The Legal Nature of Exclusive Social Clubs: An Overview
Privateness, Discrimination and Secrecy at the Face of Law

Zhengmao Sheng

What is public, and what is private? This question forms not only the basis of all governments, but also that of all legal systems. The public-private distinction first began to take shape "in the sixteenth and seventeenth centuries," when nation-states and political sovereignty molded each polity into an identifiable "public realm." This public arena was then offset by a trend of maintaining private spaces against "the encroaching power of the state."[1] For a long time this line was clearly drawn: the Fourteenth Amendment, for one infamous example, was held to be applicable only against "State regulations or proceedings," not the actions of any "mere individual".[2] The liberty of contract remained a bulletproof defense against state legislation until squarely denied in 1937,[3] and an expansive administrative state into what were previously regarded as private spheres since the 1890s resulted in much conflict and opposition.[4] However, prominent legal scholars have pronounced this distinction dead (or at least theoretically so) by the time of *Shelley v. Kraemer* (1948)[5], and many allege that this gradual decline had begun in the 1920s at the face of a "socially oriented legal thought."[6]

---

[1] Morton J. Horwitz, "The History of the Public/Private Distinction," *University of Pennsylvania Law Review* 130 (1982): 1423. https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4677&context=penn_law_review.
[2] *The Civil Rights Cases*, 109 U.S. 3, 11 (1883), 23-24.
[3] *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).
[4] Michael Willrich, "Struggles over Individual Rights and State Power in the Progressive Era," in *Oxford Research Encyclopedia of American History* (Oxford University Press, 2016), 1. Doi: 10.1093/acrefore/9780199329175.013.103.
[5] Duncan Kennedy, "The Stages of the Decline of the Public/Private Distinction," *Univ of Pennsylvania Law Review* 130 (1982): 1352. https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4675&context=penn_law_review.
[6] Hila Shamir, "The Public/Private Distinction Now: The Challenges of Privatization and of the Regulatory State," *Theoretical Inquiries in Law* 15, no. 1 (2014): 7, citing Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850-2000,* in *The New Law and Economic Development: A Critical Appraisal* (David M. Trubek & Alvaro Santos eds., 2006): 37-59.

So, back to the question here: what is public, and what is private? Duncan Kennedy, one of the most influential legal historians of this era, proposed a loop of individual and institutional "roles" that increase in their "privateness": legislators/judges/executives… public utilities…labor unions... very large corporations, small businesses… individual workers, consumers/tenants… churches, and eventually parents.[7] If we are to take this chain of being, then the classical legal theorists will certainly draw a concrete line between labor unions and "very large corporations," assigning the former cluster to legal scrutiny and the latter private discretion. However, since the beginning of the 20th century the line has shifted to the right, placing business establishments in the realm of public concerns. Nonetheless, there was still plenty of room left between "small businesses" and "individual workers", a niche occupied by civic associations, societies, and exclusive or semi-exclusive social clubs, whose privateness became the focus of many court battles in the 1920s-1930s and since the 1960s.

I. What are Social Clubs?

Social clubs, previously known as "gentlemen's clubs," first appeared in 18th-century England (London, essentially). Originally to differentiate their more "elegant clientele" from the general populace served by the prosperous coffee-houses, the club-houses soon assumed their full identity as meeting places of like-minded and affluent gentle*men* by 1815. Their exclusivity was maintained by entry fees and careful membership selection (usually by recommendation), and those fortunate to be admitted enjoyed company, networks, and social prestige --- if their

[7] Kennedy, "The Stages of the Decline," 1355.

club happened to be among the more respectable ones.[8] Reciprocally, the clubs can also boast of their illustrious members. One of the most ancient and exalted clubs --- the White's --- did not hesitate to introduce their clients as "cultured and responsible men of character" among whom it counted Sir Robert Walpole, Lord Palmerston, and dozens of high aristocrats.[9] Such clubs also functioned as diners, bars, lounges, meeting halls and libraries for their members, and were usually governed by binding constitutions and bylaws.

