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Harlan F. Stone

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The Lawyer and His Neighbors

BY HARLAN F. STONE¹

In 1710 Cotton Mather, the famous New England divine, in what was probably the first address to American lawyers, thus exhorted our profession:

"There has been an old Complaint, That a Good Lawyer seldom is a Good Neighbor. You know how to Confute it, Gentlemen, by making your Skill in the Law, a Blessing to your Neighborhood. You may, Gentlemen, if you please, be a vast Accession to the Felicity of your Countreys. * * * Perhaps you may discover things yet wanting in the Law: Mischiefs in the Execution and Application of the Laws, which ought to be better provided against; Mischiefs annoying of Mankind, against which no Laws are yet provided. The Reformation of the Law, and more Law for the Reformation of the World is what is mightily called for."

These sentiments might well be taken as a guide by which the lawyer should regulate his life, but it is probable that Cotton Mather, in giving utterance to them was expressing a pious hope rather than a confident prediction, for the evidence is abundant that the legal profession was held in light esteem in the New World until about the middle of the eighteenth century. It was not then deemed needful that judges should be lawyers and, as is pointed out by Charles Warren in his history of the American Bar, the lawyer was everywhere distrusted. In many colonies those acting as attorneys were forbidden to receive any fee. In others paid attorneys were not allowed to appear in court and in all they were subjected to restrictions indicating a want of confidence in their character and integrity. It is doubtful whether at the time when Cotton Mather wrote, any of the New England states had accepted the common law of England as a rule of decision in the Colonial Courts, and the other colonies, with the exception of Maryland and Virginia, had only accepted it in part.

Indeed, in the mother country, although the lawyer held a distinguished position at the bar there had long been a significant undercurrent of dissatisfaction with law and its administration which found expression in the publication of books and pamphlets, such as "Speech against the judges for their ignorance" 1641, "The Mirror of Justices," written long before but first printed in 1645, "The Downfall of the

¹An address before the Cornell University College of Law, May 16, 1919, on the Frank Irvine Foundation established by the Conkling (Cornell) Chapter of Phi Delta Phi.

Unjust Lawyers," "Doomsday Drawing Near, with Thunder and Lightning for Lawyers," 1645, "A Rod for lawyers who are hereby declared robbers and deceivers of the nation," 1659, and many others of a similar character which might be named. It is interesting and instructive to inquire the reasons for the low estate of the lawyer in this period of our history for I think they have their lesson in our own day and throw light on our own problems.

The Anglo-Saxon race, both in the old and in the new world, was then entering a new period of development which made it inevitable that the common law should either crumble into fragments or take on a new flexibility and adaptability in order to conform to the changing conditions of social and national life. Feudal England was experiencing the beginning of its transformation into commercial and colonial England. The narrowness and pedantry of the feudal law of Coke was only beginning to feel the effect of the decisions of Lord Holt and it was yet to experience the benefits of the judgments of Lord Mansfield which gave to our law renewed capacity for orderly expansion and development. Moreover, the recollection was fresh in the minds of men of the servile if not corrupt judges and law officers of the crown of the period of the Stuarts, the last of their kind in English history to stain the annals of the profession. It was not strange, therefore, that the colonies in the New World had an inherited distrust of judges and lawyers.

But there were special reasons for this attitude to be found in the local conditions and the peculiar situation of the legal profession in America. There was in the entire New World no developed science of law and there were few materials available out of which to organize one. The total number of published law books to be found in the colonies probably did not exceed a dozen, there were no reports of the colonial court proceedings, and the total number of English reports in the colonies were about 30. There were no law schools, and few if any lawyers of character and distinction to act as preceptors of the younger men of the profession. Small wonder then that the lawyers of the time were of the pettifogging, court-hanger-on type which then, as now, reflected only discredit on the profession.

It is interesting to contrast this picture of our profession during the first hundred years of our Colonial history with Edmund Burke's reference to it some sixty years later in his celebrated Oration for Conciliation with the Colonies. I have often quoted the passage, for it states so admirably most of the qualities which have given to our profession its distinction and which have made it such a potent instrumentality in critical times in its history for the preservation of liberty and the perpetuation of right. He referred to the spirit and activity

of the lawyer class in the American colonies as one of the capital causes of the spirit of liberty in the new world. "In no country perhaps in the world," he said, "is the law so generally studied" and in proof of this statement he referred to the great number of lawyers who were members of the Continental Congress to the fact that law books were being printed in the colonies for their own use and that as many copies of Blackstone's Commentaries had been sold in America as in England. He expressed the opinion that it was the wide-spread study of and interest in law which made the Colonists so "acute, inquisitive, prompt in attack, ready in defense, full of resources," which led them to "augur misgovernment at a distance and snuff the approach of tyranny in every tainted breeze."

