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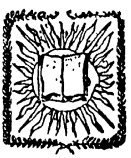
The American State Series

# CITY GOVERNMENT IN THE UNITED STATES

BY

FRANK J. GOODNOW, LL. D.

EATON PROFESSOR OF ADMINISTRATIVE LAW AND MUNICIPAL SCIENCE IN COLUMBIA UNIVERSITY



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# CONTENTS


| CHAPTER | | PAGE |
|---|---|---|
| I | INTRODUCTORY: THE CITY AS A SOCIAL FACT | 3 |
| | Meanings of the Term "City" | 3 |
| | Cities Formerly not Self-perpetuating | 4 |
| | Cause of Recent Increase of Urban Population | 7 |
| | Causes of Cities | 9 |
| | Character of Urban Population | 13 |
| | Improvement of Urban Conditions | 19 |
| II | THE CITY AS AN ORGAN OF GOVERNMENT | 22 |
| | Political Position of Cities | 23 |
| | City Subordinated to the State | 25 |
| | Municipal Home Rule | 33 |
| | Municipal Functions | 36 |
| | Present Position of Cities | 39 |
| III | THE DEVELOPMENT OF THE CITY IN THE UNITED STATES | 43 |
| | English City Government in the Eighteenth Century | 43 |
| | Early American City Government | 45 |
| | Original Sphere of Action of American Cities | 52 |
| | Change in the Position of American Cities | 55 |
| | Legislative Interference with Cities | 57 |
| | Change in the Organization of Cities | 59 |
| | Board System of City Government | 62 |
| | Mayor System of City Government | 65 |
| | No American Type of City Government | 68 |
| IV | THE POSITION OF THE CITY IN THE UNITED STATES | 69 |
| | The American Administrative System | 69 |
| | The City a Creature of the State Legislature | 73 |
| | The City an Authority of Enumerated Powers | 74 |
| | Cities Have Lost Their Autonomy | 77 |
| | Political Parties and City Government | 79 |

CHAPTER PAGE

V STATE CONTROL OF CITIES . . . . . 89
Necessity of State Control of Cities . . . . . 89
Constitutional Limitation of Legislative Power . . . . . 91
Prohibition of Special City Laws . . . . . 93
Necessity of Larger Municipal Powers . . . . . 97
Ineffectiveness of Legislative Control . . . . . 99
Central Administrative Control . . . . . 101
Control of Political Parties . . . . . 103
Separate City Elections . . . . . 105

VI THE PARTICIPATION OF THE PEOPLE IN CITY GOVERNMENT . . . . . 109
Universal Suffrage for City Elections . . . . . 109
Elected or Appointed City Officers . . . . . 113
Referendum and Initiative in City Matters . . . . . 118
Methods of Nomination . . . . . 121
Nomination by Petition . . . . . 122
Direct Nomination . . . . . 126
Regulation of Parties . . . . . 128
City Parties . . . . . 130
Fusion in New York City . . . . . 130
Chicago Municipal Voters' League . . . . . 132

VII THE CITY COUNCIL . . . . . 137
Original City Organization . . . . . 137
Decay of City Council . . . . . 139
Effects of the Decay of City Council . . . . . 144
Reaction in Favor of City Council . . . . . 146
Present Position of City Council . . . . . 154
Manner of Election . . . . . 156
Term of Members of City Council . . . . . 160
Powers of City Council . . . . . 161
Ordinance Power of Council . . . . . 164
Power to Determine the Sphere of Municipal Activity . . . . . 167
Financial Powers of City Council . . . . . 169

VIII THE CITY EXECUTIVE . . . . . 176
Position of Mayor . . . . . 176
Term of Mayor . . . . . 182
City Civil Service . . . . . 183
British System . . . . . 186
United States System . . . . . 189
Boards versus Commissioners . . . . . 191
City Administrative Districts . . . . . 200

CHAPTER PAGE

IX POLICE ADMINISTRATION . . . . . 204
Meaning of Term "Police" . . . . . 204
City Judicial Functions . . . . . 205
City Police Justices . . . . . 209
Children's Courts . . . . . 211
Importance of City Courts . . . . . 212
Preservation of the Peace and Order . . . . . 214
The London System . . . . . 215
Early American Systems . . . . . 218
Adoption of London System . . . . . 221
Advantages of State Police . . . . . 223
Police Boards versus Commissioners . . . . . 226
Defects of American Police . . . . . 228
Police Licenses . . . . . 234
Public Health and Safety . . . . . 235
Sanitary and Other Ordinances . . . . . 236
Organization of Health, etc., Authorities . . . . . 238
State Control . . . . . 240
Powers of Health, etc., Authorities . . . . . 242
Remedies . . . . . 245

X ADMINISTRATION OF CHARITIES AND CORRECTION . . 248
Early Methods . . . . . 248
Separation of Charities from Correction . . . . . 250
Insane Poor . . . . . 251
Municipal Charities . . . . . 252
Organization of City Poor Authority . . . . . 254
State Control . . . . . 258

XI SCHOOL ADMINISTRATION . . . . . 262
Early Methods . . . . . 262
Organization of City School Authorities . . . . . 263
Separation of Educational from Physical Administration of Schools . . . . . 269
State Control . . . . . 271

XII PUBLIC WORKS ADMINISTRATION . . . . . 274
Physical Conditions of Cities in Olden Times . . . . . 274
Modern Conditions . . . . . 275
Organization of Public Works Authorities . . . . . 276
Necessity of Records . . . . . 279
American Conditions . . . . . 281
Importance of Public Works in Cities . . . . . 283

CHAPTER PAGE

XIII FINANCIAL ADMINISTRATION . . . . . 286
City Receipts . . . . . 286
City Tax Authorities . . . . . 289
City Assessors . . . . . 290
Local Assessments . . . . . 294
City Expenditures . . . . . 295
City Budget . . . . . 297
City Disbursing Officers . . . . . 299
Auditing of City Accounts . . . . . 300

XIV CONCLUSIONS . . . . . 302

INDEX . . . . . 309

## PREFACE

In two little books entitled "Municipal Home Rule" and "Municipal Problems," published respectively in 1895 and 1898, the author of the following pages attempted, in some cases, somewhat exhaustively, the treatment of what appeared to him to be the most important problems connected with the study of city government as they presented themselves in the United States. The method of treating these questions, on the one hand, did not involve a systematic exposition of the subject, but, on the other hand, did involve a comparison of American institutions with those of some of the more important European countries.

In the book now presented to the public the author's intention has been to confine himself almost exclusively to a study of American conditions and at the same time to broaden the scope of the inquiry so as to embrace the entire field of city government so far as that is regarded from the viewpoint of organization and structure. No attempt has been made to describe the methods adopted by different American cities in the discharge of their functions of government nor to comment upon the success or

failure of such cities in the attempts which they have made.

The accomplishment of the author's purpose has naturally involved a treatment of some of the subjects treated in the books to which allusion has been made. Indeed, in some cases the same language has been employed. Such repetition was possible owing to the courtesy of the Columbia University Press, which has kindly permitted the author to borrow from his former works published by them what he saw fit.

The author desires in closing this preface to extend his thanks to his many friends who have aided him in his work, and particularly to Professor Leo S. Rowe of the University of Pennsylvania, and Professor W. W. Willoughby of Johns Hopkins University, who have both read his book either in manuscript or in proof, and to both of whom he is indebted for many valuable suggestions.

FRANK J. GOODNOW.

COLUMBIA UNIVERSITY,
July 30, 1904.

# CITY GOVERNMENT IN THE UNITED STATES

# CITY GOVERNMENT IN THE UNITED STATES

## CHAPTER I

### INTRODUCTORY: THE CITY AS A SOCIAL FACT[1]

**Meanings of the Term "City."** The term "city" has two meanings: the one sociological, the other legal or political. When we speak of the city in the first sense we refer to it as an aggregation of people living within a comparatively small area. When we use the term in its legal or political meaning we have reference to the fact that the city constitutes a political unity—that it has specific political duties to perform, and for that purpose is endowed by the state with more or less definite legal powers. The peculiar social conditions produced by urban life, to a very considerable degree, determine the form of the political organization of the city and the extent of its powers, and also exert a profound influence upon the manner in which its government is administered and its powers exercised. While, therefore, in the following pages we

[1] Authorities: Giddings, "Principles of Sociology;" Weber, "The Growth of Cities in the Nineteenth Century;" Columbia University Studies in History, Economics, and Public Law, Vol. XI; Abstract of the 12th Census of the United States.

shall consider the city mainly from the legal point of view, it will be well for us first to direct our attention to some of the more important consequences flowing from its existence as a social fact.

From the sociological point of view, the city belongs to that class of phenomena known as aggregations of individuals. These aggregations may be classified as internally recruited aggregations and externally recruited aggregations.[1] Internally recruited aggregations are characterized by the fact that they are due to blood-relationship; externally recruited aggregations by the fact that they are aggregations of strangers drawn together by some cause other than the attractions of blood-relationship.

**Cities Formerly not Self-perpetuating.** If we attempt to give the city a place within this classification, we must say that until very recent times the city has been an externally, rather than an internally, recruited aggregation. This has been due to the fact that the sanitary and other conditions which affect the production and continuation of human life have been such in cities that, from the point of view of population, cities have not been even self-sustaining. That is, their birth-rate has been less than their death-rate, so that, had it not been for the immigration into cities from the rural districts, the city populations would soon have been depleted.[2]

[1] Giddings, in his "Principles of Sociology," p. 93, makes the same distinction under the terms "genetic aggregations" and "congregations."

[2] See Weber, "The Growth of Cities in the Nineteenth Century." On p. 231 Dr. Weber says: "The most conclusive evidence of a

What was true of the centuries preceding the nineteenth century is still true of the cities of many countries at the present time. Dr. Weber, whose excellent work on "The Growth of Cities in the Nineteenth Century" has already been referred to, sums up his conclusions on this point as follows: "In France the cities do not sustain themselves, nor do many of the Italian cities. In Germany, Sweden, Austria, Hungary, etc., the cities furnish from one fourth to one half of their increase according to size. But in Great Britain immigration has so diminished that even the largest cities provide three fourths and often more of their increase. In the United States, where the cities now show a larger natural increase than do the rural districts, there is still a vast immigration,—four or five times as large as the natural increase."[1] That cities

large migration from the fields to the towns, however, is afforded by the bills of mortality begun in several cities in the sixteenth and seventeenth centuries. These death reports formed the first material of the new science of demography or population statistics, at first known as 'Political Arithmetic.' Now these early bills of mortality almost uniformly show more deaths than births each year, the natural result of which would be the decadence of the city. But on the contrary, the city grew; its population even increased more rapidly than the rural population. The simple explanation of such a state of affairs was a large emigration from rural districts to the city. And this was the conclusion of Captain John Graunt, the founder of the new science. He estimated the annual immigration to London to be 6000 persons. While this number is purely conjectural, it raises a very strong presumption that migration to the metropolis was relatively greater 250 years ago than it is to-day. For, between 1871 and 1881, with a population of nine or ten times as large as in 1650, London's net immigration amounted to less than 11,000 per annum."

[1] *Ibid.*, p. 246.

during the past two centuries have not only held their own, but have in many instances increased in the number of their inhabitants, is particularly true of the nineteenth century.[1] Finally, it is to be noticed that the population in cities increased more rapidly in the latter part than in the early part of the nineteenth century.[2]

Several conclusions at once suggest themselves on the consideration of these facts. The first, naturally, is the vast and rapidly increasing importance of city

[1] Thus in 1801 in England and Wales the percentage of the population residing in cities of over 100,000 was 9.73; in cities of over 10,000, 21.30. The percentages for the year 1890 were respectively 31.82 and 61.73. In Prussia in 1816 those in cities of over 100,000 constituted 1.8 per cent., in 1900 12.9 per cent. of the population, while those in the cities of 10,000 and over constituted in 1816 7.25 per cent., in 1890 30 per cent. of the population. What is true of England and Prussia is also true of France. There in 1801 2.8 per cent. and in 1891 12 per cent. of the population lived in cities of 100,000 and over. In the former year 9.5 per cent., in the latter year 25.9 per cent. of the population lived in cities of 10,000 and over. In the United States there was in 1800 no city of 100,000 inhabitants. In 1890 15.5 per cent. of the population lived in cities of that size. In 1800 3.8 per cent., in 1890 27.6 per cent. of the population of the United States lived in cities of 10,000 and over. *Ibid.*, p. 144, where will be found an elaborate table covering most of the countries of the world.

[2] Thus in England and Wales, while the percentage of the population in cities of 10,000 and over increased in the period from 1801 to 1851 from 21.3 to 39.45, during the period from 1851 to 1891 this percentage increased from 39.45 to 61.73. In Prussia the corresponding percentages were: in 1816, 7.25; in 1849, 10.63; and in 1890, 30; in France in 1801, 9.5; in 1851, 14.4; in 1891, 25.9; in the United States in 1800, 3.8; in 1850, 12; in 1890, 27.6.

life. The problems, political and otherwise, which city life involves are really problems which hardly existed prior to the beginning of the nineteenth century. The second is that some causes must have been at work in the latter half of the nineteenth century not at work before, which have caused the enormous increase in city population. This increase is too rapid to be due to the same causes to which the increase prior to the beginning of the nineteenth century was due.

**Cause of Recent Increase of Urban Population.** The first suggestion which is usually made as to the cause of this rapid increase in urban population is an increased immigration to the cities from the rural districts. This is not, however, believed to be the cause. For, as has been shown, immigration into cities was as characteristic of past centuries as of the nineteenth, and indeed in countries like Great Britain, apparently is decreasing at the present time. The real reason for the increase is to be found in the improvement of sanitary conditions which has taken place within the cities during the whole of the nineteenth century, and is going on with increasing rapidity at the present time. This is the conclusion reached by Dr. Weber, who says: "The manner in which the modern growth of cities has taken place is rather a larger natural increase in the city populations themselves (lower death-rate!) than an increase in immigration from rural districts; the current of migration cityward has been observed for several centuries, but it is only in the nineteenth century that any considerable number of

cities have had a regular surplus of births over deaths."[1]

What significance to us now does this change in the cause of the increase of urban population have? It is that cities are somewhat changing their character, and are being recruited from within instead of from without. This change in the sociological character of cities must have an important result on their political organization. For capacity for local self-government is due in large part to the existence of neighborhood feeling and friendly relationships which arise from inherited traditions. The population which existed in large cities, prior to 1800, was certainly not of the kind in which we should expect a form of government based on this neighborhood feeling and these friendly relationships to be highly developed. In so far, however, as external is giving place to internal aggregation, we may expect that this neighborhood feeling and these friendly relations will have a greater opportunity for development. It may well be that the greater interest in municipal problems and the improvement of municipal government by which the latter part of the nineteenth century was characterized, were, in large part, due to the difference in the character of the city population which has resulted from the substitution of internal for external aggregation as the method of increasing the city population. It is certainly significant that the cities of both England and Germany, which show the effect of this movement more than do those of any other

[1] *Ibid.*, p. 283.

country, made such marked improvement in their government during the nineteenth century.

**Causes of Cities.** But whatever may have been or may be the character of cities, whether as aggregations they are recruited from within or from without, the mere presence of the aggregation demands explanation. What now are the causes which either bring about the congregation of people in a city or permit the increase of its population? It may be said, in the first place, that the cause must be a permanent one. Mere temporary congregations of people will not result in the establishment of a city of any permanence. Thus that kind of immigration which is due, for example, to the discovery of an oil-well or a mine, will not result in the formation of permanent municipalities, unless the oil-well continues permanently to flow, or unless there be an almost inexhaustible supply of ore, or unless other conditions are present which make for permanence in settlement.

The only conditions where these permanent congregations of people are possible are those which both permit and require a great division of labor. No city can exist in a country where a considerable proportion of the population cannot live without direct recourse to agriculture. A considerable urban population is possible only in two cases: first, where the cities themselves are situated in a country of great fertility upon which they may rely; or, second, where the means of transportation are so highly developed that the cities may obtain with reasonable cheapness their food sup-

ply from a distance. In former times, when transportation was difficult, both because of its undeveloped character and because of the dangers of war, cities could develop only under the first conditions mentioned. In modern times, however, it is possible for conditions to exist, such as we have seen exist in England and Wales, where much more than 50 per cent. of the inhabitants of the country live in cities of ten thousand and over.

Cities are then possible only when men may live from other pursuits than agriculture; only when from the agricultural point of view there is a large surplus population. What now are the reasons which cause this surplus population to settle in any particular spot? In other words, what are the reasons why cities are located in the places in which we find them? These reasons are three in number. They are: first, commercial; second, industrial; and third, political. Facilities for transportation are not merely some of the most important causes of the development of cities generally; they are as well the causes why cities grow up and flourish in particular places. It is to secure such facilities that cities are founded at some place on the ocean, or other great body of water, where there is a favorable situation for the receipt and shipment of merchandise. The mere shipment and receipt of such merchandise offer employment to many people. But further, the business subsidiary to commerce, such as banking, insurance, etc., aids in attracting to such commercial centers those who are looking for work.

In the second place, the use of machinery has been and now is of the greatest impcrtance in attracting an

urban population. For this reason all places which are favorably situated for the development of the power necessary to drive machinery tend to become centers of population.

So far as transportation facilities or means of power are removed from a state of nature, so far of course do the natural advantages cease to attract population. Thus, so far as transportation is conducted more advantageously by rail than by water, so far do the natural advantages of the seaport or the river town as a center of population diminish. Again, so far as steam replaces water-power to that extent does the neighborhood of a waterfall cease to be chosen as a town site. At the same time it is well to remember that natural conditions are apt always to exercise an important influence on urban population. For railways are built only where the topography of the country will permit, and the development of steam-power is possible only where coal can be conveniently obtained.

Finally it must be admitted that cities which are unfavorably situated for either commerce or industry still have been founded and continue to flourish. At the time of their origin they may have been so situated as to be able to share in the existing commerce and industry. Later on new commercial and industrial conditions may have sprung up to which they could not accommodate themselves. Yet other causes may have enabled them to overcome their disadvantages. This is particularly true of political centers which may continue to exist and increase in population, although situated unfavorably from the point of view

of existing industrial and commercial conditions. Indeed if we look at the political capitals of the world, which, with very few exceptions, are not naturally favorably situated for trade or manufacture, we cannot but feel that the political causes of urban growth are of the greatest importance. In the case of one city, namely Washington, the political causes seem to have been the only causes for the urban development. Washington has practically no trade, absolutely no manufactures, and yet is continually growing in population.

From what has been said it will be seen that the saying of Cowper that "God made the country, and man made the town," is probably true in a sense which he did not intend; that is, the location of cities is due very largely to what we may call artificial causes. This is particularly true since the development of the modern business of transportation by means of canals, highways, and railways. It is still, of course, the case that cities situated on large bodies of water, such for example as the oceans or bodies like the Great Lakes, have natural advantages which cannot be overcome by anything that man can do. But apart from such cities it may safely be said that the reasons for urban growth are often to be found in the favorable situation of given areas for transacting the commercial business of a given period. This favorable position may be due not to natural but to artificial causes. Cities which, at one time, were favorably situated from this point of view lose the advantages of their situation, owing, either to the discovery of methods of natural transportation which were at one time un-

known, or to some change in the method of transportation which has been due solely to the work of man. This fact accounts largely for the rise and fall of those great cities of antiquity, whose situation we now know only from the presence of the ruins of their most important buildings. This fact again accounts for the greater degree of prosperity which existing cities have had at different times in their history. Palmyra, at one time the center of the trade between the Orient and the Roman Empire, now offers to the view of the adventurous traveler merely a few ruins in the midst of a sandy waste. Venice, at one time the mistress of the Mediterranean and the commercial center of Europe, became, with the discovery of the all-water route to India, a city of only secondary importance. Genoa, whose history resembles that of Venice, is, since the completion of the Suez Canal, becoming again a city of commercial importance.

**Character of Urban Population.** The nature of the motives which bring about an aggregation of population cannot fail to have an important effect upon the character of the population. Making their living, as they do, from commercial, industrial, and, so to speak, political occupations, the inhabitants of cities can hardly fail to be molded in their character and intellectual qualities by the influences of commerce, industry, and politics. Now it must be admitted that while commerce and industry tend to develop intelligence, it may well be, as compared with the occupations of rural life, they do not develop that character

which lies at the basis of good government.[1] The larger part of the population of cities may become very expert in some detailed line of work, but it may well be doubted whether such expertness is accompanied by that breadth of view which is apt to be developed in a man whose daily task embraces more varied experiences. Furthermore, the division of labor which lies at the basis of city life, it would seem, tends to develop in the city inhabitant an inability to take care of himself. If disorder occurs in a city it is to be put down by a professional police force; if a fire breaks out it is to be extinguished, again, by a professional fire service; if contagious disease appears it is to be dealt with, again, by a professional health department. In a word, city life not only encourages narrowness of views, but also favors the development of habits of submission to government. It tends to make good subjects rather than good governors.

Property appears to be much more unequally distributed in the urban than in the rural communities. This is certainly true in the United States. The census of 1900 shows that 64.4 per cent. of the farm families own their own homes, while only 35.6 per cent. hire their homes. In the case of families other than farm families, the figures are almost reversed. Only 36.3 per cent. of such families own their homes, while 63.7 per cent. of such families hire their homes.[2]

[1] See Hobson, "The Evolution of Modern Capitalism," pp. 338–339, quoted by Weber, *op. cit.*, p. 399.

[2] In the largest cities the percentage of persons owning their own homes is almost incredibly small. Thus in New York only 12.1 per cent. of the families resident in the city own their

The degree to which family life is affected by the conditions existing in cities is seen from the tables of the census of 1900 relative to dwellings and families. The average number of persons to a dwelling in the United States as a whole is 5.3. In cities of 25,000 inhabitants and over, the average is 6.8. In the city of

homes, the balance of 87.9 per cent. being renters. In the boroughs of Manhattan and the Bronx only 5.9 per cent. own their homes, and less than half of this number, namely 2.3 per cent., own their homes free and clear of mortgage. The percentages of the families owning their homes in some of the other large cities in the United States are as follows:

| Cities | Owning Homes | Free from Mortgage |
|---|---|---|
| Baltimore | 27.9 per cent. | 20.5 per cent. |
| Boston | 18.9 " " | 9.2 " " |
| Buffalo | 32.9 " " | 15.8 " " |
| Chicago | 25.1 " " | 11.9 " " |
| Cincinnati | 20.9 " " | 13.9 " " |
| Cleveland | 37.4 " " | 21.3 " " |
| Detroit | 39.1 " " | 22.5 " " |
| Indianapolis | 33.7 " " | 18.1 " " |
| Milwaukee | 35.9 " " | 16.5 " " |
| Minneapolis | 28.7 " " | 16.1 " " |
| New Orleans | 22.2 " " | 19.1 " " |
| Philadelphia | 22.1 " " | 12.1 " " |
| Pittsburg | 27.2 " " | 15.2 " " |
| San Francisco | 24.1 " " | 16 " " |
| St. Louis | 22.8 " " | 14.2 " " |

The city in the United States having over 25,000 inhabitants which has the highest percentage of home-owning families is Akron, Ohio, with a population of about 43,000. Here 53.7 per cent. of the families own their homes. The city of over 25,000 inhabitants having the lowest percentage of home-owning families is Hoboken, N. J., with a population of 60,000. Here 9.6 per cent. of the families own their homes.

New York it is 13.7, while in the boroughs of Manhattan and the Bronx it is 20.4.[1]

It is difficult to reach any very definite conclusions as to the effect on the political capacity of the population of cities of this greater inequality in the distribution of property which is to be found in cities or as to the degree to which family life is permitted by the conditions obtaining within cities. As to the latter point it will be noticed in the figures given that in quite a number of instances the number of persons to a dwelling is very little, if any, greater in even some of the larger cities than it is throughout the country as a whole. As to the former point, it is rather interesting to note that in some of the cities—for example, Chicago, St. Louis, and Philadelphia—whose governments are not usually regarded as of the best, the percentage of home-owning families is a comparatively large one.

Formerly it was believed by many that city life had a bad influence, not merely on social and political character, if we may speak of it in that way, but as well on individual character, both from the physical and the moral point of view. It is doubtful, however, if there is anything in city life which inherently and inevitably conduces to physical or moral degeneracy. So far as the former is concerned it may be pointed

[1] The average number of persons to a dwelling in the other large cities of the United States is: Baltimore, 5.7; Boston, 8.4; Buffalo, 7.1; Chicago, 8.8; Cincinnati, 8; Cleveland, 6; Detroit, 5.5; Indianapolis, 4.7; Milwaukee, 6.2; Minneapolis, 6.4; New Orleans, 5.4; Philadelphia, 5.4; Pittsburg, 6.3; San Francisco, 6.4; St. Louis, 7.

out "that the believers in town degeneracy base their arguments on antiquated statistics. There can be no doubt that down to very recent times the health of urbanites compared unfavorably with that of men who worked in the open air, just as their death-rates did. But in the last quarter century the evidence in both cases has changed. In 1874 a French authority declared that fitness for army service depends less on the density of population than on wealth, climate, daily life. Health and vigor may always be preserved if men in cities will make proper provision for open-air exercise, cleanliness, and a pure food supply."[1] It is, however, true that the death-rate of cities is still higher than that of the rural districts. The last census of the United States shows that the death-rate of the rural districts, of which statistics were obtained, was 15.4; that of the urban districts, 18.6 per thousand.[2]

[1] Weber, *op. cit.*, p. 395. Dr. Weber gives, in a note, certain statistics taken from the three densest departments of France, comparing them with the three least dense. In these statistics it is shown that the number of men who had to be examined to secure one thousand soldiers was less in the former than in the latter.

[2] The city in the United States recorded in the census as having the highest death-rate is Natchez, Miss., which, with a population of a little over 12,000, has a death-rate of 39.7 per thousand. The city having the lowest death-rate is St. Joseph, Mo., which, with a population of nearly 103,000, has a death-rate of 9.1 per thousand. Most of the Southern cities of the United States have a high death-rate, which is largely due to the great mortality among the colored population. The lowest death-rates are found in the cities of the Northwest, which contain a large population of young people.

So far as concerns moral degeneracy, all that can be said is that city life conduces to certain forms of vice and crime while country life seems to favor the development of other forms.[1]

Our review of the intellectual and moral qualities which seem to be especially favored by city life would seem to force the conclusion that city life with its lack of neighborhood feeling and of inherited traditions, its intellectual narrowness, its habits of submission to government, and the great inequality in the distribution of wealth, is, notwithstanding the possibility of reasonably healthy and moral conditions, on the whole not favorable to the development of good government.

While the social qualities developed by city life are not thus those which favor the development of good government, the kind of government which must be carried on by cities is of the most complex and difficult type.[2] It is small wonder then that city governments fall far short of what is demanded of them. It is not surprising that city government is on the whole the worst kind of democratic government.

For a long time many thinking people have been conscious of the failure of city government, and of the demoralizing influences on character of city life. This was one of the contentions of Thomas Jefferson, who regarded the development of cities in this country as presenting one of the most serious obstacles possible to good government, and particularly to good democratic government. The consciousness of these influ-

[1] Weber, *op. cit.*, p. 399 *et seq.*

[2] See *infra*, p. 114.

ences had for its effect the development of a distinctly pessimistic view of the situation. It was then decided that cities were distinctly and inherently bad, but with the nineteenth century a somewhat more hopeful view has come to be entertained.

**Improvement of Urban Conditions.** Attention has already been called to the improvement which has been made in the sanitary conditions of cities. This improvement is so marked that a city need no longer be regarded as a devouring monster for whose existence the rural population is sacrificed. But it is not alone the sanitary conditions of cities that have been improved. A similar improvement may be noticed in the intellectual and moral conditions. At any rate it cannot be questioned that serious attempts are being made to bring about an improvement in these conditions. These attempts are being made both by city governments and by private voluntary effort on the part of city dwellers. City governments have very generally, during the nineteenth century, and particularly during the latter half of that century, been spending vast sums of money in order to offer to their citizens greater opportunities for intellectual development and mental and physical recreation. The well-developed school systems, the great public libraries, the lecture courses, public concerts, botanical and other gardens, the means of recreation offered in the universally present public parks and playgrounds are all evidences of the change from the feeling of hopelessness with regard to the future of cities which was characteristic of the early part of the nineteenth century.

They all show that hopelessness has given place to effort, with results that cannot as yet be entirely measured.[1]

The effort which has been made to improve the conditions of cities has not been confined to the city governments. Municipal citizens have voluntarily banded together in various associations for the improvement of urban conditions. In almost all cities of any size charitable and other organizations have been formed to improve the lot of the poorer classes of city dwellers. A great deal is now being said and written about the city beautiful which not so many years ago would have met with nothing but contemptuous silence had it not encountered actual derision. Now, however, the result of such efforts is the formation of municipal art societies whose purpose is to guide the cities in the right direction, from the artistic point of view, in the undertaking of public improvements. Again, the social settlement idea, which has found its application in almost all the large cities in this country as well as in some of the old world, is an evidence that people are not only conscious of the disadvantages accompanying city life for the vast majority of city dwellers, but also are trying to counteract these disadvantages by voluntary associations. These social settlements promote the feeling of neighborhood which is so necessary to good government, and offer to the hard-worked and poorer classes of our municipal citizens opportunities for social intercourse and recreation of which they would otherwise be almost wholly deprived.

[1] As to what has been done in this direction by American cities, see Zueblin, "American Municipal Progress."

Whether the efforts which thus have been made to offset the necessary disadvantages of city life will meet with the success which it is hoped will attend them, it is as yet too early to say. At any rate we may congratulate ourselves, at this, the beginning of the twentieth century, that we have abandoned the hopeless resignation which was so marked one hundred years ago. It is true the difficulty and complexity of the municipal problem have vastly increased in that hundred years, but we are girding ourselves for the struggle with a hope that augurs well for the future.

Attention has been called both to the great importance of city life in modern conditions and to the important part which the city government has played in the improvement of the environment of city dwellers. It must also be said that much of the improvement in that environment which has been made could not have been made except through governmental agencies. Voluntary effort may accomplish much, but all that requires the exercise of the sovereign powers of compulsion, as, for example, in the matter of sanitation, must be done, if done at all, by governmental agencies. It will therefore be seen that the city must be studied not merely from the sociological point of view, but also from the political point of view. The city is not merely an urban community, a social fact; it is also a political organization, an organ of government.

## CHAPTER II

### THE CITY AS AN ORGAN OF GOVERNMENT[1]

WHEN we study the city simply as a social unit we may, so to speak, consider it in isolation. That is to say, without seriously vitiating our results, we may seek to discover why it exists, and to determine the characteristics of its population without reference to the fact that it constitutes a part of a larger political whole.

When, however, we come to consider the city as an organ of government, we are liable to fall into serious error if we do not examine its relations to the political organization of the state within which it may lie. We cannot study it in isolation. For the city as a social fact, a mere urban community, is not exactly the same as the city as an organ of government. The city as a mere densely populated area may exist where there is no city from the point of view of the law. Thus, for a long time, the metropolitan district known as

[1] Authorities: Lavisse et Rambaud, "Histoire générale," Chap. VIII; Dareste de la Chavanne, "Histoire de l'Administration française," Chap. VI; Gierke, "Das deutsche Genossenschaftsrecht," Vol. I, *passim;* Vine, "English Municipal Institutions;" Wilcox, "The Study of City Government."

London was in large part governed as was the adjacent rural population. It is only, indeed, since the passage of the Local Government Acts of 1888 and 1899 that there has been a metropolitan London from both the sociological and the legal points of view.

**Political Position of Cities.** It has been said that "The city as a governmental unit may occupy one of three positions: it may be a city state; it may be a grade of local government established by the state in the constitution, or it may be simply the creature or agent of the general government."[1] This statement may be historically true. In the history of the past there have certainly been instances of city states. It is nevertheless impossible under modern conditions that city states should exist. Indeed, even in the case of those cities which are commonly referred to as city states, the city's statehood consisted largely in the fact that it was the ruler of outlying possessions. This would seem to be a necessary characteristic of the city state. For a city can never be self-dependent in the same way in which any other area can be self-dependent. It is obliged to rely upon other districts for its food supply. It cannot rely, with any degree of certainty, upon such rural districts for its food supply, unless it has political control over them or unless they are subject to the state of which the city is a member.

The problems connected with the city state are therefore problems not of the character which we ordinarily assign to municipal problems, but are rather

[1] Wilcox, "The Study of City Government," p. 73.

the problems of governing dependent communities. They are really more in the nature of colonial than municipal problems. We may for this reason exclude the city state from our consideration and may say that, so far as concerns the city's relations to the state in which it is to be found, the city may be either a grade of local government or simply the agent of the general government of the state in which it is situated.

When we say that a city may be a grade of local government we mean that the city is recognized as possessing an inherent sphere of action with which the state or general government must not interfere. When we say that the city is simply the creature or agent of the general government of the state in which it is situated, we mean that the city is not recognized as possessing any inherent powers, but that all its actions are regulated by the state government which regards everything that the city does as a part of the general administration of the country.

We may look at this matter from two points of view: namely, that of power and that of usage. The constitution of the state may be so framed that no authority of the state government may be recognized as having jurisdiction over certain matters within the city. We are not to infer, however, from such a statement that the ultimate sovereign to which the city is subordinate may not, when it sees fit, change the constitution and cause a redistribution of powers. We are to conclude merely that so long as the constitution exists, no authority is recognized as having legal powers with regard to certain matters, but the municipal authorities. This is a position in which cities have

seldom been placed. Within, however, comparatively recent years, such a position has been assigned to cities by the constitutions of several of the states of the American Union.[1]

**City Subordinated to the State.** Ordinarily the position of the city is, from the legal point of view, one of complete subordination to the state. We do not mean, where such is the case, that the state government does not recognize any powers of local government as existing in the city. It may or may not. Whether it does or does not depends, however, in this case not upon any constitutional provision, but rather upon the usage of the supreme authority in the state government. It may, indeed, be the case that in those states where the relations of the central government of the state with the cities are regulated by usage rather than by constitutional law, the cities have a wider field of practically unrestrained action than they have in those states where the constitution definitely assigns to the cities a sphere of action in which they are uncontrolled by any authorities of the state government.

What now, as a matter of fact, is the position which is assigned to the city in the modern state? Is it the same as that which was assigned to it in former days, or is it different? If it is different, much of the value of conclusions derived from a consideration of the conditions of cities in the past is destroyed. In order to answer the question which has just been put it will be well to make a rapid survey of the

[1] *Infra*, p. 92.

development of urban life, and particularly of the political side of that life.

A study of the history of municipal development reveals the fact that the city has occupied varying positions in relation to the states in which it has been geographically situated. It has had at times even a position of absolute independence and, as in the case of the city states of antiquity, has been the governor of subject territory. It has, on the other hand, been reduced to a position of complete subordination to the larger state in which it was situated, which did not recognize it as having any municipal life apart from the life of the state as a whole. From the point of view of sociology the city has always existed in Europe since the time of Greece and Rome. From the legal point of view, however, the city seems to have absolutely disappeared during the middle ages. Urban communities of course were in existence, but they were governed, as other parts of the country, in accordance with the general administrative system of the states in which they happened to lie.

The complete subjection of cities to the states in which they were situated, and the refusal on the part of those states to recognize that such cities had any life of their own, could not permanently continue. The complete subordination of urban communities to the state governments of the middle ages naturally resulted in a conflict. This conflict was waged by the cities against the feudal lords and the royal power throughout western Europe. It began at about the time that these feudal lords and the royal power had succeeded in incorporating the urban communities into

the general administrative system which was adopted at the time of the formation of the various Teutonic kingdoms in the Roman Empire. It was directed toward securing the exercise by the cities of powers which, with our modern ideas of political science, we regard as state and not municipal powers. This struggle was, however, not so much a struggle between the cities as such and the state as such, as it was a struggle upon the part of the developing industrial and commercial classes in the society of the times, both for the freedom to pursue their vocations and for participation in the government.

Thus the power to hold a market—which was one of the points upon which the cities put the greatest emphasis—was, in the commercial conditions of the middle ages, really a power to regulate commercial relations. Again, the power to regulate customs duties, which was claimed both by the cities and by the central government, was a power whose exercise very vitally concerned the interests of the commercial classes. This power was commonly made use of by the crown, not for the purpose of regulating these relations in the interest of the commercial classes, but for the purpose of increasing the royal revenue without any regard for those classes. So, also, the power to hold their own courts, for whose possession the cities struggled so arduously, was a power whose exercise by the cities was absolutely necessary to the welfare of the commercial and industrial classes. The courts, in the first place, were made use of by the feudal lords and by the crown as a means of obtaining revenue just as much as they were used as a means of

administering justice. Furthermore, the fact that commercial and industrial relations were predominant in urban communities made it necessary, under a popular system of administering justice, that the inhabitants of these communities should be excluded from the jurisdiction of courts controlled by a rural population whose interests were almost exclusively agricultural in character. Finally, the military powers which the cities so commonly claimed during the early part of the middle ages were powers whose exercise by the municipal population was absolutely necessary for the proper protection of the industrial and commercial interests at a time when the law was practically the will of the strong.

So we might go on. Almost every power for whose possession and exercise the cities struggled, during the period we are discussing, was a power which has now come to be recognized as properly pertaining to the government of the state as a whole. Its exercise by the cities was, however, in the conditions at that time existing, necessary if the commercial and industrial interests were to obtain that recognition which was absolutely essential to their continued life and future development.

In a large number of instances, particularly in Italy and Germany, the cities were the victors in the struggle and attained to the position of independent political communities. In a number of other instances the cities, while not becoming politically independent, still succeeded in obtaining the right to exercise many powers which we now regard as powers of state government. When, however, the policy of

the governing classes of the various European states had become so modified as to accord to the commercial and industrial classes that recognition necessary for their prosperity,[1] we find that the cities appear to decline in importance from the political point of view, and cease to contest the exercise of these governmental powers with the state government. This decline of the cities in political importance seems to have been inevitable. The demands made by the cities were absolutely incompatible with the development of the national state. The cities, if the national state was to develop, had to give up the exercise of powers whose exercise properly devolved upon the state, and were obliged to content themselves with a position of subordination in that state.

The process of subordinating the cities to the state government may be said to have begun with about the middle of the sixteenth century, and was finished by the end of the eighteenth century. This was true both in Germany and in France, and was practically true in England.[2]

[1] Thus in France the abolition of the duel and ordeal as modes of legal proof, which was secured by most of the cities, for the procedure before their own courts, as a privilege, became general throughout the kingdom.

[2] The subordination in England is not, however, so apparent, because cities had never attained in England the same degree of independence as on the Continent, and because the general administrative system of England was much less centralized than on the Continent. Thus we find in England that the administration of justice and the preservation of the peace were regarded as functions of the state government. Their discharge, however, was delegated to municipal officers. Officers

The municipal development of the sixteenth, seventeenth, and eighteenth centuries was thus directed toward securing a general recognition of the fact that the city was a subordinate member of the greater state in which it was situated, and had, from the legal point of view, no inherent right of government of which it might not be deprived by the state in the interest of the welfare of the state. But, wherever ideas of administrative decentralization prevailed, it was recognized that while the state was theoretically sovereign, it might properly delegate to the cities as its subordinate agents, the discharge of many of the functions of government which, from the point of view of theory, were recognized as belonging to the state.

The independence which the cities had secured during the middle ages as a means of securing the recognition of the importance of the industrial and com-

who were otherwise engaged in the discharge of the corporate business of the municipal boroughs were by royal commission vested with judicial and police powers; were, indeed, made justices of the peace with minor civil and criminal jurisdiction. The mere fact, therefore, that, at the end of the eighteenth and at the beginning of the nineteenth century, borough officers in England discharged judicial and police functions is not at all evidence of the belief that these functions were local and not central in character.

In other states, as for example, in Prussia and in France, both the legal theory and the practical policy of the government recognized cities as possessing no inherent rights. Cities were neither recognized as possessing any theoretical sovereignty, nor, as a matter of fact, intrusted with the independent discharge of any functions of the government. Where they possessed any powers at all, the exercise of those powers was subject to the supervision and control of the crown.

mercial classes was taken from them in the interest of the welfare of the national state. It was taken from them properly inasmuch as the cities had secured the modifications in the legal system and the political organization which were necessary to the welfare of the commercial and industrial classes.

We may, however, go a step further. We may say that the independence of the cities was taken away from them not only in the interest of the state government, but also in their own interest. One of the most marked features of municipal development is the almost universal tendency which urban communities have shown toward the development of oligarchical government; toward the subjection of the vast majority of the urban population to the control of the more important and powerful economic classes in the municipal society. Most cities of ancient and medieval times fell under the control of a council whose membership was filled by coöptation or by election from a narrow body of the most important citizens. In most cities these councils used their powers in the interest of the class they represented, and often to oppress the vast mass of the population. It may, of course, be said that this tendency toward oligarchical government was in many, if not in most cases, aggravated by the attitude which the central government of the state assumed toward the cities.[1]

[1] A study of English municipal development will show at once how first the crown, and later the nobility and gentry, made use of the cities for the purpose of controlling parliament, and how almost every influence in the state was brought to bear to force the municipal population under the control of

But, admitting that the behavior of the state government toward the cities aggravated any tendency they may have had toward oligarchical government, it cannot be gainsaid that the cities, without such action on the part of the central government, were of their own accord falling into the oligarchical régime.[1]

Whether the municipal population would have been able to cast off the yoke of the oligarchy if the state government had not interfered, of course, cannot be said. It is, at any rate, true that by the end of the eighteenth century, whether owing to an inherent and incurable political incapacity, or whether owing to an inherent tendency toward oligarchical government, aggravated by central interference, the government of the cities of the European world was in the hands of municipal oligarchies.

The apparent inability of the municipal population to work out their own salvation brought it about, then, that the beginning of the nineteenth century was marked by a most drastic interference upon the part of the central state governments of Prussia, France, and England in the internal organization of cities. Beginning with France in the year 1800, continuing in Prussia in the year 1808, and ending in England with the year 1835, important municipal corporations acts were passed which laid the basis for the munici-

a few persons, who might thus more easily be controlled by the predominant political forces which were seeking the control of the House of Commons.

