of international law that treaties be enforceable as municipal law in the courts of the contracting parties.²²

The Brickerites continued to clamor that our government should continue to be one of delegated and limited powers. Bricker, during the 1953 subcommittee hearings, said:

The root of the difficulty lies in the lack of demarcation between domestic and international legislation. A line must be drawn beyond which the international organizations know they cannot pass. The United Nations should draw the line in a resolution of the General Assembly and should facilitate a judgement on the question by the International Court. The United States should draw the line by amendment to the Federal Constitution.²³

The Brickerites believed that advantage had been taken of an alleged loophole in the Constitution. They wanted it closed to possible further abuse. They wanted neither the Constitution to be changed nor the rights of citizens to be lost because of this loophole. In their appeal for amendment, the

Brickerites quoted Thomas Jefferson from his "Parliamentary Practice":

By the general power to make treaties, the Constitution must have intended to comprehend only those objects which are usually regulated by treaties, and cannot otherwise be regulated. It must have meant to except out all those rights reserved to the States; for surely the President and the Senate cannot do by treaty what the whole government is interdicted from doing in any way.²⁴

Also frequently quoted was Charles Evans Hughes, former Chief Justice of the U.S. Supreme Court.

If we take the Constitution to mean what it says, it gives in terms to the United States to make treaties. It is a power that has no explicit limitation attached to it, and so far there has been no disposition to find in anything relating to the external concerns of the Nation the limitation to be implied.

. . . I have been very careful in what I have said to refer to the external concerns of the nation. I should not care to voice any opinion as to an implied limitation on the treaty-making power. The Supreme Court has expressed a doubt whether there could be any such. That is, the doubt has been expressed in one of its opinions. But, if there is a limitation to be implied, I should say it might be found in the nature of treaty-making power.

If we attempted to use the treaty-making powers to deal with matters which did not pertain to our external relations, but to control matters which normally and appropriately were within the local jurisdiction of the States, then I again say there might be grounds for implying a limitation upon the treaty-making power, that it is intended for the purpose of having treaties made relating to foreign affairs, and not to make law for the people of the United States in their internal concerns, through the exercise of the asserted treaty-making power.²⁵

According to Hughes, there was no explicit limitation on the treaty-making power of the United States government. There might be, however, an implied limitation that treaties should be limited to foreign affairs and not applied to domestic concerns. This seemed to be compatible with, and indeed very similar to what Jefferson had said. The Brickerites

endorsed Hughes' interpretation that treaties should not be used to affect domestic concerns. This, in fact, was part of what they wanted an amendment to declare. Although Hughes' viewpoint was encouraging to them, they were concerned that the doctrine of Missouri vs. Holland and the State Department's memorandum on the lack of distinction between domestic and foreign affairs completely destroyed any case for an implied limit on treaty power. They believed that unless they were able to pass an amendment, there would continue to be a serious doubt about whether there was any limitation on treaty power.

U.S. District Court Judge Orie Phillips said that although dicta could be found in Supreme Court decisions

. . . to the effect that while the treaty-making power is not limited by an express provision in the Constitution, it does not authorize what the Constitution forbids and its exercise must not be inconsistent with the nature of our Government and the relation between the States and the United States.²⁶

There seemed to be considerable agreement with the idea that the intent of the Founding Fathers was that treaties could not do certain things. What upset the Brickerites was the fact that conditions had changed since the writing of the Constitution. After Missouri vs. Holland, there did not seem to be a clear limit as to what was constitutional as far as treaty subjects were concerned.

A political analysis of what happened to the proposed amendments is necessary in order to understand why an amendment failed to pass the Senate. As the crucial votes on the

various proposals approached in February 1954, the Brickerites met with opposition not only from their old adversaries in the State Department and the Attorney General's staff, but from the White House as well. The final decision from the White House to oppose any and all proposed amendments was the determining factor in the defeat of the Brickerites in the Senate.

Notes

1. Youngnok Koo, "Dissenters from American Involvement in World Affairs: A Political Analysis of the Movement for the Bricker Amendment" (Ph.D. dissertation, University of Michigan, 1967), p. 22.
2. The Conference met from August 21 through October 7, 1944, in a mansion called Dumbarton Oaks in Washington, D.C.
3. The Committee did not at first have this exact name; it was adopted after the United Nations came into being. See paragraph above for the origin of this committee.
4. Article 68 of the United Nations Charter provides that the UN "shall set up commissions in economic and social fields and for the promotion of human rights."
5. U.S., Congress, Senate, Committee on the Judiciary, Proposing an Amendment to the Constitution of the United States Relative to the Making of Treaties and Executive Agreements. Hearings before a subcommittee of the Senate Committee on the Judiciary on S.J. Res. 130. 82nd Congress, 2nd session, 1952, statement of Frank Holman, May 22, 1952, p. 147, hereafter cited as Hearings, 1952.
6. Clyde Eagleton, ed., 1949 Annual Review of United Nations Affairs (New York: New York University Press, 1950), pp. 245-246.
7. Statement of Frank Holman, Hearings, May 22, 1952, p. 148.
8. Koo, "Bricker Amendment," p. 25.
9. Frank E. Holman, Story of the "Bricker" Amendment: The First Phase (New York: Committee for Constitutional Government, Inc., 1954), p. 2.
10. Time (July 13, 1953), quoted in Herbert S. Parmet, Eisenhower and the American Crusades (New York: The Macmillan Company, 1972), p. 308.
11. Eagleton, 1949 Annual Review, p. 247.
12. Fujii vs. California, 217 P. (2nd) (Ct. of App. Cal. 1950) 481, rehearing denied, 218 P. (2nd) 595. Review granted by the Supreme Court of California, cited from Eberhard P. Deutsch, "The Treaty-Making Clause; A Decision for the People of America," American Bar Association Journal 37 (September 1951), p. 661, note #13; also used as an example by Frank E. Holman, in "Treaty Law-Making: A Blank Check for Writing a New Constitution," ABAJ 36 (September 1950), pp. 710, 787, 788.

