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## LIMITATION OF DEBATE IN THE UNITED STATES SENATE: A PHASE OF THE LAW-MAKING PROCESS

REX M. POTTERF\*

### A. *The Early Senate and Unlimited Debate.*

The makers of the Constitution probably never contemplated a Senate with so large a membership as that which now exists. Indeed the first Senate comprised only twenty-six members. With such a membership it could assume its intended position as an "advisory council." Increase in numbers has been gradual but as new states have been added, the present Senate has a membership more than thrice that of its first predecessor. Under such circumstances it would not seem strange that Senatorial procedure, unmodified in the face of changing conditions, would present some singular anomalies.

During the making of the Constitution it became necessary to formulate certain compromises, and one such compromise related to voting strength in the Legislative Department. In the Senate—the upper house—provision was made for the absolute equality of states. This particular compromise was effected to allay the distrust of such small commonwealths as Delaware and Maryland. The people of the less powerful states feared to trust the larger states in a legislature based wholly upon population and not state sovereignty.<sup>1</sup>

One of the consequences of the small Senatorial membership was a practice of unlimited debate. It is true that prior to 1806 rules VIII and IX of the Senate provided a kind of limitation on debate, but in seventeen years it was invoked only three times. In 1806 these rules were abrogated. Henceforth the only limitation on speech in the Senate was a rule that no Senator could speak twice on an identical subject during the same day.<sup>2</sup> In short, with a very few exceptions the United States Senate is attempting to function under rules which were adopted when the first Congress was organized.<sup>3</sup>

It almost never occurs that every Senator exercises his prerogative of speaking on every occasion when the Senate is considering a measure. If such were the case, very little business could be transacted. On important measures this rule has in part contributed to mature and dignified deliberation. There are those who strongly defend the practice as productive of good government.<sup>4</sup>

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\* See biographical Note, Page 149.

<sup>1</sup> John B. McMaster, *History of the People of the United States*. Vol. I, p. 438 ff; A. C. McLaughlin, *The Confederation and the Constitution*, p. 221 ff.

<sup>2</sup> "As Mr. Dawes States the Case," in the *Forum*, October, 1925, p. 577.

<sup>3</sup> Senator Oscar Underwood in the *New York Times*, March 15, 1925.

<sup>4</sup> See speech of Former Senator Beveridge at French Lick, Indiana, quoted in *New York Times*, May 25, 1925.

### B. *The Perversion of Unlimited Debate.*

It is possible for a Senator, once he has gained the floor, to hold it so long as he is physically able to speak. He may not be interrupted by another Senator unless he is willing to suffer such interruption. Rules exist to protect priority to the floor even after it has been yielded for the purpose of allowing a question to be asked. Such a question from another Senator may sometimes amount to hundreds of words.<sup>5</sup>

When the Senatorial privilege of unlimited discussion is perverted into a device for the prevention of a vote on any particular measure, the term "filibuster" is applied to the practice. Toward the end of a session of Congress it frequently happens that many bills are left for action without adequate time for considerable discussion. If for any reason such legislation is obnoxious to any individual Senator, he may, by gaining the floor, speak until the hour for adjournment has arrived, and thus prevent a vote.

Such filibusters have at times continued for many hours and even days. When a Senator conducting such a filibuster tires, he may have the Secretary of the Senate read material which bears on his subject, or he may read it himself. In this way he may gain time for a breathing space.<sup>6</sup>

Freedom of Debate attains even greater importance when a group of Senators, no matter how small, choose to cooperate in the conduct of a filibuster. By such cooperation an *impassé* in legislation has been occasioned a number of times. Due to the fact that there is no privileged business in the Senate, it is fairly easy for a group of Senators working harmoniously together to produce such an *impassé*. The order of the calendar is followed unless an agreement tending otherwise has been adopted.<sup>7</sup>

### C. *Some Instances of the "Senate Filibuster."*

Both political parties have availed themselves of the filibuster when it seemed to serve their ends. More often, however, legislation has been blocked by the opposition of a small group. It has occasionally happened that a filibustering group comprised members of both political parties.

Prior to the Civil War probably the most notable filibuster was that of 1841. Senator Henry Clay was in charge of the administration fiscal measures which were opposed by the Democratic minority. Exasperated at the obstructive tactics of the Democrats, Senator Clay attempted to invoke closure of debate. This attempt was met with radical opposition even in his own ranks and he was compelled to abandon the proposal.<sup>8</sup>

<sup>5</sup> *Congressional Record*, 65 Congress, 3rd Session, March 3, 1919, p. 4879.

