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STANDARDIZATION RUN MAD : THE GIBBS BILL IN NEW YORK

On March 26, 1925, there was introduced in the State Senate of New York by a member of that body a Bill, known as the Gibbs Bill in subsequent discussions of the same, entitled "An Act for the regulation and organization of the bar of the State of New York, in order to promote the administration of justice." Although this measure did not pass the legislature and has not since then been reintroduced, it is understood to be a prospective plan for the regulation of the practice of law in that State which is being backed by a sufficiently influential minority of the bar to render it a formidable menace in the near future. So strongly is this menace feared by the bar of the City of New York, that the regular Bar Association of that city has been taking steps to combat the further propoganda in favor of the bill. Hon. William D. Guthrie, the President of that Association and one of the recognized leaders of the American bar, has issued and circulated a pamphlet containing a description and discussion of the proposed legislation, and voicing the opposing views of himself and of the Association of which he is the head.

The title of the Gibbs bill, above quoted, is a cunningly devised deception as to the real purpose and scope of the projected plan for revolutionizing the legal profession in New York. It should have been styled "An Act to Incorporate the bar of the State of New York, in order to destroy the personal integrity and independence of the lawyers of the State, and to place that incorporation in the hands of the least intelligent and reputable members of the legal profession;" for that is exactly what it proposes and would achieve if it became a law. Its provisions, in brief, are the following: (1) To supersede all voluntary organizations of the bar, state and local, and to substitute therefor the state-wide incorporation of the entire body of the legal profession, by making it compulsory upon every member of the profession to become and be a member of the corporation in order to be per-

mitted to practice law in the State; (2) To transfer, automatically and without the consent of their membership, the property, libraries, franchises and accumulated assets of all of the voluntary associations to the new statutory association, without compensation of any sort to the owners of such property and privileges; (3) The newly-formed corporation of the entire bar, acting through various "councils," shall have complete control of all ethical and disciplinary regulations of the bar, of all legislative reforms and changes affecting the profession, and generally of everything pertaining to the rights, duties, qualifications and privileges of the lawyers of the State. There are minor details for carrying into effect the above scheme, but the main features of it are as stated. They are so extraordinary and contrary to every tradition and principle heretofore recognized as the essential and primary characteristics of the legal profession, in the United States at least, that it is difficult to believe that they have met with the support of any considerable number of representative lawyers in New York or elsewhere. Yet, so potential is the pestilent influence of an active organized minority, exerting its efforts through a persistent and more or less unscrupulous propaganda, that, after several years of intrigue and ingenuity, the promoters of this radical movement succeeded in procuring its approval by the New York State Bar Association, without adequate discussion and practically by fraudulent methods of procedure. They also obtained the indorsement of Judge Charles E. Hughes, the prestige of whose name and authority was of immense value to their proposed innovation; but it must in truth be said that, notwithstanding his high official positions in the past and the prominence he has attained thereby in the counsels of his profession, Judge Hughes' opinion on a matter of this sort is entitled to no such weight as to render it conclusive. His successful career at the bar, on the bench, and in national affairs has been due largely to adventitious personal and political influences, rather than to substantial achievements among his legal brethren. At any rate, in this controversy he is overmatched by the judgment of many lawyers of equal if not superior wisdom and experience in the realm of legal and judicial problems. The Bar Association of New York City, after full and critical examination and the most deliberate discussion, has gone on record

against the Gibbs bill, for reasons that are clearly expounded in Mr. Guthrie's pamphlet, and it is not to be credited that the real leaders of the bar in that or any other State will lend support to the measure, if they take time to give an equally dispassionate consideration to the subject.

Aside from its effects upon the bar, in destroying the personal responsibility of lawyers as officers of the court and guardians of social order, civil rights and political principles, this plan to create by statutory compulsion a mass organization, with supreme control over everything relating to the practice and procedure of law, involves strange conceptions of corporation and constitutional law, at variance with rules and doctrines hitherto regarded as fundamental. It is a new idea in the law of corporations, that men engaged in a lawful vocation which they are pursuing in the exercise of individual freedom of choice and for objects at once meritorious and profitable, thereby acquiring vested rights in their chosen field of labor and ambition, can be herded like a flock of sheep and forced by legislative act to become members of an incorporated brotherhood, *nolens volens*, upon an equal footing with an indiscriminate horde of inferior, perhaps objectionable, fellow stockholders. It is also a novel phase of constitutional law that would authorize such a corporation to confiscate and appropriate to its own use and benefit, without compensation or the consent of the owners, a vast and valuable collection of private property accumulated by the intelligence and enterprize of voluntary associations, some of them already incorporated. The various state, city and local bar associations throughout the country, organized and developed by the activity and professional zeal of their membership, constitute only a minority of the total number of practicing lawyers, but they are the ones who represent and have embodied in their work the pride and prestige, the traditions and teachings, the public spirit and professional aspirations of the American bench and bar. Whatever of advancement and elevation in the profession has been accomplished in the past, or is tangibly evident in the present, has been promoted and procured by the efforts and vision of these organizations. Yet, by such laws as the Gibbs bill foreshadows these societies are to be legislated out of existence, and their membership diluted into helpless vacuity by the forcible

