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AMERICA'S SOCIAL MORALITY

DILEMMAS OF THE CHANGING MORES

BY

JAMES HAYDEN TUFTS



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PREFACE

The study here presented of social morality in the United States does not assume to declare dogmatically what ought to be. Nor is it chiefly concerned to record what is. The first method would seem to be presumptuous; the second dull. We are all aware that divorce is common, crime efficiently organized, foreign relations unhappy; that business has joined government in the pillory, and that the country has changed its mind on prohibition. But the meaning of these familiar facts is not so clear. Some critics blame America; another critic thinks that any collective group is liable to be immoral in its means of maintaining itself; some plead that the nation is still young and has not yet had time to adjust itself to its tasks; others affirm vehemently that America is all right and that Europe is all wrong. The interpretation which is here offered is that our institutions of family, industry, business, and government are now facing conflicting forces and demands which give rise to genuine moral dilemmas—dilemmas of the group. Certain facts will naturally have to be considered, but the important fact is believed to be not that certain individuals deserve censure—it is comparatively easy to attach a tag if we are sure of our standard; the important fact is that standards themselves are uncertain, and in some cases shifting. To discover these moral dilemmas and explore the factors that are causing strains and tensions is the purpose of this volume

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CHAPTER I

WHAT IS SOCIAL MORALITY?

Social morality, as considered in this study, concerns the morality of groups. Groups are made up of persons, but it is a matter of everyday experience that a member of a group does not always conform to the standards of his group, and is then liable to be disapproved or even disciplined or punished by the group. Or to put the case in a different light, an individual may think that a certain course of conduct is good or reasonable or right, but also be made to feel that his family or neighbors or business associates hold a different view, or that the law of his state forbids such conduct. Law, public opinion, family pride, class consciousness, honor of a gentleman, business standing, patriotic loyalty are familiar terms for attitudes or standards of various groups.

If we choose to look at the problem as it presents itself to an individual who has to decide whether to conform to the group standard or to do what he thinks right, or perhaps simply to do as he likes, we are dealing with personal or individual morals. If, however, we choose to consider, not what the individual should do, but what the group standard is, how it was formed, and what its consequences are, we are dealing with problems of social morality. Whether A pays his debts, helps B who is in trouble, drives his car recklessly, is or is not faithful to his wife—these are matters of personal morals. If, however, we consider whether business reputation demands prompt payment of debts, whether kindness to neighbor is

esteemed in A's community, whether an automobile club condemns reckless driving, whether A's social set frowns on sex relations outside of wedlock, we have crossed into the field of social morality. We are dealing with what Sumner called the *mores*. Standards of personal or individual morals are very largely determined by the mores of the several groups through which the youth passes and to which the adult belongs. Beginning with the family, and continuing through school, play group, business or industrial or professional group, individuals learn more or less aptly how they must behave while in that group. The law of the land prescribes certain general rules of behavior for all. Most persons conform to these group rules and standards without much questioning as to whether the rules and standards are good or right. As Sumner put it in extreme statement, "The mores can make anything right." Yet there is always one possibility of criticism or revolt. When the family insists that the young man marry within an approved social set; or that he enter his father's business which he dislikes; or when the nation summons him to serve in the army; or the union orders a strike, the conflict between what the individual wants to do and what the group and its mores expect him to do may lead to doubt whether the group is right. The mores cannot always make anything right under such conditions. Sometimes in such cases the individual simply bolts, and refuses to obey without troubling to find a reason. But sometimes he reflects, asks "why?", comes to the conviction that the group is wrong—or right—and then we say he is acting from conscience.

Social morality also has conflicts. When two groups with differing mores clash, or are in such close relation that comparisons and criticisms are made, or when one group is subordinate to another which demands com-

pliance, or when new inventions appear and ways of living are changed, some readjustment of standards becomes almost inevitable. In the meanwhile the uncertainty of group standards affects the conduct of individuals. Many of the members of groups feel lost, or possibly freed from responsibility, if the group tradition is unsettled. On the whole, group or social morality has greater inertia or stability than any single individual is likely to have. It encounters fewer standards that claim superior authority. When a given group has no superior group to which it looks for standards, it is a law unto itself. In this case possibility of criticism from within is the main resource for correction or improvement. There is bound to be a lag in the response of a great mass to individual challenge. The prophets of Israel found the task of changing the national mores almost too difficult, although they could appeal to a profound reverence for the higher authority of the national divine ruler and protector. In the case of a group which is supposedly subordinate in authority to the nation, it by no means follows that the morals of the lesser group will always recognize the national example and authority. Religious groups sometimes resist national standards of international relations. Powerful business groups are sometimes unwilling to conform to state and federal laws. The attitudes of certain sets in society toward gambling, intoxicants, and sex relations show little regard for any mores embodied in law, because these social groups hold their own standards on these matters to be absolute, and the mores of the majority which enacts laws to be of negligible or inferior importance.

Aside from the facts of mass inertia and of the reluctance of a strong group to yield to pressure, there is one very good reason for a less flexible temper in social

than in individual morality. The consequences of a change in group standards affect so many people, and affect them so deeply that the prudent will wish to weigh carefully the values in the new course proposed. Even if the end sought commends itself, the means deemed necessary to its achievement may endanger other values. The experiment which Russia is making in changing the motives of work and the distribution of what is produced is even more fundamental in possible reversals of relative valuations than our forefathers' shift from monarchy to democracy in government. Does it involve the abolition of liberty? is the question that gives pause.

Nevertheless social morality changes its standards. Not only conflicts between groups but mechanical inventions, economic forces, political issues, and shifts in population from country to city constantly bring pressure to bear. In seeking to understand the mores of the present it is essential to consider not only a cross-section but to note also the direction of movement, and this will mean some reference to historical setting.

If group morals largely determine personal or individual morals, it is apparent that to understand life and society we need to understand social morality. Relatively few studies of American standards of morals as compared with political and economic analyses have as yet appeared. The shifts in public opinion, which are now going on, render the task of making statements that will hold good for any great length of time doubly difficult. On the other hand a flood of monographs, essays, sociological surveys, realistic fiction, statistical studies, and biographies affords much material and invites an attempt to put on record some aspects, at least, of the American scene. In the remainder of this introductory chapter the sources for social morality will be noted and certain lead-

ing factors indicated that have contributed to the formation of social morality in the United States.

II

Statistics are naturally a first source to be examined for evidences of what groups choose and do. European governments have long been recording numerous facts about their populations which afford material for *Moralstatistik*. Americans have until recently been far less curious as to even such relatively non-private facts as birth and death rates, to say nothing as to causes of death, abortions, and suicide rates among different religious bodies. We have avidly counted ourselves once in ten years; our cities have proudly recited growth in city directories and school enrollment; certain criminal records have been kept; but the more exact inquiries of German, French, British, Italian, and Scandinavian officials on many topics have not been generally imitated among us. Today nearly all the states are in the registration area for births, deaths, and several further details. Marriage and divorce rates are available; city and rural areas can be compared in many particulars. Elections in some cases turn on moral questions in the broad sense. Educational statistics are highly significant of the ambitions and valuations of the people. The recent Report of the President's Research Committee on Social Trends has brought many additional statistics into service to show what people are reading, and what presumably they prefer, to show the changes in government, in education, in the quantity and kinds of commodities consumed, and in efforts for social welfare. Economic facts lend themselves to statistics, but it is only recently that the attempt has been made to show the distribution of wealth and in-

comes, and as yet the figures for wealth are largely estimates. Criminal statistics are being placed on a better basis, but statistics need interpretation, and are often inconclusive as to the morals implied. It is obvious from the figures of divorces through a period of years that there is lessening aversion to divorce and presumably lessening social disapproval of it, but there is room for difference of opinion as to whether this change signifies loss or gain for marriage morality; it may conceivably mean a higher standard for what is expected in a successful marriage. Elections seldom turn on a single issue; it is sometimes believed to be good party tactics to confuse the issues in the hope of catching more votes. Criminal statistics are notoriously defective as indications of morals because of the differing policies of police in making arrests, the differing standards of police courts, the differences between states as to what are crimes or misdemeanors by statute. The statistics of prisoners are further unsatisfactory as a picture of the criminal situation, because they enumerate only those criminals who are caught, and these are usually not the shrewder or more influential.

Law, both as enacted in legislation and as formulated in decisions of the courts, is an important expression of moral attitudes. If law be regarded as based in reason, it shows what is held by legislatures and courts to be reasonable; if it be regarded as based on the will of the people, then it shows what the will of the people—or in some cases the will of an energetic or dominant group—is at a given time. Courts are slower than legislatures to respond to changes in public sentiment, yet in the case of factory legislation and other extensions of the police power to protect health, childhood, laborers, from the dangers of new conditions in our civilization courts have shown a

disposition to recognize a changed opinion of what is reasonable.

Amendments to the Federal Constitution have in most cases registered moral movements. Of the first ten amendments, generally known as the Bill of Rights, the first eight evidenced the attachment of the men of the eighteenth century to the rights of the individual as against the government, a principle which went deepest in the issues of that century. The thirteenth, fourteenth, and fifteenth amendments reflected the convictions of the majority as to slavery and the Negro. The sixteenth registered a moral conviction as to the fair distribution of the burden of taxation [1] as well as a judgment upon a fiscal policy. The seventeenth, although in form merely prescribing a change in the method of choosing senators, was also advocated on directly moral grounds.[2] The eighteenth climaxed a long-continued resentment at the saloon power in politics, and a determination to make the control over intoxicants more effective. The nineteenth came as the consummation of long-continued group efforts toward enlarging the opportunities and responsibilities of women whether as a measure of justice or as a contribution to political well-being.

There is indeed the oft-repeated charge that certain laws find their place in the statute book because of the ambition of some legislator rather than because there is a real body of considered opinion which demands it. This may be true of occasional enactments, but that the mass of legislation originates in this way is scarcely plausible. The force back of the enactment is usually a demand of some group. Whether a newly enacted law continues

[1] Wayne MacVeagh in *North American Review,* Vol. 193, pp. 161-79 (Feb. 1911).

[2] C. E. Merriam, *American Political Ideas,* pp. 114 f.

to be supported by public sentiment is a distinct question and depends upon many factors. In the case of woman suffrage no public opposition remains to what for many years was the ideal of a very small group; in the case of prohibition no such general acceptance obtained after a brief period; yet each amendment was a notable instance of social morality expressing itself in law.

Platforms of religious, political, or educational groups, and codes of business and professional groups afford material that must be used with caution.

Political platforms are usually discounted since, as the railway porter pointed out to Tom Johnson, a platform is not meant to stand on but to get in on. Even so it represents a gamble upon what will appeal to the voter. Religious and educational platforms represent in greater measure the convictions of definite groups. Codes of business or professional ethics represent in part the views of those members of the business or profession who are seeking to improve standards and practice, but in some cases probably have been shaped by the more conservative. They cannot always be taken as evidence of actually observed standards.

Scientific studies of groups, or of individuals considered in their group relations, are now appearing with increasing frequency. Studies of community, race, juvenile, industrial, and criminal groups, from the Pittsburgh Survey to *Middletown,* and from histories of Tammany to *The Gang,* surveys of organized crime, and of prostitution, have explored aspects of American life that must be reckoned with. Autobiographies, biographies, and case studies of persons who have been conspicuous in the business, industrial, religious or political world, usually reflect contacts and influences between individual

and group and thus directly or indirectly disclose group standards.

Certain official investigations have been fruitful for social morality. Veblen's *Theory of Business Enterprise* extracted from the Report of the Industrial Commission much of the material on which its caustic criticism of the current business standards was based. The Senate investigation of the "corrupt transactions" under the Harding administration brought to light a disgraceful condition. The Federal Trade Commission's investigations of the attempt to influence teachers and to control textbooks by certain Public Utilities revealed a subtle method of working upon the public mind.

Literature of the day, especially criticism, fiction, and drama, is valuable for its treatment of the morals of sex and family, and to a less degree for those of business and politics. The daily, weekly, and monthly press is of course a mine; the difficulty comes in sifting what is genuinely typical of the mores.

Secondary sources comprise interpretations of historians and writers in the field of social morality from William G. Sumner to the present.[8] The observations of such Europeans as de Tocqueville, Bryce, Siegfried, Faÿ, have helped us to see ourselves as others see us.

III

To understand anything of a process or idea it is not sufficient to describe it; so far as possible we seek to discover the factors that have contributed to make it what

[8] Arthur Hadley, *Standards of Public Morality*, N. Y., 1912; John M. Mecklin, *Introduction to Social Ethics*, N. Y., 1920; deal with general aspects. Treatments of particular phases will be noted under the several topics.

it is. In so complex a process as the moral life of such a composite people as ours we obviously cannot name any one or two causes why we are as we are. Nor can we hope to name them all. We may, however, note some of the factors that have been most emphasized by students of our institutions and traits. For convenience we may group these under, (1) What we found here awaiting us; (2) What we brought with us; and (3) What new factors have entered since we came. These do not correspond to the usual divisions into heredity and environment, but the classification of factors is not of great importance for our purpose; the main thing is to keep a wide field of possible factors open before us, and not to determine in advance that everything can be explained by economic forces, or by Nordic stock, or by Protestant religion, or by democratic government, and hence to shut our eyes to the plain fact that a human being and his society and morals are very complex.

What then did we find here when we came? First of all diversity of terrain, soil, and climate, and extraordinary natural resources that were later to have a profound influence upon industry and so upon life. But climate, terrain, and soil began from the landing of the early colonists to exercise a selective effect upon qualities and occupations. The cold climate of New England compelled one type of crops; the milder climate of Virginia and the Carolinas another. A surface broken by hill and valley into small plots lent itself to small farms; the southern coast to large plantations. Such factors made it at a later time a natural development for slavery to expand in the South and die out in the North, whatever the importance of other conditions. Whether the stony soil and rigorous cold of New England had any part in the dour character for which its puritanism is popularly

held responsible, may be purely a matter of speculation, but they were clearly among the reasons for the tide of migration that soon set in toward western New York and on into the Middle West, thus determining in many ways the character of the population in that region.

The colonists found also a frontier—a frontier that was pushed ever west until it finally disappeared at the close of the nineteenth century. Turner has made this factor familiar to all readers of American history, and has traced many of its subtle as well as its more easily identifiable effects. Of serious import in moral consequences was the presence of the Indian as a part of the frontier. One fact of considerable significance in New England was the reënforcement which danger from Indian attacks brought to the plan of settling in villages, for anyone who has lived in a New England village has felt a distinctive atmosphere of social community and control that does not obtain in the "great open spaces." But the great moral influence of frontier life has often been noted: the frontiersman was strong, resourceful, courageous, helpful to neighbors, but a law unto himself, and ready either to take the law into his own hands or to disregard it as he saw fit. He was continually in quarrels with the Indians and continually encroaching on the Indian territory and thereby bringing on retaliation, war, broken treaties. The influence of the frontier did not pass entirely when the physical boundary was reached.

We came to the New World from several racial stocks, and brought with us certain temperaments and traditions. At first English stock was by far the most numerous and dominating. Dutch, Swedish, German (Pennsylvania "Dutch"), French Huguenot, remained as more or less isolated settlements and did not swarm over the country. The second influential tide came from the North of Ire-

land and adjacent parts of Scotland. Coming a century later than the original settlers, the Scotch-Irish largely found homes, or made them, on the frontier. They were generally poor but entirely equal to facing hardships and fending for themselves once they found land to subdue and cultivate. Conditions in Ireland were hard, and there seemed to be a general temper of readiness to adventure across the ocean. Nevertheless it certainly took a grim resoluteness to dare the long voyage, the uncertainties of settlement, the isolation and exposure of the frontier, the lack of almost everything that to our mind of today makes existence desirable or even tolerable.

Conditions here had changed when the third migration set in, the migration from Ireland and famine in the decade 1845-55. Most of the million Irish were poor; few brought anything but bare hands, warm hearts, and willingness to work at any kind of job, on railroads, in factories, at housework. Not many were disposed to push out into frontier settlements. They found opportunities in cities or industrial centers where they rapidly improved their economic status, became our police, our school teachers, our men to take risks in building skyscrapers. Above all, they brought and kept alive a bitter feeling toward the English Government.

Germans who swarmed into the Middle West at about the same period with the Irish emigration to the northeastern states brought with them a culture in many respects superior to that of the frontier where they made homes. Cincinnati, St. Louis, Milwaukee and Chicago had large German groups with German taste for music and letters. The very fact that they brought a culture and a language of their own favored a degree of independence and separateness from English-speaking people that made their own tradition more persistent. Scandi-

navian immigrants, like the Germans, pushed out into the Middle and Far West, cut down forests or broke new sod for farms. Yet despite difference in language from the older settlers, they were so similar in stock and traditions that there was little thought of any social class distinction or discrimination.

The later flood of migrants from Italy and Eastern Europe, however, brought not only different languages but different cultures. They did not for the most part seek farms and thus enter a social environment in which neighborhood plays a rôle in dissolving barriers of race and language, but, like the Irish, found their way chiefly to industrial centers and cities, and there have formed convenient blocs for city political leaders to enlist through Tammany and similar organizations which help the immigrant to a job and in return claim his vote.

Altogether we have come from nearly every part of the world. In 1901 Professor Buck found forty different languages spoken in the city of Chicago, and an enterprising newspaper was able to add two more that had escaped Professor Buck's eye. Most of the forty had their own weekly newspapers and the Germans maintained a daily.

And besides those who have come are those who were brought. After the first African slaves were sold in Virginia from a Dutch ship a large trade was developed by the English, despite efforts of some of the southern colonies to check it, and was found profitable by New Englanders, although few were brought to New England. Slaves soon lost their native language, and had little opportunity to maintain any cultural tradition, but the economic and social class distinction became so deeply fixed by their status as slaves as not only to persist after emancipation but to affect the attitude of the white population of the South toward manual labor.

The various European stocks that came first were similar in one important respect: they were, on the whole, middle class. None of the nobility came, and relatively few of the class of gentry. Indentured servants were partly of humble station, but once their term of service had expired they could become landowners and thereby independent and "middle class." The aristocracy which later existed in Virginia has been shown to have been the product of economic conditions there and not of original status. The status of Ministry, Squire, and Deacon in Massachusetts was not hereditary. For one thing, all worked. Domestic tasks were performed by the housewife with the assistance of "help," not of "servants," and the farmer retains to this day the same term for farm employees.

In another respect, of much importance in recent history, all stocks were alike: all were accustomed to use alcoholic beverages. English and Germans drank beer; Scotch and Irish drank whiskey. New England developed a fondness for rum of both West Indies and native manufacture. Italians drank wine, Poles and Bohemians beer, Scandinavians beer and whiskey. On the frontiers whiskey was always popular, for a little went farther and was more effective in producing the desired stimulation. These habits and traditions were to prove an important factor when the problem of intemperance developed.

In a third respect all European stocks were agreed: whether of Christian or Jewish faith they brought a common attitude toward the family, and whether marriage was, as with the Catholic, a sacrament, or as with the Puritan, a civil contract, it was almost always permanent, and divorce almost unknown.

Toward another institution, government, nearly all the immigrants, from Plymouth, 1620, to Russians and Poles

of the twentieth century, were more critical. Many had left their native lands to escape oppression or from economic conditions for which government was held responsible. With others religious liberty was the point at which government came into conflict with a non-conforming group. Not all could be said to be, like the Irish immigrant of the story, "agin' the government," but practically all came with the hope of liberty from some kind of restraint, and were easily moved to resent control from beyond the sea. When, however, governments were set up, as has often been pointed out, it was largely the English system and the English common law that gave the pattern. The governments of Massachusetts and Connecticut took their criminal law verbatim from the law of the Old Testament, and, like the rest of Christendom at that time, read without question of divine authority, "Thou shalt not suffer a witch to live." In Louisiana, the Southwest, and California the French and Spanish laws of community property followed a different tradition from the English, and one that was more favorable to the position of the wife.

In one highly important tradition these European stocks brought different inheritances: the early settlers were largely Protestant; the Irish, Poles, and Italians almost exclusively Roman Catholic; the Germans, partly Lutheran Protestant, partly Catholic; the Scandinavians, of Lutheran or national Reformed church affiliations. So far as the direct moral teaching of these churches and of the Jews who came in large numbers from Germany and Eastern Europe was concerned, there was little difference. All taught the ethics of the Ten Commandments and the Golden Rule, the duty of justice and mercy, of charity, chastity, and integrity. All taught the reality of sin and prayed for forgiveness. All taught that the moral law

came from divine authority. But there were important differences between Catholic and Protestant as to the conception of the church and its relation to the community,[4] and these have in many ways led to different attitudes on matters of public policy such as prohibition.

The Roman Catholic Church has for its central determining conception that the church is a body, a corporate whole. Individuals through membership in this body share in divine grace as communicated through the sacraments. They recognize the authority of the Head of the Church as represented by the Pope. The church thus conceived is eminently what Durkheim regarded as a social fact. It is not merely a collection of individuals; it has a character and life of its own. It teaches the child, consecrates matrimony, requires attendance at mass which symbolizes a mystic union, receives confession, and gives its last consecrating at death. In all these acts and ceremonies the member of the Catholic Church is made conscious of the great organization, of its supreme authority within its peculiar sphere. For the believer in God, the church as established by God is invested with the divine sacredness. It is evident that for the devout Catholic the total effect of the church must be deep and broad. Its influence upon the family is easily recognizable. It does not sanction divorce; it vigorously opposes birth limitation except through limitation of sex-intercourse; and the respect for church authority fostered by ritual and doctrine makes its attitude a power over its members.

On the other hand, the Catholic Church in certain respects holds a far looser rein than Protestant churches. In observance of Sunday the Catholic Church has combined a more regular attendance upon worship with fewer

[4] E. Troeltsch, *Social Teachings of the Christian Churches*, tr. by Wyon, 1931.

restrictions upon conduct and recreation during the rest of the day. The Catholic Church has urged temperance but has not officially favored prohibition. As Siegfried puts it, the Roman Catholic priest has had a tolerance for the frailty of human nature. But within the sphere which it aims to control it spares no effort or sacrifice; witness the zeal shown in undertaking to provide separate parochial schools at the cost of those who as taxpayers must bear also their share of the expense of public schools.

Protestant churches had a different philosophy of the church community, at least this was true of the larger number. The Episcopal and Lutheran bodies retained more of the older corporate conception. But Methodists, Baptists, Presbyterians, Congregationalists, and many of the smaller denominations viewed the church as a company or association of believers, of followers of Christ, who as it were make the church, instead of participating in its life and deriving life therefrom. The church was for them as for the early disciples a "beloved community" to use a phrase of Royce. But the primary fact was the regeneration of the *individual* believer. The church was, for this view, logically secondary, and a fellowship for mutual aid and support rather than a medium of grace. This conception of church and believer led to emphasis upon the individual's inner experience, regarded as the prerequisite for membership, rather than upon the presumption that all children of church members were virtual members, awaiting only confirmation for full inclusion within the corporate body. Many persons who are entirely in sympathy with the teaching and way of life expressed by these churches have been unable to achieve the emotional experience regarded as essential, and so have remained outside the membership. Hence the psychological effect of the church in these bodies has been not

that of an authoritative guide but that of an agency appealing to reason or emotion.

Nevertheless, if corporate unity and infallible authority have been lacking in Protestant churches these bodies have been characterized by a strong belief in the propriety and duty of carrying their religion into society. The movement for social justice which swept the country in the early years of the present century had its leadership and support largely in the Protestant churches, or in those individuals who had by tradition or early training come from these churches. Active interest in the Labor situation was evidenced by the study of the steel industry by the Federal Council of Churches. The Woman's Christian Temperance Union and the anti-Saloon League were strong in Protestant communities. The Roman Catholic Church was more cautious. In the case of prohibition the Lutherans and Episcopalians were similarly cautious. The significant point, for our purpose, is that in the churches which have less control over children there is, as if by compensation, a more active assertion of social religion. The activity in social reform enlists its membership in support of causes. The collective influence has been strong. As Siegfried remarks, the passion for reform and uplift, incomprehensible to Latin peoples, is limited to England and America.[5]

The new factors which have entered into the making of the American social morality of the present century will find consideration in the following chapters in connection with the several problems treated, but we note here some of the more basic.

Beginning with the economic factors, the change from farm to factory and other forms of machine industry has set problems of its own and has also indirectly occa-

[5] André Siegfried, *America Comes of Age*, 1927, pp. 34 ff.

sioned several other changes of significance for morals. Questions of fair wages, of collective bargaining and labor unions, of liability for industrial accidents and industrially caused diseases, of tariffs and the international relations affected by them, all have moral aspects. Indirect consequences of our shift in occupation include the great increase in wealth, and so of luxury, the present unequal distribution of wealth, the power of wealth in our society, the rapid growth of cities and the change from rural to urban life, the increased immigration of industrial and city dwelling peoples as compared with agricultural peoples, the great expansion in corporation ownership, the larger employment of women outside the home and the general transition from a society in which almost every man was an independent owner or craftsman to a society in which the majority work for some employer—when they can. The cycle of industrial unemployment has thus far in its extreme forms seemed to bear most heavily upon the more highly industrialized regions.

The change from rural to urban life [6] has also set in motion a chain of agencies that raise moral problems. The massing of population, combined with the great mobility of modern city dwellers, destroys the neighborhood group that was so effective in both social control and mutual helpfulness. Home life in a multiple dwelling, with little or no place for children either inside or out is a more difficult proposition than in the country. Boys' gangs flourish, supervision of the recreation of young people disappears, entertainments from movies to night clubs and dance halls are commercialized, temptations to gambling, intemperance, and illicit sex relations are frequent. Crimes against property are more

[6] R. E. Park, E. W. Burgess, R. D. McKenzie, *The City*, 1925, has bibliography.

rewarding, for there is more to steal; escape is easier when it is so easy to lose oneself in a crowd. City governments have proved peculiarly exposed to corruption from both wealthy seekers for special privileges and from crooks who buy protection against enforcement of the laws they wish to break.

Change to a more complex civilization has raised moral problems in government.[7] Beginning our national life as a nation of farmers our fathers found Jefferson's ideal of a simple government excellently suited to preserve liberty, to them the dearest of their values. But with the growing power of wealth liberty was threatened in new ways, and a weak government was no protection. Next to liberty, equality appealed to the men of '76, and when the larger part of the people were small farmers and the tasks of government few and relatively simple, equality was easier to maintain. Slavery as a commercial and industrial institution brought a new strain upon this principle, as upon that of liberty. And since the Civil War the enormous inequality in economic power has asserted itself and threatened at times to abolish, or at least to overmatch in importance, nominal political equality. "To establish justice" stands in the preamble of the Constitution as a primary aim of the Federal Union and justice is a moral as well as a legal principle. But a new industrial system, with new perils to life and health, and a new organization of economic power in corporations have brought to the fore a new problem of social justice which challenges the older conceptions of free contract and laissez faire.

No list of factors in the social morality of the United States, however curtailed, could properly omit the patterns and influence of outstanding personalities. Religious and

[7] C. E. Merriam, *American Political Ideas*, 1920.

educational leaders have inspired or quickened groups in their various churches and schools; inventive genius has stimulated in numerous boys ambition to imitate the career of an Edison; organizing ability and financial achievement in the field of industry and business have suggested to many the path to success in building a fortune. But no one in any of the fields mentioned would be counted as a nation-wide pattern whose personality stands four-square as an ideal American. It has been reserved to political leaders to command by their combined ability and character the veneration, or respect, or affection that belongs to the man who meets a great situation and carries forward nobly a great cause. Franklin, Washington, Jefferson, Lincoln, and through a great area, Lee, have been identified with the nation's birth and peril. They each symbolize a cause for which men gave the last full measure of devotion. They grow, rather than wane, in the confidence of the people. Not only their wisdom and strength but their integrity, sincerity, and unfaltering courage appeal to successive generations. All were abused and vilified in their lifetime; all are secure in the esteem and admiration of their countrymen.

CHAPTER II

WHAT THE AMERICAN CITIZEN VALUES

When we seek to estimate the character of an individual, one way of approach is to ask, "What does he prize highest? Has he some end—power, success, wealth, independence, art, reputation for fair dealing—to which he devotes his energies, and for which, if need be, he is willing to sacrifice lesser values?" We judge the tree by the fruits, but after all, we are interested in the health and soundness of the tree. Similarly in studying the character of a group or of a people, it is in point to look not only at this and that detail of conduct—business, politics, crime, philanthropy, vice—but also at the main end or ends, if there be such, which the group more or less consciously pursues. The groups called corporations are obliged in their applications for a charter to state the purpose of the proposed organization. Some are for profit, some for benevolent or social purposes. The Federal Constitution names in its Preamble the purpose in forming a "more perfect union," but of course this does not profess to cover all spheres of the life and aims of the people. It may be a mistake to speak of "the" end of the American people. It may be that various sections or classes have differing ends. Or it may be that ends change so frequently in our present age that all we can fix upon is the fact of changing values. Nevertheless we may take a hasty look at the problem before considering in detail the several aspects of American life in which it is possible to find more data for definite judgments.

It will help toward a juster estimate if we glance backward and view the American scene in perspective. Broadly, the chief interests and reflective valuations in our part of the New World may be viewed as falling into three periods. We may conveniently call these the religious or theological, the political, and the economic, although we shall find grounds for recognizing other ends than those suggested by these names. The first of these periods extends from the settlements down to about the year 1760. Conflict with Great Britain then brought political problems to the front, and until the Civil War the great issues that challenged thought were of liberty, equality, union. Since the Civil War the enormous economic development has taken precedence and education has gained increasing hold upon the ambitions of young and old.

In all three periods the ever-present and compelling necessity of daily bread has been a factor in the lives of the great majority—this may perhaps go without saying. But over and above this some ray of promise has more or less clearly shone in the evening sky to give added value to a day's work, and maintain the worker's courage to face another day's labors. James Truslow Adams calls this something the American dream of better opportunity for the common man. But there have been, besides this general dream, other or more specific values in the several periods. In the first period of colonial life, down to about the year 1760, the answer to the question, What is most worth while? not only in the "Holy Commonwealth" set up by the pious founders of the Massachusetts Bay Colony, but also among the great number of Scotch-Irish Presbyterians who came a century later, would have naturally come in the phrase of the Westminster Assembly, "Man's chief end is to glorify God and

enjoy him forever." Protestant and Catholic alike thought of man as a sinner, in need of salvation through the grace of God, and looked upon this span of life as of less importance in itself than in relation to the eternal world and its values. Next to the Bible, *Pilgrim's Progress* gave the imagery for this view of human destiny.

During the Revolutionary period and down through the time of de Tocqueville, liberty and equality were the significant symbols of hope. Under the spell of Webster's oratory liberty became joined in the North with union, "one and inseparable." Liberty for whites, of course; equality for whites in the senses of equality before the law and as opposed to the prevalent European conception of a hereditary ruling class or monarch. The common man was no doubt chiefly occupied with daily bread, with subduing the forest and pushing on into new frontiers, but in so far as any one star shone in his evening sky, it was liberty. The Declaration of Independence, the first amendments to the Federal Constitution, the Bills of Rights in the several states gave literary form to the spirit of Bunker Hill, Saratoga, and Valley Forge.

Nor was the Negro forgotten. The Quakers had early taken a stand against slavery. Vermont came to the Continental Congress with a bill of rights abolishing slavery within the state. Massachusetts decided that its bill of rights included Negroes. And most significant, the South was for a time in the lead of anti-slavery agitation. In 1827 out of one hundred thirty anti-slavery societies in the United States, one hundred six were in the slave-holding states, and only four in New England and New York.

Even in the Civil War both North and South were still cherishing liberty, though in different applications. The

North doubtless fought the war officially for the preservation of the Union; yet it may well be doubted if the cause of the Union as such would have sustained endurance through the terrible four years had not the deeper cause of liberty for the slave been felt as the ultimate issue. The South fought for liberty to determine its own institutions.

In these two periods concerned with religion and the rights of man—especially the right to liberty—America was not following a lonely path. Europe in the seventeenth century was still in ferment and war over religious questions. These were indeed intricately involved with the struggles of the common people against rulers and the struggle between princes and Pope. The common people were often crushed in the clash of arms but they had one weapon which in the long run was to change the field of combat—the printed book, and especially the Bible. It was this which was emancipating the many from the rôle of passive listeners to an authoritative clergy.

To this folk—a common people that could read—Luther, Calvin, Zwingli and the English and Scottish Reformers could appeal. The movement which began with externals resulted in making religion the affair not only highest in importance but nearest to daily life. Daily bread must be secured of course, but for common folk—yeoman, craftsmen, tradesmen, clerks—there was neither opportunity nor temptation to seek wealth. Religion became not merely a realm in which the lowly might feel lifted to a level where distinctions of class no longer held, since God's people, as Bunyan so movingly portrays them, are children of the King. It became through access to the Bible the chief field of intellectual interest. The sermon displaced ritual. Puritans in Old and New England re-

enacted the rôle of a chosen people. At Boston and Hartford the Hebrew criminal code was adopted bodily. Parents named their children for Old Testament priests, prophets, kings, and patriarchs, making even greater use of names of prophets than the Jews themselves. Sermons were phrased in Scriptural language and the imagery was of Canaan, the Promised Land, and the New Jerusalem. The right of private judgment was a revolutionary principle but few carried this to the position of the Quakers with the reliance upon an Inner Light. The great body of Protestants were fain to avail themselves of the Bible as an authority prior to the church, an authority to which the common man had now access, without need of priest. Even Calvin's emphasis upon the doctrine of election, offensive to modern feeling, takes on a different sense as we read it in the Institutes where its setting is that of a support to the lowly, despised and persecuted. God might choose his own from these, from common folk. He is no respecter of persons.

The Reformation's strength was in the awakening middle class—the class which furnished the bulk of seventeenth century migrants to America. European followers of the Reformed faith were sometimes victorious, sometimes exterminated; in any case it was in the Old World a hard struggle; it was a Thirty Years' War, or Netherlands against Spain, or Puritan against King and Established Church. American colonists found room in the New World for their beliefs and for the middle class. Although not all colonies were founded for a definitely religious purpose, and although it was still less the case that all who came were moved by the religious purpose of the founders in those colonies where religion was the major interest, nevertheless the leaders and influential

men in practically all were Protestant and middle class.

The shift of men's chief interest from religion to government and liberty began in Europe. The two were inextricably interwoven in the English Civil war. In this struggle Laud and Strafford were typical figures, the one of ecclesiastical rigorism, the other of executive absolutism, and the wrath of a Puritan Parliament brought both to the block. The "sectaries," charges Edwards, "hold that all men are by nature the sons of Adam and from him have legitimately derived a natural propriety (property) right and freedom." Milton carries the appeal one degree farther back. "No man who knows aught can be so stupid as to deny that all men naturally were born free, being the image and resemblance of God himself, and we are by privilege above all the creatures born to command and not to obey." [1] But it was John Locke, defending the Revolution of 1688, who definitely marks the turn from religious to secular liberty as chief interest. Rousseau indeed clothes the doctrine of natural rights in more eloquent and impassioned language, which was echoed in the French Declaration of 1789, but the arguments of Locke fitted the sober temperament of the American colonists. Locke's emphasis upon property as the word for the sum of natural rights lent itself to the resistance of the colonists to the Navigation Acts and Taxation measures. But as embodied in Jefferson's Declaration of 1776, Life, Liberty and the Pursuit of Happiness sounded a chord deep enough to thrill the citizens of the new states long after the war had left them with their immediate ends secured. They continued indeed to name their children by Old Testament names, for many of these had now acquired the status of a family tradition, but they named them also for Revolutionary heroes, Washington, Mar-

[1] *The Tenure of Kings and Magistrates.*

quis Lafayette, Franklin, or even for the ideal itself, "Freedom," "Liberty."

What has taken the place of Religion and Liberty as the chief interest and value of America since the Civil War?

In the first place, is there any longer *an* America, or are there rather several Americas? Territorially there is the Northeast, the South, the Middle West, the Mountain States, the Pacific Coast. On many questions these show different interests and different attitudes. Again there are rural America and urban America characterized by differences in density of population, differences in the size of communities, differences in occupation, in the homogeneity or heterogeneity of populations, in social mobility, in social stratification. Largely the rural population is of British, German or Scandinavian, or Negro stock. The cities are of Irish, German, Jewish, Italian, Polish stocks. New York contains 22 percent of native born of native parents. Largely the country is "dry"; the city "wet." Or again, there is Protestant America, and Roman Catholic America, Industrial America and Agricultural America. Which of these various Americas has the best claim to be regarded as typical? Is there sufficient unity to justify any such attempt to affix a single label? Certainly in the diverse attitudes of different groups before the United States definitely entered the World War, we were reminded that different racial traditions had not been forgotten; yet when the government made its decision, extraordinary unanimity in support was soon reached. But America at war is not so good a test as America at peace.

Speaking broadly there can be little doubt that since the Civil War economic problems have occupied attention far more than in previous periods, although in dif-

ferent senses for different groups. There are the people who aim to make money, and those who aim to get a living. For the first there may be any one of five motives or a combination of two or more.

The men who in former days would have sought military glory or political power have found that in this age economic power is far greater than in all but the very highest of military or governmental ranks. It is a striking indication of the decline of military prestige that since the World War officers as a rule have not cared to keep their titles on their return to civil life. The contrary was the case after the Revolutionary and Civil wars. Political power has also declined. Granted that the President of the United States exercises great power, it also remains true that as a rule the ablest man is not the most "available" as a candidate. The man who depends on his own resources to make his way believes that business offers a freer field. And if the enterprise he aspires to head is in certain respects less extensive than the nation's government, his own rule within the enterprise is less restricted by checks and balances, by popular favor and disapproval, by precedents and tradition. If he needs political help, and is not overscrupulous he can count on legislatures and judges to give it if their selection is properly guarded. Such men as Hill and Harriman, Morgan and Gary, Hanna, Carnegie, and the Rockefellers, found scope for their ambitions in building and ruling empires unhampered by rules of constitutional government.

A second motive which is closely allied to love of power is the sporting or competitive interest. This of course plays a rôle in politics also. Our political parties no longer differ in policies, but there is keen rivalry to win and so have the chance to carry on the government. The game of political football offers advantages to the

team which carries the ball. But the economics game is a more intellectual game, less dependent on the contingencies of popular emotion. Shrewdness plays a more conclusive rôle.

A third incentive to make money is the luxury which wealth commands for the individual or his family. No age ever offered so much to him who has money wherewith to buy. Dress and jewels have their long time valuations, but motor cars, luxurious travel, apartments as costly as former palaces but far more comfortable, airplanes, yachts, country clubs, estates, are at the service of the man of wealth. When we think of the stream of products, says Justice Holmes, "It is obvious that the many consume them." If we are thinking of the necessaries this is no doubt true; the rich cannot eat all the wheat or the beef and pork of the country. But the finer grades of many articles and a host of choice and desirable things are accessible to the rich only. If the tastes of the man himself remain simple it is not certain that other members of his family will resist the standards of their social class.

A fourth possible reënforcement to zeal for making money is the philosophy of the more sophisticated, that since prosperity is good each prosperous individual is a contributor to prosperity and therefore is a good and useful citizen.

Finally there is the desire for the approval of the social class to which one belongs. To many this is the strongest possible inducement. Success means this, rather than meeting any purely rational test. The scholar prizes the recognition of scholars; the lawyer or physician that of his professional colleagues, the business man that of other business men.

For the many in America who are trying to get a living for themselves and their families few if any of these five

motives appeal. They are working for others; the ever haunting fear is that of loss of a job, illness, or, if the men in question are farmers, the peril never far remote is of drought, or flood, or pest, or low prices. Security, not power, is the economic good they aspire to. The common man would like to see his children have a better chance than he had himself, and this means, for one thing, better education. He enjoys many comforts, but to the great mass of farmers, small tradesmen and laborers the money motive as such scarcely figures. They wish to be sure of daily bread and to be free from the need of charity or dependence upon others in old age. For many, especially of the women, the church community furnishes an outlet for the desire for some larger interest. Once in four years politics stirs the ashes of former enthusiasms. Comparatively few have definitely intellectual interests or a discriminating taste in pleasures.

For the millions of Americans who can count only on salaries or wages, for whom money is but a medium of exchange for the necessities and perhaps the comforts of life, and therefore incapable of acting as a means to power or influence or prestige, it is probable that *education* comes as near being an object of sober esteem as any that can be named. In rare moments a Lindbergh or a Byrd captures the imagination of all classes and ages by a feat of successful daring. And in the World War, notwithstanding European incredulity, the common soldier no less than President Wilson was stirred by devotion to what he believed to be a great cause. But it is doubtful if in ordinary times it is possible to fix on any one value which is so typical as education in the sense that all prize it.

The extraordinary expansion of secondary and higher education in the United States has been characterized by

Professor John Dewey as "one of the most remarkable social phenomena of history." Writing in 1928 Professor Dewey estimates that during this century the population of the United States has increased from seventy-six to one hundred twenty-two millions, about three-fifths or 60 percent. Attendance in the colleges, universities, and professional schools has increased for men from 75,000 in 1899-1900 to 563,000 in 1927-1928, or more than seven times; for women the increase has been from 37,770 to 356,137, or more than nine times. In secondary schools the increase is still greater, ten times the figures of a generation ago. "It at least shows," says Professor Dewey, "that we are finally beginning to make good our ideal of equal educational opportunity for all." [2]

The common man sometimes shows indifference to the institutions of political life which at an earlier age seemed the promise of all good things. He may feel awe-struck —at least he might have so felt before the crash of 1929 —and rather helpless before the masterful stride of the machine age and business organization. Such figures, showing the expansion of education, suggest that the common man is turning to this field to find a more secure if less spectacular realization of cherished American ideals, of the New World of Columbus, to borrow the thought with which Professor Dewey closes his paper.

If, however, we ask what influence since the Civil War has been most conspicuous in government, in public opinion, and in the public press, there is little question that economic interests have been and are the leading topic. Since economic power is doubtless the strongest in present civilization, except in war times, and since it touches all of us, it would be strange if monopoly and

[2] A Critique of American Civilization, in *Recent Gains in American Civilization,* edited by Kirby Page, N. Y., 1928, pp. 268-76.

speculation, prosperity and unemployment, government control versus unlimited freedom of enterprise, were not in the public mind. But this is far from saying that the American people are all moved by money or the love of it. With many the prevailing interest is that of justice; with others that of resentment at the control of living conditions by a powerful few. With others it is another form of the old democratic ideal—the "American dream."

To speak of any single interest or end, as though the mind of the people were one and were settled upon the same objective throughout a period, is to assume too much unity and stability. It is to ignore the lesser tides, eddies, and currents of periods and localities. It is to forget the demand for social justice which swept the country in the first decade of this century; the desperate efforts of the South to repair the losses suffered in the Civil War; the struggle of the Negro for a self-respecting status that should give meaning to the liberty which at first was a name rather than a reality. It is to pass over as incidental the turning of the nation's thought to world affairs by the World War with its subordination of economic to national and world interests; the impulse its aid gave to prohibition and woman suffrage; and its after-effects in a reactionary temper of intensified nationalism, isolation, intolerance, and repression. It is to neglect as too recent for a proper estimate the lessons that may yet be learned from the economic depression following the gigantic gamble of 1929.

This mobility in the American values does not apply to all phases. Legal tradition in the United States has been notoriously more conservative than that of England, from which we took our common law. The colonists made a good beginning when they reduced greatly the crimes punishable by death. But the traditional fear

of oppression by the courts strengthened the defenses of the accused. The change of crime from an individual, sporadic affair, to a professional and organized business having its alliance with politicians and wealthy citizens, and retaining its own lawyers, has proved the weakness of a too rigid system.

Although religion has found change difficult, fundamentalism is probably the last struggle of a type of doctrine once generally held. The Gladstone-Huxley debate of fifty years ago was the last in which any churchman of note set himself to oppose modern science. Historical criticism of the Old and New Testament has been accepted by scholars and ministers of education for a generation. Fear to recognize the advances of science is found chiefly among those who have had too little contact with them to understand the spirit of science—and also its limitations.

The reasons for the mobile, fresh life generally characteristic of the United States are not far to seek. The migrants from the first have been those both discontented with their lot and venturesome enough to try a somewhat desperate chance of long voyages, unknown shores, the want of almost all the stability and comfort of settled ways and institutions, the risk of hostile Indians. The influence of a country of great resources, which called for initiative and self-reliance; the setting up of new institutions for which old precedents were only in part a guide; the cutting loose from an upper class which for a thousand years had ruled Western Europe; the rapid progress of invention; the shift from a farming population to industry and city life—all these have played their part. And not least has been the very fact of newness. Said a good Catholic to a frontier acquaintance of mine, "My church is nearly two thousand years old, yours is

but three hundred." To which the North Dakota farmer replied good-naturedly, "That is why I like mine better; when I get a plow, I want the latest model." The cry which was heard by the Columbus of Edward Everett Hale's verses: "Give me white paper," has echoed in the ears of eager minds who have scrapped the older machinery of aristocratic political institutions as well as the outmoded machinery of factories—even if they have exchanged the power of birth for that of wealth, and have not yet found how either to spend it wisely, distribute it justly, or adequately control it for the common good.

CHAPTER III

WORK AND LEISURE, RECREATION AND AMUSEMENT

The mores of the United States strongly approve work and condemn idleness. They are somewhat suspicious of leisure. When the day's work is over they look kindly on recreation, and if the commercial profits of amusements and sports are any indication, they at least interpose no objection to the enjoyment of baseball, movies, and motoring by those who have the price. The attitude toward work and leisure has been attributed by superficial commentators on American life as due to the dominant interest in the almighty dollar. This is absurd to anyone who has grown up in a community where the older traditions of the American people are still alive. Benjamin Franklin was no dollar-chaser; he was scientist, philanthropist, servant of his country; yet he praised work and condemned idleness. The psychology of work and leisure is not so simple as the commentators in question suppose.

I

The human race has by no means universally approved of work. "Nature peoples generally regard productive labor as the business of women, unworthy of men," remarks Sumner. The Greeks regarded mechanical and commercial occupations as ignoble and as rendering those engaged in them unfit for citizens, and incapable of excellence. Husbandmen, lacking leisure, are similarly de-

ficient in the essentials of citizenship. The military and deliberative classes are the only true members of the good city-state. Virgil praised the life of the farmer but the military tradition was strong in Rome. Slavery helped to render manual labor disgraceful in ancient as in modern times. The Greek attitude toward manual labor was not based on pecuniary considerations, for Aristotle says that many artisans are wealthy. It was a class attitude. In ancient India only the Brahmins, Warriors, and Farmers could be "twice-born" men; the Sudras, who were probably of a conquered race, did menial labor and were despised. The Israelites spared some of the Canaanites who became "hewers of wood and drawers of water." In feudal Europe manual labor was performed by serfs or villeins; those of gentle birth might fight, govern, hunt, or enter the clergy. But with the passing of the old feudal system a middle class emerged, made up partly of tradesmen and merchants, and partly of artisans and yeomen. These worked and at the same time owned property. In the towns the merchants and craftsmen banded together in gilds and achieved self-respect as they gained influence and power. Towns sent their burgesses to Parliament and their growing wealth made them respected by kings. For the middle class work meant independence and strength.

In the early settlers of North America four factors tended to make work honorable, or at least to make it the regular order, and therefore to put the idler into disfavor. Three of these factors came with the migrants from the Old World; the fourth was awaiting them here.

First and most important was the fact that the emigrants were nearly all from the middle class or below. They naturally brought yeomen's or craftsmen's or merchants' ideas with them.

To many of the colonists work was a religious matter. The Puritan and Reformed churches, to which most of them belonged, looked upon life as a "calling." [1] Life was for them a discipline, not a sport. As called of God every man was bound to serve in some especial station, and in this he was serving God. He was also following the ascetic path which the "religious" of the middle age had followed as a discipline. It was not that labor was hereby made "honorable"—this was a class conception—but it was a high duty.

The Old Testament which was especially in favor with the English Puritans—if one can judge by the names they gave their children and the texts from which they preached sermons—was much of it the product of a people who worked with their hands. Its promised land was for a pastoral and an agricultural mode of life. Its sages reiterate the wisdom of industry and the foolishness of the slothful, the idle, and the sluggard. The excellent or capable woman "riseth while it is yet night," and continues at her labors; "she eateth not the bread of idleness." [2] The New Testament was likewise largely written by fisherfolk and a tentmaker-disciple of a carpenter. "Not slothful in business, fervent in spirit, serving the Lord" was a favorite text.

To these three factors was added the compelling circumstances of life in a country where practically everything necessary for food, shelter, and clothing had to be raised and made ready for use by the hands of each household, and where except for neighbors' occasional help in an emergency every household had to be self-supporting. The New Englanders for the most part had to clear forests

[1] Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, tr. by Parsons, N. Y., 1930.

[2] E.g., Proverbs, 6: 6-11; 12: 11, 24, 27; 13: 4, 11; 14: 23; 19: 15; 20: 13; 21: 5; 22: 29; 26: 13-16; 28: 19; 31: 10-31.

before planting and the soil was not fertile. The story of the pioneer and the pioneer's wife has often been told but few in our age can visualize a civilization in which almost nothing could be bought, and in which there was almost no money to buy with. If you were to buy with fish, or corn, or hides, or butter, all these must first be caught, or grown, or made. Even in the early years of the nineteenth century in the Vermont town where the writer's parents were born, the day book of the village store showed few accounts settled by money. Cheese, butter in the winter, pork and beef were credited against debits for salt, tea, calico (everyday garments were of home-grown homespun, home-woven wool), rarely a beaver hat, frequently a mug of flip or a quart of Jamaica or Medford rum. In such conditions work was not a matter of choice, but of necessity. The minister's salary at sixty pounds or $200, even when supplemented by the nominal salary of ten dollars received for service as postmaster, paid a hired man but did not exempt the minister from strenuous labor in the field.

As a correlate of the positive attitude toward industry and labor was the bald fact that if any did not work and thus do his share, someone else was liable to be burdened. In a farming or village community the man who was idle or shirked would be known and few would be so bold as to defy public opinion. Mrs. Stowe's character, Sam Lawson, whose easy-going ways were not only a trial to his wife, "Hepsy," but a subject of caustic comment in the community of Oldtown,[3] was less sensitive to criticism than most men.

Of these various factors which combined to give a definite set to early colonial character, the middle class

[3] Harriet Beecher Stowe, *Oldtown Folks, Oldtown Fireside Stories.*

pattern was common to all the Settlements. Virginia was no exception, for, as Wertenbaker has shown, the aristocracy in that colony and its contempt for manual labor were a later product of the plantation system. The influence of the hard conditions of a new country was likewise common. Some of the early Virginia colonists who did not fancy hard work soon found their way back to England. The influence of the Bible and the conception of every man's life as a calling were more effective in New England than elsewhere. The anxiety of Judge Sewell that his son Samuel should find a suitable calling shows how naturally the anxiety of a parent took that imagery. The present-day parent would be more likely to speak of a "position" or in more homely phrase of a "job." The conception of a calling persisted in the case of the ministry long after it had ceased to be applied to other professions or occupations.

The general spirit of American morality still approves of work. The seemingly trivial fact that to engage in some occupation involving manual labor does not interfere with amateur standing in athletic sports is yet significant in contrast with some Old World attitudes.[4] The principal class in which esteem for work does not obtain is that of certain sons of the rich, unless we accept Veblen's theory that the wives of rich men perform "vicarious leisure" for husbands whose earlier training and habits do not permit them to be content to be gentlemen of leisure.[5]

An influence to break down general disfavor toward

[4] Compare the rules of the Amateur Rowing Association of Great Britain which excludes from amateur standing in that sport anyone "who is or has been by trade or employment for wages, a mechanic or artisan or laborer, or engaged in any menial duty." *Ency. Brit.*, Art. "Amateur."

[5] Thorstein Veblen, *A Theory of the Leisure Class*, 1899.

idleness and encourage a reversal of our mores exists in the establishment of trusts as a mode of provision by men of wealth for their families. It was long the accepted doctrine that the father amassed a fortune, the son spent it, the grandson went to work again. When, however, neither son nor daughter nor grandchild is able to draw upon the capital sum left in trust there is no fear of poverty to compel labor. In the case of women, there is on one side the rapid increase in millionaires which adds to the number of those who practice "conspicuous waste" in houses, motor cars, dress and travel; and on the other side the increasing number who seek more interesting ways of living by entering upon the newer occupations opening to women. No statistics are available to show to which side the balance inclines.

Leisure as an end in itself, or as giving opportunity for reflection and for cultivation of the arts and graces of living, has never had wide appeal among our people, at least among men of affairs. The great increase in the number of well-to-do young men who have independent incomes has not resulted as yet in any large accession to serious pursuit of art and science, or even of politics, by this class. The millionaire father would be likely to think that his son was turning "soft" if he did not enter upon one of the more seemingly "active" kinds of work. Still less has the Bohemian type found a recognized place. Casual, carefree existence, with more or less occupation with some art, has always appeared to the mass as a pose rather than as a sincere way of living.

II

Work does not seem logically to preclude recreation. Yet the American people is notoriously at a loss when not

at work. The fine arts are generally held by the wise to offer the best recreation for the mind; games and sports refresh both mind and body. The lesser arts—cooking and serving of meals, furnishing and decoration of the home, appropriate and becoming dress—all belong to civilized life and contribute to refreshment and enjoyment. The dance stands midway between art and play—as a folk dance it once played an important rôle in social life of groups; as a religious ritual it developed elaborate forms and led to the Greek drama.

Of the fine arts music is best suited to general participation but the Americans are not a distinctly musical people in the sense in which the Germans are. We may listen to music, in concerts or over the radio, but despite all the efforts to teach singing in the schools we do not sing. The mountain folk of the Appalachians and the Negro are the exceptions.

We read—newspapers, magazines, and books, but especially newspapers and magazines. Considering first the reading of books, if we look at the annual number of books published in the United States and other countries, the first impression is that for so large a population the list of the United States is small. The number of new books issued by American publishers reached a peak in 1910 with 11,671, dropped to 4,772 during the year 1919, and during 1931 reached 8,506. In this last year Great Britain issued 9,197, France 9,176, and Italy 11,949, although the population in each of these countries is much smaller than in the United States, and they might be supposed to be more severely hurt by the financial depression.[6] However the cost of publication is far higher here than in Europe, and the number of new books appearing is not the most accurate evidence of reading habits. It

[6] *World Almanac*, 1933, p. 279.

needs to be supplemented by facts as to volumes issued and especially by facts as to public libraries.

As to volumes, figures for 1927 show that there were published in that year 227,495,544. Of these 83,849,664 were textbooks, and 31,047,094 juvenile, leaving for the voluntary reading of adults one and one-half volumes per adult. Fiction was the largest class, 36,553,507, but philosophy and religion were not far behind with 22,220,536, followed by poetry and drama 6,281,165; science and technology, 2,392,044, history 1,462,193, law 2,493,510, biography 3,075,121, medicine 1,168,755, travel 1,190,569, fine arts 943,952, sociology and economics 875,191.[7] Reading of many of these classes of books should, of course, be regarded as education rather than as recreation, but for convenience the figures are presented together here.

Of public, society, and school libraries in the United States in 1929 there were 6,429 reporting 3,000 volumes or more, with 4,387 branches.[8] Nineteen and a half millions of borrowers' cards were in force and 336,000,000 books were drawn, besides the great number consulted or read in the libraries. This would give a per capita circulation of about 2.7 for the whole country, and about seventeen books for each card holder. But the library circulation varies widely in different regions, ranging from an annual per capita circulation of 7.3 in California to one of .18 in Arkansas. In Chicago from 1880 to 1920 population increased five times and the public library circulation twenty-five times. In Los Angeles the per capita circulation for the library year 1932-1933 was 9.6 and the number for each card holder 32. Adult English fiction gained 13 percent over the preceding year; non-fiction

[7] *Ibid.*, 1931, p. 445.
[8] *Ibid.*, 1933, p. 279.

17 percent.[9] Evidently in those regions that are best served by libraries there is a good deal of reading going on.

As to what we read, Gray and Munroe in their study, *The Reading Interests and Habits of Adults* have learned much about the amount read, and something as to the quality.[10] "About 50 percent of adults read magazines, and 95 percent or more read newspapers. Educated people read far more, as a rule, than those who have had less educational advantages"; professional groups devote about twice as much time a day to reading as clerical groups, and almost three times as much as do trade and labor groups. Married people devote more time to reading than unmarried. While the number of books read is small, it is growing. Magazines are read more generally than books, and newspapers more widely than magazines. In magazine circulation the Pacific States lead, followed in order by New England, the Mountain group, East North Central, West North Central, Middle Atlantic, West South Central, South Atlantic, and East South Central. The total circulation in 1927 of periodicals appearing weekly was nearly 56,000,000, and of monthlies, quarterlies, etc., about 144,000,000. In 1927 the average circulation of daily newspapers, excluding Sunday, was 42,343,210, and of Sunday editions 27,695,859, which would easily give everyone a chance so far as quantity is concerned.

That we are a nation of newspaper readers makes it certain that we have presented to us daily through the news columns a nearly identical spread of items whether

[9] Bulletin of the Los Angeles Public Library and additional information supplied by the staff.

[10] Wm. S. Gray and Ruth Munroe, *The Reading Interests and Habits of Adults*, N. Y., 1929.

we are North, South, on the Atlantic or Pacific, plus a certain amount of local news which is of course peculiar to the region. At breakfast or on the way to work, or in the course of the day or evening, half of the American people follow Lindbergh's flight or the trend of the market, the fortunes of baseball and other sports, the murders and scandals of unusual character, guesses as to the continuance of unemployment, the progress of the Five-Year Plan in Russia, the policies of Mussolini or the rise of Hitler. That we are to a somewhat less extent magazine readers insures our exposure at least to the romantic, sentimental, grim and sordid, adventurous, tragic, humorous, and criminal phases of life as imagined and told by writers of various abilities. In the class magazines there is also information for the farmer, housewife, parent, business, professional and working man, and critical discussion of serious questions. And if only half of us read books it is to be remembered that it is but a short time since the day when few of our people—or of any European people—read any book but the Bible, and that many of our millions have come from countries where the peasant and laborer are still strangers to letters.

When we ask about the quality of our reading in newspapers and magazines the answer is not so cheering. In the newspapers the topics given the greatest amount of space are athletics and sports, markets, crime, government and politics. Crime, accidents, government and politics feature the front page. The tabloid type of newspaper, dealing chiefly in sensational and trivial items, has had a large increase in circulation. Editorials and other expressions of opinion have decreased in importance. The magazines represent a broader survey but those of widest circulation are not those of the highest literary standards. Yet with all of these defects our reading is probably the

most hopeful of our lines of recreation. Of the influence of the press in forming public opinion and continuing the education begun in home and school more will be said in other places.