Burke's portrayal of the position and influence of the legal profession in Revolutionary America was not overdrawn. The history of the Revolution and of the formative period of the union of states is a record of leadership and of the influence of the bar which has never been surpassed at any time or in any country. Such names as James Otis, John Adams, Josiah Quincy, Robert Payne of Massachusetts, Peyton Randolph, Patrick Henry, Edmund Pendleton of Virginia, Charles Carroll and Samuel Chase of Maryland, and Alexander Hamilton and James Kent of New York recall vividly to mind not only the remarkable development of the English common law in America during the latter part of the 18th century but the ascendancy of the legal profession in legislation and in the political and social life of the growing nation. Lawyers were the most influential members of the Colonial legislature, and the Continental Congress. Of the 55 signers of the Declaration of Independence more than one-half were lawyers. They not only kindled the flame of the Revolution but they translated the Revolution into institutions under the forms of law with a passionate devotion to liberty and a skill and statesmanlike grasp which has excited the wonder and admiration of the historian. They profoundly influenced the formulation of the Constitution and the great legislative acts organizing the administrative and judicial arms of the government were the creations of lawyers. The Constitution itself was vitalized and made an effective instrument of government by Chief Justice Marshall aided by an able bar.

How shall we account for these striking changes in the authority and influence of our profession in a period comparatively so brief? From a vocation generally held in contempt and almost outlawed, how was it that in less than fifty years it attained a position of influence as deserved as it was assured? If we study the history of the times we shall be forced to conclude that this rise to eminence was coincident with and I believe very largely in consequence of the

development of law as a science in the Colonies and of the application to it of improved educational methods. Burke was rightly impressed with the avidity with which law books were studied in the colonies. In the latter part of the 18th century the importation of law books from England greatly increased and although judged by modern standards the list of importations was a meagre one, the standard law books of the period, such as Coke on Littleton, Comyn's Digest, Hale's and Hawkins' Pleas of the Crown, Lily's Entries, and Blackstone's Commentaries were eagerly sought and widely read. Of greater importance was the growing practice for young men seeking the bar to give themselves all the advantages of the best available education.

In contrast to our own day, a liberal college education was generally regarded as a necessary prerequisite to law study. The lawyers at the Massachusetts bar between 1788 and 1817 were nearly all college graduates, for the most part from Harvard but with representation of Dartmouth, Brown, and Williams. In 1805, 77 of the 105 members of the New Hampshire bar were college graduates, and in Maine, Connecticut, New Jersey and South Carolina a large portion of the bar, and in New York a somewhat smaller proportion were either educated for the bar in England or were graduates of American colleges, notably Yale, Princeton, Kings (afterward Columbia) College, the University of Pennsylvania, and William and Mary College in Virginia. With all our increased educational facilities, what was then the rule has now become almost the exception in many of our states and in New York until recently less than 40 per cent. of the candidates for admission to the bar were college graduates.

A most stimulating influence in setting high standards of education and attainment for the bar in the new world was the considerable number of young lawyers who received their training in the Inns of Court. Notwithstanding the burden of expense and the difficulties of travel, many young men who afterward became the best known lawyers of the colonies journeyed to London to receive there the benefits of law study and association in the Inns of Court. Here in association with young lawyers many of whom became famous at the English bar they received their legal training profoundly influenced by the traditions of the English bar and by the notions of individual right and liberty which then characterized legal thought and which has become our greatest heritage from the English common law. From 1760 to the close of the Revolution 115 Americans were admitted to the Inns of Court: from South Carolina 47, from Virginia 21, from Maryland 16, from Pennsylvania, 11 from New York 5 and from each of the other colonies one or two.

