I speak today in the role of a Conservative. By definition, a Conservative is one who hesitates to accept change. But its verb form, "to conserve," means to "preserve from injury or destruction."

Today, the object of destruction is the Constitution of the United States. The destructive force is the so-called Bricker Amendment.

Where does the Bricker amendment strike at our Constitution?

Threatened is one of the fundamental characteristic of our fabric of government, if not the most fundamental -- the Doctrine of the Separation of Powers. So ingrained in the thinking of the Founding Fathers was this doctrine that the actual arrangement of the Constitution devoted Article I to the legislative branch, Article II to the executive branch, and Article III to the judiciary. Not only was the separation of powers the existing practice and the prevailing political theory, but it represented sound psychological observations -- for the Founding Fathers, and their descendents after them, well
knew that "Power tends to corrupt and absolute power corrupts
absolutely."

The Articles of Confederation failed in the early days of
our Republic largely because of its inability to deal with foreign
affairs. Treaties and their enforcement was one of the most urgent
problems that faced the Constitutional Convention in 1787. When
the written document emerged from the secrecy that surrounded
Philadelphia, Article II, Section 2 read: "(The President) shall
have Power, by and with the Advice and Consent of the Senate, to
make Treaties, provided two thirds of the Senators present concur."
Clearly, the treaty-making power had been vested in the executive.

In vesting the treaty power in the Executive, our Founding
Fathers accepted the universal custom of sovereignties to vest the
treaty power in the Executive Branch of government. There was another
powerful and compelling reason to do so -- the President, elected by
all the people, alone has the power to speak or listen as a representa-
tive of the nation. As John Marshall told the House of Representatives
in his great argument of March 7, 1800: ("Annals of the Congress of
the United States, Sixth Congress," p. 613.)
"The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made on him.

"He possesses the whole Executive power. He holds and directs the force of the nation. Of consequence, any act to be performed by the force of the nation is to be performed through him."

But the vital principle of checks and balances does not allow the President free reign. His treaties must meet with the approval of two thirds of the Senators present. We all know that the Senate has been called the graveyard of treaties. John Hay even went so far as to say,

"A treaty entering the Senate is like a bull going into an arena. No one can say just how or when the final blow will fall. But one thing is certain: it will never leave the arena alive."

In spite of these facts, however, supporters of the Bricker amendment are today asking us to change our traditional executive-legislative balance in treaty-making. Ironically, under the pressure
of an atomic age cold war, the Senate is not only being asked for a vote of no confidence in the Executive, but in itself as well. No longer, they say, can we put our trust in the President (who negotiates treaties) or in the Senate (who confirms them).

The effects of the Bricker amendment would be to require treaties that affect "internal law" after going through the usual Senatorial "arena," to be either passed by both Houses of Congress, or approved by the 48 State Legislatures.

And what are these treaties that affect "internal law"?

The Association of the Bar of the City of New York believes that we would not be able to make treaties concerning the allocation of international radio frequencies or adopt uniform quarantine regulations because they effect "internal law". The State Department believes that we could not make treaties for the international control of atomic energy and mass destruction weapons because they affect "internal law". Professor Zechariah Chaffee of the Harvard Law School believes that we could not make certain types of
treaties of commerce, ownership, and inheritance of land abroad, and for the carrying out of business and professions abroad because they affect "internal law". The distinguished Chairman of our Foreign Relations Committee has even said that treaties for the international control of narcotics and international extradition of criminals might not be made because they affect "internal law".

It is indeed possible that all these types of treaties will be prevented or impeded under the proposed amendment. But the fact remains that no one knows the exact extent that the "internal law" clause of the Bricker amendment would affect treaties. Isn't it remarkable that we are now discussing the passage of an amendment to the Constitution of the United States and we cannot say definitely what will be affected by it?