<sup>6</sup> *Ibid.*, Sixty-fifth Congress, Third Session, p. 5000.

<sup>7</sup> Ogg and Ray, *Introduction to American Government*, p. 387.

<sup>8</sup> Robert Luce, *Legislative Procedure*, pp. 289-291.

Since 1890 the filibuster has become a frequent resort and has been the occasion for many dramatic scenes in the Senate. The Force Bill of 1891 was particularly obnoxious to the Southern Senators and after a battle lasting two months a vote on it was prevented. Senator Charles J. Faulkner (West Virginia) spoke for thirteen hours on the bill.<sup>9</sup> Two years later the attempt to repeal the purchase clause of the Sherman Silver Act was thwarted by the determined stand of the "Silver Senators" who would not allow the measure to come to a vote. On this occasion Senator William V. Allen (Neb.) addressed the Senate for sixteen and one-half hours. He is said to have made a well connected and logical speech.<sup>10</sup>

During the first decade of the present century there were a number of singlehanded filibusters. In 1901 Senator Thomas H. Carter (Mont.) secured the defeat of the pending Rivers and Harbors bill. In 1903 Senator Benjamin Tillman (S. C.) after a protracted speech compelled the Senate to incorporate a claim of one of his constituents into the Deficiency Appropriation bill. Senator Edward Carmack (Tenn.) brought about the abandonment of the Ship Subsidy bill by similar tactics in 1907.<sup>11</sup>

In 1908 the Aldrich-Vreeland Currency bill was defeated by a filibuster of Senator Robert M. LaFollette (Wis.). On this occasion Senator LaFollette spoke for eighteen hours. This feat probably resulted in a slight reform in Senatorial procedure the next session. It was provided that a quorum could not be demanded as a point of order unless some business has intervened since the last quorum call. Further it was provided by this rule that speaking could not constitute business.<sup>12</sup> The filibuster of 1911 directed against the admission of New Mexico and Arizona was designed to defer this measure until it could be credited to the new Congress.<sup>13</sup>

Vice-President Dawes notes that in the last eight Congresses, seven extra sessions have been necessitated because of filibusters. This practice seems to have been particularly prevalent during the two administrations of President Wilson.<sup>14</sup>

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<sup>9</sup> *Ibid.*, p. 291; see speech of Senator Charles S. Thomas (Col.) in *Congressional Record*, Sixty-sixth Congress, First Session, May 28, 1919, p. 328.

<sup>10</sup> Luce, *op. cit.*, p. 292; *Congressional Record*, *op. cit.*, p. 328.

<sup>11</sup> Luce, *op. cit.*, p. 293.

<sup>12</sup> Carter Field, "Dawes and Delay," in the *Outlook* for March 25, 1925, p. 449.

<sup>13</sup> See speech of Senator Robert L. Owen in *Congressional Record*, Sixty-fifth Congress, Third Session, March 3, 1919, p. 4939.

<sup>14</sup> The great mass of constructive legislation enacted during the life of the Sixty-third Congress, elected in 1912, was not secured without great difficulty. Vice-President Dawes notes that during that Congress, the Rivers and Harbors Bill was debated for thirty-two days; the Panama Canal Bill for thirty days; the Clayton amendments for twenty-one days; and the Conference report on the Clayton Amendments for nine days. "As Mr. Dawes States the Case," in the *Forum*, October, 1925, p. 578.

#### D. *The Provision for Senatorial Cloture in 1917.*

In 1917 during the short session of the Sixty-Fourth Congress<sup>15</sup> occurred the Armed Ship Bill Filibuster.<sup>16</sup> The Armed Ship Bill had passed the house by a vote of little short of unanimity.<sup>17</sup> The filibuster was protracted until the adjournment of Congress and the shipping of the nation was left unprotected.<sup>18</sup>

The peculiar difficulties of the nation<sup>19</sup> and the fact that an overwhelming majority of the Senate had been thwarted<sup>20</sup> seemed to justify President Wilson's denunciation of filibustering.<sup>21</sup> Subsequently the Senate made a revision of the rule of Unlimited Debate.<sup>22</sup> This rule known as the Cloture rule provides for cloture in the following manner: On petition of sixteen Senators the Senate must vote two days later on the question of closing debate. If Cloture carries by a two-thirds majority, a date may be fixed for closing debate and speeches

<sup>15</sup> This Congress was elected wholly on domestic issues when the European War appeared very far indeed from our shores.