13. Ibid., p. 787.
14. In this case a treaty enlarged the legislative power of Congress into a previously unconstitutional area.
15. Some of the articles following Holman's broaching of the treaty-law subject follow: Frank E. Holman commented on treaty-law on "The President's Page" of the ABAJ, 35 (March 1949), pp. 201-203; Moses Moskowitz, "Is the U.N.'s Bill of Human Rights Dangerous? A Reply to President Holman," ABAJ, 35 (April 1949), pp. 283-288, 358-359; Holman, "President Holman's Comments on Mr. Moskowitz's Reply," ABAJ, 35 (April 1949), pp. 288-290, 360-362; Frank B. Ober, "The Treaty-Making and Amending Powers: Do They Protect Our Fundamental Rights?," ABAJ, 36 (September 1950), pp. 715-719, 793-796; Holman, "Treaty Law Making: A Blank Check for Writing a New Constitution," ABAJ, 36 (September 1950), pp. 707-710, 787-790; Eberhard P. Deutsch, "The Treaty-Making Clause: A Decision for the People of America," ABAJ, 36 (September 1951), pp. 659-662, 712-714; William Fleming, "Danger to America: The Draft Covenant on Human Rights," ABAJ, 37 (October 1951), pp. 739-742, 794-799; Eberhard P. Deutsch, "The Need for a Treaty-Amendment: A Restatement and a Reply," ABAJ, 38 (September 1952), pp. 735-738, 793-796.
16. John P. Humphrey, The Annals of the American Academy of Political and Social Sciences, vol. 255 (January 1948), p. 21.
17. Moses Moskowitz, "Is the U.N.'s Bill of Human Rights Dangerous?," ABAJ, 35 (April 1949), p. 285.
18. "Our Foreign Policy," State Department Publication 3972, General Foreign Policy Series 26 (Washington, D.C., U.S. Govt. Printing Office, released September 1950), p. 4; U.S., Congress, Senate, Committee on the Judiciary, Proposing an Amendment to the Constitution Relative to the Making of Treaties and Executive Agreements; and Proposing an Amendment to the Constitution of the United States Relating to the Legal Effect of Certain Treaties. Hearings before a subcommittee of the Senate Committee on Judiciary on S.J. Res. 1 and S.J. Res. 43. 83rd Congress, 1st session, 1953, cited in statement of Alfred J. Schweppe, February 18, 1953, p. 52. Hereafter cited as Hearings, 1953.
19. He agreed with Henry St. George Tucker (former Dean of the Law School of Washington and Lee University). Tucker first used the analogy in his book Limitations on the Treaty-making Power (Boston: Little, Brown and Co., 1915).

20. Eberhard P. Deutsch, "The Need for a Treaty Amendment: A Restatement and a Reply," ABAJ, 38 (September 1952), p. 796, also quoted in the statement of Schweppe, Hearings, February 18, 1953, p. 62.
21. Statement of Schweppe, Hearings, February 18, 1953, p. 62.
22. Statement of Finch, Hearings, April 9, 1953, p. 1121.
23. Florence E. Allen, The Treaty as an Instrument of Legislation (New York: Macmillan Company, 1952), pp. 104-105, quoted in statement of Bricker, Hearings, February 18, 1953, p. 8.
24. Thomas Jefferson, "Parliamentary Practice," (1801) quoted in Eberhard Deutsch, "The Need for a Treaty Amendment," ABAJ, 38 (September 1952), p. 736.
25. Charles Evans Hughes, speech before the American Society of International Law in 1929, quoted in the statement of Schweppe, Hearings, February 18, 1953, pp. 52-53.
26. Statement of Orie Phillips, Hearings, April 8, 1953, p. 988.

CHAPTER IV

THE POLITICAL HISTORY OF THE PROPOSED AMENDMENTS

The first formal action of the ABA came in February 1952, when its House of Delegates adopted a resolution that recommended Congress adopt a constitutional amendment that would read:

A provision of a treaty which conflicts with any provision of this Constitution shall not be of any force or effect. A treaty shall become effective as internal law in the United States only through legislation by Congress which it would enact under its delegated powers in the absence of such a treaty.¹

According to Frank Holman, the Peace and Law Committee of the ABA had not studied executive and other agreements sufficiently at that time to include any mention of them in this resolution.

On February 7, 1952, Senator John Bricker introduced, with sixty-one co-sponsors, S.J. Res. 130, which was referred to the Senate Judiciary Committee.² The Judiciary Committee referred it to a subcommittee under the chairmanship of Senator Pat A. McCarran of Nevada.³ This subcommittee held intermittent hearings from May 21 through June 13, 1952. At the conclusion of these hearings, the Judiciary Committee published a record of the evidence but did not recommend any action due to the lack of time and the upcoming congressional

elections of 1952. S.J. Res. 130 lapsed with the adjournment of Congress in the summer of 1952.

By September 1952, the ABA had adopted a proposed amendment concerning executive and other agreements for Congress to consider. This ABA proposal read:

Executive agreements shall not be made in lieu of treaties. Congress shall have the power to enforce this provision by appropriate legislation. Nothing herein contained shall be construed to restrict the existing power of Congress to regulate executive agreements under the provisions of this Constitution.⁴

By the time this proposal was adopted by the ABA House of Delegates, S.J. Res. 102 and 130, both of which had sections on executive and other agreements, had been introduced in the Senate.⁵ In 1952, the issue of treaty-power was of sufficient national interest to be put into the Republican Party Platform. Although John Bricker had wanted a strong statement supporting his ideas of amending the Constitution, the best he was able to get into the Platform was the statement that, "We [the Republican Party] shall see to it that no treaty or agreement with other countries deprives our citizens of the rights guaranteed them by the Federal Government."⁶

During the ensuing presidential campaign, Clarence Manion, Dean of the Notre Dame Law School, was asked by the Republican Party's "high command" to speak on the dangers of treaty-law and he complied. The Brickerites, after hearing John Foster Dulles' Louisville speech in April 1952, and with Dean Manion speaking against treaty-law, and with a commitment in the Republican Party Platform, albeit a watered down

version, assumed that Dwight D. Eisenhower would support a constitutional amendment to safeguard the rights of the American people. As it turned out, Eisenhower at first seemed amenable to amendment but later changed his mind. The actual role that the proposals to amend the Constitution played in the presidential election campaign of 1952 was not large. America's role in the Korean War and Communists in Truman's administration were more significant.⁷

The reader will recall that Bricker had already introduced two resolutions proposing to amend the Constitution before Eisenhower was elected and one more before his inauguration as President.⁸ Eisenhower's future cabinet and staff were already grappling with the problem before inauguration day. On January 2, 1953, Dulles sent a memorandum to Governor Sherman Adams to ascertain whether there would be an early attempt to push an amendment through the Senate.⁹ Dulles said that there might be a case for some amendment, but Bricker's amendment went too far. Dulles' main contention in opposition to the proposal was that it would unduly hamper the President in particular, and the federal government in general, in taking action in the field of foreign affairs. Dulles recommended that the administration study the matter further. Subsequent to this, Sherman Adams wired Jerry Persons in Washington and instructed Persons to tell Bricker that Eisenhower would like to have a personal conference with him before he introduced his resolution.¹⁰ Of this telegram, Adams has said, "That began a series of delaying actions on

the amendment that continued with interminable discussions and disagreements for the rest of that year."¹¹

Shortly after his inauguration, Eisenhower followed Attorney General Herbert Brownell's suggestion and requested a report from the head of each department and/or agency of the executive branch of government concerning the possible effects of S.J. Res. 1 and 2 on their respective departments.¹²

Brownell had talked to Bricker, who on February 11 seemed anxious to get some Senate action on his resolution. Brownell, a few days later, sent Bricker a letter that asked him to hold up action on his resolution until the views of the departments and agencies were known.¹³

A meeting of the heads of each department met on February 27 at the White House to coordinate their efforts on the amendment. In the February 25 cabinet meeting, the President, in the form of a memorandum, requested that the head of each department ask to testify before the Senate subcommittee on the proposed amendments. Herman Phleger, a legal assistant in the State Department, coordinated the testimony of administration officials heard by the subcommittee.¹⁴ In these hearings, most of the executive branch officials opposed the proposed amendments, with Dulles and Brownell opposing amendment in any form.