domination of a mass of miscellaneous mediocrity. In other words, the legal profession is to be standardized upon the low level of those practitioners who by their own conduct have demonstrated their unwillingness and unfitness to guide the destiny or to improve the *morale* of their calling. A material aspect of this movement is in itself enough to condemn it as a practical project. Of course there will be a fee charged for becoming a compulsory member of the proposed corporation, and, if the scheme is to be at all beneficial and to supersede the voluntary bar associations, that fee will grow in size by constant progression until its burden will become onerous beyond any present means of computation. No doubt the prospect of handling this steadily mounting fund has whetted the financial appetites of some of the sponsors of this revolutionary proposition.

The notion embodied in the Gibbs bill did not originate in New York. Its chief promoter and most zealous protagonist appears to be one Ex-Judge Goodwin of Chicago, who has commissioned himself to spread wide this gospel of standardized incorporation. Like all true propagandists he has been lecturing in many places for several years, by self-sought invitations or as a volunteer missionary of legal reform. He has spoken before local and state bar associations, has invaded the meetings of the American Bar Association, and by his plausible, and often deceptive, appeals for the improvement of the bar and the raising of professional standards, he has gained much favorable attention. The last few years have familiarized us with the usual methods of the faddists, the fanatics, and the typical uplifters in almost every field of utopian innovation, and the course of Judge Goodwin and his satellites has followed the customary line of proselytism. The average lawyer, like the average citizen, is too busy or indifferent to study the principles and objectives of new schemes of ostensible reformation, and if the purpose of the proposed reform appears to be a good one, he accepts it at its face value as expounded by the propagandist. Hence the apparent strength of the forces behind the Gibbs bill. Judge Goodwin's most voluble and valiant fugleman in New York is one Cohen, a member of the City Bar Association of New York, and some idea of the personal and racial arrogance, as well of the style of argument, of this gentleman may be gained from the

following choice morsel extracted from an article by him, which appeared in the March number of the *New York Law Review*.

"It so happens that for something like five thousand years all the females in the writer's line of ancestry have had the good taste to choose a direct descendant of the line of the high priesthood—the name Cohen is an indicium of this high birth. By right of inheritance, therefore, he may claim membership in the elite of the law, the oldest elite yet surviving. But the thoughtful will already have observed that the writer's ancestors claimed the right of membership in the elite not by personal choice, but by divine right. Note this: God's chosen people, not people who chose themselves."

Exactly what Mr. Cohen's Levitical antecedents have to do with the Gibbs bill is not obvious, but it is worth noticing that the Gibbs bill anticipates the accumulation of a public fund in the hands of the "New York Bar, Inc.," the size of which is calculated to appeal to the inherited financial ability of the *elite* in which he so boastfully claims membership.

Mr. Guthrie's pamphlet, which is in fact his report as President to the Association over which he presides, covers all of the principal points in the controversy, but he was not called upon to discuss one very pertinent aspect of the proposed legislation. The Gibbs bill is but another sinister symptom of the prevailing craze for standardizing and syndicating every thing and everybody in the country. It belongs to the same class of legislation as that which seeks to prohibit all education except that inculcated in the public schools, and to sterilize the spiritual and moral character of the nation by a purely secular and non-religious regimen of instruction. It is of a piece with the movement recently broached by some members of the Association of American Law Schools, to enact laws that will permit no person to practice law who is not a graduate of a law school that is a duly accredited member of that Association. It is close akin to the new cult of "Americanism," that advocates the obliteration of all differences among the citizens of this republic; which would extirpate from the foreign-born or descended citizen those inherited virtues and capabilities that make him a valuable ingredient in our cosmopolitan population; which would bar from our shores all immigration unless it comes from nations arbitrarily adjudged to be most like our own in racial and religious attachments; which would level all minds and aspirations to the same plane of mechanical imitation, and all manners and morals

to a common model of vulgar materialism; which would reduce our many-minded, adaptable, versatile, and heterogeneous population, composed of the choicest and most energetic races of the globe, each admirable and inimitable in its own way, to a monotonous composite of denatured and devitalized aliens, forced into an artificial harmony by the straight-jacket of legislation, and evolving a flat-pattern civilization whose dismal homogeneity can find relief only in paroxysms of folly, fanaticism, and licentious excess. That is the ultimate and inevitable end of the standardizing process that is in progress all over the land and in every department of activity. It is the greatest menace that endangers the nation, and it deserves to be keenly studied, fully described and fearlessly combatted. There is probably no man in the country better able to perform this service than Mr. Guthrie, the author of the pamphlet mentioned. His long and distinguished career at the bar, his mature judgment and approved courage, his freedom from personal or political bias, and his magnificent resistance to the standardizing mania, as evidenced in his arguments before the Supreme Court of the United States in the notable cases of the Nebraska foreign language law and the Oregon school law, signally equip him for such a task, and it is to be hoped that somehow he will find suitable opportunity to do this for his countrymen.

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