<sup>16</sup> As the European War brought the United States more and more into its maelstrom, measures were proposed to Congress which some people thought would eventually draw the United States into the War. One such measure was the Armed Ship Bill. This bill had as its object the arming of American ships against German submarines. The disclosure of the German plot to bring about war between the United States and Mexico was insufficient to persuade all of the Senators that a pacific policy was indefeasible.

<sup>17</sup> The vote in the House was 403-13. "The Filibuster in the Senate" in the *Outlook*, March 14, 1917, p. 445.

<sup>18</sup> The measure was brought to the Senate from the House of Representatives on March 1, 1917, leaving only three days for passage. A little bipartisan group carried on the filibuster until noon, March 4, 1917, the constitutional date of adjournment. In fact the filibuster was in progress until a few minutes before the ceremonies began for President Wilson's second inauguration. John B. McMaster, *The United States in the World War*, pp. 344-347.

<sup>19</sup> Among the legislative measures which received no action by this Congress were the army and other appropriation measures of vital necessity to a nation on the verge of war. Such problems as that of the railroads and the high cost of foodstuffs were left without an attempt at solution. A list of 2000 nominations to federal offices failed of confirmation. "Congress Closes," in the *Independent*, March 12, 1917, p. 441.

<sup>20</sup> Early in the morning of March 4, 1917, before the Senate adjourned, a protest was signed by seventy-six of the Senators. They affirmed their sympathy with the Armed Ship measure and they expressed their desire to support it if they but had a chance. "Armed Neutrality, in the *Independent*, March 12, 1917, p. 441.

<sup>21</sup> Just after Congress adjourned, President Wilson issued a statement to the nation. Among other things he said: ". . . A little group of wilful men, representing no opinion but their own, have rendered the great Government of the United States contemptible." "The Filibuster," in the *Outlook*, March 14, 1917, p. 445.

<sup>22</sup> The President called the Senate in special session to confirm his appointments. The first care of the new Senate was to amend its rules. "The Senate in Special Session," in the *Outlook*, March 14, 1917.

will be limited to one hour each.<sup>23</sup> By this rule no amendment can be made except by unanimous consent. This rule has been invoked but twice,<sup>24</sup> but it is a slight improvement over the previous practice.<sup>25</sup>

## II

### A. *The Sixty-fifth Congress.*

In the election of 1916 the question of our policy towards the warring nations of Europe and of military preparedness were uppermost. The congress elected in November was prevailingly anti-war and against large military expenditures.<sup>26</sup> In view of this fact it was rather singular that the new congress elected that year had before it the task of legislating for a great war.<sup>27</sup>

During the war President Wilson had declared politics "adjourned" but elements of opposition were only awaiting the end of the War to crystallize.<sup>28</sup> The appeal for a Democratic Congress in the election of 1918 gave to the Republicans their cue and on this issue they made great gains in the Senate as well as the House.<sup>29</sup> By this upheaval the Republicans were greatly encouraged. Some of the Republican Senators elected had personal grievances against the President. This combined with party sentiment, boded no good for the legislative proposals of the administration.<sup>30</sup>

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<sup>23</sup> Field, "Dawes and Delay," in the *Outlook*, March 25, 1925, p. 449.

<sup>24</sup> Relative to the Treaty of Versailles, November 15, 1919; and the World Court Protocol, January 25, 1926.

<sup>25</sup> Still it is possible to delay a measure a maximum of ninety-six hours, if every Senator should use his privilege. Of course this is an absurd situation and would never happen. Since a two-thirds vote is required, it is impossible to save a measure in this manner if the minority in opposition to the bill numbers more than a third of the Senate.

<sup>26</sup> The Democrats had a bare working majority in the House and a majority of six in the Senate. William E. Dodd, *Woodrow Wilson and His Work*, p. 191; *The World Almanac and Encyclopedia* for 1919, p. 191.

<sup>27</sup> One of the first acts of this Congress was the declaration of war against Germany. Dodd, *op. cit.*, p 219.

