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COMPULSORY INCORPORATION OF THE BAR FROM THE COUNTRY LAW- YER'S VIEWPOINT*

THE proposed compulsory incorporation of the bar has awakened little interest in the country lawyer and his voice has been unheard in the debate that preceded and followed the introduction of the measure. As the conditions under which I practice are more rural than urban, I approach this discussion from the viewpoint of the country lawyer.

I have watched with interest and with hope the development of a sentiment favorable to strengthening associations of the bar. While they seem less essential in the agricultural counties, the wholesome effect of close organization everywhere is undeniable.

I would favor a movement in the direction of the British system—without, however, entertaining any wish that the evolution in that direction be unduly forced or any delusion that even an approximation of their excellent system can, under American conditions, be accomplished.

We have not developed and cannot artificially create the fine rivalry between Law Societies that has done much to elevate and maintain the tone of their bar. While our associations are to us just one more thing to belong to among a list already too long, the barrister's Law Society is his home, his college, his office and his career. Our lawyers too are not so generally drawn from a class to whom culture, education and leisure are a birth-right. Men out of breath with the day's necessities do not develop fine ethical theories or philosophies. Moreover, we have not a British public to sustain us in our efforts at reform of the bar.

As I do not hope in the near future to see a bar of British standards, also I cannot hope for a bar in which the best American standards will be general. The bar is simply a cross section of the community. At least so it appears to one who views it in rural conditions where he can see both the bar and the community as wholes. If there are undesirable lawyers they are responses to a demand from that kind of clients. Hence, I have no ex-

*Address delivered by Robert H. Jackson, of Jamestown, N. Y., at a conference of Associations of the Bar of Western New York, held at Buffalo, June 24, 1926.

pectation of raising the standards of the rural bar much above that of the community to which it looks for retainers.

Notwithstanding rather moderate expectations from bar reform, I feel that the voluntary associations are inadequate and that ultimately, an all inclusive self-governing bar should be erected.

The local bar association in most upstate counties is ineffective in comparison to its possibilities. Strangely enough, it includes the greatest number of individual influential men of any local organization, yet their collective influence as a bar association is generally less than a local W. C. T. U. When they meet a cancellation of influence takes place between different elements so that single members standing alone will often be more effective than the association. If bar feuds or factions do not develop, dry rot usually does.

As to the State Bar Association the rural lawyer is generally indifferent. He regards highly the talents of the men who lead it, but identification with it has no practical results and is not essential to his local good standing. The greater number, I believe, of the lawyers at our local bar whom I respect and fear are not members of the state association.

In soliciting members for that organization, I have found that most men regard it as impractical to spend the time and money to attend meetings held in quite remote cities. When they do attend, for the most part they attend as spectators and regard the association as a thing apart from them. The country members are too scattered to be acquainted and the city members mix with those they know. That the machinery is pretty generally as well engineered as in a party convention is recognized by the countryman as somewhat a necessity and he is generally satisfied with results. He knows that such talents as he has are not recognized because the stage he shows upon is remote and the white light of metropolitan publicity does not beat upon him. He knows that the active members are largely from the cities and that they do not see the rural problem nor the country view of general problems. All of these things the rural member accepts with philosophical indifference. Your leadership has his acquiescence but not his enthusiasm—not even his interest. Such an association is destined to have very limited influence.

The fundamental weakness of the Gibbs Bill which, to my mind, makes it or any modification of it unacceptable to the rural bar, is that it provides no remedy for this sort of thing. The proposed organization has structural defects that make it an impractical agency for the cooperation of the entire bar.

The scheme of organization proposed by the Gibbs Bill is the democratic or mass meeting type and should be abandoned in favor of a representative system of organization for the state, with local units in each county or city.

The Gibbs Bill proposes that the State Bar act either by mass meeting or by post card referendums. One is unfair, the other futile.

When a compulsory association commits all of its members at a mass meeting held at one point in the state, it denies any voice to all whose time or circumstance does not permit their attendance. The ratio of trouble and expense to importance of attending is too great to the mass of country lawyers. If the bulk of the bar is absent your association is again an affair of volunteers.

It is my belief that the rural bar will permanently oppose the grant of any substantial power to an association which so functions that they can neither attend nor be represented.

The post card referendum provided in the Gibbs Bill does not meet the difficulty.

As a means of determining complex policies straw votes of men, who have not heard debate and have not read or thought upon the subject, are futile. Many conscious of their limitations refrain from the vote and others voice half-formed views. No one will devote much study to a problem of post card dimensions. Let us not resort to mail order opinions.

The only means by which an all inclusive State Association can function is by the representative system. Local units can readily meet and name, and if desired, instruct, representatives. Every member can attend and be heard at such local meetings. A basis of representation in proportion to the number of members seems preferable.

Delegates so selected are likely to be men of standing and ability. Inasmuch as they have a definite status in the state meeting and a duty to attend rests upon them, a pretty complete attendance is likely. As the representatives would report back to local meetings, knowledge of state bar proceedings would, I feel, be more generally spread in the profession than at present.