[1] In England thus again the oligarchical form of government had developed before the attempt had been made by the crown to get control of the cities.

pal organization of the present day. These acts were, it is true, considerably modified during the course of the nineteenth century, but the city which they inaugurated still exists. This movement may be characterized by the statement that the power of determining the organization of the city government was definitely taken away from the municipal population and assumed by the central government. This power had, from almost time immemorial, been exercised by the cities themselves, and its exercise had resulted in the development in the cities of oligarchical government.[1]

**Municipal Home Rule.** Notwithstanding the tremendous encroachments by the state governments, upon

[1] A somewhat similar movement has taken place in the United States. The very general abandonment of special charters, the substitution therefor of general municipal corporations acts and the interference of the legislature in the organization of cities, where special charters are still granted, have had for their result the assumption by the state government of the power to organize the city government. It is true, of course, that theoretically special charters are framed and passed by state legislatures. But, as a general thing, the charters which are thus passed by the legislature have been drawn up in the first place by city officers or city conventions or commissions, and are passed by the legislature at the instance of such authorities. The only exceptions to this movement in the United States are to be found in those states which, like Missouri and California, give the cities the right to frame their own charters. But these exceptions are more apparent than real. For the constitution which gives the cities this right generally prescribes in considerable detail the form of city government which may be incorporated in the charter to be adopted.

what had been recognized to be the rights of the cities, by which the beginning of the nineteenth century was accompanied, the nineteenth century as a whole may be regarded as characterized by the growth of the idea of municipal home rule. Municipal home rule, however, as it was understood in the nineteenth century, was something quite different from what it was during the middle ages. The solution of the great problems which had been fought out between the cities and the state during the seventeenth and the eighteenth centuries was left unchanged.

The municipal home rule which the cities obtained throughout Europe during the course of the nineteenth century does not consist in the exercise by them of any of the powers which, as a result of the struggles of the earlier centuries, had been recognized as properly belonging to the state. The municipal home rule of the nineteenth century consists in the possession by the city of the right to regulate those matters of administration which must be regulated locally in order to be regulated successfully,—matters which are really of little interest to the state as a whole but which are of supreme importance to the municipality. These matters may be compendiously described as local improvements.

While the legislation of the nineteenth century thus recognized that municipalities should possess large freedom of action in undertaking local improvements, it did not recognize that even here the municipalities should have free hand where the interests of the municipality come into conflict with the interests of the state government. The point of con-

tact of these two somewhat conflicting interests is mainly in the domain of local finance. The undertaking of local improvements necessitates large financial operations. These operations may be so conducted by the municipality, through the exercise of the taxing and borrowing powers, as seriously to derange the financial system of the state as a whole. So far as this is the case, the legislation of the nineteenth century was careful to secure to the central government of the state a control over the actions of the municipality.

The eighteenth century, then, was marked by the adoption of the theory that the city was an agent of the state government for the discharge of those functions interesting the state government which demanded local treatment, and as such should be subject to state control. The nineteenth century was marked by the recognition of the city as an organization for the satisfaction of local needs, and by the grant to it, when acting in this capacity, of large freedom of action.

Too much emphasis should not, however, be laid upon this sphere of municipal home rule as it is sometimes termed. For, if we bear in mind the history of the city, we cannot help feeling that what we now regard as distinctly local work may, with the development of new social conditions, become of such vital interest to the state as a whole that it may either determine to exercise a control over the actions of the city in attending to it, or may take the matter altogether out of the hands of the city and attend to it itself. Thus, for example, the urban communities in the eastern part of the state of Massachusetts have

grown so rapidly within the last twenty-five years, and the competition between them for the purchase of sources of water-supply has become so keen that it has been necessary for the state of Massachusetts to step in and regulate and largely administer the whole matter of water-supply itself. Up to within very recent times there has been hardly any question that the water-supply was a distinctly local function.

**Municipal Functions.** The whole matter of municipal functions therefore is in a state of flux. What may be a municipal function at one time in a given state may not be at another. Again, what may at a given time be a municipal function in one state may not be in another state. In both cases the reason why it may or may not be recognized as municipal is that it is, or is not, under existing economic and social connections, of distinctly local interest. At the same time it will probably be long before everything that the city will do will become of general interest. For many years to come there will probably be many things which cities may and will do, which interest them so exclusively that they may be regarded in attending to them as organs for the satisfaction of local needs. But we shall probably see in the future, as we have seen in the past, a continual encroachment by the state on what has been recognized as the domain of the city, due to the fact that what the city is doing has become of interest to the state as a whole.

The sphere of municipal activity, upon which the state does not at any given time encroach, will proba-

bly be found largely in that branch of administration known as internal affairs. From the nature of the case the city can have nothing to do in the domain of foreign relations or of military affairs. It is true that the ancient and medieval cities had important duties to perform in these administrative branches.[1] But this was because they were more or less in the position of city states.[2]

What has been said with regard to military affairs may with some modifications be repeated with regard to judicial affairs. In practically all modern states the administration of justice has come to be regarded as a function of the state and not of the municipal government. It is of course true that, just as in the administration of military affairs, cities may be called

[1] See Wilcox, "The Study of City Government," pp. 76 and 25, citing Ashley, "Economic History," Part II, p. 94.

[2] It is of course true that even now in the states of the United States in which there exists a citizen soldiery, cities or their officers may have assigned to them by the state the establishment, maintenance, and care of armories. But the soldiers who use these armories are under the command of officers who receive their commissions from the state and not the city government, and are regarded by the military law as soldiers of the state and not of the city. The duty of maintaining armories is in these cases imposed upon the city and not upon the state, not because military affairs are regarded as a municipal function, but because this is a convenient way of paying this part of the expenses of the state government. The state has, under the system of administration prevailing in the states of the United States, no officers in the localities upon whom these duties may be imposed, and merely makes use of the city as its agent for this purpose.

upon to discharge certain functions, so in the administration of justice the cities may be called upon to pay the expenses of the judicial administration, and judicial officers may be given a territorial jurisdiction coincident with the boundaries of the city. But in such cases the city is usually regarded as discharging these functions as an agent of the state government.

The city may in like manner be treated as an agent of the state in the branch of administration which has been called financial affairs. It may be the agent of the state for the payment of expenses which are really expenses of the state government; it may be the agent of the state also for the collection of the state revenues, as is the case with many of the cities in the United States. But in addition to being the financial agent of the state it may be intrusted with the exercise of financial powers in its own behalf. A grant to the city of financial powers would seem to be almost necessary if the city is to be permitted to live a life separate and apart from that of the state. The city, therefore, in the domain of financial affairs, may be regarded both as an agent of the state government, and as an organization for the satisfaction of local needs.

It will be seen then that, with practically this single exception of the finances, the city as an organ for the satisfaction of local needs is confined in its action to the branch of administration which is spoken of as the administration of internal affairs. Even here, as in the case of the judicial and financial administration, the city may not always be given an absolutely free hand. It may not be regarded as in all cases an or-

ganization for the satisfaction of merely local needs, but must be treated as an agent of the state government. For example, it may be made an authority in the sanitary administration, but in so far as it discharges sanitary functions it must be regarded as acting as an agent of the state government. Unsanitary conditions existing in the city have a bad effect on the health of the state as a whole, since many diseases are contagious. What is true of sanitary powers is also true of powers relative to schools. Ignorance on the part of a municipal population may have an effect upon the people of a state as a whole, since it may affect the intellectual capacity of the members of the municipal population who are, at the same time that they are municipal voters, voters at state elections.

**Present Position of Cities.** We may say, therefore, that the city at the present time is recognized, first, as an agent of the state government; second, as an organization for the satisfaction of local needs, but that it can be regarded as merely an organization for the satisfaction of local needs only for a very narrow class of functions which are to be found almost exclusively in that branch of administration which is known as internal affairs. Further it may be said that while the city as an organ for the satisfaction of local needs should be accorded a large freedom of action, the whole matter of the sphere of its action as a local corporation is not permanently fixed, and that the state may at any time make a city an agent of the state government, and may subject it as such agent to a central control.

So far the only question which has been discussed has been, what is and what is not a municipal function? That is, when is a city an agent of the state government, and when is it merely an organization for the satisfaction of local needs? We have still to consider the question how—that is, by what process and in what manner—it shall be determined what is and what is not a municipal function.

The sovereignty of the state is now so universally recognized that there is no question as to what authority shall make the determination. It is the state and not the city which in our modern law is vested with this power. It is further usually an organ of the state government, as distinguished from the state as sovereign, which exercises this power. If the state constitution does not vest the city with certain powers, it is the legislature, aided by the courts, which determines in the concrete case what the city shall do and how it shall do it. If the state constitution does, as it has done in some of the American states, assign a sphere of action to the cities, it still assigns such sphere of action usually in such general terms that it is again the legislature, but in this case with the approval, as well as the aid of the courts, which makes the determination. In neither case may the city take possession of any branch of work and exclude the action of the state in that branch.

But in what manner shall the state authorities act in the determination of the sphere of municipal action? Two general methods have been adopted: One, that adopted by England and the United States, starts from the point of view of the state, and lays

down the rule that the city may not act except where it has been authorized expressly and specifically by the state. This view of the city's position has led to the practice of enumerating in detail its powers, particularly its financial powers, and to the adoption by the courts of the rule of strict construction of all grants of power to cities. The adoption of such a method of determining municipal competency is due to the failure to conceive of the city as living a life of its own, separate and apart from that of the state as a whole. Such a conception is in its turn due to ideas of extreme centralization, centralization at any rate from the legislative point of view; to the desire to prevent state disintegration. This desire has been a characteristic of English policy since the days of William the Conqueror and his successors, who were the only kings in Europe able to withstand the tendency toward feudalism with its ideas of local autonomy, so characteristic of the times in which they lived.

The other method of determining the competence of the city is the one adopted generally on the Continent. It starts from the point of view of the city, and adopts the principle that the presumption is always in favor of the city, which has the power to do anything which it has not been forbidden to do, or which has not been intrusted to some governmental authority other than the municipality. This theory of the position of the city is based upon the conception that the city has a life separate and apart from that of the state as a whole. This conception is in its turn due probably to the long-continued absence on the Continent of any such thing as centralized leg-

islation, and to the belief in local autonomy resulting from the greater influence on the Continent of feudal ideas.

Whatever the effect of these theories may be upon the authority of the state, there can be no doubt as to which is the better from the point of view of municipal development. A city which does not have to look to a central state authority for every grant of power, and whose powers are not subject to the rule of strict construction, is much more favorably situated for rendering service to its own inhabitants than is a city whose powers are apportioned to it by the Anglo-American rule.

It may also be said that the effect of this more liberal method of determining municipal powers on the authority of the state is not seriously bad in these days when the questions whose decision affect the power of the state are so universally answered in its favor. Under the continental method, municipal development may therefore be greatly favored with due regard to the interests of the state as a whole.

## CHAPTER III

### THE DEVELOPMENT OF THE CITY IN THE UNITED STATES [1]

**English City Government in the Eighteenth Century.** In order to understand the beginnings of city government in the United States it is necessary to consider briefly the system existing in England in the eighteenth century. For that was the model on which the American system was framed. The English system of city government existing at the time this country was settled was based on certain rather well-defined principles. In the first place, the cities, or boroughs, as they were commonly called, were incorporated through a grant by the crown to each locality of its own special charter. There was, therefore, no uniform system of city government in England, except in so far as all the special charters were governed by certain generally applied principles.

In the second place, what was incorporated by the English charter was not the district, nor the people living in the district, but only the municipal officers, or these officers and a narrow body of freemen or

[1] Authorities: Fairlie, "Municipal Development in the United States" in "A Municipal Program;" "Municipal Administration," Chap. v; Allinson and Penrose, "Philadelphia;" Durand, "The Finances of New York City."

voters. The official name of an English municipal corporation was indicative of this condition of things, being, for example, "The Mayor, Aldermen, and Councillors of ——," or "The Mayor and Jurats of ——," or "The Mayor, Aldermen, and Commonalty of ——."

In the third place, and partly as a result of the character of the incorporation just described, the form of government provided by these charters was distinctly oligarchical in character. In most instances the council, which was the governing body of the corporation, was a self-perpetuating body, although in some cases its members were elected by the narrow body of freemen or voters already alluded to.

In the fourth place, the sphere of action of the English municipal corporation of the eighteenth century was a very narrow one. The corporation had control of its property and finances, and had the power to pass local ordinances, mainly of a police character. Its officers, or certain of its officers, were further frequently intrusted by royal commission with important duties relative to the administration of civil and criminal justice, and the preservation of the peace.

During the latter part of the eighteenth century the population of cities had greatly increased. This increase of the population made necessary an enlargement of the sphere of municipal activity. The corporate organization of the cities was, however, bad. It was bad because the cities were prostituted in the interest of the national political parties.[1] Under these conditions the city government could not with safety

[1] *Supra*, p. 31.

be intrusted with the discharge of the new functions of government. The result was the formation, by special acts of Parliament, of trusts or commissions, not connected with the borough council, for the discharge of these new functions, such as paving, lighting, and even watching the streets.

Such was the system of city government existing in England during the seventeenth and eighteenth centuries, and it is safe to say that whatever may have been the depths to which any American city has fallen, it is doubtful whether it ever sank so low as were English boroughs at the beginning of the nineteenth century.[1]

**Early American City Government.** But, with all its faults, the English system was made the model of the system which was established in the North American colonies.[2]

[1] As Mr. Vine says, "English Municipal Institutions; Their Growth and Development from 1835 to 1879," p. 10: "The municipal corporations were for the most part in the hands of narrow and self-elected cliques, who administered local affairs for their own advantage rather than for that of the boroughs. . . . The inhabitants were practically deprived of all power of local self-government, and were ruled by those whom they had not chosen, and in whom they had no confidence. . . . The corporate funds were wasted. . . . The interests and the improvements of towns were not cared for. . . . The local boards were too often corrupted by party influence and failed to render impartial justice, and . . . municipal institutions, instead of strengthening and supporting the political framework of the country, were a source of weakness and a fertile cause of discontent."

[2] For the history of the colonial period, see Fairlie, "Municipal Corporations in the Colonies" in "Municipal Affairs," Vol. II, p. 370.

The first municipal corporation of any importance to be established in this country was that of New York. New York received its first charter in 1665. This charter was unsatisfactory, and in 1683 a petition was made to Governor Dongan to give the city a more satisfactory frame of municipal government. Governor Dongan, in 1686, issued to the city of New York a charter which has been since that time the basis of its municipal government. It has, of course, been subjected to frequent amendment, but the history of New York, as a municipality, may be said to date from the time of its issue. In 1708 another charter, known as the Cornbury charter, was issued to the city, and in 1730 the most important provisions of the Dongan and Cornbury charters were incorporated into a new charter, known as the Montgomerie charter, which was issued to the city by Governor Montgomerie.

Soon after the issue of the charter of 1686 to the city of New York, the city of Philadelphia received a charter, namely, in 1701, from which year may be said to date the history of Philadelphia as a city. During the eighteenth century other charters were issued to various municipal corporations by the governors of the North American colonies. The municipal corporations which were thus established were in the main confined to the central colonies of New York, New Jersey, Pennsylvania, Maryland, and Virginia. We find almost no instances of the formation of municipal corporations in New England.[1]

[1] The probable reason why the idea of incorporating cities was not adopted in New England is to be found in the vitality

By 1746 the colonial period of municipal incorporation seems to have closed. The advantages of the system were, however, apparent just as soon as population began to gather in the cities after the Revolutionary War. Beginning with the existence of the states as independent political communities there appeared a large number of new municipal charters; and by the beginning of the nineteenth century the only considerable urban community in the United States which was not incorporated was Boston, which, as late as 1820, continued to govern itself through the ordinary New England town organization.

While the charters that were issued after the Revolution were very similar to those which had been issued during the colonial period, there was this essential difference between them: the colonial charters had been granted by the governors of the colonies; the municipal charters that were issued after the Revolution were granted by the state legislatures. This difference in the incorporating authority was destined to have an important influence on the position of the community that was incorporated. For the charter that was granted by the governor was, like the municipal charter which was granted in England by the crown, regarded as something in the nature of a contract between the executive part of the colonial government and the community incorporated. The

of the New England town. The town system of government really gave to localities all the freedom of government that they desired, and was well adapted to the needs of the various districts which, until the beginning of the nineteenth century, did not contain any very large population.

municipal charter, on that account, was not believed to be capable of amendment except as the result of an agreement between both parties to the contract. When, however, a charter was granted by the legislature, it was regarded not so much as in the nature of a contract, but as an ordinary act of legislation which, like all acts of legislation, was capable of amendment by the action of the legislature alone.

The municipal corporations which were established in this country during the colonial period departed in one respect from the English model. In very few instances was the council a self-perpetuating body. Indeed, Philadelphia may be said to have been the only important city in which the council was renewed by coöptation. As a general thing the people of the city were permitted by the colonial municipal charters to participate in the choice of local officers. The probable reason why the more liberal form of municipal charter was adopted in this country, although it was discouraged in England, was that neither the crown nor the political parties had any direct interest in securing the adoption of a narrow form of charter for the colonial corporations. For the American municipal corporation differed from the English corporation in that it had no representation in Parliament and could not, therefore, be made use of to secure a party majority in that body. While the people were generally permitted to participate in the selection of municipal officers, no such principle as universal manhood suffrage was adopted. The power to vote for municipal officers was, as a general thing, confined to the well-to-do classes. The usual rule was

to grant it to the freemen of the city, being freeholders. Thus in the Montgomerie charter of New York city the suffrage was granted to "the freemen of the said city, being inhabitants and the freeholders of each respective ward."[1]

The municipal organization provided by most of the colonial municipal charters followed very closely the English municipal organization of the eighteenth century. The governing body of the corporation was a council. This council, like the English council of the same period, consisted of a mayor, recorder, and a number of aldermen and councilmen, or assistants. The mayor, however, seems, even in the earliest charters, to have occupied a rather more important position than that which was accorded to the mayor by the English charters. In the first place, he was quite commonly the appointee of the governor of the

[1] A word of explanation is perhaps necessary with regard to the freemen of the city. Almost all the colonial charters contained provisions for bestowing the freedom of the city upon persons, either resident or non-resident. The advantages which the freemen of the city possessed in addition to that of voting was that they alone could practice any "art, trade, mystery, or manual occupation, or merchandising business" within the borough, except during the great fair. In some cases this monopoly of trade was a privilege of considerable value. For example, Albany had a monopoly of trade with the Indians, and New York at one time had a monopoly of bolting flour. In the later years of the colonial period, however, these advantages ceased to be of any particular importance, since trades were thrown open to all; and at the present time, while the freedom of the city is sometimes granted to distinguished visitors, it has come to be regarded as nothing but a compliment.

colony.[1] In the second place, he seems to have had rather wider police powers than any other member of the council. For example, in New York and Albany he had full control of the licensing of the retail sale of liquors, and was the clerk of the markets. It may well be that the greater importance, which the mayor secured, as a result both of the peculiarity of his tenure and the rather wider powers that he possessed, was the cause of his development into the all-important mayor of the present day.

While the council thus composed was the only governing body in the city, certain of its members, namely, the mayor, recorder, and the aldermen were, after the English model, vested with important judicial powers not granted to the other members of the council. The mayor, recorder, and aldermen indeed were, by the charters of some of the cities, of which New York is an example, vested with almost all the judicial powers which were exercised within the limits of the city. The only important exception to this rule was to be found in the powers possessed by the court of the colony occupying a position similar to that of the state supreme court which was the only court of general common law jurisdiction to be found.[2]

The mayor, recorder, aldermen, and councilmen, or

[1] In some of the English cities, however, the titular officer corresponding to the early American mayor was appointed either by the crown or by some powerful nobleman.

[2] It is perfectly easy to trace in the legislation of the state of New York the development, from these judicial powers of the mayor, recorder, and aldermen, of all of the courts within the city of New York which exercise civil and criminal jurisdiction, outside of the supreme court. *Infra*, p. 205 *et seq.*

assistants, were then to constitute the common council of the colonial municipal corporation. As a general thing provision was made in the royal charters for district representation. For example, the Montgomerie charter of New York provided that one alderman and one assistant were to be elected in each of the wards into which the city was divided. Apart from the provisions of the charter with regard to the members of the council, the royal charters did very little toward providing for the detailed organization of the city administration. This was left to the council to arrange by ordinance.

Some of the charters, however, made provision for the special treatment of general colonial administrative business which had to be attended to as well within as without the limits of the city. Thus, the Montgomerie charter of New York provided for the election, in the wards into which the city was divided, of assessors and collectors to assess and collect the general colonial taxes, and constables to preserve the peace. New York also, inasmuch as the city of New York was from the beginning placed in the position of a separate county, was exempted from the jurisdiction of any county authority. A separate sheriff was provided for in the charter to act for the city and county of New York, and after the development of boards of supervisors, which were finally established in 1703 throughout the colony, the mayor, recorder, and aldermen were authorized to discharge for the city and county of New York functions similar to those which were discharged in the other counties by their boards of supervisors.

**Original Sphere of Action of American Cities.** The sphere of action of these early American municipal corporations was very much the same as that of the English municipal corporation of the same period. This sphere of action was quite narrow when compared with that possessed by the modern American municipal corporation. The functions possessed by the municipal authorities were more of a police and judicial than an administrative character. The judicial functions of certain members of the council have already been considered. The police functions of the council, using the word in its broad sense, were considerable. Thus the council had general authority to pass such ordinances as seemed "to be good, useful, or necessary for the good rule and government of the body corporate," subject merely to the limitation that these ordinances be "not contradictory or repugnant" to the laws of England.

The exercise of this police power, which was theoretically a very large one, was, however, very much limited by the fact that the financial resources of the corporations were very small. Some of the corporations, of which New York was a rather exceptional example, obtained by their charters large property rights, receiving among other things ferry, dock, and wharf rights. But in few instances was the income from the property, which a city possessed, supplemented by the right of local taxation. The result was that the income of these corporations was insufficient to defray the expenses of the very modest kind of municipal government which they carried on and resort had to be had to loans and to municipal lot-

teries, from whose income the debts which were incurred were discharged.[1] At quite an early time in the history of the colonial corporations, however, the insufficiency of the revenues of the corporations resulted in an application by those bodies to the legislature for the power to levy taxes for specific purposes. The first instance of such an application is said to have been in 1676, when the corporation of New York, on its application, was authorized to levy a tax to pay off debts incurred in rebuilding one of its docks.[2] By the middle of the eighteenth century, however, taxation became a regular source of a considerable part of the revenue of most all the colonial corporations. In some cases the power to tax was granted only for specific purposes; in other cases the power might be exercised for any of the purposes of municipal government, but limits were imposed upon the amount of money which could be raised.

The result of the narrow powers of the colonial municipal corporations was that little or no attention was paid to a long series of matters which we regard at the present time as essential parts of municipal administration. For example, little was done by the corporations to supply the cities with water. All that was usually done was for the council to pass regulations of a police character to prevent the fouling of the wells and pumps from which the people of the city obtained their water. In some cases the council appointed overseers of wells and pumps whose duty it was to keep the wells and pumps in good order.

[1] *Cf.* Durand, "The Finances of New York City," p. 24.
[2] *Ibid.*, p. 19.

The first city in this country which attempted to establish a model waterworks plant was the city of Albany, which began its work in this direction in 1774. In the same way little or no attention was paid to charities or public schools. In Philadelphia alone was either of these matters under the control of officers provided by the city authorities. Elsewhere the poor officers were separately elected, as a general thing, in close connection with the ecclesiastical organizations, and schools were conducted by private persons or by the churches.

The position of the American municipalities at the end of the colonial period was, then, that of organizations which had been formed for the satisfaction of what were then regarded as the local needs of the district over which the corporation had jurisdiction. The conception of what were local needs was both broader and narrower than it is at the present time. It was broader in that judicial powers were regarded as sufficiently local to be delegated to the cities. During the nineteenth century these judicial powers have very largely been taken by the state into its own administration. The powers of municipal corporations were narrower than they are now, inasmuch as many, if not most, of the matters which receive attention by the municipal corporations of the present time not only did not receive attention but were not regarded as having been given into the charge of the municipal corporations by their charters. The narrowness of their powers and the rather local and *quasi*-private character of these powers were undoubtedly responsible in some degree for the conception which was held

by the people of the day, that the municipal corporations were not liable to be controlled to any very great extent by the legislatures of the colonies.

**Change in the Position of American Cities.** The nineteenth century brought about great changes, both in the position which the city occupied in the state government, and in the organization of the city for the purpose of discharging the functions which were intrusted to it.

The position of the city has been changed from that of an organization for the satisfaction of local needs to that of a well-recognized agent of state government. The state government of the present time makes use of the city or of its officers as agents for the purposes of general state administration. In financial matters the city, when of large size, is often made the agent of the state for the assessment and collection of taxes. Indeed, the city itself is often the taxpayer of certain of the state taxes, as for example, the general property tax, and adds the amount, which it pays to the state, to the amount which it collects from the inhabitants for the purpose of paying the expenses of the city. In the colonial period, the state taxes were often collected by state officers acting within the city, but not a part of the general corporate organization. When the system of local taxation was developed, the beginning of which we have already noticed, it seemed advisable, for reasons of convenience and economy, to combine the collection of local and state taxes in the same officers. These officers were naturally the municipal officers, inasmuch as the general system of de-

centralized administration, which was adopted for the state as a whole,[1] confided the care of such matters to officers chosen directly or indirectly by the localities in which the duties were performed.[2]

What has been said of the tax administration may be said also of other branches of administration, both those which were being attended to by governmental action at the beginning of the nineteenth century, and those which have been developed during the course of the nineteenth century. Thus in cities of large size, in accordance with the principles of decentralized administration, which have been spoken of, the care of the poor has often been vested in the local corporations or officers. The same may be said of education. The schools, which, at first, were really nothing more than private schools, have been made a part of the city administration. The result of this development has been to put the city in the position not merely of an organization for the satisfaction of local needs, but also in that of an agent for the purposes of general state administration.

But while the sphere of the state agency of cities has thus vastly increased, it must not be supposed that their functions as local organizations have not also

[1] For a sketch of this system, see *infra*, p. 69.

[2] Within the last twenty-five years there has been somewhat of a change in this matter of taxation, and the modern tendency has been in the direction of providing separate taxes for the state, to be collected by its own officers,—taxes, for example, like the corporation tax, the succession tax, or the liquor tax, as in New York,—and a system of local taxation for the cities and other localities, which is put into the hands of local officers.

increased in importance. In the early part of the nineteenth century the city of New York began the construction of the Croton aqueduct. Later on it established a professional police and fire force. About the middle of the century it began the laying out of a park system. The streets were very commonly sewered and paved, and, indeed, by 1850 the whole sphere of municipal activity had extended far beyond the dreams of the city inhabitants of 1800. What was done in New York was very soon copied in other cities, so that at the present time almost all cities of the country, while important agents of state government, have, as a result of the enormous extension of the sphere of distinctly municipal activity, become even more important as organs for the satisfaction of local needs. A good method of judging the degree of this extension of the sphere of municipal activity is to be found in the expenditures of cities. The total expenditure of New York at the present time is something more than $150,000,000 annually, and this sum was in 1898 equaled by the aggregate expenditures of the seven other cities of 400,000 population in the country.[1]

**Legislative Interference with Cities.** This great development of the local side of municipal corporations has not, however, been accompanied by the application of the same principle that seems to have been applied to municipal corporations during the colonial period. It has been pointed out that during that

[1] Fairlie, "Municipal Development in the United States" in "A Municipal Program," p. 28.

period the corporations were regarded as in very large degree free from central control.[1] But about 1850 the legislatures of the states began to interfere in the government of cities. Undoubtedly one of the reasons for this interference is to be found in the more public character which had been assigned to municipal corporations. Legislative control over cities was the only state control possible under the general administrative system. Legislative control was necessary as to matters in which the cities acted as agents of the state government. Accustomed to interfere in matters which were of interest to the state government, the legislatures failed to distinguish between such matters and matters which were of main, if not of exclusive, interest to the cities themselves. The legislatures were able to carry this interference to the extent to which it was carried because of the adoption of the legal theory that the municipal corporation was a mere creature of the state.[2] Legislative interference became so great, however, that a number of states inserted provisions into the state constitutions which were intended to prevent absolutely all interference with particular matters or to prevent the legislature from adopting certain methods of interference which had proved to be particularly bad. Some states, like the state of New York, in-

[1] For example, Judge Spencer of the New York Supreme Court, said (Mayor *v.* Ordrenan, 12 Johns., 125) that it was the almost invariable course of procedure for the legislature not to interfere in the internal affairs of a corporation without its consent.

[2] *Cf. infra*, p. 73.

serted in their constitutions provisions securing to municipal corporations the local selection of their own officers. But the most common method which was adopted was to prohibit all special legislation with regard to cities.[1]

**Change in the Organization of Cities.** Not only has the position of the city been changed, but also its organization has been subjected to great modification. The first change that was made in the original system of municipal government, which may be called the council system of government, was facilitated by the distinction made in the original charters between the mayor and the council. While facilitated by this distinction, the change that was made was due, however, it is believed, to the attempt to transfer to municipal conditions principles of political science which had been formulated with regard to the state and national goverments.[2] It is probably true that the original council system did not work altogether satisfactorily.[3] It cannot be said, however, that the charges made against the system were very definite or very severe.[4] In any case, soon after the expiration

[1] *Infra*, p. 93.

[2] Durand, *op. cit.*, p. 45.

[3] The probable cause of such trouble as there was, is to be found in the fact that the municipal governments very early in their history became involved in the struggles and contentions of the national and state political parties. See *ibid.*, p. 38, where a most striking example is given of the influence on elections in the city of New York of the national political parties of the early part of the nineteenth century. See also *infra*, p. 61.

[4] *Ibid.*, p. 45.

of the first quarter of the nineteenth century, changes were introduced into the original municipal organization which had the result of making it conform to the system of government adopted for the state and the nation.

The result of the application to municipal organization of the principles at the bottom of the state and national governments was, in the first place, the according to the mayor a position similar to that of the governor in the state government, and the president in the national government. Thus the mayor was to be chosen by the people and not by the state governor or city council. Popular election was provided in Boston and St. Louis in 1822 and in Detroit in 1824. In 1834 the mayor of New York became elective, and at the present time the principle of an elective mayor may be regarded as permanently adopted in the municipal system of the United States. In the second place, the council was treated as if it occupied a position in the city government similar to that of the legislature in the state and national governments. The council was quite frequently made to consist of two chambers. The only reason for the change that can be found is the desire to model the council upon the state legislature. It is, of course, true that from the very beginning the council consisted of the two classes of officers who have been referred to respectively as aldermen and councilmen or assistants. The distinction made between these two classes of council members was made, however, not so far as their legislative and administrative duties were concerned, but had particular reference to the performance of those

judicial duties which, by the charter, were imposed upon the aldermen.

By the first quarter of the nineteenth century, then, the municipal organization which had been developed was of a type modeled very closely upon the system of government in the state and the nation, and consisted of a mayor, who was elected by popular vote, and had very commonly a veto power over the resolutions of the council similar to that possessed by the president and state governor over the acts of Congress and the state legislature respectively, and a council, also elected by popular vote, which was frequently composed of two chambers.

This system of government was not, however, a satisfactory one. Prior to the making of these changes in the municipal organization, the complaints against the council were neither frequent nor severe. Very soon after the change was made they increased both in number and in vehemence. About this time the great national parties were developing throughout the country as a whole, and were reaching out in every direction for means by which to increase their power. There was no branch of the government whose possession could so much increase the power of political parties as the city governments. All the cities had, as compared with the other districts in the country, large numbers of officers and employees, and all were spending a large proportion of the money which was spent by the governmental authorities of the country. Either because of the inefficiency of the city governments, which certainly became quite marked soon after 1850, or because of the desire of the political

parties to get control of the city governments in order to increase their power in the state and nation, changes were made in the system of city government as it existed in 1850, which resulted in the ushering in of a new period in the development of municipal organization in the United States. This new system we may speak of as the board system.

**Board System of City Government.** As we originally find it, the board system was little more than a system of boards independent of the city council. The origin of the system is probably to be found in the New York charter of 1849. This made provision for independent executive departments and for taking from the council almost all administrative power. The reasons for the change were somewhat the same as those for the establishment of the mayor in a position of independence over against the council. That is, it was desired to model the city organization on that of the state and national government. The influence of the democratic spirit, so prevalent about the middle of the nineteenth century, is seen in the provision of the charter of 1849, that the heads of the new executive departments were to be elected by the people of the city. The election of the heads of these departments was seen at once to be unsatisfactory, and by the charter of 1853 the power was given to the mayor to appoint, subject to the approval of the city council, the heads of all departments except the comptroller, and the corporation counsel. The example set by New York was followed by other cities. Thus Cleveland provided for elective departments in 1852; Detroit, in 1857.

Soon after the adoption of this board system, however, the legislatures of the states began to provide for the state appointment of the members of city boards. This custom on the part of the legislature began just before 1860. The first point of attack was the police department. Later on the attempt was made to introduce this system into other branches of municipal administration.

By about 1860 it may be said that in all the important cities of the United States the most important parts of the city governments were in the hands of boards largely independent of the council, the members of which were in some instances appointed by the central state government, in some instances by the mayors of the cities, either acting alone or in conjunction with the city councils, and in some cases elected by the people of the city. At the time that this system was at its height, the members of these boards were not only independent of the council, but were also practically independent of the mayor. They were independent of the mayor even where he appointed them. For, as a general thing, they could not be removed from office by the mayor except for cause. This meant that they could be removed only as the result of charges and after a hearing, and the determination of the removing authority was subject to the review of the courts.

The result of the introduction of this system was completely to disorganize the municipal administration. Each important branch of city government was attended to by a board or officer practically independent of any other municipal authority. No one

mayor, because of the shortness of his term as compared with that of these officers and the members of these boards, could appoint all the city officers or all the members of any one board. The result was that the municipal organization consisted of a collection of independent authorities, and that the mayor, where the right of local appointment was secured to him, was merely an officer who could fill vacancies in the various offices which happened to occur during his term.

Finally, it is to be noticed that frequently the acts of the legislature establishing these municipal boards or commissions, provided for what are sometimes called non-partisan, at other times bi-partisan, commissions. The provision for the bi-partisan or non-partisan board took one of two forms: It was enacted either that no more than a certain number, either half or a bare majority of the members, should belong to the same political party, or that half of the members of the board should belong to each of the two leading political parties. This common provision in the acts establishing the board system is an indication that one of the reasons for its establishment was the desire of the political parties to secure the influence which resulted from the possession of power in the city administration.[1]

We may say, then, that by the year 1860 the council had in most of the larger American cities ceased to be anything more than a legislative body in the city government. It had lost all its original administrative functions. These had been assumed, in the first place,

[1] See Wilcox, "Party Government in Cities" in "Political Science Quarterly," XIV, p. 681.

by the mayor, and, in the second place, by the officers and boards, to which reference has just been made. The council had lost also important legislative powers. Among the important legislative powers which the council lost was the power it possessed, under the original charters, of organizing the details of the city administration. This power had been lost because of the fact that the new charters and acts of the legislature regulating the city government went into great detail. The assumption by the legislature of this former power of the city council had extremely bad effects. It resulted, in the first place, in the regulation of the details of city government by an authority which had little knowledge of the needs of the city. This authority was often governed in its action not by considerations which had anything to do with the welfare of the city, but by considerations of partisan politics. In the second place, the regulation of the details of municipal organization by the legislature offered a constant temptation and opportunity to interfere in matters which properly should have been left to the municipality to regulate. It cannot be doubted that the introduction of this board system, accompanied, as it was, by the assumption by the legislature of the power to regulate the details of city organization, was one of the chief causes for the great extension of the control of the legislature over municipal affairs generally.

**Mayor System of City Government.** But about 1880 the people of the United States seem to have awakened to the fact that the board system did not work satis-

factorily; that it diffused responsibility for municipal action; that it made it impossible for the people, at any given municipal election, to exercise any appreciable control over the municipal government, and that it offered a continual temptation to the legislature to interfere in the affairs of the city. The result was an attempt to change again the municipal organization. The changes that were introduced into the system, beginning with about the year 1880, may be said to have ushered in a new period of municipal development, which we may call the mayor period The first modification of the board system which was made in any important city charter was made in the charter of the city of Brooklyn about the year 1882. By this charter, the mayor was given the right, within twenty days after assuming office, to appoint new heads of the executive departments. The example of Brooklyn was followed by the city of New York in the year 1895. As a result of the continued success of one political party at the city elections in the years preceding 1895, all of the boards and offices of the city were practically controlled by adherents of this organization. In 1894 this organization was defeated at the polls after a campaign of great interest and excitement. It was felt by the people of the city and by the legislature of the state that, under existing conditions, the new administration could not represent the wishes of the people who had put it into power, and therefore a law was passed in 1895 giving to the mayor the right, within six months after assuming his office, to remove the heads of departments from office arbitrarily and not subject to the review of the courts.

In the meantime the mayor had received an absolute power of appointment in a number of cities, among which was the city of New York, being relieved from the necessity of obtaining the consent of the council to his appointments. Later on a number of cities, to which the city of New York was added by its recent charter of 1901, adopted the principle of arbitrary removal by the mayor throughout his entire term. The change in the municipal organization which has just been outlined was accompanied in many instances by the substitution of single commissioners for boards as department heads. The single commissioner was regarded as a necessary part of the original Brooklyn plan.

This system of city government we may call the mayor system of government. It is characterized by the fact that the mayor is vested with the absolute power of appointing and removing most of the important municipal officers. The mayor system may possibly be regarded as the coming system in the United States. But it cannot be said that it has been generally adopted throughout the country. Indeed, it is difficult to say what at the present time is the American type of municipal government. Most of the charters of the cities of the United States show the influences of the different periods of municipal development which have been outlined. Thus we find in a number of cities that the council still has a great deal of power. We find again, in a number, independent departments, the heads of which in some cases are elected by the people of the city in accordance with the ideas of democratic government so

prevalent about 1850,[1] in other cases, appointed by the central government of the state, in other cases, and in the majority of cases, appointed by the mayor and confirmed by the council.

**No American Type of City Government.** It cannot, therefore, be said that up to the present time the United States has developed a peculiar type of municipal organization. This is due particularly, of course, to the fact that we have more than forty different legislatures legislating upon the subject. It is due also to the non-existence of any general idea as to the position which the city occupies. Only after we have comprehended that the city is at the same time an agent of state government and an organization for the satisfaction of local needs, in the one case properly subject to an effective state control, in the other to be endowed with much freedom of action, shall we be able to develop a distinctive and satisfactory type of municipal organization. The position which the city occupies in our American system of government it will be the endeavor of the next chapter to ascertain.

[1] This is a feature of the new Ohio Municipal Code, which is thus a step backward rather than forward.

# CHAPTER IV

## THE POSITION OF THE CITY IN THE UNITED STATES[1]

**The American Administrative System.** In order that we may understand the position which the city occupies in the American state, it is necessary that we should have at least a general idea of the American system of administration. As the city has no relations with the national government it is not necessary for our purpose that we make any study of the national administrative system; we may confine our attention to that of the states.

The administrative system of the states of the American Union is, notwithstanding the existence of forty-five states, one of remarkable uniformity if we confine our attention to the fundamental principles upon which it is based. It rests, in the first place, upon the proposition that the state legislature is, in the absence of some constitutional provision, the depository of all governmental power. The state constitution has, however, apportioned certain governmental pow-

[1] Authorities: Goodnow, "Comparative Administrative Law;" *ibid.*, "Municipal Home Rule;" *ibid.*, "Municipal Problems;" *ibid.*, "Politics and Administration;" Wilcox, "The Study of City Government."

ers to the courts, and certain other such powers to the governor and other executive or administrative officers.

In the second place, the state administrative system is based upon the principle that the powers conferred by the constitution upon the governor are political rather than administrative in character. Thus the governor has certain powers relative to legislation, such as the power to recommend in his messages legislation on subjects with regard to which he believes legislative action desirable, and to withhold his approval from bills passed by the legislature, which bills when thus disapproved cannot become law unless they are passed again by the legislature. The governor has also the power of military command as a result of his position as commander-in-chief of the military forces of the state. Finally, the governor has the power of pardon.

The position of the governor is, from the political point of view, of great importance. From the point of view of the administration, even of matters which concern the welfare of the state as a whole, the position of the governor is, however, one of relative unimportance. From the point of view of the administration of local matters the position of the governor is one which is almost negligible. The position of the governor in the administrative system of the state itself is unimportant, because most branches of state administration are, by the constitution, intrusted to officers neither appointed nor removed by him nor subject to his direction and control. Of recent years, however, the tendency has been to increase the powers

of the governor as the head of the administrative system of the state, but even now in most states many important branches of state administration are attended to by officers quite independent of the governor.

The position of the governor from the point of view of local administration is absolutely unimportant because he has practically no control over local officers, even where such officers are discharging functions which vitally interest the people of the state as a whole. Such officers are furthermore in a similarly independent position over against the other state officers at the head of the various branches of state administration. For neither the governor nor any state officer has any large powers of appointment, removal, direction, or control over local officers.

The administrative independence of local officers is maintained, often as a result of constitutional provision, notwithstanding the fact that the state relies on these local officers for the execution of laws whose effect transcends the district over which these officers have jurisdiction and is felt everywhere throughout the state. The system of administration which thus assures to local officers this administrative independence is spoken of as a system of local self-government, or as a decentralized administrative system.

The American system of administration is, however, decentralized only from the administrative point of view. From the legislative point of view it is highly centralized. In the absence of constitutional provision to the contrary the American system recognizes no inherent rights of government in the various local

corporations. As a matter of practical legislative policy the legislature does not as a usual thing grant large powers of local government to local corporations. Many matters, however local in character they may be, are regulated by the state legislature. This body among other things regulates in great detail the organization of the local corporations. Our system of government is, therefore, both from the legal point of view and from the point of view of practical legislative policy, one of legislative centralization and administrative decentralization.

In this system the city takes its place alongside of the other local corporations, the most important of which are the county and the town. These corporations, whatever may have been their history, whether they have antedated the state, as is the case with many of the local corporations in the Eastern states, or whether their birth has followed that of the state, as is the case with many of the local corporations in the Western states, exist as a result of legislative tolerance, or have come into being as a result of positive action on the part of the legislature. This body may at any time deprive them of their corporate life, may arrange their organization to suit its own caprice, and may endow them with such powers and impose on them such obligations as seem fit and proper to the legislative intelligence. It is of course true that within comparatively recent times constitutional provisions, and in some cases legislative statutes, have modified this position and either provided for a greater administrative centralization of the general system or assured to the local corporations a position

of greater independence over against the legislature, thus diminishing the legislative centralization to which reference has been made. What these provisions are will be indicated later. But notwithstanding these constitutional provisions and legislative statutes the position of the local corporations, of which the city is one, has not been fundamentally changed. To understand what is the position of the American city we must, at any rate, begin our consideration of it with the idea that our system of administration is one which, decentralized from the administrative point of view, is centralized from the legislative point of view.

**The City a Creature of the State Legislature.** The character of our administrative system has several important effects on the position of the city. In the first place, the city is made by the system the creature of the state legislature. In the absence of a constitutional restriction the legislature of the state may do as it will with the cities within its jurisdiction. The charters of cities are at the present time regarded as mere statutes, which, in the absence of a constitutional limitation of the powers of the legislature, are subject to amendment by that body at any time.

