TOPICS OF THE TIME.

Lawyers' Morals.

It is apparently the popular opinion that lawyers' morals are of a different type from those of ordinary human beings. There is evidently great difficulty in fixing the standards of legal morality and defining its rules. So much debate of this topic itself excites misgivings. Is a lawyer bound by the common laws of conduct recognized as binding by reputable men in other callings? Some of the disputants would seem to maintain that he is not, which is startling; and some to insist that he is, which insistence would itself seem to imply an abnormal condition of things.

Nevertheless, the discussion must be fruitful of good. Now and then we get a clear and uncompromising utterance like that of Mr. Theodore Bacon, read at a late meeting of the Social Science Association and printed in its journal. Mr. Bacon recognizes the fact that the typical lawyer is not the type of honesty. "If," he says, "unswerving integrity, if ingenuous simplicity are recognized by the community in the ranks of the legal profession, they are regarded — let us not blind ourselves to this fact — as an incongruous interpolation in the normal type, . . . and the friendly critic will most probably fall into the very phrase of the ancient epitaph, 'An honest man, although a lawyer.' The dominant feeling would still be fairly expressed by Dr. Johnson's pungent saying, who answered an inquiry as to a person who had just left the room: 'I do not wish to be calumnious, but it is my belief that the man is an attorney.'" When an intelligent lawyer admits that such is the "dominant feeling" with respect to his profession, the perennial debate upon lawyers' ethics is explained and justified.

Mr. Bacon's treatment of this theme is trenchant and uncompromising. His view is summed up in this saying: "I can find no different — or rather, I will say no lower — ethical basis of action for the advocate than for any other member of society." This is a wholesome maxim. It blows away a whole firmament of fog. It brings the subject within reach of common minds. If lawyers are amenable to the same ethical rules that govern other men, then it is not presumptuous for laymen to judge their conduct.

Doubtless there is some confusion in the popular mind as to a lawyer's rights and obligations. The common question, whether a lawyer can rightly defend a criminal known to be guilty, — answered so generally in the negative, — is often discussed under a fundamental misconception. "The fallacy involved in the prevalent objection," as Mr. Bacon says, "is in the notion that the interest of morality demands always the punishment of bad men. The error is a grave one. The interest of morality and of social order demands, above all things, that a bad man shall *not* be punished unless he has violated some law; and even that a known violator of law shall not be punished except by the forms of law. . . . And every lawyer who interposes against an eager prosecutor or a passionate jury the shield of a strictly legal defense, declaring, 'You shall not hang or imprison this man, be he guilty or not guilty, until by the established course of procedure, by competent legal evidence, you have proved that he has offended against a definite provision of law, and that the precise provision which you have charged him with violating,' is defending not so much the trembling wretch at the bar as society itself, and the innocent man who may to-morrow be driven by clamor to crucifixion." This view of the lawyer's duty in criminal cases is one that the layman does not always get hold of, but it is entirely just.

The question of the lawyer's relation to iniquitous civil actions is treated by this essayist with less perspicacity. He thinks that the cases are few in which honorable lawyers *know* their clients to be in the wrong. If this be so, then there must be many dishonorable lawyers; for, undeniably, there is a vast number of civil cases in which one side is *palpably* in the wrong. Mr. Bacon says that the honorable lawyer who *knows* beforehand that the case which he is asked to undertake is iniquitous, promptly declines it. And he accounts for the relation of reputable lawyers to bad cases by saying: "It is seldom that the incessant and fervent assurances of the client, the proofs and arguments which, all on one side, he arrays before his counsel, have failed to keep him convinced, from beginning to end, that he must be in the right." With strictly honorable lawyers this is undoubtedly the rule; but it is at this point that the temptation to lower the professional standards is strongest. This is, therefore, precisely one of the points at which the lawyer's morals need toning up. The advocate whose conscience has fallen into a too easily satisfied condition will be a little less thorough in this preliminary examination than he ought to be.

