

The Best Men of the Bar: The Founding of the American Bar Association

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On a clear and sunny Wednesday morning, August 21, 1878, nearly a hundred lawyers gathered in the narrow courtroom behind the Saratoga Springs town hall to organize the American Bar Association. The New York newspapers gave the event perfunctory coverage, but there was little attempt, either then or since, to determine the motivation of the founders. Neither reminiscences of the participants nor Edwin R. Sunderland's official *History of the American Bar Association* (1953) provides much insight into the origin of what was to become one of the most influential private interest groups in American political life.¹

Despite the lack of a detailed study, it has been suggested that the ABA was organized in reaction to the movement for liberal reform in the 1870's and as a means of promoting that variety of radical conservatism usually denominated *laissez-faire*. Even a recent ABA president characterized the founders of the Association

as conservatives very much linked with big business. . . . [The] "good" which the Association was designed to foster throughout the land had a rather specific meaning which had to do with railroads and banks and all the forces which changed our country [into] the mightiest industrial empire on the face of the earth, with all its concomitant rape of the earth, pollution and political corruption.²

The theory seems to have attracted the noted constitutional historian, Edward S. Corwin, and to have first appeared in the dissertation of Benjamin Twiss, one of his students.³ Twiss was somewhat vague about the influence of the ABA in the promotion of *laissez-faire* economics, contenting himself with the demonstration that conservative lawyers were members of the

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Association. However, Corwin himself, in the introduction to Twiss's *Lawyers and the Constitution*, stated flatly that

the development of American Constitutional law during the period from 1875 to 1935 was . . . the work primarily of a small group of lawyers whose clients were great financial and business concerns — in short, of the aristocracy of the American bar, the founders and principal figures of the American Bar Association.⁴

Even before this work appeared, Corwin had developed the thesis further in *Constitutional Revolution, Ltd.* The ABA, he wrote, "organized in the wake of the decision in *Munn v. Illinois*, . . . soon became a sort of juristic sewing circle for mutual education in the gospel of *Laissez-Faire*."⁵ Corwin then cast subtle inference aside in a series of lectures published as *Liberty Against Government*. Here the birthplace of the ABA became Chicago, "a fact reflecting the animus of some of its founders toward the 'barbarous' decision in *Munn v. Illinois*."⁶ Finally, C. Herman Pritchett, citing Corwin, transformed the theory into textbook certainty: "the Association was founded in Chicago in 1878, and a principal purpose of its organization was to fight the 'barbarous' decision of *Munn v. Illinois*."⁷

Besides the difficulty of geography, the major flaw in the Corwin thesis was its anachronism. What may have been true of ABA members in 1898 or 1928 was not necessarily accurate in 1878. Corwin's "founders" were not, excepting perhaps William Maxwell Evarts and Edward J. Phelps, founders of the Association at all but rather influential turn-of-the-century lawyers; and, as Arnold Paul has demonstrated, "the general hardening of conservative attitudes" began only in 1892.⁸ Certainly the belief that the American Bar Association was "from its foundation embarked on a deliberate and persistent campaign of education designed to reverse the [Supreme] Court's broad conception of legislative power" would have surprised the little band who met behind Saratoga's town hall in 1878.⁹ Powerless to control entrance into their own profession, they were hardly in a position to lecture the Supreme Court.

In reality the impetus for organizing a national lawyers organization sprang more from professional than political or economic motives. Far from opposing the reform spirit of the age, the organization of the American Bar Association was itself a

manifestation of that spirit, a spirit to which its founders were highly sympathetic.

The establishment of the American Bar Association in 1878 did not reflect the contemporary strength of the profession. In fact, it was somewhat premature in that it was not built upon a foundation of strong state and local organizations. During most of the nineteenth century professional legal organizations experienced a slow if sporadic decline in both numbers and influence. A number of lawyers' clubs and library societies were snuffed out after the Revolution when the normal unpopularity of lawyers was heightened by their attempts to enforce the repayment of debts and protect Tory property.¹⁰ Others fell before Jacksonian democracy with its distrust of an elite, faith in a natural right to follow any calling, and fear that a recognition of professionals would create a privileged class.¹¹

Across the nation standards for admission to the bar were lowered or abolished altogether. In 1800 a definite period of preparation for entering the legal profession was required by fourteen of nineteen states; by 1840 this had dropped to eleven of thirty states, while in 1860 only nine of 39 states had any educational requirements. Several states adopted constitutional provisions similar to that of Michigan which permitted "every person of the age of twenty-one years, of good moral character" to practice law.¹² Virtually every legal memoir of the early nineteenth century seems to include a half-humorous illustration of the casual manner in which prospective lawyers were certified to practice in antebellum America. L.E. Chittenden, chairman of a committee on bar admission in Vermont of the 1850's, questioned two young men who wanted to go west:

Of any branch of the law, they were as ignorant as so many Hottentots. . . . I frankly told them that for them to attempt to practice law would be wicked, dangerous, and would subject them to suits for malpractice. They begged, they prayed, they cried. . . . I, with much self-reproach, consented to sign their certificates, on condition that each would buy a copy of Blackstone, Kent's Commentaries, and Chitty's Pleadings, and immediately emigrate to some Western town.¹³

To Roscoe Pound such instances buttressed his belief that the period between the demise of the Suffolk [Boston] Bar Association in 1836 and the organization of the Association of the Bar of the City of New York in 1870 was an "Era of Decadence" for the American legal profession.¹⁴ Unfortunately for this thesis such notables as Oliver Wendell Holmes, Jr., Charles Francis Adams, Elihu Root, Joseph Hodges Choate, Salmon P. Chase, and John Peter Altgeld began their distinguished careers during this period with almost as little legal knowledge as Chittenden's western exiles. In an era when high geographic and social mobility was combined with the relatively mundane tasks of the frontier lawyer, the old professional standards would have been difficult to maintain in any case.