The exclusivity of these clubs began to loosen, and their number proliferate, since the 1850s in Britain, as new clubs began to focus on artistic, literary, or occupational qualifications. This development was closely followed in the United States, where some of the oldest clubs claim greater ages than the republic itself.[10] By the 1900s, American social clubs had proliferated to all major cities, and country clubs, which first appeared in the 1880s, were also recruiting more and more among the wealthy that would have otherwise joined their urban counterparts.[11] These enduring institutions differed fundamentally from their British predecessors in that their admission was less restrictive, their spirit less intellectual, and their environment more recreational, in which food, drinks and sports surpassed politics and ideology in significance. In the 1920s, especially from 1923 to 1930, they have turned into popular associations and had

---

[8] For more information on the roles of social clubs in 19th-century Britain, see Antonia Taddei, "London Clubs in the Late Nineteenth Century," *Discussion Papers in Economic and Social History* 28 (University of Oxford, April 1999). http://www.nuff.ox.ac.uk/economics/history/paper28/28taddeiweb1.pdf.
[9] Percy Colson, *White's: 1693-1950* (London: William Heinemann Ltd, 1951), 17.
[10] For example, the South River Club in Maryland had been convening regularly at least as early as 1740. See National Park Service, U.S. Department of the Interior. *National Register of Historic Places Inventory - Nomination Form.* May 15, 1969. https://mht.maryland.gov/secure/medusa/PDF/NR_PDFs/NR-27.pdf.
[11] A large-scale study on American country clubs does not yet exist, but many accounts on individual clubs are available, such as those of the Concord Golf Club (established around 1895 in Massachusetts) and the Ho-Ho-Kus Golf Club (established in 1893 New Jersey). See https://www.concordcc.org/files/library/HistoryofConcordCountryClub.pdf and https://www.rcc1890.com/files/HistoryofRCC_Revised.pdf. These facts may have prompted John Steele Gordon to draw the conclusion that "in the 1880s clubs sprang up on the outskirts of major cities…" See "The Country Club," *American Heritage* 41, no. 6 (1990). https://www.americanheritage.com/country-club.

received tax exemption in 1916.[12] The attention such status drew, alongside their growing membership, together engendered increasing doubts on their proclaimed “privateness”, and led to a series of court battles in that era.

II. Liquor Sale, Taxation, and the Clubs

The impact of deteriorating public/private distinction was not equally distributed. Arguably the commercial and business regimes were forced into greater reforms than the others, hard-pressed by anti-monopoly campaigns, federal regulations and more labor-sympathetic legislators. At the same time, the government also sought to impose moral standards onto the populace, and the Eighteenth Amendment establishing nationwide alcohol prohibition marked the heyday of this trend. This ban on intoxicating liquor well conformed to an expanding array of revenue codes in the states that fashioned strict licensing and taxation clauses on the manufacture and sale of alcoholic beverages. Curiously, it was also from these laws concerning intoxicants that a vague legal outline of social clubs initially stemmed. These were at first often peripheral or merely implicational, but in the 1900s we saw more and more state legislatures passing laws explicitly addressing the status of social clubs in their anti-alcohol campaigns.

In the Revenue Act of 1862, the first major chapter is entirely dedicated to duties on distilling or selling “spirits, ale, beer, and porter”. Its section 64 exhaustively provides standard duties for 33 classes of persons and corporations where a license must be purchased before alcoholic beverages can be put for sale. Among them social clubs or associations are not found, but their immunity from this legislation is implied by the language that “every place where food

---

[12] See United States Internal Revenue Service, “C. Social Clubs: IRC 501 (c)(7) Organizations,” *1982 EO CPE Text*. https://www.irs.gov/pub/irs-tege/eotopicc82.pdf.

or refreshments of any kind are provided for *casual visitors* and sold for consumption" is deemed a "eating-house" and must pay ten dollars for each license.[13] The privateness of clubs prevailed on a national level. However, a federal definition of "clubs" would not be reached until 1924, and in the years in between, the burden of regulating private associations rested on individual states, as they held actual powers on their corporation and taxation.

