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THE RESPONSIBILITIES AND DUTIES OF THE
LEGAL PROFESSION.

It is always an invidious task to attempt to say anything in the way of rebuke, or criticism, upon the usages or the conduct of one's own profession. It will naturally be attributed to having outlived the proper period of common sympathy and fellow-feeling; or else to disappointment and defeat in one's projects or hopes; or, what is more unfortunate, to some conscious sense of superiority, in some particular: any one of which imputations, which it is always easy to make and difficult to disprove, must have the effect to neutralize all desired or expected good. But in the face of all these disadvantages, and of some others, which may naturally occur to our readers, we venture to caution the profession, in this country, not to flatter themselves that they will be able, for any very long period in the future, to maintain their present influential and commanding position, without the exercise of great watchfulness, and constant effort, to maintain that high-toned *esprit du corps*, which in England, and to some extent throughout Europe, has characterized the legal profession for many generations, we might fairly say many centuries. It seems to us that this is where the legal profession in America is most in danger of losing tone, and ultimately both character and position. When it comes to think lightly of its prestige, others will naturally think lightly of it; for who should know better than themselves?

It is easy to speculate upon the great effect of enforcing a

higher standard of literary and professional attainment, to be tested by rigid examinations before admission to the bar, as one of the sure safeguards of the character and conduct of the profession. And it is no doubt true that everything of that character, which tends to elevate its character and to withdraw the minds of the members of the profession from the more debasing motives of seeking its rewards from considerations of mere worldly emolument, whether in the shape of money, or of social or official position, must to that extent have an elevating influence upon them; and if it do not entirely counteract, and ultimately overcome, all counter influences, will more or less retard the final victory and success of such debasing tendencies. But we have no confidence in any such merely temporary palliatives. So long as all the external barriers of separation between the profession and the mass of the outer world, such as those of dress and association, are absolutely and entirely abolished in this country, it will require great watchfulness, and great skill, to maintain any proper and effective sense of the real character and dignity of the profession, even among themselves. We know how absurdly the professional attire of an English barrister, or indeed, for that matter, of an English judge, sometimes strikes an American, when seen for the first time; and especially the horse-hair wigs. And even the ermine of the judges sounds more poetical than it looks. But even this mere distinctive dress, simple as it is, and absurd as it inevitably must appear to those unaccustomed to witness any distinction in official attire, has most undeniably played a very important and effective part, in maintaining the present high character of the profession in Europe; and especially in Great Britain and Ireland. It is impossible to restore anything of that character in this country; if it were desirable, which of course it is not. The only vestige of distinctive dress remaining, either among the bar or on the bench, anywhere in America, is the black gown, worn by the judges of the Supreme Court at Washington. And even these judges in holding their circuit terms, in the different portions of the country, have more commonly discontinued that slight departure from the ordinary citizen's dress. And in many portions of the more rural districts, all formality in crying the courts, even at their daily adjournments, has, long since, entirely disappeared. And in many states there is great reluctance to making any formal pro-

clamation, even at the first opening of the courts,—it has become more a declaration of the fact that the court is here, than a proclamation of its readiness to be approached. This is but the inevitable tendency of things in a country, where the people naturally desire to have everything, as much as possible, according to their own habits and customs, both as to manner and dress. Allowing all this to have become in this country an inevitable necessity, as we must, still it is none the less necessary to maintain the substance of decorum, under the simplest forms, or no forms at all. And nothing less than the entire separation of the legal profession from all other pursuits, and its absolute, unqualified devotion to its own distinctive duties, can ever maintain its character and influence in a free country.

We do not mean by this that no member of the legal profession is ever to go into either house of Congress, or the state legislatures; or into any office in the executive departments. A certain number of that profession may be useful in legislative assemblies; in some sense almost indispensable. But they should go there, if at all, because their professional learning and experience is needed there, and not as a stepping-stone to higher official place; and it should be understood that any such diversion from the more legitimate work of the profession is, for the time, an abandonment of its service. A lawyer in the legislature is no more in the profession than a merchant, or banker, or mechanic, while there, is to be regarded as occupied in his business or trade. He has, of course, laid it aside for the time. He is no more a merchant, or banker, or mechanic, when engaged in legislation, than if he had utterly abandoned it for ever. And the same is true of the lawyers in Congress, or anywhere else, out of the legitimate work of the profession. They are no more in the profession than if they had enlisted into the army; and no man has any more right to claim to be of the profession, because he was once admitted to the bar, than if he had never made the law a distinctive study, if that is his only claim to belong to the legal profession. It is not the study of the law, or of any other profession, which fairly entitles one to be reckoned as belonging to it, or as an expert in it; but only the practice of such profession. For to that extent only, one may, with great propriety and advantage in a merely general course of education, devote much time and study to different juridical