The subcommittee hearings on S.J. Res. 1 and 43 began on February 18, 1953. On that day Bricker said that besides the sixty-three co-sponsors of his resolution "I think about six or eight have told me that when it is finally put in form

and submitted by this committee, they will support the matter when it comes to the floor."¹⁵ Bricker also claimed that the resolution had widespread public support for two reasons:

The American People want to make certain that no treaty or executive agreement will be effective to deny or abridge their fundamental rights. Also, they do not want their basic human rights to be supervised or controlled by international agencies over which they have no control.¹⁶

As more specific reasons for adopting his resolution, Bricker cited the Genocide Convention and the doctrine of Missouri vs. Holland. Opponents of the Genocide Convention saw it as a threat to the American freedoms of speech, press, and the rights of those accused of crimes. The proponents denied this. Both the proponents and opponents, Bricker said, had plausible arguments, but the Supreme Court could not constitutionally give an advisory opinion, so without a test case, one could not know for sure which argument would win. The Senate could have added various reservations if the Convention were adopted, but the International Court of Justice said this would have nullified the effects of ratification. According to Bricker, "The Senate will never be able to vote intelligently on the Genocide Convention until such time as the supremacy of the Constitution over treaties is firmly established, and that, of course, is the purpose of this amendment."¹⁷

Since Herman Phleger, legal advisor to Secretary Dulles and coordinator of administration personnel's testimony before the subcommittee, was in such an influential position, his views deserve attention. Phleger echoed other opinions in

the administration; that is, he claimed that the language of Bricker's amendment would at least hamper, if not make impossible, action in the field of international agreements. The language in the resolution did not indicate that it would apply solely to future agreements and treaties; possibly it could be interpreted to apply to all such agreements made in the past. A flood of litigation would probably develop concerning nearly all of our important treaties, past and future, should Bricker's resolution be adopted.¹⁸ Phleger concluded:

- (a) The executive authority would be brought into serious question by the proposed amendment, and every negotiation of a treaty or other international agreement would be clouded by doubts and uncertainties as to the extent of the Executive authority. This is wholly unnecessary, and the implications from such a change in the basic structure of our constitutional system would create a chaotic and dangerous situation without solving any actual or imminent problem.
- (b) . . . The conduct of foreign affairs would be needlessly obstructed. There is no clear need for a change in the treaty-making procedure. There is also no clear need for the proposed limitation on the making of so-called Executive agreements. Except for the relatively few arrangements and understandings effected by the Executive under powers vested in the President by the Constitution, nearly all such agreements are made effective under and pursuant to legislative authority, without changing or adding to the laws passed by Congress.¹⁹

Notes

1. Frank E. Holman, Story of the "Bricker" Amendment: The First Phase (New York: Committee for Constitutional Government, Inc. 1954), p. 12.
2. U.S., Congress, Senate. S.J. Res. 130, 82nd Congress, 2nd session, February 7, 1952. Congressional Record, vol. 98, pt. 1, p. 908. Hereafter cited as Cong. Record. The complete text of this proposal can be found in the appendix, p. 69.
3. The rest of the subcommittee consisted of Herbert R. O'Connor of Md., Homer Ferguson of Mich., Willis Smith of N.C., and Robert C. Hendrickson, of N.J.
4. Holman, "Bricker" Amendment, p. 15.
5. U.S., Congress, Senate. S.J. Res. 102, 82nd Congress, 1st session, September 14, 1951. Cong. Record, vol. 97, pt. 9, p. 11344.
6. Republican Party Platform of 1952, quoted in Holman, "Bricker" Amendment, p. 32.
7. Glendon Austin Schubert, Jr., "Politics and the Constitution: The Bricker Amendment During 1953," Journal of Politics, 16 (May 1954), p. 257.
8. S.J. Res. 102 was introduced on September 14, 1951; S.J. Res. 130 was introduced on February 7, 1952; and S.J. Res. 1 was introduced on January 7, 1953.
9. John Foster Dulles to Sherman Adams, January 2, 1953, Dwight D. Eisenhower, Records as President, White House Central Files, Official File 116-H-4, Box 582, folder entitled "116-H-4, Secret Pacts and Executive Agreements 1953 (1)," Eisenhower Presidential Library, Abilene, Kansas.
10. Sherman Adams to Jerry Persons, January 5, 1953, Ibid. Wilton B. "Jerry" Persons directed White House liaison with the Congress while serving as Deputy Assistant to the President from 1953-58.
11. Sherman Adams, Firsthand Report: The Story of the Eisenhower Administration (New York: Harper and Row, Publishers, 1961), p. 105.
12. Herbert Brownell to Dwight D. Eisenhower, February 13, 1953, Dwight D. Eisenhower, Records as President, White House Central Files, Official File 116-H-4, Box 582,

folder entitled "116-H-4, Secret Pacts and Executive Agreements 1953 (1)," Eisenhower Presidential Library, Abilene, Kansas. S.J. Res. 2 proposed to impose limitations on executive agreements. U.S., Congress, Senate. S.J. Res. 2, 83rd Congress, 1st session, January 7, 1953. Cong. Record, vol. 99, pt. 1, p. 156.

13. Herbert Brownell to John Bricker, February 13, 1953, Dwight D. Eisenhower, Records as President, White House Central Files, Official File 116-H-4, Box 582, folder entitled "116-H-4, Secret Pacts and Executive Agreements 1953 (1)," Eisenhower Presidential Library, Abilene, Kansas.
14. Bernard M. Shanley to Theodore Pearson and Dana Converse Backus, March 4, 1953, Ibid.
15. U.S., Congress, Senate, Committee on the Judiciary, Proposing an Amendment to the Constitution Relative to the Making of Treaties and Executive Agreements; and Proposing an Amendment to the Constitution of the United States, Relating to the Legal Effect of Certain Treaties. Hearings before a subcommittee of the Senate Committee on the Judiciary on S.J. Res. 1 and S.J. Res. 43. 83rd Congress, 1st session, 1953, statement of Bricker, February 18, 1953, p. 2.
16. Ibid., p. 3.
17. Ibid., p. 5.
18. Herman Phleger to Dwight D. Eisenhower, March 2, 1953, Dwight D. Eisenhower, Records as President, White House Central Files, Official File 116-H-4, Box 582, folder entitled "116-H-4, Secret Pacts and Executive Agreements 1953 (1)," Eisenhower Presidential Library, Abilene, Kansas.
19. Ibid.

CHAPTER V

ADMINISTRATION VACILLATIONS

During the subcommittee hearings of February, March, and April 1953, administration personnel consistently opposed any amendment. This was one of the "no amendment" policy periods of the administration. Attorney General Brownell and Secretary of State Dulles, the two most influential administration members who testified, both solidly opposed any meddling with the traditional balance of powers between the executive and legislative branches of government.