For example, in the state of Tennessee, as early as 1875, its *Code* had, under its "Private Corporations" title, granted charters to those "for the general welfare and not for profit", at first including societies devoted to "literature, history, painting, music [and] fine arts" and then "clubs for... pleasure" in 1885.[14] However, whether these were deemed private meeting places or public accommodations merely *presented* as private was a peculiar matter, and there was sufficient evidence on each side. To support the former, the same legislature passed a *Revenue Act* in 1899 that did not remotely approach the issue of clubs or societies but instead levied privilege taxes on everything else from advertising companies to those staging "wild west shows"[15]. Such leniency continued into the 20th century, as a new version of the same legislation in 1907 in essence equates social clubs to tax-exempt "fraternal benevolent and social organization[s]"[16] and was later upheld by the Tennessee Supreme Court.[17] On the other end, nonetheless, we find the *Hermitage Club* case of 1899, which subjected a stereotypical social club maintaining a reading room, billiard tables, and a barroom where stocks of liquors were "kept" and "dispensed" to state

[13] *An Act to provide Internal Revenue to support the Government and to Pay Interest on the Public Debt of 1862*, Public Law. 37th Cong., 2nd sess. *Congressional Record* chap. 116: 457. https://www.loc.gov/law/help/statutes-at-large /37th-congress/session-2/c37s2ch119.pdf.

[14] Frank M. Thompson et al., *Thompson's Shannon's Code of Tennessee 1918* (Louisville: The Baldwin Law Book Company, 1918), 1006-1007. Thomp. Shan. Code (1918), § 2513. 1973. Corporations not for profit.

[15] *Revenue Law, 1899.* HR 693. See Theo F. King, *Digest and Explanation of the Tennessee Tax Laws* (Nashville: Brandon Printing Company, 1899).

[16] See *Moriarty v. State*, 122 Tenn. 440 (1909).

[17] *Id.*

privilege taxes under the conviction that it constitutes a liquor dealer.[18] Both opinions were authored by William Dwight Beard, Tennessee's Chief Justice from 1902 to 1910.[19] To him, the two cases were aligned to the text of the law, and served as complements, not contradictions, to each other. A closer look at the two cases should well illustrate the legal nature of social clubs before the late 1910s.

In both *Hermitage Club* and *Moriarty*, the original defendants were found to be *bona fide* social clubs, not mere guises of commercial dealerships. They were also chartered under the same act and served approximately the same purposes. In fact, they were so similar in every respect that the State in *Moriarty* confidently proposed *Hermitage Club* as a binding precedent. Justice Beard disagreed, and found the distinction in two acts by the latter. First, the Hermitage, even before the privilege tax was introduced in 1899 (just before the legal controversy), had for some unknown reason acquired a revenue license, which was not mandatory. This acquisition thus established its dealership *prima facie*, and Beard dismissed the counterarguments promptly. Secondly, while Moriarty's chapter of the Order of Elks charged its clients only for "the cost of the drink, with that of 'service' added," Hermitage's charter was more ambiguous. On one hand it claimed that "no profit [derived from the liquors] has ever been declared or paid", but at the same time it ordered all such "profits" be deposited "into the general fund [of the club]." After recognizing the difficulty it affords, the court opted to find it an implication of profit-making, and, combined with the fact that the alcohol was also provided to the invited non-members, proof of Hermitage's status as a public dealer in the trade of intoxicants.

---

[18] See *Hermitage Club v. Shelton*, 104 Tenn. 101 (1899).

[19] "Tennessee's Former Chief Justice," *Case & Comment: The Lawyer's Magazine* vol. 17 (1910-1911), 478-479.

The seemingly reasonable deliberations are not as sound as the court wished them to be. The general fund of Hermitage was used exclusively to furnish the needs of the clubhouse and not for personal or institutional enrichment, which were apparently the true targets of state taxation. It can also be argued, not without merit, that its income is of the same nature as the payments Moriarty, a steward, received for his "service" at the Elks, both being essential assets of a club. Furthermore, in other precedents the presence of invited guests did not seem to bother the judges, further reducing the validity of Tennessee's *Hermitage* ruling.[20] Conclusively, the license must have been the main ground on which to base a conviction, and this test is obviously too individualized. Any club, as long as it does not sell alcoholic beverages for explicit private gains, can retain its privateness by passively lacking a revenue license, and can as easily be transformed into a public store in the eyes of the law by positively applying for one, without any change in its method of management. At the end of the day, in *Moriarty*, Justice Beard had to turn the attention away from the licensing issue, and settle the test on the subjective question whether "the serving of liquor… is the principal purpose, or one of the chief objects, of… an organization."[21] The privateness of clubs was unchallenged at large, but its opposition would gradually become more formidable in subsequent cases.

