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THE FUNCTION OF UNIFORM STATE LAWS

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The subject of uniform state laws is of growing importance. It is in harmony with the general demand for efficiency and standardization of the present time.

At the time of the adoption of our constitution there was no thought of creating any government with national powers as we understand national powers at the present time.[1] It was a constitution designed to provide for national integrity, for national defense, and for what had always been regarded as the proper sphere of imperial control—the regulation of commerce. Our government is based upon the legal proposition that all local and domestic subjects should be controlled by the state, while all matters of national character should be controlled by the national government. The inherent powers of the original state governments have been reserved to the states, except as delegated to the Federal government.

Under this provision, the original thirteen states began their career with a wide diversity of laws. This was partially caused by the fact that settlers from the various countries of Europe brought their own laws and customs with them. Men in those colonial days lived in comparative isolation. At that time there was but little necessity for uniformity of state laws. There was little commercial or social intercourse. The telegraph and telephone had not been invented. Each neighborhood then formed a little industrial and social world of its own. The people were engaged in a fierce struggle to establish and maintain their independence as well as to provide the necessities of life. Many years later, it required as much as six months to travel from the Atlantic to the Pacific coast. There were few means of communication between distant towns. There was no need at that time for people to consider the subject of uniform state laws.

The application of steam to transportation and manufacturing resulted in a general awakening of the people to the possibilities of the

* See biographical Note, Page 149.

[1] See paper read before the Indiana State Bar Association by Judge Lex J. Kirkpatrick at the 1918 session and published in the Proceedings of the 22nd annual meeting of said association. From this paper much of the data herein discussed was obtained.

new world in which they had sought refuge for human liberties. With the advent of the steam engine, different communities were brought into closer relationship; and later, with the advent of the application of electricity in the telephone, telegraph and radio, not only our own country, but the civilized world has been more closely knit together. The man in New York has become a neighbor to his brother in San Francisco, as well as to those in foreign lands. It is now a daily occurrence for radio owners to receive evening entertainment from New York, New Orleans, and Denver, and all this at their own fireside. The farmer now gets his daily market reports, and reports of contests of national interest in baseball and football are received play for play within a few minutes after the actual happening. We now travel by auto, by rail, and by air. It can be truly said that strangers among us are rare. This wonderful transformation in the industrial and social order is briefly referred to in order that we may, if possible, more fully understand the reason for this insistent demand for uniform laws.

Every observer knows that in electrical and mechanical engineering the trend is to "standardization." The success of the Liberty Motor which was a powerful factor in favor of this country and our allies in winning the World War is due to this principle. The various parts of this motor are so standardized that they may be manufactured in different factories in remote parts of the United States, and sent to one factory to be assembled and installed as a common unit, thus reaching the highest degree of efficiency. In the automobile industry, the trend has been toward standardization as is shown by the great consolidations and the dying out of the smaller manufacturers. It is predicted that the radio industry will soon follow along this line.

In the commercial world, no argument is necessary to show the importance of uniformity. Many years ago there were numerous narrow gauge railroads built and operated in this country, but it was soon found that such railroads were not practicable. All the gauges must be alike if trains of different companies were to use the same tracks. After a waste of millions of dollars, the gauges of the railroads of this country, with the exception of a few roads in the mountains, were standardized. The particular size of the gauge was not so important; but a standardized gauge was essential for the practical development of transportation throughout the country. The result was uniformity of gauge and equipment; the diversified system was inconvenient and expensive.

In the various states of this union, there is as wide a diversity of statutory law, and the interpretation thereof by our courts, as formerly existed in the gauge of railroads.

We are not making the same mistake with our highways, since many of the state highways, and all of those which receive Federal aid, are now built to a standard furnished by the engineers of the

Federal government. In the matter of diversity of language, we now realize, as never before, the advantage of uniformity. Our government is now urging that every man and woman in this country should be able to speak the English language. As a matter of efficiency, it is insisted that the English language should be taught not only in our public schools, but in our shops and business houses, when necessary. It is understood by everyone who employs a large number of laborers in the various activities in this country that efficiency greatly increases with uniformity of language. Advancing social and industrial standards must keep step with the advance of business processes or society will soon be so out of tune that the harmony of our civilization will be destroyed.

While we fully realized that standardization has supplanted diversity in the industrial world, and thus adds immensely to the efficiency of our manufacturing and commercial activities, I fear that as lawyers and law makers, we have not applied to our state the vital principle that has revolutionized the commercial and social world. The rule of state statutory law, on most subjects, changes as often as we cross the state line. This fact does not make it impossible to obey the law, but it does make it inconvenient, costly and difficult.