<sup>28</sup> The Republican minority was obviously ready to function as an opposition party as soon as patriotic consideration would admit. Certain Democratic Senators from Southern States were no longer friendly to the administration. Among the opponents of the President in his own party were Democratic Senators from Missouri, Mississippi, Oklahoma, and Georgia. Even Senators Chamberlain and Hitchcock had taken occasion to declaim against various phases of administration policy on the floor of the Senate.

<sup>29</sup> Of the thirty-three Senators elected in 1918 only fourteen were Democrats and nineteen were Republicans. In the northern states the only Democratic Senators elected were David I. Walsh of Massachusetts and Thomas J. Walsh of Montana. The remaining twelve Democrats were returned from states of traditional Democratic leanings. The new Senate was composed of forty-nine Republicans and forty-seven Democrats. *The World Almanac, op. cit.*, p. 843; Dodd, *op. cit.*, p. 275.

<sup>30</sup> See President Wilson's letter to the Wisconsin electorate opposing the candidacy of Senator Irving I. Lenroot in *New York Times*, August 12, 1918.

The record of this Congress as a war Congress is fairly creditable,<sup>31</sup> but when it met for the short session in December, 1918, the War was over and reaction had begun.<sup>32</sup> The President's trip abroad and the makeup of the Peace Commission met with much disfavor and furnished his opponents in the Senate with an opportunity to begin an attack upon him. This was really a part of the larger design to spend as much time as possible in matters other than those pertaining to legislation.<sup>33</sup>

Early in the session a formal debate on the Treaty of Versailles was inaugurated. True, the Treaty was not yet complete, but still its discussion was excellent for time-killing purposes.<sup>34</sup>

#### B. *The Events Preceding the Filibuster.*

The irrelevant discussion proceeded for some time before the administration leaders seemed to be cognizant of the trap which had been set for them. Toward the end of December it became apparent that a filibuster was impending.<sup>35</sup> Singularly enough some of the administration leaders were drawn into the debate and apparently contributed their part to the delay.<sup>36</sup>

The prelude to the real filibuster came February 19 to March 3, during which period a number of ponderous speeches totaling many hours were made on the subject of the League. The administration leaders then abandoned the field to their enemies and contented themselves with one speech on the subject by Senator Hitchcock.<sup>37</sup>

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<sup>31</sup> It had declared war, provided for great armies, levied enormous sums in the form of taxes, provided war materials, established the American Merchant Marine, extended federal control over the means of transportation and communication and had created the Aeronautic Industry. One is apt to forget this tremendous array of achievements when he views the fiasco at the end of this Congress. "What the Sixty-fifth Congress Did," in the *Independent*, March 15, 1919, p. 359.

<sup>32</sup> This was the Lame Duck session of Congress and many of the Congressmen had been defeated for reelection. This fact enables one to appreciate better the reactionary character of the Short Session.

<sup>33</sup> One of the matters which consumed the attention of the Senate for several days was a resolution introduced by Senator Sherman of Illinois declaring the office of President vacant. *Congressional Record*, Sixty-fifth Congress, Third Session, December 3, 1918, p. 23; December 4, 1918, p. 72; December 2, 1918, p. 3; December 6, 1918, p. 172.

<sup>34</sup> The Republican Senators felt that their mandate to rule was clear and unmistakable. Their leadership was pretty well united in opposition to the Democratic Administration. Great economic issues such as taxation, finance and tariff seemed to require a solution. These issues since an early day had been a source of difference between the two major parties. The Republicans had a feeling that to legislate in these exigencies was their province and not that of the Lame Duck Congress. *Congressional Record*, Sixty-fifth Congress, Third Session, December 4, 1918, p. 73.

<sup>35</sup> See colloquy between Senator Watson (Ind.) and Senator Jones (N. Mex.) in *Congressional Record*, *op. cit.*, December 26, 1918, p. 860.

<sup>36</sup> *Ibid.*, *passim*.

<sup>37</sup> The Republican Senators who spoke were Poindexter, Borah, Reed, Lewis, Owen, Cummins, Hitchcock, Lodge, Knox and Sherman.