Simultaneously, tax collectors and state officials were waging wars against social clubs in most other states, and the state supreme courts became divided. Roughly half of them tended to support the threatened clubs and renounce the taxation they suffered, most pronouncedly in New

[20] For example, see *State v. Austin Club*, 89 Tex. 20 (1895).

[21] Indeed, the test also demanded that if any income from serving intoxicants was pooled into a general fund or used for "the payment of salaries," the club must be considered a disguise over an actual dealership. However, this was in some, if not direct, conflict with the facts of *Moriarty*, in which the staff received part of the income as compensation of their service. Therefore, I chose to dismiss this second half which is obviously too tenuous.

York[22], Pennsylvania[23], Montana[24], Nevada[25], North Carolina[26] and Virginia[27]. These cases were argued along similar lines: that the clubs were not purported to sell alcohol, which was given only to members or guests, that the price charged was sufficient only to recover the stocks consumed and did not count as commercial profits, and all underscored how the transaction was merely "incidental". The other half, on the other hand, was more prone to rule against the club directors, such as in the states of Minnesota[28], Colorado[29], Illinois[30], Michigan[31], Louisiana[32], and Georgia[33]. This was especially the case in Georgia, whose legislation passed "general tax acts" in both 1907 and 1909 to directly impose obligatory licensing and taxation on social clubs that served alcohol even only to their affiliates. In the other states, however, the private sphere of clubs was placed under attack not by the laws, which resembled their counterparts elsewhere, but from the way courts interpreted them.

For example, the Supreme Court of Colorado, in its *Manning* (1909) opinion, asserts that a social club, run by a "board of control", being the directors who were empowered to "dispose of liquor to the club [members]," cannot ensure "joint use, occupancy and enjoyment" by all its members. It continues to equate the board of directors with "agents" of club members, between whom any transaction is an unwritten contract, thus "a sale pure and simple". This perspective

---

[22] *People v. Adelphi Club of New York*, 149 N.Y. 5 (1896).
[23] *Klein v. Livingston Club*, 177 P.A. 224 (1896), no. 181.
[24] *Barden v. Montana Club*, 10 Mont. 330 (1891).
[25] *State v. University Club*, 35 Nev. 475 (1913), no. 2005.
[26] *State v. Colonial Club*, 154 N.C. 177 (1910).
[27] *Piedmont Club v. Commonwealth*, 87 Va. 540 (1891).
[28] *State ex rel. Young v. Minnesota Club*, 106 Minn. 515 (1909), nos. 15,690-(21).
[29] *Manning v. Canon City*, 45 Colo. 571 (1909), no. 6461.
[30] See, for example, *South Shore Country Club v. People*, 228 Ill. 75 (1907) and *People ex rel. Stevenson v. Law & Order Club* 203 Ill. 127 (1903).
[31] *People v. Soule*, 74 Mich. 250 (1889).
[32] *State v. Boston Club*, 45 La. Ann. 585 (1893), no. 11,111.
[33] *Deal v. State*, 14 Ga. App. 121 (1914).

necessarily struck at the very foundation of a social club's pillar, which is its fraternity both socially and legally. No major precedent sought to severe a club's board from its membership, recognizing their uniformity. *Manning*, however, essentially limited the permanent club establishment to its leaders, while reducing to the others to the establishment's temporary occupants, no more private than the travelers staying at an inn or a hotel, which were subject to all kinds of regulatory supervision. In *South Shore Country Club* (1907), the Illinois Supreme Court rejected all components of a typical "incidence" argument, and deferred to a strictly statutory application demanding "dram-shops" to acquire licenses for selling liquors[34]. The justices conceded that this term "has in popular accepation a… restricted meaning… used to designate a place where intoxicating liquor is sold at a public bar frequented by the public without restriction," but pointed out that a common-sensical definition should be abandoned at the face of textual specification. As the Dram-shop Act clearly defines a dram-shop as "a place where… liquors are retailed by less quantity than one gallon," and thus must encompass such social clubs that furnish an amount of alcohol within that maximum. Not only did it blur the distinction between a private club and a public-house even more, but it also implied how the "retail" barrier no longer prevented a court from convicting social clubs, which were increasingly being perceived as profit-seeking enterprises that should conform to state practices. Indeed, as late as 1914, it did not bother Judge James Robert Pottle of the Georgia Court of Appeals writing how "the decided weight of authority" in cases of this type had shifted against the clubs[35].