In a news conference on March 19, 1953, Eisenhower said that the proponents of amendment seemed to be saying that they wanted to amend the Constitution so that it would be impossible to break it. This seemed to Eisenhower to be a "bit of an anomaly . . . you amend it in order to say that it will remain the same."¹ Although the wording of the proposals was unclear, Eisenhower stated that "it is one of those things where the President does not have to take a decision."² He did not consider the possibility that he would play a direct role in the amendment process.

At a later news conference, Eisenhower was asked whether the proposed amendment would affect the President's conduct of foreign affairs. Eisenhower answered that in the

opinion of Dulles, that in certain instances, the answer was yes.³ The President said that it would definitely make foreign policy less flexible and that this would be a disadvantage for the country, given the state of the world. These news conferences in March were the first public setbacks for the Brickerites.⁴ During April, administration personnel then testified against the proposals before the subcommittee. Dulles said in his testimony that the present administration would not sign the UN Covenants on Human Rights and Political Rights for Women. The Brickerites interpreted this as a tactical retreat by the administration, the purpose of which was to nullify the immediate reasons for supporting an amendment; i.e., a fear that the United States might sign away rights guaranteed in the Constitution by becoming a party to these UN treaties.

In reaction to administration moves, the Brickerites changed their tactics. They no longer emphasized "The reckless and misguided usurpations of Presidents Roosevelt and Truman; now, even a Man of Good Will could not be trusted in the White House."⁵ A quote, attributed to Thomas Jefferson, that epitomized this new attitude was embraced by the Brickerites: "In questions of power, let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution."⁶

Reacting to the new strategy of the Brickerites, the administration pressured some senators to reevaluate their positions regarding support for the proposed amendments. A

few co-sponsoring senators decided to take a second look at S.J. Res. 1 before giving it their unqualified support.⁷

Senator Willis Smith of the subcommittee stated that "there were reports that the Administration's stand would put enough pressure on Senators to prevent adoption of the resolution."⁸

Senator William Langer of North Dakota, Chairman of the Senate Judiciary Committee and the hearings subcommittee and an early advocate of the amendment, reversed his position and voted against reporting S.J. Res. 1 out of committee favorably. He filed a separate dissent with Senate Report 412 on June 25, 1953. The reasons for his vote were:

. . . I have been informed that efforts are being made by the majority leader and some members of the administration to work out a compromise text on this matter which would be acceptable both to the administration and to the proponents of this resolution. . . .

While I recognize the dangers which have alarmed the proponents of this legislation, I have no desire to see a remedy effected which might prove worse than the ill sought to be cured. It was my hope, therefore, that a measure might be worked out on which we could have assurances from the Chief Executive, or the members of his Cabinet directly affected by such an amendment, that the proposed amendment would not adversely affect the conduct of the foreign relations of the United States, nor adversely affect the present separation of powers between the legislative and the executive branches.

. . . This amendment so vitally affects the operation of the office of the President and the whole executive branch that it seems to me desirable to make every attempt to reach an accord which will prove satisfactory to the Chief Executive and to the proponents of the resolution.⁹

Senate Report 412 reported S.J. Res. 1 out of committee favorably by a vote of 9-5. All of the nine yeas came from co-sponsors of the resolution and included five Republicans and four Democrats. The minority report consisted

of two Republicans and three Democrats. The two Republicans voting for the minority report were Senators Langer and Alexander Wiley of Wisconsin. Wiley was, at that time, Chairman of the Senate Foreign Relations Committee. The votes of Senators Langer and Wiley were indicative of the Republican split on the amendment.

Following the committee report, Majority Leader Robert Taft continued to work for some compromise wording acceptable to both the Brickerites and the administration. This attempt at compromise was doomed to failure. During the summer of 1953 it looked as though the administration might agree to an amendment that declared that the Constitution was paramount over treaties but that would not adversely affect the foreign affairs of the country. It proved to be impossible to hammer out compromise language that would satisfy both the administration and the ardent Brickerites.

The administration changed its previous stand on the issue by July 1953, two and one-half months after the conclusion of the subcommittee hearings. It appeared to be a political detriment to maintain a "no amendment" policy. The American people felt that there was some danger to the inviolability of the Constitution and the Bill of Rights. The press reported the events, especially the hearings, and the American public, confused about the issue, believed that if all those senators (the sixty-four co-sponsors) saw a danger, then there must be something to it.¹⁰

Secretary of Agriculture Ezra Taft Benson, who had

been doing a lot of traveling, had seen "an apparent universal support for the Bricker amendment. Personally, I feel," he said, "that from a political standpoint at least, it is a serious mistake for us to press further opposition to the amendment."¹¹

Eisenhower stated in July 1953, that he would agree to an amendment that stated simply that a treaty cannot "circumvent or supersede the Constitution" in order to quiet the fears of the Americans about their rights.¹² In the same news conference, he said that he would "never agree to anything that interfered with the constitutional and traditional separation of powers between the departments."¹³ Eisenhower also told the public that Brownell was then working with various members of Congress on wording that would be acceptable to both Congress and the administration.

Eisenhower had changed his position on the issue. In early 1953 he had maintained that the President had no role to play in the amendment process. By summer, he said that he would support an amendment that stated simply that no treaty could override the Constitution, but that he would oppose any amendment that would upset the traditional balance of powers. These were his public statements. Privately, he continued to oppose any amendment. On March 27, 1953, one day after a press conference, he wrote to Edgar Eisenhower that he saw no point in amending the Constitution to say the same thing that it did already. He wrote, the Constitution should not be

changed, ". . . I want no amendment."¹⁴ He reiterated this opinion in the cabinet meeting of April 3, 1953. In the July 3 cabinet meeting, he revised this to sound more like his public views; i.e., he thought an amendment was unnecessary, but "a reiteration of the paramountcy of the Constitution could be accepted."¹⁵

On Tuesday, July 21, 1953, Clarence Manion, Dean of the Notre Dame Law School, spoke to Attorney General Brownell about the Bricker amendment.

Dean Manion advised the Attorney General that the people of the country were so aroused over the Administration's attitude of no amendment that criticism of the Administration would mount during the intervening months if its attempts to stall any amendment continued.¹⁶

According to Holman, the administration, in order to avoid these charges of stalling, supported Senate Majority Leader William F. Knowland's substitute amendment which was offered just before the congressional recess. The amendment was submitted on July 22, 1953. This was done "without Senator Bricker's knowledge, in his absence, and without his being consulted by anyone, he still supposing that the whole matter was going over to January 1954."¹⁷

In a White House press release of the same date, Eisenhower expressed his "unqualified support" for the resolution. The resolution provided:

that treaties and executive agreements shall not violate the Constitution, and that the courts may so declare; that in the future the Senate shall vote on treaties by recorded yeas and nays . . . and that the Senate may in each instance, when considering the ratification of a treaty, if it so determines, provide that it shall not be effective as internal law save by congressional action.¹⁸

The President also said that previous proposals would have altered the traditional power of the executive to carry out foreign policy, but that this one would not. Eisenhower had become actively involved in the amendment process. Contrary to his previous statement that the President did not need to make a decision regarding amendments, he had definitely taken a side by July 1953.