The only measure which the Republicans permitted to pass was the Victory Bond Authorization Act,<sup>38</sup> which was enacted March 3, 1919. Meanwhile numerous charges and countercharges were made as to which party was to blame for the impending failure of legislation.<sup>39</sup>

On March 3, 1919, aside from the exception of the Victory Bond Act, the Senate had made no perceptible progress with legislation since it had convened, December 2, 1918. The House had passed a number of great financial measures and supply bills and its work was practically complete.<sup>40</sup>

### C. *The Closing Hours of the Session.*

Senator Myers of Montana secured the reading of the Calendar which required four hours. This was an unusually effective method of delay.<sup>41</sup> This required thirty-eight pages of the Record at a cost of sixty dollars a page.<sup>42</sup> Quorums were frequently called,<sup>43</sup> facetious resolutions were introduced,<sup>44</sup> proclamations of the President were read,<sup>45</sup> objections were made to voting on various measures, objections were made to the laying aside of the same measures for other measures,<sup>46</sup> and further speeches were made on subjects far removed from the supply bills under consideration.<sup>47</sup> Senator LaFollette engaged in a short filibuster against one of the administration supply measures to which he was particularly opposed and when he announced that he had much documentary material to lay before the Senate, the administration Senators agreed to lay this particular measure aside.<sup>48</sup>

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<sup>38</sup> This was essentially a war measure. *Congressional Record, op. cit.*, March 3, 1918, pp. 4893-96.

<sup>39</sup> Senator Kellogg (Minn.) thought the Democrats had kept the bills in the Committee too long. Senator Thomas (Colo.) thought both parties were to blame. He blamed, most of all, the Senatorial method of transacting business. *Ibid.*, February 26, 1919, p. 4316.

<sup>40</sup> The New York Times, February 28, 1919.

<sup>41</sup> *Congressional Record, op. cit.*, February 28, 1919, pp. 4530-68.

<sup>42</sup> *Ibid.*, February 25, 1919, p. 4239.

<sup>43</sup> *Ibid.*, February 27, 1919, p. 4391.

<sup>44</sup> Senator Sherman, an arch-enemy of the President submitted a resolution of adjournment in honor of the "safe return" of the chief executive.

<sup>45</sup> Regarding his request to have this document read Senator Gronna said: "I do not want to consume any more time than is necessary to inform the Senate about wheat, because it is evident to me that the Senate is ignorant about the production of wheat." *Ibid.*, February 27, 1919, p. 4435.

<sup>46</sup> *Ibid.*, February 27, 1919, p. 4435.

<sup>47</sup> Senator Hardwick, an anti-administration "Lame Duck" from Georgia, gained the floor and delivered his farewell address to the Senate in the form of an impassioned tirade against the League of Nations. He announced that his remarks would require only a few minutes, but they cover six pages in the *Record*. When Senator Hardwick finished his address, Senator Smoot raised the question of a quorum. *Ibid.*, February 28, 1919, pp. 4520-28; 4569-72; 4473-77; March 1, 1919, pp. 4699-4707.

<sup>48</sup> Senator LaFollette had spoken for four hours and there appeared to be no limit to his capacity to talk. He thundered against the abuse of the rule on Conference reports; he touched upon the unrest in the land; he



Other Senators participated in the filibuster and on the whole one is impressed with the splendid teamwork which they manifested.<sup>49</sup>

Senator Sherman (Ill.) held the floor until the time of adjournment, having made a wonderful record for endurance.<sup>50</sup> At noon, March 4, the Vice-President announced adjournment with a variation in the Latin *sine die*, remarking instead *Sine deo*.

#### D. *The Effects of the 1919 Filibuster.*

Thus the Senate which in 1917 had provided for a mild form of cloture at its last session had been the scene of one of the most notorious and damaging filibusters in the history of legislation. A session was frittered away with the avowed design of forcing an extra session of Congress. As later events showed, such an extra session could hardly be postponed beyond June 1, 1919 due to the urgent financial needs of the government.

criticized the rule which regulated applause in the galleries; and he related experiences with Theodore Roosevelt. *Congressional Record, op cit.*, March 1, 1919, pp. 4706-17.

<sup>49</sup> Senator Penrose advocated a Special Session; Senator Reed (Mo.) denounced the War Department; Senator Johnson (Cal.) read a letter from a soldier boy in Russia; and Senator Calder appealed for the engraving of a vignette of Theodore Roosevelt on the notes of the Victory Bond issue.

<sup>50</sup> Senator Sherman said a few days later: "I have twice held the floor till the clock struck twelve and if parliamentary methods of the Senate do not change, I will do it again . . . I wanted to call the President's bluff." *New York Times*, March 9, 1919.