Next to reading comes the moving picture, or cinema, which has now become a "talkie" as well as a "movie." The average weekly attendance in the United States for 1930 was given as 115,000,000—nearly once a week for the entire population, infants included. A small proportion of the films shown are educative as well as entertaining. The usual topics, however, are raw sex or crime, and the advertising endeavors to feature the salacious aspects. "Imprudently risqué," urges a poster announcing a recent offering. The technique has been constantly improved but the quality remains for the most part cheap, empty, destitute of cleverness and humor, not to speak of moral or educational value. The fact that children attend in such numbers aggravates the situation.[11] The recently completed three-year survey under the auspices of a representative committee shows in detail the great influence of the movies and confirms in general the criticisms and apprehensions of Eastman and others.[12]

The question naturally arises: Does the prevailing type of motion picture indicate the taste and morals of the hundred million who attend or of the four firms that produce? The firms allege that they must give what the public wants and that the growth of the business is the proof of popular approval. On the other hand, it is claimed that the extraordinary technical improvement, the moderate number of good films, and the low prices of admission account for the rapid increase in attendance.

[11] Fred Eastman in *The Christian Century*, 1930.

[12] A popular summary is presented in *Our Movie Made Children*, by Henry James Forman, N. Y., 1933.

The censorship board in Chicago cut out more than six thousand scenes in 1928 from films to be exhibited in that city, largely because of representations of crime or indecency. The fact that the producing firms control the business, and that the local theaters are practically forced to order their films in blocks, operates to limit the reliability of box office receipts as tests of the tastes of patrons. Similarly, Al Capone says he does nothing but supply what the best people demand.

The deeper question raised by the movies is whether the people can continue to entrust so important an educational and recreational agency to commercial auspices, actuated solely by the profit motive. The Greeks created a great art as a community enterprise. On the other hand, the Romans developed gladiatorial contests under public auspices. Again, the Shakespearean stage was under private control. The case may be regarded as not yet closed. But, as has been said, a civilization in which a large proportion of the population spends its days in the factory and its evenings at the movies can hardly be rated as high.

It is very likely because of the defects in many of the lesser arts that Americans fall short in domestic joy of living. Cooking has suffered from the very abundance of raw materials; from the hurry of life in American cities; from the restricted markets in the country; and from the ignorance of many women who begin housekeeping with no training in this important craft. So far as this last factor is concerned, the situation is changing. The schools, the daily newspaper, and the class magazines are teaching the science and the artistry of food preparation and serving, but hotels and restaurants, on which an increasing number depend, continue inferior.

Baseball remains our most popular outdoor sport, with a reported attendance in 1930 of ten million at major league games. Golf, tennis, and, in the autumn, football, share the sporting pages of the daily newspapers. The unhappy fact is that the mass of Americans participate only vicariously in these recreative activities.

Motoring probably is the outdoor recreation most generally enjoyed. The registration of passenger cars for 1929 was over twenty-three millions. Making deduction for those used exclusively for business purposes, the cars average nearly one to a family. The accident rate is appalling; 29,531 deaths were reported in 1929. But when we take into account the intelligence and muscular control necessary to drive a car on crowded thoroughfares at the high speed now demanded by our restless folk, and when we bear in mind also the impatience of any social control over his actions which the free American citizen considers his just and inalienable right, the surprising fact is that the accidents are not still more numerous. The automobile tends to give the whole family recreation of a healthful sort. It is perhaps the best contribution to healthful recreation which our machine age has made. The debit from a recreational point of view is that it has destroyed walking on country roads. Horse racing, once the sport of kings, is now chiefly an incident to gambling.

Among indoor forms of recreation card games have held a position of peculiar interest for students of the mores. They were frowned upon by our frugal and pious ancestors in New England as a waste of time, and also because they were frequently associated with gambling. On the other hand, cards were the natural form of relief for the frontier, and gambling was an inseparable accompaniment of the saloon in the mining town where money

came suddenly and went in the same rapid fashion. In recent years the taboo against card playing, like that against dancing, has been largely lifted by most of the churches that formerly reprehended these amusements. Clubs for playing bridge have flourished. Professor Steiner in his chapter on Recreation in *Recent Social Trends* finds an index to the increase in card playing in the increase in manufacture of playing cards as estimated from the Federal tax reports. "Federal tax was paid in 1931 upon 49,329,062 packs of playing cards. The production of playing cards increased nearly three times during the past thirty years and has made a gain of 27 percent since 1920. . . . Informal groups banded together for the enjoyment of social life now form a recreational pattern reaching out in all directions and including a growing number of people." [13]

By far the greatest change in recent recreation is that introduced by the radio. In 1930 there were estimated to be 13,478,600 receivers in use, serving approximately 55,000,000 listeners. Millions who never before heard grand opera, and to whom Beethoven was not even a name, have had the opportunity to hear the finest of singers and the greatest of symphonies. Public affairs are discussed by able and distinguished speakers; the President of the United States explains his policies, and the people of the whole country listen to the frequent reports of news, weather forecasts, and conditions of unemployment and distress. Along with these fine features comes also, it is true, much cheap and crude humor, and, worse still, under the guise of "modern" music, much doleful and sentimental slush wailed out by mediocre voices that cannot "say Good-bye," and undergo other lamentable calamities of the lovelorn.

[13] J. F. Steiner, *Recent Social Trends,* 1933, pp. 934 f.

"On the whole," Professor Steiner thinks, "the field of recreation, as it has developed in recent years, represents a distinct advance over traditional ways of spending leisure time. The growing participation in athletic sports and games and the popularity of outdoor life are assets from the point of view of health and social well-being. The active forms of recreation now so widely available are recognized as important factors in building character and preventing delinquency. The modern passive amusements while by no means always of high quality, are an improvement over those prevailing a generation ago. The recreational devices now existent in so many forms play an important part in giving relief from the monotony of daily toil and adding to the enjoyment of life." [14]

Serious questions arise from the difficulty of providing outdoor recreation for city dwellers and from the commercial control of many of the passive amusements. In the case of motor cars, commercial control has been favorable not only to technical development, but also to esthetic gain; in the movies, cabarets, dance halls, burlesque theaters, commercial control has yielded sorry results.

[14] J. F. Steiner, *Recent Social Trends*, 1933, p. 954.

CHAPTER IV

CLASS AND RACE

It is favorite campaign hokum to proclaim that there are no classes in the United States. Do we not read in the Declaration of Independence that all men are created equal? In reality we have sharp class distinctions which are keenly felt between different groups of whites, and as between white and Negro nothing in the Old World compares with the separation between the two races in those areas in which slavery formerly prevailed. At the same time there are among whites a high degree of mobility and less well-defined barriers.

In Europe the three classes, gentry, middle class, and working class, are firmly established structures. The gentry owed its credentials to military prestige, control of land, and birth. The middle class gained power largely through wealth obtained in trade or manufacture. Individuals from the middle class occasionally made their way into the ranks of the gentry, but the middle class as such has felt self-respect and has furnished from its ranks much of the liberal strength of the past century. In the industrialized countries working men have gained through association and the writings of Marx a clear class consciousness. Politically they have gained the ballot, and for a time governed the British Empire. Ortega sees in this class, particularly in the Mediterranean countries, a new consciousness of revolt. The masses no longer feel themselves inevitably limited. But in England, where the Labor Party has been so strong politically, the strata

are socially well defined. As one of Snaith's working-class characters lays down the chart for her life to his daughter who is suspected of perilous flirtation with an attractive young gentleman, "The gentry is the gentry; middle class is middle class; and working class is working class."

In America a few of the lower gentry were among the early colonists but the great majority of the English and practically all of the early German, Scotch, and other races were of middle or lower class. Even Virginia formed no exception. Traditions of social distinction were reflected in New England in the appointment of a committee by the annual town-meeting "to dignify the meeting-house," and by the custom of Harvard College in its catalogues of arranging the names of students in accord with their social standing. The clergy and the squire were given a social status. But those older class lines gave way before the combined influences of (1) the necessity of manual labor by all in a new country; (2) the opportunity open to practically all, even to indentured servants as soon as their term of service had expired, to acquire a holding of land in fee simple; (3) the ideas of equality which were set forth in the Declaration of Independence and in the constitutions or bills of rights of the various states; (4) the approximate actual equality, economically and socially, of the great mass of the settlers, especially of those who were constantly pressing on from the older settlements to the newer regions where little counted except the ability to wield ax and saw and to shoot straight, and where all were poor alike.

With Jefferson's administration, and still more with the coming of Andrew Jackson to the presidency, the effort to maintain an aristocracy, whether based on family, or on education, or on ecclesiastical eminence, was crushed

by the political triumph of the common man. Perhaps military claims were slowest to be abandoned. A general or colonel kept his title after he ceased to command troops, and found it an asset. After the Civil War we continued to elect generals to the presidency until 1884, whereas since the World War few have wished to carry their titles into civilian life.

But meanwhile class divisions have come back on a new and firmer basis. For we not only have the Old World divisions between rich and poor, employer and employed, white-collar class and working class, city dweller and countryman, but the more obstinate barrier between races and ethnic groups, reënforced as these are in some cases by religious differences, language differences, and cultural differences. Class divisions based on economic conditions or on residence are more frequently and easily crossed in America than in Europe; there is far greater mobility here for several reasons.[1] But class divisions based on race, particularly when this is strengthened by difference of religion, as between Christian and Jew, Protestant and Catholic, or still more by difference of color, as between white and Negro, white and Indian, or white and Chinese or Japanese, are crossed with difficulty, especially when there is also economic competition.

I

Look for a moment at the first type of class divisions—those based on economic, occupational, or residential status. It is the high degree of mobility in American life that gives ground for the superficial dictum that there are no classes. But consider what the status of rich and poor carries with it. To be rich does not mean merely to

[1] P. Sorokin, *Social Mobility*, N. Y., 1927.

be able to buy and use more things. It ordinarily means living in a separate district. Such segregated residence involves that contacts and acquaintances are with other rich people, and that children attend a school in which most of the other children are likewise from rich parents —unless they attend a private school in which all are from this class. When the son of the rich man chooses his occupation, his choice will virtually be limited to some department of business; law is the only profession chosen with any degree of frequency. Very few girls from wealthy families marry clergymen, teachers, or physicians. Amusements of such types as golf, polo, yachting, are class amusements; club associations are with the rich. In short, nearly all that defines a class in the Old World is found here.

Although the millionaire class has in the past been recruited from a considerable range of occupations and parentage there is some evidence to prove what might almost certainly be predicted, namely, that it is tending to become more stabilized and less open to all comers. This does not mean that the general test of wealth is being abandoned or lowered. Quite the contrary, it means that millionaires today are more likely to come from the group which had already taken the first steps up the ladder. Thus Sorokin found that of two hundred twenty-eight deceased millionaires, fifty-six came from farmer parentage, sixteen from working-class stock, ten from the clergy, one hundred nineteen from parents in business, manufacturing, banking. Whereas of two hundred forty-eight living millionaires, only eighteen have come from the farm, four from the working class, seven from the clergy, as against one hundred eighty-six from business, manufacturing, banking. The further fact that so large a proportion of the wealth is already, or soon will be, in the

ownership of the women of America should make for stabilizing the class of the wealthy. For the most part women are not engaging in hazardous enterprises in which fortunes may be swiftly won or suddenly lost. They receive their wealth chiefly by inheritance or bequest, and aim to conserve it by investment rather than to venture it in business. It has recently been estimated that one-half of the country's property is now owned by women. This will tend to remain in the possession of their families, and to keep those families in the social class of the father or grandfather.

It must be admitted that since the Civil War wealth has been the surest password to the American upper class —and this despite the fact that great wealth is usually regarded as a doubtful asset for a candidate for high political office. It must be admitted also that bare possession of wealth, apart from any other qualification, is the most unlovely of the various sources of distinction that at one time or another have gained recognition. Noble ancestry, military prowess, ecclesiastical position, athletic triumph, beauty of person, brilliance in interpreting in music, art, and letters the tragedy and comedy of human life—these appeal more strongly to the esthetic taste. Service to the state, or to a great cause, discoveries of laws of the universe and conversion of nature's forces to human welfare, preventing and healing of disease, contributing to education, embodying in living character the dignity and worth of common humanity—these appeal to the American as to all men, as secure titles to honor and remembrance. But these are not usually passwords of admission to "society."

Yet to be fair to American estimation we must recognize that bare possession of wealth has not been the whole or even the great claim of most of the builders of our

economic structures. To "make money" has been inseparably bound up with doing things. Capital to the more active minds was an agency for building railroads, factories, reapers, and great industrial and business organizations.

The second generation, that inherits without effort or need of active intelligence, may be uninteresting, but the pioneer builders gained a scope and incentive for constructive activity which seldom failed to make them men of power. And if they have often been single-minded and ruthless in their operations, the same was true of those who at an earlier day rising to military power by dominating the less audacious, founded European nobility. To the constructive builder of industry or business, as contrasted with the merely acquisitive type, the sense of power in building and directing a vast enterprise has counted first; money has been the means and the test, rather than the chief end. Nevertheless it is directly or indirectly the password of entrance into the most obvious and conspicuous "upper class."

Wealth has not only been associated with constructive ability; it has also been a means to a good many other factors in the general mobility, which has made American society, to use Sorokin's phrase, "a pot of boiling water." A certain minimum, above the level of abject poverty, has been necessary with all but the intensely eager and unusually strong, in order to get an education; and even if "education" has commended itself to hard-working parents as the way of escape from "having to work for a living," it has bulked large in the general American estimate of "getting on." Increased income has meant a better house, with the aids to freer life made possible by modern invention. To some it has meant travel, which

has at least added a bit of color to an otherwise drab and meager existence.

Wealth may also put in a claim to be considered a democratic means of rising in the social scale, however stupid and silly some of its possessors may appear to the common man. In a new country with untouched natural resources and a rapidly increasing population it has been within the power of a great many to acquire a competence. To do this demands neither peculiar gifts of body nor the right ancestry, both alike out of the individual's control, but chiefly the very general capacities of mind and body plus an unrelenting pursuit and a readiness to forego whatever interferes with acquisition. How much property, or how large an income is necessary for a passport into "society"? Rank is largely relative. A millionaire in a village, or even in a small city, can easily command his selection of guests and his entrée to clubs. In New York the mere millionaire can scarcely qualify.

Now note the effects of high mobility. For the aspiring individual, mobility means opportunity; at the same time it strengthens immensely the influence of the upper class. Instead of being governed chiefly by the standards of his own class, as is more largely the case in countries of less mobility, reaching its climax in the fixed castes of India, the individual American has his eye on the next higher class, to which he aspires. He cares little to improve the standing of his own class; his great aim is to get out of it. If he cannot accomplish this leap upward for himself, he at least hopes to achieve it for his children.

It follows that the rich, the employing class, and the city class, exercise in subtle ways a greater influence upon the mores of the community at large than in countries where classes are more stable. For where there is greater inertia the influence of the superior class is limited. The

tendency for members of lower classes is to regard the institution of the gentry as a sort of natural stratification which may be respected or may be violently disliked, something as one may like or dislike strata of rock according to whether one values esthetic effects of mountains or grudges the economic wastes and interference to free circulation which they involve. In either case there is little incentive for one of lower class to imitate the standards of living, of taste, or of morals of the gentry.

In proportion as there is pronounced class consciousness on the part of a lower class there is likely to be class conflict and a resentment against the attitudes of the higher class which works against imitation of them. It is difficult to understand the puritan and parliamentary conflicts of England without taking into account not only religious and political issues, but also the emergence to class consciousness of the middle class. In America, on the contrary, where there is a continuous stream of the ambitious upward, aided by the natural resources of a new country and a public school system culminating in state universities and the almost equally accessible endowed higher institutions, few condemn or despise the mores of a class to which they aspire to belong in the near future. City newspapers exert a constant influence upon country standards by their advertisements of styles and furnishings, by the "society columns," by the importance accorded to city events and city personalities. The concentrations of wealth, political influence, cultural advancement, in a population whose young people are as a rule pressing toward the city, combine to make the mores of the city prevail over the more stable mores of the rural dwellers.

II

Consider next some of the facts as to the classes which are more stable, i.e., those determined by race, and in most cases fenced in also by differences of color, religion, or cultural background and level. If the question is asked, Why call these groupings "classes"? Why not call them "races" and let it go at that? the answer is that although race difference does not necessarily carry with it the implication of superior-inferior, or of other characteristic class-attitudes, it may do so. In most cases in America it at least affords a pretext on which to base discrimination although the real motive may be economic competition, or merely the general impulse to regard as "queer" any custom, dress, or culture that is different from that to which one is born and bred. Even the Dutch, who were so close in history and culture to the English, and who have such a high place in present esteem, were in early days regarded by the New Englanders as so "queer" that to characterize any practice as outlandish or strange the favorite exclamation was, "That beats the Dutch."

Siegfried, in *America Comes of Age,* makes much of the division between the English Protestants who made up the larger part of the original colonists, and the later comers who were not only not English in race but were also Roman Catholic or Jewish in religion. In the case of the Irish immigrants of the 40's, racial and religious distinction were accentuated by differences in economic and educational levels. In the case of Jews from Russia, of Italians, of Poles, and of immigrants from the Balkan States and the Near East, language was an additional bar. As the greater number of these immigrants settled in cities,

and so far as the first generation was concerned, kept to themselves, maintained their Old World religion, and their former low standard of living, it was scarcely surprising that there was little acquaintance between the older stocks and the new folk. A city is not a dwelling place of neighbors. Even folk of the same race, language, culture, economic level, and religious affiliations may live for years in the same block without acquaintance. Until the Social Settlements began to open lines of communication there was little contact except on the economic basis of the job, or on the political basis of the votes sought by the ward politician. Indeed the Irish, as the older settler, may find the ritual of the more recent immigrant strange. I was watching a procession of one of the Chicago Italian benevolent societies, in connection with which, as the procession halted from time to time, men from the side lines would contribute dollar bills to be pinned on to a clothed figure carried on a platform. "Nothing but haythen" came the disgusted comment of the Irish policeman at my side. The second generation speaks English, but suffers in manners and morals because it not only loses the restraints and culture of its family's tradition and group, but, except for the schools, sees little of the better side of the older American strains, and imitates the patterns set by business or industrial associates or employers, seldom under favorable conditions for its own elevation. In California, where the Spanish tradition is identified with the Roman Catholic Church, I have found no evidence of the division present in those parts of the country where the priesthood and adherents of that communion are Irish or Italian or Polish.

In support of Siegfried's claim of the importance of the Protestant-Catholic division may be cited the favorable position of the German and Scandinavian settlers

who have been largely Lutheran. Yet the case is not so simple. The Germans of '48 came from better-educated and more prosperous strata than the Irish, Latin, and Slavic people, and many came not so much because of economic need as from political stress. When they settled in a city—Cincinnati, St. Louis, Milwaukee, Chicago—they did not forget German music and German literature. But—and this was true also of the Scandinavians—they went also in large numbers into the country, bought farms, and under the more favorable conditions of country life, where neighbors exchange services, and take notice of those who are honest workers and self-respecting, well-conducted citizens, they naturally gained more rapidly the respect and esteem of the older dwellers.

Siegfried calls this a Protestant country. This is measurably true of rural United States, but not of the large cities. Of the twenty-six largest cities in 1926, the Roman Catholics were the largest body in twenty-five and the second in number in the remaining city, New York. Jews were first in New York and second in the next eleven, and out of the twenty-six largest cities were second in nineteen. It is only when we descend the scale of population to the southern cities of Atlanta, Birmingham, Dallas, and Richmond that we find any Protestant denomination in first place. Further, in nineteen out of the twenty-six largest cities the Roman Catholics and Jews taken together outnumber all the Protestant bodies combined.[2] It may be that social distinction has persisted to a considerable degree in some of the Protestant bodies, but political control of many of the large cities has passed to the Roman Catholics, and the Jews have gained a strong position in commerce, finance, and law. So far as religious groups have tended also to mark social classes

[2] Census of 1926, *World Almanac*, 1933, pp. 428 f.

they have shown conspicuously in the Roman Catholic and Jewish bodies the power of a firmly knit group to lift its membership through the prestige of its leaders and the strength of united action.

Yet however wide the gap between the English Protestants and the later European migrants of Catholic or Jewish stock, this gap begins to narrow in the second generation, especially in business relations, and in educational advancement. Intermarriage is not generally looked upon with greater favor by the Jew or Catholic than by the Protestant parent. "Do you think she really believes in three Gods?" was the anxious inquiry from a Chicago Jewess whose son wished to marry a Roman Catholic. Nevertheless "mixed marriages" are not infrequent, particularly between those of the same economic and educational levels.

Of the two minority religious groups, the Roman Catholic suffers little, if at all, from any economic, social, or educational disadvantage. The large numbers of Roman Catholics make them a great political power. They control the government of New York, Boston, and less absolutely of some other large cities. They provide largely the police forces of the nation, and a proportionate number of teachers in the public schools. No Protestant college or university excludes or discriminates against Roman Catholic students. Protestant colleges would hesitate to call a Catholic to certain chairs; still more decisively would Catholic institutions reserve certain chairs for their own members. But in the universities, particularly in advanced work and in professional schools, there is no ban. The fact that Catholics have such a comprehensive educational system of their own may be a factor. This prevents any tendency to swamp by numbers institutions in those cities in which Catholics outnumber

other churches. Whether in certain areas prejudice against Catholics operated to defeat Alfred Smith in the presidential election of 1928 is not clearly evident, for the prohibition issue entered also. Certainly the appointment of Justice White to the Chief Justice's dignity was generally approved. Roger Taney's appointment to the same position by President Jackson met opposition, but on other than religious grounds.

The Jews, on the other hand, undoubtedly suffer disabilities, particularly at certain higher levels. At the bottom of the social scale the disposition of small boys to throw stones and shout derisive epithets at the quaintly clothed, bearded peddler is to be set down to a general impulse to treat the strange as queer. No religious difference is necessarily in mind. And it may be doubted whether religion plays any rôle in the filling of the office positions in New York City for which the advertisements specify "Gentile" or "Jewish." Certainly clubs and college fraternities are scarcely interested in the religions of their members, yet it is at such points that social exclusiveness is most keenly felt. Professionally, the Jew finds few obstacles in business or law. Two Jews sit on the Bench of the Supreme Court. Jews are well represented on the faculties of law schools. They are highly successful as practitioners. But they often find it difficult to obtain teaching positions on other faculties. This particular barrier, however, does not affect such large numbers as the so-called "quota system" which avowedly or secretly is in vogue at many schools, colleges, and universities, particularly at those of high standing and at those situated in cities. This system in effect operates to limit the admission of Jews to a certain fixed number or to a certain percentage of the total enrollment. On the side of the institution it is said: If no limit is set we

might find ourselves with so many Jews that Gentiles would cease to attend, and then Jews would also cease to apply, for Jews do not wish to attend an exclusively Jewish school. Hence a quota system is simply a measure of self-preservation. From the side of the Jew the system has the effect of an arbitrary exclusion of his children from higher education, or at least from education at the institution which is most desirable, whether because of its location or because of its standing in the educational world. This is more keenly felt by a people that relies necessarily for its social advancement upon its brains rather than upon its ancestry.

III

Whatever may be thought of the class consciousness as between older and more recent stocks, or as between Gentiles and Jews, no one can see the situation between white and Negro as other than the most extreme case of class that now exists in the civilized world, with the possible exception of the Untouchables in India.[3] Difference of race is not the sole basis; the difference of status between master and slave which still persists in the memories of many; the difference in economic condition and educational advancement; the difference in social status which forbids according to the Negro the ordinary courtesy of Mr. and Mrs.; the difference in political rights despite the Fifteenth Amendment; the difference in treatment by such quasi-public agencies as railroads and hotels—all these combine to make the Negro feel that

[3] Charles S. Johnson, *The Negro in American Civilization,* N. Y., 1930, has a full bibliography. The discussion in the text has been based chiefly on Jerome Dowd, *The Negro in American Life,* 1926; R. R. Moton, *What the Negro Thinks,* 1929; H. W. Odum, *An American Epoch,* 1930.

the white is not content to call him inferior, but is determined to keep him so, and to deny to capable and educated individuals the opportunity to advance. The Negro must "know his place."

In the case of the Negro there has been an exception to the general theory of the American people. For this theory has been that each man should be treated on his merits, and not damned because of the status, or even because of the sins of his fathers. The biological attitude towards the Negro is that one drop of Negro blood constitutes him a member of the inferior race, and therefore endows him with the racial qualities and subjects him to the disabilities of its most ignorant and least worth-while members.

An aspect of race discrimination which is especially bitter to the Negro is that which is enforced in public agencies and institutions. According to the professed theory of American life these are supposed to offer their services and opportunities equally to all citizens. Most notorious is the right to vote, guaranteed by the Fifteenth Amendment but a dead letter in the South. It may be objected that since only about half the persons of voting age actually go to the polls, even in the North, the Negro is not deprived of a valuable privilege. Yet the case is not so simple. The women of the country came to feel it a distinct brand of inferiority that they were denied the ballot. And it is one thing to decline or neglect to vote; it is another and very different thing in its implications to be excluded from voting by fear of violence or by a law nominally requiring an intelligence test, if this test is regularly worked to bar Negroes but not illiterate whites. For some Negroes the discriminations enforced on railroads may be more obnoxious than political disqualification. No one who has traveled in the South can regard

the railroad accommodations as either intentionally or actually equal. To ask the whites whether they would be willing to exchange cars and waiting-rooms would probably justly be held to prove idiocy or lunacy. That courts have considered accommodations equal is an unusually good illustration of the voluntary blindness of the goddess of justice. Self-respecting Negroes find the automobile the only mode of travel that does not insult them with a tag of inferiority.

Not many Negroes travel by rail, but Negroes have children, and on the general theory at the foundation of our system of public education these children should be given educational opportunities. All states offer a minimum to colored as well as to white but there is a wide difference in quantity and quality in many of the states. It is in this case as in several others the economically poorer states that show the strongest discrimination. In one state Negroes constitute 38.9 percent of the population but receive 1 percent of the appropriation. In the southern state with the largest total appropriation for education the Negro child receives $20.14, the white $31.74; in the state with the lowest appropriation the Negro receives $7.35, the white $42.01. High school privileges for the Negro in those states which require separate schools for the Negroes and whites are very meager. In 1927-28 the total attendance in Negro public high schools for eighteen states was 92,624—about 4 percent of the enrollment in the elementary schools, whereas in the country as a whole the enrollment of pupils of ages fourteen to seventeen in 1930 was 41 percent of the enrollment from ages seven to thirteen. Of course the poverty of the Negro parent would lessen the number who could take advantage of high schools, and the low average day's attendance per pupil for the Negro child in the

eighteen states, which is but ninety days a year, would further reduce the number with sufficient preparation to enter high schools.

It is also true that Negroes live largely in rural areas where high school privileges are less available generally than in cities. But with all these reservations it is scarcely credible that the high school enrollment would be so pitiably small as it is in some states if opportunities were provided. The favorable feature in the situation seems to be that the enrollment in Negro public high schools has increased. In 1921-22 the total enrollment was 42,650; in 1927-28 it was 92,624, although the population in those states had increased little if at all.

As regards the difficult question of discrimination in the courts, it is in the nature of the case impossible to cite objective evidence. Jerome Dowd, who aims to present the situation as a general economic attitude, rather than as an exclusively racial southern attitude, presents certain statistical comparisons which tend to show greater leniency in sentences imposed upon the Negro, and in the second place, calls attention to the disadvantage under which the economically inferior class labors in any court, North or South. The statistics of cases in Winston-Salem show, according to the analysis of Judge Stevenson, an approximate equality in fines and length of imprisonment. But western North Carolina has never been the region charged with most serious discrimination. What one would need to be assured of, if lack of discrimination were to be regarded as proved, would be whether Winston-Salem is typical of Alabama, Arkansas, Georgia, Louisiana, Mississippi, and South Carolina. As to the contention that "it is not true, as commonly alleged, that the Negro suffers any injustice in the southern courts that is not suffered everywhere else by a similarly impe-

cunious class of people," the figures cited in Charles S. Johnson's [4] *The Negro in American Civilization* indicate that in various parts of the country police and courts do discriminate against the Negro. It is probably true that the white offender in cities is more likely to belong to a professional criminal group which has its staff of retained lawyers to protect its members, whereas the Negro is more likely to be without such support. Whatever the facts as to southern courts, Principal Moton says that the Negro thinks that there is discrimination. Very likely the courts are less pronounced in their attitude of discrimination than the sentiment of the communities in which they sit.

But whatever the attitude of courts, there can be no question of the attitude of those communities which disregard courts and substitute mob executions. The total lynchings in the United States 1885-1930 amount to 4,308, of which 1,050 were of whites and 3,248 of Negroes—a ratio of about three to one. A more significant series for present attitudes, however, is that for the years of the present century. Total lynchings in the years 1900-1932 were 1,880, of which 195 were whites and 1,685 of Negroes—a ratio of more than eight to one. Lynchings of whites, which in 1885 exceeded those of Negroes—106 white, 78 Negro—have almost ceased; those of Negroes have greatly lessened, particularly since 1922. And in 1931 there were sixty-three instances in which officers of the law prevented lynchings, seven in northern and western states, and fifty-six in southern states.[5] Yet André Siegfried, in his *America Comes of Age,* states that he conversed with many in the South, in-

[4] Johnson, *op. cit.,* ch. XXII.

[5] From records compiled by Monroe N. Work, in *World Almanac,* 1933, p. 323.

cluding judges, who did not show the slightest hesitancy in speaking of participation in lynching mobs. The facts indicate a slowly diminishing disposition to express race prejudice in the form of illegal violence. There was never any occasion for such action in failure of the regular agencies to secure convictions, and the cases in which rape was alleged as the crime have been less than one-fourth of the total. Unhappily in some localities diminishing frequency has almost been counterbalanced by increasing savagery in the burning alive and torture of victims. Taken in all its aspects the attitude of certain parts of the community as revealed in the record of lynchings is the most appalling expression of race prejudice, disregard for the fundamentals of public order, and reversion to sadistic brutality which the civilized world has known in recent times. The decrease during the past decade has shown that the community can control such expressions if it will; but to change the mores which have found expression in this way will take time and continued effort. The public opinion of other parts of the country counts for little; the effective influence is that of southern leaders.

IV

As explanation for race prejudice, various theories have been put forward, and the psychology is doubtless complex. Race prejudice is not "instinctive antipathy" for either may be present without the other—if for the moment the word "instinctive" is taken to stand for a rather blind, unreasoned feeling. The white child tended by a colored "mammy" felt no instinctive antipathy toward her. But in civilized no less than in savage society there is an in-group and an out-group, conditioned at first by

familiarity or strangeness, later reënforced by family, kindred, economic, military, religious, cultural, and patriotic forces. Such relationships as those of Greek and barbarian, Jew and Gentile, conqueror and subject, master and slave, carry with them definite attitudes and emotional responses; they likewise carry a twofold code of morals; one code for relations between members of the same stratum and group, another for conduct toward the outsider. There is a measure of truth in Nietzsche's classification of all systems into two: morals of masters and morals of slaves.

Since during the earlier history of the country slaves were held in the North as well as in the South, and since the slave trade was much of it carried on by northern shipowners, it is evident that there was no early difference of principle. It would be absurd to attribute any differences in general policies to superior or inferior morals of an individual character. North and South are equally conscientious, so far as desire to do what they believe to be right is concerned. But the difference in present attitudes illustrates the influence both of institutions and of group sentiment. It exemplifies also the complication of moral problems by the mere numerical proportion between the races in a given locality, and the inheritance of a situation from a former generation. A society and an industrial system based on slavery carry with them a whole set of principles and emotional attitudes toward manual labor, toward sex, toward parental responsibility for mulatto children, toward civilities of social intercourse. Even mob action may appear—or be rationalized so as to appear—as right. The case is not entirely different from that of the morals of killing in war. Ordinary rules of conduct toward fellow beings are suspended. Under the principle of national self-preserva-

tion laws which regulate respect for life are abolished as regards the enemy group, *inter arma silent leges*. Under our sectional and local system, each section, each state, feels that it must settle its supreme questions for itself. A condition approaching anarchy exists within certain of our local groups, just as a similar condition exists internationally. This carries with it the presumpton that self-defense is the highest law of conduct, and that violence is the logical procedure. At the outbreak of the World War several nations believed—or were persuaded to believe—that self-defense required war, because no tribunal existed capable of a fair judgment and competent to ensure respect for its decisions. It was necessary to place a declaration of war on this basis in order to carry the approval and support of their peoples. Similar conditions obtained in the South. The Civil War changed the legal situation, but not the mores. "The North may have thought that it imposed its point of view, but the South undoubtedly had the last word." [6]

That the relations between racial groups are likely to become tense in proportion to numerical factors is obvious. The influx of Negroes into Chicago during the World War was followed by as mad and disgraceful a race riot as could have occurred in a southern city. Beginning in a trivial dispute over whether a colored boy had crossed the invisible line bounding the respective portions of a bathing beach supposed to be reserved for the two races, the smoldering prejudice and economic jealousies flamed into such violence that for days Negroes feared to venture abroad. The presence of a few from a different race rarely leads to violence, although in California the high ability of the Japanese farmer has struck such fear into the soul of the white that the latter has

[6] *America Comes of Age*, p. 91.

resorted to legislative measures of protection more drastic than any southern state has adopted against the Negro.

The Reconstruction situation which intensified the determination to exclude the Negro from voting, was aggravated by our sectional and local self-government theory. Under a national government, as contrasted with state and local sovereignty, such extravagant expenditures by ignorant legislatures could scarcely have occurred, and in any case the costs would have been distributed over the nation, instead of falling entirely upon the impoverished section. Self-defense again appeared to be the only resort. Even the national measures intended to secure civil and political rights have almost entirely failed to overcome local sentiment, because the Supreme Court interpreted the Fourteenth Amendment in the light of a federal system which leaves most rights to the exclusive jurisdiction of the states, and in the case of the Fifteenth Amendment national legislative and executive authorities have been unwilling to go against local opinion and use national force to secure what was intended by the Amendment. The attitude of southern sentiment in this matter has often been compared to that of several northern states toward the Eighteenth Amendment in refusing to enforce it and thereby practically nullifying it. Even President Hoover felt compelled to abandon the attempt to change the mores of certain states. It is to be said for the southern position that when the whole historical background is taken into account the object of resistance to the national majority was at least as dignified and important as that of asserting the right to manufacture, sell, and drink intoxicants.

As the result of our regional attitude toward standards of mores, and consequently of law, the only way in which

southern attitudes on race can be changed is through southern influence. This will probably take a long time, yet we have to remember that whereas ethics has but a feeble force, if unaided, to change the mores, there are other forces which work in the same direction—economic forces, educational forces, scientific forces. "The South," says Siegfried, in a previously quoted dictum, "had the last word." But the South has not yet said its last word! Wise and sympathetic leadership toward coöperation between the races is slowly making its influence felt toward a better condition.

The ground alleged for the doctrine that certain races are to be held not merely different but inferior, is either frankly economic, as in the anti-Chinese agitation by California labor groups, or partly economic and partly eugenic—to preserve the purity of the white race—as in the case of the Negro. In view of the number of mulattoes born under slavery the eugenic motive seems to have been a somewhat recent after-thought of the white—unless it was considered that so long as all children of mixed blood were safely isolated by their status as slaves, following the condition of the mother, "purity" of the white race was not endangered. At any rate there was no objection interposed by aristocratic southern society to such racial mixture unless it were legalized. And at the present it is not intercourse between the races but legal marriage which is prohibited. It is claimed also that whereas there is intense resentment—as all can understand and sympathize with—against attacks upon white women by Negro men, there is no protection, either legal or from public opinion, for Negro women against annoyance or attack by white men, and if a Negro husband or father should attempt to show resentment or resistance

he would endanger his life. It is entirely logical and consistent to hold that intermarriage and sex relations between two groups are undesirable without holding that either group is necessarily inferior. But it seems to be asking too much of the average man to expect him to make such a division in his attitudes. If a man is a foreigner "heave a brick at him"; if he is of different color, he is a "chink" or a "nigger," regardless of the fact that he may be far superior to the native or white hoodlum in knowledge, manners, culture, and refinement.

V

All civilized peoples have class problems; the rise of industry, the division of labor, as well as the difference in capacity for rule and the difference in fortunes of war, have created classes. Progress of religion, science, communication, sympathy, and law has worked against the inherited system. Underprivileged classes have at times revolted, at times found less violent ways to improve their condition.

In America the situation has been at once less and more difficult: less difficult, because we began with virtually one class—a middle class, and shaped our political and educational institutions on a doctrine of equality; more difficult, first, because our fundamental principles of liberty and opportunity encouraged the rise of a new upper class based on economic ability and without any traditions of public responsibility, and secondly, because we imported a Negro race of slave labor. We have hoped to meet these problems by a principle of individualism, of free movement for every person up or down in the social, economic, and political scale according to his ability. But while this has worked well for the strong, it has

left the weak without the help which a class can give its members. And in the South, the deeper attitudes fixed in both races by slavery could not be suddenly changed by an emancipation proclamation. In the North the change from agriculture to industry and the incoming of multitudes of immigrants bringing variant language and cultural traditions, have added to the complexity of the problem. There are genuine moral dilemmas involved.

The case for a selected ruling class was stated once for all by Plato when he said that the wisest should rule. Plato, however, was so concerned that rulers should be wholly devoted to service of the public that he would allow them no private property. Neither military nor economic strength was to determine policies in his state. Aristotle stated the case for a subordinate laboring class when he said that some men are by nature fit to direct, others to work under direction, and added the race and cultural comment that all Greeks belong to the directing class. The Hindu Radhakrishnan puts the argument for caste division concisely. When a superior race finds itself in the same territory with an inferior race there are three possibilities: (1) The races may mix; this means deterioration of the superior race to the level of the inferior. (2) The superior may exterminate the inferior; this is ruthless. (3) The superior may set caste separation between the two races. Marx presented the argument for strong class consciousness and united action on the part of the working class, but his forecast of a triumphant revolution by that class offers no hope for a minority race.

The American doctrines of equality and opportunity conflict at certain points with the arguments that urge the reasonableness or necessity of class and race separation.

The doctrine of equality has never been supposed to imply that all men are equal in all respects; the colonists chose Washington to command their army and Franklin to represent their cause in France because they regarded them as better fitted for those difficult tasks than the average man. What it meant to the men of 1776 was, however, opposition to the whole Old World system of a fixed, hereditary ruling class. What it has come to mean increasingly has been equality for every man in at least the "natural rights" of life, liberty, and the pursuit of happiness, and further equality of opportunity to share as many of the advantages of education and of the goods of civilization as the ability and character of the individual and the general resources of the community permit. It has not opposed the rise of individuals above the level of the average, but if it should appear that inherited wealth were taking the place of noble birth in establishing a fixed hereditary class, constituted not of men and women of ability but of the descendants of men and women of ability, it is altogether probable that measures would be taken to limit the right of bequest. In the field of education the use of mental tests to assign certain pupils to certain types of schools or to certain studies is welcomed if employed as a means of aiding the individual, but has aroused suspicion and protest if administered as a method of separating children into the two classes of Aristotle—those who are fit to direct, and those who are fit only to be directed. Representatives of the working class have been exceedingly jealous of curtailment of opportunity through anything like a class system of education.

In the South the situation has presented not one, but several genuine dilemmas. First, the survival of the older status—legal, social, ecclesiastical, political, industrial—of the two races is opposed by the principle that

each individual should be treated on his own merits and should have his opportunity. The mores of both white and Negro had been fixed on a caste basis. On the other hand, the principle of opportunity has been eagerly seized by the more ambitious Negroes, and doubtless some have abused the liberty and the measure of equality gained through education. The older household virtue of kindness which had a large scope under the older régime does not find place so naturally between two classes, one resentful because of what it has lost, the other embittered because of the contrast between nominal equality and actual conditions. There is also an economic dilemma. The South was impoverished by the war and by the loss of all the property represented by slaves. It has also remained largely agricultural, and has shared in but slight degree in the vast wealth that has come to the industrial and commercial North. If the South had been ever so desirous of providing education for the Negro it could not have been expected to make bricks without straw. There has also been a sincere question as to the better method of improving the condition of the Negro, a question that has divided the leaders of the Negroes. Is it a more hopeful method of advancing the race to treat each individual on his merits and encourage him to rise, avoiding as far as possible associations that would retard his progress; or should the Negro develop a strong race and class coherence? Should he take the white culture as a standard and goal of ambition, or should he take pride in the gifts, character, and achievements of his own race? Can he look for gradual advance through education, economic gains, and aid from the more humane whites, or must he rely upon concerted pressures—economic and political —to obtain what he regards as his rights? Certainly the

present situation, seventy years after emancipation, shows the stubborn resistance of mores based on race and slave-status to the principles of free opportunity and equal rights which among the whites have been regarded as basic in American life.

CHAPTER V

SUICIDE—A SYMPTOM

What has suicide to do with social morality? Is not suicide a disease or a mental disorder rather than an object of moral judgment? Yet suicides fill a large place in the moral statistics of Oettinger and von Mayr. Certainly we do not look upon suicide with the eyes of our British ancestors who regarded it as felony—*felo de se*—and punished attempts at suicide, or gave the body of the successful suicide "an ignominious burial on the highway, with a stake driven through the body."

Two factors may have contributed to a change of view: the general humanitarian progress during the past two centuries, and the scientific study of suicides which shows their relation to various social and pathological conditions. On the first of these it is unnecessary to dwell at this point. It affects our whole attitude toward offenders against law, and toward treatment of the unfortunate—the insane, the deaf, the blind, the poor. The second deserves more attention because it is an instance of the way in which an early problem in ethical theory was occasioned because of the use of statistical methods applied to human behavior.

One of the early treatises on suicide was that of the Italian, Morselli,[1] whose work appeared in English in an abridged translation in 1881. He argued vigorously for the statistical method which had been attacked on the

[1] H. Morselli, *Il Suicidio,* Milan, 1879.

ground that it treated human behavior as externally determined, as opposed to voluntary. The same question might of course be raised as to marriages and various other human connections which are found to present remarkable regularity when a sufficient number of instances are considered. Modern writers are not so much worried over this alternative of regularity versus free will. On the one hand there is no disputing the figures which show a high degree of uniformity in the suicide rate or of progressive increase in nearly every European country, together with marked differences between the rates of different countries. The two sexes in European countries commit suicide almost without exception in the ratio of three to four men to one woman. Almost universally the city rate is higher than the country rate. Everywhere in Europe the maximum numbers of suicide occur in the spring and early summer months—April, May, June. Such facts call for recognition. On the other side, the fact that there are regularities in the number of accidental deaths does not lessen the importance of the appeal "safety first," nor the wisdom of observing traffic signals. The precise question which is of chief importance for social morality is not whether society approves or condemns suicide, but what do the facts of suicide in a given area or society signify as to the conditions in that area or society. Suicide is a symptom, not an ultimate. What is it a symptom of?

As in many disordered conditions, diagnosis is not simple. Early inquirers were struck by the higher suicide rate in Northern Europe as compared with Southern Europe. Might it not be the cold climate of Scandinavia and parts of Germany which was at least partly responsible for rates of eight to thirty-one per 100,000 inhabit-

ants as compared with rates of two to four for Spain and Italy? Or since Scandinavia, Germany, and Austria were peopled by Germanic stocks, might not the high rate in these countries be due in part to race? In France, moreover, the northern districts with their large infusion of Frankish or Germanic and Norman blood had a much higher rate than the Breton or Pyrenean region. Similarly in Italy the rate for Lombardy was twice that of Sicily and four times that of Calabria, correlating with the differences in height and color between the northern and southern Italians which so obviously point to different racial stocks.

But another factor complicates the picture. The regions with high suicide rates are not only northern and inhabited by Germans; they are largely Protestant in religion. Morselli found the frequency of suicide in Catholic states to be on an average of 5.8 per 100,000; in Protestant states 19; in states of the United or non-United Greek church 4. Legoyt found similar tendencies of 6.23 for Catholics; 10.27 for Protestants; 3.62 for Greeks; and 4.84 for Jews.[2]

Suspicion that type of religion is a contributing influence is confirmed by the rates for those states which include Protestants, Catholics, and Jews. For in Prussia in 1869-72 the rates were Protestant 18.7, Catholic 6.9, Jewish 9.6; and in Bavaria, 1870-79, Protestant 19.5, Catholic 7.4, Jewish 11.5. Von Mayr in 1917 was able to point to a large number of similar records.[3] Religion apparently makes a difference, although of course correlation does not of itself prove causal relation. It may be that the kind of men and women who choose to be

[2] H. Morselli, *Suicide*, 1886, pp. 119-30.
[3] Geo. v. Mayr, *Statistik u. Gesellschaftslehre*, 3 vols., 1917.

Protestants are also the kind who are especially liable to commit suicide. For one thing Protestants are more individualistic and less closely bound to their group. Rates for Jewish groups have however risen since 1890 so that they now are as high as those for Protestants, and in some cases higher.[4]

Besides the three factors of climate, race, and religion, there are at least three others, city versus country, occupation (especially industrial versus agrarian economy), and general culture. These three tend to coincide in correlation, i.e., rates in cities are higher (from 50 percent up in most countries) than in rural areas: industrial, commercial, and professional groups have higher rates than agriculturalists; the educated, higher rates than the ignorant. And finally, in Europe and the United States, sex is indirectly or directly a factor because between three and four times as many men as women commit suicide.

Morselli wrote in the decades when many saw in Darwin's and Spencer's conception of the struggle for existence the key to social problems. This key for Morselli opened all the various doors through which the complex problem of suicide had been surveyed. Suicide is an effect of the struggle for existence and of human selection, which work according to the laws of evolution among civilized people.[5]

> They judge wrongly who think that the evils of civilized society such as misery, disease, prostitution, madness, suicide, are accidental and avoidable. . . . These social evils represent the inevitable result of the struggle for existence.[6]

The conquered must give place to the victors, and among

[4] Ruth Shonle Cavan, *Suicide*, 1928, pp. 38-45.
[5] Morselli, *Suicide*, p. 354.
[6] *Ibid.*, p. 361.

the first who go will be all those unable to work, those who having many desires and passions to satisfy, find themselves facing the terrible specter of misery; the intemperate and the improvident; the weak in character, who cannot adapt themselves to new ideas, nor change their habits when necessary, or whom overwork, privations or the abuse of pleasure have rendered timid in the hour of danger—cowardly in the presence of unexpected misfortune. The mode of cutting them off will differ; for one it will be by extreme poverty, and slow privations, for another by hunger or a rapid illness; for one madness, for another suicide; but under one form or another early death must inexorably reach them.[7]

A grim picture certainly! But social science was not content to stand still and contemplate the inexorable struggle. Durkheim, a decade later, made a notable advance by an analysis which brought out more strongly the social factors in suicide. For Durkheim, the group or social interaction is everywhere the dominant and significant factor, whether in morals, law, division of labor, or religion. The individual is so bound up with the group that any serious change in his relation to his group or in the equilibrium and constitution of that group brings strain. "Egotistical" suicide is due to an increase in social isolation. The divorced, the widowed, those who find themselves lonely in the great city, away from kin and friends, are examples of isolation. Protestants are less firmly united under group control than Roman Catholics. War solidifies the group and during its duration tends to diminish suicide. A sudden shattering of equilibrium, a crisis, a disturbance in the collective order, is responsible for a second type of suicide, which Durkheim called "anomic," the suicide of disorder. It is not the poverty pro-

[7] *Ibid.*, pp. 366 f.

duced by an economic crisis, but rather the crisis itself, which causes suicide. A third type of suicide, the "altruistic," is due to some fear of disgrace or other evil befalling the group to which the individual devotes himself. If this analysis be accepted as at least throwing some light on the social conditions favorable to suicide, the possibility of some measures of prevention appears less hopeless than on Morselli's theory of inexorable necessity.

But other studies continue to point to the complexity of factors bodily and mental, which play a part in leading the individual to end his life. In Prussia an attempt is made to record the motives so far as these are discoverable. Von Mayr presents the following table for men and women as recorded for forty years.[8]

The numbers attributed to "Alcohol" are also included in those for "Vice."

SUICIDE MOTIVES IN PRUSSIA

Men

	'69-'72	*'73-'76*	*'83-'90*	*1906*	*1907*	*1908*
Surfeit of life	11.9	12.2	10.4	6.6	6.3	6.2
Bodily ills	5.3	6.	8.3	10.3	10.2	9.8
Nerve disorders	...	...	...	3.8	3.9	3.8
Mental disorders ...	29.5	22.9	22.3	22.1	22.8	22.4
Passion	2.2	2.6	2.3	2.8	2.6	2.4
Vice	9.9	13.	11.6	12.1	12.6	12.4
Alcohol	...	...	...	11.6	12.1	11.8
Sorrows and worry..	10.9	11.9	13.8	9.4	10.4	11.9
Remorse, shame, fear	10.6	8.7	8.	7.8	7.5	7.8
Anger and strife ...	2.4	2.3	2.7	1.6	1.7	2.2
Other and unknown.	17.4	20.4	19.7	24.5	22.	22.1

[8] v. Mayr, Vol. III, p. 385.

Women

	'69-'72	'73-'76	'83-'90	1906	1907	1908
Surfeit of life	7.1	8.9	7.5	3.6	4.8	3.3
Bodily ills	7.3	6.7	9.2	8.8	8.4	9.2
Nerve disorders	...	...	...	6.5	9.	7.9
Mental disorders ...	48.4	43.7	40.9	36.1	38.	38.3
Passion	4.7	6.2	5.8	6.3	6.9	5.7
Vice	2.2	2.1	2.5	1.5	2.4	1.4
Alcohol	...	...	...	1.3	2.1	1.3
Sorrows and worry..	6.7	6.9	8.1	7.4	7.1	9.1
Remorse, shame, fear	10.9	9.1	8.5	6.9	5.3	5.4
Anger and strife ...	2.8	2.9	2.6	1.8	1.6	1.9
Other and unknown.	9.9	12.8	14.9	21.1	17.	17.8

The relative constancy in the percentages assigned to the various classes is noteworthy; the large percentage of suicides among women attributed to mental disease, and the relatively greater proportion among men suicides attributed to vice, including alcoholism, are also of interest. The motives assigned neither confirm nor oppose the causes which Morselli and Durkheim believe to be ultimately reasonable, for we have to ask what produced surfeit of life, mental disease, sorrow and worry, alcoholism, or passion, and why do some endure to find solutions for their troubles while some break and find death the only remedy.

Dr. Cavan has made studies of suicide in Chicago which give more specific data on many points. By dividing the city into seventy-two areas, many of which have such distinctive characters in economic, religious, and racial conditions as to be treated as communities, she was able to find significant correlations. For example, cities show higher suicide rates than rural areas. But in Chicago eight-ninths of the seventy-two areas and eight-

ninths of the population show a rate of twenty per 100,000 or less, not greatly in excess of the rate for Illinois (15.3). The remaining areas show rates from twenty to eighty-seven. Of these high-rate areas four are extreme. The "loop" which is the business area tops all with a rate of eighty-seven, followed by the Near South Side with fifty-nine, West Madison Street with forty, and the Lower North Side with thirty-five. All four are areas with little family life, males predominating. Dwellings are chiefly hotels or lodging houses. West Madison Street is a resort of homeless men. Two of the areas have high divorce rates although few marriages. The population is shifting. Four of the areas are included in the six which have the largest number of brothels. These four are also the four having the highest murder rate. In these are virtually no neighborhoods, no standards, no traditions. Low economic status and detached condition of individuals combine to render them less fortified to resist crises. Experiences of various kinds may precipitate a crisis: unemployment, arrests, change of location, illness, alcoholism, insanity, rupture of intimate relations by quarrels, death, or separation.[9]

Particularly pathetic is the high rate among the foreign born. As compared with a rate of 13.6 for native white of native parentage and a rate of 12.1 for the second generation of immigration, the rate in Chicago for foreign born males is 41.4; for women it is 14.2 as compared with 8.6 for native born of native parents and 6.1 for native born of foreign parents. Uprooted, tumbled into a strange place, confronted by an unknown language, and the consequent economic handicaps, it is easy to imagine the conditions which lead to doubling the suicide rate.

More recent statistics show a steady rise in the suicide

[9] Cavan, *Suicide*, ch. V.

rate in the United States since 1925 when it stood at 14.8 until in 1932 it reached 21.3. It is natural to think of the economic depression as responsible in part but Dr. Dublin of the Metropolitan Life Insurance Company [10] warns against laying stress exclusively on this factor. "Suicide represents a group more easily upset mentally and emotionally than are the average persons. They have immature attitudes and childish methods of reacting toward life, and are thrown off balance upon slight provocation."

But why should, say, Germans, be more easily upset than Poles? Or why should whites be so much more easily upset in southern cities than are the Negroes, giving for example in New Orleans rates of 18 for white and 7.1 for Negro, and in Richmond 14.6 for white as against 2.2 for Negro? Of the ten American cities having the highest suicide rate in 1932, six are on the Pacific coast and four in the Middle or Far West. Why such a proportion of easily upset people in Pacific Coast cities, as compared with those on the Eastern seaboard? Why should Davenport, Iowa, head the list in 1932 with a rate of 50.3 or Little Rock, Arkansas, have the dubious honor for 1930 with a rate of 85.9? [11]

It is no ultimate answer to note that the Pacific Coast cities are also at the head of the list in the percentage of divorced persons. Of the first nine cities, arranged to show the percentage of divorced persons, the highest four, the sixth, and the ninth are on the Pacific Coast. The ranking of the states shows a similar order. The states having the highest percentages of divorced persons are 1, Nevada; 2, Oregon; 3, California; 4, Washington.

[10] As reported in the *New York Times* of Oct. 2, 1932.

[11] The figures for 1932 are from Dr. Frederick L. Hoffman in *The Spectator* as summarized in the *Literary Digest* of July 1, 1933.

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This shows a less firm condition of family life, which in turn may be due in part to the high mobility in the population and perhaps in part to the restless character of many of the number who have pulled up stakes in their old homes to seek newer regions. Many of the thousands who have poured into Los Angeles in the last decade have come with neither money nor a skilled trade and have inevitably met disappointment.

All in all, when we consider that America has been and still is a land of opportunity with abundant natural resources, a high per capita wealth and income, a generous system of public education, a free choice among numerous religious bodies, and an indefinite number of fraternal orders and lodges, it is somewhat surprising to find a suicide rate about midway on the scale of European rates. We have a lower rate than Austria, Germany, Denmark, and France; a higher rate than England, Ireland, Norway, Italy, and Spain. It seems evident that since economic conditions are not less favorable here the social disorganization must be greater. The extraordinary murder rates and the rapidly increasing divorce rates point in the same direction. And "social disorganization," comments Dr. Cavan, "is the loss of control of the mores over the members of the group." [12] The New World has traditionally been a land of liberty and opportunity. These, with a considerable part of the population, have meant loosened ties, freedom to do as each likes, to live one's own life, disregard of the traditions and the mores. The main body of the people, especially in the older settled parts of the country, and in rural areas where a neighborhood still exists, has reached a sort of compromise or working adjustment between the individual and the group, between the traditional mores based largely on

[12] *Suicide*, p. 330.

Hebrew and Christian conceptions of right and wrong and the freedom of a highly competitive society. The prevalence of suicide is a thermometer which registers the degree of pressure from ills, bodily, mental, personal, social, and the resistance which the individual, alone or through support by his group is able to offer in the crises of modern civilization.

CHAPTER VI

THE MORES OF SEX, MARRIAGE, AND FAMILY

The mores of sex are at once the most deeply rooted and the most under pressure at the present day. The world over, relations between the sexes are the most heavily charged with emotion. They take their place side by side with religion, with group conflicts, with food supply. They furnish the theme for song and for tragedy, for romance and for daily work. They concern human beings more deeply and universally than government or the economic system. At the present time they share with the economic system in the tensions and dilemmas of conflicting forces.

No detailed exposition of the present unrest can or need be attempted. Abundant material is available for the reader. At one end the steadily increasing divorce rate, at the other the emphasis upon sex in fiction, drama, and essay, the radical demands for individual liberty and self-expression in sex relations, both before and after marriage, show a focus of interest comparable to the political focus of the American and French revolutions. Before noting more in detail certain of the facts and trends of sentiment it may clarify the situation to note the basal conflicts and consequent moral dilemmas which underlie the present unrest.

First conflict: The American mores have kept sex as such in the background. The present vogue in literature and conversation among many is to make sex in its physical aspect a central and even dominant interest. The

pendulum is swinging from sex repression to sex obsession. On the one hand social pressure, religious authority and certain considerations of taste. On the other, a powerful human drive and a revulsion from older austerities, insincerities, and squeamishness. Where is the pendulum likely to find its stable position?

Second conflict: Man matures sexually before he matures intellectually and before he is in a position to marry and establish an independent family and home. At the same time cultural influences tend to increase sex sensitivity, as compared with the more primitive cultures. There is therefore a tension between the biological force of sex and the cultural demands for postponement of marriage.

Third conflict: The psychological dilemma between the physiological drive of sex and the two agencies which have emerged, the one to refine, the other to control the sex impulse. The refining agency has been the esthetic. From early days it has touched sex with beauty, and thereby lent something of its peculiar detachment, its pause of arrest, to the lover's admiration. It tempers passion with tenderness. It finds expression in dance and song, in epithalamium and ritual. It enlists the sympathy of the social group. It transmutes sex attraction into romantic love. It solves the problem for one stage of development but itself sets a new problem for a later stage. The agency of control is reason which forecasts the future, weighs gains against losses, pains against pleasures, and thereby checks the direct drive of sex toward immediate satisfaction. America has pinned its faith to love, continental Europe to reason. In either case the tension remains, although at different stages. It is accentuated by the age-long difference between youth and age.

Fourth conflict: The fourth conflict with its resulting

dilemmas is that between individual freedom of choice, enjoyment, action, and social pressure whether exerted through religious sacrament, legal restraint, economic interests, family obligations, eugenic considerations, or all combined in the mores of marriage and family. In this conflict the forces of individuality and individualism have behind them the impetus of previous advances in the political and economic spheres. They are powerfully reenforced by the instruments of modern invention for increased enjoyment, and by the substitution of the scientific for the traditional and religious factors in social control. The strength of the mores is correspondingly weakened by this substitution. It is further weakened by the shift from country to city, with the accompanying loss of the neighborhood group and the greater isolation of the individual. An additional factor is the character of city populations, made up as these are in large measure of recent immigrants confronted by an alien language and alien culture, and of children of such immigrants who discard their ancestral cultural traditions as old-fashioned, and frequently fail to find equally binding ties in the social influences of their present environment.