Before I go into the subsequent developments of relevant cases at a state level, it might be helpful to point out how rare club tax cases went to the U.S. Supreme Court. The only one it

---

[34] The statute can be found in the Illinois Dram-shop Act, Ill. Stat. p. 750 (Hurd, 1901).
[35] See *Deal v. State*, p. 126.

heard in the first two decades of the 20th century was *Cosmopolitan Club v. Virginia* (1908)[36], and the controversy centered on the peripheral issue whether the club was but a sham.

Comparatively, the litigation in state courts continued well into the latter half of the century. One such case, *New York State Liquor Authority v. Sutton Social Club* (1978)[37], derived from a "social club" that served alcoholic drinks without a license, and the New York Supreme Court promptly called their transaction a "sale". It appears, at first glance, that this was nothing more than a faithful, if not blind, adherence to a long line of precedents since the 1890s, whereas a closer look would find the Sutton Social Club quite different from the Elks or the Hermitage. The former, "open only on Friday and Saturday nights from about 10:30 p.m. until at least 4:00 a.m." providing "free alcoholic beverages, as well as dancing and backgammon," epitomizes the new cluster of "social clubs" that began to deviate from their respectable ancestors. The model of gentlemen's clubs was more often exploited as a guise, and the term itself a euphemism, of the more disreputable "nightclub[s] for men that features scantily clad women dancers"[38]. Arguably Sutton featured less troublesome forms of entertainment, but a schism was already under way, and the judges were well aware of that. In *Sutton*, Justice Kelly O'Neill-Levy made use of the legal category "bottle club"[39] to categorize the new trend, confirming its distinction from "a legitimate political, religious, fraternal or charitable club". It was also noted that despite its advertisement of being a "membership club", Sutton's clientele was less restrictive, and the admission fees seem to be the only criterion. As clubs burgeoned and flourished in a

---

[36] *Cosmopolitan Club v. Virginia*, 208 U.S. 378 (1908), no. 130.
[37] *New York State Liquor Authority v. Sutton Social Club, Inc.,* 93 Misc. 2d 1024 (1978).
[38] *Merriam-Webster,* s.v. "gentlemen's club," https://www.merriam-webster.com/dictionary/gentleman%27s%20club.
[39] A definition of these "bottle clubs" requires that people visit such places primarily for the purpose of consuming alcohol, thus differentiating them from the social clubs where liquors are "incidental". See NY CLS Al Bev § 64-b.

conspicuously public fashion to survive in a consumerist society, they lost the protection a truly private assembly deserved.

III. Discrimination, Right of Assembly and the Clubs' Secrecy

If the laws and court records portrayed social clubs as liquor distributors in the pre-World War II era, afterwards they painted a different image. Since the 1940s, social clubs began to be perceived as strongholds of conservatism and racial segregation, and lawsuits were to focus on their discriminative admission policies and practices. The criticism on their elitist attitudes and proclivity, nonetheless, did not find traditional justification in the American cultural and social norms, as the concept of discrimination always aligns to that of women's rights and minority status. Without *de facto* advancement in the latter two, there can hardly be any in the former.