studies, and to that of jurisprudence among the number. But in strictness such an one should no more be admitted to the bar, than he should be admitted to the army or navy, because he may have devoted time and labor to understanding the scientific principles of engineering, or of navigation. The bar is intended exclusively for those who purpose to devote their lives to the assistance of the courts, and the suitors, in the administration of public and private justice. And it is here, that the character and conduct of every member of the profession is the interest, and, in some sense, affects the character of all others. And if this central and fundamental fact could be so impressed upon the common mind of the country, as to become one of the abiding living principles of the public life, it might go a large way towards preserving the profession from those temptations and those influences, which must always, more or less, tend to contaminate and to degrade it.

A man who seeks the highest honors of the profession and who aspires to its holiest offices, should and must have his whole mind absorbed in the pursuit. He cannot here, more than in religion, serve two masters; he cannot serve mammon and the profession at the same time. And it is this great mistake which causes so many unfortunate failures in success at the bar, and which brings so much scandal upon the profession in our own country at the present time. A lawyer, who is properly imbued with the love of his profession, cannot love any other pursuit, in the same manner, or to the same extent. The thing is psychologically impossible, if we may be allowed so stilted a term upon so common-place a topic. All other objects of ambition, which are thrown across his path, he will regard as in the nature of obstacles to the attainment of this highest, purest, most ennobling object of his pursuit. Mere money-making, except as the natural result of professional advancement; mere political office, however high, he will regard as things not to be listened to, for a moment; as base and degrading bribes, which a true man should spurn with the same loathing, which he would an attempt to corrupt his faith or his honor.

And here we may name more specifically the two great and controlling influences in our country, and indeed in all free countries, from which the profession has most to dread—the love of money and the love of office. Unless we have greatly mis-

judged, these two influences are now doing more than all else to ruin the character of the profession of this country. The love of ease, and the love of controversy and of mastery, in opposite directions, no doubt, operate disastrously in many instances upon the hopes and the character of some members of the profession. Want of nerve and of true pluck make some men do, or consent to have done, many base and degrading things, in the name of the profession, sometimes, no doubt. But all these influences, and many more which might be named, as of debasing influence and tendency, are as nothing in comparison with the corrupting influences of the love of money and of place. The victims of these terrible destroyers, among the noblest and best of our members sometimes, are as that of famine and the pestilence in their destructive influences, in comparison with all other causes. And it seems to us the disgraceful effects of money upon the profession are nowhere more apparent or more appalling than in the unlimited extent of professional charges; and what seems the most corrupting feature of all, the disposition, in all cases, to take all that can be squeezed out of clients, by the last turn of the screw of necessity. This would be called extortion and robbery, in any other profession, or in the legal profession in any other country, we fear.

We do not here refer in particular to some fabulous accounts of the incredible sums received or reputed to have been received by some few members of the profession; like that of ten thousand dollars—more than the annual salary of the highest judicial officer in the nation—for the argument of a single motion in court; or that of one or two hundred thousand dollars in a single cause. There will always arise an occasional cause or single hearing, which, fairly or unfairly, will command exceptionally large fees; and there will always be enough subservient retainers of such fortunate or unfortunate members of the profession as may be connected with such cause, thus suddenly enriched, who will esteem it glory enough for them, to retail the astounding success of such enterprises—which, if they ever occurred, it would have been more creditable, both to the principal and his retainers, to have kept a profound secret. We do not refer to any such exceptional cases, either of counsel or causes, in what we say of the enormity of professional charges. But, everywhere, in small causes and large ones, we fear there is too much disposition

to measure professional charges, not so much by the amount of labor performed, or the responsibility and difficulty of the service, or even by the ability of the client and the importance of the questions involved, and the successful or unsuccessful results; all of which are, no doubt, fairly entitled to have due weight in estimating professional services; as by the amount which it is possible to obtain, without serious detriment to the future prospects of professional emoluments, from that or other clients.