But it is not just the existing legislative-executive balance that would be upset by the Bricker amendment. Equally important is its devastating effect on the Federal-state balance. Not only did
our Founding Fathers vest the treaty-making power entirely in the hands of the Federal government, but they made sure that treaties would be "the supreme law of the land." This was done, in the words of James Madison, to prevent "the States in their individual character, from defeating the Constitutional authority of the States in their united character..."

The Constitution gave Congress a number of specified powers. Powers not specified, or delegated, and not constitutionally necessary and proper for the carrying out of delegated powers were reserved to the States under the 10th Amendment. But the treaty power was not reserved to the States. Not only was it delegated to the Federal Government, but Article I, Section 10 of the Constitution strictly forbids a State from entering "into any treaty, alliance of Confederation."
That the treaty power, vested solely in the Federal Government, is "the supreme law" taking precedence over any conflicting State statute is not a new and radical principle as the proponents of the Bricker Amendment would have us believe. Only seven years after the Constitution became effective, in 1796, the Supreme Court held (in the case of Ware v. Hylton, 3 Dallas 199) that a Virginia law was unconstitutional because it conflicted with a later treaty. Had there not been a treaty, the State statute would have been perfectly legal. But if the Federal Government had not had this supremacy power in treaty-making, and had the State law remained in effect, we could have had no guarantee that other nations would respect our agreements, or even make treaties with us at all.
Certainly with the distinct possibility that any agreement our representatives negotiated with foreign nations would have no effect as law within the 48 States, our international bargaining power would be drastically weakened. And that would be the situation under the Bricker Amendment. In other words, as Secretary of State Dulles has said, the Bricker Amendment "would set the clock back to an approximation of the conditions which existed under the Article of Confederation." Any treaty negotiated on any subject that in domestic law is reserved to the States would have to be ratified by the States — by 48 separate bodies, usually meeting for only 60 or 90 days at irregular intervals, some spaced two years apart.

The Bricker Amendment would repudiate the principles of internationalism which unite the mainstream
of both of our major parties. It is the long step
backward to the dismal and disastrous "go it alone" way
of thinking. It is the psychological roadblock in the
path of American participation in world affairs.

I have attempted to show the havoc this amendment
would wreak on the basic fabric of our government — The
Constitution, and on our hopes for a free world. I
have done this as a student and teacher of government,
and not from a legalistic point of view. I am not a
lawyer. Great outcries in behalf of this proposal have
come from certain small, but vocal, groups of the Bar.

To analyze their polemics more fully, I call your atten-
tion to three blistering legal reports in opposition to
the Bricker Amendment by the Federal Bar Association, the
Association of the Bar of the City of New York, and the
Section of International and Comparative Law of the American Bar Association. I call the attention of the Senate, as well, to the opinions of 26 out of 27 Deans of American Law Schools who vigorously oppose this threat to the Constitution, and to the numerous forthright statements of opposition by one of our nation's greatest Constitutional lawyers, Mr. John W. Davis.

But even without a law degree one can observe a vital flaw in the arguments of the proponents — for all their reasoning is either hypothetical or based on mere dicta. As one of the most influential proponents said in presenting his case to the American Bar Association, "We are thinking about what is going to happen eight years from now". Why do the proponents resort to such strategy? Certainly they would not attempt to build such a case in a court of law. They do so because they cannot point
to one single unconstitutional treaty in the 165 years of American history. What could be a greater commentary on our treaty-making system and the wisdom and vigilance of our Executive and Senate? What could be a more powerful answer to those who criticize our Constitution?

Has this minority of the legal profession stopped to look carefully and responsibly at the Bricker Amendment in the light of our role in world affairs?

Armed with precedents and horn books, have they not failed to see this measure in the far-sighted, long-term light of our foreign policy — and our quest for survival in this atomic age?

