overborne by the inducements which wealth, skilfully employed, can offer him; and when once the average man's standard of public virtue has been lowered by the sight of numerous deflections from virtue in others, great is the difficulty of raising it. In the United States the money power acts by corrupting sometimes the voter, sometimes the juror, sometimes the legislator, sometimes a whole party; for large subscriptions and promises of political support have been known to influence a party to procure or refrain from such legislation as wealth desires or fears. The rich, it is but fair to say, and especially great corporations, have not only enterprises to promote but dangers to escape from at the hands of unscrupulous demagogues or legislators. But whether their action has this palliation or not, the belief, often well grounded, that they exercise a secret power in their own interests, exasperates other sections of the community, and has been a factor in producing not only unwise legislation directed against them, but also outbreaks of lawless violence.

To these scattered observations, which I have made abrupt in order to avoid being led into repetitions, I need hardly add the general moral which the United States teach, that the masses of the people are wiser, fairer, and more temperate in any matter to which they can be induced to bend their minds than most European philosophers have believed it possible for the masses of the people to be; because this is the moral which the preceding chapters on Public Opinion have been intended to make clear. But the reader is again to be reminded that while the foregoing points are those in which American experience seems most directly available for European states, he must not expect the problems America has solved, or those which still perplex her, to reappear in Europe in the same forms. Such facts — to mention two only out of many — as the abundance of land and the absence of menace from other Powers show how dissimilar are the conditions under which popular government works in the Eastern and in the Western hemisphere. Nothing can be more instructive than American experience if it be discreetly used, nothing will be more misleading to one who tries to apply it without allowing for the differences of economic and social environment.

PART VI

SOCIAL INSTITUTIONS

CHAPTER CI

THE BAR

Among the organized institutions of a country which, while not directly a part of the government, influence politics as well as society, the Bar has in England, Scotland, and France played a part only second to that played by the Church. Certainly no English institution is more curiously and distinctively English than this body, with its venerable traditions, its aristocratic sympathies, its strong, though now declining, corporate spirit, its affinity for certain forms of literature, its singular relation, half of dependence, half of condescension, to the solicitors, its friendly control over its official superiors, the judges. To see how such an institution has shaped itself and thriven in a new country is to secure an excellent means of estimating the ideas, conditions, and habits which affect and colour the social system of that country, as well as to examine one of the chief among the secondary forces of public life. It is therefore not merely for the sake of satisfying the curiosity of English lawyers that I propose to sketch some of the salient features of the legal profession as it exists in the United States, and to show how it has developed apart from the restrictions imposed on it in England by ancient custom, and under the unchecked operation of the laws of demand and supply.

When England sent out her colonies, the Bar, like most of her other institutions, reappeared upon the new soil, and had gained before the revolution of 1776 a position similar to that it held at home, not owing to any deliberate purpose on the part of those who led and ruled the new communities (for the Puritan settlers at least held lawyers in slight esteem), but because the conditions of a progressive society required its existence. That disposition to simplify and popularize law, to

make it less of a mystery and bring it more within the reach of an average citizen, which is strong in modern Europe, is of course still stronger in a colony, and naturally tended in America to lessen the corporate exclusiveness of the legal profession, and do away with the antiquated rules which had governed it in England. On the other hand, the increasing complexity of relations in modern society, and the development of many new arts and departments of applied science, bring into an always clearer light the importance of a division of labour, and, by attaching greater value to special knowledge and skill, tend to limit and define the activity of every profession. In spite, therefore, of the democratic aversion to exclusive organizations, the lawyers in America soon acquired professional habits and a corporate spirit similar to that of their brethren in England; and some fifty years ago they had reached a power and social consideration relatively greater than the Bar has ever held on the eastern side of the Atlantic.

But the most characteristic peculiarity of the English system disappeared. In the United States, as in some parts of Europe, and most British colonies, there is no distinction between barristers and attorneys. Every lawyer, or "counsel," is permitted to take every kind of business: he may argue a cause in the Supreme Federal court at Washington, or write six-and-eightpenny letters from a shopkeeper to an obstinate debtor. He may himself conduct all the proceedings in a cause, confer with the client, issue the writ, draw the declaration, get together the evidence, prepare the brief, and conduct the case when it comes on in court. He is employed, not like the English barrister, by another professional man, but by the client himself, who seeks him out and makes his bargain directly with him, just as in England people call in a physician or make their bargain with an architect. In spite, however, of this union of all a lawyer's functions in the same person, considerations of practical convenience have in many places established a division of labour similar to that existing in England. Where two or more lawyers are in partnership, it often happens that one member undertakes the court work and the duties of the advocate, while another or others transact the rest of the business, see the clients, conduct correspondence, hunt up evidence, prepare witnesses for examination, and manage the thousand