The state bar meeting should be organized as a deliberative representative assembly—almost a novelty in present-day America. I would not restrict floor privileges, committee membership or offices to delegates, but would grant these rights to all members and urge their attendance, irrespective of their being chosen to represent a local association. But policies should be determined by vote of the representatives. They would hear and participate in the debates and would unquestionably give a better informed vote and one more representative of the enlightened opinion of the bar than any post card canvass would do. To a bar so organized I believe we would be willing to entrust real power.

Annual registration and payment of dues are matters of course. Those fees should adequately finance the organization as a sound business proposition. While I have no data at hand to estimate their amount, the \$3

fee provided in the Gibbs Bill seems almost as absurd as trying to finance through a silver offering and a collection plate. While membership in the bar should not be made costly or oppressive, it ought in value and dignity to equal at least a third class secret society.

As to grant of powers, the Gibbs Bill is hard to take seriously. It gives the State Bar Association less power than a lodge or a noon lunch club—for they at least can control their associates—and that power is denied the state bar.

It is granted the right to maintain a law library at Albany. The state already maintains one better than the bar is likely to acquire in years and it is open with splendid service to every member of the bar. Moreover, a library in Albany is not highly useful to the country lawyer.

Aside from this, the Gibbs Bill creates only a glorified debating society. The Gibbs Bill merely makes specific application to lawyers of the right of free assembly, free speech and the right to petition for redress of grievances. But it adds nothing to such rights. The State Bar could recommend as much as a ladies auxiliary and could do absolutely nothing. It would create a mere phantom bar whose effect upon professional standards would be only that of a scarecrow—it would awe the timid until its straw body was seen. Then it would take its place along with other curious and useless legalisms.

A State Bar, to justify its birth pains, must have the following, which I state as a minimum grant of power.

First—To hear complaints and investigate claims of illegal practice of the law, to subpoena witnesses, take proofs and make findings which will be presumptive evidence upon which injunction shall issue from the Supreme Court to restrain violations. This deprives no man of his day in court.

In the rural districts the two chief illegal practitioners are justices of the peace who create more business than they do, and trust companies who solicit estate and trust business, drawing of wills and conduct more or less illicit law practice. If one in private practice makes complaint, his motive is misunderstood, he is pilloried as a busybody and gets scant support from the local bar, many of whom are not free to oppose the interests involved. A state association investigating at the request of a local member would be free of this sort of thing and the mere existence of the power would largely suppress the evil.

Second—To my mind the bar should have some functions as to admission. The present system of examination and admission should be supplemented by requiring the formal endorsement of the appropriate local association or committee thereof, in place of two character affidavits as at present. Affidavits are readily obtained for submission to examiners who will not know

the applicants or the affiants, and the making of which in the generalities permitted entails little responsibility. I would retain the present system of ascertaining the educational qualifications of the applicant but place the responsibility for character and general fitness squarely upon the local association. It would have a better influence upon both applicants and the bar if the association had this veto power over admissions.

Third—The bar should be entrusted with power of disbarment, discipline and reprimand,—probably to be exercised through the state rather than the local organization. I would also retain all of the present powers and methods of disbarment and protect the individual by giving him the right to certiorari as to action by the association. But to grant the power would place a new restraint upon the wayward and awaken a new responsibility among the bar.

Fourth—The State Bar, if it is incorporated, should be incorporated upon such a basis that it could adequately finance and maintain what would correspond to a bureau of justice or a state division of the American Law Institute. This would require paid and steady work in codification of legislation, harmonizing and modernizing the civil and criminal law and practice, and generally studying and recommending legislative measures touching legal administrations. These problems receive little legislative attention because it is no one's duty to press the remedy. Such a work carefully and disinterestedly done would command legislative and public support which no recommendations of the bar have ever had in the past.

Fifth.—I believe that the State Bar, functioning through itself or its units, must undertake and have the power of assessment upon its members for the purpose of sustaining legal aid work wherever it is necessary. A bar which has the privilege of advising rich clients, has the duty of advising the poor ones. We know that today that duty is shunned by many, is indifferently done by some and viciously done by other elements of the bar. There is no way that the bar as a whole can strike a blow at its own vicious elements and at the same time perform its social duty like removing the poor from the grip of the shyster. Given a monopoly of the right to practice, the bar must fully occupy the field.

The Gibbs Bill, breaking to the hope the promise made to the ear, has served the useful purpose of stimulating discussion among lawyers and laymen. It can serve no other.

Its enactment would not be a step towards better things—it would be only a false step. It would delay and discourage real reform of the bar during an indefinite period while its failure became demonstrated and bar organization brought into disrepute.

To my mind the matter should be recommitted and further considered awaiting the development of a sentiment among bar and public that will sustain the creation of a real bar association, all inclusive in membership, self-governing in character, with substantial powers to exercise and duties to

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perform and functioning upon a system that will represent every element of our ancient and well-loved profession.