Not only has a lawyer no right to undertake a clearly unjust cause, he has no right to continue in a cause which he undertook, believing in its justice, if, in the course of the trial, he becomes convinced that it is unrighteous. His manifest duty to retire from the conduct of a bad cause, concerning the character of which his client has wantonly deceived him, is clearly maintained by this essayist.

Out of all this discussion it is easy to draw two or three plain maxims, obvious enough to men in other callings, but far from being commonplaces of legal ethics, as all who frequent the courts must know.

1. A lawyer ought to be a gentleman. His function as an attorney gives him no dispensation to disregard the ordinary rules of good manners, and the ordinary principles of decency and honor. He has no right to slander his neighbor, even if his neighbor be the defendant in a cause in which he appears for the plaintiff. He has no right to bully or browbeat a witness in cross-examination, or artfully to entrap that witness into giving false testimony. Whatever the privilege of the court may be, the lawyer who is guilty of such practices in court is no gentleman out of court.

2. A lawyer ought not to lie. He may defend a criminal whom he knows to be guilty, but he may not say to the jury that he believes this criminal to be innocent. He may not in any way intentionally convey to the jury the impression that he believes the man to be innocent. He may not, in his plea, pervert or distort the evidence so as to weaken the force or conceal the meaning of it. He is a sworn officer of the court, and his oath should bind him to the strictest veracity. It would be quixotic to expect him to assist his adversary, but his obligation to speak the truth outranks every obligation that he owes to his client. It is notorious that some lawyers who would think it scandalous to tell a falsehood out of court, in any business transaction, lie shamelessly in court in behalf of their clients, and seem to think it part of their professional duty. That bar of justice before which, by their professional obligations, they are bound to the most stringent truthfulness, is the very place where they seem to consider themselves absolved from the common law of veracity. So long as the legal mind is infected with this deadly heresy, we need not wonder that our courts of justice often become the instruments of unrighteousness.

3. A lawyer ought not to sell his services for the promotion of injustice and knavery. Swindlers of all types are aided by lawyers in their depredations upon society. The mock broker who operates in Wall street, and strips green country speculators of their hard-earned gains by the most nefarious roguery, always has an able lawyer as his accomplice. The gentleman by whose agency a nest of these rascals was lately broken up says: "The great difficulty in stopping swindles of this class is that the rascals make enough money to be able to employ the best of legal advice, and are, moreover, careful to do nothing which will render them liable to arrest." This is the testimony of a lawyer, Mr. Ralph Oakley, of New York. "The best of legal advice" can be had, then, in New York city for such purposes. It would be more difficult to believe this if its truth were not so often illustrated in the stupendous frauds and piracies of great corporations, all of which are carefully engineered by eminent lawyers. Our modern "buccaneers"—our brave railroad wreckers—are in constant consultation with distinguished lawyers. They undeniably have "the best of legal advice" in planning and executing their bold iniquities.

In the discussion which followed the reading of Mr. Bacon's paper at Saratoga, the suggestion was made that a better legal education would tend to correct disreputable practices at the bar, whereupon a clergyman put this troublesome question: "I desire to ask, for information, whether it is not the case that in many instances the most highly educated attorneys prove the most facile and unscrupulous instruments, as the advocates of large corporations and monopolists?" The question was not answered. Evidently it was not for the want of facts on which to base an intelligent answer.

So long as lawyers can engage in operations of this nature without losing caste in their profession, it will be needful to continue the discussion of professional ethics. And it would seem that the legal profession ought to lose no time in purging itself of those who are guilty of such practices. In the words of the late Lewis L. Delafield, Esq., of the New York bar, spoken in the discussion to which we have referred: "There are many lawyers—and they are not exclusively confined to our large cities—who should be disbarred without delay for dishonest and corrupt practices; and until some serious and successful attempt is made in this direction, the legal profession must expect, and will deserve, to decline in popular esteem."

In all callings there are disreputable men; the presence of such men in the legal profession brings no necessary discredit upon that profession if it be evident that the professional standards of conduct are high and that lawyers in general are disposed to adhere to them, and to enforce them. This discussion simply raises the question whether the lawyer's ethics is not often confused by unnecessary casuistry, and whether the bar in general is not greatly at fault in neglecting to enforce its own rules against disreputable members. On these points it will be observed that the severest judgments of this article are pronounced by good lawyers. It may be added that the standard here raised is not an impossible ideal; many lawyers in active practice carefully conform to it.