Formal restrictions disappeared; but the market for legal services remained, a harsh and efficient control. It pruned away deadwood; it rewarded the adaptive and the cunning. Jacksonian democracy did not make everyman a lawyer. It did encourage a scrambling bar of shrewd entrepreneurs.¹⁵

A "scrambling bar" did not encourage strong bar associations, however. Although little research has been done into the records of these organizations, now scattered among state libraries or destroyed by fire and neglect through the years, it seems that far from enforcing an aristocratic monopoly over the legal profession, the antebellum bar associations were ineffective in maintaining even a modicum of ethical and disciplinary standards. Indeed, this was not often their intention. Many were engaged solely in the establishment of a law library, while others, perhaps the majority, were chiefly social. In some cases their only surviving publications are banquet menus.¹⁶

The founding of the Association of the Bar of the City of New York in 1870 coincided with renewed interest in professional associations of all types. Lawyers, no less than other groups, understood the value of organizing for purposes which crisscrossed public and self-interest, and by August, 1878 eight city and a number of state bar associations had been established. Unlike the antebellum societies, the new associations generally restricted membership to the "decent part" of the profession, "primarily well-to-do business lawyers, predominately of old

American stock.”¹⁷ Where once elite lawyers had controlled admission to the legal profession itself, they now hoped to restrict membership in the bar association in order to distance themselves, in the words of one bar leader, from the men “seen in almost all our courts, slovenly in dress, uncouth in manners and habits, ignorant even of the English language, . . . vulgarizing the profession.”¹⁸

The new associations were hardly more than shadows of their potential, however. Some were successful in having corrupt judges removed from office, especially in the South where the judges happened to be carpetbaggers. Others suggested minor legal reforms on topics both politically non-sensitive and dull. Many bar associations continued the earlier social tradition of the antebellum societies. Though it is usually said that the Association of the Bar of the City of New York was founded to battle the Tweed Ring, the Association tarried three years before moving against the Boss, who indeed had recently employed many of its members. Instead, the Association purchased a brownstone headquarters and installed a full-time librarian, rare books, busts of eminent lawyers, and a punch bowl filled with a beverage “brewed according to a special recipe furnished by the nearby Century Club.”¹⁹ Another association convened only at funerals — “not much life in our organization,” the secretary commented.²⁰

The American Bar Association, then, was not, as has been suggested, “the capstone” of a tightly organized pyramid of state and local bar associations. It might not have been established for many years had it not been for the catalyst of a young Connecticut lawyer, Simeon E. Baldwin (1840-1927).²¹

Baldwin was the youngest and most precocious of nine children born to a prominent New Haven family. One of his great-grandfathers was Roger Sherman, signer of the Declaration of Independence. His grandfather had been an influential Federalist and founder of an anti-slavery society, and his father, who had served both as a senator and governor of Connecticut, argued the famous *Amistad* slave case in association with John Quincy Adams. Because poor eyesight prohibited service in the Civil War, Baldwin was able to continue the study of law at both Yale and Harvard before returning to New Haven in 1863 to practice in his father’s law office. He wisely specialized in corporate practice, gained the New York and New England

Railroad as a client, and soon took his place among the most distinguished (and wealthy) members of the Connecticut bar.

Though Baldwin eventually became Chief Justice of the Connecticut Supreme Court and, still later, Governor of the state, his importance lies only partially in a political career studded with as many defeats as successes. Beginning in childhood with the organization of a "corporation" and a secret order called the "Clio Society," Baldwin remained throughout life an avid organizer and joiner. Probably no one else in American history has held the presidencies of as many different professional societies. Between 1890 and 1910 he was president of the American Bar Association, the American Historical Association, the American Social Science Association, the International Law Association, the American Political Science Association, and the Association of American Law Schools. Vice-president of a number of other organizations, notably the American Association for the Advancement of Science, Baldwin retained membership in such diverse groups as the YMCA (president, 1884-1886), the New Haven Colony Historical Society (president, 1884-1896), the Board of Park Commissioners of New Haven, the American Economic Association, the New England Tariff Reform League, the Union International de Droit Penal, the General Hospital Society of Connecticut, the Conference of Congregational Churches of Connecticut (moderator, 1881), and the Sons of the American Revolution.

Despite his organizational proclivities, Baldwin was hardly a hail-fellow-well-met. To those outside his immediate family he projected an image of aloof formality. His capacity for work was enormous, a characteristic indicative not only of his personality and patrician upbringing but of tragedy as well. After 1872, when his wife suffered a total nervous breakdown and his oldest daughter died, Baldwin completely submerged himself in his work. "There are those to whom hard work brings its daily blessing as a banisher of sorrow," he once wrote. "Melancholy is a foe to be expelled at any cost, and preoccupation is often the only thing that avails to shut it out."²²

In great part Baldwin's consuming energy was directed towards the concerns of Gilded Age reform. Baldwin was, in fact, the epitome of "The Best Men," "the men of breeding and intelligence, of taste and substance," who saw themselves standing between the two extremes in American political life — the robber barons, whose

greed for gain seemed to threaten traditional moral principles, and the radicals, whose desire to tamper with basic economic standards threatened American prosperity.²³ On the national level "The Best Men" included such academicians as Mark Hopkins and Charles Eliot Norton; men of letters William Dean Howells and Thomas Wentworth Higginson; influential journalists like E.L. Godkin of the *Nation* and Horace White of the *Chicago Tribune*; and politicians of the caliber of Carl Shurz, Samuel J. Tilden, Dorman B. Eaton, George F. Edmunds, Grover Cleveland, and the young Theodore Roosevelt and Henry Cabot Lodge.

