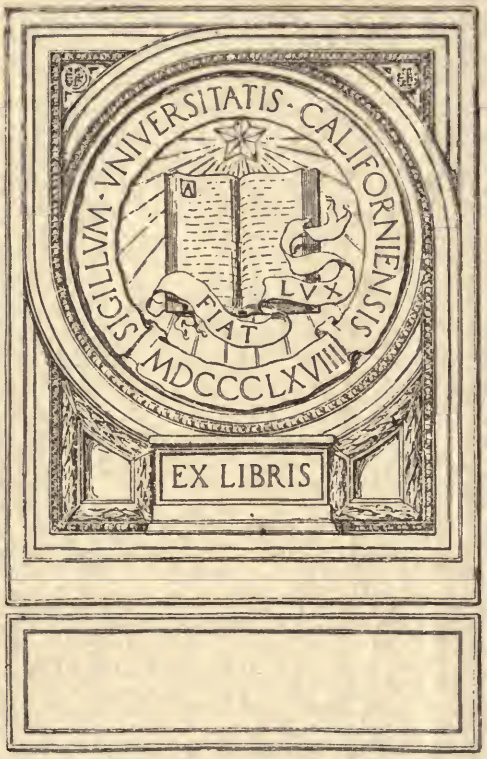
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MUNICIPAL GOVERNMENT

BY

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NEW YORK
THE CENTURY CO.
1919

PREFACE

To the Second Edition

THE decade which has elapsed since the publication of the first edition of this text has been an eventful one in the field of municipal government. In the preparation of a new edition two objects have been kept particularly in mind. First, An effort has been made to bring the text abreast of the times by a revision of statements of fact and by giving attention to matters of recent interest, such as municipal home rule, the devices of direct government, the newer forms of organization, the relation of the city to its public utilities and municipal finance. In the second place there has been revision of form in the direction of greater simplicity of presentation.

It is hoped that the text will prove especially serviceable to those students who must encompass all phases of municipal government:—its place in the governmental system, its organization and its functioning, within the limits of a single course. The lists of references at the beginning of chapters include such readings as are readily available and are adapted to the use of undergraduate classes.

Acknowledgment should here be made of the assistance gained from the bibliographical labors of Professor William B. Munro of Harvard University.

July, 1919.

FRANK J. GOODNOW.
FRANK G. BATES.

PREFACE

To the First Edition

In the belief that there was a demand for a book on municipal government somewhat comprehensive in its scope and attempting to cover, however incompletely, the entire field, "Municipal Government" has been written. The endeavor has been made therefore to treat both the historical development of city institutions in western Europe and to discover the characteristics which distinguish the social conditions of modern urban populations, in the hope that help might be obtained in the solution of the problems presented by city life.

The fulfilment of the purpose which the author has had in mind has made it necessary to cover some of the ground already covered in books from his pen. This is particularly true of his "City Government in the United States," from which much of the matter in the present work having reference to the conditions existing in American cities has been taken.

It has been the author's hope, in writing the following pages, that they might both prove of value to that increasing body of students in colleges and high schools, who devote some portion of their time to the study of municipal government and be of interest to that part of the general public, apparently also increasing in number, who are endeavoring to solve the problems arising in connection with urban development.

Frank J. Goodnow.

Columbia University
August 1, 1909.

CONTENTS

MUNICIPAL GOVERNMENT

MUNICIPAL GOVERNMENT

CHAPTER I

GROWTH OF CITIES

REFERENCES:

Beard, C. A., "American City Government," Chap. I. Howe, F. C., "The Modern City and Its Problems," Chaps. I and IV. Howe, F. C., "The City the Hope of Democracy," Chap. II. Shaw, A., "Municipal Government in Great Britain," Chap. I.

The City. There are in all countries large aggregations of persons within small areas which are variously called "cities" or "urban communities." The mere existence of these aggregations presents peculiar phenomena. The questions may be asked: How did these aggregations come about? and, How are they constituted? that is, What are the characteristics of urban populations? These questions are of a sociological nature. When one speaks of the "city" or "urban community" as a mere aggregation of individuals dwelling in close proximity the term is therefore used in a sociological sense.

The presence of these aggregations, however, causes problems to arise which are not sociological in character. These social groups must have a governmental organization. Not only must they have such an organization, but, since their problems are peculiar owing to the density of their population, that organization must be different from that which is accorded to rural communities. When, therefore, the "city" or "urban community" is spoken of as a governmental organization the term is used in a political rather than in a sociological sense. One thinks then not so much of the reasons why aggregations of persons exist or of the character of their populations, as of the position which the city occupies as an organ of government and of the political powers which it exercises.

It has been said that the political problems of cities are peculiar. This is due not only to the density but as well to the character of urban populations. Therefore, although attention will for the most part be directed to the city as an organ of government rather than as a social fact, it will be necessary to consider briefly why cities have come into existence and to understand those characteristics of urban populations which can fairly be regarded as having an influence on the governmental and political problems of cities. Only in this way is it possible to reach conclusions of any value as to the solution of the political problems of modern cities.

Extent of Urban Growth. A study of city characteristics and the determination of the form of government best suited to their needs assumes greater importance from the fact that the densely populated areas are increasing in size and number. One of the observations most commonly made at the present time concerning the civilization which owes its origin to western Europe is that the cities are increasing in the number of inhabitants faster than are the rural districts. From 1900 to 1910 the urban population increased more than 30 per cent while the rural population increased only a little more than 11 per cent. The result is that an increasingly large proportion of the total population is living an urban life.[1] There is also a distinct tendency for the larger cities, as for example the cities of 100,000 and over, to attract a larger and larger proportion of the population.[2]

[1] The extent of the relative increase of population in the urban and rural districts of the United States is indicated in the following table:—

Population	*1910*	*1900*	*1890*	*1880*
Urban	42,623,383	30,797,185	22,720,223	14,772,438
Rural	49,348,883	45,197,390	40,227,491	35,383,345
	Per cent of Total Population			
Urban	46.3	40.5	36.1	29.5
Rural	53.7	59.5	63.9	70.5

The urban population is taken to include the inhabitants of places of over 2,500 population.

[2] The percentages of population living in places of specified sizes are shown in the following tables:—

Percentage of total population.	*1910*	*1900*	*1890*	*1880*
Cities of 25,000 or more	31.0	26.0	22.3	17.2

What is true of the United States seems to be true as well of all the states of western Europe. In England and Wales the total urban population, defining that term as the population residing in places of three thousand inhabitants and over, increased between 1901 and 1911 11.2 per cent, while the rural population increased 9.9 per cent.[3] Between 1881 and 1891 the increase was 15.4 and 3 per cent respectively.[4] In France the urban population, defining the term as the population dwelling in communes of two thousand or more inhabitants, increased in the period 1901–1911, 15.9 per cent, while during the same period the rural population actually decreased 3.9 per cent.[5] In Prussia the urban population, i.e., the population living in places of two thousand and over, was, in 1900, 55.5 per cent of the whole population; in 1910 it was 61.5 per cent. In the whole of the German Empire the proportion of the population living in towns of 5000 population was in 1880, 28.6 per cent; in 1890, 35 per cent; in 1900, 42.3 per cent, and in 1910, 48.8 per cent.[6] In Belgium, in 1846, the cities of 100,000 and over had 6.8 per cent of the population of the country and in 1910, 17.6 per cent. Between 1900 and 1910 the total population of Belgium increased 18.3 per cent, the cities of 100,000 and over, 10.2 per cent and all over 25,000, 6.5 per cent.[7] Statistics from Austria, Italy and Spain confirm the conclusion that throughout western Europe the rate of urban increase is rapid and exceeds that in the rural districts.

Cities of 100,000 or more	22.1	18.7	15.4	12.4
Cities of 250,000 or more	16.8	14.4	11.0	8.8
Cities of 500,000 or more	12.5	10.6	7.1	6.2
Cities of 1,000,000 or more	9.2	8.5	5.8	2.4
Percentage of urban population.	*1910*	*1900*	*1890*	*1880*
Cities of 2,500–25,000	33.0	35.9	38.3	41.5
Cities of 25,000–100,000	19.3	18.0	19.0	16.2
Cities of 100,000 to 1,000,000	27.7	25.3	26.6	34.1
Cities of 1,000,000 and over	19.9	20.9	16.1	8.2

[3] "Statesman's Yearbook."

[4] *Ibid.*

[5] "Statesman's Yearbook."

[6] *Ibid.*

[7] *Ibid.*

In Australia where European civilization has been transplanted the same tendencies are to be found. In New South Wales the cities of 10,000 inhabitants contained in 1851, 28.2 per cent; in 1891, 33.6 per cent, and in 1911, 45.8 per cent of the population. In Victoria the same class of cities had in 1851, 30 per cent; in 1891, 46.1 per cent, and in 1911, 53.4 per cent of the entire population.[8]

In countries not possessing western European civilization the same conditions are not found. Thus the urban districts in Russia proper contained at the close of the last century only 12.5 per cent of the population; in British India, only 9.22 per cent; while in Bengal, only 4.82 per cent of the population of over seventy million persons are to be found in the urban districts.[9] In China, however, it is estimated that the fifty-two cities above one hundred thousand have 22 per cent of the population.[10]

Growth of Cities a Recent Phenomenon. Not only does a study of the census statistics of various countries show a disproportionally rapid growth of urban populations as compared with rural, but it also appears that this excessive growth is a phenomenon of comparatively recent times. On account of the many disturbing factors which enter in a comparatively new country like the United States, the statistics on this subject are not very informing, but when European countries are considered, some very significant figures appear with respect to urban growth.

It is seen that the period 1821–1851 was in England a period of concentration, and in this period the decades, 1821–1831, and 1841–1851, are especially marked. In the first, the rate of increase of most of the English cities was most remarkable, some of them increasing at a rate of 60 per cent and over. This was a period of great industrial activity, the number of pounds of cotton imported having increased from 51,000,000 pounds in 1813, to 287,800,000, in 1832, and 489,900,000, in 1841. It was also

[8] Weber, "Growth of Cities," p. 140; "Statesman's Yearbook."
[9] Weber, "Growth of Cities," p. 124.
[10] *Ibid.*, p. 129.

during this period that railroads were first built. The first railway was built in 1830; by 1840, there were 800, and in 1850, 6,600 miles of railway.[11] In France the urban development began somewhat later than in England. The year 1831 may be taken as the beginning; in 1851, urban population had increased greatly and continued to increase until 1871, when it fell off considerably. This increase is, as in England, coincident with the industrial revolution, which began in France shortly after the political revolution of 1830.[12]

In Germany the concentration of population in cities was not noticed until after 1852, and is particularly marked after 1880.[13] The changes in the industrial system, which seem to have been followed by an increase in the urban population, did not take place in Germany until after 1840. Even as late as 1850, only 5,856 kilometers of railway line had been built. By 1848, however, the industrial revolution was completed. The successful termination of the French war in 1871 made the political union of Germany possible, and was followed by great commercial and industrial expansion.

It may be said, then, that urban development is a characteristic of modern western civilization, and, in the form in which we find it at the present time, a comparatively modern phenomenon. The problems incident to it are thus new rather than old. Certainly their solution makes more insistent demands than ever before, since never before in the history of western civilization did such a large proportion of the people live in urban communities as at the present time.

Sources of Increase in Population. If attention is directed to the methods by which the aggregations of population which we call cities are brought together, it will be discovered that these groups are recruited either internally or externally;—internally, by persons born and reared within the city; externally, by those who have migrated from outside. While it is true that every city owes its population at any given time to both methods of

[11] Weber, "Growth of Cities," p. 52.
[12] *Ibid.*, pp. 76–77.
[13] *Ibid.*, pp. 83, 89.

increase, it is also true that the proportion derived from each varies widely with time and attendant circumstances.

Now while the method of internal recruiting should not be overlooked, it has had in the past a comparatively unimportant influence upon the growth of cities. The number of internal recruits to the city population depends to a considerable degree upon the sanitary condition of the city. If these conditions are bad the death rate becomes higher than the birth rate. The same result occurs when devastating wars take place in frequent succession. In the centuries preceding the nineteenth the sanitary and other conditions affecting the production and conservation of human life were of such a character in the densely populated areas of the European world that the death rate was greater than the birth rate. It is said that in London in the forty years from 1603 to 1644 there were 363,935 burials and 330,747 christenings.[14] "A German student who investigated the church records of baptisms and burials in several German cities came to the conclusion that on the average there were eighty or ninety births to one hundred deaths in the period from 1550 to 1750."[15] The result has been that, had it not been for migration from the outlying districts into the cities, the city population would have decreased even to the point, sometimes, of threatening the existence of the city.

The improvement in the sanitary condition of cities in the nineteenth century due to the discoveries of medical science applied by a more efficient municipal government have, however, brought it about that many cities have at the present time a higher birth than death rate. Indeed, Dr. Weber states that while in France and Italy the cities do not generally sustain themselves, "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-quarters and even more of their increase. In the United States where the cities now show a larger natural increase than do the rural dis-

[14] Weber, "Growth of Cities," p. 232.
[15] *Ibid.*, p. 234.

tricts, there is still a vast immigration, four or five times as large as the natural increase.'' [16]

Before turning to a consideration of the specific causes of urban growth, some general facts and conditions which affect the problem in a general way may be reviewed.

Density of Population not a Cause of Growth. In seeking causes of urban growth it may be well at first to make it clear that mere density of population is not a cause. This is illustrated by the fact that Bengal with a large population has a low percentage, while Australia, with a sparse population, has a high percentage of urban population. In the case of Bengal, the occupation of the people is in the main agricultural, and the character of the agricultural system is very primitive; great reliance is placed on manual labor, almost none on machinery. The result is that, notwithstanding the fertility of the soil, the agricultural labor of most of the people is required in order to sustain the population. None, roughly speaking, can be spared for occupations not of an agricultural nature. In other words, the rural districts demand for their cultivation, under existing methods and conditions, the services of practically the whole population.

When, however, one turns to Australia, how different are the conditions! The land is very commonly not adapted to distinctly agricultural pursuits. It is either so arid as to make them impossible, or it is so far away from the market in which agricultural products can be sold as to make the raising of distinctly agricultural products unprofitable. It is, however, wonderfully adapted to the raising of cattle, sheep, and horses, and markets are readily obtained for live stock and wool. The natural result is that the country is devoted to pastoral rather than agricultural pursuits. Comparatively few people are required to devote themselves to the distinctly rural occupations suitable to the country, i.e., to the direct raising of wool and live stock, and a considerable number of people devote themselves to occupations largely commercial in character, which are necessary in order to market the products raised. The result is that in

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

Australia large urban communities have sprung up as the homes of those who devote themselves to the commercial occupations made necessary by the pastoral character of Australian economic conditions. This result is reached although industry has been developed scarcely at all in that country.

Divorce from the Soil Necessary. From what has just been said it appears, then, that urban communities are possible only where economic conditions are such that a portion, at least, of the people living in the country can obtain their livelihood from some occupation not immediately connected with the soil. As it has been put, cities are possible only where at least a portion of the inhabitants are divorced from the soil.[17]

When trade is bounded by arbitrary political lines, or is local rather than general in character, it may be said further, that cities are possible only where there is a back country tributary from a political point of view either to the city itself or to the larger state of which the city is a part. In the first case there is usually found the form known as the city-state, of which Venice was once a good example, while in the second is found some form of a national state, such as Rome after she had extended her influence over Italy, and the modern states of western Europe.

Where, however, a world trade has been developed it may well be that a whole country may become urban in character. In such a country we may find cities of great size with no *hinterland* tributary to them, all devoted to commercial or industrial occupations. Such a country may not contain sufficient land under cultivation to sustain its population or to give it raw materials in sufficient quantities to keep its industries alive, but may be obliged to import both agricultural products and raw materials from distant points beyond its boundaries.

Such is the condition of England and Wales, whose urban population is 77 per cent of their entire population. England imports most of her food stuffs from the United States and Australasia, her cotton in large degree from the United States, and her iron from Spain. She is, thus, able to support an

[17] Weber, "Growth of Cities," p. 16.

enormous urban population, although she does not produce enough food or raw materials in her own boundaries for the needs of even a comparatively small part of her people. From a political point of view, her position may be a precarious one, but from an economic point of view it is doubtful whether she is at a great disadvantage with the United States where the Lake Superior iron ores and the western wheat fields are far distant from the industrial centers, although they are within the political boundaries of the United States.

It may be said, then, that urban communities are possible and only possible where economic conditions permit a portion of the inhabitants, whatever may be the density of the population, to obtain their living out of an occupation not immediately connected with the soil.

The divorce of men from the soil is only possible, however, when agricultural methods are so highly developed that the work of a part of the community will yield products sufficient to support the whole community, or when new and more fertile lands, from which food and raw materials can be obtained, are subjected to cultivation.

Until such conditions obtain industry and commerce cannot develop to the extent of making possible the existence of the large industrial and commercial classes out of which urban communities are formed.

Agricultural Improvement and City Growth. When the conditions above described arise, and when the state of commerce and industry becomes such that better wages and more attractive living conditions are offered in those occupations than prevail in agriculture, the separation from the soil will take place. This is actually what occurred in England toward the close of the eighteenth century.

The invention of the spinning jenny and the improvements in the loom made spinning and weaving more profitable than working in the fields. The consequent scarcity of agricultural labor and the reduction in the quantity of farm products produced tended to raise the price of food stuffs so as to offset the apparent advantage in increased wages. Under these circumstances the increased demand for agricultural products inspired

great improvements in farm methods. Common lands were enclosed and their cultivation was much more intensive than had been true before. The yield of wheat per acre went up from seventeen to twenty-six bushels per acre. Scientific stock breeding followed. Beeves weighed at the Smithfield market, 370 pounds in 1710, 800 pounds in 1795.[18]

These improvements in their turn rendered unnecessary the labor of as many agricultural laborers as formerly and made it possible for a larger portion of the community than formerly to devote themselves to the new industrial undertakings which sprang up soon after. In 1770, 42 per cent of the people were devoted to agricultural pursuits; in 1841, 22 per cent. Ultimately both occupation was found for the surplus population that had formerly been agricultural in character and inducement was offered to the agriculturist further to improve agricultural methods to offset the higher wages paid the agricultural laborer than would have been paid, were it not for the competition of the factories formed as a result of the great industrial revolution, which began in the last years of the eighteenth century.

In spite of the general principle that in new countries the larger proportion of the population is normally found engaged in agriculture, in some countries, notably in the United States, the urban population is relatively large. This is apparently due, in part at least, to the unusually prosperous condition of agriculture arising from efficient methods, and in part to the fact that in older countries there remains on the soil an old agricultural population which has not yet adjusted itself to new economic conditions by merging with the new industrial population. In the newer country this older rural population has never existed.

The rural population in the United States is relatively large in spite of the efficiency of its agricultural methods because the country is so largely engaged in producing for export. The urban population is, however, increasing at a rapid rate and by the time that the country will have ceased to export

[18] Weber, "Growth of Cities," p. 165.

raw materials, the urban will probably outnumber the rural population. In Australia the unusual proportion of urban population will probably continue until a different type of agriculture becomes possible.

It may be concluded, then, that under the economic conditions of modern times a larger urban than rural population is by no means an abnormal or temporary phenomenon, but on the contrary, is in new countries as much as, if not even more than in old, a normal and permanent phenomenon. If this is the case it is somewhat difficult to see how any schemes which may be adopted for getting the people back to the farms will have any great success. Improvement in rural conditions may conceivably result in a proportionally larger rural population than now exists, but such increase will not be great. Unless there is a corresponding broadening of markets such increase will make more keen the competition for those which already exist.

Wider markets for agricultural products are a necessary prerequisite for a greater rural population, and wider markets for the agricultural products of a given country can be secured only through the growth of cities, the underselling of less favored agricultural districts, or the increase in consumption by existing populations made possible by lower prices. So far as this last contingency may occur the existence of a larger rural population as compared with the urban population is conceivable.

Motives for City Forming. Thus far attention has been directed merely to general considerations affecting the trend of population toward the cities. If one would know the character and surroundings of city populations upon which their needs and aspirations are conditioned, the question must be asked: Why do large populations gather in particular spots?

Whatever the motives which lead people to congregate in cities, the population must not only come together but stay together. That is, the motive must be reasonably permanent in character, rather than a merely evanescent one. Large numbers of people will be attracted to newly discovered sources of mineral wealth, but they will not remain unless that mineral wealth is of such a character that a reasonably long time will elapse before it is extracted from the earth. Thus, in many parts of Pennsyl-

vania may be found the ruins of villages which were formed because of the discovery of oil wells, but which fell into decay when the wells ceased to flow. If, however, the aggregation continues long enough, other forces than those which were originally responsible for the establishment of the urban community may come into play, and cause not only the continuation of the community, but its further growth. Thus, Oil City, in Pennsylvania, notwithstanding oil wells may no longer exist there of sufficient magnitude to attract a large population, has continued in existence because it is suitably situated for the carrying on of occupations other than the extraction of oil.

The motives which lead people to gather together may be classified as defensive, religious, political, educational, commercial and industrial. Cities are formed because large numbers of persons are drawn to particular places from one or more of these reasons. It will be found that in many instances cities have come into being from a single one of the above mentioned motives. When colonizing nations establish themselves in the midst of uncivilized peoples, soldiers and colonists gather in or about fortified posts for defensive purposes. Thus began the cities of Quebec and Pittsburg, as did many of the older towns in the original American colonies. In the south of India there is a temple near the city of Trichinopoly, in and about which it is said as many as thirty thousand persons are gathered. Lourdes in the south of France is another example of a city formed because of religious, or at least quasi-religious, reasons. Again, our own capital city of Washington is an example of an urban community established solely for political reasons. In Oxford, England, is found a community which could with difficulty remain in existence, were the university around which it has grown up removed from its midst.

From whatever motive cities may have been formed, their growth is, as a usual thing, due to a variety of motives working together. Around forts or castles, where people gathered for safety, as well as about temples and shrines set up for religious worship, trade springs up which thrives on the needs existing or excited in the people who may come together primarily from

defensive or religious motives. Ultimately the population gathered for commercial or industrial pursuits may outnumber those who are drawn thither for the earlier purpose, or entirely supersede them.

In a world in which the greater part of mankind must earn their bread by the sweat of their brow, economic motives must be recognized as, by and large, the controlling motives of human action. While many cities have thus been founded for other than economic reasons, by far the greater number of cities have either been established, or are able to continue their existence and develop because of their favorable situation for the purposes of trade and industry. Indeed, it is not infrequently the case that places so favorably situated are chosen by priests and educators as places from which religious and cultural influences will be most liable to emanate. This being the case, a large part of our time must be devoted to a consideration of the ways in which trade and industry influence both the establishment of cities and the character of the urban population which their pursuit attracts.

Trade as a Motive for City Forming. While trade and industry may be said to be the two most important causes of urban development, at the same time it must be recognized that no very great development of industry is possible without the possibility of trade. Without trade, industry is dependent entirely upon the demands of the local market. Where trade exists which opens up more than merely local markets great industrial expansion is possible. Trade is practically impossible without transportation, which is in its turn impossible without means of communication. These in their turn are impossible where reasonably stable government with its accompanying peace does not exist. We must, therefore, assume that before cities dependent on trade can exist, man must have reached a stage in his development when war is not the normal condition, and when government has attained some degree of effectiveness. City populations of any considerable size are therefore indicative of a reasonable degree of civilization and political capacity.

Trade being thus dependent on transportation, we find that

trade centers are closely connected with transportation routes. Such transportation routes are of two kinds, either water or land routes. From another point of view trade routes may be spoken of as natural or artificial; and while it is possible for trade routes by water to be influenced greatly by human activity, as by the building of canals, of which the Suez Canal is the most famous example, at the same time the hand of man is much more apparent when we come to consider trade routes by land. Human activity is seen on the land in the construction of waterways not directly connecting great bodies of water and in the construction of ways not dependent on water. Channels of rivers are deepened. Canals which connect rivers are constructed. Roads and bridges are built and tunnels bored through mountain ranges.

Influence of Breaks in Trade Routes. Now a main effect of the hand of man in connection with transportation is seen in the attempt to do away with breaks in those routes due to a change in the mode of transport. In rather primitive commercial conditions such changes in methods of transport are very common. In the first place a trade route may be said to be broken at the shore of a large body of water. Water routes must give place to land routes. Again, in primitive commercial conditions the highway must give place to the bridle path, when mountain ranges are to be crossed. The camel must take the place of the horse as a beast of burden when deserts are to be traversed. Great rivers which the engineering ability of the time cannot bridge cause other breaks. Finally, just as on land the wagon is replaced by the pack horse or the camel, so where the river or other inland waterway meets the ocean the vessel of lighter draft must be replaced by the ocean-going vessel.

Every time a break in transportation takes place a great deal of subordinate but necessary work is involved which demands the services of many men, and the tendency is for people to congregate at the points at which breaks occur. The influence of man in his attempts to avoid breaks in trade routes and the labor as well as the delay caused thereby is apparent when one considers the history of the commerce of Europe with the East. The most ancient trade route in history was that from the coast

of Asia Minor to the Euphrates and Tigris rivers.[19] At the commencement and termination of this route, where further transportation was interrupted by the necessary change of vehicle, arose Tyre and Sidon on the Mediterranean and Babylon on the Tigris, the greatest cities of the ancient world. Later on, when the means of navigation were improved, it was found that a nearly all-water route with the most profitable part of the East could be secured by making the short land journey from the Nile to the Red Sea. Alexandria sprang up where the ships of the Mediterranean had to unload. Later, when trade routes were extended toward western and northern Europe, Venice and Genoa became points of transhipment from the Mediterranean voyage and secured control of the Eastern trade.

When in the fifteenth century it was found that an all-water route existed around the continent of Africa and, on account of the further improvement in navigation, could be used, Venice and Genoa declined in importance, and Lisbon, the capital of the country whose adventurous sailors first proved that such an all-water route was practicable, took the place of both Alexandria on the one hand and Venice and Genoa on the other. The break at Alexandria made it impossible for the old route to maintain itself, notwithstanding the alliance of the Venetians and the Egyptians, who attempted by force to prevent the Portuguese from taking advantage of their discovery. Finally, in the middle of the nineteenth century the long-thought-of plan of cutting the Isthmus of Suez was realized and again the Mediterranean cities began to prosper, particularly Marseilles, Genoa and Naples. In the meantime, however, naval engineering had so progressed that vessels of greater size could be used and we find the cities of northern Europe, such as Bremen and Hamburg and Antwerp, sharing in the trade with the East. In almost all these cases the prosperity of urban communities is seen to depend on the fact that breaks in the trade route were unavoidable at or about the place where they were situated.

[19] On the ancient trade routes between Europe and the East, see Hunter, "History of British India," Vol. I, chap. 1.

Another instance in modern times where the importance of a situation at a break in the trade route was most keenly appreciated is seen in the relations between the English cities of Liverpool and Manchester. Liverpool was established at a place where a break in a trade route was, under existing conditions, unavoidable. Manchester, only a few miles away, did not have this advantage but determined to secure it by artificial means. Notwithstanding the opposition of Liverpool, Manchester obtained an act of Parliament permitting the building of the Manchester Ship Canal through the construction of which Manchester hoped to secure a situation at a place where the trade route would be broken. Manchester succeeded, but in the meantime ocean-going vessels were so increased in size as not to be able to use the canal and thus Liverpool has been able to retain at least a portion of the trade.[20]

What has been shown to be true of natural water routes of trade is just as true of the more artificial land routes. The tendency is by an improvement in the routes to overcome the obstacles offered to trade by nature. This results, as in the all-water routes, in the diminution of the number of breaks in the route. A most marked instance of this tendency is to be seen in the case of the substitution, for other means of communication by land, of railways, which pierce mountain ranges and cross rivers.

The result, therefore, of the substitution of the more modern means of communication by both water and land is, if no other influences come into play, by diminishing the number of breaks in trade routes to take away from many cities one at least of their *raisons d'être* and to concentrate population in the larger cities. World trade and long trade routes make great cities and the more a city's trade takes on the character of world trade and the longer the trade routes at the break of which it is situated, the greater the city will become, simply because of the fact that it grows at the expense of its rivals.

Influence of Railways and Customs Tariffs. As compared with

[20] As to the importance which mediæval cities ascribed to securing breaks in trade routes where they were situated, see Schmoller, "The Mercantile System," p. 10.

ancient times, trade is, in modern times, carried on under very artificial conditions. Railways and customs tariffs have an important effect upon trade and as a consequence upon cities. Customs tariffs of themselves make breaks in trade routes. If custom districts are small, breaks in trade routes are numerous and few large cities can develop. If customs districts are large, i. e., if political organizations have expanded, fewer customs houses and therefore greater cities are found. In large states themselves customs tariffs may be made a means by which cities may be developed. If the government of a particular state desires to concentrate population in a few cities it may do so by limiting the number of its ports of entry and its customs houses. If, however, it desires to scatter its population among numerous cities, it may do so by making a large number of ports of entry and permitting the establishment of bonded routes, by which merchandise may be carried into the interior and examined and the duties on it paid away from the coast or the land frontier.

Railways, of themselves artificial trade routes, may be made influences for the concentration of population, not only through the fact that by their mere construction they cause breaks in more nearly natural trade routes to disappear, but as well through the system of rates which may be adopted. Differential rates in favor of one place as against another and a basing point system of rates have, it is believed by most New York merchants, attracted trade from that city to other and in some instances interior points, which have become themselves distributing points for internal or foreign trade. This would not have been the case had such rate systems not been adopted. On the other hand, the tapering rates, as they are called, which seem everywhere to have been adopted in Australia, have, it is said, served to concentrate population in the large centers of Sidney and Melbourne, and have prevented the development of small centers of trade in the interior, whose absence is so marked in the southern continent.

One may, therefore, conclude that the modern world trade and long trade routes tend to further the development of the great cities at the expense of the small, but that in the artificial

conditions due to customs tariffs and railway rates much may be done to counteract those influences, or at any rate to prevent them from having an undue effect.

Industry as a Motive for City Forming. It would be improper, however, to conclude that trade is the only great cause for urban growth. It is the most important, it is true, both because the influences of trade are increasingly centripetal in character as the districts widen over which trade extends, and the trade routes lengthen, and because industry finds little field for activity until trade has been established. But once facilities for trade are provided, industry progresses by leaps and bounds and becomes a prime factor in the city's growth.

Household Industry. The original kind of industry with which we are acquainted is that of the household. Under the system of household industry household wants of an industrial character were supplied by the members of the household, in the main the women, to whom mankind is indebted for most of the rude appliances by which industry was originally carried on. Household industry can be carried on where there is no trade since each industrial unit is self-sufficient. A variety of household industry is the village or manorial system in which there may be a certain differentiation. Particular industries may require all the services of particular individuals. There may be a village shoemaker, a village tailor and a village blacksmith. The difference between a strictly household system and a village system of industry consists of course in the fact that under the latter a community arises, between whose members something in the nature of trade exists. But in both cases the industry is confined to supplying the wants of such a small circle and the trade, such as it is, is circumscribed by such narrow limits as to have practically no influence in attracting an aggregation of people. Such aggregation as exists is of the kind spoken of by Giddings in his "Principles of Sociology" as a genetic aggregation.

The Guilds. But in those communities where trade with other communities is favored by their situation, the tendency is for the business of the industrial classes, which have differentiated, to increase. The shoemaker or the tailor or the blacksmith hires

persons to help him and the guild or handicraft system springs up.

While in the household system, as has been said, the women are the principal industrial factors, under the village or manorial system the men take a more prominent part, and in the guild system they seem to play the principal rôle. This is not so much because the women have been relieved of labor, but rather because the new industries that have sprung up can, because of their character, be more effectively attended to by men. The men are now enabled to attend to them since, because of improvements in agricultural methods, a certain number have been relieved of work in the fields.

Domestic Industry. While yet the only power by which industrial appliances were worked was hand or some other form of muscular power, a still wider development of industry came with enlarging markets, in what is called the domestic or cottage system. Although by this change industry returned to the household, still the system differed greatly from what has been called the household system. In the household system the attempt was made to supply the needs of the household only, while in the domestic system the members of the household engaged in the industry worked for wages and with the earnings from their labor bought that which they needed but did not produce. This system had in common with the guild system the characteristic that the cottage artisan, like the guild member, worked for an employer who in most cases supplied capital in the shape of raw material and wages and sold the product for what he could get.

The domestic system was the most highly developed form of industry during the time that the power used in industry was hand or muscular power, and with the exception of a few factories where machinery and workmen were gathered together it was the prevailing form throughout England in the middle of the eighteenth century. Furthermore, even under this system the business of manufacturing was not conducted entirely by a special class which devoted themselves to this work alone. Spinning and weaving were in large degree in the hands of persons who devoted a good part of their time to agriculture and often

had near the cottage in which they carried on their industry a plot of land which they cultivated.[21]

The domestic system of industry may not be said to have exercised any very great influence on the concentration of population and cannot therefore be said to have contributed to urban growth. Indeed, in England, it had the contrary effect of diminishing the urban population which had grown up as a result of the guild system, and was strenuously opposed by the cities which saw their industries decline and their guilds diminish in power and importance, as a result of the spread of the domestic system.

The Factory System. The next and last stage in industrial development was the factory system. This was made not only possible but necessary by the application of steam power to manufactures and the invention of such machines as the power loom and spinning jenny, and was distinguished from the system which it superseded by the fact that the artisans had to come to their work, whereas before, in large measure, their work came to them. The centralization of industry due to the factory system had most marked effects on urban development. The world over, the establishment of the factory system has been followed, as we have seen, by a concentration of population in large cities.

Comparative Effects of Trade and Industry. It would seem, however, that industry, different from trade, does not necessarily have a permanent and continuing centripetal influence in building up large at the expense of small cities. Thus in the United States all of the 124 cities of the country of more than 25,000 population grew from 1880–1890 at the rate 47.7 per cent; the 28 largest cities at the rate of 44.9 per cent, and the second largest, viz., those less than the largest but of at least 25,000, at the rate of 58.9 per cent. In England in the period from 1881–1891 the cities of from 20,000 to 100,000 population increased most rapidly.[22] In both France and Germany peculiar circumstances have perhaps contributed to make the result somewhat different from that in England and the United

[21] Hobson, "The Evolution of Modern Capitalism," p. 34.

[22] Weber, p. 50.

States. In France the railways are constructed and operated in such a way as to give predominance to Paris, and Paris is of course included in the cities of 100,000 and over. As a matter of fact, however, while all the cities of 100,000 and over showed a gain from 1861–91 of 47 per cent, those of 10–20,000, 42 per cent; those from 20,000 to 100,000 have gained 50 per cent.[23] In Germany the enormous growth of Berlin, due to its becoming the capital of the newly formed German Empire, gives to the cities of over 100,000 the largest rate of growth.

An analysis of the population of the largest cities on the one hand and the smaller cities on the other hand, which we have seen are developing more quickly than the largest ones, would seem to show that the former are rather commercial, while the latter are rather industrial in character. By the twelfth census of the United States the one hundred and sixty cities of the country of at least 25,000 inhabitants had a total population of persons of at least ten years of age of 15,674,181. Of these, 8,420,909 were engaged in gainful pursuits. Of these 2,473,525 were engaged in trade and transportation, 3,265,402 in manufacturing and mechanical pursuits, 2,129,852 in personal and domestic service, and 462,761 in professional service, i. e., a little over 29 per cent of those engaged in gainful occupations were engaged in trade and transportation and a little under 39 per cent in manufacturing and mechanical pursuits.

In New York, however, while industry claimed 37 per cent of the earning population, commerce also claimed 37 per cent. In Chicago the figures were: industry nearly 33 per cent, trade and transportation a little over 35 per cent. In both Boston and San Francisco the population engaged in commerce was greater than that in industry; in the former nearly 34 per cent were in commerce, a little over 32 per cent in industry; in the latter nearly 34 per cent were in commerce, nearly 32 per cent in industry.

Philadelphia and Baltimore seem to be exceptions to the rule, being preëminently industrial cities, though among the largest cities in the country. In some of the smaller inland cities, how-

[23] Weber, "Growth of Cities," p. 75.

ever, the disproportion between the commercial and industrial population is very great. This is particularly true of New England, where in some cities like Worcester and Fall River the industrial population is from two to nearly five times as great as the commercial.

Dispersion of Population. We may, therefore, conclude that although the largest cities will be with us as most difficult governmental problems, the rate of their growth is not in the main to be proportionally so great in the future as it has been in the past. For while we may conceive of greater concentration in industry it is difficult to imagine a much more world-wide trade than we now have. A further extension of trade routes is practically impossible, and unless such an extension takes place favored commercial cities cannot grow at the expense of their less favored rivals as they have grown in the past. The line of attack, therefore, if we are convinced of the necessity of a greater dispersion of population, is along the lines of trade and transportation rather than along the lines of industry. Greater decentralization in the transportation and commercial system by taking from favored commercial centers the advantages they now hold in the matter of railway rates will do much to distribute population or at any rate to prevent greater concentration of population so far as that is due to preferential treatment. The concentration of population due to changed industrial conditions will in all probability correct itself as it becomes less profitable to conduct industry in large cities. High rents and taxes will drive industries into the smaller cities if freight rates can be made favorable enough.

CHAPTER II

CHARACTER OF CITY POPULATIONS

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Existence of an Urban Type of Character. It has been pointed out that from various motives, political, commercial, industrial, or what not, large numbers of people have, within comparatively recent times, been attracted to the cities not only of America but of Europe as well. It is but inevitable that a population thrown together under conditions so different from those surrounding the people of the rural districts should develop characteristics peculiar to their environment. For the student of municipal government, the question is, whether these characteristics are such as to differentiate their possessors from the inhabitants of the state at large with respect to their ability for self-government. An analysis of the character of urban populations reveals certain elements which invite investigation in this connection.

Heterogeneity of City Population. It has been pointed out that in all civilized countries a large proportion of the population is derived from immigration. Of this migration to the cities Doctor Weber says: "Migration is predominantly a short-distance movement, but the centers of attraction are the great cities, toward which currents of migration set in from the remotest counties. The larger the city, the greater its power of at-

traction, i. e., the larger its proportion of outsiders, the more distant the counties or districts which contribute to it." [1]

In urban populations, then, a large proportion of people have few important historical traditions, and no local associations which take root in childhood. In this there is sharp contrast to the rural population where an attachment to the soil and a conservatism of attitude toward things in general develop in a way quite impossible under the conditions of modern city life. In so far as cities do not recruit their population from the outside, they approach more nearly the character of the rural districts with respect to group solidarity. Where the city owes its existence or increase chiefly to the excess of its birth over its death rate, the population has less the characteristics of a bird of passage. Long historical association with the city and with the same neighborhood groups, as well as intermarriages within the group, have a strong steadying influence upon ideas and opinions, in marked contrast with the fluidity of opinion in externally recruited centers. On these grounds it might be expected that the population of the cities of Germany and England would be less heterogeneous in origin and ideas than those of the United States.

The heterogeneity of populations is especially noticeable in larger cities since they draw their immigrants from more widely scattered sources, and at the same time their average birth rate is not so greatly in excess of the death rate. Furthermore, if the population of the city is recruited largely by emigration from foreign countries, a still greater degree of heterogeneity may be expected. Difference of language, difference of religion, difference of morals and difference of general habits, all tend to produce a population of extreme heterogeneity. Such is the character of the population of the cities of the United States.

By the United States census of 1910, of the total urban population, 22.6 per cent were foreign-born while the percentage in the rural districts was but 7.5. Foreign-born and the children of such formed 51.6 per cent of the urban population. In the eight cities of more than 500,000 population the

[1] Weber, "Growth of Cities," p. 283.

foreign-born comprised 33.6 per cent of the inhabitants. In a large number of the cities of lesser size a similar state of affairs exists. In several of the large industrial centers the proportion of foreign-born rises above 40 per cent and in one case above 50 per cent. The proportion of those of foreign birth or of foreign parentage in a number of centers goes above 80 per cent, while in some of these cities those of native parentage sink to less than 15 per cent.[2] A comparison of these figures with those of the censuses as far back as 1850 shows, however, that the percentage of aliens, while increasing in the country at large, has decreased in the cities.

To this heterogeneity, due to the presence of persons of foreign birth, or those whose antecedents and traditions are foreign, in large numbers, must be added that due to the presence of the negro, though it is a fact that the proportion of negroes in the urban districts of the country is decreasing. The percentage of negroes in the cities of more than 25,000, in 1910, was but 6.3 per cent, but in certain cities the percentage is very large.[3]

Public Health in Cities. Formerly it was believed by many that physically the city-dweller was much inferior to the inhabitant of the rural districts. This opinion, so far as it was founded upon fact, was based upon old statistics. It is true that until since the middle of the nineteenth century, the death

[2] In the fifty cities of over 100,000 inhabitants, the foreign-born included more than 33 per cent; three had more than 40 per cent (Lowell, 40.9 per cent; New York, 40.4 per cent; Fall River, 42.6 per cent), while Manhattan Borough of New York had 47.4 per cent. Of the cities of the class between 25,000 and 100,000, of which there were 179, 27 contained more than 33 per cent and 10 over 40 per cent each. Those of over 40 per cent were Holyoke, Mass., 40.3; Shenandoah, Pa., 40.6; New Britain, Conn., 41 per cent; Chelsea, Mass., 42.4 per cent; Manchester, N. H., 42.4 per cent; Woonsocket, R. I., 43.4 per cent; New Bedford, Mass., 44.1 per cent; Perth Amboy, N. J., 45 per cent; Lawrence, Mass., 48.1 per cent; Passaic, N. J., 52 per cent.

Those of native parentage were in Woonsocket, 15 per cent; Passaic, 13.8, and Lawrence, 13.6 per cent.

[3] The percentage of negro population in certain cities is, by the census of 1910, as follows: Charleston, S. C., 52.8 per cent; Savannah, 51.1 per cent; Jacksonville, 50.8 per cent; Montgomery, 50.7 per cent; Shreveport, 49.6 per cent, and Wilmington, N. C., 47 per cent.

rate in cities was generally higher than in the country. There seems to be little doubt that formerly the general health and physical development of those reared and living in the cities were lower than in the case of persons in the country districts, whose occupations ordinarily kept them much in the open air.

The fact has however been fairly well established in the last half-century that the factor of urban or country life has little necessary, or even usual, relation to physical well-being. "Health and vigor may always be preserved if men in cities will make proper provision for open air, exercise, cleanliness and pure food supply."[4] "In 1874, a French authority declared that fitness for army service depends less on density of population than on wealth, climate, daily life,"[5] etc. Physical examinations of those presenting themselves for examination for entrance into the National Army of the United States, in 1917 and 1918, have shown that a higher physical standard was attained by recruits from the cities than by those from the country.[6]

Improved sanitary conditions, a more carefully guarded food supply and a wider recognition of the value of pure air and athletic sports have done much to turn the scale in favor of the physical superiority of city over country populations.

Women in Cities. Since, under modern conditions, cities are to an increasing extent being recruited by internal means, the physical standards maintained among women in the cities are of increasing importance not only to the present but to future generations. This problem takes on a more serious aspect, too, on account of the increasing participation of women in the industrial and commercial life of the community. The number of women thus engaged, and especially the number of these

[4] Weber, "Growth of Cities," p. 395, quoting a French authority.

[5] *Ibid.* Quoting same authority.

[6] Of the total number rejected as unfit, 63 per cent were from the country and 37 per cent from the cities. As a result of the examination by the Indiana State Board of Health of 1,000 country school children and 1,000 city school children, with respect to thirteen physical defects to which children are subject, it was found that the percentage afflicted with each defect was much greater among country than among city children. (Letter of Dr. J. N. Hurty, secretary, Indiana State Board of Health.)

working after marriage, and hence to a considerable extent mothers of families, has direct bearing not only upon the physical, but likewise upon the moral and social well-being of the urban population.

While statistics as to the conjugal relations of women engaged in occupations other than home-making are not available in the census of 1910, it is possible to draw certain inferences upon this subject. It appears that in cities of more than 25,000 inhabitants, the number of females exceeds that of the males.[7] If occupations are considered, it seems that urban women engaged in "gainful pursuits" (i.e., those other than home-making), are employed in domestic service, manufacturing and mechanical pursuits, trade and transportation, and in professional services in the order named.

It may be assumed with reasonable safety that a very large proportion of the women engaged in domestic service are unmarried, and that a considerable majority of those in professional pursuits (chiefly nurses and teachers), and those in trade and transportation (chiefly retail and office clerks), are likewise unmarried. If these assumptions are reasonably correct it may be concluded that, although there is found to be an excessive number of unmarried females in the cities, a large number of married women are employed in gainful occupations, and that the number employed in manufacturing and mechanical pursuits is disproportionately large.[8]

[7] Dr. Weber in summing up his conclusions on this point says (p. 299): "The excess of females in any population is usually ascribed, first, to the heavier mortality of male than female infants, which within the first year usually effaces the superiority of male births. Then comes the great mortality of adult males due to the dangers of their occupations, as well as to vice, crime and excesses of various kinds which shorten life. Now, all these forces are accentuated in the cities, producing a greater excess of females there than elsewhere, even without the influence of immigration, which increases the surplus of women [who are greater migrants than men to the cities, see *Ibid.*, p. 284] in cities. In the cities, also, the superiority of male births over female births is smaller than in the country."

[8] The percentage of distribution of women in gainful occupations, in 1910, is given by the census statistics as follows:

Agricultural pursuits	22	Chiefly rural
Manufacturing and mechanical	21.9	

The connection between the employment of women in industry and infant mortality is brought out in the statistics of the census of 1900. It is there shown that, as compared with other cities, in those devoted to textile industry in which large numbers of women are employed, the rate of infant mortality is unusually high.[9]

While tables already given reveal a high correlation between the employment of women and the rate of infant mortality, recent studies tend to ascribe this high mortality in certain industrial cities to the economic condition of the family. The high mortality rate of children is said to be due to the inadequate incomes of families rather than to the lack of care and of nurture attendant upon the employment of mothers. One student of the problem states that "the fundamental cause of the excessive rate of infant mortality in industrial communities is poverty, inadequate incomes, and low standards of living with their attendant evils, including the gainful employment of mothers. The employment of the mothers in gainful occupations is simply the remedy for these evils or 'adverse conditions' which the working people in industrial communities have adopted. Undoubtedly, this recourse has had an important effect on the problem, in many cases actually tending to reduce the rate of infant mortality, while in others having just the opposite effect. The primary question in considering the social causes of infant mortality is whether the employ-

Domestic and personal service	32.5	Chiefly urban
Trade and transportation	14.9	
Professional services	8.3	

[9] The following figures are taken from the mortality tables of the census of 1900:

	Females in industry		*Percentage of all females*	*Average death rate per thousand children under 5 years*
Fall River, Mass.	14,556	=	33	103.1
Lawrence, Mass.	7,671	=	29	89.2
New Bedford, Mass.	6,001	=	22	93.7
Philadelphia, Pa.	65,325	=	13	70.9
Minneapolis, Minn.	5,151	=	7	39.7
Columbus, O.	3,378	=	6	41.3

ment of mothers and married women in extra-domestic occupations is, from the viewpoint of society as a whole, a good remedy for poverty and an acceptable means of mitigating its influence on the health and mortality of babies and young children. From the point of view of the individual poor or poverty-stricken family, the fact cannot be escaped that the effect may be both good and bad: bad, in that it causes the baby to be artificially fed, forces the mother to be absent from home, and in other ways lowers her efficiency as a mother; good, in that it increases the family income and decreases the influences of poverty. We are, thus, forced to conclude that the fundamental economic and industrial factor of infant mortality is low wages. The fundamental remedy is obviously higher wages."[10]

Home Life in Cities. In the development of character no influence is more potent than that of the home and the family. The employment of married women in industry must exercise in still other directions than the care and nurture of children, an important influence on the home life of a large part of the population in industrial centers. The family must, in the nature of things, where the mother is continually absent from home, come to be of a different character from what it is under different conditions.

An important influence on the family or home life of a large part of the urban population is also to be found in the degree to which the family, owing to housing conditions, is a domestic unit. Under the influence of the factory system, which has been seen to be so commonly adopted in cities, it has naturally ceased to be the industrial unit. What, now, are the conditions in cities which affect it as a domestic unit? Some idea of these conditions may be obtained, from one point of view at least, by considering the number of persons in a dwelling.

The census of 1910 shows that while in the country as a whole the average number of persons to a dwelling is 5.1, the average in cities of over 25,000 inhabitants is 6.8. The range

[10] Hibbs, H. H., Jr., "The Influence of Economic and Industrial Conditions on Infant Mortality," *Quarterly Journal of Economics*, Vol. 30, No. 1, p. 150.

in the larger cities is from 30.9 in Manhattan Borough in New York City to 4.4 in Indianapolis.[11] A consideration of the detailed figures would apparently lead to the conclusion that in the largest cities, with the exception of Philadelphia, there is a crowding of the city population which must have an important influence upon the family as a domestic unit, but that in Philadelphia and the cities of the second grade conditions are little, if any, different from what they are in the open country. An investigation made a decade ago of the standard of living of workingmen's families shows that the larger the city the larger is the proportion of the family income which goes for rent and the smaller are the family quarters. In the borough of Manhattan it was found that on the average 24 per cent of the income of the families investigated having an income of from $600 to $700 went to the payment of rent. In Syracuse and Rochester, however, the percentage is 20. Again, in Rochester, for example, apartments of seven or eight rooms are the rule, while in the borough of Manhattan 71 per cent of the families with an income from $600 to $800, which were investigated, lived in three rooms.[12]

Economic Conditions in Cities. Besides the conditions in cities already noted which might be termed economic, there are certain others which affect the character of urban populations. Among these is the matter of the equality of the distribution of property, which is indicated to some degree by the extent to which people in the cities as compared with those in the country own their homes. It may be said that the first important investment of the average man of family under normal conditions is the purchase of a home.

The census of 1910 shows that 62.8 per cent of what are

[11] The number of persons per dwelling in the larger cities was in 1910 as follows: New York City, 15.6; Manhattan Borough, 30.9; Bronx Borough, 15; Chicago, 8.9; Philadelphia, 5.2; Boston, 9.1; Baltimore, 5.5; Pittsburg, 6.1; San Francisco, 6.4; St. Louis, 6.5; Buffalo, 6.8; Cincinnati, 7.3; Cleveland, 6.2; Detroit, 5.6; Indianapolis, 4.4; Milwaukee, 6.2; Minneapolis, 6.4.

[12] Chapin, "The Standard of Living Among Workingmen's Families in New York City," pp. 272–3.

called "farm families" own their homes, while only 37.2 rent them. In the case of families other than "farm families" the figures are almost reversed. Only 38.4 per cent of such families own their homes, while 61.6 rent. In the largest cities the percentage of home-owning families is almost incredibly small. In New York City only 11.7 per cent belong in this class, while in the borough of Manhattan the percentage falls to 2.9 per cent. In this borough the number owning homes free from mortgage is but 1.2 per cent.[13]

In the country at large less than one-half the families do not have property; in the city of New York two-thirds have no property.

Age of Urban Populations. Statistics seem to prove that the cities have the most energetic and productive portion of the population considered from the point of view of age. There is not the same percentage of very young children or very old people as in the rural districts, but a considerably larger percentage of people between the ages of twenty-five and sixty-five.

Dr. Weber in summing up the situation for cities both American and European where the conditions are the same as here, says: "As the result of the presence of a relatively larger number of persons in the active period of life in urban populations one would expect city life to be easier and more animated,

[13] Figures for other large cities are as follows:

Cities	*Owning homes*	*Free from mortgage*
Baltimore	33.7 per cent	23.9 per cent
Boston	17.1 per cent	7.7 per cent
Buffalo	34.2 per cent	16.1 per cent
Chicago	26.2 per cent	12.0 per cent
Cincinnati	23.2 per cent	15.2 per cent
Cleveland	35.2 per cent	17.7 per cent
Detroit	41.2 per cent	21.2 per cent
Indianapolis	33.0 per cent	17.2 per cent
Milwaukee	36.4 per cent	16.4 per cent
Minneapolis	40.4 per cent	22.8 per cent
New Orleans	23.1 per cent	18.6 per cent
Philadelphia	26.6 per cent	11.6 per cent
Pittsburg	28.0 per cent	15.2 per cent
San Francisco	33.0 per cent	19.7 per cent
St. Louis	25.0 per cent	14.8 per cent

the productive classes being large and having a smaller burden to bear in the support of the non-productive class.''[14] This advantage that city life offers is offset to an extent at any rate by the presence in cities already noted of an undue proportion of women, a large proportion of whom are reported in the census of the United States, for 1910, as widows. The percentage of widows to all females of fifteen years of age and over in urban communities at that time was 11.6, while in rural communities the percentage was but 9.4.[15]

Moral Conditions. It is extremely difficult to obtain an exact idea as to the relative morals of urban and rural populations. It is almost everywhere the case that the statistics of crime, which are almost the only statistical measure of immorality that we have, show that crime is more common in the cities than in the rural districts. It is to be remembered, however, that the opportunities for certain classes of crime are much greater in the cities than in rural districts, and that the greater number of crimes which we find in the urban districts may be due to the greater temptation to which urban populations are exposed rather than to any greater immoral tendencies on their part. The vast majority of crimes in the city are against property, and so far as we are able to compare the statistics of cities with those of the rural districts, we find that the excess in the number of crimes in urban districts is almost altogether due to the

[14] Dr. Weber in commenting on the age of city populations further remarks: "One would also expect to find more energy and enterprise in cities, more radicalism, less conservatism, more vice, crime and impulsiveness generally. Birth rates should be high in cities and death rates low on account of age groupings" (p. 304).

[15] In 1910, the 91,803,211 persons in the country at large, and the 42,525,172 in urban territory, whose ages were known were distributed according to age as follows:

Ages	*Country at large* *Per cent*	*Urban territory* *Per cent*
Under 5 years	11.6	9.9
5 to 14 years	20.5	17.4
15 to 24 years	19.7	20.1
25 to 44 years	29.1	33.2
45 to 64 years	14.6	15.2
65 and over	4.3	4.0

greater number of such offenses. When, however, we come to consider crimes against the person, we find that in the cities these crimes are relatively rather less than they are in the country.[16]

Intellectual Conditions. While the urban populations may be regarded as having perhaps a slightly greater tendency to immorality than the rural populations, they are from the point of view of education in a better position. Almost everywhere it is the case that city schools are better and more numerous than in the rural districts. Further, the statistics of illiteracy in the United States show that "with very few exceptions (New York City, Pittsburg, Cleveland and Detroit), the cities have a better educated population than the rest of the state in which they are situated. The difference in favor of the cities is in many instances very marked. . . . There can be no doubt about the superiority of the city schools, both primary and secondary."[17] By the United States census of 1900, it was shown that 10.7 per cent of the entire population over ten years of age was illiterate, while in the one hundred and sixty cities of at least 25,000 inhabitants, only 5.7 per cent were illiterate. But as Hobson points out, "The education derived in schools is . . . only a part of the education men receive. Perhaps the most valuable part of a man's real education, looked at from the broadest point of view, is that which he obtains out of school in the conduct of the ordinary affairs of life. If we look at the matter from this point of view it must be said that the greater opportunities for social intercourse afforded by city life tend to open to the city population resources which are denied to the countryman. On the other hand, it is to be remembered that the distractions of city life are so great that the city dweller is apt to be more superficial than the rural inhabitant and less able, as a result of the education which he receives along all lines, to develop as a well-rounded individual. Scattered and unrelated fragments of half-baked information form a stock of "knowledge" with which the townsmen's glib tongue en-

[16] Weber, pp. 401, et seq.
[17] *Ibid.*, p. 398.

ables him to present a showy intellectual shop-front. Business smartness pays better in the town, and the low intellectual qualities which are contained in it are educated by town life. The knowledge of human nature thus evoked is in no sense science, it is a mere rule-of-thumb affair, a thin mechanical empiricism. The capable business man who is said to understand the "world" and his fellowmen, has commonly no knowledge of human nature in the larger sense, but merely knows from observation how the average man of a certain limited class is likely to act within a narrow prescribed sphere of self-seeking. Town life, then, strongly favors the education of certain shallow forms of intelligence. In actual attainment the townsman is somewhat more advanced than the countryman. But the deterioration of physique which accompanies this gain causes a weakening of mental fiber: the potentiality of intellectual development and work which the countryman brings with him on his entry to town life is thwarted and depressed by the progressive physical enfeeblement. Most of the best and strongest intellectual work done in the towns is done by immigrants, not by town-bred folk." [18]

Although Mr. Hobson's conclusions with respect to the "progressive physical enfeeblement" which he says comes with town life cannot, in the light of the most recent information, be accepted, and although there are those who would question whether the best intellectual work of the towns is done by immigrants from the country, his comparisons of urban and rural intellectual attainments and characteristics may be accepted as otherwise substantially correct.

Conclusions as to Character. An analysis of the character of urban populations would lead us to the following conclusions:

First. The population of cities is actuated by commercial and industrial motives. As Mr. Hobson says,[19] "The modern town is a result of the desire to produce and distribute most economically the largest aggregate of material goods; economy of work, not convenience of life, is the object. Now, the economy of factory coöperation is only social to a very limited extent; anti-

[18] Hobson, "Evolution of Modern Capitalism," p. 339.

[19] *Ibid.*, p. 340.

social feelings are touched and stimulated at every point by the competition of workers with one another, the antagonism between employers and employed, between sellers and buyers, factory and factory, shop and shop. . . . The town as an industrial structure is at present inadequate to supply a social education which shall be strong enough to defeat the tendencies to anti-social conduct which are liable to take the shape of criminal action.''

Second. This population is perforce heterogeneous in character, and the larger the city the greater is apt to be the heterogeneity.

While the excessive individualism and heterogeneity of urban populations tend to make difficult social coöperation, it must be remembered that the presence in a small area of many persons makes the matter of their organization for the purpose of realizing some ideal much easier than it would be in the sparse population of the rural districts. The spread of trade-unionism in the cities is a good illustration. If then the ideals of city populations are distinctly social in character a real social coöperation is easy of accomplishment in cities. If on the other hand the ideals of city populations are individualistic rather than social in character, the ease of organizing individuals having the same individualistic aims may result in the formation of distinct classes actuated by class rather than by social interests. And the greater the heterogeneity of the population the greater the liability of the formation of these classes. If there is great diversity of nationalities or races, classes formed of the individuals of the same nationality or race are apt to be found. Thus, if the government is a popular one, there will be found in the public prints frequent reference to the German, the Irish, or the Jewish vote. If there is a distinction of religion one finds in the same way references to the Roman Catholic or the Protestant vote. Where racial and religious differences coincide the strength of the class distinctions and feelings will be greater. If there is a great inequality in the distribution of wealth or a marked division of the people into taxpaying and non-taxpaying voters we are apt to find organizations of taxpayers who oppose, from a purely selfish point of view, expendi-

tures demanded by the non-taxpaying classes, who may through their votes control the political situation in the city, and because of the fact that they do not directly pay taxes advocate the expenditure of city money without sufficient regard for the financial resources of the city.

City life with its individualism and heterogeneity would seem thus to further the development of individual and class interests rather than a true social idealism.

Third. City populations have as compared with rural populations no historical associations with the cities in which they live. Neighborhood feeling is not likely to be strong.

Fourth. Being composed in large measure of young people or people of middle life, city populations are radical rather than conservative in their tendencies; they are impulsive rather than reflective and are considerably more inclined than rural populations not to have regard for the rights of private property.

Fifth. City populations are more productive than rural populations. They can, therefore, endure a higher rate of taxation. With the greater productivity they also contain probably a smaller proportion of the dependent classes, though the presence in cities of such a large percentage of widows brings it about that there will be a large dependent class due to the death of the principal breadwinner of the family.

Sixth. City populations contain a greater proportion of criminals than the rural districts, but there are reasons for believing that on the whole they are not much, if any, less virtuous than rural populations.

Seventh. City populations are better educated than rural in the sense that a greater proportion of city than of country people can read and write and that their distinctly literary educational opportunities are greater. Because of their industrial character they are probably less capable of taking broad views than countrymen, since the factory system which has so universally been adopted in cities tends, on account of the minute division of labor which is its accompaniment, to cultivate expertness in narrow lines rather than breadth of view.

In the city so much is done for the city dweller as a result of some sort of social action in which the individual partici-

pates, if at all, only in a very indirect way, that he may easily lose his capacity for action. Thus, if he desires to go from one part of the city to another, a public conveyance of some sort is at hand to take him a part, if not all, of his journey. If a fire breaks out, a professional force is at hand to put it out. If disorder breaks out, again a professional police is ready to put it down; and so we might go on. Hence, mere life in cities tends to cultivate a certain helplessness.

Eighth. Property is much more unequally distributed in the cities than in the rural districts. More very wealthy and more very poor people are found than in the country districts.

Ninth. Family life is different in the cities from family life in the rural districts. In large cities a large part of the population is often crowded together. In industrial cities where a large proportion of married women work in factories, the family does not properly discharge its most important function, viz., the care and nurture of the children, and the rate of infant mortality is very high.

Tenth. Although it was formerly a fact that the cities were less healthful than the country, in recent years the reverse is coming to be true, so that it may be said that the cities contain more than their due proportion of the most vigorous part of the population.

Effect on Political Problems. These characteristics of urban populations should be borne in mind in discussing the political problems connected with city life, for unless this is done the successful solution of these problems will be well nigh impossible.

Furthermore, it must always be remembered that because of its economic conditions the character of the population of a given city may be quite different from that of another. A solution of the political problems of one city may be quite successful, but the attempt to apply the same methods in some other city may be followed by failure simply because the conditions of its population are different.

The political problems of cities may be classified under three main heads:

First. The position of the city as an organ of government.

Second. The functions of a social character which must be

discharged in a city because of the character of its population.

Third. The organization to be adopted for the discharge of the functions which must be discharged by the city in its political capacity.

Effect on the Political Position of the City. The conditions of a city's population have an important bearing on all these questions. Thus, the solution of the problems connected with the position of the city in the governmental system is dependent upon the determination of the question whether the population of a special city is fitted to take upon its shoulders the burden of conducting the government of the city. And because we may decide that the conditions existing in certain cities or classes of cities are such that local self-government may wisely be permitted, it by no means follows that the same rule is to be applied to all cities. Again, what may be proper for the cities of one country may not be proper for the cities of another country where, for one reason or another, the conditions of urban life are different. Therefore a comparative study of municipal institutions must be pursued with due regard to the actual conditions existing in the cities of different countries as ascertained by observation and statistical investigation, and conclusions derived from an examination of specific sets of conditions may be applied to other sets of conditions only after hesitation and with great caution.

Effect on the Functions of Cities. What is true of the first set of problems is just as true of the second. The social functions which must be discharged in a particular city or class of cities must depend upon the character of its or their population. A city, a large proportion of whose families live in their own homes, may be entrusted with the exercise of larger powers of taxation and borrowing money than one in which there is a small percentage of home-owners, particularly if the main tax is imposed on the owner and not on the occupier. Where there is a large proportion of voters who do not knowingly feel the consequences of their extravagance, extravagance is likely to occur.

Again, a city where many of the married women are engaged in occupations which take them daily away from their homes

must ultimately, if no remedy for such a state of things is found through private initiative, extend its activity so as to care for the young children who will otherwise die of neglect.

A city whose inhabitants are crowded together, where many are living in one dwelling as a rule, must exercise large powers in the domain of public health administration, if the spread of contagious diseases is to be prevented, and conditions favorable to health in general are to be secured.

In either of the contingencies just noted the city must extend the activity of its school system so as to do for its older children, through school playgrounds, roof gardens and similar institutions, what they might secure for themselves or through the family and the home were conditions different.

Effect on the Municipal Organization. Finally, the character of a city's population must have an effect upon its actual governmental organization. The word "actual" is used advisedly, since the formal organization with which the law may have provided a city under a mistaken idea that this organization is suited to its conditions will be so modified by the play of extra-legal forces that the real governmental system will be quite different from the one incorporated in the law and studied by the ordinary student of municipal affairs. If boss rule tends to develop in the conditions to be found in modern cities, real boss rule will be found, however democratic the legal form of the government may be.

Now, it is often the case that where the real governmental system differs from the system which is theoretically in existence, evils develop which most seriously impair the efficient administration of city affairs. The development of these evils is due in large degree to the fact that methods adopted in the formal system to ensure the realization of the popular will and official responsibility for acts of government are not of such a character as to realize the ends sought in the system of government which actually exists. If, however, the formal system of government has due regard for the conditions existing in the city, the endeavor will have been made to obtain in the first place a clear understanding of urban conditions as urban conditions, and not as merely a fractional part of general social condi-

tions, and to provide a governmental organization suited to these conditions. The attempt will not have been made, for example, to give a city a system of government which is a mere copy in miniature of the kind of government adopted for the state at large, nor to base the government of the city upon the principle of universal suffrage merely because that principle has been adopted in the government of the country as a whole. The conditions in the country as a whole may be quite different from those in the city as to equality in the distribution of wealth as well as in other respects. Or, if it is considered that the principle of universal suffrage is so firmly imbedded in the feelings of the people as to make the idea of changing it in any way incapable of realization in the near future, the attempt will have been made so to arrange the system of taxation that the greatest possible number of voters personally pay taxes and know when they pay them in order that the development of classes of taxpaying and non-taxpaying voters be so far as possible prevented.

The Problem Presented. Enough has been said, it is believed, to show how necessary it is that the governmental system obtaining in a city be suited to the conditions of life in the city. The question now comes up: What in a general way is the form of government suited to urban conditions as they present themselves in most cities? While the question as stated makes no allowance for peculiar local conditions it is believed that we can outline a system of government suited for most cities, which by emphasizing only the usual needs of city life, may be made so general in character, that it may by local action be adapted to the local and peculiar needs of a particular city.

With this preliminary explanation let us then consider what sort of a system of government as respects state relations, form of organization and social functions is suited to urban conditions in general. The answer to this question is difficult, because of the fact that as yet there may not be said to be by any means a universal agreement by students as to the effect of social conditions on government in general. Particularly is it true that no such agreement exists among students of municipal government either as to the effect of urban conditions on

city government, or even as to the significance for purposes of city charter-making of the facts as to city conditions revealed by census and other statistics. Few successful attempts have been made by sociologists or others to formulate what has been termed the psychology of society. We have a pretty well-developed individual psychology, but the science of social psychology is a new one, and such results as have been obtained from a study of social psychology must be used with great care. Laboratories for experimental social psychology are almost impossible of establishment. The only way, therefore, in which the inductive method may be used is to study the past. Through such a study we may be able to formulate certain general principles, which may, *prima facie,* have much to commend them.

CHAPTER III

THE CITY-STATE

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Periods in Municipal History. The different positions which the city has held in European political society may be classified under three general heads, corresponding in a general way to successive periods of time. In the first place the city is seen in the form which is known as the "city-state." In the second place it is found as an administrative district of a larger state, occupying a position similar to that of other administrative districts, whether urban or rural. In the third place it is recognized as possessing certain rights of local government peculiar to itself in the exercise of which it is distinguished from other administrative districts. In a study of the development of the city with particular reference to its relations to the state, attention will first be given to its position as a city-state.

The City-State Idea. The city-state was an organization formed by people for the most part descended from the same stock and worshiping the same gods which were peculiar to the particular state. Indeed, one of the most important reasons for their organization as a political body was the maintenance of the temples and altars at which they conducted their worship.[1] The city-state was composed of both urban and rural

[1] Cf. Fowler, "The City-State of the Greeks and Romans."

districts; that is, in the city-state no distinction was made because of the presence of a great number of people in a small area. The original city-state, indeed, was rather rural than urban in character, but the natural congregation of inhabitants about the temples and altars had the result of causing what bore a strong resemblance to urban conditions in different parts of the territory. Furthermore, these little urban communities, because of their religious significance, occupied a leading position in the whole social system. The political power in the city-state was, therefore, centered in the urban rather than in the rural districts. While the city-state was, from one point of view, very homogeneous in character because its people were in large measure descended from the same stock, there was great economic and social heterogeneity in the population of most such communities. This was due to slavery, which was the labor system of the ancient world, and to the existence of two very distinct social classes, such as were known in Rome as patricians and plebeians.