little things for which a man goes to his attorney. The merits of the plan are obvious. It saves the senior member from drudgery, and from being distracted by petty details; it introduces the juniors to business, and enables them to profit by the experience and knowledge of the mature practitioner; it secures to the client the benefit of a closer attention to details than a leading counsel could be expected to give, while yet the whole of his suit is managed in the same office, and the responsibility is not divided, as in England, between two independent personages. However, the custom of forming legal partnerships is one which prevails much more extensively in some parts of the Union than in others. In Boston and New York, for instance, it is common, and I think in the Western cities; in the towns of Connecticut and in Philadelphia one is told that it is rather the exception. Even apart from the arrangement which distributes the various kinds of business among the members of a firm, there is a certain tendency for work of a different character to fall into the hands of different men. A beginner is of course glad enough to be employed in any way, and takes willingly the smaller jobs; he will conduct a defence in a police-court, or manage the recovery of a tradesman's petty debt. I remember having been told by a very eminent counsel that when an old apple-woman applied to his son to have her market licence renewed, which for some reason had been withdrawn, he had insisted on the young man's taking up the case. As he rises, it becomes easier for him to select his business, and when he has attained real eminence he may confine himself entirely to the higher walks, arguing cases and giving opinions, but leaving most of the preparatory work and all the communications with the client to be done by the juniors who are retained along with him. He is, in fact, with the important difference that he is liable for any negligence, very much in the position of an English Queen's counsel, and his services are sought, not only by the client, but by another counsel, or firm of counsel, who have an important suit in hand, to which they feel themselves unequal. He may however be, and often is, retained directly by the client; and in that case he is allowed to retain a junior to aid him, or to desire the client to do so, naming the man he wishes for, a thing which the etiquette of the English bar is supposed

to forbid. In every great city there are several practitioners of this kind, men who only undertake the weightiest business at the largest fees; and even in the minor towns court practice is in the hands of a comparatively small group. In one New England city, for instance, whose population is about 50,000, there are, I was told, some sixty or seventy practising lawyers, of whom not more than ten or twelve ever conduct a case in court, the remainder doing what Englishmen would call attorney's and conveyancer's work.

Whatever disadvantages this system of one undivided legal profession has, it has one conspicuous merit, on which any one who is accustomed to watch the career of the swarm of young men who annually press into the Temple or Lincoln's Inn full of bright hopes, may be pardoned for dwelling. It affords a far better prospect of speedy employment and an active professional life, than the beginner who is not "strongly backed" can look forward to in England. Private friends can do much more to help a young man, since he gets business direct from the client instead of from a solicitor; he may pick up little bits of work which his prosperous seniors do not care to have, may thereby learn those details of practice of which in England a barrister often remains ignorant, may gain experience and confidence in his own powers, may teach himself how to speak and how to deal with men, may gradually form a connection among those for whom he has managed trifling matters, may commend himself to the good opinion of older lawyers, who will be glad to retain him as their junior when they have a brief to give away. So far he is better off than the young barrister in England. He is also, in another way, more favourably placed than the young English solicitor. He is not taught to rely in cases of legal difficulty upon the opinion of another person. He is not compelled to seek his acquaintances among the less cultivated members of the profession, to the majority of whom law is not much of an art and nothing of a science. He does not see the path of an honourable ambition, the opportunities of forensic oratory, the access to the judicial bench, irrevocably closed against him, but has the fullest freedom to choose whatever line his talents fit him for. Every English lawyer's experience, as it furnishes him with cases where a man was obliged to remain

an attorney who would have shone as a counsel, so also suggests cases of persons who were believed, and with reason believed, by their friends to possess the highest forensic abilities, but literally never had the chance of displaying them, and languished on in obscurity, while others in every way inferior to them became, by mere dint of practice, fitter for ultimate success. Quite otherwise in America. There, according to the universal witness of laymen and lawyers, no man who combines fair talents with reasonable industry fails to earn a competence, and to have, within the first six or seven years of his career, an opportunity of showing whether he has in him the makings of something great. This is not due, as might be supposed, merely to the greater opportunities which everybody has in a new country, and which make America the working man's paradise, for, in the Eastern States at least, the professions are nearly as crowded as they are in England. It is owing to the greater variety of practice which lies open to a young man, and to the fact that his patrons are the general public, and not as in England, a limited class who have their own friends and connections to push. Certain it is that American lawyers profess themselves unable to understand how it can happen that deserving men remain briefless for the best years of their life, and are at last obliged to quit the profession in disgust.

A further result of the more free and open character of the profession may be seen in the absence of many of those rules of etiquette which are, in theory at least, observed by the English lawyer. It is not thought undignified, except in the great cities of the Eastern States, for a counsel to advertise himself in the newspapers.[1] He is allowed to make whatever bargain he pleases with his client: he may do work for nothing, or may stipulate for a commission on the result of the suit or a share in whatever the verdict produces — a practice which is open to grave objections, and which, in the opinion of more than one eminent American lawyer, has produced a good deal of the mischief which caused it to be seventeen centuries ago prohibited at Rome. However, in some cities the sentiment of the Bar seems to be opposed to the practice, and

[1] California has recently passed a statute forbidding counsel to advertise for divorce cases.