The legislature then has, under our system of government, the absolute legal right to regulate municipal affairs as it sees fit. It has not only the legal right, it has also had in the past the moral right to interfere in city government. For the city became, during the course of the nineteenth century, an agent of the state government. The city has ceased to be what it once was, merely an organization for the satisfaction

of local needs, and has become as well an important member of the general state governmental system. Our system of decentralized administration did not permit of the exercise by any state administrative authority of any control over the city, even where it was thus acting as an agent of the state. It was necessary, therefore, if any central control at all should be exercised, that it should be exercised by the legislature.

**The City an Authority of Enumerated Powers.** In the second place, the city, in the absence of a constitutional provision, has no powers not granted to it by the legislature.[1]

[1] No better or more authoritative statement of the powers possessed by the municipal corporations in the United States can be found than that given by Judge Dillon in his great work on municipal corporations and approved by many of the later decisions of the courts themselves (Dillon, "Law of Municipal Corporations," 4th ed., p. 145). He says: "It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient but indispensable. Any fair reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act, or make any contract, or incur any liability not authorized thereby or by some legislative act applicable thereto. All acts beyond the scope of the powers granted are void." Judge Dillon adds that while the rule "of strict construction of corporate powers is not so directly applicable to the ordinary

It may be added that the legislatures of the states have not granted wide powers to cities, but have generally enumerated in greater or less detail the powers which cities may exercise. Thus when the city of New York wished to build and lease a rapid-transit railway it had no power to do so, and had to apply to the legislature for the necessary authority. Thus again when it wished to establish a municipal electric-lighting plant, it had no power. When it applied to the legislature for authority in this instance its application was denied.

In the third place, whatever may be the theoretical power of the city to enter upon any particular branch of governmental activity, the financial powers which it possesses are so limited that it is practically unable to exercise the powers of which it may be possessed without the grant to it by the legislature of the necessary financial power. That is, the American law recognizes the taxing power, from whose exercise most of the city's revenues must come, as a power of state government possessed alone by the state legislature. The city certainly does not possess it in the absence of legislative grant. The American law also does not accord to cities large powers of borrowing money in the absence of legislative authorization. In many

clauses in charters or incorporating acts of municipalities as it is to the charters of private corporations . . . it is equally applicable to grants of powers to municipal and public bodies which are out of the usual range or which may result in public burdens or which in their exercise touch the right of liberty or property or, as it may be compendiously expressed, any common law right of the citizen or inhabitant'' (*ibid.*, p. 148).

cases the legislature has been as niggardly in its grants to cities of financial powers as it has been in the grants of other powers.

For all these reasons a city in the United States is, in the absence of constitutional provisions, completely at the mercy of the state legislature so far as concerns both its governmental powers and its financial resources. This subjection of the city to the state is a result of the defeat of the cities in their long struggle with the state during the seventeenth and eighteenth centuries to which attention has been called. In this respect American cities differ in no way from European cities. The European legislature has exactly the same theoretical powers over the European city as has the American legislature over the American city. But the whole European system of government is so different from the American system that the actual position of the city in Europe is quite different from that of the city in the United States.

The Anglo-American local corporation is an authority of enumerated powers; the European local corporation is an authority of general powers. The Anglo-American local corporation may do only those things which the legislature of the state says plainly that it may do; the European local corporation may do everything which the legislature of the state has not plainly forbidden it to do.

At first blush the difference in the position of the American city from that of the European city may not seem to be of great importance. A more careful study of the matter will, however, show that this difference is crucial. For the American state legislature

has been, one might almost say, irresistibly tempted so to make use of its well-recognized powers over the cities subject to its jurisdiction, as to deprive them of most of their functions of local government, and to make them the playthings of state and national party politics. Under these conditions a scientific solution of the vexed question of municipal organization has been impossible, and the proper discharge by the cities of the functions necessary to the welfare of the urban population has been seriously interfered with if not absolutely prevented.

**Cities Have Lost Their Autonomy.** It has been said that the exercise of its powers by the legislature has deprived cities of their power of local government. The result has come about in the following way: No legislature is far-seeing enough to be able to determine for all time what powers it may be expedient for a city to exercise. No legislature, even under the régime of special city charters, can give a particular city powers which will be permanently satisfactory so long as these powers are enumerated in detail. The conditions, economic and otherwise, upon which city governments are based, are continually changing. As a result of these changing conditions American cities are forced to apply continually to the legislature for new and extended local powers. Such powers are often granted retrospectively through the exercise of the power the legislature possesses to ratify illegal action.

The necessity of changing and extending local powers has brought about an immense amount of special

legislation, and the legislature, accustomed to regulate by special act municipal affairs on the proposition of the various cities, and obliged to exercise through special legislation the necessary central control over matters attended to by cities which are of vital interest to the state as a whole, has got into the habit of passing special legislation with regard to purely municipal matters of its own motion not only without the consent of the local people, but often against their will, and for reasons in many cases in no way connected with their local welfare. The condition of things which has resulted from this habit of the legislature is one about which there is no difference of opinion. In those states where such central interference has been most marked the people of the cities have very largely lost interest in the municipal government, and whenever they desire to see some concrete municipal policy adopted their point of attack is the state legislature rather than any local and municipal organ. In New York city, for example, the people have become so accustomed to this method of action that they regard it as perfectly natural and normal.[1]

[1] The condition of things which this centralization of local matters in the legislature has produced cannot be better described than in the words of the Fassett Committee in their report, made in 1891, on the government of the cities of the state of New York. Here it is said that "it is frequently impossible for the legislature, the municipal officers, or even for the courts to tell what the laws mean; that it is usually impossible for the legislature to tell what the probable effect of any alleged reform in the laws is likely to be; that it is impossible for any one, either in private life or in public office, to tell what the exact business condition of any city

**Political Parties and City Government.** The loss of local government by the cities and the resulting lack of interest of municipal citizens in the conduct of city affairs are not, however, the worst results of the actual position which the city occupies in the American political system. More serious is the fact that owing to this position it is practically impossible to secure a solution of any one of our municipal problems uninfluenced by the consideration of the effect which the solution proposed may have on questions of state and national politics.

The influence which has been accorded to the state

is, and that municipal government is a mystery even to the experienced; that municipal officers have no certainty as to their tenure of office; that municipal officers can escape responsibility for their acts or failures by securing amendments to the law; that municipal officers can escape responsibility to the public on account of the unintelligibility of the laws and the insufficient publicity of the facts relative to municipal government; that local authorities receive permission to increase the municipal debt for the performance of public works which should be paid for out of taxes; that the conflict of authority is sometimes so great as to result in a complete or partial paralysis of the service; that our cities have no real local autonomy; that local self-government is a misnomer; and that consequently so little interest is felt in matters of local business that in almost every city in the state it has fallen into the hands of professional politicians. . . . These are conditions which if applied to the business of any other corporation would make the maintenance of a continued policy and a successful administration as impossible as they are today in the government of our municipalities, and produce waste and mismanagement such as is now the distinguishing feature of municipal business as compared with that of private corporations'' (Senate Committee's Report, Vol. V, p. 13).

and national political parties in the municipal affairs of the American city has been to a degree, at any rate, inevitable. Our system of government is based on a system of checks and balances and independent governmental authorities. The system has afforded continual opportunities for conflict between these authorities, but it has provided no means of settling such conflicts. These conflicts had, however, to be settled, or governmental paralysis would have supervened. Means had, therefore, to be found outside of the government for their settlement. As Mr. Henry J. Ford says in his book on "The Rise and Growth of American Politics":[1] "The rigid framework of the constitution forced political government to find its outlet in extra-constitutional agencies, bringing the executive and legislative branches under a common control despite the constitutional theory." "Parties were founded whose organization was gradually to develop a strength and an elaboration equal to the intricate tasks imposed by the complex nature of the government." Originally politics could "be managed by conference and agreement among gentlemen and the conduct of politics had to defer to their class opinions. But the spread of democratic influences was rapid. The growth of city population developed an electorate which soon dispossessed itself of habits of deference to social superiors so that it had to be wrought upon by other influences. There were none so available as those connected with the use of patronage, and this use had to conform with the changing conditions of politics." Mr. Dorman B.

[1] See p. 71.

Eaton, in his book on "The Government of Municipalities,"[1] says: "It was natural and inevitable under such conditions that political parties should grasp for the control of cities and villages, and extend their party tests and spoils-system methods over them. Nowhere else could parties so effectually organize, find so many subservient voters, grasp so much patronage or so easily extort large sums of money and other spoils in a space so small and easily dominated as in cities. City party government which enforced party tests of opinion for all offices and places in the city service was, therefore, quickly extended to every city and village equally without consideration of its fitness and without resistance. The true municipal reformer,—the civil service reformer,—or any body of independent enlightened thinkers on the subject, had not appeared. If some managers in cities could see that their party system had no fit place in city affairs it was too much to expect that they would advance a theory to that effect, for it would not only defeat their own advancement in their party, but if accepted would deprive it of a large part of its power and patronage."

But the political party has sought the control of the cities not merely because it could through this control strengthen its own organization. It has sought to control the cities also because, under our decentralized system of administration, it must have control of the city in order to secure the application of the principles which it represented. Attention has often been called to the fact that the American city is an agent

[1] See p. 10.

of the state government. Attention must also be called to the fact that owing to our decentralized administrative system the state government has in the past had no effective control over its agent.[1] A means of effective control not being present in the government, that control had to be found outside the government. It was found in the political parties. State political parties formed for the purpose of carrying through some program are of necessity bound to interest themselves in municipal politics, for the cities have under our system almost free hand in enforcing state statutes. A prohibition party, for example, which has succeeded in placing upon the statute book a law prohibiting the sale of liquor would fail in its duty if it did not strive to secure control of the government of a city which had in its hands, not subject to an effective state control, the management of the police which was to enforce such prohibition laws. The state parties, therefore, in busying themselves with city politics have been in many instances merely discharging the functions which were theirs of right.

In many cases this extra-legal control through the party is as ineffective as is the legal control of the legislature. Thus the attempt of one of the parties in the State of New York to close the saloons on Sunday in the city of New York is productive of no greater results than the action of the legislature in putting a Sunday-closing law on the statute book.

It is true, of course, that some of the causes of the interference of political parties in municipal affairs are permanent and enduring. For, as has been said,

[1] See *infra*, p. 99.

to quote Mr. Ford again,[1] "the interdependence of political interests is such that local transactions cannot be separated from state and national concerns. If the party is hurt anywhere it feels it everywhere. Means of adjustment between local and general political interests have thus been secured which have gradually effected a hierarchy of political control with respective rights and privileges that are tenaciously insisted upon."

The interference of political parties in municipal government has been, however, unnecessarily encouraged by the position which has been accorded to the city in our political system. The absolute subjection of the city to the legislature and the fact that the city has been treated by the courts as an authority of enumerated powers which were to be strictly construed, have offered to the political parties the opportunity to fix the organization of cities and regulate the exercise of their powers in the way which best suited the desires of the party. For the political parties have controlled the legislature. Beginning with about 1850, when the questions of national unity and slavery were pressing for solution, the political parties began, through their power in the legislature, to rearrange the municipal organization so that it might be most subservient to them. No system of government was ever devised better suited to force the municipal voter to act with his state or national political party in municipal elections than that unconcentrated board system which has been described, combined with numerous elected officers and frequent elections.

In many instances the parties went further than

[1] See *op. cit.*, p. 301.

providing a municipal organization which suited their purposes. They deliberately reorganized particular branches of the administration of a single city so as to reap from such reorganizations the greatest partizan advantage. Dr. Fairlie cites an example of such behavior in the history of the State of Illinois and the city of Chicago. He says:[1] "In 1861 the Republicans controlled the state government and the new board of police appointed by the governor was, in consequence, composed of Republicans. In 1863 the Democrats gained control of the state and passed an act reducing the term of the police commissioners from six to three years by which action the board became evenly divided between the two parties while the Democrats hoped ultimately to obtain complete control. But in 1865 the Republicans were again in power in the state, city, and county, and new acts were passed restoring the six-year term to the police commissioners, providing that new commissioners should be elected by the voters of Cook County—which was less liable to become Democratic than the city—and placing the fire department under the control of the board of police."

The result of such action upon the part of the political parties has been that it is impossible to secure a scientific solution of the problems of municipal organization. No one who studies that vexed subject can help thinking time and time again that the peculiar institutions which may have been or are now possessed by some particular city are to be explained, not upon any theory of municipal government, but

[1] "A Municipal Program," p. 22.

by the temporary exigencies of the political parties in control of the state legislature.

The political parties have not confined their attention, however, to municipal organization. They have made use of their power in the state legislature as well to regulate the use by the city of its powers in such a way that the party or members of the party might derive advantage therefrom. The legislature under the control of the state parties has often determined what salaries the cities should pay their officers. It has forced the cities in many instances into expensive undertakings into which they would not have entered had it not been for the compulsion of the legislature. The Philadelphia City Hall building affords a good example of how far the legislature under the dominion of the political parties has been willing to exercise its powers over cities. "In 1870 the legislature decided that the city should have new buildings. The act [which was passed to accomplish this result] selected certain citizens by name whom it appointed commissioners for the erection of the buildings. It made this body perpetual by authorizing it to fill vacancies. . . . This commission was imposed by the legislature upon the city and given absolute control to create debts for the purpose named and to require the levy of taxes for their payment."[1] "The public buildings at Broad and Market streets" were, in the words of Judge Paxson,[2] "projected upon a scale of magnificence better suited for the capital of an empire than the municipal buildings of a debt-

[1] Dillon, "Municipal Corporations," 4th ed., Vol. I, p. 128.

[2] Perkins *v.* Slack, 86 Penn., State, 283.

burdened city." The city was compelled, however, to supply the necessary funds and "for nearly twenty years all the money that could be spared from immediate and pressing needs" was "compulsorily expended upon an enormous pile which rivals the town halls and cathedrals of the middle ages in extent if not in grandeur." [1]

Special acts have been passed also to force the payment of claims not capable of enforcement in the courts, but held by persons possessed of political influence. The remarks of Mr. Justice O'Brien [2] are indicative of the extent to which this practice has been carried. He says: "It will be difficult to cite a more flagrant instance than the one here existing of a legislative act, attempting to fasten on property owners a burden which the courts and local authorities have stamped as fraudulent and void. After defeat in the courts the legislature was successfully applied to and a mandatory act passed which compelled the local authorities to assess as part of the cost work done under a contract which was fraudulent in its inception, was never complied with and was finally abandoned."

The exercise by the state legislature of the vast power over cities which it has possessed, has resulted thus not only in destroying all vital local self-government, but as well in debauching and corrupting the government of cities. For the misuse of their powers by city officers, which it has encouraged and even enforced, could not fail to lower the tone of city government. People cannot distinguish between the sacri-

[1] Hare, "American Constitutional Law," Vol. I, p. 630.
[2] In the matter of Cullen, 53 Hun., 534.

fice of municipal interests for laudable purposes, and their sacrifice for improper purposes.

The main cause of the evil conditions of American cities, which have caused such marked dissatisfaction during the last forty or fifty years, is to be found, then, in the conduct of the state and national political parties toward the cities. The conduct of these parties has been made possible largely because of the position which the city has occupied in our political system. It naturally follows that this position is not the proper one. It is further not the position which has been accorded to the European city. We have accorded to the city the position which was accorded to the European city as a result of the development of the seventeenth and eighteenth centuries. We have not made the modifications in that position which were introduced by the European practice of the nineteenth century. In other words, we have recognized that the existence of the national state is dependent upon the theoretical subjection of the city to the state. We have not recognized, however, as a matter of either law or practice, that the city has any rights which the state is bound to respect. We have given the city a position as an agent of the state government and have subjected it as such agent to state control. We have not accorded to it a position as an organization for the satisfaction of local needs, and as such recognized it as entitled to large freedom of action.

While we have not thus accorded to the city the position which it should occupy if municipal government is to be successful, it must not be supposed that no attempts have been made to remedy the evil

conditions which have been described. On the contrary, the first attempts of the legislature to interfere with the affairs of cities were met by attempts to limit the powers of the legislature by constitutional provision. Attempts have also been made by legislation and otherwise to expel the political party from municipal politics. These attempts it will be the purpose of the following chapter to discuss.

## CHAPTER V

### STATE CONTROL OF CITIES [1]

**Necessity of State Control of Cities.** The fact that the city is discharging many of the functions which have been assigned to it, as an agent of the state government, makes it absolutely necessary that the state shall possess some control over it. The state cannot with due regard for its safety permit municipalities or their officers free hand in the discharge of such functions. For if anything is proven by English and American administrative history it is that uncontrolled local administration of general matters leads to great lack of administrative uniformity where uniformity is necessary, and is often both slovenly and inefficient. The most noted example of this fact is to be found in the administration of the English Poor Law of the seventeenth century.[2] We have nearer home an example of the inefficiency of uncontrolled local administration of laws regarded as of general in-

[1] Authorities: See the same as for the preceding chapter; Eaton, "The Government of Municipalities;" "A Municipal Program."

[2] See Maltbie, "English Local Government of To-day," Columbia University Studies, etc., Vol. IX, Chap. II.

terest, in the case of the prohibition and other liquor laws in the United States.[1]

The further fact that matters which are at one time regarded as of purely municipal interest become, with the course of social development, of interest to the state as a whole, makes it necessary that the state government shall always have the power of extending its control over such matters, although at the time, they be regarded as distinctly municipal in character,—matters as to which the city may not be considered as acting as an agent of the state.

Finally, the state should have a control over the financial administration of cities. For the carrying on of that administration necessitates the exercise of the taxing and borrowing powers. No argument is needed to prove the necessity of the existence of state control over the taxing power. What is true of the taxing power is, however, just as true, though not so apparent, in the case of the power to borrow money. For the main means by which the payment of debts is provided is the exercise of the taxing power. For these reasons there must be provided in the governmental system a state control over the actions of cities.

But, while from the point of view of the state it is necessary that this control be a broad one, from the point of view of the city, this control should not be exercised, except where the interests of the state as a whole are directly concerned. Our glance at the history of municipal development has shown us that a too

[1] See Sites, "Centralized Administration of Liquor Laws in the American Commonwealths," Columbia University Studies, etc., Vol. X, p. 345.

extended exercise of the state control over cities prevents the development in the municipality of that local life whose existence is so necessary for the proper occupation of that great field of municipal activity opened to the modern municipality by the social development of the nineteenth century. There is great danger that the city may be hampered by the state in the exercise of powers which are necessary to municipal development. There is also great danger that the interests of the municipality will be disregarded by the state; that the municipality will be sacrificed to the state. In an age in which urban development has attained the dimensions which it has in the age in which we are living, this would be a serious matter.

**Constitutional Limitation of Legislative Power.** Two methods have been adopted to keep the necessary control of the state over the city within its proper limits. One, which is characteristic of the United States, has consisted in the attempt to assign in the state constitution a sphere of activity to the city into which the organs of the state government may not enter, and within which the municipalities may act free from state control. It consists in the first place in forbidding the state legislatures and, indeed, the authorities of the state government as a whole, to interfere in any way with certain matters which are intrusted to the municipal authorities or to the municipal people. Thus the constitutions of a number of the states of the United States forbid the state appointment of officers who are regarded as distinctly municipal in character. Thus, again, many constitutions forbid the legislatures of

the states to grant street franchises without the consent of the municipal authorities having control of the streets concerned.[1]

The most radical step which has been taken in this direction has been taken by the states of Missouri, California, Washington, Minnesota, and Colorado.[2] The constitutions of these states provide that the voters of certain cities, generally the largest cities, shall have the right to frame their own charters, which shall be amended only by the voters of the cities themselves. The courts, when called upon to interpret these provisions, have held that they affect only those functions of city government in the discharge of which the cities are not regarded as acting as agents of the state government. Thus the courts have held, as have also the courts of certain states in interpreting the constitutional provisions assuring to cities the right to elect or appoint their own officers, that these constitutional provisions do not affect such departments as the police department, education department, and that department of the city having in its hands the licensing of the retail sale of liquor, since these departments are not parts of the local government of the city. These constitutional provisions do not therefore prevent the legislature from organizing certain city departments as it

[1] For an enumeration of the states whose constitutions contain these and similar provisions, see Goodnow, "Municipal Home Rule," p. 60.

[2] See Oberholtzer, "Home Rule for our American Cities," Publications of American Academy of Political Science, No. 90.

sees fit, or from providing for the central appointment of the officers in charge of such departments. The courts have thus taken a narrow view of the sphere of local government. They have been obliged to take this view because of the necessity of considering the interests of the state as a whole. They have been unwilling to adopt a policy which would result in breaking up the state by releasing municipalities from all state control over matters which interest the state as a whole. Had they not taken the view that they have taken, had they construed these constitutional provisions as forbidding state regulation of police, education, and so on, they would have destroyed all state control over matters which unquestionably concern the state as a whole and not merely the city.

It cannot, therefore, be said that such constitutional provisions as those under consideration have been effective in securing to the cities freedom of action as to many matters which are popularly regarded as a part of municipal government. As to a series of other matters which are not only popularly but legally regarded as matters of city government, it must be said, however, that these constitutional provisions have been eminently successful. They have certainly secured to the cities protected by them a greater immunity from legislative interference than has been secured by any other device which has been adopted to diminish the control of cities by the legislature.

**Prohibition of Special City Laws.** The most common method, however, which has been adopted in the United States for limiting the control of the legisla-

ture over the city is to be found in the provision so frequently inserted in the state constitutions which forbids the legislature to pass special acts with regard to the affairs of cities.[1] By this method of limiting the state control over cities the attempt has been made to limit that control by providing that it shall be exercised only in a particular way, that is, through the passage of general and not special acts by the legislature. The exact degree in which the power of the legislature is limited by these constitutional provisions can be determined only by the determination of the questions: what is a special act under the constitution, and what are the subjects, that is, "the affairs of cities," which may not be regulated by a special act?

Hardly any of the constitutions defines a special act. The only one which makes such a definition is the constitution of New York which was adopted in 1894. This makes provision for three classes of cities, and then defines a special act as an act which does not apply to all the cities of a class. This constitution, however, differs from most of the constitutions in that it does not absolutely prohibit special legislation, but merely makes its passage by the legislature difficult.[2]

The determination of what is a special act is by most of these constitutions left for the courts to make. In the exercise of their powers of construction the courts have held that they are not bound by the form of an act. They consider themselves at liberty to go back of an act which is general in form, and to determine whether it is special in its application. If

[1] See Goodnow, "Municipal Home Rule," Chap. v.

[2] See *infra*, p. 96.

they consider it special in its application they do not hesitate to declare it to be unconstitutional. The courts have further generally recognized that it was not intended by these constitutional provisions to prevent the legislature from classifying cities. While in some instances the courts have insisted that the classification to be constitutional must be reasonable, at the same time they have generally adopted the view that classification by population is a reasonable classification. A reasonable classification of cities is, finally, constitutional even if it results in the placing temporarily of only one city in a class. This attitude of the courts has resulted naturally in not preventing a great deal of special legislation. So far as that has been the case the method of constitutional prohibition of special legislation has been ineffective. It would not be fair to say that it has been totally unsuccessful, but in some states at any rate, of which Ohio was until the very recent decisions of its Supreme Court a marked example, special legislation with regard to cities has been pretty nearly as frequent since the passage of the constitutional limitation of the legislative power as before. The recent decisions of the Supreme Court of Ohio have, however, departed from the usual rule of law and have taken the ground that under the constitution of the state, classification is not permissible, and a uniform system of city government is necessary.

The courts have also been called upon to determine, as in the case of the first two classes of constitutional provisions which have been mentioned, what are "local" or "municipal affairs." As a general thing,

however, they have laid more emphasis upon the special character of the act than upon the nature of the subjects with regard to which special legislation is prohibited. The result of their decisions is that acts which are held to be special with regard to any matter attended to by a city government, whether from other points of view that matter may be considered as local or general in nature, are absolutely prohibited.[1]

It cannot, therefore, be claimed that the commonly adopted method of limiting the powers of control of the legislature over the city in the United States has been successful. The attempts of the people have been largely frustrated by the attitude which the courts have assumed with regard to the constitutional provisions. We cannot, however, here, any more than in the case of the other constitutional provisions referred to, blame the courts for the attitude which they have taken. In the first place, local development involves a large amount of special legislation under any scheme of enumerated local powers. The mere prohibition of such special legislation will not, of course, result in making it unnecessary. In the second place, the control of the legislature was the only state control which existed in our general administrative system. If the courts, therefore, should construe the constitutional provisions as destroying this control, there would be great danger of an entire disintegration of the state government.

A word should, perhaps, be said in regard to the

[1] For a fuller treatment of this subject, see Goodnow, "Municipal Home Rule," p. 77.

method of limiting the power of the legislature over cities provided by the last constitution of the State of New York. This method is based on the idea of defining what is a special act, and of giving to the city affected by it a suspensive veto of such act. This veto may be overcome by the legislature by repassing the special act vetoed. This method has been successful in making impossible a good deal of the most objectionable special legislation; it has not, however, prevented the passage by the legislature of special acts which the party in control of the legislature has considered of great importance.

It would, therefore, seem as if any method of limiting the control of the state over the city which is based upon a constitutional denial of the power of the state government to interfere in municipal matters were foredoomed to fail. It would seem that to solve this problem of state control over municipalities the attempt should be made so to organize the control that the state authorities may be removed as far as possible from the temptation to exercise their power of control, but that the existence of their power should not be denied.

**Necessity of Larger Municipal Powers.** From what has been said, it will be seen that the main causes of the improper extension of the control of the state over the cities in the United States have been the narrow powers which the city has possessed, and the rule of strict construction of its powers which has been adopted by the courts. We may conclude, then, if we may judge from American experience, that the most

effective way of diminishing the actual exercise of the state control over the cities without denying its existence is for the legislature to abandon the enumeration of the powers of municipal corporations and to adopt the method of general grants of power to them. The state in the United States where the prohibition of special legislation has been worked out most successfully is perhaps the State of Illinois. The legislature of the state, in the municipal corporations act of 1872, passed by it to comply with the provisions of the state constitution, abandoned the ordinary method of a narrow detailed enumeration of the powers of municipal corporations and granted to the bodies to be organized under the act much wider powers than have been granted by almost any other general municipal corporations act in the United States. The result has been that in Illinois special legislation, while not a thing of the past, has diminished very greatly in volume. In Ohio, on the other hand, a general municipal corporations act was passed somewhat earlier, which descended into the most minute details and granted very narrow powers. The result was the passage by the legislature of a great deal of special legislation, immediately after the adoption of the constitutional provision prohibiting it from passing such legislation. This legislation was not, however, for a long time regarded as special by the courts. European experience also goes to prove that the interests of both the city and the state would be subserved by the grant to the cities of large powers of local government. The grant to cities of large powers of local government need not result in any

state disintegration if provision is made in other ways for the exercise of the state control over cities which we have seen must be provided for.[1]

**Ineffectiveness of Legislative Control.** The control of the state legislature over cities, as it is exemplified in the United States, has finally shown itself to be ineffective even from the point of view of the interests of the state itself. Its ineffectiveness has been particularly marked in the financial administration. The usual rule of law in the United States is that cities may not issue negotiable bonds without express legislative authorization. Cities may not, therefore, become indebted to any important degree without the permission of the state legislature. The whole matter of municipal indebtedness is entirely within the control of the legislature. But the legislature has so exercised, or rather so failed to exercise, its powers of control that the people have had to step in and themselves fix the limit beyond which the legislature may not permit the cities to become indebted. Almost every one of the constitutions of the states of the United States contains provisions which limit the debt-making capacity of the cities within the state.

The ineffectiveness of the legislative control is seen also in other directions. Thus the attempt of the legislature to control the action of cities in the regulation of the sale of liquor has been almost universally unsuccessful. Where prohibition laws have been passed by the legislature it is a notorious fact that the cities

[1] See, on this general subject, "A Municipal Program," *passim*.

in the state quite commonly neglect to enforce them. Where the legislature of the state has attempted to prohibit the sale of liquor in the cities on Sunday, the attitude of the cities is often the same.

Sometimes the failure of the legislative control has been followed by the same action on the part of the people of the state as in the case of municipal debts; that is, a prohibition has been inserted into the constitution. In the case of municipal indebtedness such a limitation of the power of the legislature has been successful. In the case of liquor laws it has been unsuccessful. The reason is obvious. In one case the prohibition needs no further action for its enforcement. Any attempt on the part of the city or state legislature to increase the city debt beyond the constitutional limit can be declared invalid by the courts. In the case of liquor laws the prohibition needs positive action on the part of cities in order that it be effective. While the courts can prevent positive action they are not always in a position to enforce such action. Other cases—in the field of education, of public sanitation, public charities and correction —might be mentioned where the legislative control over cities has been just as ineffective in securing the enforcement of the law as in the case of liquor legislation. Thus in the State of New York the legislature attempted in 1850 to establish a general system of local boards of health. But, although the acts passed "were mandatory in form, there being no authority to enforce them, but few local boards were established."[1]

[1] Fairlie, "The Centralization of Administration in New York," p. 130.

**Central Administrative Control.** The failure of the legislative control in securing from the cities the positive action necessary to the enforcement of law was so marked in the case of prohibition laws that the states in some cases abandoned the legislative control and attempted to secure the desired results by taking from the cities the power to enforce the law, or by subjecting its enforcement, when left in the hands of the city, to the supervision of state administrative authorities. The movement so characteristic of the middle of the last century—a movement whose influence may still be felt—in the direction of state police in cities was largely due to the failure of the cities to enforce liquor legislation.[1] A belief that the cities had failed to enforce state election laws has also been partly, at any rate, responsible for the appointment by the state of officers in cities for the administration of the election laws. This has been done for example in the city of New York.

There are also cases where the state has not taken into its own hands the management of matters at one time in charge of the city, but has subjected them to a state control. Thus in the State of New York the management of the civil-service laws by cities is subjected to the control of a state civil-service commission. In a few states, such as Ohio, the finances of the cities have been subjected to a similar state control.[2] In a large number of states the management by cities of schools and charitable and correctional institutions

[1] See Sites, *op. cit.*

[2] See Orth, "The Centralization of Administration in Ohio," Columbia University Studies, etc., Vol. XVI, p. 470.

must be conducted in accordance with rules laid down by central state authorities, such as state school boards and boards of charities and state superintendents of schools, who also have rights of inspection and supervision of the actions of city officers.[1]

If we take this movement in the direction of administrative centralization together with the constitutional limitations of legislative power which have been described, we cannot fail to reach the conclusion that the state control over the local corporations in the United States is being changed from a legislative to an administrative control. That such a change will be a beneficial one cannot be doubted. If we are to judge by the conditions of European municipalities, where the control of the state is almost entirely administrative in character, we must admit that, as compared with the legislative control to be found in the United States, the administrative control offers to the cities opportunities for self-development as organs for the satisfaction of local needs, of which they are deprived under a system of legislative control, and at the same time provides, for matters of interest to the state as a whole, a means of control far more effective than the legislative control. The cities of Europe at the present time do much more than do American cities for the benefit of the local inhabitants, and, at the same time, are prevented from neglecting to enforce state laws, the enforcement of which is intrusted to them.[2]

[1] See *infra*, Chaps. x and xi.

[2] One cannot read the interesting and instructive description of municipal life contained in Dr. Shaw's books on "Muni-

**Control of Political Parties.** The subject of the state control over cities may not be dismissed without a consideration of the effect it has on the attitude of the political parties. For a control actually exercised by the state political parties over the city government, while not legally a state control, so long as the parties are not organs of the state government, is from the point of view of the real political system a state control. For it is unquestionably a control, and it is exercised in the interest of the state and national political parties, and, therefore, in the interest of the state and nation.

It is surprising in view of the extent of this party control over cities that its exercise was for so long a time unperceived. It is only within comparatively recent times that the urban populations of the United States have become really aware of the fact that their interests were being sacrificed by the state and national parties to the interests of the state and nation. One of the first public documents which called attention to the evils resulting from the interference of state political parties in municipal government was the report which was drawn up by the commissioners appointed in the State of New York in 1876 to devise a plan for the government of cities in the State of New York. Here it is said, "it is then through the agency of the great political parties . . . that all mu-

cipal Government in Great Britain," and "Municipal Government in Continental Europe," without feeling that the large sphere of home rule of the European cities is very largely responsible for their great activity in so many directions that have not been entered upon by the cities of the United States.

nicipal officers are and have long been selected. It can scarcely be a matter of wonder then that the present condition of municipal affairs should present an aspect so desperate."

The remarks of this commission, however, excited little comment and were followed by less results. But about 1880 the cry of non-partizanship in municipal elections began to be raised and is now heard throughout the length and breadth of the land. The wonder is not that this cry is raised, but that it was so long before it was raised. For no country which has attained any degree of urban development can tolerate conditions which result in a complete and permanent sacrifice of the interests of its urban population. The conditions of the middle ages will be repeated. Then, the struggle on the part of the cities was for commercial and industrial freedom; in this age, it will be for political freedom.

How now shall we attempt to limit this extra legal control of parties over city government? We cannot legislate them out of the field. But while we can do nothing by legislation positively to expel the state parties from city government, we can do much by legislation to diminish the attractiveness to parties of city government. Attention has already been called to the fact that the attitude of the political parties toward city government results largely from the position of the city. It has been suggested that a change in the position of the city would result in a change in the attitude of the party. This is so not merely so far as concerns the measures relative to cities passed in the legislature by the party in control of the legislature. It is so also so far as concerns the behavior

of the party organization outside of the legislature. If our state control over cities is an effective one the state party is not of necessity forced to busy itself with municipal politics. Thus, if a state prohibition party by getting control of the state government can insure the enforcement of a state liquor law because of the fact that the state government has an effective control over the actions of cities, such party is not obliged to try to get control of the city government as it would be were the city not subject to an effective state control. What is true of liquor legislation is true in the same way of any matter in which a state party is interested.

The subjection of the cities to an effective state control would thus remove one of the motives which state parties have for interfering with city government. It would not, of course, remove all such motives, but it would unquestionably make it easier for the members of the party, who in the end of course determine party action, to consider the needs of the city apart from the needs of the party, which they naturally believe to be identical with the needs of the state and nation. Indeed, all that we can hope to accomplish, in diminishing the extra-legal control of the state parties over city government, is to make it easier for the citizen, who is both party member and municipal voter, to consider city questions as having an importance in and of themselves irrespective of their effect on the state party to which he belongs.

**Separate City Elections.** The change in the position of the city which is gradually being made in our law, and the substitution of the new administrative for the

old legislative control are, however, not the only ways in which this can be done. The attempt has already been made to separate municipal from state elections in point of time. Originally municipal elections were commonly held in the spring, as they are now in a few of the large cities and in quite a number of the small cities, while state and national elections were held, as now, in the autumn. But in the case of the large cities, of which New York is an example, the time of city and state elections was made the same because, as it was alleged, it was difficult to rouse sufficient interest in a spring election to get out a representative vote. It may well be, however, that the change was made at the behest of the parties, which felt that with the two elections at the same time they stood a better chance to get control of the city government because state and city issues would be confused.

The New York commission appointed in 1876 to investigate municipal government in that state, suggested in its report that state and city elections be separated. Nothing was done about the matter in New York, however, until 1894, when, by the constitution adopted in that year, it was provided that the city elections should take place in the odd years and state elections in the even years.[1] This plan has the advantage of not requiring two elections in the same year, and at the same time of separating state and city elections. It has been quite successful. Since its adoption it has been possible, as it never was

[1] The only important exception to this general rule is that the elections of state assemblymen take place annually, and thus at the same time as the city elections.

before, for the municipal voter to leave his state party and give his vote at the city elections for the organization which he believes most likely to regard city interests from the city point of view. National and state political parties have not by any means been driven out of municipal politics, but the independent vote in city matters has been greatly increased. The idea which lies at the base of the election provision of the New York constitution has been also made the foundation of the present New York primary law. It is provided in this law that a person's actions in municipal politics shall not affect his standing in his state party. In Massachusetts the attempt has been made in some of the cities such as Boston to separate the city from the state and national elections by providing that the city election shall take place one month after the state election. While this method does not seem to have been followed by the same success as has followed the New York method, at the same time quite an important change in the vote may often be noticed. A Republican majority, for example, in the state election may be followed by a Democratic majority in the municipal election a month later.

It is, however, doubtful whether anything more can be done by legislation than to offer a greater opportunity to the voter to act independently of his state party in municipal matters. Most of the work that can be done in this line must be done as a result of the education of public opinion. As soon as city dwellers become convinced that their welfare is bound up in the diminution of the control of state parties in cities, the control of the party will diminish. There

is much evidence for the belief that this conviction is becoming stronger than it ever has been. The recent extraordinary development of urban life has brought it about that municipal questions are assuming an importance which they have never had before, and are forcing themselves upon public attention with greater frequency and greater urgency. The cry for non-partizanship in municipal matters which is every day becoming more insistent is evidence of the fact that the voter is beginning to see things in their right proportions. The national and state political parties will have to give heed to the wishes of the urban population by the mere reason of its voting strength, and the people of the cities will force the state parties either in their local organizations to adopt local policies, or to retire from local politics and give place to municipal parties. Municipal questions will thus secure a consideration apart from their relation to the state and nation, and an opportunity will be afforded for the expression and execution by the local communities of the local will.

# CHAPTER VI

## THE PARTICIPATION OF THE PEOPLE IN CITY GOVERNMENT [1]

**Universal Suffrage for City Elections.** It is proper to assume that the ideal system of city government is that which will permit of the widest opportunities for the satisfaction of those needs that result from the presence of a large population in the municipal area. In so far as the city population is intelligent, and in so far as the political ideals of the state in which the city is situated are democratic, it is proper, further, to assume that the ideal system of city government is that which will permit most easily of the expression of the will of the municipal people and the putting into execution of that will with regard to all municipal matters.

This problem of the satisfaction of municipal needs and the realization of the aspirations of the urban

[1] Authorities: Eaton, "Government of Municipalities;" Oberholtzer, "The Referendum in America;" Meyer, "Nominating Systems;" Dallinger, "Nominations to Elective Office in the United States;" "Detroit Conference for Good City Government, 1903;" Tolman, "Municipal Reform Movements."

population must, however, be studied in the light of the conditions which exist in urban communities. The problem is distinctly an urban problem. It cannot satisfactorily be solved, if solved at all, by attempting to apply to it principles which are derived from a consideration of other than urban conditions. We must, therefore, bear in mind in solving the problems connected with the participation of the people in municipal government that we have a social basis, for the government which we desire to establish, which is unfavorable to the development of good government. It has been shown that the social qualities that are developed by urban life are not the qualities that favor good government. Our glance at the history of the development of cities has shown that the apparent tendency of all cities is to fall into the hands of an oligarchy, and that this tendency is apt to be aggravated by the control which is exercised over the city in the interest of the state as a whole. These facts must be borne in mind when we attempt to determine the question as to the degree and manner of the participation of the people in municipal government.

The first branch of this subject to demand consideration is the question as to how general shall be the participation of the people in the city government from the point of view of the people themselves. As the city is a part of the state government this question cannot be answered as the result merely of a consideration of the city in isolation. If the general system of administration of the state in which the city is situated is a decentralized one, one of local self-government, and, as a result, cities are important agents

of the state government and are not subject to an effective state control, it would seem to be necessary that the same degree of participation in the government which is accorded to the citizens of the state for state matters should be accorded to the citizens of the city for city matters. If universal suffrage is under such conditions the rule in state elections, it should be the rule in the city elections. For if the suffrage for state and city matters is different the opportunities for conflict between the state and city will be increased in number.

If, however, the city is not an important agent of state government, or if it be subject to an effective state control, it is not necessary that the state and city electorate be the same. For either, as under the first supposition, city voters will elect officers whose powers are merely local or municipal; or, as under the second supposition, the state, through its control over cities, may prevent the city from so making use of its powers of state agency as to bring it into conflict with the state. In either case the difference in the state and city electorate will not have the effect of aggravating the differences between the state and the city.

Of course, it must not be understood that the mere fact that the state and city electorates are the same will absolutely preclude the existence of conflict between the state and the city. Even where the state and city electorates are the same, as, *e.g.*, where universal suffrage is adopted for both the state and the city, the fact that the desires of the citizens of the state as a whole may differ from those of the citizens of a particular city will often result in producing this

conflict. It cannot, however, be denied that the chances of this conflict are considerably increased where the state and city electorate are not the same.

The United States is a country whose administrative system, so far as the states of the Union are concerned, is a decentralized one. The city in the United States is a very important agent of state government and is at the same time not subject to an effective state control. The electorate of a city in the United States should, therefore, be the same as the electorate of the state in which the city is situated. Inasmuch as the electorate of the states in the United States is practically based on the idea of universal suffrage, we must conclude that universal suffrage is the proper basis of the city electorate so long as the city retains the position which is now accorded to it. In the United States, however, the period of residence within the city required of the municipal voter is as a general thing quite short. The result is that it is perfectly possible for a large vote to be cast in the cities of the United States by a more or less floating population which has no real abiding interest in the affairs of the municipality for whose officers they are voting. How large this floating population actually is, and what influence it has upon city elections in the United States, it is difficult to say. But it is at any rate certain that this period of residence is often too short, and it would be perfectly proper, even while accepting universal suffrage for cities, to increase the length of the period of residence necessary to vote at city elections. For example, it is usually the rule that one may vote at a state election who has resided for

a year in the state, a month or two in the county, and a certain number of days in the election district where the vote is cast. This rule is applied usually without modification to elections for city officers. The result is that it is perfectly possible for a citizen of the state to vote at a municipal election, although he may have been a resident of the city for not longer than the period required for residence in the county for state elections. It would not be violative of the principle of universal suffrage for cities to require for voting at city elections a period of residence within the city equal in length at least to that within the state which is required by the state for state elections. The adoption of such a policy would not, under the ordinary state constitution as interpreted by the courts, require a constitutional amendment.

**Elected or Appointed City Officers.** The second problem connected with the participation of the people in city government is, How general should this participation be, from the point of view of the officers to be elected by the people? In answering this question we must remember again that we are considering urban communities. We should not apply to city elections principles merely because their application has been successful in other than urban communities. The conditions existing in the large centers of population are quite different from those which exist in rural districts. Owing to the more permanent character of the population in rural districts, the feeling of neighborhood is much stronger there than in the urban communities. The people, knowing personally most

of the candidates who present themselves for office, are in a position to make a wise choice of officers. In the cities the feeling of neighborhood is not strong; people cannot in the nature of things be acquainted with many of the candidates who present themselves for office where many of the officers are elected. It is therefore difficult, if not impossible, for the people in cities to know much about the merits of any large number of candidates.

In urban communities, further, offices are much more numerous than they are in rural districts, and if a great number of offices are to be filled by election, many of which are subordinate and comparatively unimportant, even the most intelligent elector is apt to become confused and is liable to rely upon the party with which he acts in the state or national issues, regardless of the fact that the officer for whom he may be voting has no duties which exercise any important influence on the issues of state and national politics. The control of the state and national party over the city is increased by providing numerous elective city officers.