Three stages or periods of the city-state, so far as it has affected modern municipal development, may be seen:—viz., the Greek, the Roman and the mediæval.

The Greek City-State. Though the influence which Greek conditions had upon the development of city government was chiefly exerted through the adoption of Greek ideas into the Roman civilization, reference to the Greek city-state must be made. It was in Greece that the city first became a real city-state. The topography of the country discouraged the formation of larger political areas and preserved local independence long after the religious bond had been supplanted by political and economic unity. Athens, the most enlightened as well as the most influential among the Greek states, consisted, at the height of its power, of the mother city and the whole district of Attica, rural as well as urban, to which citizenship had been extended. To these were joined by bonds which, under the name of alliances, gave Athens supremacy over them, the cities of central Greece and of the Ionian islands and a considerable area on the coast of Asia Minor. A large number of dependent cities also acknowledged the supremacy of Athens.

In Athens were perhaps a hundred thousand Athenian citizens who composed the democracy of Athens; perhaps a third as many alien residents, and a hundred thousand slaves. Politically the aliens and slaves had no existence nor could they even hope to become citizens. Power was vested in the assembly of Athenian citizens who discussed and passed upon the legislation presented by the Council of Five Hundred. The most important magistrates were the generals who were invested with the essential state functions of war and foreign relations. On the purely municipal side, while both charity and education received public attention, the greatest activity was manifested in public works. The allied cities, though bound to Athens by ties of race, religion, civilization and commerce, remained distinct city-states living their own separate political existence.

The City in the Roman Republic. The conquest of Italy by the city of Rome was in large measure the successive subjugation of city-states like itself. When the Roman influence had extended through Italy there were at first three kinds of municipalities. There were, in the first place, what were called colonies, which had been founded in order to secure the obedience to Rome of the districts in which they were founded. The organization of these was modeled on that of the mother city. The original Roman colonists were regarded as a sort of privileged aristocracy, similar to the patricians at Rome. By the selection of the most prominent of them there was formed a body which came to be known as the *curia,* similar to the Roman senate. By the side of this *curia* were the *duumvirs,* officers who resembled the Roman consuls. All the free male inhabitants formed an assembly commonly spoken of as the *comitia.*

The second class of cities was that of the *municipia,* which possessed in varying degree rights of self-government, the differences depending upon the extent to which the inhabitants of the *municipia* were regarded as possessing Roman citizenship. The third class was that of the allied cities. These really stood outside the Roman state, and their organization was governed by their own local conditions and laws. Their relation to Rome was that of a greater or less degree of subordination. As Rome extended her influence over all Italy the status of

these cities as city-states gave way and they tended to become merged in the great city-state of Rome. The first important attempt to impose upon all the cities of Italy a universal form of municipal organization and a law of municipal relations of universal application is to be found in the Tabula Heraclensis, supposed by Savigny to be the work of Julius Cæsar. After this law was enacted Italy was divided into districts known as *oppida.*[2] These *oppida* comprised, as did the old Roman city-state, urban communities proper and smaller adjacent communities, which, where they were urban in character, were known as *vici,* or *castella,* and the rural communities known as *pagi.* The organization of this type of urban community was thus very like that found in the original city of Rome and in the colonies which Rome established.

The City in the Early Empire. During the first two centuries of the empire the cities, as a result of the formation of the imperial government, lost the remnants of their political independence. The conception of government had changed so that the city-state had now become merely a part of a greater system. During this period, however, the cities of Italy enjoyed great prosperity, due in large measure to the development by the Roman jurists of the idea of the juristic personality of the city. This conception of juristic personality permitted them to hold large amounts of property of their own, and to live a life which, from many points of view, was separate and apart from that of the Roman state as a whole.

The heterogeneous character of the population of the cities, to which allusion has been made, was, after Rome became predominant throughout the Mediterranean world, greater than before. This was due to the greater freedom of migration which was possible to all nationalities and races of the Mediterranean basin, and because of the great number of alien slaves brought into the Italian peninsula. Since this heterogeneity made social coöperation more difficult, we find that during these two centuries the municipal organization showed a marked tendency to fall into the hands of the property owning classes. There

[2] Liebenam, "Städteverwaltung im Römischen Kaiserreiche," p. 452.

appeared a class spoken of as the *possessores,* i.e., the owners of the greatest amounts of property, who were gradually able to exclude the rest of the people from all participation in the government. The *curia,* which, it has been seen, was the aristocratic part of the municipal organization, finally became hereditary, and all the offices of honor in the cities were filled by the election of members of this class. Through its power of self-perpetuation, of appointing municipal officers, and of passing resolutions with regard to municipal matters, this group finally obtained absolute and complete control of the municipal government.

The Cities in the Later Empire. The general degeneration of the social organization which was characteristic of the later Roman Empire naturally had its effect on the prosperity of the cities. The gradual accumulation of almost all property in the hands of an aristocracy, which obtained political power and used it for its own benefit and against the interests of the great masses of the people, brought it about that prosperity decreased and the population declined: declined notwithstanding the various legislative devices to which resort was had in order to encourage marriages and large families. Naturally the city governments lost much of their original vigor, and because of their inability to discharge the duties imposed upon them, as well as because of the centralization of social conditions generally, the central government of the Empire began to exercise greater and greater control over them. The control of the central government reached its culmination in the imperial administrative system originated by Diocletian and perfected by Constantine. In accordance with this system the civil administration of the Empire was so arranged that the entire Roman Empire, apart from Rome and Constantinople, was divided up into four districts known as Praetorian Prefectures. The prefectures were divided into districts known as dioceses and each diocese was divided into provinces. At the head of each prefecture was a Praetorian Prefect; at the head of the diocese was a Vicar; in each of the provinces was an officer subordinate to the Vicar, who was known by different names in the different prefectures, but who commonly bore the title of Presi-

dent or Rector. These officers were all appointed by the central government. Each province was divided into districts which had different names in the different prefectures. In Italy they were called *oppida,* in the other prefectures they were usually known as *civitates.* These districts contained, as before, both urban and rural communities, between which no distinction was made. Being the undermost members of the system, they had to bear the burden of a very expensive administrative system. This burden was increased by the fact that by exemption from taxation Constantine favored the military class as well as the officers of the Christian church, which he had recognized. Furthermore Constantine did not hesitate to take from the *oppida* much of the property from whose income the expenses of their administration had been defrayed in order to endow the Christian churches and corporations, and to aid in building up the new capital of Constantinople, to which he devoted so much of his energy.

The endeavor to obtain the money necessary for the imperial government had as a result that the hereditary officials in the cities, namely, the members of the *curia,* were made pecuniarily responsible for the performance of the corporate duties of the city and were forbidden by law to leave the city without the consent of the Rector, or President, of the province, as it was feared that by leaving they would escape this burden, which finally came to be regarded as intolerable.

The cities thus fell from the proud position of independence which they originally occupied as city-states, and became merely administrative districts of a larger government. They were made use of by that government in order to further the interests of the state as a whole rather than those of the cities themselves. The whole municipal organization was put into the control of a few persons, since a compact local organization and a well-defined financial responsibility facilitated the collection of the state taxes.

This complete degeneration of municipal administration caused a series of attempts to be made in the latter part of the imperial period to reorganize the city. Space forbids us to dwell upon them and all that will be said with regard to this

matter is that everywhere throughout the Roman Empire the bishop of the Christian church came, as a result of these attempts at reorganization, to occupy a position of great importance in the cities. The influence of the bishop was particularly marked both in Italy and in the older parts of Germany, which became subject in this respect to Roman influence. It was due, after the Franks came into power, first, to the grant to the bishop of judicial power over the members of his household and, second, to the fact that the bishop became a feudal lord.

Rise of Walled Cities. The invasion of the Roman Empire by the Germans had important effects upon municipal life, but for a long time the cities remained merely administrative divisions of the larger state. In the period during which the *Pax Romana* existed, urban communities were of no importance as fortified places. It was unnecessary in the peaceful conditions which existed throughout the Roman world for any particular attention to be given to the fortification of towns. The Roman system of architecture, as we find it in most of the Roman cities outside of Rome, where the enormous population combined with the topography of the district brought about exceptional conditions, shows how cities were, if some other consideration did not come into play, spread over a large area. The great extent of cities permitted the building of low one- or two-storied houses. Pompeii is a good example of such cities. We have, it is true, in Pompeii several instances of two-storied houses, but never the high buildings which were to be found in Rome itself, and which seem to be characteristic of the mediæval city.

With the dissolution of the Roman Empire, however, and the consequent decay of the *Pax Romana,* conditions of disorder became so universal that the people of the cities had to build fortifications in order to defend themselves against the ravages of robbers and the incursions of the Germans. The first indication of the necessity of such fortifications in Italian cities is noticeable in the days of the Lombards. Urban communities which were surrounded by a wall were distinguishable from the communities which were outside of the wall also in that part of Europe which came to be known as France, where the

same conditions brought about the same results. We find the cities which continued in existence in this part of Europe during this period of disorder of very much less territorial extent than the old Roman cities in which they claimed their origin. In many other cases urban districts which did not date so far back as the Roman period grew up in close connection with fortified places, so that it is said that of five hundred French cities all but eighty-four originated, for the most part, in fortified villages. In both Germany and England the presence of fortifications was an important factor in the development of municipal life. Indeed, the word borough, which is the local name in England for what we call a city, meant originally a fortified place. The existence of these fortifications had an important effect later in bringing about a congestion of population. It being impossible to fortify a district so large as that which in the days of peace had been occupied by the Roman city, it became necessary for the houses to be built higher and higher. The architectural customs of mediæval Europe have thus had an important influence on modern urban life.

Lack of Political Distinction. Inasmuch as the Germans who invaded and ultimately controlled the Roman Empire had a dislike for urban life, cities were not at first established by them. Indeed, the establishment of cities was not favored by the existing economic conditions. The carrying on of commerce during the disorder which followed the breaking up of the Roman Empire being extremely difficult, it was difficult, if not impossible, for new populations distinctly urban to develop, though the older cities which still continued in existence retained their former position. These were incorporated into the ordinary administrative districts and were subjected to the rule of the ordinary administrative officers, i.e., the dukes during the period of Lombard supremacy, and later, the counts of the Franks. The physical distinction between urban and rural districts, due to the fortification of strong places, did not thus immediately cause a distinction of a political character to be made between urban and rural districts. Such a political distinction was, however, soon made. With the establishment of the feudal system, which brought about reasonable conditions

of peace, commerce began again to spring up. Italy, being the most highly civilized part of the European world, felt the effects of the commercial revival first. Urban population began to increase both in numbers and in wealth, and this change in economic conditions soon brought about a change in political conditions.

Rise of Municipal Government in Italy. Attention has been called to the important position which the bishop occupied in the later imperial municipal system. The bishops had, likewise, in many instances taken a place of political prominence in the feudal system and were for the most part residents of the urban communities where were to be found the cathedrals and great churches which were the outward evidence of the bishops' power. The first attempts of the municipal populations to obtain a greater independence of the power of the feudal officers was furthered by the bishops. In many cases in Italy the count was expelled from the city, which thereafter attached itself to the bishop, who was aided in his government of the town by the richer commercial classes. To them was given in Italy the name of *popolo.* As Mr. Symonds says: "Interpreting the past by the present, and importing the connotation gained by the word 'People' in the revolutions of the last two centuries, students are apt to assume that the *popolo* of the Italian burghs included the whole population. In reality it was at first a class aristocracy of influential officers to whom the authority of the superseded count was transferred in commission and who held it by hereditary right."[3] The whole subsequent history of the cities of Italy centers around the demand for the enlargement of the *popolo.*

The struggles resulting from the attempt of the less wealthy classes on the one hand to gain admission to the *popolo,* and the resistance offered by the wealthier classes on the other to this demand, combined with the struggles between the Emperor and the Pope, brought about conditions of great disorder in the Italian cities. The final result of the struggle was the disappearance of the bishop as a political authority and the development of a very

[3] Symonds, "Renaissance in Italy: Age of the Despots," p. 54.

despotic government. The only important exception was Venice, where the commercial and property owning oligarchy retained and even increased its power. The despot first appeared in Ferrara in 1208 under the name of "Captain of the People," who became in most cases hereditary. The despotism gradually developed two distinct forms. In some cases the old institutions remained in formal existence but were manipulated by some family of influence which controlled the city. An example of this form is Florence, which was controlled by the Medici. In other cases the older institutions disappeared and the government was avowedly despotic. This was the case in Milan, which was controlled at first by the Visconti and later by the Sforzas. Through this course of development by which they had freed themselves from the control of feudal officers, the Italian cities again assumed an independent position somewhat of the nature of city-states.

Before the development of the "Captain of the People," most of the Italian cities had established officers known as "Consuls," unquestionably named after the old Roman officials, under whose rule the law merchant and probably other parts of the Roman law, which had much greater adaptability than the feudal law to the demands of the commerce then springing up, were introduced in the Italian cities. Ordeal and duel, which were important means of legal proof in the feudal law, were not suited to the legal relations arising out of commercial transactions.

A competition largely of a commercial character between the various Italian cities resulted in internecine wars. As a result of these wars certain cities were subjected to the control of others, so that out of the union of what were almost city-states resulted larger states, and the city in many cases again fell into the position of a subordinate member of a larger state. Milan and Florence suffered this fate, while Venice and Genoa were able to continue as city-states until quite late in the history of Europe.

Development of German Episcopal Cities. A development somewhat similar to that in Italy took place in that part of Europe which has come to be called Germany. During the

Roman occupation that part of modern Germany which lay west of the Rhine as well as south of the Danube was Christianized, and in most of the urban communities which owed their origin to Rome, such as Cologne and Vienna, there were, at the time the Germans overran the country, bishops of the Christian church. The Franks, who ultimately came to control this region as well as Italy and Gaul, were favorably inclined to the Christian church, and granted its bishops in Germany as well as in Italy important political privileges. Also certain urban districts, like Aix-la-Chapelle, were the residences of the Frankish kings. Wherever such a royal residence existed there were appointed officers known as Palatine officers, or officers of the palace, who, like the bishop, possessed a jurisdiction over their immediate subordinates. These two exceptional jurisdictions existed at first alongside of that of the count or other feudal officer.

By the time of the fall of the Carolingian empire, several causes were leading to the development of a community life in the municipality different from the life outside. These causes were: First, In accordance with the general principles of German judicial organization, the free population of the cities participated in the administration of justice through officers chosen from among them, known in the early Carolingian period as Scabini.[4] Second, In the distinctly urban communities in Germany which were, as in Italy and France, surrounded by walls, there developed the idea of a city peace in accordance with which any person living within the city walls had a claim to special protection against violence and wrong. Third, As a result of the increasing importance which was accorded to the bishops, these officers, formerly almost exclusively ecclesiastical, succeeded in usurping the powers of the regular officers of the royal administration. In this way most of the important cities in the older portions of Germany came to be governed by bishops occupying a well recognized feudal position. By these means the urban fortified communities, maintaining their own peace,

[4] The same officer is seen in the German Schöffen and the French Echevins.

doing justice through their own officers and governed by bishops, were already distinguished from the rural unfortified communities remaining under the jurisdiction of counts and other feudal officials.

Conditions of comparative peace were brought about in Germany as in Italy through the general acceptance of feudalism as a system of government. Commerce also began to develop. The most important routes of travel to central Europe were from the Italian cities in the north of Italy over the Alps to the Rhine and Danube and down these rivers, particularly the Rhine. The development of commerce along the Rhine resulted in a great increase in the number and wealth of the urban communities of the Rhine valley. The immediate result of their increase in importance was a struggle for greater municipal independence. In this struggle the urban communities were aided by the crown, which was willing to do anything in order to curb the pretensions of the feudal nobility, among whom were included the bishops in control of the cities. The crown in pursuance of this policy granted to the urban communities many privileges and charters. Some of these privileges were merely of a commercial character, as for example, freedom from tolls and market rights. In some cases they were political privileges, relieving the inhabitants from the control of the bishops. One of the most important was the principle that the "air makes free," which came to be recognized as meaning that residence within the limits of a city for a year and a day relieved the person so residing from all political dependence on any feudal superior outside of the city. The effect of the recognition of this principle was to encourage migration to the cities from the rural communities, where serfdom with all its accompaniments existed.

Rise of Municipal Independence in Germany. The struggle which the citizens of the episcopal cities entered into with the bishops emphasized the idea of a community of interest among the people of the city, and the citizens of the city began to speak of themselves as *cives, urbani, burgenses, civitatenses.* Closely connected with the movement was the organization into guilds of the merchant classes who really had the power in the cities.

These guilds in many cities exercised an important political influence, and soon there developed an organ which represented the people more effectively than they could be represented through the *scabini*. The body which was thus developed came to be known as the council, and ultimately succeeded in obtaining a general judicial power and exercised a supervision over all the work of the city to which it did not itself attend. The climax of this development was reached in the establishment of the office of Burgomaster, or master of the citizens, which, as a general thing, was developed out of the presidency of the council.

From an early time and largely owing to the missionary efforts of the German kings in the conversion of the heathen Germans on the east of the Rhine and the north of the Danube, cities had sprung up in these districts which, like the older cities, were made the seats of episcopal power. In these cities the development was similar to that in the older parts of Germany which has just been noticed. The development in these episcopal cities on both sides of the Rhine had a great influence also upon other cities which had never been the seats of bishops. The conditions here were such that a development similar to that in the episcopal cities appears to have taken place without the struggles so common between the population of the episcopal cities and the bishops. In many cases such cities were established in the domains of feudal lords, as for example, in Brandenburg. These lords were very desirous that cities should thus be established in order that their own power and revenue might be increased. From the very beginning they seem to have granted very large privileges to those who should undertake the founding of cities. At the time of their foundation these were permitted to incorporate into their organization the principles the development of which in the case of the episcopal cities has already been noticed.

Imperial Free Cities. Everywhere throughout Germany in the twelfth and thirteenth centuries, which were times of great commercial expansion and prosperity, the cities, whether episcopal or not, endeavored to obtain independence from their lords ecclesiastical and secular. One of the reasons why they

wished such independence was to modify the feudal law, which was, as has been said, not suited to commercial and industrial communities. The cities, therefore, attempted to obtain control of the judicial organization and early secured the right to have their own local courts. These city courts developed their own ideas of commercial law, one city very often copying the law of some other city, but all being influenced by the law merchant which had been introduced from Italy. The city of Magdeburg, for example, formulated a law which appears to have been very popular through mediæval Germany. Indeed, Magdeburg aided the other cities not only by giving them a code of law, but also by acting as court of appeal from the determinations reached by other cities in their attempts to interpret and apply the law originating in Magdeburg.

The German cities had further before them the example of the Italian cities. Like the Italian cities they strove to become republics independent of all superior power. A number of them succeeded in accomplishing what they desired. In fact, so successful were they that both the feudal princes and the emperor seem to have become frightened at the turn things were taking. Frederick the Second, who desired to reëstablish the Holy Roman Empire and obtain control of the kingdom of Sicily, was obliged, in order to secure the support of his vassals, to attempt to stem the tide of municipal independence. He issued several decrees, the most important of which were those issued at Worms, 1231, and Ravenna, 1232, by which the attempt was made to overthrow the independence of the municipalities.

These laws, however, were never actually enforced, and after their passage as before the cities struggled on in the same old way. They made alliances with other cities and formed leagues like the great Hanseatic League, received outsiders within their limits, and attempted to obtain dominion over outlying territories. Some of them succeeded in the struggle and became imperial free cities, that is, cities which recognized no feudal lord standing between them and the emperor. Other cities were unable to carry on the struggle successfully and were obliged to succumb to the forces brought against them. But while unable to secure complete independence, they nevertheless

during the thirteenth and fourteenth centuries obtained many rights and privileges of self-government.

In all cities, whether imperial free cities or not, the population was divided into two classes, those having political rights and those, constituting everywhere the great majority of the city population, to whom such rights were not granted. As a result of the development of industry, as opposed to trade or commerce, the industrial portion of the population obtained greater and greater economic power and followed the example which the mercantile portion of the community had given them in early times. They formed what came to be known as "craft-guilds," which, during the fourteenth and fifteenth centuries, practically ousted the former mercantile guilds from their position of control in the city government, and obtained that control for themselves.

The position which most of the cities in Germany had succeeded in obtaining by the end of the fifteenth century was one which they could not logically retain. Either they must become in the full sense of the word city-states, like some of the Italian cities, or they must sink to the position of members of a larger state and must become, from the legal point of view, administrative districts of a larger state. It was, of course, impossible for many of the cities to assume the position of city-states. In fact, with the dying out of the feudal law, which gradually throughout Europe came to be replaced by the Roman law as a national state law, there was not the same need for the cities to remain independent. Roman law, which had been developed at a time when social relations were rather complex, satisfied all the needs of the commercial communities of the sixteenth and seventeenth centuries. Furthermore, the religious wars which broke out in Germany and which culminated in the terrible struggles incident to the Thirty Years' War destroyed the commercial prosperity of Germany and made it impossible for the cities to maintain themselves. With the exception of a few, which had been recognized as free cities and which had grown so powerful that they could maintain their independence, practically all the cities of Germany were reduced to a position

of subordination to the feudal princes, who during the religious wars had developed at the expense of the emperor.

Municipal Oligarchies. In Germany, another reason why no effective resistance was offered by the cities to what may be regarded as a usurpation of their rights by the feudal princes is to be found in the character of the government which the cities enjoyed. Attention has been called to the fact that all the people of the cities did not possess political rights. This condition of things was aggravated in the course of the fourteenth and fifteenth centuries. The control of the city government fell into the hands of a smaller and smaller class who succeeded in having the principle adopted that members of the municipal council should be chosen by coöptation, that is, when a vacancy occurred in the council it should be filled by the remaining members. This council had a very close relation with the industrial organization of the people, found in the guilds, and did not hesitate to make use of the political power which it possessed in the interest of the class which it represented. The result was that not only was the government of the cities in the control of the wealthier few, but the wealthier few did not scruple to exercise their political powers in their own interest. They prostituted their powers in the interests of a class, and wasted the city's patrimony. They were, therefore, not popular with the municipal population, and the princes of the various states which arose in Germany were able, without meeting any great resistance on the part of the city population, to assume control of the municipalities.

The result of the final development of the German cities was, then, the same as it was in Italy. The cities went through a period during which many of them obtained practically the position of city-states, but were for the most part later brought into the position of subordinate members of a larger state.

Cities in France. What has been said of the conditions of the cities existing in the Roman Empire is just as true of the Prætorian Prefecture of Gaul as it was of Italy and Germany. The districts into which this portion of the Empire was divided and which made no distinction between urban and rural con-

ditions, were subjected to the régime of feudalism. All the urban communities were parts of districts managed by feudal officers. The revival of commerce in the tenth and eleventh centuries had the same effects, further, in Gaul or France, as it was later called, that it had in Italy and Germany. If we examine the important trade routes by means of which this portion of Europe carried on its commerce, we shall find that in the first place commerce came from the north of Italy, either over the passes of the Western Alps, or by water, to the south of France, where important urban communities had continued in existence from the times of the Romans, or it came into the north of France from the cities of Germany, situated about the mouth of the Rhine. From either of these two districts commerce flowed into the middle of France.

Consular Cities. In the south of France the Italian influence was very marked. Cities came to be endowed with consuls who were for a long time supposed to have had a Roman origin. Later investigation, however, would seem to prove that the consular cities, as these cities were called, did not get their organization from the cities of the Roman Empire, but from the Italian city-states. These cities in the south appear to have secured somewhat the same degree of independence as was secured by the Italian cities. They became in some instances really city-states.

Communes. The development in the north was very different. Here the cities, which sprang up as a result of the increase of commerce, in many instances secured their independence as the result of a distinctly revolutionary movement, and came generally to be known as communes. They took by force the right to govern themselves and obliged their feudal lords to recognize this right. The basis of the commune was something in the nature of a conspiracy and an oath was taken by all the members of the commune to fight for its liberty. The commune movement was aided by the Crown, which as in Germany saw in the existence of strong urban communities a political force which it could set off against the feudal nobles, and therefore granted charters to the communes. These charters contained in the first place certain privileges of a private-legal character, that is, they

permitted cities to exempt themselves from a portion of the feudal law. In the second place, these charters often granted privileges of a political character, providing for an officer known as a Mayor, and an elective Council of Jurats, as they were called, quite analogous to the Burgomaster and Council of the German cities, to whom were granted judicial and administrative powers.

Feudal Cities. The central portion of France could not fail to be influenced by these ideas which came from Italy either by the southern or northern route. The feudal lords in whose domains urban communities began to spring up as a result of the development of commerce, found it to their advantage to give them privileges similar to those which the city-states of the south and the north had succeeded in obtaining. In some instances we find evidence of what in more modern times would be called operations of a speculative character carried on by the feudal lords. They established town sites and laid out cities, and, in the same way as the feudal princes in Germany were at the same time doing, they granted large privileges to persons who would come and settle in these districts. These cities, however, were for the most part governed by a bailiff, or similar officer, of the feudal lord, and the privileges which they received were privileges of a private-legal, rather than a political character. This was the time when the law merchant was being revived everywhere throughout Europe, and this law together with limitations of the rights of the lord with regard to his subjects living in these urban districts was very commonly introduced into the cities throughout France.

The Crown and the Cities. As the royal power increased in France, the attempt was made to take away from the consular cities of the south and the communes of the north the political privileges which they possessed and to assimilate them to the feudal cities in the center of the country. Ultimately all the cities of the kingdom, however they originated, came to occupy a position similar to that obtained by the feudal cities. The movement which resulted in giving to all urban communities a position of a privileged character, somewhat different from the rural districts, was accompanied by the alleviation of the

condition of the serfs throughout the country. Persons living in the rural communities might migrate to the cities. This alleviation of serfdom had somewhat the same effect as the recognition of the principle that "the air makes free" had in Germany.

It will be seen from what has been said that, owing to one cause or another, the idea of the city-state really never took root in France. The cities which resembled city-states and which were established in the south and north were quite early in the history of the country placed in the position of subordinate members of a larger state, a position which they have ever since occupied.

In England the city-state never developed at all. Its failure to develop was due probably to the early centralization of the royal power, and the consequent establishment of a common law not based on feudal principles, as well as to the backwardness of trade and commerce as compared with the continent.

CHAPTER IV

THE CITY AS AN ADMINISTRATIVE DISTRICT OF A LARGER STATE

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The Mediæval City not a City-State. The revival of municipal independence which has been seen to be characteristic of all Western Europe in the tenth and the immediately following centuries, did not really cause a reversion to the ancient idea of the city-state. While there are many characteristics of the ancient city-state in the cities of Italy, Germany and France, which sprang up as a result of the revival of commerce, it is improper for two reasons to regard the cities of mediæval Europe, however independent may have been their position, as really examples of the old city-state.

In the first place, the ancient idea of a peculiar religious worship did not lie at the basis of the new municipal organization. The religion of all Europe was now Christian, and while particular saints were regarded as according special protection to particular places, the reverence in which they were held was not so great as to cause the establishment of a local religion in the sense in which each of the city-states of the ancient world had its own religion.

In the second place, whatever may have been the independence of the cities, they never claimed complete immunity from the power of the sovereign lord of the country, that is, the Emperor in Italy and Germany, and the king in France. Venice and Genoa, and particularly Venice, might perhaps be regarded as exceptions. These two cities remained for a long time independ-

ent of any other state, and in Venice the peculiar veneration in which Saint Mark was held was almost a substitute for a state religion.

Commercial Basis of Mediæval Cities. It has already been seen that as the substitution of the imperial for the city-state idea in the Roman state was caused by changing social and economic conditions, so in turn, were the causes of the municipal revival of the middle ages almost entirely commercial in character. The successful prosecution of commerce and the occupations attendant upon it was impossible under the legal conditions existing in the feudal world. The cities, and by the cities we really mean the commercial communities, struggled not so much for any abstract idea of political liberty or independence, as for the opportunity to carry on under favorable conditions the occupations upon which the existence of municipal life was absolutely dependent. The great influence which the cities had in bringing about modern conceptions of law—for the Roman law originally introduced into the cities ultimately became the law of almost all of Europe—has caused many to believe that they are to be regarded as in the nature of cradles of liberty, and that municipal populations are more prone to struggle for the realization of abstract principles of liberty than are rural populations. If, however, the interpretation of the history of mediæval municipal development which has been given is correct, it would appear that the municipal populations were struggling during the middle ages merely for a better opportunity for the transaction of the business upon which municipal life was dependent.

After the cities had secured the changes in the law and in the political system which were necessary in order that the occupations of trade and commerce could be successfully carried on their political importance declined. The abstract idea of municipal independence, apart from the consideration of the economic advantages which such independence in the conditions of the time gave them, does not appear to have had very much influence upon their actions.

City Oligarchies. That cities may not properly be regarded as cradles of liberty is likewise seen when their internal domestic

history is considered. Like the Roman cities, they fell under the control of a small class which made use of its power over the city government in its own interests. It has been seen in the preceding chapter that in Italy the oligarchical rule which was at first characteristic of the newly revived municipalities gave place generally to despotic rule. In Germany it has been seen that the government became oligarchical rather than despotic in character and was carried on by a narrow group of citizens who were usually closely associated as merchants or manufacturers with the commerce and industry of the city, and who made use of their powers to secure to themselves what were very much in the nature of commercial and industrial monopolies.

Early English Boroughs. While the tendency of urban population to fall under the control of an oligarchy is perhaps even more marked in England than on the continent, the circumstances attending the development of oligarchic rule were in some respects unlike those seen in Italy, Germany or France. In the English cities there was no direct heritage of Roman tradition, nor did feudalism exist to such a degree as to cause the crown to foster the cities as a foil against the power of the nobles. Moreover, as has been stated, the city-state idea never gained a foothold.

The original English municipal organization was unusally democratic. Its center was in a special court, which cities, after the manner of all European cities in the middle ages, were permitted to hold, called the court-leet. In accordance with the idea of popular administration of justice, which was characteristic of the original Teutonic legal system, this body consisted of the freemen householders, who, in the language of the time, "paid scot and bore lot." By this was meant the paying of taxes and the legal capacity of participating in the judicial administration. As the cities developed, this body, which was originally judicial in character and which did for the city justice what the ordinary courts of the hundred did for the rural districts, assumed the discharge of the municipal functions which were necessitated by the presence in the city of a large population.

Gradually, however, this democratic organization was modified, owing to changes in the general governmental system of the country. This modification occurred especially in two respects. The first of these was with respect to finance. One of the things which characterized the original English municipal borough was the privilege known as the *firma burgi*. This consisted in the right granted to a city to compound for a fixed sum the pecuniary burdens which might be demanded by the Crown of the municipal inhabitants. It was in the early days the result of a bargain between the Crown and the city, which was represented by its court-leet. After the amount which was to be given to the Crown was ascertained, it was distributed among the people of the city by the court-leet. When, however, Edward I, in 1295, summoned to meet with the Great Council of the kingdom, two representatives from each of the boroughs, and two knights from each of the shires, and thus formed the body afterwards known as the English Parliament, the function of the court-leet in fixing the amount due the Crown ceased to be of any importance. Such bargain as was thereafter made between the Crown and the city was made in Parliament, where the borough was represented. The amounts which were to be paid by the city inhabitants were likewise determined by Parliament rather than by the local court-leet and took on the nature of a tax.

In the second place, at the same time that the financial functions of the old municipal assembly were being taken from it, the judicial privilege, which it possessed, consisting in the administration of the law in a special municipal court-leet, was succumbing to a two-fold centralizing influence. The law itself was becoming much more complex with the greater complexity of social conditions, and this complexity of the law made it seem expedient to provide for its application by judges learned in the law in place of the old popular courts. At the same time, a new method of preserving the peace was established. This obtained its final form in the reign of Edward III, when the office so celebrated afterwards in English history, namely, that of the justice of the peace, was established. Justices of the peace were provided for the cities as well as for the open country, and in

the cities as well as in the open country, they assumed the discharge of almost all police and minor judicial functions. As a result of the appointment of judges learned in the law, and of justices of the peace, the old court-leet ceased to have any particular importance as a judicial body, and although apparently it was never abolished by formal act of Parliament, it seems to have died of inanition.

Development of Oligarchical Government. The apparent result of the decreasing importance of the court-leet was that it came to be attended by fewer and fewer persons. The only part of the work which it formerly did that it had still to do was attending to the distinctly local matters of an administrative character. This work could be done more easily by a committee of the body than by the whole body, and we find developing everywhere in English cities a small body known in some places as the Leet-Jury, in others as the Capital-Burgesses, and in still others as the Borough Council, which, ultimately, under the latter name came to be the principal municipal authority. The old basis of municipal citizenship, which consisted in paying scot and bearing lot, began to be undermined, and was replaced by different principles in different cities, principles which varied with the occupations and interests of the municipal inhabitants. In the larger cities, like London, in which the interests of commerce and industry predominated, membership in guilds became the basis of municipal citizenship. London to-day, with its livery companies, as they are called, is a good example of the organization of the medieval English city.

The assumption of political power in the English cities by a narrow class of the municipal population was naturally not accomplished without opposition upon the part of the inhabitants who were excluded from participation in the government. Thus, it is said that in 1467 "the companies and liveries of London had been making encroachments upon the privileges of householders in the ward motes to such an extent that it was necessary for Parliament to interfere for the protection of the people, and upon the Parliamentary roll of the same year there is a petition praying for the dissolution of the tailors' guild at Exeter, on the ground that they set the authority of the

mayor at defiance and threatened to reduce the town to a state of anarchy.''[1] Notwithstanding this opposition, the result as in Germany was that the citizens as a whole lost all right to participate in the city government, and a new body which represented the wealthier classes took to itself the powers formerly exercised by the more democratic court-leet. This narrow body, the borough council, or by whatever name it was called, was either renewed by coöptation, or chosen by a very narrow electorate that was composed of the more wealthy members of the community.

Incorporation of Boroughs. The next step in the development was to put the seal of legality upon this oligarchical municipal organization through the device of incorporation. The early charters possessed by cities were not in reality charters of incorporation, but like the charters granted to the German and French cities, were merely charters of privileges. The first charter of incorporation was granted in 1439 to the borough of Kingston-upon-Hull. With the accession of the Tudors, the movement for incorporating boroughs assumed such proportions as to justify us in placing the beginning of the period of incorporation at the accession of the Tudors to the throne of England.

These charters incorporated, not the whole body of citizens, but the narrow oligarchy which had come to take its place. The legal name, ''The Mayor, Aldermen and Commonalty of New York,'' which the city of New York bore up to the time of the creation of the present city of ''Greater New York,'' was given to it in one of the early charters framed upon the English model.

The Boroughs and the Crown. It has already been seen that in France the favor shown by the king toward the communes, primarily for his own purposes, carried benefits to the whole population. In England, however, the charters of incorporation redounded to the benefit of only the narrow governing oligarchy and the Crown itself. Since the days of Edward I, every borough had been entitled to return to Parliament two mem-

[1] Vine, "English Municipal Institutions," p. 7.

bers, who had come to be selected by the governing oligarchy. By placing the seal of legality through incorporation upon this oligarchy, the selection of members could be more effectually controlled by the Crown. The immediate need of the Crown to control Parliament grew out of the religious struggles of the sixteenth century incident to the Protestant Reformation and the separation of the English church from Rome. Indeed, the importance of controlling Parliament was so great that the king granted charters of incorporation carrying with them the right to be represented in Parliament to an enormous number of boroughs, so that, ultimately, the urban population were disproportionately represented in Parliament.[2]

Even the grant of charters of incorporation to the towns which desired it was not sufficient to satisfy the wishes of the Crown; and the courts, which were at this time under royal control, invented what is known as the principle of implied incorporation. This principle was made use of to force upon boroughs, which would not accept the charters offered them by the Crown, the oligarchical form of government which it has been seen had so generally developed.[3]

The most noted example of action on the part of the Crown in the establishment of oligarchical government in the boroughs is to be found in what is known as the "crusade against corporations," which took place under Charles II and James II, particularly under the latter. James was aided in his work by his tool, the notorious Lord Jeffreys. Actions of *quo warranto* were brought in great numbers against such municipalities as had evidenced any desire to be independent[4] and judgment was given by the courts against many of them, including the city of London. Other corporations voluntarily surrendered their charters for fear of being proceeded against by the Crown. In case judgment was obtained against a corporation, or a corporation

[2] Notwithstanding the various redistribution acts which have been passed within the last two centuries this disproportion still exists.

[3] Corporation Cases, 4 Reports, p. 776; Ireland and Free Borough, 12 Coke, p. 120.

[4] The most famous of these cases was that of Rex v. London, 8 Howell's State Trials, pp. 1039–1340.

surrendered its charter, a new charter was granted placing the control of city affairs including the election of members to Parliament in the hands of the wealthy few.

After the Revolution of 1688 conditions were no better. The political parties which soon developed found it to their advantage to perpetuate the "rotten boroughs," as they were called, for the purpose of swelling the number of their party adherents in Parliament.

English Cities in 1830. The position of English municipal government as it existed in the early part of the nineteenth century is well described by Vine. He says: "That 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 borough; that 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; that the corporate funds were wasted; that the interests and improvements of towns were not cared for; that the local courts were too often corrupted by party influence and failed to render impartial justice, and that municipal institutions, instead of strengthening and supporting the political framework of the country, were a source of weakness and a fertile cause of discontent." [5]

The whole municipal organization was thus prostituted in the interest of the party politics of the kingdom generally. It was so poor and so unrepresentative that it was useless to give the city corporations any of the new functions of administration, made necessary by the changes that were taking place in English social and economic conditions. When the suppression of the monasteries by Henry VIII had made necessary some provision for the poor, this branch of administration had been entrusted to the ecclesiastical parishes, which existed in the urban as well as in the rural districts. These parishes, which acted under the supervision of the justices of the peace, had more vitality than the boroughs in which they might be found, and were, therefore, in many cases, entrusted with the new functions of govern-

[5] Vine, "English Municipal Institutions," p. 10.

ment. In other cases such new functions of government, among which may be included the lighting and paving of the streets, were put into the hands of new authorities: "trusts" and "commissions," formed by special legislation. The sphere of government which the borough corporation, as a corporation, had to discharge therefore remained very small. It embraced only such matters as the care of municipal property, the issue of police ordinances, and the discharge of certain functions connected with the administration of justice. The justices of the peace by whom justice was administered in the cities were often the same persons who in other capacities acted as municipal officers. The borough was not looked upon as a local organization for the performance of all governmental functions within the municipal area, but as on the one hand a juristic person with property of its own, to be made use of for the benefit of the few who were entitled to it, and on the other hand, as a mere delegate of the state government for which it acted in matters of state rather than local concern, like the administration of justice.

French Centralization. Owing to the fact, perhaps, that France became thoroughly centralized before any other state in Europe, the movement towards subjecting municipalities to the state began there earlier than elsewhere. There it may be said to have begun as early as the fourteenth century. The most noted early instance of the subjection of cities to central control was the interference by Charles VI with the administration of the city of Paris, in 1383. Central control of cities was not important in France, however, until the beginning of the sixteenth century. The attempt was then made by the Crown to issue general ordinances which should apply to more than one city. Up to this time it may be said that the government of the cities, so far as their relations with the Crown were concerned, was regulated by ordinances of a special and individual character. While under the régime of special charters the relations between the cities and the Crown were regarded as being governed by something in the nature of a contract, under the régime of general ordinances the contract idea was abandoned, and cities were regarded as subject to the general legislative power of the

Crown. The Crown was not considered, in its regulation of city affairs, as dealing with another party to a contract on a position of equality with it, but as regulating the relations of subordinate communities through the exercise of sovereign power.

The purpose of these general ordinances was to increase the influence of the Crown as the representative of the new national state which was beginning to develop. It had as its ultimate effect the taking away from the cities of practically all powers of local self-government. This was accomplished under the reigns of Louis XIV and XV, so that by the beginning of the eighteenth century the cities were merely administrative districts of the kingdom with privileges hardly any greater than were possessed by other administrative districts.

The Crown had in many cases ample excuse for interfering. As early as 1464 there is found an instance of a bankrupt city, viz., Montreuil sur Mer. The Crown had to appoint commissioners to liquidate its indebtedness and one of the means to which the commissioners had recourse was that used by some American cities in the nineteenth century, namely, the scaling of the city debt. Numerous instances of such municipal extravagance might be cited. Indeed, municipal extravagance became so serious that Colbert, the great finance minister of Louis XIV, undertook a general investigation of the debts of the cities in several of the French provinces. The report of the commissioners appointed for the purpose was followed by an ordinance in 1662, which made the authorization of the Crown necessary for contracting any new debts. In 1669, all the cities were ordered to send to the royal officers in the provinces their budgets of receipts and expenses for the last ten years, and in 1683, the Crown, in order to prevent them from becoming indebted in the future, ordered that their budgets of expenses should be fixed in advance by the royal officers.

Legislation of Napoleon. The subjection of cities to the control of the central government reached its climax in the Napoleonic scheme of administration which was incorporated into the great administrative act of 1800.[6] This act is interesting for

[6] L. 28 pluviôse an VIII.

several reasons. In the first place, it established in its final form the administrative district known to the French law as the commune. The term "commune" was adopted because it was associated in the minds of the French with the struggles for municipal liberty, which occurred in the northern part of France during the middle ages, and which, as we have seen, resulted in the establishment of little republics in the nature of city-states. The law is interesting, in the second place, because the commune which it established reverted to the old Roman idea of the city-state in that it made no distinction between the urban and the rural portions of the community. The commune consisted of a territorial area in which both urban and rural communities were to be found, governed from the most important urban district in the commune, to which was given the name of *cheflieu.* Finally, the act of 1800 is of interest, as has been intimated, in that it shows the extreme point to which the movement of subjecting the cities to the control of the state went in the highly centralized government of France. The organization provided by this act for the commune consisted of a council and mayor, who were appointed by the central government of France, and all of whose acts were subject, before they had legal force, to the approval of some officer of the central administration.

Centralization in Germany. In Germany, the development was much the same as in France. The action which the monarchs of the various states of the Empire took towards the cities during the seventeenth and eighteenth centuries was in the nature of the exercise of sovereign power. As a result of this attitude, in the first place, the contractual basis of the city was abandoned and everywhere municipal administration began to be regulated by general ordinances more in the nature of legislative acts than in that of contracts. The conception of the city which is to be found in these ordinances is not that of a local self-governing body, but of a state agent which is made use of, not so much for the satisfaction of the local needs of the inhabitants of the district in which the city is situated as to aid the state government in a better regulation of state affairs. That conception of state affairs now included what had formerly been regarded as city affairs. The rights and powers possessed by

cities were, therefore, regarded as having been delegated to them by the general state government. The officers in the cities were regarded as part of the state government placed by it in the cities, or, where the right of electing city officers was still retained by the municipal population, their election was made subject to the approval of the state. These officers, when elected, acted under the supervision of the central state authority.

In the second place, the rights of the cities as legal corporations, and the private-legal rights of the single members of these corporations were regulated by state law, while any resolutions passed by the cities as a result of the exercise of any powers, that might have been left with them to regulate their internal police, had force only after they had been approved by representatives of the central state government.

In the third place the property of the cities, finally, came to be regarded as state property simply held by the cities in trust, and its management was subjected to the continual control and supervision of the state government.

This condition of things was brought about in Prussia largely by the Great Elector and Frederick William I, and the legal conception of the conditions which they established was incorporated into the Prussian code that was adopted in the reign of Frederick the Great.

It has already been shown that, on account of the gradual degeneration of German municipal administration, which had fallen into the hands of a small and selfish class, little effective resistance to this state interference was made by the cities. As a matter of fact, indeed, the work which the Crown thus undertook was done in such a way as really to benefit the average municipal inhabitant. The town property and police power, which had been made use of by the municipal oligarchies as a means of enriching themselves and the class to which they belonged, were restored by the Crown to the position which they formerly occupied as a means of benefiting the entire municipal population. The Crown, thus, while reducing the cities to the position of absolutely dependent members of the state organization, laid the social basis upon which a reasonably democratic municipal government might be built up in the future. As

Leidig says: "The service which the absolute government that arose at the end of the Thirty Years' War rendered to municipal government is that it put the cities in a position to serve public needs, and, while it had no conception of a municipal life apart from the life of the state, it did exercise the powers of the cities for public ends, and in this way revived the old municipal spirit for the work of the future."[7]

Centralization in Italy. Attention has been called to the fact that the cities of Italy, after the development of despotic government therein in the fourteenth and fifteenth centuries, in many cases dropped into the position of members of a larger state. This movement was furthered by the subjection of most of Italy to the influence of foreign states. Thus, Spain ultimately obtained control of the southern part of Italy, which was organized under the name of the Kingdom of the Two Sicilies. In the north of Italy by the eighteenth century, most of the states which had developed had fallen under the control of Austria, while the center was occupied by the Papal States. In all of these districts the cities ultimately lost almost all independence. In particular instances, they had certain privileges of a private-legal, rather than a political character. These privileges did not ordinarily include the right of local self-government, but rather security of property rights and the civil liberty of the citizens, together with a limitation of their duties to the state. In exceptional instances, however, the inhabitants of cities did have the right to choose their own officers.[8] The final result of the encroachments of the central government of the state was, in some of the Italian states, to reduce the cities to the position of purely administrative districts. Such was the case in Piedmont, whose king ultimately consolidated Italy. Charles Emmanuel III, king of Piedmont, in a series of regulations, which were consolidated in 1775, and remained in force until 1848, provided a uniform administration for all communes. The officers of the communes were appointed directly or indirectly by the central government.[9]

[7] Leidig, "Das Preussische Stadtrecht," p. 9.

[8] Pertile, "Storia del Diritto Italiano," Vol. II, pp. 370–400.

[9] Orlando, "Primo Trattato Completo di Diritto Amministrativo Italiano," Vol. I, pp. 1109 et seq.

In England, no such subjection of municipal government to the control of the Crown save the extra-legal control over the return of members of Parliament is to be noticed. This apparent freedom from central control is, however, more apparent than real. The system of government possessed by England was, after the development of Parliament, a system of legislative centralization, while that on the continent prior to 1848 was a system of administrative centralization. In accordance with the English principles of legislative, or Parliamentary, centralization, the cities were regarded as subject in all cases to the power of Parliament, and as having only those powers which Parliament had expressly or impliedly granted to them. As compared with continental cities their sphere of activity was a very narrow one. It is true that in this sphere they acted free from any central administrative supervision, but all things considered it was as true in England as on the continent that the city of the latter part of the eighteenth century was a subordinate member of a greater state of which it formed a part.

Conclusions. It would appear then that the ease with which cities were subjected to the control of the state was due to two main circumstances. In the first place what at one time had been of merely local interest had become of general state interest, owing to a widening of social and economic interests, and to the adoption of a general state law which regulated these interests. That which was true of the law was also true of the other matters whose regulation by the cities was necessary if the commercial classes were to have the opportunities for action which they desired. Like the law merchant, these matters were afterwards regulated by the national state, which bore in mind the interests of the commercial classes now become of great importance to the state, and exercising great influence over its policy. The reasons for political independence on the part of the cities having ceased, the cities made little serious resistance to the attempt upon the part of the states to subject them to their power. We may say, indeed, that the cities ceased to have an excuse for existing as separate and independent communities after the widening of social and economic interests which made possible the national state, and from that time

cities everywhere throughout Europe became a part of the new system of political organization which was thus developed.

In the second place, the oligarchical government which cities everywhere seem to have developed was undoubtedly a reason why no serious resistance to subjection to state power was made. This government was everywhere accompanied by the exploitation of the many by the few. The cradles of liberty, as cities have often been called, had become engines of oppression whose preservation could not be expected to arouse enthusiasm on the part of the oppressed.

Cities had thus become incapable of discharging satisfactorily the functions which they had formerly discharged. Meantime the new governments which arose through the formation of the national states, and which showed much more vitality and vigor than the anachronistic and degenerate city governments, naturally assumed control of the cities.

CHAPTER V

THE CITY AS AN ORGAN FOR THE SATISFACTION OF LOCAL NEEDS

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Appearance of the Modern Municipal Problem. The middle of the eighteenth century found the cities of Europe small and inconspicuous, playing no important part in the economic life of the state. As organs of government they served only as administrative divisions of the state. The growth of commerce and the substitution of the factory for the household system of industry, which came with the industrial revolution in the later years of the eighteenth century, resulted in the massing of population in cities to an extent hitherto unknown. A result of this concentration was to bring into prominence problems of housing, sanitation, lighting and local improvements generally, which the mediæval city had not seriously attempted to solve, but for which those of the nineteenth century must find solution if they were to secure even tolerable living conditions.

In attempting to meet the new demands and to work out a solution of the new problems, a fundamental step was the recognition of the fact that the city, while serving as an administrative agency of the central government, as in the preceding

period, should, at the same time, have a distinct existence as an organization for the satisfaction of local needs. Hence it may be said that the city came, during the nineteenth century, to hold a dual position in the state: First, as an administrative division of the state; and second, as an organ of local government. With the recognition of this second function there have come to the city gradually, through legislation in most of the European countries as well as in the United States, both authority to undertake a wider range of activities of a local character, and an organization adapted to the newer and broader purposes.

European Municipal Legislation. The first important piece of European legislation which recognized that the city, in addition to being an agent of state government, was an organization for the satisfaction of local needs, was the Prussian Cities Act of 1808. This act recognized that each city had a sphere of activity and property apart from the state and gave to the city an organization which in its outlines and characteristic features has remained to the present day. This organization was so formed as to permit of voluntary action upon the part of the city in the direction of satisfying its own local needs.

The Prussian Act of 1808 was followed in England by the Municipal Corporations Act of 1835, which gave to the English municipal borough a position and organization very similar to those which had been devised in Prussia for the Prussian municipal corporation. Subsequent legislation amplified the power of the boroughs making them competent to perform all the necessary local functions.

France followed the lead given by Prussia and England, and, by a series of laws beginning in 1830 and ending in the existing law of 1884, gave to her cities both an organization and powers of local self-government which permit the cities to attend to the distinctly local needs of modern urban life.

The kingdom of Sardinia, which later developed into the present kingdom of Italy, provided, under the influence of the revolutionary ideas of the year 1848, for her cities, local councils elected by the larger taxpayers. The electorate was enlarged in 1859. The movement toward according to the cities of Italy greater liberty continued uninterruptedly and, after

the union of Italy in 1870, new laws were passed, namely, the present law of 1889 as to the general powers of cities, and a law of 1903 as to the operation by the cities of public utilities, which greatly enlarged the powers of local government possessed by the cities, and recognized that they were not merely agents of the central government, but as well organizations for the satisfaction of local needs.

American Municipal Legislation. American municipal institutions were borrowed from those of England as they existed prior to the adoption of the Municipal Corporations Act of 1835. Hence the city charters, colonial and state, well into the nineteenth century were based primarily upon the mediæval notion that a special judicial organization was necessary in municipalities. The sphere of government recognized in these charters as possessed by the cities embraced merely the three rights to exercise judicial powers through the special courts that were established; to issue police regulations; and to manage the property with which the city was endowed by the charter, or of which it became possessed in some way. The cities were not recognized as possessing, in the absence of legislative authorization, any power to tax their inhabitants, but were restricted, so far as income was concerned, to the fines that might be imposed in their courts and to the revenue from their property. They generally, however, possessed the borrowing power, and when their debts became so great as to cause anxiety they resorted to various expedients, such as lotteries, in order to pay their debts.

As will be brought out more fully in the succeeding chapter, the cities derived all their powers from the legislature through their charters. Since these powers were strictly enumerated, it became necessary, as the sphere of municipal activity broadened with the development of new city needs, to make continual applications to the legislature for new powers. These powers when asked for by particular cities and upon the justification for the request being shown in actual conditions, were usually granted. With the multiplication of requests many of which were identical for different cities, certain proposed grants of power came to be recognized as "usual" and were granted almost as a matter of course upon application. Others less frequently applied for, and

bearing the mark of novelty, were granted less readily, and only after deliberation if not in the face of actual opposition. By the middle of the nineteenth century the avalanch of applications for new charters and special grants in amplification of old ones, which descended upon legislatures at each session, led, along with other causes, to be investigated later in our study, to the adoption in many states of general laws for cities. These general laws contained, besides other provisions, a grant to all cities of the state of practically all of the powers which had come to be looked upon as "usual" and appropriate for cities. These general laws together with the precedents set in the special acts constituted in course of time recognition of the city as an organ of local government and of a sphere of activity which belonged to it as such.

It will be found also in the succeeding chapter that the position of the city in the governmental system thus recognized has in course of time been given through the state constitution protection against legislative invasion.

Change in Municipal Functions. It has been seen that the growth of centralized states in Europe resulted in the assumption by the state of one after another of the functions performed by the mediæval city until the city, if performing any function of government at all, did so merely as an administrative subdivision of the state. An examination of just what is the nature of the functions conferred upon cities both in England and in America during the nineteenth century shows that the action of state governments in giving a wider range of powers did not after all reverse the judgment arrived at during the eighteenth century. It was not merely that the city had been tried and found wanting in capacity to discharge a whole series of administrative functions, but that matters that were at one time looked upon as of municipal interest merely had come to be viewed as of interest to the state at large. The administration of such matters was to remain wholly or chiefly with the state. It was a quite new and wholly different range of powers with which the city found itself endowed as a result of the newer course of development. In order to appreciate more precisely the extent to which the conception of the proper sphere of the city had changed, it will be

well to examine the matter historically with respect to the accepted classification of administrative functions in general, viz. foreign, military, judicial, financial and internal affairs.

Foreign Affairs. When the city lost its independent position as a city-state, it lost the right to discharge any functions relative to foreign affairs. In the mediæval days of municipal independence, the cities had in many cases, as has been seen, entered into foreign relations. They thus formed leagues with other cities, of which the Hanseatic League is a well-known example.[1] In modern times the city is permitted no share whatsoever in foreign affairs.

Military Affairs. What had been said with respect to the position of the city as to foreign affairs may be repeated substantially as to military affairs. In former days the city had important military duties to perform. Many cities, indeed, had their own armies, or train bands as they were sometimes called.[2]

It is, of course, true that even now in countries like the states of the United States, in which there exists a citizen soldiery, cities or city officers may have assigned to them by the state the establishment, maintenance and care of armories, and the

[1] Prof. Ashley says of the English cities, "Economic History," Part II, p. 94, cited in Wilcox, "The Study of City Government," p. 76: "Before the close of the Middle Ages England was covered with a network of intermunicipal agreements to exempt the burghers of the contracting towns from tolls when they came to trade; and these unquestionably led the way to more complete freedom. They are indeed almost the exact parallels, in that stage of economic development, to the international treaties of reciprocity by the aid of which many modern politicians expect to reach universal free trade. They began as early as the thirteenth century; Winchester and Southampton entered into such a contract in 1265, and Salisbury and Southampton in 1330, and they became more frequent as time went on."

[2] As Dr. Wilcox says, "The Study of City Government," p. 25: "The feudal cities as well as the ancient city-states often had their own armies and were not slow to use them against each other. Soldiers of the city of London played an important rôle in the early internal and other wars of England." Dr. Wilcox quotes (p. 77) Mrs. J. R. Green as saying: "The inhabitants defended their own territory, built and maintained their walls and towers, armed their own soldiers, trained them for service and held reviews of their forces at appointed times."

partial support of a military establishment, but the soldiers for which such provision is made are regarded as state and not city troops, and are under command of officers who receive their commissions from the state and not the city government, and are governed by the military law of the state and not of the city. Duties relative to military affairs are imposed upon the cities in certain cases, not because military affairs are considered as a municipal function, but in order to provide a convenient method of defraying a part of the expenses of the state government.

Judicial Affairs. What has been said with regard to military affairs may with some modifications be repeated with regard to judicial affairs. The cities in former days almost universally had important judicial functions to discharge. Indeed, the origin of the modern municipal organization, it has been shown, is to be found in the judicial organization. In almost all modern states the administration of justice has come to be regarded as a function of the state and not of the municipal government, yet it may be said that at three points the city is still sometimes concerned in the administration of justice. First, it is true that quite commonly in the United States local judicial officers exercising minor, or even as in New York, higher civil and criminal jurisdiction, are appointed by the city authorities or elected by the people of the city. Wherever a special judicial organization, which provides for the local selection of judges, has thus been established in the city, it must be said that in such cases the city has been assigned a share in the administration of justice. This is so notwithstanding the fact that the decisions of these local courts may be subjected to the supervisory control of the state courts. The arrangements which are made in cities relative to the administration of justice have an important influence on its government, particularly where the judicial control over municipal action is strong, and under the conditions to which reference has been made this control comes to have the nature of a self-control.

Second: What is true of the administration of justice generally is also true of that part of it which affects solely the prosecution of crime. In cities which comprise the whole of one or more

counties, where the American practice of electing the public prosecutor is adopted, it must be admitted that the prosecution of crime also is really a municipal function.

Third: Provision may be made, as in the case of the administration of military affairs, for the payment by the city of all or part of the expenses of the administration of justice. This, as a matter of fact, is the general rule in the United States.

In all these cases, however, the city is acting as the agent of the state government in the discharge of a function of government which is now recognized almost universally as belonging of right to the state, but which the state has delegated to the city, either because it is more convenient for the city than for the state itself to assume the discharge of this function, or out of regard for historical tradition. If, however, the city is protected by the constitution of the state in its right to select judicial officers, the right of the government of the state to assume judicial powers is by so much limited.

Financial Affairs. In the domain of financial affairs the city not only acts as the agent of the state, but also performs financial functions in its own behalf. As agent of the state, it has been seen, it may pay the expenses of certain branches of state administration and it may also be made the agent of the state for the collection of state revenues. A large number of the cities in the United States collect for the state most of the taxes from which the expenses of the state government are defrayed.

Acting in their own behalf, practically all cities perform certain financial functions of taxation and appropriation. The grant to the city of such 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. It is of course possible for the state itself to collect all the public revenues and to apportion its share to each city in the state. While there is, perhaps, no state which adopts such a policy exclusively, it is still true that a large part of the revenues of the cities in certain countries come from such a source. This is so both in England and in the United States, where the central state government makes large grants to the cities for the purpose of education. As a general thing, however, most of the revenue of the cities comes from the exercise

by the cities of financial powers in their own interest. Here they cannot be regarded as acting as state agents.

Internal Affairs. The domain of internal affairs is that branch of administration which embraces all matters not included in any one of the other four. It is somewhat of the nature of a catch-all, and the various subjects included within it are on that account difficult of classification. At the same time it may be said that these subjects fall under one of two heads, police and public welfare.

The characteristic of the class of subjects falling under the first head, namely, police, is that the action of the government with regard to them limits the freedom of action of the individual. Examples are the preservation of peace, the care of the public health and the protection of the public safety. In all of these cases the government secures its object by obliging the individual to live in such a way, to pursue such a course of conduct as will not violate the public peace and will conduce to a state of public health and safety.

The characteristic of the class of subjects falling under the second head, namely, public welfare, is that the action of the government with regard to them, except incidentally and in rare instances, does not limit the individual's freedom of action, but on the contrary enlarges the scope of his opportunity, by offering to him the means of improving his material and intellectual well-being. Examples are the maintenance of means of communication, the provision of means of education, the support of the poor and the construction and maintenance of local improvements.

Whether belonging in the class denominated police or in that denominated public welfare, it may be seen upon examination that with respect to state interests the subjects included in internal affairs fall into three categories. In the first place, the preservation of internal peace and the protection of the public safety are, like military and foreign affairs, recognized as state functions, and though under our decentralized system their administration is, to a great extent, vested in local officers, their action is distinctly that of a state agency.

In the second place, there is a range of activities in the dis-

charge of which it must be admitted that the people of the state as a whole have a real interest although that interest may be but indirect and secondary. The preservation of the public health is first of all a matter of vital importance to the locality, but since many diseases are contagious, unsanitary conditions in the city may imperil the health of the whole state. Consequently the state as a whole has a real interest in the health of every city. Again, ignorance on the part of the municipal population may exert an influence upon the people of the state as a whole since it may affect the political capacity of the municipal population, who at the same time that they are municipal voters are voters at state elections. Therefore the education of the children of the city is recognized as of interest to the state at large.

In the third place, in that group of activities known as local improvements the interest of the state is remote if it exists at all. In this group may be included such matters as water, gas and electric light works, sewers, means of intra-urban communication, and the means of recreation, such as parks, playgrounds, museums and libraries. With regard to these things it may be safely said that the city is not acting as the agent of the state but as an organization for the satisfaction of the local needs of the municipal population which are not felt by the people of the state as a whole.

Present Functions of the City. We may conclude from the foregoing consideration of the relation of the city to the various administrative functions of government that in the last three or four centuries it has come about that almost all powers for the exercise of which the cities have struggled since the dawn of municipal government in the middle ages, have been recognized as functions of state rather than municipal government. The exercise of certain of these powers has been assumed by the state itself, and the cities have been denied any share whatever in their exercise. This is true of powers relating to foreign and military affairs and of most powers relating to judicial affairs.

The exercise of another class of powers, including within them some judicial powers and such powers as relate to the preservation of the peace, the public health, the care of the poor and the schools, has not been assumed exclusively by the state. The

state, on the contrary, permits the city to share in their exercise, but regards the city not as acting exclusively or mainly in its own interest, but rather as an agent of the state government.

It has been found, however, that the massing of population in cities as a result of the changes in economic and social conditions which began at the end of the eighteenth century has made it necessary to regard the city as something more than an agent of the state government; and the legislation of the nineteenth century everywhere granted to cities large powers of a distinctly local significance. The city, as a result of this legislation has become an organization for the satisfaction of local needs. This revival, so to speak, of the city, which took place during the nineteenth century, was thus due, not so much to the reversal of the decision as to the position of the city with regard to the powers which had been decided to be powers of state government, but which the cities had claimed the right to exercise, as to the belief that a new field of municipal activity, that already designated as local improvements, quite apart from the interests of the state as a whole, had been opened which the city must occupy. It is a field which has come to be known as municipal affairs and it is because the city has attempted, during the nineteenth century, in most cases with considerable success, to occupy this field that we have a municipal problem.

CHAPTER VI

POSITION OF THE CITY IN THE STATE

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Subordinate Position of the City. It will have been seen that the great contribution of the nineteenth century to municipal government, both in Europe and America, was the establishment of the dual personality of the city and the delimination, more or less clearly, of a sphere in which the city is given a considerable degree of freedom of action in local affairs. At the same time the fact must not be lost sight of that the city is a subordinate governmental body. Its position in the governmental system is determined first of all by its legal status, including not only its legal nature but the powers and responsibilities vested in it by the state of which it is a part. Furthermore, just as the actual government of a state cannot be understood by a study confined to the organization formulated in the law, so to understand the true place of the city in the state, it is necessary to know, not only its place in the legislative system, but also the extra-legal political forces which in their operation may seriously modify the action of the formal legal organization. Hence it becomes necessary to take up first, the legal position of the city, and second, its extra-legal or political position.

Definitions. As now constituted in the United States, the city may be defined as an urban area constituted as a municipal corporation having a double purpose: first, as an administrative district; and second, as an organ of local government.

A municipal corporation has been defined as:—"A body politic and corporate constituted by the incorporation of the inhabitants of a city or town for the purposes of local government. It authorizes them in a corporate capacity to exercise specific subordinate powers of legislation and regulation with respect to local concerns."[1]

As a form of public corporation, the city is created for purposes of government and to satisfy the local needs of the inhabitants, and membership in the corporation is involuntary. In these respects it differs from a private corporation the purpose of which is pecuniary gain and membership in which is voluntary.

Legal Status of the City. The legal status of the city in Great Britain and in the United States is determined, first of all, by the fact that it is a corporation. As such it is created by the state; its form and powers are derived from the state, and even its existence may be terminated by the state.[2] Under English law all corporations, public and private, are bodies of enumerated powers, the enumeration thereof being made in more or less detail by the supreme legislative body. The legal presumption is against the power of the city to do a particular thing. If a city desires to exercise a power which it has been determined that it does not already possess, it must apply to the legislature, the source of authority, for the grant to it of that power. Not only are the powers of cities enumerated, but also such powers as are possessed are in general strictly construed by the courts.

The legal status of a municipality is determined not only by the fact that it is a corporation but, in the second place, by the fact that it is an organization for the performance of public functions of general interest. As such it must have a position such that its power shall always be exercised in harmony with the general welfare of the whole state.

[1] Dillon, "Municipal Corporations," 4th ed., Vol. I, p. 39.

[2] Berlin v. Gorham, 34 N. H., p. 266.

The charters or acts of incorporation which prescribe the organization and functions of municipal corporations and define their relations to the state, may be grouped, with respect to their source, as: first, those enacted by the legislature; and second, those made and adopted by the cities themselves. The charters enacted by the legislature may be classified with respect to their form and application as either special charters or general laws.

Special Charters in England. It has been seen already that charters of municipal incorporation had become common in England by the time of the Tudors, and that their number was increased from time to time down to the close of the eighteenth century. The charters were there, as elsewhere throughout Europe, special in character: that is, a charter applied only to the city to which it was specially granted. The law regulating the position and power of each city was therefore peculiar to that city. It was this form of incorporation which was adopted in the United States where it has been adhered to more persistently than in England. The passage of the Municipal Corporations Act of 1835 marked the substitution by England of the principle of the general law for that of special incorporation. The chief effect of this act was, however, merely to provide for all English municipal corporations the same general form of organization. While all corporations were given the same powers by this act, those powers were enumerated and enumeration was not sufficiently extensive to allow for the development of the cities whose needs were in any way peculiar. Though there were later other acts which granted further powers to all cities, yet even these have not proved sufficient to meet the needs of all cities. Cities peculiarly situated are still compelled to apply to the state for special authority to exercise powers not conferred by the general laws.

Special Charters in the United States. Municipal incorporation, like other English municipal institutions, was quite naturally adopted in America, and by the outbreak of the Revolution no less than sixteen municipal corporations were in existence in the colonies. All of these were outside of New England where the town system gave to the urban districts a form of government

suited to their needs.[3] The colonial corporations derived their powers from the colonial governors as representatives of the crown. Upon the separation from England the power to create municipal corporations passed to the state legislatures and municipal charters took on the form and nature of statutes, enacted, amended and repealed like other statutes.

These charters were, as has been said, at first, special in character, and were looked upon as contracts entered into between the cities and the state. Until near the middle of the nineteenth century no other form of charter was known, but about that time general municipal corporation laws appeared in several of the states. At the present time only a comparatively small number of the states ostensibly retain the special charter, but in a large number of states where the special charter has been formally abandoned, charter-making is, through the device of classification, almost as special in fact as it ever was. Apart then, from a small number of states, it may be said that charters of cities are almost as special as when we received our system of city government from England. These charters are special with regard not merely to the powers which the city possesses, but as well to the organization with which it is provided.

The special charters were, especially in the earlier years, ordinarily drawn in accordance with the desires of the community and granted in response to petition. Since they contained provision for such organization as the petitioners sought, their variety was as great as the ideas and needs of the city receiving them.

The General Law. As has been said, the passage of the Municipal Corporations Act in England marks the adoption there of the idea of the general law of incorporation for municipalities. Though this act did not make future special charter legislation unnecessary, the subsequent general acts have gone far toward removing the necessity for, as well as the temptation to, voluminous special legislation.

The narrow range of powers granted and the necessity of

[3] Fairlie, "Essays in Municipal Administration," p. 48.

widening the sphere of municipal activity brought about by the new community needs have made necessary, in this country, continual applications to the legislature for new powers. This constant application to the legislature and the action of that body in imposing regulations where not sought led to so many abuses that, about the middle of the nineteenth century, a number of states by constitutional mandate prohibited the enactment of special legislation for the incorporation of cities, and in some cases added the injunction that general laws for the incorporation and government of cities be passed. Such general laws now on the statute books of a majority of the states constitute virtually standard uniform charters for all cities in the state, or at least for all cities of the same class. Such acts are usually made mandatory upon all existing cities and all other urban communities having a specified number of inhabitants which have expressed a desire by popular vote to become incorporated. Under these laws incorporation is completed by the filing of a certificate of such vote and the compliance with certain slight formalities. In some states two standard laws, or, in others alternative provisions, affecting usually the form of organization, have been enacted. This latter practice has grown up since the introduction of the commission and commission-manager forms of city government. In certain states, when not positively forbidden in the constitution, special charters have continued to be granted after a general law was provided.