The influences which gave the English bar an exclusive and aristo-

cratic character operated even more strongly in the new world. Here the absence of an aristocracy founded on hereditary privilege, and the absence of great wealth gained from the rapid development of commerce and industry during the later phase of our history gave to our bar an unquestioned social and political leadership to which perhaps it could not under other conditions have attained. These influences made the bar the most English of our institutions and during the early part of the 19th century it had a more highly developed class consciousness than probably at any other time in its history. In a number of states the distinction between barristers and attorneys was maintained for a time after the Revolution, notably in Massachusetts, New York and New Jersey. Numerous associations of the bar, variously known as moots, sodalities or local bar associations sought to exercise the functions of the Inns of Court in promoting the social and professional unity of the bar and in exercising control over the admission to practice. The system of appointment of judicial officers still obtained. The judges were generally selected from the leaders of the bar and the bar exercised a very considerable influence in their selection. Conditions which tended to give to the bar a solidarity and a sense of corporate responsibility which has never quite been equalled in any later period.

Since about the year 1832 the history of the American bar to my mind falls naturally into two distinct phases or periods: the first of these ended shortly after the Civil War and the second is, I believe, now drawing to a close. During the early part of the 19th century the bar came nearer to constituting an exclusive privileged class in the new republic than any other group in the community.

It is perhaps not unnatural that with the reaction against English institutions following the Revolution and the spread of Jeffersonian democracy there should have been a revulsion of feeling, especially in the newer communities of the west, against what many chose to regard as the aristocratic pretensions of the bar and its tendency to arrogate to itself special rights and privileges. In two ways this popular distrust of lawyers and their ways produced changes in our institutions which have profoundly influenced the bar and their relation to the people. The first of these was a gradual abandonment of the system of appointment to judicial office. In 1832 the State of Mississippi adopted a Constitution providing for the popular election of judicial officers for short terms of office. This change of policy was soon followed by a majority of the states, so that the system of appointment in its original form has been retained in only four states. Unfortunately, there is no record of the debates in the constitutional convention which adopted the Mississippi Constitution in 1832. If, how-

ever, the records of other constitutional conventions may be taken as indicating the reasons for the change it was due not to any necessity of remedying abuses but to the spread of the extreme democratic movement which accepted as a part of its fundamental philosophy the principle that the power of selection of all governmental officers should be exercised by the people through the ballot, a doctrine which ultimately led to the selection of practically all state and municipal officers by popular election.

This change in the method of selecting judges had important consequences on the character and general qualifications of the judges selected. A no less competent and disinterested observer than James Bryce attributes the general inferiority of the judges in a number of states to those of the federal bench and the English bench, to the limited terms of office and to the method of their selection. But what is more to the point in our present inquiry, it tended to break down the solidarity of the bar since judicial honors ceased to be the customary reward for leadership at the bar. It widened the gap between the bench and the profession at large and deprived the bar of the authoritative leadership exercised in the earlier days by judges who were elevated to the bench as recognition of their leadership at the bar rather than as a reward for political service as has proved too often to be the case under the elective system.

The other change brought about during this second period and due to similar causes was a gradual lowering of the educational and professional standards which had prevailed for the bar in the earlier history of the country. In Massachusetts and in New York and in most of the other states the educational requirements for admission to the bar at the close of the 18th century, judged in comparison with general educational standards and facilities were far more exacting than they were at a period within our own recollection. For example, the Suffolk County, Mass., bar in 1768 required the candidate to obtain the consent of the bar before beginning his law study. He was required to study law three years before admission to practice before the inferior courts, two additional years before admission to practice before the Supreme Court, and two years more before he could assume the office of barrister. As early as 1771 the Suffolk County bar made a college education a prerequisite to law study. In New York in 1797, a period of seven years law study was required of all candidates for admission to the bar.

The transition from such requirements to the provision of the Indiana constitution that any citizen should have an unqualified right to admission to the bar marks the triumph of pure democracy over any pretensions that the bar should be either exclusive or learned.

In other states some formal requirements for admission to the bar were retained but they were far less exacting than those to which I have referred and their administration was in most cases perfunctory.

The underlying cause of this transition was as I have said the trend toward extreme democracy and the popular reaction against the creation by government of a privileged class from which any freeborn American could be excluded. But there were other contributory causes to be found in the special situation of a new country remote from contact with older civilization. Especially important was the severance from the mother country which cut off our lawyers from close relationship with the English bar and thus limited the force of its traditions and influence. The rapid expansion of the country into the new communities of the south and west inevitably developed a social life free from convention and impatient of formal restrictions on freedom of action.