If we consider that these tensions are produced by the physical and psychological make-up of men and women on the one hand, and by the social pressures and course of civilization on the other, we shall perhaps avoid two mistakes: the mistake of taking the situation lightly and supposing that there is any quick and easy cure for what seem to be evils, and the mistake of blaming individuals for tendencies which are largely due not to vicious character but to trends and movements by which the individual is subtly affected. It is not the individual who knows he is wrong that offers the most serious problem to the mores; it is the individual who firmly

believes he is right. Finally, this method of approach may perhaps uncover tendencies toward reconstruction or readjustment.

I

Some of the conflicts in present social morality are by no means novel. The tensions between youth and age, between social restrictions and individual demands for liberty, have been world-wide and age-long. Sex passion in conflict with social regulation may cause execution among Australian natives or suicide in the Trobriand Islands. It engaged the concern of Hammurabi and of the Mosaic code. It was one of the persistent problems of the medieval church and came forward at the Reformation as one of the points of divergent mores. On the other hand, certain of the conflicts have peculiar intensity at the present time and in the United States. Protestantism freed itself from monastic institutions and rejected celibacy of the clergy. But it was easier to free itself from an institution than from the idea of sex which underlay that institution. This idea was that sex was not only a passion needing control but a peculiarly sinful passion. Something of the old taboos of "uncleanness" seem to have persisted from Old Testament conceptions of sexual functions. Augustine had seen in the act of conception the taint of transmitting the original sin. Moreover, Protestantism in taking over much of the medieval conception was at a disadvantage when it faced the problem of control. The Roman Catholic view of marriage as a sacrament invested the institution with a certain mystic quality which added to its solemnity. By treating marriage as a civil contract the Protestant churches lost this mystic sanction. As if in compensation,

they became severe in their attitude toward sex morals. They were accused by the Roman Catholics of looseness in their doctrines, and this may have been an element in intensifying the sternness with which they looked upon any irregular sex relation. In the case of another medieval conception, that of the "calling" of the priesthood, Weber has pointed out that Protestants extended it to all believers.[1] Perhaps the general attitude toward sex may be similarly looked upon as an extension of the attitude specialized by the medieval church in its doctrine of sacerdotal celibacy.

Another factor which contributed to the American mores was that the colonists belonged almost entirely to the middle class. In aristocratic society, Sumner remarks, a man's family arrangements are his own prerogatives. From Solomon to Louis XIV and Charles II monarchs have held themselves above the restrictions framed for common folk, and their court has frequently exercised a similar exemption. The middle class has not only generally supported monogamy; it has also set limits upon extra-marital relations.

In any case the early Protestant colonists brought with them as their method of control a strict theory of chastity before marriage and a disposition to keep sex not only under control but under the ban.

It would be absurd to infer that ignorance of the functions of sex was the rule. The population was almost entirely agricultural. No child reared on a farm is likely to remain ignorant of the breeding of horses, cattle, dogs, and fowls. And the practice of "bundling" was certainly a more severe test of austere morals than the modern automobile. But the general tradition which was unchallenged until near the close of the nineteenth century was

[1] Weber, *The Protestant Ethic and the Spirit of Capitalism*, 1930.

that sex in its physical aspects was not to be frankly treated in literature or on the stage. The postal authorities regarded even medical books dealing with sex physiology and hygiene as "obscene." In the 90's a woman physician was prosecuted for selling her book on the subject, a book which would now be regarded as conservative. The writer recalls a remark by his college professor of Greek (in a college for men) that probably the first of Plato's dialogues which a graduate would wish to read for its portrayal of Socrates was the Symposium, but that this could not be read in class. Boys learned the facts of sex from other boys in language which impressed a ribald and nasty stamp upon the whole topic. Girls were supposed to be "innocent," i.e., ignorant of sex, until married. Ladies were not supposed to speak of legs although they did not hesitate to wear bustles.

Against such a conspiracy of hush and such a deletion from literature and the stage of one of the deepest and strongest passions of men and women, such a relegation of the physical aspect of marriage and the family to the realm of the nasty and disgusting, such an ignoring of the problems of adolescence and the years of young manhood and womanhood, such an acceptance of prostitution as a necessary part of a social system—the time was ripe for revolt. The revolution in biology led by Darwin gave science a new place in the realm of ideas. Anthropology made customs and taboos common knowledge. Social reform could not shut its eyes to the new situation brought about by the growth of cities and commercialized recreation. The war and its consequent disillusion was the last straw. The last decade has seen an outbreak comparable to the long repressed revolt of the Russian people against despotism. Sex has become not only a matter for scientific treatment, and a subject in education,

but a dominant theme in the movies. The "confession" magazines exploit the theme for millions of readers. Sex repression seems to have been succeeded by sex obsession. Are the mores to sanction the shift? Herein is the setting for the first dilemma. Nothing is gained by epithets or by charging the first attitude to the Puritans and the second to degenerates. It is more instructive to examine the psychological roots of the two attitudes.

The root of the first attitude is modesty, shame, reserve. Whatever our theory of emotion and emotive behavior the tendency to keep certain functions and behavior in the background is very deeply rooted among civilized peoples. The savage also has his reserves although not always identical with those of the civilized. Only a woman who has herself borne children is permitted to be present at the birth of a child among the Trobriand Islanders.[2] The sex organs are covered not only by the puritanical but because of a sense of decorum in general. The individual who exposes himself as an exhibition shocks not merely convention but good taste. Modesty is the contrary of coarseness and lubricity, not of intelligent facing of facts.

On the other hand, the disposition to cover up the body and its functions is capable of absurd and hurtful excess. It is one thing to maintain reserve; it is another thing to exaggerate the attitude to prudery. This may stimulate a morbid concentration of attention upon what should be incidental, or should have its normal expression and then give place to other interests.

The scientific attitude avoids the dilemma by attention to structures and functions, causes and effects, without emotional accompaniment. Whether its purpose is the more general scientific aim of understanding facts and

[2] Margaret Mead, *Growing up in New Guinea*, 1931.

relations, or the more specific medical concern of preventing or curing disease, emotion is at a minimum. The surgeon's interests compel detachment. The same attitude makes it possible in a class room of a coeducational institution to consider facts and problems of physiology, anthropology, and sociology, even as the medical professor can present obstetrics to students in his field. In so far as the present shift takes the scientific attitude it is likely to be sanctioned by a gradual adaptation of the mores. The changed fashions for women's dress are an aid to a more decent and wholesome attitude.

What of the non-scientific attitudes? Are the newspapers likely to continue to give prominence to sex episodes? and the movies to stimulate erotic feelings? Is the sex interest, particularly its gruesome perversions, likely to attract, to the virtual exclusion of other themes from the stage and fiction? Probably, for a time, the present focus of attention will continue. But no great literature has limited itself to one object of human interest and it is unlikely that American life and its major interpreters—if and when we are fortunate to have such —will place sex so prominently in the picture as to dwarf all else. It is improbable that what Gilbert Murray [3] refers to as "a sort of disinterested enthusiasm for sexual misconduct in all its forms, from obscene language to unnatural vice," and which he finds "in advanced Liberal journals both in England and America," will permanently infect the American mores.

II

The second conflict: The fundamental crux of premarital relations is that the biological age at which sex

[3] *Harper's Magazine,* Jan. 1930, pp. 133 f.

desire is keenest is earlier than the age at which persons in our modern society can afford to marry. The age of puberty is commonly said to be from twelve to fourteen for girls and two years older for boys. In any case it is conservative to say that most girls of fifteen and boys of seventeen have felt the awakening of interest in the other sex which goes with physiological maturing. Contrast the age of marriage. Professor Ogburn estimates that "in 1920, at eighteen years of age, one-thirty-seventh of the young men in the United States were married and about one-fifth of the young women; at twenty one-eighth of the young men and three-eighths of the young women; at twenty-five less than half (48.8) of the men and two-thirds of the women, and not until thirty-three do we find three-quarters of the men married."[4] Moreover the age of marriage in the city population seems to be later than in the rural population. And the age of the more able and ambitious—if for the moment we assume those listed in *Who's Who* to be typical of this class—is evidently above the average. The figures for the 33,931 enrolled for the first time in *Who's Who* for 1932-33 give as the average age of marriage 28.44 years. Variations from the average in the different occupations are but slight. The range is from 27.33 for editors and 27.45 for writers to 31.80 for architects and 30.71 for physicians and surgeons. The average for business men in the list is almost identical (28.70) with that of educators (28.71), although the business men terminated scholastic education at 22.16 and the educators at 29.97.[5]

The facts are clear. In professional and art circles and among outstanding business men marriage is delayed

[4] E. R. Groves and W. F. Ogburn, *American Marriage and Family Relationships*, N. Y., 1928, pp. 221 f.

[5] *Who's Who in America*, 1932-33, p. 24.

until an average of eleven years after physiological maturing. The mores of the American people have required, strictly of women, less strictly of men, chastity during this period when sex desire is normally at its keenest.

The grounds for the postponement of marriage are chiefly two: one, inseparable from advancing culture, is that since marriage is not merely for physical mating, but still more for the union of mind and heart, those who marry too early are not in a position to select wisely. Europe is so assured of this that parents retain the function of selecting. In America the young people select—although doubtless prudent parents endeavor to have them thrown with the "right" companions in education, sports, and society. Dr. Hamilton's two hundred cases indicated that "marriages late in life proved notably happier than early marriages. Out of the men married between thirty and thirty-four, 66 percent were happy and 63 percent of the women. Only 32 percent of the men who had married before twenty-four were happy and only 28 percent of the women." [6]

Dr. Davis's study of 1,000 married women is not precisely comparable statistically but the figures show that whereas 3.8 percent of the entire 998 married at ages fifteen to nineteen, 7.8 percent of the unhappy 116 married at those ages. In the period twenty to twenty-four the proportions of the unhappy was the same as that of the whole 998. On the other hand, with the age of marriage twenty-five to twenty-nine the unhappy 116 showed a percentage of 35.7, as against 40.7 for the percentage of the whole 998 who married at that period. That is, there was a larger proportion of earlier marriages and a smaller proportion of late marriages in the unhappy group.

[6] G. V. Hamilton and K. MacGowan, *What Is Wrong with Marriage?*, N. Y., 1929.

Dr. Davis summarizes a comparison of the unhappy 116 with a happy 116 of the same age and education. "Generally speaking . . . the happy group on the whole is composed of women whose own age and that of their husbands at time of marriage was greater than the unhappy group." [7]

The number of cases in the studies of both Dr. Hamilton and Dr. Davis is too small to be conclusive. Dr. Davis's group of 1,000 included 691 college or university graduates—a far higher proportion than in the community at large. It is probable that with such a group of better educated women adaptation of mind and temperament would count for relatively more than with the average population. Nevertheless, the two studies tend to confirm the rather common opinion that young people under twenty years of age frequently mistake a temporary attraction for an affection that will endure.

Yet, granting the desirability of delaying marriage until twenty or even twenty-four years of age, this is far from proving the wisdom of postponement until twenty-eight. And it does not meet the tension set by the long celibate period.

The second cause for the postponement of marriage is economic. It is expensive to marry and establish a home. A young man who contemplates marriage with a young woman of good social status aspires to maintain his bride "in the conditions to which she has been accustomed"—rather than at the level on which the bride's mother began marriage. Unless he inherits wealth, this means several years of work after completing school or college. In the city the price of rent is a deterrent, and the supposed necessity of keeping up with the more prosperous of his

[7] Katharine B. Davis, *Factors in the Sex Life of Twenty-two Hundred Women*, N. Y., 1929, p. 50.

friends or business associates counts up heavily in the budget estimates. The higher pressure of business and social competition in the city as compared with the country probably combines with the greater expense of city life and with the greater opportunities for employment in the city for women, to make marriage considerably later in the city than in the country. And at the same time the social and moral restraints of the city, where the individual is more isolated and where few if any know of his way of life, are less than in the country where neighbors still take knowledge of goings and comings and the community still functions as a guardian of morals.

With from five to fifteen years after physiological maturity before social and economic conditions favor marriage, and with an increasing proportion of city dwellers, there is bound to be a severe strain on the chastity required by our previous morality. New influences, also, have come in to weaken older restraints. Freud has emphasized "repressions" and some have short-circuited the theory in the interpretation that it is perilous to put any restraint upon sex desires. From the side of ethics it has been argued that the right to be happy involves the right to have sex experience.

The extent to which the attitudes and conduct of young people before marriage have been affected by these various forces is difficult to ascertain objectively. In the nature of the case no general statistics are available. Teachers may have impressions but young people do not always tell all they think to those who are regarded as belonging to an older generation. And a multitude of young people have left school and are "on their own." These are earning their own bread and many are no longer at home. Such young people, independent of home restraints and older associations, are often in a mood to assert inde-

pendence of the mores. The automobile has banished many of the external restraints. In some groups young people use intoxicants to an extent which inevitably tends to loosen control. One would infer from the personnel of those women prominent in opposition to Prohibition that this use of intoxicants has increased among the sons and daughters of the rich. The picture of this set which Rachel Crothers draws in her play *Nice People* cannot be taken as scientific evidence of loose morals but it is at least a question mark. Somewhat more significant are the comments in the March 1931 *Harper's Magazine,* of a woman "nationally known in her profession." The writer is talking of the effects of drinking upon herself and her associates. She asserts that "today bi-sexual drinking is the rule. Men and women of all classes habitually drink together," and adds, "a new social order has come in with women drinking. I know women who complain that they drink to relieve what they euphemistically term their 'sex inhibitions.'" The writer evidently has in mind not the young, but the elder group. She goes on, however, to ask, "What happens to children who witness the people they look up to and respect becoming a little foolish with drink?" In the October 1931 number of the same magazine, Alice Beal Parsons says, "Parents would be aghast if they knew how many gently and cautiously reared girls are today making experimental forays into city hall-bedrooms of friends' apartments, and defiantly proving that they are fully sexed." Does this, supposing it to be well-founded, indicate actual change in the mores, or only individual breaking away from standards which still stand firm? In Mrs. Parsons's opinion, not precisely either consequence, for the sentence above quoted concludes, "Only to find in some amazement that in the society to which they must return sexual customs

still range through varying shades of liberalism all the way back to Victorian propriety." In other words, the sex mores for the unmarried are in flux.

Just where the present barometer stands it is impossible to say with assurance. In *Only Yesterday,* Frederick Lewis Allen has massed the evidence of "The Revolution in Manners and Morals" which culminated in the early 20's. He counts as causes—"the post-war disillusion, the new status of women, the Freudian gospel, the automobile, prohibition, the sex and confession magazines, and the movies." [8] As conspicuous signs of change he notes the fashions, cosmetics (many will recall the shock with which they first witnessed the general use of lip-stick and make-up of eyes), smoking of cigarettes by women, drinking together by men and women, frankness in conversation, books and theater, petting parties, and a general obsession with sex.

Walter Lippmann analyzes the radical attitudes as based on the logic of birth control. Formerly a great deterrent to sexual intercourse was the consequence of pregnancy. For the unmarried woman this meant social disgrace as well as something wrong—"sinful," if she were of religious stock—and if the man did not suffer physically or socially he still might be held to account legally. With some, the tradition of the gentleman was, as put by a father to his son, "If you must have satisfaction, buy it from those who have it for sale; don't seduce an innocent girl." But the possibility of intercourse without pregnancy has removed from consideration external consequences, physical and social. Only the psychological remain, and these are susceptible of modification. For if sex experience is an isolated incident it becomes either

[8] Frederick L. Allen, *Only Yesterday,* N. Y., 1931, ch. V.

too insignificant to make a fuss about or may even, as a positive pleasure, be regarded as a "right." The logic of birth control, Lippmann points out, cannot effectively be limited to married people, and particularly not to wives physically and financially unable wisely to bear and rear large families of children. It can be acted upon as readily by the unmarried as by the married.[9]

There is considerable evidence that birth control is being thus acted upon to some extent—to how great an extent no one knows. Physicians state their impressions that an increasing number of employed young people, who are independent of their parents and yet do not quite dare to assume the financial burdens of a home, live together unmarried, or at least come together fairly regularly. This may or may not be coincident with a decrease of prostitution.

The significant study by Dr. K. B. Davis, *Factors in the Sex Life of Twenty-two Hundred Women,* deserves particular attention. Of the 2,200 women 1,000 were married, 1,200 unmarried. Both groups were above the average in education. Of the unmarried 1,200, 1,146 were college graduates, 601 were teachers, and 96 engaged in social work. The unmarried were asked, "Is a young man before marriage ever justified in having sex intercourse? If so, under what conditions?" and a similar question as to young women before marriage. A definite answer was given the question as to men by 1,019: yes, 213; no, 806. To the same question as to a young woman, 958 gave definite answers: yes, 186; no, 772.[10]

It is not surprising that in a group consisting largely of women engaged in teaching and other serious professional work approximately 80 percent should answer "no."

[9] Walter Lippmann, *A Preface to Morals,* 1929, ch. XIV.
[10] K. B. Davis, *op. cit.,* pp. 350 ff.

It is, perhaps significant of unsettlement in the established mores that 20 percent should say "yes." It is also pertinent that 111, or one in nine of those answering, stated that they had themselves had sex experience. Of this 111 who had had sex experience 71, or 64 percent, answered "yes" to the above question, whereas of the 746 who had never had sex experience only 106, or 14.2 percent, gave affirmative answer.

How far is such a group of women representative of the mores? The average age of the unmarried 1,200 at the time of reply was 36.8 years; the "mode," or age at which the greatest number replied, was thirty years. The date of the replies is not stated, but from the fact that parts of the report began to appear as articles in 1922 it seems probable that the work began several months previous to that date. It would follow that the decade most nearly represented would be that of 1910-1920. It would, in any case, represent the first two decades of the century, but not the changes, if any, since the war.

In the next place, can 1,200 college women, more than half teachers and social workers, and all but 108 gainfully employed, be regarded as either influential in determining the mores or as typical in their attitudes and practice? Probably such a group would not be the influential units in the rich class, nor in the cities like Middletown, where "the entire community treats its teachers casually."

The more than 250 persons to whom this weighty responsibility of training the young is entrusted are not the wise, skilled, revered elders of the group. In terms of the concerns and activities that preoccupy the keenest interest of the city's leaders, they are for the most part nonentities; rarely does one run across a teacher at the weekly luncheons of the city's business men assembled in their civic clubs; nor are many of them

likely to be present at the social functions over which the wives of these influential men preside.[11]

Nor would they be likely to be more influential in church groups, for in so far as the morals of this church group are guided by the clergy rather than by their wealthy laity the conservatism in doctrine is likely to make the group indisposed to seek guidance from the more liberally minded class as well as to render the teacher uncomfortable as a member. It is improbable that the 1,200 are an influential force directly.

Are they nevertheless fairly representative of the mores? In some respects undoubtedly. Teachers have to conform to the mores of their communities or lose their positions. Indeed school and college authorities are likely to demand higher standards from teachers than prevail in the community at large. One indication of conservatism, although of course it has no application to the 1,200 unmarried women of the report, is found in the fact that in the table of frequency of divorce among those of various occupations, teachers are near the low frequency end, along with clergymen and farmers. The women of the group of 1,200 who are not teachers and social workers are less dependent upon conformity to the mores for their positions. Nevertheless they are likely to be at least as serious and prudent as the average group.

All this goes to show that there is a considerable minority that in 1920 approved of pre-marital sex experiences for both men and women, but that a large majority of a fairly conservative group did not approve such practices.

It would be interesting to know how young men feel about sex experiences—not for themselves, but for women, i.e., do they marry the women with whom they

[11] R. S. and H. M. Lynd, *Middletown*, N. Y., 1929, p. 209.

themselves (unless already engaged) or other men have had sex experience? I know of no statistical evidence, but it may be doubted whether women who had gained a reputation for numerous or even occasional experiences would be sought in marriage by men of ambition and high in social standing.

Proposals for dealing with the dilemma have not as yet gained general acceptance. The older remedies offered were chiefly along the line of supplying other outlets for vigorous sexuality. Thus the committee of the British Social Hygiene Association:

> The hardship can be diminished without resorting to promiscuity or any other form of incontinence—by the pursuit of activities, ideals, and ambitions which will serve both as an outlet for personal energies and incidentally promote the earlier possibility of marriage.[12]

That parents who can afford it should make a point of aiding their children to marry young instead of bequeathing them property at a later period when it may no longer be valued or needed has necessarily a limited appeal, for most parents exhaust their surplus funds by the time their children have completed their formal education. "Companionate marriage" as proposed by Judge Lindsey [13] aims at meeting existing evils by certain legal measures. Companionate marriage is defined as "legal marriage with legalized birth control, and with the right to divorce by mutual consent for childless couples, usually without payment of alimony." It is a program which proposes to "legalize, stabilize, and direct certain of the customs, privileges, and practices of modern marriage,

[12] Cited in Spaulding, *Twenty-four Views of Marriage*, N. Y., 1930, p. 404.

[13] Ben Lindsey, *Companionate Marriage*, 1927, Preface.

practices which are already in widespread use, but which have no legal status or direction." Like many other programs for reforming evils, it trusts largely to legal means. It is true that at present birth control is practiced by many young married people who feel financially unable to undertake the expense of children. It is true that birth control is also practiced by unmarried persons, and that some young people fear to marry because ignorant or because doubtful of the reliability of contraceptives. It might aid in certain respects to legalize what is now done illegally. But it does not meet other aspects of the difficulty. It does not encourage young people to begin early to rear children; its tendency would rather be to postpone the coming of children. The fundamental economic causes of postponement remain.

III

Third tension: Love versus reason. For the elevation and emotional refinement of the sex relation the reliance in America has been upon transmuting physical attraction into love. Girls have been taught and have believed that it is love which really makes true marriage. Marriage for money, or position, or for other ends of a purely rational sort has been regarded not only as not the ideal, but as dubiously moral. This has not been carried to the abstract logical consequence of claiming that love is the only prerequisite for sex relations; the religious or civil ceremony has also been held to be essential not only to legitimate marriage obligations and the children that may follow but to make the relation "right" and "honorable." As stated by the Report of a Committee of the Federal Council of Churches:

The New World, while inheriting the traditions and institutions of the Old, has yet been singularly free to develop a life of its own, comparatively unshackled from the past. Countless young people in this land have seen in marriage not only a monogamous relationship, but an inspiring vision of devoted loyalty and lifelong companionship between one man and one woman. Most of our young people love like that at one time or another, and all of them desire to do so.

This American ideal is now attacked from two quarters; and what is more serious in the long run, it has an intrinsic weakness due to its emotional character which is liable ultimately to affect the stability of the marriage to which it lent grace and beauty. Consider, first, the more external attacks. Both tend to lessen the importance of joining sex to the sentiment of love.

To refine and elevate sex by transmuting physical passion into love—such has been the ideal. So transmuted and refined the passion becomes one of the great experiences which enrich and dignify life. The great number of men and women do not find in their ways of earning their daily bread any very thrilling career. A job is for most a necessity, and unemployment means loss of morale. But after all, a job is—a job, and not an emotion. Earlier society found in religion and various communal celebrations—in what Professor Dewey has called the "consummatory" sides of living—an element of participation in common emotions of joy or grief, triumph or defeat, which modern life does not afford. For many, love was the one experience that gave tenderness, reverence, and meaning to the common round.

Mr. Joseph Wood Krutch in his thoughtful reflections upon The Modern Temper, sees this value disappearing below the horizon in some at least of the representative authors of the day. No longer a supreme privilege, love

as treated by these authors is physical experimentation, casual, cheap, and insignificant. It implies little value of any sort; it lacks power to lift life; it is too unimportant to justify moral concern as to sex relations. This attitude portends, in Mr. Krutch's phrase, "the death of a value."

Another line of thought which likewise tends to minimize the value of joining sex with love is the French view of marriage in relation to love on the one side and family on the other. The French view regards the family as of great, if not supreme, importance. It believes, therefore, that marriage, as the pre-condition of the legal family, should not be left to the choice of young people who are swayed by emotion, but should be arranged by parents who will be guided by reason. Emotion is not important; a sentiment of esteem based on companionship and cooperation may be expected to follow. Common interests, financial and parental, will cement the union firmly. Emotional attachments with sex experience of a casual sort are unimportant and present no ground for disturbing the marriage relation. "In the absence of children, sexual relations are a purely private matter." "The importance attached to adultery is quite irrational." [14]

Undoubtedly the tendencies to separate sex relations from love have been aided by the spread of birth control knowledge. If sex experience is not expected to result in anything further, an external motive for taking the relation seriously is removed. As in other critical experiences of life, the moral situation becomes more difficult when there is freedom of choice and when external motives of rewards and fears are removed.

The most penetrating analysis that the writer has seen

[14] Bertrand Russell, *What I Believe*. Cf. *Education and the Good Life*, p. 221.

of the present moods is found in an article by Edward Sapir in *The American Mercury*. Says Professor Sapir:

> Europe may laugh and shrug its shoulders but America can be shockingly stubborn on what she feels to be the fundamentals of life. It would be nothing short of cultural disaster if America as a whole surrendered to continental European feeling and practice. With religion in none too healthy a state, and with the esthetic life rudimentary and imitative, America needs an irrational faith in the value of love and of fidelity in love as perhaps no other part of the occidental world needs it today.[15]

The intrinsic weakness of making love the important condition for marriage lies in the emotional quality of love, and the transient character of emotion. Usually the first person with whom one is in love is not the permanent object of affection. In many cases when it is without sufficient rational basis in the possession of similar backgrounds, interests, and tastes, emotion is especially transient. The marriage comes to be regarded as disappointing. Divorce is sought as a remedy. The solution is easy to state in general terms—use greater foresight and supplement emotion with rational weighing of relevant considerations. The difficulty of course is that emotion tends to exclude reason.

An aggravation of the intrinsic difficulty comes from the hit or miss way in which our young people in cities are almost forced to make acquaintances. In a rural or small town environment there is a source of difficulty in the limited number from whom selection is possible. But those who live in the country are known to each other and to parents. In the city there are, broadly speaking,

[15] Edward Sapir, *The American Mercury*, April 1929; reprinted in Spaulding, *Twenty-four Views of Marriage*, N. Y., 1930.

no neighbors. Multitudes of young people stream into the city to earn their living. "I'm awfully lonesome since I came to Chicago," the plaint of the young man of whom Jane Addams tells in her classic, *The Spirit of Youth and the City Streets,* is a word echoed by many. The public dance hall is hardly an adequate solution. Neighborhood settlements reach only a limited number. Churches are confronted with polyglot races and religious divisions. Our old methods of making acquaintance fail in the city.

That better opportunities for acquaintance and better education may do much to help wise selection is indicated by the studies of marriages formed by graduates of coeducational schools and colleges. Dr. Davis's study showed a "probably significant difference in the percentage of happy marriages in favor of the college women." [16]

IV

Fourth conflict: Freedom, self-expression, independent life versus control by moral and social conventions, and the pooling of interests and mutual interdependence of marriage and family.

The older mores knew less of this conflict because of what John Stuart Mill called "The Subjection of Women." For the church, the man was "the head of the woman," for the naïve reason that "Adam was first formed, then Eve." The wedding ceremony provided the basis of unity in the bride's promise to "obey." The Common Law was even more simple in its solution. As stated by Blackstone, "The very being or legal existence of the

[16] K. B. Davis, *op. cit.,* pp. 41 f. "The percentage of college women in the Happy Group is 77.3, while in the Unhappy Group it is 66.9."

woman is suspended during the marriage or at least is incorporated and consolidated into that of the husband, under whose wing, protection and cover she performs everything." In this the Common Law was far more extreme than the Civil Law, as the latter survives in the conceptions of community property in those of the United States which have been affected by French or Spanish systems. Facilities for education of women beyond elementary schools were almost nil in the United States until the establishment of "academies" early in the nineteenth century, and of "seminaries" somewhat later.

Meanwhile two revolutions were in progress—and are still at work—which have changed the situation and created the present tension: the industrial revolution and the revolution in ideas.

The industrial revolution has taken industry from the home to the factory, has taken men, women, and children away from the home for work and for recreation, has changed us from a nation of country and village dwellers to a nation in which the city with its wealth, its jobs, its careers and opportunities, its pleasures, leadership in thought, political power, and social prestige draws the young and rules all of us in subtle ways. Its influence upon all the conditions of family, marriage and home has been directly and indirectly to loosen the older economic bonds which were an important influence in keeping the family together when husband and wife were economically mutually dependent.

The revolution in ideas began on the one hand in the religious-political field as a struggle against authority in church and state; on the other in the religious-intellectual field as a challenge to authority, and an appeal to science, to reason, to individual liberty of thought. The political-religious revolution had its high tides in the Reformation,

and the English, American, and French Revolutions. Its more recent waves have been seen in the substitution of democracies for monarchies, and in the admission of women to the suffrage. The religious-intellectual revolution had its high tide in the shift brought about by the advance of science, especially by the doctrine of evolution. Our present generation has seen fundamental shifts from authority resulting from the evolutionary theory as applied to religion and the Bible.

The general shift away from the older constraints of religion did not at first affect sex mores, except perhaps as it may have contributed slightly to the increased frequency of divorce which attracted notice in the later decades of the nineteenth century. But in this century and especially since the World War several factors have combined to disturb the mores all along the line from the attitudes of adolescents, through attitudes toward marriage, divorce and child-bearing, to attitudes of parents toward children and of children toward parents.

Perhaps neither the urge toward individual liberty nor the substitution of the scientific way of looking at things for the authority of the scripture and the church would have been effective in undermining the settled attitudes of the majority of Americans toward the relation of the sexes if economic and social changes had not contributed to the forces of change. These include change from country to city with loss of neighborhood consciousness and control; change from agrarian life to industry or business which again carries with it a shift from conservative ways and stronger influence of the local church to more varied and mobile ways of thinking; increase in wealth which makes possible greater independence of action; the rise of an upper class distinguished by wealth, restive under social

restraints and able to break over them with relative impunity from effective public sentiment.[17]

The change in mores was first apparent in the increase in divorce coupled with a change of sentiment toward divorced persons. This increase in the frequency of divorce began to attract attention in the closing decades of the last century and has continued at an almost uniform rate of increase for each decade. In 1870 the number of divorces granted was 10,962; about one in 3,500 of population. When on an average only about two persons in a town of 3,500 people obtain divorces in a year it would not signify an important factor. Or by another comparison, if there were in such a town thirty-seven marriages in that same year the divorced persons would be in a negligible minority. In 1926, however, in such a community there would be only slightly more marriages than a half century ago, but there would be nearly 5.6 divorces. There would be about twenty-one divorced persons living in the community who had not remarried and a considerable number of divorced persons who had remarried. If a proportionate number belonged to the wealthy and socially influential class the influence upon the mores could not fail to be felt. As a matter of fact, while the census reports do not designate the financial or social standing of those who obtain divorces they do show that the urban divorce rate is considerably higher than the rural divorce rate. The city in this as in other respects sets the pattern which the country will not wholly disregard, however great may be the lag. The change since 1870 in the ratio of divorces to marriages from one to thirty-seven, to one to six, is then both an index of change in mores and indirectly a force making for such change. When those who set social patterns, whether

[17] *Cf.* W. G. Sumner, *Folkways*, p. 376.

residents of New York or of Hollywood, adopt a new style it is likely to be followed. It may seem inept to mention New York since the divorce rate in New York is low. But the rate of divorce in New York City is undoubtedly reduced by the mass of Jewish and Roman Catholic population, while the wealthy frequently resort to Reno or Paris where the legal grounds for divorce are less restricted than in New York.

At the present time there is still opposition to divorce among the clergy of several Protestant denominations although few refuse absolutely to perform the wedding ceremony for divorced persons. The Roman Catholic Church does not permit divorce. The increasing number who care little for religious authority go their own way, and can usually find enough friends or associates who either approve divorce, or at least consider it a matter that concerns solely the parties, to feel no social ostracism.

Some disapproval remains. Clergymen would find it difficult to retain a parish or find a new one if divorced. Schools, colleges, and many universities, while not perhaps setting any rigid rule, certainly do not favor divorced persons, although their attitude may depend on the grounds for granting the divorce rather than on the divorce itself. A divorce on the ground of cruelty, meaning merely disagreement or desertion, is not on the same plane as divorce on the ground of adultery or habitual intoxication and abuse. Somehow we are more scrupulous as to our children's morals than as to our own. We wish the teachers to set a good example.

Mores as to marriage have probably not changed so much as those relating to divorce. There is at least no general disposition to revolt against the institution—provided it is not too permanent in its obligations. A larger percentage of the population was married in 1930 than in

1920, namely 60 percent of males fifteen years and over, and 61.1 of females fifteen years of age and over married, or for the whole population in 1930, 60.6 as compared with 55.3, 55.7, 57.3, and 59.9 for the census years 1890-1920.[18]

In maintaining marriage the moral and religious support of the mores is strongly reënforced by legal and economic considerations. Waiving for the moment any scruple as to casual sex relations and any question of social disapproval, two facts cannot be disregarded: First, when a woman enters into sexual relations with a man (unless she takes the purely professional attitude of the prostitute which for most would be unthinkable) she incurs a serious economic risk. She assumes a share in the responsibility of parenthood and if the relation is casual and involves no coördinate responsibility on the part of the man, she is left with a heavy burden; the woman pays. No man who cares for a woman in the way that refines and dignifies the sex relation would wish her to be placed in such an unfair situation. And few women could contemplate calmly the probability that children with no father must be handicapped in making their way in the world. Economically, as in other respects, youth and beauty are assets to a woman. In a world industrially and commercially organized as is our American society a woman cannot disregard entirely the economic risks of merely casual relations even if she were willing to assume the risks of social disapproval and the more personal risks of emotional stress and disintegration.

The main influence of the law on the marriage institution is doubtless through its provisions for property, inheritance, and support, rather than through its prohibition of unlawful cohabiting. Fornication is seldom

[18] *World Almanac*, 1933, p. 334.

charged unless the circumstances render it flagrantly scandalous. The background of feeling, built up by centuries of religious and civic tradition, that unions of man and woman are so serious in meaning and implications as to be "affected by a public interest"—to borrow a legal phrase from another application—still holds. Persons who have been unfortunate in one marriage do not hesitate to contract another. The scheme envisioned by Dr. Watson of mating "without responsibility" and wholly at the pleasure of either party, has evidently not as yet made wide appeal.

But when we look not at the number of marriages but at the internal conditions statistics fail us. Are men and women more or less faithful to the spirit of the institution than formerly? Is there any sign of a relaxation of the disapproval of adultery in the sense, say, of the French point of view? The American mores have made sexual infidelity crucial. In all states which permit divorce at all adultery is a legal ground for divorce. It is not necessary, as until recently has been the law in England, that adultery by the husband must be joined with some aggravating circumstance such as desertion. And so far there is little indication that the French attitude is gaining ground, despite Bertrand Russell's advocacy. The monthly magazines which have widest circulation in homes do not publish stories which tell approvingly of such attitudes. And these magazines aim to be in harmony with the mores, not of the most daring but of the upper middle and middle classes. Deep rooted is the feeling for some ordering and stability in what we regard as the most important matters. Some restless natures are restive under any institution which in any way opposes obstacles to complete freedom of individual action. The mores embody the feeling for order and stability, but

at times yield slowly to change. At present they are yielding in respect to divorce. Perhaps this is a safety valve which saves marriage from more fundamental changes.

To quote once more from the penetrating analysis of Professor Sapir:

> The moral atmosphere in America is only superficially similar to that of continental Europe. One of the surest signs of the essential difference in outlook is the rapidly increasing divorce rate. Bewailed by domestic moralists and deplored by our European visitors, the ease of obtaining divorce in America is actually an indication of our restless psychological health. Were the institution of marriage and the family actually divorced in sentiment from the sphere of sex indulgence there would be no reason why a tolerance of marital infidelity should not come to be accepted in America as it has long been in France. But anyone who imagines that America can with a clear conscience settle down to the reasonable and gracious distribution of individual pleasures and familiar ceremonies that seem to suit the French genius knows very little about the American temper.[19]

[19] Sapir, *op. cit.*, pp. 357-58, in Spaulding, *Twenty-four Views.*

CHAPTER VII

THREE MORAL DILEMMAS OF BUSINESS

The general attitude toward business considered from a moral point of view is mixed, not to say, perplexed. On the one hand business has commended itself to popular judgment as efficient, as progressive, as adventurous in attempting large things, as successful in amassing vast capital, financing enterprises of value to the public, giving employment to millions. We have been wont to feel that a business administration of a city government or a school system represents all that may be desired, as contrasted with one governed by "politics." Men at the head of great business organizations make the front page in the daily press when they have any comment to offer on government, religion, education, and the welfare of the country. They occupy the place in public interest which in other days was held by kings and generals. And as the king can do no wrong, they have been on the whole admired. (As the French lady remarked of Louis XIV and the lavish luxury of Versailles, "Well, anyway, he left something to show for it.")

On the other hand, we have no less striking evidences of an opposite attitude. Mr. James Truslow Adams, who was once a business man and is now an historian and essayist, writes in almost vitriolic language of "Our Business Civilization." Foreign critics, of course, pounce upon this phase of American life as if it were peculiar to this country, and write of "America, the Menace." But if we set aside the opinions of historians as belonging to

the intelligentsia, and of foreigners as prejudiced, we still are left with legislation intended to curb various business practices which are supposed to be against public policy. We are all familiar with the Sherman Act, with factory legislation, with the Interstate Commerce Commission, with inspection of banks by federal or state officials, with supervision of insurance companies and public utilities. We know, too, that probably no party would dare to nominate for President of the United States a man who was suspected of connection with Wall Street, even one who had been the head of a great business. All these facts indicate at least certain reservations in the public mind as to the extent to which business can be trusted. But perhaps objection may be made to this line of evidence. "You are citing laws," the critic may interject, "but laws are made by politicians; everyone knows that politicians have to enact laws to justify their existence and to win votes. This evidence proves nothing." Well, we reply, it at least proves that some voters do not entirely join in the chorus of praise which would give business a free hand.

But let us for the moment waive this matter of restraint by the Congress and by legislatures. There still remain the courts. No one accuses the courts of bias against business; under judicial interpretation many an act of legislation restraining business has been declared void; and certain other acts have been construed in a sense highly favorable to corporate interests. Yet we find business occupying a large part of the time of the courts. Doctors, teachers, even lawyers, except in their capacity as attorneys, seldom appear before the bar, but business almost rivals the bootlegger as a litigant.

Why? Not, I take it, because business men as men differ from other men. Those whom I know are human,

with the same mixture of strength and weakness, and about the same degree of public spirit and liberality as professional men display. The reason for the public's perplexed attitude is to be sought, not in the personal character of business men, but in the *nature* of *business,* as understood and carried on. Business is confronted by certain moral dilemmas. In these dilemmas it is not a simple matter of seeing clearly two paths, one right, the other wrong, and then making a choice. It is rather a case of conflicting interests and complicated situations, where even courts render varying decisions or decisions by a divided bench. No wonder that the public is uncertain of its position.

Before taking up these dilemmas, a word as to historic background may be in place.

In the Middle Ages the church, on one hand, and the social system of classes, on the other, regulated business. The church aimed to restrict the pursuit of gain, to determine fair prices, to forbid usury; it forbade forestalling. The social system fixed the scale of living for noble and for peasant. Men knew what to eat, what to wear, where to live. The modern world, in the interest of greater freedom and expansion of individual life and ambitions, separated spheres of living and institutions from direct moral control. Politics, for Machiavelli and modern governments, should be politics—not morals; art for Renaissance artists, should be art—not morals; business, for the new middle class, just emerging to its place in the sun, should be business—not morals. Monopoly was abhorrent—that savored of royal favoritism. Gild regulation of quality and price savored likewise of constraint. As the natural liberty of mankind became the basis of law with Blackstone, freedom of competition gained analogous favor among merchants. The old con-

flict between selfish love of gain, on the one side, and justice and the common weal, on the other, was beautifully adjusted by Blackstone and Adam Smith. According to Blackstone, the creator "has so intimately connected, so inseparably interwoven the laws of eternal justice with the happiness of each individual that the latter cannot be attained but by observing the former, and if the former be punctually obeyed it cannot but induce the latter." Adam Smith held that when each sought his own profit he was led, as if by an invisible hand, to benefit the public.

To the fundamental theory of liberty as upheld by Adam Smith was added the substitution of the market as the standard for prices and quality, and the impersonal corporation as the effective agency for carrying on business in the great society of modern times. The market standard reflects what men want, not what they ought to want. It shows what they are willing to pay, not what by some standard of morals or the social system the article is "worth," or what a "fair" price is. The impersonal corporation formed for profit represents in clearest degree the separation of modern conduct of commerce and industry from all control by religious authority and the moral standards and restraints grounded in the older professedly personal relations of man to man in kinship, neighborhood, or civic community. Such moral terms still used in business as "honest," "honorable," "reasonable," speak unmistakably of community life; "value" and "worth" suggest a distinction, if not between what men want and what they ought to want, at least between passing fancy, an appeal to momentary appetite, and a more well-considered, lasting want or desire. To turn over all standards to the market was to lay a foundation for future conflicts unless the market should provide some substitute for the older standards when man dealt with

his fellow and faced the consequences of his dealing. In some degree business has sought to set up and maintain standards of its own; yet self-government in business is both uncertain in its standards and weak in its enforcement.

Of the moral dilemmas of business, six appear especially in evidence as setting problems for the mores: market standards of price, market standards of quality, the profit motive, competition, the trend toward combination and expanding power, and finally speculation. All these activities, or phases, may be regarded as consequences of the separation of business as a self-regulating process; all are seemingly in the line of scientific and technical advance; yet all conflict with deep moral convictions of at least much of the public opinion of our day.

I

Market standards of quality represent a plausibly democratic method of regulating the quality of what is made, sold, bought, and used or consumed. Instead of quality fixed by church, or government, or social class, what better method could be followed than of letting the consumer decide what he wants? If he wants inexpensive goods, give him the opportunity to get them; if his taste demands more durable or precious articles, gratify that taste. Who would wish to have all his choices dictated by someone else, however wise and prudent that someone might be? Under war-time stress people might submit to standardized brands, and to regulation of food and clothing by public need as determined by the public food administrator, but when peace came all were glad to select once more what they preferred. It may seem that there is no room for argument.

But consider what has been going on to render the market standard suspect. In an old-time market purchasers bought goods of whose quality they were, in the main, competent to judge intelligently. The man was a judge of cattle, the housewife of clothing; no such bewildering variety of products, fabricated into attractive articles and put up in alluring packages, tempted the eye; chemistry had not disguised tastes and spread its display of colors. More important, advertising had not come to capture the reader's confidence by its glowing statements; salesmanship had not learned the arts of overcoming sales-resistance. If a doubtful buyer asked his neighbor's advice he could get a neighbor's opinion; the art of securing "recommendations" from notable persons for a price had not arrived. Many articles now on the market—patent medicines, mining stocks, adulterated products—are pure frauds. The marketing of real estate in localities remote from the buyer, the marketing of all sorts of stocks and bonds of whose substantial value the buyer has no means of reliable information, have opened the door to a flood of deception.

But even apart from deception, which Better Business Bureaus and Consumers Research endeavor to expose, there is a problem. It is generally recognized that to "commercialize" art or journalism or education is to lower or at least to endanger its quality. To commercialize means to "give the public what it wants," i.e., to place in the market what will bring the largest money return. The high-minded firm wishes to retain for its food products, its clothing, its motor cars, its radio sets, a high standard of quality, even as the high-minded publisher wishes to publish a good newspaper. The demand of the market sometimes works against his desires. The

worse currency drives out the better. The market may select successively better types of radios and motor cars; it is not so successful in the cases where the public is not so competent to judge. Pure food laws and blue sky laws attest the public judgment and the need of protection to health and property which the "market" can not—or at least does not—afford.

II

The market sets the price. Is the market price a "fair price"? The "old-fashioned honesty" used to speak of charging more than an article was worth, or of taking advantage of a seller's necessity to drive a hard bargain. Admitting that bargaining between equals may give the nearest practicable approximation to a fair price, there are two kinds of transactions that raise questions for business morals.

When the market itself is "rigged" or manipulated to give fictitious prices, how can the market price justly be called the "fair" price? The circulation of false reports of crops, or of the financial condition of a business, is so crudely dishonest as to be generally disapproved or even punishable by law. But the public is not convinced that the rise and fall of securities in the market register intelligent and honest bargaining. Securities were offered in the heyday of the 1920's that have proved worthless. Insull securities were offered to a selected group of insiders at prices which caused a member of the Senate Investigating Committee to inquire whether the purpose was "to make them look better to the suckers who were ultimately expected to buy them." The whole intricate record of the Insull operations and manipulations has not yet been disclosed, but there is suspicion

that the Insull securities were not the only ones that sold for fictitious prices in a manipulated market.

Disliking the term "manipulation" promoters of stock sales at fictitious prices prefer to speak of "making a market." Mr. John T. Flynn in *Harper's Magazine* of September 1933 prefers the homely phrase "The Wall Street Water Pump." Stock which represents little or no capital actually paid in to the enterprise is given a market price by the promoter. His device is to buy through one broker and sell through another. The trustful public is attracted by the stable or rising quotations and is allured into the market thus "made." Mr. N. R. Danielian in the *Atlantic Monthly* of July 1933 finds the scientific term "expansion of gas" suggestive of the expansion of securities.

Mr. William A. Gray, counsel to the Senate Banking Committee, reviewing the evidence collected by that committee in its investigation of the stock market, is reported by the Associated Press of March 16, 1933, as stating that the evidence showed a number of practices that to the outsider would seem to confirm Mr. Capone's opinion, "It is a racket." Some of these practices shown by the evidence are: manipulation of the market; employment of traders to stabilize the market; buying and selling of stocks by officers of corporations on the basis of inside information and in such a manner as to prevent the public from knowing of their dealings; pegging of prices in order to permit issues to be sold to the public at a fixed price. Most disturbing of all for those who try to inform themselves through the press as to values of securities is the following: "Subsidizing of newspaper men and others whose business it was to disseminate information for brokerage houses and traders with regard to a particular stock in order to aid the market manipulations, with their services paid for in a substantial man-

ner." At least, then, there was one "substantial" aspect of the transaction!

The second case in which the market fails to give a "fair" price as measured by older standards is such a situation as has confronted the farmer for the past decade, during which prices for what the farmer sells have steadily declined, prices for what he must buy have either remained at war levels or have declined much less than those of farm products; taxes have fallen more and more heavily upon farmers as the only class that has all its property in full view of the assessor; and finally payments of interest and principal of debts must be made in money which in relation to prices of farm products is highly difficult and expensive to come by. In one respect this market is also "rigged." The farmer sells in a world market and buys in a market stiffened—some might say "rigged"—in the interest of industry and business by protective tariffs. To some extent the situation is due to the unorganized condition of agriculture which has not learned how to match production to demand. But to some extent the fluctuations of prices are not yet sufficiently understood to make clear how depressions can be avoided, or how certain classes can help being pinched in the vise of a rising or falling market. The shrewd or the lucky may escape, but to the older standards of justice such a market standard offers a problem not yet clear. Professor Holt has suggested [1] that as regards the farmer's plight the danger is that unless relief is found the farmer may sink to the level of the European peasant class. This would mean much more serious consequences than hardship for a number of individuals. It would change the whole character of rural life and institutions—church, school, social

[1] Arthur E. Holt, *Social Justice for the Farmer! The Chicago Theological Seminary Register,* Jan. 1933, pp. 7-9.

standards, ambitions. It would cut off a large source of supply of strong, vigorous, well-reared young men and women such as now come to the cities to help build their industries, business, professions, and institutions. If this is a sound diagnosis we have the market determining not only pecuniary matters but the fundamental bases of social structure, and with these of social morality.

III

The third dilemma in business morality is that between profit-seeking and public welfare. The one horn of the dilemma is: No business can be carried on long unless it shows a profit, hence the business man must seek a profit or commit economic suicide. The other horn of the dilemma is: Excessive profits are condemned by public opinion and in any case the pursuit of profit is not the same as pursuit of the general good and may lead to flat defiance of public good.

Evidence that the American people recognize the conflict between profit-seeking business and public welfare is abundant. Undoubtedly we are not all of the same mind on many points. Individualism has been acclaimed as the American policy. Laissez faire has been urged often by those who were sure that it was all right for the government to grant them special privileges, but all wrong for the government to interfere when, to increase profits, they put the screws on to the consuming public or the competing rival. Business men have at times persuaded themselves, and even a considerable part of the people, that whatever helps business helps the country and whatever hurts business hurts the country. To investigate corruption of city or national government has frequently been regarded as hurting business.

It needed no appeal to the *Wealth of Nations* to foster laissez faire in America. In a country where practically all the necessities, comforts, and luxuries had to be extracted from the soil, when the trader by making goods available performed a public service easily recognized, and when virtually everyone could be an independent farmer or craftsman or trader, the doctrine that private gain helped all was measurably true. The main point of earlier conflict was that between debtor and creditor. Manipulation of the currency in the interest of lenders was suspected. The debtor in desperation organized a Shay's Rebellion. Whether right or wrong financially, President Jackson's hostility to the United States Bank represented a very general feeling of distrust. But when in the seventies the railroads seemed to the farmers of the Middle West to be exacting freight rates that were responsible for low prices of farm products, a new attitude developed rapidly. Welcomed eagerly at first as enabling the farmers to market their crops, the railroads now found public opinion against their alleged excessive rates. The Granger legislation gave sharp challenge to the doctrine that individual profits necessarily coincided with public welfare. The court in sustaining an act regulating warehouse charges formulated the conception of "property affected with a public interest." Under the cover of this conception a mass of state and municipal legislation and orders has been adopted and judicially upheld.

All anti-monopoly and restraint-of-trade legislation reflects distrust of the profit motive. Public health and safety are protected from the profit motive by pure food laws and factory laws. Even so humane a policy as prevention of accidents and restriction of child labor could not be left to the mercies of business. Most extreme of all conflicts is that of the control or prohibition of the

sale of intoxicants. The business of brewing and distilling was formerly entirely respectable. In Europe it still is. In America since the Maine prohibition law of 1846, which was followed by similar laws in many other states in the 50's, and in nearly all parts of the country by some attempts at regulation until the adoption of the Eighteenth Amendment in 1919, growing opposition to the business as a business has been apparent. The profit motive, it has been alleged, stops at nothing in its aim to increase sales and is flagrantly opposed to public welfare. Many who regard prohibition as unsatisfactory would remove the profit motive by having the state control the sale as in Canada.

If the majority of voters in the country distrust the profit motive in monopolies, in agreements in restraint of trade, in public utilities—railroads, lighting plants, gas plants, street railways—in purveying of foods, in the management of factories, in the sale of intoxicants, what remains? Blue sky laws in many states aim to control the sale of securities. Insurance companies must satisfy state commissioners of their ability to meet their contracts. Banks must be periodically inspected by national or state examiners. In many cities even farmers are not trusted to market milk unless their dairies have been inspected and their cows tested for tuberculosis.

When we look not at legislation but at critical opinion as to the profit motive in journalism and public entertainment, we find similar distrust. Newspapers have very generally ceased to print advertisements of cure-alls, fake remedies, fortune-tellers, and fraudulent enterprises, but the temptation to exploit scandals and sensational matter is not so well resisted. The commercialized stage and moving picture are not trusted by those who are concerned with the morals of children. And, finally, the pro-

fessions jealously contrast professional standards with commercial practice.

So far the evidence of distrust of the profit motive. But there is evidence on the other side. We distinguish business practices injurious to the consumer from those which affect the public in more general ways. As to the first there is no doubt that certain firms command and deserve the confidence of customers. The practice by many firms of allowing goods to be bought subject to approval and returned if not satisfactory implies reliability. The extensive business of mail-order houses is conducted on the plan that the customer shall send the price of the article in advance and also have the privilege of returning the article if unsatisfactory. Descriptive statements in mail-order catalogues are carefully worded instead of following the custom of claiming superlative merits. In this case as in general where the interest of the merchant is in satisfied customers, confidence is likely to be maintained.

The coöperation of business men in trade associations, Better Business Bureaus, and similar organizations must also be taken into account. These associations have adopted codes of trade ethics. Most of these codes are intended to stabilize and standardize policies and practices between members of the association rather than to protect the interests of the consumer directly, but the Better Business Bureaus, the Periodical Publishers' Association of America, the Associated Advertising Clubs of the World, the National Association of Credit Men, have done much to expose or restrain fraudulent enterprises and to set standards of advertising.

The National Industrial Conference Board's study of Public Regulation of Competitive Practices,[2] based on

[2] *Public Regulation of Competitive Practices,* N. Y., 1929, p. 268.

investigations by M. W. Watkins sums up its general conclusion as to the importance of these voluntary efforts as follows:

> The transformation going on in the commercial world from cut-throat warfare, with its subordination of ethical to profit considerations, toward a more chivalrous competition may have been aided by the administrative regulation of business practices. But that it is fundamentally a spontaneous conversion is indicated by the significant development latterly of these voluntary organizations which would purge trade competition of corrupt and unfair methods.

The plain fact is that the ancient maxim "Honesty is the best policy" held true in dealings when (1) future dealing with the same person could be expected, or (2) repute for honorable dealings might be counted upon to follow such dealing. But at present in urban population a large share of trade is in single transactions with casual customers. A vast amount of business procured through advertising involves only a single purchase. And in our urban communities there is not such a steady body of customers who discuss transactions and build reputations. Shops change hands, customers move often; the best policy from the standpoint of profits may be to attract new customers by sensational advertising or by low prices at special sales.

The other motive which has in the past made for fair dealing has been the regard for the tradition of the group, for the neighbors or friends with whom one lived and did business, and for the approval of the group and of associates. This motive has largely been destroyed by the two great annihilators of personal relations and group mores, namely, the impersonal corporation and urban life. It is not strange that with the partial failure of the "best

policy" motive and the almost complete disappearance of the moral restraints due to personal and community relationships, resorts should be had to the law. Those who are continually complaining of the law-making urge, which adds to the burdens of business and to the cares of corporation counsel, should look for the causes. And these are not chiefly the vanity of law-makers seeking publicity, nor the enmity of the have-nots for the successful haves. The causes are that the profit motive stripped of moral restraints by the corporate impersonal organization has run riot in the opportunities thrust upon business by science and invention, by the rapid growth of markets and the shift from neighborhood trade to nation-wide customers who figure not as the men and women with whom one lives, but only as No. B-8765421. No social morality in the world's history has been exposed to such a strain. Nearest has been the extension of trade from domestic to foreign; dealings with foreigners, particularly with those who are ignorant, have always borne an evil reputation. Trades with the Indians for fur or land are notorious for lack of moral scruple. For many business purposes immigrants have taken the place of Indians. For others the maxim "A sucker is born every minute" excuses any deal that can be put over.

If the profit motive has had greater power and called out a greater mass of restrictive legislation in the United States than in Europe, the probable reason is that nowhere outside of the United States has such a combination of natural resources, rapid invention, and good markets invited the shrewd seeker for profits. The people are Europeans, or Europeans once or several times removed. But at home an Astor would have found no fur trade, a Vanderbilt no New York Central, a Rockefeller no oil, a Carnegie no such market for steel, a Ford no

such numbers of eager purchasers ready to buy and quick to learn the operation of the new automobile. The two influences, aside from personal scruples of conscience which have tended to offset the naked profit motive have been (1) the long-run policy of firms, which keep a high standard of quality and fair dealing, and find this a substantial asset as well as a matter of honor and principle; and (2) with others the law of the land. The whole point is not that business men are of inferior moral stamp as compared with the public which makes laws to restrain the practices followed in pursuit of gain. It is rather that to the extent to which business is business it is under high pressure to use methods which have no regard for the old morals of giving a fair equivalent, and of not taking advantage of a brother's or a neighbor's necessity or ignorance.

If the profit motive is distrusted in the relations between buyer and seller there has been even greater ground for distrust in the profit motive as a contributor to public welfare. By "public welfare" in this connection is meant that which is distinctly not identical with private interests. The older tradition as stated above, took little account of common wealth. Perhaps the most notable exception was the provision for reserving two sections out of the thirty-six in each township of land in the newer states to be an endowment for schools. And taxation for schools has always been regarded as an appropriate exercise of the power of the state. But it is only within the present century that certain radical conflicts between private profit and public welfare have become conspicuous.

Foremost is the exploitation of natural resources. No public opinion condemned waste of soil, timber, coal, and oil in earlier years. Everyone—lumberman, miner, oil-

well driller, farmer—was doing it, and the supply seemed inexhaustible. Future generations might be trusted to find substitutes if these particular resources should be no longer plentiful. It did not pay the lumberman to replant the cut-over area, nor could he afford to do it in competition with the lumberman who undertook no such public service. The coal miner could extract a part of the coal at less proportionate cost than to take it all. Chase has given an appalling summary of the "gutting of a continent." But after pointing out that the "history of the national conquest of America largely parallels the history of every other rich and virgin area—Canada, Australia, South Africa—" and noting the conditions under which the pioneers had to get their living—farmers, miners, lumbermen, hunters—he asks, "Is it more than you or I would have done?" [3] Of course, the pertinent distinction for our present point is that what is done by the pioneer to supply his own necessities is one thing; what is done on a vast scale for commercial purposes is another. The former may contribute to the public welfare, the latter is a shocking damage. It was not until early in the present century that those who could look forward beyond their own generation were able to get the public ear. The conservation of Natural Resources was one of the causes that appealed to Theodore Roosevelt, and his support did much to convert the Congress to lock the door before all the country's horses had been appropriated for private profit.

The morals of special privilege is another case of divided opinion. Is it good morals for an individual or group to receive special privilege from the government? "Yes," said Hamilton, the Federalists, Whigs, and Republicans, "if you mean a bank, a tariff, a railroad. For

[3] Stuart Chase, *The Tragedy of Waste*, N. Y., 1926, ch. XII.

these are a benefit to the whole country." "No," said the Jeffersonian Democrats and the southern cotton growers in Calhoun's day, for they help the bankers, the manufacturers, the capitalists, at the expense of the poorer classes, and the farmers. But with the advent of municipal franchises the issue ceased to be a party matter. New York, Philadelphia, Chicago, Cleveland, as Lincoln Steffens portrayed them in *The Shame of the Cities,* were induced by enterprising capitalists to grant immensely valuable privileges in gas, street railways, and other utilities. The corrupt action of the city authorities became notorious, but it is obvious that if officials were bribed the promoters did the bribing. Steffens [4] tells us in his autobiography that these bribers and corrupters were such straight crooks that he rather liked them. At any rate it is probable that they felt no scruples. They were usually men of wealth, and received social and even political recognition. At present the municipal plums have been largely handed out, but the control of power promises to afford fortunes to those who can get and keep strategic advantages. The efforts of public utilities to influence textbook makers and teachers, as brought out by the Federal Trade Commission, show ethics not unlike that of the earlier generation of privilege seekers.[5]

The newspapers at first gave space to the testimony elicited by the Federal Trade Commission. Some of it was certainly sufficiently startling to compete with the divorces of movie stars and the exploits of bottleggers. But for some reason the newspapers ceased to report the testimony. Perhaps in 1929 the general belief that everyone could become rich through speculation diverted atten-

[4] Lincoln Steffens, *Autobiography,* N. Y., 1931.