The Brickerites saw this whole episode as merely a face-saving device used by the administration to quell negative public opinion. Dulles had retreated from his previous stand of supporting, or at least appearing to support, an amendment. His 1952 Louisville speech had been interpreted by some as an indication that he would support an amendment to protect the country and its citizens from the dangers of treaty-law that he had pointed out in that speech. Dulles admitted that the Brickerites had performed a patriotic duty in calling public attention to the issue. They had, in fact, altered the treaty policy of the United States. In 1953, the administration no longer planned to sign either the Covenant on Human Rights or the Convention on Political Rights for Women.¹⁹ Heretofore, Dulles had been a supporter of the UN "Human Rights" program; i.e., he had supported the Genocide Convention and the above two documents. As further evidence that the Knowland substitute was offered merely to stave off negative public opinion, the Brickerites pointed out that not even Senator Knowland supported his amendment in the Senate in 1954.²⁰ The administration was also non-supportive of the

Knowland substitute in 1954.

In December 1953, Sherman Adams set up a conference between the President, Dulles, and Brownell to consider a new draft proposal. Brownell was prepared to submit a proposal that stated no treaty could become effective as internal law without legislation, but would not affect the President in dealing with purely international concerns.²¹ The President was ready to agree so that Bricker could have his name on something, but he made it clear that it could not weaken the powers of the President.

On January 7, 1954, Bricker met with Eisenhower and Dulles at the President's residence. An agreement was reached but Bricker backed out of it. A few days after the meeting, Bricker telephoned Brownell from Ohio and said that "he [had] found a philosophical difference between what he believed and what the administration believed."²² Consequently, he decided to offer the "which clause" and on this point he would not compromise. The "which clause" stipulated that a treaty could become effective as internal law "only through legislation which would be valid in the absence of treaty." Brownell attributed this about-face to Holman, with whom Bricker had purportedly talked in Ohio.²³ Senators Eugene Millikin, Leverett Saltonstall, and Knowland all urged the administration to iron out the differences with Bricker. The President, referring to the "which clause," said that there was a matter of principle beyond which he would not go. Concerning Holman, Eisenhower said that he seemed determined "to save the United

States from Eleanor Roosevelt," who was Chairman of the UN Human Rights Commission.²⁴ The point was that the Brickerites were opposed to nearly everything that was proposed by the Human Rights Commission on the grounds that Americans' rights would have been endangered if the UN proposals had been adopted. Eisenhower did agree to attempt one more talk with Bricker.

During January 1954, Eisenhower expressed more than one view on the Bricker amendment. In a letter to John J. McCloy, he said that an amendment that merely reaffirmed what the Constitution said might be the best way to alleviate the fears of the people concerning their rights.²⁵ In a follow-up letter, he stated that a mere tactical defeat of the proposed Bricker amendment could result in a stronger force that next time could result in passage of the potentially damaging proposal.²⁶ The implication was the same as in the first letter; it would be better to support an emasculated resolution that would not alter anything materially but would quiet the fears of the people than either to offer no amendment at all and suffer the consequences of negative public opinion or have a strongly worded amendment passed.

When Congress began its session in January 1954, Bricker was anxious to pass his amendment. The administration was, however, still opposed to his resolution. Erwin N. Griswold, Dean of the Harvard Law School, wrote to Gen. Robert Cutler on January 6, 1954, that:

If he [Eisenhower] regards the presidency as a trust, . . . I am sure he does not want to see it sharply impaired during his term of office. . . . There can be no doubt that the president would be sharply subordinated if the Bricker Amendment ever became part of the Constitution.²⁷

Griswold also wrote the President a similar letter that said that he would be remembered for selling out the Constitution if he gave in to Bricker.²⁸ More specifically, he would be held responsible for allowing the powers of the President to be diminished in the field of foreign affairs. Shortly after receiving this letter, Eisenhower expressed the similar view that the administration should not sell out the executive power by agreeing to the "which clause."²⁹ He still favored some amendment to quiet public opinion, but would not allow it to contain the "which clause."³⁰ In his January 13 news conference, he maintained that he would still support a simple amendment that stated:

any kind of international agreement that contravened any article of our Constitution should be null and void . . . that the Senate could, whenever it chose, include in its approval that anything in that treaty affecting the internal affairs of the United States could become effective only by an act of Congress.³¹

At this time Sherman Adams depicted Eisenhower as "thoroughly disgusted" with the Brickerites.³² Their proposals were viewed by Eisenhower as attempts to change the existing constitutional basis of executive power. He wrote Senator Knowland on January 25, 1954, following a favorable report of the Bricker amendment out of committee, that:

I am unalterably opposed to the Bricker Amendment as reported by the Senate Judiciary Committee. It would so

restrict the conduct of foreign affairs that our country could not negotiate the agreements necessary for the handling of our business with the rest of the world. . . .

Adoption of the Bricker Amendment in its present form by the Senate would be notice to our friends as well as our enemies abroad that our country intends to withdraw from its leadership in world affairs. . . . It would impair our hopes and plans for peace. . . .

I fully subscribe to the proposition that no treaty or international agreement can contravene the Constitution. . . . So that there can be no question on this point, I will gladly support an appropriate amendment that will make this clear for all time.³³

By this time, Eisenhower was looking for a way to defeat the Brickerites. As he had said earlier, he felt that the defeat must not be by a narrow margin. He wrote, "We must arrange that the defeat is conclusive and that the battle will not again be opened, at least in our time."³⁴ Exactly how he planned to accomplish this varied from time to time.

In a conference held on January 24, at the Mayflower Hotel, Senators Homer Ferguson of Michigan and Eugene Millikin of Colorado represented the administration; Senator Knowland was not present, although it had been planned that he would attend. Senator Bricker was accompanied by Frank Holman and Charles Webb, Bricker's legislative assistant. Senators Walter F. George and Pat McCarren were also present to lend a look of bipartisanship to the meeting. Most of the time was spent discussing various versions of the Bricker amendment. Special consideration was given to the possibility of eliminating the "which clause." Time was spent speculating on who would support an amendment without the "which clause." The idea of amending the supremacy clause of the Constitution

(clause 2 of Article VI) was also entertained. The meeting ended with no agreement. Bricker, however, took the Ferguson-Knowland proposal under advisement.³⁵ This proposal simply stated that treaties must be made pursuant to the Constitution. It also provided that there be a roll call vote in the Senate when voting on approval of a treaty.