I single out these men of the legal profession first who support this resolution because they are honorable individuals in the main whose primary mistake appears to be that they have failed to see the forest of world
affairs for the trees of legal dicta. But what about
that other group of willful men -- those Bricker Amend-
ment supporters who are deliberately using the proposal
as a weapon in their self-appointed crusade to bring our
nation back into the fold of isolationism, and who rally
to the cry of Gerald L. K. Smith to "Kick the UN out
of the U. S. and get the U. S. out of the U. N." (See
"Abolish the United Nations" Citizens Congressional
Committee to Abolish the United Nations). On this
issue, the extremist fringe is all the more dangerous
because they are carefully hiding behind the coattails
of legalistic arguments. Gratia, they have finally been
given a shield of respectability.

Let us examine some of the arguments these
extremist groups have been spreading across the United
States in behalf of the Bricker Amendment. Let us see
how they have distorted the truth to forward their cause.

First, there is the irrevocability of treaties distortion. I quote from Samuel Pettengill, sometime Chairman of the old Committee to Uphold the Constitution. He has written something called "Subverting the Constitution by Treaty," which is being widely distributed by Merwin K. Hart's National Economic Council. (You will recall this group as the one that the House Select Committee on Lobbying Activities of the 81st Congress said tries "to disparage those who oppose its objectives by appeals to religious prejudice..." (General Interim Report, Union Calendar No. 1085, p. 22) Pettengill writes:

"No matter how foolish or 'dishonorable' a treaty or executive agreement may be, you must bleed and die if you get hooked in one of them."
"And once in, you can't get out.....
Nor could the Senate repeal a treaty.
Only our cleverlads (he tells us earlier that this means 'The Hisses, Achesons, and Dulleses') and their foreign friends could agree to change a treaty."

Unfortunately for this argument, the Supreme Court held nearly 70 years ago (in the Head Money Cases, 112 U.S. 580) and has since repeatedly declared that any act of Congress can repeal an earlier treaty. This rule, by the way, also applies to Executive agreements. If we confirm a treaty and later want to repeal it, all that has to be done is to get a simple majority of Congress.

There is absolutely nothing irrevocable about the treaty,

making power of the Constitution.

Second, there is the completely fallacious argument that the Bricker Amendment would place the United States on a "parity", or on a plane of "equality" with other
nations. The proponents of this line of reasoning appear to have a scanty knowledge of comparative government.

Professor Lawrence Preuss of the University of Michigan has shown that their understanding of this issue is based upon "a superficial examination of foreign practice", "an exclusive reliance upon formal texts," and "a misunderstanding of the process by which treaties are given effect under foreign legal systems..." (Michigan Law Review, June 1953) Yet, a group of ladies calling themselves the "Vigilant Women for the Bricker Amendment" have spread the inaccuracy in more than 100,000 copies of their pamphlet, "Our Constitution has a Dangerous Loophole."

They write:

"The United States is the only major participant in the entire UN which permits ratified treaties to become 'the supreme law of the land.'"
"Let's give ourselves the same protection other nations provide for themselves."

Now what is the true situation? Let us take the United Kingdom, for example, since it is most frequently cited as the country we are not in a position of "equality" with in so far as treaties becoming domestic law is concerned. Professor Preuss finds that "From the moment the treaty becomes binding internationally, the British Government is in a position to give effect to it internally. No further legislative action is required subsequent to ratification." In other words, it becomes the "supreme law of the land." The Professor then goes on to find the same true of France, the Netherlands, Belgium, Italy, Switzerland, Western Germany, and Australia. I might add that when the State Department asked our diplomatic corps to make a survey of foreign treaty procedures, their findings were similar.
So what about this statement of the so-called Vigilant Women or similar statements by Mr. Frank Holman, who, by the way, would go so far in isolating our country as to oppose the Baruch Plan for atomic control, and who has done extensive propagandizing for this amendment in more than 40 States? The true situation is that the Bricker Amendment, instead of giving us "the same protection other nations provide for themselves", would give us the most cumbersome method of treaty-making in the world, and put us, not on an "equal plane", but at a distinct disadvantage in international relations.
Third, there is the misleading appeal to doctors. I quote from a letter to American doctors in December by Edward A. Rumely, Executive Secretary of the Committee for Constitutional Government, a group that has opposed most every piece of humane legislation for the last 18 years. Rumely writes: "Passage of the Bricker amendment is indispensable to safeguard the medical profession and free enterprise for physicians." The fact is that the Bricker amendment has nothing to do with the free enterprise of the American medical profession.