Finally, the administration of an urban community is much more complex than that of a rural district. The presence of a vast number of people in a small area of itself presents problems which require for their solution a large amount of technical knowledge and skill. The rural highway becomes a city street which must not only sustain an immense amount of surface traffic to which the rural highway is not subjected, but must also serve as a means of conveying under its surface gas, water, electricity, and sewage.

The care of the public health in rural districts is a comparatively simple matter. Unobstructed light and free circulation of air may be trusted to act as preventives of most diseases. In the city, however, great care must be taken to prevent the breaking out of disease; energetic measures must be taken to stamp out contagious diseases because of their greater liability to spread and because of the rapidity with which they spread if once allowed to get a foothold.

Not only do branches of administration for which there is some provision in rural districts become more complicated in urban communities, but also many matters which in rural districts can be left entirely to private initiative become of necessity in the cities the subjects of governmental action. In attending to some, the highest amount of technical skill is required; in attending to all, harmony in administrative action and continuity in administrative policy are absolutely indispensable if advantageous results are to be expected. The elective method is not the proper one for securing the necessary technical skill. Evidence of technical skill does not usually attract votes. The elective method is not the proper one to secure that administrative harmony and continuity which it has been said are necessary. For the election of many officers who are not subject to any common control, produces an unconcentrated government in which harmony is impossible of attainment; and the short terms which are usually connected with elective offices are apt to break the continuity of administrative policy.

The experience of the cities of the United States

goes far to corroborate the conclusions which are derived from a theoretical consideration of the question. It has been shown that the earliest form of municipal government which was established in this country was, for some reason or another, unsatisfactory, and that changes were made in the system about the middle of the nineteenth century. One of the changes which were then made was, it will be remembered, the application to urban communities of the elective system which had worked so satisfactorily in the rural communities of the country. One of the reasons for the change may be found in the abuse which was made of the appointing power, through the exercise of which most of the offices in the cities were originally filled. The conclusion was reached about the year 1830 that the method of appointment to office was not as good a way of filling offices as election by the people. The result was that about the middle of the century the elective principle was generally introduced into our governmental system in the cities as well as in the open country.

The experience of the people of our cities, soon after the elective principle was generally introduced into the city organization, was not a happy one. It led them in many cases to abandon the idea of popular government for cities and to resort to an extreme centralization in the hope that the state government, under which the larger cities were so generally placed, might represent a more enlightened opinion than it was believed could be found in the cities themselves. This centralization was in some cases administrative, in other cases it was legislative, but in all cases the

city was deprived of many of its rights of local autonomy.

The condition of the cities of the United States under the elective system was thus worse than under the appointive system. This seems to have been almost inevitable. The cause of the abuse of the appointing power, which was one of the reasons for the adoption of the elective system, was the necessity of building up the great political parties which sprang up in the United States during the first half of the nineteenth century. The need of maintaining these parties was no less after the adoption of the elective system than it had been before. The cause of the trouble not having been removed, the trouble continued. The parties, instead of making use of the appointing power as they had done in the past, adapted themselves to the changed conditions and were able, through their control over city elections, to perpetuate and even to aggravate the evil conditions which had existed prior to the adoption of the elective system.

The adoption of the elective system not only failed to remove the cause of the evils from which the cities had suffered. It also showed itself absolutely inapplicable to the larger cities. It was impossible to obtain the necessary technical skill under the system. City public works, for example, were notoriously worse managed than similar works of private corporations. Administrative policy had no continuity in cities. Conflicts between the various elective offices were in some cases so severe as to result in a complete governmental paralysis.

The experience of foreign countries also goes far toward proving that it is wiser to confine the power of the municipal voter within very narrow limits. In England, France, Germany, and Italy hardly a single municipal officer, who has to do with the technical part of the administration, is elected by the people of the cities. The participation of the people in city government is confined to the selection of a council, in which are vested almost all the powers of government. The various administrative officers in the municipal organization are appointed directly or indirectly by the city council.

The city government of the United States is, however, at the present time very largely based upon the idea that the voters of the city shall vote for many if not most of the important municipal officers. The municipal code which has been recently adopted in the state of Ohio is a good example of the extent to which the elective principle is sometimes applied. At the same time the tendency to be seen in most of the later charters which have been adopted is in the direction of confining the participation of the people in city government to a vote for the mayor, the members of the council, and perhaps the most important financial officer of the city. In so far as this is the case we can congratulate ourselves that our faces are turned in the right direction.

**Referendum and Initiative in City Matters.** The municipal voter may finally participate in city government not only by electing municipal officers but also by himself aiding in the determination of the

policy of the city. He may be called upon to vote directly upon propositions which are laid before him. This method of participating in the city government is called the referendum.

The referendum is, in the case of the American town meeting, a very old institution. In the town meetings throughout New England the people not only elect the officers of the town but as well determine what amounts of money shall, within the limits of the powers granted to the town by the state, be expended upon the various branches of town administration. During the course of the nineteenth century the principle of the referendum was extended to cities in a number of special cases. Thus, for example, it is quite common to find provisions in the American state constitutions prohibiting a city or other municipal corporation from contracting any debt or pledging its faith or loaning its credit, except with the approval of the majority of the city voters. In some instances this approval is necessary for the levy of taxes. A similar referendum is often necessary for the acquisition or alienation of city property by the city authorities; for the determination of the question whether liquor shall be sold within the municipality, and for the grant to corporations of franchises to use the streets.[1]

In other cases, while no provision is made for the referendum in the state constitution, it is the practice of the legislature to submit special acts with regard to cities to the people of the cities concerned. The

[1] See Oberholtzer, "The Referendum in America," for an exhaustive consideration of this subject.

question of the constitutionality of this practice has very frequently been raised, but the tendency of the courts at the present day is to recognize that it is perfectly constitutional so long as it is confined to local matters.[1]

Finally, four states, namely, Iowa, California, Nebraska, and South Dakota, have granted to the local legislative authorities the right to refer questions to the people of the various localities. In one state, Nebraska, no ordinance which has been passed by the local legislature shall go into force until thirty days after its passage. "If within that time a petition signed by fifteen per cent. of the voters of the city or other local district asking for a referendum on the subject is presented to the duly authorized officers it must be submitted to popular vote at a regular election. Again, if the number signing the petition equals twenty per cent. of the voters a special election may be called. Urgent measures relating to 'the preservation of public peace or health, however, are expressly excepted from these provisions.' "[2]

The grant of this power of referendum to the people is also accompanied in some instances by the grant of the initiative. On the petition of a fixed percentage of the people a given ordinance or other legislative measure must be submitted to them for their action. Such an initiative is provided by the recent charter of the city of San Francisco. This charter is one of the so-called "free-holders charters" framed and adopted by the people of the city of San Francisco in accordance with the provisions of the state

[1] *Ibid.*, p. 321. [2] *Ibid.*, p. 309.

constitution, guaranteeing to them the right to draw up their own charter.

The effect of the grant to the people of the referendum seems to be a contraction rather than an extension of the sphere of municipal activity. This is particularly true where the question of the levy of a tax is to be determined by popular vote. In the case of the incurring of debts, however, the referendum is said not to have the same effect. The people seem to be unwilling to bear the immediate burden of taxation no matter how meritorious may be the object for which the tax is to be levied. They are either willing to throw upon future generations the burden resulting from the incurring of indebtedness, or they are so ignorant as to the amount of the city's indebtedness that they are unable to act intelligently when a proposition to incur new debt is submitted to them. It cannot be said that our experience with the referendum in this country, outside of the town governments of New England, is such as to induce the belief that a wider application of the principle will be accompanied by great benefit.[1]

**Methods of Nomination.** The purpose of giving to the people of cities the right to elect their own officers and to determine the policy of the city is to secure the determination of municipal questions in accordance with the best interests of the city. The city

[1] The referendum, however, would probably have the effect of diminishing the influence of party. See Lowell, "Government and Parties in Continental Europe," II, pp. 313 and 326.

in the United States, however, as has so often been said, has been in the past very largely governed by the state and national political parties which naturally have at heart the interests of the state and nation rather than those of the city. Such being the case, the mere grant to the municipal people of the right of electing city officers and of determining in other ways the municipal policy, is not sufficient to secure the management of city affairs in the interest of the welfare of the city. If we desire to secure this result, something further must be done in addition to giving the municipal people the right to vote. Mr. Dorman B. Eaton, in his "Government of Municipalities," suggests as a remedy for the evils resulting from the nomination of municipal officers by the state and national parties, what he calls "free nomination."

**Nomination by Petition.** In support of his plan of free nomination Mr. Eaton says:[1] "There is no just basis for allowing parties to control their [that is city] nominations, but a manifest need of enabling all citizens to freely exert their influence both as to nominations and elections irrespective of party relations and interests. We have allowed the development of so haughty a despotism on the part of parties that their majorities now claim a right to dictate all the nominations and very largely the votes of their adherents. What should be represented by the candidates in city elections of city officers is neither parties nor factions nor party principles, but the public opinion policy and interests of the city and its resi-

[1] P. 210.

dents concerning their own affairs regardless of party affiliations. This true representation can be secured only by means that shall prevent coercion by party managers and majorities and give the people a real freedom in the nomination and election of their city officers. . . . No political right is clearer than that of all citizens to freely nominate such candidates as they prefer. Every voter would be the sole judge for himself as to how far it is a patriotic duty for him—and there may be such a duty—to coöperate with others in election. Yet city parties quite generally, and their managers and leaders almost constantly seek not only to make nominations decisive of elections, but to deprive the citizens of all real liberty to vote effectively for any other candidates save those which these parties impose upon them."

What Mr. Eaton thus pleads for under the name of free nomination is nothing more than nomination by petition. The question of nomination by petition has arisen in this country very recently as a result of the adoption of an official ballot to be printed and distributed by state officers at state expense. This system originated in Australia, and came to be known to us in this country mainly as a result of its being incorporated into the English ballot act of 1872. In its English form it provided in no way for the recognition of parties. Nominations were to be made by two proposers and approved by at least eight voters of the district for which the election was to be held. When the question of the adoption of the official ballot in the United States arose, the demand was made that English methods be considerably modified. They

were modified in the first place by giving the party legal recognition. The party was defined as an organization which had cast a certain percentage of the vote at the last election. The convention of a party making a nomination was to certify its nomination to the state ballot officers, and the candidates of such party were placed on the ballot in one column. This party column ballot as it was called indicated to the voter the party to which the candidates belonged, since at the head of the column was either the name of the party or a party emblem.

Provision was made finally in the American ballot acts for nominations not made by any one of the regular parties. Such nominations were made by means of a petition which was to be signed by a number of persons varying with the territorial extent of the district over which the office, for which the nomination was thus made, had jurisdiction. The number of signatures to the petition necessary to make one of these independent nominations was, as a general thing, made very much greater than was the case under the English ballot act of 1872. The reason that was offered for demanding such a large number of signatures was that under our ballot acts, different from the English ballot act, the state is to pay for the expense of the ballot. In England the expense of the ballot is defrayed by the candidates. It was believed that in this country it would not be proper to adopt the English method of throwing the cost of the nomination on the candidate. The number of signatures required for a valid nomination petition was therefore made

quite large, in order to prevent inconsiderate nominations.

Mr. Eaton's contention is that we should adopt the English plan. We should not recognize the nominations of party conventions; we should reduce the number of signatures necessary to a valid nomination petition, and should arrange the candidates in alphabetical order under the offices for which they are nominated and not under the party column. It must, however, be remembered that the conditions existing in the United States are very different from the conditions existing in England. In the first place the number of offices to be filled by election is in England much smaller than in this country. It is very doubtful if in thickly populated districts where the voting population is large and not very intelligent, where the neighborhood feeling is not strong, and where the officers to be chosen at one election are many in number, the ordinary voter can intelligently choose the officers to be chosen except with the aid of a party. This he would not have if the nominations were not put into a party column. It is also extremely desirable that the officers elected at a given election should so far as possible have the same purposes in view, and, therefore, should belong to the same party.[1] This result can be secured more easily through the party column than in any other way.

Mr. Eaton's plan of free nomination is, therefore, not a plan which under our present system of city

[1] This party need not, of course, be one of the state and national parties but may be a city party.

government would appear to be applicable with advantage. With the relations of the cities to the state as they are at present, with a large number of offices to be filled at any city election as is the case at present, it would seem as if this system of free nomination, or nomination by petition, would be utterly inadequate to produce the result which is desired. If the relations between our cities and the state were rearranged and the number of officers to be elected at a given election were reduced it is altogether probable that the English system of nomination could be introduced with profit.[1]

**Direct Nomination.** Another method of regulating municipal elections which has been proposed is that which is known as direct nomination. By the system of direct nomination, the attempt is made to dispense entirely with the party convention and to permit the members of the party to nominate directly. The most interesting experiment which has been made in this country along this line has been made in Minnesota.[2] The Minnesota system provides that nominations to be made by political parties shall be made in accordance with the provisions of the primary election law of the state. A political party within the meaning of the act is one which gets at least ten per cent. of the vote cast at the last election for its leading candidate. In a general way the principles at the basis of this

[1] See Goodnow, "Politics and Administration," p. 30.

[2] See Meyer, "Nominating Systems," for a description of methods of direct nomination. In the appendix to this book will be found a copy of the primary election law of Minnesota.

law are these: On the day provided for registration for the public elections every one who presents himself for registration is permitted to cast a vote for the choice of the candidates of the party with which he then desires to affiliate himself. Every one who has the right to vote may affiliate himself with any one of the political parties recognized by the act regardless of his conduct in the past. The ballots for this direct primary election are supplied by the state. Any one may present himself as a candidate at the primary election who is eligible to the office for which he seeks to be a candidate, who shall have filed with the proper officer an affidavit to the effect that it is his *bona fide* intention to run for nomination for such office and who shall have paid to the proper officer a sum of money, the amount of which shall be regulated by the importance of the office for which he desires to be a candidate. The vote is an absolutely secret vote, similar to the vote which is had in the case of the public elections. The candidates at the primary election receiving the highest number of party votes are declared to be the candidates of the respective parties, and are placed then upon the official ballot for the public elections.

This method of nominating candidates was adopted in the year 1899 for counties having over 200,000 inhabitants, being limited to city and county offices and to the position of member of the state legislature and of congress. There was only one such county in the state, *viz.*, the county of Hennepin which contained the city of Minneapolis. The first election under the system took place in the year 1900 and resulted in the

election of a mayor whose administration was extremely unsatisfactory. All the members of the city council and all the other officers elected, however, were satisfactory. The people of Minnesota did not, therefore, believe that the experiment had failed. At the next session of the legislature the law was made applicable to all the state, except for state officers such as governor, secretary of state, and so on. There was another election held under the system in 1902. The results were extremely satisfactory, and the attempts which were later made in the legislature to repeal the law were unsuccessful.[1] The question of direct nomination has become an extremely important one in the state of Wisconsin also, and there is every indication that the legislature of that state will soon put upon the statute book a law somewhat similar to the law which has just been described.

**Regulation of Parties.** A third method which has been devised for changing the present system of nomination is that of the regulation of the existing party nomination operations by act of the legislature and their subjection to the control of the courts. This is the method which has been adopted in the state of New York. The present primary law of the year 1899 provides that the primary elections of the state parties, which are defined somewhat as under the law of Minnesota, shall be held in accordance with its provisions. This law offers the voter, at the time he registers for the state elections, the opportunity to register

[1] See "Detroit Conference for Good City Government of the National Municipal League," p. 32.

himself as an elector of any one of the recognized political parties. In order that the party affiliations of voters may be kept secret the voter is provided with an envelop in which he inserts a slip of paper indicating the party with which he wishes to affiliate himself. This envelop is sealed and deposited in a ballot-box, and from the envelops so deposited the rolls of the different parties are made up. Provision is made in the act also for a subsequent registration which may take place up to within a given time prior to the date of the primary election. Such provision was necessary because the registration for the purpose of voting with the party takes place in the autumn of one year, the primary election of that party, nine or ten months later. All of the operations at this primary election, together with those of the conventions which are the result of such primary election, are subject to the control of the courts in much the same way as are the state elections. This system of primary elections does not thus do away with party conventions, though it is stated in the law that the city, village, or county organization of any one of the parties may adopt direct nominations for city, village, or county officers if it sees fit.

It is difficult to say exactly what has been the effect of the subjection to the control of the courts of the operations of the parties in the nomination of their candidates. On the whole it may be said that there is much greater satisfaction exhibited by the general voter with the actions of the party than was the case prior to the adoption of the law. So far as the effect on the municipal elections is concerned it may

be said that it is good. Since the adoption of the legislation it has been much easier for the independent voter to release himself from the domination of the party than was the case before. In the city of New York, for example, the independent voter has had very much greater opportunities since the passage of this legislation to make his voice felt in the management of city affairs. This is largely due to the statement in the law that one's position in the state party is in no way imperiled by the action which he may take in a municipal election.

**City Parties.** It is very doubtful whether it is possible by means of any scheme based upon legislative action to secure to the independent voter at municipal elections the control of city affairs. The only thing that can be done is to make it easier for him to relieve himself from the domination of the political party. The desired end of securing the management of city affairs, apart from considerations of national and state politics, can be secured therefore only through the voluntary coöperation of the members of both the great political parties irrespective of any methods which may be provided by the action of the legislature.

**Fusion in New York City.** There have been two important methods of such coöperation to which it is desirable to call attention. One of these has received possibly its highest development in the city of New York. More than ten years ago a large number of voters became convinced that it was absolutely impos-

sible under the conditions which existed in the city to secure good city government through the agency of either one of the great national and state political parties. The attempt was then made to form a new political organization, not connected with either of the parties, which should enter the field of politics only on the occasion of municipal elections. The first attempt that was made in this direction was, as is usually the case with such movements, unsuccessful. Subsequent to the defeat of this municipal party, and in 1894, the constitution of the state of New York was so changed as to separate municipal from state elections. Immediately after the adoption of the constitution the conditions in New York were so bad that an attempt was made this time to unite the elements opposed to the dominant political party in the city. This attempt was successful, and the government presided over by the late Mayor Strong was inducted into office. The coalition which secured the election of Mayor Strong was, however, multi-partizan rather than non-partizan. In the election of 1897 the attempt was again made to organize a political party for the city which, from the point of view of national and state politics, was distinctly non-partizan. This attempt was a failure, owing, as many believe, to the failure to unite with one of the political parties within the city. Since that time the Citizens' Union, as the new political organization was called, has remained in existence. It has, with the course of time, appealed to more and more people, and, as a result of the recognition of its mistake in 1897, has endeavored so far as may be to unite with the minority state

political party in the city. It was successful at the polls in 1901, but lost the election in 1903.

The administration of the city, which, during the years 1902–4, was conducted by the candidates of the Fusion party, as it is commonly known, was, in the opinion of most of those competent to judge of the matter, an administration which had in view, as far as that was possible, the interests of the city alone, and was actuated little, if at all, by considerations of national and state politics. The city, as a result, had a better government than it had had in the memory of its oldest citizen,[1] and the people of New York believe that they have been successful in solving the question of the non-partizan administration of city government. However discouraging to the advocates of non-partizan city government may be the recent defeat of the Fusion party, it is safe to say that there are few of its advocates who are convinced that the methods adopted in New York to achieve the desired result are wrong under the social and political conditions existing in the city.

**Chicago Municipal Voters' League.** In Chicago things have taken a somewhat different course.[2] The instrument, by means of which very much the same result has been secured as has been secured in New York by the Citizens' Union, is the Municipal Voters'

[1] *Cf.* Steffens, "The Shame of the Cities," p. 16.

[2] A description of the method adopted in Chicago is contained in an article entitled "The Municipal Situation in Chicago," by Frank H. Scott, published in the "Proceedings of the Detroit Conference for Good City Government," page 140.

League. This was organized in the year 1896. "It avowed its purpose to secure the election of 'aggressively honest men' to the Council and employed surprisingly simple methods to effect its aim. Eight municipal campaigns have been fought since it became a factor. The once powerful gang has been completely overthrown, but three of its fifty-eight members remaining in the Council, and they are wholly discredited and without influence. In its place there is a Council of an unusually high average in character and intelligence, fifty-three of whose seventy members can fairly be relied on to be faithful to the interests of the people they represent. Each year the standard is being raised. To become an alderman is an honorable ambition, and young men of education, standing, and ability are aspirants for the position. A very remarkable fact is that in the organization of the Council's committees, party affiliations have no place. This regeneration is by no means the full measure of the results achieved in those campaigns. The interest of the people in the welfare of the city has been greatly stimulated, with the necessary consequence of a large increase of the independent vote at municipal elections." [1]

The methods of the Municipal Voters' League are quite different from those of the Citizens' Union in New York. "When the nominations [of the regular parties] have been made there is submitted to each candidate who is not considered hopelessly bad the League platform. This is a pledge, not to the League but to the people. . . . The candidate may sign, modify,

[1] *Ibid.*, p. 148.

or refuse to sign the platform, without thereby assuring either the League's support or its condemnation. The people are informed of his action in regard to it by the reports."[1] In addition to informing the people as to the position which each candidate takes, the League takes an active part in the campaign, supporting those candidates whom it approves and endeavoring to defeat those candidates whom it disapproves. The success of the League work is attributed "to the sincere desire of a large portion of the community for better government. Given the facts, the average citizen, not politically hidebound, prefers to vote for a fit man rather than for a bad or an unfit one. The League furnishes the facts, unbiased by partizanship or personal feeling and unaffected by libel suits or threats. The people of Chicago have confidence in it and accept its judgments."[2]

The New York and Chicago methods of securing, irrespective of legislation, a non-partizan city government, have this in common: Neither the Citizens' Union of New York nor the Municipal Voters' League of Chicago busies itself with anything except what it regards as city elections. It is true, of course, that in the city of New York the Citizens' Union does nominate candidates for the state assembly, but this is because the control of the legislature over the city is so great that it is a much more important city authority than is the Board of Aldermen of the city of New York itself.

This attempt to separate national and state from city politics is characteristic of a majority of the

[1] *Ibid.*, p. 153. [2] *Ibid.*, p. 156.

methods adopted in this country for the betterment of city government.[1] It is seldom, however, that the attempt has been made to form a political organization separate from the national and state parties by means of which the result desired is to be sought. The most ambitious attempt of this sort is that made by the Citizens' Union in New York. But even this organization has found by experience that its best chances of success are to be expected when it acts in alliance with other political organizations, even where those other organizations are parts of a national and state party.

In Chicago the Municipal Voters' League is not a political organization, since it makes no nominations itself. It accomplishes its work by criticism of the nominations of the regular political organizations. Through this criticism it has, however, done much to secure an administration of city government which, from the point of view of the political parties, is a non-partizan one.

We may, therefore, conclude that at present the time is not ripe for the formation of a city party which shall attempt to play a lone hand in the game of city politics. Whether the time will ever be ripe for such action may be doubted. At present the proper practical procedure for those to adopt who wish to secure non-partizan administration of city government under existing political and governmental conditions, is to secure a fusion of the inde-

[1] See Tolman, "Municipal Reform Movements," where the purposes and methods of a large number of organizations are described.

pendent voters with the political party, naturally in minority in the city, on the platform of an administration of city government which shall, from the point of view of the national and state political parties, be as nearly non-partizan in character as the intelligence of the people will insist on having and as the political party, with which fusion is desired, will permit.

In the meantime all should strive to secure those changes in legislation relative to city matters which have been referred to as making easier the future divorce of city from state and national politics and independent voting in city matters.

## CHAPTER VII

### THE CITY COUNCIL [1]

**Original City Organization.** A study of the history of municipal development will show us that the important elements of the original municipal organization have been, in the first place, a general assembly of the political inhabitants of the municipality; in the second place, a council; and, in the third place, one or more magistrates. This was the organization of the Roman municipality with its comitia, its curia, and its duumvirs defensor and curator. This was the organization of the original Frankish city with its freemen, its *rachimburgs* or *scabini*, and its count or bishop. This was the original organization of the English borough with its court leet, its leet jury, and its mayor, provost, or reeve.

This original rather popular organization was modified almost everywhere by the disappearance of

[1] Authorities: Wilcox, "The Study of City Government;" Durand, "The Finances of New York City;" "Council *versus* Mayor," in "Political Science Quarterly," Vol. XV, p. 426, 675; Johns Hopkins University Studies in Historical and Political Science, Vols. V and VII; Eaton, "Government of Municipalities," "A Municipal Program," Commons, "Proportional Representation;" Charters of selected cities.

the assembly of the political inhabitants. The disappearance of the assembly was due, probably in part, to its unfitness for the discharge of governmental duties under conditions which were at all complex in character, and in part to the tendency, whose existence has been commented upon several times, toward the development in cities of oligarchical governments. For not merely were the functions of the original assembly transferred to the council, but the council relieved itself from popular control in that it commonly secured the renewal of its existence through coöptation.

The two elements of the original municipal organization which have survived are then a council and magistrates. A municipal organization based on these two elements is an organization which resembles the organization formed for the discharge of all governmental functions, where it is intended that these functions shall be subjected to popular control. It would seem, therefore, that the municipal organization which depends upon a council and magistrates is an organization which is justified both by theory and experience where popular government is desired.

It is, however, to be remembered that this form of municipal organization was worked out during a period when municipalities were exercising powers which are now regarded as distinctly governmental, when municipalities were acting more or less as little states. The question naturally presents itself, Is the form of municipal organization which had become universally accepted by the end of the eighteenth century a form of organization which is suited to the

conditions of modern municipal life? The claim is often made at the present time, particularly in the United States, that cities have ceased to be governmental authorities and resemble more closely business corporations; that municipal administration is business, not government; that, as a result, a city council is an unnecessary element in municipal adminstration and should be done away with. The municipal council, under the conditions of modern American municipal life, has been compared with the vermiform appendix, whose presence in the human organism is liable to cause trouble, without discharging, so far as known, any useful function.

**Decay of City Council.** This feeling that the council is a useless part of the city government in the United States has found expression in municipal charters. It is seen in the general decline in importance of the council to which attention has been called. It is seen also, in rare instances, in what has amounted to the abolition of the council in the case of particular cities. Thus, "by the charter of 1879 the 'administrative system' was introduced into the New Orleans government. The mayor and seven administrators were elected by general ticket. The seven were at the heads of the departments of finance, commerce, improvements, assessment, police, public accounts, and waterworks and public buildings, respectively. Together with the mayor these heads of administrative departments formed the council for local legislation."[1] A similar organization is still maintained in

[1] Wilcox, "The Study of City Government," p. 147.

Memphis. A body called the legislative council exists which "consists of eight persons, being the members of two boards elected by the people of the city at large—the board of fire and police commissioners, consisting of three members, and the board of public works, consisting of five members."[1] In New York city, under the charter as it existed just prior to 1897, the city council had such few powers that its influence on the city government was practically nil.

What is it now that has caused this decline in importance of the city council? Most people will answer this question by saying that the work of the council was not satisfactory, because its members were corrupt, or because they lacked wisdom. How it came about that they so degenerated, native Americans attempt to explain by pointing to the immense immigration into the cities during the early part of the nineteenth century of foreigners who were not brought up with American ideas of local self-government.

The explanation which is given for the deterioration of the membership of the council is not, however, satisfactory. Immigration into the United States, prior to 1820, was not important. "During the 'twenties' the immigration was small, only 10,000 or 12,000 coming over annually, increasing to 20,000 in 1826 and 1827, owing probably to the commercial depression in England. In the 'thirties' it grew steadily, decreasing in the years 1836 and 1837 on account of the depression of trade in this country. The number first reached 100,000 in 1842 but sank the follow-

[1] *Ibid.*, p. 164.

ing years, showing that the normal figure at that time was somewhat less. In 1846 began the first of those great movements due to crises in the old world which have occurred frequently since and whose reflex action tends to keep the tide permanently strong. The combination of bad times in Germany and the famine in Ireland made the enormous maximum (427,833) in 1854. This number was not reached again until after the civil war."[1] It will thus be seen that the tide of immigration into this country cannot be said to have been a very important one until about the middle of the nineteenth century.

The movement away from council government began, however, as early as 1830. The mayor began to be made elective by the people as early as 1822; the New York Municipal Convention of 1829 adopted the principle for the city of New York, gave the mayor a veto power and tried to secure the establishment of separate executive departments by enacting that "the executive business of the Corporation of New York shall hereafter be performed by distinct departments which it shall be the duty of the common council to organize and appoint for that purpose."[2]

The dissatisfaction with council government, therefore, existed prior to the time when any great foreign immigration began. It could not, therefore, have been caused by any lack of political capacity due to foreign immigration. To what this dissatisfaction was due is not known, but it is probable that it was the belief that the council system of municipal gov-

[1] R. M. Smith, "Emigration and Immigration," p. 41.

[2] Durand, "The Finances of New York City," p. 43.

ernment was not in accord with the generally accepted theories of the political science of the time. The political science of the early part of the nineteenth century laid great emphasis on the French theory of the separation of powers which had been made the basis of the state and national governments.

Of course we must assume that council government had its faults. No system of government has ever existed, which it is the lot of the student to study, which has not had its faults. These faults, it has already been said, were probably in large part, if not entirely, the consequence of the attitude of the political parties toward city government, but the malign influences of party on city government were not at the time perceived, or if perceived, those in control of the political fortunes of the country were too anxious to build up and strengthen the parties to permit their conduct to be influenced by the fortunes of the city.

In any case it was only natural that the existing defects in municipal government should be attributed to the municipal organization, which from the point of view of the prevailing political science was theoretically defective, and that the attempt should be made so to remodel that organization as to bring it into line with what was regarded as theoretically proper. The changes which were made were unquestionably followed by deterioration in the character of the council, if we may judge from contemporaneous testimony. The character of the council seems to have changed for the worse, whether as a result of the immigration which began about this time, or be-

cause of the diminished importance of the council resulting from the changes made in the municipal organization. Subsequent legislation throughout the United States, with few exceptions, has been characterized, till within very recent years, by a continuous encroachment upon the powers of the council until, as we have seen, it has become, in some cities at any rate, of almost no importance at all.

While in the United States we have reduced our city council to a position of insignificance as compared with the position which it occupied at the beginning of the nineteenth century, in Europe it has not only retained the position which it then occupied in the municipal organization, but, owing to the increased importance of municipal government, has become an authority of vastly greater power. It is often attempted to explain the success of council government in Europe by pointing to the fact that the municipal suffrage there has always been limited. This fact alone will not, however, explain its success, since we have only to go slightly back of the nineteenth century to find the municipal councils everywhere throughout Europe in a state of the greatest degradation, although they were formed by methods quite the reverse of election by universal suffrage.

The universal degradation of the municipal council in Europe in the latter part of the eighteenth century was due to the fact that municipal government was sacrificed in the interest of the national state: in England, owing to the attempt to build up the national parties, to which everything in the government was sacrificed; in Continental Europe, owing to the at-

tempt to do away with that feudal autonomy which had made the existence of the national state impossible. It has already been said that the disfavor into which the municipal council fell in the United States was due to evils which resulted in the United States no more than in Europe from any inherent defect of the council, but from the fact that municipal government was sacrificed in the interest of the state.

In the United States we wreaked our vengeance on the council. In Europe the system of municipal and state government was so reorganized that the interests of municipalities might be considered on their merits and apart from any effect which the control of municipal government might have on state politics.

**Effects of the Decay of City Council.** One of the results of the decrease in importance of the municipal council in the United States was the loss by the cities of local autonomy. The movement toward diminishing the powers of the council was accompanied by a movement in the direction of state management of local affairs. This was perhaps as marked as anywhere in the case of the City of New York. The charter of 1849 finally established in the government of New York the principle of separate executive departments, the heads of which were selected by the city voters; but later, *i.e.*, in 1853, appointed by the mayor with the approval of the council. In the year 1857 began the assumption by the state government of the right to appoint the heads of the most important city departments. The legislature did, it is true, in 1870, restore the method of local appointment which has

been maintained up to the present day, but it did nothing to rehabilitate the council. In fact, little by little the council was practically shorn of all power. It was both shut out from participation in administration and deprived of powers of legislation.

The legislative powers of the council were assumed by the legislature of the state, which determined the municipal policy by the passage of special acts. The result was that just prior to 1897, the year of the adoption of the Greater New York Charter, all important questions relative to New York City government were determined at Albany. The city had lost practically all legislative power, that is, the power of formulating the municipal policy. This power had been assumed by the state legislature. Thus, for example, when it was desired to inaugurate a system of underground rapid transit it was found that the powers of the city authorities were insufficient for the purpose. Application had to be made to the legislature of the state, which enacted a very detailed law upon the subject, providing for the carrying on of the work by a commission which was not connected with the municipal authorities. The same was true of the new East River bridge which was begun a few years ago. Again, when the city desired to enter into the policy of municipal ownership of the water front it was found to be impossible without legislative action to carry out the desire. Finally, when it was desired to increase the school facilities of the city by the erection of a large number of new school-houses, it was necessary to appeal to the legislature in order to get the authority to issue the necessary bonds.

**Reaction in Favor of City Council.** The Greater New York Charter of 1897 marked a change in the policy which had been followed for more than fifty years. In the report of the Greater New York Charter Commission it was said: "When the Commission came to consider the legislative department for the greater city, diverse and conflicting views and plans were urged for adoption. The general judgment was that a municipal legislative assembly was not only necessary but indispensable. But as to the constitution, size, and powers of such an assembly conflicting views were also presented and urged. . . . The Commission has, however, converted the present Board of Aldermen into a municipal assembly consisting of two houses. . . . The charter has been constructed upon the principle that it is expedient to give to the city all the power necessary to conduct its own affairs. The Commission has accordingly conferred upon the municipal assembly legislative authority over all the usual subjects of municipal jurisdiction. The extent and variety of its powers, as well as its size, mark the Commission's sense of its dignity and importance. With a view to self-development the Commission has intrusted the new city with" very large powers which are enumerated in the report. "The City, as the Commission has constituted it, has within itself all the elements and powers of normal growth and development, making it unnecessary to have habitual recourse as hitherto to the legislature of the state for additional powers—a serious evil and in the past the source of much abuse. These powers—great, varied, and even complex as they necessarily are—will, when scruti-

nized, be seen to be no greater than the city requires and to be always legislative in character. They are such as the municipalities of England and of Europe as well as of this country constantly exercise. . . . But while the charter thus confers upon the municipal assembly powers adequate to the present wants and the future development of the city, it interposes, in accordance with established American polity, a variety of checks and safeguards against their abuse similar in their nature and purpose to the constitutional limitations upon the Congress of the United States and the legislatures of the several states." Indeed, so many checks were thrown about the action of the municipal assembly that the exercise by the municipal authorities of the wide powers granted by the charter of 1897, was made exceedingly difficult. When this fact is borne in mind it will at once be understood why the people, both private citizens and city officials who desired something done, found it easier even under the charter of 1897 to go to Albany as they had gone in the past, than to worry through the various authorities which, by the charter of 1897, had the power of decision.

The grant of local power made by the charter of 1897 did not thus result in making the determination of municipal policy a local matter. The charter of 1897 was revised in 1901. The commission appointed to make this revision said in its report:[1] "In considering the question of the legislative powers to be conferred upon the city of New York, we have been met in the first instance by the question whether any city

[1] P. 4.

legislature should exist at all. It has been contended that the affairs of the city are entirely, or almost entirely, of a business nature, and that no city legislature is really necessary except for the adoption of what may commonly be called administrative rules and regulations. In this view the Commission is unable to concur. There will be many questions relating to the development and internal administration of the city which must be the constant subject of legislation, as the city grows, and as new and unforeseen conditions arise. Unless a city legislative body exists there must be constant legislation by the State as to the affairs of the city and the embarrassment arising therefrom in municipal administration is generally acknowledged. . . . The Commission in passing upon the question of the legislative powers of the city has substantially adopted the views which are well expressed in the report of the Commission which framed the present Greater New York Charter."

The charter which was adopted in 1901 for the city of New York differed from the charter of 1897 largely in that it removed certain of the checks which had been imposed upon the action of the municipal assembly, and in that it made it easier for this body to act by reducing from two to one the number of houses of which it was composed. The draft as originally proposed by the Charter Revision Commission increased considerably the ordinance power of the board of aldermen, but the legislature did not approve of this proposition and reduced the powers of the board of aldermen in this respect almost to what they were before.

It will be seen from what has been said that in the

last few years there has been a tendency toward restoring to the council of the city, in which it had lost most in importance, many of the powers of which it had been shorn in the latter half of the nineteenth century. This tendency is in accord with the ideas of what may be called the theoretical writers on municipal government. Bryce, in his "American Commonwealth," was perhaps the first to question the wisdom of the movement toward the destruction of the council. Dr. Shaw's books on municipal government in Great Britain and Continental Europe took even more positive grounds. Since the publication of these works most of the books which have appeared upon the question have acknowledged that a city council is absolutely necessary. One of the most urgent pleas for its retention and for the increase of its powers is the late Dorman B. Eaton's "Government of Municipalities."

Few of the theoretical writers on the subject have gone so far as to advocate the restoration of the council to the position which it occupied in the United States prior to 1830, when it absolutely controlled the city government. The marked exception to this rule is the case of Dr. Durand, the author of "The Finances of New York City." Dr. Durand, in two articles published in the "Political Science Quarterly," September and December, 1900, entitled "Council *versus* Mayor," advocates the entire rehabilitation of the city council and the adoption of what has come to be known as the English system of municipal government.

It may, therefore, be said that the question of the position of the council in the city government of the

United States has ceased to be merely an academic question and has become one of real practical importance. It will be well, therefore, to consider the main arguments which have been advanced in favor of the council by the adherents of council government if we may include within that term all those who favor an increase of its powers.

The first argument noticed is the one which is the basis of the thesis of Dr. Durand. His argument is an attack on the principle of separation of powers as applied to all forms of government, and particularly on the applicability of the principle to municipal government. This argument, as Dr. Durand is quite aware, may be used as an argument as well in favor of the increase of the power of the mayor and executive departments as in favor of the rehabilitation of the council. Dr. Durand, therefore, attempts to show that a single individual, even had he the necessary time, is not as well fitted as a council to be trusted with deliberative authority and general responsibility for government, whether in the nation, the state, or the city; that a similar line of reasoning goes to show that the action of a council is more likely to be honest and upright than that of an individual; that another important consideration in favor of intrusting discretionary authority to a council rather than an individual is that thereby greater continuity is secured; and that, finally, a council is to be preferred to a single individual, because it is more apt truly to represent the people.[1]

[1] "Political Science Quarterly," December, 1900, p. 692 *et seq.*

The second argument which has been advanced in favor of the rehabilitation of the council is that its existence is necessary in order that reasonable municipal home rule may be secured. There are many powers connected both with the determination of municipal policy and the carrying out continuously of that policy when once determined upon, which are of a legislative character; which, in other words, resemble powers that through the entire American system of government are intrusted to a deliberative body. So long as modern American ideas of government are held, these powers will never be intrusted to administrative officers or boards consisting of merely a few individuals who do not owe their election to the people; who are, in other words, not representative of the municipality. If the municipal council is destroyed or, what is practically the same thing, shorn of its powers, such powers will not be conferred upon administrative officers or boards, but will be exercised by the legislature of the state, which is generally regarded as more representative in character than these boards or officers ever can be.

The destruction of the municipal council means, therefore, not the destruction of the council or representative idea of government, but merely the transfer of local legislative powers to a central legislative body. The more important the city council, the less important is, as a matter of fact, the position of the legislature as the organ which is to determine the policy of the municipality. This seems to have been the argument which appealed particularly to the commissions of 1897 and 1900; the one for the preparation,

the other for the revision, of the charter of Greater New York.

The third argument which is advanced in favor of the council is to the effect that only where it exists is it possible to keep politics out of the city administration. This argument has taken two somewhat different forms. The first is one upon which Mr. Eaton lays great emphasis. His contention is that a council may be a non-partizan body; a mayor never can be. He says:[1] "Save in very rare cases of a non-partizan uprising and union for municipal reform a mayor will be not the representative of the city or its people as a whole, but only of some party majority. Such an election would increase party power and would tend to perpetuate city party domination. . . . It is plain that a true council is in its nature a non-partizan body, because one in which, . . . all parties, interests and sentiments of importance will be represented. To increase the authority of the mayor is, therefore, to increase the power of party in the city government, while to increase the authority of the council is to augment the influence of the non-partizan and independent elements among the people. The issue between predominating powers in the mayor and predominating powers in the council is, consequently, but another form of the issue between party government and non-partizan government in cities—between government by party opinion through partizan officers, and government by public opinion through non-partizan officers."

The other form which this argument takes is that

[1] "The Government of Municipalities," p. 252.

the existence of the council is necessary if we desire in our municipal administration to distinguish politics —that is, the function of determining policy—from administration—that is, the function of carrying out policy once determined upon.[1] If these functions are not clearly distinguished, it is difficult if not impossible to prevent politics from affecting administration, not only in its action but also in its organization, with the result that qualifications for even clerical and technical positions in the public service soon become political in character. While it is necessary in all governmental organizations to separate politics from administration, it is particularly necessary in the case of municipal government on account of the technical character of a large part of municipal administration. Positions in many branches of municipal activity must be filled by men with large technical knowledge if the work of the city is to be carried on advantageously, and our past experience, not only with regard to municipal administration, but also with regard to the national and state administrations, proves that if politics are allowed to influence in the appointment to such technical positions, they are not filled by competent men.

Under the former charters of New York and Brooklyn, the mayor and executive officers exercised almost all municipal powers, both legislative and administrative, not assumed by the legislature of the State. The heads of departments in these cities ceased altogether to be permanent in tenure, and it was considered almost as a matter of political principle that

[1] See Goodnow, "Municipal Problems," p. 221 *et seq.*

each incoming mayor should appoint new incumbents. Indeed, the charters of both cities made a special point of permitting each mayor to secure heads of departments who would represent the principles on which he himself was elected and stood, although he was given no continuing power of removal.

This was probably necessary in order to make such a system of municipal government popular in character; but popular government was thus secured at the expense of the highest administrative efficiency. What was really done by such an arrangement was to create a municipal council in a new form, which did not, it is true, possess all of the powers of the original council, but which did actually determine what should be the policy of the city so far as that was a matter for local determination. The great defect of such an arrangement was that officers who should have been administrative became political in character.

It is thus seen that both practical men and theorists in the United States are tending toward a partial rehabilitation of the municipal council. American experience would seem then to be in accord with European, so far as concerns the propriety of the existence of the council as an important factor in the municipal organization.

**Present Position of City Council.** It is difficult to say what is the position of the council in the city governments of the United States, for we really have no system of city government. This is the case because of the different laws in the different states, and of the

habit in some states of issuing special charters to special cities. At the same time it is almost universally the case that the law recognizes both the council and the mayor, and that the council does not elect the mayor. Further, the general rule is that the mayor appoints the heads of departments with the approval of the council. But the tendency in the larger cities is to vest this power in the mayor alone. Finally, owing to the special and detailed character of municipal legislation in the United States, the council has largely lost the organizing power and considerable legislative power which has been assumed by the state legislature.