After this meeting and the January 25 letter from Eisenhower to Knowland, the administration pressed Bricker to accept the Ferguson-Knowland proposal.³⁶ Finally, on January 31, 1954, on Washington television, Bricker announced that he would accept and support the Ferguson proposal on the condition that the administration would do the same. On Monday, the next day, Eisenhower announced that he would not support the proposal.³⁷ The Brickerites believed that the administration had been deceitful. First they had succeeded in getting Bricker to drop the advocacy of his own amendment and then the administration had withdrawn support for their own suggested amendment.

On January 26, 1954, Senator Knowland held a press conference and released to the press the January 25 letter from the President in which Eisenhower expressed that he was "unalterably opposed to the Bricker Amendment as reported by the Senate Judiciary Committee." Bricker was upset about the episode since the letter was unfavorable to his amendment. Even the President did not know that Knowland was going to release the letter to the press.

Senator George, meanwhile, had worked on a substitute

amendment and had given a copy both to the Senate Democratic Leader Lyndon B. Johnson, and to the Senate Majority Leader William F. Knowland.³⁸ Knowland took a copy to the White House. Knowland said that the President was not enthusiastic about the George substitute, but finally after a good deal of discussion, "agreed, . . . or at least I felt he agreed . . . to accept it."³⁹ The George substitute left out the "which clause," which was one of the reasons Knowland and George believed that the administration would at least not oppose it, if not support it. George continued under this assumption while Knowland found out that Brownell had convinced Eisenhower to oppose it. The White House liaison men with the Congress, under orders from the White House, openly opposed this proposal. Knowland reported that, "In the meantime, I had played some part in convincing Senator Bricker that he should willingly permit, without a major fight, his amendment to be changed and the George substitute accepted."⁴⁰ On February 17, 1954, the Senate rejected the "which clause" by a vote of 44-43.⁴¹ On February 25, the Senate then defeated Bricker's last try on S.J. Res. 1 by a vote of 42-50.⁴²

Knowland found himself in an embarrassing situation. He had led Bricker and George to believe that the White House would, at the very least, not oppose the George substitute. This turned out not to be the case at all. Knowland, when the Senate considered the George proposal, left his seat, the one that the Senate Majority Leader occupies. Knowland later said, "I didn't want my position to be considered as an offi-

cial Republican Conference point of view."⁴³ As late as the Columbia oral history interview in 1967, Knowland still did not know what information had turned Eisenhower against the proposal.

The earlier defeat of Bricker's S.J. Res. 1 caused his followers to support the George proposal. On February 26, it received 60 yea votes and 31 nay votes.⁴⁴ A change of one vote would have given it a two-thirds majority in the Senate. It is by no means certain whether it would have received enough votes in the House of Representatives to have been submitted to the states for ratification.

Notes

1. U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1953-), Dwight D. Eisenhower, 1953, p. 110.
2. Ibid.
3. Ibid., p. 132. [The President's News Conference of March 26, 1953.]
4. Glendon Austin Schubert, Jr., "The Bricker Amendment During 1953," Journal of Politics, 16 (May 1954), p. 257.
5. Ibid., p. 275.
6. U.S., Congress, Senate, Committee on the Judiciary, Proposing an Amendment to the Constitution Relative to the Making of Treaties and Executive Agreements; and Proposing an Amendment to the Constitution of the United States Relating to the Legal Effect of Certain Treaties. Hearings before a subcommittee of the Senate Committee on Judiciary on S.J. Res. 1 and S.J. Res. 43. 83rd Congress, 1st session, 1953, statement by Schweppe, February 18, 1953, p. 68. Hereafter cited as Hearings, 1953. Also cited in U.S., Congress, Senate, Committee on the Judiciary, Constitutional Amendment Relative to Treaties and Executive Agreements. S. Rep. 412, 83rd Congress, 1st session, 1953, Senate Miscellaneous Reports on Public Bills, vol. 2, p. 8 (by the majority). This information was cited from Schubert, "The Bricker Amendment During 1953," pp. 275-276, note 71.
7. Schubert, "The Bricker Amendment During 1953," p. 279.
8. Congressional Quarterly Weekly Report, XI (April 17, 1953), p. 502, cited from Schubert, "The Bricker Amendment During 1953," pp. 279-280, note. 97.
9. S. Rep. 412, p. 55, cited from Schubert, "The Bricker Amendment During 1953," p. 280, note 99.
10. As evidence of the public's confusion, Herbert S. Parmet, Eisenhower and the American Crusades (New York: Macmillan Company, 1972), p. 309, says: "When Gallup's pollsters tried to gauge public opinion, after the Administration and Bricker had reached their first deadlock, they were unable to submit a reliable estimate because the wide-spread ignorance of the subject had yielded an inadequate sampling."

11. Ezra Taft Benson to Dwight D. Eisenhower, June 30, 1953, Dwight D. Eisenhower, Papers as President, Ann Whitman Files, Dwight D. Eisenhower Diary Series, Box 4, folder entitled "Bricker Amendment," Eisenhower Presidential Library, Abilene, Kansas.
12. U.S., President, Public Papers of the Presidents, Dwight D. Eisenhower, 1953, p. 469.
13. Ibid.
14. Dwight D. Eisenhower to Edgar Eisenhower, March 27, 1953, Dwight D. Eisenhower, Papers as President, Ann Whitman Files, Name Series, Box 11, folder entitled "Eisenhower, Edgar, 1953 (2)," Eisenhower Presidential Library, Abilene, Kansas.
15. Cabinet meeting of July 3, 1953, Dwight D. Eisenhower, Papers as President, Ann Whitman Files, Cabinet Series, Box 2, folder entitled "Cabinet Meeting of July 3, 1953," Eisenhower Presidential Library, Abilene, Kansas.
16. Frank E. Holman, Story of the "Bricker" Amendment: The First Phase (New York: Committee for Constitutional Government, Inc., 1954), p. 46.
17. Ibid., pp. 40-41.
18. U.S., President, Public Papers of the Presidents, Dwight D. Eisenhower, 1953, p. 510.
19. Statement of Dulles, Hearings, April 6, 1953, p. 825.
20. Holman, "Bricker" Amendment, p. 48.
21. Sherman Adams, Firsthand Report: The Story of the Eisenhower Administration (New York: Harper and Row, Publishers, 1961), p. 107.
22. Supplementary Notes for Legislative Leadership Meeting of January 11, 1954, Dwight D. Eisenhower, Papers as President, Ann Whitman Files, Dwight D. Eisenhower Diary Series, Box 3, folder entitled "Staff Notes, January-December 1954," Eisenhower Presidential Library, Abilene, Kansas.
23. Ibid.
24. Ibid.