Contents of the Charter. The American municipal charter or law of municipal incorporation contains three principal elements:—1. The clauses creating or perpetuating the incorporation; 2. A description, more or less in detail, of the governmental organization of the corporation, and, 3. An enumeration of the powers conferred upon the city.

The incorporation clause usually declares the city to be a "body corporate and politic," and confers upon it the common corporate powers: perpetual succession; the use of a common seal; the power to acquire, hold and alienate property, make contracts, and to sue and be sued.

The form of governmental organization is prescribed in some detail, and includes the specification of the organs of government,

election provisions, organization of the legislative body, the administrative organization, the officers, their manner of election, tenure of office and duties. These will be taken up and discussed at length in chapters VIII to XV.

Powers of Cities. The chief original purpose of English municipal incorporation was not to promote local government but to create legal persons who might hold property and have standing in the courts of law. To this end these corporations were made subjects of the private law and their sphere of activity was made very narrow, including few of the matters now thought of as of municipal concern.

The earliest charters in the United States granted merely the right to exercise judicial power through special city courts, issue police regulations, and manage the property with which the city was endowed by the charter or which came into its possession in any other way. They were not recognized as possessing, in the absence of legislative authorization, any power to tax their inhabitants but were restricted, so far as income was concerned, to the fines which might be imposed in their courts and to the revenue from their property. While the English cities did not, until the second quarter of the nineteenth century, play any important part in local government, the American municipal corporations, when the newer community needs demanded governmental recognition, at once adapted themselves to the new demands and assumed the new functions as a matter of course.

The powers now usually conferred upon cities in the United States may be briefly summarized as:

1. The powers incident to all corporations.
2. The power to levy taxes and borrow money.
3. The power to appropriate and spend money.
4. The power to perform certain public services.
5. The power to enact and enforce local police ordinances.

The detailed consideration of these several powers and the manner of their exercise, which more properly belongs with the discussion of the organs of government in which they are vested, will appear in a later chapter. Here certain general aspects only will be considered.

When municipal corporations took on municipal functions and assumed their places as public corporations performing subordinate services for the state, they carried over certain characteristics of the private corporation which have deeply affected their status as organs of government. These inheritances from the private law relate to:—

1. The scope of their powers.
2. Their legal liability.

Scope of Municipal Powers. It has already been said that, like a private corporation, the city is a body of strictly enumerated powers; and likewise, that the legal presumption is against the power of the city to do any particular thing. In this connection the principle of law has been laid down that such corporations "can exercise no powers but those that are conferred upon them by the act by which they are constituted, or such as are necessary to the exercise of their corporate powers, the performance of their corporate duties, and the accomplishment of the purposes of their association."[4] If it is desired to ascertain whether a city may do a specific thing, for example, to build and operate a public market, it is necessary to examine the law in order to find out whether such a power has been expressly or impliedly conferred upon the city.

Furthermore, as has been noted, not only are the powers of cities enumerated, but also such powers as they possess are strictly rather than liberally construed by the courts. The scope of municipal powers and the principle applied in their interpretation is set forth by a leading authority thus:—"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 a power is resolved by the courts against the corporation and the power is denied."[5]

[4] Spaulding v. Lowell, 23 Pickering (Mass.), 71.

[5] Dillon, "Municipal Corporations," 4th ed., Vol. I, p. 145.

In the actual adjudication of cases this rule has been modified in some jurisdictions in favor of the city when it involves the usual forms of municipal organization or one of the functions ordinarily exercised by such corporations; but when interpreting grants of an unusual nature, or those "which may result in public burdens, or, which in their exercise, touch the right to liberty or property,"[6] the principle will be strictly adhered to. An examination of the decisions will reveal how flexible is this rule, and how hazy is the distinction between the two classes of cases.

Under these conditions of enumeration and of interpretation, unless the legislature adopts the policy of general grants of power, cities must make continual application to the legislature for the grant of the new powers whose exercise the development of greater complexity in urban conditions makes necessary. For example, in the year 1916, it required a special act of the legislature amending the charter of Taunton, Mass.,[7] to authorize the establishment of a dental clinic for school children; likewise, it required legislative action to add a police captain and two sergeants to the police force of Lackawanna, N. Y.[8]

Legal Liability of Municipal Corporations. With respect to its legal liability, the city holds a position between that of the state, which is not responsible for its acts, and that of the private corporation, which is liable to the same extent as a private individual. The rules of legal liability applied to municipal corporations take their form from the fact that these corporations possess two kinds of powers,—first, those which are governmental, and second, those which are private. In the exercise of the first class the city is acting in a public capacity, is a subject of public law, and is clothed with some of the governmental attributes of sovereignty; in the exercise of the second it is acting in the capacity of a private corporate person under private law and possesses none of the immunities of government.[9]

[6] *Ibid.* I, p. 148.

[7] Mass. Acts and Resolves, 1914, p. 50.

[8] Laws of New York, 1914, p. 1624.

[9] Lloyd v. The Mayor, etc., of New York, 5 N. Y. p. 369; 55 Amer. Dec. p. 347.

Since a clear perception of the city's legal responsibilities and immunities may assist in removing the mistaken notion that the city is a mere business organization, it may be well to examine the effects of its twofold character on its liability in contract and in tort.

Liability in Contract. In performing its functions both governmental and private the city is liable on its contracts in much the same way as a private corporation. While on grounds of public policy the courts will not take jurisdiction to enforce a contract against the state, there is theoretical liability on the part of the state for contracts. The same considerations of public policy have not been held to have weight with respect to cities to the extent of relieving them from such liability. Moreover, one of the chief purposes of the incorporation of cities was that they might become subject to the private law.[10]

Liability in Tort. With respect to torts the general rule of law is that when acting in its public or governmental capacity the city is not liable, but that it is liable when acting in its corporate or private capacity. The rule of public law is that the state is not liable for the torts of its agents. The same immunity in tort is extended to municipal corporations acting in a governmental capacity. Contrary to the rule in France and Germany, under Anglo-American usage, the immunity from liability for tort is carried over by the state when it enters into private relations. This immunity, however, does not extend to the municipal corporation in its private capacity. In respect to its torts, in its private relations the city is in much the same position as a private corporation. The rules thus laid down are comparatively simple in the statement, but in the application the line between the acts which are public and those which are private in character is by no means well defined and the distinctions made are far from clear.[11]

Municipal Administration not Business but Government. It is a not uncommon remark that municipal government is, after all, not truly government, but that "the city is really a business

[10] Goodnow, "Municipal Home Rule," pp. 180–183.

[11] *Ibid.*, Chap. VII.

corporation and that its organization should be determined and its management conducted on what are called 'business principles.' '' This idea, which has gained wide currency, has arisen from a perception of the ignorance, waste and corruption so frequently displayed as the result of the injection of partisan politics and the spoils system into the city affairs. With these results have been compared the efficiency and intelligence displayed in private corporations in the management of enterprises identical with, or at least not unlike, those which the city administration is called upon to conduct. This failure to recognize the public or governmental side of city government is no less a mistake than the failure of legislatures to recognize and respect the private or corporate side.

As a public corporation the municipality's membership includes all those domiciled within its limits, but the private corporation includes only those who are pecuniarily interested. With respect to the greater share of its activities the city is exempt from liability for torts, an exemption not shared by the private corporation; the city likewise enjoys an exemption from local taxation and is given the right of eminent domain in pursuing its corporate ends, neither of which privileges is usually enjoyed by the private corporation. Moreover, if city administration is business it should be run on business principles, i.e., to make profits; but as government its objects are the common good, to provide benefits upon many of which no precise money value can be placed, and to find the most equitable method of paying for these. It has been said that "municipal corporations are organized not to make money, but to spend it." The difference between city government and other government is that it is local.

What is meant by those who would identify city government with business is that in the general financial affairs of the city as well as in cases where the city is furnishing services of a distinct money value, such should be conducted with as strict regard to economy, efficiency and integrity, and with a view to securing to the community and the individual as nearly full return for expenditures as would be the case in a well managed business concern.

Political Position of the City. The legal position of the city in the state, both in England and in America, has been demonstrated to be one of complete subordination. This does not necessarily mean that the state does not leave to the city any freedom of action in matters of local concern. This it may or may not do. As a matter of fact, as has been pointed out, in both these countries such a sphere of action has been recognized, and in the United States this has been protected from invasion from the state government by constitutional guaranties. The actual extent of that freedom of municipal action depends not so much upon constitutional guaranties, but rather upon the usage or habit of the dominant political authority in the state government, the legislature. 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 where the constitution definitely assigns to the cities a sphere of action uncontrolled by any authorities of the state government. The place which the city actually holds, irrespective of its legal status, is spoken of as its political position. This position is determined first of all by the attitude of the policy-directing power in the state, the legislature, and in the second place by the general extra-legal political situation as developed through the working of the party system. In fact much of the misuse of power over cities by the legislature has been due to the exigencies of the partisan political situation. We may take up then: first, the attitude of the legislature toward the city and the developments therefrom, and, second, the relation of political parties to the problem of municipal government in the United States.

Development of Legislative Domination. Turning attention, then, to the attitude of the legislature toward the municipalities, the development of a complete legislative domination may be traced. One result of the doctrine that municipal corporations are bodies of enumerated powers, which powers are to be strictly construed against the corporation, was, as has been said, both in England and in the United States, the necessity of continual application to the legislature for the grant of new powers made

desirable by the increasing complexity of urban conditions. The prevalence of the special charter made necessary a separate grant for each new need in each city. In the United States the principle of enacting general municipal laws, though laid down in theory, has scarcely anywhere prevailed in practice to the complete exclusion of what are virtually special acts, though the special acts are frequently disguised under the form of general laws. The legislatures, too, have been disinclined to delegate authority over municipalities to administrative officials. The practice of repeated applications to the legislatures made necessary under these circumstances has led those bodies to fail to recognize that there is a field of action on purely local matters in which the city should be left free to develop its own policy and determine the means of its execution. Instead, there has come to be no phase of municipal government, either of its organization or its functions, as to which the legislature has not felt perfectly free to legislate. In the earlier days when charters were looked upon as contracts, it was commonly true, as was said of the state of New York, 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."[12] About the middle of the century, however, the legislatures began to pass laws applicable to particular cities without securing their consent, thus abandoning the idea that charters were contracts. In this view the legislatures were sustained by the courts which held that acts regulating city government were ordinary acts of legislation susceptible to amendment at any time without the concurrence of any other authority.

This gratuitous regulation of the affairs of cities has assumed two principal forms: first, special legislation, relating to the powers, duties and responsibilities of individual cities, and, second, the appointment by the state of officers usually held to be municipal officers.

Special Legislation. By the year 1850 the flood of special enactments from the legislatures of practically all of the states had become a source of such abuses that restrictive measures were,

[12] Mayor v. Ordrenan, 12 Johnson (N. Y.), p. 122.

in some quarters, being taken to stem the stream, though in many states it continued at full tide. In 1870, in New York, of 808 acts passed by the legislature, 212 containing three-fourths of the bulk of the statutes of the year related to cities and villages. In 1890, in the same state, a legislative committee found that within the six years, 1884–1889, the legislature of the state passed 1284 acts relative to thirty cities of the state, of which number 390 affected New York City.[13] In 1890 the legislature of Maryland enacted 67 laws especially affecting Baltimore. In 1901, the Virginia legislature enacted 694 acts of which 607 were special.

Such special acts are virtually, if not formally, amendments to the charters of the cities concerned. The result was that soon even the law officers of the cities themselves were uncertain as to the powers and duties of any particular municipality. The facility with which special legislation could be obtained was taken advantage of corruptly for personal gain or partisan advantage. By this means one finds expensive public works forced upon a city against its will; revenues of a city diverted to uses outside its boundaries; offices created to furnish places for political henchmen; police who have been discharged by their superiors reinstated by law, and claims against a city which had been disallowed by the courts ordered paid by legislative enactment. Such a condition of affairs not only leads to unwise legislation, but destroys civic interest among the citizens, places undue emphasis upon politics, leads to corruption and deprives the city of self-government with respect to local affairs.

General Laws and Classification. It has already been pointed out that excessive regulation by the legislature of city affairs which amounted virtually to a denial of any proper sphere for the city as an organ of local government led to a resort to the means already developed for protecting private rights from legislative invasion, viz., that of constitutional prohibition. As early as 1851 provisions which later became common, were inserted in state constitutions prohibiting or limiting special legislation for cities. In some cases such mandates were accom-

[13] Goodnow, "Municipal Home Rule," p. 23.

panied by the direction that general laws should be passed for the organization and government of municipalities. In few of these states were these constitutional stipulations attended by great success in preventing legislation really special in character. It was at once obvious that a form of organization which was adapted to the wants of a city of ten thousand inhabitants would be quite inadequate to the needs of one of a hundred thousand, and that duties lightly borne by the latter might become a grievous burden upon the former. Consequently the courts of most of the states recognized that notwithstanding the constitutional mandate with respect to general laws, it was necessary for the legislature to classify cities and then to enact general laws applicable to the cities of a class. In many instances the legislature took advantage of this attitude of the courts to classify cities so minutely that its acts, while general in form, were just as special in their application as before. Although the supreme court of Ohio was driven by the excesses of the legislature to reverse its former decisions and declare classification unconstitutional, in most states still legislation concerning cities, though general in form, is really special in character.[15]

Another reason why constitutional provisions requiring general municipal corporations acts have not been as satisfactory as was expected and why, on that account, the legislatures, even after the constitutional prohibition of special acts affecting cities, still continued to pass what were in reality special acts, is to be found in the detailed organization and powers conferred upon cities by the legislatures in acts purporting to be general in character. The legislature had fallen into the habit of regulating the organization and powers of cities in detail prior to the adoption of the constitutional provisions alluded to, and the mere adoption of such provisions did not have the immediate effect of causing any change in legislative habits. The need of special action in the case of particular cities was as great after the adoption of these constitutional provisions as before, and the legislature was compelled to take such action, which, as has been

[15] Goodnow, "Municipal Problems," p. 40; Goodnow, "Municipal Home Rule," Chap. V.

said, was upheld by the courts. In one state, however, the legislature adopted another and, as it has proved, a wiser policy, though not as yet widely followed. In Illinois the first general municipal corporations act, that of 1872, did not attempt to regulate in detail the municipal organization, but on the contrary confined itself to very general provisions as regards both the organization and the powers of cities. As a result we find that the constitutional prohibition of special legislation had a different effect in that state from that which it at first had in the state of Ohio, and special legislation in that state with regard to cities practically ceased.

Regulated Special Legislation. The lack of success which has commonly attended the adoption of constitutional provisions attempting absolutely to prohibit special legislation as to cities, and the recognition of the desirability of such legislation in certain cases led the state of New York to attempt to solve the problem in another way when it came to adopt its constitution of 1894. The constitution then adopted does not absolutely prohibit special legislation, but divides the cities of the state into three classes according to their population, and requires that a special act, which is defined in the constitution as an act affecting less than all of the cities of one class, shall, before it becomes a law, be submitted to the authorities of the city or cities concerned. The municipal authorities have the right to disapprove it after holding a public hearing, notice of which is to be given in the newspapers. If the local authorities disapprove the act, it is again to be submitted to the legislature of the state which has the right to pass it by an ordinary majority over the veto of the local authorities. The act is then to be submitted to the governor of the state in the same way as other acts. It is difficult to arrive at a determination as to the effect of this constitutional provision. It would seem, however, that the formalities and the publicity required for the passage of special legislation with regard to cities have had the effect of preventing the enactment of the most objectionable classes of special bills. This is particularly true of the many bills affecting special cities which come up before the legislature in the last days of the session. As the local authorities have the right to withhold their approval

fifteen days, it would be possible for them, by delaying their action somewhat, in case they wish to disapprove a bill, to return it so late as to make it impossible for the legislature to repass the bill over the local veto. It is, however, true that this method of making special legislation more difficult does not prevent the passage of special acts which have become party measures. Thus, the present charter of New York was adopted by the legislature after it had been vetoed by the local authorities of at least one, and that the most important, of the consolidated cities.

The Virginia constitution of 1902 seeks to secure the benefits of special legislation while avoiding its worst evils by prescribing that before any special, private or local bill can be sent to committee, it must have been referred to a joint committee on such bills and a written statement from them secured whether the object of the bill might be accomplished under general law or by court proceedings.

Municipal Home Rule. City populations in widely scattered localities finally became convinced that the many local problems pressing for solution could be successfully met only by granting to each city wide liberty of action in purely local matters. Conviction was even more sure that legislatures by their policy of constant legislation, special in fact if not in name, were violating an inherent right of self-government. Such sentiments crystallized at last into a demand for "municipal home rule." No subject related to municipal government, save perhaps, the commission and the city-manager forms of government, has attracted more wide-spread attention than this of "municipal home rule." Though finding with different people widely different meanings, to a people deeply imbued with a love of local self-government, this phrase has had an attractive sound and has been one to conjure with. The ideas, more or less vague, finding expression in this term usually resolve themselves into a demand for one or more of the following:—

1. The right to have laws enforced locally by officers locally elected.
2. The right to determine the form of municipal organization.
3. The right to determine the scope of municipal activity.

State Appointment of City Officers. The right of localities to

be governed by officers of their own choosing has been a cherished privilege of English-speaking peoples, against any invasion of which protest has been quick and loud. About the middle of the nineteenth century, the conspicuous failure of the methods of selection of administrative officers by council appointment and by popular election furnished the occasion, often at the instigation of the exasperated citizens themselves, for the appointment of such officers by the state. In a number of instances provision was made by law for the state appointment of police commissioners, fire commissioners and other officers who were to have jurisdiction over either some particular city, or a district which embraced the territory of several adjoining municipal corporations. So violent an invasion of established privilege brought protest, and certain vicious examples like that presented in the notorious "ripper laws" of Pennsylvania have given point to these protests.

This situation soon led to the insertion in a number of constitutions of provisions which secured to the cities the right of locally selecting city officers, and forbade the creation of special commissions to control certain lines of municipal activity. These provisions, however, were worded in such a manner as merely to forbid the legislatures to provide for the central appointment of "city officers." When the courts came to determine what were "city officers" the traditional legal attitude toward municipal corporations led them to take a rather narrow view of the matter, and it was held in a number of cases that almost all of the officers who were engaged in work in a city and who had been popularly regarded as city officers were state rather than city officers and were not affected by these constitutional provisions. Indeed it may be said, generally, in the light of these decisions, that only those officers in the city government are city officers in the sense of the state constitution, who have to do with the streets and public works generally of the city. The courts have no doubt been led to these decisions partly because police, health and other locally elected officers are charged with the enforcement of state laws and by their inaction may virtually nullify laws in particular communities. It has been suggested that while preserving the right of local election a solu-

tion of this phase of the problem might be found in a broad power of removal of such officers lodged in the state administration.

Furthermore, the courts have recognized in several cases that all of the provisions which have been inserted in the constitution with the idea of protecting municipalities against the interference of the legislature are to be construed strictly and as affecting only those corporations which may be mentioned in the provisions. Thus, the courts have held that, even under constitutional provisions prohibiting special legislation with regard to cities or providing for the local selection of corporate officers, the legislature has the right to organize new corporations with a different territorial basis and with special administrative functions, such as police districts and drainage districts, and that, in case it does so, the provisions of the constitution, to which allusion has been made, do not have the effect of limiting the power of the legislature with regard to such newly created corporations.

City-Made Charters. The right of cities to determine the form of their organization has found expression in the grant to them of power to frame and adopt their own charters. This, the latest, has so far proved the most successful device for relieving municipalities from excessive legislative interference. It has been proven by experience that in spite of the mandate for general laws, so long as the policy of legislating in detail concerning cities is persisted in, and the doctrine of enumerated powers is adhered to, there will be constant resort to the legislature. The recognition, at the same time, of the advantages of proper special legislation has proved a strong argument for the granting to cities of this new right.

In certain states, as for example in Ohio, cities in making their charters are restricted to a choice between certain specified alternative forms of organization. The California constitution provides that the charter must be submitted to the legislature for approval or rejection as a whole, while in Oklahoma and Arizona the governor may veto the proposed charter. In practice these have not proved to be real restrictions on the cities.

Municipal Functions. The third right contemplated in the ex-

pression "municipal home rule," that of determining the scope of municipal activities, is of the most practical importance. The right is ordinarily included in the right to make a charter, though not necessarily so. It might exist even though the form of municipal organization were carefully prescribed by the state, though this is contrary to established practice in the United States. The right is sometimes stated as that "to make and enforce all laws and regulations in respect to municipal affairs." Save for the stipulation that this right shall be exercised subject to the constitution and general laws of the state, such a grant of power revises the fundamental doctrine of enumerated powers and makes of the city, within the sphere of municipal affairs, a body of general powers. That sphere of municipal affairs has already been shown to include substantially that which is commonly known as local improvements.

Future Relation of the City to the State. Thus far it has been seen that during the past century cities have come to have a definite field in the government system in the management of local affairs. Successive decisions of the courts have determined only in part the boundaries of this field of municipal affairs. Were society in a static instead of in an evolutionary condition this work of delimination might in time be made complete.

The fact is, however, that development is constantly going on. New conditions create new local needs, and those new needs demand new activities on the part of the municipality for their satisfaction. Hence the field of municipal affairs tends to broaden.

On the other hand, in those states where cities have become so large and numerous as to comprise a large, if not a major part of the population, the discharge of the function of satisfying a need which has always been considered purely local ceases to have a merely local interest. The state cannot look with unconcern upon the discharge of functions which affect the major or a large part of the population. It might thus happen again, as was once the case, that questions which have been regarded as local may become of general interest. When commerce and industry were young they were carried on by such a small part of the population of the state that the management of commercial and

industrial relations might well be regarded as functions affecting exclusively the individual commercial and industrial communities, i.e., the municipalities, but when in the eighteenth and nineteenth centuries commerce and industry became state-wide, the care of their relations became a matter of state concern.

In the same way the care of those interests which in the nineteenth century were regarded as municipal matters may, with the increase of urban population and the importance of the municipalities, become matters of state concern. A marked instance of this development may be seen in the conditions existing in eastern Massachusetts, where have grown up in close proximity a number of urban communities. The competition among these communities for the available sources of water-supply became so keen that the state had to step in and assume the management of what had hitherto been regarded as a municipal matter. In like manner the street railways were once of purely local interest, but with the application of electricity to their operation these lines have become parts of suburban and even of interurban systems, and consequently of state interest and properly subject to state regulation.

Whenever an activity hitherto merely of local concern takes on a wider interest the state must step in, just as it did long ago with respect to military and foreign affairs, and, in the interests of the state as a whole, claim as its own the function which down to the moment had been merely local. It may discharge this function itself, or it may make use of the city as its agent.

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 city may not be at another. What is a municipal function in one city may not be such in another. In both cases the reasons why it may or may not be recognized as municipal are that it is or is not merely local in interest. Even the geographical situation of the city sometimes may have an influence in determining the question. Thus, sewerage, in a city like New York, situated on tide water, has less general interest than in Chicago, which is compelled to discharge its sewage into one of the rivers of the state. At the same time, it will probably be a long time before everything that the city does will

become general in interest. For many years to come there will probably be many things which cities may and will do which interest them so nearly 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 of the state upon 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.

Limitation Upon Municipal Home Rule. The instability of the line of demarcation between municipal and state affairs, and the probability of the transfer of various functions from one category to the other in the no-distant future must inevitably raise many difficulties in the practical application of the doctrine of municipal home rule, and will suggest some limitations upon the broad acceptance so commonly accorded that doctrine.

It must be admitted that so far as is consistent with good administration, local government should be left to locally selected officers; that cities should be given wide liberty in determining the details of their governmental organization, and that they should be left free to work out their own destinies in a wide range of local matters, chiefly in the domain of local improvements; yet it can scarcely be doubted that the subordinate position assigned to the modern city is, under modern social conditions, the right one. The economic basis of society has so broadened as compared with former times that the city is not the proper governmental authority to exercise those powers whose exercise may materially affect the interests of the broader economic unit which has come into existence.

Furthermore, the great heterogeneity which is characteristic of the population of the modern city as compared with that of the ancient city,—a heterogeneity which is in large measure due to the wider area of commerce and the peculiar characteristics of modern urban populations which are industrial in character,—makes it more difficult for modern than for former urban populations to discharge the governmental functions which in former times were entrusted to them. Indeed, the character of modern urban populations is such that it would appear to be doubtful whether, in cases where a wide suffrage

is the rule, they are capable of discharging efficiently many of the functions the discharge of which modern urban life imperatively demands. For, whether we regard the matter either from an *a priori* or a historical point of view, urban life does not favor the development of democratic government. Urban populations in the past have too easily and generally fallen under the control of oligarchies and despots or bosses, to permit us to entertain the hope that under modern conditions their fate, if left to themselves, will be much different from what it has been in the past. The conditions of modern cities certainly favor just as much as did those of former cities the rule of the oligarchy or the despot or the boss; nor may it be safely contended that the recent successes attendant upon the introduction of new forms of governmental organization, improved methods of administration, and the revival of civic interest in many cities, will in the long run impair the soundness of this conclusion.

Municipal home rule, then, save within the somewhat restricted limits set forth in the preceding sections, has no just foundation either in history or in theory until the conditions of city populations are very different from what they are at present. Municipal home rule without limitation has no place in correct thinking. On account of the reverence in which it is held, it is often used as a slogan by those who have not the true interests of urban populations at heart, or by those who, while possessing good intentions, are not sufficiently acquainted with the conditions to which they would apply it, and do not consider the problem in the light of the history of western municipal development.

American Political Parties. The second factor in determining the political position of the American city is the extra-legal political situation which has grown up through the working of the party system. The general system of government adopted both in the states and in the United States national government is based on the theory of checks and balances. By this theory the powers of government are apportioned between three departments which are made as separate from and independent of each other as the mind of man can well devise, but unless these

departments can be co-ordinated it is difficult for the government to accomplish much. This governmental incapacity, if we may so call it, was not regarded by those responsible for the adoption of this system of government as a defect, for in the days in which the system was framed, much government was deprecated. The political philosophy of the fathers placed great reliance upon individualism.

Almost from the time this system was established, however, problems of the most momentous importance had to be solved. It had to be determined, first, whether the United States was to become a democratic or remain an aristocratic republic; second, whether it was to be a nation or a confederation; and, third, whether the labor system known as slavery, which had been inherited from the days of colonial dependence, was to be extended or abolished.

There was thus great need of a strong government. The system as originally established was not strong because so many authorities had to pull together in order to accomplish anything. But as the system of government adopted was incorporated in documents which were difficult if not impossible of amendment, the formal system of government could not well be changed. Since that system provided in no way for that co-ordination of governmental departments without which harmonious and effective action could not be ensured, means to secure the desired end had to be sought for outside of the system. This means was found in the development of well organized and disciplined political parties, which strove by every means within their power to get control of all governmental departments in the belief that in this way and in this way only they could force these departments to act in harmony, and thus secure a solution of the problems before the country.

In order to build up the parties, administrative efficiency in both the national and the state governments was sacrificed through the introduction of the partisan political maxim that "to the victors belong the spoils." Public office was given as a reward for partisan political service, and little attempt was made to secure official incumbents because of their fitness for the discharge of the administrative duties attached to the

offices which they secured. The questions asked were: does the applicant hold the proper opinions on the extension of the suffrage, on state rights and slavery; and will he, if given the office, further the policies of the party which has selected him?

Party Domination in Cities. During our early history the city was recognized by law, under the theories held during the eighteenth century as to the position of cities, as a mere agent of the state government. The distinctly local problems of city government were not so important in our early history as they are now. Cities were comparatively few and unimportant. Such interests as cities had were naturally, therefore, sacrificed in the endeavor to solve the more serious problems which the American people had to face. Hence, it is not to be regarded as remarkable that the state legislature, which completely controlled the fate of cities, and was at the same time the hotbed of partisan political strife, should have made use of its unquestionable legal power over cities in the interests of the dominant political parties.

But this is not the whole story. Parties, to be strong, must have an organization which permeates the entire political system. That organization must certainly extend through the urban population where the suffrage is general. Nowhere in the state are there so many state voters in similar areas as in the urban communities. Further, a political party formed for the purpose of putting into effect a state policy, is irresistibly tempted to busy itself with distinctly city politics, since the cities, as has been seen, are, apart from the control exercised by the legislature and the courts in their interpretation and application of the law, the uncontrolled agents of the state in the discharge of a long series of functions. The city police enforce the state laws. The city boards of education manage the state educational institutions of the cities. The city financial authorities often collect the state taxes, while the general municipal authorities commonly have charge of the elections in the cities for state officers. State political parties have thus in addition to their evident duty of influencing city populations in their capacity as state electorate, a perfectly proper and justifiable motive for endeavoring to obtain control of the ma-

chinery of the city government. If, for example, a state policy with regard to the sale of liquor in the cities is successful, its success is in large measure due to the attitude of a city and not a state police. If state elections in cities are honest it is because of the honesty of municipal and not state authorities.

State parties are liable to be tempted to interfere in city politics and to strive for the control of city government because of other motives, which, while perhaps less proper, are no less strong than the ones just enumerated. The administration of all cities and particularly large cities necessitates the existence of numerous offices and the making of many profitable contracts. If the state political party can obtain control of the city government it can arrange that city offices are given to its adherents, and can make it more probable that city contracts are awarded in such a way as to do the party the greatest good.

It may be said without danger of contradiction that little consideration was given by the people of this country to municipal affairs until after the close of the Civil War. Until then the feeling of the people generally without much dissent favored the control of city elections by national and state political parties. On the one hand, the absence of really serious municipal problems and, on the other, the necessity of solving the great problems of democratic government, national unity, and negro slavery, caused the mind of the average citizen to be so occupied with national questions as to leave little time or inclination for the consideration of what he regarded as the parochial problems of mere city government. Soon after the war, however, when our great national political problems had been solved, there began an agitation for better administrative conditions generally, which resulted in the adoption of the national civil service law of 1883, and for a curtailment of the power of the legislatures over cities through the adoption of a series of constitutional provisions attempting, but generally without great success, to protect cities against legislative action. Somewhat later, the attempt was made by a variety of legal measures to protect cities from undue control of political parties. Primary and other election laws were adopted, which subjected political parties to government control and distinguished more clearly

between municipal and state politics. This legislation was preceded if not caused by the development of the popular feeling that municipal should be separated from state and national politics—a feeling which led to the establishment of such organizations as the National Municipal League and innumerable local non-partisan organizations in cities.

Under the political conditions which have prevailed even to the present time in the United States, it has not been possible to make a clear-cut distinction between the local and state political party organizations; at the same time it has become much easier than formerly to separate municipal from state and national issues, and to consider municipal issues on their own merits apart from the influence they may have on state and national issues.

The Position of English Cities. The method of defining the relations of the city to the state employed in the United States has been spoken of as the English method, and is substantially that originally employed in England. The application of this method, however, has not had the same effect upon the actual position of the city in England that it had in the United States.

In the first place, as has been pointed out,[16] since the passage of the Municipal Corporations Act of 1835, municipal charters in England have not been as special as in the United States. This act provided for all cities a uniform system of government of a very general character, but left it to the city councils to determine, with few exceptions, just what offices should be created and how they should be filled. Supplementary to this act, Parliament passed from time to time a series of standardized "Clauses Acts" in which were included provisions relating to particular matters which were frequently the subject of special legislation. Thereafter much of the special legislation consisted in the application of these acts to particular cities. Parliament, too, by a number of standing orders adopted a procedure for special legislation which made such legislation both difficult and expensive, and offered guaranties both to the corporation and to private individuals against hasty and improper legislative action. Parliament, also, through the estab-

[16] *Supra*, p. 79.

lishment of such boards as the Local Government Board at London, created authorities of an administrative character to exercise part at least of the control which it might have exercised itself, and has quite commonly asked the advice of such boards where it has still ventured to exercise its control. In all these ways special legislation has, without any attempt at a constitutional limitation of the powers of Parliament, been greatly decreased in amount and at the same time improved in character.

Furthermore, the extra-legal conditions have been quite different in England from what they have been in the United States. The establishment of cabinet government in the early part of the nineteenth century has co-ordinated the legislative and the executive authorities, and has therefore made unnecessary the tremendous expenditure of political energy and the sacrifice of administrative efficiency, both general and local, which seemed to be necessary in order to build up political parties in the United States. Finally, the political issues before the English people have not until recently been of the supreme importance which characterized the early political issues of the United States.

English Parties and City Government. Under these extra-legal conditions which have prevailed, English political parties did not strive in the same way as in the United States, either through their influence in Parliament or at municipal elections, to control the city governments. Municipal issues separate from imperial issues could be formulated, and demand and receive attention. Municipalities had the opportunity to develop comparatively free from the disturbing influences of imperial politics. As England was, even at the beginning of the nineteenth century, highly advanced from a commercial and industrial point of view, it had, early as compared with the United States, numerous and important cities with a large urban population. Distinctly municipal needs and problems were, therefore, at an early period much more important than in the United States.

All these conditions, legal, political and economic, naturally brought about a different attitude on the part of the people generally toward the city, whose sphere of local government gradually expanded during the course of the nineteenth century;

and as a result, secured to the city an actual, if not legal, freedom to solve its own problems, which it did not secure in the United States. It was only after the presentation of the important political issue of Home Rule for Ireland—an issue which it was believed involved the integrity of the kingdom—that the political parties showed signs of desiring to get control of the city governments. Traditions of non-partisan municipal government were, however, so strong that little harm has so far resulted from this attempt to change the policy of England towards its cities. Furthermore, the facts that the suffrage was not so wide as in the United States, and that fewer officers were elected in the cities made both organization of parties easier and the work of parties less. It was not necessary, therefore, for parties to be so strong as in the United States, nor for administrative efficiency to be sacrificed in the interests of strong parties, as was the case in the United States.

The Continental Method of Articulation. The second method of adjusting the relations of the city to the state has been spoken of as the continental method. Under this method cities are authorities of general powers and as such may take any action upon local affairs not forbidden or otherwise provided for by law. Beyond such general control as is contained in the fundamental municipal corporations acts, state regulation of municipalities is secured through the state administrative system.

The Position of the French Cities. The French law of municipal corporations of 1884 expresses the continental theory in the statement that the "municipal council shall govern by its deliberations the affairs of the commune." An examination of the other provisions of the law shows that there is nowhere a statement as to what "the affairs of the commune" are. All that one finds as to the competence of cities is a series of provisions which limit the power of the city by giving to some authority of the central government the right to declare void a resolution of a city council on the ground that it is in excess of the council's powers, or which subject certain resolutions of the council to the necessity of being approved by some higher authority. In other words, cities may do anything which they have not been forbidden to do or which has not been entrusted

to some other authority. The presumption is in favor of the power of cities to act, and the work of the student who wishes to ascertain whether a city can do a given thing is directed to the ascertainment of the limitations upon their general powers to act rather than an examination of the enumerated powers granted. The only general exception to this statement which should be made is as to undertakings which are regarded by the French courts as commercial rather than governmental in character. In such instances the courts have in a number of cases refused to regard these undertakings as included within "the affairs of the commune." The courts have thus refused to regard a local railway as an "affair of the commune."

Furthermore, the charters of all cities are contained in a general act which is general, both because it applies to all cities and because it lays down general principles as to the organization and powers of cities. Cities may, within the limits of the act, provide their own organization and extend their sphere of action as they see fit. The limitations on city action contained in the law are, it is true, rather numerous, and the cities are subject to a strong central administrative control whose extent and operation will be considered later. But cities under this arrangement are considered to be not merely agents of the state government but as well organs of local government which shall, under the control of the central government of the state, determine what their sphere of action as such organs shall be.

The same need for strong national parties as was felt in the United States has not been felt in France, partly, it is believed, because of the adoption of the principles of cabinet government, and strong national parties have not as a matter of fact developed. City government has not, as in the United States, been sacrificed in the interest of national issues. But the very weakness of the national parties would appear in recent years to have had a bad influence on the administrative efficiency of both the general and the local government, including that of the cities. Municipal elections are frequently decided on national issues, and municipal affairs are in some degree, much more than in England, influenced by considerations of national politics.

The Position of the Prussian Cities. The principle that cities are authorities of general powers lies at the basis of the Prussian law of municipal corporations. The municipal law of 1808, says Leidig, "first recognized that the corporations which formed a part of the state organization had their own personality distinct and apart from that of the state, and that they should pursue their own ends independently within the sphere of competence delimited by the action of the state."[17] This competence is not, however, enumerated or defined in the law, which recognizes that the sphere of municipal activity embraces the satisfaction within the city limits of all the social needs of the city inhabitants in so far as the law has not entrusted to other authorities the discharge of functions which are theoretically municipal in character. In such a case the theoretical character of the function will not cause it to be regarded as within the sphere of municipal competence.

The Prussian Superior Administrative Court, in a decision, interpreting the Prussian law as to the sphere of activity of cities, has said that law "has fixed the limits to the activity of cities as cities. To the cities is entrusted severally the care of the moral and economic interests of their citizens, in so far as special laws have made no exceptional provision for the care of such interests. In default of such laws the limits of municipal activity, over against the state as the controlling authority, are to be found only in the city's local territorial jurisdiction, i.e., in the local character of municipal functions. Whatever the city within its boundaries and by means of its own resources can do to further its interests is not in principle at any rate outside of its jurisdiction and may be regarded as a municipal matter."[18] In another decision, the same court has said: "A municipal corporation may through the application of its resources make a subject of its activities, everything which will further its corporate welfare or the material interests and intellectual development of its members. It may of its own motion inaugurate institutions and enterprises of general utility which subserve these ends.—It has in general the care of the

[17] Leidig, "Preussisches Stadtrecht," p. 498.

[18] "Entscheidungen des Oberverwaltungsgerichts," Vol. XIII, pp. 89, 106.

moral and economic interests of its members, and may employ its resources for this purpose, but—and this is the limit the passing of which will result in the violation of the law—upon the supposition, which is always to be kept in mind, that it and its organs limit themselves to the furtherance and representation of purely local interests." [19]

As in France the sphere of municipal competence is delimited rather by the prohibitions laid on city action than by an enumeration of powers. As in France, also, the line within which the city may act is drawn rather closely by the provisions of law which subject municipal action to central administrative control.

Political parties of great strength have not for some reason developed in Germany, and, as in England, cities have been able to devise and put into execution purely municipal policies, little if at all affected by considerations of national politics.

Thus in continental Europe, as well as in England, conditions are such as not to encourage interference in city affairs by that arch political body, the legislature. Special legislation with regard to cities is almost unknown and the organization of cities may be framed with little regard to the interests of political parties and with the idea of fashioning the best possible machine for the discharge of the functions which the city must discharge.

Cities and Political Parties in Europe. By what has been said it is not intended to imply that national political parties take no part in and have no influence on municipal elections. Such a statement would be contrary to fact; for everywhere in Europe, and particularly in France, candidates for municipal office have national party affiliations which are commonly known and unquestionably influence the result of the election. But once in office public opinion generally demands of them that they discharge their duties as representatives of the city with its interests in mind.

The legal and extra-legal conditions in Europe are thus such as to encourage rather than discourage the consideration and decision of municipal issues on their merits and not as influencing national issues.

[19] "Entscheidungen des Oberverwaltungsgerichts," Vol. XIV, p. 76.

Conclusions. It has been seen, then, that the modern municipal problem may be said to have had its origin about the end of the eighteenth century, and that in making use of the municipal corporations as agencies in the solution of that problem, there has come a general recognition that the city should hold a two-fold position, first as an administrative district of the state, and second, as an organ of local government. Since the city is first of all a subordinate member of a larger state, its relations to the state must be defined. These relations are both legal and political. Two methods of determining these relations are found: the English, and the continental. Under the English method the legal position of the city is found to be that of a corporation of strictly enumerated powers, formerly always conferred by special charter, but more recently by laws which, in form at least, are general.

The real place of the city in the governmental system, however, is dependent largely on the attitude of the policy-directing power of the state. While the legislatures in the United States have recognized the existence of a field of purely local concern appropriate to the activities of municipal government, they have not clearly defined the field nor have they shown a disposition to refrain from legislative invasion therein. On the contrary, they have continually interfered in purely local affairs, often to the detriment of the locality. This has brought into prominence the question of "municipal home rule." From time to time constitutional safeguards have been thrown around cities, among which the most successful has been that of conferring upon cities the power to frame their own charters and, within broad limits, to determine the scope of the activities. There has been gradually emerging a group of activities in the field of local improvements which are coming generally to be recognized as properly belonging to the city free from external interference.

Owing to the exigencies of party politics, parties have sought and held a controlling influence in city affairs, and though it has become more easy than formerly to distinguish local from state and national issues, yet the practice of employing local officials in the administration of state laws still presents a suffi-

cient reason for maintaining the interest of state parties in local affairs and city elections.

While the legal position of the English city is similar to that of cities in the United States, and while in the earlier part of the nineteenth century the political attitude of Parliament was not dissimilar to that evinced by the American legislature, the later policy of Parliament has been such as to leave cities a much greater degree of freedom in their local affairs than is enjoyed in America. The continental method of defining the relations of the cities to the state treats the city as an authority of general powers. Cities, both in Prussia and in France, enjoy under general laws broad powers over both their organization and functions. Furthermore, there has been shown no disposition on the part of central legislative bodies to interfere unduly in local affairs but the localities have been left to exercise their broad powers under rather careful administrative supervision. Neither in England nor on the continent, save with few exceptions, have political parties found it desirable to interest themselves in municipal affairs.

Thus it has come about through extra-legal means that in the countries where cities are protected by no constitutional guaranties, but are thrown wholly on the mercies of the legislative power, as in Prussia, France, and England, they have been given, and today enjoy, a much greater degree of what may be termed "municipal home rule" than is the case in most of the states of the United States, where constitutional safeguards have been erected, and where local self-government is, in theory, highly prized.

CHAPTER VII

STATE CONTROL OVER CITIES

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Necessity of State Control. The fact that the city is discharging many functions which have been assigned to it as an agent of the state government makes it necessary that the state shall exercise some sort of a control over it. The further fact that matters which are at one time regarded as of municipal interest become, with the course of social development, of interest to the state as a whole makes it necessary that the state should always have the power of extending its control over matters which may at one time be regarded as distinctly municipal functions. Finally, the state should have a control over the financial administration of cities so far as the carrying on of that administration necessitates the exercise of the taxing and the borrowing powers.

For these reasons there must be provided in the governmental system a state control over the actions of municipalities. But while from the constitutional point of view the control which the state may exercise over municipalities should be a very broad one, from the point of view of legislative policy this control should not be exercised except when necessary. Our study of the history of municipal development shows us that the too extensive exercise of the control of the state over the municipality prevents the development in the municipality of that local life

whose existence is so requisite to the proper occupation of that great field of activity opened to the modern municipality by the social development of the nineteenth century. There is a great danger that the municipality 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.

Methods of Control. If the laws and political customs of different countries are examined it will be found that, in the exercise of the control which it is evident that the state should maintain over the municipalities within its borders, two methods have been adopted. One of these, the legislative method, originated in England where it has been to a large degree superseded by a system of administrative control, and was subsequently transplanted in America; the other, the administrative method, originated on the European continent where it universally prevails, and was adopted in England during the nineteenth century. Each is the natural outgrowth of the institutional history of the country in which it came into being.

Legislative Control. The English, or legislative, method of control starts from the idea of a completely unified and centralized state governed by an omnipotent Parliament to which all local governmental bodies are strictly subordinated and by which they are controlled. This conception of a thoroughly centralized state under legislative domination is due probably in the first place to the fact that William the Conqueror and his successors were able to prevent the development of any ideas of feudal autonomy in England, and in the second place to the subsequent development of a parliament which in course of time became the dominant power over the whole kingdom.

Alongside this intense legislative centralization there has been an equally complete acceptance of the doctrine that such powers as have been assigned to the localities shall be administered by officers locally chosen and free from the control of strangers coming in the name of the state. It is this devotion to local self-government which forms one of the bases for the popular demand for "municipal home rule." Under the American de-

velopment of this system of government it is the legislature which not only brings the city into existence but defines its powers with great particularity of enumeration. The legislative theory is that the law having defined these powers and duties, the city stands responsible to the law for their due exercise. If, however, the city fails to perform its duty or performs it in a manner prejudicial to the larger interests of the state the legislature itself has no adequate means of coercion. Since the function of the legislature is to legislate, the only method of control open to it is to enact additional legislation which shall reiterate in greater detail the duties imposed. The result is that the legislature has sought to anticipate every possible contingency which may arise and provide in advance in great detail for every situation which may arise. Beyond this the legislature cannot go, and if compliance with the legislative mandate is to be secured resort must be had to the courts.

Since the city is a corporation it is subject, with respect to its private acts, to the private law in very much the same way as is a private corporation or an individual. In its public capacity the city is subject to the control which the courts have over the acts of public officers generally. Moreover, city officers are subject to the control of the criminal law like other public officers.

It would appear, then, that this detailed legislative control, supplemented by a judicial control, is, in theory at least, quite complete. It will be found, however, that in practice serious defects present themselves.

Defects of Legislative Control. The development and evil effects of legislative domination have already been traced in the preceding chapter in an attempt to show the political position in the state which is occupied by the city.[1] These effects, however, need to be reviewed here briefly in order to indicate the failure of legislative action as a means of control. The failure to assign to the city a definite field of local action, and the consequent practice of enumeration of powers, coupled with adherence to the doctrine of strict construction of municipal powers, made necessary frequent resort to the legislature for new grants of

[1] *Supra*, p. 117.

power. The result was grave abuses of special legislation and interference in matters of purely local concern.

Not only was there enacted legislation detrimental to local welfare, but local spirit and civic interest were crushed. The legislature has failed to distinguish between the local government and the state agency of cities, and has extended its control over the one branch of activity as well as over the other. Distinctly municipal policies are frequently determined by the state legislatures. The legislature cannot be blamed for acting as it has acted because hardly any distinction has been made in the minds of the people between these two kinds of activity and because no theory of the proper sphere of municipal freedom of action has been formulated.

The exercise of the legislative control over cities has been disastrous in its effect upon the cities' interests, too, because this control has been exercised in too many instances in the interest of the state and national political parties and not in that of effective municipal government. The organization of cities has too often been changed not because the change made was expected to make the city a more efficient governmental machine, but because it favored the political party in control of the state legislature.

Besides interfering in a positive way by unwarranted imposition of burdens upon the cities, legislative control has shown itself ineffective as a restraining influence when restraint upon local action would have been salutary. This has been true often when the legislature has, on the theory that the cities ought to be the best judges of their needs, acquiesced in the demands of the cities without sufficiently considering their propriety. A marked example of this ineffectiveness is seen in the treatment of municipal indebtedness. While the cities have to go to the legislature for permission to borrow money, and the legislature has thus had the power to prevent municipal extravagance, the legislature has acceded so frequently to the requests of the cities for power to incur debt, that the control which the legislature in theory has possessed might just as well not have existed, so far as concerns any effect that it has had

on the amount of municipal indebtedness. The cities of the United States have shown themselves, although subject to this legislative control, as extravagant as the cities of Europe had shown themselves in the days when they were independent of state control over their finances.

Defects of Judicial Control. Likewise there exist practical reasons tending to check the efficiency of the courts as agencies of control supplementary to the legislature. In the first place, since promptness is an important element in the working of an effective control, the delays and technicalities which beset the progress of causes before the courts seriously diminish the usefulness of the judiciary as a means of control. The value of the courts for this purpose is impaired also by the facts that both the judges themselves and the public prosecutors are usually chosen by popular election, and that the juries are recruited from the local citizenship. Under such conditions action tending to restrain local impulses is all but hopeless when state and local interests are in conflict.

While courts can and do enforce constitutional and statutory provisions which prohibit action on the part of cities, such as the provisions limiting the debt incurring power, they can not and do not enforce with the same success many legal provisions imposing positive duties on cities and city officers. The reason is obvious. In one case the prohibition needs no further action for its enforcement. Any attempt on the part of a city to increase its debt beyond the limit fixed in the law can be declared invalid by the courts, and any bonds that may have been issued can be and are held void. But in the case of laws imposing positive duties on cities and city officers, like the laws regulating the liquor traffic, positive action on the part of the city is necessary in order that the law be enforced. Such action the courts are not always in a position to enforce. Cases in the fields of education, public sanitation and public charities and correction may be mentioned where laws imposing positive duties on cities and city officers have been persistently disobeyed. Thus in 1850, the State of New York attempted to establish a general system of local boards of health. But although the

acts passed by the legislature "were mandatory in form, there being no authority to enforce them, but few local boards were established." [2]

Constitutional Limitations on Legislative Control. Just as in order to protect the sphere of private rights from legislative intrusion, constitutional guarantees have been set up, so to avoid the undue interference of the legislature in local matters which is the inevitable accompaniment of the attempt to maintain legislative control, provisions have been inserted in state constitutions limiting legislative power with respect to cities.

These limitations, as has been already pointed out, include the prohibition of incorporation of and legislation concerning cities by special act; the positive requirement that general laws for the incorporation and government of cities be enacted, and a provision securing to the inhabitants the right to select their own officers. In some states acts containing specific subjects enumerated may not be passed in special form; elsewhere special legislation, while permitted, may be enacted only subject to the approval of the city affected or at least after such city has been given the opportunity to be heard upon the subject. The extreme attempt to curb legislative control occurs in the case of the "home rule" provisions in several constitutions whereby cities are permitted to frame and adopt their own charters.

While these constitutional provisions, particularly the last mentioned, have done much to fortify the position of the cities as against the state legislature, it cannot be claimed that these attempts to restrain legislative activity have been thoroughly successful. Their application raises two questions, the answers to which are by no means free from uncertainties and perplexities. They are, first: What are special acts? and, second: What are the local affairs which may not be regulated by special act? [3]

The courts, notwithstanding constitutional inhibitions, have under the device of classification, sometimes a subterfuge of the most transparent sort, permitted what is in reality special legislation. The attempt to limit legislative power has likewise been

[2] Fairlie, "Centralization of Administration in New York." Columbia University Studies, etc., Vol. IX, p. 543.

[3] Goodnow, "Municipal Home Rule," pp. 63–98.

largely frustrated by the courts through their decisions holding that the sphere of municipal activity protected by the constitutional prohibitions is on the whole a very narrow one.

The reasons why the courts took the attitude they did are, in the first place, the necessity for local development, which involves some amount of special legislation under a scheme of enumerated powers; and, in the second place, the fact that the legislative control was the only control over cities which existed in the American administrative system. If the courts therefore had construed the constitutional provisions so as to destroy this control there would have been great danger that the cities would become *imperia in imperio* and that thus state government would have disintegrated.

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 failure. It would seem that in order to solve this problem of state control over municipalities the attempt should be made so to organize the control that the state authorities would not be tempted to exercise it improperly, while the existence of their power should not be denied. It has been shown that the main cause of the improper extension of the control of the state over the cities in the United States is to be found in the very narrow powers which the city possesses, and that, if we may judge from both European and American experience, such improper extension of the legislative control over cities may be discouraged by the grant of general powers of government to the cities.

The mere grant to cities of general powers of government does not, however, make any provision for the control which it has been shown that the state must exercise over municipalities. Indeed, the recognition of general powers in the municipalities would be extremely dangerous to the welfare of the state as a whole if some means were not devised of assuring to the state a control over the actions of the cities. This control is on the continent and to a less degree in England an administrative control, which is the second method of providing for the necessary state control.

Administrative Control. While in England and the United States the centralization of government which has been secured is a legislative centralization, on the continent the centralization has been administrative rather than legislative. The great influence of feudal ideas on the continent prevented the development of the idea of the unity of the state, and no general representative legislative authority was established in early times. There were formed in both France and Germany local legislative bodies whose powers varied considerably at different times. The only unity in the state government was to be found in the administration with the Crown at its head. The purpose of the absolute monarchy everywhere was to realize the idea of national unity. The absolute monarchy on the continent did, it is true, endeavor with varying degrees of success to extend its centralization to matters of legislation as well as of administration, but the chief success of the Crown in its attempts at centralization was in the domain of administration. By the time of the French Revolution its success was almost complete. In France, as we have seen, the Crown had succeeded in forcing its general scheme of municipal administration on all cities in the kingdom and had, as a result of the general ordinances in which this scheme was to be found, secured a very large control over the administration of municipal affairs, appointing most of the important officers. The influence of the French Revolution was in the same direction. It secured unity to France and the great law of 1800 made the city but a part of the central administration, giving the central government the appointment of all city officers and subjecting their action to a most strict central administrative control. After the unity of the state had been secured, however, and the supremacy of the central legislative power had been acknowledged the administration began to be decentralized. This decentralization did not, however, result in the denial of the right of the central administration to control the government of the cities where the interests of the state as a whole were affected. It merely provided that, where privileges of local government could be granted with due regard to the interests of the state, this should be done.

The same is true of Prussia. The centralization of municipal

administration had the same result as in France, that is, the practical absorption of all municipal administration into central state administration. In Prussia further as in France, and largely due to the same causes, a central representative legislature played a very unimportant rôle. Indeed, it did not appear in Prussian history until about 1848. The administration with the Crown at its head attended to legislative as well as to administrative matters. Since 1808, the date of the passage of the great cities' act, the administration, as in France, has been much decentralized. Particularly is this the case within the last fifty years. But, as in France, notwithstanding the grant of large privileges of local government to the cities, the central administration has large powers of control over their actions in so far as these affect the interests of the state as a whole.

The unimportance, indeed the absence for so long a time of any central legislative authority, had of course an important influence on the position which the administration occupied in the post-revolutionary system of governmental polity. Whereas, in England, owing to the early recognition of the supremacy of the central legislative body, Parliament, administrative officers owed allegiance to that body and official duties were minutely prescribed in its mandates, on the continent, on account of the absence of any central legislature, administrative officers owed allegiance to some administrative superior whose instructions delimited their competence and prescribed their duties. When the central state legislature was finally established on the continent it naturally occupied a position very different from that of the English Parliament and the American state legislature. The fact that the detailed duties of subordinate administrative officers had from time immemorial been prescribed by royal ordinances and ministerial circulars of instructions made it perfectly natural for the legislature, so far as it interfered with the administration at all, to confine its interference merely to the laying down of general principles which were to be elaborated in detail by ordinance and instruction and to permit the administration to continue to exercise in the future as it had exercised in the past a control over the governmental affairs of the local communities. This control hereafter differed from what it

had been in the past only in that it was no longer entirely arbitrary but was to be exercised within the general limits fixed by legislation and was in some cases subject to judicial revision. But the predominant position of the administrative organization and its recognized efficiency made it not only unnecessary but also inexpedient and unnatural for the legislature to assume the same special control over administrative matters which it had been the recognized policy of the English Parliament to exercise.

To these reasons is due the fact that on the continent the central administrative control exercised over municipalities, which is the remnant now left of the idea that all administration is state administration, is merely a part of the general administrative centralization, and is exercised by the ordinary central administrative authorities, either the executive departments at the capital of the state or the general representatives which the central administration has always had and now has in the localities and which are an essential part of a centralized administrative system.

In England a centralized administrative control similar in many respects to that existing at the time on the continent was developed during the nineteenth century. It could not, however, be organized in the same way in which the continental system was organized. The original local self-government system of England could not adapt itself to the changed conditions necessitated by the existence of a central administrative control, without being completely remodeled. The central administration had no representatives in the provinces, but matters of general interest were attended to there by local officers, that is, the justices of the peace. Therefore the new legislation of Parliament, beginning with the Poor Law Amendment Act of 1834, superimposed upon the original local self-government system a new system of administration with what is now the Local Government Board at London at its head, to which have been given large powers of control over the local authorities established since 1834. When the matter of education became one in which the local communities interested themselves, a similar control over the exercise of their school powers was vested in the Privy Council.

A comparison of the existing continental and English systems of central administrative control over municipalities must therefore start from different points of view. On the continent the start must be made from a completely centralized administration. In England we must start from a completely decentralized system.

Administrative Control in Prussia. On the continent, then, at the beginning of the last century the city was merely a part of the general administration and its authorities were for the most part appointed by the central administrative authorities. The first change was made by Prussia in the act of 1808, which gave large powers to the cities. But notwithstanding the great steps which have been taken in recognizing that cities have a sphere of action which is theoretically independent of that of the central government, the old idea that cities are parts of the general system of administration still has influence on their relations with the central government. This is seen in the power possessed by the central state administration to disapprove the choice by the city councils of their most important executive officers, and to dissolve the city councils themselves. Up to 1883 the central administration had the further power of unconditionally vetoing all resolutions of the city council and the city executive. Since 1883, however, the council or the executive may appeal to the proper administrative courts from such veto. A similar power of appeal is given to the council against the exercise of the veto power over council resolutions which is possessed by the city executive. The courts which hear these appeals in first instance are not controlled altogether by officers learned in the law, but by lay members who are elected indirectly by the people. The powers of veto of the professional central administration and of the city executive, in whose formation the central administration participates through its power of approving the appointments of the council, can therefore be exercised neither arbitrarily nor altogether in the interest of the state.

Finally, the central administration may, when the local authorities neglect or refuse to do so, insert in the budget of the city, appropriations for obligatory expenses, that is expenses for

branches of administration which the law says shall be supported by the cities, and may make provision for the levy of the necessary taxes. Appeal from its decisions may be taken to the supreme administrative court, a body of a purely professional character and learned in the law. The difference in the bodies to which appeals go in these cases is due to the difference in the nature of the decisions appealed from. Those of a political nature, to be decided from the point of view of expediency, go to a popular body. Those of a legal nature go to a body learned in the law.

So far it will be noticed that with the exception of the powers of dissolving the municipal council and of approving municipal appointments, the control which has been considered, has been formed mainly with the idea of keeping the city within the bounds of its legal competence. While its legal competence is ultimately determined by judicial bodies, the powers of control of the central administration are very valuable, inasmuch as the law thus makes it expressly the business of the central administration to force the cities to obey the law. Reliance is not placed upon private interest alone, as in the United States, where practically the only way in which the courts can keep the cities or other authorities within the law is as a result of the application of private persons whose rights have been violated by the illegal acts of the authorities complained of.

Prussian Cities as Agents of the State. As has been intimated, the Prussian city is the agent of the state government in a number of cases: thus, a city of 25,000 inhabitants is exempted from the circle, a division corresponding to the American county, but generally smaller, and forms by itself an urban-circle, as it is called. All the duties devolved upon the ordinary circle then are devolved upon the cities. Thus again, the city generally attends to the administration of the schools, and to the care of the poor, and has functions to discharge relative to the administration of justice. Where it is not of large size it also has the care of the police, which term is used in its widest sense, embracing not only the preservation of the peace but also the care of the public health and the protection of the safety of the people generally, including the prevention and extinguishment of fires. In the

case of the larger cities, however, the law, recognizing that the police is not a local matter, gives the central administration the power, if it sees fit, to take this matter into its own hands by appointing the persons who are to have charge of it. Where this is done the expense of the police administration is shared between the city and the central government in the proportions provided for by law.

In all of these cases where the city is acting as agent of the central government it, as such agent, is subject to the direction and control of the higher authorities having jurisdiction over these branches of governmental activity in the country at large. The fact that these functions are attended to by the city or city officers does not change their character. The cities are sometimes given discretionary powers relative to these matters, mainly of a supplementary character, but the central administration does not lose its power to insist upon the taking of a certain minimum of action.[4]

[4] This fact comes out most clearly in the school administration, which is one of the most important matters attended to by the city. In the first place the general system of instruction is prescribed by central legislation and controlled by the central administration, although the city school board, which consists partly of members selected by the city council, attends to the details of school administration, such as managing the school property, carrying out the provisions of the school budget which is ultimately fixed by the city council, supervising the execution of the school law, and compelling school attendance.

In the second place the city council generally appoints, subject to the approval of the central administration, all teachers and, most important of all its school duties, attends to the school finances. Here, however, the council is subject to the control of the central administration, which may force it to provide the necessary school buildings and apparatus and money for compensation of teachers. In case, however, of difference of opinion between the city and the central administration as to new school buildings or repairs of old buildings, the matter is decided on appeal by the proper administrative courts, and in making provision for new teachers the supervisory authority has to bear in mind the financial conditions of the city as well as the needs of the schools.

While every city is obliged by law, which it may be forced by the central administration to obey, to support the necessary primary schools, it may undertake the maintenance of higher schools. Where this is done the city school board has charge merely of the physical conditions of the schools, the pedagogical side of their administration being under

The central control, further, is exercised over the financial administration of the city. Thus, subject to certain limitations contained for the most part in the German constitution and adopted in the interest of German unity and the Imperial finances, Prussian cities have the power to impose almost any kind of tax they see fit. They may thus impose direct and indirect taxes provided such municipal direct taxes are levied on lands, buildings, income and trade in certain ratios. Where it is desired to depart from the ratios fixed by the law the consent of the central administrative officers must be obtained. Central approval to be given by one of the popular authorities referred to is also necessary for all loans increasing the city debt.

Administrative Control in France. In France the main features of the system of central control are the same as in Prussia, although the control is not nearly so complicated because of the greater simplicity of the general French administrative system. Four principal ways may be distinguished in which this control finds expression. The central administration has, as in Prussia, the power to dissolve the municipal council and remove the executive, namely the mayor and his deputies, although its approval of their election is not necessary. In the second place, the mayor, who is regarded for a series of matters as the direct agent of the central administration in the city, acts as such agent under the direction of the central administration. The central authorities at Paris may not only suspend him and remove him from office but may themselves perform any of the duties of the mayor which he refuses to perform, and may disapprove any of the police ordinances which he issues.

The central administration may also as in Prussia force the municipality to perform the duties imposed upon it by the law, by inserting in the municipal budget appropriations for obligatory expenses in case of the refusal of the city council to act, and by making provision for the levy of the necessary taxes, and may prevent the municipality, by disapproving its actions, from

the control of the principals and of the central school authorities. Finally, it is to be noticed that the central state government in case of necessity gives aid to the cities to enable them to maintain both the higher and the lower schools. (Leidig, "Preussisches Stadtrecht," pp. 464 et seq.)

exceeding the powers granted to it by the law. The same sort of control as in Prussia is given to the central administration over the financial administration of the city.

Finally, the same principle has been adopted of allowing the cities to appeal from the decisions of the central administration disapproving resolutions of the municipal council on the ground of excess of powers. The appeal goes to the administrative courts, which in France are not however at all popular in character, but are almost a part of the professional central administration.[5] State control over cities in Italy is administrative in character and is in its general features modelled on the French system.

Such is the way in which the central administrative control over cities is organized and exercised on the continent. It is, as has been said, a part of the general administrative system and is a relic of the time when municipal administration was regarded as a part of general state administration; but, as will be shown, under it municipal corporations have a very large sphere of local action, and whether due to it or to the form of organization or to other causes, municipal government has been, particularly in Germany, very successful.

Administrative Control in England. In England the central control over cities is quite differently organized. The English municipal organization proper is a part of the old English local government system, which was quite decentralized. The only original method of central administrative control over cities is to be found in the power of the Privy Council to disapprove municipal ordinances. All other control was exercised through special legislation of which it has been shown there has been a large amount even since the passage of the general Municipal Corporations Act of 1835.

With the course of time, however, the power of the central administration over cities has been strengthened. This has come about in two ways: in the first place, as the general administrative system of the country has been more centralized the city, upon which new functions of a public character have been imposed, has been subjected to the central administrative control

[5] Law of April 5, 1884, Article 67.

in the same way as other local authorities. In the second place, the general spread of centralization has not failed to have its influence on the purely "borough" affairs, i. e. affairs from time immemorial attended to by the boroughs.

English Cities as Agents of the State. The first step in centralizing English administration was taken in the Poor Law Amendment Act of 1834, which established a central poor law commission, afterwards converted into a board, to control the actions of the local poor law authorities which were then established. The city has, it is true, never been given the charge of the poor and a municipal district bears no relation to the poor law district, the union.[6]

But the next step, taken in the public health act passed about the middle of the century and later consolidated with its amendments into the Consolidated Public Health Act of 1875, made the city an urban sanitary authority. As such urban sanitary district it has been made subject, as all sanitary districts, to a very strict control exercised by the Local Government Board established in 1871, and the successor of the old poor law and health boards. The functions discharged by a municipality as an urban sanitary district were so wide in extent and so varied in nature, being in many cases only indirectly of a sanitary nature, that it was believed that the name "urban sanitary district" was not at all indicative of the functions to which the municipal authorities attended as urban authorities. In 1894, therefore, when a considerable change was made in the local government institutions by the passage of the Local Government Act of 1894, the term "urban sanitary district" was abandoned and the term "urban district" adopted. Since the passage of that act every borough or municipal corporation is at the same time an urban district and the corporate authorities are urban district authorities. It is said that as urban district authority the borough has more functions to discharge than as borough or corporate authority.

When public schools in the American sense of the word were

[6] The recent report of the Poor Law Commission advocates the grant to the city of the care of the poor.

established in 1870 the borough was made a school district. The borough council did not become the local school authority, which took the form of a school board elected as were all other school boards. By the Education Act of 1902, however, the borough council has been made the borough school authority and acts, as do all school authorities, under the central administrative control of the Education Department. The centralization of the general administrative system of England has thus subjected to a central administrative control many functions such as the care of the public health, schools and streets, which are commonly regarded in the United States as functions of city government.

Central Control of Local Matters. In the second place, matters always attended to by the municipal boroughs have felt the influence of these centralizing tendencies. Acts of 1856 and 1888 provided for a consolidation with the county police of the police forces of all boroughs of less than ten thousand inhabitants. The act of 1856 further introduced a central control over the municipal administration of police in the larger boroughs by providing that the central government should aid all boroughs in maintaining a police force, provided a certain standard of efficiency was maintained. This is to be evidenced by the certificate of the Home Secretary granted only after an inspection of the work done by the borough.

The financial powers, particularly the borrowing powers of cities acting both as boroughs and as urban districts, have been limited in that they have frequently been subjected to the central administrative control now exercised by the Local Government Board at London.[7] But this control has been much weakened through the passage of special acts of Parliament giving permission to depart from the rule laid down in the general law, a fact which shows how much less useful is the legislative than the administrative control when looked at merely from the viewpoint of the exercise of an efficient control in the interest of the state.

While all other local corporations in England, as well as cities

[7] Arminjon, "L'Administration Locale de l'Angléterre," p. 215. Maltbie, "The English Local Government Board," *Political Science Quarterly*, Vol. XIII, p. 232.

in France, are subject to a central audit of accounts, the English borough is not, except in the case of school accounts; although it is provided that after the local audit has been made borough accounts must be filed within a month with the Local Government Board at London. Somewhat the same plan is adopted in Prussia with regard to municipal accounts generally.

The central control which had been distributed among various central authorities for each branch of administration into which the central control has been introduced was, with the exception of the control over schools, centralized in the Local Government Board at London at the time of its establishment in 1871. The Local Government Board has under it a corps of officers, inspectors, auditors, etc., who supervise the administration of the localities.

Administrative Control in the United States. The failure of legislative control in the United States has caused recourse in a number of instances to administrative control. Thus in the state of New York the administration of the civil service law by cities is subjected to the control of a state civil service commission which has the power to disapprove the rules of the municipal commissions. In a number of states the finances of the cities have been subjected to some extent to state control.[8] In a large number of states the management by cities of schools and charitable and correctional institutions and of the public health must be conducted in accordance with rules laid down by state administrative authorities, such as state boards of charities and of health, state boards of education and state superintendents of schools, who also have rights of inspection and supervision of the actions of city officers.[9] When we consider this movement in the direction of administrative centralization together with the constitutional limitations of legislative power which have been described, we can hardly fail to reach the conclusion that the state control over local corporations in the United States is being changed from a legislative into an administrative control.

Comparison of Legislative and Administrative Control. The

[8] Orth, "The Decentralization of Administration in Ohio," *Columbia University Studies*, etc., Vol. XVI, p. 470.