All lawyers who have given special attention to the public utility laws of the various states, wherein Public Service Commissions have been provided for, recognize the value of uniformity in public service laws in the rules of practice before the various commissions. This uniformity also tends to increase the value of the securities in the various states, possessing public service commissions, and saves counsel who examine and pass upon such securities a vast amount of labor.

Uniformity in all state laws would be neither practical nor desirable; local conditions in each state call for local laws. When we advocate uniform legislation, we refer only to laws of general concern.[2] The principle of uniformity, when thus applied, will in no wise destroy or affect the individuality of the state. If any uniform law proves unsatisfactory to any state, it is within the province of the legislature to amend or repeal the same.

There are those who object to the principal of uniformity on the ground that it would tend to centralization, and the placing of too much power in the Federal government. This objection is untenable. On the contrary, uniformity of state laws may be a formidable defense against encroachment of the Federal power, and unless the states do adopt uniformity on subjects which affect the whole union, there will always be a demand that the Federal power take up the subject and

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[2] See discussion of Prof. Ernest Freund of the University of Chicago printed in the Proceedings of the 22nd annual meeting of the Indiana State Bar Association from which paper valuable suggestions were obtained.

pass laws regulating the same. We need no better example of this than the child labor law.

A recent utterance of President Coolidge on the subject can well be quoted. The president said:[3]

> If we are to maintain the nation and its government institutions with a fair semblance of the principles on which they were founded, two policies must always be supported. First, the principle of local self government in harmony with the needs of each state. This means that in general the states should not surrender, but retain their own sovereignty and keep control of their own government. Second, a policy of local reflection of nation-wide, public opinion. Each state must shape its course to conform to the generally accepted sanctions of society and to the needs of the nation. It must provide a workable similarity of economic and industrial relations. It must protect the health and provide for the education of its own citizens. This policy is already well recognized in the association of the states for the promotion and adoption of uniform laws. Unless this policy be adopted by the states, interference by the nation cannot be resisted.
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> Throughout our whole nation there is an irresistible urge for the maintenance of the highest possible standards of government and society. Unless this sentiment is heeded and observed by appropriate state action, there is always grave danger of encroachment upon the states by the national government. But it must always be realized that such encroachment is a hazardous undertaking, and should be adopted only as a last resort. The true course to be followed is the maintenance of the integrity of each state by local laws and social customs which will place it in comparative harmony with all the others. By such a method, which can only be the result of great effort, constantly exerted, it will be possible to maintain an "Indestructible union of indestructible states." The maintenance of this position rises in importance above the hope of any other benefits, which constant changes would be likely to secure. And the nation can be inviolate only as it insists that the state be inviolate.

We have in recent years heard considerable complaint on account of the law's delay and uncertainty. This is due largely, to the diversity of the law, which necessarily leads to litigation and useless expense and delay. Uniformity of legislation by our various states and uniformity of interpretation by judicial construction, go hand in hand and thus tend to relieve the busy lawyer, as well as the litigant, of the mass of conflicting decisions upon the same subject matter in different states.[4] A uniform law contains and provides that "this

[3] From the address of President Coolidge on the occasion of the dedication of the Arizona Stone in the Washington Monument.

[4] See Proceedings of the 32nd annual meeting of the National Conference of Commissioners on Uniform State Laws published in Reports of American Bar Association Vol. XLVII, year 1922. (4 1-2) On the question as to the purpose of the Negotiable Instruments Act, see the following decisions: *Rockfield v. Springfield First National Bank*, (Ohio), 83 N. 1 392, 14 L. R. A. (N. S.) 842; *State Bank v. Michel*, 152 Wis. 88, 139 N. W. 748,

act shall be so interpreted and construed as to effectuate its general purpose and make uniform the law of those states which enact it." Under this provision the courts search the decisions of the courts of other states, under such statute, and apply the same in determining the questions involved. Thus it would not be long until uniformity in judicial construction would prevail in regard to uniform statutes. The courts of the various states will gladly coöperate to reach such greatly desired results.

