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A COMMENT ON THE BRICKER AMENDMENT

By

ANDREW WILSON GREEN*

The real reason for opposition to and support of the Bricker Amendment is to be found in the fact that such an amendment "might hamper the conduct of our country's [foreign] affairs."¹ To take this phrasing of the case against the Bricker Amendment would be for the proponents of the amendment to accept a semantically disadvantageous phraseology. Nevertheless, in all honesty it must be conceded that this is what the proponents of the Bricker Amendment want to do; to hamper the President in his conduct of foreign affairs in certain particulars. The proponents of the amendment do not consider our Constitutional liberties a proper matter for barter in an effort to achieve certain ends of international policy.

In brief, the proponents believe that the President should be "hampered" in his conduct of foreign affairs, and express some surprise that in a republic the restriction of a magistrate's powers should be criticized as such. Of course, those who regard matters of international peace and world law as of paramount importance, would naturally favor granting to the President unrestricted power to barter whatever was necessary to their accomplishment.

It is to be supposed that the proponents of the Bricker Amendment incline to the view that wars and civil insurrections are something we will always have with us, even in this atomic age, and are therefore uninclined to barter liberty or property for values which they believe to be illusory.

However, the matter goes deeper than this; for what is involved is a conflict of social philosophies. The socialist philosophy has been gaining ascendancy in the world (and in the United States) under various labels and guises for nearly a century. The Constitution of the United States was written with a wholly different social philosophy as a frame of reference.

As a consequence, the Constitution represents a barrier to the full implementation of the socialist philosophy in the United States. Those who are responsible for the planning of the strategy of the socialist philosophy as a political force are well aware of this barrier. This goes for socialists in and outside of the United States. The easiest way to breach this barrier is through the treaty loophole. The possibility is quite real that the United States might adhere to the United Nations sponsored treaties such as the Convention on Gen-

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¹ Ely, *A Hidden Hole in the Fifth Amendment: Treaty Power versus Property Rights: A Substitute for the Bricker Amendment*, 59 DICK L. REV. 299 (1955).

ocide, the Convention on Human Rights and the Statute for an International Criminal Court. These treaties have had the support of large and influential bodies of opinion in the United States, including church groups, political action groups, etc. These United Nations sponsored treaties advance the social philosophy of socialism.

The proponents of the Bricker Amendment are therefore anxious that no transient popular enthusiasm should persuade the President to negotiate and the Senate to confirm such treaties advancing socialism, which in their opinion would be to exchange the eternal value of the Constitution for a mess of potage, or that such an event might occur as a result of cleverly concealed maneuvers. Of course, this depends upon how much "unhampered" democracy the President should be permitted to exercise. Those who are persuaded that law is governed by natural principles will not be upset by removing our Constitutional rights from the fickle and transient shifts of public opinion.

Of course, it must not be supposed that all, or even most, of the opponents of the Bricker Amendment are interested in advancing socialism. No doubt their major interest lies in avoiding the future horrors of atomic war. However, this does not alter in my judgment the fact that their opposition to the Bricker Amendment aids those who would establish world-wide socialism.