Racial and gender discrimination in private clubs has been a path often trodden by legal scholars, and most began their discourse in the year 1866, when *The Civil Rights Act* was passed with the purpose to dislodge certain legal disabilities with regard to race or color.[40] It is also universally accepted a claim that the said legislation "implied private organization exemption," which was perpetuated by the *Civil Rights Act of 1964* only more explicitly.[41] Due to this abundance of secondary resources, it would not be of great improvement for me to explore in depth the statutes or court cases involved, and a brief summary would suffice. The private club's discriminatory admissions were upheld as legal for the majority of the 20th century, although challenges arose immediately in 1968 in South Carolina.[42] Not until 1990 did a court clearly

[40] For example, see Margaret E. Koppen, "The Private Club Exemption from Civil Rights Legislation - Sanctioned Discrimination or Justified Protection of Rights to Associate," *Pepperdine Law Review* 20, no. 2 (1993), 642-688.
[41] *Id.* Also see "Discrimination in Private Social Clubs: Freedom of Association and Right to Assembly," *Duke Law Journal* (1970), 1181-1222.
[42] *State v. Richburg*, 250 S.C. 451 (1968).

exercised its intention to rule against a discriminatory club, but only "on an alternative theory of liability," not the two *Civil Rights Acts*.[43] The legal crusade then reached a landmark in 2004, when the Supreme Court of Kentucky placed the statutory authority of its Human Rights Commission above the privateness defense of all clubs, whether nominally public or private in spirit, once and for all.[44] Some tests were preserved and devised to see whether a club is "genuinely selective" or outright discriminating, but they are no longer outside the bounds of regulatory measures that dictate the public life of private individuals.

However, another aspect of the 1860s shift mostly remains *terra incognita*, namingly the sudden hatred and aversion people developed against the clubs that are inherently covert in nature, compared to the recognition and toleration of ordinary social clubs or benevolent orders. Many of these were unfavorably labeled "secret societies", a term readily associated with conspiracy and crime. Why did such animosity erupt around that period, and what could their presentation in the court system reveal regarding the roles they play in the legal regime of the United States? In order to answer these two questions we must define a "secret society". Dictionaries usually treat them as organizations with limited membership that are "oath-bound" and with "conceal[ed]... rites, activites, etc"[45], signalling a dubious emphasis on mystique and religious symbolism. Nonetheless, recent studies have traced the genesis of this term to the benign, "literary-musical" associations in late 18th-century Finland, and rejected the popular myth of The Freemasons being a conspiratorial body.[46] Nor were the secret societies perceived as

---

[43] *Commonwealth v. Pendennis Club, Inc.,* 153 S.W.3d 784 (2004), paraphrasing *Watson v. Fraternal Order of Eagles*, 915 F.2d 235 (1990).
[44] *Ibid.* Also see Allison Lasseter, "Country Club Discrimination After *Commonwealth v. Pendennis*," *Boston College Third World Law Journal* 26, no. 2 (2006), 311-349.
[45] See *Merriam-Webster*, s.v. "secret society," https://www.merriam-webster.com/dictionary/secret%20society, and *Collins Dictionary*, s.v. "secret society," https://www.collinsdictionary.com/dictionary/english/secret-society.
[46] Jaap Kloosterman, "Secret Societies," European History Online, http://ieg-ego.eu/en/threads/european-networks/

antithetical to democratic notions in early American history; instead, they acted as evangelical drivers of republicanism, championing the causes "of virtue and merit," enlisting supporters from mechanics, lesser merchants and revolutionary-minded military men in the 1750s. Indeed, freemasonry became a significant unitary force within the Continental Army, and served as an intermediary structure between the state and the people.[47] Any anti-masonic sentiments there were before this period must have been temporarily suppressed.[48]

The concerted attack on "secret societies" nationwide, which developed in the 1860s but exploded since the 1890s, in hindsight, looks like unfounded paranoia, and their victims were overwhelmingly college or even high school students who were denied graduation or certain honors due to their membership in fraternities or such clubs of unspecified purposes. The first of these cases, *People ex rel. Pratt v. Wheaton College*, took place in 1866, so the onset of this anti-fraternity campaign must have been earlier.[49] In this case, a student at a private college was suspended due to his membership in the Good Templars, a fraternal association dated back to 1851. The Illinois Supreme Court first examined the college charter, and found the trustees' power of "adopt[ing] and enforc[ing] such rules as may be deemed expedient for the government of the institution" could not have been guaranteed without "forbidding the students to become members of secret societies." The rationale, according to a Justice Lawrence, is but palpable, for "all persons familiar with college life know that the tendency of secret societies is to withdraw

secret-societies.

[47] David G. Hackett, "Revolutionary Masonry: Republican and Christian, 1757-1825," *That Religion in Which All Men Agree: Freemasonry in American Culture* (Berkeley: University of California Press, 2014), 55-57.