"The Best Men" viewed themselves as independents, reformers whose goals would be acceptable to their colleagues in either party. They sought to purge the political system of its corruption — bosses in the North, carpetbaggers in the South — but they had no desire to make sweeping changes in society. Moderate reform, "safe, careful, and deliberate reform," in the words of Grover Cleveland, was their objective.

For the abuses that offended them they proposed the simple remedies of "good government," economic orthodoxy and moral rejuvenation. Put "good men" into positions of responsibility and power, they urged, revive the Jeffersonian regard for limited government; respect and defend the tested Christian moral precepts and apply them to everyday affairs, as well as to government; trust in the "natural laws" of political economy to right the economic wrongs of the day.²⁴

Throughout his long life Baldwin was able to touch all the conventional bases of Gilded Age reform and some unconventional ones as well. One of his longest and most unsuccessful struggles was an attempt to rid Connecticut of the grossly misapportioned electoral districts that favored rural areas of the state. (Not surprisingly he organized a New Haven County Constitutional Reform Association in 1873 in attempting to achieve this purpose.) In 1880 Baldwin wrote Senator George Edmunds of Vermont requesting that crusty New Englander to run for the Republican presidential nomination in order to thwart the ambition of that *bête noir* of reformers, James G. Blaine. The following year Baldwin mobilized support for the establishment of a civil service system in state government and organized Connecticut's Civil Service

Reform Association. When the Republican Party nominated Blaine in 1884, Baldwin bolted the party, organizing and becoming president of the Connecticut Independent Republicans. Most of these Mugwumps eventually returned to the Republican fold, but Baldwin became a Democrat.

As might be expected, many of Baldwin's reform interests were intimately connected with the law. At twenty-seven he tackled the ambitious task of preparing a digest of Connecticut law, persuaded the legislature to purchase 183 copies of the finished product, and gained an instant reputation when *Baldwin's Connecticut Digest* became a standard reference work for lawyers of his state. From 1877 to 1879 Baldwin worked with several committees which finally abolished the obsolete distinction between suits at law and suits at equity, and at the end of the nineteenth century he joined penologists in advocating what seems at first glance to be an odd assortment of criminal reforms directed against the penitentiary system: probation, parole, indeterminate sentences, the reintroduction of the whipping post, and castration for rape. Baldwin was also one of the first American lawyers to suggest laws prohibiting the use of heroic methods to preserve the lives of terminally ill patients.²⁵

Baldwin devoted much of his energy to the improvement of legal education. Improbable as it may seem considering his other activities, Baldwin was a professor at the Yale Law School from 1869 to 1912 — including two years when he was also governor of Connecticut. At Yale he successfully advocated the lengthening of the law school course from two to three years and introduced the first graduate law program in the United States. Throughout his life Baldwin remained unenthusiastic about the major contemporary innovation in legal education, the case book method introduced by Christopher C. Langdell at Harvard Law School in 1870. In a sense Baldwin was ahead of his time, for he criticized the pseudo-scientific nature of this pedagogical method because it ignored "the human element in whatever judges may say or do" and "the power of circumstances to affect their conclusions."²⁶

In September, 1877 Baldwin explained both the Yale plan for graduate study in law and the need for a longer course of study for the professional degree to the American Social Science Association (1865-1909), at the time the only national organization providing a forum for the discussion of legal topics. The ASSA had been

founded by a group of philanthropists and social Don Quixotes whose urge for reform had led them to a quest for knowledge. Believing in an absolute truth, in natural laws which governed human conduct, and in man's ability to discover these laws by piling up empirical data, society members earnestly hoped that social science would become "the science of the age," that it would produce "an earthly paradise — an enchanted ground."²⁷ The interest of the Association was divided into four departments: education, public health, social economy, and jurisprudence. To the fourth department was assigned the task of considering

the absolute science of Right; and second, the Amendment of laws. This department should be the final resort of the other three; for when the laws of Education, of Public Health, and Social Economy are fully ascertained, the law of the land should recognize and define them all. Under this head shall be considered all questions of the justice, the expediency, and the results of existing statutes, including their bearing on Suffrage, Property, Privilege, Debt, Crime, and Pauperism. Here, then will come up the vexed questions of Prison Discipline and Capital Punishment.²⁸

As time passed, the utopian overtones of the ASSA program seemed less and less in harmony with the prevailing notions of reform, and the Association collapsed — though not before it served as the matrix from which emerged such professional organizations as the American Economic Association, the American Political Science Association, the American Historical Association, and the American Bar Association.

After Baldwin read his paper, "Graduate Courses in Law Schools," to the ASSA Department of Jurisprudence, a discussion occurred in which three future leaders of the ABA took part. On the motion of Carleton Hunt, dean of the University of Louisiana [Tulane], the assembly adopted a vague resolution commending "the care, future encouragement, and future development" of law schools "to the members of the legal profession and to the friends of learning in general."²⁹ A year later, at the opening of the conference which launched the American Bar Association, Baldwin claimed that the idea for such an organization had sprung from a resolution passed by the Department of Jurisprudence. Since no

such resolution has been discovered, it is possible Baldwin unconsciously combined the resolution on legal education with informal discussions about the feasibility of a national bar association.³⁰

In any case, Baldwin seems to have considered organizing such a professional group almost immediately following the ASSA convention, for he broached the idea to a former college classmate soon afterward. When his friend responded with an encouraging reply suggesting that the proposed organization would encourage legal reform, Baldwin began the task of gaining the support of his seniors in the profession. At the annual meeting of the Connecticut State Bar Association in January, 1878, he moved "that a committee of three be appointed to consider the propriety of organizing an association of American lawyers: with the power to issue a circular on the subject." The Association approved the motion and appointed Baldwin, Governor Richard D. Hubbard, and William Hamersley as committee members. A favorable assessment by the committee was virtually assured since both the Governor and Hamersley, a founder of the Connecticut State Bar Association, were sympathetic to legal reform.³¹

