

Although in most cases other reasons were alleged for that approval, I am wholly of the opinion that in many instances that view is due in no slight degree to the fact that the United States and the separate States have all a written Constitution. The mind of the American lawyer naturally and instinctively inclines to written formulation of all precepts, all rules, all principles.

The difference in the connotation of the words "Constitutional" and "Unconstitutional" in the American usage and our own will illustrate my meaning. In the United States the "Constitution" is a written document of so many words and letters, with us the Constitution is the indefinite and indefinitely formulated principles upon which a British people should be governed—what is "Constitutional" and what is "Unconstitutional" in the United States is for the Court to decide on legal principles and methods by an examination of the formal document to be known and read of all men—in Canada it is for Parliament, or in the last resort the electorate, by the consideration of what is for the benefit of the people. In the United States anything transgressing the written document is illegal however wise it may be. With us to say a proceeding is "Unconstitutional" is to say it is legal, however unwise, or even oppressive, it may be. Whether my impression of the cause of the formulation of a Code of Ethics in the United States is well founded or not, it is manifest that the practice in that land is not binding upon us, like as the two countries are in most particulars.

I propose, therefore, to attack the question without reference to other countries, and briefly to state the conclusions I have arrived at. I may be permitted to say that these conclusions are not formed, though they may be stated, now for the first time.

In the first place it may be assumed that it is not proposed to lay down a Code, disobedience to which would result in disbarment temporarily or otherwise. Our Law Society of Upper Canada has ample power to disbar in a proper case, but the power has been exercised only in the case of crime whether after conviction or otherwise. So far as I know it has never been suggested that a Code of Rules should be laid down to govern the Discipline Committee or Convocation in their duties in that regard, and I can see infinite difficulties in the way of such codification.

Not to dwell upon that phase, however, let us consider the real proposition, which is to lay down a Code the breach of which will lead to the disapproval of professional brethren, to exclusion from association and fellowship, to ostracism by respectable members of the Bar. If it were proposed to make the Code a Penal Code violation of which would render the offender liable to disbarment, legislation would be necessary, and many considerations would arise which may now be passed over—considerations which to my mind would be fatal to the proposition.