[5] Ernest Gruening, *The Public Pays,* N. Y., 1931; Jack Levin, *Power Ethics,* N. Y., 1931.

tion from the slow and steady methods of the utilities. But a Bryan may yet present the power question as a moral question, and then there will be an opportunity to test the opinion of the country.

Why should there be the division of moral attitude? How can we understand the hard-boiled callousness with which men who would not dream of defrauding a fellow citizen in a commercial transaction, and who have frequently been identified with churches and chosen to high office in government, have apparently felt no scruples in seeking special privilege, and even in taking "necessary" measures to secure such privileges? And further, how can we explain the lack of social conscience which condones such treatment of the public?

President Hadley in his Kennedy Lectures on *The Standards of Public Morality* stated the conflict clearly.[6] He saw that it was superficial to charge the lack of public spirit to the depravity of business men. Five hundred years ago under the feudal system of fixed status our ancestors had a coherent and well-defined system of public opinion. Every man's duties were defined for him. Under the system of liberty which took the place of fixed status and duties, old standards did not apply. Many drew the false conclusion that "because we have found it wise to let individuals serve society in their own way, we may therefore let them have their own way in everything, with the assurance that they will serve society in spite of themselves; that the selfishness of all men pulling apart and working for their own interest, can by some occult process be trusted to promote the common interest. For this extreme theory there is not one shadow of justification in human history." President Hadley then holds that the difficulty lies chiefly in that men have made

[6] Arthur Hadley, *The Standards of Public Morality*, N. Y., 1908.

Adam Smith's doctrine of the "invisible hand" (which it should be kept in mind was announced before the industrial revolution) a moral guide.

Professor Mecklin sees the same conflict [7] and finds one factor in the inability of a fixed and authoritative religious moral system to deal with a changed social situation. A second factor is that business has taken the lead in organizing the new resources and forces, leaving religious, political, and cultural groups behind. Hence the place occupied by the captains of industry. They "were to all intents and purposes a law unto themselves."

James Bryce comments on the power of wealth in democracies and places the United States first among the three—United States, France, and Canada—in which it is reputed to influence public opinion through the press or to secure legislation or the nomination of favorable judges by contributions to political parties. But he notes also the prevalence of corruption in England at an earlier period. He remarks that "money will always have power because the rich man has something to give which others are glad to receive," but believes that tone has "risen (1921) in the United States since 1890 where modes of gaining and using wealth once taken as part of the game are now under the ban of opinion." [8] If he were writing in 1933 he might make his statement stronger. The money changers in the temple were scourged in the Inaugural of the President.

Lincoln Steffens was at first stunned by the callous attitude of business toward the buying and selling of city and state governments, or of whole political parties. He came to understand what was meant by calling such pur-

[7] J. M. Mecklin, *Introduction to Social Ethics*, N. Y., 1920.
[8] James Bryce, *Modern Democracies*, N. Y., 1921, p. xx, Vol. I; Vol. II, pp. 454, 488, ch. LXIX.

chases "necessary." He concluded that when two powers divide the government the inevitable outcome is that one will attempt to control. Either the economic power will control the political or vice versa. America is working toward unification and equilibrium by one method, Russia by the other.

But the American people as a whole is not ready for the simplification of its problems by committing the government to the economic power. Despite the popular slogans of "less government in business, more business in government," large areas of the country are not converted to the beneficence of special privilege, and of rule by those selected "by the competition of the market"—to use the phrase of Justice Holmes. The South, notwithstanding the industrial development of iron and textile manufactures, is still largely agrarian. The interior states, west of the Mississippi, are likewise largely agrarian, and suspicious of the money power. In national elections the issue is never clean-cut. But the trend of legislation is steadily toward greater control of business in the interest of public welfare. Witness the increased powers given to the Interstate Commerce Commission in successive revisions, the addition of the Federal Reserve Banking system and the Utilities commissions of the several states, the recent Securities' Act and the emergency National Industrial Recovery Act. Hence the dilemma: Which is the ultimate court of appeal to decide what constitutes a reasonable profit and what makes for public welfare? Is it the American principle of economic liberty and individualism, or the equally American principle of the will of the people as the supreme law? [9]

[9] On the Profit Motive and Public Welfare, cf. Max Radin, *The Lawful Pursuit of Gain,* Boston, 1931; R. H. Tawney, *The Acquisitive Society,* N. Y., 1920.

CHAPTER VIII

MORAL DILEMMAS OF BUSINESS (Continued)

Competition has presented two dilemmas to social morality: the merits of competition as against monopoly or combination, and the uncertain boundary between "fair" and "unfair" competition.

IV

Competition came forward with high credentials from the modern business system. It was to be a substitute for the older moral regulation of trade by the church, and for the old feudal regulation of suitable standards of living by the status of the person in the social scale. It appealed to the average American of earlier days on three grounds: It offered a sporting contest attended by rivalry, the thrill of winning, and valuable prizes; it frequently reduced prices to the consumer; it was opposed to monopoly which had odious associations with grants made to royal favorites and often felt to be oppressive.

The sporting aspect of competition, a "fair field and no favors" applied to a situation in which there was a chance for measurably free competition and in which anyone might try his hand and brain to production. Very slight capital was needed to start a blacksmith's shop, a saw mill, a scheme for distributing palm leaf to sewing women and later gathering the sewed hats. The farmer produced so little surplus beyond what was consumed in his own household that he found market for his butter,

cheese, beef and pork. In the writer's native town, a typical New England community, there were at the time of the Civil War or shortly earlier, twenty-five independent industrial units making ten kinds of products, from building stone and scythes to woolen cloth and straw hats. At present all but six of the earlier units have ceased to exist. Two woolen mills are virtually the only productive units. The situation is fairly typical of what has happened in many regions. Retail stores have kept up the competitive theory longer but the chain stores and the mail-order houses are completing the process of larger and fewer units, which has had a spectacular course in the great industries of steel, wood, textiles, slaughtering of animals, and distributing of meat products. As a result of this rapid disappearance of independent units and therewith of free competition, the value of competition as offering opportunity to independent individuals has been greatly reduced.

How has the second supposed value fared? This, too, has sustained severe attacks. In various industries it has been found that to combine is far more profitable for producers than to compete and thereby cut one another's throats. Railroads, steel, oil, automobiles, rubber, farm machinery and indeed nearly all the principal manufactured products are made and marketed by huge corporations. A recent estimate [1] is that in 1927, two hundred of the largest non-financial corporations in the country controlled over 45 percent of the assets of all non-financial corporations, and controlled 35 percent of all business wealth. Dr. Means further estimates that "if recent rates of growth were to continue, 80 percent of

[1] Gardiner C. Means in the *American Economic Review,* March 1931. *Cf.* Laidler, *Concentration of Control in American Industry.*

non-financial corporate wealth would be in the hands of two hundred corporations by 1850."

Horizontal and vertical mergers have eliminated such intermediary agencies as jobbers; manufacturers deal with consumers. Banks have followed a similar policy of combination, and in some states of branch banking.

Uneasiness as to efficacy of competition was aroused when large combinations, called "trusts," began to appear fifty years ago. It seemed that instead of resisting monopoly competition could now be used to create monopoly. Small business concerns found themselves forced to combine or perish. In alarm Congress passed the Sherman Act in 1890. By this Act every contract or combination in restraint of interstate or foreign commerce, and all monopolizing or attempt to monopolize the same, are made misdemeanors. Most of the states had already adopted similar laws for local business or soon followed the pattern of Congress. For a period during which the interpretation of the law was in doubt, business did not take the moral problem very seriously. Combination was a legal problem, not a moral one. It seemed to resolve itself into this: In the Northern Securities case the Court had forbidden a holding corporation from controlling competing railroads. As one stockholder put it, "This means that instead of one white certificate in one pocket, I must now have two certificates, one pink, one blue, in two separate pockets."

To resist combination seems like resisting the inevitable. The legal ban seems to be opposed to a more economical method; combinations are in a position to give to the consumer a large margin which is wasted by competition. Of the ten cents paid for a cake of soap, it is often said five pays for the soap, the other five for being persuaded that this cake is better than some other cake.

But recently an argument more directly addressed to the public conscience has been presented. Waste of natural resources has been perhaps the most serious charge against American business. Forests, coal, oil, and soil have been both used and wasted at an appalling rate. Mr. Oscar Sutro of the Standard Oil Company of California is quoted in the public press of Nov. 10, 1931, as follows:

> The law sanctions the waste of our natural resources and renders our industries in that field defenseless against overproduction. They are the victims of fierce and destructive competition in a race that increases surplus production. In the copper industry stocks more than doubled in 1930 and despite prices below cost of production the surplus continues to increase in 1931. In the coal industry and in the lumber industry production far exceeds consumption and though prices decline the surplus increases.
>
> In the petroleum industry existing wells produce twice as much oil as can be consumed, yet new drilling has been carried on with titan disregard of consuming ability.

Public opinion among the laboring class as to the merits of the Sherman Act, and its attempt to maintain competition, was jolted into unexpected opposition to the Act by its application to certain activities of labor unions. The Danbury Hatter's case, which awarded triple damages to the hat manufacturer whose hats were boycotted by a union, destroyed one union weapon. The injunction against Debs and others who had led a strike which interfered with movement of trains and transportation of mails and goods, struck down another main weapon of union labor. Union men may have been guilty of a slight exaggeration in claiming that the only cases to which the Sherman Act was effectively applied by the courts were those

against labor, but there was good reason for alarm at the possible extent to which the law might be construed by the courts to restrain union combinations. Agitation by union labor procured the attempt through the Clayton Act to limit the issuance of injunctions in disputes between employer and employee. Employers flanked this move by the "yellow dog" contracts. But under the present conditions of industry laborers find little gain from competition and see no benefit from the Sherman Act. The large corporation is likely to pay as good wages as the small firm. What it may do to increase the cost of living is obscure, and in any case the facts seem to be that, law or no law, concentration of control is steadily advancing.

Laborers who do not belong to unions lack incentive for positive opposition to the Sherman Act and similar legislation, and probably regard the competition offered by chain stores as helpful to the family budget, but as regards the benefits of competition in supposedly rival employers bidding eagerly for their services, they are skeptical. Until the restriction of immigration, the supply of common laborers was nearly always in excess of demand. Since the restriction, the constant substitution of machines for workmen has operated in similar fashion. The gains in wages since 1914 have been due to war-time demands and in Ford's works to a new philosophy of high rates rather than to competitive conditions. The common laborer is therefore indifferent.

The farmer finds that competition in what he sells, plus no competition when he buys, make a desperate situation. Wheat and cotton growers all suffer from unlimited competition. Fruit growers who ship their products to Chicago and receive in return from the commission agent a bill for excess of charges over sales price are not en-

thusiastic. Cotton growers find that changes in styles are not dependent on competition so much as on the progress of science and invention or the incalculable trends of fashion.

Finally, economic writers are pointing out that changed conditions have upset the equilibrium between supply and demand which competition was supposed to secure. Particularly overproduction of farm products has been accompanied by inability of multitudes to find money with which to buy food. Even if, as it seems probable, the war is primarily to blame, it can at least be said that competition has done little or nothing to help. In fact, as Professor Veblen put it: [2]

> The system of free competition, self-help, equal opportunity, and free bargaining . . . assumes an industrial situation in which the work and trading of any given individual or group can go on freely by itself, without materially helping or hindering the equally untrammeled working of the rest. . . . It was a possible method of keeping the balance in the industrial system before the coming of the machine industry.

Professor John M. Clark sums up the arguments pro and con [3] and finds that as yet, despite its deficiencies, competition is still the best practicable method of social control for certain industries. Practically all economists agree that for natural monopolies—railroads, gas, lighting, the telephones—direct regulation or public ownership is the only alternative.

The interpretation of the Sherman Act which for a time wavered between a strictly literal and a less literal construction of its text finally settled down to the rule of rea-

[2] Thorstein Veblen, *The Vested Interests,* 1919, pp. 86 ff.

[3] *Social Control of Business,* 1926, pp. 38-39, 42-43, 146-69, 434, 444-47.

son of the common law, by which the actual effects of a given combination must be considered as well as the technical form of its organization. Viewed from this angle the United States Steel Corporation was held not guilty. Professor Taeusch [4] however believes that the year of the enactment of the Sherman Act marks the origin of Business Ethics in the United States and that this law "first represented the awakening self-consciousness of the American people to the broader social problems engendered by our business behavior." [5] It has served to bring home to business the responsibility of considering something besides profits. The Chamber of Commerce of the United States has asserted that "business should render restrictive legislation unnecessary through so conducting itself as to inspire and deserve public confidence." [6]

If the morals of competition versus combination is a somewhat muddy pool, the question, "What is unfair competition?" has come sharply to the front since Woodrow Wilson's championship of the New Freedom and the adoption in 1914 of the Federal Trade Commission and the Clayton Acts. Both English and American courts had for some time characterized certain practices as "unfair" or "unjust," or not "honest," or not "legitimate." Indeed, Commissioner of Corporations, Davies, found in his *Trust Laws and Unfair Competition* [7] fifteen main classes of such unfair practices appearing in common law decisions, besides a few miscellaneous cases. These common law cases were almost wholly brought as suits for

[4] C. F. Taeusch, *Policy and Ethics in Business,* 1931, chs. III-VII.

[5] P. 53.

[6] *Principles of Business Conduct,* XV, cited in Taeusch, p. 143.

[7] Joseph E. Davies, *Trust Laws and Unfair Competition,* Washington, Government Printing Office, 1916; *cf.* Wm. H. S. Stevens, *Unfair Competition,* Chicago, 1917.

damages by competitors who claimed that they had been injured. They introduced the reader to almost all the devices of militant business up to the present, except the "racket" as enforced by bombs.

State statutes have aimed both to protect competitors from each other, and to protect the consumer. Examples of the first class are laws forbidding bribery of an employee in order to induce him to place contracts with the firm offering the gift or gratuity. An instance of the second is found in laws forbidding false or misleading advertising of goods offered for sale. But the campaign platform of the New Freedom and the subsequent enactments of the Federal Trade Commission and Clayton Acts, focused public attention directly upon what had previously been the concern of parties directly affected.

The Federal Trade Commission Act followed the analogy of the Sherman Act in that it prohibited practices which had previously, under the common law, been matters for private complaint and suits for damages by injured parties. It differed in providing an administrative body—a sort of traffic policeman—to issue orders to cease and desist from unfair practices. The Clayton Act specified certain practices as unlawful. It may be remarked as bearing on the relevance of this legislation to our inquiry as to business morality that the Federal Trade Commission has been almost choked by the cases of unfair competition brought to its attention.

Professor Taeusch groups the principal unfair practices under Trade Piracy, Misrepresentations, and Espionage, Unfair Accusations and other Vexatious Tactics.[8] But it is somewhat disconcerting to find that certain practices enjoined by the courts under the Sherman Act and prohibited by the Clayton Act are discussed by Professor

[8] *Op. cit.*, chs. XIV-XVI.

Taeusch under "The Structure and Dynamics of Business." Other practices such as price-cutting, price-discrimination, and commercial bribery are also considered under the heading of "Price Policies." Hence the total number of "unfair" practices is similar to Davies' count.

To the evidence from complaints and statutes and orders "to cease and desist" must be added also the activities of trade associations which have been brought to the notice of the courts and judicially condemned. These include price-fixing, fixing the channels of trade with prevention of sales by manufacturers to consumers and "irregular" dealers, and limitation of output. Boycotting, blacklisting, and whitelisting are among the means employed.

The impatient reader who has followed this recital, especially if he has read the mass of material here merely listed by topics, has very likely come to hold one of two positions: Either (1), that the cases of unfair competition are after all negligible on the ground that there are unscrupulous individuals in every profession or occupation; or (2), that business is a corrupt, cut-throat successor to the plundering and piracy of the old-time profession of arms. But there is a third position: The business man in competitive situations is in continuous peril. He is subject to pressure from the constant uncertainties of market conditions affecting purchases of materials and sales of products, from the uncertainties of wages, and in many kinds of business from the unpredictable fluctuations of fashion, or from the progress of invention which replaces the horse by the motor car, the railroad by the motor bus and truck. Economists have pointed out that this will be all to the good—of the more efficient, and

probably of the consumer. The biologist may see the universal working of Darwin's law. But the men who though less efficient than the topnotchers are still human beings with families to support and educate, not to mention providing their own bread and butter, do not take so disinterested a view of the weeding-out process. Perhaps they believe that the more efficient are so because of tax evasions, or special privileges, or by driving harder bargains with employees. If so, or even if it is a sheer case of what looks like certain extinction, the weaker party is likely to think of self-defense. The professional man whose income, if usually far less than the successful business man's, is at least more stable and less liable to be imperiled by causes independent of personal ability and character, may be inclined to judge business mores severely. The fact remains that if the business man is often guilty of unfair competition it is absurd to attribute this to personal viciousness, or to treat the mass of cases of "cease and desist" as merely the necessary percentage of offenders against morals to be expected in any group. The explanation is to be sought in the uncertainty of the exact boundary between unfair and fair, but also in part in the very essence of the competitive process.

V

A fifth dilemma is posed by the growth of huge business organizations. Combination is seemingly the law prescribed by efficiency. Is there any limit to the size and power that such organizations should set to their growth? The natural answer might seem to be: That is a purely economic problem; if there is no limit to the economy and efficiency of an organization, there is no reason for further concern; no moral issue is involved. But the

case is not so simple. As well say there is no moral issue in the expansion of a national state to an empire.

The Insull procedure illustrates one possibility. The Commonwealth Edison Company of Chicago was to all appearance a well-managed and sound utility, serving the people of the city with electric light and power at reasonable rates. As the executive of this company and later as the executive of the Peoples Gas Company, Mr. Insull was regarded as capable and successful. Securities of his companies were rated high. Responsible bankers dealt in them; investors placed their funds in them with confidence. Then Mr. Insull aspired to control larger and yet larger areas of electric power and light. To obtain the capital for this purpose new companies were formed and stocks placed on the market. Company was piled on company, and stock on stock. The trustful public was induced to invest in "Insull" properties. The crash came and the trustful public lost all that it had invested in the blue-sky[9] financing. The amount of the loss has been estimated at $700,000,000. Nor was Insull the only capitalist who caused losses to trusting investors by attempting unlimited expansion. The executives of another Chicago firm that "expanded" have been sentenced to Leavenworth for using the United States mails to send out misleading statements; and probably many large cities can furnish similar instances of disastrous expansion, whether technically criminal or not. The craze to expand seems to operate as a stimulant, and under its influence the funds of investors, even of banks which are supposed to use care in the investment of depositors' money, are often recklessly squandered; witness the crash a few years back in the securities of the New York, New

[9] N. R. Danielian, "From Insull to Injury," *Atlantic Monthly*, April 1933.

Haven, and Hartford Railroad held by "widows and orphans" and educational institutions as conservative investments.

"But," it will be objected, "you are intimating that the reason why expansion was wrong in these cases was that it caused pecuniary losses. Suppose that the venture had succeeded—as doubtless other great combinations have succeeded—would the expansion then have been entitled to a clean bill of moral health?" No! another moral danger threatens the successful—the danger of power.

How to secure the value of political power and at the same time to safeguard its exercise is a problem at which the western world has worked for centuries. Checks and balances have been the favored technical devices. But the deeper roots of democracy have been found in the growth of the feeling of responsibility on the part of those entrusted with power, corresponding to a clearer demand by the mores that government shall steadily seek the common good, and not the private interest of the rulers. Economic power has not yet learned this lesson of responsibility, and the mores have not yet clearly framed a demand, except in the doctrines of "property affected with a public interest," and the "police power." It was the theory formerly that for most kinds of economic power the best control lay in competition, and hence that the public interest would be sufficiently safeguarded if competition were maintained. But in the ultimate analysis there is no difference in principle between power in government and power in business. Both are likely to be used for private ends unless the mores demand a public end; neither will meet this demand fully unless there is a sense of responsibility to the public by those who exercise power.

There are many aspects of corporate power which show

that the idea of public responsibility in the conduct of business has scarcely dawned as yet upon many if not most of the powerful corporate managements. Some of these aspects have been noted in the preceding section on the profit motive. One aspect, in which it must be admitted the mores are equally backward, is the scale of remuneration for executives of the large corporation as compared with the scale of compensation for definitely recognized public service. That the President of the United States should receive seventy-five thousand dollars and the president of a corporation a thousand thousand or fifteen hundred thousand may not reflect the deliberate judgment that a steel company or a tobacco company is performing a service twelve to twenty times as important as the federal government, but at least it indicates that the conception of public service as determining in any degree the policy of such companies has not progressed far. Nor is this conception demanded by the mores. The American people dearly love to be taxed by private business which professes no public responsibility, and hate to be taxed for public services. Responsibility in the uses of money after it has been acquired has made greater progress than responsibility in the actual conduct of corporate enterprise. Professor Wormser in his thoughtful study [10] of the power which great corporations possess holds that other corporations should adopt the same theory of primary obligation to the public which has been sanctioned by the courts as the law for public service corporations. If corporations will not adopt this view of their own accord, they should be placed under government supervision and control. This would

[10] I. Morris Wormser, *Frankenstein Incorporated,* 1931; *cf.* Ripley, *Main Street and Wall Street,* 1927; Dunham, *Business Adrift,* 1931; Taeusch, *Policy and Ethics in Business,* 1931.

give "a socialized capitalism." Exposures since Professor Wormser's book was published add force to the logic of his position, and leave little ground beneath the older, highly comfortable doctrine of a century ago that competition can be trusted to prevent abuses of power. "Corporate capitalists," says Professor Wormser, "if they would meet the serious situation which now confronts them, must regard themselves as 'trustees.'"

It may take a long time for economic power to reach the position of recognizing fully its responsibility to the public. But we have to remember that it took centuries for political power to reach that position. Meanwhile thoughtful and far-seeing men of affairs face a moral dilemma.

VI

Finally the dilemma between the principle that one should in some way earn what he gets, and the fact that modern business has a large speculative element and often rewards speculation far more munificently than it rewards work. Speculation—"making money" by forecasting the uncertain future, either by careful study or by shrewd guess or by sheer luck—as distinguished from the work by which products are created and exchanged or services performed, covers a wide range. At one extreme, the farmer holds his grain in hope of a rise in price, the manufacturer or merchant confronting the same possibility of future rise in price purchases a stock of goods. At the other extreme some venturesome person "takes a chance" that the market will go up or down on the basis of a tip or a "hunch," and buys, or "sells short," with no intention of owning any commodity and no thought of contributing to the stabilizing of the market; indeed "stabilizing" is just what he does not wish. The first type of speculation

is a necessary element in most kinds of business; the second extreme is gambling. But there are many transactions in which the line between necessary risk and taking a chance is not easy to draw. And sometimes the speculator is accused of not merely "taking" but "making" a chance when he rigs the market or uses his resources and his control over sources of information to create the very rise or fall by which he profits. This may be called playing with loaded dice, a practice not in high esteem among even the professional gamblers.

The services which Stock Exchanges and Boards of Trade are claimed to perform are (1) to afford a market for shares of stock, or for cotton and grain, and (2) to stabilize values by facilitating purchases and sales and thus preventing cumulation of losses or excessive fluctuations. To perform these services would tend to reduce risks, and in proportion to the degree to which transactions are based on knowledge of conditions and on sound judgment. But (1), many who speculate do so without knowledge, and (2), rise and fall of prices are at times due, not to conditions of industry or crops, but to manipulation or to mob psychology.

"The distinction between the gambler and the speculator," says the Report of the Federal Trade Commission on the Grain Trade,[11] "is principally a matter of degree of knowledge." Similarly, Justice Holmes,[12] "Speculation of this kind by competent men is the self-adjustment of society to the probable," if the emphasis is on the phrase, "by competent men." If then the reflective mind finds the classifying of speculation to be dependent upon so difficult a qualification as the "competence" of those

[11] Vol. VII, *Effects of Future Trading*, 1926, p. 291.

[12] Chicago Board of Trade *v.* Christie Stock and Grain Co. 198 U. S. 236, 247.

who engage in it we have one obvious ground for the uncertain attitude of public opinion. To estimate the "competence" surpasses the powers of the man on the street. Those who trade doubtless think themselves competent, and if any scruple should arise it would be quieted by the reflection that trading is business, and business is the foundation of modern civilization.

Some have positive opinions adverse to certain forms, at least, of speculation. "The opinion is often expressed that short selling should be prohibited as in its nature immoral, or at least inimical to sound business practice." Farmers are very generally opposed to short selling, alleging that it involves the selling of millions of "wind" bushels in competition with their actual grain. Political parties have been keen to capitalize alleged Wall Street control in the opposing camp, though doubtless not so much on the grounds of conscientious scruples against speculation as of resentment against the supposedly selfish exercise of financial power. The average non-speculator perhaps agrees with Al Capone who may be regarded as an authority on "rackets," if not on Wall Street. He testified that he had lost $10,000,000 to bookies, but never attempted the stock market. "It's a racket," he says. Many shorn lambs approve this estimate.

But apart from the reputable character of speculation derived from its rôle in recognized business there is a distinction in the mind of the common man between getting something for nothing in gambling and getting something for nothing in business. The distinction is this: in gambling what is gained is more obviously someone's loss. In a lottery the loss for any one individual may be only the price of a ticket, but in card games, or bets on horse races, or the like, the loss is frequently large enough to be serious. The loss is of course a part of the game, but it is not

always an unmixed pleasure to profit by another's loss. In "making money" by speculation, on the other hand, the successful adventurer scarcely thinks that his winnings come from others' losses. In such a rising market as that of 1929 everyone seems to be winning and no one losing. The psychology is much like that of going fishing; there are fish in the river or the ocean; they do not belong to anyone in particular; they are just waiting to be caught by anyone who has the skill and luck. Why not throw in a line?

Admitting then the lure of speculation and that in "competent hands" it may represent adjustment to the probable, what is the moral dilemma? As already stated, it is that a way of getting something for nothing confronts an opposing theory that a man should give an equivalent return. It is virtually a fishing-hunting type of action versus an agricultural and mechanical type. In one case we take chances in order to make a haul; in the other we seek to extract values from the soil by labor, or to make tools and shape materials. In one case we guess or calculate future chances; in the other we work.

Undoubtedly the speculator, like the hunter, often brings home the bacon, but if he asks certain questions he may be disquieted. For example: Are any real values created by speculation or does it at best facilitate an estimation of contingent values? If mines, farms, and factories should cease operation, and all men should stop work, how long could we live by the Stock Exchange? Particularly uncomfortable is the query of the workman who is asked to give an honest day's work for a given wage. "Just what do we mean by honest?" is his question. "In business a man is praised and esteemed successful in proportion as he makes a maximum of money with a minimum of time and effort, rather than because he

labors faithfully to earn what he gets. It looks to me like a double standard of morals." Nor is it only the working man or moralist who raises doubts. Mr. Roger Babson wrote in 1929: [18]

> Prosperity cannot last forever in a country where the speculators are making most of the money while the producers of the necessities of life are barely making both ends meet. . . .
>
> The weakest factor in the situation today is the growing belief that it is easier to make money in the stock market than at one's legitimate job.

Yet if disturbed by such aspects the perplexed citizen returns to the actual business of merchandising or manufacture or even agriculture, he certainly has to take risks. Theologians used to argue that foreknowledge implied foreordination. God would not be God unless he knew the future; and the only basis of knowing what man and nature would do was by determining all actions and events through divine decree. Business is confronted by a similar logic. If the future of demand and supply could be certainly foreknown there would be little need of taking risk and little place for speculation. But science is as helpless to predict men's tastes and choices as God, unless science like God can predetermine what men and women will wear and eat, and what welcome they will give to new inventions. An omnipotent state might decree scales of living, styles of dress, amusements, and reading, and thus give to science the means of prediction. But as yet the western world is unwilling to install a scientific state in the place once occupied by an omnipotent God.

Business will probably continue for some time to deal with risks. Some will show better ability than others to forecast the uncertain future, and will profit by this abil-

[13] *Collier's Weekly*, Jan. 25, 1929.

ity. But such a wild and general rush to get something for nothing as seized the public in 1929 and the crash that followed should suggest to the business leader the perilous morals. After all there is a difference in public service between creating or distributing some useful product or performing some needed service, and getting something for nothing. In the one the aim is normally to reduce risks; in the other, troubled waters offer the best fishing. A business system in which, as phrased by Mr. Babson, "the speculators are making most of the money while the producers of the necessities of life are barely making both ends meet" is in unstable equilibrium. The lessons of the mad speculation of 1929, "the most gigantic gamble in history," ought not to be forgotten.

CHAPTER IX

MORAL PROBLEMS OF INDUSTRY

Candidates for public office are fond of pointing to the common interest of capital and labor. Both are doubtless dependent on the prosperity of industry. In recent days Mr. Ford's doctrine of high wages is based on the fact that laborers may be also potential buyers. Certain unions have aided management by suggestions for more efficient operation. Yet no intelligent employer or workman ignores the fundamental fact that employment is based on a bargain, a contract. A contract between two parties where considerations of friendship or charity do not enter is decided by the respective bargaining powers of the parties. One factor in the bargaining power of each party is very commonly recognized by the public, namely, the urgency for employing more laborers, and the urgency for securing a job. If the employer cannot secure additional workmen he loses a fraction of his profits; if the workman cannot secure a job he loses his means of procuring his living and this is far more serious.

But there are various other factors in bargaining power which are not so obvious. Some of them are not so much due to the personal strength or weakness of a particular employer or workman as they are to the general nature of the machine process. Just on that account they are as impersonal and inevitable as fate.

There are four conflicts of interest as to terms of the employment bargain. The outcome is determined by superior bargaining power. And there are four factors in the

respective bargaining powers. In all conflicts of serious interests the stronger is tempted to be hard, the weaker to become desperate. It is only when parties are nearly even in strength that their terms are likely to be reasonable. Hence it is not surprising that contests over the factors which give bargaining power are often more bitter than those over wages and hours. Employers are frequently more willing to concede advances in wages than to agree to collective bargaining through the labor union.

I

Consider first the fourfold conflict of interests:

1. How much of the income from the industry shall go to profits and how much to wages?

2. How much shall constitute the day's work?

3. Which party shall bear the risks—of accident, disease, old age, unemployment?

4. Which party shall have the say as to shop rules and conditions, as to hiring and firing?

1. Doubtless the conflict between profits and wages is not so flatly conceived as it was a hundred years ago. Then it was held that low wages were a necessity for high profits. Now the more enlightened employer is likely to accept the policy of paying the market scale of wages, especially if he thinks that his competitors are paying the same scale and not cutting under his own standard. To pay the market rate is a policy which may appeal alike to his class feeling and to his conscience for it is more comfortable socially to have the same handicap as one's rivals and it also seems better sport. Henry Ford did not make himself popular when he raised his minimum wage to five dollars per day. And as for conscience, what better standard of a "fair wage" can one find than

the market affords? For if one pays a lower scale it does not seem quite fair, and if a higher the profits may disappear, and with profits gone the business cannot last long.

What the policy of paying the market scale leaves undisturbed is the question: Is the market rate fair? If we define "fair" as what is agreed upon in view of supply and demand, then the fair rate is fixed by the respective bargaining powers of the parties; if we grope for some other principle we find ourselves involved in intricate problems. On the one hand a democratic society seems to call for a less uneven distribution of incomes; on the other the fundamental principle of liberty, and perhaps the incentive to the great efficiency of modern industry, seem threatened if we limit the prizes. It is far simpler for the employer to say, business is business, not morals, and to take the market rate as the standard.

How about the worker group? They, too, find the market standard simpler; but in such a country as America where there is less rigid class status they inevitably are dissatisfied with the market rate. For they see the luxurious living of the employing class, and wish their children to rise, even if willing themselves to forego some of the modern conveniences, widely advertised. The more radical, therefore, favor abandoning the capitalist economy, with the market setting the standard. The more conservative accept the market method and ask: What determines the market? If it is bargaining power, how can the workman increase his power so that the scales of justice will seem less unevenly weighted?

2. How much labor shall be accounted a fair day's work? When work is paid by the piece this question may seem not to arise. But even in piece work the determination of a piece rate is influenced by the amount which

can be earned in a day by a good workman. And this involves the pace which should be set by a good workman. The conflict of interests is, therefore, the converse of that in the fixing of wages. The interest of the employer is in a maximum of output; the interest of the workman, if it does not imply a minimum which might cause dismissal or indirectly a loss of job through failure of the industry, does to the average workman seem to favor some restriction of output.[1] At a time when constant improvement in machines and in organization of the work process is reducing the number of workmen and the demand for labor, why should the workman add his efforts to accelerate the discharge of workmen and lessen the demand? The alternatives are similar to those under 1 above: either use the "custom of the trade" or current pace, or else resort to a highly complicated calculation. The employer relies on setting the pace by the machine or on scientific management; the worker upon ca'canny, or on a union standard of so many bricks or joints a day. But which will prevail is likely, as in the first conflict, to depend on bargaining power.

3. Who shall bear the risk of industry, accident, disease, old age, unemployment?

So far as accident is concerned it may seem that the conflict has been settled by workmen's compensation acts. But these acts came only as the outcome of a long agitation over the question of social justice. The great value of the acts was probably not so much in the compensation awarded to unfortunate victims as in the preventive measures adopted by employers when they were made liable. The effect encourages workmen to query whether management would not find ways to lessen seasonal un-

[1] Restriction of output is not peculiar to unionism. See Stanley B. Mathewson and Others, *Restriction of Output Among Unorganized Workers,* N. Y., 1931.

employment if it were held responsible for the support of its employees, or at least partially responsible for insurance against periods of depression. The query also arises whether if management had some responsibility for workmen over forty years of age it might not find ways to use their labor. On the other hand the employer has assumed that he was hiring laborers by the day, or week —not by the year or lifetime. To undertake such responsibility would be contrary to the whole theory of efficient industry as at present understood. Why not consider that if the employer pays good, i.e., market standard, wages the responsibility of provision for old age is then with the workman? Some workmen manage to save enough to maintain themselves; does not this show that all could if they economized and saved instead of buying comforts and luxuries in imitation of those having larger incomes?

Evidently the two groups are not in agreement on the merits of risk bearing; each will naturally seek to shift as much of the risk as possible to the shoulders of the other, and success will depend on bargaining power, or on which side secures the support of public opinion and of legislation.

4. The fourth conflict is one less generally understood by the public than the other three. Which party shall regulate shop conditions? The employer frequently sees but one possible answer to this question. The business is his; he has either created it or bought it; efficiency requires that he manage it. Scientific management reenforces his position. Rather than submit to dictation from any workman or any trade union he will fight to a finish, and if defeated may even close the plant.

But the workman sees another side. The factory, or with railroad men the train, is not simply a place where

hours are spent and wages earned. Its conditions may affect health; they inevitably have subtle effects upon mind as well as body. Foremen under pressure to increase production may be callous to risks which are not obvious. Being human the foreman may not always be reasonable. All the reasons which in the past have led to resentment against absolute authority are likely to occur to the workman. At an earlier period the customs of the craft or trade had a restraining influence and were regarded by the workmen as a protection. But the machine and scientific management are constantly undermining these defenses. The workman sees his only hope in some joint system of control which shall give weight to the human costs as well as to the economic costs of production. In other words, he believes in citizenship in industry as well as in politics. Measured by its bearing upon his daily life, industrial citizenship concerns him more obviously than political citizenship. "Recognition of the Union," which often appears to the employer as unreasonable, and to the public at large as an empty formula in comparison with such substantial matters as wages, is for the union member a recognition that he is a person with rights, not a commodity to be given a number, turned over to a foreman, paid a wage, and discharged when work is slack, or when the foreman happens to take a dislike to him. Whether the workman can attain such a status depends as in the preceding cases upon his bargaining power.

II

It is time to ask, On what does bargaining power depend? What assets has the employer and what assets has the employee?

There are four sources of bargaining power which enter into the situation:

(1) Supply and demand; (2) On the employer's side, the machine; on the side of the worker his skill; (3) On the side of the employer, the corporate organization; on the side of the worker the trade union; (4) On the side of the employer, the defenses of property and free contract by the courts; on the side of the worker, legislation under the police power to guard health and protect from accident, to limit competition from child labor and from immigration.

(1) It may almost go without saying that supply and demand play a part, particularly in the determination of the market price of wages. Yet supply and demand are not ultimate forces. The great war created a sudden demand which raised wages after a long period of sagging or at best stationary scales. Immigration of millions of unskilled laborers from Europe had kept the supply equal to the demand, and often in excess of demand.

(2) In the second pair of forces, the machine versus the worker's skill, the greater strength is clearly with the machine. For the machine represents not only power but division of processes. To divide a complex process is to substitute simpler units, each of which is easier to learn than the whole process of a difficult craft. An automobile is a far more complicated piece of apparatus than any known to the old-time blacksmith, but instead of the long apprenticeship required for the skill necessary to temper steel, to work it on the anvil, to fit it for its place, and to shoe horses, the laborer in an automobile factory can be taught his highly specialized and simplified task in a few hours. In the men's clothing industry few workmen are now competent to cut and make a suit of clothes. There seems almost no limit to the process of division and

simplification. And with advance in this process a large factor in the demand-supply equation is subtracted from the assets of the worker and transferred to the side of the employer; for when it took two or three years of apprenticeship to learn a trade the supply of workers was at least protected from sudden accessions of new craftsmen; now labor is much more easily and readily available for almost any part of the industrial process.

(3) In the third item, organization, the employer is vastly superior. Even an individual employer who has any considerable capital at his command can usually better afford to wait than can the workman who is seeking a job. But individual employers have been steadily giving place in the larger industries to corporations. President Nicholas Murray Butler has called the limited liability corporation the "greatest single discovery of modern times," and Professor Kohler of Berlin in 1909 spoke of the American Corporation as "an institution whose rise throws everything else into the shade, and with whose financial power the world, one might say, can be conquered." [2]

The union of a number of stockholders furnishes capital which no individual could command. Limited liability restricts the liability of each stockholder to the amount of his investment. The continuous succession of membership, powers, and life enables it to conceive and carry on enterprises unlimited by time. It can thus incur debts payable in the distant future and to this extent depend upon the resources of the future to help carry the burdens of today.

The vast size of the greater corporations attests the confidence of the public in their strength and reliability. According to Professor Wormser, writing in 1931, "More

[2] Cited in Wormser, *Frankenstein Incorporated,* p. 52.

than twenty corporations have total assets of over $1,000,000,000 each. Many number over 100,000 stockholders." [3] Mr. Gardiner C. Means states that 200 large corporations had combined assets in the year 1927 of more than $67,000,000,000, and controlled considerably more than half the industry of the country.

When the capital resources, the number of stockholders, the long life, the impersonal character of corporation are taken into account their power seems irresistible The large corporation has superseded for many enterprises the smaller unit. Is it surprising that it presents an almost overwhelming superiority of bargaining power in comparison with the individual workman?

What has the organization of labor to show that is comparable in bargaining power to the great corporation?

There were reported by the census of 1930 as gainfully employed 48,832,589. Of these 10,482,323 were in agriculture and do not affect the general problem, since employing farmers are, for the most part, not organized in corporations, and are scarcely as strong in bargaining power as farm laborers. Mining employs in round numbers a million; manufacturing fourteen millions; transportation four and one-half millions; trade seven and one half millions; a total of twenty-seven millions. Out of these the American Federation of Labor reports a membership of three millions, and the Railway Brotherhoods a membership of four hundred thousand. Other organizations not included in the two main groups may add two hundred thousand more. But the total is less than five millions, or about one in five of all employees. Further, it is noteworthy that with the exception of the railways, few of the great corporations recognize the unions and attempts to organize unions among their employees have

[3] Wormser, *op. cit.*, p. 49.

been successfully resisted. In the case of the skilled trades, unions have been fairly successful; the unskilled worker has found no effective support, and has therefore had no bargaining power. In the pre-war period $1.65 a day or $10.00 a week was the general wage, and this was subject to the fitful nature of employment which made the total earning for the year precarious.

(4) If the three factors in bargaining power just noted seem to have little connection with morality (aside from the group standards and practices of employers and unions which will be considered in the next chapter) the fourth factor is largely an expression of the moral attitude of the public toward the conflicting claims and interests of the employers and employed. It is the support given by legislation and the courts to the respective weightings of the two sides of the balance.[4] Employers have usually appealed to the courts when their property has been threatened by violence, as in a strike, or by boycott, or when they have feared interference with their control by the formation of a union, as in the case of the so-called "yellow dog" contracts. Courts have gone so far as to prohibit strikers from even so much as telling anyone that a strike was in progress, or from telling anyone that the employer required the employee to sign a "yellow dog" contract. Frequently injunctions have forbidden strikers from persuading non-union men to join the union. The fundamental theories of the courts have been the rights of property and of free contract. They have nominally admitted the right of workmen to organize in unions, but have regarded inequality of bargaining power as a necessary consequence of free contract. Economic coercion is not coercion in a sense which

[4] John R. Commons, *Legal Foundations of Capitalism,* 1924; Ernst Freund, *Standards of American Legislation,* 1917.

the law recognizes. And if the superior bargaining power of the corporation as over against the individual workman is exerted in depriving him of the weapon of organization and thus compelling him to continue bargaining as a single individual—why, then the workman is out of luck. He has been caught bare-handed while his opponent has a modern machine gun. The legal conception of a fair field and no favors is not precisely that of medieval chivalry in which the two contestants were supposed to be armed, or even that of the prize ring where heavyweights are not matched with featherweights; it is rather that of serious war where either party is entitled to all the advantages of superior strength and strategy and where the stronger therefore dictates the terms of peace.

Some firms prefer peace by mutual agreements. Some firms hold it a form of fair play to allow the workman the advantage of organization which they themselves possess. But some prefer the economics of war and the ethics of conquest. The law lends little help to the workman so far as protecting his right to organize is concerned. What is more, the law forbids the Congress or the legislature to protect this right. It sees no public purpose served by a labor union. The unionist may think that to see no public purpose in a labor union is carrying the blindness of Justice, symbolized by the bandaged eyes of the traditional figure of the goddess, to an extreme. If desperate, he may resort to violence. If more resourceful, he may use sabotage.

The ethics of violence in a strike is essentially that of self-defense. A group decides upon a strike. At first there is likely to be a period of negotiation. If no adjustment is reached the firm may proceed to offer employment to any who will apply. The striking group must fail unless it can prevent the employment of applicants.

It tries persuasion but if this fails and the chance of success is put in jeopardy it is likely to resort to terrorizing and violence. In any case if the contest is at all bitter the group feeling is likely to be strong against the "scabs." The psychology is that of primitive hostile groups.

The sympathy of the general public is sometimes with the firm, sometimes with the strikers. If it is a case of a corporation as the employer, public sympathy is likely at the outset to be with the men. In the case of the strike against the United States Steel Company the Report of the Federal Council of Churches commanded general approval except among the employing class and among those who like to be on the winning side irrespective of other considerations. In a strike of railway or street-railway operatives, however, any sympathy with the strikers is likely to be short lived. The public is then no longer in the position of an impartial spectator.

Violence is almost sure to alienate public sympathy. The original issue fades into the background when some scab is beaten or killed. When there is a suspicion that violence may be used the police may anticipate violence by themselves beating up strikers and arresting any bystander who questions their action. Seeing the great strategic advantage which results from shifting the issue to disapproval of violence the resourceful employer has at times resorted to agents provocateurs, who incite to violence for the express purpose of turning public opinion against the strikers.

Whether the case is like that of the McNamaras, or that of the Herrin miners, or that of the Lawrence strike, it is beyond the sphere of ordinary morals. Such situations show men imbued with a war psychology which to those in the militant groups justifies murder—even as war justifies killing the enemy. To one above the battle

the ethics of either type of warfare is chiefly an evidence of a breakdown in all efforts at reasonable adjusting of human wills. The humane lover of justice must condemn violence; he must also work for some more adequate recognition of the rights of minorities, of the under dog. If industry is to continue in peace, society must find methods to make the conflicts between capital and labor less purely issues of sheer bargaining power, or else grant the workman an effective right to organize and thus to equalize in some degree the conditions of the contest.

Law can sometimes be changed. The workman has appealed with success to the public sense of what is fair and humane to secure aid in support of his contentions. Four sets of conflicting interests have been mentioned: wages, the day's work, industrial risks, shop control. The first, with a few exceptions in the form of minimum wage laws, and the second are left to the bargaining process. In both the third and the fourth legislation has intervened in aid of the worker.

Notably in the risks of industry American action was slower than British, partly because the industrial revolution came later to us. For a long time workmen and social workers struggled vainly against the legal doctrines of assumption of the risks of employment by the workman, and of the exemption of the employer from liability when an accident was chargeable to the fault of a fellow workman. Earlier legislation passed to remedy these conditions was declared void by the courts. But by persistent efforts, even extending in New York to a constitutional amendment, aided by judges who were aware that an industrial revolution had changed conditions since the eighteenth century, by humane employers, and by a general response to appeals for social justice, legislation was finally secured and judicially approved, which shifted

part of the burden. More important, it induced preventive measures. Shop conditions were also made the subject of legislation. Hours of employment in occupations dangerous to health and in women's labor have been limited. Child labor has been forbidden in most states.

Finally, the factors affecting bargaining power have been changed. The Congress has restricted immigration which had flooded the ranks of unskilled labor. This measure was urged primarily as a protection for American institutions against submergence by great numbers of people of other speech and traditions, but it was also backed by labor interests. In 1932 the Congress by an almost unanimous vote adopted a measure to outlaw the "yellow dog" contracts, although this has not yet been passed upon by the courts.

Legislation is a better test of social judgments and of the disinterested opinion of the public than are the decisions of the courts. The Supreme Court may, as Mr. Dooley once said, follow the elections, but sometimes it is slow to read the returns. Until the public, and in particular the United States Senate, awoke to the fact that on such questions as those at issue between employer and employed decisions are based on the social philosophy of the judge rather than on purely legal grounds, the law was looked upon as beyond the control of popular will. Law was law, not ethics, or common sense, or ordinary reason. Such decisions as that of Munn *vs.* Illinois and Holden *vs.* Hardy, which recognized the new forces of modern society, were slow in reaching the common mind. When Justice Holmes exploded a bomb with his now famous sentence: "This case is decided upon an economic theory which a large part of the country does not entertain," the revolutionary conception so announced was not that of adherence to any particular economic doc-

trine, but that of removing the formidable mask of judicial sanctity and exposing the basis of a decision as an economic opinion. If the ground was simply economic opinion, why should the economic opinion held by a number of justices prevent the economic opinion held by the people of the State of New York from becoming the law of that State?

It is then fair to say that the public sentiment of the country has steadily moved toward equalizing the potential bargaining power of the workmen as well as toward ensuring healthful conditions in factories and protection from accidents.

In the matter of security the more progressive industries have begun provisions for unemployment insurance. The Clothing Industry of Chicago, the General Electric Company, Procter and Gamble, the Dennison Company, and others have introduced such systems. Many firms during the present depression have endeavored to keep their workmen on at least part time. Yet the great numbers of unemployed (ten millions seems a conservative estimate) show how far from an adequate provision has been made. So far as the general moral attitude of the people is concerned there can be no question that the present depression has brought out both a more general feeling of community responsibility and a more generous response to the need of relief than had found expression in any previous hard times. Opinions have differed as to the agencies best able to administer relief, but there has been little survival of the older individualism embodied in the maxim, "Where the tree falls, there let it lie."

Security against want in old age is partly an industrial problem, but partly a community problem. Machine industry prefers young workmen. A man in middle life may be retained but if he is out of work he finds it

nearly impossible to get another job. Still less can the aged be gainfully employed. In an agrarian civilization care of the aged by children or other relatives is relatively simple and less burdensome. In industrial and urban society there is usually no extra house room and when all food must be bought the additional burden of even a single dependent is felt. However, not all the aged in straitened circumstances are in industrial families. The white collar class and even the professional class are represented among those left by illness, or death of relatives, or failure of banks, or any of the economic disasters, with no adequate means of support. The principal method of caring for such unfortunate cases was through county or local relief, either in institutions or by outdoor aid. But there was a stigma attached to the institutional type which made it a desperate resort for a self-respecting person. It is one of the most encouraging developments of recent years that twenty-five states and one territory have already (1933) adopted old-age security laws. In other states the subject has been discussed. The eighteenth century loosens its hold reluctantly, but such a prolonged depression as that now prevailing hastens the process.

In conclusion, the moral attitude of the employing class may be said to have been sensibly modified on the question of wages in the direction of a higher level. This may be aided both by the Ford-Filene theory of mass production and greater consuming power by wage earners, and by the Owen D. Young theory that the management of great corporations is able to take into account not only the interests of owners but those of workmen and consumers as well. The general public has no very positive convictions upon the subject. Farmers who make up

a considerable class are so much worse off than skilled industrial workers and even than unskilled industrial workers who retain their jobs, that they can scarcely be expected to regard industrial workers as an under dog. Probably general opinion is indifferent or content to let the market rate decide.

On questions involving health and safety and the employment of young children, humane employers have cooperated with social workers and labor groups. In these cases government action was necessary to protect good standards from the cutting under by less scrupulous employers. On the question of the pace or speed of the worker, the conveyor system is believed by many to be the solution—the machine decides. On security the issue is forcing not only the working class but the employer and the community to serious thought. On the general question of collective bargaining as indispensable to fair terms the employing class shows little tendency to concession. The general public may not share the views of the author of the articles published under the name of Vice-President Coolidge. These articles on radicalism in the women's colleges cited as one evidence of radicalism that debaters from Radcliffe had upheld the affirmative of the question: "Resolved, that the recognition of labor unions by employers is essential to successful collective bargaining." The public may be skeptical, so long as it retains any sense of humor, of efforts to pin the tag of radicalism, or Bolshevism, or Communism upon movements disliked by the well-to-do class or by a certain type of employers. The tactical purpose of such labels is too obvious to deceive the public, except when this public is still suffering from war hysteria. But the moral implications of union organization are far less direct than those of child labor

or of health and safety. The farmer class works longer hours for less pay than the factory worker and from its individualistic tradition is not likely to see the necessity of organization. The small-merchant class is likewise individualistic by occupation. The white-collar class is more closely affiliated with the employer than with the factory worker. Only the exceptional lawyer has interests connected with union labor whereas a large majority of the legal profession have clients in the well-to-do or business class. Clergymen and teachers are usually favorable to the principle of collective bargaining. But they are not strong enough to offset the contrary forces. The great corporations are, in most cases, opposed to collective bargaining except in the form of conferences with company unions or committees of their own employees.

The National Industrial Recovery Act of 1933 provides that all codes of industries under the Act shall be subject to the conditions:

(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(2) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing.

This is an emergency Act. How far it will encourage the organization of employees into labor unions remains to be seen. How far collective bargaining will come to be generally accepted in industry may depend to a great

degree upon the success of the experiment. Success will depend largely upon the intelligence and reasonableness of the parties and upon their determination to coöperate.

Railroads have already tried collective bargaining. In the case of the railroads public opinion plays a more important rôle than in manufacturing industries. Both parties, management and employees, know that any interruption of service will be serious, and a long interruption intolerable. Railway management is more conciliatory and the Railway Brotherhoods more reasonable than are management and unions in certain other industries. The safe conduct of trains and proper regard for human life place a premium upon long apprenticeship, intelligence, and reliability. It would not be safe to man trains with strike breakers. A notable example of negotiation was given in the conference which finally resulted in the acceptance by the employees of a ten percent reduction in wages for the period of a year. According to the Associated Press under date of January 31, 1932:

> For the first time on a nation-wide scale, presidents of railroads and heads of labor organizations sat down at a conference table and proceeded amicably and unhurriedly to work out a solution to their problems— The executives promised an earnest and sympathetic effort to maintain and increase employment. The labor representatives based their action upon the urgent needs of the railroad industry and the demands of the public welfare. It marked a new phase in the relationship between railway capital and labor.

It would mark a long step toward industrial peace if a similar attitude and method could prevail in industry. Doubtless there would need to be changes on both sides; the employer would have to disclose to the workmen facts and figures showing the conditions of the industry and

the market instead of a bald "Take it or leave it." The representatives of labor would need to be intelligent and reasonable instead of refusing to consider the necessities of the situation. But to substitute reason for force is the way of peace and of citizens in a commonwealth.

CHAPTER X

ATTITUDES TOWARD PROPERTY AND WEALTH

The American people by origin, occupation, and institutions are strongly imbued with the rights of property and disposed to look favorably upon wealth. By origin they were from the middle class—farmers, traders, mechanics—or, if they came to the colonies as indentured servants, they aimed to acquire a holding of land as soon as possible. The middle class, which had no pride of birth, made its way toward self-respect and general standing by the other agency of esteem and power, viz., property. Coming to a country which offered unlimited land but little other wealth, land was the type of property which was almost universally prized and possessed. The land could be owned in fee simple, not merely held by tenant from landlord. Successive waves of westward migration enabled the greater number of the population to continue as landowners until the present century. At least, in 1890 two-thirds of the population were classed as rural. The occupation of farming required a large fixed investment; constant contact with soil, tools, home, animals, and products formed strong habits; the feeling of ownership induced or reënforced the generalized attitude toward property. Similarly the trader was by occupation habituated to ownership of goods and of money. Children were taught the sacredness of property and the wickedness of stealing:

> It is a sin to steal a pin,
> Much more to steal a greater thing.

Insecurity of property in the Old World came from thieves and highwaymen, but in more pressing fashion from royal owners. Taxes were never popular. The early theory had been "the king should live of his own," i.e., by the rents and revenues of the crown lands. This income had been supplemented by grants from Parliament, but the American colonists were jealous of any claims for taxes not granted by their own legislatures. They guarded property explicitly in the Fifth Amendment to the Constitution and even more fundamentally in the provisions for the election of Senators and President, and for appointments to the Supreme Court. The constitutions of the states in many cases included property among the natural rights. Kentucky adopted Locke's theory and declared: "The right of property is before and higher than any constitutional sanction." When Macaulay wrote in 1857, "Your constitution is all sail and no anchor," he failed to give due weight to the power of the courts and to the influence of agrarian civilization. The shocks to the security of property have not come from the sources envisaged by Macaulay, viz., from hungry laborers incited by agitators to plunder the republic. On the contrary they have come from the middle class itself; and largely from a section of that class which believed itself to be acting from moral motives. With one exception—abolition of property in slaves—limitation of the rights of property has been effected by legislation and upheld by the courts, or at least by some courts. Five general types of property restriction have secured legal recognition, although in no case was there unanimous agreement. It will help to understand present mores if we glance at the five.

I

First came the question of slavery. While the discussion ranged over several points—liberty, equality, advantage or disadvantage of slave labor, the citadel of the advocates of slavery was the conception that the slave was property. Although the Federal Constitution alluded to slaves as "other than free" persons, or as persons "held to service or labor in one state under the laws thereof," they were bought and sold like other property, and were so regarded by their owners so far as legal rights were concerned, whatever the personal relations might be. The anti-slavery movement, whether due to economic, religious, or humanitarian motives, was forced to confront the claim of property right. It denied the right of property in human beings. Against the authority of the Constitution and the Fugitive Slave Law it set a "higher law." Finally, as a war measure, the Emancipation Proclamation destroyed slave property, but such property had become increasingly regarded as a wrong rather than as a right by a large part of the people of the North.

The second restriction of the right of property came from the very class which might have been supposed by tradition and occupation to be sturdy upholders of property rights. The so-called Granger legislation of the seventies was an attempt to regulate the charges of railroads and warehouses. It originated with the farmers and in those states of the Middle West where farmers were the controlling class. It resulted in the legal doctrine of property affected by a public interest. How far the psychology of the situation was affected by the fact that the railroads were corporations it is not easy to say. That

may have had a part. But the legislature and the Supreme Court (in Munn *vs.* Illinois) were more or less consciously distinguishing what Hobhouse calls, "property for power" from "property for use." They recognized that the power of the railroads to fix rates gave them a control over the life and property of others which was as dangerous as unlimited right of taxation. It was the old power of monopoly in a new dress.

The court, indeed, cautiously worded its opinion. It declared, "When one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created." It thus introduced the fiction of a virtual grant by the owner to the public. But the real issue was the right of the public under the police power to control certain kinds of property. The supporters of the legislation believed they were limiting private property in the interest of the public good. The decision in Munn *vs.* Illinois, says Professor Commons, "recognized for the first time the economic power of property, or power to withhold, growing out of economic conditions." [1] Under this doctrine the charges of railroads and public utilities are regulated. In fact the railroads are now so largely controlled by the Interstate Commerce Commission that railroad property retains only a fraction of the ordinary rights of private property.

Nor have legislatures failed to broaden the definition of property affected by a public interest. Noteworthy was the law passed by Kansas in 1920, declaring the manufacture and preparation of food and clothing, the mining or production of fuel, and the transportation of these articles, as well as public utilities, to be so affected.

[1] John R. Commons, *Legal Foundations of Capitalism*, p. 34.

This law was decided by the Federal Supreme Court to be unconstitutional. On the other hand, a New York law of 1921, restricting rents, was upheld by a decision of five to four as an emergency measure. It is not improbable that further attempts to broaden the scope of the doctrine may be made—and may succeed.

The third attempt to limit private property was the movement for factory legislation and similar measures, under the general conception of social justice. Here as in the anti-slavery movement, and later in the prohibition movement, the primary motive was not an animus against property, but a desire to bring about certain reforms which would incidentally restrict certain kinds of property and which were resisted on that ground by the owners of property thus affected.

Restriction of child labor, for example, compelled employment of adults at higher wage; limitation of the working day for women implied less production; employers' liability for accidents to employees shifted a burden from one class to another; requirement that wages be paid in cash lessened profits derived from company stores. All legislation of such character, which made rapid progress in the last decade of the nineteenth and the first decade of the twentieth century, was opposed on the ground that it interfered with the rights of property. Much of it was declared unconstitutional by the courts.