But whatever the causes one cannot doubt that the effect on the American bar was a distinct loss in the average quality of its membership and a consequent loss of its prestige and authority in the life of the nation. If one compares the annals of the bar during the period 1830 to 1860 with the years immediately following the Revolution he is impressed with the decline of the corporate spirit of the bar and of that feeling of corporate responsibility for law administration which guarded jealously the avenues of approach to the law and exacted high professional standards of all those who succeeded in passing its barriers. Great leaders, there still were—Webster, Choate, Chase, Binney, Shaw, are great names in the annals of American jurisprudence and the law itself made more rapid progress in its development than in any previous period. But the bar as a whole occupied a less commanding position and wielded a declining influence on political life and public opinion.

The close of the Civil War marked the beginning of economic and industrial changes which profoundly affected our entire national life and these changes have had an especially direct and immediate influence on the practice of law. The penetration of the railroads into the new west, the opening up of public lands to settlers, the rapid growth of manufacturing and commerce, with the consequent increase of population in the industrial centers, the development of the great industrial corporations, have not only expanded greatly our statute and common law but have given us a new type of lawyer and a new leadership of the bar. The real growth of the law of corporations, railroads and public service companies, and insurance have taken place within a brief period of about 50 years, a growth so rapid and the problems of administration have been so involved with the problems of business

organization that we have been compelled to resort in these fields to law administration through administrative boards and commissions. As was perhaps inevitable the march of economic events has substituted for the leadership of the advocate and the legal scholar the leadership of the business lawyer and specialist. At his best he is the skillful, resourceful solicitor, and at his worst a mere hired man of corporations. Such leadership undoubtedly requires a training and intellectual power of the first order and at its best it is no less honorable than that of the great jurist or the barrister, but it has tended to give to the practice of law more and more the characteristics of business rather than of a learned profession and has contributed not a little to the decline of professional standards and the corporate spirit and activity of the bar which began some two generations ago.

For a considerable period the bar associations were less active and their membership as compared with the numbers of the profession too small to exercise effective influence over the profession at large. The story of the early bar associations in New England which embraced practically the entire membership of the bar and exercised a control over all its activities, presents an attractive picture when compared with the waning influence of bar associations in later times. We can now discern a much to be desired increase in activities and influence of the various state and local bar associations but it is not so many years ago when less than 25 per cent. of the lawyers in New York City were members of any bar association. In short, I believe it would not be difficult to select a date late in the century just past when it might fairly be said that the American bar in point of requirements for admission, professional standards, corporate spirit, and professional self consciousness had reached the low water mark in its history.

Lest I be charged with drawing too gloomy a picture I hasten to explain that in making this statement I refer to the bar as a whole and I exclude from the indictment that part of it made up of men of education, drawn very largely from the leading law schools of the country, who have preserved the best traditions of the profession. Under any system of regulation and control of the bar, however lax, we should have and let us hope always will have such a group, a bar within the bar, setting its own standards of professional attainment and right conduct, believing and acting on the belief that law is a profession worthy of the most rigorous and exacting training and that it demands the loyal adherence to those intellectual and ethical standards which are essential to the well being and effective influence of any profession.

It is the inspiration of this group which I believe attracts annually in increasing numbers so many of the graduates of our colleges and

universities to the leading law schools of the country for their preparation for the bar. Such a group suffers inevitably in public reputation and influence from the association with great numbers who, because of low standards of admission and professional fitness are in no proper sense worthy of membership in a learned profession. In consequence the bar has carried an almost insupportable burden of a large membership unfitted for its responsibilities by education and training and without any natural inclination to maintain its traditions.

The last thirty years has witnessed the growth of agencies which are making some progress toward improvement of these conditions. The most note-worthy of these is the better class of law schools. As a class they have labored unremittingly for the improvement of legal education and they have steadily raised the preliminary educational requirement for admission to law schools. The influence of their example has been diluted by the growth of great numbers of schools without recognizable professional or educational ideals. Their aim has been to make admission to the bar so easy and expeditious as to attract to them great numbers of students who have neither the patience nor the capacity nor the educational background to meet the exacting requirements of thorough-going professional study. The result has been the diversion of large numbers of young men from useful careers in trade or business to the legal profession for which they have neither natural aptitude nor adequate preparation. To have deprived the community of a competent plumber or a capable insurance agent in order to give to it an inferior lawyer is not only economically wasteful but it is positively injurious to the individual and to the public at large which has a direct and vital interest in the capacity and probity of the bar. An indispensable adjunct and unailing prop to the low-grade law school is the lax bar examination. In fact, the rapid growth of this type of law school in the last twenty years is accounted for mainly by the development of the kind of bar examinations which can be passed by the aid of the "cramming" law school but which are not sufficiently searching and discriminating to be real tests of the adequacy and effectiveness of the lawyer's training.