The result is that the council under the most favorable circumstances is all but shut out from the exercise of any power not distinctly legislative in character—all executive powers being vested in the mayor and executive officers—and that it is often much limited in the exercise of legislative powers. The mere fact that the charter regulates the details of the municipal organization takes away an important power from the council. Further, the legislature is also often so niggardly in its grants of power, particularly of financial power, that it is difficult if not impossible for the council to exercise its legislative power. Finally, in some states the legislature puts into the charter a number of provisions which regulate matters of local police or vest police powers in the mayor or executive departments, while in almost all states the mayor possesses a veto over the resolutions of the council which can be overcome only by an extraordinary majority of the council.

**Manner of Election.** Whatever may be the position and powers of the city council in the United States it is, in all cases, an elective body. The legislations of the different states differ, however, considerably as to the details of election. Either one of two general principles is, however, adopted; that is, total renewal or partial renewal. By the first, all of the members of the council are elected at the same time. This is the rule which has been adopted generally throughout the United States. In either case the vote may be by general ticket or by district ticket. In case it is by the latter, the district may be a single district, or it may be represented by a number of council members. The single district is the rule. The purpose of the adoption of the district plan is to secure local representation or minority representation. The necessity of securing local representation is present only in the larger and somewhat heterogeneous cities. In these cities some recognition of locality is absolutely necessary. In the smaller cities the need of such recognition is hardly felt, if it is felt at all. In all, however, it is desirable to secure minority representation, or, at any rate, to secure in the council an opposing minority. It is only through the clash of diverse opinions that the best conclusions as to any matter are reached. It is impossible to secure these diverse opinions under the general ticket system, unless some system of minority representation is provided. It is possible to secure minority representation under a district ticket, although the district ticket will not assure it. Thus, in New York, under a single district system, one party secured every seat in the city council at the election of 1892,

At this election 166,000 votes elected all members of the council, although there was a minority vote of nearly 100,000. But as a general thing, a single district system will secure an opposing minority in the council.

The possibility, however, that minority representation will not be secured under the district system, and the certainty that it will not be secured under a general ticket have led to the agitation for the adoption of some system of minority representation. The plans which have been proposed for minority representation may be classed under three heads, namely: limited voting, cumulative voting, and proportional representation. Under the first, a voter is not permitted to vote for all places in the council to be filled at the election. This plan has been tried in Boston and in New York. There are, however, serious doubts as to its constitutionality under the ordinary provisions in the American state constitutions, and it has generally been abandoned where it has been adopted. For under it a nomination for office by a party of any considerable strength can easily be made equivalent to an election.

Cumulative voting consists in giving the voter as many votes as there are places to be filled, and in permitting him to distribute his votes as he sees fit. It has been adopted in the Illinois constitution for elections to the lower house of the state legislature, and may be adopted by any city for its council elections. This method is probably not constitutional under the ordinary American state constitution. On the whole it may be said to have secured the representation of minorities, without being accompanied

by such serious disadvantages as to counterbalance the advantage of securing such representation. Under it, however, nomination by either of the two leading political parties as in the case of limited voting is practically equal to election. Further, on account of plumping the votes, cumulative voting may result in the election of a majority of the candidates by a minority of the voters. Party organization and discipline must be very strong to secure a proper representation of the voters. The danger of plumping may be avoided by not permitting cumulation of votes beyond a certain number. In the case of a council election this may be secured by the abandonment of the general ticket and the establishment of districts in which no more than three or five members are to be elected. Cumulative voting is, on the whole, the most feasible and workable type of minority representation that has been devised, because although it will not probably produce mathematically exact proportionality in representation, it is the easiest to operate, and its dangers being known can be more easily guarded against.[1]

The third system of minority representation is known as proportional representation.[2] The most mathematically exact system is that known as Hare's system, and is used in some of the elections in Denmark. This is, however, very complicated, and is on that account not practicable for council elections in large cities.

[1] The system of cumulative voting is, under the name of "free voting," strongly advocated by Mr. Eaton. See "Government of Municipalities."

[2] See Commons, "Proportional Representation."

Another system has been adopted in Switzerland that is known as the "free-list system." By this the voter is confined to the candidates put in nomination, and must vote a straight party ticket. The number of votes cast is divided by the number of candidates, the result being known as the electoral quotient. The number of votes cast by each party is divided by the electoral quotient, the result being the number of candidates elected by each party, those being chosen who stand the first on the party list. In the case of fractions, left over after such division, two rules have been adopted: One gives preference to the party having the largest fraction, the other, to the party casting the highest number of votes. The latter is deemed preferable, inasmuch as the system of "forced fractions," as it is called, often leads, where few offices are to be filled, to the election of a majority of the candidates by a minority of the voters.

Many schemes have been devised for varying the details of this general system to meet objections such as have been instanced. They all, however, complicate the processes of election and justify the remark that has been made of the system generally, that it would be difficult to convince even intelligent voters that the announced results of the election carried on under the system were in conformity with the actual votes cast. A further objection to the scheme of proportional representation is, that even if the results claimed by its advocates were actually produced, the body elected under it would be a debating society rather than a body capable of political action. What is desired by minority representation is not so much

a body in which every shade of existing opinion is represented, as a body which, while possessing a majority capable of political action, has, at the same time, a minority capable of opposing and causing a modification of the results desired by the majority. Such a result is secured ordinarily both by the single district system and by the system of cumulative voting. A system based on districts sending from three to five representatives, elected by cumulative voting, would seem to avoid the disadvantage of the single district system, that is, the rather inferior character of the men often chosen when that system is adopted and at the same time to make impossible the excessive cumulation of votes which is possible where a large number of places are to be filled by cumulative voting.

**Term of Members of City Council.** The term of the council members has a close connection with the subject which has just been considered. If the principle of partial renewal is adopted, the term is two, three, or four years, so that the council may be renewed by halves, by thirds, or by fourths. Where the principle of total renewal at one election is adopted, the usual term in the United States while varying from one year, as in Boston, to four years, as in St. Louis, averages two years, as in New York. Finally, the council sometimes consists of different classes of members, if it is not divided into two chambers. The general rule, however, is, that it consists of one chamber.[1]

[1] Fairlie, "Municipal Administration," p. 377.

A word should be said as to the size of the council before closing what is to be said concerning its composition. There is very little agreement as to this matter. The number varies from 187, the number of the members of the two chambers in Philadelphia, to 20, the number in St. Paul and Cleveland.[1]

Special qualifications for membership in the council are sometimes required. Sometimes they do not permit of the election of every voter and, sometimes, though not often, they permit of the election of persons who are not voters. The usual qualification, if one is required in addition to that of the right to vote, is a property one, which may be evidenced either by the payment of taxes or the ownership of property. Such qualifications are usually regarded as constitutional under the ordinary provisions of the American state constitutions, although they are not, as a matter of fact, so common in the United States as in Europe. As a general thing, every voter is qualified.

**Powers of City Council.** The powers of the council depend, first, upon the relation of the city to the state; and, second, on the relations of the council to the executive authorities of the city.

If the state has adopted the plan of granting general powers of local government to the city, as is the case on the Continent of Europe and in one or two states of the United States, the council, as the principal authority for their exercise, has very wide powers. If, on the other hand, the state enumerates the powers of the city, as it generally does in England and the

[1] *Ibid.*, p. 378.

United States, the extent of the powers of the council is determined by the extent of the enumerated powers granted. In the United States, where the practice has been based on special municipal corporations acts, which has had the effect of making such general acts as have been passed very detailed in character, the powers granted to the council are comparatively small in extent.

If the system of municipal government adopted recognizes the existence of other municipal authorities than the council, as it does almost everywhere in the United States, the council loses in power, either as a result of the fact that participation of the executive authorities is necessary to valid action by the council, or because powers conferred upon the city are to be exercised by the executive authorities and not by the council. In the United States the council often has little administrative power and has to share the exercise of the local legislative power with the executive, which has always the right to veto council ordinances, and sometimes exercises alone the local legislative power.

As a result of these conditions we find that the power of determining the details of the municipal organization is not possessed by the council except in rare instances. Chicago is an instance of a city whose council has large organizing powers. Generally this power has been exercised by the legislature by fixing the details in the charter or statutes governing the city. This is the case in New York. Further, the only power of appointment commonly possessed by the council in the larger cities is to confirm the appoint-

ments of the mayor, and even this power is not possessed by the council in the largest cities. In the smaller cities the council often appoints city officers. The council is very commonly presided over by the mayor, although it is frequently the case that it elects its own president. In New York the presiding officer of the council, that is, the president of the board of aldermen, is elected by the people of the city in the same manner as is the mayor. The council usually, however, elects the other officers necessary for the exercise of its powers.

As a general rule elections to the council are determined by some state court, either in final or in original instance. In some cases the council determines the matter in first instance with appeal in proper form to the courts. In very rare instances the determination of the council is final.

The city council in the United States seldom fixes its own rules of procedure. The charter usually contains provisions relative to the number of members who shall constitute a quorum, the majority required to pass a resolution, which is often greater than an ordinary majority, particularly in cases involving the expenditure of money, or relating to the property of the city; the amount of deliberation necessary to the validity of the action of the council, such as the number of readings of council bills, etc. All such provisions must be observed, else the action of the council will be invalid.

Outside of the power of determining the details of municipal organization, the powers of city councils may be classed as: first, ordinance power; second,

power to determine the sphere of municipal activity, and third, financial power.

**Ordinance Power of Council.** By this power is meant the power to lay down rules of conduct which are binding upon the inhabitants of the city. During the middle ages this power embraced a much wider field than now. At present the state legislature fixes most of the rules of conduct which must be observed by the citizen in his ordinary life, and leaves to the city merely the power to regulate some of those relations, which, as the result of the presence of a large population, need regulation of a special character. The power is usually referred to as the power of police ordinance. In the United States the power of ordinance is, by the theory of the law, vested in the council. Indeed, by the common law of England and the United States the council has the right to issue such ordinances merely as the result of the incorporation of the city. This implied ordinance power is the one important exception to the Anglo-American rule of the enumeration of municipal powers. General grants of ordinance power often are also expressly conferred upon cities.

The theory of the American law that police-ordinance power is conferred by general grant, either express or implied, to the city council, is, however, largely departed from in practice in the United States. It is often the case that the subjects which may be regulated are enumerated in the charter in great detail, when it is usually held, applying the principle that "the mention of the one excludes the other," that the

authority in which such powers are vested may take action only as to the enumerated subjects. The effect of the long enumerations found in many of the municipal charters is, therefore, usually a limitation of the common-law powers of the ordinance authorities. The only effect that such enumeration has upon the police-ordinance power is that the courts may not, as in the case of the exercise of the common-law-ordinance powers, declare void an ordinance on the ground of its unreasonableness. The reasonableness of the regulation is regarded, in the case of an ordinance passed as a result of the exercise of an express power of ordinance, as settled by the legislature. Finally, as has been pointed out, many charters in the United States vest the ordinance power not in the council but in some executive municipal authority, or take it away from all municipal authorities by regulating the matter in their own provisions.

Where a general police-ordinance power is vested in a city council, the law of the United States often derives powers from it which are not, in our classification, included within it. For example, the power to establish municipal waterworks, as having an important bearing upon the public health, and the power to establish municipal electric-light works, which distribute the electric light to the inhabitants of the city, as having an important influence upon the safety of the inhabitants of the city, have been derived either from the general-health or police-ordinance powers, or merely from the general-ordinance powers of the city council.

There can be little doubt that the original American

method by which the ordinance power is vested in the council is the preferable method. Where an ordinance is made by an executive authority there is generally no debate, and its passage is not subjected to publicity. The ordinance can, therefore, receive no criticism until it is placed upon the statute books. Mr. Eaton says of the sanitary code of New York city, the original of which, consisting of 165 ordinances, he himself drafted, "that with very small changes they were adopted by the board [of health] without any hearing or consent on the part of any other city authority or even of the city itself" notwithstanding that they profoundly affected "many important private interests and rights as well as the duties of many city officers outside of the board."[1]

The worst method is the one adopted in many American cities where "the ordinance-making power is distributed between limited councils, commissions, boards, and single officers. Much conflict, confusion, and needless litigation are the inevitable result, as there would be concerning the laws if there were several law-making bodies in the same state. Ordinances which all citizens must obey certainly ought to be enacted by a competent body having general city jurisdiction after public debate and a consideration of the needs of all official departments and all business interests, but quite generally in American cities, by reason of the lack of any competent council, ordinances are made in a semi-secret manner by some authority—some commission, board, or officer having only a limited jurisdiction—without conferring with those

[1] "The Government of Municipalities," p. 263.

at the head of other parts of the administration, or even the hearing of representatives of the city or its people. Besides, large parts of the administration are not regulated by ordinances at all as justice and good administration require they should be, for where good ordinances end, in municipal administration, despotic or corrupt official favoritism generally begins."[1]

In many of the smaller cities in the United States the council has, in addition to the power of general ordinance, the power to make special orders of individual application, such as nuisance-removal orders. But in the larger cities the power to make such special orders of individual application is usually vested in the mayor or some one of the executive departments, particularly the health department.

**Power to Determine the Sphere of Municipal Activity.** By this power is meant the power to establish and carry on services for the benefit of the municipal inhabitants. The continental cities have this power except so far as the ground has been occupied by the state or some other governmental authority with the permission of the state. They have this power as a result of the grant to them of general powers of local government. As the result of the possession of such a power the continental city may, if its financial resources permit, provide for supplying its citizens with water, gas, light, and electricity, and for intra-urban transportation. It may do this by entering into such contract, as it deems proper, with some private corporation, which is the actual practice throughout France,

[1] *Ibid.*, p. 262.

or it may establish and operate the necessary plant itself, as is frequently the case in Germany. It may provide insurance against fire for its citizens, which is quite common in Germany, and may establish institutions for loaning money to those in need of temporary pecuniary help, as is done in France by means of the *monts de piété*. It may establish free libraries and playgrounds and conduct theaters and concerts for the instruction, recreation, and amusement of its inhabitants.

All these things the continental city may do without applying to the legislature for a grant of the power to do the special thing it desires to do; and it does all these things, not as an agent of the state as it does when caring for the schools, poor, and police, but as an organization for the satisfaction of the local needs of its inhabitants. When it acts as agent of the state it is subject to the control of the state whose interests are affected by its action. When acting as an organization for the satisfaction of local needs it acts free from all central control, except such as is exercised over the financial powers whose exercise is necessitated by the use of its material powers, if we may call them by this name.

In England and the United States conditions are quite different. As has been pointed out, the English and American cities are not endowed with general powers of local government, but may act only where it is the evident intention of the legislature to permit them to act. In England it is true the laws of parliament passed during the nineteenth century granted to the cities very wide freedom of action, because of

both their number and the extent of the subjects which they regulated; but even in England it cannot be said that either as a matter of law or of practice the sphere of municipal activity is as broad as it is on the Continent. Where, however, the English city may act, it is the council as the only legally recognized authority in the city government which acts.

In the United States the acts of the state legislature have not granted so wide powers to the cities even as in England, and the practice is, whenever it is desired to enlarge the sphere of municipal activity, for an appeal to be made to the legislature for the necessary power. Further, the powers which are granted to the city are granted frequently not to the council but to the executive authority. This has been particularly true of the city of New York during the last thirty years where the board of estimate and apportionment or some other executive authority has, as a result of special legislation, to exercise the powers granted to the city, by means of which the sphere of New York's activity has been increased. The only possible exception to the rule of the narrow powers of the American city councils is to be found in the case of councils which possess a general police power. This, it has been shown, has in some cases been given a very wide expansion.

**Financial Powers of City Council.** These powers relate to city property and city taxes and city indebtedness. As a general rule the financial powers of all cities everywhere are either enumerated or subjected to pretty strict central control. This principle of

state control over municipal financial powers seems to have been adopted as a result of the apparently inherent tendency of municipal corporations to be extravagant. We find traces of such a control in the early days of the Roman Empire, where the emperors appointed curators whose principal duty was to prevent extravagant management of municipal property. One of the main reasons why the Crown imposed its control upon the cities in France and Germany during the seventeenth and eighteenth centuries, was to prevent them from running into debt and from wasting their property. In England, however, the central control over the finances of cities, apart from the exercise of the taxing power, was not introduced until the nineteenth century, while in the United States the same century saw the introduction not merely of limitations on the financial powers of cities, but also upon the power of the legislature to grant to cities financial powers. Such, for example, are the common limitations found in the American state constitutions upon the municipal tax rate and municipal indebtedness.

So far as concerns municipal property the rule is that municipal property devoted to the public use is inalienable. Thus it has been held that without special legislative authorization a municipality may not alienate public municipal property such as its streets, parks, or waterworks. Private municipal property, *i.e.,* property not devoted to a public use, such as lands or houses rented by the city, may be alienated even involuntarily. That is, sale on execution to satisfy a judgment against the city is permitted where there is no statute to the contrary. The man-

agement of city property is commonly subjected to the control of, if it is not absolutely vested in, the executive.

So far as taxes are concerned, it would seem to be the universal rule that no city has any inherent right to levy taxes. The taxing power is distinctly governmental in character, and can be exercised by a city only as a result of the fact that this power has been clearly granted to the city by the state. This rule has two important effects: First, no city has any general taxing power; that is, no city may impose any kind of taxes which it has not been permitted by the legislature to impose. The legislature sometimes grants to cities such a general power of taxation. As a general thing, however, a city's power of taxation, so far as the kind of the tax is concerned, consists of the power to add a percentage to the state tax on general property, or to certain specified state taxes. There are, however, exceptions to this rule. Thus, in some of the states of the United States, as for example, Pennsylvania and New York, the cities levy their taxes on land or on property while the state gets its revenue from other sources. In all the states a large amount of revenue comes from assessments for local improvements of supposed benefit to the property on which they are imposed. These are technically distinguished in many ways from taxes. For example, as a general rule, current expenses are defrayed from the receipts from taxes, while permanent improvements of peculiar benefit to certain property are paid for by the special assessments laid on such property. This distinction is not, however, always observed. Particu-

larly is it the case in a number of the Western cities that current expenses are defrayed from the proceeds of assessments and not from those of taxes.

The second effect of this rule is that no city can levy taxes beyond the amount fixed in the law, nor for purposes for which provision is not made in the law. The rate of city taxation is often in the United States fixed by the legislature or by the state constitution, in which case the legislature may not authorize any excess. The limitation of purpose is not so common as the limitation of rate; but, by the law of the United States, city taxes are always limited to public, and in many cases further, to municipal purposes. The character of the purpose is determined by the courts, which in their decisions have laid down rules which preclude the American cities from making use of the taxing power for a number of purposes for which it is used in Europe. Thus taxes may not be levied in the United States for the support of private schools, for aiding the inhabitants to rebuild their property in case of fire, for aiding in establishing a local industry, and so on. It is doubtful whether a city may make even an indirect use of its taxing power for a private purpose, as by spending money to provide insurance against fire, as is quite common in Germany.

Where taxing powers are given, they are commonly vested in the council, so far as concerns their exercise for purely local purposes. In a number of cities in the United States, however, the taxing power is vested in the executive officers, as is the case in the city of New York. Here, an executive board, called the board of estimate and apportionment, really exercises the

taxing power, in that it practically determines the amount of the appropriations which it is the duty of the board of aldermen to raise by the levy of taxes.

Where, however, the taxing power is granted for the purpose of obtaining money to defray the expenses of those branches of administration in which the city acts as the agent of the state, the power is ultimately exercised by no city authority. It is true it is the duty of the tax-levying authority in the city, whether it be the council or the executive, to levy the taxes necessary for these purposes of government, but if such authority neglects or refuses to do its duty, the exercise of the taxing power may be forced by the courts. This, however, may be an ineffective remedy, since it is usually available only in case of the application of a private individual, and since, in many instances, the court can do no more than punish the tax authority for not doing its duty. It may not itself perform the neglected duty.

The power to incur debts, the last of the financial powers of the city, is treated somewhat more liberally than the other financial powers. Cities almost everywhere possess the power to incur debts as a result of the fact of their being corporations. The courts in the United States, however, make a distinction between the power to incur debts, the power to borrow money, and the power to issue negotiable instruments, such as bonds. The better rule would seem to be that cities do not possess the power to issue negotiable bonds unless they have been expressly or impliedly authorized to do so by the legislature. As a general thing, however, all three powers are granted by the

legislature subject to limitations. These limitations are to be found in the statutes or the constitutions, and the courts are pretty strict in holding the corporation up to the law, giving a wide interpretation to the words "debt" or "indebtedness" where they occur in the limiting clauses of the statutes or the constitutions. Further, the courts apply to the power to incur debt the same rules which they apply to the taxing power, holding void attempts to incur debts for other than public purposes, on the ground that these debts must be paid for out of the proceeds of taxation, and that therefore the taxing power is exercised on the occasion of the exercise of the power to incur indebtedness.

In a few instances debts for certain purposes, as *e.g.*, for waterworks, may be incurred even if the constitutional limit has been reached. This is so in New York. It has been proposed to give this principle a much wider application by providing that debts incurred for profitable undertakings such as water and gas-works and electric-light works shall not be included in the calculation as to the amount of indebtedness which may be constitutionally incurred.[1] This plan has not, however, been received with great favor.

In all these cases the power to incur debts is vested in the council or the executive authorities of the city in accordance with the position which has been assigned to these bodies. The council must, ordinarily, take action, but the executive must, in nearly all cases, participate as a result of his power of veto. In some cases, as in New York under the present charter, the

[1] See "A Municipal Program," pp. 59, 111.

power is exercised by the board of estimate and apportionment, the board of aldermen having no veto upon the exercise of the power in certain instances, and in no instance having the power to disapprove unless it disapproves within six weeks after action by the board of estimate and apportionment, when its disapproval is subject to the veto power of the mayor.

It is seldom that the council is subject in the exercise of its powers to a central administrative control. The judicial and legislative control are believed to be sufficient. Thus it may pass such ordinances as it sees fit within the limits of the law. When passed, such ordinances are valid without the approval of any administrative authority, but may be declared invalid by the courts because in violation of law, or, in certain cases, because unreasonable.

## CHAPTER VIII

### THE CITY EXECUTIVE [1]

**Position of Mayor.** In the ordinary American city charter the mayor, who is with hardly an exception elected by the people of the city, is styled the chief executive of the city government. In and of itself this phrase means very little. The grant of the executive power to the mayor confers really very little power upon him. What his powers are and what his position in the city government consequently is, depend upon the enumerated powers which the charter says he may exercise. His real position in the city government is determined also by the length of his term and by the relations which the provisions of the charter permit him to establish with the other administrative officers. Thus, a power of appointment of other city officers, unaccompanied by the power of removal, will not give the mayor a strong position where the terms of these other officers are not identical with his own term. Such a power may, where these terms of office are not identical with his own term, put him in the position merely of being able to fill the vacancies in office which occur during his incumbency of the

[1] **Authorities: The same as for the preceding chapter.**

mayoralty. If, on the other hand, the terms of the officers whom he appoints are identical with his term, he can, at the commencement of his term, fill the subordinate offices with appointees of his own, and will thus have the power to mould the whole city administration to suit his own ideas.

The mere fact then that most American city charters vest the chief executive power in the mayor does not bring it about that the mayors of most American cities occupy the same or even a similar position. Indeed, the mayor occupies a very varying position in the different states of the American union and in many cases even in the cities of the same state. As a result, further, of the fact that many city charters make provision for other city executive or administrative authorities separate and apart from the mayor, a consideration merely of the mayor will not give us an adequate idea of the city executive. We must treat at some length as well of the city executive departments as they are frequently called.

Taking up, in the first place, the position of the mayor we notice that in some instances he is little more than a presiding officer of the city council with a casting vote in case of a tie vote by the council. This is his position, particularly in the smaller cities throughout the country. In a number of other cities the mayor has, either in addition to the power of casting a vote in the case of a tie, or in place thereof, a veto power over the resolutions of the council and in some cases over items therein. The mayor's veto may generally be overcome by a two-thirds vote of the council. In these cities the subordinate officers

are for the most part elected by the people in the same way as the mayor or are appointed by the council. In this class of cities we have practically a council system of government which is only modified by the fact that the mayor has a qualified veto power. This system of government sometimes approaches the independent board system because of the fact that the subordinate executive officers are frequently elected by the people. In these cities the position of the mayor is consequently a comparatively unimportant one.

In a second class of cities, which probably embrace the majority of American cities, we find the mayor having considerable power of appointing the other officers in the city government. These powers, however, he can exercise only with the approval of the council. In these cities the officers so appointed are usually appointed for a fixed term which is not identical with that of the mayor. They may not commonly be removed except for cause or except with the concurrence of the council, and often only in case of both of these contingencies. In this class of cities the position of the mayor is somewhat more important than it is in the class just mentioned. At the same time even here the mayor is not the chief executive officer in the sense that he is the superior of the other municipal officers with powers of direction and control over them and therefore responsible for the administration of the city government. Indeed, under this system of city government no authority can be said to be responsible. The responsibility is really divided between the mayor and the council. The re-

sults of such a system of municipal organization are frequent conflict of authority and consequent governmental inefficiency. It has been during the existence of this system, and doubtless largely as a result of it, that the many complaints as to the inefficiency and corruption of city government in the United States have arisen. The lack of concentration in the city organization to be found in this system of government —a lack which is aggravated in some cases by the fact that the heads of some of the departments are elected by the people—it is sometimes attempted to remedy by providing in the charter for some means of uniting in some sort of boards the otherwise unconnected departments. Thus, in St. Louis, heads of departments having to do with the various public works of the city are united in a board of public improvements. This institution was copied in the first charter granted to Greater New York, but was abandoned in the new charter, whose makers attempted to secure the same result by decentralizing the city government and putting into the hands of the president of the borough most of the functions relating to the public works of each of the five boroughs into which the city was divided. Other means similar in character have been adopted in other cities.[1]

Finally, there are a number of cities, particularly the large cities, where of recent years the position of the mayor has been made a very important one. In these the mayor has the right to appoint, without the approval of any other authority, the heads of almost all

[1] See Wilcox, "An Outline of the Study of City Government," p. 197.

the important executive departments, and in his own discretion to remove them at any time during his term of office. This system of city government may be called the mayor system. Under it the mayor is made the responsible head of the city administration, and the phrase in the charter which makes him the chief executive of the city has a meaning quite different from that which must be attributed to it in the charters of the first two classes of cities to which allusion has been made.

There is much to be said in favor of the council system of city government. It has the great advantage that it avoids all possibility of conflict between municipal authorities. The council being absolutely supreme in the city there is really no authority with which conflicts may arise. The council type is the only type, of which this can be said, under which popular local government can be secured. For, if the executive is made supreme, there is great danger that the control of the municipal government will fall into the hands of the state government. Further, the concentration of power in the hands of the council facilitates the obtaining of the best possible council membership. The responsibility and honor attached to council membership attract the best elements in the community. Every power which is taken away from the council and vested in some other municipal official, takes from the honor attached to council membership, and by so much diminishes the value of the prize open to laudable municipal ambition. The history of American municipal development shows that the council

began to deteriorate in character very rapidly after the development of the office of mayor separate from and independent of it. Finally, a council properly organized so as to change partially at each municipal election favors that continuity in municipal policy which is necessary for municipal administrative efficiency.

Inasmuch as the council is an absolute necessity for all city government, while an executive separate and apart from the council is not such a necessity, it would seem that the council type is the ideal type of city government. But while we may admit this to be the case it does not necessarily follow that the attempt should be made to make the other types existing in the United States conform at once to the council type. Governmental forms are the result of long evolutionary processes. The proper form which should succeed, for example, that form of city government most commonly found in the United States may not be, probably is not, the council type. The absolute monarchy succeeded the unconcentrated forms of the feudal régime and was in its turn succeeded by the constitutional monarchy. So the mayor type which has been developed in some of the cities of the United States may be the proper form to succeed the unconcentrated board system which for a time was so common and in its turn may be succeeded by a form of city government which more closely approximates the ideal council system. It would appear that what we need now in the United States is a greater concentration in our municipal organization. When we have

secured that by increasing the powers of the mayor, we may safely take the further step of increasing the importance of the position of the council.

**Term of Mayor.** The term of the mayor differs greatly in the different cities, varying usually between one and four years and averaging two years. The length of the term seems to have very little connection with the system of government which has been adopted. In other words, the term of a mayor, who is little more than a president of the council, is almost as liable to be of the average length as is the term of a mayor who is absolutely responsible for the city government. Thus, under the present charter of St. Louis, the mayor, who must make all his appointments at the beginning of the third year of his term of office and has no power of removal, has a term of four years; while the mayor of New York City, who has absolute power of appointment at the beginning of his term and of removal at any time during his term, has also a term of four years. In a few instances the term of the mayor, whatever its length, may be shortened as a result of his removal for cause by the governor of the state. The governor has this power, for example, in the cases of the larger cities of New York and Michigan, and of all the cities in Ohio. Where such a power exists it can be exercised by the governor only for cause and after a hearing, and the action of the governor is usually subject in theory to review by the courts. The courts, however, do not generally regard themselves as justified in attempting to control the discretion of the governor, and content themselves with seeing to

it that the person removed has a hearing, and that some evidence of the dereliction of duty charged has been offered to the governor. If such is the case they will uphold his decision.

Before closing what is said with regard to the mayor, attention should be called to the fact that the mayor, particularly in the smaller cities of the United States, discharges judicial functions. In most of the cities he is a magistrate, and while he seldom acts in the larger cities, in the smaller cities he has minor civil and criminal jurisdiction and very commonly exercises his judicial powers. These powers would seem, however, to be a relic of the past rather than a forecast of the future, and it is probable that the future will see a considerable diminution in them.

**City Civil Service.** A study of municipal organization is not completed with the examination of the powers of the council and the mayor and of their relations one with the other. It is, of course, true that in those cases in which the organizing power as to the details of the city organization is granted to the council, any further study of city government must leave the statutes and extend to the field of local ordinance where variations in detail are apt to be very great, greater perhaps than in the case of the statutes of the legislature. In the United States, as has been pointed out, in most instances, certainly in the case of the largest cities, the council has no large organizing power. This has been assumed and is exercised by the legislature of the state through the passage of general municipal corporations acts or special city

charters. At the same time, in a number of cities in the United States, of which Chicago is a marked example, the city council still has the power to organize the details of the city administration. But, however great may be the various details and whatever difficulties the student may encounter in his investigation of what are tiresome and what may seem to be unimportant details of the city organization, the study of these details is absolutely necessary. For it is largely as a result of the detailed organization of the city and municipal custom that city government is good or bad. As Dr. Shaw[1] says of Paris: "There can be no comprehension, however faint, of the government of Paris which does not take into account the superb permanent organization of the civil-service machine. It is to this *tertium quid* that one must look if he would discover the real unity and continuity of the administrative work of the Paris municipality. Prefects may come and go, ministers may change with the seasons, and municipal councils may debate and harangue until they make the doings at the Hotel de Ville a byword for futile and noisy discussion. But the splendid administrative machine moves steadily on. Herein lies the explanation of much that puzzles many foreign observers who cannot understand how to reconcile the seemingly perfect system of French administration in all matters of practical detail with the rapid and capricious changes in the highest executive posts." What is here said of Paris may be said of every city in the world. It is the way in which the administrative force of the city is organized and does its

[1] "Municipal Government in Continental Europe," p. 27.

work that makes municipal administration efficient or not.

What now are the qualities which this administrative force should have in order that the best government may be secured and how has the attempt been made, if it has been made, to secure the best government? The qualities desired in a municipal administrative force are two in number: they are amenability to popular control, and administrative efficiency. Amenability to popular control is necessary, else the wishes of the people will be incapable of realization; administrative efficiency is necessary, else what is done will not be well done. But while amenability to popular control is predicated upon an unstable tenure of office, administrative efficiency is predicated upon actual permanence of incumbency. The two desired qualities seem, therefore, to be somewhat inconsistent. This inconsistency, further, is not a seeming but a real inconsistency, and the natural result is that it is usually the case that one of the two qualities so desired in a municipal administrative force is, as a matter of fact, somewhat sacrificed to the other. This is particularly true where the attempt is made to secure the desired result by means of legal provision. Thus, in the United States, where what is sought for is amenability to popular control, the terms of the important municipal officers, whether because of legal provision or of political usage, are so short that permanence of incumbency is well-nigh impossible. The result is that while popular control is probably to a greater or less degree secured, the administration is comparatively inefficient. In Germany,

where it would seem that what is most ardently desired is administrative efficiency, the tenure of municipal officers is so protected by law that an effective popular control over the city government is very difficult, if not impossible, of attainment.

**British System.** In Great Britain, on the other hand, no attempt is made to secure by law either amenability to popular control or administrative efficiency. Everything is left to the council and public opinion, and the result has been that in recent years both qualities have been secured in a high degree. In Great Britain the council divides itself into committees, each of which has under its jurisdiction some one branch of city administration. On each of these committees there are a number of aldermen and councilors, and, as a rule, each has an alderman for its chairman. These committees are practically the heads of the different city executive departments which have been formed by the council in the exercise of its power to organize the city administration, and have power, subject to the approval of the council in which the ultimate authority rests, to appoint, dismiss, and direct the officers of the department.

It is through this committee system that the whole city administration is rendered amenable to popular control. The people control the council, the council controls the committees, and the committees control the departments. The control which the people exercise over the council is so organized, however, that popular control is somewhat subordinated to administrative continuity, for the council is only partially re-

newed at each election, one third of the councilors being then changed.

Under the council committees there is a regular routine administrative force. This force is divided into the higher and the lower administrative force. Such a division is not, however, made by the law but results from the usages of the council and its committees. The higher officers, such as the borough surveyor, equivalent to the American engineer-in-chief of public works; the borough clerk, equivalent to the American corporation counsel; the health officer and inspector of nuisances, equivalent to similar officers in the American city, have by law a tenure during the pleasure of the council, and no provision of law determines their qualifications which, like their tenure, are fixed by the council. But, as a matter of fact, these officers are chosen because it is believed that they are qualified, by reason of their knowledge and experience, satisfactorily to perform the duties of their respective offices; they serve for long terms and are seldom, if ever, dismissed arbitrarily and without good cause. What has been said with regard to the higher officers may be repeated with regard to the lower officers. No attempt has, it is true, been made by law to apply to them the merit system of appointment introduced into the imperial service by the Civil-Service Reform movement. But their terms of office are actually quite long, though their tenure is during the will of the council. The result is that no attempt is apparently made to secure by provision of law either administrative efficiency or permanence of tenure. These are, however, secured by public opin-

ion. The entire administrative force is out of politics, not merely national, but also local politics.

Under this scheme of government both the qualities so desired in an administrative force are secured. An enlightened public opinion is largely responsible for the attainment of these objects. The greatest hindrance to the development and exercise of such an opinion is to be found in the influence which national political parties exercise over city government. The influence of such political parties is greatly diminished in Great Britain, first, by the position which is accorded to the city. The city is not an important agent of state government; and where it does act as such agent, the control which the state exercises over it is administrative rather than legislative. The influence of the political parties is further diminished by the general scheme of municipal organization, which fixes clearly the responsibility for city government, and on account of the small number of elective officers makes little demand upon the intelligence of the voters.

Further, the British principle of concentrating all administrative power in a popularly elected council makes it unnecessary that the popular control shall be exercised in concrete cases over any of the city administrative officers. Municipal officers, acting under the direction of the council committees, possess so little freedom of action and so little discretion that it is not necessary, in order to realize the wishes of the people, as expressed by the council, for the popular control to be exercised over them.

Finally, the fact that the heads of the departments

are members of the council serving without pay and not getting their livelihood out of the emoluments of their official positions, provides for the existence and continuous exercise of a popular control over municipal administration which under the social conditions existing in the ordinary British city is in the hands of representatives of the most intelligent and public-spirited classes. There being no salary attached to council membership, no one seeks election to the council from motives of pecuniary gain. The honor attached in the public estimation to the position is sufficient reward for the time devoted to the work. The time devoted to municipal work also is comparatively so small as the result of the committee system which in its turn is often based on a subcommittee system, that even busy men can afford to serve without pay on the borough council and do their share of committee work.

**United States System.** In the system in force in the United States we find a system radically different from that which we have just considered. This system is characterized by the complete separation of the mayor and executive departments from the council. The number of these departments, their functions, their term of office, and the method of filling the office of head of department—all these matters are, as a rule, fixed in considerable detail by the provisions of the charter. Only the minor details may be fixed by the council. The executive departments are not only separated from the council; they are also, in many instances, separated as well from the mayor. The board

system, as this system was called, is now, however, being abandoned, and the executive departments, particularly in the larger cities, are being subordinated to the mayor, in whom the executive power is being concentrated.

The lack of concentration in the system of city government most popular in the United States has brought it about that very large discretionary powers are vested in the heads of departments. This has made it necessary that frequent changes should be made in the official force, particularly in the heads of departments. For only through the exercise of the power of appointment, where he possesses it, can the mayor exercise any influence over the heads of these departments. These frequent changes have been further encouraged by the influence which national parties have so long had over municipal politics in the United States. Up to within very recent years city elections have been decided largely as an incident of national and state politics, and the frequent changes in the official force, with the resulting lack of permanence of incumbency, have brought it about that real administrative efficiency has been impossible of attainment.

Since 1880, however, the attempt has been made to concentrate municipal administration in the hands of the mayor. While this change has resulted in subjecting the municipal administration to a greater popular control than was before possible, it has not succeeded in producing that permanence in the higher ranks of the administrative force, particularly in the heads of municipal departments, which is necessary

for administrative efficiency. Each incoming mayor, as a matter of course, appoints new heads of departments as he did prior to the time when the change in the position of the mayor was made, and in so doing he is supported by the prevailing public opinion.

What is true of the higher administrative officers is true also of the lower. The only general exceptions which are to be found are in the cases of the school-teachers, the police, and the members of the fire department, who are often given a permanent tenure by law. The attempt has sometimes been made also to give to the lower officers in every department a tenure similar to that of teachers, policemen, and firemen. The law, however, is generally silent as to the tenure of the lower officers as well as to the qualifications, both of the higher and lower officers. The only exception is to be found in the cities which have adopted the merit system introduced as a result of the Civil-Service Reform movement, and here the qualifications which are required of municipal officers usually affect only the lower grades of the service.

The desire to concentrate all executive power in the mayor in order to secure that responsibility for city government without which popular control cannot exist, and also to secure greater administrative efficiency, has resulted in the very general adoption of what are called single-headed departments.

**Boards versus Commissioners.** The desirability of single headed departments has come to be regarded as unquestionable, and it is almost heretical at the present time to express the conviction that the board form

is preferable. At the same time it is well to remember that both Great Britain and Germany lay great emphasis upon the board form of administrative departments, while both France and Italy have organized their administrative departments in such a way as to give a certain amount of recognition to the board form of organization. While, therefore, a conviction as to the desirability of the board form may be regarded as heretical, when looked at from the point of view of the average American municipal reformer, it cannot be considered at all heretical when regarded from the point of view of continental European and British municipal government. It is therefore quite proper to consider somewhat in detail the reasons which are advanced in favor of the board form of organization.

The reasons which are advanced in favor of the board form are, in the first place, the greater permanence of tenure in the heads of the city executive departments which it assures. This results from the fact that boards may be so organized, as indeed they are generally organized, as to be partially renewed. The members are given such a tenure and term of office that all of them do not leave office at the same time.

A further reason for the adoption of the board form is to be found in the fact that it is the only form of organizing the executive departments of the city which really makes permanently possible popular non-professional administration. The work in practically all executive departments of cities of any size is so great in extent and so complex in its character that it can be properly attended to by one man only on the

condition that he devote his entire time to it during his term of office. Certainly no one man can properly attend to the work of a municipal department, unless he subordinates all other work of a private character to the performance of his official duties. Now no man can afford to devote himself for any length of time to the performance of official duties so absorbing, unless endowed with large private means from which he can live without resorting to some regular occupation as a means of livelihood, or unless the emoluments of office are quite large, or the experience derived from the performance of official duties is going to be of aid to him in his future career.

The result is, that either a permanent official class must be developed under the single-commissioner system, or else the offices are monopolized by the well-to-do classes of people. The latter result is hardly consistent with a popular democratic government. The former means either a permanent professional bureaucracy, or that the offices are filled by a set of men who make politics their profession, obtaining their livelihood from the emoluments of the various offices they fill, one after the other. Because they do not occupy any of these offices for any length of time, and because they have not received any adequate training, if they have received any training at all, they are often not competent to fill these offices.

This last result is what has followed, in the average American city, the adoption of the single-commissioner form of organizing the executive departments. It is unquestionably true that the majority of important offices in the city of to-day in the United States

are filled in the long run by what are commonly termed "district leaders;" that is, men who, for the most part, get their living out of politics; who, if they do not resort to other and illegitimate methods of obtaining money and are not well-to-do, must get their living out of the salaries which are attached to and must be attached to the offices. They are, in fact, the only men to whom we can look under the present system to take office permanently.

Such are then almost inevitably the results under our present political conditions of the single-commissioner system of municipal executive departments. It would be possible by attaching large salaries to the important offices in the large cities, and by making the terms of office much longer, preferably during good behavior, to develop a really professional service. If single-headed departments are to be retained—and that the system has much in its favor cannot be denied—that is what should be done. If it were done, it would be possible to demand of the incumbents the previous training necessary to fit them for the arduous and complex duties they are to perform. We should then frankly recognize what is actually at the present time the case, that these positions must be held by a professional official class, and by so doing we could do much to elevate the plane of that class, both as regards character and ability.

Such a permanent professional administration, however, would not reflect as clearly as is desirable the wishes of the people. No system of administration is ideally a perfect one which is entirely controlled by a professional official class. Municipal administration

is so complex and so wide in extent that it is extremely doubtful whether under any system of organizing the mayor's office the influence of the mayor, serving for a short term only and depending upon permanent professional heads of departments for the execution of the municipal policy in its details, would be great enough to make the administration sufficiently amenable to popular control. Such a popular administration can be obtained only through a board system in which the members of the various boards are not paid large enough salaries to make official positions tempting as a means of livelihood. It is, indeed, probably better, as is done in Great Britain, Germany, France, and Italy, to attach no emoluments whatever to these positions in order that the motives of those who assume them may be absolutely unmixed. No emoluments being attached to these positions, persons desiring to obtain a livelihood out of political life will not be attracted to them, provided some method were adopted, which it would seem ought to be quite possible, of preventing the incumbents of such positions from making money in illegitimate ways.