The case Rumely and others are trying to build is that a so-called "Socialized Medicine" program will be slipped over on the American people through an International Labor Organization Convention. What they fail to tell the doctors is that this ILO Convention under discussion would give the Federal Government no legislative powers it does not already possess; that the two-thirds vote of the Senate needed to pass such a Convention is more difficult to get than a simple majority of Congress; that such a treaty is non-self-executing and would therefore have to receive enabling legislation from both
Houses of Congress and that as the Walter-Murray-Dingell bill was not even able to get out of committee in 1948 there is no possibility for such a Convention to withstand the much more arduous formalities necessary for it to become law.

In still another misleading appeal to doctors, it is said that without the Bricker amendment reciprocal treaties for the practice of medicine would lower our medical standards. This is not so for the following reason: if the President negotiates such a treaty, if the Senate by a two-thirds vote confirms such a treaty, if the President then ratifies such a treaty the only thing it could possibly do would provide that a foreign doctor shall not be denied the right to practice solely because of his nationality. He would still have to fulfill the rigid requirements that the States set up to protect the public health. In my own state, Minnesota, we have a State Board of Medical Examiners. This consists of seven physicians appointed for long terms by the Governor. An agreement for the reciprocal rights to practice medicine would not affect this State Board. They would still have the authority to set standards...
and grant licenses. The Bricker amendment has nothing to do with the protection of our high medical standards.

Personally, I am perturbed by the outright insinuation that the duly elected Senate of the United States is engaged together with the President in a world plot to sneak something over on the American people. Furthermore, I consider this attempt to appeal to the so-called "vested interests" of the American medical profession one of the most unfair tricks of the campaign waged by the supporters of this amendment.

There is another appeal being made in behalf of the Bricker amendment. It is the appeal to fear. True, this propaganda technique is only being employed by a small minority. But this minority, from the "literature" I receive daily, appears to be by far the most vocal. Take, for example, the booklet written by one Bryson Reinhardt called, "You?... In a Foreign Prison?" We could laugh this off if it wasn't for the fact that in the last four months it has been reproduced more than 500,000 times; that it has been widely distributed by the Committee for Constitutional Government, and that "promotional plans for substantially increasing
this circulation" have been undertaken. Allow me to quote from
Reinhardt's discussion of Article IV, paragraph 2 of the
Constitution (the "supremacy clause"):

"Just how does it endanger you?...What does this hole in
the Constitution mean to you personally?...to your children?
...your neighbors?...your job?

"In one sentence: It means that—with a little manipulation
—foreign governments (including Russia) can reach through
this hole and control YOU as they now control the faceless
serfs in their own lands.

"Control the most intimate details of your personal life...
what is taught to your children in school...what you can buy
at your grocery store...what your minister may say in church...
what union you may join or not join...where and how you work
and live." (This is unbridged passage. Nothing has been
deleted.)

This statement should really be sent to the "How's That Again"
Department of the New Yorker magazine. Yet such threats, such
unfounded fears are being poured into the bloodstream of our nation.
I appeal to my distinguished colleagues who sincerely and honestly
support the amendment, to repudiate this extremist fringe so that the
nation -- unhampered -- can debate the constitutional issues involved
calmly, dispassionately, with reason and intelligence.