We cannot better illustrate our meaning than by comparison of professional charges, in England and this country. There, no doubt, the more successful and popular advocates always command, upon the whole, a very large professional income. But there all the trials in banc or in equity, with some minor exceptions; and all proceedings before parliamentary committees; and a very large amount of jury business, is done in London and Westminster, all within two miles of Westminster Hall. And while there is, unquestionably, a thoroughly good understanding between the two departments of the profession—the attorneys and solicitors on the one hand and the bar or barristers on the other—that professional services shall be maintained at a living point; and in carrying into effect this mutual purpose, there is no doubt, on the part of the solicitors, the only persons with whom the client has any communication, more or less of duplicity or finesse; affecting to regard those very charges on the part of counsel as exorbitant, which they have themselves encouraged counsel to make, or to accept; yet after all allowances and deductions are made, upon all sides, for the multiplicity of charges and the often somewhat enormous character of the final summing up of the expense of litigation in England, we must confess our surprise at the very moderate sums which are paid the most distinguished counsel at the English bar, either for written opinions or arguments in court, and especially the latter. We do not believe the charges for either of the two last-named classes of professional service, are half as high in London as in New York; meaning by this, to compare what may fairly be called the regular charges in both cities. And while we suppose the charges in the other American cities may be regarded as somewhat more moderate than in New York, among the most distinguished lawyers and advocates in those cities respectively, the difference may probably be placed more to the account of neces-

sity, than either of conscience or good will. We have had some means of learning the range of these charges in some portions of America, where there is, we believe, a commendable ambition not to outrage public sentiment on the one hand, or that of the honorable members of the profession on the other; and from what we could learn in regard to these matters in London, we think most American lawyers, of high standing, would excite some surprise, by making the same rate of charge in London, for a written opinion upon important questions of law, which they would always make in any of the leading cities in our own country. But then, no doubt, as a whole, English clients expect litigation to be as expensive as it is with us, perhaps more so. For, in regard to some portion of professional service, where, in our country, competition or culpable indifference as to the importance of having the service wisely and skilfully done, has reduced charges to a scandalously low standard; there is no such tendency in England. The making of wills, and the drafting of other important instruments, may be named as illustrations of this point. And the same is unquestionably true in much of the subordinate work of the profession in our country. It is given over too exclusively to the young and inexperienced members of the profession, where there is any extent of competition and almost no assurance whatever of any degree of competency. Whereas in fact this subordinate but very important and responsible work should be held more under the control of the well-educated and responsible members of the profession, who might, by employing the younger members of the profession to do much of this work under their own supervision, at once educate and bring up the different grades of their brethren from one plane of business, so to speak, to another, and also afford reasonable assurance to the clients, that they were faithfully served, and at the same time not unreasonably depreciate the rate of compensation, all which would be an important service to the profession and to the public.

But there can be no question that both the exorbitant charges of the more popular members of the profession, and the unreasonable depreciation of the rate of compensation in many other departments of services within it, tend constantly to produce a kind of restlessness and demoralization among all its members. There being no gauge or common measure in regard to the higher

charges, and most of the lower ones being so utterly insignificant and contemptible; all of which may fairly be supposed to be known throughout the profession; those persons, who, from youth or inexperience, or want of adventitious patronage, find themselves shut out from the more lucrative employment of the profession, naturally fall into other pursuits, or rush into politics; till the profession is in danger of falling into the hands of two leading classes, the incompetents and the unscrupulous; both of which may be generally induced to do almost any kind of work for what, in the slang of the times, is called, we believe, "a consideration," when applied to one not in official position, and, when applied to the latter, "a gratification," or "gratification-money."