The Bible in the Sunday-school.

THE calling of the Sunday-school teacher is becoming more and more difficult. It was never a sinecure to those who rightly conceived of its duties and responsibilities; but the progress of years, and the movements of thought, render its problems increasingly serious. Indeed, it begins to be evident that the business of teaching, in all departments, is one requiring great skill and wisdom; that it is not well done by those who make it the mere incident of a career devoted to other pursuits; that it requires the most careful study of the human mind, and the most patient adjustment of means to ends. Pedagogy is taking the rank that belongs to it as one of the nobler sciences.

While the work of teaching in general is receiving so much attention, the work of Sunday-school teaching has not been neglected. Sunday-school institutes and Sunday-school assemblies in all parts of the country are discussing methods and criticising theories with diligence and enthusiasm.

The burning question for the Sunday-school teacher is not, however, so much a question of method as of subject-matter. To learn how to teach is easier than to determine what to teach. Doubtless there are thousands of teachers to whom this difficulty has never presented itself; but to the most intelligent and thoughtful among them it is a serious question.

The Unitarian Sunday-school Society has proposed an answer to this question which is likely to awaken discussion. A little book entitled "The Citizen and the Neighbor" has been prepared by a clergyman of that denomination as a manual of instruction in Sunday-schools. This book treats of "men's rights and duties as they live together in the state and in society," and these rights and duties are classified under four heads, as political, economical, social, and international. Each chapter consists of a series of simple elementary statements, followed by well-framed questions, serving not only to draw forth the doctrines taught in the text, but to prompt independent thought. An admirable little manual it is; and in the hands of a judicious teacher it could be made extremely useful. The pastor who should organize the young people of his con-

letters asks no unusual privilege; but to be relieved from a disability which obtains against no other form of industry.

It is in the power of every reader of these words to aid in putting an end to the disgraceful inaction of our country, by urging upon his representative in the present Congress that he support Mr. Breckinridge's efforts to obtain consideration for the bill. Should it fail through indifference or opposition to pass the present House,—and its secret enemies are working actively to that end,— it will again have to be pushed through the Senate, and the ground hitherto gained will be wholly lost. The committees, who have borne the brunt of the agitation at great expense of time and labor, have a right to expect the cordial assistance of all who have at heart the prosperity and honor of the country.

OPEN LETTERS.

More about "Lawyers' Morals"—The Responsibility of Laymen.

THIS is a matter that is much more seriously considered by reputable members of the profession than is generally supposed. It is a question of grave importance, not only to lawyers, but to the public at large. The standard of a lawyer's morals so far as his professional duties are concerned is, in part at least, established by legislation in most if not all of the States. In California, for example, the Code of Civil Procedure provides:

SECT. 282. It is the duty of an attorney and counselor:
1. To support the Constitution and laws of the United States and of this State;
2. To maintain the respect due to the courts of justice and judicial officers;
3. To counsel or maintain such actions, proceedings, or defenses only as appear to him legal or just, except the defense of a person charged with a public offense;
4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the judge or any judicial officer by any artifice or false statement of fact or law;
5. To maintain inviolate the confidence and at every peril to himself to preserve the secrets of his client;
6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;
7. Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest;
8. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.

This section of the code fixes a standard of moral and legal duty which if lived up to in practice should place the profession above just reproach. It is simply the embodiment, in legal form, of what is the lawyers' code of morals without legislation.