Baldwin then traded on the reputation of the governor in order to obtain approval of the new association by "a small number of leading lawyers in different parts of the country," who were asked to sign "a circular recommending the matter to the favorable consideration of the profession."³² On April 29, 1878, Baldwin sent a letter requesting such signatures to thirteen prominent attorneys: Judge Charles Devens (Massachusetts), Governor Richard Hubbard (Connecticut), Charles O'Connor (New York), Secretary of State William Maxwell Evarts (New York), S. Teakle Wallis (Maryland), Senator Charles R. Buckalew (Pennsylvania), Alexander R. Lawton (Georgia), Carleton Hunt (Louisiana), Senator John B. Henderson (Missouri), Senator Lyman Trumbull (Illinois), Governor George Hoadly (Ohio), Judge Thomas McIntire Cooley (Michigan), and Senator Stanley Matthews (Ohio).³³

When six of these gentlemen, namely Devens, O'Connor, Wallis, Buckalew, Henderson, and Cooley, either refused to permit their names to be used or did not respond, Baldwin addressed another letter to those who had agreed to sign the call, advising them that the Committee was "inviting a few others to add their names." These included Senator Benjamin Bristow (Kentucky), Henry

Hitchcock (Missouri), Richard McMurtrie (Pennsylvania), John K. Porter (New York), Charles Train (Massachusetts), J. Randolph Tucker (Virginia), and E.J. Phelps (Vermont).³⁴

Excepting Evarts and Cooley, these twenty men are remembered today only by specialists. Yet in the late nineteenth century they were prominent members of their respective state bars; fifteen were of sufficient note to warrant a sketch in the *Dictionary of American Biography*. A composite portrait reveals striking similarities in both the background and viewpoint of these Gilded Age lawyers.

Though nine of the twenty were Democrats, eight were Republicans, and the political affiliation of three is unknown, virtually all were political moderates. Typical of their Civil War attitudes are those of Charles Devens and Stanley Matthews, both of whom defended the Fugitive Slave Laws to their political detriment before becoming colonels in the Northern army. On the opposing side were men like Carleton Hunt who, with strong Union sympathies, fought for the Confederacy. After the war the twenty, almost to a man, opposed the Radicals. O'Connor, Tucker, and Hoadly represented Jefferson Davis or his estate; Trumbull and Henderson were two of the famous seven Republicans who saved Andrew Johnson from conviction at his impeachment trial. Some of the twenty switched from one party to another, an oddity in Gilded Age politics. Henderson and Cooley went from Democrat to Republican, Matthews from Democrat to Republican to Liberal Republican, and Hoadly and Trumbull from Democrat to Republican to Liberal Republican to Democrat.

Unlike most lawyers of the period, fourteen of the twenty had attended college, and a majority had either attended law school (7), or had served an apprenticeship in another lawyer's office (7), or both. Only a few had "read law" privately in the manner of Abraham Lincoln. Significantly, of the six who did not sign the call, only two had attended college, and only one had attended law school.

In 1878 the average age of the twenty was fifty-seven, and fifteen were born between 1816 and 1826. They were at the height of their careers, and most had already served in some state or federal office. As might be expected, the twenty were, on the whole, very prosperous gentlemen doing a substantial amount of corporation work.

It is as liberal reformers, however, that they exhibit their most striking similarity. O'Connor and Evarts were the chief prosecutors of Boss Tweed; Wallis was president of the Civil Service Reform Association of Maryland; Buckalew reformed the penal code of Pennsylvania; Hunt became city attorney of New Orleans under a reform administration; Bristow and Henderson investigated and prosecuted the Whiskey Ring; Cooley later became an important member of the Interstate Commerce Commission under Grover Cleveland; Train, as a congressman, served as manager of impeachment proceedings against a corrupt judge; and even McMurtrie, an apolitical legal monomaniac, had one outside interest — hospital reform. An exception to this characterization like John K. Porter, who had defended President Grant's venal private secretary Orville E. Babcock, only proves the rule: Porter's name was included on the call only because O'Connor had suggested that his former legal apprentice replace himself, and Baldwin acceded to his wishes.³⁵

Only four of the fourteen who signed the call — Bristow, Hitchcock, Phelps, and Hunt — actually attended the organizational meeting of the American Bar Association. The remainder, excluding Randolph Tucker and Alexander Lawton, never played a significant role in the affairs of the ABA. Their places were taken by another similar though slightly younger group which included Baldwin, Luke Poland (Vermont), James Broadhead (Missouri), George Wright (Iowa), John H.B. Latrobe (Maryland), Thomas Jenkins Semmes (Louisiana), Francis Rawle (Pennsylvania), and William Allan Butler (New York).³⁶

This "Saratoga clique," which was to run the Association for its first two decades from "the hotel porch after lunch," was also reform minded. Broadhead had acted as special counsel for the government in the Whiskey Ring scandal, and Poland was noted for his congressional investigations of the *Crédit Mobilier*, the carpetbag government of Arkansas, and the Ku Klux Klan. The most significant difference between the gentlemen asked to sign the call and the "Saratoga clique" was the large number of legal educators in the latter group. Thus these men might have been expected to emphasize not only the more theoretical aspects of the law but also professional, rather than political, reform.