[9] *Infra*, Chaps. XII–XIV.

success of any system of state control over cities must be judged from two different points of view, viz., that of the city and that of the state. The control should be exercised in the interest of both the city and the state. It should be exercised in the interest of the city in that it should permit of the greatest possible local enterprise and initiative. It should be exercised in the interest of the state in that it should secure proper attention by the city to those matters which interest the state and in which the city is acting merely as the agent of the state government. A system of state control over cities which does not bear both of these things in mind and does not secure both local enterprise and efficiency in matters affecting the state as a whole must be regarded as unsuccessful. The effects of administrative control upon the local interests of the city may be seen by a somewhat detailed examination of the facts with respect to the single country, England. English municipal history presents the best field for study since here is found an example of a country which, while beginning its modern municipal development under a system of legislative control as complete as that now in operation in the United States, has within recent years built up a large administrative control which, though not impairing the legislative supremacy, in practice largely supersedes the older method.

Effects upon Municipal Activities. Perhaps no better account of the activities of British municipalities has yet been written than that of Dr. Albert Shaw in his "Municipal Government in Great Britain." In the seventh chapter of this work Dr. Shaw treats of the social activities of British towns. In it he refers to the "remarkable period of awakening and improvement in the British towns" in which we are now living. He calls attention to the fact that the larger British towns have very generally since 1870 obtained control of their water works and are now providing a copious supply of water for their inhabitants. He shows that nearly one-fifth of the aggregate of all local debts, namely $200,000,000, has been incurred in the English and Welsh towns for this purpose. Attention is also called to the fact that about the time the cities entered upon the policy of the municipal ownership of water works they began the municipalization of gas

works. In some of the cities, particularly the cities of Scotland, "the municipal authorities light the common stairs of tenement houses as well as the regular streets, and it is probably true of Edinburgh, Dundee and Aberdeen, as it certainly is of Glasgow, that the common stairs and courts of tenement houses are lighted at a greater cost for gas and wages than the public streets." The English municipalities did not during the nineteenth century confine their attention to water works and gas works, but at the present time almost all the important street railways in Great Britain are owned and operated by the municipal or other local authorities. Since 1870, further, more money has been expended by British local authorities for improvements that may be grouped under the words harbors, docks, piers, and quays, than for anything else except water works. No British town "which has not provided one or several great and elaborately appointed market houses" is considered progressive. While at the beginning of the nineteenth century "the majority of British industrial towns were practically without any parks, public gardens or recreation grounds whatsoever" and "such a thing as a municipal department for the provision and administration of public playing grounds was almost unheard of," at the present time "an entire change has come about and every town has created a system of parks and gardens." Many towns have public baths and wash houses, while most of the larger towns and many of the smaller ones have made provision for public reference and lending libraries and free reading rooms.

Most of this development of distinctively municipal functions has taken place since the year 1870. It will be remembered that the year 1871 was marked by the establishment of the present Local Government Board, which has a very strong central administrative control over all those functions which the cities are discharging as urban districts. It must, therefore, be said that from the viewpoint of municipal development and local enterprise the adoption of the principles of central administrative control, as they have been applied in England, has not been accompanied by any diminution in municipal public spirit, but has on the contrary been accompanied by a great increase in the development of the sphere of municipal activity.

We have already seen that the theory as to the competence of municipalities in Germany accords them the right to do anything permitted by their resources, which can further the local welfare of their inhabitants. A study of the activities of particular German cities will show that the German city in actual practice goes far towards living up to this theory of the sphere of municipal government. It is of course true that the assumption of a number of functions by German municipalities is facilitated by the general views which are held as to the propriety of governmental action. But whatever may be the effect of such views it is none the less true that the existence of the kind of state control over cities which has been described, that is, the central administrative control, has not had the result of limiting seriously the opportunity for municipal development. What is true of England is just as true of Germany.

Effects of Administrative Control on General Administrative Efficiency. The success of any system of state control over cities may not, however, as has been indicated, be judged entirely by the success which it has had in permitting the development of municipal enterprise. It must be judged also from the viewpoint of the state itself. The endeavor must be made to see whether the interests of the state have in any way been neglected. When we come to consider the subject in this light we find it impossible to make any comparison as to the effectiveness of the state control in the case of any of the countries to which allusion has been made, except England. For in both France and Germany the central administrative control has existed from time immemorial. In England, however, it was introduced, as has been seen, about the fourth decade of the nineteenth century. It was introduced not in the interest of the cities, that is, not in order to further municipal and local enterprise, but to insure that the various local authorities should attend efficiently to those matters in which the central state government had direct interest. The first instance of its introduction was in the Poor Law Amendment Act of 1834, and here central administrative control was adopted in order to do away with the evils which had accompanied the uncontrolled local administration of the poor law. It worked so successfully here that it was later introduced

into the public health administration, and with the gradual extension of the functions which are regarded as embraced within the general term of sanitary functions, was finally applied to most matters which are regarded at the present time as municipal in character. We are able, owing to the character of the statistics which have been kept in England, to judge of the effects which the change in the methods of control has had by comparing statistics with regard to specific matters made in years prior to the introduction of this control with those made in recent times.

Effects on Poor Law Administration. Harriet Martineau[10] says of the conditions existing prior to the adoption of the Poor Law Amendment Act of 1834: "The poor rate had become public spoil. The ignorant believed it an inexhaustible fund which belonged to them. To obtain their share the brutal bullied the administrators; . . . the idle folded their arms and waited till they got it; ignorant boys and girls married upon it; poachers, thieves and prostitutes extorted it by intimidation; county justices lavished it for popularity and guardians for convenience. This was the way the fund went; as for whence it arose—it came more and more every year out of the capital of the shopkeeper and the farmer, and the diminishing resources of the country gentleman. The shopkeeper's stock and returns dwindled as the farmer's land deteriorated and the gentleman's expenditures contracted." The same author in writing of the conditions existing after the passage of the Act says,[11] "Before two years were out [that is after 1834] wages were rising and rates were falling in the whole series of country parishes. Farmers were employing more laborers, bullying paupers were transformed into steady workingmen, . . . the rates which had risen nearly a million in their annual amount during the five years before the poor law commission was issued, sank down in the course of five years after it from being upwards of seven millions to very little above four."

The great progress which these extracts show, was due in large

[10] "History of the Peace," Vol. II, p. 324, cited in Maltbie's chapter on the "Effects of the Central Administrative Control in England," in Goodnow, "Municipal Problems," p. 111.

[11] *Ibid.*, p. 333.

part to the introduction of a central administrative control over the poor law administration. It was maintained, though of course not to the same degree, during the entire course of the nineteenth century. In 1849 the paupers per thousand of the population were 62.7 in number; in 1894 they were 26.5; in 1866 the rate per pound of ratable value for the purpose of supporting the poor was one shilling 5.4 pence; in 1893 it was 11.6 pence.[12]

Effects on Public Health Administration. Dr. Maltbie in referring to the progress which had been made in the improvement of sanitary conditions cites an article from the *Edinburgh Review*.[13] Here it is said: "Out of fifty towns visited on behalf of the commissioners, the drainage was reported as bad in forty-three, the cleansing in forty-two, the water supply in thirty-two. In Liverpool forty thousand, in Manchester fifteen thousand of the working class lived in cellars, 'dark, damp, dirty and ill-ventilated.' Nottingham contained eleven thousand houses of which eight thousand were built back to back and side by side, so that no ventilation was possible. . . . Even in Birmingham, then as now a model town, the water supply for some of the poorer districts is described as being 'as green as a leek.' The results of this state of things were clearly seen. Whilst the death rate in the country districts was 18.2 per thousand, in towns it was 26.2; in Birmingham and Leeds it was 27.2; in Bristol, 30.9; in Manchester, 33.7; in Liverpool, 34.8. . . . The average age at death in Rutland and Wiltshire was thirty-six and one-half years whilst in Leeds it was twenty-one, in Manchester, twenty, in Liverpool, seventeen." These statements are made with regard to investigations which were undertaken, one in 1843, one in 1844 and 1845.

The result of these investigations was the introduction of central administrative control in the administration of public health in 1848. It was not, however, introduced completely until 1871. Dr. Maltbie says:[14] "If we institute a comparison between present conditions and those of this early period [that is, the period prior to 1848] we shall find a marked contrast and all the

[12] Goodnow, op. cit., p. 115.

[13] Vol. CLXXIII, p. 69.

[14] Goodnow, "Municipal Problems," p. 117.

evidence points towards more rapid progress since 1871 than before. Considering the death rate, which although it is not an infallible index of sanitary conditions may be taken as a fairly accurate standard of comparison when the same country is considered and decennial periods are used, it is found that the average death rate for the eleven years 1838 to 1848 was 22.23 per mille; from 1849 to 1872, 22.34; and from 1873 to 1893, 19.99; being 19.2 for the single year 1893. Or to state it more vividly, if the death rate for 1893 had been the same as that from 1838 to 1848 there would have been upwards of ninety thousand more deaths during that year than there really were. This saving of ninety thousand persons annually has great economic importance, for the direct effect of improved sanitation has been to increase the duration of life, and this increment has come, not to the very old or to the very young, but to the middle aged at the time when personal activity is at or near its height. . . . The decrease [in the death rate] has been greater in urban than in rural districts, in spite of the fact that the former have been increasing in population much more rapidly than the latter, and therefore have been confronted with more difficult problems. The decrease of the death rate in urban districts as compared with rural districts may be due to two causes: one is that the urban districts have more generally undertaken work of sanitary improvement, the other, which may be partially responsible for the former, is that the central administrative control is greater over urban than it is over rural districts."

Effects on Police Administration. About the middle of the nineteenth century the conditions with regard to the police forces of the cities and their activity in preserving the peace were not regarded as satisfactory. The central government, however, did not feel that it was expedient to introduce the same sort of central administrative control over the administration of the police as had been introduced in the case of the administration of the poor law and the public health. The method adopted by the acts passed about the middle of the nineteenth century was for the central government to appropriate a certain amount of money to aid the various localities, particularly the cities, in the support of an efficient police force. This aid was given, how-

ever, only on a certificate of efficiency awarded after an inspection by an officer of the central government. The introduction of this central control over the police force was not, however, popular, many localities preferring to maintain their police force in their former condition rather than improve them and receive the state aid. Thus, in 1857 a hundred and twenty localities received no aid. Central control, however, became more popular, for in 1890 there was no borough which did not receive aid. These figures, as Dr. Maltbie points out, are of little value unless it is proven "that the standard of efficiency which a force was obliged to reach to receive the subsidy" was raised. This, however, has been the case, and "no locality was allowed to content itself with past achievements, but was obliged to make further progress or lose the subsidy." While in 1856 there were upon an average 1784 persons to one policeman the number had decreased in 1893 to 971; that is, although the police forces had increased 168 per cent the population had increased but 46 per cent.

Effects on School Administration. The central administrative control in England has been introduced into the school system and the general financial administration of the municipalities. Dr. Maltbie[15] says with regard to the school administration: "The most significant facts are the great increase in the per capita expenditure for each scholar, the salaries of teachers and the accommodations of schools and average attendance of pupils. One should not fail to observe that the accommodation of day schools has increased at a much more rapid rate than the population, the former rate being over two and one-quarter times the latter, and the average attendance has increased at a still more rapid pace, but is excelled by the increase in the number of teachers. These indeed are important signs, for a progressive educational system should exhibit just such tendencies."

Effects on Financial Administration. An examination of the experience of English municipalities with respect to finance, and especially with respect to municipal borrowing, under the two forms of control is of especial value since direct comparisons can be made. Here it is clearly shown that the tendency of legisla-

[15] Goodnow, "Municipal Problems," p. 128.

tures is to permit localities to incur debts to a greater extent than is proper. When, however, the exercise of the borrowing power is subjected to a central administrative control, where an examination of an impartial character is made of the conditions of the case, it is much more likely that a locality will be prevented from entering into an improvident transaction in borrowing money.

Conclusions upon this point are well stated by Dr. Maltbie thus: "Nearly every general act fixes a ratio of indebtedness which may be incurred for the purpose enumerated in the act, and this ratio limits not only the local authority but also the amount that the central authority may approve as well. Complete statistics are not to be had, but if one compares the ratable value of all England with the local indebtedness, a wide margin is found between the actual ratio and the statutory limits. Remembering that over one-half is due to local acts, where no approval of the central administrative authority has been required, one is easily convinced of the restrictive tendency of the plan. Statutory limitations have been of little value, and as between the two the central administrative control has exercised by far the greater restraining influence. The custom has been for localities to appeal to Parliament for power to do what they would not be permitted to do by the departments, or what they thought would not be approved should an application be made, with the result . . . that more indebtedness has been incurred under local acts than under sanction of the Local Government Board. The present plan of requiring these acts to be considered and reported upon by some central department is gaining ground, with the result that even the local acts are conforming more and more to the principles laid down by the department as to approval of loans and that they deal more with exceptional instances than with questions plainly within the realm of the central departments. This itself is a result brought about by the Local Government Board and is evidence that the central control is much more effective when exercised by an administrative authority than when exercised by the legislature through the passage of special legislation." [16]

[16] Goodnow, "Municipal Problems," p. 136.

Conclusions as to State Control. It appears, then, that in the exercise of the necessary degree of control which the state should exert over municipalities two methods have been made use of, the legislative and the administrative. The legislative method, particularly characteristic of the United States, the practical workings of which have been pointed out in the preceding chapter, has not only proved ineffective, but has led to positive results of an undesirable character. On the other hand a study such as is made in the present chapter of the effects of administrative control, when compared with the results obtained under the legislative method as illustrated in the United States, cannot fail to convince one that, considered from the viewpoint both of municipal development and of state interests, administrative is far preferable to legislative control.

The reasons why administrative control is to be preferred to legislative control are clear and may be summed up as follows:—

(1) In the first place, the legislature must in the nature of things be a partisan political body and the control which is exercised by the legislature over municipalities is likely on that account to be influenced by partisan political considerations. This has certainly been the case in the United States and as certainly was the case in England in the period prior to the passage of the general Municipal Corporations Act of 1835. While legislative control would seem thus inevitably to be exercised more or less because of partisan political considerations, administrative control is not necessarily subjected in the same degree to these influences. Of course in an administrative system in which partisan politics have not been distinguished as clearly as they should be from administration it is true that even the administrative control may in many instances be influenced by improper political considerations. But it is perfectly possible by a proper arrangement of the administrative system considerably to reduce the influence of political considerations. This is quite impossible in the case of a body which is as necessarily political in character as is the legislature.

(2) The second advantage which administrative control possesses over legislative control is that it is exercised ordinarily by a body

of a more or less permanent character, which can, if proper appointments are made, be a more or less expert body. In any case its very permanence causes it eventually to possess large expert knowledge.

CHAPTER VIII

THE PARTICIPATION OF THE PEOPLE IN CITY GOVERNMENT

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Control of Municipal Organization. As the first great problem of municipal government is the establishment of the proper relation between the city and the state, so the second is the form of organization which the city shall take for the most satisfactory accomplishment of the purposes of its creation. Prior to the time when the city was subjected to the control of the state the participation which should be accorded the people of the city in the city government, and the organization which the city should have, were in large measure matters of local determination. The solution which was made of these problems in particular cities was dependent upon the population conditions of those cities. As most city populations have always been commercial or industrial in character, and have always found social coöperation difficult because of the development of classes, oligarchical or despotic government has generally developed of such a character as to place the control of the city in the hands of the more powerful economic classes. In some cases where the commercial or industrial character of the city was most marked, as for example in the medieval cities dominated by merchant or craft guilds, the city organization was almost merged in the general commercial or industrial organization of the community. In these cases the guilds were so closely connected with the city organization as to be with difficulty distinguishable therefrom.

The result of the local determination of the degree to which the people of the city should participate in city government and of the form to be given to its political organization, has been thus the denial of this right of participation to all but the more powerful economic classes, and the adoption of an organization through which those classes might exploit the city in their own interests.

When the state assumed control of the city in the latter part

of the eighteenth century, the tendency of city populations to fall under the dominion of the more powerful economic classes seems to have been borne in mind by those responsible for the new legislation which regulated the relations of cities. Everywhere throughout Europe the determination of the extent to which the people of the city should in the future participate in the city government and of the organization which the city should have was made by the state for the city. With comparatively few exceptions as to unimportant details this is the law at the present day. The most important exceptions are to be found in Prussian cities which by local ordinance may, within the limits of the state law, fix the property qualifications of voters, and in those cities of the United States which under the "home rule" charter plan may frame their own charters of local government.

Municipal Suffrage a Special Problem. Although the problems of municipal suffrage and municipal organization are by the law of the present day for the most part state rather than city problems, in the sense that they are to be solved as a result of state rather than city action, they must at the same time be solved in the light of the conditions which exist in cities. The attempt should be made to solve them in such a way as to permit of the fullest satisfaction of the needs of city populations compatible with the fulfillment of the purposes of the state of which the city is a part. It must, however, always be remembered that city populations are heterogeneous in character, liable to develop powerful social classes, more disposed than other populations to criminal actions, and, while from a literary point of view better educated than other populations, have an impulsive rather than a reflective temperament. Urban populations being thus different from rural populations, the principles relative to suffrage and governmental organization which are suited to rural conditions may not *a priori* be regarded as suited to urban conditions.

These considerations should be borne in mind when we devote our attention to the first subject relating to city organization, viz., the participation of the people in city government.

Municipal Suffrage—Manhood Qualification. The participa-

tion of the people in city government, which has been distinctly extended in recent years through the widespread introduction of institutions of direct government, may be considered under the following heads:—municipal suffrage; number of elective offices, and the newer agencies of direct popular action, including the recall, the initiative and referendum, and direct nominations.

If we consider the first of these, viz., the municipal suffrage, from the standpoint of the relations of the city and the state government we find that two main views have been entertained on the subject, which have profoundly influenced the decision any particular country has made as to the qualifications of voters at city elections.

The first of these views is that every person who is by law qualified to participate in state elections should be and is qualified to participate in city elections. Such a view necessarily takes no account of the peculiar characteristics of urban populations, but bases the right to participate in the city government on the theory that general political capacity is sufficient to justify the grant to those supposedly possessing such capacity of the right to vote at city elections. This view of municipal suffrage is generally combined with the view that general political capacity is to be predicated of every male citizen of adult age who has not been deprived of civil rights. In other words, the countries which in their solution of the problem of municipal suffrage make little or no allowance for the peculiar characteristics of urban populations are the countries which have adopted more or less completely the principle of manhood suffrage. These are the states of the United States, France, and Italy.

Among these countries there is to be observed a difference with respect to the qualification of residence. In the states of the United States none but a resident of the city may vote therein. In France and Italy, on the other hand, it is conceived that a person paying taxes in a city may acquire, thereby, an interest in it which may even overshadow his interest in his place of residence. Hence it is permitted that any person paying direct taxes in a city may cast his ballot either in such city or at his

place of residence as he shall elect, but not at both places.

Some of the states of the United States also require that all voters shall be able to read and write, but such qualifications have very little effect in reducing the suffrage below a universal manhood standard.[1] In Italy where similar requirements were formerly in force they excluded a large proportion of the population from the right to vote.

Municipal Suffrage—Property Qualifications. The other view which has influenced the determination of this question of municipal suffrage is that the persons who are qualified to vote at city elections are only those who, regardless of their qualifications of general political capacity, have a stake of a more or less permanent character in the city which their vote affects. The countries which take this view of the matter are also countries which have not adopted universal manhood suffrage for state elections, but adhere more or less completely to the view that property rather than man, or as well as man, is to be represented. They therefore either grant the right to vote only to persons possessing some sort of a property qualification, evidenced by the ownership of property or the payment of taxes, or give to the man who possesses a certain amount of property a vote of greater power than that granted to a man who has less property or no property at all. Countries which belong to this class are Great Britain and Germany.

In England the municipal suffrage is conferred upon every male and unmarried female British subject of full age who, having been for the last twelve months preceding July 15 a resident of the city or within seven miles thereof, has (1) occupied jointly or severally for the whole of such period of twelve months any house or other building in the city; (2) been rated (taxed) in respect of such property for all rates (taxes) levied during the same twelve months; (3) paid, before July twentieth all rates levied up to the fifth of the January next preceding, and (4) has not within twelve months received charitable relief.

The law is interpreted so as to qualify as voters those who occupy a separate part of the house, even one room, but not those merely living in the house as a part of the family, such

[1] Hatton, "Digest of City Charters," p. 49.

as a servant or child of the occupier, and to permit a person, otherwise qualified, to vote where some other person has paid the rates. It is, as a result, a common practice for landlords to pay the rates of the smaller tenants and reimburse themselves by an increase in the rent.

In Prussia, which may be taken as being typical of Germany, the municipal franchise prior to the changes brought about by the Great War, was granted to all German male citizens twenty-four years of age, householders (i.e., those who occupied a separate room in a house), in possession of civil rights, who during a year had resided in the city, paid all taxes due from them, and had the necessary property qualification; viz., owned or occupied a house, or pursued independently a stationary trade, or paid a tax, or had an income of a certain specified amount. This property qualification varied in different cities. The three-class system of voting which has prevailed in Prussia served as a further serious and grossly unequal property restriction upon the franchise.[2]

Municipal Suffrage—Period of Residence. Both these methods of defining the qualifications for municipal suffrage are accompanied by a provision of law which requires the possession by the would-be voter of the requisite qualification, be it residence, the ownership or occupation of property or the payment of a tax, for a definite period before the vote is cast. The length of this period varies widely and has an important influence on the number and character of the persons who vote. Thus in Italy qualified voters except those qualifying by reason of paying taxes in the city must have resided in the city a year. The election lists are begun January first and completed and published on the fifteenth of March. The elections take place after the spring session of the city council, but not later than the month of July. The period of residence required of voters not tax-payers is thus actually a very long one, being nearly eighteen months.

In England the period of residence required is twelve months preceding July fifteenth. Since the election list is not made

[2] Brooks, "The Three Class System in Prussian Cities," "Municipal Affairs," Vol. II.

up until October first and the election is not held until November first, the actual period of residence is extended to more than fifteen months.

In Prussia the required year of residence must precede the preparation of the voting list in July, but as the election ordinarily took place in November following, the qualifying period was, as in England, fully fifteen months.

In France those persons otherwise qualified, and not qualified by reason of paying taxes in the city, must either have their domicile in the city or have resided therein for a period of six months before the time for making up the election lists. As the municipal elections regularly occur on the first Sunday in May and the lists are completed about February first, the actual period of residence is about nine months.

In the United States, however, the period of residence is usually a short one. Thus, in New York, for example, every citizen twenty-one years of age who has been a citizen for ninety days and an inhabitant of the state one year next preceding the election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, is entitled to vote in such election district and not elsewhere, for all officers elected by the people and upon all questions which are submitted to the vote of the people. As the date from which the period of residence is counted in the United States is usually the date of the election, the period of residence required by the constitution cannot be extended by adding to it the period intervening between the making of the election list and the date of the election. In some states the period of residence required is even shorter. Thus in Michigan by the constitution in force in 1889 persons otherwise qualified could vote after a residence in the state of three months and in the city of ten days.[3] On the other hand, in a few states the period of residence required is distinctly longer. In Louisiana the voter must have been a resident of the State for two years, and of the parish (county) one year.

Number of Municipal Voters. It is difficult to ascertain what effect is exerted on the actual number of voters by such pro-

[3] Attorney General v. Common Council, 78 Mich., p. 545.

visions as to property qualifications and residence. In England, however, it is said that from 25 to 40 per cent of the adult male population are legally not entitled to vote. The number actually voting is less than the number legally entitled to vote, owing to the fact that the poorer voters do not pay their rates or do not receive credit for so paying them where they are paid by the landlords, and thus do not get their names on the election lists.

If we compare conditions in New York and London we find that the registration list in the former contains about 16 per cent of the population; in the latter, about 12 per cent. The New York registration list would on the London basis have been in 1906 about 480,000 instead of 660,000. In other words, more than 25 per cent of the present voters in New York would be disqualified if the conditions of suffrage in New York were the same as in London. This calculation makes no allowance for the female vote, which is usually about 10 per cent of the male vote.

The classes actually prevented from voting in city elections in England by the conditions of suffrage are the confirmed pauper, semi-criminal and criminal classes, the poorer paid working men in times of industrial depression, sons living with fathers or mothers, who are rate-payers, and a number of the smaller householders. Whatever other persons are excluded, who are probably not many, the most unintelligent portion of those who would vote in this country and the great mass of the purchasable vote are without doubt prevented from voting at city elections in England.

In France, however, the number of electors, notwithstanding the long period of residence required, is a large one. Thus there are in Paris with a population of less than three millions, six hundred thousand electors. The large number is probably due to the fact that the registration is official and not personal.

In Italy as recently as 1911 the requirement of a literary qualification reduced the number of voters to about 11 per cent of the population, but by the removal of that test in 1913 the number was increased to include more than 26 per cent of the population.[4]

[4] "Statesman's Yearbook, 1917."

In Prussia the property qualification and the long term of residence, taken in connection with the three-class system of voting has had an important effect on both the number of voters and the economic classes in which the preponderance of power is located. The fundamental idea at the basis of this system is that the voters are divided into three classes, the first class consisting of the persons paying the highest taxes, who pay one-third of the taxes, the second class, of those paying the next highest taxes, who pay another third of the taxes, the third class, of the rest of the voters. Each of these classes was given equal representation upon the council.

Conclusions as to Municipal Suffrage. If we consider the actual participation of the people in municipal elections in the countries whose laws we have examined we find that the United States is the only country which has adopted the plan of giving to every state voter resident in the city, and to him alone, the right to vote at city elections. France and Italy, which in principle give the vote at city elections to all state voters resident in the city, extend the right as well to persons who have a stake in the city, though they do not reside therein. The states of the United States further, by the ordinarily short term of residence required for qualification, do not attempt to confine the vote to those state voters who are really permanently identified with the city, as do both France and Italy.

By not providing for either property or educational qualification, and by requiring merely a short term of residence, the United States city election laws thus generally bring it about that the number of voters at city elections is from eight to fifty per cent greater than elsewhere. Moreover, the fact that these laws do not accord the vote to non-resident taxpayers prevents the exercise of a possible conservative influence on city elections.

The fundamental differences between the election laws of this country and those of other countries make the problem of American city government quite a different one from what it is in any one of the other countries to which reference has been made.

Although the conditions of population in American cities are such that the voters are much more heterogeneous than they are elsewhere, or even than they once were in the United States,

our election laws give no consideration to that fact, but confer the city suffrage on vast numbers of people who cannot be said to have a permanent stake in the city, who indeed, in many cases, may not be bona fide residents of the city, and may not have sufficient political capacity, because of lack of the power to read or because of previous associations, to cast a vote intelligently. The whole problem of city suffrage in the United States would seem, if we compare it with conditions in other countries, to have been solved without due consideration of the characteristics of urban population.

This failure to give consideration to the peculiarities of urban populations is probably due partly to an adherence to that abstract theory of political equality which swept away property qualifications generally, and partly to the fact that the suffrage laws were framed at a time when cities were comparatively small and when populations were still quite homogeneous. The remarkable changes which have taken place in these respects within the last seventy-five years have, however, apart from a few of the southern states, had no effect in causing a reconsideration of the determination made so many years ago.

While the failure to consider the peculiar conditions existing in cities unquestionably makes city government in the United States difficult, the position assigned to the city in the law is such as to justify, from one point of view at any rate, the attitude which has been taken. The city, according to the law of the United States, is an important agent of the state government and as such acts independently of almost any effective state control. Under these conditions conflicts are likely to arise between the state which adopts a policy and the city which executes that policy, if by any chance that policy is not popular in the city. In such a case a city which has the uncontrolled execution of the state policy may take advantage of its powers of execution, or non-execution—for that is what its powers are where it occupies an independent position in the state government,—to neglect or refuse to enforce the state law. If for example the state whose suffrage is universal adopts a policy with regard to city sanitation or the housing of city people based on sanitary considerations, and entrusts the execution of

that policy to a city in which the electorate is composed of the landholding classes, there is great danger that the state policy will be nullified by local action. Of course the identity of state and city suffrage will not ensure harmonious relations between state and city since the economic interests of state and city are not always or even usually the same; but where state and city suffrage are the same there is less liability for such conflict between state and city than there is where state and city suffrage are different. It is therefore, from this point of view, quite right and proper that, in the United States, where cities are important state agents and are not subject to an effective state control, the suffrage for city matters should be the same as for state matters.

Number of Elective Officers. The degree in which the people participate in city government is dependent, in the second place, on the number of the officers who are elected. In this respect the states of the United States differ from most other countries. In foreign countries the only city officers of any importance who are elected are the members of the council. The sole exception to this rule is that in England the rate-payers elect in addition to the members of the council, two auditors of borough accounts and two revising assessors for elections. All the other city officers in Europe are appointed by the council or by the state government. In most of the cities of the United States, however, the people elect in addition to council members, mayors, school officers, the chief financial officers, and in many cases quite a long list of other less important officers.[5]

The provision for so many elective city officers in the United States is not, it is believed, due to an intelligent or even conscious belief that the elective method is proper for urban conditions, but rather to a general feeling that under all conditions the people may be intrusted with the choice of their officers. In most of the rural areas of the United States many of the officers were from the beginning chosen by the electors. The abuse of the appointing power, by which most of the offices in the national, state and municipal governments were originally filled,

[5] See list of elective officers in the United States, Hatton, "Digest of City Charters," p. 56.

caused the conditions of the smaller local areas to be compared to their great advantage with the conditions existing in the state and national governments. The general conclusion was reached about the year 1830 in the United States that appointment 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 under the elective system was not a happy one. The results were even worse than under the appointive system. This seems to have been almost inevitable. The cause of the abuse of the appointing power 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 in power 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, and the parties adapted themselves to the changed conditions and were able through their control over the elections to perpetuate and even aggravate the evils complained of.

It was very generally believed that the political capacity of the native American was high and that this had been amply demonstrated in the success attending the national, and perhaps in less degree, the state governments. Writers on American city government were accustomed to account for the failure of popular government in the cities by the presence therein of so many voters of foreign birth who had been admitted to participation in municipal affairs before they had familiarized themselves with our ways of thinking and acting, before, in other words, they had become assimilated. This being thought to be the cause of our failure, the municipal population, or at least the most intelligent portion thereof, were willing, as are the people in some of the southern states at the present time, where there is a large ignorant negro population, to surrender their political privileges. They hoped by the surrender to get good government, caring little if only the government proved good, what might be the method by which it was obtained.

Trial of State Centralization. The foregoing considerations led in many places, particularly in the large cities, to a more or less complete abandonment of the idea of popular government and a resort to a considerable degree of centralization under the state. It was hoped that in the state at large might be found a more enlightened opinion than had been displayed in the cities. This state control took the form of the appointment by some state authority of the heads of city administrative departments. No provision was made however for any real control by the state over these appointees when once selected. This radical departure from the accepted canons of local self-government did not become popular and the popular election of a large number of city officers continued to be the general practice throughout the United States.

Weakness of the "Long Ballot." It has become plain that an extensive use of the elective system, i.e., the "long ballot," has tended to increase rather than remove some of the most serious evils in city government; indeed it has been demonstrated that the system is absolutely inapplicable to the larger cities. The conditions existing in such large centers are quite different from those which exist in the rural districts where the elective principle had first been tried and where it had undoubtedly been successful, both in expressing the popular will and in securing reasonably efficient administration.

The differences in conditions between urban and rural areas affecting this problem are in the main three. In the first place, in the rural districts the feeling of neighborhood is strong, owing to the more permanent character of the population. The people knowing personally most of the candidates who present themselves for office are in a position to make a wise choice. In the cities, on the other hand, the feeling of neighborhood is not strong. 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 cities, further, offices are much more numerous than they are in the rural districts, and if a great number of offices are to be filled, many of which are subordinate and comparatively unimportant, even the most intelligent elector is liable to become

confused and is therefore likely to rely upon the party with which he acts in 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. In this way the control of the party over the city is rather increased than decreased by the adoption of the elective method. The popular control which it is desired to secure by its adoption is made illusory where many officials are to be elected and where the constituency is a large one.

Finally, the administration of a city is more complex than that of a rural district. The presence of a vast number of people in a small section 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 serve as a means of conveying under its surface gas, water, electricity and sewage. The care of the public health which in the rural districts is a comparatively simple matter becomes, in the city, a difficult one. In the country unobstructed light and free circulation of air may be trusted to act as preventives of most diseases, but in the city, greater care must be taken to prevent the existence of unsanitary conditions, and more energetic measures must be taken to stamp out contagious diseases because of their greater liability to spread if once allowed to get a foothold.

Not only do branches of administration for which there is some provision in the rural districts become more complicated in the cities, but also many matters which can in the country be left entirely to private initiative become in the cities the subjects of governmental action. In attending to some of these the highest amount of technical skill is required, and in attending to all of them 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 since evidences of technical skill are not calculated to secure votes. Neither is the elective method the proper one to secure administrative harmony and continuity, for the election of many

officers who are not subject to any common control produces an unconcentrated government in which harmony is almost impossible of attainment, while the short terms which are usually connected with elective office make continuity of administrative policy difficult.

The Short Ballot. The futility of reliance solely upon the elective system to secure efficient and responsible city government has been clearly demonstrated by experience. The underlying cause of the failure of the system when widely applied is the fact that it is absolutely impossible for any considerable number of voters to exercise any discrimination among candidates for a large number of offices. Since the ballot is the only instrument by which the voter may exercise discrimination in the selection of officers or control over their acts, it is essential that this instrument be made wieldy. The means taken to accomplish this has been to reduce the offices to be filled by election to so small a number and to restrict them to those of such prominence that the voter can exercise real discrimination in choice and intelligence in judgment with respect to those entrusted with authority. Under this plan the selection of minor officers and those in whom technical skill and specialized knowledge are essential is left to those elected at the polls who are in a position to exercise an intelligent choice and in whom responsibility for such choice is centralized. The federal, the commission and the manager plans of organization embody these ideas. While by no means insuring in all cases wisdom of choice or soundness of judgment as its practical application discloses, the soundness of the "short ballot" principle has been established.

The Recall. Complementary to the right of electing city officers is the right given to the voters of certain cities to remove public officials before the expiration of their terms of office. This modern adaptation of an ancient practice under the name of the recall found its American origin in Los Angeles in 1903 and has since been adopted in a large number of cities, particularly those under the commission form of government. The usual method of its operation is that whenever any group of citizens disapproves of the policy of an officer or believes that he is

inefficient or culpable, they may originate a petition setting forth the grounds of their dissatisfaction and asking that an election be held to determine whether the official in question shall be removed from office and another elected in his stead. When the prescribed number of signatures, varying in size from fifteen to thirty-five per cent of the number of votes cast for the office at the last election, is secured and the petition properly filed with a designated authority an election is called to fill the position in question. Nominations are usually made by petition but it is commonly provided that the name of the person sought to be removed shall be placed upon the ballot without petition unless he expresses a wish to the contrary. If the officer whose conduct has been unsatisfactory wins at the election his victory amounts to a vote of confidence from his constituency, otherwise he is recalled and his competitor securing the highest number of votes succeeds to the office for the unexpired term. To prevent the abuse of the recall privilege it is usually stipulated that no more than one petition shall be filed against any officer during his term of office or at least in any one year.

As an instrument of popular control the recall has been most widely adopted in cities which are under the commission form of government, where wide powers both of legislation and of administration have been vested in a small body of men. While the recall serves as a powerful deterrent and corrective agent the remedy is somewhat heroic. The danger is that by it the community is thrown back toward those conditions which the substitution of appointment for election of administrative and judicial officers was intended to overcome. Its effect may easily become that of a perpetual candidacy in which the candidates' energies are consumed in efforts to keep abreast of the fluctuations of popular fancy. While its deterrent effects both for good and for evil cannot be known, an encouraging fact is that to the present time few, if any, instances are cited of its use with mischievous results.

The Initiative and the Referendum. A fourth means by which the people may participate in the government of their own city is through those agencies of direct legislation, the initiative and the referendum. These two devices are usually, though not

necessarily, found side by side in city government, and may be considered together. Through them the citizens are provided with the means of originating or assisting in the determination of lines of municipal policy.

As applied to city government the initiative is the process by which a designated number of voters may by petition propose measures of municipal legislation and compel their consideration by the city council or by the voters at the polls.

The referendum is the process by which, either as the result of petition by a designated number of voters or by requirement of law, a legislative proposal or act may be brought before the voters for acceptance or rejection. Such proposal may have originated either in popular initiative, petition or in action of the city council.

Though logically the second step in the process of direct legislation the referendum is historically older and is more widely used than the initiative. The adoption of the referendum is a return to the method of direct legislation practiced by early Germanic peoples and later reproduced in the American colonies. In the New England town-meeting it was from the beginning and is still the practice for the voters not only to elect their local officers but also to adopt by-laws and determine what amounts of money shall, within the limits of the powers possessed by towns, be raised by taxation and spent for the various branches of town administration. From the time of the American Revolution until the present it has been to an increasing degree the custom to refer constitutions and constitutional amendments to popular vote for approval. There has likewise been a growing tendency to require state legislatures to submit to the approval of the voters certain categories of acts, particularly acts involving the borrowing of money in unusual amounts. In other cases where there has been no constitutional requirement it is the practice of the legislature to submit special acts with regard to towns and cities to the people of such locality. This has been done, for example, quite frequently in Massachusetts.

Familiarity with the principle through its use in state affairs as well as in the New England towns made it comparatively easy to extend the referendum to cities in certain specified cases.

Thus, for example, it is common to find a provision in American state constitutions prohibiting cities from contracting any debt, or pledging their faith or loaning their credit, except with the approval of the qualified voters or the tax payers within the city. In some instances this approval is required for the levy of any tax except for the necessary expenses of the city. In other instances it is only when it is proposed to contract debts above a specified maximum that the referendum is required. The restriction sometimes runs that in no single year may there be incurred, without the consent of a majority of the voters, debts greater in the aggregate than the annual revenues of the city.[6] A similar referendum is often necessary where the municipal authorities desire to acquire or alienate property for the municipality, and to determine the question whether liquor shall be sold within the municipality, or franchises to use the streets shall be granted. From the use of the referendum on specific questions or on unusual occasions the extension of its application to all ordinary measures of municipal legislation was but a step.

In cases of the referendum prescribed in a constitution of course the question of constitutionality cannot arise, but when the authority for its use is found in an act of the legislature there has been some divergence of judicial opinion as to its constitutionality particularly in the earlier times. A foremost authority on the subject has said:

"In nearly all the states of the Union the courts have considered and discussed this question, and the tendency has been distinctly favorable to this kind of legislation. . . . Unless another tendency should later set in there is then every reason for the belief that supported by the weight of authority of more than a half century the referendum regarding local matters in American communities is now a valid and constitutional part of our system of government in every one of the forty-eight states."[7]

Though the initiative is so closely related to the referendum it is a distinct and further step in direct legislation and one

[6] Oberholtzer, "The Referendum in America," p. 280.

[7] *Ibid.*, p. 321.

which has come into prominence more recently than the referendum. The idea of the initiative appears in the right of every voter in the town-meeting to propose measures of legislation, as well as in the familiar usage that certain processes of local government shall be set in motion or certain general laws shall become operative in the locality only upon petition of a certain number of the voters and a referendum to the whole electorate.

The introduction of the home-rule charter movement in Missouri in 1875 and its subsequent widespread adoption gave impetus to the use of the initiative since under that system the machinery of charter-making is set in motion upon petition of a prescribed number of voters. Since that time the initiative and the referendum have been incorporated in the laws of at least ten states, and included in the home-rule charters of many cities. Still more widespread use was accorded them by their inclusion in the commission government law by Des Moines in 1907 and in a host of city charters and laws based on the Des Moines plan. The number of votes required to initiate a project of legislation varies from five to thirty per cent of the total vote cast at the last preceding election, while for the referendum the percentage required varies in general from ten to twenty-five.

The causes which have brought about a favorable attitude toward direct legislation are, on the part of the public, a loss of confidence in elected legislative bodies both as to their ability and their honesty, together with an abounding faith in the unlimited political capacity of the individual voter; and, on the part of the legislative bodies, a willingness to shift responsibility for action back upon their constituents.

Direct legislation has had both enthusiastic advocates and vehement opponents. In its favor it is urged that the initiative and referendum are intended not as a substitute for representative government but as a stimulus by which representative government may be quickened to its work. It is believed that by securing to the citizen the opportunity of voting directly upon measures rather than men there will come to him an awakened interest in matters which otherwise would have failed to attract his attention. Thereby the process becomes of great educational

value. As to the value of the legislative product it is said that in both form and content it will compare favorably with the ordinary product of representative bodies. The processes of direct legislation are, in the last resort, a powerful engine for bringing forward and placing on the statute book legislation for the public welfare which through the operation of special and selfish interests it would be impossible to secure from representative bodies of the usual type.

The opponents, on the other hand, though admitting shortcomings in the representative system, assert that there is no assurance that measures will prove of more interest than men, and that it is unlikely that greater wisdom or diligence will be displayed in the performance of one duty than of the other. It is pointed out that instead of being a stimulus it will prove to be the reverse, since diminishing the power and responsibility of the office attracts to it less capable men. Furthermore the responsibility lifted from the representatives' shoulders will rest upon anonymous authors and become dissipated among the voters generally. While it is admitted that the average voter may reach a proper conclusion on a simple question involving broad principles of right or wrong, or of general policy, it is argued that he is quite unprepared to pass intelligently upon the great number of questions which cannot be reduced to such simple terms. It is pointed out that, in fact, a great share of the questions actually arising are of a highly technical and specialized character upon which the average voter is not at all competent to pass, and upon which a determination can properly be reached only after an intimate discussion and often only after compromise. Deductions based on the success of direct methods of legislation in town-meetings made up of a small and homogeneous body of voters with simple needs are, it is said, scarcely conclusive when applied to the heterogeneous population and complex conditions of the modern city.

The capacity of the municipal voter is perhaps put to as searching a test as any, when he is confronted with questions of financial concern. It has been observed that while the people generally exercise a restraining influence upon officers who would incur excessive debts, yet they cannot be trusted always

to recognize when the debt has reached the limit of prudence. The voters at any given time have very vague ideas of the resources of the city, its outstanding debt, the provisions made for payment or the amount of indebtedness which the city can properly carry. When approval is asked for a loan the voter inquires as to its object and if that appeals to him personally or is calculated, as he believes, to promote his own happiness he is likely to vote for it without much regard for the larger considerations of the public needs and the state of the finances. There is a tendency among certain classes to favor all loans on the theory that they will put money in circulation.

It is said also that the voter "as a rule approaches a proposition to increase the tax rate in a very different frame of mind. It is of course true that every loan means a heavier burden of taxation, if not at once, at some future time. The postponement of the evil day is, however, very seductive to the tax-payer; he will look on indifferently while bonds are issued in large sums, but it is another matter altogether when a direct proposal is made to him for an increase of the tax rate, say from one dollar to one dollar twenty-five on each hundred dollars of the assessed value of his property. No matter how good the purpose for which the additional revenues are needed, tax-payers will vigorously resist this open attempt to induce them to make over a larger portion of their substance to the state." [8]

The only other countries having an important municipal development which make provision in their legislation for anything in the nature of a referendum are England and Italy. In the former it is provided that no expense in promoting or opposing a bill in Parliament shall be incurred unless such promotion shall have the consent of the owners and rate-payers of the city. This consent is to be given at a meeting of such owners and rate-payers, summoned by the mayor, unless a demand is made at such a meeting by any owner or rate-payer that a poll shall be taken, when such consent shall be given at a poll taken at a special election held for the purpose. This provision is not apparently

[8] Oberholtzer, "The Referendum in America," p. 282. Also see articles in "Proceedings of the American Political Science Association," Vol. IV, pp. 165, 193, 198.

a very important one and resort is seldom had to it, except where a city desires to obtain special legislative authorization to take over some public utility. In Italy, by a law of 1903, no city may enter upon the field of municipal ownership and operation except after the policy has been approved by the voters of the city. In none of the countries in which the city council is a reasonably satisfactory body has any attempt been made to make large use of the referendum. The only exception to this statement is Switzerland, where urban development has not been marked.

It is perhaps not yet time to pass judgment upon this attempt to give wide application to the principles of direct legislation in city government. The experiment may fairly be said to be still on trial. In reaching a conclusion it should be remembered that the only country having an important urban development in which the experiment has been tried is the United States, and that in our cities this experiment has been in progress for but a few years. If by specifying a sufficiently high percentage of votes necessary to set their machinery in motion, a too facile use of these weapons may be avoided, it is possible that their stimulative effect on city councils may prove salutary. Under such circumstances they may become of real service in emergency without their becoming at the same time instruments of obstruction or the ready resource of persistent agitators.[9]

Non-Partisan Nominations. A final channel through which the people participate in the government of their cities is through the nomination of candidates for office. It is of course true that from an early time the people have nominally participated, through caucus and convention, in the nomination of candidates whose selection was dominated in reality by a small coterie of political leaders. The attempt in more recent times to free nominations from machine control and place them within the control of the rank and file of the voters has taken two forms: first, by introducing non-partisan nominations; and, second, by the direct primary.

The first attempt to secure non-partisan nominations for city

[9] Taylor, "Municipal Initiative, Referendum and Recall in Practice," in *National Municipal Review*, Vol. III, p. 693; Montague, "The Oregon System at Work," in *National Municipal Review*, Vol. III, p. 256.

officers was through the method, Australian in its origin, of nomination by petition. This Australian system came to be known in the United States mainly as a result of being incorporated in the English ballot act of 1872. This act, which was later applied to English city as well as Parliamentary elections, 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 an official ballot, to be distributed by state officers at state expense along the lines laid down in the English Ballot Act, arose in the United States the demand was made that English methods be considerably modified. They were modified in the first place by giving the party legal recognition. A party was recognized as an organization which had cast a certain percentage of the vote at the last election. The convention of the party making the nomination was to certify its nomination to the state ballot officers and the candidates of each party were placed on the ballot.

The ballot soon assumed two typical forms both of which departed from the English idea by including party designations. Both forms have since been modified in various particulars in different states. The first, called the Massachusetts type, seeking to weaken party influence, groups all the candidates for each office, arranging the names in each group in some predetermined manner. The voter is required to make a cross against the name of each candidate for whom he wishes to vote. The second type, emphasizing the party affiliation, is known as the party column type. Under this plan the candidates of each party are placed in a separate column at the top of which is the party name and some designating emblem. Party voting is made easy by providing that one may vote a straight party ticket by placing a single cross in a circle placed at the top of the party column for that purpose.

Non-partisanship was recognized in these American laws by provision that nominations not made by one of the regular parties might secure a place on the ballot by means of a petition. This petition was to be signed by a number of persons varying with the territorial extent of the district in which the

nomination was made. 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. A large number of signatures was believed to be necessary because under the American ballot acts, the state was to pay the expense of the ballot which in England was defrayed by the candidates. It was believed that it would not be proper in this country to impose the cost of the ballots on the candidates, and the number of signatures required was made large in order to prevent inconsiderate nominations.

The Direct Primary. Through the adoption of the direct primary the attempt is made to dispense with the party convention and to permit the members of the party to nominate candidates directly. First put in practice in Crawford county, Pennsylvania, about 1860, the idea failed to attract general attention for more than a generation. Early in the present century it began to make rapid headway and is now used in one form or another and to a greater or less extent in nearly every state. In general it provides for nomination by political parties which are recognized as such when they have cast a certain number of votes at the last election.

Direct primaries are of two kinds, closed and open. In the closed type, which is the more common, the nominations of a party may be participated in only by regular members of the party. Party membership is determined in various ways, usually by a statement by the voter, sometimes that he supported a majority of the party's candidates at the last election, sometimes that he proposes to do so at the next election. At the primary the voter is presented with a ballot containing the names of the candidates of his party only. At the open primary each voter is provided with a ballot containing the names of the candidates of all parties and he is free to participate in the nominations of any party. Under some laws a man's name must be proposed by a certain number of voters in order that he may be a candidate for office. By others any one who is eligible to the office in question may propose himself as a candidate. The vote is a secret one and the primary is conducted in a manner similar

to that of an election. The candidates receiving either the highest number of votes, or a number of votes which is both the highest and exceeds a certain percentage of the votes cast, are declared to be the candidates of the respective parties and are placed upon the official ballot at the public elections.

One of the defects of this system of direct nominations is that the votes at the primary are frequently so scattered as to cause the nomination of a candidate who has only a comparatively small minority of the votes cast. Again, where the law provides for placing on the primary election ballot the names of the candidates for nomination in alphabetical order a man whose name begins with a letter in the first part of the alphabet would appear to have a much better chance of success than one whose name appears at the end. Attempts are being made to remedy both these defects. It is proposed to provide that the voter shall indicate both his first and his second choice, and, in case no one has a majority of the first choice votes, to give weight to second choice votes. In order to take away from persons whose names begin with a letter in the first part of the alphabet the unfair advantage which they thus secure, it has been proposed to place the names of candidates on the ballot either in the order in which they have been filed, or as a result of a drawing of lots, or to change the order of the names on the ballots, placing thus A's name first on the first hundred, B's name first on the next hundred and so on.

The Non-Partisan Direct Primary. There are still those who would eliminate party nominations altogether and substitute nomination by petition. The advocates of such a system would reduce the number of signatures to the nomination petition, and would arrange the candidates in alphabetical or some other order under the office for which they were nominated and not under the party column. A grave difficulty presents itself, however, in the large number of offices to be filled by election. It is probable that the average voter would be able under this plan to vote even less intelligently than when he relies upon the party emblem to guide him in his choice. Furthermore it is desirable that officers elected at a given election should have so far as possible the same purposes in view. They should therefore ordinarily

be members of the same party, not necessarily a state party, but a city party if that is ever developed. This result can practically be secured only through a party column ballot.

The material shortening of the ballot which has accompanied the adoption of the commission form of government has given impetus to the movement for non-partisan city elections. The non-partisan direct primary was incorporated in the Des Moines commission government law and has since been given a place in many charters and laws following the Des Moines plan. Under the non-partisan primary system the nominations are made by petition, and on the primary ballot all candidates for each office are grouped together without party designations. The two names receiving the highest number of votes for each office at the primary are placed on the official ballot as candidates for the office, again without party designation. Under these favorable conditions non-partisan nominations seem to have been satisfactory, but until the number of candidates is much reduced by this or some other device, it is not likely that nomination by petition and on a non-partisan basis will become successful.

Of the direct primary, partisan or non-partisan, Professor Merriam has said: "So far as its tendencies have been made evident, the direct primary has justified neither the lamentations of its enemies nor the prophecies of its friends. It has not 'destroyed the party'; nor has it 'smashed the ring.' It has not resulted in racial and geographical discriminations nor has it automatically produced the ideal candidate. Some 'bosses' are wondering why they feared the law; and some reformers are wondering why they favored it. It appears, then, that the direct primary, like the initiative and the referendum, is still on trial, and like those other instruments of direct action may find its greatest real service, not as an assurance of better nominations, but as a means whereby, in emergency, the best laid plans of professional politicians may, in the public interest, be brought to naught." [10]

City Parties—The Citizens' Union. In spite of the inauguration of non-partisan nominations and the direct primary, it is doubtful whether it is possible to do more than to make it easier

[10] Merriam, "Primary Elections," p. 131.

for the voter to free himself from the domination of party when he is disposed to make the attempt. Further efforts to separate the management of city affairs from considerations of national and state politics must apparently be made, not through the enactment of law but through the voluntary association of individuals. There are two methods by which coöperation for purely city purposes has been secured and which are exemplified in what has been done in New York City and in Chicago. The first is through the organization of a city party which shall nominate candidates or, by fusion with one of the national parties, secure the nomination of and give support to worthy candidates. The second method is not to organize a party but to seek by education and publicity to secure the nomination of desirable candidates by existing parties and to aid in their election.[11] The first of these has received possibly its highest development in the City of New York. About the year 1890 a large number of voters became convinced that it was impossible 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 unsuccessful. Subsequent to the defeat of this municipal party the constitution of the State of New York was so changed as to separate municipal from state elections. Immediately after this change was made, attempt was made to unite the elements opposed to the dominant political party in the city. This attempt was successful and the government presided over by Mayor Strong was inducted into office. The coalition which secured the election of Mayor Strong was, however, multi-partisan rather than non-partisan.

In the election of 1897, the same forces under the name of the Citizens' Union undertook to organize a municipal party with officers and committees and acting through conventions. They were defeated at that election but have continued their organiza-

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

tion and activities to the present time. Recognizing the mistake made in 1897, the party has sought, rather than by nominating candidates of its own, wherever possible to secure its objects by fusion with the minority party. By this means their candidate was elected in 1901 but was defeated in 1903. For some years the organization's activities were confined to the less ambitious lines of endorsing or opposing candidates or sometimes nominating candidates for minor offices. It has maintained a legislative bureau at Albany which watches in the public interest measures introduced affecting the city, and observes the activities and votes on city matters of the legislative members from New York City. At the close of each session the league publishes a report giving the legislative record of each member from the city. In 1913, by fusion with the Republicans and other anti-Tammany forces the Union secured the election of Mayor Mitchel. Although the Mitchel administration has been regarded by many to have been the best which the city has ever had, at the election in 1917, owing partly to the failure of fusion plans with the Republicans, a wave of reaction brought about the complete defeat of the Union candidates.

The Citizens' Union has found that its best chance of success lies in acting in alliance with other political organizations, even where those other organizations are parts of a national or state party. Their experience has further shown that considerations of state and national partisan interest make fusion a difficult matter to accomplish. Even intelligent voters readily allow partisanship, petty prejudices or grievances, and personal interest to obscure the larger question of securing a clean and business-like administration of the city government.

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. A distinctively city political party would appear to be within the realm of practical politics only where conditions are very different from those that exist in the United States. Even in England where the city is subjected to a rather effective state control, where special legislation is comparatively rare, where the spoils system of ap-

pointment to municipal office has not been adopted, and where the only elective officer of any importance is the council member, municipal elections are conducted in large degree upon party lines, although after the election the persons elected to office are able to transact the city business on its merits without regard to the conditions of imperial politics.

The Chicago Municipal Voters League. The second method is typified by the Municipal Voters League of Chicago which was organized in 1896. The announced purpose of the league is "to secure the election of aggressively honest men to the council." After a half dozen years of activity it could be said of the organization: "The once powerful ring has been completely overthrown, but eight of its fifty-three 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 people they represent. Each year the standard is being raised. To become an alderman is an honorable ambition and young men of education and ability are aspirants for the position. A very remarkable fact is that in the organization of the council committees party affiliations have no place. This regeneration is by no means the full measure of the results achieved in these campaigns. The interest of the people in the welfare of the city has been greatly stimulated, with the necessary consequence in a large increase of the independent vote at municipal elections."[12] The results of the succeeding years of activity have not given cause to change materially the characterization of its achievements.

The methods of the league are quite different from those of the Citizens' Union. The league is not a party but rather an investigating and educating agency. It assumes that: "The real tests of aldermanic service are honesty, intelligence and effectiveness, with ability to see clearly where the public interests lie and the courage and independence to serve on the side of the public against private or special interests."[13] When

[12] Scott, "The Municipal Situation in Chicago," Proceedings of the National Municipal League, 1903, p. 148.

[13] *Ibid.*, pp. 140–156.

nominations have been made the league submits to each candidate a brief platform of perhaps a dozen sections, including what may fairly be demanded of an honest, intelligent and efficient councilman. This platform the candidate may endorse, qualify, reject or ignore, but if signed it stands as a pledge by the candidate to his constituents. The attitude of the candidate toward this platform, together with his public record, is presented in the bulletin of the league.

Of this method of operation it has been said: "To secure good men in office in the first place demands intelligent and fearless criticism, and to furnish this to the public is no light enterprise for an executive committee. It is an awesome thing coolly to print an estimate of a candidate's personality. It is not difficult to rehearse his training or point the lack of it, but to publish its mature opinion on his character and temperament imposes heavy responsibility upon a civic body. There must be honesty in the committee, of course, as well as earnestness, diligence and rare judgment. That these have not been lacking is demonstrated by the fact that though such estimates have been published with startling frankness, to the best of our information, no candidate has seen it worth his while to sue for damages in libel." [14]

In the campaign the league takes an active part by supporting or opposing individual candidates.

The organization and methods of the Municipal Voters League have been widely copied by civic leagues throughout the country. The conclusion seems to be general that the results of this form of activity are most encouraging. Whenever the leagues have taken a conservative and judicial attitude the public has displayed a disposition to rely upon their recommendations and candidates hesitate to provoke unfavorable criticism from the league.

[14] Fox, D. R., "Voters' Leagues and Their Critical Work," *National Municipal Review*, Vol. II, p. 665.

CHAPTER IX

THE CITY COUNCIL

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Original Municipal Organization. A study of the history of

municipal development shows that the important elements in the organization provided for cities have been those to be found in most governmental organizations, viz., a council or assembly and one or more magistrates. The Roman city had its *curia* and its *duumvirs,* the later Italian city, its *consiglio* and its consuls, the German city, its assembly and council of magistrates with the Burgomaster at its head, and the Anglo-American city, its council and mayor. Although this form of organization was developed as a result mainly of local action during the period when cities were striving to realize the dream of a city-state, the governments of the various states of which cities became subordinate parts, did not seriously depart from this general plan when they assumed the function theretofore discharged by the cities themselves, of determining the character of municipal organization.

Both the French law of 1800 and the Prussian law of 1808 made provision for a council and magistrates, i.e., the mayor and deputies, and the Burgomaster and the members of the *Magistrat,* while the English law of 1835 recognized in addition to the council a mayor who, though a member of that body, was in some respects distinguished from its other members. The English mayor did not, however, occupy so important a position as that accorded to the city executive by either the French or the German law. Indeed, almost all important functions of city government were vested in the council, as had been the case in most of the special city charters which were replaced by the Municipal Corporations Act of 1835. While the continental practice recognized the executive authorities of the city government as occupying an important position, it did not, however, and does not now, as will be shown, make a clear cut separation between them and the council.

The Council System. The English system of city government, which may be called council government, was adopted in the charters granted in the colonial days to cities in the United States. It is true that the first charter of New York distinguished the mayor, who was appointed by the governor of the province, from the council, whose members were elected by the city electors. At the same time the administrative powers of the mayor differed little from those possessed by the elected members

of the council. Very early, however, in the history of municipal development in the United States there was a tendency to differentiate the mayor from the council. The mayor, who as early as 1822 became elective by the people in certain cities, obtained a power, similar to that possessed by the President of the United States and the governors of the states, to veto council resolutions. Later, executive departments similar to the departments of the national government were organized, the heads of which, again like those of the national government, were to be appointed by the mayor, by and with the advice and consent of the council. By about the middle of the nineteenth century the American city had an organization which resembled very closely the general plan of organization adopted for the national government. This resemblance was too close to be altogether accidental. The student of the historical development of municipal organization in the United States can hardly fail to come to the conclusion that those responsible for municipal organization in the first half of the nineteenth century consciously and purposely adopted the form of government provided by the United States constitution as a model, believing that it offered an ideal not only for national but as well for urban government.

Experience, however, soon demonstrated that this was a mistaken view. Hardly was this supposedly ideal form of government adopted than changes began to be made in it. These changes, it is true, were unquestionably made in many instances for partisan political reasons, but at the same time it cannot be denied that the condition of American city government in the middle of the nineteenth century was not satisfactory. Whether the cause of the trouble was the unsuitability of the form of government to city conditions or the sacrifice of municipal interests to the exigencies of national and state politics, to which allusion has been made, it is difficult to say. But whatever was the cause it is certainly true that there was great dissatisfaction with the conditions of city government. The changes which were subsequently made in city organization had three marked effects. The first was to diminish the power of the council, the authority in the city government in which the people seem to have had least confi-

dence. A second effect which these changes had was to carry further the disintegration of the city government, the first step in which had been taken when the mayor had been separated from and been made independent of the council. A third effect of these changes was to take from the city and bestow upon the state the management of certain affairs, which had up to the middle of the nineteenth century been recognized as municipal rather than state affairs.

The Board System. Many of the heads of the city executive departments then in existence were made elective by the city voters. In other cases they were to be appointed by the governor of the state. This was particularly true of the police department. In many cases the authorities, whether appointed by the mayor and council, elected by the people, or appointed by the governor of the state, were organized as boards in such a way that the term of one member would expire every year or two years. It was hoped that a board would be taken out of the realm of active politics and, having in its collective capacity more or less continuity, would be able to pursue a more permanent policy than had been possible under the old form of organization. Later, appointment by the state governor and election by the city voters became less common methods of filling the position of head of a city department and were replaced by appointment by the mayor and council. It would, however, be difficult to select a city charter in the United States where some city office besides that of the mayor and members of the city council is not filled either by popular election or by appointment by the state governor.

But notwithstanding this change in the method of filling city offices the system of city government existing in the United States about 1860 was characterized by the presence of independent boards or officers holding for fixed terms generally longer than that of the mayor who appointed them and removable from office only with extreme difficulty. This system has been called the "board system" of city government. It remained in existence up to about 1880. No more typical example of it can be found than is presented by the former charter of New York adopted in 1873. Since the various boards and city officers acted

in most respects independently of both the mayor and the council, the government of the city was completely disintegrated. No one mayor appointed them all. All that one mayor could do was to fill vacancies as they occurred. The completed diffusion of responsibility and lack of harmony in the government of the city made reform imperative. Without altering the position of the council the change inaugurated took the form of giving to the mayor, through large powers of appointment and removal, the predominant position in the city government. This movement, which began about 1880, resulted in what has been known as the "mayor" or "federal" form of government. A good example of it is found in the charter of New York adopted in 1901.

Under both the board and the mayor systems of government the council sank into a position of insignificance. It was denied participation in administration since all administrative powers were assumed by the mayor and heads of administrative departments. The powers of legislation which it might otherwise have had were mostly assumed by the state legislature. That body, either by general law or by special act as the case might be, determined the municipal policies.

In New York City, which offers a typical example, just prior to 1897, the year of the adoption of the Greater New York charter, all important questions relative to the government of the city were determined by the state legislature. The city had lost practically all legislative power, that is, the power of formulating the municipal policy. When, for example, it was desired to inaugurate a system of under-ground 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 not connected with the municipal authorities. Again, when the city desired to enter into the policy of municipal ownership of the water front it was found to be impossible to do so without legislative action. 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.

In the rapid developments which have taken place in the field of city government since the closing years of the nineteenth century, the problem of the structure and powers of city councils has held a foremost place. Two distinct and opposing schools of opinion and of consequent practical development may be distinguished. The one group, including both practical men and academic writers, have directed their efforts toward the rehabilitation of the council by restoring to it many of the powers taken from it during the last half of the nineteenth century. The other group would follow the trend seen in the development of the "mayor" system to the point of abolishing the council altogether and vesting the legislative functions still preserved to the city in the administrative authorities.

In the group of those who would restore the council to a place of real power, the drift of opinion among those engaged in the practical work of charter-making is expressed in the reports of the commissions which had under revision the charter of New York City in 1897 and again in 1901. The charter commission of 1897 in its report 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 entrusted 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 re-

course 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 scrutinized, 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 having taken this long step toward making the council a real policy determining body, they were unable to break entirely with tradition. Says the commission:—"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 wider 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 apply to the state legislature, as they had applied 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 (page 4), "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 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 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 the number of houses of which it was composed from two to one. The draft as originally proposed by the Charter Revision Commission at the same time increased considerably the ordinance power of the board of aldermen. The legislature, reluctant to surrender to any degree its political domination of the city, did not, however, approve this proposal and reduced the powers of the board of aldermen in this respect almost to what they were before. The charter for New York drafted in 1909, but not adopted by the legislature, also proposed to establish a local legislative body, but its powers were so small that it would not probably, if the charter had been adopted, have realized the wishes of the commission.

The tendency revealed in the words of the successive charter commissions in New York City was in harmony with, and was without doubt strongly influenced by, the ideas of theoretical writers on municipal government. Bryce, in his *American Commonwealth,* was perhaps the first to question the wisdom of the movement towards the destruction of the council. Dr. Albert Shaw's books on municipal government in Great Britain and continental Europe took even more positive grounds. Since the publication of these works a majority of the books appearing 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 that of Dorman B. Eaton in his "Government of Municipalities." Few of the theoretical writers 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. A marked exception to this rule is Dr. E. D. Durand, who 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.[1]

Arguments for Council Idea:—It is Representative. The question of the position of the city council in the government has ceased, then, to be merely an academic question and has become one of practical importance. For this reason, and particularly since there has arisen an active movement ably supported in the opposite direction, it will be well to consider the main arguments which have been advanced 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 to be 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 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 body for the exercise of deliberative authority whether in the nation, the state or the city; that a similar line of reasoning goes to show that the action of a body is more likely to be honest and upright than that of an individual; that another important consideration in favor of entrusting discretionary authority to a body rather than an individual is that thereby greater continuity is secured; and that, finally, a body is to be preferred to a single individual because it is more apt truly to represent the people.

[1] Durand, E. D., "Council versus Mayor," *Political Science Quarterly*, Vol. XV (1900), p. 692.

—**Municipal Home Rule.** The second argument which has been advanced in favor of the rehabilitation of the council is that its existence is necessary in order that a reasonable municipal home rule may be secured. In the latter years of the last century certain cities in at least four states secured the right to make and adopt their own charters. This right carried with it the power, not only to decide upon the form of municipal government, but to undertake at will any form of local governmental activity in which the city might desire to engage, so long as it was not contrary to the constitution and general laws of the state. This treatment of municipal powers constituted a reversal of the general rule that the municipal corporation is a body of strictly enumerated powers.

This development seems not to have attracted widespread attention for some time, but during the early years of the new century its possibilities as a means of escape from legislative domination either by the mischievous method of special legislation or by the leveling process of uniform general laws were perceived. The home-rule charter movement thereupon gained ground rapidly. The champions of a rejuvenated council saw the potentialities of this movement. They reasoned that if cities were to have a free hand in the determination of municipal policies and in carrying them out when determined upon, strictly legislative functions must be entrusted to a real deliberative body. It was believed that so long as modern American ideas of government are held, such broad powers of a deliberative character would never be deliberately and for long entrusted to administrative officers or boards who do not owe their election to the people, or to a body which, even if elected, is so small as not to be fairly representative of the citizenship. The wide adoption of the home-rule charter plan seemed, to these persons, destined to carry with it the rehabilitation of the city council as a real deliberative and policy-forming body. If, however, 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, then, the city council, the less important will be the legislature in the determination of the policy of the city.

—Exclusion of Politics. The third argument which has been 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-partisan body; a mayor never can be. He says, "Save in very rare cases of a non-partisan 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-partisan 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-partisan 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-partisan government in cities—between government by party opinions through partisan officers, and government by public opinion through non-partisan officers." [2]

The other form which this argument takes is that 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 a policy once determined upon.[3] If these functions are not clearly distinguished it is difficult if not impos-

[2] Eaton, "Government of Municipalities," p. 252.

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

sible 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 influence in the appointment to such technical positions, they are not filled by competent men.

The almost universal result in cases where the council has been reduced to a position of unimportance is exemplified in New York and Brooklyn under their charters before 1897. In those cities the mayor and executive officers, acting either separately or together, 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 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 issues on which he himself was elected and stood, although he was given no continuing power of removal.

This destruction of permanence in office seemed to be 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 be administrative became political in character.

Rise of Commission Government. While theoretical writers were discussing the preservation of the city council and charter-makers were seeking to restore it to vigorous life, a group of men of affairs, drawing on their business experience, were inaugurating a plan of government embodying the opposite principle. This plan of organization, which originated in Galveston, Texas, as an emergency measure after the great inundation of 1900, has come to be known as the "commission plan" of city government. Though it originated quite apart from all political theories, the new plan carried forward the ideas of the group who would minimize the council and magnify the work of the administration. The new plan at once attracted much attention but found no imitators, save Houston, Texas, in 1905, until 1907. In that year Des Moines, Iowa, adopted the system incorporating therewith the initiative, the referendum, the recall, non-partisan nominations and the merit system of appointment. The plan at once gained popularity and, in substantially the Des Moines form, has been very widely adopted under general laws and special acts as well as in home-rule charters.