In an article in THE CENTURY [1] it is said that "it is apparently the popular opinion that lawyers' morals are of a different type from those of ordinary human beings." A great deal of the trouble lies in the very fact that popular opinion, and not the opinion of the profession, rates the standard of lawyers' morals below what it should be and below what it really is. It is believed that not only popular opinion, but the conduct of the public in its treatment of the profession, has tended more than all other causes to reduce the standing of individual members below the standard recognized by the profession. No lawyer of any standing believes that the moral standard of his profession should be below that of any other, or of any business or calling in life. But popular opinion has apparently established a lower standard of morals, and is constantly tending to drag the profession down to that level. It is undoubtedly true that many lawyers fall below the standard recognized by the profession at large; but this may be said of any class of business men, and to a very great extent they are educated by public opinion, which looks more to a lawyer's success than to his professional honesty. It is not at all "presumptuous for laymen to judge their conduct"; but it should not be overlooked by the layman who treats of the ethical rules which should govern lawyers, that his standard of the morals of the profession may be far below that of the great majority of lawyers, and that he may be contributing his mite towards the debasement of its individual members, who would much rather elevate it still higher.

Certainly no one will deny that it is wrong for a lawyer to accept and attempt to win a cause which as a matter of law should be decided against his client, if he has knowledge of all the facts. The California code, it will be seen, expressly forbids this except in the defense of persons charged with crime; and so it is with the codes of other States. But it must be borne in mind that a lawyer, before trial, knows but one side of the case, while the layman who judges of his conduct has heard both sides. Not only so, but the client frequently misleads, and sometimes purposely deceives, his own attorney by concealing or actually misrepresenting the facts. No doubt an attorney would be justified in abandoning the case upon the discovery of the deception that has been practiced upon him; but almost invariably when the client has misstated the facts to his attorney he will do the same to the court under oath, and it is an exceedingly delicate matter for the lawyer to assume that his client is committing perjury and that the other party is in the right. This he has no right to do. It is his plain duty to present the case fairly to the court, whose duty it is to determine which of the parties is right. If, however, the lawyer *knows* his cause to be wrong, he violates his duty as an attorney, the law, and his oath by accepting a fee. He should unhesitatingly refuse to act further the moment he makes the discovery, if the knowledge comes to him after entering upon the case. But the distinction between *legal* and *moral* right should not be overlooked. The lawyer has a perfect right, and it is his duty, to interpose for his client any legal defense, although a layman might justly say that as a matter of moral right the client has no defense. For example, a debt may be barred by the statute of limitations. The defendant who is sued is in a moral sense still liable, as the debt is unpaid; but

[1] November, 1884.

the statute of limitations having run, he has a legal defense which his attorney is bound, as a matter of duty, to interpose for him. Many other cases arise in which technical rules of law conflict with popular notions of right and wrong; and because of this, lawyers are frequently censured unjustly.

Very few thoughtful men, whether lawyers or not, will at the present day contend that a lawyer violates any rules of professional ethics or commits any wrong to society by defending a criminal whom he knows to be guilty. To be tried and defended by counsel, in open court, is a constitutional right expressly guaranteed to every person charged with a criminal offense. No one, whether his attorney or not, has a right to assume his guilt. The law presumes his innocence. If he is unable to employ an attorney, the court must appoint one to conduct his defense. The attorney has no legal or moral right to refuse to defend him on the ground that *he* knows him to be guilty, whether he is employed by the defendant or appointed by the court to appear for him. This duty requires him to make the defense for him fairly and justly, in the interest of society as well as of the prisoner. If, believing the prisoner guilty, he expresses a different opinion to the court or the jury, he is guilty of a gross violation of duty and of professional ethics. Indeed, it is regarded by right-minded lawyers as unprofessional for an attorney to advance his opinion or belief in any case, civil or criminal, whether he is right or not. It is his duty to present the testimony to the jury, with his views as to its weight and the credibility of the witness, together with a statement of the law as he understands it, so long as his views do not conflict with the law as given to the jury by the court.

It should not be necessary to say that no rule of professional ethics could justify a lawyer in any attempt to deceive the court or a jury by falsehood or otherwise. This is expressly forbidden by law. Many laymen seem to act upon a different principle. They often employ an attorney because they believe that he will be able and willing to deceive, mislead, or in some way overreach the court, jury, and opposing counsel. One of the great misfortunes is, that when the services of a lawyer are needed the question is not usually asked, "Is he honest, can he be trusted?" but, "Is he smart, can he win my case?"