The legal basis for court decisions that declared unconstitutional certain humane legislation which interfered with property rights, was the Fourteenth Amendment. When the Federal Constitution was under consideration conflicting interests of creditors and of debtors, of rich and poor, were freely recognized. But it is necessary to read between the lines to see just what adjustments were devised. Property rights were guarded, in the language

of Alexander Hamilton, by giving to "the first class (the rich and well born) a distinct permanent share in the government," namely the Senate and the presidency, together with the Supreme Court. Taxation, if direct, by the Congress was to be in proportion to population, not to wealth. The Fifth Amendment gave more explicit protection to property but it was in the Fourteenth Amendment, designed to protect the Negro against legislation by the former slave states, that property found its defense against all legislation by the several states that could be held to infringe property rights. By interpreting "person" to include corporate as well as natural persons, the courts have protected great business organizations from regulations adjudged to be confiscatory. Yet the popular will has continued to seek limitation of property rights when these are clearly opposed to humane measures.

There are, however, waves of public opinion. In the matter of child labor, a large number of the state legislatures had adopted requirements for a minimum age and for completion of certain grades of school work. Some were less advanced than others in both standards and enforcement. Efforts to set a more uniform standard by Congress under the taxing power and under the power to regulate interstate commerce were both defeated by the decisions of the Supreme Court. Finally an Amendment to the Constitution was proposed to the state legislatures by Congress in 1924, giving the Congress "the power to limit, regulate, and prohibit the labor of persons under eighteen years of age." This, however, was approved by only five states and rejected by twenty-four. Whether this negative attitude was due more to jealousy for state authority, or to a feeling that many young persons under eighteen are better off if at work, or to emphasis upon in-

dividual liberty after the Prohibition Amendment went into effect, or to the general slump in humanitarian effort following the war, or to the extreme conservative swing evidenced in frenzied fear of communists, in suppression of radical groups, and in general reactionary temper—it is difficult to say. The same query as to the reasons for shifts in public opinion will be noted under the chapter considering prohibition.

A fourth limitation upon property rights, and by far the most drastic in its possibilities, was the adoption of the Sixteenth Amendment authorizing the federal income tax. Like the anti-slavery movement and factory legislation under the police power, the primary motive was not hostility to property; it was a demand for justice in the bearing of burdens, plus a fiscal advantage in finding a convenient source of revenue. An income tax had long been a main reliance in European budgets and had been used by the federal government during the Civil War. But for approximately twenty years prior to 1913 such a tax had been held to be unlawful. In its first application rates were low, but under the pressure of war the taxes on the higher incomes were raised to a maximum of sixty-five percent, and to meet the emergency of an unbalanced budget the Congress in 1932 enacted a maximum of fifty-five percent. This was denounced by conservatives as a policy of "soak the rich." Undoubtedly its supporters were largely from the West and South. But it did not appear to representatives of rural districts that a man whose net income after paying the tax would still be a half million or more, would suffer in comparison with the farming population whose capital is heavily taxed locally and whose income in 1932 averaged less than $300.

That the present distribution of wealth is grossly in-

equitable is probably the conviction of a great part of the American people. That this inequitable distribution is involved in our system of private property is also more or less definitely believed. But the average man does not admit that inequalities are the necessary consequences of any possible system of private property—any more than he admits that a salary of a million a year represents a proportionate ability or a proportionate value of services to the community. The average man is more inclined to attribute the inequalities of distribution to privileges granted by the government in tariffs, or to manipulation of securities and values, or to absorption by individuals of values created by society, or to unfair taxation, or to the fisherman's luck which sometimes nets a big haul.

Certainly during the present depression (1930-33), when millions of workmen are without work and millions of farmers continue to work long hours for no pay, there has been surprisingly little disposition to find fault with private property as such, and surprisingly little disposition to remedy inequality by violence or even by legislation.

In principle, however, the federal income tax is a radical measure. It removed one constitutional safeguard of property. Doubtless the higher incomes can in part evade the tax through investments in tax exempt securities and otherwise. Yet even so it is a safety valve against a popular uprising, as well as an effort to distribute burdens more justly. It is not a substitute for a more thorough revision of a system which seems so haphazard—not to say unfair—but it is at least a gesture.

The fifth limitation of property was the Eighteenth Amendment which involved property invested in 177,000 saloons or other places licensed to sell intoxicants, huge amounts invested in distilleries and breweries, and an un-

determined fraction of properties invested in hotels. There was no hostility to property as such. The purpose was to abolish an enemy to public welfare—political, economic, moral. Nevertheless individual owners of property invested in this business might well have felt, as did individual slave-holders, somewhat bewildered at suffering the loss of a kind of property which not long before was regarded as not only entitled to legal protection but also to social respectability.

Is the influence of the machine tending to lessen regard for private property? The five limitations above noted (except the third, that of factory legislation) have come neither from the rich nor from the industrial workers but from the farmers and middle class. And in the case of humane legislation, limiting child labor and women's labor and shifting the burden of accidents, social workers and the more socially minded churches joined forces with the trade unions. But in the machine Veblen saw an agency which tended to displace older use and wont in morals as well as in techniques.[2] The owner, and the financial, clerical, and sales personnel deal with money. They think in terms of ownership. The machine worker has little contact with money. His days are spent and his attention directed upon a mechanical process. He rarely owns his home.

Yet if the machine worker is undergoing a subtle change in the direction indicated by Veblen, he has thus far given little evidence of such conversion. The communist party remains negligible in elections, polling in 1932 (according to the *World Almanac*) "over 55,000" out of a total vote of over thirty-nine million, about one in seven hundred. Socialism, which would limit certain

[2] Thorstein Veblen, *The Theory of Business Enterprise,* N. Y., 1904, ch. IX.

kinds of property by public ownership, has never succeeded in polling a million votes in a national presidential election, unless the combined Farmer-Labor, Progressive, and Socialist votes for La Follette be counted as Socialist. Even after three years of depression, Thomas in 1932 received but 728,860 votes, although endorsed by liberal organizations not necessarily accepting socialist economics. The American Federation of Labor has always been as conservative on property questions as a Union League Club or the president of the United States Steel Corporation. It has been bitterly opposed to Russian Communism. It has also frowned upon the proposition of a distinct labor party.

The American temper, whether in farmer or labor groups, seeks to meet economic injustices and emergencies rather through legal action, and frequently by a vote for what promises to be a "square deal," or a "new deal," than through a complete upset and reconstruction of the economic basis of institutions. The average citizen believes that on the whole America has been for the common man a land of opportunity, and fears to fly to ills he knows not of.

II

Attitudes toward wealth and property are shown in what people do with their wealth. Legislation is an indication of the restrictions which majorities believe to be necessary or expedient; voluntary gifts for public purposes afford an equally significant indication of attitudes toward the common good.

The people of the United States have very generally been regarded as generous to their fellows both at home and abroad, especially to those overtaken by some calam-

ity of fire, flood, famine, earthquake, or war. In emergencies such as these, Americans have not been wont to count their money carefully, but have cast into the treasury freely of their wealth—and from their poverty as well. They have been less cautious than the peoples of some Old World countries. Famines in India and China, earthquakes in Japan or California, fires in Chicago, Boston, San Francisco, floods in the Mississippi valley or in that of the Hwangho, Belgian children in war time, and typhus fever in Eastern Europe have found ready response in sympathies and gifts. The unemployment distress of the period since 1929 has been the occasion for gifts on a previously unexampled scale.

Gifts prompted by considerations of long-time public welfare have been equally generous. Conspicuous in this class have been gifts for education. Before the day of the great provisions of the towns and cities for high schools, academies were built and largely aided by private contributions. Before the state universities, colleges were founded by settlers who had little surplus beyond the necessary demands of daily bread; they have since been endowed generously by grateful alumni. For the year 1929-30 the U. S. Office of Education reported gifts from private donors to universities, colleges, and professional schools to the sum of $139,508,922, and income from productive funds of $67,370,057, which would represent an investment of previous gifts to approximately one and a half billions of dollars. Hospitals have likewise appealed both to sympathy and to thoughtful consideration of public needs.

A recent development of provision by men of wealth for wise handling of large sums has been the establishment of Foundations for civic, philanthropic and educa-

tional purposes. These have considerable flexibility in the use of their funds, and are therefore able to avoid the danger of tying up funds for purposes no longer appropriate to the needs of a changing civilization. Twenty of the largest of these foundations had in 1931 total assets of $858,659,908.

Churches are also sustained by voluntary gifts, and to a large degree represent interest in public as contrasted with private ends. In rural areas the church is the social center as well as the religious center. In cities, churches minister to a variety of social needs as well as lend their influence to encourage and maintain all sorts of good causes. Among other activities they maintain more than a thousand hospitals with over a hundred thousand beds. The total amount expended by the churches of the country in 1926 was $817,214,528.

In recent years social work in cities has claimed increasing attention and support from both private and public sources. Relief has always been felt to be a public task, but older methods of relief were often pouring money into a sieve. Study of individual cases and consequent broadening of the conception of what needs to be done to insure social well-being as well as to help individuals in misfortune have laid the foundation for a far more scientific approach and a stronger appeal to both sympathy and reason. In New York City the amount expended from private resources increased from ten millions in 1910 to forty-five millions in 1929, and the amount from public resources from seven to twenty-eight millions. In the three years beginning with 1929 and extending through the depression years of 1930 and 1931, a quantitative Study of Relief in Eighty-one Cities by Ralph G. Hurlin and Anne E. Geddes of the Russell Sage

Foundation, cited by Sydnor H. Walker in the *Recent Social Trends in the United States,* showed an increase from ten million dollars of private relief in 1929 to seventeen millions in 1930, and fifty millions in 1931; and of public relief an increase from thirty-two millions in 1929 to fifty-three in 1930, and one hundred nineteen in 1931.[8]

An estimate of the more substantial contributions for charitable and public purposes is afforded by the deductions reported in the federal income tax returns. These returns for the period 1916-29 show a total of gifts of slightly under four billions and of bequests of slightly over one billion dollars. Gifts during the 20's averaged about five hundred millions a year. This, of course, fails to include the sums contributed by those who made no income tax returns—nearly four-fifths of the people of the country—and also omits gifts made to individuals.

Yet for a complete view of the American attitude toward both education and welfare work it is necessary to take into account public as well as private expenditures. The line between the two is a shifting one, and one that varies for different regions. In the East higher education is largely under privately endowed institutions; in the West, under state auspices. In some cities welfare work draws the larger fraction of its support from private sources; in others from public. In New Orleans all relief is by private agencies; in Detroit 96.7 percent is through public agencies; and other cities range between these extremes. The function of private social work has tended to deal increasingly with measures of prevention, leaving relief more and more to be met by public agencies. It "has experimented with methods of meeting various situations, demonstrated the effectiveness

[8] *Recent Social Trends in the United States,* pp. 1212, 1215.

of certain methods, and stimulated social legislation to make possible the transfer of social services to public funds."

Professor Odum in his chapter on Public Welfare Activities in *Recent Social Trends*[4] formulates the task of social welfare as "to provide scientific and practical ways of attacking problems of inequality." Natural inequalities and economic inequalities both claim study and aid. At first the point of view was largely that of charity. "Since 1917, however, the reorganization of state public welfare departments and the trends toward professional social work standards have accentuated the movement away from the older concepts of charity toward the newer ideals of democratic service."[5] The total expenditures for public welfare for 1928 are estimated by Professor Odum to be five hundred thirty-five millions. This sum added to the five hundred millions reported in the income tax returns and the one hundred fifty millions in bequests for 1928, brings the total well above a billion dollars for public welfare exclusive of public education.

The expenditures of public elementary and secondary schools for 1930 are given by Professor Judd in the same *Report on Recent Social Trends* as $2,316,790,000.[6] When the sums expended for public higher education are added and the total combined with the expenditures for social work and public welfare we have a sum in excess of three and a half billions of dollars. Such a sum is in a very real sense an indication of public purpose and of private generosity and response to social obligations. It is an aspect of democracy which is at least as important as the discreditable facts of corruption and graft in public

[4] Howard W. Odum, Public Welfare Activities, *Recent Social Trends*, pp. 1224-73.
[5] *Ibid.*, p. 1228.
[6] *Ibid.*, p. 373.

life. It is a witness that we still believe in equality of opportunity and are recognizing the seriousness of the task a democracy faces in a country of such multitudes of people who have to begin near the bottom of the ladder, and yet are of us, for better or for worse.

CHAPTER XI

MORAL PROBLEMS OF GOVERNMENT

The title will probably suggest to most readers corruption, crime, machine politics, "pork," taxation, or prohibition. These are sufficiently exploited in the press and denounced by one group or another. Certain of them will receive separate discussion in later chapters. But conduct clearly recognized as crime, corruption, vice, does not form the most difficult or fundamental problem for government or for the mores. When an issue is clearly presented between what is plainly acknowledged to be just, honest, and decent, and what is unfair, crooked, and shameless, the public is not in doubt. Even in the numerous city elections in which the slogan, "To hell with reform!" carries the day, the issue is seldom simply between a wide-open town with unlimited graft and a respect for life, property, and decent morals. Many ties of race, economic dependence, party allegiance, combine with different traditions from Old World habits and conditions to confuse the voter. Men whom it would be silly to call "bad" will usually be found on both sides of most questions that constitute political issues. On the other hand, when corruption is clearly discovered, the cynical question, "What are you going to do about it?" is not often heard. Even the scandals of the Harding administration were hushed up rather than defended by the party in power.

The difficult moral problems are those in which the mores are confused because of conflicting values and in-

terests. Some of these conflicts in values are due to basal factors in human nature; some are due to profound social changes since the establishment of our federal government, and a consequent failure of older policies and principles to meet adequately new demands. We may consider them under two heads: those due to the need of order, structure, permanence, as versus the demand for change, adaptation, flexibility; and those due to different philosophies of the state and of the corresponding functions of government.

I

Structure, habit, wont, are basic in every living creature of any considerable degree of organization, and in every society of strength and stability. They are the bone and fiber that preserve the gains of growth, transmit the achievements of the past, and maintain the coherence necessary to any important accomplishment of ends. But structure in living beings survives only as it continually changes and re-creates itself. When it ceases to change, it dies.

The mores are more usually thought of as the settled ways of conduct with fixed standards of approval or disapproval. They are customs. Among peoples who live in a stable environment, get their living in the same way from generation to generation, build no cities, and have little contact with other peoples, the mores are correspondingly stable and simple. Parents have no occasion to correct the speech of children who never hear any but the conventional, patterned language and little occasion to correct morals if the tribal pattern is equally uniform. But among peoples changing their habitat, their occupations, their economic and social status, the cake of cus-

tom is not so hard. Sorokin's simile of a pot of boiling water is more appropriate for many aspects of social life among such changes than the simile of the "cake." The mores of such a people are obliged to make changes or lose their hold, and if involved in too rapid and frequent changes they likewise lose their authority. A country peopled originally for the greater part by dissenters from established religious bodies, and often at odds with the governments they left behind, bold enough to venture into a wilderness, and radical enough to set up a republic, might be expected to make innovations and adjustments in government as well as in mechanical inventions.

The mores underlying government in the United States have shown a dominant temper of stability. Written constitutions have proved at times bulwarks of conservatism. Even so slight a change as the change in the dates of organization of the Congress and of inauguration of the President elected in November was delayed for years after its desirability had become obvious. Yet several changes in fundamentals have been made, and the interesting fact about many of these is that they have drawn strength from moral unrest even if not wholly originated by it. Examples of such changes demanded or urged by changes in the mores or on moral grounds are: abolition successively of property, race, and sex restrictions upon suffrage; abolition of slavery; partial abolition of the spoils system and substitution of a merit system; protection of the factory worker from accident and occupational disease; protection of women workers, and protection of young children from too early employment; the judicial doctrine of property affected by a public interest; the more active assertion of the police power of the state in matters of health, safety, and morals; fairer distribution of the burdens of government through the income

tax; efforts to overthrow the reign of the saloon by restriction or prohibition of the sale of intoxicants; and, most far-reaching of all, the establishment of a general system of public education. Of the twenty amendments to the federal constitution only six appear to be primarily designed to define governmental authority or improve its efficiency. The remaining fourteen voice moral as well as political drives.

Not only the cynic, but the serious inquirer may, however, point to various movements inspired by moral motives that have failed. Numerous political parties, organized to right some injustice, have been doomed to join the ranks of lost causes. Emancipation of the slaves, in the opinion of André Siegfried, has been a doubtful good to the Negro. A war to end war seems to many at present little likely to achieve that promised result. Struggles to overthrow corruption in city after city have achieved a brief success, only to be followed by a return to Tammany in New York or to a similar group in other cities. The widespread agitation against the "shame of the cities" was damped by the epithet, "muckraker," coined by the man who regarded himself as a leader for civic righteousness. The "new nationalism" of that same leader disappointed many of his followers when he "took Panama." The "New Freedom" of Wilson gave place under the stress of war hysteria to Russian-like action against suspected groups and parties; the noble experiment excited derision in the wealthy class and the saloon returned under the name of the speakeasy. Even the accession of women to the privilege and responsibility of the ballot, although entirely justified as a measure of justice and democracy, has not as yet effected any clear gain in the processes or conduct of government.

One "reform movement" in particular seems to call for

more than a passing allusion. During the first two decades of the present century there was a general campaign against corruption in government, against the waste of national resources, and in behalf of social justice, which raised high hopes. Much legislation was enacted designed to carry out new policies. Courts seemed to look forward to needs as well as backward to precedent. A new spirit seemed to be in the air. In the World War the nation not only showed unexpected unity of support to the government, but felt the inspiration of a broader than merely nationalistic end. Yet the dramatic close of the war was followed by a sudden let-down, not only of military spirit but of what had promised to be a new spirit in public service. Return to normalcy seemed to some, even in the national government, to mean return to plunder. And when exposure finally came the public appeared not to feel any strong passion of indignation. A jury returned a verdict of acquittal for one of the parties to a "corrupt" transaction, and another jury returned a verdict of guilty against the other party to the same transaction. Reform appeared to be dead.

Critics like John Chamberlain publish autopsies under the more urbane title, *Farewell to Reform*,[1] but the verdict of death from inanition is not distinctly more encouraging than the gleeful slogan with which the Tammany campaigner consigned reform to the lower regions and presaged the passing of good government in the metropolis.

"Why "Farewell to Reform"? Steffens and Chamberlain agree that the reforms did not go deep enough. The reformers did not face frankly the facts that economic power inevitably seeks to control government for its own ends. Steffens concludes that reform tried to turn back

[1] John Chamberlain, *Farewell to Reform*, N. Y., 1932.

the wheels which are steadily rolling towards a single control. Chamberlain likewise sees in reform movements, including the schemes of the "planners" of today, a failure to go to the roots. Some degree of humanitarianism in industry is to be credited to the period of Roosevelt and La Follette, but it was on the whole a movement of "return" to earlier ideas, not of meeting a new situation. Roosevelt was "the perfect *representative* of the middle class of pre-war America," which both feared the trusts and yet "wanted to leave an opening at the top—the good old American right to succeed." Its attitude was one of "confusion."

Not all students rate the quest for social justice so low in actual fruit. Professor Faulkner in his survey [2] devotes more space to other than governmental changes but says in summing up: "The bitter attacks of the muckrakers and the drive for social control made many business leaders see a new light. A sense of responsibility to the community was developing far different from the economic brigandage which had ushered in the century." [3]

It is my opinion that the adoption of the Income Tax Amendment and the changing attitudes of the courts toward the exercise of the police power in social control were the outcome of a profound change in social morality. Also, that the genuine feeling of sympathy and responsibility which has been manifest during the depression of the past three years, even though it has not expressed itself in adequate governmental action, is a sign that the mores have moved far from the position of former depressions when relief was left to private charity or the almshouse.

[2] Harold Underwood Faulkner, *The Quest for Social Justice*, 1898-1914, N. Y., 1931.
[3] *Op. cit.*, p. 330.

II

The suggestion that the failure of the reform government of the early years of the century was due to its being in the nature of a "return" brings us to the second source of our confusion in the mores back of government, namely the conflicting philosophies of the state and of government which have been held. These philosophies are commonly known as the theory of Jefferson and the theory of Hamilton. The first may also be called the theory of individual rights, the second that of class interests. Both were the outgrowth of the rising middle class, but the middle class included two diverse groups with different occupations. Jefferson represented the independent farmer; Hamilton the commercial and manufacturing group. Each contributed an important factor in the foundation of our national life and government; changed conditions have changed the meaning of both theories and brought them into conflict, not only with each other, but also with the new needs and demands of a democracy in the present age. A deeper theory than either has been subtly at work, although no statesman of commanding power has given it formulation and identified it with his name.

In Jefferson's theory of rights the ones most emphasized were liberty, equality, and property. These told the story of a long struggle against royal power and oppression. Milton, Locke, the judges presiding over the Common Law courts, religious dissenters and puritans had written chapters of the history. The primary function of government was "to secure these rights." The danger to be guarded against was that government should usurp too much power. It should limit its activities to a mini-

mum. So limited, the tasks of government are not beyond the competence of the common citizen. The common citizen as Jefferson thought of him was an independent farmer. His right of property was of "property for use," not of "property for power." Equality in opportunity was possible because of the vast unoccupied lands awaiting the settler in the New World. Our factories should remain in Europe; the United States was to be a nation of independent, self-governing farmers. For such citizens liberty, equality, and property made the values of life in society, and the values that government should protect. The theory might well be called the "independent farmer's philosophy." In one sense it was the theory of a class, but of a class not organized and coöperating. The farmer played a lone hand.

Hamilton's theory was to give the men of wealth and property, the commercial interest and the manufacturing interest, a stake in the government. Let government promote the interests of these classes and these classes in turn would support the government. Government should be strong, not weak, and the support of the strong classes would make government strong, and the nation strong. Government should serve the strong, and the strong should serve the government. Government should not hesitate to assume functions such as banking if these would help the commercial and property interests. It should aid manufacturers by a tariff. Hamilton himself was politically minded. If he had been obliged to distinguish the two alternatives and choose between them, he would doubtless have said that his great goal was a strong nation, and that a strong commercial-property-owning class was a means, rather than that class was his end and nation the means. But he scarcely thought of these as exclusive alternatives. Nation and class were bound up

together. When economic interests, instead of being timid and in need of government aid, became so strong as to control government for various purposes of their own, the clash between a class theory and a democracy became evident.

Each philosophy made its contribution at the period when national life was taking its form. Jefferson's made us a democracy; Hamilton's a strong democracy. In one point they agree at the present time: each guards jealously the right of property from control or "interference" by government. The Jeffersonian is jealous of government in either property or personal affairs on the ground of personal liberty; the Hamiltonian resents interference and demands "less government in business" because he is strong, and dislikes any control by a power not of his own class. Representatives chosen by popular vote, instead of as in business by competition of the market, he regards as "politicians," who do not understand economic affairs, and are controlled by a class interest which is opposed to his. The difficulty with the Jefferson theory at the present is that property today, instead of being the limited property for use of the individual farmer, has become the property for power of the great corporation that commands the resources, and controls the jobs, i.e., the livelihood and standards of living for the mass of the nation. The difficulty with the Hamilton theory of class interest is that instead of being as at first a means of strengthening a somewhat incoherent democracy, class interest threatens democracy itself, and at the same time has not developed the sense of responsibility that alone can make great power in any element consistent with public safety and welfare.

Meanwhile demands upon government to deal with new situations and the complex conditions of a machine

age, an urban residence, nation-wide and international trade—conditions that are proving too severe a test for some of the European republics—are resulting in conflicts that show the confusion in our mores.

For example, there has been a great expansion in the functions of government in recent years. Dr. Wooddy in the Report on Recent Social Trends estimates that perhaps one-third of the actual types of administrative work carried on by the federal government in 1930 had not been authorized prior to 1915. Much of this expansion takes the form of restrictions upon person or property or both. Whether these are restrictions upon traffic in the interest of public safety, on preparation and marketing of food in the interest of public health, upon the capitalization and organizing of corporations and marketing of securities, or upon the manufacture and sale of intoxicants, they all entail additional functions; most entail additional expenditure and taxation; all interfere with liberty or property—or both. Both Jeffersonians and Hamiltonians denounce these additions; yet the forces of civilization have been compelling. An element in the situation which causes additional irritation in some cases is that the person or interest restricted is obliged to contribute through taxation to the restricting process.[4]

Nor are the forms of expansion that give service less contentious. In extending government aid to banks, or agriculture, or to this or that class, we seem to be following the Hamilton program. But there is a difference in the case of some of the types of aid now granted. Hamilton advised a program of help to a powerful class that could give an equivalent in the way of support. Some of the recent services, on the contrary, are to groups that

[4] The Editor and Publisher of the *Chicago Tribune* can see in it only the sack of America by the bureaucrats and tax-eaters.

are underprivileged. In some cases there is no very clear line between service that may properly be regarded as for the public good and services that seem to be rather for some class at the expense of some other.

Aid to agriculture does not appeal to industry so strongly as a tariff on manufactures. Loans to railroads and banks by the Reconstruction Finance Corporation are denounced by one group; corresponding aid to farmers by another. The parcel post has no friends among the express companies, nor postal savings banks among privately-managed savings or investment institutions. Publicly-owned utilities have seemed almost flagrantly immoral to those interested in gas and electric plants under private ownership. It is not necessary to suppose that all who favor increase of governmental functions are "progressive" or that those who oppose are backward. Nor that the promoters of services are moved exclusively by self-interest and opposers by public interest. There is sufficient uncertainty as to how much government may wisely undertake, irrespective of the merit of this or that restriction or service, to produce uncertainty of the moral attitude toward government itself.

The most critical test for the older philosophies, however, has come in the recent depression. Liberty of the Jeffersonian had joined hands with the impatience of government control characteristic of the powerful business class favored by Hamilton in the platform known as individualism. It fitted the conditions of the independent farmer and of the frontier; it suited the business class to be let alone; it offered to the ambitious the hope of prizes to be won by his own efforts; it recruited the upper class from the most vigorous young men of all levels of society. If any did not succeed it was his own fault, or if it was his own misfortune then he must suffer the con-

sequences. Yet this philosophy has simply been swept from the field by the collapse of industry and the spectacle of ten million men and women unemployed. Business and industry were without plan or wisdom. Liberty had proved inadequate to prevent catastrophe. Yet just as overwhelming was the conviction that the government could not long evade responsibility for relief. It needed no revolt of the masses to frighten community, state, and nation into action. The need of an ordered control of the economic process is coming to be felt as imperative, not for the sake of this or that class but for the life of the nation itself. A new philosophy is called for; perhaps it is in the making.

Equality was close to liberty in Jefferson's plan. For the independent farmer there appeared no necessary conflict between the three rights of liberty, property, and equality. But as property for use is replaced by property for power the older equality is lost or endangered. This conflict was clearly stated in a decision of the Federal Supreme Court. The difficulty of maintaining equal bargaining power between employing corporation and individual laborer has been noted in Chapter IX. The laborers attempt to combine in a Union. To protect laborers in the right to associate in this way the Congress and certain state legislatures passed laws which were declared by the Court to be unconstitutional. Justice Pitney frankly stated the impossibility of combining property rights and freedom of contract with equality of bargaining power:

> No doubt wherever the right of private property exists there must and will be inequalities of fortune; and thus it naturally happens that parties negotiating about a contract are not equally unhampered by circumstances. . . . Since it is self-

evident that, unless all things are held in common, some persons must have more property than others, it is from the nature of things impossible to uphold freedom of contract and the right of private property without at the same time recognizing as legitimate those inequalities of fortune that are the necessary result of the exercise of those rights.[5]

In the earlier years of our national life this incompatibility between the rights which were so basic to liberty and the equality which was asserted as likewise of divine origin and authority was less glaring, because in a nation of small farmers bargaining played a relatively inferior rôle. Each man determined his living conditions principally by his own industry and thrift. But the shift to an industrial society has made the average man in most occupations dependent for both employment and wage upon an employer who is himself a unit in a competitive system where strength of bargaining power is an ever-present factor. Such inequalities in economic power raise problems for a democracy that are not easily solved by the older formulas.

The outstanding contrast to equality is the organization of the industrial system itself. Efficiency in business and industry is based upon centering responsibility in the chief executive and giving him a free hand. He will of course need a staff; but he chooses the staff, not they him. Authority comes from above. The loyal employeee is he who obeys orders. Current slang expresses this by its epithet of "Yesman." The factory is similarly organized. Such a system makes for quick decisions and prompt execution of plans. Yet it tends to create or foster in both executive and staff or factory employee habits and attitudes which are the reverse of those implied in a

[5] Coppage *vs.* Kansas, 236 U. S. 1.

democratic government that emphasizes equality. It resembles rather a military system. The executive issues orders, often with little supervision or control by the directors. The effect may be, and apparently not seldom is, to make him impatient of control by law, and contemptuous of the slow processes of discussion and consideration that are involved in bringing a group to a decision. On the other hand, the man who is trained always to obey orders without question is not receiving an education that will tend to foster the initiative and independence of thought which in the past have been supposed to be desirable in a democracy.

The two philosophies, Jefferson-farmer and Hamilton-commercial, came into head-on collision in the Granger legislation of the seventies and eighties. The legal outcome in the doctrine of property "affected with a public interest" looked toward a theory that there is something higher than either the natural rights of Jefferson or the class interest of Hamilton, namely what the great jurists and publicists from Rome to Justice Holmes have sought under the conception of justice and public good. Such an end may indeed be urged by a group; ordinarily it must have the driving power of some group behind it in order to get a hearing and become law; but there is nevertheless a difference between a private or class end and a public end. The will of the people is doubtless the immediate source of law, but the faith of democracy rests in the belief—or the hope—that the will of the people in the long run becomes more intelligent and reasonable. We have at least progressed so far as to accept an election as a decision, instead of seeking to make ends prevail by violence. And this means that there is underlying our whole political procedure some respect for a common minimum on which classes and individuals stand.

The question of Professor Muensterberg to the writer, when the former was seeking to understand our political parties and their policies, brings out one point in this minimum: "Do I understand, then," he asked, "that both parties are in favor of the Republic?"

Yet just because such a conception as "affected by a public interest" emerged, not from a philosophic reflection upon human society, but as a judicial decision in a legal contest, which in turn represented conflicting interests of two social groups, the resulting restriction of railroad and warehouse rates was felt by railroads and warehouses, and subsequently by other public utilities to be an "interference" with business. Similarly under much so-called "social legislation." It was farmer versus railroad; small manufacturer or business versus the "trust"; labor union versus employer. Big business regarded the new legislation as in many cases oppressive. When one state shortened hours in factories or adopted workmen's compensation acts in advance of other states, competition was made more severe. The progressive era was followed by the insistent clamor for "less government in business." The Child Labor Amendment to the Federal Constitution met a chilly reception from state legislatures in the reaction from liberalism after the war.

This divisive attitude back of the general program of social legislation reflected the strength of the Hamilton class interest theory of government, reënforced in this instance by Jeffersonian insistence upon personal liberty. It is largely responsible for what Professor Merriam points to as "the wide ranging and paradoxical tendency to boycott government as a general instrument of social control, while utilizing it as an agency of personal or group profit." [6]

[6] Charles E. Merriam, *Recent Social Trends,* p. 1536.

Such conflicts of interests express an as yet unclear moral attitude of the mores toward the community and the common good. We are not sure whether a capitalistic system built on the profit motive can come to terms with a theory of the public good. In prosperous times, when everyone saw wealth just around the corner, few criticisms were taken seriously. Now, when business leadership has collapsed and confessed bankruptcy, assurance of the soundness of the Hamilton philosophy is less complete. Yet we are reluctant to give up faith in liberty. We are British rather than Russian or Italian in our psychology. We revealed surprising unity of devotion to a common purpose in the World War. We shall probably seek to keep liberty and yet assert our growing conviction of the need of a strong and ordered community.

In this confusion of the mores between rights, interests, and a public good above both individual and class, one agency of democracy has thus far stood above the battle. Like justice, education has been a goal on which all could unite. And since the process of education, unlike that of litigation, does not involve progress through contest attended by victory for one interest and defeat for the other, its method does not foster competing interests and class divisions. From small beginnings, and in the field of higher education from reliance upon endowment by private contributions, public education has grown extraordinarily in all parts of the country. In the older states, colleges and universities have been founded and built up chiefly by gifts; in the newer states by taxation. But in their conception of the function of education in a democracy there has been unity. The small college that Webster loved and the great university, pictured in the phrase of President Angell of the University of Michigan, as the center and goal of paths from every home in the

state, have alike cherished the generous faith in the power of truth to make men free and the loyalty of the men and women of the republic to the common good as supreme.

Increasing appreciation of the value of education to the community and to the individual has been shown by the amazing growth in public support and in attendance upon secondary and higher institutions during the present century. Professor Dewey's characterization of this growth was cited in Chapter II. As summarized by Professor Judd in the Report on Recent Social Trends the gains are as follows: Expenditures for public elementary and secondary schools have roughly doubled with each decade of the present century, rising in actual amount from $214,965,000 in 1900 to $2,316,965,000 in 1930, and the value of school property from $550,069,000 to $6,211,327,000. The amount raised and expended is now second only to that on account of war. Increase in attendance upon higher institutions during the three decades from 1900 to 1930 was 314 percent although the increase in population was only 62 percent. "In 1900 there were 630,048 pupils in secondary schools. The number of such pupils in 1930 was 4,740,580. In 1930 one of every seven persons of college age was in college and one of every two persons of secondary school age was in secondary school. Never before in the history of the world has there been such a development at the upper levels of an educational system." [7]

At the present writing the burden of taxation has become so severe in the general depression of farm, industry, and business that reduction in expenditures has seemed imperative. Traces of class interest have been visible in some of the proposals to this end. But it is difficult

[7] Charles H. Judd, *Recent Social Trends*, p. 239.

to suppose that the American people will abandon their faith in the one agency of democracy which has at once enlarged liberty, opened a new door to equality, ministered to prosperity of all classes, and served conspicuously and generously the common good.

Does education promise any more adequate philosophy of the state and of government to guide democracy under present conditions of civilization? "Realists" say: "Recognize frankly that government is simply a fulcrum for use by one power or another. The proletariat rules in Russia, and does not try to conceal the fact. That is the only country where there is no hypocrisy about the matter. In capitalistic countries the bourgeoisie rules but hypocritically claims that the people rule or at least that rule is in the interest of the people. In fact the bourgeoisie is scarcely aware that it is not the whole people. One class or the other is bound to rule and for its own interest. Have done with hypocrisy! Power can be met only by power; intelligence not backed by power is futile."

But this language sounds European to the American. It does not fit the extraordinary mobility of our classes. It does not suit a society in which there is much disposition to imitate a higher class but little disposition to act consistently on the basis of class solidarity. If some capitalists have been conscious hypocrites in asserting that big business was good for the country as well as for themselves, others have frankly confessed the need of broader vision and aim. It is rash to predict, but there is much in the American tradition to give ground for distrusting the "realists," and the "fulcrum theory" that conflict of classes with victory of one over the other in controlling government is to be our way out. Such a political change as was registered in the election of 1932 indicates neither fixity of class nor even that of party.

Some signs in both past and present suggest the emergence of what, for want of a better name, may be called a Commonwealth theory. In principle the theory is not novel. It was suggested to the Greek by his city through its laws, its justice, its art, its religion, its education. We honor the memory of Washington, Franklin, Lincoln and many less eminent who have stood above the battle of greedy seekers for privilege and power, because they saw and served more clearly what the common man felt vaguely, that his country stood for a good not to be measured wholly in terms of individual or class interests, nor dependent wholly for its success upon the backing of class power. The deeper human needs find fulfillment in what our fathers symbolized in the term "Commonwealth."

For the modern the state and its government is in some respects less inclusive than the Greek city which in Aristotle's phrase existed that its citizens should live a fair and noble life. The state no longer is a religious community, since for us church and state are distinct. Religion is the concern of the church; art is largely fostered by private agencies. But in other respects the modern state is more inclusive than the ancient city. Its citizenship is not restricted to a leisure class, but includes farmer, mechanic, trader; it includes women as well as men. Its task is greater, for it must unify many elements. It commands more effective instruments in the means of communication which science and invention have placed at its service. But the same fundamental needs of an ordered life, of justice, of coöperation, of sharing in a good life, call for a community in which the common good is the common purpose, and for a government with powers adequate to such a task. Other peoples may prefer other modes of meeting their problems; we believe in democ-

racy. Despite the partial failures of our past organization to meet many of the problems that have confronted us, despite the weakness of government in dealing with crime, and the backwardness of our legal system, despite the ineptitudes of isolation in foreign policy, and the slow progress in adjusting democracy to the inheritance from slavery, we are going to continue what Justice Holmes has called an "experiment," a government resting on freedom. But we are not necessarily tied to the eighteenth century conceptions of freedom. The twentieth century calls for a higher emphasis upon the goods achieved through association. Government is the instrument for securing and protecting these goods.

CHAPTER XII

THE LAWLESS STRONG

The attitude of the American people toward laws and law-breaking has invited the attention of citizens and the criticism of visitors. The multitude of laws on the statute books and on their way to enactment in the forty-eight states and in Congress argues an extraordinary use of law-making and a confident reliance upon law as a social agency. The statistics of crime and the immense amount of evasion of law and of anti-social practices which escape the grasp of legal machinery and hence of statistical record indicate, in the view of many, a lawless people.

A popular method of dealing with these two sides of American life is to allege that the first causes the second; excessive law-making is said to invite a disregard for law. Others deny that the American people is lawless—except in the matter of prohibition which does not count since a prohibition law is, in the view of those who scoff at it, an improper law. Others have charged crime to immigration—and it must be admitted that the names of many conspicuous criminals do not suggest the roll of the *Mayflower*. Still others speak of the influence of the frontier, or of the modern city. J. T. Adams traces the lawless attitude to early colonial days when the King's arrow was no protection for the trees reserved for the British navy, and when piracy and smuggling were not entirely shunned by respectable merchants. Adams and other historians have recalled that the early colonists included many who were "transported" in lieu of a prison sentence.

Dean Abbott in her review of immigration procedures [1] points out that until 1882 and even after the law of that year, various European governments found it cheaper to provide for their criminals a passage to America than to maintain them in prisons.

Yet most of these explanations apply, if at all, to the kinds of law-breaking which are as obnoxious to the great mass of the American people as to the peoples of Europe. The ordinary American is neither a murderer, a robber, a thief, nor a prostitute. The explanations throw little light on what Aristotle called the most heinous crimes—those motived, not by poverty with its needs of the necessaries, but by desires for the superfluities. Men do not corrupt government because of poverty.

Stated in sociological terms, we need to distinguish the attitudes of the strong groups or individuals, from those of minority, underprivileged groups or individuals. The former are impatient at restraints placed upon them by the laws which control power in the interest of the common-weal; the latter seek to defy or evade the laws which aim to protect interests of security already approved.

For if we view law as the attempt of society to maintain a social order with the two aspects of stability and change, it is evident that the existing order may be challenged by two agencies. On the one hand new demands or inventions in social, political, or economic conditions or ideas conflict with the established order embodied in laws and institutions. The new demands may lead to political revolution—a crime unless successful—or to economic revolution which involves no less serious conflict, even though its battles may be fought in legisla-

[1] National Commission on Law Observance and Enforcement. *Report on Crime and the Foreign Born,* by Edith Abbott, 1931, Part I.

tures, courts, and public opinion rather than with fire arms. On the other hand, privileges and immunities guaranteed by existing laws inevitably bear hard upon some groups and individuals. Any law that restrains free conduct of business will irk the ambitious promoter of venturesome schemes. Any law that protects private property will sit lightly on the boy who finds it tedious to work at monotonous tasks and joins with his gang in beating the game.

The social morality of any people is likely to be much more sure of its ground against the second type of offenders. The murderer, robber, and thief find little sympathy for their unsocial acts—except among the limited group who are like-minded. Their acts have been banned so long that they are regarded as either abnormal or as hostile.

But the "malefactors of great wealth" meet no such assured opposition in their schemes to divert social wealth into their own pockets. In earlier days, if, as was the case with many a feudal baron, his land and title were won by the sword, this right of might was too much the rule and custom of the time to call out protest except from the peasant or villein who did not count. The lords and their vassals made the effective mores of their times. Not until the rise of the cities and of the middle class was there any effective restraint upon the robber baron. The replacement of a military civilization by an industrial shifted the conflict from arms to brains. This seemed to Herbert Spencer the millennial dawn. Adam Smith and laissez faire furnished the rationalization for emancipation from outgrown checks and restraints. The Lord or the Nature of Things would ensure complete harmony between desire for power and wealth—the superfluities of Aristotle—and the common good. Some still think so.

The publisher of the *Chicago Tribune,* for example, sees in the history of American development a glorious record of exploitation of natural resources and business expansion unmarred by a flaw except as this expansion has been hampered by political interference or taxation.[2] President Hoover in his exposition of American Individualism passes lightly over the possible excesses of unrestrained pursuit of gain.

The fact is that there is an esthetic glamor in the career of a bold adventurer, quite irrespective of its utilitarian benefit or injury. A spectacular rise to wealth, like a Napoleonic rise to power or like a Lindbergh flight, inevitably calls out admiration. "Success" is undoubtedly an object of desire and of emulation. As asserted by Sumner, to elevate success to a motive may involve "depression of all social interests," or may be, as damned by William James, to worship a "bitch-goddess." It is not exclusively an American trait, but in a land characterized by extraordinary mobility and the absence of rigidly fixed classes, success has appealed to a larger number as possible and hence as an object of more general ambition and approval. Constructive imagination, organizing ability, courage to undertake large enterprises, and persistence in spite of obstacles—for all these qualities which are found also in the explorer, the pioneer, the inventor, and the leader of forlorn hopes, the development of a new country has offered large opportunities. It is not strange that they are admired.

The spirit of liberty is a second trait in the reckoning. It has had such scope in our social and political system that it does not easily brook restraint, especially when high economic authorities have proclaimed that economic

[2] Address before the Kansas City Branch of the Federation of American Business, in *Chicago Tribune* of July 8, 1932.

liberty is the sister of religious liberty and political liberty, both dear to American hearts. It has seemed a quasi-religious and patriotic duty to the man of action to resist restraints upon his free adventuring. If to love of liberty we add the competitive spirit which has been the idol of modern economics and has been jealously guarded by the courts, the Sherman Act and the Clayton Act, we find sufficient grounds for the ambiguous position of the bold enterpriser. He is both admired and feared. He may go on his way confident that he is playing the game according to the rules, only to find himself not only unpopular with those who have been crowded to the wall by his aggressive policies, but denounced by muckraking magazines and by a President of the United States as an "undesirable citizen."

The plain fact, as has often been pointed out, is that whereas the landed nobility gradually gained a sense of responsibility to both national government and local tenants, the nerve of our economic system has been freedom in both relations. There has been no national government with sufficiently comprehensive powers and responsibilities to envisage a pattern of public interests and enforce its acceptance. Instead we have given all the police power which "extends to all the great public needs" to the forty-eight separate states, each of which entertains its own notions as to public welfare, and is likely to differ from other states in many important respects. In many cases the power of a state is quite unable to cope with that of a vast corporation domiciled within its borders but nation-wide in its operation. And while interstate commerce is under federal control, Congress has thus far confined its activities chiefly to the railroads, to the prohibition of monopoly and restraint of trade, and to tariffs to meet the desires of various interests.

The corporation organizer picks out Delaware as the easiest state for his purpose; the man in search of a divorce seeks Reno; if he wishes race-track betting he has a choice of several states, and if he prefers the Stock Exchange variety he turns to New York. The system may have advantages as affording laboratories for social experiments but it is scarcely adapted to impress the man of wealth and power with the conviction that the public good is clearly defined or universally binding. In early days several states were notoriously governed by their railroads—Connecticut by the New York, New Haven and Hartford, Pennsylvania by the Pennsylvania, New York by the New York Central, California by the Southern Pacific, New Hampshire by the Boston and Maine. More recently public utilities have proved too strong for some of the weaker states and their commissions. Certainly Illinois exercised no control over the questionable operation of the Insull corporations through which the public is estimated to have lost seven hundred millions of dollars.

Indeed, what with our dominant economic superstition that competition and self-interest can be relied upon to give prosperity and universal happiness in the best of possible worlds, and with the weak and diverse agencies of government which are supposed to frame and enforce laws for the public good, it is not strange that "the strong" have often despised the law, like Callicles of Plato's dialogue, viewing it as an attempt by the many weak to curb the few strong. The sentiment attributed to Commodore Vanderbilt has doubtless been felt by many who lack his frankness and force. When his attorney advised him that his proposed steps toward organizing the numerous railroad units of the State of New York were intended no doubt for the public good but were

unfortunately all contrary to the laws of New York, Vanderbilt is said to have exclaimed, "Hell, you don't suppose you can run a railroad in accordance with the laws of the State of New York, do you?" Somewhat similar in its implications as to the relations between law and business is the comment of the elder J. P. Morgan to his attorney, "I don't know that I want a lawyer to tell me what I can't do. I want one to tell me what I can do." Mr. Morgan wished to keep within the law but had no thought of taking the law as representing the last word in public policy.

The history of the country at different periods has seen successive types of disregard for law by "the strong," ranging from arrogant contempt for its restrictions to efforts to control and wield its agencies.

It is impossible to state accurately how far the slave-owner in pre-war days was a law to himself. The plantation was a small world; the master was in the nature of the case the sole authority present. Murder excepted, there was little in his relationship to his slaves for which he could be called to account. And in his relations to other white men he notoriously was governed by the "code" of honor, rather than by the statutes. From Andrew Jackson down he was quick to resort to his dueling pistol to settle disputes. And as for the decisions of the Supreme Court, the State of Georgia did not feel constrained to obey it when Indian rights were concerned. The cotton planters not only ruled the South, they ruled the nation. No doubt the southern leaders believed that to control the federal government was necessary in order to protect their interests, and no doubt they had convinced themselves that the Jeffersonian doctrines of democracy and equality were absurd and that as declared by Chancellor Harper, Alexander H. Stevens, and John C.

Calhoun, slavery was a beneficent and divinely ordained institution. The subtle influence of property upon their philosophy of society was clear. They gave the impression to the North that unless they could rule they would leave the Union and would refuse to recognize any superior authority of the federal government.

Following the Civil War, the scene shifts to the railroads. The construction of the railroads was unquestionably a great public necessity. Unfortunately the theory under which they were built was that they were private industries, pure and simple. The public interest was supposed to be secured by competition. This, to be sure, did not preclude public aid. The scandal of Crédit Mobilier showed one aspect of methods in construction. Stock was sold to members of Congress at a low price. The Erie Railroad at about the same time gave an example of freebooting by Drew, Gould, Fisk, and their associates which surpassed previous annals. The stock of the company rose and fell in Wall Street gambling. The peculiarly shocking feature was their use of judges to protect their raids. It might be argued that just as Chicago gangsters are undisturbed while merely killing off one another, so the public need not worry so long as it was a fight between the Erie gang and Commodore Vanderbilt. But there were stockholders, and in particular foreign stockholders, whose faith in directors certainly suffered a blow. And what was particularly suspicious, the New York Legislature was "induced" to pass measures favored by Gould, and later to lay aside its scruples against monopoly and assent to the organization of the New York Central and Hudson River Railroad Company by which Commodore Vanderbilt accomplished his purpose of a unified system. Not content with the

assent of legislature, both the Erie directors and Vanderbilt sought aid from the courts; they secured injunctions from their respective judges which commanded opposite courses of action, and piled one upon the other as fast as blows from contesting boxers. It was a merry game and although the amount ultimately held by the gamblers may have been small as compared with amounts resulting from more recent transactions, it showed conclusively that it was foolish to engage in ordinary confidence games or petty thimble rigging since these games yielded less and were frowned upon by law. Far better to use the agencies of law to assist in emptying the pockets of stockholders.

The next stage of railroad management shows the public disillusioned of its naïve belief that the railroad management would be led by regard for its own interest to serve the public interest also and that if any further check was needed this would be supplied by competition. In the words of Charles Francis Adams, Jr.:

> The whole theory under which the railroad system was left to develop itself was founded on a theoretical error; . . . That error lay in the supposition, then universally accepted as an axiom, that in all matters of trade, competition, if allowed perfectly free play, could be relied upon to protect the community from abuses. . . . The mania for railroad construction which began in 1866, and culminated in the crash of 1873, brought matters to a crisis. As lines multiplied, the competition increased. The railroads had been built much too rapidly and the business of the country could not support them. Those immediately in charge were under a constant and severe pressure to earn money; and they earned it wherever and however they could. They stopped at nothing. Between those years it is safe to say that the idea of any duty which a railroad corporation owed to the public was wholly lost sight of. In the

eyes of those managing them the railroads were mere private money-making enterprises.[3]

The attitude of the railroads seemed to evidence contempt of strong men or corporations for laws enacted by some inferior unit. It is small wonder that Congress finally took strong measures to regulate bodies which had despised lesser authorities. It may be objected that they were not technically lawless, because they were acting on the principle of American individualism which relies on competition, and because they had not prior to Munn *vs.* Illinois been held by the highest authority to be "affected with a public interest." Railroad employees who undertook to resist lower courts had not the same legal presumption. It may be freely admitted that the railroads could secure superior legal advice and that they could more deftly evade penalties, but so far as the disposition underlying the conduct of the two was concerned, there seemed to be in each case a defiant attitude.

After the railroads, insurance. The scandals which the Armstrong Committee discovered through its counsel Charles E. Hughes were due, according to the president of one of the insurance companies, to the introduction of bad bills in the New York Legislature, against which it had become necessary to secure protection. The companies contributed to the party treasury and in return were protected against "strike bills." But the committee did not consider the lavish expenditures of the companies which included the maintenance of a "House of Mirth" under the head of "legal expenses," as so innocent a measure of self-defense. Apparently the payments to the party treasury were able not only to influence legislation but

[3] Charles Francis Adams, Jr., *Railroads: Their Origin and Problems*, N. Y., 1888, pp. 117, 123.

to secure from the Insurance Department the certification of false accounts by the companies which covered up enormous salaries to officers and "the enormous syndicate profits which men like Harriman and Morgan were able to make through the use of the policyholders' money." [4]

About the same time the "Sugar Trust," not satisfied with writing the tariff on sugar, connived with customs officers to defraud the government of millions of dollars by underweighing.

And after insurance, public utilities. The "shame of the cities" in the early years of this century was the sale of special privileges to favored individuals or corporations, sometimes for cash payments to aldermen, sometimes for less crude considerations. It was shameful on the part of city officials to take bribes, but there can be no bribery without those who buy as well as those who sell. Those who bought were not poor men. They were usually corporations organized "for profit." Some were probably unwilling buyers who felt obliged to bid against competitors. As Croly says of Mark Hanna, if it was necessary to take measures to protect his investments from rivals, he took them.

Frederic C. Howe, in the *Confessions of a Reformer,* gives a striking picture of Mark Hanna and Tom Johnson. "Both men were lawless. They respected neither the law nor the courts. They knew how laws were made. They used political power in the city councils, in the state legislatures, to tighten their hold on the community. They had made judges. . . . They were lawless by temperament; they felt themselves above the law. That was part of their power. They had no reverence." [5]

[4] H. F. Gosnell, *Boss Platt and His New York Machine,* Chicago, 1924, pp. 277-84.

[5] Frederic C. Howe, *Confessions of a Reformer,* N. Y., 1925.

Recent managements of the Utility companies have carried on. The investigation conducted by the Federal Trade Commission has brought to light some interesting methods of creating public opinion favorable to private as versus public utilities. Of special interest are the disclosures of efforts to enlist the services of the press and of teachers and textbook writers on behalf of the policy of private ownership. Undoubtedly the managements of privately-owned companies should have not only their day in court, but an opportunity to present their case in the press and in maganizes and books. On questions of public policy, where there are two sides the student has a right to get both sides from the teacher and from the source material.

But the conscience of modern society has come to distinguish sharply between what is right for the attorney and what is right for the judge. The one may accept a fee and no one is deceived as to his status. The other must not accept fee or favors from a party to a suit pending before him. Probably the utility publicity business would hesitate to approach a judge secretly in order to influence his judgment in a case. It must be freely admitted that the public conscience has not reached the same degree of clarity as to the professional proprieties in the case of teachers and journalists as it has in the case of judges. Newspapers are expected to be partisans in matters affecting party politics. On these themes editorials are regarded as expressing the policy of the paper, not necessarily the personal view of the writer. No one is deceived.

But in such matters of public policy as the financing, rates, and management of utilities the public feels that it has a claim for impartial examination and discussion. If the editor were to print honestly the caption, "This editorial was written by the Publicity Bureau of the XYZ

Electric Company," the reader would be in a position to appraise the opinions expressed. Advertising was regarded by the Utility companies as an effective and economical method of securing the desired editorials. Thus the director of the Tennessee Public Utility Information Bureau could report as follows:

> At a cost of less than $700 we have been able to get our story in papers whose combined circulation is approximately 350,000, and as a result of these advertisements and our personal contact with the editors we have received a very large number of favorable editorials.[6]

A similar official reports great success in Missouri:

> We . . . were successful . . . in increasing the amount of advertising which had been done in the State. This has a splendid effect upon the editors. The result is that we now stand very well with the editors and the press of the State. I may say that the newspapers are 99 percent with the privately owned utilities.[7]

So valuable did editorial support appear to Mr. Insull and to certain companies of the National Electric Light Association that $84,000 were contributed in 1927 to a firm supplying editorial matter to 12,784 newspapers. Every state in the Union was represented. "The estimated total space used was 3,111,420 inches."[8] Quite likely the firm of E. Hofer and Sons were sincere believers in "the blighting effect Government or public ownership has on private initiative and enterprise," as stated in its prospectus, but are not the readers of 12,784 newspapers entitled to know that they are being stuffed with canned

[6] Ernest Gruening, *The Public Pays*, N. Y., 1931, p. 181.
[7] *Ibid.*, p. 181.
[8] *Ibid.*, p. 190.

opinions put up by E. Hofer and Sons, and not even inspected under the Pure Food Act! Possibly these revelations concerning newspapers may be one reason why some newspapers lost interest in following the investigation by the Federal Trade Commission.

Probably the attempt to enlist the teachers, textbooks, and schools of the country caused deeper resentment. For although no law may be violated when a teacher is subsidized, the people have trusted teachers to present facts honestly, and when treating controversial questions to present both sides in an impartial manner. Any deference to the opinion of a teacher depends on the supposition that he is disinterested. The claim of professors in colleges and universities to be free to investigate and seek truth rests for its justification on the importance to the community of unbiased truth-seeking. Mr. Insull who was a conspicuous leader is credited with the brilliant idea of enlisting the services of schools and colleges in the interest of privately-owned utilities. Doubtless he would not have thought it just the thing to subsidize courts and judges. And of course there is no law against placing teachers on a utility's pay roll. But the underlying philosophy of action is the same. It is that of controlling the agencies of government, of public opinion, in the interest of the strong.

The most striking contempt of law by wealthy individuals in the past decade has been the encouragement they have offered to violation of the prohibition laws. Of course the law does not forbid the use of intoxicants. But it does forbid the sale, and there is no sale without a buyer. One must admit the moral, if not the legal logic of Al Capone's question, "What have I done except to supply the demands of our best citizens?" The bootleggers' fancy prices are not obtained from the poor.

They must come from the well-to-do. As in the case of bribery, two parties are necessary to violation of the law, even though only one is legally an offender. It is hard to discover superior regard for law in the party who is not legally liable.

In the case of prohibition and of many other laws it is true that they are enacted not by unanimous vote, but by a majority. It is further true that many laws are passed because some active group is behind them. None know this better than the strong. But when the group behind a law is not "our group" the law is likely to appear less worthy of our support and observance.

The Adamson law, whether justified by consideration of public welfare or not, was undoubtedly passed because of the pressure of the railroad employees. Tariff laws, whether justified on the ground of public good or not, are enacted at the instance of the interested groups. And the method of framing a tariff is to include sufficient industries and corresponding sections of the country to get a majority of the Congress behind the measure.

In sum, the law in the minds of many strong business men is not synonymous with the right for several reasons. (1) There is little national law, but instead there are multifarious state laws. (2) These laws often conflict. (3) Both federal and state laws are sometimes enacted at the instance of some group. (4) In any case, they are likely to be passed, not by business executives, but by "politicians," who as a rule come from a less wealthy, i.e., lower social class which does not understand economic problems. (5) Therefore, the alternative presented to those of upper financial class is either to control the lawmakers or to disregard laws which restrain business improperly. The first alternative may take the form of campaign contributions to the party which is counted

most likely to deliver the goods, or to both parties. Crude purchase of votes is less in favor.

Why set the lawlessness of "the strong" in the front rank? Because the example and influence of the strong and successful count in determining the mores of the people; those of the poor, the lower class, count only with their own limited groups. The middle class and the young from rural and middle class city homes are not likely to select bootleggers, gunmen, and racketeers as their models. On the other hand, when leaders in the business world achieve fortune and prestige by evasion of law or by controlling law-making for private interests, or by gigantic gambles with other people's money, it is not surprising that the impression grows that the path to success is easiest for those who are not too scrupulous.

After the completion of this chapter the following statement by Judge Wilkerson of the United States District Court appeared. It confirms so forcibly the view of the chapter as to the significance of the "lawless strong" that it is here presented.

> If we would seek the beginnings of the existing disrespect for law, we must go back of prohibition or the World War. We must go back to the days of the strong man who defied law to build up the great combinations and amass vast fortunes. From their example has come the popular belief that there is one law for the rich and another for the poor and that courts are impotent against the encroachments of lawless wealth.[9]

[9] Hon. James H. Wilkerson, *Chicago Alumni Magazine*, March 1933, p. 207.

CHAPTER XIII

YOUNG DELINQUENT AND PROFESSIONAL CRIMINAL

If the American people were asked, What is your attitude toward crime? it would reply in the spirit, if not in the laconic phrase attributed to President Coolidge when asked what the minister in the morning sermon had to say on the subject announced, namely, "sin." "He was against it," answered the President. Despite the occasional outbreaks against "sob sisters" by "hard-boiled" journalists and others who favor the public with advice as to the way in which to stop crime, there is little sympathy for the kinds of crime which ordinarily go by that name. To sympathize with the boys who make up the large proportion of present-day criminals is, for a humane person, inevitable. To recognize a problem of social engineering in the larger percentage of young boys from certain city areas who go wrong is likewise inevitable for a scientific mind. No doubt the boys in question are "bad," but only the hopelessly unscientific or moralistic mind is interested in labels as such. The problem is what makes them bad, and what can be done for either prevention or cure. The mores of the great mass of the people condemn murder, rape, robbery, theft. This is but to say that most of us wish to be secure in our persons, and in our belongings, few or many. Further, despite the disagreeable features of many kinds of labor, the fatigue from long hours, the unhealthfulness of certain occupations and the social inferiority badge attached to others,

the average man or woman prefers to work rather than to be idle, and a steady job rather than a precarious life of occasional booty at the price of continual warfare with the police. Whether this preference for work is due to any moral bias, or to the customs of a people long trained by the traditions of the middle and working class ancestry, stimulated by a temperate climate, private ownership of land, and the compulsion of the frontier, is immaterial. The recent depression has weighed heavily because it has meant grinding poverty and the bitterness of applying for aid. But to many, the bare condition of idleness has been almost intolerable. The maxim, "Only saps work," is not the view of the typical household.