The essence of the new plan of government is that, departing from conventional municipal forms, it eliminates the council altogether and vests all power both legislative and administrative in an administrative commission usually of five persons elected on a general ticket. In the smaller cities the number of commissioners is sometimes reduced to three.

The commission acting in its legislative capacity enacts all ordinances and votes all appropriations. It is likewise the responsible head of the administration. It selects its own chairman who, although he is sometimes called "mayor," as such has no veto power, nor any administrative authority beyond that of his fellow commissioners. All minor city officers are appointed by the commission as a whole or by individual commissioners, so that the voters are called upon to elect no officers other than the commissioners. The commissioners are severally the heads of the departments into which the administrative services of the city are

grouped, and each is responsible to the commission as a whole for the work of his department.

The commission plan returns to the original form of city government in the United States in that it unites in one authority the legislative and administrative functions, but with the important difference that whereas the single authority was formerly legislative in character, it is under the new plan administrative. Just as under the earlier plan the members of the council acting together voted appropriations and made contracts for city work, and then as members of various committees supervised the administration of the undertaking, so now again the commission provides the funds and the individual commissioners thereupon direct the disbursement of these funds. Thus is abandoned the principle of the separation of powers which was first applied to city government in the United States, not because it was believed to be peculiarly adapted to urban conditions, but because the principle was thought to be an axiom of political science applicable to all forms of government.

Criticism of Commission Government. In the endless series of experiments in municipal organization no development has evoked such enthusiastic praise or such fierce denunciation as the commission plan. Although its administrative rather than its legislative aspects have more especially attracted attention and given rise to discussion, it is necessary to envisage both in seeking to arrive at any just conclusion as to its merits as a whole. The arguments for and against the system are found to be somewhat is follows:

In its favor it is said:—First: There are secured certain advantages which result from concentration of authority and responsibility. Chief among them is harmony of action. This is substituted for the opposition of interests and the deadlocks which arise under the mayor-council or any system based on the principle of checks and balances. Concentration of authority removes circumlocution and delay, and makes way for the promptness and directness of action characteristic of successful business administration. On account of the centralization effected it is possible to locate responsibility for faults of commission and of omission to a degree hitherto impossible.

Second: The arguments based on the general-ticket method of electing city councils apply to the commission plan, viz., that the evils of ward politics, the gerrymander and the log-rolling among small interests are done away with, and that the persons elected to be commissioners will be of such reputation and character as to command city-wide support and will be capable of viewing civic policy in its largest aspects.

Third: Since the people choose only the commissioners the advantages of the short ballot are secured. By this means administrative offices involving professional and technical qualifications will be filled as the result of appointment and consequently with greater discrimination than is possible at the polls. In a considerable proportion of the commission-governed cities the commission is a continuing body, only a portion of its membership being renewed in any one year. The electorate is thus called upon to select not more than one or two persons at an election. The concentration of attention on so small a number of candidates makes a real choice possible.

Fourth: Granting the imperfections of the system, still the improvements wrought under it are, it is claimed, so great when compared with the corruption and inefficiency common under the older plans that few cities having once tried the new seriously consider a return to the old form.

Critics of the commission system assert:—First, That in character and ability the commissioners chosen have not been superior to those holding higher offices under the older forms of government. A large number of those elected as commissioners, it is pointed out, had previously held office under the old system and it is not a safe assertion that those who had not were superior to their predecessors in official positions.

Second: That while simplicity of structure and directness of action have made easier the introduction of business-like administration they have not given assurance that such a result will actually follow. An investigator has said: "With some notable exceptions, the commission government cities studied show little administrative progress. Unless the governments that preceded them were wholly barren of method and utterly incompetent, the administrative changes as yet wrought by commission govern-

ment are not, for the most part, especially noteworthy."[4] It is asserted that in the administration of problems involving the employment and control of men as well as with the purchase, care and use of materials, problems which test real business efficiency, commission government has shown little improvement over achievement under other forms of government.

Third: It is a mistake to unite in one authority both the appropriating and the spending of funds. It is admitted, however, that this criticism holds equally against any system which combines all powers of government in one body, and that any such theoretical objection can, in view of American municipal experience under a separation of powers, carry but little weight.

Fourth: It is less truly representative than the mayor-council system. The fact that the commission is formed under circumstances where administrative considerations are kept to the front rather than considerations of popular opinion should not be lost sight of. It has been observed that under American ideas of government, policy forming must be done by bodies somewhat widely representative in character. If perchance such representative bodies are endowed with administrative powers no principle of popular government is violated. The worst that may be said is that efficiency is sacrificed. If, on the other hand, a small administrative body designed primarily to secure efficiency in action is given policy-forming powers, government thereby becomes less truly representative. American ideals demand that efficiency yield to popular control. Furthermore, if the representative principle is to be violated to this extent for the sake of concentration of authority and responsibility, then the logic of the situation would demand that the concentration be carried to the point of creating a single administrative head rather than a plural executive of five.

Fifth: It is charged that those in authority under the commission system have failed to catch any new vision of social service, and that they have developed no wider constructive plans for the promotion of the moral, sanitary, economic or social welfare of the community than did the representatives of the older systems.

[4] Bruère, "The New City Government," p. 185.

Conclusions as to Commission Government. The commission government movement is, it should be remembered, a charter movement and not a program of social reform. Hence its contribution to municipal government is primarily through the development of an organization which may produce greater efficiency in government, and only secondarily through the advancement of the general welfare of the community. Likewise, in estimating its value from the viewpoint of governmental organization, the merits of the system in its essential elements should be distinguished from those of certain non-essential features which, since Des Moines set the example, have commonly been associated with the plan, viz., the initiative, referendum, recall, nonpartisan elections and the merit system of appointment. Commission government may exist without any of these and they may be employed quite as readily with other forms of government.[5]

As a method of governmental organization it achieves a new concentration of authority and responsibility and thereby simplicity of method and directness of action, i.e., a more efficient governmental machine. It offers, therefore, an opportunity rather than an assurance. Since it is not, from the legislative point of view broadly representative, it must, in turn, yield precedence to any system which combines with simplicity, directness and efficiency, a more truly representative method of policy determination. The criticism, too, is well founded that on the administrative side the commission plan fails to carry to its logical conclusion the process of administrative centralization which would be accomplished by setting up a single head rather than a plural executive.

Though the short-ballot principle in the commission plan has apparently not produced an entire change in the character of the personnel, it is probably true that those persons elected as commissioners were among the best of the former office-holders. The appointees are, it would appear, upon the whole superior to those holding similar positions under the old system.

The success of the commission plan when judged by service rendered to the community under its operation has been sum-

[5] Bates, "Forms of City Government," Indiana Bureau of Legislative Information, Bulletin No. 5, p. 15.

marized by a sympathetic investigator: "The introduction of the commission form has resulted in a marked increase in efficiency in municipal finance, in the care of streets, including paving and lighting, has advanced the administration of police and health departments, though to a less degree than finance and engineering, and has brought about a more satisfactory operation of municipal utilities and regulation of public service corporations than prevailed under the aldermanic plan."[6] The observations of others bear out the conclusions that the most marked achievements under the plan have been in the direction of public improvements rather than in matters of public morals, health or social welfare. While in the larger aspects of finance there has been improvement, in the technique of business administration the advance has been small. A review of the whole movement leads to the conclusion that quite as important as any gain due to intrinsic merits of the plan has been the awakening of a civic spirit. This spirit has, for the time at least, inspired in officials a new conception of their office and in the citizens a new sense of personal relation to the city and its government.

"The chief danger involved in the commission government movement is that, once citizens have secured the adoption of the plan, they will rely upon the plan and not upon citizen interest and insistence for furthering governmental progress. The commission movement is not a continuing effort to promote efficient government but a single peremptory re-ordering of the governmental machine with the expectation that it will work more satisfactorily in consequence. Commission government associations stop working when commission government is attained."[7]

"Citizens have yet to learn that commission government will in the long run be no better than any other government, unless it adopts a constructive social policy and introduces methods of scientific business management."[8]

The City Manager. The defect of the commission plan in

[6] Bruère, "The New City Government," p. 84, quoting conclusions of E. S. Bradford.

[7] Bruère, "The New City Government," p. 96.

[8] *Ibid.*

that it impairs the representative character of the body vested with policy-determining powers has not as yet impressed itself upon the public because the prevailing policy of the state legislatures has left little of a legislative character for the council or commission to do. The tendency toward the emancipation of city councils through the grant to the cities of charter-making powers is likely at no distant day to call attention to this matter. Meantime the weakness of the plan in that it sets up a plural administrative head has aroused criticism both from the theorists and from those who have been influenced solely by the results of its practical operation. Of this defect it has been said: "Theoretically it is true the commission as a whole is responsible for the administrative as well as the legislative side, but in popular imagination and in actual practice each commissioner is an independent administrative head and his is the real responsibility for the effectiveness of his department. Manifestly this makes a five-headed executive for the city as a whole and one would expect the inconveniences that inevitably result from a diffusion of executive power to make themselves felt under such an arrangement."[9]

To provide a remedy there has been developed the city manager plan which found its first application in Sumter, S. C., in 1912 and which has since been rather widely adopted. Under this system the commission retains all its legislative powers and its control over the administrative service, but the actual administration of affairs is delegated to a new official called the city manager appointed by and responsible to the commission. In some of the charters embodying the new feature the non-technical officers, such as judge, clerk, attorney, auditor and civil service commissioners, are still appointed by the commission. The manager has under these charters the appointment and direction of the engineering and industrial services only. Elsewhere the whole official service is appointed and controlled by the city manager.

Although the position of city manager is primarily an administrative device its introduction carries with it possibilities of a

[9] James, "What is the City Manager Plan?" Univ. of Texas, Bulletin No. 6, Municipal Research Series.

legislative character deserving of mention. Thus far the new form is commonly spoken of as the "commission-manager" form and in nearly all cases the manager feature has been employed in connection with a commission. This, however, is by no means essential. The two fundamental purposes of the commission form are to centralize administration and at the same time to concentrate legislative and administrative authority and responsibility. By the introduction of the manager the first of these is attained, and by subordinating him to the commission the second purpose is accomplished. There remains, then, no imperative reason why the legislative body should remain so small. It is not improbable that with the extension of municipal home rule and the manager idea, the council may be restored to its early position as a municipal legislature. Should this occur, the cycle of municipal legislative development will have become complete.

The English Municipal System. If the most important municipal systems of the western world be compared from the point of view of the relative importance of the council, there are found to be three fairly distinct forms of municipal government: the English, the continental and the American systems. The first to be considered is the English system, which recognizes the council as the only organic authority in the municipal system. The management of public charity, which is regarded as of state rather than local interest, is, it is true, in the hands of an elective board, known as the board of guardians. But as the union, the poor law district, is not coterminous with the borough, the care of the poor should not be regarded in England as a municipal function.

With this exception, however, the borough council is really the only authority known to the law of municipal corporations in England. The English borough council has, subject to a few limitations,[10] complete power of organizing the city government.

[10] Such as the provisions that there must be a mayor and aldermen elected by the council, an education committee, a watch committee, two revising assessors for election lists and three auditors, a public health officer, an inspector of nuisances, a town clerk, a treasurer, and a chief constable.

It has the power of appointing, removing and directing all borough officers, and a series of powers quite numerous and quite broad conferred upon it by the Municipal Corporations Act of 1882 and the Public Health Act of 1875,[11] and other general acts, such as the tramways acts, the baths and wash-houses acts, the libraries acts and the allotment acts.[12]

Through the exercise of these powers each English borough council may adapt the general scheme of municipal organization provided by the municipal corporations act to the needs of the borough it represents. It may adopt single-headed departments or boards as it sees fit; it may provide for the merit system of appointment or not, as it deems expedient, and it may change the details of the administrative organization which it establishes where and when it will. As a matter of fact, however, the immediate supervision of the detailed work of city administration is entrusted to council committees. Since the council has absolute power over the affairs of the borough within the limits of the law and subject to the central administrative control, there is no question in the minds of its subordinates as to its supremacy. The chance of conflict between local authorities is reduced if not eliminated. The concentration of power in the council makes it certain that the energies of municipal officers will be directed towards the carrying out in detail of the policy determined upon by the council and will not be dissipated in struggles for supremacy with each other.

The Continental Municipal System—German Form. The second system of municipal government to be considered is the continental system. This offers two forms: first, the German, and second, the Franco-Italian.

The German system differs from the English in that it makes provision by the side of the council for an executive, which is either one man or a board. It may be said, it is true, that municipal powers are distributed between the council and the executive, on the theory of the separation of powers; that is, that the council is a deliberative body and the executive is to

[11] A borough is now an urban district and the borough council is an urban district or sanitary authority.

[12] Fairlie, "Municipal Administration," p. 386.

execute its decisions. On the other hand, however, it is to be remembered that the executive is accorded great influence over the decisions of the council, while the members of the council both elect the members of the executive and under its direction participate in the work of administration through membership on various administrative boards which are at the head of the city executive departments.

The executive exercises a great influence over legislation in that it may veto the acts of the council both on the ground of illegality and inexpediency, when the council may appeal to a higher state administrative authority against the veto. The city executive in Germany is an agent of the state for the enforcement of state laws and has the police ordinance power where the police power is exercised by a municipal authority. In its capacity as such state agent its acts independently of the council. Largely as a result of the moral influence which it exercises, owing to the professional character of a portion of its members, it furthers directs the deliberations of the council. Where the board system is adopted, and it may be taken as the typical German form, the executive board has really the initiation of legislation. The German city council is therefore largely an authority of control. Initiation of new undertakings, in accordance with the general scheme of German government, is mostly left in the hands of the executive.

The influence of the council over the executive and of the executive over legislation brings it about that legislative and administrative powers are largely coördinated. This coördination tends to prevent the occurrence of those conflicts between municipal authorities which are so disastrous to municipal efficiency, while the power to appeal to the higher authorities of the state government offers a means of quickly settling differences which may arise.

The Continental Municipal System—The Franco-Italian Form. The Franco-Italian form of municipal government resembles the German in that the law recognizes other municipal authorities besides the council. The law makes provision both for a council and a number of magistrates, called in France the mayor and deputies, in Italy the sindaco and assessors, who

together in Italy form what is called the *giunta,* and are elected by the municipal council. In both France and Italy the chief executive of the city assigns to the deputies and assessors respectively the different departments of municipal management, but they attend to them under his direction. In Italy the *guinta* has certain independent functions of its own to discharge and seems to occupy a more important position as a permanent executive board than do the mayor and deputies in France.

In both France and Italy, while the council has within the limits of the law, the organizing power, the power of appointment, removal and direction of the municipal officers and all administrative powers are vested in the mayor and his deputies or assessors, the ultimate power being vested in the mayor. An exception to this statement must be made in the case of those Italian cities which have entered into the field of municipal ownership since 1903. In these cities the management of each such enterprise is vested in a special director who is appointed by the council and would appear to be independent of the sindaco.[13]

Finally, the fact that in both countries the mayor is recognized for certain matters as an agent of the state government and when acting as such agent is under the control of the central administration makes him, as to these matters, independent of the council.

In both France and Italy the council is thus merely a legislative body, having the power of issuing all local ordinances in Italy, in France all but police ordinances which are issued by the mayor. The council in both France and Italy is therefore not so important as in England, although the fact that the executive has no veto power over its action gives it a greater legislative power than has the council in Germany. The position of the council in both France and Italy is weakened through the legal provision fixing the number of its sessions, in France four, in Italy two, each year. In the latter country, however, the *giunta* is regarded as the permanent committee of the council. Like the German council the French council is largely an authority of control.

[13] See *infra,* Chap. XIV.

The American Municipal System. The third system of municipal government, if it may be called such, is found in the United States. It is difficult to speak of a system of city government in this country because of the differing general laws in the different states, of the habit in some states of granting special charters to special cities and of the increasing number of home-rule charters. The innovations contained in the commission and city manager forms have added to the difficulty of making generalizations. Since the commission and manager governed cities are as yet comparatively few, it may still be said that in general in the United States the law provides for two coördinate organs, the council and the mayor, both elected by the people. Further, it has come to be the rule that the heads of departments are appointed not by the council but by the mayor with the approval of the council, or by the mayor or some other authority acting independently of the council. The council is not, therefore, a body of great importance, so far as concerns its power of filling city offices. Further, 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 have 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. The legislature is often so niggardly in its grants of power, particularly of financial power, that it is difficult if not impossible for the council effectively to exercise its legislative power. In some states also the legislature puts into city charters provisions which regulate matters of local police or vest police powers in the mayor or an executive department. The mayor in almost all states possesses a veto over the resolutions of the council, which can be overcome only by an extraordinary majority of the council.

With respect, then, to the importance of the city council, the countries under consideration may be arranged in a diminishing scale beginning with England where the council is supreme and descending to the United States where it is of least importance. In the United States, while the mayor is not supreme, he with his executive officers come very near being so in certain cities. This supremacy of the executive is in most cases accompanied by the assumption on the part of the state legislature of the exercise of many local powers which in other countries would belong to the council.

Constitution of Councils.—Everywhere Elective. The ways in which the council is constituted in different countries are as varied as the degrees of its importance. It is everywhere, however, based on the elective principle. It is true that by the French law of 1800 the council was appointed by the authorities of the central government. This law of 1800, however, organized a system of administration, generally so centralized that real local self-government was impossible under it. The city was by this law regarded as an administrative district of the state rather than as a local corporation organized for the satisfaction of local needs. The principle of central appointment was abandoned in 1831 in favor of election. It is also true that in the City of New York by the charters in force from 1873 to 1901 an authority which discharged many of the functions ordinarily discharged by the council, that is, the Board of Estimate and Apportionment, was composed of five members, two of whom were appointed by the mayor, the principal elective officer.[14] A somewhat similar plan is adopted in German cities, where the members of the executive board are appointed by the council, although the executive board has powers of legislation coördinate with those possessed by the council.

But in general we may say that in all systems of municipal government which endeavor to secure to the city large powers of local self-government the council is elective. The legislations of different countries differ, however, considerably as to the details of election. Either one of two general principles is adopted,

[14] The members of the Board of Estimate and Apportionment are all elected by the municipal citizens by the provisions of the present charter.

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 in France and generally throughout the United States. Partial renewal is the rule in England, Germany and Italy.

District Representation. Whether the process be that of total or of partial renewal, 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 general ticket where no special provision is made is the rule in France, in Italy, in England, and in Germany. In the United States the single district is the rule. In all countries which adopt the general ticket it is, however, provided that the city may be divided into districts, each of which is to elect a certain minimum number of representatives on the council. Thus in England the number of members to be elected in each district must not be less than three, one of whom is to be elected each year. In France in all of the cities of over 10,000 inhabitants not less than four members of the council are to represent each district, while in Germany the number is to be determined by some authority of the central government. Where such a departure from the principle of the general ticket is permitted the actual districts which are formed are formed as a result of the concurrent action of the local and the central authorities. Thus in England the districts are made by the council by a two-thirds vote, subject to the approval of the central government at London. In France the districts are made by the general council of the department, a board similar to the board of supervisors in certain American states, on the initiation of a general councillor, a member of the city council or the prefect of the department as agent of the central government, or on the petition of the electors of the city concerned. In France the districts are made only after an investigation has been made of the matter. In Prussia, where the matter is left largely to the city to determine, the city council decides whether the district plan shall be adopted, the general ticket being otherwise the rule. If the council determines to adopt it, the city executive makes

the apportionment, fixing not only the limits of the districts but also the number of members to be elected from each district. The executive must, however, observe the rule that all voters are to be as far as possible equally represented.

The purpose of the adoption of the district plan is to secure either local representation or minority representation or both. The necessity of securing local representation is present only in the larger cities but there some recognition of locality is highly desirable since in large cities real differences in interests exist between localities. In small cities the need of such recognition exists only to a slight degree if at all. In all cities, however, it is desirable to secure minority representation, or at any rate to secure on 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 where all of the members of the council are elected at the same time unless some system of minority representation is provided. It is possible to reach the same result 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 elections 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.

Minority Representation.—Limited and Cumulative Voting. The liability that the district system will not secure minority representation and the certainty that a general ticket will not secure it 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 is adopted in Italy where every voter may vote for only four-fifths of the number of councillors to be elected, and 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 in the United States, for under it a nomination for office by a party of any considerable strength could easily be made equivalent to an election.

Cumulative voting, sometimes spoken of as "free voting,"[15] 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. This method of voting has been adopted in the Illinois constitution for elections to the lower house of the state legislature and to the councils of some cities in the state. Though this method is probably constitutional under the ordinary American state constitutions experience has shown serious objections to the cumulative system. Usually by mutual agreement the places to be filled are apportioned between the leading parties according to their ordinary voting strength and nominations are made by each party only for the number of places assigned them by this agreement. Nomination is then practically equivalent to an election. On account of the concentration of votes on a popular candidate, there may result 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 distribution of the votes. At the same time its friends point to the fact that cumulative voting does secure minority representation. They show that the dangers of too great concentration may be avoided by not permitting cumulation of votes beyond a certain number. In the case of municipal elections 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. It is further urged that cumulative voting has the great practical advantages that the system is simple of operation and easy to be understood by the average voter.

Minority Representation.—Proportional Representation. A third plan for securing minority representation is known as proportional representation. The advocates of this plan be-

[15] Eaton, "Government of Municipalities."

lieve that the interests of the city will be better served by a council composed of representatives of several different groups or interests in the community than by a united majority opposed by a united minority, each representing a single group or point of view. The purpose of proportional representation is to enable every considerable group of voters in the community, if they so desire, to secure representation in the body to be elected. Several systems of proportional representation have been devised, chief among which are the "Hare" and the "list" systems. The most mathematically exact and the one preferred for cities by those favoring proportional representation is the Hare system, but its adoption had been retarded by its seeming complexity.[16]

Proportional representation under the Hare system is at present growing in favor in the United States and therefore may be examined in some detail. Neither the Hare nor any other system of proportional representation is practicable if less than five candidates are to be voted for. Hence district representation is abandoned and city councils are elected by general ticket. Nomination by petition, in order to avoid the necessity of primaries, is advocated but is not necessary. The names of the candidates, however nominated, are arranged in a single column with or without party or other designation. The voter marks his ballot in the square beside the name, indicating by figures, 1, 2, 3, etc., his first, second, third and other choices, expressing as many choices as he pleases. In counting the vote the *electoral quota,* or smallest number of votes that will ensure the election of a candidate, is first determined. Every candidate securing first choice votes equal in number to the *quota* is declared elected. At the same time an equal number of candidates having the fewest first choice votes are dropped from the count as hopeless. Thereupon the surplus first choice votes

[16] The Hare system is in use for parliamentary elections in South Africa and Tasmania and is provided for in the Home Rule Act for Ireland. For municipal elections it is used in one or more cities in the Transvaal, New Zealand, British Columbia, and Alberta. In 1915 it was adopted in Ashtabula, Ohio; in 1917 in Boulder, Colorado, and in 1918 in Kalamazoo, Michigan.

for the several candidates just declared elected and the votes showing first choice for the candidates just dropped are inspected and transferred to other candidates in accordance with the second choices expressed thereon. The transferred votes are added to the first choice votes of the candidates to whom they were transferred. This process of dropping the person having the lowest vote, transferring votes and counting is repeated until a sufficient number of persons have secured votes equal to the quota to fill the whole number of places.

Under the list system the voter is confined to the candidates put in nomination, and must, as a rule, vote a straight party ticket.[17] The number of votes cast is divided by the number of persons to be elected, 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, sometimes leads, where few offices are to be filled, to the election of a majority of the candidates by a minority of the voters.

The main objections which have been offered to proportional representation are three in number. First, It has been said that the complexity of the system would lead to the invalidating of many ballots and to unwarranted delay in determining the results of the election. While from the limited use in this country of the system it would appear that the number of spoiled ballots is, at the outset, larger than usual, the anticipated delay in counting has not occurred. Second, It is asserted that it would be difficult to convince even intelligent voters who had not made a detailed study of the system that the announced results were in conformity with the actual vote cast. It is

[17] The "list" system has found application in parliamentary elections in Switzerland, Denmark, Belgium, Sweden, Finland, Iceland, Bulgaria, Würtemburg, Holland, and in Russia for the Constituent Convention.

probably true that for a time at least the results would have to be taken on faith by a large number of voters. Third, It is said that even if the results claimed by its advocates are obtained, the body elected under it, having no bond of cohesion to bind them together, would become a debating society rather than a body capable of political action. Such objectors believe that what is desired in the way of 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. This is the result secured usually by both the single district system and by the system of cumulative voting.

Whatever the system of representation employed, in most cases a plurality of the votes cast elects, but in France and Germany a majority is necessary to elect on the first ballot. If this is not secured another ballot is taken when a plurality elects. In Germany the voter at the second election must vote for one of the two candidates receiving the largest number of votes at the first election.[18]

Term of Council Members. The term of council members bears a close connection with the subject which has just been considered. If the principle of partial renewal is adopted, as is usually the case, the term is two, three, five or six years, so that the council may be renewed by halves, by thirds, or by fifths. Thus in England the councillors have a term of three years, one-third of the number being elected each year. In Germany generally the term is six years, one-third of the members being elected every two years, while in Italy the term is five years, one-fifth of the number of the council being elected every year. Where the principle of total renewal at one election is adopted the usual term varies from one year as in Boston to four years as in St. Louis. The average term in the United States is two years, as in New York.

Classes of Members. The council sometimes consists of two classes of members. These may sit as two separate chambers

[18] Hatton, "Digest of City Charters," p. 58.

though the general rule is that whether of one or two classes they sit as a single chamber. The only exceptions to the one chamber rule are a minority of American cities which still follow the analogy of the state and federal legislatures. In Italy the *giunta* and in Germany the executive board of magistrates performs some of the functions of a second chamber. In England, however, though sitting as one chamber, the council is composed of two classes: the councillors elected by the municipal citizens for three years, and the aldermen elected by the councillors for a term of six years. This principle is also applied, though rarely, in the United States, and in such cases it is common that the aldermen are elected at large while the councilmen are selected by districts.

Number of Members. 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 in this matter, either between the plans adopted in the United States and those adopted in Europe, or between those adopted in the different cities of the United States. The number varies from four hundred in Buda-Pesth to nine in Boston. Under the charter granted in 1907, the city of Newport, Rhode Island, was given a council of 195 members, 39 of whom were to be chosen from each of five wards. 13 were to be chosen each year from each of the wards for a term of three years.

Relation of Composition to Self-Government. The idea of self-government entertained in a country appears to have its effect on the size, term, and mode of renewal of city councils. If the prevailing conception of self-government is a government by the people of the city in their own interest and through the selection of persons from among their own number who are not in politics for a livelihood, but who are at the same time that they are discharging municipal functions making their living out of some other occupation, then the council is larger, serves for a longer term and is only partially renewed at each election.[19]

[19] As to the effect on local self-government of a large council, see articles in Proceedings of the National Municipal League, 1907; Munro, "The Galveston Plan," p. 142; Chadwick, "The Newport Plan," p. 166, and Sikes, "How Chicago is Winning Good Government."

If, on the other hand, self-government means that the government is administered by officers who are to a considerable extent professional politicians or professional administrators administering laws made largely by state authority, then the council tends to become smaller, the term shorter and renewal complete at each election.

The English system may be taken as an example of the first type. Here in the larger cities the council consists of from eighty to one hundred members. The city is divided into districts and the terms of the members of the council are such that every district will elect one member at each annual election, and that at such election one-third of the total number of the councillors will be chosen. This council is divided up into committees, each of which has charge of some one branch of municipal administration. The number of the council members being large, committee work can be so distributed among the members that each member can do his share without being overburdened. It is possible under such a system to make service as a council member unpaid, inasmuch as each council member can obtain his livelihood from his ordinary vocation, and also to make it compulsory, inasmuch as a large part of a man's time is not required for his public work. The system adopted in Germany, which produces the same result, is based on the same principle, that is, of large councils, long terms and partial renewals, and lays great emphasis on compulsory, unpaid service.

The French and American systems, perhaps, exemplify the second type less markedly and do so, too, to varying degrees. In both countries the number of councillors is smaller than in cities of equal size in England or Germany. The term in France is four years as compared with the American average of two years. The longer term in France is due, in some measure at least, to the more exalted place which the council holds in that country both in the work of actual government and in the esteem of the public. The difference between the Franco-American plan of total renewal and the Anglo-German plan of partial renewal is accounted for by the fact that under the first the members of the council as members are more or less confined to deliberative business, while under the second,

the members in other capacities such as members of committees do a great deal of administrative work. In the United States alone are the members of the council paid for their services.

Qualifications of Councillors. As a general rule special qualifications for membership in the council are 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 is a property one, which may be evidenced either by the payment of taxes or the ownership of property. Such qualifications are 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. In America, as a general rule, every voter is qualified. In England all taxpayers, whether voters or not, are eligible if they live within fifteen miles of the borough. The French non-resident taxpayer, if a voter, may be a councillor provided that not more than one-fourth of the whole number are non-resident. Prussia requires that at least one-half of the council be house owners.

Character of Councils.—Attitude of Voters. A satisfactory conclusion as to the real position of the city council in different countries cannot be reached merely from a consideration of the law with regard to its composition. The real position of the council is determined rather, by the attitude and habits of the municipal voters with respect to the election of council members. The attitude of the voters even under a suffrage which lays little stress on property qualifications may be of such a character as to bring into office as council members men who from a social point of view belong to a much higher class than that of the voters who elect them. If this is the case the system of government while in theory quite democratic will be in essence aristocratic. This is largely the case in England where there exists a class feeling whose influences are to an American difficult of comprehension. As a result of this class feeling there is a deference on the part of large masses of the population to what are recognized as the upper classes which makes voters willing if not eager to obtain members from these classes to represent them in the city government. If, on the other hand,

no such social feeling exists the attitude of the voter seems to be such that the possession of wealth and social distinction actually tends to disqualify one for successful candidacy for the city council. This attitude of the voter merely reflects the distinction between the social aristocracy of England and Germany and the social democracy of France and the United States. England and the United States exemplify best, perhaps, these contrasting characteristics.

Character of Council in England. A typical instance of the conditions due to this attitude of the municipal voters in England is to be found in the City of Liverpool. Liverpool was in 1906 divided into thirty-five wards. Thirty-four of these wards were represented by one alderman and three councillors for each ward; one ward was represented by only one councillor. The council in 1906 consisted therefore of one hundred thirty-seven members. Of these one hundred thirty-seven only twenty-five lived in the wards they represented, while one hundred and twelve lived outside the wards which elected them as their representatives in the council, or to which as aldermen they had been assigned. Of these one hundred and twelve fifty lived outside the limits of the city. These fifty were all of the upper business and professional classes. Furthermore, forty-four other members of the council lived in the six richest residential wards of the city. With the fifty living outside of the city there were thus in all ninety-four members of the council who lived in the better residential districts within or without the city limits. The degree to which the poorer classes of the community are represented by members of the wealthier classes becomes apparent when we compare the working class wards with the richer residential wards. Twenty of the wards may be described as working class wards including at one extreme the slums and at the other the districts in which reside the upper grades of artisans. In 1906 of the eighty aldermen and councillors accredited to these wards only eight lived in the wards they represented, and of the seventy-two who lived outside the wards they represented fifty-three lived in the six richest residential wards of the suburbs. On the other hand, of the twenty-eight representatives of the seven residential wards occupied by the middle

and richest classes sixteen lived in the wards they represented and only twelve outside. These outsiders lived in other wards or in the suburbs among people of the same social standing as those they represented. Thus while the strictly working class wards were entitled to eighty representatives two-thirds of these representatives resided in the residential wards and suburbs, while the people of the residential wards which were entitled only to twenty-eight representatives elected practically all of such representatives from among their own neighbors. Finally, there were two strictly business and commercial wards represented by business men.

The council of the City of Liverpool is thus in the control of the richer classes of the community. A few members of the council were in 1906 described as "very rich men"; at least one hundred of the one hundred and thirty-seven members were said to be "fairly well to do," or "moderately wealthy"; only about twenty were described as "poor men." Another census of the council brought out the fact that it contained thirty-nine wholesale and retail merchants, twelve brokers and agents, nine manufacturers, twelve lawyers, eleven building employers, five trades unionists and socialists and fifteen engaged in the liquor business. Nearly all of these fifteen were, however, manufacturing brewers and not retail liquor dealers. In a word it may be said then that the members of the council of the City of Liverpool were in 1906 to the extent of two-thirds large and small business men and employers of labor and to the extent of one-fifth professional men whose associations were with business men. What is true of Liverpool is just as true of most other British cities.

The fact that much the larger portion of the municipal councillors in Great Britain are not residents of the wards they represent attracts scarcely any attention among the voters. In choosing as their representatives persons recognized not to be of their own class the voters are probably not consciously actuated by the desire to honor those whom they deem to be their betters. On the contrary in many if not most cases they are in all probability governed by the belief that in thus acting they are securing more efficient representatives than could be secured

from among those of their own class who reside in the district. For to be influential in English political life a man must be socially presentable and if possible well connected. Sidney Low [20] has pointed out how small is the class which is politically influential in Great Britain and how difficult it is for a man to become politically eminent who is not by birth or education capable of so comporting himself as to be welcome to that class. If one is not thus welcome it is difficult if not impossible for him to obtain access to those in control of the government. While what Mr. Low says is unquestionably more pertinent to imperial than to municipal politics it is none the less true that his remarks have an application to municipal politics. For as a result of that desire, which would seem to be common to all men, to imitate what they admire, those in control of the city, although not of the recognized aristocratic class, do not fail to be influenced by aristocratic ideas; they thus strive to carry on their municipal business by methods and according to standards which conduce to great official dignity and decorum. One of the results of this course on their part is that it is difficult if not impossible for a poor man who may be elected to the city council to keep the pace believed to be necessary by his fellow representatives. This difficulty is naturally increased by the fact that while conscientious service by a municipal councillor absorbs a great deal of time it is absolutely unremunerated. Notwithstanding this gratuitous character of the service of the city councillor it is possible to secure good men in the councils because of the belief that successful service for the municipality will be rewarded by a personal and social distinction which can with difficulty be secured in any other way.

Another characteristic of the British municipal councils, which is also due to extra-legal rather than to legal conditions, is that the council is comparatively permanent in its membership. Re-elections of councillors are very frequent. It is not uncommon to find members of these bodies who have served ten, fifteen or even twenty years. Their re-election is facilitated by the provisions of the election law which make unnecessary a resort to the polls in districts which are not contested, i. e., dis-

[20] Low, "Governance of England."

tricts in which only one candidate is nominated. Uncontested elections are not infrequent in the case of members of a council who have represented their district satisfactorily to the voters, and are not unknown in case of first elections. In 1906 there was a member of the council of one of the large British cities who had been in the council more than twenty years and against whom an opposing candidate had never been nominated during that time.

What has been said of the composition of the councils and of the length of service of council members is just as true of the committees of the council which manage the various branches of municipal administration. Thus, in the City of Birmingham, of the eight members of the Gas Committee only one lived, in the year 1906, in the ward he represented; six lived outside of the city limits in one of the aristocratic suburbs. Every one of these eight members represented a strictly working class ward. The chairman was one of the leading business men of the city and had for thirteen years been a member of the committee. Four others were also leading manufacturers in the city and had served in the council for terms varying from three to fifteen years.

In Glasgow in the same year nine of the committee-men had served two years; seven, three years; eight, four years; six, five years; nine, six years; one, seven years; one, eight years; one, nine years; three, ten years; two, eleven years; two, twelve years; one, thirteen years; one, fourteen years; seven, fifteen years; two, eighteen years; two, twenty years; three, twenty-one years; two, twenty-four years; and three, twenty-five years.[21]

Character of Council in Germany. The character of the members of German city councils has been much like that of council members in England. Merchants, manufacturers and members of the learned professions formed a large proportion of the membership.[22] Re-elections also have been quite common.[23] It

[21] Goodnow, "The British Municipality," National Civic Federation Report on Municipal and Private Operation of Public Utilities, Part I, Vol. I, p. 43.

[22] Schriften des Vereins für Socialpolitik, Vol. 118, pp. 42, 114.

[23] *Ibid.*, p. 119.

should also be remembered that the law has prescribed that one-half of the members must be house owners, while as a matter of fact this number was often exceeded.[24]

Character of Council in the United States. In the United States, on the contrary, the democratic character of the municipal council, due to the adoption of the principle of manhood suffrage, is increased rather than decreased by the attitude of the voters. In 1895 Mayor Matthews of Boston collected some definite facts as to the social standing and character of persons elected to the council of the City of Boston. "He presented statistics showing that during the first fifty years after the creation of the city government, in 1822, from eighty-five to ninety-five per cent of the council were owners of property assessed for taxation, but after 1875 the proportion had rapidly declined and in 1895 less than 30 per cent of the council members were property owners. Not only had the percentage of property owners declined but the total assessed value of property owned by council members, which had been $986,400 in 1822 and $2,300,400 in 1875, had fallen to $372,000 in 1894." [25]

In the United States the people not only seem to prefer to elect persons owning little or no property to the council, but they also seem to prefer to change their representatives in the council very frequently. The result is a rather short term of service which is favored both by the failure to re-elect and by the short term for which a council member is at any given time elected. From 1836 to 1900 there had been in "Newark, N. J., a total of five hundred and sixty-nine aldermen. Of these, three hundred and forty-two, about sixty per cent, had held the position for two years or less; forty-nine had served for three years, and one hundred and seventeen for four years. Only sixty-one, or a little over ten per cent, had served for more than four years and forty of these had only two years additional. Of the remaining twenty-one, seventeen were aldermen from seven to ten years; and the four holding records for longest service held the position for thirteen, fourteen, sixteen and twenty-two years

[24] *Ibid.*, p. 115.

[25] Fairlie, "American Municipal Councils," *Political Science Quarterly*, Vol. XIX, p. 242.

respectively. The St. Louis House of Delegates of 1899–1901 had among its twenty-eight members but eight who had served in the previous house and only two who had a longer term of service. One of these two, however, had been a member of the House for fourteen years. The Cincinnati Board of Legislation in 1900, out of thirty-one members, had four who were also on the board in 1895. The Cleveland council of 1901–02 had not a single member who was on the council in 1895.

"The Chicago Council in recent years shows a large proportion of re-elections. Of the thirty-five members whose terms expired in the spring of 1902 twenty-two (nearly two-thirds) were re-elected. . . . Seven have served for six years, four for eight years, and one member has been in the council for fourteen years. At the council election of Detroit in 1901 seven of the seventeen members chosen were re-elected." [26]

It seems scarcely probable that an investigation of conditions at the present time would reveal any increase in the proportion of re-elections in the cities of the United States.

Character of Council in France. The character of the French city councils would appear to be somewhat the same as that of city councils in the United States. M. Berthélemy says: [27] "Most of the great French cities are administered by assemblies composed for the most part of persons unequal to the task which they undertake, and sometimes of a doubtful morality. The unfortunately general and very partisan political character of French municipal elections has consequences most regrettable.

"These are, in the first place, the exclusion of all special representation of important interests even where these interests are imperilled.

"They are, in the second place, that taxes and loans are voted by the representatives of persons who by reason of poverty do not feel their burden and are only indirectly affected by an increase of debt. . . .

"Another unfortunate result of the political character of municipal councils is to be found in their instability."

[26] Fairlie, "American Municipal Councils," *Political Science Quarterly*, Vol. XIX, p. 236.

[27] Schriften des Vereins für Socialpolitik, Vol. CXXIII, p. 170.

Powers of 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 granted general powers of local government to the city, as is the case on the continent of Europe and in certain 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 United States, the extent of the powers of the council is determined by the extent of the enumerated powers granted. In the United States cities, with respect to the powers of their councils, fall into two very distinct groups. The general practice has been to pass municipal corporation acts, both general and special, which are very detailed in character, and which grant comparatively narrow powers to the council. The cities which operate under such acts comprise the great majority of American cities and, for purposes of comparison in this discussion, these may be taken as the American type. The second or "home-rule" group contains the cities under home-rule charters and a few others, especially in some of the states making provisions for the commission plan, to which home-rule privileges have been granted. In these instances broad powers of local government are generally conferred, including those of determining the details of municipal organization, the manner of selecting city officials and the sphere of municipal activity, so that the position of the council approaches that of the cities of continental Europe. This group cannot, however, be taken as typical of America.

If the system of municipal government adopted recognizes the existence of other municipal authorities than the council, as it does everywhere except in England, the council loses in power, either as a result of the fact that the 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. The former is the case in Germany; the latter is the case in France, Italy and the United States. In France and Italy the council possesses no administrative power, but does possess legislative power, al-

though in France as in Germany it has little or no power of local police ordinance. In the United States the council has little administrative power and has to share the exercise of the ordinance power with the executive, which has always the right to veto council ordinances, and sometimes exercises alone the ordinance power.

As a result of these conditions we find that the power of determining the details of the municipal organization is possessed by the council in England, France, Italy, and with some limitations in Germany, but not except in the cities of the home-rule group in the United States. Here this power has been exercised by the legislature by fixing the details in the charter or statutes governing the city.

The council everywhere except in the United States, in addition to fixing the details of the municipal organization, appoints the principal executive officers, such as the mayor and heads of the municipal executive departments. In the United States, outside the cities of the home-rule group, the only power of this character which it possesses in the larger cities is to confirm the appointments of the mayor, and even this power is not possessed by the council in the largest cities. In the smaller cities of the United States, however, the council often appoints certain of the most important city officers. The mayor is, except in Germany and most of the large cities of the United States, the president of the council. The council elects its own president, however, in Germany. 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 as well. The latter is the rule in England, France and Germany. In some cases the council in the United States determines the matter in first instance with appeal in proper form to the courts, while in very rare instances it has the final determination as well. The city council usually fixes its own rules of procedure. The great exception is in the United States, where the law usually

contains provisions relative to the number of members who will 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., 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 classified as: first, ordinance power; second, powers to determine the sphere of municipal activity; and third, financial powers.

Ordinance Power. 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 an urban population, need regulation of a special character. The power is usually referred to as the power of police ordinance. In Germany, however, city councils still have wide powers of local legislation and may as a result of their exercise regulate many details of the law with regard to local elections, taxation and the conditions of labor.[28]

The police ordinance power is usually under the continental system of municipal government conferred upon the executive. Thus in Germany and France it is possessed by the burgomaster and the mayor, when it is not granted to a state appointed authority.[29] By the Anglo-American law, however, the power of ordinance is in theory 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 enu-

[28] Schriften des Vereins für Socialpolitik, Vol. CXVII, pp. 29, 143.

[29] Leidig, "Preussisches Stadtrecht," p. 457; Berthélemy, "Traité Elémentaire du Droit Administratif," p. 199.

meration of municipal powers. General grants of such police ordinance power, however, often are expressly conferred upon cities by the Anglo-American law.

The theory of the American law that police ordinance power is conferred by general grant, either express or implied, upon the city council is, however, largely departed from in practice. It is often the case that the subjects which may be regulated are enumerated in the charter in great detail. Under these conditions it is usually held that, applying the principle that "the mention of the one excludes the other," 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 American municipal charters and laws is therefore usually a limitation of the common law powers of the ordinance authorities. The only effect that such enumeration has in enlarging 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. In the case of an ordinance passed under an express grant of power, its reasonableness is assumed to have been settled by the legislature. In England it would seem that all council ordinances or bye-laws, as they are called, may be declared by the courts void as unreasonable, even where they have been approved by a higher state authority such as the Local Government Board.[30] The only control which the courts have over these ordinances in continental Europe is to declare them void where they are in excess of the powers of the authority adopting them.

Finally, as has been pointed out, many charters and laws 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 water works as having an important bearing upon the public health, and the power to

[30] Redlich and Hirst, "Local Government in England," Vol. I, p. 328.

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 ordinance powers or merely from the general ordinance powers of the city council.

There can be little doubt that the English and 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; 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." [31]

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." [32] It is not uncommon, however, in American cities for general ordinances to be made by administrative officers or boards having only limited jurisdiction, without conference with other branches of the administration and without public hearings. This is but another result of the decline in power and prestige of the council. It has been said: "Where

[31] Eaton, "The Government of Municipalities," p. 263.
[32] *Ibid.*, p. 262.

good ordinances end, in municipal administration, despotic or corrupt official favoritism generally begins." [33]

The Power to Determine the Sphere of Municipal Activity. By this power is meant the power to establish 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. This is 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,[34] or it may establish and operate the necessary plant itself, as is frequently done in Germany. It may in this latter country and quite commonly does provide insurance against fire for its citizens. It 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 play grounds and conduct theatres and concerts for the instruction, recreation and amusement of its inhabitants.

All these things the continental city council may do as a result of the exercise of its general power of local government, without the necessity of 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, but as an organization for the satisfaction of the local needs of its inhabitants. Whereas, 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,

[33] Eaton, "The Government of Municipalities," p. 262.

[34] This is so because of the view entertained by the Council of State, the highest administrative court, as to the powers of municipal councils. The power of French municipal councils as to undertakings making use of the streets is less than elsewhere because the main streets being part of the state highways are under the control of the central government. Munro, "The Government of European Cities," p. 54.

it acts free from almost 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. When the continental city is acting as the agent of the state its powers are quite commonly exercised by the executive, in France the mayor, in Germany the executive board. When it acts as local government it is the council which determines whether the city shall enlarge or contract its sphere of activity, subject only in Germany to the veto of the executive board from which veto appeal may be taken to the proper supervisory authority of the state government.

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 only act where it is the evident intention of the legislature that they may act. In England it is true the laws of Parliament passed during the nineteenth century granted to the cities very wide freedom of action, 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, outside the cities of the home-rule group, the acts of the state legislatures 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 one 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. These powers relate to city property, city taxes and city indebtedness. As a general rule the financial powers of all cities 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 control in the early days of the Roman Empire where the emperors appointed curators whose principal duty it 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 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 taxing power was not introduced until the nineteenth century, when an administrative control was set up. In the United States the same century saw the introduction, not merely of limitations on the financial powers of cities, but also constitutional limitations upon the power of legislatures to grant to cities powers of taxation and of incurring debts. In the United States control over city finances, like control over all other municipal functions, has been legislative rather than administrative. Much reliance has likewise here been placed on popular control through the referendum and similar expedients to curb this tendency towards municipal extravagance.

The financial powers of city councils may be classified as those relating to municipal property, taxation and debts. So far as concerns municipal property the rule has almost everywhere been introduced that municipal property devoted to a public service is inalienable. Thus in the United States it has been held that without special legislative authorization a municipality may not alienate public municipal property such as its parks or water works. Alienation of city property by sale or long lease is permitted on the continent of Europe only with the consent of the central government.[35] The only exception to this general rule is in the case of involuntary alienation, that is, sale on execu-

[35] Berthélemy, "Traité Elémentaire du Droit Administratif," p. 192; Leidig, "Preussisches Stadtrecht," p. 207.

tion, which is permitted in the case of all property in Germany,[36] and in the case of private property in the United States.[37] The management of city property is of course in England vested in the council. Where, however, an executive organ exists as in France, Germany and the United States, the management of city property is commonly subjected to the control of the executive, if it is not absolutely vested in the executive.

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. The first effect is that no city has any general taxing power; that is, no city may impose any kind of tax 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 powers of taxation, so far as the kind of the tax is concerned, consists in the power to add a percentage to the state tax or to certain specified state taxes. There are, however, exceptions to this rule. Thus in England the whole system of city taxation is quite different from state taxation, and the taxes levied by cities are technically known as "rates," as opposed to "taxes," which are levied by the central government. Thus again in France and Italy one of the principal sources of municipal revenue is found in what are known as octroi taxes, that is taxes on objects brought into the city for consumption therein. Thus again, in some of the states of the United States, the cities levy their taxes on land while the state gets its revenue from other sources. In most of the states of the United States a large part of the city 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.

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

[36] Leidig, op. cit., p. 198.

[37] Dillon, "The Law of Municipal Corporations," 4th ed., Vol. II, p. 673.

provision is not made in the law. The rate of city taxation is often in the United States fixed by the legislature or in the state constitution. In the latter case the legislature may not authorize any excess. On the continent, however, it is usually fixed in the law and may be exceeded only with the permission of the central administration. 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. These, 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 would be very doubtful whether a city might make even an indirect use of its taxing power 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, practically exercises the taxing power, in that it 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 the purposes of state government, but if such authority neglects or refuses to do its duty, the supervisory authority may step in and force the levy of the necessary tax. On the continent this is some administrative authority of the central

government. In the United States the exercise of the taxing power may be forced by the courts. This latter, 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, receives somewhat more liberal treatment than the other financial powers. Cities almost everywhere possess the power to incur debt as the result of their being corporations. Even in the United States such a power is recognized by the courts in the absence of a specific grant by the legislature. The exercise of this power, together with the limitations placed upon it, will be discussed in connection with municipal finances generally in a later chapter.[38]

[38] *Infra*, Chap. XV.

CHAPTER X

THE CITY EXECUTIVE

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Form and Position of the Executive. What has already been said has been sufficient to show that the city executive occupies a very different position in the different countries. While, for example, in England and the United States we find in the cities an officer called a mayor, in the former country he is little more than the presiding officer of the council; in the latter he is a real executive authority. What is true of the United States is also true of France, Italy and Germany, where the maire, the sindaco, or the burgomaster even in those cities having a city executive board (*magistrat*), discharges real executive powers. In the German cities which have the board form of executive, the executive board is also a real executive authority. Again, while in France and Italy the executive has no appreciable influence over the legislative functions of the city council, in both Germany and the United States the executive has a veto over all acts of the council. In Germany (Prussia) the burgomaster may likewise veto the resolutions of the executive board. In Germany this veto may be reversed on appeal to a higher state

authority; in the United States, by an extraordinary council majority.

But while there is thus no agreement as to the position which the mayor or similar officer shall occupy, there is general agreement outside of England that there shall be a certain degree of separation between the legislative and executive powers, each of which is, roughly speaking, vested in a separate authority. The degree of separation is not, however, everywhere the same. The United States is the country which carries this separation the farthest. This is due to the fact that the mayor does not owe his position to the council, but is elected by the voters by whom the members of the council are elected. In other countries he is elected by the council. In England, France and Italy only council members are eligible for election as mayor. In England, France and Italy therefore it may be said to be the fundamental conception of the position of the mayor that he is to be largely dependent upon and a subordinate of the council, which is thus given, notwithstanding any separation which may be made of the executive and the legislative authorities in the municipal organization, the predominant position. The mayor is in none of these countries given a power, like the veto power, of exercising any legal influence over the council. In France and Italy the position of the council in relation to the mayor is weakened by the provision of the law limiting the number of the sessions of the council to four or two each year. And as a matter of fact the council is, after it has elected the mayor, largely guided by him.

In contrast with the position of the municipal executive given to him by the law in England, France and Italy we may place the position which he occupies in both the United States and Germany. It is true, of course, that the executive in Germany is elected by the council, but the central government's approval of the council's choice is necessary in case of the burgomaster and the professional members of the executive board in order that the choice of the council may be effective; and the members of the executive serve for long terms and are removable during their term of office only for cause. The tenure of the executive is thus not of such a character that the executive can be said to

be the council's man. The veto power which the executive has in both countries is a further indication that the fundamental idea of the German and American system is not to give the council a predominant position in the municipal organization. On the contrary, the fundamental idea of these systems would seem to be the establishment of two somewhat coördinate authorities in the city government.

What has been said with respect to the position of the city executive in the foregoing paragraphs is true of the older and typical group of American cities, but not of those under the commission and city manager forms of government. In the cities under the commission plan the executive resembles that of the English city in that it is consolidated with the legislative authority, but with the difference that whereas that united authority in England is legislative in character, in the commission governed cities it is primarily administrative. Under the commission plan, too, the mayor if there be one is one designated by the commission from among themselves with powers merely as a presiding officer.

As a matter of fact because of either legal provision or political conditions the dominating factor in the municipal organization is, outside of Great Britain and those few cities in the United States which still cling to the early council system, the executive. The executive is with these exceptions the initiating and the council is the controlling authority in city government.

Term of Executive. The term of the executive differs in different countries; in England the executive (mayor) serves one year; in France, four years; in Italy, three years; in Germany, as a rule twelve years, though sometimes for life; in the United States, from one to four years, generally two years. England and Germany here carry out logically the idea at the bottom of their respective municipal systems, while France, Italy and the United States do not. France and Italy are not logical in that they give their executive a term inconsistent with that dependence upon the council which the system in other respects seems to seek; the United States, in that the mayor has often such a short term as seriously to diminish the strength which is otherwise accorded to the position of the mayor. The result is

that in France and Italy the mayor has actually become the more important factor in the city government, while in the United States much of the benefit which might be secured from a strong mayor is as a matter of fact not secured. In both France and Italy the chief city executive may be suspended and removed from office by the central government. In the United States also the power to remove the mayor for cause is sometimes given to the state government though seldom exercised. In Germany the members of the city executive may be removed only as the result of conviction for crime or the judgment of a disciplinary court.

Relation to City Officers. The relation of the chief executive to the other municipal officers over whose actions he has more or less power of direction differs very greatly in the different countries. Here again England and Germany seem to be the only countries which have been thoroughly logical in their treatment of the question. In England the council, not the mayor, has the powers of appointing, removing and directing all municipal officials. In Germany, on the contrary, the executive, with certain exceptions, appoints, removes, so far as any administrative authority may remove,[1] and directs the municipal officers. In Germany, in the cities having an executive board it is true, however, that the council elects, subject to the approval of the central government in the case of the professional members, the members of the executive board. In France and Italy, while the council elects the deputies or assessors and general managers or directors, i.e., the heads of departments, when it elects the mayor and for the same term, the mayor, except in the case of the directors of the various public utilities operated by the cities in Italy, apportions their duties among them and thus puts them in the position which they actually occupy in the municipal administration as well as directs their actions, but may not remove them from office.

In the United States no less than five methods may be distinguished for adjusting the relation between the chief executive authority and the heads of administrative departments. The first and still the most common method, probably, is for the

[1] In Germany office is regarded as a vested right of which the incumbent may be deprived only as the result of a regular trial.

mayor to appoint the heads of departments subject to the approval of the council. Another which was formerly much made use of but which is now ordinarily restricted to the selection of financial officials and sometimes to the heads of the school and park departments is election by the people. A third and more logical method, which is rapidly superseding the first, gives the mayor absolute power of selecting department heads. Under the commission plan the individual commissioners are assigned by the commission to be heads of the several departments, and each commissioner is responsible for the conduct of his department to the commission as a whole. Still a fifth method is that whereby the commission or council, the supreme executive authority, appoints a city manager to whom is delegated the actual supervision of the work of a part or all of the departments. As a general rule, in the United States the mayor may remove the appointed heads of departments only with the approval of the council, though the tendency in the larger cities is to vest in him the absolute power of removing them. Where the mayor has unlimited powers of appointment and removal it may be said that he has the power of direction and supervision, and is thus made responsible for the administration of the city. Under the commission plan the commission has the power to reassign members to the various departments, and has absolute power of removal over the city manager.

Judicial Functions of Mayor. In both England and the United States, particularly in the smaller cities of the latter country, the mayor discharges a few judicial functions. Thus in England the mayor in office as well as his immediate predecessor is a justice of the peace, though it would appear that he seldom acts. In the United States the mayor is generally a magistrate, and while he seldoms acts in the larger cities, in many of the smaller cities he still has minor civil and criminal jurisdiction, and very commonly actually exercises his judicial powers. These judicial 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 of them.

Importance of the Municipal Civil Service. When we finish our study of the council and the executive, we really, with the excep-

tion of the United States, almost finish the description of the municipal institutions so far as they have been regulated by the statute law. This is due to the fact that in most countries of the world outside the United States the council has the power of organizing the administrative departments. Under such an arrangement the detailed organization is a local matter regulated by council ordinance, and therefore varies from city to city and is in a constant state of change. But while this is true, our study of municipal institutions may not stop here, for it is largely as a result of the detailed organization and of municipal custom that municipal government is good or bad.

It has been said 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 by-word 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." [2] What is here said of Paris is true of every city in the world. It is the way in which the administrative force of the city is organized and does its work that makes municipal administration efficient or inefficient.

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?

Desiderata in the Municipal Civil Service. 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

[2] Shaw, "Municipal Government of Continental Europe," p. 27.

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 dependent upon precarious tenure, administrative efficiency is dependent 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, while the thing to be desired is a proper balancing between these opposing qualities, the natural result is that it is usually the case that one of the two qualities so desired in the municipal administrative force is, as a matter of fact, somewhat sacrificed to the other. This is particularly true where attempt is made to secure the desired result by means of legal provision. Thus 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 and those officers are given such a control over the actions of the popular bodies in the city government that an effective popular control over the actual administration of municipal government is very difficult of exercise. German municipal government is largely a government by permanent experts subject to a more or less effective popular control. In the United States, however, where what is sought is a popular control, the terms of the important municipal officers are so short, whether as a result of legal provision or custom, that permanence of incumbency is well nigh impossible and, while popular control is probably secured in the more highly developed forms of American city government, the administration is comparatively inefficient. Experts are conspicuously absent in the system.

In England, on the other hand, little attempt is made by law to secure either amenability of municipal officers to popular control or administrative efficiency. Everything is left to the council and public opinion, and in recent years by these means rather than by specific requirement of law both qualities have been secured in a high degree.

How, now, may the desired ends be secured? This may first of all be determined in part from a somewhat detailed consideration of the organization of the administrative force as it exists in

the various countries whose municipal institutions we are studying.

England.—Organization of the Administration. Let us begin with England, which has a more clear-cut, logical system than any other country. In England the council divides itself into committees each of which has under its jurisdiction some one branch of administration. The Municipal Corporations Act makes provision for one such committee, viz., the watch committee, which under the chairmanship of the mayor has the supervision of the police.

The Education Act of 1902 also provides for an education committee which is to supervise the schools of the city and which, different from the other council committees, may be composed, at least so far as concerns a minority of its members, of persons not members of the council.[3] On each of these council committees there are a number of aldermen and councillors. These committees are practically the heads of the different 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 real power rests, to appoint, dismiss and direct the officers of the department. The membership of these committees is comparatively permanent, as has already been pointed out.

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, it will be remembered, the council is only partially renewed at each election, one-third of the councillors being then changed, while only half of the aldermen change every three years.

Character and Tenure of Civil Service. Under each committee there is the regular routine administrative force. This may be

[3] A list of the committees in the cities of Manchester and Leeds is given in Fairlie, "Municipal Administration," p. 400.

divided into a higher and a lower administrative force. Such a division is not, however, made by law, but results from the usages of the council and its committees. The higher administrative force has by law a tenure during the pleasure of the council, and no provision of law determines their qualifications, which are fixed by the council.[4] Among these officers are the borough surveyor, equivalent to the American city engineer; the town clerk, corresponding to the American corporation counsel, but with such wide powers that he is in many cities the more or less expert head of the entire municipal administration; the health officer and the inspector of nuisances, corresponding in each case to similar officers in the United States. The lower administrative force includes those subordinate officers who might, in the United States, be placed under the protection of civil service laws. What has been said with regard to the lower officers may be repeated with respect to these lower officers. No attempt has been made by law to apply to them the merit system introduced by the civil service reform movement.

It is apparent, then, that no attempt is made to secure by provision of law administrative efficiency or permanence of tenure. These are, however, secured by public opinion. The entire administrative force is out of politics, not merely national but also local politics. The higher officials are chosen because it is believed they are qualified to perform their duties and not because they have rendered political service; and inasmuch as their tenure, while nominally during the pleasure of the council, is really during good behavior, they form a highly educated, permanent professional expert force, which under the general direction of the council and the immediate supervision of the council committees carries on the work of the city unaffected by any changes which may arise in the composition of the council or its committees. The same may be said of the lower administrative officers of the city. In England, as in Germany, experts play an important rôle in the city government, but in England their position is not legally protected as in Germany and they are, contrary to German practice, rather the subordinates than the peers of the non-expert elements.

[4] Redlich and Hirst, "Local Government in England," Vol. I, p. 334.

Under this scheme of government both the qualities so desirable in an administrative force, viz., amenability to popular control and administrative efficiency, are secured. But an enlightened public opinion rather than the law is responsible for the attainment of these objects. It is true, however, that the development and exercise of such an opinion are greatly furthered by the general scheme of municipal organization. The failure to attain the same objects in the United States is due to the lack of such an enlightened public opinion. This lack is perpetuated both by the form of our city government and by the influence of national political parties in the city.

Further, the British principle of concentrating all municipal power in a popularly elected council makes it unnecessary that the popular control shall be exercised in concrete cases over any of the distinctly administrative officers in the city. The municipal officers, who are under the direction of the council committees, possess so little freedom of action and 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 regularly over the officers directly.

Character of Council Committees. The fact that the department heads, i.e., the council committees, are composed of 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 intelligent and public-spirited classes of the urban population. There being no salary attached to council membership, no one seeks election to the council from motives of pecuniary gain. The honor and social prestige attached in the public estimation to the position are sufficient reward for the time devoted to the work. The fact that public opinion will not tolerate the introduction of the spoils system has served to prevent the development of a class of professional politicians seeking office. The time devoted by members of the council to municipal work also is comparatively so small as a result of the committee system, which, in its turn, is based on a sub-commit-

tee system,[5] that even busy men can afford to serve without pay on the borough council and do their share of committee work. The extension of the sphere of activity of the cities through their engaging in municipal trading is, however, in some British cities so increasing the demands on the time of council members that, if we may believe common report, the work of these council committees is becoming somewhat perfunctory in character, and the influence of their professional expert subordinates is increasing in importance.

Germany.—Organization of the Administration. The country whose municipal organization most closely resembles in this respect that of Great Britain is Germany. Here we find two forms of executive organization, the one called the burgomaster, the other the board, form. The only real difference between the two consists in the fact that the various higher administrative officers are, under the first, rather the subordinates, under the second, rather the colleagues of the burgomaster. That is, in the burgomaster form they must do as they are told by the burgomaster, while in the board form they participate in the determination of questions of policy, although, those questions once determined, they are to act under the general direction and control of the burgomaster. In both cases these higher administrative officers are either paid and professional or unpaid and popular, the number of the latter being determined by local ordinance. The qualifications of the professional officers are laid down in the law and provide for both theoretical professional training and practical experience; the qualifications of the popular officers are practically the same as those required of council members. Both classes of officers, as well as the burgomaster, who is a paid professional officer, are elected by the council for long terms, generally twelve years, longer, sometimes for life, in the case of the professional than in the case of the popular officers. Reappointments also are the rule. The choice of the council in the case of the professional officers must be approved

[5] In Leeds, for example, several of the committees are divided into as many as four sub-committees, while almost all the committees are composed of at least two sub-committees; Hirst, "The City of Leeds," Schriften des Vereins für Socialpolitik, Vol. CXXIII, p. 145.

by the central government. The burgomaster or the executive board is the chief executive and appoints the subordinate administrative officials. For these a merit system of appointment has been provided by law which lays stress as in the case of the higher professional officers both on theoretical fitness, as evidenced by training and examinations, and practical experience, as evidenced by service in some city department without pay. Often the burgomaster and the professional members of the executive board in the larger cities, have, prior to their appointment, served in similar positions in smaller cities. They are chosen because they are presumed to be expert, and often a city in need of such officers inserts a notice to that effect in the newspapers, as is also done in England. Provision is also made for giving preference in appointment to the lower positions to honorably discharged non-commissioned officers of the army. This is particularly true of the city police forces, which thus very commonly have had a military training. Permanence in tenure in both the higher and lower service is secured through the absence of all power of arbitrary removal. Discipline is secured by the recognition of a disciplinary power, which includes the power to impose fines and even arrest, as vested in the chief executive. Pensions are commonly granted to city officers after a stated term of service.[6]

Administrative Boards. To secure a greater popular control over the administration there is formed for each branch of the city's business a board or commission composed of one or more of the higher administrative officers, of members of the council and of citizens not members of the council or officers of the municipal administration. This committee under the guidance of a professional officer and the control of the executive attends to the business of some one branch of the city's administration. Thus, for the schools there is a school board under the presidency of a professional school commissioner (*Schulrath*) and composed of the various elements mentioned, which attends to the physical administration of the schools, their pedagogical

[6] For the position and powers of the German city executive, see Bishop, "The Burgomaster," *American Political Science Review*, Vol. II, p. 396; and Munro, "The Government of European Cities," p. 179 *et seq.*

side being under the control of the school commissioner, acting under the direction of the State Department of Education. What is true of the schools is also true of the support of the poor. In this branch of administration we have a good example of the way in which the German system attempts to make use of the voluntary work of its citizens. It is quite common in the German cities, of which Elberfeld is a shining example, for the city to be divided into districts. In each of these districts there is a voluntary commission which attends to the management of the poor relief under the general supervision of the city board of charities in somewhat the same way that charity organization societies do their work in American cities. In some of the German cities there are under the direction of the local committees a large number of volunteer unpaid workers. In Magdeburg, for example, in 1904, there were six hundred and two unpaid officers who aided the city administration in its work. Of these, five hundred and sixteen were occupied in the poor administration.[7]

We see, then, here a system of boards, largely of a non-professional character, which act in conjunction with and under the guidance of professional higher administrative officers, and which are aided in the detailed administration by a large number of unpaid workers. This system, combined with the powers of control possessed by the council over the work of the administrative force, does much to make the German system, which otherwise lays such stress upon permanence of official tenure and expert management, amenable to popular control. This combination of lay and professional officers in the same authority is peculiar to Prussia and underlies the whole local government system. It is productive of great efficiency and makes possible the occupation by the city of a very wide field of activity without making undue demands on the time of the non-professional popular officers, of whom there are so many in the city civil service.

France and Italy.—Organization of the Administration. In these countries we find a system which departs even further from the English system. Here the higher administrative officers, that is those who correspond to the committees of the

[7] Schriften des Vereins für Socialpolitik, Vol. CXVII, pp. 181–183.

British borough council, are called adjuncts or deputies in France and assessors in Italy, known in Italy in their collective capacity as the *giunta*. These officers are chosen by the council from its own members at the same time at which it elects the mayor and for the same term as the mayor and are, like the mayor, unpaid. Their number varies with the size of the city, being fixed by the law regulating municipal corporations. The mayor as the repository of the entire municipal executive power distributes the business among them as he sees fit and always has at least a nominal control over them, though it would seem that he may not remove them from office. An exception to this general system is to be found in the cities of Italy which have since 1903 entered the field of the operation of public utilities. There is at the head of each such branch of administration in these cities a director or general manager chosen by the council from outside its membership by competition. The general manager is aided by a council chosen in like manner.

The general Franco-Italian system resembles the English system in that the heads of the departments are thus usually members of the council. It resembles the German system in that these heads of departments theoretically act in the discharge of their duties independently of the council and under the direction of the chief executive.

It is the custom in France for the council to appoint committees like the English council committees, of which the deputies are the real chairmen, but these committees are merely advisory and have no positive administrative functions to discharge.

Tenure of Civil Service. So far as the administrative force is concerned the legal conditions are much the same in France and Italy as in England, that is, the law does not lay down the qualifications of municipal officers but leaves that matter to the mayor, in whom is vested absolute power of appointing, removing and directing almost all municipal officers except that in certain cases, among which are the police, the central government reserves certain powers of control.

