

The Outlook

Volume 145

April 20, 1927

Number 16

The Butler-Borah Debate :

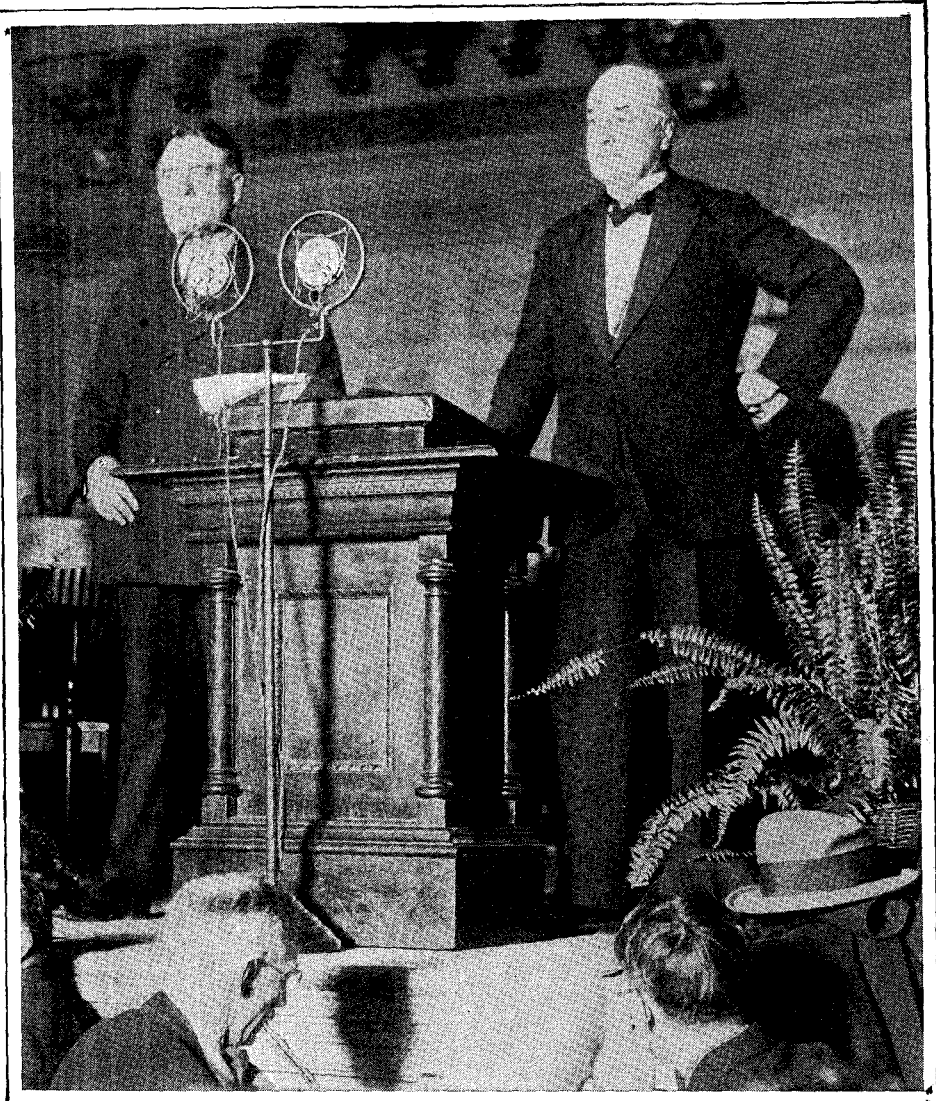
Dr. Butler's Arguments

POLITICIANS normally do not like to have big, fundamental issues raised. Buchanan's statement that there was no Constitutional right of secession and no Constitutional right to prevent it was characteristic of the ordinary politician's point of view. Politicians avoided the slavery issue as long as they could, tried to compromise it, and in the end turned it over to the soldiers. Naturally, therefore, politicians deplore anything that raises the question of the observance and enforcement of the Eighteenth Amendment. They consequently deplore such a debate as that which was held under the auspices of the Roosevelt Club of Boston between President Butler, of Columbia, and Senator Borah, of Idaho.