But we need not further pursue this somewhat disagreeable analysis of the profession and its employments. There are, no doubt, more than the number required to save the doomed Cities of the Plain, in all our American cities, who have not defiled their garments, and who will not under any degree of temptation; and who will in the end bring back our erring members to a proper sense of the irremediable wrong they are doing themselves and the public, by having no rule of honor or conscience in their professional charges. This of itself would not at once restore the purity and the dignity of the profession; but it would, we think, be taking an important step in that direction. If a public sentiment against making such exorbitant charges could be maintained to such an extent, that such a member of the profession would be regarded in the same light as if he had been guilty of a breach of trust in the misappropriation of his client's money, we might soon expect a complete reform. And we do not see why this would not be a just view of the matter. Counsel, who appropriate nine parts in every ten more out of their client's money, to their own use, than they are entitled to do, are guilty of a breach of trust and confidence, which ought to cut them off from the service and the society of the profession, as much as if guilty of obtaining money by false pretences. We do not object to distinguished counsel being paid large fees, very large, in proportion to the amount of service. A man who has devoted his life to the study and the practice of a difficult and honorable profession, and who serves honorable clients in an honorable way, should receive large, very large compensation. But such a man will have some rule, some standard of charge. He cannot

degrade himself by becoming a robber of his own client; or even of his adversary. If he is not allowed to call himself a Christian, and act upon the basis of Christian conscience, by doing to others as he would expect them to do, in a change of circumstances; he may at least claim to be governed by the rules of honor and decency, and not make himself a brute or a barbarian.¹

We could desire no fairer or more honorable rule of professional charge than that which Mr. Lincoln prescribed to himself. If that rule were adopted, we do not think there would be room for much complaint that distinguished members of the profession continue to encourage discreditable suits. If one is moral and decent in his relations to his client, he will naturally require the same conduct on their part—and he may justly be expected to do so. We do not desire to offer any suggestion in regard to the proper remedy for any existing evils in the profession, beyond what has been already made. Bar Associations and Bar Rules are well enough in their places, and for social purposes serve often a very good end; and once in a thousand times may help to exclude an unworthy member from the respect and confidence of the profession. But, in the long run, something more will be required to lift the mass of the profession upon any very much higher plane. And the same is true of any other single remedy, for alleged evils upon the subject. One cannot expect the legal profession to rise very much above the level of commercial honor and honesty in other pursuits. If monopolies and combinations in all other pursuits, even to the very verge of conspiracy, are

¹ We commend Mr. Lincoln's rule in regard to fees as worthy of all respect and imitation. He accepted \$5000, for the argument twice of a very important railway cause, which was decided favorably to his clients, and which affected their interest nearly half a million of dollars. Pending the negotiations for the payment of his fees, he made the following private memorandum, as the expression of his views upon the subject: "Are, or are not, the amount of labor, the doubtfulness and difficulty of the question, the degree of success in the result, and the amount of pecuniary interest involved, not merely in the particular case but covered by the principles decided, and thereby secured to the client, all proper elements, by the custom of the profession, to consider in determining what is a reasonable fee in a given case?" We should be sorry to shock the sensibility of any by comparing small things with great—but we fear there are more men in the country, entirely competent to rise to the comprehension of the sublime significance of the issuing of the Emancipation Proclamation, than there are who could truly estimate the deep sense of justice involved in this plain commentary upon the proper elements of professional charges.

tolerated and commended, we cannot expect the members of the bar to soar very much above the same low plane of morality and decency, which prevails in other pursuits.

We are not of the number of those who believe that the legal profession, or any other profession, will or can assume, and maintain, any standard of moral conduct very much below that of the mass of the people whom they serve, and whom they will naturally desire and strive to please, and to influence. Nor, on the other hand, is it easy for any one class or profession to rise very much above the surrounding multitude, in regard to morality or manners. There is an unconscious influence, coming from our constant contact with others, which all will find it extremely difficult to rise very much above. It imperceptibly dilutes our most ardent desires and purposes for good. It weakens our holiest impulses, and deadens our faith, even in spite of ourselves; and when we come to apply this to the profession of the law, we shall find that it is just about what the people wish it to be; what they will and desire—what, in short, they make it. The demand and supply here, as everywhere in political economy, will, and must, in the long run, regulate each other, whether we will or not. It is because men desire lawyers to make the most of their causes, by all manner of means, fair and foul, that multitudes in the profession will always be found ready to serve them, just in that way.

