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# TO UPHOLD THE HONOR OF THE PROFESSION OF LAW

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## TO UPHOLD THE HONOR OF THE PROFESSION OF LAW.<sup>1</sup>

Gentlemen of the Bar—I might say of many bars but for the possibility of being misunderstood—the next thing on the menu, a somewhat predigested course certainly, is the proposition to form a State Bar Association. It would be against nature if, being lawyers, we undertook anything without first querying as to its legality. It is evident that we are meditating a combination and, as in these days every combination in restraint of trade is *maranatha anathema* and one purpose of our combine is to restrain the trade of the sinners of the Bar, it may be logically argued that we are engaging in an unlawful enterprise. I take it the all-sufficient answer is that ours is one of the “good trusts.” That it certainly is a good one is hardly debatable, nor is the occasion for it any the less that there are in the Commonwealth many city and county associations which are doing excellent work and which are neither to be consolidated nor superseded. The difficulty with the local associations is that they do not take in the whole field it is desirable to cover. On such subjects as changes in the general laws, state or national; as substantially identical legislation by the several States on various topics; as the selection of judges for the higher courts; as the mutually helpful relations that should subsist between all other Bar associations and the American Bar Association; only a Bar association which is representative of the entire body of lawyers of a State can speak with the necessary authority or can hope to have the necessary influence.

Without enlarging on this topic let me briefly call your attention to what should be a leading, perhaps I should say the paramount purpose of the association we expect to form and of any similar association. The excellent draft of a constitution which is to be submitted to you states the purposes of the association to be these:

“To cultivate the science of jurisprudence and promote reform in the law, to facilitate the administration of justice, to further uniformity of legislation throughout the Union, to uphold the honor of the profession of law, and to encourage cordial intercourse among the members of the Massachusetts Bar.”

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<sup>1</sup> An address delivered by Mr. Olney before a body of Massachusetts lawyers who met for the purpose of organizing a State Bar Association.—EDITOR.

Of these purposes none impresses me as so comprehensive and important as that expressed by the phrase "to uphold the honor of the profession of law." Whoever devised it must have conceived the honor of the legal profession to be of the highest moment. He must also have considered it to be something to which under existing conditions special attention should be directed. He was right, in my judgment, in both views. The calling of the lawyer of the present day is scarcely held in the honor that belongs to it, and in the popular mind stands discredited by false and unworthy ideas of its true character. Let me illustrate by a couple of extracts from a novelette in a recently published and widely circulated magazine in which the career of a successful lawyer of our times is thus depicted:

"For many years in the enjoyment of a successful and fairly lucrative law practice, he had of late become more and more closely identified with the business affairs of a very large corporation, the president of which had intrusted to him the planning of some of its most important ventures; ventures, indeed, in a legal sense, which involved all concerned in a complicated network of moves approaching more and more inevitably the limits of the law and requiring correspondingly more and more exercise of legal acumen and agility to avoid disaster."

Again: "He did not like the work although he knew it to be the work of most prominent lawyers and the practice of most successful corporations. The watering and re-watering of stock, the violent and ruthless crushing of competition, the control of trust funds for private enterprises, the influencing of legislation, were as much a part of the daily routine of the affairs of his company as paying the wages of thirty thousand employees every other week or the installation of a new power plant."

This description of the role of the prosperous lawyer of the present day is meant by the author as a simple statement of facts and is not by way of either reproach or censure. But consider what a criticism of him it really contains and how strongly it tends to show both that he is without special honor in the community and why he is without it. He is represented as only one variety of businessman; as an adjunct to a business and its adventures with functions as much a part of its routine as those of its wage earners and day laborers; as using his "legal acumen and agility," so far as he remains a lawyer at all, in advising how nearly the extreme limits of the law can be approached without being overstepped; as influencing legislation in favor of

his clients' interests; and as dexterously manipulating the issue and sale of corporate securities. The portrait thus painted is not of the lawyer who is a failure but of the lawyer who is a success and to whom the law student or young practitioner would naturally look as guide and exemplar. It is useless to protest that the picture is unjust and unfair and both in form and color a gross exaggeration—it undeniably represents a current and widespread popular impression. Nor does it offer strictures upon the legal profession and its work which are peculiar to laymen only. A distinguished member of the Suffolk (Mass.) Bar in a recent address is reported to have asserted that the ordinary standards of business are morally much higher than those set by law. In explanation of the utterance it ought to be said that it was made to business men to whom presumably it was desired to be nice, and that it was part of an after-dinner speech at a symposium where the company and the occasion proved so inspiring that the speaker is reported to have wound up by singing verses of his own composition amid the wildest enthusiasm. Nevertheless, all due allowances being made, to put the ethical code of the business man ahead of that of the lawyer was certainly a unique idea and looks like a case of putting the cart before the horse.

Without seriously considering so extraordinary a proposition, we may pertinently ask what is responsible for those features of the modern lawyer's vocation and practice which, with the people at large, are unquestionably the subject of severe criticism? Something obviously is due to the abnormal growth of paternalism, and when government undertakes to displace the natural laws of trade by arbitrary and generally crude and obscure regulations designed to aid or retard competition, to corral the home market in the interest of favored industries, and to prescribe the conduct of business operations generally, it compels every large industry to carry one or more lawyers as part of its regular staff. That they may not always resist the temptation to be over-ingenious in construing statutes and finding loop holes of escape from provisions felt to be both injurious and unreasonable, is by no means wonderful. But much the most potent cause of what is objected to in the modern lawyer's career—so far as the objection is well founded at all—is probably to be found in the dominant materialism of the day. America only shares in it with the rest of the world, though here its most notable manifestation is in the passion for money-making. Distinguished travelers and observers from abroad have said, perhaps with

truth, that Americans care more for the game than for the stake, that luxurious ease and all wealth can buy, interest them less than the pursuit of the wealth.

Be that as it may, lawyers as members of a community absorbed in money-making, are themselves inevitably more or less infected, so that it is not surprising that many, consciously or unconsciously, come to regard money-making as the real aim and object of their career. It is a view of the profession quite incompatible with the honor that should attach to it. What is that honor—the honor which this association is to uphold? What is its essence? By what rule are we to determine what such honor requires? There can be but one answer and that is that the lawyer is bound to regard himself not merely as a private citizen but as a man enlisted in the public service. He is a minister of justice, his function is to help the community to the largest possible measure of justice, and to that end he plays a part hardly inferior to that of the judge on the bench. He occupies indeed a two-fold fiduciary relation—on the one hand to the public, on the other, to his immediate client—his code of ethics is necessarily founded upon and permeated with the fiduciary idea, and the futility of comparing his code with that of the business man whose one rule necessarily is to take care of No. 1, and not even to know of any No. 2, is too plain for discussion. It is this conception of the profession of the law which makes it honorable—honorable to belong to and honorable in the sight of men—because its work is done on honor and primarily in discharge of fiduciary and public duties, and only secondarily for pecuniary reward. In what originates the axiom that the lawyer lives well and dies poor, except in the realization of the truth that money-making is not the true goal of his endeavors? If our profession in these days is not enjoying the general regard it should have, it is because its members do not always bear in mind the public and fiduciary nature of their calling. In the way of bettering that condition of things, of impressing upon both the public and the Bar that standard of conduct whose recognition and practical observance are essential to the honor of the profession, this association can do much, and certainly cannot apply itself to a more worthy or important task.

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