25. Dwight D. Eisenhower to John J. McCloy, January 13, 1954, Dwight D. Eisenhower, Papers as President, Ann Whitman Files, Dwight D. Eisenhower Diary Series, Box 4, folder entitled "Bricker Amendment," Eisenhower Presidential Library, Abilene, Kansas. [McCloy was U.S. Military Governor and High Commissioner for Germany from 1949-52 and Assistant Secretary of War from 1941-45.]
26. Ibid., attached to letter above.
27. Erwin Griswold to Robert Cutler, January 6, 1954, Dwight D. Eisenhower, Papers as President, Ann Whitman Files, Dwight D. Eisenhower Diary Series, Box 4, folder entitled "Bricker Amendment," Eisenhower Presidential Library, Abilene, Kansas.
28. Adams, Firsthand Report, p. 108.
29. Supplementary Notes for Legislative Leadership Meeting of January 11, 1954, Dwight D. Eisenhower Papers as President, Ann Whitman Files, Dwight D. Eisenhower Diary Series, Box 3, folder entitled "Staff Notes January-December 1954," Eisenhower Presidential Library, Abilene, Kansas.
30. Ibid. Also see Dwight D. Eisenhower to John Davis and Dwight D. Eisenhower to Erwin Griswold, both of January 18, 1954, Dwight D. Eisenhower, Papers as President, Ann Whitman Files, Dwight D. Eisenhower Diary Series, Box 4, folder entitled "Bricker Amendment," Eisenhower Presidential Library, Abilene, Kansas.
31. U.S., President, Public Papers of the Presidents, Dwight D. Eisenhower, 1954, p. 52.
32. Adams, Firsthand Report, p. 108.
33. Dwight D. Eisenhower to William F. Knowland, January 25, 1954, Dwight D. Eisenhower, Papers as President, Ann Whitman Files, Dwight D. Eisenhower Diary Series, Box 4, folder entitled "Bricker Amendment," Eisenhower Presidential Library, Abilene, Kansas.
34. Dwight D. Eisenhower to Henry Wriston, January 20, 1954, Ibid.
35. For an account of this meeting, see Holman, "Bricker Amendment," pp. 87-89. U.S., Congress, Senate, Committee on the Judiciary, Proposing an Amendment to the Constitution of the United States Relating to the Legal Effect of Certain Treaties and Other International Agreements. Hearing before a subcommittee of the Senate Committee on

- the Judiciary on S.J. Res. 3. 85th Congress, 1st session, 1957. The text of the Ferguson-Knowland substitute can be found on the foldout following p. 372. The complete text of this proposal can be found in the appendix, p. 75.
36. Holman, "Bricker" Amendment, p. 89.
37. Ibid., p. 90.
38. U.S., Congress, Senate. The George substitute proposal for S.J. Res. 1, 83rd Congress, 2nd session, February 2, 1954. Cong. Record, vol. 100, pt. 1, p. 1103.
39. Oral History Interview with William F. Knowland by Ed Edwin, for the Columbia University Oral Research Office, June 22, 1967, p. 40, Eisenhower Presidential Library, Abilene, Kansas.
40. Ibid., p. 41.
41. Dwight D. Eisenhower, The White House Years; Mandate for Change: 1953-1956 (Garden City, New York: Doubleday and Company, Inc., 1963), p. 284; and Cong. Record, vol. 100, pt. 2, p. 1916.
42. Eisenhower, Ibid. U.S. Congress, Senate. 83rd Congress, 2nd session, February 25, 1954, Cong. Record, vol. 100, pt. 2, p. 2262.
43. Knowland, Columbia Oral History Interview, p. 42.
44. U.S., Congress, Senate. 83rd Congress, 2nd session, February 26, 1954, Cong. Record, vol. 100, pt. 2, pp. 2374, 2375.

CHAPTER VI

RESULTS OF THE BRICKERITE MOVEMENT

The Brickerites did not prevail in their attempt to amend the Constitution. Although the issue did arise chronically, "after its defeat in the 1954 session, [it] never became a subject of formal congressional debate during my [Eisenhower] time in the White House."¹ The opposition to amendment by the Eisenhower administration was primarily responsible for the defeat of the proposals in the Senate. Once the administration had decided to oppose the proposals, its actions were consistent with its stance excluding the offering of the Knowland substitute in July 1953. This substitute was offered in response to perceived public support for some kind of amendment. Its purpose was to keep public opinion for amendment from becoming anti-administration because of the administration's previous "no amendment" policy.

With sixty-four co-sponsors, it would appear that S.J. Res. 1 would surely pass the Senate, but many of the senators attached their name to it only to assure that the matter received Senate attention. Many senators were not agreeing to that particular proposal; in fact, the final wording of the resolution was not worked out until after the hearings were held on it. The point was that not all of the

co-sponsors were obligated to vote for any particular version of the Bricker proposals. The co-sponsors, after forcing consideration of the proposals in the Senate, were not all convinced of the necessity of amendment in the end.

Despite the fact that no amendment resulted from their campaign, the Brickerites could claim some accomplishments. The Genocide Convention was killed in committee. In the subcommittee hearings, Dulles said that he was authorized to state:

. . . while we shall not withhold our counsel from those who seek to draft a treaty or covenant on human rights, we do not ourselves look upon a treaty as the means which we would now select as the proper and most effective way to spread throughout the world the goals of human Liberty to which this nation has been dedicated since its inception. We therefore do not intend to become a party to any such covenant or present it as a treaty for consideration by the Senate.²

Dulles said substantially the same thing regarding the Convention on Political Rights for Women. He also stated that the present administration would see to it that the Senate would receive every opportunity to "advise" on treaties and other agreements. This would keep the Senate from having to choose "between adopting treaties it does not like or embarrassing our international position by rejecting what has already been negotiated out with foreign governments."³ Neither Bricker nor other stalwarts of the movement were satisfied with these results. They continued to offer resolutions to amend the Constitution but met with quickly declining success in attracting Senate support. After the defeat of the George substitute, the Brickerites never developed another significant

Notes

1. Dwight D. Eisenhower, The White House Years; Mandate for Change: 1953-1956 (Garden City, New York: Doubleday and Company, Inc., 1963), p. 285.
2. U.S., Congress, Senate, Committee on the Judiciary, Proposing an Amendment to the Constitution Relative to the Making of Treaties and Executive Agreements; and Proposing an Amendment to the Constitution of the United States, Relating to the Legal Effect of Certain Treaties. Hearings before a subcommittee of the Senate Committee on Judiciary on S.J. Res. 1 and S.J. Res. 43. 83rd Congress, 1st session, 1953, statement of John Foster Dulles, April 6, 1953, p. 825.
3. Ibid.

CHAPTER VII

CONCLUSION

The significance of the Brickerite movement becomes apparent when viewed as merely one facet of a conservative reaction to internationalism, UNism, and the growth of presidential power that grew out of World War II and the Cold War. Alfred Kelly and Winfred Harbison report that Cold War crisis psychology and security concerns resulted in a decade of conservative reaction to the Cold War.¹ The results of this reaction were the Republican Party victory in the 1946 congressional elections, the first in nearly twenty years; the Taft-Hartley Labor Relations Act of 1947; the McCarran, or Internal Security, Act of 1950; and the McCarran-Walter Immigration Act of 1952. All of these were supported by many Republicans and several southern Democrats. This author would add the Brickerite movement to this list of effects of the conservative reaction.