Recent years have witnessed a revival in interest in professional ethics, a greater activity of the bar associations—state, national and local—and a greater interest and activity in some localities at least in purging the bar of its unworthy members. These are helpful signs which give promise of a reviving professional, corporate spirit and that the bar will develop in increasing measure a wholesome self respect. But with respect to the two steps which are most essential to strengthening the position and influence of the bar, namely, the raising of the standards of legal education and improving the bar examinations—

the bar as a whole is still apathetic. The impetus to reform and improvement has come almost wholly from the law schools with little aid from the profession at large or from the various bar associations of the country. In this respect the bar has lagged behind the medical profession which has set us a commendable example in taking steps through the American Medical Association to adopt high standards of professional training and to grade the medical schools of the country according as they measure up to those standards or fall below them. In all but one state attendance at and graduation from an approved medical school is required before admission to practice medicine. But no state requires the study of law at a law school as a prerequisite to practice law and no state requires a preliminary education beyond that of a high school to prospective members of the bar.

It is a false notion of democracy that would deny to the state the right to exact adequate training and skill from its public servants or that would assume that equality of political rights should entitle the citizen to any right to enter a learned profession without adequate qualifications for the performance of its duties.

The argument is often advanced that a standard sufficiently high to improve the bar generally would have kept Abraham Lincoln from becoming a lawyer. This argument is without merit, principally because it is based on a false assumption. Abraham Lincoln as a young man had an education superior to the standards of education which prevailed in his own community. Had he lived in this day and generation who is there who knows of his life and character who could doubt that he would have availed himself to the utmost of the educational advantages which are open to every man of ability and character regardless of his station in life. With our present educational facilities no standard of admission to the bar which has ever been proposed would have kept any man fitted by character and ability for membership in the bar from entering it. The danger until recent years has been not that we would keep our Abraham Lincolns from the bar but that by our indifference to the problem we should permit the bar to be discredited and its influence destroyed by an inundation of the unfit. The notion that the bar in this country could ever have become an undemocratic institution through increased educational standards is an utterly mistaken one. There is no force in American life more potent for democracy and the preservation of our free institutions than the education of our colleges and universities. No section of our country asks for less democracy but all should ask that the agencies of democracy should be more intelligent, better trained and better fitted to bear their responsibilities.

In the years since I came to the bar much progress has been made toward securing a wider and better understanding of this problem. Nearly all states now have uniform examinations; in many the examinations are more exacting, but in most they leave much to be desired. In all states preliminary educational requirements are too low. The better class of law schools have raised their own standards and they are preaching unceasingly the gospel of a better bar through better education and higher standards. What is now needed is closer coöperation between all agencies for improvement of the bar,—the law schools, the bar, the courts, and the bar associations. The American bar, like the American Medical Association, ought to be neither afraid nor ashamed to say what it considers adequate training for the bar,—what schools provide it, and what boards of bar examiners exact it.

I have said that I regard the third phase of the history of the American bar as now drawing to a close. Just as the phase of our economic expansion must now give place to a period of more intensive development of all our natural and acquired resources, so the field of law will now have to be more intensively cultivated. Instead of the rapid expansion of corporate organization requiring expert service of the best lawyers we shall see corporations more and more transacting their routine legal work in their own legal departments and we may hope to see a greater number of lawyers turn to advocacy and the study of purely legal problems. Through the study of comparative law, through a better understanding of legal doctrine, and through more scientific legislation we may make progress towards the simplification of law and prepare to approach the great problem which the multiplication of precedents embodied in our judicial decisions is pressing upon us. Whether it will be solved by codification or a restatement of the law or by lessening the emphasis placed on precedent, or by some device by which the number of precedents will be diminished, no man can now say. But we may be certain that it will not be adequately solved unless the legal profession brings to bear on it the resources which come from thorough training and an enlightened and intelligent grasp of the nature and functions of law in social organization.