The existence of the board system thus makes it possible for the business and professional classes of the community to assume the care of the public business without making too great personal sacrifices. Compulsory service, as is the rule in Prussia, may be introduced. Such a provision for compulsory unpaid service would not be unjust, for the work of almost all departments is of such a character that it can be subdivided and distributed among the various members of the boards at the head of the departments.

The work demanded of the members of these boards will be much diminished if proper methods of filling the higher subordinate positions are adopted. If, for example, the public works department of the city is placed in the hands of a board having under its direction a competent engineer or engineers, with permanent official tenure, who attend to the details of the purely technical work, there are left for the board itself merely questions of policy to determine, which can be given to individual members of the board to attend to with the aid of the permanent professional force. The individual board members by the expenditure of a comparatively small amount of time, that is, as compared with what would be demanded of one man responsible for the entire work of the department, can arrange all preliminaries which must be attended to before any matter is decided by a full session of the board. Such full sessions can be held often enough to secure efficient attention to the work of the department, without making it necessary for any member of the board, even if account is taken of the individual work he could do, to devote all of his time, or even a large part of his time, to public business to the detriment of his private affairs.

Such a method of organizing the heads of municipal departments not only makes the administration of the municipal policy popular in character, but it also has the great advantage of awakening and keeping alive local public spirit. The mere fact that it calls into public service a large number of men who are not in public life for what they can get out of it, tends to form numerous centers from which will radiate the

best sort of political influences—influences which will be continuously at work for the amelioration of municipal conditions. If, combined with such a method of organizing the heads of municipal departments, there are adopted proper methods of appointing, not merely the clerical and ministerial forces of the departments, but also the higher subordinates who ought to have a special and technical training, we have not only a popular administration which would encourage the development of public spirit; we have also a most efficient administration.

Finally, we may draw a lesson from American experience. If an examination is made of the ordinary method of organizing the educational administration in the American city, which must be regarded as on the whole one of the most successful branches of American municipal administration, it will be found that the board system is adopted. At the head of the administration of the schools is to be found a school board or board of education, whose members are elected or appointed in various ways. Under the board, which concerns itself with the general policy of the schools, is to be found a more or less professional force with the superintendent of schools at its head, which, under the direction of the board of education, conducts the common schools. This has had the result, as everyone knows, of allowing politics, that is, state and national politics, much less influence over the schools than they have over the other branches of city administration. It has also had the effect of keeping alive the interest of the people in the schools, which are unquestionably considered one of the

most important branches of municipal administration, and in the proper maintenance of which the people of almost every city of the United States take the greatest pride.

It is also to be noticed that often in those cities in whose organization the single-headed system predominates, when any great public work is to be undertaken for whose successful prosecution a continuous policy is desirable, the work is intrusted not to the single head of the department of public works but to a special commission or board whose members have long terms of office. Such, for example, was done in New York in the case of the aqueduct, and also in the case of the building of the present rapid-transit railway. What is this but a recognition of the value of the board form in securing permanence of tenure and continuity of administrative policy?

But, notwithstanding all that has been and may be said as to the advantages of boards, we cannot fail to notice that the present tendency in the United States is away from the board form and toward the single-commissioner idea, particularly in the larger cities where the work of the departments is most complex. Even in the case of schools this tendency is evident.[1] What seems to be desired is administrative efficiency and the power of quick action. It may be also that the social conditions of American life are not such as favor the board form. It is certainly true that the whole industrial and commercial organization of this country is based on the one-man idea rather than on the board idea. It is the railroad president, the cor-

[1] See *infra*, p. 271.

poration president, and the bank president, rather than its board of directors, who gives its tone to the railway, the manufacturing corporation, and the bank. What is true of the industrial organization is in like manner true of our educational and political organization. It is the college president and the party boss who directs the college and controls the party. Such being the case, it may well be that we must reconcile ourselves to the single commissioner in city government, notwithstanding all the faults by which the system is accompanied. And it cannot be denied that these faults are, to a degree at any rate, offset by the greater concentration of responsibility and greater powers of quick action which it must be admitted are present in the case of a single commissioner. It is, however, much to be regretted that boards find such unfavorable conditions in the United States. For, as a result of their absence, we are deprived of the possibility of securing some of the most beneficial characteristics by which a system of city government may be distinguished.

In the United States, contrary to the conditions which exist in other countries, neither positive law nor public opinion has in the past attempted to secure either an amenability to popular control or administrative efficiency. But, within recent years, as a result of the concentration of the executive power in the mayor, greater amenability to popular control is being secured. The adoption of the merit system has done something also to secure administrative efficiency. What has not been secured by law has not been secured by public opinion, which until very recently

has not been at all enlightened. This has been due, however, to the failure on the part of the people generally to perceive that municipal questions should be decided upon their own merits, and that the fortunes of cities should not be sacrificed in the interests of the state and national political parties. The necessity of building up and maintaining political parties has been so great that it has blinded the people to the evil of the government of cities by national parties. Of late, however, a reaction has set in and considerable progress has been made in building up a public opinion sufficiently strong and sufficiently enlightened to reprobate the practices of the past in this respect.

**City Administrative Districts.** Before closing what is said as to the organization of the city executive in the cities of the United States, a word at least should be said with regard to the districts into which the city is divided for the purposes of its administration. Almost every one of the departments in a city of any size feels the need of dividing the city into circumscriptions for the purpose of discharging conveniently the functions intrusted to it. Thus, the police of the city cannot keep order in a city of any size where they are obliged to act from a single center. The city is usually divided into precincts, in each of which is a center of police activity. What is true of the police is true of the fire department, the street-cleaning department, the public-works and other departments. In addition to the purely administrative districts into which cities of any size must be divided, there are other districts which must be provided, such as elec-

tion districts for both state and municipal elections, and judicial districts.

Of course it is true that the needs of each department, whose needs are thus considered, are somewhat different from the needs of every other such department. If these needs are the only thing worthy of consideration, each department should be at liberty to district the city to suit its own convenience regardless of the other departments and branches of the city government. But it is also true that the interests of the city as a whole deserve consideration, and that if the method of districting the city has an important influence on those interests, and particularly upon the political capacity of the people, considerations of administrative convenience should give way. Now it is unquestionably true that the district system of a city does have an important influence on the political capacity of the people.

Attention has been called to the fact that one of the things which make city government inherently difficult, is the lack of neighborhood feeling which seems invariably to be produced by city life. If each branch of the city government, and each city executive department, forms districts to suit its own convenience merely, it is almost a certainty that there will be almost as many series of different districts as there are branches of city government and city executive departments. The result is that such a neighborhood feeling as may exist is disintegrated, and that it becomes impossible, so long as this administrative diversity continues, for such a neighborhood feeling to develop. If, on the other hand, care were taken

to make the election districts the same as the judicial districts and to cause these to conform, in some way, to the police, fire, and other districts; if the district court-house, the fire engine-house, the police station-house, and even the school-house in given parts of the city were situated, from the point of view of city geography, near each other,—placed perhaps in or around a small playground or park,—it would be possible to develop civic centers which would tend to encourage the development of neighborhood spirit. It is quite true that the convenience of the departments might be interfered with, but the loss suffered by the departments would be more than compensated for by the development of neighborhood spirit, and in many instances as well by the greater convenience of the citizen who would find that his business with the city government could be conducted with greater ease than under conditions where the city districts bore no relation to each other. Under the plan which has been outlined, of course the districts would be more permanent than at present, while the civic centers which might develop would, of necessity, be absolutely permanent. The changes of population which are going on so continuously in the city would make the problem of district representation a different one from what it is where the districts are not permanent but are changed to suit the changes of population. The problem would not, however, be one of great difficulty, for, instead of establishing single districts as at present, it would be possible to make provision for districts whose representation would vary with their population.

The plan which has been outlined is one which to a large degree has been adopted in Paris. Paris is divided into twenty districts, each of which has a civic center—the *mairie*—at which are found the office of the *maire,* in this case a district and not a city officer—generally a city library, and the local office of the charities department. The *mairie* itself is usually situated in a small open space or park. The twenty districts, in addition to being thus administrative districts, are also election and judicial districts. In this case, notwithstanding their differences in population, they are equally represented on the city council. So far, however, in the United States little attention seems to have been given by the city governments to this important matter, and the convenience of the administrative departments alone has been considered. The result is that an opportunity has not been availed of either to preserve or to develop neighborhood feeling, or to secure an architectural effect which would render city life much more attractive than it is at present.

# CHAPTER IX

## POLICE ADMINISTRATION [1]

**Meaning of "Police."** The word "police" is now used in a sense quite different from that in which it has been used in the past. Originally it meant all government. Later it was used to indicate what is now called internal administration, that is, all administration not military, financial, judicial, or relating to foreign affairs. Finally it came to mean that part of the administration of internal affairs which has to do with the preventing of the happening of evil and the suppressing of violations of the law through the adoption and enforcement of repressive measures. This is the sense in which the word is most commonly used nowadays, though the habit of referring to the officers, whose main duty is the preservation of the peace, as policemen, has caused it to be thought that police is confined to the preservation of the peace.

Using the term police as indicating that govern-

[1] Authorities: Fairlie, "Municipal Administration;" Eaton, "Government of Municipalities;" Sites, "Centralized Administration of Liquor Laws" in Columbia University Studies, Vol. X, No. 3; Whitten, "Public Administration in Massachusetts," *Ibid.*, Vol. VIII, No. 4; Rawles, "Centralizing Tendencies in the Administration of Indiana," *Ibid.*, Vol. XVII.

mental function which is exercised for the preservation of the public safety through actions somewhat repressive in character, we may divide the police functions into three classes, to which we may give the names of legislative, judicial, and administrative police.

Legislative police functions consist in the issue of general ordinances in the interest of the public safety. This matter has already been discussed in what has been said relative to the powers of city councils.

**City Judicial Functions.** By judicial police we mean the power to punish violations of police laws and ordinances. The functions of judicial police resemble very closely the functions discharged by the criminal courts; and it is often the case that they are discharged by the lower instances of the criminal courts, or that police courts are invested not merely with police functions but as well with minor criminal jurisdiction. We shall, therefore, in our discussion of judicial police discuss as well the criminal judicial functions which are exceptionally discharged by municipal officers.

By administrative police we mean the power to prevent the endangering of the public safety. While one of the main functions of administrative police is the preservation of the peace and the maintenance of order, the word has a much wider meaning. Under this heading we shall discuss as well sanitary police, building police, and police of public safety generally. We shall take up, first, judicial police.

It will be remembered that in our study of the de-

velopment of municipal institutions in the United States we saw that the earlier American charters vested, in accordance with the English ideas of the time, judicial police functions in certain of the city officers, namely, the mayor, recorder, and aldermen. Thus, in New York, these officers were declared, by Section 26 of the Montgomerie Charter of 1730, to be justices of the peace, and were to hold four times a year courts of general sessions of the peace with jurisdiction to inquire into, hear, and determine crimes and misdemeanors in like manner as justices of the peace in their quarter sessions in England might do. They were also to be justices of Oyer and Terminer, and gaol delivery, and to be named in every commission thereof. Further, they or any of them had power to arrest vagabonds, idle and suspicious persons, and to commit them to the workhouse or to Bridewell, for a limited period. In addition to this criminal jurisdiction they had the power to try civil causes, real, personal, and mixed, arising within the city. That is, the mayor, recorder, and aldermen had, acting either singly or in courts of which the mayor or recorder must always be one, a full criminal and civil jurisdiction within the limits of the city of New York. This was a result of this special grant to them by the crown of judicial powers.

The exercise of these powers remained unchanged during the colonial period, and it is not until 1788 that we find any evidence that the state considered that the administration of justice in the city of New York was a function of state administration which

should be attended to by state officers. By an act of 1788, although the mayor, recorder, and aldermen were still to have the powers of commissioners of Oyer and Terminer and gaol delivery, they were to hold such courts along with one of the justices of the Supreme Court. By an act of 1798 and one of 1800 the number of terms of the court of general sessions was increased, and a police office was established in the city with two special justices and clerks. This police office was established at first apparently merely to aid the mayor, recorder, and aldermen who might still act as conservators of the peace. The constitution of 1821 vested the appointment of these special justices in the common council of the city.

The constitution of 1846, however, provided for the popular election of all judicial officers, and by an act of 1848 the city of New York was divided into six districts. In each of these districts a police justice was to be elected who should have all the powers and perform all the duties of the special justices for preserving the peace in the city of New York. In this way the petty criminal jurisdiction was transferred from the aldermen, mayor, and recorder to a police court, separate and apart from the council. It seems, however, that the mayor, recorder, and aldermen had for a time the powers of magistrates, but never used them.

The petty civil jurisdiction of the mayor, recorder, and aldermen shared the same fate, though at an earlier date. By a law of 1787 assistant justices were to be appointed in New York city to relieve the magis-

trates,[1] and in 1791 the aldermen were declared to be incompetent to discharge the minor civil judicial functions. Their higher civil and criminal jurisdiction was taken away from them in 1821. The law which took this from them recites that, "Whereas the mayor, aldermen and commonalty of the city of New York by their petition under their common seal have represented that the permanence and tenure of judicial officers is advantageous to the administration of justice and that the provisions to the effect of those hereinafter contained will be beneficial to the city, Therefore, be it enacted" that the mayor's court shall be changed into a court of common pleas or county court of the city of New York. The judges are declared to be the first judge, the mayor, recorder, and aldermen. The first judge was to be appointed for good behavior by the governor and council of appointment. He must, to be eligible, be a counselor of the Supreme Court of three years' standing. No new trial was to be granted except for irregularity, unless one of the judges present at the hearing was a counselor at law in the Supreme Court. This court could be held by the first judge, mayor, or the recorder, and one or more of the other judges.

The same act provided for a court of general sessions of the peace of which the same persons were to be judges. The act then goes on to say that it shall be the special duty of the first judge to hold the court of common pleas, and of the recorder to hold the court

[1] These justices have since been replaced by the district court justices who are, by the constitution of the state, elected by the people of the districts.

of general sessions. The recorder still presides over the court of general sessions, but he has lost almost all of his administrative functions and has become therefore exclusively a judicial officer. The court of common pleas, to which was afterward added the Superior Court of the city of New York, was, with the Superior Court, incorporated into the Supreme Court of the First Department of the State by the Constitution of 1894. The last step in this development was the taking away from the aldermen and the mayor the right to sit as judges. This was done for the aldermen, as far as the criminal courts were concerned, by a law of 1857. The mayor is still, in the charter of New York, declared to be a magistrate, though his powers as magistrate are not defined, and he never attempts to exercise judicial powers.

**City Police Justices.** Up to 1846, then, the persons having judicial police functions to discharge in the City of New York had been either appointed by the governor or elected by the city council; or certain members of the council, that is, the aldermen, who were elected by the voters of the city, *ex officio* discharged these functions. The democratic movement of the middle of the nineteenth century had the same effect on this branch of administration that it had on all others. The Constitution of 1846, as has been said, made these officers elective by the people. The elective principle worked as badly here as in other parts of the city administration, but being, so far as concerned judicial police officers, incorporated into the constitution it could not be abandoned so soon as it

was in the case of the elected heads of executive departments.[1] In 1869, however, the constitution was so amended as to permit of the appointment by some local authority of the judicial police officers in the cities of the state of New York. In 1873 a law was passed, drawn by the late Dorman B. Eaton, which vested the power of appointing police justices, as they were called, in the mayor, subject to the confirmation of the aldermen. Later the confirmation of the aldermen was made unnecessary. The law of 1873 provided further that the police justices might be removed by the judges of the higher courts. In 1895 the system was reorganized and the principle introduced that police justices should be removed only after an opportunity to be heard in their defense had been accorded to them. The law of 1895 provides further for two classes of justices: police magistrates who are committing magistrates and have the power to punish for police offenses, and the justices of special sessions who act both as a court of appeal from the summary convictions of police magistrates and as courts of first instance acting with a jury for minor criminal offenses. Both the magistrates and the justices of special sessions may now be removed for cause only and after an opportunity to be heard.

So far as other cities in the United States are concerned the practice varies. Sometimes the judicial police officers are appointed by the governor of the state, or the state legislature, as in the New England

[1] These, it will be remembered, were made elective in 1849, and were made appointive by the mayor and council by the charter of 1853.

states, sometimes by the city council, as in the Southern states, or by the mayor and council, or by the mayor alone, as in New York and other cities scattered all over the country; sometimes elected by the people, as in Philadelphia and generally throughout the Western cities. What has been said with regard to police judges may almost be repeated with regard to municipal civil judges. Indeed, in some cases the same person acts in both capacities.

**Children's Courts.** Within recent years the attempt has been made in some of the larger cities of the United States to provide, in addition to the ordinary minor criminal courts, a court or courts for hearing criminal complaints against children. The purpose of providing such special children's courts is to prevent the association of offenders of immature years with habitual adult offenders, and also to prevent the development, in the mind of the youthful offender, of the idea that he is a criminal. Such courts have been established, for example, in the cities of New York and Baltimore. Closely connected with these children's courts is the system of probation officers for whom provision has been made in a number of the larger cities. These officers are appointed by the minor criminal courts, very frequently on the nomination of the voluntary associations, whose purpose is the amelioration of the lot of the criminal and dependent classes.[1] When a youthful offender, or in

[1] See New York State Library Bulletin, No. 54, p. 461; Report of Conference of Charities and Correction, 1901, Index *sub verbo* "Probation;" Annals of American Academy, Vol. XX, p. 257.

some cases an adult first offender, is convicted of a criminal offense by one of those minor criminal courts, the judge by authority of the statute suspends sentence and hands over the person convicted to the charge of a probation officer. In such case the person so placed in charge of the probation officer must report periodically to him. Such reports finally come to the judge who, if they are satisfactory, may in the end discharge the offender. It is said that this method of dealing with first offenders has been successful, particularly in the case of youthful offenders and those who have been convicted of drunkenness.

**Importance of City Courts.** The subject of the organization and powers of these lower city courts, and particularly of those having criminal jurisdiction, is one of the most important subjects connected with the study of city government. For the great mass of city people come into relations only with these courts. If these courts are corrupt or inefficient, justice for the great mass of those people is but a misnomer. And yet, notwithstanding the transcendent importance of the subject, it has aroused little discussion on the part of the writers on city government, who have very generally confined their attention to the general problem of municipal organization, or have considered in the main the problem of municipal functions.

Now, as a matter of fact, there are few points in which city government in the United States is so unsatisfactory as these minor city courts. In New York city various methods of solving the problem have been tried, as has been shown. It is, to say the least,

very doubtful whether the solution at last reached is a satisfactory one. It is certain, however, that in large cities the worst possible solution of the question is the popular election of the minor judges, particularly the police judges. The evil is aggravated where the election is by districts. The almost invariable result of the election-district system, in the conditions which prevail in our large cities, is the election as police judges of the worst possible type of ward politicians. Appointment by the mayor has produced somewhat better results, particularly where the mayor has been confined to the appointment of members of the bar of a certain number of years' standing. But the experience of the city of New York goes to show that this method of filling the office may result in the existence of a police bench which is a disgrace to a community which flatters itself that it is either civilized or enlightened. Conditions in New York have been so bad under the system of mayoral appointment that the legislature has been obliged to step in and legislate the entire force of police judges out of office.

Indeed, it would seem that local executive appointment or local election of police judges in the larger cities of the United States was not the proper way of filling these offices. State appointment, which is the rule in New England, would seem to have secured better results. The fact that such a method has been, *e.g.*, in the state of Massachusetts, the unchanged rule for a long time would seem to indicate that the evil conditions accompanying all the methods tried in New York have not been present under the method of central state appointment.

Much might be said in favor of the appointment of these officers by the justices of the higher courts. Such a plan is proposed by Mr. Eaton, in his "Government of Municipalities," and, as he points out, has been followed with marked success in the case of the United States Commissioners, who, in the federal system of judicial administration, exercise some of the functions discharged in the cities by police judges, and who are appointed by the United States judges.

In conclusion, it may be said that some of the states of the United States are the only governments in the world which attempt to fill these offices by any method of local selection. In Great Britain, France, and Germany all officers discharging the functions discharged here by police judges are appointed by officers of the central government.

**Preservation of the Peace and Order.** Administrative police is that part of the police function which has to do with the arrest of offenders against the criminal and police laws and ordinances. The systematic organization of professional, disciplined police forces has only very recently been undertaken. From a very early time the attempt was made to provide officers for the preservation of the peace, like the English Parish constables, of whom Dogberry is the most famous example. There was nothing, however, very systematic about the way in which the government attempted the work, and the attempts which it made were not attended with great success. Besides forming systems similar to that which was based on the

parish constable, the governments of the centuries preceding the nineteenth century placed a considerable reliance upon the army for the preservation of order, particularly where that might be disturbed as the result of political offenses.

**The London System.** The first attempt to form a modern city police force was made by England, in 1829, by the act passed to improve the police in and near the metropolis of London. The metropolis of London as distinguished from the city of London had grown up naturally about the city through the settlement of persons in what had been rural parishes. As the population of these parishes had increased and it was seen that the unmodified rural parish organization was inapplicable to the new conditions, special Acts of Parliament were passed, giving particular parishes a special organization. But, so far as the preservation of the peace and the maintenance of public order were concerned, reliance was placed on the parish constable and the night watchman, who had jurisdiction only in the parish in which they had been appointed. Dr. Colquhoun, a city police magistrate, drew attention, in the latter part of the eighteenth century, to the bad conditions produced by such a system, in a book entitled "The Police," which in a short time went through several editions. Various parliamentary committees were appointed to examine into the subject in the early part of the nineteenth century. In 1828 a commission was appointed on the suggestion of Sir Robert Peel, who was then Home Secretary, and in 1829 an act was passed which took

out of the hands of the parishes surrounding the city the charge of the preservation of the peace, and provided a metropolitan district, as it was called, which ultimately came to consist of all the country within a radius of fifteen miles from Charing Cross, and in which a new police force was established. The police of the city of London, which had not been affected by the act of 1829, was, in 1839, put upon somewhat the same basis as the metropolitan police force. The fact of Sir Robert Peel's connection with the change will always be associated with the new municipal police methods from the terms of "Bobby" or "Peeler" which, originally used in derision, have since come to be applied commonly to city policemen in almost all English-speaking countries.

This reform met with great opposition. The committees of Parliament, which in the early part of the nineteenth century had examined into the subject, regarded with considerable misgiving so radical a change in the historical methods of maintaining order. And Parliament made the change only because of the increase of crime everywhere throughout the metropolitan district. The misgivings of those responsible for the change were but a forecast of the opposition which followed its adoption on the part of the people. The "Peelers," or "Bobbies," as they were at once called, were greeted on the street with hisses and hoots of disapproval; and cries of "Down with the new police" were commonly heard. Only four years after the passage of the act came the Chartist riot in Coldbath Fields, when three policemen were stabbed and one killed. The coroner's jury brought in a ver-

dict of "justifiable homicide." Committees of Parliament were then appointed to inquire into the conduct of the new police force, approved it, and popular hostility ultimately subsided.[1]

The main characteristics which distinguished the new methods from those which they superseded were three in number. They were, first, the professional character of the force. The old system of parish constables and night watchmen had, it is true, been based upon paid service, but the service was paid for on such a low scale that the constable and watchmen were not able to live from their pay alone. The new force, in addition to being much more numerous than the old, received larger compensation and were expected to devote their entire time to their work. The occupation of policemen thus became a definite occupation, requiring certain specific qualifications, although the powers given the new force were little more than those possessed by parish constables.

The second characteristic of the system was its centralization. The officers at the head of the new force, at first two commissioners, later one commissioner and three assistant commissioners, who were given the powers of justices of the peace, were appointed by and acted under the immediate direction of the home secretary.

In the third place, the new force was organized on a semi-military plan and consisted of constables, sergeants, inspectors, and divisional and district superintendents.

At the time of the formation of the system provision

[1] "Encyclopædia Britannica," Art. "Police."

was made for a detective force which was and is known as the criminal investigation department. This is under the charge of one of the assistant commissioners, who has his headquarters in Scotland Yard with officers of the department in the divisions of the metropolitan district. These officers are often sent all over the country and even to the British Colonies and foreign states.

The municipal corporations act of 1835 contained a provision by which this system might be extended to other British boroughs, although the management of the forces which were to be provided was to be left in local control. Subsequent laws have, by grants of aid from the central government to the boroughs and counties, whose police forces attain a certain degree of efficiency, to be evidenced by a certificate of the home secretary, encouraged the formation of similar forces in both boroughs and counties, and, in 1839, as has been said, a police force for the city of London was organized on pretty nearly the same basis, although, like the borough forces, it was left under local control.

**Early American Systems.** In the United States, at the beginning of the nineteenth century, similar conditions existed in the cities as existed in England. Reliance was placed almost entirely on the constables and night watchmen. A good idea of the conditions which existed in one of the large cities of the United States is given by Allinson and Penrose, in their "Philadelphia." Here it is said:[1] "The first watchman was ap-

[1] P. 34.

pointed in 1700 by the provincial council, and had the whole care of the city within his charge. It was his duty to go through the town at night ringing a bell, to cry out the time of night and state the weather, and to inform the constables of any disorder or fire. In 1704 it was ordered by the common council that the city be divided into ten precincts and that an equal number of watchmen be assigned to each constable therein. In the same year the city was divided into ten wards. The constable was the principal officer of the watch. The watch was not a permanent body of paid men, but every able-bodied housekeeper was supposed to take his turn and watch or furnish a substitute. . . . The system, however, was onerous and unsatisfactory. . . . At length, in 1749, the complaint concerning the want of a 'sufficient and regular watch' culminated. It was complained that the watch was weak and insufficient, and that the housekeepers refused to pay the watch money upon the pretense that they would attend the watch duty when warned, but frequently neglected to do so." In 1750 an act was passed granting to a board, consisting of six wardens to be annually elected, the power to appoint and pay as many watchmen as they deemed proper. "In conjunction with the mayor, recorder, and four aldermen they were to fix stands throughout the city at which the watchmen were to be posted and to have general control of the watch. The constables and watchmen were supplied with copies of the rules and regulations. The constables reported regularly at the court-house and had general superintendence of the watchmen. Neglect or violation of the police rules of the mayor,

recorder, aldermen, and watchmen was punished by fine." The system was not, however, at all satisfactory. "During the revolution there was practically no police protection to the city apart from the military, and even after the act of 1789 was passed the same radically inadequate system continued as existed under the charter government. The police force, if we may use the term, consisted of a high constable, the constables, the watch, and the superintendent of the watch, the two former appointed by the mayor, the latter by the city commissioners. The constables had their common law powers. The ordinance of 1789 creating city commissioners and the several ordinances supplementary thereto, placed the appointment and regulation of the watch in their hands where it remained until 1833 subject to removal by the mayor for misconduct. The first decided step to be noticed in this period is that the city commissioners were to appoint a superintendent of the night watch, and hire and employ a sufficient number of able-bodied men to light and watch the city, at fixed wages, prescribe rules for their government, and dismiss them when they thought proper." [1] The system still was not satisfactory, and several riots occurring, one in 1838 and another in 1844, resulted in the improvement of the system, the police force being organized in 1850 somewhat on the English model.

Conditions were very similar in New York. In 1840 an attempt was made to make the force more efficient. The mayor with the approval of the council was to appoint a chief of police, and the captains and men were

[1] P. 99.

to be appointed every year in each ward by the aldermen and the assessors. Naturally such a system was unsatisfactory and in 1853 a change was made. By the law passed in this year the mayor, recorder, and city judge were made police commissioners, with power to appoint the members of the force during good behavior. At first great difficulty was found in both Philadelphia and New York in making the men wear uniforms. The attempt to do this excited somewhat the same remark that the later attempts of the late Colonel Waring to put the street-cleaning force of New York into uniform excited. The wearing of uniform was then considered to be degrading to American manhood, and the attempt to make the men wear it was resented. Indeed, it is said that in Philadelphia the attempt to make the men wear their uniforms was not successful until 1860.

But both in Philadelphia and New York the attempt to make a somewhat military force after the English model was successful, and the example of these two cities was followed by others, so that at the present time almost every city in the country has its uniformed police force, organized in military fashion, and professional in character.

**Adoption of London System.** It will be seen that the system, as originally introduced in the United States, differed in one important respect from that adopted by the English law of 1829. In the United States the preservation of the peace was, at first, regarded as a purely municipal matter, and was therefore put in the charge of the local authorities, the mayor being

the most important authority having to do with the matter. In London, and on the Continent as well, it was regarded as a matter affecting the interests of the central government and therefore was either put into the hands of the central government or made subject to its control. The experience of a number of the cities of the United States, under the local management of the police force, was such as soon to produce a change in this respect, which brought the American treatment of the subject more into accord with European ideas. Thus, in 1857, the police of New York city and of Brooklyn was put into the hands of a centrally appointed police commission having jurisdiction over the newly established metropolitan police district. The example of New York was followed within ten years by Baltimore, St. Louis, Chicago, Detroit, and Cleveland,[1] while other centrally appointed police boards have since been provided in several cities in Massachusetts, among them being Boston, in Cincinnati, Washington, Denver, Newport, Kansas City, St. Joseph, Birmingham, Manchester, N. H., in eleven Indiana cities,[2] and in Providence (1901). In some of the cities, in which these centrally appointed boards were created, return has been made to the method of local appointment. This is so in New York, Chicago, Detroit, and Cleveland.[3]

The attempt to centralize the police forces of cities in the United States has given rise to a number of judicial decisions as to the constitutionality of this action on the part of the state, either under the ordi-

[1] Fairlie, "Municipal Administration," p. 133.
[2] *Ibid.*, p. 139. [3] *Ibid.*, p. 133.

nary American state constitution or under a state constitution which contains a provision that local officers shall be locally selected. The rule supported by the greater weight of authority is in favor of its constitutionality under either supposition. In New York, however, a state-appointed local police is unconstitutional. But the state may form a district which is substantially different from the territory of a city, and provide for a centrally appointed police force therefor, and there is reason to believe that a state constabulary, under the control of a state-appointed board, would be upheld.

**Advantages of State Police.** The reasons for the adoption of centrally appointed police forces, apart from transient partizan political ones, are two in number: One is the general dissatisfaction with local police management. This was largely responsible for the state appointment of the police commission in New York in 1857. It is, of course, true that partizan-political reasons had their influence then, but it is none the less true that the condition of the police force in New York under local management was a bad one.

The second reason for the centralization of municipal police forces has been the neglect of cities, having the management of the police, to enforce state laws which were believed to be of vital importance by the people of the state as a whole, particularly the prohibition laws.[1]

It is difficult to obtain any satisfactory testimony

[1] Sites, "Centralized Administration of Liquor Laws," p. 84.

as to the effect of state administration of the police force in the cities of the United States on the preservation of the peace and the maintenance of good order. The testimony would, on the whole, seem to be in favor of a state-appointed force,[1] although it cannot be said that a state-appointed police force is any more successful in securing the enforcement of Sunday-closing, liquor, or prohibition laws than a locally appointed police.[2] Ex-Mayor Quincy of Boston, is reported as saying:[3] "I am free to say that under the present board [the police board in Boston has since 1885 been appointed by the governor of the state] police administration has been better, the laws have been more strictly enforced, good order has been more generally maintained than under the old system. When the tone of the state government is higher than that of the city government centralized-police administration is the better system. The strictly police functions are more properly a state affair than most of the other departments of the city government."

It may be said, further, that the United States is the only country which has adopted the principle of uncontrolled local-police management. In most of the countries of Europe the police of the larger cities is under state management, while in all the police is subject to a strong central administrative control. In the countries of Europe the system which was established about the middle of the nineteenth century, and which was based either upon central appointment or a strong central administrative control, has been

[1] See Sites, *op. cit.*, pp. 55, 87, and 89.
[2] *Ibid.* [3] *Ibid.*, p. 75.

permitted to continue unchanged. In the United States, however, continual changes are being made in the system. Sometimes we have local control and other times we have state control. The stability of the European systems would indicate that they are reasonably satisfactory; the instability of American conditions would also indicate that the American system is not satisfactory, were it not for the fact that the exigencies of partizan politics are responsible for so many of the changes in the municipal organization in this country. But, while making due allowance for these disturbing influences, it can be said that the conditions of the police forces of the ordinary American city are not satisfactory; and the inference may be just as strong, perhaps, that one of the reasons why they are not satisfactory is that the control of the police force is too subject to the influences of the classes, to control whose actions the police have been formed. State control of the police would tend to remove the police force from these influences. Such, at any rate, would appear to have been the experience of the city of Boston.[1] This feeling is voiced by a message of the governor of the State of Massachusetts, in the year 1868, in which he vetoed a bill passed by the legislature to abolish the state police. He says: "A prosperous commerce, progress in the arts, and the increase of manufactures have condensed our population in large towns and cities, intensified vicious inclinations, and multiplied the actual number of crimes. This is apparently the price of public prosperity and wealth. Official records display to the public gaze

[1] Sites, *op. cit.*, p. 50 *et seq.*

an alarming increase of offenses against the person and property, of licentiousness and gambling, as well as of insanity and pauperism, that are directly traceable to lives of vice. . . . To deal with this advanced demoralization the municipal police, however honest or well disposed, seem to a great extent inadequate. . . . It is apparent that public decency and order, and public justice require the maintenance of an executive body which shall not be controlled by the public sentiment of any locality, which shall be competent in its spirit, its discipline, and its numbers to a reasonable and judicious but just and impartial enforcement of the statutes of the Commonwealth."[1] Somewhat the same testimony comes from Indiana. Professor Rawles says: "The party which at first opposed this centralization of authority has since extended it. . . . The success of the experiment is indicated by the words of Governor Matthews: 'Their [the metropolitan police boards] management of the police affairs of their respective cities has given such eminent satisfaction that there seems to be no disposition to return to the old system.'"[2]

**Police Boards versus Commissioners.** A burning question in the United States connected with police administration is, What shall be the composition of the authority, whether locally or centrally appointed, which has in its hands the management of the police? Shall it be a board or shall it be a single

[1] Quoted from Whitten, "Public Administration in Massachusetts," p. 85.

[2] Rawles, "Centralizing Tendencies in the Administration of Indiana," p. 311.

man? This question does not seem ever to have presented itself on the Continent of Europe where the head of the police force has always been one man. The same is true of the metropolitan police force in London. In the other cities of England, however, the municipal corporations act of 1835 made provision for a committee of the council, called the watch committee, which was to have charge of the police. The establishment of this committee was probably due, not so much to any conscious belief that the board system was the best system to apply to police administration, but to the fact that a committee was the only system of administration consistent with the general principles of the municipal corporations act; which consolidated all municipal functions in the council.

In this country the board system of police management was characteristic of the first attempts to organize a modern police force, namely, those of New York, by the laws of 1853 and 1857. The board system was introduced here, however, probably not because a board was believed to be particularly appropriate to police administration, but because the board system was just about that time believed to be the proper form of municipal government. It is true, that afterward the demands of the spoils system seemed to make a board necessary, for that was the only way in which a division of the spoils of the police force could be made between the two leading political parties, but this consideration does not seem to have affected the legislature which passed the acts of 1853 and 1857, for no trace of the bipartizan idea is found in those acts. Later on, it is, of course, true that the biparti-

zan idea had a potent influence in giving the board form to the municipal-police authority. The abuses which resulted from bipartizan boards have led, however, in more recent years to quite a tendency toward the abandonment of the board idea altogether, and to placing the management of the police in the hands of one man.[1] There is little doubt that the latter system is the correct one, whether such officers be appointed by the city or by the state.

**Defects of American Police.** It is, however, hardly to be believed that the mere placing at the head of the police department in American cities of a single commissioner or the appointment of such officer by the state governor, will have the effect of so changing the character of the force as to remove the present grounds for dissatisfaction with the police force as a whole. Such changes would, of course, concentrate responsibility for its management, and take it to a considerable degree out of local politics.

But the main reasons for dissatisfaction with the police force in the average large city of the United States, are not that it cannot be held responsible, or that it favors the members of one political party over those of another. The most common complaint against the city police is that, either as a body or through its individual members, it sells the right to break the law. Probably, in this respect, the police force of American cities is not peculiar. The same complaint is frequently heard of other city departments, and of the departments of both the state and national gov-

[1] Fairlie, "Municipal Administration," p. 137.

ernments, and it is not by any means unheard with regard to the police of other governments. But the persistence and the universality of the complaint in the cities of the United States cannot fail to produce the impression that the habit is more wide-spread and more deep-seated in the case of the American municipal police than it is elsewhere. We are naturally inclined to ask whether there is anything peculiar in the organization of the American city police, or in the conditions of American life, which should have for its effect a greater disposition on the part of the police to sell their favor in this country than in others.

So far as concerns the police force of Great Britain the organization of the city police force is much the same as here. The force, as a whole, is called upon not merely to suppress disorder and open violations of the law, but also to ferret out secret violations of the laws which have been passed with the particular idea in view of improving the public morals. In the case of the continental police forces the conditions are somewhat different. The enforcement of most of such laws is intrusted to a special department of the police force known as the morals police, and the major part of the force is removed to a degree, at any rate, from the temptation to sell its favor.

In one respect, however, the conditions of American life differ very much from those of European life, and the difference is perhaps in large part accountable for the greater use made by the police of American cities of their powers in their own pecuniary interest. In the United States the people have never so clearly as in Europe, and particularly in Conti-

nental Europe, distinguished between vice and crime. It is too commonly believed in this country that once we have determined that an action is vicious, it necessarily follows that such action should be criminally punished. Whether an action is believed to be vicious or not depends, of course, upon a variety of things. But whatever the criterion of morality or immorality may be, the public belief in its immoral character is the result of the standards, somewhat subjective in character, of the majority of individual men. Now, whether an act shall be a crime or not should be dependent simply upon the solution of the question, Is it socially expedient to attempt to punish such act criminally? The morality of the act has little, if anything, to do with the matter. An action may, from the point of subjective individual morality, be absolutely innocent, and yet it may properly be a crime. Thus from the individualistic moral point of view it is an innocent action for a man to drive on either side of a city street. Yet the government may properly determine quite arbitrarily that it shall be a crime to drive on either the left or the right side of the street. Again, an action may be from the point of view of individualistic morality most vicious in character. But its viciousness may not result in making it a crime. Mere sensual indulgence in any form is vicious. But the mere fact of its viciousness is not sufficient to justify the government in making it criminal.

The only justification for punishing an act criminally is that the welfare of society requires that it should be so punished. Now it may well be that the difficulty of punishing some particular act may be so

great, and the procedure necessary to secure its punishment may be so arbitrary, that the social welfare is less subserved by the attempt to punish it than it is by leaving it alone, no matter how vicious it may be. By letting it alone the people in their governmental organization do not countenance it. They simply declare it is inexpedient to attempt to punish it criminally. Take, for example, the case of gambling. The state may determine that it is inexpedient to make mere gambling an offense. This is the general rule as to mere private gambling. No one commits a crime in gambling. The state does, however, say that it will not permit its power to be exercised to recover a gambling debt. But when it comes to the keeping of a gambling-table, the state does often say that under all conditions the keeping of a gambling-table is a crime. It does so because it believes, or the majority of the people believe, that keeping a gambling-table has such bad effects on society that it may properly be made a crime. But suppose, after numerous and persistent attempts to suppress the keeping of gambling-tables, the state came to the conclusion that these attempts led, through the corruption of the police force and the arbitrary invasion of the right of personal liberty, to a greater social harm than the keeping of gambling-tables in such a way that no scandal or disorder was caused thereby—suppose, then, that it ceased to attempt to punish criminally the mere keeping of such a table, it could not fairly be said that it countenanced gambling.

Now, one of the results of attempting to determine the criminality of an act by its viciousness has been

to force upon the police of cities in the United States work which, under the standards of morality prevailing in the cities, it is practically impossible for them to perform. Little, if any, good is therefore actually accomplished, even from the point of view of those who believe an act should be criminally punished because it is vicious. All that is accomplished is the satisfaction of the conscience of those persons, of whom there are unfortunately too many, who seem to think that if they have made a sort of profession of faith by denominating as criminal in some statute, some act which is commonly regarded as vicious, they have satisfied the demands made upon them by the obligation to live a virtuous life. The moral satisfaction of such persons has, however, been secured at the expense of very evil effects in other directions.

That the evil effects of such a method of action are great cannot for a moment be denied. And these evil effects are particularly marked in the case of the police forces in American cities. Public opinion seems to justify the passage of statutes upon the enforcement of which that same public opinion does not insist. The result is a temptation for the police which human nature is hardly strong enough to resist. The police force becomes a means by which the whole city government is corrupted. There has never been invented so successful a get-rich-quick institution as is to be found in the control of the police force of a large American city. Here the conditions are more favorable than elsewhere to the development of police corruption, because the standard of city morality which has the greatest influence on the police force, which

has to enforce the law, is not the same as that of the people of the state as a whole which puts the law on the statute book. What the state regards as immoral the city regards as innocent. What wonder then if the city winks at the selling by the police of the right to disobey the law which the city regards as unjustifiable?

These conditions of American life must be borne in mind when we consider the police problem of the modern large American city. Until we alter somewhat our standards of determining crime we can hardly hope for a different kind of police force. Changes of its organization are mere scratches on its surface and will have little if any effect on its real character. As to what are the concrete instances in which changes should be made in the criminal law, it is, of course, exceedingly difficult to say. For we must bear in mind that there have been many instances where the criminal law has anticipated by a good deal the popular standards of morality. Civilization owes a great deal to criminal laws whose enforcement has been very imperfect. At the same time no criminal law should be placed upon the statute book until the question of the possibility of its enforcement, and the effects of its attempted enforcement on the social well-being, have been carefully considered. No criminal law should be kept permanently on the statute book, no matter what may be the immorality of the act which it punishes, where the effects of the attempt to enforce it on the social well-being are worse than those of letting the act go unpunished. It always should be borne in mind that the state is not the only means by which civilization is advanced. Much may profitably

be left to the church and to other organizations whose work is moral instruction and uplifting, but to which is denied the sovereign right of punishment.

**Police Licenses.** Closely connected with this subject are the attempts often made by the state not to suppress but to regulate some particular habit or practice. Where the state decides for regulation rather than suppression, the enforcement of its policy of regulation is usually intrusted to the police force. The only matter which in this country is universally subjected to a policy of regulation is the retail sale of liquor. The policy of regulating the sale of liquor is usually based on a system of licenses. The issuance of these licenses is usually discretionary, and quite frequently is vested in the authority standing at the head of the police department. In other cases the issue of the licenses is put into the hands of a special commission, whose members are chosen in the same way as is the head of the police department. In the smaller cities in this country the matter is often attended to by the mayor, who, in these cities often as well, is himself the head of the police department.