After Baldwin had acquired consent for the use of their names from fourteen bar leaders, he printed the call for organization

which had circulated in handwritten form for several months. The call proposed "an informal meeting at Saratoga, N.Y. on Wednesday morning, August 21, 1878, to consider the feasibility and expediency of establishing an AMERICAN BAR ASSOCIATION," and Baldwin represented himself as a secretary to the fourteen worthies who would report the views of the call's recipients to the August meeting.³⁷

Baldwin clearly indicated that the call was to be sent only to a selective group of lawyers "whom such a project might interest." Discovering these gentlemen seems to have been fairly difficult in 1878. Baldwin was forced to rely a great deal on personal acquaintance or word of mouth. He kept a large notebook with a record of all lawyers to whom the call had been sent, and of the 607 names listed, one third were residents of Connecticut or the two neighboring states of New York and Massachusetts. Baldwin also sent extra copies to most of the original sponsors for them to distribute judiciously.³⁸

With the call circulating throughout the country, Baldwin made arrangements for group rates at Congress Hall, the largest resort hotel in both Saratoga and the nation. Saratoga Springs was chosen because more wealthy lawyers were likely to vacation at this prestigious spa than at any other in the country. It was also central to the East, the section from which the ABA was to draw most of its members, and its cool temperatures and race track attracted large numbers of Southerners. More than usual of the latter were residing in Saratoga that summer because a yellow fever epidemic was ravaging the lower Mississippi Valley. It is not surprising, therefore, that Louisiana had the largest representation at the organizational meeting.³⁹

The responses which Baldwin had requested in the call were not forthcoming in the numbers he might have hoped. Fully four-fifths of the recipients ignored it, sixty-four expressed approval of the organization but said they could not attend the August meeting, and only fifty-four replied that they would be present. On the other hand, it seems Baldwin received only one negative reply from a recipient unfriendly to the notion of a national bar association.⁴⁰

These responses to the call for organization as well as the few speeches and resolutions of the Saratoga convention itself provide substantial evidence that the impetus for founding the American Bar Association sprang from a desire to promote professional

reform rather than to thwart political or economic reform. In fact, the varied facets of this reform interest may be grouped under the four purposes adopted by the Saratoga assembly as Article I of its constitution:

to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among members of the American Bar.⁴¹

Though advancing "the science of jurisprudence" seems a glittering generality in our own day, "in an age which honored science above other sources of wisdom, it became clear that people who established their ability to study . . . scientifically would command attention and influence the course of events."⁴² Judge Gustave Koerner, who claimed to have first suggested a national bar association in the *Chicago Legal News*, reflected the mild utopianism of the ASSA in his reply to Baldwin. He hoped — and was undoubtedly disappointed — that meetings of the bar association would be

*scientific conferences of Jurists, working in sections and preparing at each session material to be discussed at subsequent sessions. Judges, law writers and members of the Bar, . . . should all participate in such discussion and assist in laying practical measures of reform before the National and State legislatures.*⁴³

While not of primary importance to the founding of the Association, the first meeting did authorize a committee on Jurisprudence and another on International Law, thus providing a forum for the discussion of the more theoretical aspects of legal practice. Of course, it also produced an aura of intellectual detachment separating ABA members from the "scrambling bar" of urban America.⁴⁴

The promotion of "uniformity of legislation throughout the Union" was, on the other hand, perhaps the greatest concern of Baldwin's correspondents, a concern which could not be met by local or state bar associations. With the growth of national corporations and the expansion of trade across state boundaries as a result of advances in transportation and communication, lawyers

found "the diversity existing in our commercial law" frustrating and inefficient. "Defects of existing statutes . . . might be pointed out and proper remedies suggested," said one correspondent, if lawyers of one state were well acquainted with the legislation and judicial decisions of another.⁴⁵ At the first meeting of the Association, a committee on Commercial Law was authorized with the particular task of examining laws concerning negotiable paper, "Looking toward further uniformity in the law on that subject."⁴⁶

"Uphold[ing] the honor of the profession" was a euphemism for raising standards of legal education and admission to the bar, one of the primary motivations for founding the American Bar Association. A number of Baldwin's correspondents feared that the organization might flounder unless its membership was restricted to those of "high standing in the profession." Only gentlemen could inaugurate and carry forward "such true reforms as [were] in harmony with the progressive spirit of the age."⁴⁷ The Saratoga convention appointed a committee on Legal Education and Admissions to the Bar, and, on the motion of Carleton Hunt, adopted a resolution instructing it to propose some plan "for regulating, on principles of comity, the standing, throughout the Union, of gentlemen already admitted to practice in their own states."⁴⁸

Baldwin hoped to de-emphasize the final objective of the ABA: the establishment of "cordial intercourse among members of the bar." In the constitution and the preliminary circular, he listed it last, though in the call itself "comparison of views and friendly intercourse" appeared first. But sociability could also be viewed in the more serious light of restoring national harmony after the bitterness of civil war and Reconstruction. A national bar association, one future member wrote to Baldwin, would have

a most powerful tendency to weaken mutual prejudices, to produce harmonious and fraternal feelings amongst an influential and leading class of men, and would be a means of cementing our Union, so lately disrupted.⁴⁹

Certainly lawyers, as a professional group moderate in political stance and representing the interests of national economic development, might have been expected to stand in the vanguard on the "road to reunion." Furthermore, the timing of the convention could hardly have been improved, following as it did,

the Compromise of 1877 and occurring in the midst of a Southern yellow fever epidemic which brought immediate organized relief efforts from the North and expressions of gratitude from the South.⁵⁰

Because of Baldwin's extensive planning, the actual meeting of organization on August 21 was somewhat dull. There was much convention harmony and little controversy or dissent. The "Saratoga clique" held the reins firmly, although "an animated discussion arose on the point whether all lawyers present should take part in the organization, or only those to whom invitations had been sent." In the end only the latter were considered as the founders of the ABA. A committee to report a constitution returned with a completed draft only hours after its appointment. Baldwin had actually written the document during his summer vacation in the Adirondacks, and it was adopted by the association with only a few minor alterations.⁵¹