Keeping in mind this conservative reaction, the origins of the Brickerites' isolationism can be brought into focus. They had had enough of the internationalism of Franklin Roosevelt and Harry Truman. The Yalta and Potsdam agreements were particularly influential on those who demanded congressional control over the making of executive agreements.

The Korean conflict, a strong, protracted military action begun and continued without a declaration of war by Congress, struck a responsive chord in the potential supporters of the Brickerite movement. The predominant concern was the question of who should control the foreign policy of the United States, the President and the executive branch of government, or the Congress. Those who were upset about Yalta, Potsdam, and Truman's policies in Korea wanted congressional control.

The Steel Seizure Case brought the issue of control of the government and the country closer to home. Truman seized the United States steel industry in 1952 in order to avert the potentially damaging effects of a strike on the prosecution of the war in Korea. The Supreme Court struck down this action as unconstitutional, contending that there was "no statute that expressly authorizes the President to take possession of property as he did here."² The Court rejected the thesis that presidential prerogative had expanded in the "national emergency" of the Korean War. The Steel Seizure Case was cited frequently by the Brickerites as an indication of the dangerous developments in the United States government toward presidential control and the proportional loss of power by the Congress.

The Brickerite movement also contained an anti-UN element. The Brickerites were concerned lest the UN treaties become the harbingers of change with relation to internal social and racial policies of the several states of the United

States. Examples that have been cited in this paper include the concern over the Human Rights Program of the UN and the Fujii case in California concerning alien land laws and the UN Charter.

In general, the effects of the Brickerite movement were not large. Although they were successful in keeping the Eisenhower administration from becoming a party to the UN's Human Rights Program, they were unsuccessful in their attempts to wrest power from the executive branch with respect to foreign affairs. The social changes that were feared occurred in spite of the efforts of the Brickerites. Treaties were not to be the vehicles for social and racial change in the United States in the 1950s and 1960s as the Brickerites had feared. The Fourteenth Amendment to the United States Constitution became the legal weapon for promoting changes in segregation and other racially oriented laws within the several states of the Union. The Brickerites misread the origins of the dramatic social changes to take place in the 1950s and 1960s. The impetus came not from the UN, but from within the country itself. From an historical perspective, the Brickerites were an important case because they nearly garnered enough strength to affect the distribution of power among the three branches of government which would have had a more lasting effect than what they actually accomplished.

Notes

1. Alfred H. Kelly and Winfred A. Harbison, The American Constitution: Its Origins and Development, 5th ed. (New York: W. W. Norton and Co., Inc. 1976), p. 804.
2. Ibid., p. 812.

APPENDIX

S.J. Res. 130 (82d Cong.)
(1952)

"Section 1. No treaty or executive agreement shall be made respecting the rights of citizens of the United States protected by this Constitution, or abridging or prohibiting the free exercise thereof.

"Sec. 2. No treaty or executive agreement shall vest in any international organization or in any foreign power any of the legislative, executive, or judicial powers vested by this Constitution in the Congress, the President, and in the courts of the United States, respectively.

"Sec. 3. No treaty or executive agreement shall alter or abridge the laws of the United States or the Constitution or laws of the several States unless, and then only to the extent that, Congress shall so provide by Act or joint resolution.

"Sec. 4. Executive agreements shall not be made in lieu of treaties.

"Executive agreements shall, if not sooner terminated, expire automatically one year after the end of the term of office for which the President making the agreement shall have been elected, but the Congress may, at the request of any President, extend for the duration of the term of such President the life of any such agreement made or extended during the next preceding Presidential term.

"The President shall publish all executive agreements except that those which in his judgment require secrecy shall be submitted to appropriate committees of the Congress in lieu of publication.

"Sec. 5. Congress shall have power to enforce this article by appropriate legislation."

S.J. Res. 1 (83d Cong.)
(1953)

"Section 1. A provision of a treaty which denies or abridges any right enumerated in this Constitution shall not be of any force or effect.

"Sec. 2. No treaty shall authorize or permit any foreign power or any international organization to supervise, control, or adjudicate rights of citizens of the United States within the United States enumerated in this Constitution or any other matter essentially within the domestic jurisdiction of the United States.

"Sec. 3. A treaty shall become effective as internal law in the United States only through the enactment of appropriate legislation by the Congress.

"Sec. 4. All executive or other agreements between the President and any international organization, foreign power, or official thereof shall be made only in the manner and to the extent to be prescribed by law. Such agreements shall be subject to the limitations imposed on treaties, or the making of treaties, by this article.

"Sec. 5. The Congress shall have power to enforce this article by appropriate legislation."

S.J. Res. 43 (83d Cong.)
(1953)

"Section 1. A provision of a treaty which conflicts with any provision of this Constitution shall not be of any force or effect.

"A treaty shall become effective as internal law in the United States only through legislation which would be valid in the absence of treaty.

"Executive agreements shall be subject to regulation by the Congress and to the limitations imposed on treaties by this article.

"Sec. 2. The Congress shall have power to enforce this article by appropriate legislation."

Revised Version of S.J. Res. 1 (83d
Cong.), as Proposed by the Commit-
tee on the Judiciary
(1953)

"Section 1. A provision of a treaty which conflicts with this Constitution shall not be of any force or effect.

"Sec. 2. A treaty shall become effective as internal law in the United States only through legislation which would be valid in the absence of treaty.

"Sec. 3. Congress shall have power to regulate all executive and other agreements with any foreign power or international organization. All such agreements shall be subject to the limitations imposed on treaties by this article.

"Sec. 4. The Congress shall have power to enforce this article by appropriate legislation."

Knowland Substitute
(July 22, 1953)

"Section 1. A provision of a treaty or any other international agreement which conflicts with the Constitution shall not be of any force or effect. The judicial power of the United States shall extend to all cases, in law or equity, in which it is claimed that the conflict described in this amendment is present.

"Sec. 2. When the Senate consents to the ratification of a treaty the vote shall be determined by yeas and nays, and the names of the persons voting for and against shall be entered on the Journal of the Senate.

"Sec. 3. When the Senate so provides in its consent to ratification, a treaty shall become effective as internal law in the United States only through the enactment of appropriate legislation by the Congress."

George Substitute
(Jan. 27, 1954)

"Section 1. A provision of a treaty or other international agreement which conflicts with this Constitution shall not be of any force or effect.

"Sec. 2. An international agreement other than a treaty shall become effective as internal law in the United States only by an act of the Congress."

Ferguson-Knowland Substitute
(Feb. 2, 1954)

"Section 1. A provision of a treaty or other international agreement which conflicts with this Constitution shall not be of any force or effect.

"Sec. 2. Clause 2 of article VI of the Constitution of the United States is hereby amended by adding at the end thereof the following: 'Notwithstanding the foregoing provisions of this clause, no treaty made after the establishment of this Constitution shall be the supreme law of the land unless made in pursuance of this Constitution.'

"Sec. 3. On the question of advising and consenting to the ratification of a treaty the vote shall be determined by yeas and nays, and the names of the persons voting for and against shall be entered on the Journal of the Senate."

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