in some States there are rules limiting it. A counsel can, except in New Jersey (a State curiously conservative in some points), bring an action for the recovery of his fees, and, *pari ratione*, can be sued for negligence in the conduct of a cause.

A lawyer can readily gain admission to practise in the Federal courts, and may by courtesy practise in the courts of every State. But each State has its own Bar, that is to say, there is no general or national organization of the legal profession, the laws regulating which are State laws, differing in each of the forty-four commonwealths. In no State does there exist any body resembling the English Inns of Court, with the right of admitting to the practice of public advocacy and of exercising a disciplinary jurisdiction: and in very few have any professional associations resembling the English Incorporated Law Society obtained statutory recognition. Usually the State law vests in the courts the duty of admitting persons as attorneys, and of excluding them if guilty of any serious offence. But the oversight of the judges is necessarily so lax that in many States and cities voluntary Bar Associations have been formed with the view of exercising a sort of censorship over the profession. Such associations can blackball bad candidates for admission, and expel offenders against professional honour; and they are said to accomplish some good in this way. More rarely they institute proceedings to have black sheep removed from practice. Being virtually an open profession, like stockbroking or engineering, the profession has less of a distinctive character and corporate feeling than the barristers of England or France have, and I think rather less than the solicitors of England have. Neither wig, bands, gown, cap, nor any other professional costume is worn, and this circumstance, trivial as it may seem, no doubt contributes to weaken the sentiment of professional privilege and dignity, and to obscure the distinction between the advocate in his individual capacity and the advocate as an advocate, not deemed to be pledging himself to the truth of any fact or the soundness of any argument, but simply presenting his client's case as it is presented to him.

In most States the judges impose some sort of examination on persons seeking to be admitted to practice, often delegating the duty of questioning the candidate to two or three counsel



named for the purpose. Candidates are sometimes required to have read for a certain period in a lawyer's office, but this condition is easily evaded, and the examination, nowhere strict, is often little better than a form or a farce. Notwithstanding this laxity, the level of legal attainment is in some cities as high or higher than among either the barristers or the solicitors of London. This is due to the extraordinary excellence of many of the law schools. I do not know if there is anything in which America has advanced more beyond the mother country than in the provision she makes for legal education.[1] Thirty years ago, when there was nothing that could be called a scientific school of law in England, the Inns of Court having practically ceased to teach law, and the universities having allowed their two or three old chairs to fall into neglect and provided scarce any new ones, several American universities possessed well-equipped law departments, giving a highly efficient instruction. Even now, when England has bestirred herself to make a more adequate provision for the professional training of both barristers and solicitors, this provision seems insignificant beside that which we find in the United States, where, not to speak of minor institutions, all the leading universities possess law schools, in each of which every branch of Anglo-American law, *i.e.* common law and equity as modified by Federal and State constitutions and statutes, is taught by a strong staff of able men, sometimes including the most eminent lawyers of the State.[2] Here at least the principle of demand and supply works to perfection. No one is obliged to attend these courses in order to obtain admission to practice, and the examinations are generally too lax to require elaborate preparation. But the instruction is found so valuable, so helpful for

[1] Modern England seems to stand alone in her comparative neglect of the theoretic study of law as a preparation for legal practice. Other countries, from Germany at the one end of the scale of civilization to the Mohammedan East at the other end, exact three, four, five, or even more years spent in this study before the aspirant begins his practical work.

[2] This instruction is in most of the law schools confined to Anglo-American law, omitting theoretic jurisprudence (*i.e.* the science of law in general), Roman law, except, of course, in Louisiana, where the Civil Law is the basis of the code, and international law. The latter subjects are, however, now beginning to be more frequently taught, though sometimes placed in the historical curriculum. In some law schools much educational value is attributed to the moot courts in which the students are set to argue cases, a method much in vogue in England two centuries ago.

professional success, that young men throng the lecture halls, willingly spending two or three years in the scientific study of the law which they might have spent in the chambers of a practising lawyer as pupils or as junior partners. The indirect results of this theoretic study in maintaining a philosophical interest in the law among the higher class of practitioners, and a higher sense of the dignity of their profession, are doubly valuable in that absence of corporate organizations on which I have already commented.[1]