It seems to be supposed, by many writers upon this subject, that the old-fashioned honesty and high sense of honor, if not of conscientiousness, which has always been hitherto supposed to characterize the members of the legal profession, is fast disappearing, and that its most important and lucrative employment is fast falling into the hands of sharpers and cut-throats, because they do just what offers; just what they find to do, and take all they can get, without much regard either to the means, or the amount. But this is much in keeping with the general standard of the times. Almost all men in our day and country are in haste to grow rich.

We by no means feel prepared to admit that any such fatal degeneracy has yet fallen upon the profession generally, or that it will be likely to for many years to come. But it is natural to conclude, that there could not be so much and such loud complaints of the profession, in all directions, and upon all subjects,

to which we have but imperfectly referred, unless there was something wrong somewhere; and there can be no question, if what we hear about the practice of the profession in some quarters is to any large extent founded on fact, that there is cause enough to expect corruption and its consequences in all the departments of the profession and finally throughout the entire administration of government. It is greatly to be feared, that the modern scramble for wealth and for place, is begetting a merely mercenary spirit in the profession, which is operating more or less in undermining its morals. For when all other pursuits in life come to be estimated solely by a money standard, it would be wonderful, if it would not in the end have more or less effect upon the profession of law. If any member of the profession, high or low, comes to estimate his standing and success mainly by a money standard, he will very soon have no other measure or standard in anything. He will literally fulfil the dogma of the English Premier, that every man has his price, and that a pecuniary one—which possibly Walpole might not have altogether meant.

In what we say here we have no reference to the mere amateur members of the profession, but to the hard and constant workers in its every-day toils, in court as well as out of court. It is this toiling mass of lawyers, which stamps the profession with its good character or its bad character, in all countries. Men who have revised the statutes of a state, or edited a political review a few months, or written a code, or any other book, or any number of them indeed, if they have never done anything more practical, are of small account in weighing the real, pure, solid bullion of the professional merit or demerit of a country, and counting up its coin, stamped with that sovereign impress of practical learning and wisdom which gives it currency and value in all countries, and in all times. ¹

¹This point, the difference between theory and practice, is very humorously and very sensibly illustrated, by Sir Walter Scott, we believe, in the following mode: "You see a man come down to the riverside, with all the apparatus and appliances with which piscatory knowledge and skill can furnish him. It is very delightful to see so much skill and knowledge applied to so simple a matter; but the man of skill and knowledge catches nothing, and is vexed and humiliated by seeing near him a little ragged boy, who with a crooked stick, reelless line and crooked pin, pulls out fish after fish, with a grinning delight

There is, perhaps, nothing upon which we bestow less care and anxiety, or in regard to which we feel more entire confidence, we might perhaps say indifference, than the jurisprudence under which we live. It seems almost to be supposed by many that the administration of justice is something of natural or divine growth, which cannot be essentially improved by culture or deteriorated by neglect. There seems, too, in the common mind to be an unaccountable misconception as to the relative importance of a perfect system of laws, and a wise administration of the same. We apprehend that the more common idea in regard to it, among those who give it any consideration, must be that all which is required to secure a perfect system of administrative jurispru-

at his superiority over his neighbor, the well-furnished fisherman." But we must say in behalf of our merely literary brethren, as Iago says of theoretic soldiers,

"That never set a squadron in the field,
Nor the division of a battle know
More than a spinster,"

if, indeed, much of their talk is "mere prattle without practice;" and although not commonly wanting in self-confidence or self-conceit, they are in the main men of unquestionably good principle, so far as common honesty, both of purpose and practice, is concerned. They are certainly not dangerous men, being generally too inoffensive to excite much alarm anywhere. Their great defect seems to be produced by constant mental introversion; producing at last a kind of mental and moral strabismus, by which they see objects and interests, in a perverted light, "like trees walking." Having no other standard upon any subject, but their own consciousness and reflection, they naturally come at last to measure everything by this standard, and are thus led to condemn it, since nature seldom works by parallels, and especially in its vagaries. We cannot regard such men as worthy of blame, because they do not comprehend the opinions of other men, and therefore regard them as erroneous, often when the error consists wholly in the wrong adjustment of the mental organism of the observer. It is, no doubt, sometimes perplexing and painful to be made the subject of the dissection of such surgeons. But they commonly treat all alike: first come first served; and it is proverbial that a sensitive nature will endure the censure of such operators with less shrinking than their praise—since the former will often cure its own wounds by the absurdity of its reasons, while the latter causes an infliction from which there is no sure escape, except in death or expatriation; which may remind those who attempt to follow the prescriptions of such men, of the comment of the Scotch physician upon the attempted cures of the mere novices in his profession: "It is nae jest to dee, even by the kick of an ass." But the sciolists in the legal profession are not essentially different from others of the same tribe. They seem impertinent in pushing themselves into the discussion of questions, the difficulties of which they do not comprehend. But this is rather a misfortune than a fault. We wish we had no worse men to answer for.