Yet it appears to be the cynicism of some; a large number, whether by physical abnormality, by defective home conditions, educational lack, companions, gang influence, slum neighborhood, restless craving for adventure and excitement, dazzling possibility of sudden wealth, or other motive, sooner or later find themselves at variance with organized society and its codes, not merely in the matter of idleness but in acts of violence or fraud, or wrongs against property. Are these boys and girls, men and women, sufficiently like-minded to form a group by themselves, and have they something in the nature of standards and rules of their own? In other words, have they their own mores? If so, what? Why? and then, what is the attitude of our social morality toward these "enemies of society"?

In considering the first question, How far criminals make a class-conscious group with its own mores, we may leave out certain offenders. Crimes of sudden passion may be committed in a fit of jealousy or a quarrel by persons of previous good standing. Sudden temptation may be too much for the trusted clerk. Such persons do not

necessarily identify themselves with any criminal group. Some girls may take their first "wrong step" without direct encouragement from a social group, if strongly developed sexually, and not safeguarded by family and friends, ambition or religion. Some offenders are of extremely low intelligence or weak character—there are Jukes and Kallikaks. If all offenders were of these types, occasional, or individual, or defective, the problem for society would be simpler. The two outstanding types of criminal or delinquent which are of especial interest for social morality are the juvenile offender and the professional offender. In these types group influences and group morale are important. The professional criminal may be said to have a code of his own. It is in the treatment of the juvenile group that the morality of the community has shown more intelligence. It is in dealing with the professional criminal that society has shown its own willingness to compromise its moral standards for a share in the loot of fraud, or for aid in partisan politics, or to avoid unpleasant duties.

I

That the criminal of today is more than formerly a boy or young man is attested not only by statistics of inmates of penal institutions but by the personal statements of many officials. Senator Deneen of Illinois, prior to his service as governor, was State's Attorney for Cook County in which Chicago is situated. In an address on crime problems he said in substance: "If you were to visit our county jail where persons are awaiting trial, you might well think you had made a mistake and had found yourself in a high school." The warden of Sing Sing in a recent article emphasized the youth of convicts there.

Judge Blake of Los Angeles is reported in the *Los Angeles Times* of December 15, 1931, as saying to a Teachers' Institute:

> Following nine years of experience on the bench, mostly in criminal courts, I have been amazed to see the continual parade of faces never yet shaven that come before our courts of justice. The age of the criminal has been growing lower each year until now it is almost entirely a youthful problem with which we have to deal.

Shaw and McKay, in Volume II of the Wickersham Report on the Causes of Crime, summarize the opinions of scientific students:

> Many students of the problem of delinquency and crime agree that a large proportion of habitual offenders commit their first delinquencies during childhood, youth, or adolescence.[1]

Statistics bear out the above opinions. Nineteen was the peak age of offenders arrested in 1932.

In a study of the careers of the 509 inmates of the Massachusetts Reformatory at Concord, 393, or 77.2 percent, had experience in delinquency prior to the age of seventeen years; 471, or 92.5 percent, before the age of nineteen.[2]

The Census Bureau's statistics show the number of inmates of all penal institutions at various ages, commitments for 1932, and distribution of prisoners received in prisons and reformatories which include most of the graver offenders. As summarized by Professor Best: [3]

[1] National Commission on Law Observance and Enforcement, *Report on the Causes of Crime,* Vol. II, p. 393.

[2] *Ibid.,* p. 347, cited from *Five Hundred Criminal Careers* by S. and E. T. Glueck, N. Y., 1930, p. 143.

[3] Harry Best, *Crime and the Criminal Law in the United States,* N. Y., 1930, p. 180.

Almost two-thirds (64.7 percent) of inmates in penal institutions of all kinds, slightly over one-half (51.6 percent) of commitments and seven-tenths (70.2 percent) of prisoners received in prisons and reformatories are from eighteen to thirty-four years of age, the very heyday of life, while only a little over two-fifths of the general population are so (i.e., are of ages 18-34). Or, if we wish to consider the young group, and therefore take the period from eighteen to twenty-four, we find that whereas the proportion of the general population over fifteen years of age is for the period 18-24, a little less than one-fourth (23.9 percent), the proportion of inmates of all penal institutions is nearly one-third (32.5 percent), and of prisoners received in prisons and reformatories—those convicted of more serious offenses—two-fifths (39.4 percent).

Again quoting from Professor Best's comments: [4]

The contrast in age between the prison population and the general population becomes the more marked in the ratio of the one to the other, or the number of prisoners per 1,000,000 of general population. The ratio of penal inmates of all ages is 1,513; for those from twenty-one to twenty-four, it is 2,867; at twenty, 2,665.

Not strange that the casual visitor to a jail should, as Mr. Deneen put it, wonder if he had not come by mistake to a high school! But statistical studies do not stop with such facts as those cited. They show that certain areas of cities furnish extraordinarily large quotas to the juvenile courts and police records. A map of Chicago, showing by dots the location of cases before the juvenile court, is black in certain areas, scarcely dotted at all in others. On its face this might mean either that certain areas attracted those of delinquent or criminal tendencies, or that these areas manufacture youthful delinquents. In

[4] *Ibid.*, p. 180.

so far as the black areas are areas of run-down houses and tenements, general physical deterioration, shifting population, economic dependence, diminishing church strength, and low rents, they doubtless attract the poor and the recently arrived immigrants. But the fact that the very same racial groups after removing to other areas show a marked change for the better goes to prove that the neighborhood is a factor. The evidence that poor people under other conditions show much less delinquency reënforces the inference as to the influence of neighborhood environment. And if the enormous increase in delinquency were due simply to the poverty of the residents the problem would merely shift to that of poverty—too simple a cause for the complexity of the problem as seen by those who have studied it most.

The black areas are usually areas adjoining business districts; frequently areas of decreasing population, of few families owning their own homes, and of "marked disintegration of the traditional institutions and neighborhood organization." [5]

Coming closer to the direct factors affecting boys and girls, the spirit of the community, however intangible, is a real force. Not only is there in such areas a confusion of mores in the families of foreign born between Old World standards of the elders and the new patterns of American life imitated by children; there is confusion between the teachings of parents and the patterns of predatory activity on the part of public officials or well-known law-breakers.[6] Stable habits and attitudes in the child develop under the influence of a relatively stable and consistent set of social standards.[7] Where there are

[5] Shaw and McKay, *Causes of Crime,* Vol. II, chs. II, III.

[6] Healy and Brunner, *Delinquents and Criminals,* N. Y., 1926, pp. 190-191.

[7] Shaw and McKay, p. 114.

no stable and consistent social standards the child is not likely to originate such. But this negative side of the spirit of the community is not all. In such areas there is a tradition of delinquency, handed down frequently by gangs. Boys are initiated into theft by older companions or combine in gangs. They find at hand "fences" who buy their plunder. In a marauding expedition, in burglarizing vacant houses or, when bolder, in robbing shops, boys find at first excitement and adventure, then the means for display and prestige.

The gang has its own mores. It gives to its members not only aid when they need it, but "moral support." For it is the approval of the gang that counts—just as the wealthy citizen is likely to esteem the approval of his club, and the woman in "society" the opinion of her set, above any standards set by a middle class, or enacted into law. And the prestige in the criminal gang, like prestige among "the strong," is gained by success, by putting over a coup, and baffling the enemy, that is, the police.

But why spin out the story? What father or mother of young children who has spent even a week in such a slum would willingly expose them to the environment, the associations and companionship of such an area, even if a sound home life could be maintained as an antidote? But when the meager resources, the wretched dwellings, the precarious livelihood of the homes in such a district are added, the wonder is not that some boys go wrong and some girls make "missteps"; the wonder is that so many escape.

What of it? What has this to do with social morality of the United States? Do we not have laws against theft, robbery, and prostitution? Do we not maintain police, courts, and prisons? Does not this express our abhor-

rence of crime and delinquency? Yet when we reflect that our present machinery does little if anything to lessen the amount of crime, and when we reflect further that we continue the city conditions which breed criminals almost as certainly as nurseries breed trees, or farmers breed cattle, we wonder whether we are in earnest. Are we actually so helpless, or would the price of saving thousands of boys from careers of crime be higher than we are willing to pay, or are we the victims of an outgrown system which we are afraid to change? In other words, the attitude of people toward juvenile offenders is a test of how highly our civilization values its young people.

More definitely, the city in America more than in Enrope is a part of our whole industrial order and individualistic philosophy. The city grows without plan and largely without supervision except, it may be, from the fire department. Business opportunities and profits determine the type of building. Areas of uncertain future remain for year after year, decade after decade, getting shabbier, more unsanitary and depressing. Never fit for human habitation, with no parks or playgrounds, they continue as eyesores in a great rich city, the monuments to our theory that private property is immune to any community of interest. In a New York slum the Crime Commission estimated that at the rate of change to be expected from commercial motives the replacement of old-law dwellings, unfit for human habitation, by suitable structures will require 200 years. We scrap our machinery and our industrial plants, but there is no money —for the owner—in decent dwellings in certain locations.

Why should not the city, which has to stand the consequences of criminals, compel reconstruction, or itself reconstruct? European cities do such building or rebuild-

ing. But our rugged individualism forbids. The Massachusetts Supreme Court held that it would be unconstitutional for the state to build dwellings for working men. It would be taking one man's money (by taxation) to build a house for another. It would also place the state in competition with private contractors.

To be fair to American social morality we must notice some of the efforts to prevent the breeding of young criminals and to help the young offenders. Social settlements from their beginning have made the children of their neighborhoods an especial object of study and friendly help. Juvenile courts, to which eminent and humane judges have given their best, have largely replaced the earlier order when "innocent" or "guilty" were the only categories in use for all offenders, old or young. Probation, parole, placing of children in better families, mothers' pensions to enable widowed mothers to give some care to their young children, have all been widely adopted. These have not called for any radical change in individualistic philosophy. They express the kindly feeling which Americans, more than many peoples, like to show for children. But a fundamental change in our philosophy of private property and in our methods of government in city and state is another matter. To be sure, scientific studies are recent; many points are still in dispute; legal inertia is far greater than the inertia of which Newton states the laws; and the hold of the established order, that is, of individualism, is so deeply bound in with our religious, political, and economic tradition as to make any change seem almost sacrilegious and unpatriotic. So the chances are that we shall go on in nearly the present way, growing our annual quota of boys for the police, the courts, and the prisons. We shall aim to be more intelligent and humane—but as for taking

any radical measures to stop the production, there seems little hope in the immediate future.

II

The professional criminal presents another test of American social morality. Crimes of passion will occur in any human society. Crimes against property are likely to be found wherever private property exists. But professional, organized crime as now carried on in American cities has come to be so intricately connected with police, courts, and other agencies of government that instead of being pursued by these agencies it rather controls them, or at least exists by their connivance.[8]

The statement of Judge Bruce as to the Chicago situation and its implications would apply in large measure to other great American cities.[9]

> For many years, indeed, Chicago has been under the domination of the underworld. For many years Chicago has tolerated vice and now the underworld and vice have it by the throat. We have complained of crime; we have preached the gospel of a respect for the law; yet we have exhibited to our youth the spectacle of policemen in full uniform acting, not only as customers of, but often as partners in, our brothels, our gambling houses, and in liquor selling. For all this the public is responsible; for the public has allowed it to exist.

Not all cities are so dominated by organized crime. Milwaukee, Chicago's neighbor, is shunned by criminals. It is an unsafe town in which to operate because the police and courts are "on the square." Interference by politicians is not tolerated. In New York there appears to

[8] Roscoe Pound, *Administration of Criminal Justice.*
[9] A. A. Bruce, *Illinois Crime Survey,* p. 816.

be a compromise. Certain types of plunder and law-breaking are overlooked, but the more violent types are measurably restrained.

It cannot be said that no attempts at reform are made in the crime-ridden cities. From time to time, when some outrageous crime stirs public opinion or when some courageous leader challenges the alliance of crime with government, a "crusade" sweeps the city. A new set of officials is elected. For a time things are "quiet." Little by little the criminal organization finds new ways of operating. Enforcement of laws makes enemies among those who seek special favors. Enforcement of liquor laws and of laws forbidding brothels and gambling is unpopular, not only with those who profit commercially, but with those who dislike any restraint upon individual conduct.

> Society through legislation and other measures strives to protect its citizens against wayward impulses that are destructive to human happiness and social order. Public opinion in our largest American cities seems ever to fluctuate between endorsement of a wide-open town with little or no enforcement of the laws regulating personal conduct and reform supported by crusades.[10]

"To hell with reform!" was the slogan with which New York hilariously or wrathfully voted out the administration of Mayor Strong and Theodore Roosevelt, in 1897, and welcomed back Croker and Tammany Hall. It was bad enough to require the street-cleaning force to work instead of loaf, but this might have been tolerated. Sunday closing of saloons in conformity with a law enacted by a State Legislature at Albany was a different matter. Platt, for the Republican machine, joined forces with Tammany Democrats to bury reform.

[10] E. W. Burgess, *Illinois Crime Survey*, p. 1095.

The Seabury investigation indicates that reform has remained safely interred. The huge bank accounts of various officials, the source of which seemed to be unknown to the depositors, are sufficient evidence that Tammany is still a well-organized group for the enrichment of its members at the expense of the public. So long as it can hold its majority in New York City it cares little for what goes on at Albany or Washington. Other similar organizations in the cities of the country have like aims but a less magnificent source of revenue.

Chicago after four years of honest administration under Mayor Dever, who attempted to enforce prohibition and other laws, welcomed back Thompson and a wide-open town. One might be tempted to say that the pessimistic proverb of Judaism had foreseen the history of those American cities which never reëlected a reform administration when it spoke of certain unpleasant habits of the dog and the swine.

It may fairly be said that American cities are bewildered rather than complaisant in the face of organized crime. Their struggles to meet the situation fail, not because they deliberately prefer or tolerate crime but because they do not know how to deal with the new tactics of the professional criminal. They are like the old-time bowmen when matched against firearms. They are American in name; in language, culture, and tradition the large cities are more properly European. This does not mean that the foreign born furnish more of the criminal in proportion, but it does mean greater difficulty in any unity of public opinion and in shaping policies that will appeal to all the diverse nationalities and races. In Chicago two-thirds of the population are either foreign born or children of foreign born. Mr. William Hale Thompson appealed to Chicago voters to elect him Mayor in order

that he might, as reported, get King George out of the public schools, or in less elegant phrase, "bust King George on the snoot." It is scarcely conceivable that this appeal would have succeeded had it not appealed to the animosities of two groups of immigrants well represented among the voters.

The causes for the relative immunity of organized crime in our great cities are in part conditions which do not depend on the morals of the people. Conditions of this class in Judge Bruce's analysis of the Chicago situation are: The city's newness, its rapidity of growth, its enormous wealth and the attraction this offers to the criminal, its frontier character, and its conglomerate population which concentrates in a single city the national feuds and racial animosities which in Europe are separated by national frontiers, and which nevertheless are often at each other's throats. These explain much. But besides these conditions are others which cannot be regarded as so independent of American social morality. Most serious of these is the alliance between crime and the officers of government, and scarcely less striking is the administration of criminal justice which gives practical immunity to notorious criminals and is one reason why so few of the rulers of the underworld are ever convicted.

The alliance with officers of government is made because each party has a need which the other can supply. The criminal needs protection in his business; the policeman wants influence with those higher up; the elective official wants votes on election day. The criminal has money; police can, like Nelson, look with the blind eye; the elective official can bring pressure to bear to give immunity to friends and allies. In certain areas the gangster has large influence. He befriends the immi-

grant, finds jobs for discharged prisoners, intercedes for the neighbor in trouble with the law. He has his own code in which loyalty and silence are fundamental and "the rat" who "squeals" is the meanest of creatures. Bred in the area where the outstanding types are the "poor working sap" and the prosperous law-breaker, the professional criminal may easily think the criminal career the more promising. And the longer he follows this path the more impossible the other path appears. Security can be gained more surely by making powerful friends and enrolling like the feudal vassals under a "big shot," than by taking the unfamiliar road of going straight.

Obviously the point where all this organized crime makes contact with the morality of the community is the consent of the community to be governed by men who gain and retain power by corrupt alliances. And this is masked by party politics. It is made possible by the absorption of citizens in other pursuits—business, industry, science, art, letters, whatever our interest determines. Plato's warning still holds. "He who refuses to rule is liable to be ruled by one who is worse than himself, than which no punishment can be greater." "Ruling" in a modern city means much more than voting. It means organization, taking time and money from more congenial pursuits. In the degree to which the public is not merely bewildered by the sudden complexity of the situation but is unwilling to pay the price demanded for securing good government the social morality of our cities must be adjudged inadequate. In so far as the public is bewildered the need is for increased spread of knowledge concerning the conditions which breed criminals.

The other point at which law and society are unable to cope with organized crime is in the administration of

criminal justice. The public is aware that this is a scandal. From Chief Justice Taft and Professor Pound down to the victim of organized crime there is little dissent. Professor Pound has pointed out that our procedure was given its form in a pioneer rural homogeneous stage of development when crimes were either crimes of passion or committed by individuals known or easily discovered. In accord with the tradition of law as the instrument of kings the early settlers of America were suspicious of judges and relied on juries to prevent oppression or injustice. What Dean Wigmore has called "the sporting theory" of justice has operated to give the lawyers a free hand and limit the judge to the rôle of referee. Standards of insanity have been grotesquely unscientific. The whole treatment has profited little by the advance of science and has proved nearly helpless against organized crime. One example from the writer's personal acquaintance shows the handicaps under which a citizen labors who aims to secure the conviction of a gangster. A student at the University of Chicago, when stepping on to a street car on 61st Street felt a hand in his pocket and turning suddenly seized the thief with the wallet in his hand. The thief was turned over to the policeman near by who next day made two significant comments to the student, namely, that the thief had no business working south of 47th Street, and that it would be very difficult to convict the thief because he belonged to an organization which had large funds and retained expert lawyers to defend all its members. My friend soon found out that the officer knew what he was talking about. Continuance after continuance was granted by the trial court. Once, a hearing was set at an early morning hour in a distant part of the city in the hope that the prosecuting witness would fail to reach the place on time. The stu-

dent gave up his summer vacation in order to see the case through. The *Chicago Daily News* of July 29, 1932, carries the story of a similar, although more serious, experience on the part of a restaurant keeper and his daughter who were held up May 2nd by three young bandits, one of whom had fired at the daughter. The restaurant keeper and his daughter had made twenty-five trips to attend the court proceeding. The defendant bandit out on bail "would drive past the restaurant tooting his horn and laughing at us."

So on Wednesday we decided that we'd had enough of going to court. It seemed that if we insisted upon trial of the defendants, we would have to keep going to court forever.

The next time we're held up there'll be no capture of bandits. Either my daughter will have a better aim and there'll be no live bandit to prosecute or they can take the money and walk out the door. We've had enough of going to court for a time.

Mr. Darrow sums up the various disadvantages of an accused man—poverty, inadequate legal advice, prestige of the State's Attorney, the presumption of guilt because of the fact of accusation—and concludes, "It is almost a miracle if the defendant is not convicted." [11] In view of the estimate that of over 100 gang murders committed in Chicago not even an arrest was made, to say nothing of a conviction, the "miracle" for organized crime would seem to be in a conviction.

On paper a distinction may be made between crime and vice. It has been said that public opinion condemns crime, but is indifferent to vice. A wide-open town is supposed to be indifferent to gambling, prostitution, and intoxicants, but not necessarily to tolerate or favor homi-

[11] Clarence Darrow, *Crime, Its Cause and Treatment,* p. 120.

cide, burglary and theft. Organized crime does not draw this line. Commercialized vice in the great cities is a source of enormous income. To obtain a monopoly of this business and income is so great a prize that nothing is allowed to stand in the way. Gambling in Chicago, estimated by the *Chicago Tribune* in March 1928 to be doing a daily business of $92,500,000, has been accompanied by war between different syndicates. Bombs were exploded in places of business and residences, and competitors were beaten or killed. The czar of race-track gambling was estimated in 1911 to be in receipt of over half a million dollars annually. Prostitution in all large cities furnishes large returns. In 1923 investigators found the profits in Chicago to be $13,000,000 a year. The murder of a vice lord in 1920 was an incident in the struggle for control.

But doubtless the profits from bootlegging liquor have proved the greatest. Dr. Doran, former prohibition commissioner, admits that the income to gangs amounted to $3,000,000. In 1927 government investigators estimated that Capone in Chicago controlled a revenue as follows:

Beer and (hard) liquor	$60,000,000
Gambling	25,000,000
Vice (sex) dance halls, resorts	10,000,000
Rackets	10,000,000
Total.....	$105,000,000

Since 1920 more than 500 men have been killed in gang wars in Chicago for the monopoly of loot in these various kinds of business, and scarcely an arrest followed. In a beer war "during the four years prior to October 1926 two hundred fifteen gangsters murdered each other. The

police during these same four years in literally running battle, killed one hundred sixty beer feudists and gangsters. . . . Only a handful of arrests and no convictions were secured by the law-enforcing agency." [12] New York has had its gang murders likewise, with a killing of children caught in the fire between gangsters.

It is of particular interest to note, among the sources of Capone's income, "Rackets." For this marks a new field for organized crime which may be developed in the event that illegal liquor traffic proves less remunerative. An article in the *New York Times Magazine* for October 30, 1932, by Gordon L. Hostetter foresees the probable future of such a development. Availing himself of big business, which claims superior advantages for both employer and wage earner in coöperation to fix standards and eliminate price-cutting, the racketeer organizes the laundry business, or the dry-cleaning business, or any one of a hundred other lines of business. Those who hesitate to "coöperate" are bombed. Five hundred eight bombings in Chicago from the beginning of 1928 to October 1932 had caused a damage of $1,081,069 and yielded one conviction. Other crimes involved in this speeding up of modern business economics by astute criminal leaders are blackmail, arson, murder, and kidnaping. Even if the millennial dawn in the sale of intoxicating liquors should be reached by some miraculous change of heart on the part of consumers and dealers, if everyone can get what he wants, when he wants it, almost free, the criminal is not likely to give up his profitable lines of business for "the tedious routine and comparatively modest rewards of honesty." [13] His crimes are in the nature of defense of property, understanding by "property" what

[12] John Landesco, *Illinois Crime Survey*, 1928, pp. 923-30.
[13] Edward Dean Sullivan, *Chicago Surrenders*, N. Y., 1930, p. 220.

the Supreme Court calls the interest in a business as a going concern. Armed guards defend the business of mines and factories; why not that of the sale of "beer and whiskey to our best people" as Capone puts it? [14]

Is there anything in the American morale which lends itself to such perverse and violent organizations? Is it far-fetched to see in individualism an attitude toward social well-being which lends itself to distortion? The individualist in his scale of values thinks of his own interests, or if he is a generous individualist, of the interests of some other individual. He does not easily think of a social whole, or a community as entitled to his devotion, and of himself as finding his good through membership in a community. If he grows up in a family and neighborhood of good standards, if he fits into educational opportunities, if he finds himself well equipped to enter business, industry or profession, he finds his individual interests in playing the game according to the rules. He finds a career or builds a business or fortune. He comes to respect the rules of society, even if he gives as little as possible of his time or thought or money to civic or political objects.

If a boy grows up in a home that has little to offer; in an area where the patterns are either of the "hard working sap" or the prosperous gangster; if he does not find excitement in school to compare with street life; if he comes to regard all policemen as his enemies and getting the better of them the nearest approach to the adventures of movie heroes; if prestige and luxury attend the successful gangster, the boy is likely to begin wrong. Every contact with the police which becomes a part of the boy's

[14] Fred D. Pasley, *Al Capone*, the biography of a self-made man, N. Y., 1930.

record tends to fix the offender in the ranks of the enemies, rather than of the supporters of society. His own standards find social backing in his own group. If everyone is out for success, and if wealth is the mark of success, why not seek it in the way that is open?

CHAPTER XIV

THE LAWLESS OFFICER OF THE LAW AND THE CONSCIENTIOUS OBJECTOR

As with criminals, so with officers of the law, we have to ask what their own standards are and what the attitude of the American people in general is toward the standards of the officers.

I

It is a perilous matter for a layman to say why the procedure of prosecution and trial in the United States is so far behind that of other civilizations, notably Great Britain, from which we derive our common law and traditions, and Canada which is our next neighbor. But the layman can read of the weeks taken to select a jury so ignorant as not to have heard of the murder which fills the newspapers or so incurious as to have formed no opinion. The layman knows that our legislatures are largely made up of lawyers. The layman can read the statement of the Commission on Law Observance and Enforcement that "there has been no thoroughgoing revision of criminal procedure in the United States since the foundation of our constitutional government." [1] The layman who knows the history of the United States must recognize that the colonial opposition to government left a stamp upon the spirit of the newly forming nation and

[1] National Commission on Law Observance and Enforcement, *Report on Lawlessness in Law Enforcement*, 1931.

that liberty was prized more highly than social control. Liberty meant, for one thing, reliance upon juries; it meant also a jealous regard for certain safeguards against governmental oppression as embodied in the Bills of Rights in State and Federal constitutions. The layman can read in Professor Pound's writings the story of how the courts came to be regarded as "guardians of individual natural rights against the state and against society," and of how the old death penalty for all cases of any consequence led judges to take advantage of the slightest technical defect to discharge a defendant, and form became in the highest degree essential.[2] The layman can note the "miracle" of one conviction following five hundred cases of bombing. The layman can count up the time required to attend court twenty-five times as prosecuting witness, against a bandit caught in the act of attempted robbery with a gun.

The layman can understand therefore that we are attempting to meet the very different conditions of organized crime in the modern city with a system of criminal procedure which is a hundred and fifty years old, and which works fairly well in rural society with a homogeneous population where everyone knows everyone else. To deal with modern crime by such agency seems too much like pursuing on foot or on horseback a criminal who is equipped with an airplane, or at least with a motor car.

The result is that the public is angry and bitter. The officers of the law, finding it difficult to secure evidence that will convict, or suspicious of the influence which the accused can bring to bear to defeat justice, not infrequently resort to brutality, or unfair prosecution, or in

[2] Roscoe Pound, *The Spirit of the Common Law*, pp. 102 f.

some cases to "shooting it out" with bandits and gangsters.

With the police who feel more immediately the pressure of violent public resentment, lawlessness is likely to take the form of holding the prisoner incommunicado instead of bringing him before a magistrate and of using the "third degree" to extort confessions. With prosecuting attorney or judges, lawless procedure takes the form of unfair methods of conducting the trial. These unfair methods of which the investigators for the Commission of Law Observance and Enforcement enumerate twenty-one varieties, usually involve some appeal to prejudice or passions of the jury, instead of relying upon the evidence. Sometimes lawlessness is due to the pressure of a mob or to such a state of public excitement as to make a fair trial impossible.[3] In such a case the charge of lawlessness rests primarily upon the community, and secondarily upon the court which permits the trial to proceed in the face of such conditions.

To understand the situation one must face the fact that the police are expected to prevent crime so far as is possible for them to do so, to discover and apprehend the criminal when a crime has been committed, and to secure such evidence as will result in conviction. This is not an easy or, for most persons, an attractive task. It demands physical courage and at least a degree of intelligence and shrewdness in judging men. The task is made far more difficult by several conditions of modern cities. Under older conditions the injured person could in many cases identify the offender, and if there were observers these could be counted upon to testify. The criminal could not hope to get away rapidly, and suspicious characters found few willing to conceal or protect them.

[3] Moore *v.* Dempsey, 261 U. S. 86 (1923).

In the case of organized crime none of these conditions exists. Persons injured refuse to tell who attacked them. Witnesses either are unable to identify offenders, or if obstinate are killed. Automobiles provide swift escape. Fellow gangsters are ready to assist in concealment. If necessary a "killer" may be imported from another city in order that local gangsters may have alibis and the actual agent be someone unknown to local police.

Under such conditions it is not strange that when a person suspected either of being concerned in the crime or of knowing something about it is taken into custody, the police should seek to find out what he knows, and if possible to secure a confession. For in most cases of planned crime the criminal takes pains not to be observed by an honest spectator. The only persons who know anything positive are the actual offenders or their pals or the "fence." In France the magistrate examines the accused person at once before he has opportunity to consult counsel, or to think out a story that cannot be found to contain contradictions or to fail of confirmation by other testimony. In the United States it is the duty of the police to produce the prisoner in court, but the magistrate does not act as an investigator. It is, therefore, the task of the police, alone or in coöperation with the prosecuting attorney, to secure and present evidence. The temptation to use pressure is great. Sometimes the pressure is limited to protracted questioning which may involve keeping the prisoner from sleep for long periods until he breaks. Sometimes the prisoner is beaten with rubber hose or sticks, kicked, pounded, threatened with death. One officer in 1932 used the method of "rocking" the accused by standing on him with one foot on his throat. This resulted in the death of the prisoner. The reversals by appellate courts of convictions obtained by

such brutality and torture read like chronicles of medieval trials when torture was the rule. It is to be feared that most cases never reach the appellate courts.

Some police officers deny that the third degree is used, at least in the form of physical violence. Others justify it on the ground of necessity. It is, however, flatly contrary to law. It compels a person to incriminate himself. It is contrary to the rule that confessions obtained by duress are not admissible in evidence. Juries have come to be suspicious of confessions so obtained. It may be said that there is a remedy, an action for damages can be brought against the brutal officers. But what is a man who has been thus mistreated to do when, as in a case known to the writer, he is "advised" not to try this remedy. Silence may be safer in a city where the police are given to shooting first. "Mistakes" may happen. At any rate the police care little for the opinion of any except of those who have influence. The "big shots" are seldom subjected to the third degree.

Is the third degree common? The investigators for the Commission of Law Observance and Enforcement[4] believe that it is. Not only protracted questioning, but threats, physical brutality, illegal detention, refusal to allow access of counsel to the prisoner, are common. The practice of holding the prisoner incommunicado is frequent.

Similar lawlessness is not infrequent in the form of needless brutality or reckless shooting. The public press contains frequent reports of raids on communist groups in which clubbing is the rule. The Los Angeles police varied the procedure by loosing tear gas upon a crowd waiting to enter a hall where addresses were to be given on the Mooney case. A clergyman scheduled as speaker

[4] *Lawlessness in Law Enforcement*, pp. 123-137, 143-49, 216.

said he saw no sign of disorder until the police started their attack. A recent number of the *Los Angeles Record* contained the following item:

> Almost crippled for life as the result of a police attack upon him while he was making a political speech in behalf of James Ford, Communist Negro candidate for Vice-President, Paul Walton, Negro, had been freed today by a jury of battery and disturbing the peace charges.

The Voluntary Defenders Committee of the Legal Aid Society of New York reports that in 1930, 23.4 percent of their defendants allege brutality at some stage of the process.

Is lawlessness on the part of police and other officers of the law approved by the American people? Probably not, if by "approval" is implied that the American people as persons, independent of any official responsibility or authority and acting as individuals, believe in cruelty or lawless acts. Yet lynching mobs show groups of American citizens inflicting lawless, merciless, and in some cases fiendishly cruel death upon persons suspected of crime. This shows the power of a special kind of group over members who as individuals would very likely shrink from brutality. If the ordinary citizen were made a member of a police group which has a lawless tradition and is under pressure to produce results by hook or crook it is likely that the citizen, made a policeman, would do about as the present police do.

"But," it may be properly objected, "you are supposing impossible conditions. The great mass of American people never join mobs, or act as police. What we want to know is, whether *as citizens,* not as mobsters or as policemen, the American people approve what is done by the

lawless groups." On this the evidence is not entirely clear.

In the first place we naturally look to what, if anything, the people have done through law to approve or condemn the third degree and other lawless practice. Two common law rules, against self-incrimination, and admitting only voluntary confessions, have already been referred to. There are specific statutes against the third degree in nine states, and statutes forbidding the infliction of violence, cruelty, and inhumanity upon prisoners in eight (of which three are also in the nine directly relating to the third degree). A more general type of statute providing that "the defendant is not to be subjected to any more restraint than is necessary and proper for his arrest and detention," exists in nine states not included in either of the other groups. This leaves twenty-five states with no specific provision other than the two general rules cited, one of which was embodied in the Federal Constitution by the Fifth Amendment. But the list of states which have provisions against the third degree is of very doubtful value as indicating public opinion. For several of the states which are not on the record of appeals to higher courts because of third degree practices have no statutes against the third degree, whereas two of the states having the strongest statutes against the practice contain cities in which the investigators of the Commission on Law Observance and Enforcement are confident brutality is common.[5] The opinion of the investigators is:

> Statutes cannot cope with the third degree nor can police regulations. Without the will to enforce them, these become words upon a printed page. The real remedy lies in the will of the community. . . . But before the community can express

[5] *Lawlessness in Law Enforcement*, pp. 123-137, 143-49, 216.

its will it must know when, how, and to what extent these abuses are perpetrated.[6]

The appellate courts are able in those cases which reach them to set aside convictions illegally obtained. But the sixty-seven cases from 1920-30 in which third degree methods were proved to the satisfaction of the court "represent only a very small proportion of the instances in which the third degree has been inflicted during the period involved."[7] They come from twenty-six state courts. If thirty-nine additional cases in which the evidence was not clear be included the list will cover every section except New England. "In England, by contrast, there has not been one reported case showing evidence of third degree methods in the past twenty years."[8]

What do juries think of third degree methods? According to the report already cited, jurors who suspect the existence of the third degree tend to discredit the denials of the police and, therefore, to disbelieve police testimony. "A standard question to jurors in a great city—whether or not they would be willing to convict on police testimony—shows how widespread is the suspicion of such testimony."[9] This fact as to jurors seems to throw some light upon the attitude of American morality toward lawlessness by the police. Most people have not been obliged to confront actual cases. When they do so confront cases, they usually disapprove. But for the most part they do not know, or at least know only by hearsay, of the existence of brutality. They tolerate it in the sense that they do not exert effective pressure. If they think about it at all they are probably bewildered by the mag-

[6] *Lawlessness in Law Enforcement*, p. 191.
[7] *Ibid.*, pp. 34 f.
[8] *Ibid.*, p. 53.
[9] *Ibid.*, pp. 189-90.

nitude of the crime problem, or are kept silent by the loud assertions of officials that "public criticism of the police has the effect of encouraging the criminal." Or by the epithet of "sob sister" which is freely applied to those who believe that even officers should respect the law of the land.

Apologies are perhaps due to those policemen whose methods of "framing" attendants in dental offices were exposed by the Seabury investigation, for not including their activities in this chapter. Likewise plunderers higher up. But their organizations seem to be more appropriately noted under Professional Criminals.

II

Law seldom represents the highest standard to which the nobler souls aspire. In the nature of the case it represents a minimum rather than a maximum. In most American jurisdictions, for example, although a man may not forcibly push another into the water with intent to drown him, he may stand on the bank and see a man drown who has fallen in accidentally, although a rope or a boat be at hand with which the victim could be saved.

The more serious conflicts arise, not in such cases where the law merely fails to enjoin what humane feeling prompts, but in the opposite situation, where the law commands what is repugnant to the moral sense of the more thoughtful members of the community. The law may issue as a decree of an arbitrary ruler, and be opposed by the deeper sentiments of the subject. Such was the classic case of Electra who defied the King's decree in burying her brother slain in revolt. To her, defiance was "holiest crime." Sophocles put into her mouth the appeal to a "higher law" which has voiced the conscientious pro-

test of many similar conflicts. Sometimes the conflict occurred between the supposed will of the gods and humaner feelings, as in the Hebrew shift from human sacrifice, or the passionate rebellion of Clytemnestra and Iphegenia at the sacrifice demanded by Artemis and the seer Chalchas as the price of favoring winds for the Greek fleet. Early Christian martyrs believed they ought to obey God rather than men and rejoiced to bear witness to their faith by disobedience and execution. Seventeenth century England saw great numbers thrown into prison, of whom John Bunyan is best known. Non-conformity directed primarily against ecclesiastical regulation of worship became disobedience to law when, as in England, church and state were combined. Many of the Puritan ministers refused to conform and were forbidden to preach. The Friends or Quakers went farther. They refused to take oath and resisted war.

The early American colonists included many religious non-conformists. And of those who definitely opposed certain acts of civil government, not only were the Friends an influential body in Pennsylvania, New Jersey, and North Carolina, but there came also the Mennonites to Germantown with similar views as to oaths and military service, and Moravians to North Carolina and Pennsylvania. Of these the Friends have definitely maintained their attitude toward war and are recognized by the government as conscientious objectors whom the government no longer attempts to coerce.

It was the Fugitive Slave Law which made the "higher law" a national issue. The provision of the Federal Constitution that prohibited the freeing of a fugitive slave by the laws of the state into which he might escape and required his delivery "on claim of the party to whom such

service or labor may be due" was not successfully enforced. President Washington himself was evidently aware of a disposition among "well-disposed citizens" to resist the law, for when writing to a friend in New Hampshire in 1796 with reference to obtaining the return of a Negro servant he stated that she should remain unmolested rather than "excite a mob riot or even uneasy sensations in the minds of well-disposed citizens." [10]

It was the southern contention that slaves were better off under slavery than they would be if free. But a considerable number of slaves did not think so, particularly when Virginia and Kentucky began to sell slaves to the cotton-growing states, breaking family ties by the sales. It was quite in the line of the Quaker tradition that many of the early anti-slavery societies should be formed among the Friends. Professor Macy says that the efforts of humane persons near the border to prevent the kidnaping and illegal enslavement of free Negroes created a nucleus for the later Underground Railway which in the later twenties and the thirties came to be a means of assisting escaped slaves to Canada. The number of slaves so aided has been variously estimated from sixty to one hundred thousand. But less or more, the position of those who aided them was that the Fugitive Slave Law was contrary to human principles, that it was "unmoral," that to defy it was to obey a "higher law." To the religiously minded it was opposed to the "law of God." This aid to escaping slaves was not limited to the North. "Throughout the South men of both races were ready to give aid to slaves seeking escape from dangers or burdens which they regarded as intolerable. Even members of the families of slaveholders have been known to assist fugitives in

[10] Cited in Jesse Macy, *The Anti-Slavery Crusade,* New Haven, 1919, p. 113.

their escape to the North." [11] The Quakers in Indiana were for a time divided on the issue. After 1850 with its more stringent laws all Friends' meeting houses became "liberty-halls."

In recent times the morality of bearing arms in war has presented a similar issue. In the World War the claim of Friends to be exempted from military service was respected by the authorities. But many Americans then learned for the first time of the Mennonites who came to Pennsylvania in the seventeenth century with similar views as to war. And many individual "conscientious objectors," who were not members of recognized religious bodies historically opposed to war, created a difficult problem for the government. On the one hand the duty of the authorities to execute the laws providing for the draft; on the other, conscientious scruples against a demand to commit what the objectors regarded as plain murder. The case of Roger Baldwin was conspicuous because of the singleness of the issue. He declined to take the physical examination prescribed in connection with the draft, but instead presented himself to the court as a "deliberate violator of the draft act." His reasons were twofold: objection to any form of conscription, and "profound convictions" in opposition to all war.

Judge Mayer in pronouncing sentence as required by law recognized the possibility of a standard higher than that of a majority.

"It may often be that a man or woman has greater foresight than the masses of the people. And it may be that in the history of things, he who seems to be wrong today, may be right tomorrow."

Although he feels constrained by his office to add, "But with those possible idealistic and academic speculations

[11] *The Anti-Slavery Crusade,* New Haven, 1919, p. 123.

Court has nothing to do." The fundamental reason underlying the Court's action is:

> A Republic can last only so long as its laws are obeyed. . . . We should not be able, as I think most Americans believe, to maintain what we regard as a government of free people if some individual, whether from good or bad motives, were able to violate a statute, duly and constitutionally and properly passed, because his own view of the same might differ from that of the law-makers who have enacted the law, and from that of the Executive who has given his approval.[12]

Between two and three hundred "conscientious objectors" were serving sentences at the close of the war. Subsequently a commission appointed by the President recommended the release of most of those still imprisoned.

The issue gained public attention again by the refusal of citizenship to Professor Mackintosh in 1931. The test set by the court to which he applied was the willingness to bear arms if called upon. Professor Mackintosh's position was not that of absolute refusal to bear arms under any circumstances, but that of refusal to promise to bear arms in an "unjust war." The Supreme Court by a divided bench affirmed the refusal of the lower court.

Of the three types of conscientious disobedience to law the first two have been justified by constitutional or statutory changes in the law of the land. Religious conformity is no longer a concern of the courts. Fugitive slaves no longer appeal to human sympathy. The third type of resistance to law on grounds of conscience is likely to furnish more examples in possible future wars than in the last war. Many young men have committed themselves to refuse military service in the event of war. And while some of these might probably change their attitude,

[12] From a pamphlet reprint, *The Individual and the State*, 1919.

it is probable that the national position taken in the Kellogg pacts for the outlawry of aggressive war will strengthen conscientious scruples. Protests against required military training in various state colleges or universities are at least indications of a questioning spirit.

The conscientious objector does not need the support and approval of a group. If he be a religious man, confidence of divine approval is his and is adequate. *Athanasius contra mundum* may be adequate also for the lonely protester who does not claim divine support. Yet a general spirit of resistance such as animated the early Friends may be a serious matter for even a democratic government to confront.

What has been the attitude of the American people toward those disobedient for conscience' sake? To the first group the answer came gradually but decisively: "You are right and the laws are wrong. We have learned a better way." In the case of the return of fugitive slaves public opinion was largely although not entirely divided on sectional lines. To the southern slave-owning communities northern aiders of escaped slaves were lawbreakers. To the Liberty Party in its platform of 1844 the law involved an order to do an immoral act and was to be treated as void. And while comparatively few in the North were directly concerned in aiding the escape of slaves, public opinion came to look with increasing aversion and even horror upon participating in the return of slaves to the conditions which, in some cases, made death seem to the fugitive preferable to surrender to the vengeance of a cruel and brutal master unrestrained by any save pecuniary considerations.

The conscientious objector to war has also in some past situations had a sectional support. Notably in the war with Mexico which the North regarded as a war for the

extension of slave territory. James Russell Lowell was far from being a solitary pacifist when he wrote:

"Ez for war I call it murder." On the contrary he tells us, "I found the verses of my pseudonym copied everywhere. I saw them pinned up in workshops. I heard them quoted and their authorship debated." In fact the country was divided. Many agreed with the view which President Grant, himself a soldier in the Mexican War, was later to express in his memoirs.

> I was bitterly opposed to the measure [annexation of Texas] and to this day regard the war which resulted as one of the most unjust ever waged by a stronger against a weaker nation. It was an instance of a republic following the bad example of European monarchies in not considering justice in their desire to acquire additional territory.

In the World War there was no such sectional division of sentiment to furnish moral support to conscientious objectors. Certain racial or economic groups naturally opposed war in support of the Allied Powers, but this was not necessarily on the grounds of conscience, although if these groups believed the war was an unjust one, it would be difficult to distinguish by any clear line between their attitude and that of sections opposed to the war with Mexico.

It would probably be fair to say that in the height of war feeling, there was little consideration shown for objectors suspected of German sympathies, and on the other hand that as soon as the Armistice had been signed there was a general disposition to forget and to regret the severity with which certain individuals had been treated by the courts or by local groups. At least the higher courts reversed many convictions of offenders against the Espionage and similar state acts, or reduced the sentences

imposed by the lower courts. Opposition to pacifists in the public press has been chiefly by epithet or derision. Reds, pinks, and other labels are convenient tags, used by militarists and others who regard war as inevitable, and couple with this conviction the slogan of Decatur, "My country, right or wrong." It is more than doubtful whether the American moral consciousness is willing to subscribe to this abrogation of conscience as the highest type of patriotism, but the question falls properly under the topic of the Social Morality of Relations to Other Peoples and Nations and will be further considered there.

CHAPTER XV

TEMPERANCE AND THE VICES

I

Temperance! To measure and control impulse and emotion, appetite and conduct is an ideal handed down to our mores from Greek and Roman culture. But time has proved that to transmit a name or even an ideal of measuring means little unless the measuring rule can be either transmitted or an equivalent found in the new society. To the artistic Greek, measure signified not merely the negative "nothing in excess," but the positive proportion and harmony which characterized his art and craft. When Aristotle looked for a synonym for his golden mean he appealed to the *kalón,* the fine, noble, and fair, and knew that the true Greek would at once feel as well as know what he meant. The Roman found his field for measuring in the genius for ordering conduct by dignity and decorum. *Temperantia* and *moderatio* there, too, implied not a negative restraint but a positive value of dignity, decorum, and the honorable. It was in these positive and concrete embodiments of measure in the activities and habit of the people that the real strength of the ideal in antique civilizations was found. There were presupposed a certain unity of mind and sentiment, a stable habit and settled tradition, a great and noble pattern of value.

The people of the United States have no such unity of mind and sentiment; they embrace radically diverse

racial, religious, linguistic, and cultural stocks. They are of Wall Street and Main Street, of factory and farm, of city and country, of East, South, Middle West, and Pacific Coast. Far from having a settled, stable tradition, they have an extraordinary mobility, and although certain parts of the country have been occupied by white men for three hundred years, much of it still carries the traditions of the frontier. Millions of our city population are one generation from the Old World. "A great and noble pattern and value?" Yes, some brought the religious end "to glorify God"; all came to feel the thrill of liberty; gradually the ideal of equal opportunity and right in government, in education, in economic fields gained recognition. But none of these is precisely what is needed. To glorify God is an end that has animated saints and martyrs. The Roman Catholic Church retains among even its humblest adherents reverence for the Sisters of Mercy and other holy orders *ad majorem gloriam dei.* But it requires of these orders in its vows of poverty, chastity, and obedience what it cannot expect of the layman. For him the church prescribed the standards and limits. Protestants substituted a "calling" of all believers but replaced the rule of the church by the written word of the Scripture or the conscience of the individual. The Scriptures gave on matters of eating, drinking, and marriage, as of slavery, the standards of their people and their age. The Holy Commonwealth in early Massachusetts might attempt to revive them, but they did not suit the new world and the new age.

The inner guide, the individual conscience, has inspired many to lives of devotion and consecration not less lofty than those of men and women in holy orders. It has to some degree become a social rather than an individual conscience. It moved the nation in the final struggle

against slavery. It was stirred in the movement for social justice, for equal rights for women, for protection to children. But conscience has an emotional element which fits it rather for radical reforms of great evils than for steady guidance and control of natural appetites. And the still small voice is seldom listened to by a large portion of the population. Protestant America undertakes reforms but wearies in well-doing. It tends to set its standards too far ahead of the mass, which in revenge buries reform. And it is the votes of the mass which have the last word, until the next shift of sentiment.

As regards the other ideals of American tradition, liberty and equality, they have their place but it is hardly that of measuring appetite. Rather they reënforce the individualism already noted in the attitude toward law. The individual determines for himself which laws he will choose to obey. In the case of his appetites it is nobody's business what he shall eat or drink, whether he shall gamble, or what his sex relations shall be. The customs and public opinion of fellow citizens have little control over a city dweller who is known to few and cares little for any national value except the right to do as he pleases.

Among modern European peoples the French have a high repute for control of personal conduct by a sense of *comme il faut*. The Frenchman explodes politically at relatively frequent intervals as compared with Britain or the United States, but personally he follows well-established and stable lines of conduct. The population has experienced few accessions of alien stocks for two thousand years. The family retains its authority within the sphere it claims, and still controls the conduct of the young in the making of marriage to a large extent. The economic changes of the industrial revolution have not af-

fected so seriously the social structure as in Great Britain, Germany, and America. A relatively fixed scale of living has favored careful budgeting of expense, and gives to pecuniary considerations a prudential influence in all conduct—as is exemplified in the matter of marriage choices—which they do not possess in the "easy come, easy go" attitude of the American. All these influences count against violent excesses. And of modern peoples the French probably have a sense of national pride most akin to the feeling by which the ancient Greek distinguished his culture from that of the barbarian. The clarity of French literary style reflects a mind which not merely sets limits to excess, but has a positive value to uphold, such as the Greek cherished in his *kalón*.

In the United States with heterogeneous population, with little stability of dwelling place, with early emancipation from family control, with little continuity of occupation or social status from generation to generation, with sudden exploitation of the resources of a new continent, with disrespect for all that is "conventional" and old-fashioned, temperance is either negative, or lacks the strong reënforcing support of the combined forces that obtain in France. For example, temperance in the use of alcoholic beverages has no well-accepted measure except drinking "what you can carry." Mr. du Pont thinks it prudent to wait two hours after drinking before driving a motor car, but the average youth on a gay party would scorn such restraint as a mark of senile caution, and take a chance. Few drinkers would think of waiting two hours before trusting themselves to make a public address. "Misery drinking" is naturally not expected to be temperate, but convivial drinking is likely to have its limits rendered flexible by the effects of the beverage in relaxing ordinary inhibitions. If the young girl has no

standard for the "proper" quantity of gin and such things except the limit set by those who would brand her as a prig or unsocial if she did not join in whatever conviviality were going on, she is not likely to set her standard uncomfortably high. In the absence of positive standards and social values the American temper has tended to substitute abstinence for moderation, and legal restraint or prohibition for control by customs and good taste. The French have regarded a reasonable amount of sexual freedom on the part of either husband or wife as not necessarily interfering with the stability of the marriage. The American system regards unfaithfulness as incompatible with the essential basis of the marriage relation. Analogously, we decided to stop dueling, and make this form of homicide a crime—even at the risk of increasing or adding to laws imperfectly enforced—instead of retaining dueling in modified frequency.

However, a warning issued from Chicago by the Woman's Christian Temperance Union suggests a canon that may perhaps supply both a scientific standard and a motive for temperance. "Beer makes fat" may be more effective against excessive drinking than moral appeals or conventions of good taste. Under the combined influences of dietetics and fashion's preference for the slender figure the food habits of the nation have been greatly changed since the World War. Perhaps the same influences may provide the only effective control over other habits, supplemented in certain occupations by the perils of operating dangerous machinery while intoxicated.

II

As contrasted with temperance, vice, according to Webster, "commonly implies the inordinate and degrading in-

dulgence of natural propensities or appetites." For various reasons the attitude of a people toward what are called vices is a much more interesting subject of inquiry than its attitude toward crime. For it would indeed be a strange community which did not disapprove of at least the ordinary offenses against person and property which have found a place for centuries in the law of the land. In the case of murder, robbery, arson, theft, rape, the mores are so settled that little change takes place. Civilized peoples show various frequencies of those offenses, but little divergence in the general condemnation of them. Moreover they are capable of fairly precise definition so that questions of guilt or innocence turn chiefly upon evidence. The ordinary citizen is presumed to be capable of making decisions upon evidence when he acts as juryman. The difficulties come in deciding how to deal with the offender. On this point, despite the studies of many experts, society is still hesitant. It desires to save the juvenile delinquent and the first offender; it desires to protect itself against the professional criminal; although it has thus far not succeeded well in either of these aims, partly because of somewhat mixed theories as to what ought to be done with the law-breaker.

With vice the case is far more complicated and, therefore, more interesting. In the first place the very conception of a vice has an element of uncertainty in it. Referring to Webster's definition cited above, "the inordinate and degrading indulgence of natural propensities or appetites," what degree of indulgence does a given community regard as "inordinate and degrading"? Does the fact that the propensity or appetite is "natural" grant justification for a certain amount of indulgence, or is any degree of indulgence to be regarded as unwise, even if not positively wrong? A whole philosophy of human nature,

civilized society, and moral judgment is involved. The case of discipline and austerity versus free expression of all natural appetites and propensities, of Stoic versus Epicurean, of Puritan versus Rousseau, is still, *pace* Freud, *sub judice*. Medieval asceticism gives way to Renaissance individuality; Puritan conceptions to Romantic views of nature; Wordsworth's reaction against unchartered freedom and Emerson's insistence upon a self-control rooted in adjustment to the eternal laws of compensation become outmoded in post-war clamor for sex experience, cocktails, and night clubs. But the pendulum has not yet ceased swinging and a sterner morale may again claim allegiance if the world finds itself obliged to build anew upon more frugal lines than the easy money, free squandering, and reckless disorder of 1929.

The first question is then, What standards does American society at present set for indulgence in those natural propensities which have traditionally been felt to need control? In particular, when do indulgence in stimulating or intoxicating beverages, in sex relations, and in games or adventures involving gains from chance need check either by self-control or by social disapproval?

A further source of uncertainty in the mores is suggested by the last sentence. If a man drinks too much, or exceeds decorum in his sex appetite, or gambles away a fortune, whose business is it? Is each individual in a civilized community entitled to exercise his own discretion in such matters without supervision or interference? Is it even impertinent and puritanical to lift the eyebrows at what might by some be deemed undue license? Are drunkenness, gambling, sex relations matters which properly concern public opinion? Sex relations have perhaps been more widely and rigorously the concern of mores than any other aspect of human behavior. Gambling has

assumed greater importance in a money economy than in simpler cultures. Drinking of intoxicants has likewise commanded greater attention. Are present trends likely to continue?

A third complication, by far the most serious, appears in the exploitation and stimulation of natural appetites. A community may regard betting on a horse race as a mild diversion but object to a Monte Carlo as offering gratuitous temptation to excess. It may, as did the Puritan colonists, approve moderate drinking at home, but believe in the need of restrictions upon taverns and dramshops; it may, as most citizens would agree is but elementary decency, frown upon attempts by commercial interests to cultivate an appetite for liquor among young people and children. Many enjoy dancing with friends who doubt the elevating influence of public unsupervised dance halls. Some present-day writers, who would have sex relations regarded as of private rather than public concern, look with disfavor upon commercial prostitution.

One ground for objection to the commercial exploitation of the appetites is that the commercial traffic has profits to protect. The safest method of protecting its profits is to bribe government officials or to control the government of the city. The commercial interests in the vices in a single city in 1927 were estimated by government investigators to involve a revenue of $95,000,000 a year.

Beer and spirits	$60,000,000
Gambling establishments	25,000,000
Vice (prostitution) dance halls ...	10,000,000

Estimates for the United States run into billions. Before the days of national prohibition saloon keepers were largely represented in city councils. Under such circum-

stances whatever the attitude toward indulgence, the commercial traffic becomes a political question.

It is also an economic question, in so far as these appetites compete with other desires and tastes, and the business of supplying alcoholic beverages, gambling facilities, and opportunities for sex exploitation competes with other business enterprises or with savings banks and insurance. And when it is remembered that modern business counts little on satisfying an already existing demand and much on awakening new desires and enlarged demand, the moral aspect of the problem becomes evident. It is one thing to look with tolerance or indifference upon the imprudent or foolish person who burns up his health or fortune, and with pity upon his family. It is another thing for a society to encourage the business of stimulating by all possible allurements the appetites which experience shows often pass beyond the control of reason. It is one thing to withhold judgment upon the private life of a fellow citizen; it is another to countenance agencies which tend to create for children and young people an environment favorable to forming habits of the gambler, the drinker, and the roué. Some young people are wise enough to look forward to consequences and weigh sanely life's values, but there are many who are affected by the public opinion of their social groups and the standards of business and political leaders, and by the institutions which society and government recognize. Some are strong enough after charting their course to hold to it. But many are swayed by what "everybody does." Hence a society cannot lightly adopt a policy of laissez faire toward commercial traffic in facilities for supplying and stimulating the appetites which when inordinate become vicious. Schools are not the only educational institutions. So far as control over appetites is concerned the words

of Protagoras in Plato's dialogue of that name still hold: "The whole city is the teacher."

The depression and the consequent difficulties of balancing national and state budgets have revived an ancient theory of economics and morals. In 1705 Bernard de Mandeville published some verses entitled "The Fable of the Bees, or Private Vices Public Benefits." The fable showed how a prosperous hive of bees declined when they ceased to follow the egoistic interests, pleasures, and vices, until finally nothing remained for the last survivor but to crawl into a hollow tree and die. Many during the past years have sought the source of the depression in the too ascetic morals of prohibition and of anti-gambling laws and are now (1933) looking forward hopefully to the flow of revenue from the sale of beer and the encouragement of betting upon horse racing. In four of the New England states and in several other states bills to permit betting upon horse races have been introduced. In Massachusetts it is figured that if the people will bet fourteen million dollars on the races, the state will receive as its share five million and the promoters nine. Similarly the federal government estimates that if the people will drink enough beer the tax will help to balance the national budget. The theory seems to be that people really have plenty of money, and if they will only bet freely and drink freely prosperity will return and national and state credit be restored. We love to pay taxes through the hands of private collectors. England and Germany have had beer, and yet have suffered from the depression. But the gamblers and the brewers and the budget makers are hopeful.

CHAPTER XVI

GAMBLING

Gambling, betting, taking a chance on the outcome of a race, the turn of a card, a rise in stocks, or a prize in a lottery are in several respects the least "degrading" of the vices. The gambler is indeed liable to be caught in a loss which may tempt him to take money from his employer's cash drawer. He may stake the savings which are sorely needed by his family. He who depends on gains won by gaming or lottery is likely to suffer in his ability to apply himself steadily to less exciting operations. These pecuniary perils are sufficient grounds for the laws against gambling in all states except Nevada, and for the disapproval by employers of gambling by their employees.

But if other than pecuniary aspects are considered, gambling has something to say for itself. It is akin to intellectual activity rather than to passive and sensuous pleasure. It does not cause a man to make a public show of himself in a disgusting condition as drinking often does, nor does it, like drinking, lead often to wife-beating, reckless driving of motor cars, and similar effects of intemperance. It does not abuse and sensualize what ought to be a peculiarly intimate and affectionate relationship to another human being as does prostitution. And if convivial banquet and bouquet of choice wines have been companions of song and have called out the praises of poets, betting has had its associations with races and athletic contests, which have likewise had their min-

strelsy. Horse racing has been called the sport of kings, and horse racing without gambling has been declared "a dry and tedious sport." The undergraduate who "backs" his college baseball or football team, and the political sport who backs his party's candidate in the odds of election wagers feels himself moved, not so much by sordid motives as by loyalty and patriotism, or at least is fain to persuade himself of this. Ladies may play cards for a stake without risking the indecorous possibilities of too many cocktails.