In a few states it has been believed that the discretionary power of issuing licenses for the sale of liquor is accompanied by great evil. It has been believed that use is made of the power to favor the adherents of one party at the expense of those of others. To remedy this evil the attempt has been made to subject to the review of the courts the decision of the licensing authority where it has refused to issue a license. This was done, for example, in the state of

New York. The courts, however, were so reluctant to take jurisdiction under the statute, that little good was secured by the establishment of this judicial control. After the failure of this plan it was determined to take away all discretion in the issuance of liquor licenses, and to throw the trade open to every one who could bring himself within the conditions of the law. To prevent a multiplication of the number of saloons, high taxes were imposed on the business of liquor selling. This method of regulating the retail liquor traffic has been adopted in other states as well, and has the advantage of taking from the police a discretion which is easily susceptible of improper use.

**Public Health and Safety.** The administrative police of public health and safety differs somewhat from the administrative police of the public peace and order. As a general thing, the preservation of the peace and maintenance of public order necessitate mere repressive action by the police authorities. All that the police authorities, charged with this function of administrative police, have to do is to arrest violators of the laws or ordinances which the police authority is to enforce. It is true, of course, that in many cases all that the authorities having charge of the administrative police of public health and safety will have to do in order to secure the public health and safety is to arrest and bring to punishment violators of laws and ordinances passed with the idea of promoting the public health and safety.

But it is impossible, under the complex conditions which exist in modern municipalities, to put all of the

sanitary and public-safety regulations into the form of commands to the individuals to do or not to do a given thing, whose violation is punishable as a penal offense. In many cases general regulations must be applied to particular states of facts. Thus it will have to be determined whether certain concrete conditions constitute a public nuisance or a menace to public safety. The decision of such questions may, of course, be intrusted to judicial authorities, but as a general thing judicial authorities, which are mainly engaged in the decision of controversies having largely to do with the interpretation of the private or the criminal law, are not fitted for the decision of these questions. They are not fitted for the decision of these questions because they lack the special knowledge, the possession of which is necessary for the proper determination of these questions, and because the methods of procedure before them are so slow that the public health and public safety might in many cases be endangered if resort to them were necessary before the administrative authorities could take action.[1] The result is that, the world over, important functions involving the exercise of great discretion in the administrative police of public health and public safety are intrusted to authorities which do not belong to the judicial system, but are, on the contrary, administrative authorities.

**Sanitary and Other Ordinances.** The administrative systems of almost all civilized countries agree in vest-

[1] The recent collapse of the Hotel Darlington in New York, it is alleged, might have been prevented had the Building Department had the right to order the work stopped without resort to the courts.

ing such functions in administrative authorities. The systems of administration differ, however, so far as concerns the legislative functions relating to the police of public health and safety. Attention has already been called to the fact that the legislative police functions are, as a general thing, in the United States vested in the council or other municipal legislative authority; though in the larger cities of the United States there is a marked tendency to take away such functions from the council of the city and to intrust their discharge to the administrative authorities of the city government.

In the United States the police of public health and safety starts from the idea of nuisance. It is further based on the principle that there is to be a legislative determination in great detail as to what are nuisances. There are in this country few elaborate general statutes on the subject, and in those states where special legislation is permitted by the constitution much of the legislation is contained in statutes which affect only one city. New York city was one of the first cities in this country in which the matter of public health was taken in hand. This was done about the middle of the nineteenth century, and here what was accomplished was largely accomplished in the usual way by regulations inserted in the charter of the city.

In addition to the special acts passed by the legislature there are also municipal ordinances which are passed either by the city council, as, for example, the present building code of the city of New York, or by some one of the executive departments of the city, as the sanitary code adopted by the department of health, which in the city of New York has very wide powers

in this respect. Ordinances are also adopted by other departments such as the building department or the fire department.

As a general thing, in the United States, there is no necessity that the ordinances passed by the municipal authorities shall receive the approval of any superior administrative authority, nor has any superior administrative authority the right to annul them. The only control which can be exercised over them is exercised by the courts. The courts may declare illegal all ordinances which violate a law, or, in the case of ordinances passed as a result of the exercise of the general ordinance power, all ordinances which are unreasonable. In the exercise of this power the courts do not hesitate to declare void an ordinance or even a law which makes a nuisance a thing which is not a nuisance. In other words, the courts ultimately determine what are nuisances.

**Organization of Health, etc., Authorities.** In American cities further administrative public health and safety police power is usually vested in a series of authorities. Thus, in the city of New York, police power is given by the charter to the fire, the health, and the tenement-house departments, and the building departments of the five boroughs into which the city is divided. As a general thing, owing to the unconcentrated character of municipal organization in the United States, these departments are largely independent of the mayor, although he, with the consent of the council, appoints the heads of departments. In New York city, however, and in some of the other larger cities these

departments are completely under the control of the mayor; or, in the case of the building departments in New York, under that of the borough president, owing to the fact that the mayor—or, in the case of the building departments, the president of the borough—has absolute powers of appointment and removal. In some cases the whole matter of police, in the broad sense of the word, is put into the hands of a single officer, often called the director of public safety. So far as concerns the organization of these departments, it may be said that the head of the health department is usually a board. The reason which is commonly assigned for giving the head of the health department the board form is the large legislative and quasi-judicial power assigned to it. Sometimes the board form and sometimes the single-commissioner is provided for the other departments having charge of the public safety. Why one form is adopted in one case, and another form in another, seems to be dependent on local conditions and on the prevailing local public opinion.

In the executive force, to which is intrusted in its details the execution of the laws relative to public health and safety, it may be said that somewhat the same tendency is manifest which was noticed in the case of the police force for the preservation of the peace and the maintenance of public order. That is, in the larger cities reliance is placed upon a professional force sometimes organized in a military fashion and often put into uniform. This is particularly true of the force established for the extinguishment of fires, which has been completely professionalized in

all of the larger cities, and of the street-cleaning force which has been subjected to somewhat the same influences in the larger cities, although in the smaller cities the work of cleaning the streets is often done by contract. The force required by the building and public health authorities is naturally not nearly so large as is necessary for the extinguishment of fires and cleaning the streets, for its outdoor work consists mainly in the work of inspection. The inspection force is, however, like the fire and police forces, sometimes a uniformed force. Much of the work of the building and health departments, particularly the former, is done indoors, and consists in approving plans of buildings, etc., which must by the law be submitted to the competent department before building operations may be begun.

**State Control.** The municipal police powers relating to the public health and public safety have not very commonly been subjected to any central administrative control in the United States. In some of the more advanced states, however, like New York and Massachusetts, state boards of health have been formed which have rather ill-defined powers of control over the actions of municipal health authorities. Dr. Fairlie says, in "The Centralization of Administration in New York State":[1] "The degree of positive or compulsory authority which the state board of health can now exert over local boards is limited to certain specific provisions of the law. By means of these it can, first, require local boards to take action in

[1] P. 138.

any particular case recommended by the state board; second, overrule acts of local boards where they affect the public health beyond the jurisdiction of the local boards; third, secure the enforcement of any duty prescribed by statute on local boards through the use of mandamus proceedings in the courts; and, fourth, assume direct control where no local board is organized.

Under these provisions a considerable degree of positive central control over the local boards might be exerted except for two causes. The legislative appropriation for the expenses of the state board sets the limit to its activity in this as in other directions; but equally potent is the fact that the policy of the board has been to use its mandatory and compulsory powers as little as possible. It has acted on the principle of working through the local organizations established by law, preserving their autonomy and independence, settling their disputes, supplementing their deficiencies, and endeavoring to elevate the plane of their usefulness.[1] Thus the whole tendency has been to leave the actual sanitary administration in the hands of the local authorities, and to make the central board an educational bureau rather than an office for issuing mandatory orders to the local boards.[2]

The absence of any strong centralizing tendency may be explained in part by the board form of organization and by the presence of local health officers on the central board, but the unanimity of opinion on the subject is a strong indication that the energetic

[1] Reports of the State Board of Health, Vol. VIII, p. 9.

[2] *Ibid.*, Vol. I, pp. 101, 111, and 363; Vol. X, p. 36.

exercise of the compulsory powers would be unwise."

Conditions in Massachusetts are very similar to those in New York. Dr. Whitten, in his "Public Administration in Massachusetts," says:[1] "We see . . . that although the state board possesses great powers, it can exercise little direct control over the local authorities. Its chief coercive powers are exercised upon the individual directly. In many cases its powers are simply coördinate with those of the local boards; either may act, but in case one acts there is no necessity for action on the part of the other. This is largely the case with reference to food and drug inspection, offensive trades, and contagious diseases."[2]

**Powers of Health, etc., Authorities.** A word as to the way in which the powers of these authorities are exercised, and as to the power the individual has to appeal to the courts from their decision, is necessary to a correct understanding of the actual position in the eyes of the law of the authorities provided for the police of public health and safety.

The acts of individual application which may be done by these authorities may take on the form of a decision or an order. In the case of a decision no further action on the part of the authorities may be

[1] P. 72.

[2] See, also, Rawles, "Centralizing Tendencies in the Administration of Indiana," Columbia University Studies in History, Economics, and Public Law, Vol. XVII, p. 221; Bowman, "The Administration of Iowa," *Ibid.*, Vol. XVIII, p. 145; Orth, "The Centralization of Administration in Ohio," *ibid.*, Vol. XVI, p. 500.

necessary in order to execute the law. Thus, if it is necessary, as is so often the case in the building law, that plans, etc., must be approved before action by the individual may legally be taken, the decision by the building police authority approving or disapproving a given plan, exhausts the legal action of the authority as to this particular matter. The law-abiding citizen, whose plans have been disapproved, will amend them to suit the wishes of the building police authorities.

In the case of an order, and even of a decision, however, it may be necessary, in order that the law be executed, that the building or health authorities do something further in order to enforce the law. Thus, suppose that one whose plans have been disapproved by the building authorities, proceeds to build in accordance with the plans which have been disapproved, or suppose a person fails to abate a nuisance which he has been ordered to remove by the health authorities. The mere order, in the one case not to build, or in the other to abate the nuisance, is not sufficient to cause the law to be executed.

There are two kinds of actions which can then be taken to execute the law: first, the police authority may proceed to execute its order by applying physical force to the person disobeying its order by arresting him, or to the thing which constitutes the nuisance by destroying it, that is, in the case of a building, by tearing it down; or, second, if the order consists in a command to do a certain thing, as for example, to put in sanitary plumbing in the place of unsanitary plumbing, the disinfection of a place where there has

been a case of contagious disease, etc., the police authority may proceed itself to do the thing ordered, when the expenses to which it is put may be made either a lien on the property on which the work has been done, or an obligation of the person in default. These expenses may be recovered either in an action before a court or by execution without resort to a court.

The real powers of authorities of sanitary and public safety police depend on the degree to which they may act without resort to a court of some sort for an order. Thus, if they may of their own motion abate a nuisance, pull down a construction, or collect the expenses to which they have been put by the negligence or refusal of some one to act whose duty it was to act, they have very wide powers. If, on the other hand, they have in these cases to get an order of a court of some sort they are subjected to a judicial control which may greatly limit their effectiveness.

The general rule of the American law is, in the first place, that there is no constitutional objection to the exercise of most of these powers by administrative authorities without any judicial intervention; but that, in the second place, such powers are commonly granted only in the case of the removal of nuisances, and no powers are given them of collecting without judicial intervention the expenses to which they have been put.

Now, in so far as administrative authorities are permitted to act in these cases of their own motion, without judicial intervention, it is necessary to provide some means for judicial review of their action. It is

also necessary that such a judicial review be provided in case of their decisions as, *e.g.*, their disapproval of building plans. This review may extend to questions of law alone or to questions of law and of fact.

**Remedies.** Two methods of providing such a review are to be found; either the ordinary courts are given jurisdiction, or special courts which are usually spoken of as administrative courts are formed for this purpose. The former method is the one normally adopted in the United States. In the United States the courts exercise their jurisdiction through the issuance of an injunction, or by entertaining suits for damages against the officers who have abated the nuisance. In either kind of suit the courts may, where the decision of the police authority as to the existence of the nuisance is not made final by law, review such decision from the point of view of both law and fact, and reverse it if they consider it not justified. But they are apt to be guided in the determination they make by the views of the police authority, particularly where such authority has acted in good faith and where its decision is not absolutely contrary to the evidence. If, however, the determination of the police authority is made final by the law, all that the courts can do is to prevent the police authority from depriving any one of his property without due process of law, under the guise of the exercise of the police power.

It will be seen from this very incomplete statement of the law that the powers of sanitary and public safety police authorities in the American cities are very large. This is due, first, to the wide extent of

their powers both of ordinance and of individual order of special application; second, to the fact that they may proceed so frequently without resort to judicial intervention, and, finally, to the fact that their decisions are so frequently not susceptible of judicial review as to the facts. It would seem that the decision, by an administrative authority after a hearing, that given conditions constitute a legally recognized nuisance, may constitutionally be made final and not subject to judicial review, though there is some conflict in the decisions on this point. A good example of the extent and variety of police powers of this character possessed by municipal authorities is to be found in the health provisions of the present charter of the city of New York.

It may well be doubted whether the powers possessed by these authorities in the United States, in those cases in which their powers are the greatest, are not too great. Their discretion is so wide and so uncontrolled that it offers large opportunities for official oppression; and, if current rumor may be credited, this discretion has in the past been made use of in many cases, not so much to protect the public safety and health as to enrich the officers of the health and building departments, or to obtain political support for the party in control of the city government. Prussia, in which the legal conditions were at one time somewhat the same as they are now in the United States, went through somewhat the same experience. During the reactionary period, following the Revolution of 1848, these police powers were made use of to suppress the Liberal Party: the abuse was so great

that after the reorganization of Germany, about 1870, administrative courts were formed to control the discretion of the police officers of health and public safety, so that it could be used only in the interest of the public health and safety, for which it had been given.

# CHAPTER X

## ADMINISTRATION OF CHARITIES AND CORRECTION

**Early Methods.** In all Christian countries giving to the poor was from an early time regarded as a pious act. Its piety seems to have been derived from a consideration of its subjective rather than its objective effects. It was the benefit derived by the giver rather than by the recipient of charity which seems to have been in the minds of Christian teachers, and little emphasis was laid by the precepts of the church on the duty of the giver to investigate into the worth of the recipient. The result of such undiscriminating charity was the development of a class of professional beggars who joined to their profession of begging the incidental profession of pilfering and thieving.

The intimate connection between poverty and crime was perceived even before the Protestant Reformation, and in some countries the attempt was made by law to confine begging for charitable aid to those who were

[1] Authorities: Folks, "Municipal Charities in the United States," in "Conference on Charities and Correction, 1898," p. 106; Coler, "Municipal Government," Columbia University Studies in History, Economics, and Public Law, Vol. VIII, p. 424; *ibid.*, Vol. IX, p. 488; *ibid.*, Vol. XVI, p. 475; *ibid.*, Vol. XVII, p. 142; *ibid.*, Vol. XVIII, p. 93.

disabled. With the coming of the Protestant Reformation and the secularization of the property of monasteries and other similar institutions, which had been largely devoted to the support of the poor, these laws were enforced with increased severity. At the same time the attempt was made to find some substitute for the monasteries. In England this was found in the parish, an ecclesiastical institution which had managed to survive the shock of the period of the Reformation. Upon the parish was imposed the duty of maintaining those who were regarded as the worthy poor. The unworthy poor were treated as they had been treated before the reformation, that is, as petty criminals.

From a very early time in England the normal prison for the incarceration of all sorts of evil-doers was the county jail. The great frequency of the death penalty brought it about that no need was felt for institutions for long-term convicts. Practically, the only long-term convicts were political offenders for whom the royal castles, such as the Tower of London, sufficed. County jails were sometimes found in cities because of the fact that such cities were at the same time counties. In those cities which, while not cities of counties, at the same time had minor criminal judicial functions to discharge, there were also what were know as bridewells or houses of correction. The conditions of these local prisons were of the worst possible character. They constituted one of the greatest blots on the administrative history, not only of England, but of every civilized country. In the latter part of the eighteenth century, owing largely to the

exertions of John Howard, who had spent some time as a prisoner in the French city of Brest, and who had made an investigation of the prisons both of England and of other countries, an attempt was made to reform the prison administration.

**Separation of Charities from Correction.** The reform of the prison administration which has been made in all the countries of the world has been very strongly marked by a tendency to take away the administration of prisons from the control of the local authorities, and to put it in the hands of the central administration. This has been done in England and the continent of Europe, and to a large extent in the United States. In the United States, however, at the present time there are quite a number of cities which, like the boroughs of counties in England prior to the reformation started by John Howard, have control of local houses of detention or other correctional institutions. At the same time, even in the United States, there is hardly a state which has not taken into its own administration the more important prisons, that is, the prisons in which long-term prisoners are confined.

In the cities of the United States which have retained control of correctional institutions, it has not infrequently been the case in the past, and is to a certain extent the case in the present, that the administration of these institutions is intrusted to the same hands to which is intrusted the administration of the charitable institutions supported by the city. During the last twenty-five or thirty years, however, an ear-

nest attempt has been made to separate the administration of correctional from that of charitable institutions.[1]

**Insane Poor.** The attempt has also been made to distinguish between the ordinary poor and the insane poor. The support of the insane poor has very generally been undertaken by the state, while that of the ordinary poor is, with certain exceptions to be mentioned, devolved upon the local corporations. Thus, in most of the states of the United States, the insane poor are supported by the state, either in state institutions or in county institutions. In the latter case the state repays to the county the sums expended by it for the support of this class of unfortunates. In some of the states of the United States, however, the support and administration of the insane poor are still in the hands of the city authorities. For example, in the city of Chicago, the commissioners of Cook County, which is practically the same district as the city of Chicago, have under their management not only a county almshouse and hospital, but also a county insane asylum. Thus, again, in Boston the insane poor are a city charge, and are put under the management of the insane hospital trustees appointed by the mayor of the city.

The tendency at the present time is to add to the

[1] Of the seventy-three cities of over forty thousand inhabitants in the United States in 1890, twenty-seven made a separation of their charitable from their correctional institutions. See "Conference for Charities and Correction, 1898," "Report on Municipal and County Charities," by Homer Folks, p. 106.

poor supported by the state those having diseases, like epilepsy and consumption, that call for special treatment involving considerable expense. Thus, New York state has the Craig Colony for Epileptics, established in 1894.

Finally, the attempt is often made to distinguish between the ordinary poor, having a settlement in the state, and the alien poor. The alien poor are certainly, so far as the expense of their support is concerned, usually a state charge, but while they are a state charge they are usually maintained in institutions under the direct management of the local, ordinarily the county, authorities.

We may say then that the tendency of the present day is to regard the administration of correction as a function of the state rather than of the city, although there are a number of cities in the United States which still have functions to discharge of a correctional character. What is true of correction is also true of those branches of public charity which relate to the insane poor and to the alien poor. Such being the case we may, perhaps with propriety, confine our study to the institutions which have been established in the various cities in order to give aid to the poor who are not insane and who have a settlement in the state.

**Municipal Charities.** The extent of the functions which the city discharges relative to public charities is very largely dependent upon the position which the town has assumed in the administrative system of the state. Where the town is an important area of local government, the city has very commonly wide func-

tions to discharge relative to the poor. Thus, in New England, which is the home of town government, it is said that there is not a single city of more than forty thousand inhabitants which does not do some work in the line of public charities.[1] In some of the cities of New England, of course, the work which is done in the line of public charities is more than in others, but, as a rule, every city has municipal institutions for poor relief of some sort. In the Middle and the Western states, where both the town and the county are important areas of local government, the care of the poor is by the general law devolved upon the town or county, or upon both. In the Southern states, where the town does not exist, the support of the poor is naturally devolved entirely upon the county. The result is that, as a rule, the cities outside of New England which have important functions relative to public charity are to be found only in the Middle and Western states, more frequently in the former than in the latter, while in the Southern states it is seldom the case that the city has any functions of importance to discharge relative to the poor. This rule is, of course, subject to exceptions, particularly so far as concerns the Middle and Western states. Thus, Buffalo, Rochester, Jersey City, and Reading, Pennsylvania, all cities in the Middle states, have no functions to discharge relative to poor relief, the matter being a subject of county administration; while New Orleans, Louisville, Richmond, and Charleston, all

[1] *Ibid.*, p. 108. In the appendix to this article are reports from many of the cities of the United States having a population of more than forty thousand in 1890.

cities of the Southern states, include poor relief within their municipal activities.

The larger the cities are the more liable they are to make poor relief a municipal function. Thus, eight of the ten largest cities, namely, New York, Philadelphia, St. Louis, Boston, Baltimore, San Francisco, Cincinnati, and Cleveland manage their own poor. Of the ten second largest cities, however, only five, namely New Orleans, Pittsburg, Washington, Newark, and Louisville have any important functions relative to poor relief, while in the remaining five, namely, Detroit, Milwaukee, Jersey City, and Minneapolis,—which has no almshouse but supports a hospital,—and Kansas City, Missouri, the poor relief is attended to by the county in which the city is situated.

**Organization of City Poor Authority.** The methods adopted for organizing the municipal poor authority vary greatly. In some cities we find a board, in others a single commissioner. In a number of the cities where there are boards the members of the board are paid, in others they are unpaid. In some of the cities some of the members are paid, or there is a paid secretary. As a general thing, where the board is a large one, its members are unpaid. Where, however, the board is small, *e.g.*, composed of three members, these members are frequently paid. The size of the city seems to have very little influence upon the organization of the poor authority. Thus, in New York, Cincinnati, Cleveland, New Orleans, Pittsburg, and Washington, and in the counties in which Buffalo and Milwaukee are situated, there is a paid commissioner. On

the other hand, in Philadelphia, St. Louis, Boston, Baltimore, San Francisco, Newark, Minneapolis, and the county in which Detroit is situated, there is an unpaid board. The geographical location of the cities does not seem to have much influence on the organization of the poor authority as the list of the cities, whose names have been given, shows. It may, however, be said that in general the cities of New England have adopted the idea of an unpaid board, while the cities of the South have adopted the idea of paid service. The only city in the South relying on unpaid service is Charleston, South Carolina. The cities in the Middle states tend toward the unpaid board, while the cities of the West, like those of the South, tend toward salaried service. There are, however, many exceptions to this statement.

The methods of appointment also vary greatly. The two most common methods are appointment by the mayor or appointment by the city council, with the majority slightly in favor of appointment by the mayor, which is the rule in the larger cities. In quite a respectable number of cities, however, the poor officers are elected by the people of the city. There are, however, almost no cities of any size which have adopted this method. In a few cases, as, for example, St. Paul, Scranton, and Memphis, the poor officers are appointed by the judges of some court, while in the city of San Francisco they were, prior to the adoption of the present charter, appointed by the governor of the state of California.

The lack of uniformity on the part of different cities with regard both to the character of the poor

authority and to the methods of filling the office, and the frequent changes which are made in the system, would seem to indicate that no method as yet devised has been altogether satisfactory. Indeed, the papers read at the various conferences of charities and correction are full of complaints as to the pernicious influence of politics upon the poor administration. But the later papers bear evidence of an improvement in the conditions. This improvement appears to have been made as much under one form of organization as under another. The general opinion of those interested in and acquainted with the administration of city charities seems to be in favor of a single paid commissioner. An exception might, perhaps, be made in favor of hospitals for the sick which are sometimes managed by an unpaid board. The city of New York has recently adopted this plan for certain of its hospitals, following the example of Boston and Cincinnati, where hospital boards are regarded with favor.

Seldom is it the case that the administrative organization adopted for the management of public charities attempts to enlist in the city's work of relieving the poor the services of unpaid friendly visitors. Seldom, if ever, is the attempt made in the cities of the United States to divide the city up into districts in which such unpaid friendly visitors may work. So far as any reliance at all is laid upon such friendly visitors, it is due to the work of charity organizations and similar societies which are based entirely upon voluntary effort. The model which the city of Elberfeld, in Germany, has offered to city government has been copied in the United States, not by the city itself, but by those volun-

tary organizations which often by coöperation with the municipal poor authorities have done so much to improve the conditions of the public charitable institutions.

The extent of the work done by the cities of the United States for the poor varies considerably. In many of the cities of the South and West, where the legal burden of supporting the poor is imposed upon the county, the city merely supplements the work of the county by distributing outdoor relief. In these cases the work of the city is practically confined to the distribution of such outdoor relief. In other cities, in addition to giving outdoor relief, the city government supports as well a hospital. Finally, in a very few cities no outdoor relief whatever is given, or it is confined to the distribution of coal. Such is the case, for example, in New York, St. Louis, Baltimore, San Francisco, New Orleans, Louisville, Kansas City, Denver, Atlanta, Memphis, Charleston, and Savannah. In a paper read at the Conference of Charities and Correction in 1898, the statement was made that of the forty largest cities of the country only ten do not give outdoor relief.[1] The greatest amount of outdoor relief given by any city in one year is about $140,000, which is the amount distributed by Chicago, Detroit, and Boston.

Many of the cities, of which New York is the most marked example, supplement the work done by the city through its own officers by grants of money to private charitable institutions. In New York this grant has in most recent years amounted to nearly $2,000,000, al-

[1] Conference of 1898, p. 182.

most all of which is appropriated to the use of institutions established for the relief of children. This use of public money is made necessary by a law of 1875, which forbids the detention of children in almshouses. It has been impossible for the city to provide in any other way for the support of dependent children. Two of the cities in the United States rely exclusively upon this method of relieving the poor: these are Atlanta and Savannah. This method of supporting the poor is liable to great abuse, both from the point of view of the city's finances, and from that of enlightened charity.[1]

Finally, in addition to maintaining almshouses and hospitals, and giving outdoor relief and grants in aid of private charitable institutions, a few cities, of which New York and Boston are examples, maintain municipal lodging-houses.

**State Control.** The administration of public charities in urban as well as in the rural districts of the United States has been, within the last forty years, subjected to a central administrative control, which is exercised by a state board of charities. The first state board was established in Massachusetts in the year 1863. This board originally had the supervision of both charities and correction, but by subsequent legislation its jurisdiction was confined to institutions granting poor relief only. The supervision of correctional institutions, as well as of lunatic asylums, has been given to another board. Similar state boards have been established in twenty-five states. In some cases the state

[1] Coler, "Municipal Government," Chapter II.

board has supervision, as in the case of the original Massachusetts board, not merely over charitable but also over correctional institutions. In a few of the states the state board is not merely a board of supervision over local charities, but is also an administrative board which administers separately the affairs of either the state charitable or the state correctional institutions, or both. Such, for example, is the position occupied by the Iowa state board of control, which has been the subject of so much comment during the last few years.

The organization of the state boards is usually as follows: They are composed of a number of members, chosen from different parts of the state, who receive no pay, serve for long terms, which are so arranged that only a small number of the members of the board will go out at the same time, and have under them a salaried secretary who attends to the detailed work. Where the system has been most highly organized, as, for example, in New York, the state board has under it also a corps of salaried inspectors whose duty it is to investigate the conditions of the institutions subjected to the supervision of the board. In other cases, as in those states where the system has not received a high development, the work of inspection is supposed to be done by the members of the board.[1]

The powers possessed by these boards vary considerably. Some of the boards have little more than advisory powers; their work is expected to be largely

[1] A good article on the "Value of State Boards" is to be found in the "Conference of Charities and Correction of 1894," on p. 9.

educational in character. Such, for example, is the position of the board in the state of Massachusetts.[1] In other states, however, they have really important supervisory powers. This is the case with the state board of charities of New York. In addition to having duties of an administrative character relative to that class of the poor known as the state poor, the New York state board of charities has important supervisory powers relative to the charitable institutions of the local corporations, particularly those of the cities. For example, an act of 1896 gives them the power "to establish rules for the reception and retention of inmates at the institutions under private control but supported in part by counties, cities, towns, and villages, and under the constitution payments may be made to such institutions only for inmates received in accordance with such rules."[2] Another provision of the act of 1896 gave the board authority to appoint inspectors.

The immediate effect of the exercise by the state board of charities in New York of the increased powers given it in 1896, was to decrease the number of inmates who are a public charge in the one hundred and twenty institutions for the care of destitute and dependent children. It is estimated that the financial result of the observance of the rules by the city of

[1] Whitten, *op. cit.*, Chaps. III and IV. See, also, for Ohio, Orth, *op. cit.*, p. 113.

[2] Fairlie, "Centralization of Administration in New York," in Columbia University Studies in History, Economics, and Public Law, Vol. IX, p. 107; see also Bowman, *op. cit.*, Chap. III, for Iowa; Rawles, *op. cit.*, Chap. III, for Indiana.

New York for the ten months ending December 31, 1896, was a saving to the city of $450,000.[1]

While few of the states have developed a state board with the powers possessed by the New York state board of charities, the tendency toward the increase of the powers of the boards already established is very marked. Thus it has been said that "in the field of charity and correction the tendency is plainly in the direction of the increasing exercise of administrative power and of supervision by the state. The agents of the whole community are now exercising powers in matters which before were either left to the local units of government or were wholly neglected. This tendency which is seen in every field of interest, follows naturally from the growth of communities and their closer relation to each other. But it means also that the leaders in charitable thought and action see that local interest in charity is often weak or ignorant of the best standards, and that on the sovereign state rests the solemn duty of insuring that the forms and powers of administration are the best available ones."[2]

[1] Fairlie, p. 108.

[2] "Conference of Charities and Correction, 1902," "Report of the Committee on State Supervision, and Administration of Charities and Correction," p. 127.

# CHAPTER XI

## SCHOOL ADMINISTRATION [1]

**Early Methods.** Until a comparatively recent time in the history of cities the matter of education, like that of charities, was considered to be a function of the church rather than the city, or, indeed, of any governmental organization. It is true that from quite an early time the cities in the Protestant countries of Europe aided, by grants of money, the churches in their attempts to establish an educational system. In the state of Massachusetts, further, from the middle of the seventeenth century, the establishment and the maintenance by governmental authorities of primary schools were made obligatory by law. But the cities of the United States did not take up seriously the matter of public schools until about the middle of the

[1] Authorities: Rollins, "School Administration in Municipal Government," a dissertation for the degree of Doctor of Philosophy in the Faculty of Philosophy, Columbia University, June, 1902; Butler, "Education in the United States;" Fairlie, "Municipal Administration;" Young, "Municipal School Administration," in Annals of American Academy of Political and Social Science, Vol. XV, p. 171; Webster, "Recent Centralizing Tendencies in State Educational Administration," in Columbia University Studies, etc., Vol. VIII, No. 2.

nineteenth century. Since 1850, however, it may be said that in almost all the cities of the United States a great deal of money has been expended by the city governments in the establishment and maintenance of rather elaborate school systems.

In addition to maintaining schools for the education of children and, in a number of cases, of illiterate adults, the cities of the United States have in many cases established, either in close connection with their school systems or separate therefrom, public libraries and museums. In some cases, further, they make provision for quite elaborate courses of public lectures. Finally, a very few of the cities support, as well, institutions of higher instruction. Thus, for example, the city of New York maintains the College of the City of New York, an institution of higher instruction for boys, while the city of Cincinnati gives considerable aid to the University of Cincinnati.

**Organization of City School Authorities.** Whatever may be the extent of the work of the city in the field of education, the school authority, which in all cases has charge of the primary and secondary schools and in some other cases as well of other educational institutions, is a board of education or a school-board. In only one city of importance, namely, Buffalo, is the matter in the charge of the city council. In this city a committee of the council performs the duties which in most of the cities of the United States are attended to by the school-board. The cities of the United States, in which there is a school-board separate and apart from the council, may be put into two

classes: in the first class are to be included those in which the school-board is regarded as a department of the city government; in the second, those in which the school-board is treated not as a department of the city government, but as a public corporation separate and apart from the corporation of the city. In this last class of cities the board, however its members may be appointed, has in its own control the raising of the funds which are necessary to carry on the schools under their charge, as well as the uncontrolled expenditure of these funds. This is the position of the city school authority in Cincinnati, Pittsburg, Indianapolis, Denver, Toledo, Allegheny, St. Louis, and other cities. Even in this class of cities, however, the collection of the taxes which have been voted by the school-board is frequently a function of the city government. It is seldom, if ever, the case that a city school-board, no matter how wide its powers, has the same functions which, for example, the school-district has in the state of New York, where the power not merely of voting, but of assessing and collecting, the school taxes is devolved upon the school trustees and their subordinate assessors and collectors.[1]

In the cities which treat the school-board as a department of the municipal government, the functions of the board are very nearly the same as the functions

[1] See Rowe, "The Financial Relation of the Department of Education to the City Government," Annals of American Academy of Political and Social Science, Vol. XV, p. 186, who makes a strong plea for the grant of the independent taxing power to city school-boards.

of the ordinary head of department with reference to his department. That is, the school-board makes up its estimate of the amount of money which it thinks it will require in order to carry on the schools for the coming year, and this estimate is subject to revision by the authority of the city government which ultimately determines the amount of money to be spent by the city departments. This is the position occupied by the school-board in Chicago, Philadelphia, San Francisco, Milwaukee, Newark, Louisville, Providence, St. Paul, and other cities.[1]

In some of the cities peculiar arrangements have been made which cause the school-board to approximate more closely to the type to which, from the general point of view, it does not belong. For example, in the city of New York, which, as a general thing, treats the board of education as a department of the city government, a recent statute has provided that a certain tax must be levied, by the authorities vested with the taxing power, for the support of the teaching and supervising officers of the schools, whose salaries are fixed by law. The amount of money which may be spent on this branch of educational activity is thus taken out of the hands of the ordinary municipal authorities and, within the limits of the law,

[1] For a table giving the particulars with regard to the organization and powers of school-boards, see Rollins, "School Administration in Municipal Government," a dissertation submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy in the Faculty of Philosophy, Columbia University, June, 1902.

vested in those of the school-board, although from other points of view the school-board is little more than a department of the city administration.

In all cases, however, it will be noticed that the school authority is a board. The reason for this universal departure from the type of municipal departmental organization generally accepted at the present time is to be found in the desire to keep the schools out of politics and interest as many persons as possible in their management. The schools are believed to be kept out of politics through the provision that the members of the board shall not hold terms which expire at the same time. Every year or two years, or whatever term may be determined upon, a certain number of the members of the board are renewed. It will thus take a number of years before any one political party can obtain control of the school administration.

The position which has been assigned to the school-board has an influence upon the method by which the members of the board are selected. If the school-board belongs to that type to which reference has been made, the characteristic of which is, that it is in the nature of a special corporation separate from the corporation of the city, the members of the school-board are in almost all cases elected by the people. Even in the case where the school-board is treated merely as a department of the city government, the principle of election is also in some cases adopted. Indeed, fifty-five cities in the United States choose their school-boards by election.[1] In those cities which treat their

[1] *Ibid*, p. 22.

school-boards as a department of the city government, the tendency, however, is toward providing that the members of the board shall be appointed by the mayor and council or by the mayor alone. While election by the people and appointment by the mayor, either with or without the approval of the council, may be said to be the prevailing methods for filling the position of member of the school-board, in some of the most important cities of the United States a departure is made from these methods. Thus, for example, in the city of Philadelphia the school-board is composed of one member from each of thirty-six sections into which the city is, for the purpose of school representation, divided, and these thirty-six members are appointed by the judges of the state court of common pleas. In New Orleans also the members of the city school-board are in large part appointed by the governor.

Where the school-boards are elected, they are elected either by general or by district ticket. Of the fifty-five cities in the United States electing members of the school-board, twenty-four elect from the city at large, twenty-eight from the district, and three by a combination of these plans. The largest cities have generally adopted the general ticket. This is the case, for example, in St. Louis, Boston, Cleveland, Minneapolis, Indianapolis, Kansas City, and other less important cities. In some cases the election is at the same time as the general state election or the municipal election, if that is separate from the general state election, while in other cities the election takes place at a special time appointed for the particular purpose of school

elections. In a number of the cities provision is made for local boards which sometimes, as in Philadelphia and Pittsburg, have very large powers, and in others, as in New York, have merely supervisory and consultative powers.[1]

The size of the school-board depends upon the extent to which the principle of interesting as many persons as possible in the management of the schools has been applied. This would appear to have been the principle whose application was the most desired for a long time in the history of our municipal educational administration. Within recent years, however, particularly in the larger cities, the feeling has become stronger that what is needed is not so much popular interest in the schools as efficient school administration. The growth of the belief in the necessity of efficient school administration has resulted in lessening the number of the members of the school-board. The number varies from forty-six in the case of New York to four in the case of San Francisco. The tendency is toward a small board. Thus quite recently the San Francisco board was reduced from twelve to four; that of Baltimore from twenty-nine to nine; that of St. Louis from twenty-one to twelve; that of Indianapolis from eleven to five; that of Milwaukee from thirty-six to twenty-one; that of Atlanta from fourteen to seven. In some of the cities where the number of the members of the board is very small, salaries are paid, as in San Francisco. As a rule, however, service as a member of the school-board is unpaid.

[1] See Table referred to on p. 265.

**Separation of Educational from Physical Administration.** When city schools were originally established, the school-board had practically complete charge over both the physical and educational administration of the schools. Within recent years, however, there has been a tendency toward a differentiation of these functions with the result that the school-board has, in the cities which are regarded as having the best school systems, been confined to the management of the physical administration of the schools. The educational administration has been granted to a professional expert force, at the head of which is placed a superintendent of schools or similar officer. The superintendent of schools seems to have developed about the middle of the nineteenth century. Most commonly, particularly in the larger cities, this officer is appointed by the school-board; in some cases, however, he is elected by the people of the city. In either case his term is usually a fixed one, varying from six years, as in New York, to one year, as in Philadelphia. As a general thing, his term is three or four years. The superintendent usually has the power of recommending the appointment of teachers who are appointed by the school-board. The powers of the superintendent are the greatest in the city of Cleveland, which has a peculiar school system. The Cleveland superintendent is appointed by an officer peculiar to the Cleveland system, known as the school-director, and confirmed by the board; he has a term during good behavior and appoints all of the teachers. Generally, the power which appoints the teachers is confined

in its selection to those persons who have teachers' certificates. These are granted only after an examination which sometimes, though not usually is competitive.

There is a tendency at the present time—not, however, very marked in character—to differentiate the administrative from the legislative side of the physical administration of the schools, and to confine the action of the school-board to the legislative part of the work. Such a differentiation was recommended by the committee of fifteen appointed by the National Educational Association for the drafting of a model municipal educational system.[1]

The differentiation of the administrative from the legislative side of school administration is the theory at the bottom of the Cleveland system. To the school-director, to whom reference has been made, and who is elected by the people of the city for a term of two years, the administrative side of the physical administration of the schools is given. The director devotes all his time to the work and receives a salary of $5,000 a year. He occupies somewhat the same relation to the school administration that the mayor, under the ordinary municipal charter, occupies with reference to the general administrative system of the city.[2] A similar officer is found in the school system of the city of Indianapolis. There the school-director

[1] See Butler, "Education in the United States," particularly the monograph on "Educational Organization and Administration," by Andrew D. Draper, p. 14.

[2] Since this was written the Cleveland system has been greatly changed.

is elected by the school-board, but has a veto over its acts which may be overcome by a repassage of the act vetoed.

While the differentiation of the legislative from the administrative side of the physical administration of schools has not received any very wide application in the United States, its adoption in the two cities to which reference has been made is interesting and significant. When taken together with the other developments in school administration, it cannot fail to leave the impression that the school-board is succumbing to the same influences that destroyed the city council, and that in time there will be a school department with a single commissioner at its head, having toward the school department about the same powers and duties that the single commissioner or other executive department head has toward his department. Reduced in numbers, in some cases composed of salaried members, its educational functions lost to the superintendent, its executive functions going to a director, the school-board will not have enough to do to attract men who are interested in the schools and will soon come to occupy, if the movement keeps on at the same pace, a position of as little influence as that which has been accorded to the city council by the charters of many of our cities.

**State Control.** The same tendency toward the subjection of the city in its management of schools to the control of the state, is evident, as is seen, in the relations of the state toward the charitable work of cities. In most of the states of the United States there is an

officer known as the superintendent of public instruction, or superintendent of common schools, to whom is given a large power of supervision over the cities in their discharge of their school duties. In a number of states there is not only a state superintendent of education,—there is, also, a state board of education, which has certain functions of supervision to discharge. The powers of the state officers over the local management of schools relate to compulsory education, the state regulation of text-books and courses of study, and state control of teachers' examinations.[1]

The methods by which the state supervisory educational officers exercise their control over the local management of schools are: first, the power to withhold the aid which is granted by the state to the localities; and, second, the power to hear appeals from the decision of the local school authorities. In a few states the state superintendent has also important powers of removing local school officers, and of obliging delinquent localities to take the action which is necessary in order that the schools may be properly conducted. The extent of the powers possessed by the state supervisory officials and the methods by means of which they may exercise their powers, vary, of course, very much from state to state. Probably in no state would the supervisory state officers have all the powers to which reference has been made. The state in which the powers of the superintendent of education, or similar officer, are greatest is, perhaps, the state of New

[1] See Webster, "Recent Centralizing Tendencies in the State Educational Administration," in Columbia University Studies in History, Economics, and Public Law, Vol. VIII.

York. Here the state superintendent has large powers of removing school officers, of hearing appeals from the decision of local school officers, of enforcing a uniform course of study, and of examining and licensing teachers.[1]

[1] See Fairlie, "Centralization of Administration in the State of New York," p. 39.

## CHAPTER XII

### PUBLIC WORKS ADMINISTRATION [1]

**Physical Conditions of Cities in Olden Times.** We have seen that the great development of municipal activity since the opening of the nineteenth century has been in the line of local improvements. It is difficult for the inhabitant of the modern city to conceive of the physical conditions of the cities of the eighteenth century. It is only when we read of the conditions of even the great political capitals of Europe, prior to the opening of the nineteenth century, that we get even an inadequate idea of what municipal life then was. The cities were commonly not lighted, were poorly paved, if paved at all, and were almost never swept. Sewers hardly existed, and no means was provided by the city government for intra-urban transportation or communication. Public parks were not known except so far as the gardens and grounds surrounding the palaces of the great may be regarded as doing the duty done by the parks with which all cities of any size are now endowed.[2]

[1] Authorities: Whinery, "Municipal Public Works;" Zueblin, "American Municipal Progress;" Fairlie, "Municipal Administration," Chaps. XI and XII.

[2] For an interesting account of Paris, see Lister, "An Account of Paris at the Close of the Seventeenth Century."

As Dr. Shaw has pointed out, in his "Municipal Government in Continental Europe," Paris was the first city to wake from the lethargy into which city government had fallen in the latter part of the eighteenth century. Paris undertook to transform itself into what we now regard as the modern city, and, in a way, has become the model which most of the progressive cities have had before their eyes in the inauguration of those improvements characteristic of the municipal life of the present day.