The State Bar Association of Alabama in 1881 suggested the necessity of such a movement. The General Assembly of the State of New York in 1888 created a Board of Commissioners to confer with like Commissioners from other states, which took the form of a law on April 28, 1890. A resolution was passed by the American Bar Association in 1889, at Chicago, recommending the organization of a National Conference of Commissioners on Uniform State Laws and a committee was appointed on Uniform State Laws. In 1890 the legislature of the State of New York adopted an act authorizing the appointment of "commissioners for the promotion of uniformity of legislation in the United States," whose duty it was to examine certain subjects of national importance in which there was conflict among the laws of the several states; to ascertain the best means to effect an assimilation and uniformity in the laws of the state, and especially whether it would be advisable for the State of New York to invite the other States of the Union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states. In the same year, a special committee of the American Bar

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1131; In the case of *Wisner v. Gallitzin First National Bank,* 220 Pa. 21, 25, 68 A. 955, 17 L. R. A. (N. S.) 1266, the court said, "The purpose of the legislation is to produce uniformity on the subject among the several states, and to make certain and definite by statute the rules of law governing negotiable paper." Another court said, "It was intended principally to simplify the matter by declaring the rule as established by the weight of authority." See *Campbell v. Cincinnati Fourth National Bank,* 137 Ky. 555, 126 S. W. 114; A Massachusetts court said, "It is a matter of common knowledge that the Negotiable Instruments Act was drafted for the purpose of codifying the law upon the subject of a negotiable instruments and making it uniform throughout the country through adoption by the legislatures of the several states and by the Congress of the United States. The design was to obliterate state lines as to the law governing instrumentalities so vital to the conduct of interstate commerce as promissory notes and bills of exchange to remove the confusion or uncertainty which might arise from conflict of statutes or judicial decisions amongst the several states, and to make plain, certain and general the controlling rules of law. Diversity was to be moulded in uniformity. *Union Trust Co. v. McGinty,* 212 Mass. 205, 206, 98 N. E. 679; See also *Fox v. Terre Haute National Bank* (Ind. App.) 129 N. E. 33; *Bank v. Katterjohn,* (Ky.) 125 S. W. 1071; *State Bank v. Bilstad,* (Iowa) 126 N. W. 204; *Am. Bank v. McComb,* 105 Va. 473, 54 S. E. 14; *Cellers v. Dunham,* 135 Mo. A. 396, 115 S. W. 1086.

Association, after reciting the action of New York, reported a resolution that the Association recommend the passage by each state and by Congress for the District of Columbia and the territories, of a law providing for the appointment of commissioners to confer with commissioners from other states on the subject of uniformity in legislation on certain subjects. As a result of the action of New York, of the recommendation of the American Bar Association, and of the efforts of various interested persons, the first Conference of Commissioners was held in August, 1892, at Saratoga, New York, for three days immediately preceding the annual meeting of the American Bar Association.

While in the first conference but nine states were represented, since 1912 all the states, territories, the District of Columbia, Porto Rico, and the Philippine Islands have been officially represented, and the commissioners are appointed by legislative or executive authority from the several states and territories.

The object of the conference, as stated in its Constitution, is "to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable." The conference works through standing and special committees. In recent years, all proposals of subjects for legislation are referred to a standing committee on Scope and Program. After due investigation, and sometimes a hearing of parties interested, this committee reports whether the subject is one upon which it is desirable and feasible to draft a uniform law. If the conference decides to take up the subject, it refers the same to a special committee with instructions to report a draft of an act. With respect to some of the more important acts, it has been customary to employ an expert draftsman. Tentative drafts of acts are submitted from year to year and are discussed section by section. Each uniform act is thus the result of one or more tentative drafts subjected to the criticism, correction and amendation of the commission, which represents the experience and judgment of a select body of lawyers chosen from every part of the United States. When finally approved by the conference, the Uniform Acts are recommended for general adoption throughout the United States and are submitted to the American Bar Association for its approval. In unifying legislation the National Conference is endeavoring at the same time to lift it to the plane of the best standards of jurisprudence, and, as stated before, it also has a committee on Legislative Drafting, with an expert in charge. By these methods the danger of submitting "half baked" legislation is minimized.