But in a number of the French cities, of which Paris is a marked example, methods of appointment have been provided which lay great stress on examinations and previous training,

and as a matter of fact, service, whether because of this merit system of appointment or because of an enlightened public opinion, is quite permanent in character. Admissions to the lower grades of the municipal services "are based upon appropriate and impartial examinations. Promotions are made upon approved principles from within the ranks. The system is not so mechanical as to preclude the recognition of special talent, but it affords scant opportunity for injustice or favoritism. The higher grades and branches of the public service draw upon the splendid series of municipal and national technical and professional schools which train men for every special department of municipal activity. Removals from service are not made upon arbitrary grounds; political considerations have nothing to do with municipal employment. Faithful continuance in the service is rewarded ultimately by retirement on life pensions. There is every incentive to fidelity."[8]

Popular Control and Efficiency. The Franco-Italian system in and of itself is not framed with the idea of securing either great amenability to popular control or great administrative efficiency. The long term of the council, four or five years, makes it impossible for the people to exercise a continuous control such as may be exercised in the English system of partial renewals and annual elections. Few if any citizens from outside the council are called in as members of commissions and boards, as is done in the Prussian cities. The mayor and deputies once elected by the council are independent of it and the failure to make legal provision for permanence of tenure in the subordinate administrative force leaves administrative efficiency to be secured by the same public opinion by which the popular control can alone be secured.[9]

The Franco-Italian system abandons absolutely all idea of ad-

[8] Shaw, "Municipal Government in Continental Europe," p. 31. For the position and powers of the French mayor and executive officers, see Munro, "The Office of Mayor in France," *Political Science Quarterly*, Vol. XXII, p. 645; "The Government of European Cities," p. 85 *et seq.*

[9] Almost the only instance in which the courts have interfered with the mayor's power of removal was where the record showed that it had been used for a corrupt purpose. See Revue Générale d'Administration, 1901, Vol. I, p. 167.

ministrative boards and relies on single-headed departments, as they are sometimes called, for the council committees are nothing but advisory committees which in addition to giving advice to the mayor and his subordinates inform the council of the condition of the different departments. It is true that in both France and Italy most of the heads of the departments, that is the deputies and assessors, are, like the chief executive, unpaid, but the control which they exercise must be of a somewhat perfunctory character as no one man has the time, while pursuing some other occupation, to exercise the same sort of supervision over the affairs of the department assigned to him that can be exercised by a board each member of which gives only a small portion of his time to the work. Dr. Munro thus says: "In general it would not be too much to say that the cities of France are administered very largely by a corps of permanent municipal officials acting under a broad range of authority committed to them by the mayors." [10]

The United States—Organization of the Civil Service. We find here a system radically different from any of those which we have 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 municipal corporations act or charter. Only the minor details may ordinarily be fixed by the council. In the cities operating under home-rule charters the municipality is usually at liberty to determine its organization, but even here it is not uncommon for the charter to provide somewhat in detail the administrative organization instead of leaving it to determination by the council. In the ordinary type of city the city executive departments not only are separate from the council, but for quite a long period in our history they were also in many instances separate from the mayor as well. The lack of concentration resulting from such a system brought it about that at one time very large discretionary powers

[10] Munro, "The Office of Mayor in France," *Political Science Quarterly*, Vol. XXII, p. 662.

were vested in the heads of departments in most cities of the United States. This made it necessary that frequent changes should be made in the official force, particularly in the case of the heads of departments, for only through the exercise of the power of appointment, where he possessed it, could the mayor exercise any influence over the heads of departments. These frequent changes were further encouraged by the influence which national parties have so long had over municipal politics in the United States.

Popular Control and Efficiency. This board system of municipal government, as it existed in the United States about the year 1880, was of such a character that it insured neither amenability to popular control nor, except in so far as it provided for a reasonable administrative continuity, administrative efficiency. City elections were largely decided as an incident of national and state politics, and the frequent changes in the official force with the resulting lack of permanence brought it about that administrative efficiency was difficult of attainment. Since 1880, however, the attempt has been made to concentrate municipal administration in the hands of the mayor, to whom are given very generally in the later charters in the larger cities the powers of appointing and removing and the resulting power of directing the heads of the city executive departments.

While this change has resulted in subjecting the municipal administration to a greater popular control, it has not succeeded in producing that permanence in the higher ranks of the administrative force, particularly in the heads of departments, which is necessary for administrative efficiency. Each incoming mayor as a matter of course appoints new heads of departments, as he had done prior to the time when the change in the position of the mayor had been made, and in so doing is supported by the prevailing public opinion.

Under the commission form, as has been indicated, popular control is secured by making the department heads responsible to the elected commission. Whether or not there is a requirement of law that the working subordinates be selected under the merit system, there is apparently a more serious attempt in the commission governed cities taken as a whole than elsewhere,

to secure efficiency by the recognition of professional attainments in the selection of such officials. Under the city-manager system a distinct advance in this direction is to be observed, which places the manager upon somewhat the same plane of professional standing as is the German burgomaster.

Lower Administrative Service. What is true of the higher administrative officers is also true of the lower administrative service. It is a noteworthy fact that whereas the application of what are, in this country, popularly known as civil service reform principles, viz., appointment for merit and security of official tenure, is secured in the European countries by public opinion without the assistance of positive law, in so far as these principles have been realized in practice in America, it is as the result of statute rather than of a widespread public opinion upon the subject. Until within a comparatively recent time there has been no active and widespread body of sentiment against the evils of the spoils system. The prevalent belief that partisan politics in city government was necessary to the maintenance of national political parties has blinded the people to the evils which the city suffers thereby. Within the last decade especially there has been a growing appreciation of the fact that municipal questions should be decided upon their own merits, and that the fortunes of the cities should not be sacrificed in the interests of the state and national parties. The one department of the city government which is almost universally in this country placed upon a professional basis and its staff given permanence of tenure is that of education. In a large number of cities the members of the police and fire departments are also given a permanent tenure. In certain states by state law, and in many cities by local regulation the merit system has been applied to the whole or a substantial portion of the administrative service. It is an encouraging fact that in several recent instances where attacks have been made upon existing merit systems, the public has rallied loyally in defense of the principle and repulsed the attacks. In the great majority of the cities of the country little has been accomplished or even attempted in securing any general appreciation of the fundamental importance of the question. Even the cities under the commission form of government

have fallen far short in perhaps a majority of cases of securing a really permanent expert service.

Department Heads.—Boards or Single Commissioners. The desire to concentrate all executive power in the mayor in order to secure that responsibility for the municipal 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.

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 will be remembered that both England and Germany, where city government on the whole is more successful than elsewhere, lay great emphasis upon the board form of administrative departments. While, therefore, a conviction of the desirability of the board form may be regarded as heretical when looked at from the viewpoint of the average American municipal reformer, it cannot be considered at all heretical when considered in the light of continental European and English municipal conditions. It is therefore quite proper to consider somewhat in detail the reasons in favor of the board form of organization.

The reasons 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 permanence results from the fact that boards may be so organized, as indeed they are generally organized, as to be partially renewed at any one time. 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 that it is the only form of organizing the executive departments of a 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 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 the emoluments of office are quite large and 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-headed system, or else the offices are monopolized by the well-to-do classes of people. The latter result is not believed in the United States to be 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 the offices for any length of time and because they have not received any adequate training they are really not competent to fill these offices.

This last result is what has followed in the average American city, the adoption of the single-headed 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 may be termed "political hacks." By this term is meant men who 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 and must be attached to the offices. They are in fact the only men to whom we can look under the present American system to take office permanently.

The problem of administrative organization is, then, to develop a system which brings into being a really professional service and at the same time secures adequate popular control. Such a professional service could be secured only by frankly recognizing a professional class; making the term of office long, preferably during good behavior; attaching large salaries, and demanding of incumbents a high standard of professional attainment. Such a system, depending upon a professional class,

even if it could be developed, lacks the necessary element of popular control. It is doubtful whether, through any organization of the mayor's powers under the mayor-council system, the influence of a mayor serving for a short time and dependent upon this professional force for the carrying out of his policies would be great enough to make the service sufficiently amenable to popular control.

Administration by Non-Professional Boards. From what has been said it would appear that a real professional service properly amenable to popular control can be built up only by making it subordinate to a system of boards, under which board members are not paid large enough salaries to make their positions attractive as a means of livelihood. An ideal arrangement would perhaps be, as is the case in the European countries, to attach no emoluments whatever to the positions but to depend upon the civic interest of citizens to attract them to the public service.

Such a board system would make it possible for the business and professional classes of the community to assume the care of the public business without making too great sacrifices. Compulsory service, as is the rule in Prussia, might 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 would be much diminished if proper methods of filling the higher subordinate positions were adopted. If, for example, the public works department of the city were placed in the hands of a board having under its direction a competent engineer or engineers with permanent official tenure who should attend to the details of the purely technical work, there would be left for the board itself merely questions of policy to determine, which could 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, could arrange all preliminaries which must be at-

tended to before any matter was decided by a full session of the board. Such full sessions could be held often enough to secure proper 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 would 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 radiate the best sort of political influences—influences which are continuously at work for the amelioration of municipal conditions.[11] If combined with such a method of organizing the heads of municipal departments there were 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, the administration would be popular and efficient, and would encourage the development of public spirit.

That such a system is not wholly foreign to American experience will be seen by an examination of the ordinary method of organizing the administration of education, which must be regarded as on the whole the most successful branch of American municipal administration. 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 system has had the result of allowing state and national

[11] As to the general effect on city government of the existence of numerous unpaid officers, see Schriften des Vereins für Socialpolitik, Vol. CXVII, pp. 283–286.

politics to have 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 entrusted 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.

Administration Under Commission Government. The commission plan of government, though retaining the idea of single-headed departments, seemed at first destined to secure a permanent professional administrative force combined with adequate popular control, through a different method. Under the original commission plan the commissioner in charge of a department was not required to possess expert professional qualifications, and he was not paid for nor was he expected to devote his entire time to the work of the department. His position was somewhat that of the English council committee (in this case a committee of one), rather than that of the usual department head as appointed by the mayor. The technical knowledge was supplied by subordinates in actual charge of the work who would presumably be given a permanent professional standing. The commission as a whole to whom the commissioner was responsible stood as the supervising agency of popular control.

When, however, the commission plan was transplanted to Houston and to Des Moines departmental organization was profoundly altered. Each commissioner was now required or expected to devote his whole time to the work of his department and his salary was increased accordingly. Instead of standing as a supervising agency of the public overseeing the work of a professional force, he became the active working head of his department. Perceiving that when commissioners are as-

signed to their departments after election it is only by chance that they possess specialized qualifications, one state, at least, has recognized the new position of the commissioner by providing that the commissioners shall be elected directly by the people to the headship of specific departments. The result is virtually a return to the system of elected department heads which more than half a century ago proved so unsatisfactory, modified only by what must in the long run prove a feeble supervision by the commission as a whole. Both the method of selection by popular election and the instability of the tenure will prevent, under the Houston and Des Moines system, the development of a permanent and trained professional class of administrators. We are forced to the conclusion that under the prevailing type of commission government the office of commissioner will tend to be filled by the same type of professional politician, devoid of special qualifications, as is to be found at the head of the departments under the older forms of city government. Could the original conception of the commissioner's place have prevailed, a more satisfactory result in this direction might have been realized.

But notwithstanding all that may be said and all that has been attempted in the direction of board control in this country, the recent trend is toward the single-headed idea, particularly in the larger cities where the work of the departments is more complex. What is desired is administrative efficiency and quick action. It may be 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 the country is based on the one-man idea rather than on the board idea. It is the railroad president, the corporation president, and the bank president, rather than the board of directors who gives its tone to the railway, the manufacturing company 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 leader who directs the college and controls the party. It is the President and the state governor, not Congress and the legislature, to whom the public are turning to secure desired results through political

action. In spite of the advantages offered by the board system and the abuses to which the single-headed plan is open, it is not surprising that the same tendencies and ideals should prevail in city administration as pervade our industrial and political life.

The City Manager. The institution known as the city manager is the result of an effort to combine with popular control through the commission, the efficiency to be derived from the centralization of responsibility in a single individual and the creation of a permanent professional force, both of which have failed of attainment through the commission plan as well as through the mayor-council form of organization. The qualifications and tenure prescribed for the manager give him a professional standing not hitherto recognized in the head of an American city. At the same time the responsibility centered in him for the successful conduct of affairs, together with the provisions made for a merit system give reasonable assurance that the same character will pervade the whole administration.

By the charter of Dayton, Ohio, which was the first of the larger cities to adopt the city manager plan, and whose organic law may be taken as typical, it is provided that: "The commission shall appoint a city manager who shall be the administrative head of the municipal government and shall be responsible for the efficient administration of all departments. He shall be appointed without regard to his political beliefs and may or may not be a resident of the city of Dayton when appointed. He shall hold office at the will of the commission and shall be subject to recall." His functions include the duty to appoint and remove all officers both of the higher and lower administrative services, subject in the latter case to civil service regulations; to make all appointments, "upon merit and fitness alone"; to advise the commission as to the financial condition and needs of the city, and to recommend such measures as he shall deem necessary.

Since this type of administrative organization assumes a distinctly professional character, the Dayton charter introduces a further element of popular control beyond that exercised by the commission itself, by directing the commission, upon request of the manager, to appoint citizen advisory boards. The

function of the boards is to "consult and advise with the various departments" as may be prescribed by ordinance. These unpaid boards suggest the citizen element in the German municipal departmental commission which has done much to popularize an otherwise too professional administrative service.

City Administrative Districts. Before closing what is said as to the organization of the city executive, 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 election 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 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 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—were placed, perhaps, in or around a small play-ground or park—it would be possible to develop civic centers which might materially assist the social center movement which already in certain cities has done much to develop a 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 mayor—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. Somewhat similar are the conditions in Germany where the large cities are divided into districts, with a district officer at the head of each, who is the subordinate of the burgomaster. 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 XI

POLICE ADMINISTRATION

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Definition of Police. The word "police" has been used in the past and is now used in quite different senses. Originally it meant all government. Later it was used to indicate what is now called internal administration, that is, all administration not relating to military, financial, judicial or foreign affairs. Finally it has come to mean that part of the administration of internal affairs which attempts to prevent the happening of evil and to suppress violations of the law. This is the sense in which the word is most commonly used now-a-days, 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 governmental function which is exercised in order to preserve the public safety through actions somewhat repressive in character, we may divide police functions into three classes, to which we may give the names of legislative, judicial and administrative.

Legislative police functions are discharged by 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. All that need be said here is to call attention to the fact that the local police ordinance power is in England, the United States and Italy delegated by the state to the city, and as a rule is exercised by the city council; but that in France and Germany it is regarded more as a state than as a local function and when exercised by a local officer is exercised by him under state control, and that it is not vested in the city council but rather in the executive authorities. In a number of the cities in the United States, authorities other than the council and executive in character discharge these legislative police functions.

By judicial police we mean the punishment of 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 with minor criminal jurisdiction as well. We shall, therefore, in our discussion of judicial police touch also upon the criminal judicial functions which are in exceptional cases discharged by municipal officers.

By administrative police we mean the protection 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 the heading of administrative police will be discussed not only the maintenance of order but also sanitary police, building police, fire protection and police of public safety generally, all of which are commonly in American cities comprehended in the functions of the department of public safety and the department of

health. Judicial police will be first taken up and conditions will be studied especially as they exist in England and the United States.

Judicial Police.—English Judicial Organization. Whatever may have been the original powers of English cities in the matter of justice and judicial police, with the development of the royal courts and the justices of the peace, cities and city officers as such lost all such functions. It is true that persons who in other capacities may have acted as city officers did in the larger cities of England discharge these functions; but they did so because a special commission of the peace had been granted to them by the Crown, but not because they were city officials. The Municipal Corporations Act of 1835 preserved this general system and secured to the Crown the right of appointing all the officers, except the mayor and the ex-mayor, who in the cities exercised these judicial and police functions. In order to understand the system a word explanatory of the general judicial police system throughout England is necessary.

In every county there are officers exercising judicial police functions, called justices of the peace. They act, roughly speaking, in two capacities. They are at the same time members of a county court, called the court of quarter sessions, and act, either singly or in pairs, in courts which are called petty and special sessions. The county court of quarter sessions is in the first place a court of appeal for minor criminal and administrative cases, and in the second place a court of original jurisdiction for the more important criminal cases not of a capital character. The courts of petty and special sessions are courts of first instance for minor criminal, police and administrative cases and the justices acting singly in petty sessions have police jurisdiction and act as committing magistrates. Each of the justices, and the court of quarter sessions as well, has, unless some exception is made, jurisdiction of the entire county, as well in the urban as in the rural parts. If an exception is made by what is called a *non-intromittant* clause inserted in the commissions of the ordinary county justices, then there may be a special judicial organization for the borough. In that case the borough may have simply its own justices or it may also have

its court of quarter sessions and the county justices and the county quarter sessions will not have jurisdiction within the borough.

Judicial Police in English Cities. The present Municipal Corporations Act provides first, that the Crown may, on the petition of a council of a borough, grant to the borough a separate commission of the peace and assign to any persons a royal commission to act as justices in and for such borough, when they shall have, with respect to offences committed and to matters arising within the borough, the same jurisdiction and authority as county justices have for the county, except that they shall not by virtue of a borough commission act on the county court of quarter sessions.[1] These borough justices serve without pay and practically for life, though legally their term is during the pleasure of the Crown.

Second, the Crown may, on a like petition of a borough council, appoint one or more stipendiary magistrates who shall be barristers of seven years' standing and who shall hold office during the pleasure of the Crown and shall be paid a salary not exceeding, except with the consent of the council, an amount mentioned in the petition asking for the appointment of such magistrate, which amount shall be fixed from time to time by the Crown.[2]

Third, the Crown may, on a like petition of a borough council, grant to a borough a separate court of quarter sessions on such terms as may seem fit to the Crown in Council, and appoint a recorder of the borough who shall be a barrister of five years' standing, shall hold office during good behavior and shall receive a salary not exceeding an amount to be stated in the petition, which amount is fixed by the Crown, but may be increased by a resolution of the borough council approved by the secretary of the state. One person may be appointed recorder for two or more boroughs conjointly. The court of the recorder shall have the same jurisdiction, except as to certain enumerated administrative matters, as an ordinary county court of quarter

[1] Consolidated Municipal Corporations Act of 1882, §§ 156 to 158.
[2] *Ibid.*, § 161.

sessions.[3] A borough having a separate court of quarter sessions is freed from most of the county expenses, but has itself to pay all expenses of criminal trials in the borough.[4]

It will be seen from this description that the present system of judicial police in England, so far as it affects the cities, is based upon the idea that judicial police is a matter of state rather than of municipal concern, but that it may be necessary to modify the general system existing throughout the country so as to suit the conditions in the urban districts by substituting professional paid officials such as stipendiary magistrates and salaried recorders for unpaid popular justices upon whom reliance is placed throughout the country as a whole. The necessity of modifying the details of the general system on account of the peculiar conditions of urban districts, has not, however, had the result of making judicial police a municipal function, in the sense that it is to be discharged by municipal officers. The law is careful to keep the appointment and as well the fixing of the salary of judicial police officers in cities in the hands of the central government, which can thus see to it that a proper salary is provided for professional police magistrates and that persons are appointed who will not permit local prejudices to affect the discharge of their functions.

Judicial Police in the United States. A study of the development of municipal institutions in the United States shows that the earlier American charters, in accordance with the English ideas of the time, vested judicial police functions in certain of the city officers, namely, the mayor, recorder and aldermen. The history of judicial development in the city of New York illustrates the experience of the older cities of the country. In New York these officers were declared by 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 had power to

[3] Consolidated Municipal Corporations Act of 1882, §§ 162 to 165.
[4] *Ibid.*, § 169.

arrest vagabonds, idle and suspicious persons and 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, as a result of this special grant to them of these judicial powers by the Crown.

By an act of 1788 courts of Oyer and Terminer and General Gaol Delivery in the city were to be held by a justice of the state supreme court sitting with the mayor, recorder and aldermen. The preservation of the peace was still looked upon, in a measure at least, as a local function, since the mayor, recorder and aldermen were continued as conservators of the peace. They were, however, to be assisted by special justices who were at first appointed by the governor, later by the city council, but in 1846 were made elective. Two years later the city was divided into districts in each of which was elected a police justice with the powers of the special justices for preserving the peace of the city. Though the mayor, recorder and aldermen seem to have continued for a time to have magisterial power which they seldom if ever used, petty criminal jurisdiction was by the foregoing law transferred from the executive and legislative branches of the city government and vested in a separate police court. The petty civil jurisdiction of the mayor, recorder and aldermen was, as early as 1791, encroached upon, when assistant justices were created to relieve the magistrates, and the magistrates were forbidden to exercise minor judicial functions.

The higher civil and criminal jurisdiction of city judicial officers was likewise abridged by an act of 1821 which created a "court of common pleas or county court" and a "court of general sessions of the peace." The judges of both were to be a first judge appointed by the governor and the council of appointment, the assistant justices already created and the mayor, recorder and aldermen. This act clearly recognizes the higher civil and criminal jurisdiction in the city as a state function though the city magistrates still shared in its exercise. It was

made the special duty of the first judge to hold the court of common pleas. The court of common pleas ultimately was merged with the regular system of state courts. The act of 1821 likewise provided that the recorder should hold the court of general sessions, and this he has until recently continued to do. He was later divested of all administrative functions and made a purely judicial officer. The aldermen have now lost all judicial authority and the mayor is a magistrate only in name.

With respect to their selection the history of city judicial officers does not differ materially from that of the administrative officers. The democratic movement of the middle of the nineteenth century brought about the election of officers both administrative and judicial by the people. The elective principle worked as badly for judicial as for administrative officers, but the selection of the former being fixed in the constitution it was more difficult to secure a reform. Whereas the heads of administrative departments were made appointive in 1853, it was not until 1873 that the power of appointing police justices was conferred upon the mayor and aldermen. The selection of judicial officers is now vested in part in the voters at the polls and in part in the mayor.

So far as other cities of the United States are concerned, their experience has been very similar to that of New York during the nineteenth century. To-day there is considerable variety in practice. Sometimes the judicial police officers of the city are appointed by the governor of the state or the state legislature, as in the New England states, sometimes by the city council, as in the southern states, or by the mayor and council or by the mayor alone as in many eastern states and sometimes elected by the people as in Philadelphia and generally through the middle western and far western states. In some states the mayors of the smaller cities are still ex-officio city judges.

Juvenile Courts. Within recent years attempts have been made in some of the larger cities of the United States to provide, in addition to the ordinary minor criminal courts, certain specialized courts. Best known among these is the juvenile court. 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. Closely connected with these 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. When a youthful offender is convicted of a criminal offense by one of these 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. This method of dealing with juvenile cases has been so successful that it has been applied to some extent to adult first offenders, especially those charged with drunkenness, and with good results.

Organization and Functions of Municipal Courts. The organization and powers of these lower city courts, and particularly of those having criminal jurisdiction, are 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.

There are few points in which city government in the United States remains in so unsatisfactory a condition as in its courts. The system was created generations ago in surroundings quite different from those existing in the cities of today, and has proved sadly inadequate to the needs of modern urban communities. The general criticisms directed within recent years against courts in general have in large measure been shared by those of

the cities, and, indeed, some of the evils inveighed against have been most conspicuous in city courts. Furthermore the administration of justice in large cities presents problems not appearing elsewhere. The faults of the administration of justice in cities are with respect to both organization and procedure.

The most conspicuous fault of organization is that there are several courts existing independently side by side. In many instances the judicial organization of the rural districts has been preserved in the cities. This has brought into the city the justice of the peace usually elected and almost invariably unlearned in the law, whose court, frequently having concurrent jurisdiction with the city courts of first instance, too often becomes an instrument of petty tyranny rather than a fountain of justice.

It has been the custom, as business has increased beyond the capacity of existing courts, to create new ones, each independent of all others, each having its own judges and its own particular jurisdiction. The creation of juvenile courts, mentioned above, is one manifestation of this tendency. Legislatures have persisted in legislating upon the details of such judicial organization, specifying both the structure of the courts and the powers and duties of the judges. The result is inflexibility of organization, division of responsibility and conflict of jurisdiction. Judges whose duties are light are without power or incentive to assist in other courts whose dockets are overburdened with cases. Under such an organization there can develop no unity of purpose, no esprit de corps which may inspire excellence or a sense of common responsibility.

Likewise has the legislature sought to circumscribe judicial action by enacting detailed codes of procedure. Every situation in litigation is sought to be anticipated in a system of procedural rules which leaves the judge so little freedom of action that he becomes merely an umpire in a contest between the attorneys. The result is frequently such delays and general inefficiency as to amount in many cases to a denial of justice.

To remedy the situation it has been proposed by some who have carefully studied the subject that the courts of the city should be consolidated into one great municipal court of which all the judges should be members. In the case of the smaller

cities it is proposed that the county courts similarly reorganized should be consolidated with the city courts. Such a court would be made up of branches devoted to specialized subjects such as juvenile cases, morals, traffic, domestic relations, quasi-criminal cases and criminal cases. At the head of the unified court would be a chief judge vested with general administrative authority over the work of the whole court, including power to establish branches, assign judges and prepare dockets. The chief judge alone or together with certain of the other judges should have power to make rules of procedure, and appoint officers of the court. Under this arrangement flexibility of organization is secured to the end that judges may be assigned to the particular branches for which their interest or special talents might fit them, and may in emergencies be transferred from branch to branch to relieve congestion of the dockets. Rules of procedure made by the court tend to suit the real needs and make justice more speedy than those enacted by legislative bodies. Moreover they may be more readily changed to meet new conditions.

Under the existing organization there has been no one authorized to perform the administrative work placed by this plan upon the chief judge. Under the proposed plan an administrative force would, under the direction of the chief judge, prepare the dockets, and compile statistics, as is done in most foreign countries, upon social and criminal matters coming before the courts. Recent advances in psychology and penology reveal the fact that crime is intimately connected with defectiveness and social environment. Were the court provided with a psychopathic laboratory manned by specialists the results of its investigations would prove an invaluable aid in determining responsibility for crime. Taken together with the statistical records before suggested the results of these investigations would furnish a scientific basis for legislation upon the subjects of charities and corrections such as we do not now possess.

Municipal courts conforming in organization and functions more or less closely to the plan here outlined have been set up in some of our larger cities, and those of Chicago and Cleveland have been conspicuously successful in their operations.

Selection of City Judges. Since in so great measure the success

of a court depends upon its personnel, the method of selection of judges is of prime importance. The solution of this problem so far reached has been far from satisfactory. 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 a bad 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 appointments 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.

Were a unified court to be created the chief judge might well be made elective, since he would be to a very large extent for the administrative side of the court's work. It has been suggested, therefore, that he might be given power to appoint the other judges. A precedent for this is found in the case of United States commissioners who, in the federal system of judicial administration, exercise functions not unlike those of magistrates in city court and who are appointed by the court. An alterna-

tive suggestion is that the chief judge or the members of the bar should nominate candidates from among whom the people or the governor should make the selection. It is significant to note that nowhere except in our American states is the attempt made to choose judges by local election. In Great Britain, France and Germany, all officers discharging functions similar to those exercised by petty justices are appointed by the central government.

Judicial Police in France. In France the same distinction which is made in the law of England and the United States is made between administrative and judicial police. The organization of the police courts is fixed by the law of the 16th to the 24th of August, 1790, as amended by the law of the 29th of Ventôse of the year IX. At present each police court is held by a justice of the peace appointed and removable by the President of the Republic. The only qualification is that he must be thirty years of age. In Paris and the larger cities there is one justice of the peace for each district into which the city is divided. In Paris there are twenty of these districts.

In addition to certain minor civil and conciliatory jurisdiction the justice of the peace has jurisdiction in police offences punishable with a fine of from one to fifteen francs and imprisonment for not over five days. He is also to investigate crimes, gather the evidence with regard to them and to commit for trial by the criminal courts persons charged therewith. Appeals may be taken from the convictions of the justice of the peace to the correctional tribunal.

There is one of these correctional tribunals in each city. In the larger cities it may be divided into chambers, some of which are civil and others criminal. In Paris there are seven civil and four criminal chambers. In the smaller cities the same judges have civil and criminal jurisdiction as the court is not divided into chambers. These courts are composed as a rule of three judges appointed for life by the President of the Republic. They have, in addition to quite a large civil jurisdiction, appellate jurisdiction of the convictions of the justices of the peace and original jurisdiction of the more important police

offences punishable with more than fifteen francs fine and imprisonment of more than five days.[5]

Judicial Police in Germany. In Germany a distinction, similar to the one which is made commonly in England and the United States and universally in France, is made in principle between administrative and judicial police. But in Prussia by an exception administrative police officers, who are appointed either by the Crown, or by the city council subject to the approval of the Crown, may impose fines up to fifteen marks and, in case of failure to pay the fine, imprisonment up to three days, subject to an appeal to be taken within a week to the regular courts. If no appeal is taken the decision of the police officer goes into effect.[6]

The more important offences, which in the United States and England would be called police offences but which in Germany are called penal offences, fall within the jurisdiction of the lowest criminal court known as the Amtsgericht, held by a judge appointed for life by the Crown.[7] He acts in a twofold capacity. Acting alone he is a judge of first instance with a minor civil jurisdiction [8] and a committing magistrate.[9] Acting as a criminal court of first instance he has associated with him two lay assessors or schöffen. These are non-professional unpaid officers, judges of the law as well as of the facts and have the same power as the judge.[10] The assessors resemble very closely an English petit jury, except that they decide questions of law as well as fact. They are selected from a list drawn up by the executive of the city. At the time the list is made up the days the court will sit for the coming year are determined upon and the order in which the assessors will be called upon to act is fixed by lot. The failure of assessors to appear at the proper time is punishable by fine. These courts have jurisdiction of offences which are punished with imprisonment not exceeding three months or a fine not exceeding six hundred marks, or

[5] Simonet, "Droit Public et Administratif," pp. 130, 131, 142.
[6] De Grais, "Verfassung und Verwaltung," etc., p. 270.
[7] *Ibid.*, p. 223.
[8] *Ibid.*, p. 220.
[9] Von Rönne, "Staatsrecht der Preussischen Monarchie," Vol. III, p. 339.
[10] De Grais, op. cit., p. 220.

both.[11] In both France and Germany there is attached to these courts as to all criminal courts a prosecuting force. In France the function of prosecuting police offences is entrusted to the commissaries of police who are appointed in communes of over 6,000 inhabitants, on the basis of one for every ten thousand inhabitants by the President of the Republic. It does not seem to be necessary that they shall be learned in the law. The commissaries of police may be removed by the President of the Republic and may be suspended by the prefect of the department in which the city is situated.[12] In Germany officers called state's attorneys are appointed by the Crown for life, one at least for each Amtsgericht, and must be learned in the law.[13]

Two Conceptions of Administrative Police. The conception of administrative police in any country is in large measure dependent as to both its character and its content on the ideas which have been and are now entertained in that particular country on the extent of the police power which the government as a whole shall exercise. In general these ideas are two in number. In the first place, among some peoples, of which the English may be taken as an example, the fundamental idea of police power was originally that it consisted merely in the power of repression. Police legislation was conceived of as a body of law which prohibits certain actions regarded as prejudicial to the public welfare.

Opposed to this fundamental English idea was the second idea entertained on the continent generally, that the state should, in addition to taking all necessary repressive measures, resort as well to preventive measures. The law was conceived of as a rule of conduct which should not only prohibit actions prejudicial to the public welfare but also prescribe the performance of acts which if performed made unnecessary resort to repression.

This difference in ideas as to the police functions of the state was due in all probability to the fact that liberal political ideas were developed earlier in England than on the continent. On the continent, on the contrary, the royal power was, until the

[11] Von Rönne, op. cit., pp. 338, 339.

[12] Berthélemy, "Traité du Droit Administratif," p. 324.

[13] De Grais, op. cit., p. 224.

middle of the nineteenth century, personal and absolute rather than constitutional and limited. On the continent, it was believed to be necessary to impose a restraint on individual freedom of action in the formation of associations and the expression of opinion on political matters, and resort was had to preventive measures through which attempts at political change could be nipped in the bud. Forces of a police character were organized whose duty it was to exercise a supervision over those classes most liable to attempt to bring about a change in existing political institutions. With the development of constitutional government on the continent, the arbitrary powers of police authorities with regard to the freedom of speech and association were limited by legal provisions guaranteeing such freedom under conditions clearly set forth in the law. But in the meantime it had come to be recognized that the police might properly take preventive measures with regard to the classes considered dangerous to the community. These were now rather the ordinary criminal classes than the classes desiring political change. The result is that the law on the continent grants to police authorities large powers of supervision over the population which are of the greatest value in preventing and detecting crime, in addition to the purely repressive powers which are used in conjunction with the courts in punishing those responsible for crimes already committed.

In England, however, constitutional government was established so early, and the right of freedom of association and speech was so early recognized that no political police system similar to that to be found on the continent was developed. England was, it is true, the first European country to establish an effective system for the preservation of the peace and the detection and punishment of crime in the larger cities. But when that system was established great fear was entertained, as will be shown, as to the effect on English freedom of the new police force. For that reason it was not vested with preventive powers similar to those exercised on the continent. English police officers do not even now either possess or exercise the powers of supervision which the present continental police forces

possess and exercise over the classes believed to be criminal.

When, however, English social conditions increased in complexity owing to the development of commerce and industry and the massing of people in cities consequent thereupon, the English law began to change. It was seen that repressive measures were insufficient to safeguard the interests of urban populations, whose health and general welfare were being imperilled by the great industrial revolution which was taking place. England therefore about the middle of the nineteenth century enacted public health laws and provided a public health administration based upon the idea of prevention as well as repression.

For fully fifty years nothing was done on the continent for the protection of the public health and safety comparable to what was done in England. The hesitation evinced by continental countries in following the English example was not due to the feeling that preventive measures as such were improper, since as has been seen, the police of the criminal classes was based on the idea of prevention. This hesitation, while undoubtedly partly due to the fact that the continent did not feel the effects of the industrial revolution so soon as England, was unquestionably caused also by the consideration that preventive measures in the interest of the public health involved serious limitations of the right of property. Preventive measures with regard to the criminal classes involved only a limitation of the right of individual liberty. These the property-owning classes, who controlled the government, did not resent since such measures did not affect these classes, and at the same time increased the security of property. But with the development of liberalism the property-owning classes of the continent had to accept the limitation of their property rights, made necessary by the protection of the public health, and now the law of both England and the continental states is in the case of the police of health and safety based on the idea of prevention as well as of repression.

In the United States ideas as to the repressive character of the police functions of the state, which were inherited from England, were held longer even than in the mother country. This was quite natural, because American commercial and industrial

development is a comparatively recent thing and even now has not reached the complexity to be found in Europe. But even in the United States the development of urban conditions, which has been so marked, has resulted in our accepting, particularly in the domain of public health and safety, the idea of prevention as a necessary one. In the United States, however, as well as in England, the police forces never obtained those powers of supervision over the population which are so characteristic of continental police forces.

Practical Results of the Two Conceptions. Since the English speaking peoples did not originally conceive of the police power as embracing both repression and prevention, in both England and the United States the organization adopted for the work of repression is separate from and independent of the organizations charged with the work of prevention wherever the latter work has been undertaken.

Furthermore, partly at any rate because of the narrower conception of legislative authority on the continent and the consequently wider conception of the extent of administrative authority, police authorities, which are really a part of the administrative organization of the state, are in continental countries endowed with much wider powers of supplementary legislation or ordinance than is the case in England or the United States, where by the theory of the law powers of police ordinance are vested in the city councils.

Finally, notwithstanding the gradual recognition in England and the United States of the idea that the power of the state embraces functions of prevention as well as repression, in actual practice the functions of prevention are less important in the Anglo-American countries than in continental European countries.

The concrete effects of these different conceptions of police are: first, as a rule both in England and the United States the authorities commonly spoken of as police authorities, i.e., the authorities established for the preservation of the peace, are entrusted with repressive functions only. They are to preserve the peace, detect and arrest violators of the law, and are rarely called upon to take measures intended to prevent the commission

of crime through the supervision of the classes most apt to be guilty of criminal actions.

Second: the head of the police system in English and American cities also has practically no ordinance power beyond the power to adopt regulations as to the conduct of police officers, and has little if anything to do with the enforcement of those measures of a preventive character known on the continent as sanitary police, and building police, which under the Anglo-American system, are as a rule entrusted to special authorities having no connection with the distinctly police authorities.

Finally, under the Anglo-American system the actual practice, whatever may be the legal theory, is to vest the police power, in the narrow sense in which it is conceived of, in distinctly municipal authorities. These authorities may be subjected to a state control, but they are usually really local rather than general in character.

On the continent, however, conditions are quite different. The authority in charge of the police in cities, even if he be locally selected, is recognized as a member of the state system, has usually jurisdiction not merely over the police force, as Americans understand it, but as well over sanitary, building and other matters, and has a large power of ordinance as well as of issuing individual orders in addition to the power of arresting violators of the law. The powers of a preventive character which he possesses embrace large powers of supervision over the city population, the exercise of which in the present condition of public opinion would be resented in both England and the United States. The continental police thus are expected to supervise the actions of non-residents who happen to be in the city, by an examination of hotel and lodging house registers.

Development of State Police Forces. The systematic organization of professional disciplined police forces in the narrow sense in which those words are popularly used has only very recently been undertaken by any government. Of course 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 Shakespeare's Dogberry is the most famous example. There was nothing, however, very systematic about the system

which the government established, and its action was not attended with great success. Besides forming a police organization 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 offences.

The first serious attempt to form a civil police force which appears to have been made was made by the French government by the law of January 6 and 30, 1791. This law organized a force known as the *Gendarmerie,* which was only partially of a civil character. The detailed organization of the force was provided by the law of the Republic of date 28 Germinal in the year VI (1798), where it was stated that the duty of the force was "to assure the maintenance of order and the execution of the laws throughout the Republic." The *Gendarmerie* is at the same time a military and a civil force. It is therefore organized in a military fashion and is at the same time under the direction of the minister of war and the minister of the interior. It is composed of persons who have served in the army, who after trial have shown themselves to be competent to do the work required of them. Their military duties are mainly those done in English and American armies by the provost-marshal's guard; that is, the notification to the proper authorities of offenses against the military law, the pursuit and arrest of offenders and the maintenance of good order.

Their civil duties are of similar character and are discharged mainly in the rural districts. In the discharge of their duties these officers must report to the minister of war a series of crimes which particularly threaten to disturb the public order, to the ministers of the interior and of justice the number of all arrests made with all necessary details and to the minister of the interior with regard to the supervision which is entrusted to them of the criminal and vagabond classes.

The *Gendarmerie* are always subject to the orders of the civil authorities and their chief officer in the department must report every day to the prefect of the department, who in case of trouble may order the union of several brigades (there is a

brigade in every department) at the place where the disturbance may take place.[14]

This system which was introduced very generally on the continent, was adopted in Prussia in 1812. The organization and powers of the Prussian *Gendarmerie* are similar to what they are in France, except that the members of the force are confined to civil police matters, and have no functions to discharge relative to the army which has its own force for the discharge of military police functions.[15] Italy has a similar force known as the *Carbinieri,* who are under the control of the minister of war although they are not a part of the army. There is also, in Italy, a force known as the guards of public security under the minister of the interior and under the immediate control of the prefects of the provinces. Their duties are mainly of a detective character.[16]

England possesses no such state police system, though during the course of the nineteenth century there was established a civil county police system which is under rather complete state supervision.

In the United States as in England, the ordinary work of preserving order has been considered a local function. Within a few years there has arisen a demand in several states for a body of police under state control to supplement the local forces. State police forces of one sort or another have been created in not less than thirteen states. While in some of the states the resulting organizations have been of a somewhat rudimentary and tentative character, elsewhere, notably in Pennsylvania, Texas, Nevada and New York, they have taken the form of a permanent uniformed and semi-military organization. The problems which have prompted the creation of these forces are: (1) those incident to frontier life; (2) the lack of adequate police protection in rural districts; (3) the fact that because of easy means of communication crime is no longer local in character,

[14] Block, "Dictionaire de l'Administration Française," article "Gendarmerie."

[15] Stengel, "Worterbuch des Deutschen Verwaltungsrechts," article "Gendarmerie."

[16] Fairlie, "Essays in Municipal Administration," p. 332.

and (4) a desire to release the National Guard from the odium attaching to its employment on police duty, particularly in connection with labor disturbances. In addition to the ordinary work of police, the state force is usually employed as a forest, fish and game patrol, and in the enforcement of the road laws.[17]

Local Police—The London System. The first important attempt to form an efficient 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 was concerned reliance was placed in the main on the parish constable and the night watchmen 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 police forces 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 put upon somewhat the same basis as the metropolitan police force in 1839. The fact of Sir Robert Peel's connection with the change will always be associated with the new municipal police methods from

[17] The State Police Problem in America, Report of Bureau of State Research, New Jersey State Chamber of Commerce, January, 1917.

the terms "Bobby" or "Peeler," which, originally used in derision, have since come to be applied commonly to city policemen almost everywhere that English is spoken.

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 great 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 streets 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 verdict 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.[18]

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 services, but the service was paid for on such a low scale that the constables and watchmen were unable 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 policeman thus became a definite occupation, requiring certain specific qualifications, although the powers given the members of 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 commission-

[18] Encyclopædia Britannica, article "Police."

ers, who were given the powers of justices of the peace, were appointed by and acted under the immediate direction of the home secretary, making virtually a state police for the metropolis.

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

At the time of the formation of the system provision was made for a detective force which is known as the criminal investigation department. This department 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 have assumed a really national character and 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 thus provided was to be left in local control. Subsequent laws have, by grants of aid from the central government to the boroughs and counties, which attained a certain degree of efficiency, to be evidenced by a certificate of the Home Secretary, brought about the formation of similar forces in both boroughs and counties. 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 Police Systems. In the United States at the beginning of the nineteenth century the conditions which existed in the cities were similar to those in England. Reliance was placed almost entirely on constables and night watchmen. A good idea of the conditions in one of the large cities of the United States is given by Allinson and Penrose in their "Philadelphia." Here it is said:[19] "The first watchman was appointed 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

[19] Allinson and Penrose, "Philadelphia," p. 34.

fire. In 1704 it was ordered by the common council that the city be divided into ten precincts and that watchmen be assigned to each constable therein. 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 pretence that they would attend to 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.'' [20] This system was not satisfactory and several riots occurring, one in 1833 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 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 effort to do this excited somewhat the same remarks that were evoked by the attempts at a more recent date to put the street cleaning force of New York into uniform. The wearing of uniform was considered to be degrading to American manhood, and the attempt to enforce it was resented. Indeed, it is said that in Philadelphia the men did not generally wear their uniforms until 1860.

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

Continental Police Systems. In most of the countries of Europe the police of the larger cities are organized in the London fashion. They are also either under state management, or are subject to a strong state administrative control. Thus in France the organization of the local police force in cities of more than forty thousand inhabitants is fixed by decree of the President made after hearing the wishes of the city council. The members of the force in these cities are appointed by the mayor, whose

[20] Allinson and Penrose, "Philadelphia," p. 99.

action must be approved by the sub-prefect or prefect, who alone has the right to remove them from office. The expense of the force is obligatory on the city. In the smaller cities the city authorities have control of the force.

In Germany (Prussia) the care of the police is, in the larger cities, placed in the hands of state appointed authorities known as police presidents or directors, and in the smaller cities in those of the burgomaster. In the larger cities police officers are to be chosen from non-commissioned officers in the army and navy of not more than thirty-five years of age, who have had at least seven years of service.[21] The organization of the forces of particular cities is fixed by ordinance of the central government.[22] In the cities in which the police are in the direct administration of the central government, there is usually one patrolman for every fifteen hundred inhabitants. In the cities which administer their own police the number of patrolmen is often less.[23]

Growth of State Control in the United States. Under the decentralized system of administration prevailing in the states of the union the work of administrative police has been commonly performed by local authorities. In the earlier days the preservation of the peace was in the hands of the sheriff and the constables. Though the special function of the city police was the enforcing of local ordinances, from the first their most important duty was as agents of the state in supplementing the work of the sheriff in the enforcement of the state laws for the protection of life and property.

This service was at first performed by an untrained force of citizen watchmen who owed their selection either to local election or to appointment by the mayor or city council, very commonly as a reward for political services. The inevitable result from a force so constituted was general inefficiency. The police officer from the nature of his duties is brought into daily contact with the vicious and law-breaking classes and hence is peculiarly exposed to the temptation to grant immunity to individuals of those

[21] Grantzow, "Der Schutzman," pp. 35–36.

[22] Leidig, "Preussisches Stadtrecht," p. 153.

[23] Held, "Organization der Preussischen Polizeiverwaltung," p. 9.

classes to his own personal advantage. Thus, too, a corrupt political organization through a subservient police may barter protection in return for votes and contributions to the party war chest. Hence, in a large number of instances corruption was added to inefficiency.

Whether or not the local police are corrupt, a common result of the control of the force by local authority is neglect to enforce state laws which are deemed wise and desirable by the people of the state as a whole. Since state legislatures are usually dominated by rural opinion laws are passed setting standards of conduct not acquiesced in by a majority in the city. The city is able, however, through its control of the police virtually to nullify, by a policy of non-enforcement, any law which is unacceptable to a majority in the city or to the dominant political organization. This has been particularly the case with respect to the enforcement of election and liquor laws.

To secure efficiency, freedom from corruption and the enforcement of state law the state was finally led to interfere. In 1857 in New York, the metropolitan police district was created, and the police of New York City, Brooklyn and adjacent territory were consolidated and placed under the control of a state-appointed police commission. Similar state commissions were, within a decade, created for Baltimore, St. Louis, Chicago, Detroit, and Cleveland.[24] Centrally appointed boards have since been created for Boston and other cities in Massachusetts, Cincinnati, Washington, Manchester, N. H., and Providence, though in the case of several of these there has been a return to the system of local selection.[25] There are still a considerable number, not only of the larger cities but those of moderate size as well, whose police is administered by state-appointed boards. 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 ordinary American state constitution or under a state constitution which contains a provision that local officers shall be

[24] Fairlie, "Municipal Administration," p. 133.
[25] *Ibid.*, p. 139.

locally selected. The rule supported by the greater weight of authority is in favor of its constitutionality under either supposition. In New York, however, state-appointed local police are unconstitutional, although the state may form a district which is substantially different from the territory of a city and provide for a centrally appointed police force therefore.

State vs. Local Police Control. The advantages which are claimed to be derived from state control are those already suggested as reasons for the adoption of the plan, viz., efficiency, freedom from corruption and the proper performance of the city's duty as a state agent.

Opposed to this policy are the considerations favoring local self-government. The right of the locality itself to administer the law within its own boundaries is highly cherished and of long standing. The presence of any outside power exercising authority in any form is highly distasteful to a community inheriting English political traditions, and particularly so if its activity takes a repressive form. The result of such an innovation is a more or less open sentiment of opposition which adds to the difficulty of law enforcement. This attitude of mind has been intensified by the knowledge of the uses to which such control has been put by corrupt politicians.

It is difficult to obtain any satisfactory testimony as to the relative effect on the preservation of the peace and the maintenance of good order, of local and of state administration of the police force in the cities of the United States. The testimony would on the whole seem to be in favor of a state-appointed force, although it cannot be said that such a force is any more successful in securing the enforcement of Sunday closing, liquor or prohibition laws than a locally appointed police.[26] Ex-Mayor Quincy, of Boston, is reported as saying, "I am free to say that under the present board 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 city government centralized police administration is the better sys-

[26] Sites, "Centralized Administration of Excise Laws," pp. 55–89.

tem. The strictly police functions are more properly a state affair than most of the other departments of the city government." [27]

It is to be remarked, however, that the United States is the only country which has adopted the principle of uncontrolled local police management. While 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 permitted to continue unchanged, in the United States 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 partisan politics are responsible for so many of the changes in the municipal organization in the United States. But while making due allowance for these disturbing influences it can be said that 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 influence 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.[28] 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 manufacture, 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 an alarming increase of offences against the person and property, of licentiousness and gambling as well as of insanity

[27] Sites, "Centralized Administration of Excise Laws," p. 75.
[28] *Ibid.*, pp. 50 et seq.

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." [29]

Police Boards vs. Commissioners. An important question connected with police administration in the United States has been what shall be the composition of the authority which has in its hands the management of the police? Shall it be a board or shall it be a single man? This question does not seem ever to have presented itself on the continent of Europe where the head of the police force is usually one man. In the cities of England with the exception of the metropolis of London, however, there is a committee of the council, called the watch committee, which has charge of the police. The establishment of this committee was probably not due so much to any belief that the board system was the best system to apply to police administration, but to the fact that committee administration was the only system consistent with the general principles of the Municipal Corporations Act, which consolidated all municipal functions in the council.

In the United States the board system of police management was characteristic of the New York law of 1857 which was the first attempt to organize a modern police force in this country. 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 administration generally. It is true that afterwards the demands of the spoils system seemed to make a board necessary. For only through a bi-partisan board could the spoils of the police force be distributed between the two leading parties. This consideration does not seem, it is true, to have affected the legislature which

[29] Whitten, "Public Administration in Massachusetts," p. 85.

passed the act of 1857, for no trace of the bi-partisan idea is found in that act. Later on, however, this idea had a potent influence in giving the board form to the municipal police authority.

The board form of organization is commonly advocated for those departments in the work of which many questions should be settled only after deliberation. In the police department action, rather than deliberation, is called for, so that a plural head is uncalled for on that score. The abuses which have resulted from bi-partisan boards have led in more recent years to a strong tendency toward the abandonment of the board idea and entrusting the management of the police to the hands of one man.[30]

There has been some discussion in this country whether the single head of the police department, usually styled "commissioner," shall be a civilian or a professional man, who has risen from the ranks or, perhaps, who has seen service as an officer in the army. The professional has undoubtedly more technical knowledge and disciplinary ability. On the other hand the civilian will bring to the work a better understanding of the public viewpoint and a clearer appreciation of the place which police affairs should hold in the general social economy.

Below the responsible head of the department, be it board or single head, is the officer in immediate charge of the force, the chief of police. A question which has aroused considerable debate is whether this officer shall be taken from the ranks of the uniformed force or shall be selected from outside that body. In European countries again, this question does not seem to have aroused any discussion. This absence of discussion is probably due to the fact that the term of the person in charge of the force is a long one, in most cases practically for life. That being the case, the incumbent acquires a knowledge of the force, although he may not have risen from the ranks, which enables him to manage the force as well as one who has so risen.

In this country, while, owing to political influences, it does not always happen that the chief has been promoted through the successive grades in the service, it is usual that he shall have spent a sufficiently long period in the lower ranks to have gained

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

rather thoroughly the professional point of view. Under these circumstances a solution of the whole problem of leadership which has not infrequently been reached, and with satisfactory results, is that the responsible head, plural or unitary, shall be civilian while the officer in immediate charge of the force shall be a professional.

Selection and Tenure of Police Officers. The fatal results to both efficiency and honesty brought about by making a police force dependent upon political favor for its selection and tenure were made manifest as soon as the attempt was made to maintain a professional police. Upon the development of the merit system under civil service rules the selection of the police was among the first matters to be regulated. At present the selection of these officers upon a merit basis after mental and physical tests has become, though by no means general, a not uncommon practice. Even where the city departments generally have not been brought under civil service rules, there are instances where the police have been, by law or custom, placed upon such a basis.

Police removals were universally in former days, as is still too often the custom especially in the smaller cities, made at the behest of the political spoilsman. Long before the adoption of civil service reform laws, however, attempts were made to give to police officers a tenure somewhat more secure than that accorded to other officials of the city. Laws were passed prohibiting their arbitrary removal. The usual method of removing appointive city officials, when the tenure is not merely at the will of the appointing officer, is by the superior officer upon charges made and after public hearing. In certain states, as for example in New York, the courts, in the case of policemen, have the power to review and quash the determinations of superior administrative officers in cases of removal. It is very certain that the exercise of this power has had a bad effect on the character of the police force, and in this connection it is interesting to note that no country outside of the United States has accorded to its police officers any such privileged position.

Usually their tenure is the same as other officers, which is at the will of the appointing officer. In Germany official tenure is peculiar. Arbitrary removal is nowhere recognized, but occurs

only after a conviction by a *quasi* judicial tribunal known as a disciplinary tribunal. These disciplinary tribunals are, however, not a part of the regular judicial system and in their decisions pay more regard to the needs of the service and less to the rights of individuals than do the ordinary courts.

The disciplinary power over police officers embraces in addition to the power of removal the right to impose fines, degradation of rank, suspension, and in Germany also arrest. Such punishments are usually inflicted by the higher police officers and are to be found in the most highly developed police forces of the United States.

Defects of American Police. Police forces are, notwithstanding the great services they render, not usually popular. The encroachments on the field of what are regarded as individual rights which they necessarily make cause frequent complaints to be made as regards both the efficiency and the honesty of the police. Probably in no country are the complaints of this sort more numerous than in the United States.

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, nor 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 governments, 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 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 peculiar interest. In the United States the people have never so clearly as in Europe, and particularly in continental 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 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 viewpoint 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 viewpoint 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 in the United States as to 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. The state often says also that keeping a public gambling table is a crime. It does so because it believes, or the majority of the people believe, that keeping such a gambling table has such bad effects on society that it may properly be made a crime. But suppose, after numerous and persistent efforts to suppress the keeping of public 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, as has been already suggested, 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 that an act should be crimi-

nally 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, an 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 what are crimes 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, in large

measure, the popular standards of morality. Civilization owes much 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 on the social well-being of the attempt to enforce it 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. Sometimes the state attempts to regulate rather than suppress some occupation or act deemed dangerous to the public welfare. This is often the case with the liquor traffic. Where such a policy is adopted a license is granted without which carrying on the occupation is criminally punished. Usually the issue of such licenses is a function of the police authorities. In some of the cities of the United States special authorities called licensing or excise commissions are organized for this purpose. The disintegration of the police power in English and particularly American cities to which attention has been called has resulted also in the grant of the power to issue other licenses to authorities not connected with the police. Thus in the cities of the United States the licensing of the sale of explosives and fireworks is a function of the fire department, that of peddlers and push carts, of the mayor and so on. In continental European cities usually all licenses are issued by the local police authority.

Public Health and Safety. The administrative police of public health and safety differs somewhat from that of public peace and order. As a general thing the peace is preserved and public order is maintained through repressive rather than preventive action. Most of the work of the police authorities charged with the preservation of the peace consists in the arrest

of 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 so protect the public health and safety is to arrest and bring to punishment violators of public health and public safety laws and ordinances. It is impossible, however, under the complex conditions which exist in modern municipalities to put all such police regulations into the form of commands to individuals to do or not to do given things the violation of which is punishable as a penal offense. In a large number of cases it is found desirable to provide only that when a certain state of facts exists the law shall apply. Thus the legislature may pass a law declaring that no condition which is a menace to public health shall be tolerated. Before the law can be applied it must be determined in each case whether in that instance a menace exists. The decisions of such questions may, of course, be entrusted to judicial authorities, but such authorities are not fitted for the decision of such questions because (1) they are mainly engaged in the decision of controversies having to do with the interpretation of the private or criminal law; (2) the determination of fact in such cases is better arrived at through administrative investigation than by evidence secured in a trial court, and (3) the procedure before the courts is so slow that the public health and safety might in many cases be endangered if resort to them were necessary before the administrative authorities could take action. Consequently it has been found desirable the world over to entrust the determination of the facts and the consequent application of the law in large numbers of cases, including matters of public health, to the discretion of administrative authorities rather than to judicial officers. It was in connection with public health matters that this conclusion was first reached and it is in this field that the widest and most summary powers have been given to administrative authorities.

Health and Safety Administration in England. The English methods of securing the public health and safety, like most of the methods of English administrative law, are based upon detailed legislation. By the common law the only means of pro-

tecting the public health was to be found in the law of nuisances. By the common law a public or common nuisance was indictable. Such a method of preserving the public health and safety was ineffective and when urban communities began to grow, as they did in the early part of the nineteenth century, resort had to be made to other methods. The first important change which was made in the law was made by the Nuisances Removal and Diseases Prevention Acts of about 1850, later consolidated in 18 and 19 Victoria, chapter 121. By these acts Parliament enumerated a long list of acts which were made nuisances. On the complaint that the law was not being obeyed, justices of the peace were authorized to issue orders for the removal of the nuisances, which must be obeyed under a penalty for disobedience by the persons maintaining them.

This act was later amended and with its amendments was incorporated into the Consolidated Public Health Act of 1875, which is, in addition to being what we would call a public health act, also a local government act. By it the entire country is divided into districts which are either urban or rural. Every borough, roughly speaking, is an urban district authority. The law provides that every urban district shall have a medical officer of health, an inspector of nuisances and a surveyor, who are appointed, removed and controlled by the borough council, and who are to execute the health laws. These, it will be remembered, are much wider in their extent than what we would call health laws, embracing not merely health but building and public safety regulations.

The borough council, as borough council, has the power of police ordinance in the narrow sense of the word, that is, the power to issue ordinances for the good order and convenience of the borough. These ordinances may be disapproved by the Privy Council. As urban district authority the borough council has wide powers of ordinance relative to the public health and safety, that is relative to diseases prevention, buildings, removal of rubbish, prevention and diminution of offensive trades, markets, and so on.[31] Such ordinances must be approved by the Local Government Board at London.[32] Besides issuing ordi-

[31] Husband, "Sanitary Law," p. 91.

nances the urban district authorities and their medical health officer and inspector of nuisances may likewise issue orders of individual application. Thus an urban district authority may order the owner or occupier of a dwelling to whitewash or cleanse his house if the necessity for so doing is certified by the medical officer of health,[33] may order an owner of a house to bring water into his house from the public supply;[34] may, in case of a nuisance, order the person responsible for it to abate it, and in case of his neglect to act may make a complaint before the justice of the peace, who, if satisfied that the nuisance exists, may order its removal,[35] and may remove to a proper hospital any one suffering from a dangerous infectious disease, who is without proper lodging or is lodged in a room occupied by more than one family, or in a common lodging house.[36] The medical officer of health and the inspector of nuisances have each the power to inspect, condemn and seize any food offered for sale which appears to be diseased or unfit for human food.[37]

Central Control in England. The powers possessed by the municipal, sanitary and public safety police authority are exercised under a central administrative control which is framed with the idea both of increasing local efficiency and of protecting private rights, though the former purpose is more emphasized than the latter. The central authority, that is the Local Government Board at London, "may order a local authority to remove or contract for the removal of house refuse from the premises, the cleansing of earth closets, ash pits, cesspools and the cleansing and watering of streets.[38] But the largest powers in this direction are in connection with epidemic, endemic and contagious diseases. Here it is almost supreme. It may make, alter or repeal such regulations as seem proper concerning interment of the dead, house to house visitation,

[32] Husband, "Sanitary Law," p. 94.
[33] *Ibid.*, p. 34.
[34] *Ibid.*, p. 44.
[35] *Ibid.*, p. 59.
[36] *Ibid.*, p. 68.
[37] Odgers and Naldrett, "Local Government," p. 130.
[38] 38 and 39 Vic., Chap. 55, §§ 14 and 80–90.

medical aid, disinfection, cleansing, ventilation, etc., and may even determine what authorities shall enforce these regulations."[39]

The Local Government Board may further fix the qualifications, methods of appointment, duties, salaries and tenure of office of the medical officer of health and the inspector of nuisances, and has the right of approval of the appointment of all borough analysts "whose duties are to enforce the law prohibiting the adulteration of food and drugs and the selling of food and drugs that are adulterated or are not of the nature, substance and quality demanded."[40] "The power of the Board over defaulting authorities is far-reaching and effective. It is necessary that a complaint be filed before an inquiry can be held, but as any one can make complaint and as it has been found that if an authority is negligent there will be at least one person willing and ready to so report this provision does not restrain the activity of the Board. There are quite a number of cases where complaint has been made but the Board has found no default. In the interpretation of the law by the courts, no encroachment has been made upon the powers of the Board, and although the cases are few, those that exist are plain and decide that in questions of expediency the judiciary will not interfere. Although stringent methods are provided in case the local authority refuses to act within the allotted time, it is seldom that it is necessary to go this far."[41] "Another method of central control of very limited application is to be found in the power of withholding the subsidy paid towards the support of medical officers and inspectors of nuisances if returns and reports are not sent to the Local Government Board as required. The retention of the subsidy is not in the nature of a fine imposed upon the officer, for the expense falls upon the locality which he represents rather than the officer himself. It contributes something, however, towards preventing the selection of incompetent officers."[42]

[39] Maltbie, "English Local Government of Today," p. 89.
[40] *Ibid.*, pp. 100 and 103.
[41] *Ibid.*, p. 105.
[42] *Ibid.*, p. 107.

Health and Safety Administration in the United States. In the United States also 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 is not in this country any elaborate statute 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 through regulations inserted in the charter of the city.

In addition to the special acts passed by the legislature the matter is also regulated by municipal ordinances, which are passed either by the city council, or by some of the executive departments of the city, as the health 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 authority the right to annul them. The courts, however, have the right to declare illegal all ordinances which violate a law, or in case of ordinances passed as a result of the exercise of the general ordinance power, all ordinances which are unreasonable.

Departments Included. In American cities administrative police powers of public health and safety are usually distributed among several departments. For example, in New York City there are a health department, a fire department, a tenement house department and five building departments, one for each of the five boroughs into which the city is divided. In perhaps a majority of the larger cities will be found a health department, a fire department and a building department. The function which may be called sanitation, and which includes drainage, street cleaning and garbage collection, is frequently scattered among different agencies, or it may be united with the health department or with the department of public works. Occasionally the whole matter of police in the broadest sense of

the term is put into the hands of a single official called the director of public safety.

In many cases, owing to the decentralized character of American city administration, the departments in question are not only independent of each other but also of the mayor. In some instances the mayor may, with the consent of the council, appoint the heads of these departments and in an increasing number of cities he has complete control of these as he has of all the departments, through the power of appointment and removal. At the head of each department is found a single commissioner, or perhaps more often, a board. The department of health, especially, is likely to be placed under a board as a more suitable form of organization because of the large legislative and quasi-judicial powers entrusted to the department.

The executive forces to which is entrusted the enforcement of the laws relative to public health and safety, in the larger cities of the United States, have been, like the police force for the preservation of the peace and the maintenance of public order, placed upon a professional basis. These forces are sometimes organized in military fashion and put in uniform. This is almost universally true of the fire-fighting force except in the smallest cities, and, in some of the largest cities is likewise true of the sanitary and street-cleaning forces. In the smaller cities the work of garbage removal and street-cleaning is more commonly done by contract.[43]

The work of the health department, taken in its more limited sense, includes the compilation of health and vital statistics, quarantine and vaccination regulation, regulation of offensive trades, food inspection and a general supervision in the interests of health of other city activities. The work of sanitation which, as has been observed, is frequently assigned to the health department, is preventive in character and includes the removal of garbage, cleaning the streets, the control of smoke and general sanitary inspection. The building department is, in one of its aspects, closely related to the fire department, and in another to that of health and sanitation. To secure protection

[43] The same tendency is noticeable in the large cities of Europe in the case of the forces for the extinguishment of fires.

from fire, stability of construction and sanitary surroundings in homes and places of employment are the aims of building inspection. These are secured through a system of inspection of building materials, wiring and plumbing installations, public buildings and tenement houses and the approval of plans and specifications of buildings.

The fire department has two aims, fire prevention and fire fighting. Our fire departments were originally organized for fire fighting and expenditures for this purpose in American cities far exceed those in the cities of other countries. In foreign countries the greatest efforts are directed toward fire prevention. The losses by fire in the United States and Canada are more than three times as great as in any country of western Europe. This state of affairs is due to the inferior character of building construction and the less efficient system of fire prevention in America. The elements of hazard which tend to increase the fire risks are physical, occupational and personal. Fire prevention involves the reduction of each of these by more stringent building regulations, the requirement of special protection where special hazards arise from the peculiar uses made of the premises and the effort to control personal negligence through a campaign of education. The work of prevention has been placed upon the fire department to be carried on through a system of inspection.

Central Control in the United States. Municipal police powers relating to public health and safety have not been subjected to a very extensive central control as yet in the United States, though probably to a greater degree than in the case of other city activities. There is today a growing tendency in that direction. State departments of health have acquired authority to require reports from local boards, to approve or overrule acts of local authorities, to assume local health administration when local authorities fail to act and, less frequently, to appoint or remove local health officers and to maintain a force of full-time health inspectors to supervise the work of local authorities. Several of the states have entered the field of fire prevention through the enactment of elaborate building codes and the creation of a fire marshal's department. The functions of this

department include the inspection of fire hazards, the investigation of the causes of fires and public education in fire prevention. Local fire and police departments are made the agents of the fire marshal to coöperate with the representatives of the central office.

Under these conditions a considerable degree of positive central control over local authorities might be expected and especially over local boards of health. Two causes tend to limit the actual control exerted. The legislative appropriation for the expenses of the state boards limit their activities in this as in other directions; but equally potent is the fact that the policy of state boards of health has been to use their mandatory and compulsory powers as little as possible. They have usually 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. 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, except in emergencies, to the local boards.

Sanitary Police Powers. What exactly is the power possessed by the municipal authorities in the United States having charge of the administrative police of public health and safety is of course determined by the laws regulating their powers as well as by the common law of nuisances as it has been developed by the decisions of the American courts. It may, however, be said that this power is a very broad one, notwithstanding the existence of constitutional provisions protecting private rights. The courts have decided that the constitutional provisions protecting private rights were adopted in view of the police power and hence this power is not limited by them. Their existence only limits the power of the legislature or its delegates to add by legislation to the list of nuisances. That is, the courts hold that the legislature cannot itself nor by its delegate declare to be a nuisance what is clearly not a nuisance. This means that nuisances not common law nuisances are sub-

ject finally to judicial definition; if the judicial definition coincides with the legislative definition anything may be made a nuisance.

Once it is determined that a particular thing is legally a nuisance the powers of the police authorities to suppress such a nuisance are of the widest character. This is particularly true as to the determination of the existence of facts which justify police intervention. For a long time our law was the same as that of England, namely, that a nuisance could be abated practically only by indictment or other criminal proceeding. As this involved the action of a jury it was found practically impossible under such a system to safeguard the public health in the larger cities. Of course it was true that the rule of the common law that anyone might abate a nuisance was adopted in our law, but public officers could act only at the risk of being held responsible for damages in any suit brought against them by individuals injured by their action, in case the thing abated was decided by the courts on the suit not to be a nuisance. The courts could, furthermore, on such suit practically revise the determination of the police officers as to the existence of the conditions which would justify their interference.

Mr. Dorman B. Eaton, to whom the administrative law of New York owes so much, set to work about the middle of the nineteenth century to remedy this state of things. He devised the scheme of a trial before the health authorities as to the existence of a nuisance, at which trial the individual whose maintenance of the nuisance was complained of could be heard. After the determination made at that trial the health authority was given the right to proceed to the abatement of the nuisance complained of. The attempt was made in a test case which was immediately brought to enjoin the execution of a nuisance order made after such a trial, but the court refused to permit the issue of the injunction, and held that the trial before the health authority was due process of law under which property might be taken if taking the property was necessary for the abatement of the nuisance. This method is not, however, usually followed. The order for the abatement of the conditions constituting a nuisance is usually issued without a hearing and may

therefore be reviewed by a court in a collateral proceeding like an injunction or a suit for damages where the order has been enforced. Such a method is believed to be proper under the usual constitutional provisions.

Sanitary Powers in France. By Article 91 of the French Municipal Corporations Act of April 5, 1884, which was taken from the older legislation, the mayor is charged under the supervision of the higher administrative authorities with the municipal police. The municipal police is defined in Article 97, Section I of this law, where it is said, "The municipal police has as its object to secure good order, security and public health." Article 97 then gives a long enumeration of matters which are subject to the police power of the mayor, but it is believed that this enumeration is not of such a character as to limit the extent of the municipal police as it is defined in Article 97, Section I.[44]

The mayor exercises his powers through the performance of acts which are either special or general in character. The general acts or regulations which he issues may be divided into those which are permanent and those which are temporary. The law of 1884 provides that all acts to be valid must be brought to the knowledge of the persons whom they concern. In the case of general acts this is accomplished by publication, in the case of special acts, by special notice. The permanent general acts of the mayor must be transmitted to the prefect who has the right to suspend or annul them either for illegality or for impropriety, but may not himself exercise any ordinance power by modifying the ordinances of the mayor. The temporary general regulations and the individual orders are of immediate force as soon as they are brought to the knowledge of the persons interested. The permanent general regulations do not have the force of law until the expiration of a month from the time that they are submitted to the prefect. In case of urgency, however, the prefect can give them immediate effect. The permanent general regulations have the force of law until they are abrogated by the mayor or suspended by the prefect. The

[44] Jouarre, "Des Pouvoirs de l'Autorité Municipale en Matière d'Hygiène et de Salubrité," p. 15.

exercise of the municipal police power by the mayor is thus subject to the control of the most important representative of the central government, that is the prefect.