dence in a country is to enact a written code, consisting of a few brief maxims and rules which shall embody the quintessence of wisdom and justice, and then trust its administration to such tribunals as we may happen to have, since no judge can greatly err in the administration of a perfect code, which it seems to be supposed a very easy task to prepare, provided it be only in the form of a code!

But the experience of the ages will show that the most perfect code of laws, if it were possible of attainment, can go but a short way towards securing perfect justice, either public or private. That depends far more upon the living voice of the administrators of the law, upon the judges and the bar in its active administration, than upon the nature or perfection of the code. The body of the law of modern Europe, upon the Continent, has been much the same in all countries for the last thousand years, being but the adoption and accommodation of the Roman civil law; and the same is true of the common law of England for many centuries past. There has been but little change except in regard to minor details, and these have been more affecting administration than right. But in all this time there has been in all those countries every variety of judicial administration, from the highest and purest to the most debasing and degraded; so that the bar and the bench, the former producing the latter, have, in fact, more to do with the jurisprudence of a country than all other influences combined. The administration of the law is the only practical school of jurisprudence, legislation being in truth but experimental or tentative.

It is in the courts of justice alone that the fundamental principles of all systems of jurisprudence are originally elaborated. Sir James Mackintosh says: "There is not, in my opinion, in the whole compass of human affairs, so noble a spectacle as that which is displayed in the progress of jurisprudence, where we may contemplate the cautious and unwearied exertions of wise men, withdrawing every case, as it arises, from the dangerous power of discretion and subjecting it to inflexible rules, extending the dominion of justice and reason, and gradually contracting within the narrowest possible limits the domain of brutal force and arbitrary will." And although this may have been intended, in some sense, as an encomium upon legislation, it evinces a thorough conviction that experience is the only sure teacher in

these matters, and that can only be attained in the schools of living judicial administration. All beyond this is, at best, but speculation and conjecture. All the codes, and all the books in the world, whether ancient or modern, at home or abroad, know nothing, and teach nothing except what is first learned in the courts. Constitutional liberty is indeed impossible without law, and law is impossible to be maintained in a free country without a pure, a firm, and a wise administration of the law, both civil and criminal, securing public and private justice as well between party and party as between the citizen and the state.

We should be prepared to believe that in all free countries not only the liberty, but the peace and happiness of the people, depend more upon the legal profession than upon any other, when we take into account the extent and influence of all the places occupied by its members. They now occupy more places of commanding influence in this country than all other professions combined. They, of course, constitute the entire judiciary of the country, which is in fact the very balance-wheel that regulates and controls all the other governmental machinery in the nation, and in all its departments, both state and national. They are in the speaker's chairs of almost every legislative assembly in the land. They appoint all the committees, who do the main work of legislation; who pass upon all the bills; remove all accidental obstructions, and finally place every legislative measure upon the sure track towards success or ruin. And they not only appoint all these committees, but are themselves at the head of all the more important ones, and mainly make up their subordinate members. And the debates, such as they are—no doubt poor enough, but even written speeches, memorized or read, must be supposed to have some influence—are mostly made by the profession. And much the same may be said of the executive department of the government, both state and national. Members of the profession are found in large proportion among the governors of states, and in the subordinate departments of the state administration.¹

¹Among the members of the present House of Representatives there are one hundred and thirty-one lawyers, twenty-five farmers, twenty-four merchants, eleven physicians, eleven journalists, six bankers, five manufacturers, four lumbermen, three railroad managers, three general business, two clergymen, and one teacher.