In what may be called habits of legal thought, their way of regarding legal questions, their attitude towards changes in the form or substance of the law, American practitioners, while closely resembling their English brethren, seem on the whole more conservative. Such law reforms as have been effected in England during the last thirty years have mostly come from the profession itself. They have been carried through Parliament by attorneys-general or lord-chancellors, usually with the tacit approval of the bar and the solicitors. The masses and their leaders have seldom ventured to lay profane fingers on the law, either in despair of understanding it or because they saw nearer and more important work to be done. Hence the profession has in England been seldom roused to oppose projects of change; and its division into two branches, with interests sometimes divergent, weakens its political influence. In the United States, although the legislatures are largely composed of lawyers, many of these have little practice, little knowledge, comparatively little professional feeling. Hence there is usually a latent and sometimes an open hostility between the better kind of lawyers and the impulses of the masses, seeking probably at the instigation of some lawyer of a demagogic turn to carry through legal changes. The defensive attitude which the upper part of the profession is thus led to assume fosters those conservative instincts which a system of case law engenders, and which are

[1] Some of the best American law-books, as, for instance, that admirable series which made Justice Story famous, have been produced as lectures given to students. Story was professor at Harvard while judge of the Supreme court, and used to travel to and from Washington to give his lectures. A few years ago there were several men in large practice who used to teach in the law schools out of public spirit and from their love of the subject, rather than in respect of the comparatively small payment they received.



further stimulated by the habit of constantly recurring to a fundamental instrument, the Federal Constitution. Thus one finds the same dislike to theory, the same attachment to old forms, the same unwillingness to be committed to any broad principle which distinguished the orthodox type of English lawyers sixty years ago. Prejudices survive on the shores of the Mississippi which Bentham assailed seventy years ago when those shores were inhabited by Indians and beavers; and in Chicago, a place which living men remember as a lonely swamp, special demurrers, replications *de injuria*, and various elaborate formalities of pleading which were swept away by the English Common Law Procedure Acts of 1850 and 1852, flourish and abound to this day.

Is the American lawyer more like an English barrister or an English solicitor? This depends on the position he holds. The leading counsel of a city recall the former class, the average practitioners of the smaller places and rural districts the latter. But as every American lawyer has the right of advocacy in the highest courts, and is accustomed to advise clients himself instead of sending a case for opinion to a counsel of eminence, the level of legal knowledge — that is to say, knowledge of the principles and substance of the law, and not merely of the rules of practice — is somewhat higher than among English solicitors, while the familiarity with details of practice is more certain to be found than among English barristers. Neither an average barrister nor an average solicitor is so likely to have a good working all-round knowledge of the whole field of common law, equity, admiralty law, probate law, patent law, as an average American city practitioner, nor to be so smart and quick in applying his knowledge. On the other hand, it must be admitted that England possesses more men eminent as draftsmen, though perhaps fewer eminent in patent cases, and that much American business, especially in State courts, is done in a way which European critics might call lax and slovenly.

I have already observed that both in Congress and in most of the State legislatures the lawyers outnumber the persons belonging to other walks of life. Nevertheless, they have not that hold on politics now which they had in the first and second generations of the Republic. Politics have, in falling so

completely into the hands of party organizations, become more distinctly a separate profession, and an engrossing profession, which a man occupied with his clients cannot follow. Thus among the leading lawyers, the men who win wealth and honour by advocacy, comparatively few enter a legislative body or become candidates for public office. Their influence is still great when any question arises on which the profession, or the more respectable part of it, stands together. Many bad measures have been defeated in State legislatures by the action of the Bar, many bad judicial appointments averted. Their influence strengthens the respect of the people for the Constitution, and is felt by the judges when they are called to deal with constitutional questions. But taking a general survey of the facts of to-day, as compared with those of sixty years ago, it is clear that the Bar counts for less as a guiding and restraining power, tempering the crudity or haste of democracy by its attachment to rule and precedent, than it did then.