The broad police power granted to the mayor has, however, been considerably limited by the interpretation which the courts have put upon it. The courts have based themselves upon the following principles: First, when the law recognizes a private right the ordinances of the mayor cannot attack it either by refusing to recognize, directly or indirectly, the existence of the right, or by limiting its extent or by regulating the mode in which it must be exercised. Second, an administrative ordinance cannot impose an obligation upon individuals if that obligation has not its basis in the law. Applying these principles the courts have held that when a parcel of real property presents by reason of its natural situation dangers to health, the mayor cannot by an administrative order issued under his general police power require the proprietor to remedy this condition of things by executing the work which is necessary to put it in a sanitary condition; that is, while the mayor may order the removal of unsanitary conditions which result from the way in which the property is maintained, he may not order changes in the use of the property, provided the use is a legal one, notwithstanding that this use may be dangerous to the public health. While subject to these conditions the mayor may order the owner of property to put his property in a sanitary condition, he may not order such owner to adopt any special means for putting the property in such condition. The only exception to this last rule is that the mayor may order in the larger cities the adoption of water-closets in place of the old privies which formerly existed.

The courts have also held that the mayor may not under the general police power issue ordinances and orders which have a retroactive effect. For example, while he may under this power regulate methods of building construction for the future he may not issue orders which oblige owners of existing buildings to comply with the requirements of the ordinances. They have also held that the mayor may not forbid the carrying on of a trade which is dangerous to the public health, by all persons who have

not received a license from himself. All he can do is to prescribe that every individual wishing to follow such trade must show beforehand that he fulfils the conditions which are believed to be necessary in order to protect the public health. He may not, certainly, under such a power, establish anything in the nature of a monopoly.

The interpretation of the courts is no less favorable to the rights of individual liberty than it is to the rights of property. Thus it is believed that under the French law it would be improper through the exercise by the mayor of the police power to compel either all persons or all persons who have been exposed to smallpox to be vaccinated, or to take any one suffering from a contagious disease from his own home and put him into a hospital. The only exception to this latter rule is in the case of prostitutes. The police authority is permitted to insist that infected prostitutes shall go into the hospitals provided for them.

The application of these principles has brought it about also that the mayor may not through the exercise of the police power order the undertaking of the work necessary to put a building into proper condition except where the general public health is interested by his action, that is, he has not the power to order the remedy of unsanitary conditions which are susceptible of affecting the health only of the owner or the persons inhabiting the building complained of.

The powers of the mayor relative to public health included in the general police power were thus not sufficient. In 1850 a law was passed which provided for a commission on unhealthy dwellings. Provision for such a commission was, however, left to the discretion of each municipal council, and the law was so applied as to be, as compared with the public health legislation of England or of the United States, quite ineffective and was therefore repealed in 1902. It had been held thus, that the only dwellings affected by the act were dwellings inhabited by human beings, and by tenants and not by owners, the law basing itself on the idea that it was the owner's business if he lived in an unhealthy house. Further, the commission had jurisdiction only where the unsanitary conditions were of such a character as to endanger the lives of the tenants. Thus it had been several times

held that the law did not justify forcing an owner to bring water into a house, since the presence of water in a dwelling affected merely the convenience and not the health of the inhabitants. Finally, the unsanitary conditions which would justify the interference of the commission must be due either to the character of the dwelling or to the action of the owner. That is, the law might not be put in force if the unhealthy conditions were due, for example, to the narrowness of the street upon which the building was situated, to the fact that the building was near marshes or unhealthy ponds of stagnant water, or to the acts of the tenant acting under rights guaranteed to him by his lease.

Health Law of 1902. In the year 1902, however, the French legislature adopted a new and more comprehensive health law. This law aims, in the first place, at preventing the spread of contagious diseases, and in the second place, at improving the sanitary conditions of dwelling houses; and with these ends in view increases very greatly the powers of the mayor. It provides thus for compulsory vaccination against smallpox. It also gives to the mayor the power by ordinance to compel disinfection of all places where there have been cases of certain enumerated contagious diseases, and to order the destruction of objects used by those afflicted with such diseases. Notice of the existence of such diseases must be given to the government. In places of 20,000 inhabitants and over the work of disinfection is attended to by the municipal authorities, in the smaller cities by the departmental authorities.

The law in the second place attempts to ensure sanitary dwellings by providing that in urban communities of 20,000 inhabitants and over no one may erect a dwelling without a building permit to be granted by the mayor, which permit is granted only after an examination of the building plans. In case such permit is refused appeal may be made to the prefect of the department. If the prefect upholds the decision of the mayor, appeal may be taken to the highest administrative court, viz., the Council of State, if the mayor has exceeded his powers, i.e., if the refusal to issue the permit is due to any other reason than failure to observe the building ordinances which the law requires the mayor to issue.

The law of 1902, finally, gives to the mayor power to require changes to be made in existing landed property which are necessary in order to put it into a sanitary condition. In the performance of his duties with regard to existing property, the mayor is aided by a sanitary district board. The sanitary districts over which these boards have jurisdiction are made by the general councils of the departments and as a matter of fact are identical with the ordinary districts (*arrondissements*). The boards must include in their number—at least five and at most nine—a member of the general council of the department elected by it, a physician, a pharmacist, an architect or builder, and a veterinary, appointed by the prefect.

If any property is dangerous to the public, the mayor, or in case of his negligence the prefect, shall ask the sanitary district board to give its opinion on the nature of the repairs to be made, and upon the expediency of forbidding the use of the property for purposes of habitation until the unsanitary conditions have been remedied. Persons interested in the property must be heard before the board if they so desire. In case the board decides in favor of the owner, the prefect may bring the matter before the departmental board of health, which may reverse the decision of the district board. The mayor is then to issue an order enforcing the decision of the board. Appeal may be taken from his order to the administrative courts, which may reverse or modify the decision of the board and may consider questions of fact as well as of law.

The law in the interest of forcing the municipal authorities to take steps for the improvement of sanitary conditions provides for a central administrative control over the exercise of his powers by the mayor. Thus, if a mayor does not issue the sanitary and building ordinances required by the law the prefect may himself issue one for the commune over which such mayor has jurisdiction. Thus, again, if in any commune the death rate for three consecutive years exceeds the average death rate of France the prefect of the department is to institute an inquiry. If it is determined as a result of such inquiry that sanitary works, especially water works, should be provided the prefect may force the undertaking of such works.

It will be seen from this analysis of the public health law of France that, notwithstanding the absence of all constitutional protection of private rights, such rights have been given a protection which is hardly consistent with the public safety. Before closing what is said as to the police of public health and safety in French cities mention should be made of the fact that the force for the extinguishment of fires (*sapeurs et pompiers*) is completely centralized under the prefect of the department and the Minister of the Interior. Sanitary administrative conditions in Italian cities are similar to those in France, with the single exception that the council in Italy has the sanitary ordinance power. In Italy as in France the same care is taken by the law to give the individual a judicial remedy against administrative action.

Public Health and Safety in Germany. The police of public health and safety is arranged in somewhat the same way in Prussia as in France. The police power within a city, it will be remembered, is granted either to an appointee of the central government, i.e., the police president or police director, or to the burgomaster who is appointed by the city council subject to the approval of the central government.[45] By the side of the local police authority is placed in all cities of five thousand inhabitants and over a health board which is composed of a representative of the local police authority, a representative of the city executive, appointed by it from several physicians to be nominated by the local police authority, and of three citizens of the city to be chosen by either the city council or the city executive. Finally, in places in which there is a garrison several officers from the garrison are to serve on the board as well as a representative of the military medical staff. The functions of this board would seem to be largely consultative in character.[46]

The content of the municipal police power which is vested in the police authorities is defined in the law of the 11th of March, 1850, upon police administration. This, like the French law, contains a long enumeration of objects which may be regulated by police ordinances and in addition thereto also contains a gen-

[45] Mascher, "Polizeiverwaltung," Vol. II, p. 65.
[46] *Ibid.*, p. 68.

eral clause and it would seem to be considered within the power of the municipal police authorities to issue ordinances which regulate subjects not contained within the enumeration but falling within the general conception of local police.[47] Police regulations may be issued for the entire municipal district or portions thereof. The regulations which are issued must, however, be approved by certain other authorities. For example, in the case of police ordinances relative to the public safety the city executive must be heard; in the case of all other police ordinances its consent must be given, in order that the ordinance shall be valid. If the city executive refuses its consent appeal may be taken by the local police authority to the higher administrative authorities of the state whose consent and approval of the regulations will then be sufficient to make it valid. In urgent cases the local police authority may issue police ordinances without obtaining the consent of the city executive. If, however, the necessary consent is not obtained within four weeks from the date of their issue, or the consent of the higher administrative authorities is not obtained, the ordinance goes out of force. The local police authorities may impose penalties as high as thirty marks for violations of their ordinances. Finally, the higher administrative authorities have always the right to annul the municipal police ordinances.[48]

The municipal police authorities have the right to issue not merely ordinances laying down general rules of conduct, but also, individual orders of special application which are directed to some one individual, ordering him to put his property in a condition which will not be prejudicial to the public health or safety. The power of the German police authorities would seem to be about the same as that of the French municipal police authorities. A decision of the Imperial German Court has held that it is within the police power granted to the municipal police authorities to prevent, under penalties, a use of property which is dangerous to life and health, even if such order will indirectly require changes in the property itself.[49] Furthermore no new

[47] Mascher, "Polizeiverwaltung," Vol. II, pp. 147–8.

[48] Leidig, "Preussisches Stadtrecht," pp. 457–459.

[49] "Entscheidungen des Reichsgerichts in Strafsachen," Vol. IV, p. 106.

building may be erected except where a permit has been granted by the police authority. But police authorities may not force a sick person to leave his or her dwelling and go to a contagious diseases hospital. The only persons who may be forced into public hospitals are homeless vagrants and prostitutes.[50] In Germany, finally, the municipal police authorities have the right, themselves, to fix penalties for the violation of their orders and ordinances. So far as orders are concerned this seems to be peculiar to the German system. As a rule the penalties for violation of orders are fixed in the Penal Code.

The powers which Prussian municipal police authorities have, particularly their ordinance powers, are very large. As a result of their exercise it is possible for Prussian cities with the consent of the central government to deal very effectively with problems of population congestion and housing. They can, and do, by a system of building restrictions, regulate the character of different city districts and prevent the establishment of factories in certain districts which are reserved for residences. In their action also they may be moved by æsthetic as well as sanitary considerations. It is through the exercise of these powers that Prussian cities, which in this respect occupy a somewhat peculiar position, have been recently engaged in a process of physical reconstruction. This policy is accompanied by far-sighted consideration of the needs of future development.

Methods of Exercise in the United States. A word as to the way in which the powers of health and similar authorities are exercised, and as to the power the individual has to appeal to the courts from their decisions, 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 necessary in order to execute the law. Thus, if it is necessary, as is often the case in the building law, that plans must be approved before the individual may build, the decision by the building police authority approving or disapproving a

[50] Mascher, "Polizeiverwaltung," Vol. II, pp. 70, 72, 76.

given plan exhausts the legal action of the authority as to this particular matter. The law-abiding citizen whose plans have been properly disapproved will amend them to suit the wishes of the building police authorities.

In the case of an order and even of a decision, sometimes, 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 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. In one case the mere refusal of permission to build, or in the other the order 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 the 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 to do itself 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 order the abatement of a nuisance or the pulling down of a construction, and 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 all 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. Such summary proceedings are not, however, permitted under the French law. Resort must be had to the courts. The only exception to this statement would appear to be in the case of imminent danger to the public. The German rule would appear to be the same as in France. In England, as has been said, the order of a justice of the peace is necessary even to abate a nuisance.

Judicial Remedies. 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 a judicial review of their action. It is also necessary that such a review be provided in case of their decisions, as, e. g., their disapproval of building plans. The review may be administrative or judicial in character. That is, it may be made by an administrative superior on appeal from one aggrieved by the action, or it may be made to a court. The administrative appeal would appear to exist generally on the continent, and special and elaborate provision for it is made in Germany. It does not exist, however, in either England or the United States, except in very rare instances, but the review must be by the courts.

Two methods of providing a judicial 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 England and the United States. In England, however, of late the tendency has been to deny or to limit the jurisdiction of the ordinary courts and to make use of the court of quarter sessions, which is mainly an administrative court, and to which appeal may be taken from any of the decisions of the

local sanitary authorities.[51] In the United States the courts exercise their jurisdiction by the issue of an injunction and by entertaining suits either against officers for damages or against individuals brought by the administrative department for penalties or for the expense incurred in the abatement of the nuisance.

In France, Italy and Germany, however, the jurisdiction is given to the administrative courts. In France, Italy, Germany and in England, in the case of the court of quarter sessions, the review of the courts may embrace questions of fact as well as of law. In the United States the courts, however, have to confine themselves to questions of law except in the case of actions brought by sanitary authorities to recover expenses, when they may consider the question of fact as to whether the conditions complained of were of such a character as to constitute a menace to public health and safety, but even in these cases the courts will reverse the determination of the sanitary police authorities only when that determination is absolutely contrary to the evidence. But the question as to whether the conditions complained of constitute a nuisance is often regarded as a question of law where a statute or ordinance has not clearly declared such conditions to be a nuisance.

It will be seen from what has been said 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, in which they resemble the English authorities; second, to the fact that they may proceed so frequently without resort to judicial intervention, in which they would seem to occupy a peculiar position; and finally, to the fact that their decisions are so seldom susceptible of judicial review as to the facts, in which they also occupy a peculiar position. 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

[51] Husband, "Sanitary Law," p. 121.

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 through the levy of blackmail, 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, went through much the same experience. During the reactionary period following the Revolution of 1848 these police powers were used 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 these police powers should be used only in the interest of the public health and safety for which they had been given.

CHAPTER XII

THE ADMINISTRATION OF CHARITIES AND CORRECTION

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Early Methods. Since the time that public charity began to be regarded as an object of state action, its administration has very commonly been confused with that of public correction. During the Middle Ages the administration of public charity was everywhere regarded as a duty of the church. The admonitions of the Christian religion enjoined upon the rich the duty of giving to the poor. The mere giving to the poor by those who were able was regarded as a pious act and little emphasis was laid by the precepts of the church upon any duty of investigating into the worth of the recipient of charity. The result of such indiscriminate charity was the development of a class of professional beggars who joined to their profession of begging the incidental profession of pilfering and thieving. When the Reformation came, the ideas of the Christian church with regard to the giving of charity were very sensibly modified in those portions of Europe which gave adherence to the reformed doctrine. Indeed, prior to the beginning of the Reformation the nuisance of vagabonds and beggars had become so great that in Germany the Imperial Diet in the year 1497 or-

dered that only disabled persons and those unable to work should be permitted to beg, and that other beggars should be punished as vagrants. A similar ordinance of the year 1530 made it the duty of each local district to support its own poor. The policy of the Protestant countries of taking away from the monasteries their property and thus making it impossible for the poor to be supported by the church, as they had been in the past, rendered it necessary for these countries to make some public provision for the poor. The principles which underlay the system adopted were practically little more than a development of those laid down in the imperial ordinances to which reference has been made. These were the distinction between able-bodied beggars who were treated as vagrants and those unable to work, and the imposition upon the smallest localities of the burden of supporting the latter class of the poor. In Germany the provisions of the new poor laws with regard to the duty of the localities to support the worthy poor were not, however, sufficiently detailed to permit of the development of a well-regulated poor system. Further, no adequate provision was made for securing the necessary resources upon which such a poor law system might be based. Finally, the severe laws against able-bodied paupers were not capable of enforcement.

In the countries, on the other hand, which maintained their allegiance to the old ecclesiastical institutions little change in the conditions which existed prior to the Reformation was made. It is true that in France in the latter part of the sixteenth century, largely as a result of the influence of the new religious ideas, several royal ordinances imposed upon the localities the support of the poor who were native and resided therein, and forbade all persons to wander outside of the commune in pursuit of alms. As a result, however, of the conversion of Henry IV to the Roman Catholic faith, France did not follow the example of England and the other Protestant countries in establishing a poor tax and legal right to public charity, but so long as the ecclesiastical institutions possessed large amounts of property, relied mainly on them for the giving of alms to the poorer classes of the community. As a result of this development wherever public charity became a matter of public administra-

tion, the matter fell within the sphere of activity of the various localities rather than within that of the central government.

The care of prisons and places of confinement generally had also from an early period been regarded as falling within the sphere of local administrative activity. The conditions in England prior to the beginning of the nineteenth century are typical of those which existed everywhere throughout Europe and America. Here the normal prison was the county jail. As a result of the fact that the larger cities were at the same time cities of counties or boroughs of counties, the county jails in the larger cities may be regarded as municipal institutions. In addition to the county jails there were also institutions known as houses of correction or bridewells, which were likewise under the control of the municipal authorities in the larger boroughs.

The conditions of these local prisons everywhere throughout the civilized world were of the very worst possible character. They constituted one of the greatest blots on the administrative history of every 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 city of Brest, in France, 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 taken place in all 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 them 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 the larger cities which have, as did the boroughs of counties in England prior to the reform started by John Howard, the control of local houses of detention, or of other correctional institutions. At the same time even in the United States there is no 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 usually the case in the present, that the administration of these correctional institutions is entrusted to the same hands to which is entrusted the administration of the charitable institutions which are supported by the city.

During the last twenty-five or thirty years, however, a serious attempt has been made to separate the administration of institutions of correction from that of charitable institutions. Of the seventy-three cities of over 40,000 inhabitants in the United States in 1890, twenty-seven made a separation of their charitable from their correctional institutions; eight did not, and the conditions in thirty-eight were not stated.[1]

Insane Poor. Not only has a separation been made between charities and corrections, but very generally the attempt has been made to distinguish between the ordinary poor and the insane poor. Even in those countries such as France, where a legal right to alms is not recognized, the insane poor are regarded as especially deserving of public charity, and by the law must be supported by the public. The support of the insane poor, however, has very generally devolved upon some organ of government having a larger jurisdiction than the municipal authorities. Thus, for example, in England, the care of the insane poor is by an act of 1890 imposed upon the county. The only exceptions to this rule are to be found in the case of boroughs which are at the same time counties. In these boroughs the borough council must either provide an asylum or make an arrangement with some neighboring county or borough for the support of its insane poor. On the continent of Europe the care of the insane poor is in principle entrusted to some larger administrative district than the city. Thus, in France, this matter is attended to by the department; in Prussia, by the province. In these latter countries, therefore, the cities as such have no administrative functions to discharge with regard to the insane poor or the criminal classes. Similar conditions obtain in most of the states of the United States, where the bur-

[1] Conference for Charities and Corrections, 1898, Report on Municipal and County Charities by Homer Folks, p. 106.

den of the support of the insane poor is imposed either on the state as a whole,[2] or upon the county. In all cases where the support of the insane poor devolves upon any one of the local corporations, such as the county in England, the department in France, and the province in Prussia, practically all that the local corporation has to do is to provide the necessary money for the support of these classes of the community. The administration of the asylums in which these persons are confined is very largely under the control of the central administrative authorities of the state, as, for example, in France and in Prussia, or is under their direct administration, as in most of the states of this country.

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. This is the case, for example, in Chicago, where the commissioners of Cook County, which is practically the same district as the City of Chicago, though the county administrative system is kept somewhat distinct from that of the city, have under their management the county almshouse, county hospital and the county insane asylum. In other cities of the United States, as for example, in Boston, while the insane poor are a city charge they are differentiated from the ordinary poor and are put under the charge of the trustees of the hospital for the insane, who are appointed by the mayor of the city. What is true of the insane poor is also in large degree true of the alien poor, who are supported by the state, though often in county or similar provincial institutions.

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 municipality, although, particularly in the United States, a number of the larger cities still have charge of this matter. 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. The only countries in the world which regard the care of the insane poor as a matter of city administration are England in the case of the boroughs of counties, and the United States in some of the larger cities. Even in England

[2] This is true in not less than twenty states.

and the United States, in those states where the insane and alien poor are not attended to by the central authorities of the state government, these classes are generally cared for by the larger territorial divisions of the state and it is only because some of the larger cities are assimilated to the position of counties that they may be regarded as discharging functions in this branch of charitable administration. Finally, where the cities have in addition to the management of public charities also the management of correctional institutions, the tendency is to differentiate these branches of activity, and to put each of them into the charge of a separate authority. But again it must be remembered that this has not been done in all cases in the United States.

Legal Right to Poor Relief. Such being the case we may perhaps with propriety confine our study to the institutions which have been established in the various municipalities, in order to give aid to the poor who are not insane and who have a settlement in the state. The methods of attending to this matter may be roughly grouped under two heads. There is one group of countries which are mainly at the same time Teutonic in origin and Protestant in religion, in which there is recognized either a legal right to poor relief enforceable by application to the courts in case of the refusal to grant the relief by the poor authorities, or in which, if no such legal right is recognized, a duty is imposed upon the city or other local district to take care of its own poor. In the latter case while there is no resort to the courts open to individuals to whom poor relief has been refused, the locality which is under the legal duty of supporting its own poor may be forced either through the exercise of a central administrative control or by the action of the courts, on the instance of some other authority which has given relief to one of its own poor, to reimburse such authority or to maintain one who has, as a result of legal decision, been sent to it for support.

While the Teutonic and Protestant countries thus recognize in one form or another a legal duty to support the poor which is imposed upon municipalities, a second group of countries which are at the same time Latin in origin and mainly Roman Catholic in religion, do not generally recognize any such duty as being

imposed upon any locality, and do not, except in a few unimportant cases, provide any legal poor rate or tax which may be imposed upon the inhabitants of the municipality and from the receipts of which the poor are to be maintained.

The difference in the poor law between these two classes of countries naturally has a most important influence upon the whole system of administration of public charities. For example, in the first group of countries, it is very commonly the case that provision is made for institutions of some sort in which the poor to whom public charity is given are maintained. Such a system of poor houses may be combined at the same time with the giving of out-door relief. In the countries, on the other hand, which do not recognize any legal duty as imposed upon the localities to support their poor, there are no such institutions, but reliance is placed almost altogether upon out-door relief, except in the case of the sick poor for whom provision may be made through the establishment of hospitals.

Poor Relief in England. With these ideas in mind, let us then take up the conditions of poor law administration in the municipalities of various countries. In England the support of the poor was by the great poor law of Elizabeth imposed upon the various parishes which existed in both the rural and the urban districts. Isasmuch as the territorial limits of the parish bore no relation whatever to those of the borough and a parish might lie wholly in a borough or partly in and partly outside of a borough, while a borough might embrace more than one parish, the burden of the support of the poor was not in any way imposed upon the borough as a borough. When the administration of the poor law under the parish officers acting under the supervision of the justices of the peace had proved itself to be an ineffective method of administering this branch of governmental activity, the Poor Law Amendment Act of 1834 provided for the combination of parishes in what came to be known as Poor Law Unions. As the unions, however, were composed of a certain number of parishes they bore no more relation to the borough than did the parishes before them. Indeed, at the present time in some of the most important English cities the boundary of a poor law union will be found in the middle of the city, all por-

tions of the city lying on one side of this boundary line belonging to one union, all lying on the other side of the line belonging to another. Further, the Poor Law Amendment Act provided for the election of new officers who were to be known as guardians of the poor, and who had jurisdiction over the administration of poor relief within the union over which they had jurisdiction. The administrative organization provided by the act of 1834 has been much modified by the Local Government Act of 1894, but so far as the relations of the poor law union and the guardians of the poor to the borough and the borough council are concerned, they are left in practically the same condition that they were prior to the passage of the latter act. The result is that in England it cannot be said that the support of the poor is a municipal function. At the same time inasmuch as the poor law union and the boards of guardians cannot fail to have an important influence on city life, a few words with regard to the administration of this branch of governmental activity will not be out of place. The first thing to be noticed in this system is that the poor law authority is, contrary to the general rule with regard to municipal authorities, absolutely independent of the borough council and is elected directly by the people of the borough who are resident within the particular poor law union. In the second place, it is to be noticed that in accordance with the general system the administration of poor relief by these boards of guardians is subjected to a most strict central administrative control, which is exercised by the Local Government Board at London and which results in leaving very little discretion in the hands of the local authorities. In the third place, it is to be noticed that the boards of poor law guardians are little more than deliberative authorities who do not spend any great amount of time in detail administration. This is left in the hands of a professional officer, a person who receives a salary and devotes his entire time to his work, who is known as the relieving officer. Finally, it is to be noticed that as a result of the policy adopted by the Local Government Board at London in its general orders little reliance is placed upon out-door relief, but that persons who desire public relief are put, as the phrase is, to the "workhouse test," and are to be supported in the poor houses

which are maintained by the boards of poor law guardians.

While the theory of the English law does not recognize any individual as possessing a legal right to poor relief, there are several cases which come perilously near to holding that a person who has been denied relief by the guardians of the poor may appeal to the justices of the peace for an order providing that the relief shall be granted. The law has also made provision for a tax for the support of the poor which has become the most important local tax in the English system. This is known as the poor rate. Finally, the justices of the peace may order the removal of a pauper to the parish in which he has his settlement, when the board of guardians of the union to which the parish belongs are practically obliged to give him relief.

Poor Relief in Germany. The general theory is that each city must relieve all persons in need of help. The relief which must be given includes shelter, the necessaries of life, care in case of sickness and a decent burial in case of death. The duty which is imposed upon the city of relieving the poor is either a permanent or a temporary one. The permanent relief is to be given to all persons having their settlement in the city. In the case of persons needing relief who have no settlement within the city, the city must give the relief but may demand of the area in which such person has his settlement a refund of the expenses to which it has been put in giving him the necessary relief. The amount which any city may demand of another is determined by a tariff fixed by the minister of the interior. Complaint on the part of a poor person who has been denied relief or who has been given insufficient relief may be made to an administrative court, which may order obedience to the law. Thus a legal right to poor relief is practically recognized as possessed by every poor person in need of relief who has a settlement. Controversies between poor law areas as to settlement are determined in the same way, with appeal, in case the controversy is between the areas of different states of the Empire, to the Imperial Poor Law Board. Finally, there is a distinction between the local and the state poor, the latter being the poor who have no settlement in any city or town in the state. The state poor are relieved by the state, which acts through the provincial cor-

porations, but is in the case of German poor reimbursed by the state of the Empire in which such persons have their settlement.

The care of the poor in the cities is in the hands of the city executive, but may by a municipal resolution be placed in the hands of a municipal committee. This committee is formed, as are all of the administrative committees in the German cities, of members of the municipal assembly, of the executive and of citizens of the city appointed by the municipal assembly, except in the case of the members of the city executive, who are appointed by that body. It is very commonly the case in the poor law administration for the city to be considerably decentralized. Within the city are formed small districts over which are placed relieving officers who attend to the routine administration. Several neighboring relieving officers are then joined together as a committee, but for the districts over which they have jurisdiction, are permitted to act independently. The administrative committee for the entire city has thus merely the supervision of the administration and the decision of the more important cases. In connection with these local committees are often a number of friendly visitors who are appointed by them and whose duty it is to supervise the grant of poor relief in particular individual cases. The relief is given in money, in kind, or by sending the person to be relieved to a poor house. Out-door relief, however, seems to be more relied upon in Germany than in England.

Poor Relief in France. Conditions are very different in France from those in England or in Germany. The difference is very largely due to the fact that the French law does not recognize in any way any legal right upon the part of an individual to poor relief or any duty as imposed upon any locality to relieve the poor. The communes including the cities must, however, appropriate money for the support of the insane poor and dependent children who are cared for in departmental institutions. The French law, further, makes provision for a relief fund and for an administrative service for the distribution of this fund, and determines the conditions which must be fulfilled by persons in order to receive any portion of such fund. The fund is composed of certain taxes, such as a tax of ten per cent

on concert tickets. These taxes are distributed between the bureaus of charity, as they are called, the hospitals and the bureaus of medical assistance. The various institutions through which the relief is to be distributed have other resources than those coming from taxes, in that they are all permitted to receive gifts and legacies, and to solicit contributions, while the city council may grant them appropriations from the city budget. Certain French cities in which the socialist party is particularly strong have taken advantage of their right to appropriate money for purposes of charity, to extend very widely the field of public charitable work. All of the institutions through which poor relief is distributed in France are corporations separate from the city corporation. The most important of these corporations is the bureau of charities which regularly exists in every city. It consists of the mayor, two members elected by the municipal council and four members appointed by the prefect of the department. This bureau administers the poor relief with the aid of a receiver who is appointed by the prefect of the department. In addition to the receiver, whose main duty is to receive and take charge of its property, it has under it either voluntary friendly visitors or salaried visitors, who attend to the work of distributing the poor relief in somewhat the same manner as it is distributed in the German cities, where, it will be remembered, much reliance is placed upon the voluntary efforts of citizens interested in charitable work. It is believed by some that the introduction of salaried visitors, which took place for the first time in the city of Lyons, has had a bad effect in introducing politics into the distribution of public charity. Under this system of semi-voluntary effort the French have been successful in keeping politics out of their charity administration.

It would seem to be necessary in order that any one may receive relief from a bureau of charity that he shall have his settlement in the commune. This is determined by a general law and is based upon the domicile of the mother of such person at the time of his birth, in case he is a minor, or in case he has attained his majority, by a residence of one year within the commune. The relief which is distributed by the bureaus of charity is almost exclusively out-door relief.

By the side of the bureau of charities is the bureau of gratuitous medical assistance. This is formed by a common meeting of the bureau of charities and of the hospital commission. If there is no hospital commission the bureau of charities sees to the granting of medical assistance as well as to ordinary charitable relief. In case there is no bureau of charities the hospital commission discharges both functions. Where there is neither a hospital commission nor a bureau of charities a commission is formed similar to the bureau of charities for the distribution of medical assistance. Medical assistance is distributed only to those persons who have had themselves put on a list which is formed for this purpose. Only such persons may be put on this list who have a settlement in the commune as above described and who are in need as determined by the municipal council. This list is left with the mayor's secretary and published in order that the poor who have not been put thereon may make their demands to be included in the list. There is an appeal from the decision of the municipal council to a tribunal formed for this purpose. This right of appeal is the only exception to the general rule that no legal right to poor relief is recognized.

The hospital commission is formed in somewhat the same way as the bureau of charities. This commission attends to the administration of any hospital which exists in the city, but under a pretty strict central control, exercised as a general thing by the prefect of the department.

Poor Relief in Italy. The Italian solution of the question relative to public charity resembles that which has been reached in France. Mere poverty gives no right to relief, and no relief is in principle granted by any public authority to any one. The duty to give medical assistance is, however, imposed upon every commune. This duty is described in the law as the duty to give medical, sanitary and obstetric relief. Its fulfillment results in the appointment in each commune, where there is no sufficient provision by private charity, of one or more official physicians and midwives whose services are at the disposal of the poor who are domiciled in the commune. Sometimes, after the French method, a list of those qualified to receive this aid is drawn up

by the municipal *giunta*. In other cases this body lays down the general principles which shall govern the granting of this relief. The supervisory authority has the right to disapprove an expenditure by a commune for this purpose which amounts practically to the grant of relief to all the persons resident within the commune.

In addition to this duty of according medical relief, the communes are recognized as having the duty to provide for the poor who are unable to work, where sufficient provision for this class of persons is not made by institutions of private charity.

Apart from the aid thus granted by distinctly public agencies reliance is placed for poor relief on private charity. The law gives the government large powers of supervision over private charitable institutions, providing that where they do not fulfill the purposes for which they were founded or where they are unnecessary they may be so changed as to be made of the greatest benefit to the localities in which they were established. In exercising its power the government is enjoined to carry out as nearly as may be the intentions of the founders.

Finally, provision is made by law for the establishment of what is called a "congregation of charity" in each commune. This body is composed of a president and a number of members varying from four to twelve with the size of the commune, appointed by the municipal council. No more than half of the members of a congregation may be members of the council. The term is four years and regularly the terms of one quarter of the members shall expire every year. The congregation is to be the legal organ of every local private charitable institution which for any reason has no such organ. Such a condition of things may happen where, for example, the control of any charity is by will vested in a particular family which becomes extinct. A congregation is further declared by the law to be the organ through which the state discharges its function of protecting and representing the poor. The purpose of this provision would seem to be to provide some authority which may take charge, e. g., of bequests for the benefit of the poor, where no trustee has been provided or where the one provided has refused to serve. In its capacity as the representative of the poor it is its duty to take all

necessary steps to care for the interests of orphans, abandoned children, and of the blind and the deaf and dumb. That is, the congregation is to see to it that the legal relief granted to those unable to work is obtained, and that a guardian is appointed where necessary. The congregation is also to take care of this class of persons by granting them the means of subsistence or securing them admission to some institution. These congregations may not demand money from the communes in order to discharge their duties, but must rely on their own means. The care of the insane poor is, as in most countries, devolved upon some other administrative corporation, viz., the province.[3]

Municipal Charities in the United States. The relative position of the county and town in the administrative system of the states of the United States seems to have an important effect on the position of the city with regard to public charities. There is not a single city in New England of more than 40,000 inhabitants which does not do some work in the line of public charities.[4] In some cities, of course, the work which is done is more than in others. But, as a rule, every city in New England has municipal institutions for poor relief of some sort. The reason why poor relief is so generally regarded as a branch of municipal government in New England is to be found in the law imposing on each town the support of its own poor. As a city has gradually supplanted a town it has taken upon itself the town's duty of supporting the poor.

In the middle and western states the care of the poor is devolved by the general law upon the town or the county or upon both, while in the southern states, where the town does not exist, the support of the poor is naturally devolved upon the county. The result is that, as a rule, the cities outside of New England which have charge of poor relief are to be found only in the middle and western states, though more frequently in the former than in the latter, while in the southern states it is

[3] Orlando, "Primo Trattato Completo di Diritto Amministrativo Italiano," Vol. VIII, *passim.*

[4] Conference for Charities and Correction, 1898, Report on Municipal and County Charities, p. 108. The appendix contains reports from many of the cities of the United States having a population of more than 40,000 in 1890.

seldom the case that the city has any functions to discharge relative to the poor. This rule is of course subject to exceptions, particularly so far as concerns the cities in 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 administrations, while New Orleans, Louisville, Richmond and Charleston, all cities in the southern states, include poor relief within their municipal activity.

The larger the cities are, the more they 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 Kansas City, Missouri, and Minneapolis, which has no almshouse but supports a hospital, 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 there is a board, in others, a single commissioner. In a number of cities where there are boards the members are paid, in others they are unpaid. As a general thing where the board is large, its members are unpaid, but where the board is small, e. g., composed of three members, these members are 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 single paid commissioner. On the other hand, in St. Louis, Boston, Baltimore, San Francisco, Newark, Minneapolis, and the county in which Detroit is situated, there is an unpaid board. Neither does the geographical location of the cities 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 southern states 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 towards the unpaid board, while the cities of the west, like those of the south, tend towards salaried service. There are, however, many exceptions to this statement.

The methods of appointment also vary greatly. The two most common are appointment by the mayor or election by the city council with the majority slightly in favor of the mayor, which is the rule in the larger cities. In quite a number of cities 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, until recently, appointed by the governor of the state.

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 would seem to indicate that no method as yet devised has been 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 charities administration. But the later papers bear evidence of an improvement in conditions. This improvement appears to have been as great under one form of organization as another. The general opinion of those interested in and acquainted with the administration of city charities in the United States seems to favor a single paid commissioner. An exception might perhaps be made in the case of hospitals, which are sometimes managed by an unpaid board. This is the method adopted in Boston, Cincinnati and New York. The work of the public officials is often supplemented by private charitable associations, which provide a corps of friendly visitors, who act in harmony with the public authorities but have no official connection with the public system of poor relief. This is similar to the practice in some of the German cities.

Nature of Poor Relief. The extent of the work done by the

cities for the poor varies. 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 out-door relief. In other cities, in addition to giving out-door relief the city government supports as well a hospital. Finally, in a very few cities, no out-door relief whatever is given; or out-door relief is confined to the distribution of coal. Such is the case, e. g., 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 of 1900 the statement is made that of the forty largest cities of the country only ten do not give out-door relief.[5] The greatest amount of out-door relief given by any city in one year is about $140,000, which is the amount distributed in 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 institutions. In New York this grant has in recent years amounted to nearly $2,000,000, almost all of which is appropriated to the use of institutions established for the support of dependent children. Two of the cities of the United States, viz., Atlanta and Savannah, rely entirely upon this method of relieving the poor. This method of supporting the poor is liable to great abuse, both from the point of view of the city's finances and from the point of view of enlightened charity.[6]

Finally, in addition to maintaining almshouses and hospitals and giving out-door relief and grants in aid of private charitable institutions, a very few cities, among which may be mentioned New York and the three Massachusetts cities of Boston, Lowell and Springfield, maintain municipal lodging houses.

State Control. The administration of public charities in the urban as well as in the rural districts has been within the last forty years in many of the states of the United States subjected to a central administrative control which is exercised by a state

[5] Conference of Charities and Correction, 1900, p. 182.

[6] Coler, "Municipal Government," Chap. II.

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, and the supervision of correctional institutions, as well as lunatic asylums, was given to another board. The example of Massachusetts has been so generally followed that at present there are authorities of analogous character in forty-one states. In one group of states the board had supervision over state institutions whether administered by local boards of managers or by a single state board of control, and over local charitable and correctional institutions. When there is such a supervisory board with each institution managed by a local board we have the so-called "Indiana type" of organization. In a second group of states, having what is known as the "Iowa type" of organization, the state board has direct administration of the state institutions and supervision of the local authorities.

The organization of the boards of the Indiana type is generally 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 the terms of office of only a number of the members of the board expire at the same time, and have very commonly under them a salaried secretary who attends to the detailed work. Where the system has been the 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 which are subjected to the supervision of the board. In other cases, that is in those states where the system has not received a high development, the work of inspection is done by members of the board themselves.[7]

[7] The more detailed duties of these boards are set forth in an article by Levi I. Barbour, entitled "The Value of State Boards," contained in the Conference of Charities and Correction, of 1894, on page 9. On page 13 Mr. Barbour sets forth the duties of these boards as follows: "First, inspection and report upon all state charitable and penal institutions, all county or district jails and city lock-ups and all poor-houses. The reports include a full census of inmates, their physical, moral and social conditions, their duties and the discipline maintained and a financial statement

The work of boards of this type is first of all educational, though in the states which have the work more highly developed the supervisory function is very important and effective. Under the Iowa type of organization the board is composed of a small number, usually three, who devote their whole time to the work and are paid accordingly. The attention of boards of this type seems to be directed more especially to the business aspects of institutional management and less toward the supervision of local authorities, the study of the sociological questions involved and the education of the public.

of costs and expenses, to be used for comparison with those of other institutions. These inspections are made frequently and at unexpected times, so that an every-day condition of things may be known. Those in charge of institutions never have and never will report their own faults and failures. They seldom report any untoward influences that magnify the evils they are called upon to amend unless there is supervision and liability to criticism. This does not come so much from wicked intentions as from carelessness.

"Second, the tabulated and condensed results of inspections and reports should be presented to the governor, to the legislature when in session, and to the public especially, with such advice regarding the correction of evils and the extension and direction of the work as the board may be able to give. These reports should be full and fair, praising the work when found, but without whitewash when corruption or incompetency are encountered. The public press if properly appealed to and wisely used may be made a great assistance. It is through it to a great extent that the public at large becomes interested and may be reformed.

"Third, to such boards are frequently submitted the location of state charitable and penal institutions and the plans and estimates of buildings; but they have nothing to do with the expenditure of the money, their duties being advisory and not executive. As a board is constantly traversing the state and frequently other states, visiting and examining the location, the safety and the healthfulness of like buildings and the management generally of such institutions their advice is of great use to a local board.

"Fourth, the annual estimates and demands of every nature of all state institutions, penal and charitable, are submitted to them for their advice and recommendation, before presentation to the governor and legislature.

"Fifth, in some states they are authorized to convene annually for consultation with the superintendents of the poor and the county agents for the care of children."

CHAPTER XIII

EDUCATIONAL ADMINISTRATION

References:

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Early Methods. The conditions of the municipal administration of schools can hardly be understood without a slight knowledge at any rate of the general history of education. In the middle ages the matter of education was in most European countries left to the Church. Neither the cities nor the state governments had originally any functions to discharge with regard to it. In the cities there were frequently schools closely connected with the various churches in which was given religious instruction as well as instruction in reading and writing. The instruction was not obligatory and tuition fees were demanded. This arrangement of the schools was not, however, satisfactory. As early as the thirteenth century the cities in Germany began to take upon themselves the establishment and maintenance of schools. But on account of the fear which the ecclesiastical authorities had that improper instruction would be given, the schools maintained by the municipalities were under the supervision of the Church, whose authorities practically had in their hands the appointment of teachers. In the sixteenth century, largely as a result of the influence of Martin Luther, the state as a whole also began to interest itself in the matter of education. The religious troubles which culminated in the Reformation brought it about that the schools which were established by the governments of the various

German states were made use of to further the belief which it was recognized that the Prince of the country might impose upon his subjects, and the schools were therefore little more than, as the expression was, nurseries of religious instruction. After the Peace of Westphalia in 1648 the principle was introduced of according to the different religious confessions which received public recognition the right to form confessional sectarian schools. While the schools may no longer be regarded as nurseries of the church, at the same time the later legislation of most of the German states recognizes that the common school is as a rule formed for the children of a single religious confession, and on that account teachers who profess the creed of that confession are alone eligible to appointment in the schools.

Education in England. Similar conditions existed in other parts of Europe. Thus in England even as late as the beginning of the nineteenth century the government did nothing whatever either in its central or its local organization with regard to education. What schools there were were purely private schools and supported in large measure by the various religious denominations. The jealousy which existed between the established Church and the dissenting religious bodies made it impossible for the government to do much with regard to schools until late in the nineteenth century. There were formed, however, both in the established Church and among the dissenting bodies, large school societies with resources coming almost entirely from private subscription, which set to work early in the century to provide schools in the various districts throughout England. These schools, however, were of a decidedly sectarian character. About the middle of the nineteenth century the central government adopted the policy of making appropriations to aid schools, which were granted upon the condition that the schools which received aid should fulfill certain requirements. This policy was continued for about a third of a century, the requirements becoming more and more severe, and consisting as a general thing in the passage of certain examinations by the scholars in the various schools. The grants also were conditioned upon the fact that the teachers in the various schools had certain certificates. In 1870, however, an act was passed pro-

viding for public action upon the part of the various localities in the kingdom. The Act of 1870 provided that every municipal borough should constitute a school district. Provision was made for the election of a board in each school district where it was believed that there were not sufficient school accommodations for the children. This fact was to be determined largely by the new education department, which was a committee of the Privy Council. Where it was determined that there were not sufficient accommodations the school board, which was elected by a system of cumulative voting, in order to provide representation for ecclesiastical minorities, was authorized to build school houses and establish schools, which came to be known as board schools, as distinguished from the semi-private schools which had theretofore been established. Such school boards had the right to determine the amount of money to be spent upon the schools and the municipal council of the borough was then required to insert a sufficient amount in the borough rate which they were authorized to levy, to provide the money which the school board had declared to be necessary. These school boards, however, were treated by the central government in exactly the same way as were the authorities having control of the semi-private schools to which reference has been made. That is, the central government gave them grants in aid provided that they satisfied the requirements contained in the regulations of the central supervisory department. In order that the central government might satisfy itself that the requirements which it laid down were complied with, it provided a set of inspectors appointed by it, who went about the country inspecting and reporting upon the schools subject to their jurisdiction.

The result of this legislation then was that up to the beginning of the present century in the various municipalities of England there were either semi-public schools supported largely by private contributions or board schools supported by local rates. With the management of these schools, however, the municipal government had, until 1902, nothing to do. The only case in which a borough council had any functions whatever to discharge with regard to the schools was in municipal boroughs where there were no board schools, and where there were as

a result no local school boards. In such case the borough council was to provide a committee, which was known as the school attendance committee, whose duty it was to see that the compulsory education law was carried out. Where there were board schools this duty was attended to by the school boards, which had, subject to the supervisory control exercised by the educational department of the Privy Council, absolute control of the school system, and appointed all the teachers. In order, however, to receive the aid given by the central government they must appoint only those teachers who were regarded by the central government as properly qualified. As a general thing qualification was shown either by a course of instruction in the normal school provided by the central government or by an examination.

Education Act of 1902. The whole system of city schools in England was changed by the Education Act passed in 1902. By the provisions of this act the council of every borough with a population of over 10,000 inhabitants is made the local educational authority. It has power, as such local educational authority, to administer the affairs of the elementary schools and to perform such functions with regard to other educational institutions as it deems proper. It may even provide for city colleges. In order to permit it to discharge these functions it may borrow money within certain limits, fixed by the Education Act of 1902 and the Local Government Act of 1888, and may impose local taxation.

The borough council, as the local educational authority, is to establish an education committee in accordance with a scheme to be made by it and approved by the central board of education. This committee shall be constituted, as to at least a majority of its members, of members of the council, and of other members appointed on the nomination of other bodies, who shall be persons of experience in education and acquainted with the needs of the various kinds of schools in the borough. Provision shall be made for the inclusion of women as well as men among the members of the committee.

To this committee the council shall refer all matters relating to the schools except the power of raising local taxes and borrowing money, and before exercising any powers relative to

education, shall, unless, in their opinion, the matter is urgent, receive and consider the report of the education committee with respect to the matter in question. In addition to the reference of all matters to the education committee, the act permits the council to delegate to such committee, with or without any restrictions or conditions, as they see fit, any of their educational powers except those affecting school finances.

For each of the schools provided or maintained by the municipal educational authority there is a board of managers, consisting of such number of managers as the council shall determine. In the case, however, of public elementary schools, not provided by the local educational authority, but maintained partly from the receipts from private foundations and partly from government subventions, there shall be a body of managers consisting of a board of foundation managers, who shall be elected in the manner provided by the deed of trust of such school, in case such deed of trust is not modified by the central board of education, together with a number of managers, not exceeding two, appointed by the borough council.

The borough council shall have the right to adopt regulations with regard to the management of the schools provided or maintained by them, including directions with respect to the number and qualifications of the teachers to be employed, and for the dismissal of such teachers, and if the managers of any particular school shall fail to carry out any such directions the borough council shall, in addition to its other powers, have the power themselves to carry out the directions in question as if it were the managers. The borough council shall have power also to inspect all schools. Its consent shall be required to the appointment and dismissal of teachers.

The Education Act of 1902 is framed with the intention of maintaining in existence, so far as possible, without duplication on the part of the city authorities, the schools which have been founded and carried on as the result of private initiative. At the same time, inasmuch as such schools receive large grants from the government, the attempt is made to subject them much more than they were prior to the passage of the act, to the control of the borough council and its educational committee. The result

is a great complexity in the system. It is impossible to understand the provisions of the Education Act of 1902 without studying the history of the school system during pretty nearly the entire nineteenth century. It is hoped, however, that what has been said will be sufficient to give a general idea, at any rate, of the relations which the city authorities now have with the school system. The Act of 1902 has certainly done much to make the care of the schools a municipal function. It has, however, apparently, in no way done away with central supervision, which is directed mainly towards securing certificated teachers and a reasonable uniformity of methods of instruction. The means by which the central control is exercised are mainly the grant of funds by the central government to schools, both those provided by the city authorities and those provided by private initiative. By subsequent legislation the power of local authorities has been made more broad so as to include medical instruction in schools, the establishment of vacation and recreation centers, provision for physical education as well as power to regulate juvenile employment.[1] More recently the power to raise the age of compulsory school attendance from fourteen to fifteen years was vested in local authorities, as well as provision for part-time and continuation schools.[2]

Educational Administration in France. In France, as in England, education did not become an object of solicitude on the part of the government until the nineteenth century. In the middle of that century, however, the French law permitted all communes to provide for institutions of secondary instruction and in the year 1882 the state took the matter of primary education in hand. The whole educational administration in France is, however, regarded more than elsewhere as a matter of general state concern. The only functions which the municipalities discharge with regard to it are the provision of the necessary school buildings, which is imposed upon them as a duty; the provision of a school commission, which is largely composed of members of the municipal council and whose duty

[1] 7 Edw. VII, c. 43.
[2] 10 Edw. VII, c. 37.

it is to see that all children within the municipality receive the instruction made necessary by law; and in the third place the provision of high schools for boys. It is said that these commissioners very seldom do any work. This is not, however, a duty which is imposed upon the city by the law. In case cities make provision for institutions of secondary instruction they receive the revenues which come from the school tuition fees and disburse the necessary expenses.

In all cases, in the lower schools and the higher schools, the control of the physical as well as of the educational administration of the school is vested in officers of the state government. A very elaborate system of school administration has been provided by the state beginning with the department of public instruction. At its head is a minister who is a member of the cabinet, with several councils by his side, and included among his subordinates are the prefect, a departmental school board, a rector, as he is called, of the academy, and an academic council. As a general thing the supervision and in large part the direct management of the lower schools are vested in the prefect, who has, among other duties, the power of appointing all the teachers in the lower schools. The supervision of secondary schools is in the hands of the rector and the academic council. The result is that the duties of the municipalities with regard to schools are practically of little account, the matter being, as has been said, assumed by the state administration.

School Administration in Italy. In Italy conditions are somewhat the same as in France. The whole matter of education is regarded as a state rather than a local matter. But in the case of the elementary schools, which cities are obliged to maintain, the city governments have slightly greater powers than are possessed by those of France. The law makes it obligatory upon the city council to establish a school board. This is composed of the mayor or assessor assigned to the schools, who presides, the health officer, and one or more persons chosen by the city council from among the inhabitants of the city, women being eligible. This body has rather indefinite powers, being a supervisory and advisory rather than an administrative body.

School Administration in Germany. In Germany the introduction of the principle of compulsory education, which it may be mentioned has been adopted everywhere, made it necessary to adopt also the rule that no one should be denied entrance to a public school on account of his religious belief. The difficulties arising from the presence of sectarian schools resulted also in some states in the attempt to form unsectarian schools to which teachers without reference to their creed might be appointed, and where religious instruction might be given by all denominations at a time which was different from that in which the regular instruction was given. In most states, however, it is said that even at the present time the system of confessional or sectarian schools is still maintained.

The introduction of the principle of compulsory education made it necessary also that the state should make some provision for schools in which the children of the poor might be educated. In the south of Germany as a general thing this duty of providing the necessary schools was imposed upon the various local communities, including among them the cities. In the north of Germany, however, and in Prussia there were formed special unions or corporations for this purpose. These were largely sectarian in character and consisted of all those persons belonging to a given denomination living within the school district, who were obliged to pay taxes for the support of particular schools. In addition to the money derived from these school taxes the children who came to the schools were obliged to pay certain school fees, while finally, the state was to grant certain subsidies in aid of the duties thus imposed upon the school corporations. In a number of the provinces of Prussia, however, the burden of supporting the schools is by provincial by-law imposed upon the cities within the province. As a result of this rule and as a result of the voluntary action of other cities it is said that at the present time most of the cities of Prussia have taken over the schools as a branch of municipal activity. At the same time prior to this action on the part of the municipalities, many of the school corporations had received by gift or bequest large amounts of property; as a result, each one of the schools within a city is treated somewhat as a separate

organization with its own resources. Accounts are therefore to be kept with each of such institutions.

City School Authorities in Prussia. Whatever may be the conditions of the schools in a city in this respect, there is in every city a school board having some control over all the schools of the city. The city school board consists of two government school inspectors, a representative appointed by the central government for each of the schools which is not under municipal patronage, and from three to nine elected members. One-third of the elected members belong to the city executive and one-third to the council, while the last third are chosen from among the citizens of the city who are believed to be somewhat expert in school matters. The members of the city executive and of the council are chosen in the same way as are the members of other executive departments, but need the approval of the central government. These members propose to the central government three candidates for each of the places which are filled by the citizens at large, and from the three thus chosen the government appoints one as a member of the school board.

This school board supervises the private schools in the city and administers the affairs of all the lower public schools. So far as the higher public schools are concerned, this board has charge merely of their physical administration. The educational administration of the higher schools is entrusted to the principals of the schools who are subject to the supervision of the provincial school board. Within the limits of its jurisdiction the city school board has the administration of school property and the regular execution of the school budget, must see that the laws and ordinances of the state are followed, keep the teachers up to the performance of their duties, and see to it that the children regularly attend school. The members of the board are expected in order to perform their duties to visit the different schools at regular intervals and every year to present to the city council, of which they are regarded to be merely a department, a detailed report on the conditions of the schools within the cities. This report is also to be sent to the government. The school board is often assisted in the performance of its duties by local volunteer unpaid committees each of which devotes attention to some one

school. The arrangement resembles the arrangement referred to in the field of public charities.[3]

The expenses of the school administration are defrayed in the first place from the income from the school property. It will be remembered that in many cases the schools have their own property. In the second place the cities are by law obliged to take upon themselves the burden of the support of the lower schools and are permitted to receive the income from the schools, which, however, does not amount to much at the present time, inasmuch as very generally the school tuition fees have been abolished. In the third place the state government grants subsidies to the schools largely for the purpose of helping them in the payment of the teachers' salaries.

The cities are obliged to build the school buildings and provide as well the necessary residences for teachers. They may be obliged by the state supervisory authorities to fulfil their duties in this respect, but if there is any conflict between the supervisory authorities and the cities, the cities are permitted to appeal to the administrative courts to obtain a final settlement of the matter.

While the cities are thus by law obliged to maintain the lower schools, there is no obligation imposed upon them with regard to the higher schools. They may, however, with the consent of the central school authorities of the state, that is the department of public instruction, establish higher schools which are known as advanced schools (*fortbildingschule*), and *gymnasia,* or *realschule.* There seem to be three kinds of higher schools in the cities: first, those which have been established as a result of private initiative and are regarded as foundations; second, schools established by the central government, and third, municipal schools. The permission to establish such schools is granted only in case it is shown to the state department of public instruction that the city has made ample provision for those schools which it is its duty to support and that the city is prepared to maintain the high schools in a condition which complies with the demands of the central authorities. In this case the rules which are established by the city for the management

[3] Schriften des Vereins für Socialpolitik, Vol. CXXIII, p. 217.

of the schools and the school budget are to be approved by the central authority and the school when it is thus established is regarded as a juristic person, that is, it is a corporation which may receive gifts and legacies from private persons.

State Supervision of Schools. The school system, it will thus be seen, is a combination of private initiative and governmental, generally municipal governmental, action. But whatever may be the character of a school, that is, whether from the point of view of its resources it is governmental or private, it is in all cases subject to state supervision. The supervision which is exercised thus over the school system is exercised in first instance by the state department of public instruction, that is, the ministry of educational, ecclesiastical and sanitary affairs. In every one of the provinces into which Prussia is divided there is, in the second place, a provincial school board of which the governor is president. This body has the supervision over the higher schools and the instruction of teachers. Each province is divided up into districts at the head of which is a board known as the government, whose members consist of persons belonging to the higher administrative service, are professional in character, permanent in tenure and are appointed by the Crown. In each one of these boards there is a committee whose function is the supervision of the conduct of the schools. As a general thing this committee has under it inspectors for each one of the divisions into which the district is divided, namely, circles. Inasmuch as each city of over 25,000 inhabitants is exempted from the jurisdiction of the ordinary circle and forms a circle by itself, each one of such cities has such a circle inspector. In addition to the circle inspectors there are also local inspectors corresponding somewhat to city or county superintendents in the United States; these officers are appointed by the central government, and, as well as the circle inspectors, are members of the school boards in the various cities. Although there is no law requiring the central government to make the appointment of these inspectors from the clergy, as a general thing such officers are appointed from the clergy, who thus maintain in practice a large influence over the management of the schools.

All teachers are educated in the normal schools and receive

there both a theoretical and practical instruction, it being provided that they shall teach in what may be called experimental schools before they receive their certificate. This certificate is granted after an examination which differs in accordance with the grade that the individual candidate seeks to obtain.

The actual appointment to a position in a school is as a general thing made by the local municipal authorities, although their action needs the approval of the central state government, which in the case of principals and teachers in the higher schools is granted either by the provincial school boards or by the Crown. The salaries are fixed by the general government, and it is not permitted to the localities to attend to this matter. The same is true of pensions which are generally granted to teachers after a certain number of years of service, and also to their widows and children in case of their death in the school service.

School Administration in the United States. The cities of the United States did not take up seriously the matter of public schools until about the middle of the 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. It is in these city school systems that have been worked out the important steps in educational advancement which have marked the last half-century. "In forms of organization, administration, supervision, equipment, and in the extension of educational advantages, it has been the city school district which has been the pioneer."[4]

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 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

[4] Cubberley, "Public School Administration," p. 433.

instruction for boys, while Cincinnati, Toledo and Akron, in Ohio, maintain municipal universities.

School Boards. 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 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 its 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, 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.

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 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-boards in Chicago, Philadelphia, San Francisco, Milwaukee, Newark, Louisville, Providence, St. Paul, and other cities.

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 statute provides that a certain tax must be levied, by the authorities having the taxing power, for the support of the teaching and supervising officers of the schools, whose salaries are fixed by state 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, 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 approved at the present time in the United States 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, 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. At the present time a considerable number of cities in the United States choose their school-boards by election. In those cities which treat their 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 of the state.

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, Kansas City, and other less important cities. In some cases the election is held 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, have merely supervisory and consultative powers.

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 widely but 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, and that of New York from forty-six to seven.[5] 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.

School Superintendents. 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 recommend-

[5] Laws of New York, 1917, c. 786.

ing the appointment of teachers who are appointed by the school-board. 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. The differentiation of the administrative from the legislative side of school administration is the theory of the system adopted in Indianapolis. In this city there is a school-director, who is elected by the school-board, and has charge of the administrative side of the physical administration of the schools. 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. Thus he has a veto over the acts of the school-board which may be overcome by a repassage of the act vetoed.

Administrative Tendencies. 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 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 American cities.

Central 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.

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; second, the power to hear appeals from the decision of the local school authorities, and, third, the power to grant or withhold high school accrediting which confers upon the graduates of such schools the privilege of college entrance without examination and without condition. 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 means by 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, New York. Here the commissioner of education 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.

It has been said of this tendency of the state to extend its supervisory authority over the local schools: "The prime purpose of the State in legislating on all such matters is not so much to impose its will as to stimulate the cities to educational activity; not so much to insist upon the State's methods as to insure satisfactory final results. Any wise constructive state educational policy will keep these problems of relationship clearly in mind, and will observe, whenever possible, a definite line of demarkation between the powers and rights of the State and the privileges and options of communities."[6]

The problems arising from growing central administrative control over local schools, both urban and rural, are in general the same as are presented by like control in other fields of government. With respect to their application to the field of education, the authority quoted above has said: "To preserve the schools from the deadening rule of a state bureaucracy, and at the same time to protect them from political exploitation or neglect; to leave to the cities as large liberty in the selection of tools and methods as is consistent with the securing of the results desired by the State; to see that local school systems are adequately financed, instead of being subordinated to the pressing demands of other city departments; and to keep the school systems of the city school districts in touch with community needs and expressive of community wishes, and at the same time safeguard them from politics;—these are the principal problems in the relation of the State to the city school districts subordinate to it."[7] The Federal government formerly confined its activities in the field of education to the compilation of statistics and the gathering and dissemination of information. Grants in aid had been extended to institutions of higher learning in the interests of agriculture and the mechanic arts. Through recent legislation the policy of grants in aid has been extended to the lower schools with respect to agricultural and industrial education.[8]

[6] Cubberley, "Public School Administration," p. 64.

[7] *Ibid.*, p. 63.

[8] Laws of the United States, 64th Cong., 2nd Session, C. 114 (1917).

A measure more recently before Congress, though as yet not enacted into law, would create a full-fledged Department of Education and would still farther extend the policy of grants in aid. By this measure large subsidies would be devoted both to general education and especially to the problems of Americanization, illiteracy, physical and vocational education, and the training of teachers. The administration of such a policy, though carried out through the medium of the state educational authorities, will inevitably strengthen materially the central control over the city school systems.

CHAPTER XIV

LOCAL IMPROVEMENTS

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Character and Scope of Local Improvements. A dominant characteristic of those activities which may be spoken of under the general designation of "local improvements" is that they are primarily local in character, though they may under certain circumstances become of state-wide interest. Furthermore, they are, with respect not merely to the installation and maintenance of their physical plant but to their daily operations, works of engineering. In this they are to be distinguished from the police, educational and charitable functions.

Local improvements may for convenience be grouped in the two categories of Public Works and Public Utilities.

Public works include the construction and maintenance of the streets and public areas of the city; the sewer system, including sometimes the disposal of all municipal wastes, and, in cities upon navigable waters, harbor improvements. These activities are, today, no longer under private control but are constructed and maintained by funds derived almost exclusively from taxa-

tion. Public utilities include the supply of water, gas, electricity, heat, transportation and terminals. These are maintained from the proceeds from the sale of the commodity produced or service rendered, and are conducted either by the city or by private corporations.

Since all these activities form subordinate parts of or are closely connected with the general city plan, that subject, after some introductory paragraphs of an historical character, demands first consideration.

Effect of Urban Growth on Municipal Activities. Attention has been called to the fact that it was not until the end of the eighteenth century that European cities began seriously to take up the matter of local improvements. Up to that time cities had very commonly been struggling for the right to exercise those powers the exercise of which the commercial classes (which were practically identical with the urban population), regarded as necessary for the development of commerce and its attendant industries. It has also been shown that with the widening of commercial interests and the improvement of the commercial law, these powers were assumed by the state. This widening of commercial interests, though it removed from the city powers formerly exercised, had for its ultimate result an increase in municipal activity in other directions. It caused a concentration of population which made necessary the grant of new powers to the cities.

It is interesting to note, however, that at first the attempt was made to forbid by law the growth of cities. Thus as early as 1683 the attempt was made in a royal decree to fix boundaries for Paris, beyond which buildings were not permitted to be erected. This decree sets forth the disadvantages resulting from the growth of the city as follows: "That by the excessive aggrandizing the city, the air would be rendered more unwholesome and the cleaning of the streets more difficult; that augmenting the number of inhabitants would augment the price of provisions, labor and manufactures; that it would cover the space of ground by buildings that ought to be cultivated in raising the necessary provisions for the inhabitants and thereby hazard a scarcity; that the people in the neighboring towns and villages would be

tempted to come and fix their residence in the capital and desert the country round about; and lastly that the difficulty of governing so great a number of people, would occasion a disorder in the police and give an opportunity to rogues and villains to commit robberies and murders both by night and by day within and about the city." It is needless to say that such an attempt was a vain one. The limits of the city were extended by decree in 1724. But the attempt to limit the size of the city was not abandoned. The decree of 1724 like that of 1683 again fixed the city limits and advanced reasons for this action similar to those set forth in 1683. The decree of 1724 also calls attention to the fact "that the going oftentimes in one day from one end of the city to the other, which the people in business are frequently obliged to do, would be rendered very fatiguing and consequently the facility of their mutual intercourse and communication would be greatly interrupted." [1]

The concentration of population could not be resisted and cities all over Europe, particularly the political capitals, had therefore to begin to grapple with the problems which this inevitable and irresistible increase in population presented.

Early Public Improvements. It must not be supposed, however, that prior to the end of the eighteenth century nothing was done in cities in the nature of public works to improve the conditions of city life. We have two interesting accounts of conditions as they existed in Paris at about the beginning of the eighteenth century, which prove the contrary. The one was written in 1698 by Dr. Martin Lister, who attended the Earl of Portland in his embassy to France to negotiate the Treaty of Peace of Ryswick; [2] the other, quoted above, is said to have been written by W. Mildmay, and was published anonymously in 1753. A perusal of these books will show that even as early as the beginning of the eighteenth century Paris had made some provision for a public water supply. This consisted of three small aqueducts supplemented by pumps which drew water from the Seine. That these were inadequate is shown by Mildmay's state-

[1] Mildmay, "The Police of France," London, 1753, p. 131.

[2] Lister, "An Account of Paris at the Close of the Seventeenth Century," etc.

ments that generally water is conveyed to the inhabitants "by pailfulls sold about the streets as milk is in London,"[3] and "that no inconsiderable number of people are employed in thus carrying about what is so universally wanted. . . . He, therefore, that would propose any other method of conveying water into the houses must previously point out some other means of subsistence for the numbers of people who at present gain their livelihood by this method."[4]

Similarly crude attempts were made to provide for street paving, cleaning and lighting. Originally every inhabitant was obliged in Paris, as in London, to pave the street or a portion of it in front of his house. The inconvenience of such a method, on account of the unevenness and want of uniformity in the pavement led in Paris to a change as early as 1609, when the care of the paving was put into the hands of the city authorities and the expense defrayed by a tax placed on each house in proportion to its front on the street. In 1640 the city defrayed the expense out of the proceeds of a tax paid on merchandise brought into the city. The actual work of paving was done by contract made in great detail as to the size of stones and the method of laying them. The contractor was aided in the performance of his contract by a law imposing the obligation on all wagons coming into the city to bring in a certain quantity of paving stones, which were to be delivered gratis at the city limits. This method of caring for street paving was still in force at the end of the eighteenth century.

Similar methods were adopted for cleaning the streets. In 1666 the King decreed that a tax for this purpose should be imposed on every house in proportion to its front. The actual cleaning was let out by contract to the lowest bidder. The contractor was obliged to collect the heaps of dirt swept up by the householders, who were required to sweep the street in front of their premises. Half an hour before the carts came along a bell was rung so as to give warning of their approach. Mildmay, from whose book this description of street cleaning methods is taken, adds: "But with regard to the dirt and mud in the

[3] Mildmay, "The Police of France," p. 95.
[4] *Ibid.*, p. 97.

middle of the streets, other tombrels are employed, at stated hours, every morning and afternoon, both in summer and winter, to sweep and throw into their tombrels, whatever they may be able to contain according as the weather may be wet or dry; particularly they are to be more assiduous in their duty in hard winters, to carry off or sweep into the kennels, all the ice or snow that may fall; for which extraordinary duty, whenever it happens, they are allowed a gratification at the end of the year, over and above their annual salary."[5]

The expense of lighting the streets was defrayed also from the receipts of a tax imposed on the householders. Mildmay says: "Two persons are generally contracted with for this undertaking; the one to find the lanthorns, cords and pullies; and the other to supply the candles: for the streets are here illuminated by hanging lanthorns on the middle of a cord that reaches cross the street; and is fixed to pullies on each side, at about fifteen feet high and about fifteen yards distance from one another. There are 6500 lanthorns, and consequently as many candles consumed every time they are lighted, which is only twenty times a month, being laid aside during the moon-light nights; and are never lighted, but from the last day of September to the first day of April each year; being taken down and set apart during all the summer months."[6] Elections were held annually in each quarter of the city by the householders. The persons elected had each charge of fifteen lanterns and paid, as Mildmay puts it, "some menial servant or poor housekeeper in the same street to perform the duty; accordingly every evening, as soon as it begins to grow dark, the commissary sends out a person, ringing a handbell through the streets of the quarter to give notice, as in the morning for cleaning the streets; so now for lighting them; upon which each *lanternier's* servant immediately sallies out and having a key to the iron box in which the end of every cord is fastened on the sides of the streets, lets down the lanthorn hanging on the same, and fixing his lighted candle therein draws it up again; and thus every one having only fifteen lanthorns under his care, the whole city is illuminated,

[5] Mildmay, "The Police of France," p. 120.
[6] *Ibid.*, p. 122.

in a very short space after notice; though the light itself is indeed a very indifferent one.''[7] While cities like Paris had thus as early as the beginning of the seventeenth century made attempts to provide themselves with some of what we now regard as the conveniences if not the necessities of modern urban life, little if anything had been done to make city life much more than endurable. Even so late as 1853, when Napoleon III and Haussmann began the reconstruction of Paris, ''the streets in the old city within the *enceintes* were in a shocking condition. In one the houses on opposite sides leaned against each other; in another two persons could not pass abreast; in nearly all the gutter was in the middle; very few had sidewalks.''[8]

The City Plan. By the term ''city plan'' is meant the general physical arrangement of the city including its natural topographical features, street arrangement, public places and buildings, and the transportation, drainage and water supply systems. This plan may be the product of natural growth or it may be the result of ''city planning,'' that is, of a preconceived plan designed to achieve certain ideals.