[48] It is worth noting, however, this embracement of Freemasonry and secret societies was a republican feature, not a federalist one, who saw in these institutions atheism and lawlessness, but their attack was motivated by political opinions, not controversy over their acceptance under the law. Furthermore, their offensive would not take place until the 1790s. For more on antimasonry, see William Preston Vaughn, *The Anti-Masonic Party in the United States: 1826-1843* (Lexington: University of Kentucky Press, 1983).

[49] *People ex rel. Pratt v. Wheaton College*, 40 Ill. 186 (1866).

students from the control of the faculty, and impair… the discipline of the institution." It is to note that the rules at bar here were devised and enforced by a private entity, but they would later be adopted by public school boards and municipal officials in the 1900s[50], and state governments soon followed suit[51]. In New York, a statute was passed demanding all oath-bound societies to report to the Secretary of State while exempting "benevolent associations". The U.S. Supreme Court then validated it in 1928, citing the police power as justification[52]. This trend immediately succeeded the taxation disputes in the 1890s and early- to mid-1900s, indicating a simultaneous increase in the perceived publicness of private clubs and the alarm triggered by the burgeoning secret societies. Again, it sufficiently testified to how the greater roles they assumed in the social and psychological realms of the American people had rendered them suitable subjects of legal regulation in the public sphere.

The sweeping and indiscriminate nature of this deluge of regulation may be well discerned by ending this discussion on "The Good Templars" to which the youth in *Wheaton College* belonged. Although the court records portrayed it as disruptive and malevolent, in fact it was a moderate, if not progressive, organization. It actively advocated for temperance, cared for the drunken, and at times functioned as any other benevolent charities[53]. It is probable that the Justice and the society at large failed to recognize the individualized features associations often assumed, and out of an inherent distrust of secret meetings were ready to condemn and convict.

---

[50] For cases involving school district prohibitions of secret societies among students, see *Wayland v. Board of School Directors*, 43 Wash. 441 (1906) and *Wilson v. Board of Education*, 137 Ill. App. 187 (1907). These cases persisted into the 1930s, see *Steele v. Sexton*, 253 Mich. 32 (1931).
[51] For example, North Carolina passed its Secret Societies Prohibition Act in 1953, see N.C. Gen. Stat. Section 14-12.2.
[52] *New York ex rel. Bryant v. Zimmerman,* 278 U.S. 63 (1928).
[53] See Isaac Newton Peirce & Silvanus Phillips Thompson, *The History of the Independent Order of Good Templars, complete up to the year 1868* (Birmingham: The Grand Lodge of England, 1873).

From then on secret societies lost their original appeal to the enlightened and the republican, and fell into the legal limbo where they still are today.

IV. Conclusion and Prospects

What this paper has presented was only a part of private clubs' appearance in American legal history, and many other dimensions await further academic ventures, and it might be helpful to address them briefly here. One possible avenue is to compare the social club and secret society regulations in the United States with those in Britain, where the hiatus between these two types of assemblies was wide and socially recognized. A starting point may be found in its Unlawful Societies Act of 1799[54]. Another approach is to examine the links between social clubs in the South, which were tainted by violently racist notions which the court in *Zimmerman* (1928) admittedly despised, and may have contributed to biases by the more liberal federal courts. Additionally, charters, by-laws and constitutions of private social clubs are also legal documents of incorporation that withstood the test of time, and may yield interesting insight concerning their respective era. Social clubs and societies, whether overt or otherwise, deserve greater attention from legal historians than they currently receive, for they arose out of men's fundamental want to assemble with the like-minded, and to mark their distinction from those deemed dissimilar. "How much error and sheer prejudice may lurk in all this knowing is immaterial.[55]" Sociologists proclaim, and it stands as true in the legal profession, whose history is one of rectifying errors and remedying prejudice.

---

[54] *Act Against Unlawful Combinations and Confederacies* (1799) 39 Geo.III, c.79.

[55] Georg Simmel, "The Sociology of Secrecy and of Secret Societies," trans. Albion W. Small, in *The American Journal of Sociology* 6, no. 4 (1906), 441.