DeToqueville regarded the bar as the most conservative force in our American life, a conclusion which he reached as a result of his own observation. But he might well have reached the conclusion on *a priori* grounds. The lawyer class more than any other preserves unbroken the continuity of the past with the present. He formulates his rules of conduct on the basis of what has been done in the past. His habit of studying and following precedent inclines his mind to

reverence what is established and to look with distrust on what is novel and untried. The lawyer's habit of caution which so often protects his client from the consequences of rash action is a real conservative force in the community which should not be lightly valued. But the conservative mind is subject to two great dangers,—the danger of intolerance and the danger of its becoming "closed mind." I would not be understood as regarding intolerance as exclusively a vice of conservative minds. It is a fault of the radical as well and I find almost as much intolerance among those who pride themselves on their liberal opinion as among the conservatives who are impatient and distrustful of the innovator. To cite an example from our own profession, who could be more intolerant than Jeremy Bentham, the great law reformer who saw in the common law only a "fathomless and boundless chaos made up of fiction, tautology, technicality, and inconsistency and the administrative part of it a system of exquisitely contrived chicanery which maximizes delay and denial of justice."

The convulsion of war through which the world has just been passing, as was perhaps inevitable, has bred a spirit of intolerance which has found expression in legislation and in law administration and in some instances in the lax administration of it. In the period of reconstruction and readjustment, when the new order clashes with the old, the bar, in legislation, in law administration, should deal with the new problems with a wise tolerance. We ought not in this generation and in the troubled times that are before us to forget that the most precious inheritances which the bar brought from the mother country were our notions of personal liberty and our belief that the function of law is to deal with and regulate conduct and not the freedom of opinion and speech when it does not incite to unlawful acts. One of the great tasks of reconstruction is the winning back from the encroachments of government, that individual liberty which for over 300 years has dominated the enlightened thought of the Anglo-Saxon race. Since the days of Hampden who was trained as a lawyer the members of the profession who at critical times have stood for liberty and justice have given to the bar its real character and influence. They have, to quote the words of Burke, augured "misgovernment at a distance" and snuffed "the approach of tyranny in every tainted breeze."

As indicative of the part which the bar should play in what I have referred to as the reconstruction period, nothing could be more wholesome than the determination of the American Bar Association to investigate the system of military justice in the United States. Without attempting to express any opinion of the wisdom and efficacy of that system, I believe it is important that as lawyers we should be

keenly apprehensive of the unjust exercise of arbitrary power in our governmental system whether civil or military and that we should be the first in the community to protect the rights of the individual from the encroachments by the exercise of such power whether it be clothed in the forms of law or relies upon popular prejudice or indifference to escape the consequences of its own unlawful acts. For that reason in my judgment the bar of the country has a special duty and mission at this time to scrutinize critically and jealously those laws whose enactment in principle was doubtless necessary to the prosecution of a great war, which encroach upon the field of individual liberty in placing restrictions upon the free expression of opinion and the free communication of information and the expression of ideas. At this time when the world has just been inundated with German falsehood and at a time when, I believe, we are about to hear the preaching of a great deal of false social and economic philosophy, we are prone to forget the teachings of history that in the long run there is greater danger to human progress in the arbitrary repression of truth than in freedom to disseminate falsehood. The Inquisition did not destroy heresy; the truth will thrive without its aid.

Another field for study and investigation by lawyers and our schools of law which places emphasis on the rights of the individual is the just and equal application of the laws to the individual. By this I refer not only to the denial of justice which results from giving rein to the spirit of lynch law and mob violence which is one of the most serious problems of law administration in this country, but to the great problem of making our legal system an effective agency for administering justice where the interest involved is too small or the suitor is too humbly situated to command the legal skill requisite for a just result. Nothing could tend more to cause popular distrust of lawyers and courts and to affect injuriously that which we reverence most in our legal system than the wide spread belief in our growing industrial communities that legal justice which should be free and equally available to all is in practice to be had only in the large cause or by the well-to-do suitor. Nor is there any problem more difficult of practical solution. Whether it is to be met by the extension of the activities of the Legal Aid Society or whether, as seems more likely, by the reconstruction of our judicial system and a modification of our procedure in the courts for small causes, the problem is one for lawyers to study and settle in the public interest and in the interest and for the credit of their own profession.