It is the observation of the profession that the question whether a lawyer is honest, and stands high in his profession in a moral point of view, has but little to do with his success in getting business from the great mass of litigants. It is a lamentable fact that many of the very best and most upright business men, so regarded, employ lawyers who have no regard for professional ethics or the plainest rules of honesty and integrity, solely because they believe such lawyers will gain their cases by means to which no honest attorney would ever resort. Such men are quick to condemn the profession, but they do not hesitate to employ an attorney, knowing him to be dishonest, and to wink at his practices, which they know to be unprofessional, so long as he is their attorney and his efforts result in success. It will thus be seen that there is less inducement for members of the legal profession to be honest, and greater temptation to be dishonest, than in almost any other business or calling in life. His employers fix for him a standard of morals which disgraces both the client and the attorney. He is too often employed solely because he is understood to be dishonest. The better classes of the profession erect a higher standard, and endeavor to keep its members up to that level. That many lawyers fall below it is largely due to the causes just stated. A great majority of the young men who enter the profession are poor. They are not only ambitious to obtain business, but it is an absolute necessity that they should do so. For this reason they are not so careful as they should be about the cases they take. They soon learn from experience that men who stand highest in society and business circles are not at all particular *how* they win their cases so they win them. Many of them naturally drop down to the level of their employers' standard of a lawyer's morality and never rise above it. Others, who have a higher appreciation of their duties and obligations, rise to the level of the true standard of professional morality. It is a great misfortune that any of the profession should fall below this standard. There is no class of men who should be more worthy of trust and confidence. Their standard of morals should not be allowed to fall below that of any other profession or business. Men who employ them should aid in maintaining this standard. No doubt members of the profession might remedy the evil complained of, to some extent, by proceeding against lawyers who violate their duties. The means provided by law for disbarring attorneys are ample; but it is a delicate matter for a member of the bar of any town or city to prefer charges against a brother attorney. It is very rarely done, and when it is the courts are slow to use their powers of removal. Indeed, the courts of this country are very largely responsible for the estimation in which the profession is now held.

In the article referred to above it is very justly urged that an attorney should be a gentleman in court as well as out. A lawyer is likely to forget this in his zeal in the cross-examination of a witness, and in commenting, in argument, upon the testimony of the witnesses for the opposite party. The object of a cross-examination should always be to get at the truth, and not to intimidate or confuse the witness into a false or contradictory statement. In commenting upon the testimony of a witness the attorney should never descend to personalities, except in extreme cases where the dishonesty of the witness is apparent and the "justice of the cause requires it." The attorney, being privileged to speak freely of any witness, should use the utmost care not to abuse so high a privilege.

The subject of a "lawyer's morals" and of "legal ethics" is of great importance to the profession, and no lawyer having a proper regard for his honorable calling will stand in the way of any honest effort to elevate the standard of morals by which the profession should be governed. But he cannot be expected to overlook the fact that laymen, who look at the question from their standpoint, sometimes establish for him a standard of morals far below that recognized by law and by the profession; that too many laymen employ attorneys, and expect to profit by their services, solely because they believe the particular lawyer they employ is governed by that lower standard of morals and professional ethics.

This observation is not confined to "great corporations" and "monopolists." It is astonishing how many men, who are recognized as the most honorable in busi-

ness affairs, appear to believe that a lawyer is justifiable in resorting to any kind of falsehood and trickery to gain *their* cases. Such men can do more to elevate the morals of the profession by employing none but such as they believe to be honest — of whom there are as many as in any other calling, with perhaps one exception — than can be done in any other way. So long as lawyers are employed because they are regarded as being dishonest, so long will the profession be subject to reproach because it has bad men in its ranks.

That persons outside of the profession begin to think seriously of assisting to rid it of such lawyers is a good indication, and their efforts should receive every encouragement.

John D. Works.

A Letter of Lincoln.