The last argument of the Bricker amendment supporters to
which I wish to address a few remarks could be most formidable -- if
true. I am referring to the political argument. I am referring to
the claims of widespread political support for the amendment. Let
us examine some of this alleged support:

(1) In many of the more than 20 pamphlets that Mr. Frank
Holman has published he lists a number of State Legislatures that
have gone on record favoring the amendment. Yet I have in my
possession copies of letters from the Secretaries of the Senates
of two of these States, Idaho and Wyoming, saying that their States
have not passed any such resolutions. What is the explanation?

(2) Last September, at the Chicago Republican Women's
Conference, the so-called Vigilant Women for the Bricker Amendment
set up desks for the signing of petitions at every entrance to the
grand ballroom of the Hilton Hotel. When the smoke had cleared
they had amassed 70,000 signatures. These, of course, have been presented to the Senate as an indication of grass roots strength.

But what really happened? I talked to a University scholar who had personally interviewed many of the women who signed the petition. They told him that in the bustling of convention activities they were handed innumerable official papers to sign. Pushed in among these were the Bricker amendment petitions. Many thought it was an "official position" and signed. Many didn't even have time to examine what they were signing. The treaty-making issue was not even on the conference agenda. Now what was the real extent of support? All that can be concluded is that these vigilantes have well learned the tactics of high pressure politics.

(3) Proponents of the amendment receive great comfort from the favorable resolution of the House of Delegates of the American Bar Association. But they also know that behind this facade is a split between two of the A.B.A.'s committees -- the Committee on Peace and Law Through United Nations is for the amendment and the
Section of International and Comparative Law is against it. What are these two groups? To answer that question I would like to quote from the 1952 Hearings on the amendment. (page 251) This is from the testimony of the late Mr. Charles W. Tillett. Mr. Tillett was chairman of both groups of the American Bar Association for two years and was, therefore, in an unequalled position to evaluate them.

"Mr. Tillett: The section of international and comparative law of the American Bar Association is made up not only of lawyers who practice international law professionally but also it is made up of general practitioners who feel that they can help in solving the problems of an effective and free world order by participating in the committee work of the section and its democratically conducted forums where they have an opportunity to present ideas of enduring peace.

"Senator Hendrickson: How many members do you have in that section?

"Mr. Tillett: From 800 to 1,000.

"Senator Hendrickson: That is Nation-wide?
"Mr. Tillott: And I want to impress the fact that it is a democratically conducted section. It is the only phase where the rank-and-file lawyers shall participate. The peace and law committee is not a democratically elected group, but it is appointed by the president. So the difference between the section on international and comparative law and the peace and law is that the one is a representative group of those lawyers who have an interest in that sort of thing, whereas the peace and law committee is appointed by the president, and there is no veto."

I might add that while the group opposing the amendment has 1,000 members, the group for it has seven.
The House of Delegates, however, chose to ignore the recommendations of the Section of International and Comparative Law. They accepted the argument of Mr. Holman and others that if the A.B.A. reversed its stand (and I now quote from Mr. Holman) "you will never send another Committee down to Congress to speak for this Association without the Senators or Representatives saying, 'How do we know if we follow your Committee that two years later your House of Delegates won't turn turtle on us and repudiate us'"

Does this mean that for mere prestige the delegates felt it would be better to compound a mistake rather than honestly admit one? They voted in favor of the Amendment 117 to 33. But 77 members of the House of Delegates did not vote. Furthermore, when an effort was made to poll the entire A.B.A. membership it was sidetracked.
Now does this suggest widespread support of the Bricker Amendment among American lawyers?

The proponents of the Bricker Amendment point to public opinion polls to substantiate their claims to widespread popular support. One such poll, the results of which were distributed to 1800 newspapers, 500 radio stations and every member of Congress as a sample of public opinion, was taken by an organization called Facts Forum. It showed 77% in favor of the amendment. It is not my purpose to evaluate the credibility of this poll. Suffice it to say it is in question. I do believe it necessary, however, to refer the Senate to the conclusions of the reputable American Institute of Public Opinion which found five months after Facts Forum poll, that a mere 9% of the people favor the Bricker Amendment.
appears that Samuel Insull himself could not have done
a better job of pyramiding manufactured support into
paper profits. No votes will be lost by opposing the
Bricker Amendment. At stake are not Senate seats, but
the Constitution of the United States.