The unanimous election of James O. Broadhead as the first president of the Association, at the time a largely honorary post, symbolized both the strengths and weaknesses of the new organization. He was dwarfed intellectually by many men in attendance at the meeting, but he was the epitome of the "best men of the bar." A native of Charlottesville, Virginia, he had gone west to Missouri as a young man. Though he had attended the University of Virginia for only a single session, he later became a lecturer at St. Louis Law School [Washington University]. Broadhead was "a rather old-fashioned country practitioner . . . careless about details, sometimes slipshod in his work," who, nevertheless, had successfully represented the railroad interests before the United States Supreme Court. A strong Union man during the Civil War, he was in great part responsible for preventing the fall of Missouri to the Confederacy. Then after the war, disgusted with the "test-oath" act and the "Force Bills," he became a Democrat. He also took a former Confederate officer as a law partner. Broadhead had acquired a reputation as a reformer from his fierce prosecutions of the Whiskey Ring, a notorious Collector of Internal Revenue in St. Louis, and the venal Chief Clerk of the Treasury Department. "Broadhead was a lion," said one unknown contemporary, "when he was awake."⁵²

As it happened, both Broadhead and the American Bar Association remained asleep for the greater part of the next

twenty-five years. Unrepresentative of the profession and maintaining only a minimal administrative apparatus, the ABA grew very slowly. Despite the desire of both Baldwin and the "Saratoga clique" for conservative professional reform, "cordial intercourse" remained the underlying purpose for the annual gatherings at Saratoga during the Association's first decades. The majority of even the elite members of the bar contemplated little other purpose for a gathering of lawyers.⁵³ As late as 1887 the American Bar Association was challenged by a rival organization, the ephemeral National Bar Association, which was established on the principle of federal representation not to be adopted by the ABA until 1937.⁵⁴

Nevertheless, the "best men of the bar" built well. They created a climate for professional reform, "even if for the first generation nothing happened beyond a few committee reports."⁵⁵ Lacking ties to the state associations and the power to enforce its suggestions in the political forum, the American Bar Association overcame by its very weakness the ingrained prejudice against professional legal organizations and provided a traditional foundation for the professional pressure group of the twentieth century.

NOTES

¹ New York *Tribune*, 22 Aug 1878, pp. 1, 8; 23 Aug 1878, p. 1. Edwin R. Sunderland, *The History of the American Bar Association* (New York: The Survey of the Legal Profession, 1953) says only that the "proposal to organize a nation-wide association . . . originated with Simeon E. Baldwin of Connecticut." (p. 3)

² Robert W. Meserve, "The American Bar Association: A Brief History and Appreciation" [speech delivered to the 1973 Massachusetts Dinner of the Newcomen Society, 28 Mar 1973] (New York: The Newcomen Society in North America, 1973), p. 12.

³ Published as Benjamin R. Twiss, *Lawyers and the Constitution: How Laissez Faire Came to the Supreme Court* (Princeton: Princeton University Press, 1942); the topic has been thoroughly analyzed by Norbert Brockman, both in "The Politics of the American Bar Association," unpublished Ph.D. dissertation, The Catholic University of America, 1963, pp. 15-20, and in "Laissez-Faire Theory in the Early American Bar Association," 39 *Notre Dame Lawyer* 270 (1964). The following discussion of Corwin relies heavily upon Brockman's research.

⁴ Twiss, *Lawyers and the Constitution*, p. x.

⁵ Edward S. Corwin, *Constitutional Revolution, Ltd.* (Claremont, California: Claremont Colleges, 1941), p. 85.

⁶ Edward S. Corwin, *Liberty Against Government* (Baton Rouge: Louisiana State University Press, 1948), pp. 137-138.

⁷ C. Herman Pritchett, *The American Constitution* (New York: McGraw-Hill, 1959), p. 558.

⁸ Arnold M. Paul, *Conservative Crisis and the Rule of Law: Attitudes of Bar and Bench, 1887-1895* (Ithaca, New York: Cornell University Press, 1960), pp. 4, 76-81.

⁹ Alpheus T. Mason and William M. Beaney, *American Constitutional Law* (Englewood Cliffs, New York: Prentice Hall, 1954), p. 383.

¹⁰ Anton-Hermann Chroust, "The Dilemma of the American Lawyer in the Post Revolutionary Era," 35 *Notre Dame Lawyer* 48 (1959).

¹¹ Roscoe Pound, *The Lawyer from Antiquity to Modern Times* (St. Paul, Minn.: West Publishing Company, 1953), pp. 180-183. "Bar Associations," *Southern Literary Messenger* IV (1838), 583.

¹² Pound, *The Lawyer*, p. 225.

¹³ L.E. Chittenden, "Legal Reminiscences," 5 *Green Bag* 307 (1893) @ 309. Abraham Lincoln is supposed to have examined a candidate while taking a bath. Albert Woldman, *Lawyer Lincoln* (Boston: Houghton Mifflin, 1936), pp. 153-154.

¹⁴ Pound, *The Lawyer*, p. 187.

¹⁵ Lawrence M. Friedman, *A History of American Law* (New York: Simon and Schuster, 1973), p. 278.

¹⁶ Pound, *The Lawyer*, p. 246; Philip J. Wickser, "Bar Associations," 15 *Cornell Law Quarterly* 401 (1930). Albert P. Blaustein, "New York Bar Associations Prior to 1870," 12 *American Journal of Legal History* 50 (1968) is an example of how poor our knowledge of these associations remains. However, see Maxwell Bloomfield, *American Lawyers in a Changing Society, 1776-1876* (Cambridge, Mass.: Harvard University Press, 1976), pp. 136-190.

¹⁷ Howard Mumford Jones, *The Age of Energy: Varieties of American Experience, 1865-1915* (New York: The Viking Press, 1970), pp. 166-170; Friedman, *History of American Law*, p. 395; James Bryce, "The Legal Profession in America," *Macmillan's Magazine*, 25 (January, 1872), p. 214.

¹⁸ Samuel Hand, "Annual Address of the President," 3 *New York State Bar Association. Proceedings*. 67 (1880) @ 71. Alfred Zantzingher Reed, *Training for the Public Profession of the Law* (New York: The Carnegie Foundation for the Advancement of Teaching, 1921), p. 207.