THE remarkable popular interest in everything that throws light upon the character of Abraham Lincoln, which the serial publication of his life in THE CENTURY MAGAZINE in part finds and in part creates, emboldens me to believe that a recent discovery of my own bearing on the matter may be accepted by many readers as a contribution not without its value to the growing public fund of Lincoln *memorabilia*. I use the word "discovery," although that word may seem not fit, when I say, as I must, that what I discovered was already public enough to be seen framed and hanging on one of the interior walls of the fine State Capitol in Nashville, Tennessee. The documents to which I refer are now no longer to be seen where I saw them, they having, since my visit to Nashville a few years ago, been removed to a much less frequented place of custody in the same city. Through the intervention of a friend I lately found them again, though not without trouble, and here show them for the examination of the curious.

They consist of two letters, one written to, and the other written by, Abraham Lincoln. How they came into public keeping, and with what history, in the case of the illustrious writer of one of the letters, they may be associated, I have sought in vain to learn. But the letters happily explain themselves. Perhaps the enterprising authors of the biography now being published in the magazine may be able to bring these letters into their proper setting in the circumstances of Lincoln's life.

One thing was very noteworthy in the autograph letter of Lincoln, and that was its immaculately neat and correct mechanical execution. The manuscript had the physiognomy and air of one produced by an habitually fastidious literary man. The handwriting was finished enough to be called elegant; the punctuation, the spelling, the capitalizing, were as conscientious as the turn of the phrase may be seen to be.

It is a Mr. W. G. Anderson who writes a covertly threatening letter to Lincoln — little dreaming at the moment that it was an historic document that he was so seriously inditing. The date is Lawrenceville, October 30, 1840. The address is stiffly, meant perhaps to be even formidably, formal. It is "A. Lincoln, Esqr.; Dear Sir." Mr. Anderson straitly says:

"On our first meeting on Wednesday last, a difficulty in words ensued between us, which I deem it my duty to notice further. I think you were the aggressor. Your words imported insult; and whether you meant them as such is for you to say. You will therefore please inform me on this point. And if you designed to offend me, please communicate to me your present feelings on the subject, and whether you persist in the stand you took."

And Mr. Anderson sternly signs himself, "Your obedient Servant."

There now was a chance for Mr. Abraham Lincoln. How will he meet it? Will he chaff Mr. Anderson? Will he give him stiffness for stiffness? There will surely be an interesting revelation of character. The actual fact is, if Abraham Lincoln had known, in writing his reply, that he was writing it much more for the whole world and for all future generations, than simply for his personal friend Mr. Anderson, to read, I do not see how he could have written it better for the advantage of his own good fame. Here is his reply:

LAWRENCEVILLE, Oct. 31st, 1840.

W. G. ANDERSON.

DEAR SIR: Your note of yesterday is received. In the difficulty between us of which you speak, you say you think I was the aggressor. I do not think I was. You say my "words imported insult — " I meant them as a fair set off to your own statements, and not otherwise; and in that light alone I now wish you to understand them. You ask for my "present feelings on the subject." I entertain no unkind feeling to you, and none of any sort upon the subject, except a sincere regret that I permitted myself to get into any such altercation.

Yours etc.

A. LINCOLN.

What more satisfactory light on the manly and gentlemanly spirit of the future President could one wish for than that? It certainly lacks nothing — unless it be a grace of distinctively Christ-like winningness, such as Paul could have given it.

I will venture to hope that when the Lincoln biographers come to publish the biography in book form, they may secure a facsimile reproduction of the original of this interesting letter.

William C. Wilkinson.

The Life of Lincoln — a Letter from General G. W. Smith.

IN their discussion of the battle of Seven Pines, in THE CENTURY MAGAZINE for October last, the biographers of President Lincoln have fallen into several errors, some of which will be briefly specified. They say, in substance:

1. That General Johnston made his plans without any reference to the possible initiative of General McClellan, with no thought of an offensive return, and that Johnston's purpose was put in action with great decision and promptitude.

2. That it had been the duty of the forces under G. W. Smith to strike the right flank of the Union army as soon as the assault of Longstreet and Hill became fully developed.

3. That if General McClellan had crossed his army, instead of one division, at the time that Johnston's entire force was engaged at Seven Pines, the rout of the Southern army would have been complete and the way to Richmond would have been a military promenade.