When Rule XXII Swallowed Itself!

The following is a chapter from Professor Ludwig Neuberger's authoritative college textbook, History of the United States During the Unprecedented 1950's.

Confusion gripped America after the Senate had decided that the blessings of Rule XXII should not be confined to the Senate exclusively, but ought to be extended to the country as a whole. This was the cherished Senate rule under which debate never could be ended unless two-thirds of all the members of the Senate decided the time had come to do so. "Why make ourselves the sole beneficiaries of so splendid a policy?" Senators had asked. And so Rule XXII had been applied to every election for federal office as well as to Senate rollcalls.

The first national uncertainty arose after the 34th President of the United States, a former General of the Army named Dwight D. Eisenhower, had failed to poll the votes of two-thirds of all the eligible voters on his first try for reelection.

President Eisenhower's vote in all 48 states was 35,582,236. His Democratic opponent, Adlai E. Stevenson, polled 26,027,887 votes. It looked as if the President had been returned to office. However, the Bureau of the Census announced that there had been 102,743,000 eligible voters at the time of the 1956 election. This meant that Mr. Eisenhower would have had to poll 68,494,000 votes to satisfy the requirements of Rule XXII.

The chairman of the Republican National Committee, jolted to learn that Mr. Eisenhower had fallen a staggering 33 million votes short of reelection, conferred frantically with GOP leaders on Capitol Hill concerning the immediate repeal of Rule XXII. They warned him that a two-thirds vote of all members of the Senate never could be mustered for repeal prior to January 20, 1957, when Mr. Eisenhower's first term in office would expire. The sole possible solution seemed to be the holding of another national election at once, which was set for December 6, 1956. Republican precinct squads, using mastiffs and police dogs, went into remote slums and backwoods solitudes to flush out all voters and escort them to the polls. They had discovered that, under Rule XXII, an absent voter was automatically a "no" voter.

Yet all the aggressive efforts of the GOP were in vain. Adlai Stevenson, one of the most eloquent orators of his era, decided that the unlimited-debate provisions of Rule XXII afforded him a far greater opportunity for exhaustive discussion of all issues than a December 6 election deadline allowed. Therefore, Mr. Stevenson announced that he was not ready to vote; he went right on talking.

In desperation, the Republican Attorney General sent his Solicitor to appeal to the Supreme Court, but Rule XXII evidently applied here, too. The Chief Justice was unable to convince two-thirds of his colleagues that the election ought to be held on December 6, regardless of Mr. Stevenson's desire to debate beyond that time. In fact, at least one-third of the members of the court declined to stop talking long enough for the Chief Justice to ask them to decide whether Mr. Stevenson could be compelled to stop talking long enough for the country to go to the polls.

Just when the governmental processes seemed totally snarled, an obscure young lawyer in Pendleton, Oregon, wrote a letter to the Sunday edition of the New York Times, pointing out that the very Senate which had fastened Rule XXII upon the nation was itself in serious violation of Rule XXII.

He went down the long list of states to show that scarcely a Senator had received the vote of two-thirds of the eligible citizens in his constituency. One Senator from a state where cotton and peanuts comprise leading crops was shown to have polled barely one-fifth of the qualified votes in his state. A predominant reason for this, according to the letter to the Times, appeared to have been that nearly all the citizens of colored skin never even bothered to show up at the ballot box.

"And so," concluded this historic communication to the Times, "Rule XXII actually has worked to render illegal, under Rule XXII, many of those Senators who were instrumental in making Rule XXII the law of the land."

At this point, with the Senate itself apparently in some danger of being declared null and void, the controversial provision was abruptly repealed. Hardly anybody knows precisely when this took place. It allegedly was done by voice vote late in the evening, with only two Senators, five pageboys and one Capitol policeman on the floor of the Senate.

In the new rules later adopted, a mysterious gap appeared between Rule XXI and Rule XXIII. Senators were said to be reluctant even to refer to any provision as Rule XXII. It was omitted like the 13th floor of some office buildings. No Rule XXII ever has been enacted since that era, although the United States is now one of the oldest of the earth's existing nations.

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