Churches have permitted raffles and near-lotteries at fairs. King's College (now Columbia) and Union College of New York are said to have joined forces in a lottery and disagreed as to the division of the proceeds. Many European governments have sanctioned or directly conducted lotteries, and the State of Louisiana continued to authorize a lottery until 1890 when an act to renew the charter held since 1868 was vetoed by the governor. The twin sister of gambling, speculation, having married business, has a highly reputable position in circles of the well-to-do. The code of gambling is strict in its exclusion of cheating, and its debts are "debts of honor" which the traditional gentleman, as portrayed by Thackeray, would pay at all costs, however contemptuous his attitude toward his tailor's appeal. All in all, gambling has some reason to be surprised at its present disfavor by social morality. In the election of November 1932, California repealed its Wright Act, prohibiting sales of liquor, and adopted a measure which apparently takes it out of the power of any city or town to exclude such sales. But somewhat inconsistently it voted against legalizing gambling. Why this discrimination between the vices?

Note the excellent biological pedigree assigned to gam-

bling by W. I. Thomas.[1] It is probable, he suggests, that a certain venturesomeness, a disposition to take risks, may have proved beneficial to its possessors in the struggle for existence and hence may date back to a stage even prior to human evolution. In any case the early life of man furnished risks in abundance, from weather, from river, from fierce beasts, from fellow men if we can guess at the conditions of the Old Stone Age and before. Doubtless caution was an aid to survival, but in many circumstances it would be a case of nothing venture, nothing have. The life of hunter and fisher, as compared with that of herder or plowman, was one of risks and luck, so there is nothing *a priori* improbable in supposing a factor of natural selection in favor of the bold. At all events, men of today like to hark back to those earlier trials of craft and luck. Farmer boy, factory hand, clerk, lawyer, physician, executive, and even the President of the United States hail an opportunity to fish or hunt as a recreation after more stable or monotonous tasks.

But fishing and hunting do not content either preliterate or civilized folk. The anthropologist is impressed with the laborious processes by which early man chipped or polished his axes and arrow heads, hollowed his boats, heaped his burial mounds, and built his pyramids. And very early, exchanges of products elicited comparisons of values received with values given. Progress towards the arts of civilization, dependent as it was upon the division of labor, favored the habit of work and the practice of exchange.

Here then are two factors of human nature—"drives," habits, propensities, cultural attitudes, or whatever one chooses to call them: an adventuring, risk-taking, luck-

[1] W. I. Thomas, *American Journal of Sociology*, Vol. VI (1901), pp. 750-62.

trying drive and a steady, work-for-what-you-get, give-a-fair-exchange-for-what-you-receive habit. Perhaps the one is as primitive as the other; perhaps the steady work for a moderately safe return has been largely taught by agriculture and trade. Certain it is that both are present and that the public attitude toward the first is fully as inconsistent or "hypocritical," if one refuses to distinguish between private habits and commercial-political policies, as its attitude toward intoxicants.

For on the one hand the laws of all the states except Nevada prohibit most forms of public gambling. A few states license pari-mutual betting on horse races, in which a share of the receipts goes to the public. On the other hand, a very large number of the population engage in some form of gambling from the policy and crap shooting of the humble citizens to the picking of a winner in the races, the bridge games of women, and the varied hazards of the clubs or public gambling houses, not to mention the bucket shop, and the stock market which combines the excitement of hazard with the repute of legitimate business.

The exact or even the approximate number of those who take a chance in one or more of the numerous schemes for getting something for nothing, no one knows. Various estimates of the enormous receipts in one or another city or class of hazard support the opinion that we are not behind European peoples. To begin with small things, under Mayor Dever's administration in Chicago which began in 1923, two hundred downtown handbook "joints" were closed which had been estimated to produce $364,000 a year [2] for Mont Tennes who operated not only in that city but over the country. When to the 200 joints in the loop we add the fact that numerous bar-

[2] *Illinois Crime Survey*, p. 900.

ber shops all over the city act as transmitters of race-track bets it can be seen that a considerable fraction of Chicago's people contributed to Tennes' income. But this was modest. It was stated in the preceding chapter that Capone's income from gambling in Chicago and vicinity was estimated at $25,000,000. Further, we are told that in one evening investigators in Chicago saw $3,500,000 change hands in 350 gambling houses. In one place 1,500 men and 500 women were present.[3] If this one night's stakes be multiplied by 365 or even by half that number the amount won and lost for a year places gambling high among Chicago's financial operations. Nor is there any reason to suppose that Chicago differs from other cities. Canfield's in New York[4] was famous for the wealth rather than for the number of its patrons but there was no lack of places to appeal to those who could not sign checks for five or more figures. The reign of Rothstein[5] over police, courts, and other official agencies ended no longer ago than 1928. In his article, "Four Billions in Easy Money,"[6] Mr. McLellan estimates the amount spent annually in baseball pools at five hundred millions; in race track at three hundred; in hand books at one thousand; cards, dice, roulette, etc., one thousand; bucket shops, five thousand.

An article in *Collier's Weekly,* June 13, 1925, estimates the receipts from the race tracks, including admission and money bet, both inside and outside the tracks, to be in one year $2,593,000,000, so apparently Mr. McLellan's figures are extremely conservative. And yet some peo-

[3] Howard McLellan in *North American Review,* Nov., 1929, pp. 609-15.

[4] Alexander Gardiner, *Canfield—Host to the Nineties,* N. Y., 1930.

[5] Donald H. Clarke, *In the Reign of Rothstein,* N. Y., 1929.

[6] *North American Review,* Nov., 1929.

ple get excited over the moratorium of a tenth of this amount in payment of foreign debts! Benjamin Franklin would say today almost exactly what he said two hundred years ago: "The taxes are indeed very heavy, and if those laid on by the government were the only ones we had to pay, we might more easily discharge them, but we have many others. . . . We are taxed twice as much for our *idleness,* three times as much for our *pride,* and four times as much by our *folly.*" [7]

If we add to the billions spent in gambling the amounts squandered in wildcat speculation, in Insull and Kreuger, in schemes for getting something for nothing, we have sums beside which our national budget is modest. So far as the habits and propensities of the people are concerned, we seem to have learned little since Benjamin Franklin taught elementary principles of frugality and thrift in Poor Richard's Almanac. The get-rich-quick tactics of the past fifty years with its high-powered salesmanship, its easy credit, and its fundamental policies of living on borrowed money, has not favored the steady-going habit of earning one's bread before eating cake. We take a chance; and since business speculation makes no pretense that the speculator gives any equivalent for what he wins by a rise or fall in the market, why should one be squeamish about winning a prize by a shrewd guess on a winning horse, the fall of a card, the turn of a wheel?

Since the World War a loosening of public restriction has been urged successfully in several states and agitated in others. This parallels, though less sensationally, the reaction against national prohibition. Nevada has reverted to the frontier policy of permitting gambling houses. Florida, Illinois, Kentucky, Louisiana, Maryland, and seven other states now (1933) license bet-

[7] Benjamin Franklin, *The Way to Wealth.*

ting upon horse races; legislation is pending in eleven other states.[8] The Massachusetts legislature of 1932 was attacked by what the *Springfield Republican* calls an "epidemic of gambling bills." New York has thus far maintained on its statute book the laws passed at the instance of Governor Hughes, but the career and reign of Rothstein show that there has been little interference with certain other forms of gambling. It is not improbable that with the triumph of the wets there will be also a relaxation of control over the companion "natural propensity and appetite."

An amusing feature of the legal aspects of gambling is the attempt to discriminate between horse racing and dog racing as to their relative elevation in the scale of respectability. The Illinois law limits betting to horse racing and the Illinois Supreme Court, in passing upon the claim that dog racing was legitimate, advanced learned grounds in support of the discrimination, adducing the skill involved in the training and management of horses. Doubtless the sponsors of man's oldest friend, the dog, could say something as to the skill that has gone into the breeding and training of that worthy animal. In any case the motive for betting on a race is essentially the same whether the race is by horses or dogs.

The American people do not differ markedly from their British cousins in their fondness for taking a chance. The *Springfield Republican* cites the testimony before the royal commission on lotteries and betting.[9] Sir Ernie Blackwell of the Home Office stated, "The law against lotteries cannot be enforced effectively," and as to preventing the sale of tickets for the Irish Sweep the chairman of the commission, Sir Sidney Rowlett, said: "You

[8] *Literary Digest*, April 15, 1933, p. 16.
[9] August 7, 1932.

cannot enforce the law, because there would be more people to be prosecuted than there would be to prosecute them; there is a feeling in everybody's mind that everybody is in it, and you cannot punish a man for what is so universal, even if you don't do it yourself." Sir Trevor Bigham, deputy commissioner of the Metropolitan police, seems to regard laws against gambling precisely as many in the United States regard laws against alcohol. He testified that some parts of London are "so riddled with street betting that to deal with it effectively would require a very much larger number of police than is available," and added, "these particular laws have a bad influence on police administration; they put the police who should be the friends of the law-abiding public in a position of antagonism to a very large part of it which is quite law-abiding in all aspects except those arising from the taste for gambling."

We have then the question of whether, as one school of criticism insists, it is hypocrisy for a society which spends millions upon gambling (or drinking alcohol, the logic is the same) and therefore shows its "natural propensities," to suppress commercial gambling or attempt to do so. Are we a nation of hypocrites? This is a familiar thesis of French interpreters of Anglo-American attitudes. This seems to most Americans too simple. To call a man a hypocrite because you entertain a different philosophy as to the best method of treating the "inordinate and degrading indulgence in certain natural propensities" saves the trouble of trying to understand him. The Frenchman is not a plunger. He saves slowly and does not risk rashly what he has painstakingly acquired. "Easy come, easy go" has no place in his scheme of life. He is cynical of any legal checks upon an individual foolish enough to waste his money. For reënforcement to in-

dividual discretion he trusts rather to the closely knit family solidarity, and to the tradition of *comme il faut*. He does not live in the machine age. He does not emigrate. He shows little of the extraordinary mobility of American life. He has few such diverse elements in his milieu, except in Paris, as an American city presents, and he will assure you that Paris is not France. The mores have a far stronger hold upon the individual.

In America the mores of large cities scarcely exist as restraints. If one chooses to go to the devil he finds little in social ties to hold him back. It is not necessarily hypocrisy if the effort is made through law to hold in check the commercial agencies which seek to accelerate the pace to the devil's reception hall.

No doubt the employing class favors repression of public gambling. The employer fears for his till when his clerk plays the races—or the stock market. The employer may reserve for himself the privilege of such gigantic deals as those of Insull and Kreuger. So the employer may enforce prohibition in his factory, as is said to be the policy of the du Ponts,[10] or on his railway, while opposing legal prohibition. But it is less easy to detect the clerk who takes a chance in the stock market than the workman whose breath and speech betray him. The employer would naturally prefer to have as little temptation as possible in the environment.

But the employing class is not solely responsible for legislation of this character. There is a large percentage of the American people that considers it disgraceful for the state to stand aloof and look complacently on while vices flourish. Such people think it inconsistent for the state to expend great sums for education of its young peo-

[10] See the correspondence between Pierre S. du Pont and Irving Fisher in *Fisher, the Noble Experiment*, N. Y., 1930, pp. 15-26.

ple and then to expose them to agencies which contribute to wreck a considerable number of lives. The question of legislation then comes to this: What is your philosophy of the state? If you are a strong individualist and think of government as a necessary evil, whose function is merely to keep the peace, repress crime, and decide civil claims, you will deprecate any interference with even the commercial exploitation of the vices. If you think of the state as an association to achieve a noble life you will wish to see it set a standard somewhat in advance perhaps of the practice of the mass. Such a standard might justify suppression of commercial gambling.

For after all gambling at best is a method of luck. The method of industry is to earn by producing values; the method of trade is to exchange value for value. The method of gambling is something for nothing. And in many kinds of gambling my gain is necessarily your loss. This is not a method of enrichment which is morally satisfactory. A society whose face is set toward civilization will not encourage the disposition to rely on luck and getting something for nothing.

It may not be possible, perhaps would not be wise if it were possible, to eradicate the "natural propensity." But luck is not the method by which civilization has built its most stable institutions. Gambling knows not work, or science, or justice. It is out of place in a civilized society. And until the mores have recognized this fact the more consciously directed agencies of society may well discourage it.

CHAPTER XVII

THE UNSOLVED PROBLEM OF INTOXICANTS

It is significant of the social importance of habits in the use of alcoholic beverages that the terms "temperance" and "intemperance" now refer in ordinary usage almost exclusively to these habits.

I

In earlier days gluttony and intemperance in drinking were associated. The north European nations were meat eaters and drank large quantities of beer at their banquets. Professor Patten suggests that a diet consisting so largely of flesh created a thirst for some sour drink. Dr. Johnson in the 1770's noted an improvement. "I remember," he said, "when all the decent people of Lichfield got drunk every night, and were not the worse thought of. Ale was cheap so you pressed strongly." The early colonists of America brought English, Dutch, Scotch, and German habits. The Puritan disapproved of wasting time in tippling, but no one thought of abstaining entirely. When the minister made a pastoral call it was deemed a mark of respect to offer him a glass of refreshment. Preparations for the haying season among New England farmers included laying in a stock of New England and West India rum with a flavor of brandy. When the writer's grandfather, a Vermont minister, stirred by what he read of the temperance movement in the late 1820's, announced his intention of gathering the hay on

his farm without the customary supply of ardent spirits, he was told by his neighbors and helpers that it could not be done. "Men cannot stand the sun without liquor," was the unanimous voice. Nevertheless the parson insisted, the hay was gathered, and none suffered sun stroke. The Virginia colonists were no less given to drinking. Washington and Jefferson left on record their disapproval of the practice of their day. It was, however, in 1808 that the first temperance society was organized in New York State. Massachusetts followed in 1813 and the six *Sermons on Temperance* by the Reverend Lyman Beecher, printed in 1826, exerted a strong influence. By 1835, eight thousand temperance societies had been formed embracing, it was thought, more than 1,500,000 members. The total population of the United States, according to the census of 1830, was less than 13,000,000. Four thousand distilleries had stopped and more than eight thousand merchants had ceased to sell intoxicating liquors. Up to about 1835 the temperance movement had been directed chiefly against distilled liquors but in the following year the second national temperance convention declared for total abstinence from all intoxicants.[1]

In the 1840's the Washingtonian movement, a moral-suasion, pledge-signing movement with a special appeal to drinking men, swept the country. Father Mathews' work in Ireland extended its influence to Irish immigrants. The cause of temperance reform seemed to have established itself on a firm basis. As a sequent to the various moral movements, public sentiment naturally turned to the removal of temptation from the drunkard and the young. Thirteen states enacted prohibition by the end of 1855, and in five other states a prohibitory law

[1] The historical sketch is based on H. Leigh Colvin, *Prohibition in the United States*, N. Y., 1926.

narrowly failed. There was no organized liquor power and the liquor vote was not an organized political unit to be wielded for the party which promised most.

II

Why did the temperance movement in America soon take the form of total abstinence instead of moderate drinking, and why did it seek in this early period of the 1850's prohibition rather than license? The reasons for both the total abstinence and the prohibition policies were doubtless complex. Perhaps one reason for the total abstinence pledge was that early movements, especially the Washingtonian movements, were directed primarily toward saving drunkards. There were many of them, and they included not merely the "down and out" but also prominent lawyers, merchants, and men in political life. For a drunkard, half-way measures will not work. But a more fundamental factor came into consideration. When the full consequences of drunkenness came to be considered, they were seen to involve not only the individual but his family and frequently his community. In the small towns the burden of support and the handicap laid upon children were felt by neighbors. There was little surplus income. If some were spent for intoxicants—which in those days meant mainly distilled liquors—income for family necessaries was lacking. When all these factors were reckoned with it is small wonder that drinking to intoxication appeared not merely foolish but wrong. In religious terms it was a sin. And when the conscience set down a practice as a sin the only right thing seemed to stop it.

To stop drinking in a largely rural and small-town population of middle class society did not present itself

as a hopeless task. There was no aloof upper class of gentry to maintain its prerogative of setting its own customs. There was no large element of factory workers with their own customs brought from across the sea. Those who felt competent to regulate their own habits and avoid excess were urged to help by example. Who would not abstain from what, after all, was a luxury, if thereby he could save some boy from going wrong? Small-town morality? Yes, if you choose to call it so. The writer grew up in a community of this sort. The leaders were not fanatics. They denounced no one for drinking either moderately or in excess. They did believe that the town would be a better community if all citizens were sober.

From this rise of temperance societies, followed by the adoption of prohibition in thirteen states, to the adoption of national prohibition in 1920, and the endorsement by both Republican and Democratic party platforms in 1932 of resubmission or repeal, the pendulum of temperance agitation and legislation has swung from wet to dry and from dry to wet again. In the Civil War and the following decade slavery, war, and reconstruction claimed attention. Prohibitory laws in nearly all the prohibition states were repealed; temperance advocates were discouraged; the whiskey ring engaged in wholesale fraud and corruption. The Sons of Temperance, an organization formed before the war, declined rapidly. The Good Templars had a brief success, reaching a membership of 600,000, but soon declined. Red ribbon movements and blue ribbon movements, the appeals of Francis Murphy like the earlier appeals of John B. Gough, induced many to sign the pledge, but effected little permanent change in the drinking habits of the people. The consumption of beer rapidly increased, from 36,563,000 gallons in 1800 to

855,692,335 gallons in 1890, doubling each decade. The consumption of spirits per capita had decreased from 2.52 gallons in 1840 to 1.27 gallons in 1880 but thereafter showed little fluctuation—a slight lowering in the business depression of the nineties, followed by increase to 1.63 in 1907. Apparently the forty years following 1880 showed little if any change in the amount of spirits drunk per capita, a negligible amount of wine consumed, and an increase of beer from 8.26 gallons per capita in 1880 to 20.53 gallons in 1911-14, despite the fact that in many of the states prohibition was in force.

The only movement in the seventies which proved of lasting influence was the formation in 1874 of the Woman's Christian Temperance Union which focused the growing revolt of many women of the country against the evils that affected women and children as the result of intemperance and the liquor traffic.

The great increase in the consumption of beer was doubtless due in part to the immigration from Germany and other beer-drinking countries and in part to the growth of cities. But a great factor in the rapid growth of prohibition in the early years of the present century, as a result of which twenty states adopted prohibition in the decade 1907-16, was the political activity of the liquor traffic.

The brewers had early learned to make their power feared by playing off one political party against the other. Brewer Harry P. Crowell, manager of the campaign against prohibition in Pennsylvania in 1889, explained to a representative of *The Voice* how that campaign had been won. "We raised over $200,000. Besides current expenses we paid it out to the newspapers, politicians, and some for literature, and some for public speakers." When asked how to get the newspapers Mr. Crowell said:

"We bought them by paying down so much cash. We employed a man to write for us and prepare articles for publication which would be furnished to the papers to be printed as news or editorial matter as we might direct." Mr. Crowell further explained that he had paid the chairman of the Republican State Committee and several other leaders $500 and $200 each. Similarly in Rhode Island, the "head-pin Republican worker" was paid $6,000 for his services in taking care of the state and city committees. Scarcely a city in the country was free from dominance by the saloon, or from the corruption of its officials in case there were inconvenient state laws or city ordinances, which the saloons did not wish to observe.

It was such activities which prompted the organization of the Anti-Saloon League.

III

Has there been any important gain or loss in temperance among the people of the United States since the first temperance societies were formed a hundred years ago?

This cannot be answered by statistics of arrests for drunkenness since these notoriously fluctuate with the policies of administrations, nor by convictions in the courts for these depend on a number of factors. Nor can it be determined by consumption records, except in a very general way. For these in part reflect the increments to the population from European immigrants of various habits. Nor by the mortality from alcoholism, for no statistics are available for the earlier years, and the registration area in 1900 included only ten states.

Consumption statistics are perhaps as objective as any, until the period since national prohibition was adopted.

These show, as stated, a decrease per capita of distilled liquors from 2.52 gallons in 1840 to 1.27 in 1880, and after 1880 a nearly stationary rate, reaching 1.63 in 1907,[2] and standing at 1.46 for 1911-14. Consumption of malt liquors increased per capita from 1.36 gallons in 1840 to 10.08 in 1880, 21.24 in 1907, and stood at 20.53 for 1911-14. In terms of alcohol, the per capita consumption as estimated by H. Leigh Colvin,[3] was in the seventies .985 gallons; in the eighties 1.153, in the nineties 1.273, in 1901-10 1,501, and in 1911-1914 1.611.[4] We had thus increased the use of alcohol up to the war period by over sixty percent. So far as consumption of alcohol was concerned, the seventy-four years seem to show that all efforts by moral suasion, education, religion, and legislation had resulted only in increasing the consumption of alcohol—except that no one can guess what the statistics would have been if no efforts had been made. Considering the extraordinary profits of the business and the vigor with which the sale was pushed by the liquor interests, it may be safely conjectured that in the absence of any organized opposition, consumption would have been far greater. For many agencies aided the business in overcoming sales resistance.

Consumption is not necessarily a test of whether excessive drinking and intoxication are increasing. It is possible that increase in consumption may come from more moderate drinkers rather than from more drunkards. There has evidently been a steady increase in drinking. Has there been a similar increase in drunkards? If one

[2] *Ency. Brit.* Article, "Temperance."

[3] *Prohibition in the United States,* N. Y., 1926, p. 548.

[4] Colvin, *op. cit.*, p. 549. The estimate is based on reckoning distilled liquors at forty-five percent alcohol by volume, vinous liquors as containing fourteen percent, and malt liquors as containing 4.25 percent volume.

may venture an opinion based on personal acquaintance and general reading, it would be that the drunkards in 1914-15 came from a different social class from that of the drunkards of the years before and soon after the Civil War. In that earlier period it was not uncommon that a lawyer, physician, politician, or man of business drank more than was good for him. He might be very capable when sober, and take only an occasional time off for indulgence. But eventually he was likely to lose his clients, his practice, his office, or his business. When the writer first came to Chicago to reside, in the early nineties, he heard of many prominent Chicagoans of the past whose history had shown such deterioration. A family was fortunate if it did not number at least one whose career or reputation suffered from too easy conviviality. A town was likely to number more than one such among its citizens. In the early years of this century I believe that fewer men of distinct ability and high position wrecked their careers and their lives by becoming drunkards. It was not so respectable. Drunkards there were, but they belonged to an inferior stratum.

The reasons for this were probably largely economic, at least among business men, but standards of education, and the increased influence of woman, as well as a certain degree of change in the mores, contributed. For one thing, economic efficiency was setting a far stiffer pace in the nineties and the first years of the present century. It found that intelligence, knowledge of goods and markets, and study of improved methods would sell more goods than "treating" the buyer, after the fashion of an early trader among the Indians. The urgency for efficiency and safety in an age of machinery, railroads, and other operations involving high risk was effective in a stricter standard of sobriety among many classes of

skilled workmen. The Pennsylvania railroad led the way which many other industries followed. Professional standards in law and medicine advanced. It became more important for the lawyer and the judge, in higher courts at least, to know law than to be a good drinking companion. Medicine and surgery were in a new epoch of scientific method. A clear brain and steady hand were demanded. In national if not in state and city office, availability in a candidate included at least a degree of dignity and sobriety.

Then with the post-war and national prohibition situation came another shift. In the general coöperation to devote all energies toward winning the war, the emergency war prohibition act was well observed, and for the first year the Amendment received general support. But soon came a realignment. The poor found drinking at bootleg prices too expensive. Miss Jane Addams and Commander Evangeline Booth of the Salvation Army have testified to improved conditions among the poor. Money that was formerly spent in saloons was under prohibition shared with the family. The man in numerous cases became sober. Middle class men likewise grudged the price or preferred not to coöperate with law-breakers by patronizing bootleggers. Only the well-to-do could afford to drink freely. If we may credit the plea of women speaking in the 1932 campaign against prohibition, the increase in drinking among the sons and daughters of the rich has alarmed even the parents whose examples they have followed and "bettered." Current literature exhibits this class as simply contemptuous of the law, while the more sophisticated rationalize their coöperation with the bootlegger by asserting their love of liberty, and a right of deciding constitionality quite superior to the authority of the Supreme Court. It is not easy to deny the logic of

Al Capone's protest against adverse comment on his business:

> All I ever did was to sell beer and whiskey to our best people. All I ever did was to supply a demand that was pretty popular. Why, the very guys that make my trade a good one are the ones that yell loudest about me. Some of the leading judges use the stuff.[5]

A question raised by the apparent shift in drinking habits since the World War is as to the attitude of women. Is there more drinking among women and have they as well as men changed their attitude toward prohibition? Prior to the war there was very little drinking by women. Doubtless wine was served on many dinner tables of the well-to-do, but parties for the main purpose of experiencing the thrill of mild or not so mild intoxication were not regarded with favor by women in good society. Night clubs were not yet common. It was not customary for young men when attending a dance to equip themselves with flasks with which to refresh not only themselves but their partners. We did not hear of "lit ladies" who enjoy the general relaxation of ordinary inhibitions. The most recent literature seems to indicate some degree of reversion to more conservative practices on the part of the generation just maturing. But there is little question of a considerable shift toward the left in the morale of well-to-do women. Before the war a girl who refused to drink distilled liquor would hardly have incurred the epithet of "prig." We are assured on high authority that such refusal at present may be expected to incur the odium of that term.

It is, however, probable that so far as there has been

[5] Fred D. Pasley, *Al Capone*, the Biography of a Self-made Man, N. Y., 1930.

a change of attitude in the middle class it has affected not so much the view of mature women as it has the practice of the younger who wish to be regarded as good pals by their escorts—if one may judge by the letters written to Dorothy Dix and other arbiters of mores for the middle classes.

As concerns the attitude of women toward prohibition, while women had little direct influence in drafting the party platforms which declared for repeal or resubmission of the Eighteenth Amendment, it is fairly evident from the vote in November 1932, especially in the twelve states which voted on prohibition policies, that women must have largely voted with the majority. Whether in this they were influenced by their own appetites or by a belief that national prohibition is not the best method for securing temperance will be discussed under the following section.

IV

The elections of November 1932 have set two problems for the student of the mores: (1) Do the returns, especially from those states which voted on the repeal of state prohibition laws, indicate a change in the desires of the majorities toward freer and less expensive opportunities for drinking intoxicating liquors, or a change in view as to the best method of securing temperance and controlling the liquor traffic? (2) What causes contributed to bring about the extraordinary reversal of attitude between the almost unanimous ratification of national prohibition in 1920, the elections of 1932 and the subsequent votes in states for repeal of the Eighteenth Amendment?

As to (1), undoubtedly the repealists include both a

left wing that is thirsty and a right wing that seeks a better method of dealing with intemperance and controlling the commercial traffic, particularly the efforts of this traffic to debauch or take possession of the agencies of government. The publicity of the preëlection campaign was directed principally toward attracting the voter by right-wing arguments. Since the election the left wing has begun to assert itself. A representative of the Woman's Association, in urging repeal of local restrictions in Los Angeles, stressed the importance of appealing to the thirsty tourist, and remembering the interests of the brewers. The right wing has prepared measures in some of the states designed to minimize the profit motive in the business, and to do away with the old-fashioned saloon on every corner. This has been opposed by the group which wants it possible for the "working man" to drop in conveniently for a quick drink without going out of his way. No prediction as to which wing will prove stronger can be made, and it is at least possible that as one disgusted dry has opined, the American people is determined "to guzzle" for a time. Few, if any, of the leaders among the repealists have been known to the public for their efforts in behalf of temperance; whereas teachers, the clergy, the National Education Association, the Woman's Christian Temperance Union, all interested in temperance and the welfare of young people, opposed repeal. The General Committee in Northern California sponsoring the repeal of the Wright Act (the state prohibition statute) which numbered more than 400 members, heralded as "outstanding leaders in all fields," had representatives from attorneys, real estate dealers, hotel managers, manufacturers, capitalists, and physicians, but only two out of the 400 are listed as engaged in education, and one as a clergyman. Apparently religion and educa-

tion were not recognized by the repealists as "fields" that would repay cultivation.

The circumstances under which the party victorious in the November elections framed and adopted the repeal plank in its platform indicated that the left wing was in control. The plank adopted was characterized by Senator Glass, as reported by the *New York Times*, as "a bar-room plank," and was regarded as "wringing wet." It was essentially the "Illinois plank," sponsored by a group in Chicago which had opposed such restrictions as early closing and forbidding sales to minors.[6] The galleries booed and howled down Senator Hull attempting to speak for an alternative plank. Tammany, not generally known as a temperance organization, seconded the Chicago influence. Massachusetts delegates sang "How Dry I Am!" If the convention represented the dominant purpose of the country, the wide-open policy is to have its innings.

V

Why did the sentiment of the American people change so radically, not only as to national prohibition, but also as to state legislation? Prior to the adoption of the Amendment, thirty-three of the states had prohibition. Why was a demand for national prohibition so strong that it was adopted almost unanimously by many legislatures?

For one thing, it is difficult in any dry community or state to prevent the importation of liquor from neighboring territory. State lines were never Chinese walls and since the day of the automobile they have become imaginary. When the only mode of transporting heavy loads for a considerable distance was by rail, some check

[6] Fletcher Dobyns, *The Underworld of American Politics*, N. Y., 1932, p. 4.

was possible, but now that heavy trucks cover thirty or more miles an hour, and three hundred or more in a night, it would take more police to protect the borders of a state than could easily be spared for such purpose. The rural area in a dry state contiguous to a large city in a wet state was helpless. The brewers and distillers were not organized to operate in their own states only. Like other great national corporations, they were superior in power to the states which tried to exclude or control them. Prohibitionists in dry states sought national prohibition in self-defense.

Prohibitionists in wet states doubtless sought national prohibition as an appeal to a higher jurisdiction in the hope that the nation would overrule the state. There was also the fact of the World War which unified the people of the country so that for a time they thought nationally instead of by states or smaller units.

And underneath the steady progress of prohibition was a general trend of thought and feeling which took on what those who sympathized with it might call a missionary zeal. In the first decade of the century under the leadership of Roosevelt this trend was directed toward social justice. It found expression in the Nineteenth Amendment granting suffrage to women. It campaigned against corruption in the cities. Those who did not sympathize with one or another of these movements by reformers denounced them as fantastical, as interfering with business, or as puritanical.

As regards the deadly charge "puritanical" there is this element of truth in it. André Siegfried points out certain fundamental differences in attitude between the Calvinistic Protestant and the Roman Catholic. Puritan democracy, he says, has duties as well as rights. It has a missionary spirit. If a principle appeals to the Calvin-

ist as good he seeks to put it in force, and very likely to embody it in law and enforce it upon the community. The Catholic, on the contrary, is strong for family and education but does not favor state action in social and moral fields. He is immune from the urge for moral uplift. He has great pity for human frailty, is a realist, and does not try to change customs. As thus contrasted the spirit back of all these reforms was Puritan rather than Catholic. A degree of correlation between religion and prohibition sentiment is indicated by the regions which led in the prohibition movement. The South is conservative and Protestant. The Middle West is more liberal but still largely Protestant. The three Southern New England states and New York, New Jersey, and Maryland have a larger Catholic population and have been less enthusiastic for prohibition. No doubt if we look for the causes of this regional difference we should probably give a large place to occupational and economic factors, but at this point we are asking only, How far is the prohibition movement Puritan in spirit?

What were the factors in the shift to repeal? We may distinguish general factors and specific factors.

A general factor was the reaction against all "reform" movements that followed the war. The Civil War was followed by various scandals in government. After the World War not only did members of the Harding administration engage in what the Supreme Court characterized as a corrupt transaction but there was general apathy when the looting of oil reserves was disclosed. Apparently moral enthusiasm had spent itself, and in the general desire to get back to "normalcy" there was little zeal for enforcement of the law which had been enacted by sweeping majorities. The parallel reversion to legalized betting on races was noted in Chapter XVI.

A second general factor in the balance of conflicting sentiment is the increasing proportion of the population living in cities and the increasing influence of the city standards, and particularly of the metropolitan press.

In the large cities of the United States almost without exception the foreign born, together with the first generation of the native born of foreign parents, constitute the larger part of the population; in Chicago, for example, over seventy percent. The foreign born are accustomed to the use of beer and wine with meals, without the commercial saloon accompaniments which in American cities debauch the young, control politics, bribe the police, and elect or defeat mayors, aldermen, judges, and governors. Bringing those cultural traditions from Europe they resent any interference with Sunday sales, or other limitations deemed wise by those concerned for the education and protection of boys and girls. The native born of foreign parentage inherit this tradition, reënforce it with the spirit of "young Americans" who regard parental control as old-fashioned and imitate the individualistic and irresponsible freedom of American life rather than its self-control. It is unlikely that any important restriction will be enforced in the great cities for many years to come. State laws are not more respected in the metropolitan cities than federal laws. If the suggestion of Professor Merriam for the erection of the metropolitan cities into city-states independent of state rule, should be carried, we should have an interesting experiment. It would probably bring out as the decisive test: Is it more advantageous for the prosperity and repute of a city to run wide open and cater to the "natural propensities and appetites," or to maintain some degree of sobriety and restraint? As Professor Merriam well says:

A city is a city, the country the country, and rarely do they meet successfully in the joint solution of their own dissimilar problems.

The city influence is not limited to city dwellers. City styles of dress, and city ways of looking at life exert constant pressure on the rural mind. The metropolitan press has power and prestige. Its readers in city or country are insensibly influenced by the matter that is supplied by the morning and evening newspaper. Metropolitan newspapers were almost without exception wet; some were so dripping wet as almost, in their propagandist zeal, to cease their function of presenting the news of the day objectively. It is not necessary to suppose that pecuniary motives prompted this zeal. The very fact that they reflect in large measure the dominant conceptions and sentiments of their cities is a sufficient explanation. In the words of Veblen used in reference to another "institution," efforts to corrupt them would be a work of supererogation. By a policy of never speaking of "prohibition officers" but always of "snoopers"; by playing up all the bad features of law-enforcement—or non-enforcement; by dwelling upon the "terrorism" exerted upon Congress by the Anti-Saloon League and kindred dry organizations and omitting to comment on the propaganda of wet groups; and by consistently caricaturing the dry as a fanatic with the unpleasant features of the hated Puritan, the wet press doubtless contributed toward fixing an association of mingled hatred and contempt for the law, for the officers who sought to enforce it, and for all who favored it. If the wet press contributed also to strengthen the disposition on the part of the individual to decide for himself which laws he will obey and which nullify, it would no doubt consider this a

more or less regrettable incident of a successful campaign.

A negative factor was the circumstance that a generation had come to maturity which had never known by experience the dominance of the liquor power and the saloon in political life. Twenty millions, according to the census of 1930, were in that year of the age period 20-29, and this would be slightly less than the number eligible to vote in 1932 who had come of age subsequently to war prohibition. These voters could not be expected to feel as strongly the reasons for suppressing the traffic as those who had fought it.

Less attention was given to the educational and moral aspects of temperance after the adoption of national prohibition. In a way the logic of the situation almost demanded this. For to teach the wisdom of prudence and discretion, of measuring the consequences of excessive indulgence, of playing safe, presupposes free choice on the part of the one taught. If the opportunity for deciding between drinking or not drinking implies assisting or conniving at violation of law the teacher is in an embarrassing position. It would be logically consistent to present reasons for excluding the commercial traffic, but since no unanimity of opinion exists on this point—for state administration of dispensing liquor has heretofore scarcely been thought of in the United States—there would be strong objection to public school instruction along this line. Those who wish to drink intoxicants wish to have the opportunity to buy them, and this has always implied places where they are sold by those interested in making as large sales as possible and therefore of inducing as many as possible to form the habit of using them. Parents who wish to purchase might well object to having their children taught that the sale is an evil. Teaching the desirability of excluding the sale of liquor from

a community would seem feasible only to the extent of teaching the children of parents who are dry. In any case there have been no efforts to induce young and old to "sign the pledge" as in the earlier days. Apparently the days of "reform movements" are past, and the mores are not yet clearly set for any substitute. If we are to have "moderation" instead of total abstinence we have not yet found a way to teach it. To teach moderation to a people that is not content to drive its automobiles moderately, but must speed; that disregards traffic regulations and the rights of pedestrians and other drivers, and incurs thirty thousand deaths and eight hundred thousand accidents yearly is indeed a task not yet understood.

When we turn to the specific reasons for the change of opinion from 1920-1932 their very number and variety suggests the complexity of such a general shift in alignment. Not all signify change in the mores. For example, some disapproved of prohibition because it was not enforced; others disliked it because it was too well enforced and therefore made the price of alcohol too high. Some opposed it because disrespect for law was fostered; others because, in the words of Brennan, the Democratic kingpin of Chicago, "it was one of the projects of 'reformers' to do away with the primary instincts of man—gambling, alcohol, women." Some distrusted it because it did not conduce to public welfare; others because it limited private rights in the interest of public welfare. Four types of reasons may be noted.

The economic motive for a time seemed to justify prohibition. Under Coolidge prosperity the sales of automobiles and radios increased until nearly every family had each of these luxuries. Manufacturers enlarged their plants, savings banks increased deposits. It seemed plausible to attribute the prosperous condition of the

country to the fact that the workmen were more efficient and that surplus wealth and earnings were devoted to productive channels rather than to consumption of alcohol which had never ranked high with economists as an economic operation. But when depression came, when factories were idle, expenses for charity increasing, farms going under foreclosure, and no clear view as to just what happened, the question naturally arose: If prosperity was due to prohibition, why this depression? When ordinary industries failed many thought of a possible appeal to desires more urgent than those for everyday necessities. The Middle Westerner thought of the breweries, and the malt and hops; the Californian thought of the grape growers; the Atlantic states needed no conversion, but counted up the retail dispensers.

The fiscal motive appealed strongly to two classes: those who were responsible for balancing national and state budgets and those paying income taxes who feared high rates and saw an opportunity to shift the needed taxation to the drinkers. Taxes of course have to be paid but the authorities whose duty it is to plan and collect them naturally think less of the ability of the payers than of the ease with which the tax is collected. A consumers' tax on beer would meet with less opposition than heavier taxes upon income. It is a peculiarity of the American people which has been mentioned before, that direct taxes to the government are paid much less willingly than indirect taxes paid through excise.

But the enormous wealth accruing to the bootlegger furnished the climax to the economic and fiscal arguments for repeal. The bootlegger prospered when banks failed, mortgages were foreclosed, clerks and salesmen in ordinary business and workmen in factories were unemployed, and governments sought vainly to balance their budgets.

As the steps of the psalmist well-nigh slipped when he saw the prosperity of the wicked, so many a citizen asked, Why should the bootlegger collect an enormous revenue whereas the government receives nothing from the profitable traffic? This turned many doubtful votes.

Administrative difficulties, mistakes, and inexcusable laxity counted heavily with many. During the first year no well-organized opposition to the law had gathered to render the task of enforcement so difficult as it became later, but it was evident fairly soon that the cause of prohibition was being wounded in the house of friends—or of those in official positions who should have been the friends of the laws which they were supposed to enforce. Mrs. Mabel Walker Willebrandt, the Assistant Attorney-General in charge of enforcement, found appointments to the enforcement staff made largely at the dictates of politicians who were by no means in favor of the law. Political heelers filled a large proportion of the minor positions; many distinguished attorneys and judges were out of sympathy with the law. In other cases intolerant, immature persons were given pistols and sent into dangerous situations in which they feared, and frequently with good reason, shooting on the part of the bootleggers. Mrs. Willebrandt protested and the force was ultimately placed under civil service; but a corps with the morale of the Canadian police could not be supplied at once. The results were on the one hand inefficiency and corruption, on the other, shootings in many cases where no armed resistance had shown itself. Numerous cases in which prohibition officers were killed in the discharge of their duty were passed over by the wet press with no notice, or very slight notice. The cases in which suspected lawbreakers were shot were played up effectively. The net impression on the minds of the readers of the public

press was undoubtedly that the whole effort was half-hearted, futile, and in many cases worse than futile. Officials in most of the large cities made no pretense of coöperating with the federal officials. The prohibition department in Chicago announced in the press on October 1, 1932, that Chicago had between 1,800 and 2,000 speakeasies. Previously a survey in New York had discovered 4,000. The press reported these speakeasies to be "complete with bars and the standard type of whiskey, wine, and beer." "Great hotels which once under the protection of the law sold wines at their dining tables, now live in constant fear of the padlock if guests bring liquor into the rooms. While in the very shadow of these hotels—and usually just across the street—speakeasies, with jazz bands, excellent food, and contraband liquor, exist and thrive, paying tribute for protection instead of taxes for license." The editor of the *Nation* reluctantly concluded that with our civil service it was impossible to enforce the law against the disposition of such a large proportion of citizens.

Finally the moral and legal aspects of the situation counted. Prohibition whether by state or nation is undoubtedly one of the most difficult laws to enforce if not the most difficult. The mores of the community in some parts of the country are so confirmed and stable with reference to intoxicants that the illegal traffic has little sympathy. When, however, as Capone testifies, respectable people and judges are among his best customers the indications are that the community favors the bootlegger rather than the officer who seeks arrest or prosecution of the law-breaker. As previously noted, the well-to-do are the conspicuous patrons of illegal alcohol because any considerable use is beyond the means of the middle and working class. The standing and repute of

the well-to-do in the community make their example widely influential in setting standards of social observance and among young people. It was particularly the moral difficulties that led Mr. John D. Rockefeller, Jr., to change his position. No doubt many who had known his previous support of prohibition were led to change their own views or were confirmed in such a change by his public statement.

The crux of the problem of any social control of the liquor traffic is the bootlegger and his patrons. If the government imposes restrictions upon the sale of alcohol, which effectively limit the legal sale, the bootlegger seizes the opportunity to supply the demands of those who want more or stronger beverages than the law allows. If a sufficient number of the patrons belonging to an influential class treat the law with derision and contempt, enforcement becomes difficult or impossible. So long as a considerable proportion of the population, particularly of the well-to-do, continues to exercise the "rights" to choose which laws it will observe, the mores will continue confused.

Writing, not as a moralist, but as a journalist who interprets what he sees in city life, Howard Vincent O'Brien says: [7]

> People want alcohol because it does intoxicate. And when beer comes back the saloon will come back, too, even if it's called a filling station. Also, if beer and wine come back, without hard liquor, there will be bootleggers and speakeasies.

Attempts to prevent the return of the saloon by requiring that liquors may be served only in connection with meals encounter decisions of courts that a sandwich—or even a dash of salt—constitutes a legal meal.

[7] *Chicago Daily News*, Dec. 12, 1932.

Dr. Catlin in his impartial survey of the problem,[8] distinguishes "misery drinking" from convivial drinking, and emphasizes the importance of minimizing the commercial factor which seeks to enlarge profits by increasing the number of drinkers, as well as the quantity consumed by each of them. The roots of misery drinking are in low wages, squalid lodgings, meager education, and other ills found most frequently in connection with poverty. These can be largely cut if society is willing to go at the task thoroughly. Convivial drinking can be reduced partly directly through taxation, refusal of permits to buy, and limits on times and places of sales, partly indirectly through other forms of diversion. Some more intelligent use of leisure than getting drunk should commend itself to a population introduced to good books and good music through the schools, the press, the libraries, and the radio, and disciplined by the exacting standards of modern industry and business.

[8] George E. G. Catlin, *Liquor Control,* N. Y., 1931.

CHAPTER XVIII

PROSTITUTION

In the attitude of society toward sex passion and its disorderly manifestations as in the similar problems relative to the passion for gambling and the appetite for intoxicants, we have to distinguish between its treatment of the individual who lacks self-control and its treatment of commercial exploitation of a natural passion.

Ancient morality gave attention chiefly to the individual's conduct; it thought in terms of the man's welfare. The Hebrew sage warned of the "strange woman." The Greek sage Socrates is portrayed as preserving intelligent self-control over all his conduct and showing his superiority to the morals of his day by substituting a passion for the education and inspiration of young men for the Eros which sought physical gratification.[1] With an austere and lofty note combining religious-ascetic and esthetic abhorrence of impurity and defilement, St. Paul urges the Christian disciple to honorable marriage, "For God hath not called us unto uncleanness but unto holiness." Chastity became one of the virtues which the Middle Ages set high; in ascetic zeal the church interpreted chastity as abstention, not from unlawful, but from all sexual relations. The mores of the gentry imposed strict chastity upon women, but were far from rigorous in the code for men and this discrimination has persisted until the present day as the "double standard." Boccaccio tells of the success of women in deceiving husbands. Shakespeare

[1] Plato, *Symposium*, 216-19; *Phædrus*, 250-56.

finds a favorite object of ridicule in the cuckold. The law of today generally recognizes in unfaithfulness a ground for divorce but seldom attempts to interfere with non-commercial individual irregularity.

Modern fiction finds in the conflict between passion and duty a favorite theme. The Romantic era treated this in terms of feeling; the Realist explores physical as well as emotional aspects. The conflict is seldom given a "happy ending" in the complete triumph of either passion or duty and consequent harmony of the individual with himself and society. Such triumph and harmony would follow if the author felt that life could offer a clear resolution of the conflict. The mores are not so clear and unchallenged as to insist on duty without pity for the individual caught in a dilemma. Nor are they disposed to discard all control over lawless passion. Hence the great and serious interpreters are likely to leave the conflict unresolved, with or without the artistic handling which yields the tragic catharsis.

The attitude of society toward commercial prostitution is another story. It is as if society recognized that to isolate sexual passion from all affection; to make the passion purely casual and an end in itself rather than instrumental to the values of love, family, and race or civic welfare, is to degrade it. To place it on a commercial basis is to value personal integrity in terms of money and to destroy or at least endanger all self-respect. Many of the ancient shrines had indeed their votaries who had religious status. The Greeks attempted regulation by establishing houses under police control, but the beauty or wit of celebrated courtesans gained for them a standing which is reflected in the traditions of Aspasia and Phryne. The Romans, however, looked more severely on the profession; they considered association with pros-

titutes as disgraceful, and introduced a system of regulation which is said to be the basis of present European systems of control. The essential features of these systems are registration, and police and medical supervision. The attitude is that of toleration of a necessary evil, with an effort to minimize its effects in fostering and spreading disease, and to avoid certain particularly public and scandalous methods of carrying on the business. Germany prohibits brothels and procuring, although even in that country of efficient government the law is said to be only partially successful.

In the United States the attempt has been made to prohibit brothels. This is similar to the attempt to prohibit public gambling houses and saloons. Indeed one charge brought against the liquor traffic was that saloons were in large number disorderly houses where the profits from liquor served and from prostitution were combined. Raines Law saloons in New York were notorious. The investigator for Kneeland's report found in 1912 out of 794 separate saloons and concert halls almost half, 308, disorderly.[2] The Chicago survey reported that out of 445 saloons considered, investigators "were solicited by one or more women in 236 different saloons." [3]

Two features of the policy of repression have been notorious: the ineffectiveness of the statutes in a wide-open town, and the corruption of the police who "protect" those houses which pay tribute and raid others. As a part of the farce, prostitutes were fined, the fines paid out of the profits of the business, and the business continued as usual.

[2] C. J. Kneeland, *Commercialized Prostitution in New York,* 1913, p. 145.

[3] *The Social Evil in Chicago,* by the Commission of Chicago, 1911.

A particularly sordid and revolting aspect of prostitution has been the exploitation of prostitutes by owners of houses of prostitution, by procurers, by pimps or cadets, and by the "madames." Their activities are not confined to taking the main share of the receipts but extend to procuring a constant supply of recruits, largely from young girls. In view of the part taken by men in both furnishing the demand and exploiting the women who supply the demand the Chicago Commission declared: "It is a man and not a woman problem which we face today." [4]

The older attitude was to call prostitution a necessary evil and look no farther than sex passion for its source. It was the outstanding characteristic of the Illinois Senate Vice Committee's investigation and report that it sought causes in poverty and low wages of women. Not that the choice is a purely economic choice between wages in industry and income from vice. But the conditions of housing, maternal care, education, and social status of associates are often so unfavorable to morale that a girl faces the task of supporting herself ill-fortified for the struggle. Under such circumstances the weaker, the poorly educated and untrained, find the wage they can command makes it nearly impossible to pay for necessary food and shelter, to say nothing of clothing.[5] On the other hand, in the causes stated by the inmates of the Bedford Reformatory, Dr. Davis found economic reasons in relatively few cases. Out of 279 girls only 19 offered as their reason, "inability to earn a living." And out of 1,106 street cases, "only 139 gave a directly economic reason." [6]

[4] *The Social Evil in Chicago*, p. 47.

[5] *Report of the Senate Vice Committee*, State of Illinois, 1916, pp. 23-41.

[6] Kneeland, *op. cit.*, pp. 185, 244.

Dr. Davis comments that the girls "are not as a class given to introspection" and the investigator of the street cases told the writer that they really were not sufficiently alert minded to know how or why they adopted that mode of getting a livelihood. The education of the Bedford cases was rudimentary; only 7.24 percent had finished the grammar grades. Of 1,099 street cases 46 had graduated from grammar grades and 7 had some kind of special education, as for stenography, or 4.8 percent if the 46 and 7 are combined. Yet although few of these groups give the economic reason, the general level of their earning capacity and education is low. Few or none come from well-to-do or educated families. The significant features of these studies is that they mark an effort not merely to tolerate an evil but to understand and if possible lessen it.

An aspect of prostitution which has long been a ground for public concern is its relation to venereal disease. Nearly all prostitutes who have been given careful laboratory tests are found to be infected. Practically 90 percent of the Bedford women showed infection. Each prostitute may infect many men. Some of these men infect their wives. Various maternity hospitals reports show a large percentage of infections so received, doubtless in many cases from husbands who had regarded themselves as cured.

The far greater incidence of venereal diseases in cities than in rural areas supports the probability that prostitution, largely a city institution, is an important factor in their spread. The extent of these diseases is a grave matter. The United States Public Health Service on the basis of studies including 15,500,000 people estimates that there are in the whole country 643,000 cases of syphilis and 474,000 cases of gonorrhea constantly under

medical care. The peak age at which infection occurs is from twenty to twenty-four years, at which time thirteen males and seven females per thousand are infected per annum. Dr. Parron, Assistant Surgeon-General, further estimates that on the basis of the above data, of 1,000 males born, by the time they had reached the age of forty years 254 per thousand would be infected with syphilis. Of 1,000 females born 131 per thousand would be infected. The cases under treatment in cities are several times as numerous relative to the population as in the rural districts. Among the second million drafted during the World War 5.6 percent were found to have a venereal disease. The disease in itself and in its possibilities of infecting innocent persons, is so great an evil that it is an anti-climax to mention its economic aspects. Nevertheless, for the benefit of comparison with some other burdens that are borne with some complaint, Dr. Parron's estimates of the annual costs may be quoted. These are "per capita $1.05 for each inhabitant loss in wages, $1.25 in cost of medical care, and $10.80 economic loss on account of shortened life-span, or a total of $13.10 per capita annual tax on account of these two preventable diseases." [7]

Preventable! But how? There is no difference of opinion as to the evil, but not so complete agreement as to methods of prevention. It has not been possible to separate entirely the medical problem of preventing the disease from the complex social and moral aspects of prostitution which is the chief source of infections. Continental Europe has tolerated prostitution while seeking to limit by registration and medical inspection the spread

[7] Thomas Parron, Jr., M.D., *Gonorrhea and Syphilis*. Proceedings of the National Conference of Social Work at Fifty-sixth Annual Session, 1929, Chicago, 1930, pp. 222-30.

of infection. The American attack upon the problem of prostitution may not have succeeded in any notable reduction of disease as yet but at least it takes a less hopeless view of human nature. The French would probably object that an attempt to control by law an individual's appetites is both futile and contrary to the principle of individual liberty. It may be admitted that, as with gambling and the liquor traffic, the problem is difficult and opinions differ. But it may be argued that as a machine age makes intoxication a menace to the public, so a scientific age cannot supinely tolerate an institution that not only sacrifices voluntary prostitutes but recruits girls and infects innocent wives.

The first reaction of the studies and surveys made in numerous cities during the first two decades of the present century was that the evil could be stamped out if the community really wished to end it. As a first step many cities moved to abolish the segregation or "red-light" districts. In May 1916 the American Society for Social Hygiene published a list of 131 places in the United States which had discontinued or had never adopted the segregation plan. Of 40 cities investigated in 1917, 26 had closed the segregated district, 10 still allowed it, 4 had never had it.

To close a district does not necessarily mean the discontinuance of commercialized prostitution or even of brothels. In Chicago the policy of repression has apparently shortened the period during which any one house remains in operation. The average persistence for all resorts on the records of the Committee of Fifteen of Chicago during 1929 was found to be 174 days, less than half a year. As to the actual numbers, "the Vice Commission estimated the total houses of prostitution in Chicago as of 1910 to be 1,020. The number of detected

vice resorts in 1931 from the most reliable sources of field investigation was 731."[8] The average number of inmates in the resorts has decreased in greater proportion, from five in 1910 to two in 1929. Street walking and solicitation in public places has also decreased until, judging from court records, it is now negligible.

A similar change is reported in New York in a study by Dr. Willoughby.[9] Open houses of prostitution of the older type have decreased, street solicitation has practically disappeared. Whether there has been any reduction of volume of prostitution or number of prostitutes "is impossible to say with certainty." The number of cases before the Woman's Court decreased from 5,939 in 1911 to 1,313 in 1920, and then increased to 3,294 in 1929. But since 73 percent of the cases are of first offenders, these records indicate that few are caught a second time, rather than that there has been any material change. Night clubs and speakeasies have taken the place of the older methods to a considerable extent. In 1928 the Committee of Fourteen found that of 392 visited, 360 were identified with prostitution, and of 998 hostesses 544 admitted that they were prostitutes. The use of hotels and of rooms in tenement houses for purposes of prostitution has also increased.

In Chicago the Committee of Fifteen reported complete reversal in the ratio of resorts in centralized and decentralized areas between 1914 and 1920. In 1914 the respective numbers were: in centralized areas 192; in decentralized areas 80; and the percentages 70.6 and 29.4. In 1929 the numbers were: in centralized areas 78; in decentralized areas 381; and the percentages 17

[8] Walter C. Reckless, *Vice in Chicago,* 1933, p. 15.

[9] Cyrus Waterman Willoughby, *Prostitution and Its Repression in New York City,* 1900-1931, Columbia Univ. Press, 1932.

and 83. Flats and apartments have largely taken the place of houses.

"The decentralized vice resorts are the rendezvous of the rising and increasing class of the independent, the emancipated, the clandestine prostitutes who want the 'life' without its stigma and hardships." As contrasted with the women who were inmates of the older resorts these independent prostitutes are less completely identified with their profession. They are nearer to the "mistress" or "kept woman." It is easier for them to preserve a measure of self-respect, and to leave the profession if a favorable opportunity appeals to them. The "call girl" "works when she pleases; she may have vocational and domestic interests outside her small business of prostitution; she preserves only a telephone connection with the place of resort and lives elsewhere. Such a girl is, at best, an amateur or a semi-professional." [10]

Roadhouses offer another substitute for the older type of segregated resorts. The automobile has made the suburban territory within a radius of fifty miles or even more accessible for pleasure trips. "New patterns of 'good time' or 'wild party' have developed in keeping with the frontier atmosphere of the outskirts." At roadhouses gambling, intoxicating liquors, and sex relations are comparatively unregulated by any efficient control. For vice as well as for crime the automobile has added new facilities.

An estimate of the number of sex-contacts taking place weekly in Chicago, made in 1923 by Dr. Reitman and Mr. Roloff, Executive Secretary of the Illinois Hygiene League, was accompanied by a letter stating that "on the face of it, the estimate may appear wild." The estimate set the number of "female immorals," including all types

[10] Walter C. Reckless, *Vice in Chicago*, pp. 145-46.

of professional and "loose" women far higher than any records of courts or police would suggest. Even if one adopts the suggestion made in the estimate and accepts the statistics as only one-tenth value the number of extra-marital contacts in such a city is so great as to imply that the mores as well as the law fail to exercise effective control over sex life in the large cities. The collections from vice by organized racketeering seem to indicate a flourishing business. The Illinois Crime Survey of 1929 reported: [11]

> The crusades against vice, even when they succeeded in achieving the objectives at which they aimed, as in the abolition of the segregated vice districts, do not seem to have extirpated the social evil; they have, however, driven it deeper into the community life, where it tends to find concealed forms of expression.

One such form which has probably increased since the World War has been the practice of forming connections more or less casual, yet having a measure of constancy. The business and industrial depression has probably favored the practice which has been fostered also by the general disposition since the war on the part of young women as well as young men to assert liberty of action. In some cases the depression in business and industry may have led those who in prosperous times would marry and establish a home to form connections which involved no legal obligations.

Yet while the movement toward freedom from conventional restraints reflects one trend in American life there is a correlate movement which may, in the long run, substitute a more permanent basis for a high standard of social morality.

[11] Walter C. Reckless, *Vice in Chicago*, p. 863.

Two trends in the life of American woman during the past hundred years affect directly or indirectly the present mores concerned with sex and prostitution. One is the trend toward liberation—liberation from many kinds of restraints set by traditional conventions and mores. This has been achieved partly by direct agitation, as in the movement for "Woman's Rights," led by Susan B. Anthony and others, which finally resulted in "Votes for Women." Liberty was also gained less directly through growing independence of action in economic, domestic, political, and social relations. A large number of women entered upon teaching during the Civil War. Every new career opened to women helped toward independence, though factory work and many kinds of mercantile and clerical work, where hours were long and wages low, might mean only nominal independence. Greater domestic freedom and equality were won in the control of property and in the possibility of gaining divorce without incurring severe social censure. The World War not only secured suffrage for women by the Nineteenth Amendment but made a subtle change in other aspects of thought and feeling. It is dangerous to say anything about dress, for fashion is notoriously irrational. But the changes in women's costume have certainly seemed to favor convenience for going about, for work, or for sport, rather than to be designed solely for house wear or elegance. Chaperons went out of style; free manners and seemingly freer morals for the young came in. All this was in the trend toward emancipation.