On one point Dr. Butler and Senator Borah agreed. They were equally emphatic in declaring that the present condition of widespread violation of the liquor law was demoralizing. In practically every other respect they were at opposite poles. Something is gained when two such opponents agree in insisting on facing the facts and on making the issue one on which citizens should declare themselves unmistakably.

While explicitly saying that "the Eighteenth Amendment is the law and we owe it obedience," and thus taking a position different from that which has been attributed to him, Dr. Butler was emphatic in declaring that the Eighteenth Amendment has no proper place in the Constitution, that it is "revolutionary and highly dangerous," and that it should be taken out. It has no proper place in the Constitution, he held, because it has "nothing whatever to do with the form and structure of the Government or with the limitation of powers." It is revolutionary and dangerous because it builds up a Federal bureaucracy, he alleged, and reduces "the names Massachusetts, Illinois, and California to descriptive geographical terms."

Turning aside to anticipate an objection, Dr. Butler said that it seemed to be necessary to adopt the Eighteenth Amendment in order to protect the States that had a prohibition policy of their own. "But," he asked, "what about the States that did not? Who is going to protect them?" He cited the



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Senator Borah and Nicholas Murray Butler thresh out the question of prohibition before a Boston audience

case of twelve States with eleven per cent of the population that had adopted strictly prohibitory legislation. He said that their case had been met by the law which prevented the shipment of liquor into those States. He referred, of course, to the so-called Kenyon Law.

He quoted some statements from Senator Borah with reference to other Constitutional amendments that he used to buttress his own point against the Eighteenth Amendment. The enforcement of the Eighteenth Amendment he declared to be impossible because of conflicting laws of equal validity. He referred to the Constitutional Bill of Rights. He cited as an instance of the violation of the Bill of Rights the case of a man who was shot without warning on suspicion of carrying liquor. He did not explain how this act was sustained by the Eighteenth Amendment.

The only cure for the present evils of lawlessness, he said, was the repeal of the Amendment and the adoption of something like the Quebec or Scandinavian system in its place, providing for the abolition of the private traffic in intoxicating liquor and of the saloon and for the sale of liquor in limited quantities in small packages for private and domestic use. He declared the fight was on to a finish.

Mr. Borah's Reply

ON his side Mr. Borah, after paying his respects to Dr. Butler's sincerity, ability, and courage, began with an arraignment of the liquor traffic as a curse to the human family which must be in some way dealt with by law.

In the course of his speech Dr. Butler had referred effectively to Senator Root's argument before the Supreme

Court, in which he said that if the validity of the Eighteenth Amendment was upheld John Marshall need never have sat upon the Supreme bench. Mr. Borah met that by saying that he had a profound respect for the opinion of Senator Root, but he had a more profound respect for the decision of the United States Supreme Court, which in this case was adverse to Mr. Root's position.

Violation of law, Mr. Borah held, is no reason for the abandonment of law. The choice is between government by law and government by force, said Senator Borah. When the Constitution is defied, are we therefore to surrender? And if the Eighteenth Amendment is abandoned, what is proposed in its place? There is no unanimity in the reply of the opponents of prohibition. To change the law to a higher alcoholic content will not meet the objections of those who regard the Eighteenth Amendment as fundamentally out of place. To suggest that is simply the device of politicians who want to avoid taking a position on the more fundamental question. Dr. Butler proposed the substitution of Government control. "That seems to be," said Senator Borah, "a proposition born of confusion. Something must be done. Therefore, let us choose the most unthinkable thing to do. . . . We have been against Government ownership at Muscle Shoals, but how simple and how incidental would that be to Government manufacture, sale, and distribution of liquor to 120,000,000 of people? We have turned away from Government ownership of railroads, we have worried and agonized over the administration of a few Government ships, we have shuddered at the thought of Government ownership of coal mines, and we are now fighting over the question of power; and yet Muscle Shoals, the railroads, the ships, and coal would not so test these institutions as Government control, manufacture, and sale of intoxicating liquor. . . . It contains every evil and none of the virtues of prohibition. It would be bureaucracy, and bureaucracy—drunk!"