It is a matter of great comfort and pride to me
that associated in this fight to preserve our cherished
Constitution are two national Administrations: The
Democratic Administration of Harry S. Truman and the
Republican Administration of Dwight D. Eisenhower.

We are joined by: A great number of our leading news-
papers:

New York Times
Washington Post
New York Herald Tribune
St. Louis Post-Dispatch
St. Louis Globe-Democrat
A great number of our outstanding organizations:

American Association of University Women
League of Women Voters
Young Women's Christian Association
Section of International and Comparative Law of the American Bar Association
Association of the Bar of the City of New York
New York State Bar Association's Committee on Amendments to the Federal Constitution
St. Louis Bar Association
Federal Bar Association
National Study Conference on the Churches and World Order
Board of World Peace of the Methodists Church
Church Peace Union
Catholic Association for International Peace's Subcommittee on Juridical Institutions
Central Conference of American Rabbis
Friends Committee on National Legislation
Dept. of Social Education and Action, Presbyterian Church in the U.S.A.
National Foreign Trade Council
American Civil Liberties Union
Air Transport Association of America
American Association for the United Nations
Citizens Conference on International Economic Union
United World Federalists
Cooperative League of the USA
Americans for Democratic Action
National Association for the Advancement of Colored People
Amvets (American Veterans of World War II and Korea)
Young Republican Club of New York
Committee for Collective Security
American Federation of Labor
Congress of Industrial Organizations

A great number of outstanding private citizens:

JOHN W. DAVIS — Democratic Candidate for
President of the U.S. 1924. Former member
of Congress, Solicitor General of the U.S.,
Ambassador Extraordinary and Plenipotentiary
to Great Britain, President American Bar
Association, Association of the Bar of the
City of New York.
GENERAL LUCIUS D. CLAY (Retired) — Chairman of Board and Chief Executive Officer Continental Can Co.; Deputy Director of War Program; Commander in Chief U.S. Forces, Military Governor, U.S. Zone, Germany.

FRANK ALTSCHLUL — Chairman of the Board, General American Investors Co., Inc. Member Advisory Council Yale Institute of International Studies.

HON. JAMES T. BRAND — Former Chief Justice of the Supreme Court, Oregon.

HARRY AMOS BULLIS — Chairman General Mills, Minneapolis, Minnesota


DR. EDWARD SAMUEL CORWIN — Professor Emeritus Princeton University. Author and Lecturer.

COPY

PALMER HOYT — Publisher and Editor, The Denver Post.

JOHN LORD O'BRIAN — Attorney, Washington, D.C.
Former General Counsel, Office of Production Management, also Supply Priorities and Allocation Board, and War Production Board.

PHILIP D. REED — Chairman of the Board,
General Electric Company

JUSTICE OWEN J. ROBERTS — Dean of Law School,
University of Pa. Former Associate Justice Supreme Court of U.S.


ANNA LORD STRAUSS — N.Y.C. Vice Chairman President's Commission on Internal Security and Individual Rights, Former President League of Women Voters of the U.S.
COPY

ELIZABETH E. HEFFELINGER — Republican
National Committeewoman for Minnesota.
Alternate Representative to the Second
Extraordinary Session of UNESCO

ELIHU ROOT, JR. — Root, Ballantine, Harlan,
Bushby & Palmer, Attorneys, N.Y.C. Trustee
Hamilton College; Carnegie Corp. of New York.
Director American T. & T. Co., Mutual Life
Ins. Co. of N.Y.

And the overwhelming number of the deans and professors
of our law schools.