¹⁹ George Martin, *Causes and Conflicts: The Centennial History of the Association of the Bar of the City of New York* (Boston: Houghton, Mifflin Company, 1970), see especially pp. 3-86; Friedman, *History of American Law*, pp. 561-563; James Willard Hurst, *The Growth of American Law: The Lawmakers* (Boston: Little, Brown and Company, 1950), p. 286; James Grafton Rogers, "The American Bar Association," in *Law: A Century of Progress: 1835-1935* (New York: New York University Press, 1937), I, 173.

²⁰ Walter B. Hill, "Bar Associations," 5 *Georgia Bar Association Reports* 55 (1881) @ 65.

²¹ Cf. Robert Wiebe, *The Search for Order* (New York: Hill and Wang, 1967), p. 117. For Baldwin see Frederick H. Jackson, *Simeon Eben Baldwin* (New York: King's Crown Press, 1955); Frederick H. Jackson, "Simeon E. Baldwin: Father of the American Bar Association," 39 *American Bar Association Journal* 686 (1953); James Grafton Rogers, *American Bar Leaders: Biographies of the American Bar*

Association (Chicago: American Bar Association, 1932), pp. 61-65. Baldwin is due for a more critical biography, especially since his personal diary, which he sealed for fifty years after his death, has recently been opened under control of his descendants and is currently being prepared for publication.

²² Jackson, *Simeon Eben Baldwin*, p. 73.

²³ John G. Sproat, *"The Best Men": Liberal Reformers in the Gilded Age* (New York: Oxford University Press, 1968), pp. 4-10. See also Gerald W. McFarland, "Partisan of Non-Partisanship: Dorman B. Eaton and the Genteel Reform Tradition," *Journal of American History*, 54 (March, 1968), pp. 806-822.

²⁴ Sproat, *"The Best Men,"* p. 6.

²⁵ Jackson, *Simeon Eben Baldwin*, pp. 82ff., 139-140, 134.

²⁶ *Ibid.*, pp. 94-95, 125-132, 106, 136, 214; Simeon E. Baldwin, "Education for the Bar in the United States," *American Political Science Review*, 9 (August, 1915), 437-448.

²⁷ Carrol Wright, "The Growth and Purposes of Bureaus of Statistics," *Journal of Social Science* XXV (1888), 2-3; Daniel Coit Gilman, "Opening Address," *ibid.*, XII (1880), xxiii.

²⁸ "Principle Objects of the American Social Science Association," *Journal of Social Science*, I (1869), 3-4; "The American Social Science Association," *ibid.*, VI (1874), 1.

²⁹ Simeon E. Baldwin, "The Founding of the American Bar Association," 3 *American Bar Association Journal* 658 (1917).

³⁰ *Ibid.*; Rogers, "The American Bar Association," p. 173. In 1917 Baldwin recalled one such conversation with F. P. Poché, a Louisiana lawyer, but by then he had forgotten which of them had actually proposed the organization.

³¹ Jackson, *Simeon Eben Baldwin*, p. 80; Baldwin, "The Founding," p. 659; "William Hamersley," *National Cyclopaedia of American Biography*, XIX, 371; "Richard Dudley Hubbard," *ibid.*, X, 342. Hamersley was also instrumental in improving the jury system and procedural rules in Connecticut. Baldwin's method of organizing the American Bar Association seems suspiciously similar to Hamersley's previous organization of the Connecticut bar in 1875; see Victor M. Gordon, ed., "A History of the First One Hundred Years of the Connecticut Bar Association, 1875-1975," 49 *Connecticut Bar Journal* 201 (1975), especially pp. 201-226.

³² Baldwin, "The Founding," p. 659.

³³ "Charles Devens," *Dictionary of American Biography*, V, 260; "Charles O'Connor," *ibid.*, XIII, 620; "William Maxwell Evarts," *ibid.*, VI, 215; "Severn Teackle Wallis," *ibid.*, XIX, 385; "Charles Rollin Buckalew," *ibid.*, III, 225; "Alexander Robert Lawton," *ibid.*, XI, 61; "Carleton Hunt," *ibid.*, IX, 382; "John Brooks Henderson," *ibid.*, VIII, 527; "Lyman Trumbull," *ibid.*, XIX, 19; "George Hoadly," *ibid.*, IX, 84; "Thomas McIntire Cooley," *ibid.*, IV, 392; "Stanley Matthews," *ibid.*, XII, 418. There are internal discrepancies within Baldwin's reminiscences regarding the names and numbers of lawyers to whom requests for signatures were sent.

³⁴ "Benjamin Helm Bristow," *Dictionary of American Biography*, III, 55; "Henry Hitchcock," *ibid.*, IX, 75; "J. Randolph Tucker," *ibid.*, XIX, 34; "Edward John Phelps," *ibid.*, XIV, 528; "John K. Porter," *National Cyclopaedia of American Biography*, III, 252; "Charles R. Train," *Who Was Who*, I, 608; *The Law Association of Philadelphia: 1802-1902* (Philadelphia: privately printed, 1906), pp. 55-70 [Richard C. McMurtrie].

³⁵ Charles O'Connor to Richard Hubbard, May 14, 1878, in Baldwin, "The Founding," pp. 663-664.

³⁶ "Luke Poland," *Dictionary of American Biography*, XV, 33; "James Overton Broadhead," *ibid.*, III, 58; "George Grover Wright," *ibid.*, XX, 551; "John Hazlehurst Boneval Latrobe," *ibid.*, XI, 27; "Francis Rawle," *ibid.*, XV, 400; "Thomas Jenkins Semmes," *ibid.*, XVI, 582; "William Allan Butler," *ibid.*, III, 369. Lawton, Hunt, Hitchcock, and Tucker were either members of the ASSA or had attended the 1877 meeting of the Judicial Department at which Baldwin had spoken. Members of the "Saratoga clique" are identified by James Grafton Rogers in "The American Bar Association in Retrospect," pp. 176-178.