**Modern Conditions.** It is not the purpose of this book even to outline what has been done along the line of public works by the cities of the United States. That has already been done by Dr. Fairlie and Dr. Zueblin in the books to which reference has been so frequently made. It may, however, be said that the local improvements made by the cities of the United States, as well as by those of other states, may be grouped under the following heads: provision of the necessaries of city life, transportation and communication, and disposal of refuse. The performance of its duties along these lines by the modern city does not, in most cases, necessarily result, as in the branches of municipal activity already considered, in direct administration by city officers. In most of these cases the city can attend to these matters through the medium of contract as well as through that of direct administration. Thus, even in the case of streets, the city may secure their construction, repair, and maintenance by contracts made for that purpose with private individuals and corporations. In the case of provision for

water, light, sewers, garbage disposal, and transportation generally, the city may vest the corporations or individuals with whom it contracts with the power, both of attending to the construction and repair work, and of collecting from the persons served by these enterprises, the expense of the service. Whether the city shall adopt the method of direct administration, or shall contract with others for the performance of these services, is one of the most important questions of municipal policy. It is, however, a question with regard to which at the present time we have not sufficient experience to justify a conclusion worthy of any great weight. On that account, and also because of the lack of space at our command, it is a question which no attempt will now be made to answer.

**Organization of Public Works Authorities.** Questions more important from the point of view of city government are, What is and should be the form of administrative organization adopted for the discharge of these functions where the city government has determined to take them into its direct administration? In the ordinary American city which has not attained the dimensions of a large city, all or most of the public works attended to by the city are put into the hands of one department which is called the department of public works. At the head of this department is placed a commissioner, director, or a board, sometimes elected by the people of the city, sometimes appointed by the mayor and council, and sometimes appointed either by the mayor alone, or by the council alone. The ordinary method of appointment is by the mayor

and council. The head of the department of public works may usually be removed by the appointing body. In case he is elected by the people, he may sometimes be removed by the mayor. Usually, the removal may be made for cause only, though sometimes the power of removal is arbitrary. In the average American city the tenure of the head of the department of public works is such, however, that it is largely independent of the chief executive of the city. To offset this independence of tenure, his term is usually a short one, and changes in incumbency are commonly quite frequent.

As a city increases in size the tendency is toward a disintegration of the department of public works into separate departments, each one of which has jurisdiction over some particular kind of public works. Probably the most remarkable example of such disintegration afforded by any recent city charter in the United States is that afforded by the New York charter of 1897. In this charter provision was made for a water department, a highway department, a sewer department, a department of public buildings, lighting and supplies, a department of bridges, a department of street cleaning, a department of parks, and a department of docks and ferries. Such a disintegration of the department of public works is apt, unless care is taken, to be productive of bad results, particularly under a system of city government which, like the board system, permits not only of inter-departmental independence, but also of the independence of the departments over against the chief executive. Under such conditions it may well happen that after the de-

partment of streets has had a street paved, the sewer department will tear the pavement up in order to construct a sewer beneath the surface of the street. To avoid just such results, some of even the larger cities have preferred not to permit any disintegration of the department of public works, and have put all the public works of the city under the administration of one head, either a director of public works as in Philadelphia, or a board as in most of the cities of the state of Ohio. Where the various branches of public works are not absolutely united, as in the cases mentioned, the various departmental heads are sometimes made to form a board of public improvements, as in St. Louis and in New York, under the charter of 1897. This plan of organization, however, has the disadvantage of making the procedure for the inauguration of public improvements extremely complicated. It was largely for this reason that it was abandoned in the New York charter of 1901.

Another method of solving this problem, of which, however, we have very few examples in American cities, has consisted not in the disintegration of the department but in its decentralization. The degree to which the department may be decentralized, is dependent on the topographical character of the municipal district. Thus, in the present city of New York, which consists of at least four, and perhaps five, separate districts differentiated by their situation, most of the branches of public works have been decentralized. The care of the streets and sewers, the bridges not connecting the various boroughs, most of the public buildings, and, in the case of two boroughs, street

cleaning as well, has been put into the hands of the president of the borough, who thus is a commissioner of public works for a portion of the city. It is probable that this plan could profitably be given a greater extension by American cities than it has as yet received. Even in the old city of New York, prior to the formation of the present city, it was found necessary to adopt a similar plan for the public works of that part of the city situated north of the Harlem River, then known as the "annexed district," now known as the Borough of the Bronx. The plan which was then adopted worked very successfully there during the eight years of its existence, and it was because of the success which then attended it that the plan was extended to all the five boroughs of the present city. All the testimony is to the effect that this plan has been as satisfactory in these boroughs as it was in the annexed district of the old city of New York.

**Necessity of Records.** But whatever may be the method of organizing the department of public works, one thing is extremely necessary if the work of the department is to be economical and efficient: provision should be made for keeping an accurate and detailed record, after an approved form, of the operations of the department. Thus, for example, no city which attempts to supply itself with water, gas, or electricity should enter upon the undertaking before opening accounts which will show what its plant costs; what are the expenses of operation,—including the tax which the city would receive from a private corporation were the service rendered by such corporation,—and what

is the net profit or loss, if any, to the city from the undertaking. Similar records should be kept of street pavements, which should indicate in a rough way, at any rate, the character of the traffic on the street, the kind of pavement, its cost, the date when it was laid, and the cost of its maintenance and repair. Only when a city government has access to such information can it determine the wisdom of continuing the operation of a service, like the supply of water, or the economy, in the true sense of the word, of the various kinds of pavement under the conditions of use to which they are subjected. Only by the comparison of the results which it has obtained with the results obtained by other cities keeping similar records, can a city determine whether its own methods may be improved or not. Only where a knowledge of these facts is readily obtainable are the voters of a city in a position to determine intelligently whether the city government has been competent and efficient in the management of city affairs.[1]

It is in regard to these branches of its municipal activity that a city acts in a capacity resembling very closely that of a private corporation. The courts very generally hold the city to about the same liability for the management of these branches of administration as that which is imposed upon private corporations similarly engaged. If the management of public works is of this business character which has been attributed to it, it cannot be denied that it would be proper to apply to it the same principles which would

[1] On the important point of city records, see Whinery, "Municipal Public Works."

have been applicable were the matter attended to by a private corporation. Now no private corporate management would, in these days, be long tolerated which did not keep records of the kind described. Certainly, were the business engaged in a competitive one, no corporation which did not have such a knowledge of its operations would long remain in successful operation.

It would be well if the people kept in mind, when called upon to act politically, this quasi-private character of the city in its management of public works. If they did so, they would insist upon a greater degree of actual permanence of incumbency in the offices in the department of public works than is now demanded for most city offices.

What has been said of the undertakings under direct municipal management is largely true also of those undertakings which, though under private management, still are dependent on municipal action for their successful operation. Publicity of operation is necessary if we would know whether the city is receiving a fair return either in cash payments or in character of service rendered for the franchises which it has granted to the corporations rendering the service.

**American Conditions.** Notwithstanding the desirability, if not necessity, of the keeping by the city of the records relative to the operations of its public works —using the word in its broad sense—it is very seldom that we find American cities making any pretense of keeping such records. Some years ago the question of

the continuance of the municipal ownership and operation of its waterworks became a moot one in the city of New York. It was claimed by the advocates of municipal ownership that the city waterworks had been a source of great profit to the city, and by the advocates of private ownership that the city would save money by putting the matter into the hands of a private corporation which stood ready to undertake the duty. The attempt was made by a committee of private citizens, aided by the city comptroller, to get at the facts, and it was found necessary to go through the accounts of the city from the time of the establishment of the Croton waterworks in order to determine: first, what the works had cost; second, what were the receipts; and third, what expenses should be charged to the service, and thus whether the works were profitable or not. The city did not have any accounts which showed at a glance what the financial status of its waterworks was.[1]

The practical lack of all records as to the operations of cities not merely in the field of public works, but as well in the general field of city government, makes it difficult if not impossible to determine whether a particular form of municipal government is better than some other form under similar conditions; whether one city is doing properly, as compared with other cities, some particular piece of work. The development of any science of municipal administration is rendered practically impossible because of the absence of all reliable data. Of course the great diffi-

[1] See "Report on the Water-supply of the City of New York," by the Merchants' Association of New York.

culty which the student of city government in the United States encounters is not an argument against the present conditions which has any great force, for cities are not established in order to be objects of study. At the same time present conditions hamper not merely the student but the practical administrator and politician as well. For nobody can find, except with the greatest difficulty, what are the facts of city government in the United States upon which the intelligent determination of questions of municipal policy must be based.

A great contrast with the conditions existing in this country is offered by those of Great Britain. There all the cities, as urban county districts, are obliged by the law to make full returns to the Local Government Board at London along the lines which have been set forth. These returns are all published annually, under the name of "Local Taxation Returns." From them any one may gather at a glance what has been the pecuniary success of any city in undertaking any line of work. A science of municipal administration is there possible because the facts on which it has to be based are at hand and readily accessible.

**Importance of Public Works in Cities.** At first blush the importance of the field of municipal activity to which the name of public-works administration has been given, is not apparent. As a matter of fact, however, public works have become one of the most expensive items in city government. The Bulletin of the United States Department of Labor, issued in September, 1901, shows that the 135 cities of 30,000

inhabitants and over in the United States spent, in round numbers, in the year 1900, the sum of $263,000,000 for the construction and repair of their public works, an average per capita of their population of nearly $14. This sum does not include the payments made by private corporations engaged in discharging public services. The same report shows that the same cities had invested in pavements alone nearly $433,000,000.

Municipal public works are important, further, not merely from the point of view of the municipal finances, but also from that of the effect which they have on the health and general well-being of the city population. The report to which reference has been made shows that in the 135 cities of 30,000 inhabitants and over there were in the year 1900, 6546 deaths from typhoid fever, or 34 deaths per 100,000 population. It is said that there are usually five cases of this disease to one death; the cases of typhoid fever in these cities must, therefore, have amounted to nearly 40,000. Now experience has shown that pure city water will reduce the number of deaths from typhoid to five per hundred thousand. This reduction would mean a saving of 5600 lives annually. Similar results would be reached in the case of other diseases having a close connection with the water-supply. Such a saving would be accompanied by great economic saving, for each life thus cut off represents really what is equivalent to invested capital.[1]

What has been said with regard to a pure water supply may almost be repeated with regard to sewers

[1] See Whinery, "Municipal Public Works," p. 3 *et seq.*

and streets. Poorly constructed sewers have naturally a deleterious effect on the health of the community. Badly paved streets have just as necessarily, though not so obviously, a bad effect. For badly paved streets are cleaned with difficulty, and badly cleaned streets, like dirty sewers, are breeding places for the germs which are the cause of much disease.

The attention of the voter and the public generally, is too apt to be riveted on the more spectacular side of city government. It is too often felt that while politics should be kept out of the school administration, police administration, fire and health departments, it is not so necessary that the same principle should be applied to those departments having to do with public works. But it is to be borne in mind that while a corrupt school administration endangers the intelligence of coming generations, and while a corrupt police is followed by an increased moral depravity, badly conducted public works are at once accompanied by physical degeneration. Care, therefore, should be taken to organize all administrative branches having to do with public works in the best possible manner, and to cultivate a public opinion which shall insist upon securing from those departments the most intelligent and upright performance of their duty.

# CHAPTER XIII

## FINANCIAL ADMINISTRATION [1]

**City Receipts.** City financial administration may perhaps be best treated under the three heads of Receipts, Expenditures, and Audit. The receipts of cities, for a considerable period in their history since the time cities were reduced to the position of subordinate members of a greater state, consisted almost exclusively of private corporate rather than public governmental receipts. The history of most cities in Europe had brought it about that they became owners of considerable amounts of revenue-bearing property, or of lucrative rights. From the receipts from this property, and from loans, the expenses of the city government were for the most part defrayed. Cities were not before the nineteenth century regarded as sufficiently governmental in character to be intrusted with the right of local taxation. It was the rule of the English law, for example, that the mere incorporation of a borough did not confer upon it any power of taxation. The extension of the sphere of municipal activity

[1] Authorities: Clow, "City Finances in the United States," in Publications of the American Economic Association, Third Series, Vol. II, No. 4.

which was characteristic of the nineteenth century, made it, however, impossible for cities to defray the expenses of their administration out of the income of their property, and recourse was had to the taxing power which was very commonly conferred upon them by the legislature of the state in which they were situated.

It is very questionable whether such a reversal of the policy of the centuries preceding the nineteenth century was either a necessary or a wise one. For there was, as it turned out, in the streets of cities a new kind of property whose income, if recognized as at the disposition of the city, would have been sufficient, particularly in the large cities, to pay a large part, if not all, of the really local expenses of the city government. In this country, however, the courts refused to recognize the cities as possessing any property rights in the streets, and the legislatures of the states very commonly wasted this property by improvident grants of it, sometimes in perpetuity, to private persons and corporations. These grants were in many instances unaccompanied by conditions by the enforcement of which cities could derive either pecuniary profit for themselves as corporations, or indirect advantage for their inhabitants through improvement in services. Prior to the commencement of the nineteenth century the municipal authorities had themselves wasted the city patrimony throughout England and Europe generally. During that century what might have been a new city patrimony of immense value was wasted by the legislatures of many of the states of the United States.

Within recent years, however, a more intelligent view has come to be taken of the rights of the cities, and at the present time an earnest attempt is being made throughout the United States to secure for the city a portion, at any rate, of the profit which is derivable from street and other municipal franchises.

One reason for the adoption of the mistaken policy relative to street franchises which was adopted, is to be found in the belief which has so generally been held in this country as to the functions of government. Whatever may have been the original ideas held on this subject, the experience of most of our states, which at the beginning of the nineteenth century entered into commercial undertakings, such as state banks, canals, and railways, was so unfortunate from the pecuniary point of view that it became the fixed belief of the great majority of the people that political corporations were inherently unfit to conduct enterprises whose purpose was pecuniary profit. This belief had two effects on city finances: one was that the city government should undertake only those functions whose discharge would not be undertaken by private companies, *i.e.*, the unprofitable functions; the second was that if by any chance the city should have entered upon an undertaking which could be made profitable, the charges for service should be reduced so as to cover certainly no more than the cost of the service. The advantage to be derived from any city undertaking was to be found not in the pecuniary profit from the undertaking, but the higher welfare of the inhabitants of the city.

As a result of these conditions the receipts derived

by American cities from commercial undertakings and property generally, form a very small portion of their total receipts. It is from the public governmental receipts, such as taxes, special assessments for local improvements, and loans to be eventually paid off from the receipts of taxation, that by far the major part of the revenue of the American city comes. The general principles with regard to the taxing powers of cities have been set forth in what has been said with regard to the powers of the city council.

The organization provided by the average American city for the collection of its receipts has to do, for the reasons stated, almost exclusively with matters of taxation, including within that term special assessments. It is, of course, true that where a city has revenue from property this is collected not by the tax officers, but rather by special boards or authorities having charge of particular classes of property, such as a waterworks board or other commission. In some cases the revenue of city property, such as markets, is attended to by the chief financial officer of the city. In a few cities, where the revenue of city property has been pledged to the payment of city debts, the care of city property is placed in the hands of a debt or sinking-fund commission. This is the case in the city of New York. But apart from these comparatively unimportant matters, the collection of city revenue is in the hands of the taxing officers of the city.

**City Tax Authorities.** The taxing officers of cities are of two kinds: those having to do with the levy of the tax, and those having to do with the collection of the

tax. The officers having to do with the levy of the tax differ very greatly, and differ, of course, because of the difference in the taxes levied. In all cases, however, there is some authority which ultimately determines the rate of taxation. If the tax which is levied is a specific tax, that is, if the tax is a tax of so many dollars on a certain occupation, no operations upon the part of the city officers, outside of the fixing of the rate and the collection of that rate from the persons liable to taxation, are necessary. Where these specific taxes on occupations are the only taxes levied, the city tax administration is a comparatively simple one. If the rate of taxation is a matter of local determination, it is usually fixed by the city council subject to the usual veto power of the mayor. The only other administrative officer required for the collection of the tax is a tax collector, who, at the time he makes the collection, incidentally determines that the person from whom he collects the tax belongs to a taxable class. Inasmuch as the occupation tax is the main tax in the southern portion of the United States, the tax administration is a comparatively simple one in the cities of the South. The office of tax collector is filled, like all city offices, in various ways, sometimes by election, sometimes by appointment by the council or by the mayor, sometimes by appointment of the mayor and council. His tenure and term do not differ essentially from those of other city officers.

**City Assessors.** Where, however, the taxes collected are ad-valorem taxes, that is, where the amount of the tax varies with the amount of property or business

upon which it is imposed, the tax administration is more elaborate. Inasmuch as the general or real property tax and assessments for local improvements are, on the whole, the most important sources of city revenue, what will be said upon this general subject will be confined to the administration required for the collection of the general property tax and these local assessments. The attempt was originally made to apply to cities the same methods which had been elaborated for the assessment of the state tax on property in rural districts. One of the principles upon which the assessment of these taxes was based, was that the assessment should be made by assessors elected by the people subject to be assessed. In the case of large cities it was felt that an assessment made by assessors chosen for the city at large would be made by officers too far removed from the control of the persons assessed. On that account it was quite commonly the case for the city to be divided into wards in which the voters were to elect the assessors who were to assess the property in that ward. The assessors elected in this way did not receive large salaries, did not devote themselves exclusively to the work of assessment, and usually served for short terms. The process of assessment was, so far as concerned the assessment district, really a sort of self-assessment.

The natural result of an assessment by different boards of assessors was a varying ratio of assessment in the different assessment districts. Thus, the assessors of district A might assess property at fifty per cent., those of district B, at seventy-five per cent., of its real value. Inasmuch as the rate of taxation as

fixed by the competent city authority would be the same for the whole city, a tax-payer in district B would pay to the city for similar property a tax fifty per cent. greater than that paid by a tax-payer in district A. There would, therefore, naturally be a competition between the assessors of different districts which would gradually lower the ratio of assessment everywhere throughout the city and would ultimately seriously impair the city's financial resources.

The experience of the city of Chicago here is very valuable. Owing to the competition between the assessors of the towns of which the city is composed, the ratio of assessment fell so low that it was necessary for the legislature to interfere, and by law fix the ratio of value for purposes of assessment at a given proportion of actual valuation. As a matter of fact, the ratio as fixed by the legislature was only twenty per cent. of the real value. Inasmuch as this was generally regarded as an increase in the valuation of assessors, the valuation made by them before the passage of the law must have been ludicrously low.

The city of New York long ago went through somewhat the same experience, but applied a different and much more effective remedy. About 1860, a law was passed by the state legislature doing away with the ward assessors and providing for a board having jurisdiction over the entire city. The members of this board were no longer elected by the people but were to be appointed by the city authorities. At the present time they are appointed and may be removed by the mayor whenever he sees fit to exercise this power. They receive quite a large salary, practically devote

themselves exclusively to the work of assessment, and are, in a word, really professional assessors, who, different from popular assessors, look at their work, not from the point of view of the tax-payer, but from that of the city, and, as a consequence, are inclined to assess property at something like its actual value.

An assessment of property at an approximation of its actual value is important not merely because the current revenues of the city are thereby greatly increased, but also because where a city's debt-incurring capacity is limited to a certain proportion of its assessment valuation, a low assessment valuation lessens its power to enter upon undertakings which may be necessary to the development of the city. Thus, in Chicago, where the debt limit was reached in 1870, "during more than thirty years of expansion, both in population and area, the city has been without means of undertaking upon any adequate scale, such public works as are fitting for a municipality of its size. The burden of any improvements made have been imposed upon the present generation either by way of special assessments or general taxation. In consequence, the city has financially lived from hand to mouth." [1]

The city assessors or equivalent officers are, like the other administrative officers of the city, sometimes elected by the people, sometimes appointed by the council, sometimes by the mayor, and sometimes by the mayor and council. In addition to the officers who

[1] Scott, "The Municipal Situation in Chicago," in "Detroit Conference for Good City Government of the National Municipal League, 1903," p. 157.

make the assessment, there is, in some cases, a board of revision or tax-appeal court, to which appeals from the original assessment may be taken. In other cases, the appeal goes to the ordinary judicial courts, or application may be made to the assessors to revise their first assessment.

**Local Assessments.** As a general thing, the determination of the amount of the local assessment which a given individual must pay on property benefited by some local improvement, is made by authorities other than the regular assessors of taxes. Often these authorities are appointed by the courts, and resemble a jury in that they are appointed for the determination of a single case. This is particularly true where the determination of the amount of the assessment is made as a result of an attempt to ascertain the actual benefit the property assessed has derived from the improvement for which the assessment was laid. In such cases provision is sometimes made for an appeal to an authority similar to the board of revision or tax-appeal court, provided for in the case of ad-valorem taxes. In other cases some city officer or board determines the amount of the assessment as an incident to the determination of the liability of the property to the assessment. Such is apt to be the method where the determination of the amount of the assessment is made by the application of some arbitrary rule whose adoption it is believed will secure, at any rate, some rough sort of justice. Thus it is often provided that the abutting property on a street improvement shall pay for such improvement in proportion to its foot

frontage or its superficial area. In these cases the determination of the amount of the assessment is the result merely of an arithmetical process. In these cases there is seldom provided a method of appeal as in the case of ad-valorem assessments. Either of these methods of assessing property for local improvements is regarded as constitutionally proper.[1]

**City Expenditures.** The authorities having to do with the expenditure of city moneys may be divided into two classes: the first embraces those authorities which fix the amounts of money to be spent. There are two general systems adopted by the various cities of the United States for organizing the authorities intrusted with the determining of the city appropriations. The first system vests almost all the powers relative to fixing the amount of money to be spent, so far as that is a matter of local determination, in the city council; the second provides a board of administrative officers which has at least coördinate powers with the city council. The first system is the one more generally adopted; the latter system has been established in the city of New York, in a number of the large cities of the state of New York, all the cities of the state of New Jersey, and in a number of cities scattered all over the country. In some of the cities adopting this second system, the board of finance or estimate, as it is often called, has larger powers than the council, relative to the amounts of money which may be spent. Thus a greater than ordinary majority vote of the council is

[1] See Whinery, "Municipal Public Works," p. 156, for a discussion of these methods.

necessary to amend the estimates made by the board of estimate, or the council is permitted merely to reduce but not to increase the estimates made by that body. Where a board of estimate is provided, it usually consists of the mayor, the chief financial officer of the city, the president of the council where there is one, the corporation counsel, and other officers who are generally not connected with departments spending large sums of money. In the city of New York it consists, in addition to the mayor, comptroller, and president of the board of aldermen, of the presidents of the five boroughs of which the city is composed. These last officers are really at the head of the borough departments of public works (streets and sewers), and naturally, therefore, spend a great deal of money. The members of this board representing the city at large, have each three votes. The presidents of the boroughs of Manhattan and Brooklyn have each two votes. The presidents of the boroughs of The Bronx, Queens, and Richmond, the smaller boroughs from the point of view of population, have each one vote. The control of the board of estimate and apportionment, as it is called in New York, is thus in the hands of the non-spending departments.

Where there are no boards of estimate, the estimates of each department are usually delivered to the head of the finance department, who ordinarily revises them before they are submitted to the council. The council usually considers these estimates in committee, and is often authorized to make such changes in the estimates as it sees fit. The following description of the action of the Chicago city council will give a

good idea of the work of the city council in the United States, where it possesses large budgetary power: "In 1893, the city council of Chicago passed the appropriation ordinance on March 27. After a large amount of other business had been disposed of, covering thirty pages in the printed proceedings, the council took up the special order for the evening: the consideration for the first time of the report of the committee on finance on the appropriations of 1893. Twenty-one proposed changes were defeated, four items were reduced, three were increased, one item was divided into four. Before that session adjourned the budget, carrying $11,810,969 in all, over five hundred items, had been enacted." [1] The budget of the larger cities descends into great detail, that of New York city having often more than two thousand items. Finally, the mayor may generally veto the budget as an entirety or the special items therein, his veto being ordinarily overcome by a two-thirds or three-fourths vote of the council.

**City Budget.** Ordinarily the budget does not include the expenditures for extraordinary purposes defrayed from the proceeds of loans or special assessments.[2] The same authorities which make up the budget of current expenses defrayed from the revenue of city property and taxes usually have charge also of the extraordinary expenditures. There is not, however,

[1] Clow, "City Finances in the United States," p. 44 in Publications of the American Economic Association, New York, 1901.

[2] See for the borrowing powers of cities, *supra* p. 173.

usually any attempt made to estimate beforehand what extraordinary expenditures shall be made each year, but each matter requiring such expenditure is attended to as it arises. In the city of New York, however, the charter specifically provides that the board of estimate and apportionment may, without the approval of the city council, expend each year from the issue of bonds certain specified amounts for the extension of the school system, for acquiring new docks, and for increasing the plant of its waterworks.

In most cases provision is made for a sinking fund for the extinguishment of the city debt. Where this is the case there is usually a sinking-fund commission often composed of city officers acting ex officio who, in addition to the management of the city debt, have charge of certain city property whose revenues have been pledged to the payment of the city debt.

Expenditures, both ordinary and extraordinary, are not in the average American city altogether a matter of local determination. This is particularly true of the expenditures relative to matters which are regarded as of state interest. Thus the city is often compelled by law to enter into undertakings which in the opinion of the legislature are of advantage to it, and the salaries of its officers are often fixed with considerable detail, particularly the salaries of teachers. Thus, in New York city, the minimum salaries of teachers are fixed by the state law and the city must devote a certain proportion of the tax levy to the payment of such salaries. These compulsory expenditures form, sometimes, such a large proportion of the total expenditures of the city that the function of the

budget-making authorities is little more than formal. Thus, in New York city, in the year 1868, out of a total tax levy of $17,780,590 only $3,710,709 was in the discretion of the council.[1]

**City Disbursing Officers.** The second class of authorities having to do with expenditures are those which actually disburse the money. The disbursing of money involves the discharge of two distinct functions. One is the determination of the correctness, from both the legal and the practical point of view, of the claim presented for payment; the determination, in other words, of the two questions: Has the expenditure been authorized by law or by competent authority? and, Have the services been rendered or the goods been delivered? The second function is the actual payment of the money to the person entitled thereto. In the smaller cities these two functions are quite commonly discharged by the same authority, in the larger they are discharged by separate authorities. Further, in a number of cities, of which New York is an example, the function of determining the correctness of claims against the city is made a part of the duties of the chief financial officer of the city. Where we find the greatest differentiation in the functions of municipal financial administration, we find three separate and distinct officers, namely: a treasurer, or chamberlain, who receives, cares for, and disburses city funds; a comptroller, who is the chief financial officer of the city, and an auditor, who examines into the correctness of claims against the city. As a general

[1] Durand, "The Finances of New York City," p. 87.

thing, the treasurer is elected by the people. In New York city, however, he is called the chamberlain, and is appointed by the mayor. In other cases he is appointed by the council. The comptroller, where that office is completely distinguished from the others, is almost invariably elected by the people or appointed by the council. The same is true of the auditor. It is thus generally true that the financial administration of most American cities has not been brought under the control of the mayor, even in those cities in which the mayor has large powers of control over every other branch of city administration. As a general thing, financial officers are irremovable, or, are removable only for cause. Their term of office, however, is, like that of most other city officers, a short one.

**Auditing of City Accounts.** The final function in financial administration which deserves attention is that of examining or auditing the accounts of officers having charge of city moneys and property. It may be said that this important matter has been almost entirely neglected in the American municipal system. It is true, heads of departments, and particularly the chief financial officers, commonly report to the mayor or council on the operations of their departments or offices; but, on account of the general defectiveness of the system of accounts as adopted in most American cities the reports, which are often also published, are unintelligible both to the mayor and the council and to the public generally. Beyond this matter of reports no effective provision for a regular periodic examination of city accounts is made. Provision is

occasionally made for a special examination which is undertaken sometimes at the request of the city by certified private accountants, sometimes by officers provided by the charter. In New York city, however, there are two commissioners of accounts appointed by the mayor who make periodic and also special examinations of the city accounts.

The lack of any proper system of examining city accounts has led, within recent years, to the agitation for a state examination of such accounts. Such a system has been provided in one or two states, among them being Ohio.[1] Just at present the agitation has been directed as well toward the establishment by the state of uniformity in city accounts. The demand is made not only that the accounts of cities shall be examined by a state official, but that all the cities within the state shall be compelled to keep their accounts in the same way, the way to be determined by the state officer who has in his hands the examination of city accounts. There is no question but that city government in the United States would be greatly benefited by the adoption of such a system. What was said with regard to city reports to the state may be repeated here and given additional emphasis. Only after we are in possession of such information is it possible to hold city officers to any responsibility. For only then can we know how our city governments are being conducted.

[1] Orth, *op. cit.*, p. 102.

# CHAPTER XIV

## CONCLUSIONS

THE purpose of what has been said in the preceding chapters is to describe the conditions existing at the present time in the typical city of the United States, and to give a sketch of their historical development. In more than one instance the attempt has been made to go beyond what may commonly be regarded as municipal government and to enter the field of state government. In one or two instances, even, the excursion which has been made, has been made into what may not be regarded as government at all, but as merely party politics. These excursions have seemed to be necessary because of the belief that city government cannot be understood apart from state government, and that the real governmental system cannot be understood as a result of the study of legal conditions alone. With the general governmental and political system in mind, the attempt has been made further to show that at least one of the important causes of the evil conditions obtaining in the cities of the United States is to be found in the position which the city occupies in the system of state government, and to point out the remedies which, if adopted, may ameliorate those conditions.

Thus the attempt has been made to show that the city under both the legal theory and the political practice of the United States is treated merely as an agent of the state government, always, in the absence of constitutional restriction, subject to the control of the state legislature; that this control, as exercised, has resulted in depriving the city of the right of local self-government without at the same time safeguarding the interests of the state; that the means adopted for limiting the control of the legislature have not been on the whole effective, and that the main cause of the evil conditions in the city governments of the United States is the opportunity and temptation offered, under existing conditions, to the state and national political parties to assume control of the city government.

The attempt has also been made to show that the remedy for the evils of American city life is to be found, not so much in a change in the governmental organization of the city as in a change in its position in both the legal and the extra-legal political system. What is needed is a recognition, both in law and in political practice, that whatever else the city may be, it is also an organization for the satisfaction of local needs, and in such capacity should act largely free from state control—both the control exercised by the state government, and the control exercised by the state party. To secure this result the state control should be so organized as to reduce the temptation to the state legislature to exercise that power of control which must, in the nature of things, be regarded as necessarily belonging to it. The city voter should, by

legislation and otherwise, be afforded the opportunity to decide municipal issues as far as possible uninfluenced by considerations of state and national politics.

What our cities need then are large powers of local government, the exercise of which, where necessary, shall be subjected to an administrative rather than a legislative control; separate elections for municipal offices; fewer elective officers; a more compact and concentrated organization, and greater freedom than at present is usually accorded to municipal citizens to nominate candidates for municipal offices. If changes in these directions were made, it would certainly be easier for the urban population to see more clearly than they now see what city government means to them and to free themselves in their municipal politics from the domination of the state and national parties.

The descriptions recently given by Mr. Steffens of the government of some of the largest cities in the United States are of such a character, however, as to make us have grave doubts as to the efficacy of any mere change in the legal relations and position of our cities.[1] Philadelphia, with a large native-born and home-owning and a small tenement-house population, with a charter which is largely based on what are considered to be advanced ideas on the subject of municipal government, is said to be both corrupt and contented; Minneapolis, with one of the most modern laws on direct nomination, starts under the operation of that law a new administration which has been accompanied by great scandal; St. Louis, with one of

[1] See "The Shame of the Cities."

the much-vaunted freeholders' charters, supposed to secure to her the advantages of home-rule, has shocked the United States by the shameless corruption of her officials; New York, with the most modern charter possessed by any large city in the United States, has recently refused to continue in power one of the best administrations it ever had. It is true that none of these cities which have recently been held up to us as conspicuous municipal failures, has attempted to apply at the same time all the remedies that have been proposed. But the conspicuousness of the failure in all to secure permament good government can hardly fail to force the conclusion that there is something the matter with city government in the United States which strikes deeper than mere governmental machinery. We can hardly avoid believing that the economic and social conditions at present existing in the urban communities of the United States are such as to make good popular city government extremely difficult, if not impossible, of attainment. The experiences of particular cities such as Philadelphia, encourages further the belief that there must be something in the moral character of particular populations which militates against good city government.

With the conditions in our cities such as they are, it is, however, a comfort to recall to mind the conditions which existed prior to the opening of the nineteenth century in most of the cities of the world, the changes which that century brought about in those conditions, and the fact that the same forces which were at work throughout the nineteenth century are at work at the present time with redoubled energy.

If so much has already been accomplished in the past, why should our hopes for the future be limited? Our hopes for the future are not based so much on any change in the legal position of the city, or in its administrative reorganization, as on a real change in the character of the city population. For city life in and of itself may not necessarily be productive of evil from the point of view of government. It is the city life which we have known, not the city life which may be, which has so little that augurs for good. Many of the forces which are now at work were not at work a generation ago, and it may take more than a generation, more perhaps than two generations, to accomplish what is desired.

Furthermore, it must always be remembered that the mind dissatisfied with the present and striving for improvement is prone to exaggerate the evils it desires to remedy. City government in the United States is not by any means ideally good. At the same time it is neither by any means wholly bad, nor is it deteriorating. On the contrary, it is steadily improving. The improvement is particularly marked in what may be called its physical side: the streets are better paved and cleaner than they were; the material and intellectual conditions of city life offer to the urbanite greater opportunities than they once did; the decrease in the death-rate, which is so characteristic of modern cities, in and of itself is a most encouraging sign.

The improvement in city government is not, further, confined to its physical side. The character of city officers and their attitude toward the people

whom they are supposed to serve, and whose interests they are supposed to safeguard, are less blameworthy than they once were. The fraud and corruption of which we hear so much are less glaring and less open than they once were, although there is unfortunately still by far too much room for improvement.

There is, therefore, notwithstanding the complaints which are continually coming to our notice, no real ground for discouragement. The very existence of these complaints is a proof of dissatisfaction with existing conditions. It is only after it has been ascertained that conditions are not what they should be, and only when there is a dissatisfaction with those conditions, that their improvement is possible.

We have thus reason for enthusiasm in the work of municipal reform, but our attempts at reform should not be confined to the mere structure of city or state government. They should be directed also toward improving the social conditions of our cities. Political reform should not, of course, be neglected, because every improvement in the political conditions makes for improvement in social conditions. Almost every cause, therefore, which is dear to the hearts of a certain portion of the people is an important one from the point of view of the improvement of municipal conditions. Ballot and nomination reform and civil-service reform will, if the concrete measures advocated are well considered, improve the political conditions of our cities. Charity reform, prison reform, reform of moral conditions, neighborhood settlements, and, last but not least, the efforts of the various

churches will, if the concrete measures advocated are wisely conceived, do much to ameliorate the social conditions. There is no social reform, however slight, which does not make easier the solution of the political problem; for the difficulty of the political problem in cities is in large part due to the social conditions of the city population. On the other hand, there is no political reform which does not, in its turn, aid in the amelioration of social conditions; for improvement in social conditions is, in many instances, possible only where there is a reasonably good political organization.

# INDEX

# INDEX


Accounts of cities, 300
Administrative control of cities, 101, 175
districts of cities, 200
system of United States, 69
Alien poor, care of, 251
Appointment vs. election, 113
Assessment of taxes in Chicago, 292
Assessors in cities, 290
Audit of accounts, 300
Auditor of city, 299

Birth-rate in cities, 4
Board of Estimate and Apportionment in New York, 296
system of city government, origin of, 62
system of city government, bipartizan boards, 64
Boards of education in cities, 203
estimate, 295
vs. commissioners, 191
Budget of city, 297

Charities' administration, 248
care of alien poor, 251
care of insane poor, 251
early methods of, 248
extent of city functions relative to, 252
organization of city poor authority, 254
separation of from correction, 250
state control of, in cities, 258
Charters of cities, general vs. special, 32
Chicago, assessment of taxes in, 292
Municipal Voters' League, 132
Children's courts in cities, 211
Cities, birth-rate in, 4
causes of, 9
death-rate in, 16, 19
distribution of property in, 14, 15
in England in eighteenth century, 31
in Europe, position of, 76
family life in, 15
in feudal age, 26
functions of, 36
historical sketch of development of, 26
immigration into, 4
influence of commerce on, 10
influence of factory system on, 10
percentage of total population in, 6
physical conditions of, in olden times, 274
political position of, 23
in Roman Empire, 26
sociological character of, 3, 8
state control of, 89
subjection of to state, 28
tendency of toward oligarchical government, 31
Cities in United States, agents of state, 55
authorities of enumerated powers, 74

Cities in United States—*continued*
have lost their autonomy, 77
origin of board system of government in, 62
present position of council in, 154
change in organization of, 59
change in position of, 55
may make their own charters, 92
constitutional limitation of power of legislature over, 91
decay of council in, 139
creatures of legislature, 72
Judge Dillon's rule as to powers of, 74
election of officers in, 113
financial powers of, 75
history of, 43
original judicial functions, 206
influence of political parties on, 61
legislative interference with, 57, 84
mayor, 176
mayor made elective, 60
original organization of, 48
original position of, 45
original sphere of action of, 52
nomination of officers, 121
political parties and, 79
special legislation as to, 77
suffrage in, 109
originally had no power of taxation, 53
Citizens' Union in New York, 131
City, an agent of the state, 35
a creature of the state government, 24
a grade of local government, 24
meaning of term, 3
an organ of local government, 35
City—*continued*
a political organization, 22
not formerly self-perpetuating, 4
a social fact, 1
social significance of, 3
administrative districts, 200
civil service, 183
boards vs. commissioners, 191
British system of, 186
United States system of 189
City council, 137
central administrative control of, 175
decay of in United States, 139
effects of decay of in United States, 144
manner of election of, 156
financial powers of, 169
reaction in favor of in United States, 147
minority representation in, 156
ordinance power of, 164
powers of, 161
power to determine sphere of municipal activity, 167
power of to incur debts, 174
term of members of, 160
City courts, 205
unsatisfactory character of in United States, 213
children's courts, 211
importance of, 212
method of filling position of members of, 210
origin of, 50
probation officers of, 211
elections, 105, 109
City government, complex character of, 114
heads of departments, 189
life, improvement in, 19
City influence of on character, 16

City officers, appointment vs. election, 113
direct nomination of, 126
nomination of, 121
nomination of by petition, 126
parties, 130
City police justices, 209
City population, character of, 13
City property, control of, 170
City state, 23
City taxes, power to levy, 171
Cleveland school system, 270
Commerce, influence of on cities, 10
Commissioners vs. boards, 191
Correctional administration. See Charities.
Council vs. mayor, 149, 180
Cumulative voting, 157

Death-rate in cities, 16, 19
lowering of, 19
Debts, power of city to incur, 173
Departments. See Executive Departments.

Educational administration. See School Administration.
Election vs. appointment, 113
English city, narrow sphere of action originally, 44
Estimate, boards of, 295
Executive departments in cities, 189

Factory system, influence of on cities, 10
Family life in cities, 15
Fassett Committee, report of on cities, 78
Financial administration, 286
auditing of accounts, 300
auditor, 299
boards of estimate, 295
budget of city, 297
Financial Administration—*continued*
disbursing officers of city, 299
city expenditures, 295
city receipts, 286
city tax assessors, 290
local assessments, 294
state audit of city accounts, 301
tax authorities, 289
treasurer, 299
powers of city council, 169
Foreign relations not a city function, 37
"Free List" system of voting, 159
Fusion in New York city, 130

Governor, position of in United States, 70
power of to remove mayor, 182

Heads of departments, in cities, 189
Health authorities, organization of, 238
Health ordinances, 236
Home rule. See Municipal Home Rule.
Howard, John, influence of on prisons, 250

Immigration into cities, 4, 5
Initiative in cities, 118
Insane poor, care of, 251
Interference of state with cities, 32

Jefferson, Thomas, his dislike of cities, 18
Judicial functions of cities, 205
Justice not a city function, 37

Legislative control of cities, 73
constitutional limitation of, 91
ineffective, 99

Licenses, 234
Limited voting, 157
Liquor, etc., licenses, 234
Local assessments, 171, 294

Mayor, judicial functions of, 183
elected by people of city, 60, 176
original position of, 49
present position of, 176
power of appointment of, 66, 178, 179
power of governor to remove, 182
power of removal of, 66, 178, 179
powers of, 176
term of, 182
Mayor system of city government, origin of, 65
Military affairs not a city function, 37
Minnesota, direct nomination of city officers in, 127
Missouri plan of freeholders' charters, 92
Municipal action, determination of sphere of, 40
Municipal functions, 36
Municipal home rule, meaning of, 33
Municipal Voters' League in Chicago, 132

New York Board of Estimate and Apportionment, 296
Citizens' Union in, 131
early charters of, 46
fusion in, 130
Nomination of city officers, 121
direct nomination, 126
by petition, 122
regulation of primaries, 128
Nuisances, 237

Ordinance power of city council, 164

Parish constables in cities, 214
Peel, Sir Robert, metropolitan police bill of, 215
Philadelphia, City Hall of, 85
early charters of, 46
Police administration, 204
adoption of London system in United States, 221
early American systems of, 218
defects of American police, 228
boards vs. commissioners, 226
licenses, 234
London system, 215
state appointment of city police commission, 222
justices in cities, 209
ordinance power, 164
Political causes of cities, 10
parties, control of over cities, 104
influence of on cities, 61, 79
Poor law administration, 248. See Charities.
Population, cause of increase of, in cities, 7
percentage of in cities, 6
Position of cities, 39
Preservation of the peace, 214. See Police Administration.
Primary regulations, 128
Probation officers in cities, 211
Property, distribution of in cities, 14, 15
Proportional representation, 158
Public health administration, 235
powers of health authorities, 242
remedies against action of health authorities, 245
state control of in cities, 240
nuisances, 237
Public safety, 235. See Police Administration.

Public works' administration, 274
importance of, 283
necessity of records, 279
organization of authorities, 276

Referendum in cities, 118

Sanitary administration, 235. See Public Health.
authorities, organization of, 238
ordinances, 236
School administration, 262
organization of school authorities, 263
board of education, 263
early methods, 262
extent of, 263
school-board, 263
school-director in Cleveland, 270
separation of physical from educational administration, 269
superintendent of schools, 269
state control of in cities, 271
teachers, how appointed, 269
Separate city elections, 105
New York plan, 106
Massachusetts plan, 107
Special legislation, 77
in Illinois, 98
prohibition of, 93
rule as to in New York, 97
rule as to in Ohio, 95
what is, 94
Sphere of municipal activity, power to determine, 167
State control of cities, 89
audit of city accounts, 301
of city finances, 301
of charities' administration, 258
of police in cities, 222
of schools in cities, 271
See Administrative Control.
See Legislative Control.
State police, advantages of, 223
Suffrage, in cities, 109
relation between state and city, 110

Tax assessors, 290
authorities, 289
Taxes, in cities, 286
city's power to levy, 171
Treasurer of city, 299

Universal suffrage in cities, 109

Voting. See Elections, Limited Voting, Cumulative Voting.