A similar decline, due partly to this diminished political authority, may be observed in its social position. In a country where there is no titled class, no landed class, no military class, the chief distinction which popular sentiment can lay hold of as raising one set of persons above another is the character of their occupation, the degree of culture it implies, the extent to which it gives them an honourable prominence. Such distinctions carried great weight in the early days of the Republic, when society was smaller and simpler than it has now become. But of late years not only has the practice of public speaking ceased to be, as it once was, almost their monopoly, not only has the direction of politics slipped in great measure from their hands, but the growth of huge mercantile fortunes and of a financial class has, as in France and England, lowered the relative importance and dignity of the Bar. An individual merchant holds perhaps no better place compared with an average individual lawyer than he did forty years ago; but the millionaire is a much more frequent and potent personage than he was then, and outshines everybody in the country. Now and then a brilliant orator or writer achieves fame of a different and higher kind; but in the main it is the glory of successful commerce which in America and



Europe now draws wondering eyes. Wealth, it is true, is by no means out of the reach of the leading lawyers: yet still not such wealth as may be and constantly is amassed by contractors, railwaymen, financial speculators, hotel proprietors, newspaper owners, and retail storekeepers. The incomes of the first counsel in cities like New York are probably as large as those of the great English leaders. I have heard firms mentioned as dividing a sum of $250,000 (£50,000) a year, of which the senior member may probably have $100,000. It is, however, only in two or three of the greatest cities that such incomes can be made, and possibly not more than fifteen counsel in the whole country make by their profession more than $50,000 a year. Next after wealth, education may be taken to be the element or quality on which social standing in a purely democratic country depends. In this respect the Bar ranks high. Most lawyers have had a college training, and are, by the necessity of their employment, persons of some mental cultivation; in the older towns they, with the leading clergy, form the intellectual *élite* of the place, and maintain worthily the literary traditions of the Roman, French, English, and Scottish bars. But education is so much more diffused than formerly, and cheap literature so much more abundant, that they do not stand so high above the multitude as they once did. It may, however, still be said that the law is the profession which an active youth of intellectual tastes naturally takes to, that a large proportion of the highest talent of the country may be found in its ranks, and that almost all the first statesmen of the present and the last generation have belonged to it, though many soon resigned its practice. It is also one of the links which best serves to bind the United States to England. The interest of the higher class of American lawyers in the English law, bar, and judges, is wonderfully fresh and keen. An English barrister, if properly authenticated, is welcomed as a brother of the art, and finds the law reports of his own country as sedulously read and as acutely criticised as he would in the Temple.[1]

[1] American lawyers remark that the English Law Reports have become less useful since the number of decisions upon the construction of statutes has so greatly increased. They complain of the extreme difficulty of keeping abreast of the vast multitude of cases reported in their own country, from the courts of forty-four States as well as Federal courts.

I have left to the last the question which a stranger finds it most difficult to answer. The legal profession has in every country, apart from its relation to politics, very important functions to discharge in connection with the administration of justice. Its members are the confidential advisers of private persons, and the depositaries of their secrets. They have it in their power to promote or to restrain vexatious litigation, to become accomplices in chicane, or to check the abuse of legal rights in cases where morality may require men to abstain from exacting all that the letter of the law allows. They can exercise a powerful influence upon the magistracy by shaming an unjust judge, or by misusing the ascendency which they may happen to possess over a weak judge, or a judge who has something to hope for from them. Does the profession in the United States rise to the height of these functions, and in maintaining its own tone, help to maintain the tone of the community, especially of the mercantile community, which, under the pressure of competition, seldom observes a higher moral standard than that which the law exacts? So far as my limited opportunities for observation enable me to answer this question, I should answer it by saying that the profession, taken as a whole, seems to stand on a level with the profession, also taken as a whole, in England. But I am bound to add that some judicious American observers hold that the last thirty years have witnessed a certain decadence in the Bar of the greater cities. They say that the growth of enormously rich and powerful corporations, willing to pay vast sums for questionable services, has seduced the virtue of some counsel whose eminence makes their example important, and that in a few States the degradation of the Bench has led to secret understandings between judges and counsel for the perversion of justice.

As the question of fusing the two branches of the legal profession into one body has been of late much canvassed in England, a few words may be expected as to the light which American experience throws upon it.