It is impossible that we should diligently study the English common law as it has been moulded and adapted by our Equity system without profound admiration and respect for it as, on the whole, as sane and

beneficent a system for the administration of justice as man could have devised. Moreover, the tendency of the common law when placed in direct competition with other systems of law to supplant them gives us faith in its durability and its adaptability to the needs of the people. This attitude on the part of lawyers has given occasion for the charge not always unjustly made that they are overcomplacent and self-satisfied in contemplating the beauties and excellencies of our law.

The habit of lawyers of regarding our legal system as a perfected one and of closing the mind to the possibilities of its improvement is not without its unfortunate consequences to our profession. That Blackstone became so lost in admiring contemplation of the law that he wrote of it as the perfection of human reason must have had an incalculable effect on the generation of lawyers who have accepted his Commentaries as their legal gospel. When we are inclined to think of our law as a finished and perfected system we ought to remember that when Blackstone wrote, the law denied to married women most of the substantial rights of property; the criminal law imposed a catalog of bloody penalties which we would now regard as abhorrent to any system of justice; it denied to the accused the benefit of counsel and the right of appeal; one could not testify as a witness in his own behalf and on the assumption that all atheists were untruthful, it accepted the testimony of atheists who were willing to lie and excluded that of those who had the integrity and moral courage to subject themselves to public contempt by admitting their atheism. We ought not to forget that within the last century nearly all the prominent judges of England, learned and able men that they were, opposed giving to one charged with crime the benefit of counsel. The entire history of our law has been one of change and adaptation to meet new conditions, social and economic, and to conform to a more enlightened ethical perception. In the very nature of things our law cannot become a finished and perfected system until all society itself is both perfect and static.

In the social readjustment which is even now going on as a consequence of the great war the philosophy of law as it finds expression in the theories of contracts, property, and established rights will be subjected to new tests. I would not have lawyers any less conservative in their judgments; I would not have them hold any less reverence for the past or any less confidence in the capacity of the common law to adjust itself to new conditions. But I would have them approach these new problems with open and inquiring minds.

Take for example, the problem of the status in our law of bankers' letters of credit, which will soon be pressing for solution in our courts.

In most states the question is novel because before the war most bankers' credits were issued in the great financial centers of Europe. Will their validity depend on the ancient doctrine of consideration, on the law of trusts, or will it rest on the basis of estoppel or will they be given currency by an extension of the law merchant as instruments executed in the course of business with the intention and purpose that they should be relied upon? Has the vast expansion of the powers of government in the exercise of its war powers changed our established notion of the relations of government to the individual? Will the police power be expanded in the general social interests or will there be a reaction in favor of the rights of the individual? Has our experience of government control of public carriers changed our views of the principles of regulation and control of public service corporations? And so one might go on almost indefinitely suggesting new questions in every field of human endeavor which will in the future require re-examination by lawyers.

As law students, as law teachers, as practicing lawyers, as judges, we should be constantly questioners of the validity and sufficiency of legal doctrine. For the questioner, as John Stuart Mill said, "need not be an enemy;" indeed, he who questions in the light of experience, intelligently and with an open mind, is the true friend of human progress and best makes his contribution to human well-being.

As I see our profession today it is better prepared than at any time for at least sixty years to meet and solve the problems of the adaptation of law to changing conditions. The established practice of the better law schools of searching for the underlying reason for legal rules; the constant habit of examining legal doctrine in the light of what Burke held to be the "two and only two fundamentals of the law—equity and utility" has given to the bar an increasing number of lawyers whose respect for the law is not any the less because it is intelligent and discriminating. Their influence is undoubtedly increasing in the profession. The bar as a whole in its association, in its participation, in the efforts for better legislative methods, in its effort to discipline its unworthy members, is displaying greater activity and a high sense of corporate responsibility.

For all this the profession is to be congratulated; not for what has been accomplished but for what has been promised.

The lawyer's problem still is, as in Cotton Mather's day, how to become a better neighbor. He will solve it by making his skill a blessing to his neighborhood. That will be accomplished in increasing measure when lawyers as a class are adequately trained; when with unflinching devotion to liberty and justice they examine their new problems in the light of experience with tolerant and inquiring minds.