So striking was the trend toward liberation that the corresponding positive development was sometimes lost sight of. This positive trend was toward doing things, toward sharing in the present distribution of work, achievement and responsibility, as before the machine age

women bore an equal part in household economy. Women are filling more positions and more responsible positions. They have for a generation enjoyed better opportunities in education. A Cabinet appointment in the Roosevelt administration of 1933 not only indicates the proved competence of the woman appointed but also is a recognition of the growing political influence of women. Sooner or later this general increase in dignity, efficiency, and influence is likely to be reflected in the mores. The morality of courtesy and romance did not exclude casual affairs. The morality of austere sobriety and purity was adequate to prevent degrading connections but it obtained among a part only of the population. A morality based on respect for women, fortified by the independence, efficiency, and education of women, and informed by scientific knowledge on the part of women, may be effective in "a new conscience for an ancient evil." [12]

[12] Jane Addams, *A New Conscience for an Ancient Evil,* 1914.

CHAPTER XIX

RELATIONS TO OTHER PEOPLES

Relations between peoples the world over and in all ages show some of the worst aspects of group morality. Family feuds and class pride and prejudice are bad; but the family even among primitive folk is partially restrained by superior forces of tribal opinion or power of a chief, and class prejudice may be penetrated by successful achievement or restricted by a common law. But a people is reluctant to recognize any rightfulness in the moral judgments of other peoples upon its behavior. Whether with Treitschke it holds that the State as an independent force implies "so absolute a moral supremacy that the State cannot legitimately tolerate any power above its own," or whether it merely resents criticism and restraint from any outside group through a survival of primitive divisions between "we-group" and "others-group," the result is the same. On a matter that concerns its interests or its "national honor" it refuses to recognize the judgment of an "impartial spectator" and insists on being the judge in its own case. War has appeared to be not only a favorite diversion of ambitious monarchs but a necessary instrument of national dignity. In considering the ethics of states one has almost to reverse the moral perspective, and reckon it to righteousness if peace is kept, rather than as in private morals to assume that a breach of the peace is unlawful and that the burden of justification rests on the man who breaks the ties of friendly relations. When nations recognize

no standard higher than their own views of honor or policy, it is to be expected that the mores will frequently be uncertain. Some groups will be for "my country, right or wrong," others will find or seek some higher law; one section or region may claim for itself the same prerogative of independence of higher authority. The history of the relations of the United States to other people, like that of other nations, shows divisions of public sentiment as to principles and policies.

I

Even the war of the Revolution divided the colonists into hostile camps and its outcome banished a large group of Loyalists. The War of 1812 was opposed by New England. The policies which led to the war with Mexico and the subsequent annexation of a large part of her territory were bitterly denounced by the North and as zealously defended by the Southwest and the political party in power. One group of that same period was shouting, "Fifty-four-forty or fight," but the country compromised on forty-nine without a fight. The Civil War was fought on a domestic issue but it brought tensions with Great Britain that again divided sentiment in the North, partly because British sentiment was also divided between the ruling classes, who on the whole favored the South, and the more liberal masses who sympathized with the North on the slavery issue.

In these divisions which marked the first century of our national life, the issue was not merely one of political policy; it took on moral significance. Peace lovers regarded these foreign wars, or all after the Revolution, as unjustifiable. Zealous spirits, frontiersmen like Andrew Jackson, expansionists like Henry Clay and Polk, had no

doubts. Yet through the century, despite the war with Mexico, which few in recent years have attempted to justify, one fact is to the credit alike of the two peoples concerned. After the petty quarrel of 1812 peace was kept between the United States and Great Britain, and even before the passions roused by that war had subsided the two governments planned and the peoples approved disarmament on the Great Lakes and a frontier unfortified. What a Lodge in the Senate of that day might have accomplished by shrewdly contrived "reservations," and appeals to the necessity of "preparedness" can be easily imagined.

The first century's moral conflicts, particularly in dealing with European powers, showed aspects of what present psychology calls an "inferiority complex." The nation was young. It felt that European monarchies were not anxious to see a democracy succeed. It resented the attitudes of Great Britain and France when in their great struggle with each other they disregarded the incidental injuries to American commerce. New England opposed the War of 1812 but New England singing-schools sang lustily:

> The British yoke, the Gallic chain,
> Was urged upon our necks in vain.
> All haughty tyrants we disdain,
> And shout, long live America!

It was partly in the zeal of a youthful republic for liberty and partly under the uncertainty of a nation not yet fully secure of its own safety that the Monroe Doctrine asserted a sort of protectorate over the Continent as against the European system.

The century showed also the rise of a doctrine of "manifest destiny" which, to the whole-hearted expansionist, knew no limits except those of the Continent.

Louisiana, Florida, Texas, Oregon, California, marked successive stages in an expansion which was easy because other claimants were either separated by the ocean or, as with Mexico, comparatively weak. And this expansion differed from imperialistic policy in that the new territory was given statehood immediately, or not long delayed. Yet in the case of the Mexican War the opinion of President Grant, who had himself served in the United States forces engaged, will stand as the judgment of many.

With the second century of national existence we came to events within the memory of those now living, but the same divisions of moral sentiment have been in evidence. The country was now in the age when the land hunger of the forties had given place to business and trade as the great economic forces. "Dollar diplomacy" was a natural expression of the new power. The young nation had grown up and become powerful. It proceeded in the Venezuela case to announce its new status with a bang of the drum and a blast of the trumpet.

Great Britain naturally considered Canada an integral part of the Empire and had been in Guiana before the Monroe Doctrine was proclaimed. Secretary Olney, however, announced

> that any permanent political union between an American and a European State is unnatural and inexpedient, that the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition.

These "audacious and arrogant dogmas," as they are styled by the judicial Professor Dunning,[1] might well shock not only the British government, but lovers of peace in both countries.

[1] Wm. A. Dunning, *The British Empire and the United States*, 1914, pp. 306 ff.

To be sure, the British government had previously refused arbitration, and moved either by Secretary Olney or by prospective troubles in South Africa, it now agreed to arbitrate, but it can hardly be claimed that the United States has consistently stood for the principle of arbitration. Shortly after the Venezuela case the Senate first amended the draft of a general arbitration treaty so as to except unless by special agreement any difference "which in the judgment of either power materially affects its honor or its domestic or foreign policy," and then rejected it. We have to remember also that President Roosevelt flatly refused to arbitrate the differences with Canada concerning the Alaskan boundary. Our coming of age has been boisterous. Yet despite some bad manners and ebulliency, despite the favorite political sport of twisting the lion's tail, despite the animosity shown at times by a section of the press so virulent as to suggest a personal spite, we have kept peace with Great Britain and our neighbor, Canada, for more than a century. Perhaps at times we have banked heavily on the confidence that Great Britain would sacrifice almost anything rather than incur the danger of war. In the matter of Panama Canal tolls we acted to defeat the spirit of a treaty, but on second thought reversed ourselves. A thousand ties of kinship, trade, common literature, and scientific exchange have contributed to the advance in understanding, mutual respect and mutual good will. The moral relation in this case is between equals.

II

Yet, even between equals there are difficulties. The most serious moral problems in the relations between equal nations grow from the soil of nationalism. As with

most really serious problems, the issue is not between a clear good and a sheer bad; it is between mixed goods, or between an attitude which in proper limits can appeal to sound reasons and fine sentiment, but which in its actual development becomes a source of hostility and wars, or at least of narrow provincialism and indifference to broadly human interests.

The rational ground for national spirit is that for certain purposes a nation has proved a good social and political unit. A nation should include people with some degree of like-mindedness, and some community of interest. This gives a basis for stable and free institutions. Usually the people of a nation have ties in a common language and in traditions of common achievement or common struggle. These tend to beget or express a spirit, a national purpose or ideal. This spirit may be that of liberty, of glory, of clarity and beauty, or of order and organization. The nation is a larger group than the city and is fit to secure and foster a broader group of interests. It is not so large or so heterogeneous as to lose unity and harmony. It can protect its citizens and administer justice. Its citizens may justly feel pride in its strength when used for these purposes.

The emotional basis of nationalism is found sometimes in love of place and scene which have been a part of childhood home, of familiar mountains, or valley, or plain, or sea; sometimes in ancestral and kindred ties; sometimes in the traditions of common suffering for a cause, or of triumphs like that of Marathon. This basis is strengthened by a national art or music or literature, or by unity of religious faith and ritual. Its expression by a Shakespeare, a Walter Scott, a Beethoven, a Michelangelo, a Fichte, a Washington, a Lincoln, or a Jefferson sets up a pattern which in turn tends to develop further

the devotion of the mass. To lose all nationalism would loosen the bonds of our present structures of culture and morale. Just because it has such values its excess and abuse are so difficult to limit.

Yet such excess and abuse nationalism unquestionably has. The forces of invention and commerce have steadily tended to remove natural barriers of distance, of ocean or mountain, between peoples. Science, art, world religions, travel, tend to bring about better understanding between peoples and to make for peace. But present nationalism fortifies its frontiers, and arms for defense, which often means offense when mutual suspicion prevails. It maintains armies and navies when, in the words of Bismarck, who was no pacifist, "To endanger peace lies in the very spirit of the institution." [2] Instead of encouraging commerce it places barbed-wire entanglements in tariffs designed not so much to equalize conditions of competition as to exclude the products of other countries. It urges, "Buy American!" which logically carries the implication, "Sell nothing to others!" It insists on rigorous exclusion of Japanese, instead of securing the desired limitation of immigration by the quota principle, thereby going out of our way to affront the Japanese in what seems to them an insulting and contemptuous gesture. It favors narrow-mindedness and the conceit which the narrow mind is likely to feel. It tends to assume an attitude of superiority which calls out resentment, if not fear, in other peoples. In the United States it claims the sanctions of a tradition of isolation, established when the United States was first embarking upon a perilous experiment, and might well think its independence would be endangered by entanglement in the European system. In the Senate it has prevented the United States from

[2] *Bismarck, the Man and the Statesman,* Vol. II, p. 103.

joining the other civilized nations of the world in the world court, although every President since McKinley has favored the principle, and although probably the majority of the people of the country are in favor of co-operating in such an institution to make justice, rather than force, the arbiter among nations as among individuals. It is too often forgotten by those who affect to distrust the impartiality, or to despise the weakness of such a Court, that the United States Supreme Court was similarly distrusted and despised for many years. "John Marshall has made his decision, now let him enforce it" was the comment attributed to President Jackson when the Supreme Court upheld a treaty with the Indians.

Denouncing the narrowness and partisan attitude displayed toward the institution of the League of Nations, Elihu Root, who is not an academic pacifist, said, as reported in the *New York Times* of December 29, 1926:

> And it came to be a common thing that we would read in the newspapers and hear in speech and conversation expressions of expectation that the League would fail and evident pleasure when it seemed that it might fail. . . .
>
> We, the great peace-loving people, what have we done to help in this wonderful new work? No sympathy, no moral support, no brotherhood. . . .
>
> We have allowed insensate prejudice, camouflaged futile phrases, to appear, but falsely appear, to represent the true heart of the American people with all its idealism, with its breadth of human sympathy, with its strong desire that our country should do its share for peace and happiness and noble life in all the world. These, my friends, are some of the evils visited upon us by a hateful and contentious spirit.

Relatively of minor importance is the question of the debts of the Allied Powers to the United States. Although

it is premature to attempt any forecast as to the ultimate attitude, the question affords an interesting example of the relation between economic pressures and moral conceptions. When the debts of Great Britain, France, and other Allied Powers were contracted the general feeling, whatever the wording of legal instruments, was that we wished primarily to win the war. We sent men and did not expect to collect wages for them, neither did we reckon in money values the lives and service of the Allied armies in the year before our soldiers took part in the fighting. As Mr. Dawes bluntly put the case before a committee of Congress which was inquiring meticulously into expense items incurred in France: "We were out to win the war, we weren't higgling over costs."

The official attitude toward these obligations after the return to "normalcy" was not that of coöperation in a common cause, but that of an ordinary commercial transaction. It was furthermore insisted that the debts to the United States were totally distinct from reparations assessed against Germany. There was little popular discussion and with the general reaction from the war and its psychology the nation was willing to leave the matter to the government. Everyone was making money and the Allied powers acquiesced in the various settlements.

With the depression came two changes. Germany found herself unable to pay reparations; Great Britain, France, and Belgium, finding themselves cut off from reparations, felt the burden of payments to the United States to be more than they could carry. The people of the United States, however, began to be so oppressed by low prices for farm products, unemployment in industry, failure in banks, and burdens of taxation as to count pennies instead of spending dollars without thought. The actual proportion of income payments from the debts to

our total national budget has been reckoned by Professor Taussig to be approximately that of twenty-five cents to one hundred dollars, but even twenty-five cents looked large to some. Although probably a large number of leading men in both parties in the campaign of 1932 recognized the necessity, not to say expediency or equity, in view of the fall in prices, of some reconsideration of the question, it was significant that neither party dared to discuss the issue before the public. "A debt is a debt" is a legalistic way of putting off analysis. It does not at present, however, appeal even to Iowa farmers. They are probably as honest as their creditors but they object to paying four bushels of wheat when they borrowed only one.

What adds to the illogical character of the position of the United States is that by raising its tariff walls so high as to exclude as far as possible imports from Europe it prevents Europe from paying debts in the only practicable manner. The natural result of the isolation policy has been the restriction by other countries of imports from the United States.[3]

It is also wholesome, before we judge hastily of the morality of debtors involved in desperate straits, to recall American repudiation of debts. Amounts repudiated by American States were reckoned by a writer in the *New York Times* of October 1932 at $77,650,000. In addition certain states scaled down the principal of their debts by $83,137,500. Some of these debts were contracted before the Civil War for industrial development, others after the war during reconstruction. They were not war debts. A considerable part of these repudiations was for money received from European purchasers of the debentures.

[3] Frank Simonds in *Harper's Magazine*, April 1933.

III

To keep faith and deal justly with an equal, to observe courtesy toward an equal, is not the severest test of national morality. A more difficult problem arises when a people which regards itself in some sense as superior, whether it be in the arts and sciences, in economic advance, or in military power, has dealing with a people which it regards as inferior in one or more respects. This involves in some cases the policies of imperialism; in others of "expansion" and "manifest destiny" at the expense of the weaker race or nations; in others of treating lesser nations with brusqueness—to use a mild term—in the cause of what the strong may consider to be important ends. Men of high position in national affairs often hold radically opposing views of what is right in the treatment of the weak or backward by the strong. This is partly because, in Nietzsche's phrase, there is one morality of masters and another of slaves, and partly because to some the progress of civilization, which is too often measured in economic terms, appears as one end that will justify any means however harsh, whereas others feel as strongly that the weak or backward have rights to keep their own lives, liberty, and possessions, and even their own culture.

The problem is an old one. Caste is one solution, a milder policy than extermination. Slavery was a frequent solution. Imperialism has been the policy of the European great powers. "Mandates" is the more recent conception which involves the notion of a trust rather than of exploitation. The policies of the United States toward Latin America and the Indians have given occasion for certain indefensible conduct. The more important ques-

tion for our purpose is not the past but the present, yet some of our present problems are legacies from a past which we should like to forget.

The Monroe Doctrine in its original statement while primarily a matter of protection to our own interests was also a friendly gesture toward republics to the south which had passed through similar struggles for independence. But in assuming sovereignty over the whole continent, as Secretary Olney's dispatch on the Venezuelan boundary indicated, the doctrine took on an expansion which such nations as the Argentine, Brazil, and Chile could scarcely be expected to welcome. When a little later the Spanish War was followed by a "disguised protectorate" over Cuba and annexation of the Philippines, an imperialistic policy appeared to be in full swing. President McKinley was doubtless sincere in his statement that "there is nothing left for us to do but to take them all, and educate the Filipinos, and uplift and civilize them as our fellow men," but the step called out serious protest. William Vaughn Moody's "Ode in Time of Hesitation" voiced the conscience of many who feared the inevitable pressure of economic interests and the possible stain upon the chivalry which had shed its blood to free Cuba.

> Turn not their new world victories to gain!
> Tempt not our weakness, our cupidity!

The most conspicuous instance, however, of what appeared to the weaker party a violation of treaty and a riding rough-shod over a self-governing people, occurred under a President who was the outstanding advocate of social justice in domestic affairs. When President Theodore Roosevelt "took" Panama "while Congress talked,"

he doubtless was fully persuaded that "Colombia had forfeited every claim to consideration" and that to build the canal was so great a good that neither the treaty of 1846 which guaranteed "the rights of sovereignty and prosperity which New Granada has and possesses over the said territory," nor the respect due to an independent nation should stand in the way. If he had decided that the terms offered were fair, Colombia ought to be content. It was not surprising that a Colombian editor should speak of the "crime of Panama." An American historian[4] comments:

> The fact will forever remain that the taking of Panama in the way it was done sent a shock through the whole of Latin America, and made every Latin-American nation from Mexico to the Argentine feel that American foreign policy was now a thing which they had every reason to fear.

It may be possible to pay too dear a price for "the benefit of mankind." Fortunately for the self-respect of the United States a subsequent treaty provided a reparation which Colombia accepted. It was puzzling for the moralist who thinks that right and wrong are easily discerned to find men who stood so high in public esteem as John Hay and Elihu Root approving what others of equally high standing in public esteem disapproved.

One fact, now almost forgotten, shows a hopeful reluctance to engage in what Herbert Spencer called "political burglary." In 1916 efforts, almost frantic, were made by a group which included a section of the public press, to stir up a war with Mexico. The *Chicago Tribune,* in

[4] Randolph Greenfield Adams, *A History of the Foreign Policy of the United States,* 1924, p. 289; *cf.* W. S. Robertson, *Hispanic-American Relations,* 1923, pp. 175-85; J. W. Garner, *American Foreign Policies,* 1928, pp. 81-85.

an editorial, April 21, 1916, said: "Fate holds a ripe apple to our lips in Mexico." Disclaiming the grosser intention suggested, the editorial explained:

> We do not advocate grabbing Mexico. . . . We engage in a relatively short and certainly successful campaign against Mexico, which will result in the inclusion within our sphere of influence, both for its benefit and our own, of a vast, fertile, potentially rich neighboring territory.

A protectorate would serve. But a little later, in an editorial of November 25, complete absorption is urged. The editorial has the heading, "The United States Ought to Take Mexico." It elaborates:

> If the United States dropped its frontier down and took in Mexico, life in the United States would get the advantage. . . . It is a rich country of many resources. They ought to be put to use for the benefit of the people who now live there, for the benefit of the people who would go there, and for the benefit of the United States. This is humanity.

The policy of respecting the independence of the Mexican people and allowing them to work out their own problems is stigmatized as "sentimental." "A sentimental policy with regard to Mexico is a policy of waste." Other newspapers joined in the agitation.

But the people of the United States did not respond with enthusiasm. Soon the United States entered the World War. Mexico undertook the difficult task of social, economic, and educational readjustment. The United States sent an ambassador who treated the Mexican government with courtesy and understanding. During the depression of 1930, many thousand Mexicans who had entered the United States to improve their condition were

glad to return home. An agrarian civilization proved better able to care for its people than the individualistic and industrial system of the United States.

IV

The most serious blot upon the record of the United States in its dealings with other peoples has been its treatment of the Indians. It would be as futile to sit in judgment now upon the acts of the early colonists in relation to the Indians as upon the early slave trade. Many of the colonists—Plymouth, Connecticut, Pennsylvania Quakers—made, or sought to make, fair bargains. But the clash of two unlike races, cultures, and mores, together with the insatiate hunger of the stream of settlers for more and ever more land, gave rise to problems too difficult for easy solution. Wars between French and British enlisted the tribes on one side or the other. When we recall frontier conditions, the raids upon houses of settlers, the constant fear, the fierce reprisals, we are not surprised at the hostile temper that usually prevailed.

The fundamental fact, which no individual disposition to act fairly could alter, was that the colonists wanted land. The fair-minded bargained for it; the less scrupulous grabbed it. The effect in either case was to push the Indians back. The Indian's way of getting a living required large areas for game. The white man's way meant clearing the forests, fencing the prairies, exterminating or driving away the game on which the red man lived.

The white man was individualistic, and the frontiersman doubly so; the red man was communal. "A whole tribe of Indians might starve; a single Indian never." The red man's religion was also more communal; the

white man's more individualistic. For while the individual Indian was to have his own sense of the Great Mystery and his own vision, the religion of the tribal ceremonial occupied a far more important place in tribal life than the Sunday meeting of the whites. And the mystical experience was not so individual as to divide the community between saints and sinners. The white man's religion, particularly that of Protestant whites, was, basically, a matter of individual relation to God. The relation was not of communal participation in nature rites, but was conceived in moral and governmental terms: sin, forgiveness, salvation—an experience which on its emotional side was shared by a part only of the community, and on its practical side often did not interfere with very shrewd business practices.

The atrocious corollary of religious difference was that New England Puritan and Pennsylvania Scotch-Irish Presbyterian alike regarded the Indians as "heathens" and therefore to be ruthlessly massacred, even to women and children, in accord with "David's war . . . Sometimes the Scripture declareth women and children must perish with their parents." [5]

It was, however, the frontiersmen who embodied most completely land hunger with its callous ignoring of both Indian rights and government restraint. Lawlessness did not begin with the Eighteenth Amendment. To get cheap or free land, the frontiersmen would squat on land reserved by government treaty to the Indians. The Indian resented this. Trouble would break out. The government might try to control the squatter or to buy out the Indian. The frontiersman wanted the Indian exterminated or removed.

[5] Cited in Wm. C. MacLeod, *The American Indian Frontier*, 1928, p. 215.

The larger tribes, including the agricultural "civilized tribes" of the southern states were removed west of the Mississippi. President Jackson believed they would there be free from molestation. No white man, he thought, would want to live there. Nothing could be more disastrous to any settled morale than repeated removals and shiftings, with the breaking of pledges and guaranties which this involved. On the Pacific Coast, Indians were not driven into the Pacific but into regions that were deserts without irrigation or were otherwise so impossible that no white man cared to live there. The early emigrants of the gold rush were, if possible, more callous than the earlier colonists of the East. Beeson, one of the earlier emigrants to Oregon, is quoted by MacLeod [6] as recording:

> The majority of the first emigration to Oregon were from Missouri; and among them it was customary to speak of the Indian man as a buck; of the woman as a squaw; until at length in the general acceptance of the terms they ceased to recognize the rights of humanity in those to whom they were applied. By a very natural and easy transition from being spoken of as brutes they came to be thought of as game to be shot, or as vermin to be destroyed.

In California the number of Indians was originally large. Dr. Kroeber estimates it at not less than 150,000. In 1930 it was 19,212. The principal cause of this approximate extermination, according to Dr. C. Hart Merriam, "is the gradual but progressive and resistless confiscation of their lands and homes, in consequence of which they are forced to seek refuge in remote and barren localities, often far from water." The "century of

[6] *Op. cit.*, p. 485.

dishonor" was no rhetorical figure. The *Chicago Tribune* of February 9, 1916, in an editorial urging ratification of a treaty with Haiti—if we do not take rich portions of the earth lying about, Europe will—makes the following realistic and frank statement of our past:

> In our rather flabby emotionalism we do not at all understand Europe. We ought to, because we are the descendants of people who came to North America and incontinently kicked the North American Indians out of their possessions for the very good reasons that our people wanted them, could use them, and the Indians could not defend them.

But why bring up past history? Have we not ceased to covet the lands now occupied, especially since they are largely so bad that whites do not want to live on them? And have we not adopted the policy of treating the Indians as individuals, and giving them allotments? And has not the discovery of oil in Oklahoma made the Indians rich? Can it be seriously maintained that the American people, rich, critical of injustice in Asia and Africa, generous to Belgians, giving great sums to philanthropies, are still either too ignorant, too apathetic, or too greedy, to be just to a people for whose condition both individuals and government are responsible? What are the facts?

Fortunately we are not limited to official reports on the one hand or to sentimental fiction on the other. The Institute for Government Research, a body of the highest scientific standing, at the request of the Secretary of the Interior in the year 1926, made a survey through a staff of competent investigators which without dealing in praise or blame seeks to state impartially the facts and to recommend remedies for the deplorable conditions found.

Warren K. Moorehead's survey of 1914 [7] is the work of a distinguished anthropologist and also considers conditions which are not entirely of past generations. But the following summary of facts is drawn from the report of the Institute of Government Research,[8] of which Professor W. F. Willoughby is Director. The survey covers many topics that cannot be noted here, but the more fundamental may be grouped under health, education, living conditions and general property and economic status, family and community life.

"The health of the Indians, as compared with that of the general population, is bad." Tuberculosis and trachoma are prevalent. Tuberculosis was in colonial days no more frequent among Indians than among the general population. Among whites the mortality from tuberculosis has been greatly reduced in recent years by attention to diet, housing, and medical care. "The prevailing living conditions among the great majority of Indians are conducive to the development and spread of disease." The diet lacks milk, fruit, and vegetables. The housing is generally bad, with poor ventilation. Medical care and nursing are inadequate. Pay is not sufficient to retain well-qualified physicians and nurses. Hospital facilities are not in accord with modern standards.

Most Indians are poor, extremely poor. The following table shows the per capita income which necessarily does not tell how low the income falls in individual cases:

[7] Warren K. Moorehead, *The American Indian in the United States*, Period 1850-1914, Andover, 1914. *Cf.* Seth K. Humphrey, *The Indian Dispossessed*, Boston, 1905.

[8] Institute for Government Research, *The Problem of Indian Administration*. W. F. Willoughby, Director; Lewis Meriam, Technical Director. Baltimore, 1928.

Annual Per Capita Income, Tribal and Individual	Number of Indians Accredited to Jurisdiction Reporting		
	Total	*Percent*	*Cumulative Percentage*
All classes	188,363	100.0	...
Less than $100	46,343	24.6	24.6
$100 but less than $200	88,201	46.8	71.4
$200 but less than $300	33,535	17.8	89.2
$300 but less than $500	16,209	8.6	97.8
$500 and over	4,075	2.2	...

When nearly three-quarters of the various groups have a per capita income of less than two hundred dollars the living condition can scarcely be other than wretched, and the morale low. The cause of the Indian's poverty is that "the economic basis of the primitive culture of the Indians has been largely destroyed by the encroachments of white civilization." What the whites have learned during two thousand years or more of slow progress in agriculture and industry we have assumed that the Indian could and would adopt, regardless of the fact that his whole religion, communal life and culture were rooted in another way of living.

The government, perhaps as a counsel of desperation, finally adopted the plan of individual allotment. Aside from all other difficulties, this gave opportunity to unscrupulous whites to cheat or drive unfair bargains, as the result of which many individuals soon parted with their land, and after living for a short time on the proceeds of the sale were reduced to poverty. A lawyer acquaintance of the writer said that he spent most of his time trying to protect the Indians in his state from the schemes of those who were seeking to take advantage of any Indian who had anything valuable. The intention of those who originated the legislation for individual

allotment was no doubt benevolent; lack of understanding of cultural processes was general. If the Indians could have had help in their undertakings from friendly and intelligent neighbors, or if a measure of communal enterprise could have been retained under wise guidance, the results might have been better. Instead, they have often suffered from the "rough individualism" which thought of the Indian as a being of another race and therefore with no rights which a white man is bound to respect.

Education has been attempted by the government, partly in boarding schools, partly in local schools. The survey staff found the provisions for the care of Indian children in the boarding schools "grossly inadequate." "The diet is deficient in quantity, quality, and variety." Eleven cents a day plus supplementation from the school farm certainly seems meager, especially when many of the school farms can produce only part of the milk needed. As in other parts of the Indian Service the schools are handicapped by inability to secure and retain high class personnel because of low salaries.

Is it the deliberate will of the people of the United States to continue policies which are unjust and which lend themselves to exploitation, and to a loss of the morale and self-respect that are more valuable than physical existence? It would be hard to draw an indictment for such hardness of heart against a whole people. And in the case of the Indian no such extreme superiority complex has obsessed the white as in the case of the Negro. Several eminent men and families have pointed proudly to Indian blood in their veins. Any Chicagoan who knew his city twenty-five years ago honored Dr. Favill as not only a distinguished physician but as a leader in civic affairs. It is rather, so far as the attitude of the majority is concerned, a case of ignorance. And as for inadequate

feeding of children, there are many white children whose diet is woefully inadequate and whose environment in home and associates handicaps them. The studies of delinquent children in great cities show this. We have not yet abolished poverty. We are at present helpless in a world-wide depression. The mass can not be held accountable for not knowing how to solve difficult problems of cultural adjustment or economic policies. And it is not in ordinary human nature to maintain an active interest in questions which are beyond our capacity. The mass must rely on government to formulate and carry through measures.

Further, in the case of a present situation due to past wrongs individuals can not hold themselves responsible for what Adam did, nor even for what the men of a hundred years ago did. It is only through relation to the government that the individual of today partakes in the acts of the past so far as to feel a moral obligation. And another fact which complicates the problem is that the cause of the present situation has now passed beyond the possibility of recall. A new civilization and a generation remote from that which drove the Indians from their lands are now here. Admitting that the war with Mexico was wrong, this wrong could not be righted by returning California, Arizona, New Mexico, and Utah with their present inhabitants to Mexico, nor to the Indian descendants of the aborigines. We can only look to the future, and do what can be done for a people whose cultures and psychology are so different from those of modern industrial and capitalistic society.

Government in a democracy does not usually represent the ideals of the well-meaning but ill-informed and, except on rare occasions, relatively apathetic mass. It is more likely to represent the views of well-organized groups who

know precisely what they want and bring strong and continuous pressure to bear. Two minority groups have played the main rôles in Indian affairs: the greedy group which sees a chance to profit from land or water which is in Indian possession; the smaller group of friends of the Indian which opposes the grabbers. The system which assumes that legislators must express the views of their constituents frequently means that members of Congress from the states in which the seekers for Indian possession are numerous and hungry yield to the pressure of "the vociferous few," unless, indeed, they already share the opinions of their neighbors. In one state competent officials were in this way deliberately removed or forced to resign, "because," said Dr. Moorehead, "a relatively small number of oil, coal, land, timber, and stock men wished to become rich." The feature of our administrative system which changes the Indian Commissioner when a new President is elected, has brought some good men into office,[9] but turns them out again when they have begun to grasp the problem. The morals of our relations to the Indians turn out to be in last analysis inseparable from the morals of government in a democracy. Helen Hunt Jackson wrote in the *Century of Dishonor:*

> There is but one hope of righting this wrong. It lies in an appeal to the heart and conscience of the American people. What the people demand, Congress will do. It has been—to our shame be it spoken—at the demand of part of the people that all these wrongs have been committed, these treaties broken, these robberies done, by the Government.

Now that the century of dishonor has become a century and a half of dishonor, there is still but this one hope.

[9] Much may be hoped for in the administration of the present Commissioner if his policies are adequately supported.

CHAPTER XX

PUBLIC AND PRIVATE MORALS

We defined social morality as the morality of groups. For certain purposes it is convenient to distinguish two kinds of groups: (1) primary groups, as of family and neighbors; and (2) secondary groups, formed for definite purposes, as in the case of political and economic groups. In common usage a man's relations to his family, his friends, or his neighbors are said to concern his "private" life; government is clearly "public"; business and industry are in a transitional position, but under modern conditions are increasingly considered as of public concern. Corresponding broadly to the above distinctions, morals are divided into "private morals," and "public morals." As husband, father, neighbor, friend, a man is in the sphere of private morals. As a government official he has public obligations. As a manufacturer, merchant, banker, employer, employee, he is brought into relations with others which are of public import, especially if the enterprise is a large one. Government and business are therefore classed together as belonging to the field of public morals. In so far as we are concerned not with the particular conduct or problem of some individual but with the standards set or approved by the group, both private morals (as above defined) and public morals are included under social morality.

I

Certain interesting problems arise when the private and public morals of a people are compared. Some of the moral dilemmas which we have considered may be regarded as resulting from conflicts between the standards of the two. One of the clearest statements of the contrasting standards of private and public morals among the American people is that of the late President Hadley.[1] In private morals, he says,

> the typical American citizen bears an excellent character. With the weak he is courteous; with the strong, self-respecting; with all, helpful. He uses his powers and advantages unselfishly. He does not employ his strength to elbow his way to the front through a crowd of women and children. He does not employ cunning to overreach his neighbors and friends. In great emergencies, like fire and flood or railway accidents, it is not the mean and selfish side of human nature which comes prominently to the front in the conduct of our countrymen, but the large and helpful side. We are glad to believe that the heroism shown at these times of crisis is but a manifestation of the ordinary intentions and ideals of our American men and women, which they are showing in thousands of little acts of self-sacrifice of which we never hear.

Foreign observers, like Mr. Muirhead, have made comments on American private morals in similarly favorable terms.

But President Hadley points out that with public morals the case is different. Foreign critics have remarked with a mixture of amazement and horror upon our government and our business morals. Our own sur-

[1] Arthur Twining Hadley, *Standards of Public Morality*, N. Y., 1912, pp. 3-4.

vey has been chiefly occupied with unpleasant aspects of race and class, with recriminations between business and government, and between employers and employed, with lawlessness not of individual offenders but of classes and gangs, with commercial exploitation of the appetites and passions. Brighter lighting has appeared in certain aspects of family life; in the rapid assimilation of immigrants from countries long hostile to each other, and in their readiness to forget past grievances in a new environment; in our great democratic system of public education; in the ceaseless movement which prevents the hardening and fixation of class barriers, even while it weakens the hold of the mores and indeed is constantly dissolving the older standard and restraints. Yet on the whole the picture of social morality in the United States has shown a good many heavily shaded portions in public morals. Why the contrast between private morals and public morals? Is it a contrast incidental to a certain people, or to a peculiar transitional situation, or is there necessarily a contrast between "Moral Man and Immoral Society," to use the phrase which Professor Niebuhr has recently set as the title of a discussion of the general situation in Europe as well as in America? Or are there other factors to be considered than those which President Hadley and Professor Niebuhr have put forward?

First let us recall President Hadley's explanation of the contrast. President Hadley was an acute analyst of economic and political institutions as well as by family tradition and public position familiar with many phases of American character. He uses strong terms to express his opinions of our public morality. Ruthless competition against a weaker competitor, snobbishness and servility, selfish deceit instead of heroism, are found in business and politics. And President Hadley wrote before

the scandals of the Harding administration and of the Thompson régime in Chicago; before the Seabury investigation and the Insull wrecking of the fortunes of trustful investors. Bad public morals, he insists, are not due to the depravity of the men who manage our business or our politics. This is a popular but superficial view.

> The chief trouble lies in the public standard of morals. . . . The blame for misuse of industrial or political power is ours just as much as theirs. For it is the standards that are at fault, and we as well as they have a share in making the standards. . . . The chief cause of difference between our private and our public morality is that public sentiment is clear in one case and obscure or self-contradictory in the other.[2]

And if we push the inquiry one step further and ask, Why should there be this difference in public sentiment? Hadley answers, "It is because our experience in the one case has been much longer than our experience in the other."—Several thousand years for private morals and a few hundred with our present industrial system, and he might have added, a still briefer term with a political democracy in nations of such great extent, confronted with the new forces set in motion by the industrial revolution. When society abandoned the medieval system which defined public as well as private standards in fairly well-understood terms, and organized both economics and politics on a system of liberty, it introduced new moral factors. Some have converted the truth of liberty, President Hadley continues—that it is wise to let individuals serve society in their own way—into the falsehood "we may let them have their own way in everything; that the selfishness of all men, pulling apart and working for their

[2] *Standards of Public Morality*, N. Y., 1912, pp. 5-7.

own interest, can by some occult process be trusted to promote the common interest." [3]

There can be little question that the last sentence points to a fundamental factor in the present situation, but the statement that the reason for the unclear condition of public sentiment is that our experience with the system has been relatively short seems to imply that public sentiment is more rational in its processes than would be admitted by all students of the public mind. Or if it be granted that a considerable degree of agreement in public sentiment may come as a result of longer experience, will this be effective in changing the morals of groups that have strong interests at stake? Will such groups listen to reason? And if they will not, what other methods than scientific demonstration or appeals to reason are necessary and justifiable?

II

It is to these questions that Professor Niebuhr addresses his discussion.[4] Educators, he holds, err in supposing that experimental procedure in the social field can accomplish results similar to its achievements in the physical sciences. In physical science they need only to replace ignorance by knowledge; to dislodge privilege and the collective predatory interest of nationalists or economic groups something more than reason and conscience is needed; "power must be challenged by power." Nor are sociologists and religious idealists less inept. Conference, accommodation, compromise are their methods. They are "unrealistic." They lack "understanding of

[3] *Standards of Public Morality,* N. Y., 1912, p. 23.

[4] Reinhold Niebuhr, *Moral Man and Immoral Society,* N. Y., 1932.

the brutal character of all human collectives, and the power of self-interest and collective egoism in all intergroup relations."

The three types of collectives or groups selected by Niebuhr as illustrating the thesis are nations, privileged economic classes, and proletarians. The first and third are bound together by strong group loyalty which in itself operates against an impartial and objective—in other words, a rational—attitude toward other groups. Still less can these groups follow the religious ideal of unselfish or self-sacrificing love to others. No nation has been or can be unselfish. Class-consciousness, a necessity for effective coherence of the proletarian group, arrays it against other classes. The German Liberal failed to advance his position by being reasonable; the American Negro had to show resistance before he could gain a hearing. The second group—that of a dominant or privileged economic class—has less group consciousness, except when property interests are threatened; all the more its egoism, the intensified collective egoism of its members, resists any fair, i.e., reasonable views of social situations, to say nothing of sympathy or altruism. It can not be changed by any moral suasion.

In view of such inexorable forces as those at work in nationalism, in privileged classes, and in underprivileged class, Niebuhr foresees but a modest rôle for reason and the advance of experimental method. Group morals is group morals and private morals is private morals. The industrial age tends to accentuate the sharpness of group conflict. High ideals and tender emotions of private morals must seem somewhat in the nature of luxuries in an age that suffers from ills which can be met only by coercion and forcible resistance.

If it were our purpose to consider the merits of Nie-

buhr's analysis, it would be pertinent to point out that one fundamental assumption, namely, that egoism and altruism stand for the ethical poles in conduct, is by no means indisputable. Suicide is not the apex of virtue. The moral ideal, whether it takes the more intimate mold of personal relations in the religious conception of love, or the mold of less intimate affection but no less reverent respect for personal worth in the political and economic conceptions of *aequum et bonum,* fair, right, and good, can not be graded simply in terms of self versus others. It involves a comprehensive social whole in a kingdom of ends in which persons stand to each other in many kinds of relation, and fulfill various functions. In one situation love may be the transcendent good; in another, fair dealing; in another, resistance. We do not wish sympathy from our tradesman—unless he is also a neighbor or associate in some more personal relation—we wish truth and honesty. We do not, if we are good citizens, seek benevolence from the government but equality before the law. We can not properly think of the position of a nation as simply that of an independent individual; the nation is rather the trustee of certain interests of order, justice, and security which it must guard. The complex character of moral values and duties must be fundamental in any appraisal. We cannot ignore this fact if we are to make a thoroughly realistic analysis.

III

Bergson, in his recent essay, looks at group and individual from still a different angle. He seeks primarily to understand moral forces, but throws light upon the relation between social or group agencies and individual initiative.

Bergson distinguishes two sources of morals: social pressure, examples of heroes.[5] From social pressures come the sense of duty, the obligations felt in "closed" societies, the more impersonal types of moral behavior, in which we observe habits necessary for carrying on the organic social process. From the appeal that heroes make to our imagination and emotion comes an element that is not so much duty as aspiration. It is the morals of an "open" society, of humanity rather than of a tribe or nation; instead of fixed habits, its spirit is that of "forward march"; it is creative; it is attended by the feeling of liberation; it is an *élan*. The morals of pressure embodies what, as it were, nature provides as necessary for the very existence of human society—even as nature provides the bee and the ant with mechanisms necessary for the composite life of the hive and the ant-hill. The morals of aspiration represent the possibility of advance, the spirit of the "open" soul. The morals of pressure are relatively easy of formulation; the morals of aspiration are difficult, because, as in the Sermon on the Mount, they are not intended to give rules but to induce a state of the soul. In the development of such a conception as justice the morals of pressure and the morals of aspiration are blended.

As applied to the problem of nationalism, Bergson suggests that "in giving to man the moral conformation necessary for life in a group nature has probably done for the species all that she could do. That men of moral genius have pushed farther the bounds of intelligence and conceived of humanity has been as it were the creation of a new species, achieving what could not be attained at one stroke by all men."

Apart from the Bergsonian metaphysics of the *élan,*

[5] Henri Bergson, *Les Deux Sources de la Morale et de la Religion*, Paris, 1932.

the distinction between the morals of pressure and the morals of aspiration points to a genuine aspect of the relations between individual and public morals. There are certain fundamental necessities of societies, as of individual survival. Protection from hostile attack is one of these. The cruder way is through tribal and national solidarity. A degree of order is also necessary. The simplest method of maintaining order is through authority of some sort—elders, chief, king, party boss. Another necessity is food and other material goods. For any variety in these some exchange of goods and services is necessary, and exchange can be carried on only if there be at least a minimum of confidence and fair dealing. In both political and economic society there is a tension between instincts or drives of the individual toward self-preservation or independence, or gain, and social pressure. These drives of individual character may take the form of resisting or evading social power or of capturing and using social power, political or economic. But society never abdicates the authority or the regulations necessary to its own self-preservation. Nature seems to have insured this, even as she insured for all mammals a minimum of parental relationship and parental care.

Progress beyond the minimum has come, in part at least, through moral "heroes." Men of vision have imaged and sought better ways of safety than the cruder way of war, or the timid way of isolation. They have seen ways to combine order with liberty and private rights. through law. They have found ways to increase mutual confidence and understanding and thereby to increase enormously economic welfare through increased markets and the organization of credit. They have broadened the family and kin attitudes of kindness to the conception of benevolence to all, and love of neighbor to love of man.

If we compare these examples of the highest and noblest of mankind with the behavior of groups organized, as these are, for some particular necessity and including, as they usually do, many grades of rational and social advance, we must expect unfavorable contrasts such as Niebuhr draws. In fact the same contrasts in principle were found three hundred years ago by the Reformers in their criticism of the Church. It failed to equal the pattern of the Master. In assuming responsibility for mankind, instead of remaining a small group of intimate disciples, the Church had necessarily lowered the standard of perfection, and had asserted a power that inevitably involved peril.

But it is not through lonely seers of creative genius alone that progress has come. On the one hand, interaction between group interests, on the other, the problems set by conflicts between older mores and new inventions or processes, and between individual drives and social requirements, have operated to evoke new adjustments directly or through furnishing the situations that have stimulated the moral genius to his visions and his insights. As instance of the moral value of intergroup conflict may be noted the suppression of family feuds by the courts acting for the king or the state. A present instance is the pressure of economic interests and groups for international trade and good will, and for modification of the extreme nationalism which, at the instance of other business interests and groups, no doubt, has erected barriers to friendly international relations.

An early instance of the problems, set by a group, which evoked the visions of moral genius, was the increasing wealth and luxury of the city-dwelling commercial class that called out the visions of a higher justice when the herdsman Amos mused upon them. As instances of

conflicts in the mores with new inventions, the reflections of Socrates, of the utilitarians, and of the great jurists need no repetition. The point is that the genius both enters into the group and rises above its previous level. His contribution may take the form of that universalizing of the partial which we call reason, or of that concrete image of a better pattern which we call imagination. Socrates and Jesus, in Bergson's phrase, each set a pattern of the "open soul"; John Marshall, Thomas Jefferson, Abraham Lincoln, Justice Holmes, each confronted a conflict that elicited a new construction which the nation partially, at least, adopted. There is, however, no point in asking whether the whole group is at the level of genius, intellectual or moral. The real point is whether there are certain groups that are so constituted as to make them recalcitrant to moral advance through either appeals to reason or appeals to sympathy and generous coöperation.

IV

We must frankly admit that public morals—nationalism, wars, toleration of crime, unconscionable profit-seeking, mal-distribution of wealth, conflicts between employers and employed—present conspicuously difficult problems. As Niebuhr points out, and as our survey has shown, there are genuine dilemmas involved. Under the stress of self-preservation nations, classes, business, labor-groups, will resort to desperate measures. And besides this major factor in the problem of moral advance, morals of national and economic groups have a three-fold handicap as compared with private morals—the morals of family, neighbor, and friend. (1) Political and economic groups exist for certain special needs and interests which easily tend to assume supreme value and thus distort life;

(2) political and economic groups as they increase in size and efficiency tend to become impersonal, whereas family and neighbor morals are more face-to-face; (3) political and economic groups as they gain power acknowledge no superior standard or authority and become a law to themselves.

(1) The tribal or national group exists for protection against enemies without and disturbers of peace and order within. The early means to these ends was through war and despotism. When not at war national groups still regard each other with suspicion and fear, or hold aloof and erect barriers against trade and friendship. Internal attitudes show the survivals of past despotisms in the fear of governmental activities, or disregard of governmental authority, as well as in some of the technicalities of criminal law. Political parties exhibit similar attitudes in a less violent fashion. The party member believes that his party should rule; it must rule if it is to make its policy prevail. To rule it must reward its supporters and destroy, i.e., remove the official heads of, its enemies. The party boss takes Macchiavelli for his guide and endeavors to combine the strength of the lion with the cunning of the fox. For him it is not a case of placing party above the common welfare; rather he holds that the only means to public welfare lies through supremacy of his party.

Or if we consider an economic group. Of the two functions of such groups, production and commerce, or in modern terms, industry and business, the productive function soon came under a social ban, partly because of slavery. An artisan could not be a citizen of Aristotle's best city state. The commercial or trading group was early regarded with suspicion because the very nature of trade invited the trader to make as good a bargain as

possible. Success depended upon bargaining skill, restrained only by the thought of keeping open the basis for future trading. Feudal economy subordinated the economic function, but when the modern system of economic freedom in trade and business enterprise reenforced by technological invention came in, the whole perspective of life and society was reversed. The interest that had been either excluded from social and political recognition or subordinated to church and state became the dominating power. It is not surprising if it has showed the excesses of power unrestrained by either inner responsibility or outer control. It has developed efficiently the safeguards essential to orderly and successful business: such as the performance of contracts, and to some extent the guaranties of quality, and of weight and measure; but with the assurance that the wealth of nations is secured through the wealth of individuals and that competition protects the consumer, the laborer, and the public it has gone confidently forward as if released from further obligation to the commonwealth. Public-spirited business men have sought to fulfill these obligations rather through philanthropy—the extension of another type of group morals—than through the conduct of business. Indeed under the system no business can do otherwise than conduct itself according to the rules of business. If it attempts to do business according to principles of family morals it fails—unless its competitors also adopt the same code.

(2) A somewhat similar outcome follows if we consider the relatively impersonal character of government, business, and labor, or, as Niebuhr designates them, proletarian groups. Moral conceptions of right and wrong grew from personal relations, and keep their vigor more easily if still rooted in that soil. Relations might be of status, as

between man and wife, parent and child, younger kin and elder kin, chief and tribesman, landlord and tenant, teacher and taught, or of contract, as between buyer and seller, employer and employed. In the case of such private morals as those which President Hadley cites personal relations are usually involved. The person whom you help or hurt, treat with courtesy and kindness or the reverse, is ordinarily before you. To wrong one who is not only present now but in the natural course of events, is likely to be met personally as kin or neighbor or customer, or fellow churchman from time to time, is to go against strong impediments; we wonder that the man "has the face" to do it. But government in large units—city, state, nation—becomes necessarily official and impersonal. Courts no longer deal with known persons; they know only plaintiffs and defendants; juries instead of being selected for their knowledge of the facts are selected because of their impartiality which is often interpreted to imply their ignorance. In modern business the great agency is the corporation. It issues its stock or bonds and sells them "in the market," that is, to unknown persons or to other impersonal corporations. It manufactures products and sells them "in the market," that is, to unknown consumers. It hires labor, that is, not men and women who in other capacities belong to the same community, attend the same church, and are members of the same social clubs, but strangers, frequently of alien speech, who conform to certain necessary specifications and are known only by a number. A business man once remarked to the writer, "When one of my customers incorporates, I look out."

In public groups the morals of kindness, helpfulness, consideration feel, and often are, out of place. Public service suffers if jobs are handed out to friends, irrespec-

tive of fitness; business suffers in public confidence when blocks of stock are sold to members of the family and others on the "inside" at prices below the market. Impersonal morals serve certain purposes better than personal morals. But when the check of personal relations and personal morals is removed, a strict standard of impersonal morals is not at once forthcoming. As the preceding chapters have aimed to show, both government and business are confronted with moral dilemmas.

(3) The severest handicap of public morals is that as political and economic groups become powerful they tend to acknowledge no superior standard or authority. The individual is under the control, or at least subject to the influence of some group; if "lawless" he is likely to be brought to book. The groups that foster private morals are also subjected to law, and in many cases are influenced by religious ideals.

Even the casual passer would feel the disapproval of casual spectators if he should in President Hadley's phrase "elbow his way through a crowd of women and children." But a state claims "sovereignty." It acknowledges no superior, and may even refuse to admit the obligation which "a decent respect to the opinions of mankind" requires. Past traditions are to some extent a standard and restraint, but these are perhaps as often injurious as helpful to confidence and international cooperation. Corporate groups are in theory subject to the law of the land, but as legal persons they are often able to resist successfully restraint by the several states. Charles Francis Adams wrote that when the states first set up commissions to supervise railroads the government officials were treated with contempt by the roads. No reasonable person would claim that the legal authority of the government insures its moral infallibility. The cor-

porations are entirely within their rights in contending for such powers and guaranties as are properly theirs to enable them to perform their important functions in society. The point is that the possession of great power necessarily renders any group reluctant to submit to control. Group morals control individuals, but what or who shall control groups? *Quis custodiet ipsos custodes?*

If we answer, public sentiment is all powerful, we encounter another fact that confuses our mores. Those who understand how public sentiment can be manipulated or manufactured are by no means certain that the voice of the people is the voice of God. We cited the explanations of the brewers as to their success in gaining the press, and of the utilities that improved the technique of the brewers by seeking to control not only the press but the teachers and the textbooks. During the World War propaganda gained recognition as one of the important factors in maintaining national morale and the will to fight. Many good as well as many sinister causes are constantly endeavoring to catch the public ear and bring the pressure of public opinion to bear upon government. Telegrams from thousands of constituents urging him to vote for a particular measure may well coerce a congressman; front page news items in the public press may convey the impression of a popular stampede toward this or that policy. Even a preëlection poll may turn thousands and perhaps millions of doubtful voters to vote for what appears to be the winning side. Yet, such as it is, public sentiment is our court of last appeal. The only check that can legitimately be required is that the propaganda for any cause or interest shall be open and that the persons or corporation or group behind it shall announce themselves. A judge listens to attorneys, but he does not consider that the attorney for either side is bound to bring out both

sides of the case. The public unfortunately sometimes mistakes the eloquence of the attorney for a judicial decision, when it alone appears on the front page. Disillusionment as to the infallibility of public opinion is a phase of disillusionment that has more justification than some other phases.[6]

Can a democracy control its powerful groups, or must, say, an underprivileged group assert itself and use force, use government as a fulcrum, to get a hearing? Working men distrust the courts; the Negro distrusts a government in which he has no vote. The farmer distrusts Wall Street influence; the city is contemptuous of "hick towns" and urges its increasing population as giving it the right of majority rule to determine policies of state and nation. The chances for the immediate future do not appear to favor the settlement by calm and reasonable methods of certain of these conflicting claims.

And yet the severe depression through which we are now passing has thus far revealed no evidence in the United States of that "revolt of the masses" which Ortega has characterized as the great social movement of the time. Why? Perhaps the answer lies in what Ortega styles "vital integrity" or "vital tone." After referring to "the idea, always accepted, never challenged, that the future lies with America," and affirming as its basis "the realization of a higher level of average existence in America in contrast with a lower level in the select minorities there as compared with those of Europe," Ortega points to vitality as the most important factor in estimating future prospects. "Genuine vital integrity does not consist in satisfaction, in attainment, in arrival." As the proverb

[6] Frederick E. Lumley, *The Propaganda Menace*, 1933. *Cf.* also Gruening, *The Public Pays*, N. Y., 1931; Levin, *Power Ethics*, N. Y., 1931.

has it, "The road is always better than the inn." "There is only one absolute decadence; it consists only in a lowering of vitality, and that only exists when it is felt as such." [7]

V

Has America vitality? If so, the outlook for even the underprivileged may be hopeful; the possibility in fuller degree of a democracy which is also in the old term a commonwealth lies in the discovery and adoption of new methods to assure the further raising of the level of existence, and to secure the "open society" of Bergson, the "dream" of opportunity for the average man, of which Adams has written.[8]

The mobility of American society, so adverse to firm, settled mores, is nevertheless a condition favorable to vigorous life, although it is not itself a guarantee of life. When all seems fixed—classes, precedents, laws, economic status, religion, education—when there is no intermarriage between different stocks, no intermingling of cultures, no facility of transition in economic and social standing, there is more danger of death or of revolt of the masses that see no other way out of their repressed condition.

The criticism of the American scene by the intellectuals, however lacking in perspective for a fair portrait, is an indication of discontent that at least is better than the "smooth things" spoken by the prophets of a former day. It would be absurd to take the mordant characterizations of Lewis, Dreiser, Mencken, and other realists as a fair sample of American life as a whole, just as it would be absurd to conclude that the average dissenting clergy-

[7] Jose Ortega y Gasset, *The Revolt of the Masses,* pp. 28, 35, 47.
[8] James Truslow Adams, *The Epic of America,* N. Y.

man in the England of Dickens had the thirst of Mr. Stiggins, or that all nurses were Sairey Gamps. Those who have associated with college men in business would perhaps identify one in a hundred as a Babbitt, and those who know Protestant ministers might find an Elmer Gantry once in a thousand. Social workers and professional women will hardly recognize Ann Vickers as typical. In the Main Streets of the Middle West there are values which Lewis does not choose to see, or at least does not introduce into his picture. Not many Americans have struggled up through such experiences as Dreiser, and Mencken's *Americana* sound as strange and ludicrous to most Americans as they must to Europeans. None the less, bitter medicine has at times been regarded as useful in stimulating sluggish metabolism. We have not yet reached the stage for clear vision and grasp of social problems. Our intellectuals have satire for the follies of their countrymen, but lack the humor which implies sympathy with fellow mortals in their weakness. Vision, sympathy, and humor are rare in the interpreters of any culture.

Changes in the means of attaining and securing the ends which the American spirit has prized are more positive signs of vitality. Liberty and equality, independence and opportunity, were the values that brought early colonists and later immigrants, and these values persist, but the content of the terms and the means to the attainment of the values have changed to meet conditions. Liberty in Jefferson's day meant a weak government. Independence, opportunity, and equality were secured chiefly by the abundance of free land. We were a nation of small farmers. We bought few commodities, borrowed little money, and lived largely each on his own. Today economic power which regulates prices and taxes citizens in-

directly has far more to do with the citizen's standard of living—with liberty, opportunity, and independence—than the government. To protect citizens against food adulterations, worthless stocks and bonds, irresponsible banks, exorbitant rates by rail, and public utilities requires a strong, not a weak, government. It has brought about a good part of that expansion of government functions which calls out protests from some taxpayers whose wrath would more fitly be directed against the dishonest practices of business that have made such expansion necessary. The doctrines of property affected with a public interest and of the police power are indications of the same change in the conceptions of governmental means to protection of the individual against economic power.

Equality, opportunity, and independence are no longer secured by free land. Most workers now work for an employer, and opportunity to work lies in conditions beyond the worker's control. The industrial system is anything but a system of equality. If it could ensure a measure of security, this would be a partial compensation, but it is at present unable to give security. The millions of unemployed all over the industrialized world are a sufficient witness to the combination of political wastage of resources in wars and economic inability to plan wisely. Yet there are two lines in which American society has advanced, and in which the working man has shared.

The first and greatest advance has been in the field of public education. The expansion of opportunity to share in one of the highest values of human civilization amounts to a revolution. The increases in the equipment and material now available, and the increase in the attendance of pupils in secondary and higher institutions, have been noted in previous chapters. Their significance for democracy is profound. Here at any rate, equality, lost in

our economic system, is replaced by an equality in access to the goods of the mind. Opportunity to share in the advances of culture is open. Education is an agency of an "open society." Educators who take a narrow view of the social process and are impatient at the throngs who seek an education not always wisely adapted to their needs, should not forget in their zeal for knowledge for knowledge's sake that education is America's best agency for service to the common man. And economy leagues will do well not to destroy the chief avenue of opportunity now open.

The second advance in which the common man has shared has been the application of science to inventions that add to comfort and enjoyment. Practically all read a daily newspaper, ride in automobiles, listen to radios, see moving pictures, dress in clothes that carry no badge of inferior class, have access to public libraries, and if city dwellers, to public parks. These make for fuller life.

The severest test of a spirit and life that are able to deal with what, measured by European experience, may well be regarded as the most difficult task of modern civilization, is the problem of dissolving the barriers of language and deep-seated estrangement or hostile tradition and feeling between racial or national groups. In Europe no demonstration of dangers to civilization, to economic welfare, to life itself, avails to quiet the suspicions and rancors born of age-old conflict and kept alive by repeated wars. It might be thought that such inveterate feelings would continue among the immigrant groups, many of whom in the large cities preserve for years a certain community of cultural tradition, and a degree of isolation from the "native born." In the World War it was inevitable that before the United States entered as combatant the sympathies of immigrants should be divided.

Yet the unanimity of support given to the government was remarkable. It was greater than the unanimity of support to the Union cause in the North during the Civil War, if measured by acceptance of the draft. The writer heard an American general cite as a type of true American a Greek boy in his command who had displayed heroic daring unto death with eager devotion, and many a German family sent its boys to fight against the Fatherland. The story of the Irish youngster who patriotically named George Washington as the "first man" in answer to the question of the catechism, rejecting the claims to consideration of Adam as a "furriner" may be mythical, but like all myths it testifies to a real something.

But war is not the best test. The fact that our immigrant groups find their way into all fields of American life, that the second and succeeding generations forget all too soon even the best of their previous traditions and distinctive history shows at least the vigor of the new life into which they enter so eagerly. Doubtless American life has been modified by the constant stream of immigration. Our cities are as much European in many respects as they are Older American. Washington and Jefferson would scarcely feel at home in Coney Island or Atlantic City, or in the Ford factories or the steel mills. But there is vitality.

A final indication that the heart of America is still active is the spirit in which the unemployment situation of the past four years has been met. In no previous depression has the public responsibility been felt in such an unquestioning temper. The means for dealing with the situation may not have been adequate; the disposition at first was to rely on the older type of private morality, that is, upon charity. But as the situation continued the public responsibility was more and more assumed by public

agencies. Public morality is proving the advance that has been made since the legal maxim, "Where the tree falls, there let it lie," expressed the morality of its day. If the gain in sympathy should prove lasting and the attitude of sober consideration of public good become established, it would not be the first instance in history in which moral advance has resulted from adversity.

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