See speech of Senator Thomas (Col.) in *Congressional Record*, Sixty-sixth Congress, First Session, May 28, 1919. He gives a rather interesting description of the technique employed on this occasion. "Mere talk, however melodious and edifying, becomes dull when unduly prolonged. But when punctuated by vigorous action, its monotony may sometimes be lessened if not altogether relieved. This was demonstrated by one of the filibustering triumvirate, whose exhibition of vocal and physical gymnastics upon this floor will long be remembered by the few Senators unfortunate enough to be present upon that memorable occasion. He did not favor us with a double somersault, but he certainly established an enviable record as a pedestrian. He traveled up and down, across and along the chamber. He circled its outer limits, explored all its nooks and crannies, tested the quality of every desk with the sledge hammer blows of his fists, while his voice sonorously proclaimed his unappeasable anguish. His mileage was prodigious and his vocabulary was wholly unfettered. Whether he talked because he was walking, or walked because he was talking, no man to this hour can say, for the race between his tongue and his legs ended in a draw. When he finally yielded the floor to one of his allies and retired to be groomed and blanketed for the next heat he was easily the favorite performer to the galleries. The others were powerful engines but they were stationary. He was the locomotive and always on the move. Stenography surrenders at discretion to this new style of filibuster. Only the moving picture and the phonograph can adequately present him to a continental constituency.

Under present Senate rules a similar fiasco is always possible. Indeed this was not the last case of its kind for obstructionist tendencies have been manifested in more recent sessions of Congress.<sup>51</sup>

E. *The World Court Protocol in the Senate.*

The difficulty encountered in securing action on the resolution for ratification of the World Court illustrates that practices have not materially changed. On March 3, 1923 President Harding transmitted a recommendation to the Senate in advocacy of participation. No action was taken. During the Sixty-eighth Congress, President Coolidge repeated President Harding's recommendation. On May 22, 1924, the matter was favorably reported by the Senate Committee on Foreign Relations.<sup>52</sup> The Senate took no action. On December 3, 1924, President Coolidge again recommended participation. This time the Committee took no action. In the Special Session of the Senate in March, 1925, however, a unanimous consent agreement was reached to proceed with deliberation on the subject on December 17, 1925.

Again on December 8, 1925, President Coolidge recommended adherence to the court. The debate began on schedule and after dragging on wearily, an attempt was made by Senator Robinson (Ark.) on January 22, 1926 to secure unanimous consent to proceed to a vote. This met opposition from Senator Blease (S. C.). On the same day a cloture petition signed by forty-eight Senators was submitted. Cloture carried by a vote of 68 to 26. When the question came up for vote on January 27, 1926, the resolution of ratification carried by a vote of 76 to 17.

### III

While the filibuster is at least as old as the Roman Senate<sup>53</sup> we have seen how it has been adapted to modern circumstances. It has

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<sup>51</sup> "As Mr. Dawes States the Case," in the *Forum*, October, 1925, pp. 577-578. Since May 1919, the majority and minority leaders have resorted to the unanimous consent agreement sixty-six times to further the consideration of bills in the Senate.

The ship subsidy bill was defeated by a filibuster in the Sixty-eighth Congress after it had passed the House. *Ibid.*, p. 585.

One of the most unedifying of recent cases of the filibuster was the defeat of the Crampton Bill in the Senate in 1924. This bill had been recommended to Congress by the President in 1923 and again in 1924. Its purpose was to place the prohibition enforcement corps within the Classified Civil Service. Other important legislation similarly defeated in that Congress were the Departmental Reorganization Bill, the Pepper-McFadden Banking Bill and the World Court Protocol Resolution of ratification. William D. Foulke, "Government by Paralysis," in the *Independent*, May 23, 1923, p. 578.

<sup>52</sup> "The United States and the World Court," in the *Congressional Digest*, February, 1926, pp. 43-45.