Senator Borah thereupon gave figures to support the statement that there is bootlegging and corruption in Canada under Government control. In fact, there has been no effort for control that the liquor traffic itself has not undertaken to pollute, corrupt, and break down. "I never would vote," declared Senator Borah, "to put Uncle Sam into the liquor business."

Senator Borah resented the imputation that Lincoln had ever advocated the defiance of the Constitution. As to the protection of dry States under the Ken-

yon Law, he made the point that the law did not, and under the Constitution could not, prevent the liquor being shipped through dry States, and when the liquor was shipped through it always stopped off. The wet States needed no such protection, for, as the Senator said, "the wet States can ship wet into the dry States, but the dry States cannot ship dry into the wet States." He would have been willing to leave the States to become dry one by one; but, having seen the law in those States broken down and trampled underfoot by powers outside of the State, he had become convinced that the only protection possible was protection by the National Government under the policy of prohibition. The Eighteenth Amendment, he declared, has not had a fair trial. If men like Dr. Butler, with his prestige and commanding character, would go through the country in support of the law, there would, in Mr. Borah's opinion, be a different spirit and a different morale in the Nation.

Dr. Butler's Rebuttal and the Informal Verdict

IN rebuttal Dr. Butler declared that the Eighteenth Amendment should be obeyed, but that it was not binding upon his intelligence or his conscience, reiterated the opinion that the Eighteenth Amendment bore no resemblance to anything else in the Constitution; quoted a letter from Idaho, Senator Borah's own State, in which the writer said they were making beer and wine there; drew what he believed to be a distinction between control of the liquor traffic and "absolute total abstinence;" declared that he had no time to go into details about the Quebec system, but warned his hearers not to accept statistical statements put out as propaganda; declared that he had studied the situation on the spot and had found it working well; and explained that he would not make the Quebec system a National affair, but would leave it for the adoption of the several States. He ended his speech by deploring cowardice, hypocrisy, and lawlessness in high places.

The Roosevelt Club officially refrained from expressing any judgment as to the debate, but nine men chosen by the Boston "Herald" voted six to three that Senator Borah's arguments and presentation outweighed President Butler's. This is interesting, but not of very great significance. The Outlook is in agreement with Senator Borah's belief that the Eighteenth Amendment was adopted because a large majority of the American people wished to outlaw the

liquor which for a century has resisted every moderate policy of regulation. Whether this belief is well founded cannot be determined by a vote of six to three—if in the light of the record it still needs to be determined—but by submitting the issue in some form to all the voters, as might be done in a Presidential election. In due course this may come about, as it did in the case of the slave trade.

Dawes and the Reed Committee

THE decision of Vice-President Dawes that the Reed "slush fund" committee is alive and able to function does not prove, of course, that it is so, but it does prove that the Vice-Presidential office can be made a more active office than it ordinarily has been. Other Vice-Presidents have not undertaken, in recess, to make committee appointments. The right of Vice-President Dawes to do so is questioned by many of his party associates, and that question, like the one of the continuing life of the committee, probably cannot be determined until it somehow gets before the Supreme Court, if it ever does.

The Vice-President appealed to the decision of the Supreme Court in the *Mal Daugherty* case for authority to hold that the Reed committee did not die with the expiration of the Sixty-ninth Congress. The decision in that case would seem to a layman to justify the decision reached by the Vice-President. But prominent Senators, notably the other Reed, do not believe that the decision of the Supreme Court as to the continuance of the Walsh committee from the Sixty-eighth into the Sixty-ninth Congress applies to the continuance of the Reed committee from the Sixty-ninth into the Seventieth Congress. Senator Keyes, who controls the purse-strings so far as the Reed committee is concerned, takes the same view and does not propose to permit the spending of any money by the Reed committee.

Even if it should be finally determined that the Vice-President was right in his conclusion as to the continuing life of the committee, that will not decide anything as to his right during recess to appoint a member to take the place of one resigned.

Vice-President Dawes's appointment ought, of itself, to be satisfactory to his party associates. He named Senator Fess, of Ohio, to take the place of Senator Goff, of West Virginia, resigned. Senator Fess is one of the staunchest of Administration supporters and may be depended upon not to "persecute" Republican Senators as such. The committee remains, however, composed of