³⁷ "Call for a Meeting to Form an American Bar Association," 1 *American Bar Association Reports* 4 (1878).

Dear Sir:

It is proposed to have an informal meeting at Saratoga, N.Y., on Wednesday morning, August 21, 1878, to consider the feasibility and expediency of establishing an AMERICAN BAR ASSOCIATION. The suggestion came from one of the State Bar Associations, in January last, and the undersigned have been favorably impressed by it. A body of delegates, representing the profession in all parts of the country, which should meet annually, for a comparison of views and friendly intercourse, might be not only a pleasant thing for those taking part in it, but of great service in helping to assimilate the laws of the different States, in extending the benefit of true reforms and in publishing the failure of unsuccessful experiments in legislation.

This circular will be sent to a few members of the Bar in each State — whom it is thought, such a project might interest.

If possible, we hope you will be present on the day named at Saratoga; but in any event, please communicate your views on the subject of the proposed organization to Simeon E. Baldwin, New Haven, Conn., who will report to the meeting the substance of the responses received.

BENJAMIN H. BRISTOW, Kentucky
 WILLIAM M. EVARTS, New York
 GEORGE HOADLY, Ohio
 HENRY HITCHCOCK, Missouri
 CARLETON HUNT, Louisiana
 RICHARD D. HUBBARD, Connecticut
 ALEXANDER R. LAWTON, Georgia
 RICHARD C. McMURTRIE, Pennsylvania
 STANLEY MATTHEWS, Ohio
 E.J. PHELPS, Vermont
 JOHN K. PORTER, New York
 LYMAN TRUMBULL, Illinois
 CHARLES R. TRAIN, Massachusetts
 J. RANDOLPH TUCKER, Virginia

July 1, 1878

³⁸ Francis Rawle, "How the Association Was Organized," 14 *American Bar Association Journal* 375 (1928); Baldwin, "The Founding," pp. 671-672.

³⁹ For amusing anecdotes about Saratoga see contemporary guidebooks such as R.F. Dearborn, *Saratoga and How to See It* (Albany: Weed, Parson's & Co., 1873), and Hugh Bradley, *Such Was Saratoga* (New York: Doubleday, Doran and Company, Inc., 1940). Rawle, "How the Association was Organized," p. 375; Rogers, "The American Bar Association," p. 175; *New York Tribune*, 22 August 1878, p. 1. See especially the forthcoming book on the establishment of the ABA in Saratoga by Gerald Carson.

⁴⁰ Rawle, "How the Association was Organized," p. 375; John C. Ropes to Simeon E. Baldwin, July 9, 1878, in Baldwin, "The Founding," p. 672. John C. Ropes (1836-1899), a distinguished Boston lawyer, had "no doubt that the meetings of such a body of gentlemen would be very pleasant"; however, he doubted that their association would be of "any practical benefit." Significantly, Ropes was afflicted with a spinal deformity which prevented a much desired military career. He remained a bachelor, retired from the courtroom to the office, and is remembered today, if at all, for his military history of the Civil War.

⁴¹ 1 *ABA Rep* 16 (1878).

⁴² Mary O. Furner, "Advocacy and Objectivity: The Professionalization of Social Science, 1865-1905," unpublished Ph.D. dissertation, Northwestern University, 1972, pp. 1-2. This was published under the same title in 1975 by the University Press of Kentucky.

⁴³ Gustave Koerner to Simeon Baldwin, August 3, 1878, in Baldwin, "The Founding," p. 680; emphasis in the original.

⁴⁴ Occasionally mentioned in the replies to Baldwin was the belief that the bar association might provide "a new field of professional activity . . . in which the temptations that beset the mental labors and habits" of an attorney would be sublimated in the search for justice in the abstract. The quote is from Hill, "Bar Associations," p. 86.

⁴⁵ Gustave Koerner to Simeon Baldwin, August 3, 1878, and Senator Charles Jones to Simeon Baldwin, August 10, 1878, in Baldwin, "The Founding," pp. 680, 682.

⁴⁶ 1 *ABA Rep* 27 (1878).

⁴⁷ Judge E.W. Stanley to Simeon Baldwin, July 24, 1878, and Chief Judge William C. Ruger to Simeon Baldwin, August 1, 1878, in Baldwin, "The Founding," pp. 677, 679. Another of Baldwin's correspondents wrote requesting action upon the "licensing of incompetent practitioners. This is an evil, the magnitude of which, one cannot appreciate, unless brought in actual contact with it. These raters of good moral characters have brought a discredit upon the profession, that it will take years to eradicate, even with the help of merited reforms. [sic]" Greene Durbin to Simeon Baldwin, July 23, 1878, in Baldwin, *ibid.*, p. 688.

⁴⁸ 1 *ABA Rep* 26 (1878).

⁴⁹ Gustave Koerner to Simeon Baldwin, August 3, 1878, in Baldwin, "The Founding," p. 680; Rogers, "The ABA," p. 180.

⁵⁰ Cf. Paul H. Buck, *The Road to Reunion* (Boston: Little, Brown and Company, 1937).

⁵¹ Baldwin, "The Founding," pp. 691-693; 1 *ABA Rep* 10-11 (1878). The meeting was so well organized that there must have been prior arrangements beforehand, though obviously these are not discussed in published memoirs.

⁵² Rogers, *American Bar Leaders*, p. 123; "James O. Broadhead: A Subject for Reappraisal," *Missouri Historical Society Bulletin*. XXVII (January, 1971), 125-128.

⁵³ Rogers, "The American Bar Association," p. 180.

⁵⁴ Friedman, *History of American Law*, p. 563.

⁵⁵ Hurst, *The Growth of American Law*, p. 287.