<sup>53</sup> Cato carried on a filibuster against an agrarian measure which was before the Senate. Julius Cæsar was the president consul and ordered Cato to be removed, at which the Senate followed Cato from the Senate. Luce, *Legislative Procedure*, p. 278.

its opponents as well as its exponents, but undoubtedly there is much sentiment outside the Senate for a limitation on debate. Mr. Foulke<sup>54</sup> compares it to the *Liberum Veto* which was the undoing of Poland. Senator Thomas, a statesman of mature experience, believes it responsible for much useless national expenditure.<sup>55</sup> On the other hand it has usually been defended as the last refuge of the minority against the tyranny of the majority. Such restriction as was imposed on debate in April, 1917, has been called a "misnomer."<sup>56</sup> Various ideas have been advanced as to a method of limiting debate more strictly. Vice-President Dawes seems to favor a plan whereby the majority cannot be prevented from taking a vote when it so desires.<sup>57</sup> Senator Pepper (Pa.) favors cloture whenever desired by "fifty-one per cent" of the Senators.<sup>58</sup> Senator George W. Norris has proposed a Constitutional Amendment, the effect of which would be to eliminate the Short Session of Congress on the theory that it is in that session that most filibusters occur.<sup>59</sup> Senator Underwood (Ala.) has been a firm supporter of Vice-President Dawes in attempting to secure change in the rules. On March 5, 1925, shortly after the inauguration of President Coolidge, Senator Underwood moved to amend Rule 22 in such a way as to shut off debate.<sup>60</sup>

That there is agitation for change in Rule 22, there is no doubt, but the agitation is not unusual.<sup>61</sup> Such agitation has usually followed every filibuster in the past. The vigor with which General Dawes has attacked the practice has aroused renewed interest in an old question.

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<sup>54</sup> Foulke, *op cit.*, p. 578.

<sup>55</sup> "I have witnessed the securing of appropriations for local purposes by Senators who had only to intimate a purpose to secure them. I have known riders to be placed not once but frequently, upon bills for general legislation, because otherwise they could never reach a vote." *Congressional Record*, Sixty-sixth Congress, *op cit.*, May 28, 1919, p. 320.

<sup>56</sup> The "so-called cloture rule is a misnomer . . . The difference between that and nothing has never been perceptible, and, in my judgment, it never will be." However it has been effective in saving time on at least two occasions. Senator Thomas, *op. cit.*, p. 318.

<sup>57</sup> In brief his proposal seems to be that the "minority . . . shall not exercise veto rights over the will of a majority when the majority desires only to exercise the constitutional rights of legislation." "As Mr. Dawes States the Case," in the *Forum*, October, 1925, p. 580.

<sup>58</sup> Senator George Wharton Pepper, "A Fifty-one Per Cent Cloture," in the *Forum*, October, 1925, pp. 568-588.

<sup>59</sup> The Senate has twice passed such a resolution providing that the terms of the President and members of Congress shall begin early in January. This would eliminate the short session. Senator George W. Norris, "Mr. Dawes and the Senate Rules," in the *Forum*, October, 1925, p. 582.

<sup>60</sup> The New York *Times*, March 6, 1925.

<sup>61</sup> See Editorial Note by Dean John H. Wigmore, "Did the United States Constitution Create 97 Veto Powers," in *Illinois Law Review*, February, 1926, pp. 589-590.

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SUMNER KENNER is Judge of the Huntington Circuit Court. He attended Indiana University and afterwards graduated from the Indiana Law School at Indianapolis, Indiana, in the year 1904, and practiced at Huntington, Indiana, from 1904 until 1908, when he entered the legal department of the Erie Railroad Company. He returned to general practice in 1913; served as city attorney for the city of Huntington for one term; became Assistant Attorney General in the year 1921 under Attorney General U. S. Lesh, and served until he was appointed Judge of the Huntington Circuit Court to fill a vacancy. He was elected as Judge in 1924. Besides engaging in the general practice, he was a contributing editor for the *Central Law Journal* at St. Louis for a period of about ten years.

LENN J. OARE graduated from Valparaiso University with the degrees of A.B., and LL.B., in 1908; admitted to the Illinois bar in 1909; graduated from Yale University with degree of LL.M., in 1911; entered the practice of law at South Bend, Indiana, 1911; lectured in law department of Valparaiso University 1913-17; appointed by governor to the Superior Court bench at South Bend, Indiana, August, 1922. He was elected to succeed himself in November, 1922. He was trial judge in many noted court cases, among which was the one wherein he upheld the constitutionality of the gasoline tax law, and the one wherein he declared the automobile license tax law of 1923 unconstitutional. He resigned from the bench January 1, 1926 and re-entered the practice of law in the firm of Seebirt, Oare & Omacht. He is the author of various articles in legal periodicals, and is a member of the Indiana State Bar Association.

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