The uniform negotiable instruments act, one of the earlier productions of the National Conference, has now been adopted in fifty-one jurisdictions. Indiana has adopted three uniform laws as follows: Negotiable Instruments Act in 1913, the Stock Transfer Act in 1923, and the Warehouse Receipts Act in 1921. All of these acts were adopt-

ed as drawn by the commission and were not modified in any material respect.[5] The following uniform Acts have been presented and recommended by the National Conference and adopted in the following number of states:[6]

Uniform Acknowledgements Act	9
Uniform Acknowledgements Act, Foreign	7
Aeronautics Act	8
Bill-of-Lading Act	26
Child Labor Act	4
Conditional Sales Act	8
Cold Storage Act	6
Declaratory Judgments Act	6
Desertion and Non-support Act	18
Extradition of Persons of Unsound Mind Act	8
Fiduciaries Act	6
Flag Act	9
Foreign Depositions Act	10
Fraudulent Conveyance Act	12
Illegitimacy Act	4
Land Registration Act	3
Limited Partnership Act	13
Marriage and Marriage License Act	2
Marriage Evasion Act	5
Negotiable Instruments Act	51
Partnership Act	16
Proof of Statutes Act	7
Sales Act	27
Stock Transfer Act	18
Vital Statistics Act	1
Warehouse Receipts Act	48
Wills Act, Foreign Executed	7
Wills Act, Foreign Probated	4
Workmen's Compensation Act	2

While much has been said and written on the subject of uniformity in divorce proceedings, there seems to be a question as to whether the country is ready at the present time for uniformity in the causes for divorce. South Carolina prohibits divorce for any cause whatever, and to nail her policy down has put the prohibition into her constitution. New York will grant a divorce only upon what the newspapers call the "statutory grounds," namely, adultery, and has

[5] See Acts of 1913, page 120; Acts of 1921, page 220; Acts of 1923, page 71.

[6] See Reports of American Bar Association, 1924, Vol. XLIX, page 504 being the report of Committee on Uniform State Laws referring to the recent publication of "Uniform Laws Annotated" by Edward Thompson Company.

In closing his report as chairman of the Committee, Hon. Nathan W. MacChesney said, "The movement for uniform state laws is historically correct, traditionally true, economically sound, democratically American and nationally efficient . . . In time we may count upon the public generally recognizing, as the President of the United States has stated, that our movement is not merely legally desirable, but is governmentally indispensible if our nation, as we know it, is to continue to function in its historic form under the constitution of the United States."

apparently no intention of falling in line with most of the states that have several grounds for divorce.[7]

Lawyers are naturally conservative in matters of legislation. It is but natural that a movement of the importance of that for uniformity of state laws should have its opponents. The writer has examined with interest the recent article by John Hemphill of the New York bar, and reprinted in the November issue of the INDIANA LAW JOURNAL wherein the genial Mr. Hemphill scolds the American Bar Association for sponsoring the various uniform acts which have been submitted by the Commission. The only real argument advanced, after sifting the slang expressions which would do justice to our George Ade, is that there is no real need for uniformity in many fields of the law. Granting that this be true, then the several legislatures will speedily refuse to enact the laws. When we consider that our own state has adopted but three of the several acts since 1892, I do not believe that Mr. Hemphill's claim that the several legislatures are awed and intimidated into adoption by the American Bar Association will hold water.[8]

On the other hand, an editorial in the *Green Bag*, December, 1911, paid the Uniform Law Conference the following high compliment: "The conference has come to exercise a function of great importance in molding the legislation of the several states, and should be consulted by the State Legislatures for advice on important projects of State Legislation, and aided with suggestions from other sources in its work of shaping new uniform acts." Prof. Freund recently said: "Let me assure you that the National Conference fully believes in retaining State autonomy where uniformity is not a vital need." Surely we should divest our minds of prejudice against uniform laws merely on the ground that they will in some respect change the law of our state. Any measure recommended by the National Conference always deserves earnest consideration in every state.

[7] See paper of Mrs. Edward Franklin White read before the 29th annual meeting of the Indiana State Bar Association, July, 1925. While the states hesitate in adopting uniformity in marriage and divorce laws, the advocates of centralization are at work in urging that the Federal government assume the burden. In a paper read before this meeting of the Indiana State Bar Association, the writer urged an amendment to the federal constitution and the adoption of a national divorce law. "A married pair may find themselves law violators when they leave the state of their marriage and travel to another state which does not recognize their marriage, or their divorce, or their remarriage. To express it in a pun, their united state may not be recognized in all of the United States. Is it not quite as much a matter of national concern that the status of a citizen shall be uniform in the several states as the matter of the creation of a citizen by naturalization? Is not the shifting of families from one state to another with their property and civil rights as much within the broad meaning of interstate commerce as the transportation of goods from one state to another? Is financial bankruptcy any more a national interest than bankruptcy of the home and family?"

[8] See Vol. I, INDIANA LAW JOURNAL, P. 55, November, 1925.