There are two sets of persons in England who complain of the present arrangements — a section of the solicitors, who are debarred from the exercise of advocacy, and therefore from the great prizes of the profession; and a section of the junior bar,



whose members, depending entirely on the patronage of the solicitors, find themselves, if they happen to have no private connections among that branch of the profession, unable to get employment, since a code of etiquette forbids them to undertake certain sorts of work, or to do work except on a fixed scale of fees, or to take court work directly from a client, or to form partnerships with other counsel. Attempts have also been made to enlist the general public in favour of a change, by the argument that law would be cheapened if the attorney were allowed to argue and carry through the courts a cause which he has prepared for trial.

There are three points of view from which the merits or demerits of a change may be regarded. These are the interests respectively of the profession, of the client, and of the community at large.

As far as the advantage of the individual members of the profession is concerned, the example of the United States seems to show that the balance of advantage is in favour of uniting barristers and attorneys in one body. The attorney would have a wider field, greater opportunities of distinguishing himself, and the legitimate satisfaction of seeing his cause through all its stages. The junior barrister would find it easier to get on, even as an advocate, and, if he discovered that advocacy was not his line, could subside into the perhaps not less profitable function of a solicitor. The senior barrister or leader might, however, suffer, for his attention would be more distracted by calls of different kinds.

The gain to the client is still clearer; and even those (very few) American counsel who say that for their own sake they would prefer the English plan, admit that the litigant is more expeditiously and effectively served where he has but one person to look to and deal with throughout. It does not suit him, say the Americans, to be lathered in one shop and shaved in another; he likes to go to his lawyer, tell him the facts, get an off-hand opinion, if the case be a simple one (as it is nine times out of ten), and issue his writ with some confidence: whereas under the English system he might either have to wait till a regular case for the opinion of counsel was drawn, sent to a barrister, and returned, written on, after some days, or else take the risk of bringing an action which turned

out to be ill-founded. It may also be believed that a case is, on the whole, better dealt with when it is kept in one office from first to last, and managed by one person, or by partners who are in constant communication. Mistakes and oversights are less likely to occur, since the advocate knows the facts better, and has almost invariably seen and questioned the witnesses before he comes into court. It may indeed be said that an advocate does his work with more ease of conscience, and perhaps more *sang-froid*, when he knows nothing but his instructions. But American practitioners are all clear that they are able to serve their clients better than they could if the responsibility were divided between the man who prepares the case, and the man who argues or addresses the jury. Indeed, I have often heard them say that they could not understand how English counsel, who rarely see the witnesses beforehand, were able to conduct witness causes satisfactorily.

If, however, we go on to ask what is the result to the whole community of having no distinction between the small body of advocates and the large body of attorneys, approval will be more hesitating. Society is interested in the maintenance of a high tone among those who have that influence on the administration of justice and the standard of commercial morality which has been already adverted to. It is easier to maintain such a tone in a small body, which can be kept under a comparatively strict control and cultivate a warm professional feeling than in a large body, many of whose members are practically just as much men of business as lawyers. And it may well be thought that the conscience or honour of a member of either branch of the profession is exposed to less strain where the two branches are kept distinct. The counsel is under less temptation to win his cause by doubtful means, since he is removed from the client by the interposition of the attorney, and therefore less personally identified with the client's success. He probably has not that intimate knowledge of the client's affairs which he must have if he had prepared the whole case, and is therefore less likely to be drawn into speculating, to take an obvious instance, in the shares of a client company, or otherwise playing a double and disloyal game. Similarly it may be thought that the attorney also is less tempted than if he appeared himself in court, and were not obliged, in carrying out the schemes of a fraudulent client, to call in the aid of another practitioner, amenable to a strict professional discipline. Where the advocate is also the attorney, he may be more apt, when he sees the witnesses, to lead them, perhaps unconsciously, to stretch their recollection; and it is harder to check the practice of paying for legal services by a share of the proceeds of the action.



Looking at the question as a whole, I doubt whether a study of the American arrangements is calculated to commend them for imitation, or to induce England to allow her historic bar to be swallowed up and vanish in the more numerous branch of the profession. Those arrangements, however, suggest some useful minor changes in the present English rules. The passage from each branch to the other might be made easier; barristers might be permitted to form open (as they now sometimes do covert) partnerships among themselves; students of both branches might be educated and examined together in the professional law schools as they now are, with admittedly good results, in the universities.