Development under Natural Growth. The formation of the city plan by natural growth consists of successive steps each of which may have been consciously taken but without reference to any general scheme of future development. Concerning this process of natural development one author says: ''A cursory glance reveals similarities among cities and further investigation demonstrates that their structural movements, complex and apparently irregular as they are, respond to definite principles. . . . Cities originate at their most convenient point of contact with the outer world and grow in the lines of least resistance or greatest attraction of their resultants. The point of contact differs according to the methods of transportation, whether by water, by turnpike, or by railroad. The forces of attraction and resistance include topography, the underlying material on which the city builders work; external influences projected into the city by trade routes; internal influences derived from located

[7] *Ibid.*

[8] Smith, "The Topographical Evolution of the City of Paris," *House and Garden*, Vol. VI (1904), p. 287.

utilities, and finally the reactions and readjustments due to the continual harmonizing of conflicting elements. The influence of topography, all powerful when cities start, is constantly modified by human labor, hills being cut down, waterfronts extended, and swamps, creeks and low lands filled in, this, however, not taking place until the new building sites are worth more than the cost of filling and cutting. . . . Growth in cities consists of movement away from the point of origin except as topographically hindered, this movement being due both to aggregation at the edges and pressure from the center. Central growth takes place both from the heart of the city and from each subcenter of attraction and axial growth pushes into the outlying territory by means of railroads, turnpikes and street railroads. . . . Central growth due to proximity and axial growth due to accessibility are summed up in the static power of established sections and the dynamic power of their chief lines of inter-communication.'' [9]

The ordinary results of such a natural growth will be a more or less irregular city, such as is frequently found in the unreconstructed cities of Europe and the older parts of the older American cities. A good example of such growth is to be found in old Paris, as described, that is, Paris prior to its reconstruction on the plans of Louis XIV, and in the older portions of either New York or Boston.

Perhaps no city, and certainly no European city, concerning whose early development we have such definite knowledge, illustrates better the process of natural development than does Paris. We have, it is true, no maps of the city antedating the time of Francis I. More or less successful attempts have been made, however, to construct from other data maps which depict Paris at various periods from the time when during the early Roman period it occupied merely the island in the Seine which now forms the heart of the great city. Lutetia Parisiorum, as it was called, was founded on this island evidently to secure protection against hostile attack. It was traversed by a road running north and south, which even now forms one of the important streets of

[9] Hurd, "Principles of City Land Values," p. 14.

the city. To the north of the Seine this road was crossed by another road running east and west about parallel with the Seine. These two roads formed what was known in the Middle Ages as the great cross—*la grande croisée*. From their intersection branched other roads at an angle to the northwest and northeast. On the south of the Seine another road branched off to the southwest. The city even during the days of the Roman Empire seems to have extended on both sides of the river, particularly to the north, and naturally grew along the lines of the main roads. A glance at the maps shows also that at the intersection or unions of such roads there sprang up little settlements, each of which was a center of growth. From these centers the agglomerations of houses extended until all distinction between them disappeared.

When the peaceful days of the Roman Empire disappeared fortifications were built to protect the inhabitants. These fortifications were pulled down and others placed further out, as the city extended, the place they occupied being taken by new streets. We find, therefore, a series of concentric circular streets forming main thoroughfares, in addition to the diagonal streets due to following the original roads which have been described. Such was Paris until about the time of Louis XIV. It had grown comparatively symmetrically along the lines of travel and from the outlying centers and had been able to do so because of favorable topographical conditions. The country immediately adjacent to the Seine was comparatively level, the only hills in the river valley being quite a distance from the river itself. The only thing which interfered with its natural growth was the necessity of fortifications, the influence of which has been noted. The growth of Paris would thus appear to have followed causes which should operate under similar conditions.

Development under a Preconceived Plan. As opposed to a city plan which is the result of the natural growth of a city is a city plan definitely framed with certain ideas in view, such as to secure the most available space for building, the best means of communication between the different parts of the city, the best architectural effects, or the healthy housing of the population. Such a plan may be framed prior to the building of the city.

Two conspicuous instances of the deliberate planning of a great city in advance of building suggest themselves: Washington, which has, in part at least, been developed in accordance with the original design, and Canbarra, the new capital of Australia, as yet in its early formative stages. Examples of smaller towns planned before building but upon a less ambitious scale are not uncommon. Such planning has the enormous advantage of having only the obstacles of the natural site to overcome.

City planning may, on the other hand, be applied to a city already developed in order to remedy the defects incident to natural city growth. The narrow, crooked streets and inadequate open spaces characteristic of such growth can be overcome only by the expenditure of vast sums of money. More than $250,000,000 is said to have been spent in the realization of the present city plan of Paris.[10]

The Street Plan. The street system forms the basis of any city plan. Upon the street plan the whole system of transportation and communication depends; the water and sewer systems are planned with reference to the street system, and the location of smaller parks and public buildings is closely related thereto. The layout of building lots and the use thereof are determined by the adjacent streets.

Whenever city plans are consciously framed the street system tends to assume one of three types: the rectangular, the radial or diagonal, or the circular. The rectangular plan which is, unfortunately, the prevailing one in the United States originated apparently in Philadelphia which was laid out in this way by the engineers of William Penn. This plan was adopted in the laying out of the newer part of New York City in the early part of the nineteenth century. From these conspicuous examples, and because it conforms to the plan of the United States public land survey, the plan has become all but universal in the parts of the United States west of the Alleghanies. The rectangular plan is, perhaps, one degree superior to a haphazard growth. It is simple and easily learned by strangers and offers the largest possible area for building sites, but it makes communi-

[10] Munro, "Principles and Methods of Municipal Administration," p. 37.

cation between different parts of the city difficult since it involves the necessity of traversing two sides of a triangle to reach almost any given point.[11] It fails to take into consideration natural physical features while offering a maximum opportunity for sweeping winds and whirling dust. Furthermore it is inartistic and does not lend itself to the best architectural effects, since when adopted without modification it offers no sites on which handsome buildings and monuments can be placed so as to be seen to good advantage.

The radial plan is less artificial than the rectangular in its origin and conforms more nearly to natural lines of communication. It is especially adapted to and is the natural plan for cities having a water front where travel converges upon a principal landing place or bridge. It demands a broad open space at the focal point from which the principal arteries radiate. Examples of this plan are to be seen in Providence, Buffalo and Detroit. When the radial plan is elaborated by the use of several focal points it becomes the diagonal plan. The diagonal plan is said to have been derived from the system adopted for laying out roads in the royal forests of France, or at any rate, its adoption is due to the influence of Louis XIV and his landscape gardeners like Le Notre who made plans of this kind for the development of lands outside the walls of Paris. The classic example of this plan is Paris where the plans first devised for the suburbs were applied upon a vast and magnificent scale by Baron Haussmann to the whole city. Washington is the only city in this country which has been consciously laid out on this French plan, and few who compare it with other American cities can fail to reach the conclusion that the Washington plan is vastly superior from almost every point of view to the plan upon which the ordinary American city is laid out. While the diagonal street plan sacrifices a great deal of space to the streets and avenues for which it makes provision, particularly if these streets and avenues are unduly wide, and while its adoption is necessarily accompanied by the presence of many irregular plots which are not well suited for building purposes, it provides most convenient means

[11] Robinson, "The Improvement of Towns and Cities," p. 21.

of communication for all parts of the city, and permits of the freest possible circulation of air and of the most attractive architectural effects. The centers chosen for the intersection of diagonal streets offer sites upon which buildings may be placed so as to be seen from afar and to the greatest possible advantage.

The circular plan, which is so characteristic of Vienna, and traces of which we find in Paris, is due in most instances to the accidents of the growth of formerly fortified places. In cities whose topography permits, it has been in some instances consciously adopted for the outlying sections and when combined with a park system, whose separated portions it may serve to unite, it undoubtedly subserves a useful purpose. It has few advantages, however, to commend it for purposes of convenience in building or of transportation, and it is therefore seldom adopted, except as stated, in any plans of city reconstruction which may be undertaken.

Street Plans in Actual Practice. It is seldom the case, however, that cities even when reconstructed or laid out on a plan formulated in advance, conform entirely to one of these plans. In the United States, where few if any of the cities have been reconstructed, the older cities usually contain an older irregular portion which has grown in a haphazard fashion and a new portion or new portions laid out on the rectangular plan after the New York fashion. Boston and New York are instances of such cities. In the newer cities and in Philadelphia, which has kept its original plan except in the outskirts, the rectangular plan is usually found predominating, but even here the prevailing plan is modified by the presence of old roads which cut across the rectangular lines. Chicago is a good instance of such a city. The Washington plan, as it now exists, is the result of the superimposition of the French diagonal street plan upon the ordinary American rectangular plan. Sometimes the rectangular plan is modified by the presence of two axes on which the rectangles are based. Cities laid out on the rectangular plan usually attempt to find their axis in the most important topographical factor of the site chosen. If this is a river there will be only one axis, as in Philadelphia; if it is a harbor or bay the plotting may follow roughly the course of the harbor, as in Baltimore and the lower

part of New York. Finally, an original town site laid out in this way along one axis may extend beyond the limits which were originally fixed. The city may, then, if in an American state which has been a public land state, change its axis when it reaches the lands which have been subjected to the work of the United States surveyor, who invariably follows north and south and east and west lines. This is the case, for example, in Denver.

"Only in rare instances have great cities begun large undertakings of replanning which involve at one time radical changes in the street plan or the abandonment of existing public buildings in order that broad avenues, civic centers and imposing public buildings might appear. The enormous cost, the inertia of public sentiment and the opposition of vested interests have prevented. London missed its great opportunity when, after the great fire, vested interests prevented the rebuilding according to Wrenn's plans. Likewise, America has seen similar opportunities lost in Boston, Chicago, San Francisco and Baltimore. Paris and Vienna present the two notable examples of replanning on an elaborate scale.

"As a practical problem today city planning presents two aspects:

"First: In the older parts of cities it is a matter of replanning through the opening of new streets or the widening of old ones to relieve congestion; the cleaning up of a slum; the creating of parks and breathing spaces in crowded neighborhoods; or determining and preparing the site for a public building. Such projects involve the expenditure of vast sums—the penalty paid for lack of foresight in the past—and in their turn are usually carried out singly and without the look ahead to future building. Millions are being spent in our older cities as tribute to lack of planning. New York City has spent in a generation not less than four hundred million dollars in correcting mistakes.

"Second: In the outlying districts there is going on real work of planning streets and improvements. Here is the opportunity for a harmonious and considered development which, though too often neglected, may be produced by coöperation be-

tween authorities and the intelligent self-interest of proprietors.''[12]

In the case of cities which have been reconstructed and which are found for the most part in Europe, reconstructed Paris has usually been taken as a model. The reconstruction has usually consisted first, in the destruction of the city walls, which no longer subserve a useful purpose, and the building of streets and avenues upon the site of the walls, and second in the superimposition upon the old city plan of the French plan of chosen centers from which radiate diagonal streets. This has been done in large measure in Vienna. At first the attempt was made to use the site of the old fortifications for a park. But the resulting isolation of the business part of the city made it seem advisable to make use of this unoccupied land for building purposes with the result that the Ringstrasse which circles about the old city is occupied by a series of stately public and private buildings which produce an architectural effect seldom to be found. In the building up of this district considerable use has been made of the rectangular idea.

City reconstruction has often been accomplished also, as in Paris, by a radical replanning of the old irregular portion of the city. Where this is done intelligently as was the case in Paris, the attempt is made both to preserve existing buildings of high character and to place them in an artistic setting. Thus Haussmann says, in his *Memoires,* that "he never opened a new street without considering carefully what monuments might be brought into vista. . . . Taking as the basis of this work the old types, which the designers of the seventeenth century had brought in from the forests and country, Haussmann and his engineers considered all the many things which a street is required to do, and the qualities which lead to beauty of effect, and before constructing it arranged the profiles of the section so that all conditions might be met. An agreeable relation between the width of the street and the height of buildings was established. The central pavement was made convex with gutters on either

[12] Bates, "City Planning," Indiana Bureau of Legislative Information, Bulletin No. 8, p. 6.

side, sidewalks were provided and, if possible, these were adorned by one or two rows of trees, in the genial old French style. Sculpture, fountains and monuments were introduced in proper localities."[13]

City Planning in Frankfort. Few cities in the world had, in the generation preceding the outbreak of the world war, devoted so much attention to their plans as had the city of Frankfort-on-the-Main in Germany. Frankfort was favorably situated for undertaking this work in that the city owned a large amount of land outside of its limits. But it had to secure also wide powers of expropriation and the passage of a special law—a remarkable thing in Prussia—by which it is authorized to undertake a comprehensive redistribution of land titles in its suburbs. As a result of the exercise of these powers it may with the consent of half the landholders in interest unite into one plot all the land in a given area, whoever may be its owners. After laying out such streets and squares as it deems necessary, it returns to each landholder a site equal to the size of the plot he had to surrender for distribution purposes, less the proportion taken for streets and squares. Where resort is not had to redistribution the city has to pay for the land taken for streets but the expense to which it is put it is able to recoup by the levy of local assessments on property abutting on the streets which must also bear the expense of maintaining the new street for five years. Taxes on the unearned increment of the land are also imposed on the owners of land when it is sold.

Closely connected with the laying out of the city are the building regulations, which like the increment tax are found in many German cities besides Frankfort. In this city the building regulations divide the city into three zones or districts. In the inner zone buildings with five stories, i. e., basement and four upper stories, may be built; in the middle zone four stories, in the outer zone three and in narrow streets only two stories are permitted. In the inner zone seventy-five per cent, in the middle sixty per cent, in the outer fifty per cent of the land may be built upon,

[13] Smith, "The Topographical Evolution of the City of Paris," *House and Garden*, Vol. VI (1904), p. 287.

while in certain districts even eighty per cent of the land must be left free of buildings. In some districts front gardens on the streets must be provided in addition to the open space otherwise required to be free from buildings. The city also encourages the settlement of its resident population in the outskirts of the city by providing cheap artisans' dwellings and by loaning to building societies and private persons money at low rates of interest to enable them to build such houses. The result of this policy on the part of the city is that while "there are in Frankfort, as in all large and ancient cities, a number of undesirable dwellings . . . the area in which these dwellings exist is constantly decreasing because these dwellings are being transformed into offices. A great many old houses have disappeared owing to the laying out of new streets." [14]

The Ideal City Plan. In the work of both planning and replanning, a combination of the three plans which have been described is perhaps the ideal. This has been widely accepted on the continent of Europe and has been exemplified in many German cities and in Milan and Vienna. The ideal has been graphically described by an authority on the subject: "Imagine a central point, a plaza—as with happy effect in many an old-world city—or the green or common of a village. It is a grouping spot for the public buildings, or it may be a strongly distinguished natural feature of the site, perhaps an eminence and occasionally even the water front. To this, numerous diagonal streets of primary importance would focus, so cutting irregularly a network of—not oblong blocks, as in New York, but even squares with access to the rear of the houses. And around the outside, or at various periods, place circling parkways, or boulevards—like those for instance of Brussels—whence the diagonal streets may radiate. The result is a wheel, superimposed upon a checkerboard. The hub is the true heart of the town; the spokes are arterial thoroughfares, receiving the heaviest traffic because they are the most direct lines of communication. The rim, or rims, are boulevards and parkways affording convenient means for belt line intercourse. Incidentally, the vista of every street is broken at intervals, for very

[14] Lunn, "Municipal Lessons from Southern Germany," p. 43.

long street perspectives without substantial termini are not things to be desired. Unless there be plainly visible an eminence or an architectural or sculptural mass, at the end of the street, distance becomes only wearisome.

"The practical merits of this plan are well illustrated in Vienna, where the daily distribution of population is said to take place more easily than in any other large city. But from the artistic standpoint only, we have here, first, the dominating central point of site or business, putting a stamp upon the city and giving to it that distinctiveness that so many urban communities lack. Upon this is laid all the emphasis that street arrangement can give. Then, in the junction of diagonal streets with the parallelogram's regularity, we have at hand the appropriate sites for adornment with fountains, statues and little parks. The problem has not been solved as if it were that of an exposition. It is a simple, practical and systematic ground-plan available for a busy city or for a quiet village. Towns already under way may, indeed, require modifications of it; and a site like Manhattan Island may render the whole impractical; but it is helpful to have clearly in view a general ideal scheme and its advantages." [15]

Public Works. The city plan is of fundamental importance, not merely because of the effect which it has upon architectural, artistic and sanitary conditions, but also because of the relations between it and almost all the public works and public utilities undertaken within the city.

The streets form, as it were, the frame work upon and about which a large part of the works and utilities of the city center. Except in the case of streets opened as a part of replanning operations, the clearing of obstructions and reduction to sub-grade is ordinarily performed by the private interests desiring the opening of the street. The first and most extensive public work in connection with the street is the construction of the pavement, but even this, too, is not infrequently undertaken by the promoter of the street before acceptance by the city.

Street pavements date from the earliest historic time. Streets in Rome itself and in other cities of the Roman Empire were

[15] Robinson, "The Improvement of Towns and Cities," p. 23.

paved before the Christian era though upon no such elaborate scale as was to be found on the great military roads. The Moors built paved streets in Cordova in the tenth century, and in the thirteenth century brick pavements were laid down in some of the cities of the Low Countries.[16] In Paris as early as 1604 the paving of the streets was recognized as a function of government. It was not, however, until the earlier part of the nineteenth century that street pavements may be said to have become common, and even then were mostly confined to the more important streets in large cities. Examples of street pavements were rare in America before the Revolution. Cobble stones and granite blocks were the earliest materials used.

At the present time pavements are constructed of granite and wood blocks, brick, cement, bituminous substances under the generic name of asphalt, and macadam. No one of these substances seems to be best adapted to use under all conditions and in all places when are taken into consideration first cost, durability, economy in repair, cleanliness, and noiselessness. With some forms of pavement and under heavy traffic conditions the maintenance of the street surface becomes almost as serious a problem for the engineer as the original construction, and must always have a large part in the determination of the type of material to be adopted. Sidewalks were rarely provided at all before the close of the eighteenth century.

Bridges constitute in many cities not an inconsiderable element in public works. In some instances important bridges are created in whole or in part by state or county; in others the work is undertaken by some quasi-public corporation. Among the most important municipal bridges in America are those across the East River in New York, across the Charles in Boston and across the valley of the Cuyahoga at Cleveland.

While drains for the removal of surface water date from an early time, sewers proper worthy of the name do not appear before about the middle of the eighteenth century. Their construction on any extensive scale seems to have begun in Paris. London followed after a brief interval but in America few public

[16] Fairlie, "Municipal Administration," p. 227.

sewers were constructed before 1850. Though the sewers of Paris are the most famous in the world, the cities of Great Britain and the larger cities of the United States are the most completely supplied. Baltimore and New Orleans, the most recent of the larger cities to take up the work, have now perhaps the most complete systems.

The public work connected with the sewer system involves the problem not only of removal but of sewage disposal. The obvious first solution of the problem of disposal is to discharge sewage into a neighboring stream or tidal water. Inland cities situated in a level country and upon slow flowing streams or upon lakes have found it necessary to make provision for pumping and for final disposal. Purification and utilization as fertilizer are common methods of ultimate disposal where natural water courses have been found inadequate to the work. The location of the city of New Orleans below the level of the Mississippi river has made difficult the problem of removal and disposal there. A difficult situation at Chicago has been solved in a unique manner. The Chicago drainage canal diverting water from Lake Michigan is employed not only for sewage purification and disposal but for the generation of electric power which is used both to light the city streets and to carry on private manufacturing in the city.

Even cities situated upon tidal waters which rise and fall to a considerable extent find that there is a limit to which the surrounding waters can safely be polluted by the discharge of sewage. Glasgow and London have been obliged to undertake works for sewage disposal and some system of purification will probably be necessary ultimately for all cities of considerable size.

Public Utilities—Water. Public utilities have been described above as comprising a group of services including the supply of water, gas, electricity, heat, transportation and terminals, which are maintained by the sale of the commodity produced or the service rendered. While these services are now clearly recognized as of a public character, it is a fact that quite universally, and especially in the United States where individualistic notions prevail, the inception and early control of these utilities

have been in private hands. At the present time, however, public utilities are constructed and operated either by public or private interests.

With the increase and congestion of population a service which is as imperative as that of drainage and as intimately connected with the public health is an adequate supply of pure water. The effort entailed upon any city in obtaining such a supply depends, however, in large measure upon its geographical situation. A city like Glasgow, which is situated near a hilly country blessed with a heavy rainfall, is called upon to do much less in the way of water supply than a city like New York, situated on the sea coast at quite a distance from elevated land and in a district where droughts are not unknown. Other cities, like those on the Great Lakes, which have a copious supply of potable water near at hand, have still less to do than Glasgow. Their work consists merely in pumping into their distributing systems from the reservoirs at their very doors. Glasgow has to maintain expensive aqueducts, while New York in addition to aqueducts must maintain large storage reservoirs. Other cities, like Hamburg, have found to their cost that their only available source of water supply is polluted because of the great adjacent population and have had to install filter beds. Filtration of water supply, it may be remarked, will probably be necessary very soon in the case of most cities of any size.

It is interesting to note that the earliest modern efforts to this end, which were those undertaken in London, Plymouth, Southampton and Oxford between 1283 and 1610, were public undertakings. The first enterprise of this nature involving extensive engineering operations, that of the New River Company for supplying London, was carried to completion in 1613 by a private company, as were other similar undertakings down to the nineteenth century.[17] After the year 1830 British municipalities adopted widely the policy of acquiring or constructing as municipal enterprises the supply of water. The policy soon became general and more ambitious projects were undertaken involving the bringing of water long distances ranging up to a

[17] Fairlie, "Municipal Administration," p. 272.

hundred miles from the mountains of Wales, of northern England or from the Scottish Highlands.

Upon the continent public water supplies worthy of the name scarcely existed before the nineteenth century, but after 1850 the larger cities, particularly in Germany and more recently in Italy, began to construct important waterworks systems which were in most cases under public auspices.

In the United States, before 1830, outside of Boston, public water supplies were restricted to the town pump or to that furnished by small private companies. Down to 1835, Philadelphia was the only city possessing a publicly owned waterworks, though after that date the number increased rapidly. The famous Croton aqueduct for New York was completed in 1842.[18] Most conspicuous among the recent municipal water supply undertakings in the United States are those constructed by New York City and Los Angeles. The New York aqueduct begun in 1907 brings water from a great reservoir one hundred and ten miles distant, passing through mountains and beneath the Hudson river. That of Los Angeles brings water from an even more remote source over two hundred miles away and incidentally develops power sufficient to supply all public demands with a surplus for sale to private consumers. There has been a constant tendency for cities in this country to undertake the supply of water as a municipal enterprise, though many smaller cities are supplied by privately owned plants. Of the larger cities few are supplied from private works. Indianapolis is the largest city supplied exclusively from such a source.

Gas and Electricity. The lighting of the streets was recognized as desirable as a police measure by several of the larger European cities before the middle of the eighteenth century. About 1765, oil lamps were substituted for candles in the street lanterns which were everywhere the sole means of public lighting. The discovery of gas as an illuminant, however, opened a new era in lighting. Beginning at Manchester about 1800, the use of gas for street illumination spread in the first quarter of the century to a number of the larger cities of Great Britain and the conti-

[18] Fairlie, "Municipal Administration," p. 273.

nent, and in 1816 to Baltimore. By the middle of the century the use of gas had become common in all cities. It was, in the earlier years, invariably supplied by private companies which soon began to furnish it also for interior lighting in houses and public buildings. The first municipal plant was that at Manchester, England, established in 1824.[19] The number of municipally owned gas works increased rapidly in Europe so that in Great Britain at the present time about one-half of the plants are owned and operated by the municipality. In the cities of the United States gas works have not usually been owned by the city except in some of the smaller places. But few of the larger cities have owned plants and the largest of these, Philadelphia, has leased its plant to a private company. The introduction of cheap natural gas for the cities within reach of the gas fields led to its wider use for domestic purposes of cooking and heating.

The practical use of electricity for public lighting by the arc light dates from 1880. The use of the incandescent light came six years later. The number of electric light plants increased so rapidly that gas seemed about to be superseded by electricity everywhere. The invention of the Welsbach mantle about 1890 checked this tendency, and subsequent improvements in both sources of light have resulted in a brisk competition for popular favor. As in the case of gas, a large number of small towns furnish their own electricity for public and private use, and the number of public lighting stations is increasing more rapidly than that of private ones. In the larger cities the electric plants are in a very large majority of instances in private hands. Among the largest and most successful of the municipal plants are those in Chicago, Seattle and Cleveland.

The widespread use of water power as a cheap means for the generation of electricity in both municipal and private plants has given impetus to the use of electricity for both light and power. The Chicago and Seattle plants are water-driven. Developments in the transmission of electricity at high voltage over long distances have done much to furnish widely scattered towns with that form of energy developed by water-power. The low price

[19] Fairlie, "Municipal Administration," pp. 280 *et seq.*

at which plants, public and private, have been able to supply electricity has led to its wide adoption as a source of power by manufacturers in cities. The only electrical developments for municipal purposes comparable to those in the United States are to be found in Canada and Switzerland.

Transportation. The first public urban transportation lines attempting to maintain a regular schedule were the omnibus lines in Paris and London which began operations just before 1830. The first street railway line to be put in operation was in New York in 1852.[20] Within twenty years horse cars were upon rails in the streets of all the larger American cities. In Europe tramways, as they are there called, were rarely found before 1870. In the larger American cities the street railway service was usually performed by a number of independent lines, but after 1880 there was a general movement toward consolidation under a single company in each city. The substitution of electric for horsepower, first made practical in Germany about 1881, and in the United States in 1884, became general after 1890. The immediate result was an enormous expansion both of the number of lines and the amount of traffic borne. European cities as a rule have lingered far behind those of America both in mileage and traffic. New York led the way in 1870 in the introduction of the elevated railway. The Metropolitan in London was the pioneer among underground railways and was followed by the Metropolitan in Paris. Boston initiated underground transportation in the United States in her subway completed in 1897. The subway system of New York, opened in 1904 and still in process of large extension, has been the most important undertaking in urban transportation in the present century.

Like other public utilities, street railways were at first built and operated by private enterprise. In Great Britain municipal construction began soon after 1870 and has persisted until half the total mileage in the country is under public ownership. The same course was pursued in Toronto, Melbourne and several of the continental cities. Since 1893 there has been a rather rapid increase in the number of British cities which have taken over

[20] Fairlie, "Municipal Administration," pp. 291 *et seq.*

the operation of the roads but elsewhere in Europe the tendency is less marked. For many years the Brooklyn bridge railroad was the sole example of a municipally owned and operated railway in the United States, but since 1898 it has been operated by a private corporation. Since the opening of the Boston subway an elevated and subway system has been developed in that city under municipal ownership. The original municipally owned subway of New York has, by a partnership arrangement with a private corporation, been extended to form a great system of subway and elevated roads operated under private management. Municipally owned subways are at present projected or under construction in several American cities. The ownership and operation of surface railways by the city has been widely agitated in this country in recent years and in Detroit steps have actually been taken to that end, but at the present time the only municipal street railway of substantial importance is that of San Francisco. At present this serves only a part of the city, but the whole of the street railway service of the city bids fair to come under municipal ownership in the no distant future.

Docks and Terminals. Outside the United States the construction of harbors and docks has been regarded as a municipal enterprise to be undertaken by cities singly or in groups. In the United States, however, the work of harbor dredging has been primarily the work of the Federal government though sometimes carried on jointly with a state or city. The docks and harbor improvements on the Clyde at Glasgow, the Mersey at Liverpool, the Thames at London, the Scheldt at Antwerp, the Elbe at Hamburg and the Manchester ship canal are all notable examples of this sort. Docks and railway terminals in America have been until within a few years in private hands and unregulated except as they were parts of a railway system. New York has, however, for fifty years owned a system of docks operated as a public utility. Within the present century the importance of adequate docking facilities has come to be more fully realized. Extensive additions have been made to the New York dock system and large works of a similar character have been undertaken wholly or in part by the municipality in New Orleans, Seattle, Los Angeles,

Boston, and San Francisco. The providing of rail terminals aside from those forming part of a dock system is still left to the initiative of the railroad companies.

Organization of Public Works Authorities. An important question in connection with the public works and publicly owned utilities of cities is the method of the organization of the force which is to be responsible for the custody and operation of these vital undertakings. In countries other than the United States the authorities in charge of these matters are usually organized just as are the authorities in charge of other branches of municipal administration. They are ordinarily committees or boards composed either entirely, as in England, or partly, as in Prussia, of members of the council. In Prussia, as has been pointed out, such boards have as a member a permanent professional expert who aids although he cannot control the board in its action. In England the committee usually has, subordinate to it, an expert, who has a practically permanent position and to whose opinion the committee must in the nature of things defer in most if not in all matters. But this expert is distinctly a subordinate and not a member of the board. In both England and Germany each one of the various branches of public works is usually under the immediate control of a special authority. The fact that in both countries each of these authorities acts under the control of the principal city authority is supposed to prevent conflicts of jurisdiction. But these conflicts do sometimes occur. Thus in Glasgow some of the committees have prosecuted in the criminal courts the subordinates of other committees. In Italy a special organization is provided by the law for the authorities in charge of the operation of each public utility.

In the United States, however, there is no recognized method of organizing the authorities at the head of the matters which have been classified as public works. A method which has found favor in many cities of moderate size is to place a number of these public works, particularly where they have a close connection with the streets, under the control of one authority such as a board or director of public works. This has been done with the idea of securing harmony of administration in such matters as streets, sewers and water supply. Where such con-

solidation has not been made, it sometimes happens that just after a street has been paved it has to be torn up to permit of the construction of a sewer or the laying of a water pipe. In other cases, particularly in the larger cities, where the work of each of the departments has increased greatly in amount, it has seemed best to provide separate authorities for each of the different kinds of public work, while in one at least, i.e., New York, under the charter of 1901, most of the public works, with the exception of the water supply, are placed in the charge of the presidents of the five boroughs into which the city was divided. Under such an arrangement the several departments of public works were decentralized rather than disintegrated. This arrangement is, however, peculiar to the metropolis.

No conclusion, further, has been reached in the United States as to the form which shall be given to the authority which is at the head of either a general department of public works or the special departments such as for streets, sewers and water supply, for which provision may be made. Sometimes we find boards; sometimes we find single commissioners. Sometimes the members of the boards or the commissioners are appointed by the mayor and council; sometimes they are elected by the council or the people. Sometimes they have fixed terms; sometimes they may be removed by the mayor. It is frequently the case, however, that the head of the department of public works has a tenure of office which makes him independent of either the mayor or the council. Under any of these plans the office is usually political, the term short, changes in incumbency frequent and no serious attempt made to place this technical administrative position upon a professional basis.

Ad hoc Authorities. These municipal activities are ordinarily placed under the control of some branch of the city administration, but there are cases where, for one reason or another, there are formed for the management of particular kinds of public works what the English speak of as *ad hoc* corporations, which are distinct from the ordinary city corporation. Such an arrangement is quite common in Great Britain, where special trusts have been formed for the management of docks, as in Liverpool, or for the improvement of the navigation of a par-

ticular river in which some one city is specially interested. This is the case, for example, with the Thames as far inland as London, with the Tyne at Newcastle, and the Clyde at Glasgow. These boards or trusts, as they are commonly called, while containing representatives of the city which is particularly interested in the work they are doing, have as well in their membership representatives of other localities or interests. Thus, the trustees of the Clyde Navigation Trust, as organized by the act of 1858, are the Lord Provost (Mayor) of Glasgow, chairman, nine persons elected by the Glasgow council, two each by the Merchants' House, the Chamber and the Trades House, and nine elected by an electoral body of shipowners and harbor ratepayers. These are shipowners of ships to the amount of 100 tons registered in the port of Glasgow and persons who pay at least ten pounds yearly rates to the Clyde Trust.

Somewhat similar arrangements have been made in the United States, particularly in cases where cities have entered the field of municipal ownership and operation of public utilities or have undertaken other functions which demand the investment of large amounts of capital. Examples may be found in the former gas trust of Philadelphia and the present gas trust of Wheeling. Sometimes the narrow limits placed upon the borrowing power of our cities have led in the case of productive utilities to resort to the device of a holding company through which the plant is built and operated in the interests of the city.

Sometimes in cases where a particular improvement concerns more than one municipality or affects the interests of the state as a whole the undertaking is assumed by the state alone or in conjunction with the city or a group of municipalities. This is especially true of water and sewer undertakings. Examples of this kind are the reservoir system from which Boston and the neighboring communities draw their water supply, and the system of trunk sewers which serves approximately the same area. These services are under the control of a "Metropolitan Water and Sewerage Commission" appointed by the governor of the commonwealth. The extensive dock improvements at San Francisco and at New Orleans are administered by state authorities.

Whenever the social expansion of the city outruns its corporate extension such forms of control are likely to appear. To what an extent social interests may suffer when the organization provided for such enterprises is based on an arbitrary political foundation which is narrower than the social group affected may be observed in London. London, it will be remembered, is divided into twenty-nine districts, called for the most part metropolitan boroughs. All of these boroughs have under the law the right either to grant electric light franchises or themselves to operate electric light plants. Some of them have such plants. As these authorities may not operate outside of their districts, a large central electric plant is impossible of establishment under the present law, and the interests of the great social group represented by metropolitan London are sacrificed because of the possession by the petty local authorities of powers which they cannot exercise to advantage. Apart, however, from these cases, where social interests transcend the limits of cities, public works as well as publicly owned utilities are usually attended to by the city corporation or by an *ad hoc* authority.

Public Utilities and the Public. It will have been observed to be the history of public utility enterprises that their inception and earlier development have been quite generally under private auspices and that when public ownership appears it is at a later stage. The most notable exceptions are those activities entrusted to the earlier *ad hoc* authorities in England or those in which the utility has been first undertaken at a recent date. Two causes seem to have contributed to determine the original policy of private ownership of these utilities. First: The earlier needs which are served by public utilities came into being at a time when the city was looked upon as a mere administrative district of the state rather than an instrumentality for the satisfaction of local needs. Consequently such matters were not considered to be within the province of the city, nor was there any place in the governmental organization for the conduct of business enterprises. Second: It happened, further, that these problems presented themselves at a time when governmental activity was throttled by the dominance of ideas of *laissez faire;* when gov-

ernment was held to have performed its whole duty when it had protected its citizens from violence and had administered justice among them.

The public, eager for improvements, received with open arms the promoters of these early enterprises, bestowing upon them favors with lavish hand, even the benefit of the public credit, and demanding in return nothing but the promise of the satisfaction of a pressing need. That valuable privileges were being conferred and social rights abdicated without assurance of adequate return was not realized. In fact the potential values granted were unperceived even by the recipients.

It was speedily discovered that the great weakness of the uncontrolled private operation of the utilities was that they were like any other private enterprise, operated for private profit and without regard for social needs. The temptation was irresistible on the part of the utility corporation to economize upon the quality of service rendered while imposing the highest rates the traffic would bear. The public in course of time, though but slowly, perceived that here were forces whose natural tendencies must be checked. The first means of placing a control upon these agencies whose services were becoming a vital necessity of urban life was through their franchises.

Public Utility Franchises. A condition precedent to the operation of a public utility is the privilege to make use of the public streets and other public places with pipes, poles, wires, conduits, tracks or other appurtenances for the rendering of the service in question. The contract by which persons or corporations secure the right to use the streets in distributing to consumers the service or commodity supplied is known as their franchise.

Public utilities have been undertaken almost universally by corporations, which were formerly universally in the United States created by special charters granted as special acts of the legislature. In these acts of incorporation it was customary to embody the right to use the streets without any pretense of safeguards for the interests of the city which might be involved. Moreover, when in the progress of the adjustment of relations with the city the company failed to obtain what it desired from the municipality it would sometimes secure its aims by legisla-

tive action though they might be distinctly subversive of local public interests. The many abuses of this kind led to the prohibition in many states of grants of rights in city streets without the consent of the local authorities. With the weapon thus placed within their reach communities sought to protect their own interests. Even though in the first franchises thus brought under local control the terms were broad and the obligations imposed imperfectly guarded, the public has gradually learned in some measure to fortify its position against the utility corporations.

Elements of a Franchise. Out of the experience of municipalities there has developed a substantial agreement among students and men of affairs concerning the essential points to be covered in a model franchise as well as some conclusions regarding terms proper to be insisted on by the city. The franchise should contain stipulations covering: duration, compensation, rates, service, reversion, finance and labor conditions and perhaps others. Some of these will now be considered.[21]

Duration of Franchise. The first gas franchises granted in England were generally broad in terms and unlimited in duration. When, after a time, the city of Birmingham wanted to take over the local gas plant it was found that the city must pay for the works as a going concern, that is, not only for the value of the physical plant but for the good will or franchise. The payment which it had to make was so large as to convince Parliament of the inexpediency of granting franchises in perpetuity. Therefore, when provision was made for the granting of electric light and tramway franchises the laws passed limited the franchises to twenty-one years. This period proved to be too short in the case of the electric light companies, and was later lengthened to forty-two years. Before the expiration of the franchise period it was discovered that the tramway service might be vastly improved by the introduction of electricity in place of horse power. As a general thing the companies refused to electrify their roads. The grounds taken were that since at the expiration of the franchises they were entitled merely

[21] King, "Regulation of Municipal Utilities," pp. 81 et seq.; Wilcox, "Municipal Franchises," Chap. III.

to the value of the plant as it should then stand, the unexpired term was too short to justify the necessary expense. The consequence was that the people of the cities had a poor transportation service, poor at any rate as compared with the existing state of the art of transportation. In Germany and elsewhere on the continent the rights of the public were more carefully protected. In Berlin the gas franchise granted in 1825 was limited to twenty-one years. In Paris the first franchise of fifteen years was later extended to fifty years.

There was, in some instances in the United States, a disposition to protect the interests of the city by limiting the duration of franchises. The wisdom shown by the city of New York in this respect with regard to street railway franchises was made of no avail by the courts and legislature of the state. The courts held that under the law of the state cities did not have the right to grant the street railway franchises and interpreted the statutes passed afterwards to legalize the position of the street railway companies occupying the streets under the illegal grants of the city authorities, in such a way as to recognize that these companies had perpetual franchises which were not capable of resumption by the city. In these ways it would appear that the policy of perpetual franchises was adopted in New York city. At the time of the adoption of the New York charter of 1897 this policy was abandoned for one of franchises of limited duration. Elsewhere franchises were dispensed with lavish hand and Denver went so far in 1880 as to admit by a general resolution all who wished to engage in supplying electric lights.[22] Throughout the middle-west franchises of fixed duration but rather short have been the rule. It has been found that the proper duration of the franchise varies with the utility and the character of the city, but that limits may perhaps be set at from twenty-five to fifty years. In Massachusetts first but later in some other states instead of granting franchises of a fixed duration, an indeterminate permit was granted, revocable by the city at will whenever it was found that the company was not serving the public interest.

[22] King, "Regulation of Municipal Utilities," p. 80.

Utility Rates. It is natural that the question of the rates to be charged by utility companies should appeal more directly to the average citizen than that of the duration of the franchise and that rate regulation should be more insistently demanded. The public has a right to demand reasonable service at a reasonable rate, i.e., at a rate which shall permit the proper maintenance of the plant and a fair return on the investment. The determining of what is a reasonable rate in the presence of all the interests involved is not an easy matter.

The rate-fixing power which rests primarily with the legislature may be exercised by that body itself or it may be delegated to an administrative body or to the city. The legislature no longer attempts to fix rates itself but, having decreed that they shall be reasonable, leaves the determination of the rate itself to a utility commission or the city. Whichever method is followed, the rate must not be such as to result in the impairment of a contract or to deprive the company of its property through fixing it so low as to make impossible a reasonable return on the actual investment. It has been held that if a city is authorized to fix by agreement with the company the rate to be charged, a provision in a franchise for a term of years which authorizes a stated maximum rate constitutes a contract and that any attempt on the part of the city to change the rate during the franchise term will impair the obligation of that contract. The rate-making power is held to be a part of the police power of the state which cannot be contracted away by the state. Hence it has been held that a contract is not created when the legislature grants a perpetual franchise in which a company has been permitted to charge a certain rate, but such rate may be changed as a police measure. Likewise a city to which has been given the power of utility regulation cannot without express grant from the legislature contract away the authority to modify as a public measure a rate granted in a franchise.

While maintaining the principle prohibiting the imposing of a rate so low as to deprive the company of its property, the courts have refused to lay down any general rule as to what is a reasonable return and as to what property is entitled to receive a reasonable return. They have preferred to base each

decision on the peculiar facts presented in that case. A succession of decisions has gone some distance toward determining what property of the company is entitled to be taken into consideration in determining a reasonable rate. As a means of capitalizing the increased returns due to the growth of the city the franchise has a real and sometimes a very great value, but upon the question of how far such value should be taken into consideration in determining a reasonable rate is not well settled.

A method of regulating rates somewhat automatically, known as the "sliding scale" method, has been used with success, notably with respect to gas in Boston, and to street car fares in Cleveland. This device probably originated in an act of Parliament which attempted to regulate the South Metropolitan gas company of London. Under this plan a valuation of the property is determined upon, and a standard or basing price and a standard dividend rate are fixed. Then for every reduction in the price to consumers the company is permitted to make a certain increase in dividends. In Boston the standard price of gas was fixed at ninety cents per thousand and the standard dividend rate at seven per cent. For every reduction of five cents in the price the dividend rate might be increased one per cent. In Cleveland the standard fare is fixed at three cents with a one cent transfer, counterbalanced by a fixed normal cash operating balance of $500,000. A somewhat similar plan has been adopted for the Chicago street railways. In that case any profit above a fixed rate is divided in a fixed ratio between the city and the company, and the city may elect to give its profits to the public in the form of reduced fares.

Quality of Service. Under the head of service would be considered quality and abundance of water, frequency, speed and comfort in street cars, heating and lighting units in gas and volume and intensity in electric current, yet definite standards are not in all cases and for all conditions easy to fix in a franchise beyond that of reasonableness. Great elaboration has sometimes been indulged in in attempts to determine in advance by legislation or franchise such standards of reasonableness.

Utility Finances. The public interest in adequate service at reasonable rates may be promoted by stipulations in the fran-

chise as to the finances of the utility corporation. A common practice in the establishment of a utility is to meet the entire cost of the plant through the sale of bonds, and to issue stock which represents only promoters' profits and "franchise value" as determined by the prospective increase in earning capacity of the utility. To prevent the fact of the existence of such stock held by innocent investors becoming an obstacle to adequate service or the basis of exaggerated claims upon the earning power of the plant, it has been found desirable to limit the issue of securities to the amount of cash invested in the business. A failure on the part of the public to exercise in the past a proper supervision over the financial operations of utility corporations has been an important factor in bringing about the tribulations which have beset these corporations in recent years of mounting operating costs and high interest rates; tribulations which have been reflected in the country-wide movement on the part of the utilities for advances in rates of service.

A second form of financial control is the regulation of the disposal of gross revenues. This may be brought about by providing that first of all shall be met all operating expenses, including wages, interest, cost of power and materials, insurance, taxes, accident fund, franchise payments and a fund for maintenance of the plant at a fixed percentage of its first cost. Next may be set aside an agreed minimum percentage on the capital actually invested to be available for dividends.

Reversion of the Plant. As a final element in the franchise and one to which especial importance attaches from the present trend toward municipal ownership, there may be inserted a provision for the reversion of the plant to the city. If there has been provided an amortisation fund which shall be sufficient to take up the outstanding securities of the company at the expiration of the franchise term, and if the deterioration of the plant has been guarded against by the requirement of a maintenance fund, the city may properly stipulate that at the expiration of the franchise the plant shall revert to the municipality. The city should by this means find itself in possession free of cost of a well equipped going utility, relieved of fixed charges to such an extent that the citizens may be rendered a maximum

of service at a minimum rate, or should a policy of private operation be preferred, it may be carried out under a new franchise upon terms advantageous alike to the operating company and to the public. While most franchises now in operation leave much to be desired with respect to some or all of the elements of control suggested above, there have been decided gains, and it is inconceivable that the old prodigality and carelessness in franchise matters should again prevail.

Regulation by Commission. As a first step in the regulation of public utility companies the carefully drawn franchise is of prime importance. When franchises were first granted and for a long time thereafter, it was commonly believed that the public interest could best be protected by providing for competition between companies whenever possible. Inasmuch, however, as it was found that competing companies consolidated whenever possible, or when this was not practicable, entered into agreements and combinations under which competition was impossible, it came to be recognized that a régime of monopoly was inevitable. A result was the appearance of statutes, not to preserve competition, but to regulate monopoly. It was at first assumed that franchise provisions, regulatory statutes, and the rights of persons at common law could be enforced through suits at law brought by private individuals or by the city. With the growth in complexity and technicality of the questions arising incident to utility regulation it has become evident that the courts are possessed of neither the training, the information nor the means of securing information to enable them adequately to perform this function, and that as a means of securing relief against acts or conditions for which utility corporations are responsible, suits at law are too slow and expensive. The courts, too, take cognizance of acts already committed, and with respect to the future they act only in a negative rather than in a positive and constructive way. In fact, it was perceived that the function in question is administrative rather than judicial in character. Hence, experience has shown that as in other fields where the individual invasions of private rights are slight but where when taken together they constitute a serious subversion of public rights the only adequate method of regulation is

through an administrative authority specifically charged with that duty. There has consequently come into being the "public service" or "public utility" commissions which first appeared in their present form in 1907 and are of two varieties, state and municipal. The state commissions, the earliest of which are those of Wisconsin and New York, are essentially the older railroad commissions with wider jurisdiction and increased powers. The municipal type of commission originated in a statute of Missouri of the year 1907, under which Kansas City and St. Louis organized commissions.

An active controversy has developed as to the relative desirability and effectiveness of the two types of commission. It is pointed out, on the one hand, that the services rendered by public utilities are no longer limited by municipal boundaries but have become inter-municipal or even state-wide; that the regulation of corporate finance and accounting is beyond the proper field of municipal control and that only the largest cities could collect the voluminous data and maintain the technical staff necessary to intelligent regulation. Though the trend has, in practice, been strongly toward control by state commission, it is urged, on the other hand, that the services in question are primarily local in character; that the physical appurtenances of the corporation are inseparably connected with the city streets; that a local commission will be more fully informed as to local conditions and needs and will be less susceptible to corporate domination, and that the creation of such a state commission is an unnecessary encroachment on the principle of local self-government. The conclusions of unprejudiced authorities seem to point to an ultimate solution which shall leave place for the existence side by side of both state and local commissions. According to this solution the state body would regulate especially corporate finances and accounting and safety provisions; the local commission would control in questions affecting service, and the use of the streets, while still other matters including rate adjustment would be left for coöperation between the two authorities.

Growth of Municipal Ownership. It has been observed that the beginnings of the various public utilities were made under

private auspices for reasons both practical and theoretical: because of inadequate governmental machinery for their public operation, and because of the prevailing individualistic notions of the times. The nineteenth century, however, saw such an improvement in governmental organization and revealed so many weaknesses in private management, that the field of governmental operation has been extended to include not alone matters which formerly were attended to through the process of contracting with private individuals, but also matters which until recently have received no attention at all.

In Great Britain to a far greater extent than in the United States have the early obstacles been overcome and a policy of municipal ownership adopted. In the former country, as has been noted, municipal water-works became common soon after 1830 and by the close of the century the water supply in five-sixths of the larger boroughs was in public hands. The trend toward municipal ownership of gas-works followed that seen in the case of water-works, but with less rapidity. The opening of the twentieth century saw the gas plants of about one-half of the larger boroughs under municipal operation. In the smaller towns the private exceeded the public plants in number by two to one.

Although electric light plants, public and private, were authorized in England in 1882, it was not until after 1888 when additional legislation had been passed that either private or public capital entered the field to any considerable extent. By this late date the terms of public utility franchises had become so strict that quite as many public as private electric light plants were established, and since that time the proportion of municipally owned plants has steadily increased. It has been noted above that street railways developed much more slowly in Europe than in America. The poor service and the failure of the private companies to electrify their lines promptly were potent there in directing municipal opinion toward public ownership of the tramways. Municipal operation may scarcely be said to have begun before 1893 or to have made conspicuous progress before 1896. Since that time municipal operation has become very general throughout the cities of the United Kingdom.

On the continent a large proportion of the water systems have, since 1850, come into public ownership. In Germany most of the gas and electric plants are municipally owned. Municipal gas plants are found throughout northern Europe and to a considerable extent in Italy. Municipal electric plants are somewhat less common in northern Europe. In the Latin countries, except in the case of the gas plants before mentioned, publicly owned gas and electric light works are rare.

In the United States, while as already seen the original water-works were privately owned, they are now almost universally, in the larger cities, owned by the municipality. Certain of the municipal water systems, like those of New York and Los Angeles, rank among the greatest of our engineering feats. Gas and electric plants are not in the United States, except in the smaller cities, publicly owned though there are notable exceptions in the field of electric lighting. Though municipal ownership of street railways has been widely agitated in the United States, the idea has not as yet been put in practice to any great extent. With the exception, then, of water-works and, in the smaller cities, of electric light works, it may be said that municipal ownership has not become general in the United States, and that though the current is setting in that direction, the effects are as yet far less noticeable than in Europe. In Europe the swing in that direction was hastened by the rigorous provisions of franchises which made profits small and retarded improvements. In America the impulse has come rather from the failure to establish adequate public control over utilities in private hands. The importance to the public health of a good water supply was undoubtedly the chief cause of the overcoming of, in the case of water-works, the intense individualistic opposition to municipal ownership which formerly did and to a great degree still does exist in the United States.

A study of the history of municipal public utilities and the conditions under which private operation has given and is giving way to public operation can hardly fail to carry conviction that the sphere of direct municipal action is, in spite of opposition, gradually extending. Just as the reliance upon the individual property owners for the discharge of such functions as

paving and sweeping the streets has given way to public action, so has the supply of gas, electricity and transportation been transferred from the individual to the utility corporation, and now seems destined, whether for good or ill, to be transferred in turn to direct agencies of government.

Comparison of Municipal and Private Ownership. When we come to the consideration of the advantages or disadvantages of municipal as compared with private ownership and operation, it is difficult if not impossible to give a general answer, which is based on anything more than *à priori* reasoning. For the conditions in different countries and in different cities in the same country are so different that it is almost impossible to compare the results achieved. In countries which have made no provision for an effective supervision of private companies we may find private ownership and operation accompanied in particular instances by extremely bad conditions as has been the case with the street railway situation in Chicago and New York. On the other hand we may find in a country like Great Britain, which for a long time has had an effective system of control over private corporations, instances as in the Sheffield Gas Company and the South Metropolitan Gas Company of London, of extremely satisfactory private operation.

Again, we may find in a country like the United States, which has not developed a satisfactory system of general city government, examples of extremely inefficient municipal operation, as e. g., in the case of the Philadelphia Gas Works, while in a country like Great Britain which has a satisfactory system of city government, we may find examples of very satisfactory municipal operation as in the case of the Glasgow tramways, to cite only one instance.

Furthermore, a comparison of good municipal plants on the one hand and good private plants on the other, which are found in the same country, is difficult, since the policy of different cities in the treatment of either private or municipal plants may be quite different. Thus one city may endeavor to make the plant a source of profit to the general treasury of the city corporation, while another may prefer to lower the price of the service whereby the part of the public which receives the service is

benefited. Thus a comparison of the mere price charged for the service rendered is of little value in determining the relative advantages of private and municipal ownership and operation.

The conditions of different plants are so difficult of comparison that the student rises from a study of the question with more or less definite impressions which he might have in some cases considerable difficulty in verifying rather than with clear cut conclusions based upon statistical data. It would seem, however, that, on the whole, good and efficient municipal ownership and operation are perfectly possible if certain general principles of administration are applied. These are that the management of the ultility, particularly in its financial aspects, is kept separate from that of any other utility and from the general financial administration of the city, and is entrusted to expert officials having a reasonably permanent tenure and large powers of discretion and control over the subordinate force of employees, who are not to be appointed for political reasons.

On the other hand, it would seem that uncontrolled private operation is not much to be preferred to indifferent municipal operation, although it must be recognized that too stringent control of private operation has frequently led in the past to municipal operation because private corporations from which too much is demanded in the way of payments to the city or low rate for service rendered cannot give satisfactory service. This is particularly true where the franchise period is a short one.

Further, it would appear to be the case that a private company gives generally better service than a municipality, but that on the whole, because a municipality can usually borrow money at a cheaper rate of interest than the investor in private companies is willing to take, the service rendered by a company costs the public somewhat more than municipal service. This is particularly true of the United States where the courts hold that the present value of the property and not the actual capital invested is to be considered in determining the rate which may be charged. It is true that the possibility of supplying the service at a cheaper rate is offset to an extent by the usually greater inefficiency of municipal management. For it is probably true that by and large the expense of production is greater on the

part of the municipality than on the part of a private corporation. If the question were merely an economic one it would doubtless have to be answered in favor of private operation. But the question is not an economic but a social one. These utilities are public utilities, the operation of which is conducted not with the idea of producing wealth but of rendering social service. Some of them must be operated at a loss, if we look at the matter from the view-point merely of the cash returns from persons directly making use of them. That loss may be offset by the general benefits which the community receives. It is for this reason that the use of sewers is now generally free to the users of them and that the expense of their maintenance is defrayed from the general resources of the community. It may well be that other matters will in the future be put in the same class. But whether they are or not they are given attention because the needs of the community must be considered. It is of course desirable, indeed necessary, that all these undertakings be managed as economically as possible, provided social needs are not sacrificed to economic considerations.

Therefore, the admission of the greater efficiency of private operation does not carry with it the conclusion that private operation is always desirable. For this greater efficiency may have for its effect the increase of private wealth rather than the general benefit of the community. It is wise to endure a slight waste in processes of production in order to secure greater equality in distribution or a greater regard for general social needs. It is for this reason probably that the almost universal verdict of the world has been rendered in favor of the municipal ownership and operation of water works.

On the other hand, it is to be remembered that the demands on the financial resources of modern cities are so great that the budget of very few cities can stand the drain of many inefficiently and wastefully managed enterprises, no matter what may be the advantages in the direction of greater equality of distribution or greater regard for general social conditions which may be secured. A municipal government must be a very good one, and private companies must be regardless of general social

needs to justify a city in undertaking the management of many of these public utilities at the same time.

So far as concerns the United States it may be said that before a city enters upon a wide field of municipal activity in these directions its people should ask themselves whether their political situation is such that they can reasonably expect efficient management, whether their resources are such that they can afford to stand the economic loss to the community as a whole which will probably result from municipal operation, and whether it is not possible to provide such a control over the private companies which may attend to the matter, as will ensure fair treatment of the public from the viewpoints both of equality of distribution and of regard for social needs. What has been said has been said on the supposition that under existing law the city may enter the field of municipal ownership and operation if it deems it advisable to do so. This is a supposition which, however, cannot unfortunately be made in the case of many American cities. Under the law as it now stands many of these cities are dependent entirely upon private initiative for the operation of these public utilities. This is a position in which they stand practically alone. France is the only country whose law does not recognize that cities possess considerable freedom in this respect, and in France cities are more liberally treated than in the United States. If there is one point in this matter of municipal ownership and operation upon which the opinion of the European world is practically decisive it is that cities should have the power under proper limitations to enter upon the field of municipal ownership and operation. However conflicting the chaos of opinion, statistics, law and judicial decision may be in other respects, there is almost unanimity outside of the United States that cities should have this power; and even in the United States opinion is coming gradually to approximate the opinion of Europe. The importance of the possession by the municipalities of this power can hardly be overestimated. For the knowledge on the part of private companies that this power can and the fear that it will in an extremity be exercised are most effective in securing from private companies about to operate or operat-

ing public utilities the adoption of a policy which has regard for the important public and social interests at stake. Where this power does not exist private companies are too apt to consider that they are conducting a merely private business; and in the case of these public utilities private interest and public need are often in conflict.

CHAPTER XV

FINANCIAL ADMINISTRATION

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City Revenues. City financial administration may, perhaps, be best treated under the four heads of Revenues, Expenditures, Debts, and Accounting. The revenues of cities for a considerable period in their history, since they were reduced to the position of subordinate members of a greater state, consisted 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. From lucrative rights, from the receipts from this property, and from loans, the expenses of the city government were for the most part defrayed. Cities in England and the United States, further, were not before the

nineteenth century regarded as sufficiently governmental organizations to be entrusted with the right of taxation. It was the rule of the English law thus that the mere incorporation of a borough did not confer upon it any power of taxation. The extension of the sphere of municipal activity 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 then from public governmental receipts obtained through the taxing power that by far the major part of the revenues of the American city are obtained. These revenues consist mainly of taxes, special assessments for local improvements and loans which are eventually repaid from taxes. Some of the general principles which govern in the raising of this revenue have been set forth in what has been said with regard to the financial powers of the city council.

Revenues from Municipal Property. It is very questionable whether the complete reversal of the policy of the preceding centuries, such as was contained in a reliance on the taxing power alone for municipal revenue, was either necessary or wise. There was, as it turned out, in the streets of cities a new kind of property whose income, if recognized as being at the disposal 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 the United States, however, the courts very generally 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 companies. These grants were in many instances unaccompanied by conditions by the enforcement of which cities could either derive pecuniary profit for themselves as corporations or indirect advantage for their inhabitants through improvement in service. Prior to the commencement of the nineteenth century the municipal authorities had wasted the city patrimony in 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.

This policy of waste, like the public attitude with respect to the operation of utilities, had both a practical and a theoretical basis. The experiences of many of the states which engaged in commercial undertakings, especially those connected with transportation including canals and railroads, were from the pecuniary point of view unfortunate if not in some cases disastrous. These unsuccessful excursions into the field of "internal improvements" seemed to confirm the prevailing laissez-faire philosophy, and led to a fixed belief on the part of a majority of the people of the country that political corporations were inherently incapable of conducting enterprises whose purpose is pecuniary profit. This belief has had two effects on the finances of American cities: one was that the city government should undertake only those functions whose discharge would not be undertaken by private companies; the second was that if by any chance the city should have entered upon an undertaking which could be made profitable, the charges for services should be reduced so as to cover little if any 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 in the improvement of the welfare of the inhabitants.

As a result of these conditions the receipts derived by American cities from commercial undertakings and property generally, forms a very small portion of their total receipts. Only ten per cent of all revenues of cities of over thirty thousand population, and only two per cent in the case of cities of over four thousand, comes from public utilities. What has been said of American cities is also in large part true of foreign cities, though in Great Britain and Germany some of the cities derive quite a percentage of their revenue from sources other

than taxes. Thus Berlin gets thirty per cent of its total ordinary revenue from such sources, the cities of England and Wales one-sixth, and Paris twenty-two per cent.

Powers of City Councils in Taxation. The taxing officers of cities are of three kinds: those having to do with the levy, the assessment and the collection of the tax. The officers having to do with the levy of the tax differ very greatly, and, of course in part, on account of the differences in the tax levied. In all cases, however, there is some authority which ultimately determines the rate of taxation. The general rule is that it is the city council which determines the amount to be raised by taxation and which therefore determines, within the law, the rate of taxation. As has been pointed out, however, no city council or city authority has the power to determine what kind of taxes shall be levied. This is determined by the state legislature in the law applicable to the particular city. Furthermore, the rate which may be levied is generally limited by law, either absolutely or at a fixed rate unless a popular vote to exceed that rate is secured. In France it is also limited by a law which is passed each year. In Germany the rate is fixed by law at a figure which may be exceeded only with the consent of the central administration. As a general thing, then, the law permits the cities to impose several kinds of taxes but subject to limitations with respect to rate. In exceptional cases one finds that cities are given general powers of taxation under which they may select whatever kind of taxes they see fit. This power of choosing, which is sometimes spoken of as "local option" in taxation, it is believed by some should be enjoyed by American cities generally.

Prussian cities have had wider powers of taxation than are possessed by cities of most other countries. The matter was governed by the tax law of 1893. This law gave to the cities, subject to the provisions of Imperial tax laws, the power to levy taxes of almost all kinds. In a general way it may be said, however, that the German policy was to give to the Empire the power to levy taxes on processes and things, i. e., indirect taxes, to the state the power to levy taxes on persons, i. e., income taxes, and to the localities, taxes on property. The law of 1893, while based

upon this principle, expressly permitted the cities to impose indirect taxes, taxes on trades and also on incomes, as well as upon land. The power of indirect taxation was subject to serious limitations. Greater freedom was permitted in the case of trade taxes. The law presumed that all cities would have certain revenues from commercial undertakings, fees, special assessments for local improvements levied upon those benefited thereby, and indirect taxes; and therefore provided that direct taxes should be resorted to only to make good the amount of expenditure not provided for from these sources. As a matter of fact, however, a very large part of the revenue of most Prussian cities was derived from the three direct taxes, viz. on land, trades and income. The cities were not given by the law free hand in selecting which of these taxes they would levy, but were confined by law as to the proportion of their total income which they might obtain from either one of these taxes. If they desired to exceed these limits they must obtain the consent of the central government.

In some cases, of which England is a marked example, it is further provided that the taxes which the city may levy must be separated, from the point of view of the purposes for which they are levied. Thus, there are a watching rate, a sanitary rate, a school rate and a borough rate. Although the same thing is done in some of our states, it may be said generally that no attempt is made outside of England to differentiate the purposes for which the taxes are levied.

Tax-Collecting Agencies. The organization provided by the average American, as well as European city, for the collection of its revenues is concerned chiefly with receipts from taxes and special assessments. The tax gathering officer is usually the treasurer, at whose office the taxes are payable, although in some cases another officer, the tax collector, is selected for the purpose. These officers, like other city officers are chosen in a variety of ways, though usually by popular election in the United States. In Europe the method of appointment either by the council, the executive or the central government is employed. It is of course true that when a city derives revenue from property, such as a water works, this is collected, ordinarily, by the special board or authority having charge of that class of prop-

erty, although in some cases the revenues from certain properties, such as markets, are collected by the regular financial officers. In a few cities, as for example in New York, when the revenues from certain city property have been pledged to the payment of city debts, the care of such property may be placed in the hands of a debt or sinking fund commission which would, under these circumstances, collect the revenues. But aside from these comparatively unimportant instances, the collection of city revenue is in the hands of the regular financial officers.

Specific Taxes. The revenues derived through the exercise of the taxing power may be distinguished as specific taxes, ad valorem taxes and special assessments. 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 government, outside of the fixing of the rate and the collection of the tax from the persons liable to taxation, are necessary. Where these specific taxes 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, such rate is usually fixed by the city council subject to the ordinary veto power of the city executive, where that exists. The only other administrative officer required for its collection 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 the taxable classes. Occupation or trades taxes are resorted to by the cities in France, Germany and in the southern states of the United States. Often the rates in the United States are specific.

In France and Italy a large part of the city revenue comes from indirect taxes on articles of consumption. These are collected sometimes by officers of the central government, or, when collected by the city, by officers appointed by the mayor. These are called octroi taxes and are not considered technically as taxes from the point of view of public finance. The objects on which they may be imposed as well as the rates are specified by law.

Ad Valorem Taxes.—Assessment. Ad valorem taxes are those which are levied at a certain rate per cent upon the assessed valuation of the property or business upon which they are im-

posed. In the administration of such taxes the taxing machinery is more elaborate. Not only must the tax rate be determined, but also a valuation of each piece of property or business subject to the tax must be fixed, together with the sum which each shall pay.

In a rural society where wealth is chiefly in land, improvements, stock, tools and produce, not easily concealed and easily evaluated, the general property tax is relatively equitable and successful. Upon the development of cities in this country the attempt was made to apply there the same form of taxes and the same methods of assessment which had been elaborated for use in rural districts. But almost simultaneously with the growth of cities there came into existence large amounts of wealth in intangible form, especially in the shape of corporate securities. Then the general property tax broke down and became, as usually administered, perhaps the most unjust system of taxation tolerated today in the civilized world. The failure of this form of taxation is due not only to the inequities inherent in it, but to the weakness of the system by which it is administered.

One of the principles quite generally insisted upon in the application of ad valorem taxation has been that the value of the property taxed should be assessed by assessors elected by the people subject to the tax. In some of the larger cities this idea was carried to the point of maintaining that assessors chosen by the city at large would be too far removed from the control of the people. On that account it was quite commonly the case to prescribe that the voters of each ward were to elect the assessors who were to determine the valuation of property in that ward. The persons chosen in that way received small salaries, devoted but a small amount of time to the work, served for but short terms and consequently acquired little training for the work. This method resulted in a sort of self-assessment for each district.

Assessments, under these circumstances, could be based upon merely a most superficial investigation of the property by the assessors, supplemented, perhaps, by such statements or declarations as the owner might be induced to make. The attempt

to tax intangible personalty at the same rate as realty and tangibles was not successful. The result was the shifting of the greatest burden of taxation upon real estate owners and the escape from taxation of a large class, including those best able to pay.

If by this system of ward assessment the burden was inequitably apportioned among individuals, its application was likewise inequitable as between wards. Assessment by different local assessors resulted in a wide variation in the different wards. Thus the assessor in district "A" might assess property at fifty per cent, the one in district "B" at seventy-five per cent of its real value. Inasmuch as the rate of taxation as fixed by the proper authorities would be the same for the whole city, a taxpayer in district "B" would pay to the city for similar property a tax fifty per cent greater than a taxpayer in district "A." Hence, just as between individuals there was competition in concealing intangibles to reduce the proportion each must pay in taxes, there was competition between assessors of different districts to lower the proportional contribution of that district to the sum total to be raised. The result was a general reduction of taxable values which seriously impaired the city's financial resources.

The experience of Chicago illustrates the situation above described. Owing to the competition between the assessors of the towns of which the city was composed, the ratio of assessments 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 20 per cent of the real value. Inasmuch as this was generally regarded as an increase in the valuation of the assessors, the valuation formerly made by them 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 to be 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 taxpayer, but from that of the city and as a consequence are inclined to assess property at something like its real value.

A conviction that the general property tax contains inherent defects fatal to its success has led in some states either to a classification of property so that intangibles may be taxed at a rate lower than that applied to real estate, or to the superseding of the old tax by other forms such as income, corporation and franchise taxes.

In many jurisdictions, both where the general property tax is retained, as well as where it has been superseded, there has been a disposition to attempt a reform in the methods of assessment in the direction pursued in New York as above described. The office of assessor has been made professional and permanent, and these officers with the assistance of carefully prepared maps and data on file carry on a virtually continuous assessment.

Special Assessments. A theory of taxation no longer accepted as of general application was that taxes were justified by and should be apportioned according to benefits received. Although rejected with respect to benefits which are of such general character that they cannot be measured or allotted equitably, it is still believed that where the benefits are definite, concrete and measurable, they should be paid for by the recipients of the benefits.[2] Upon this theory it is customary in a large percentage of the cities of the United States, when certain local improvements are undertaken, particularly the construction of sewers, pavements, sidewalks, boulevards and parks, to assess upon the neighboring property benefited thereby a portion or all of the cost of construction. The proportion of cost which may thus be distributed varies according to the nature of the improvement as well as according to the general principles of law.

[2] Plehn, "Public Finance," p. 90.

A fundamental rule is that the assessment upon property cannot exceed the amount of benefit conferred. The construction of a park or the improvement of a street will add materially to property values, but the construction of a sewer will not cause a corresponding increase. Again, in some jurisdictions, the levy of special assessments is confined by statute to abutting property, although it is obvious that in the improvement of a street, property not actually abutting may be appreciably benefited, and in the case of parks or boulevards the benefits are widely appreciable. It is a common provision of law that certain forms of improvement proposed to be made by special assessment may be vetoed by a remonstrance of a majority of the property owners in the area to be assessed. Costs of maintenance and repairs, however, cannot fairly be met by special assessments, although they sometimes are, since these do not add to neighboring property, values greater than existed when the original improvement was made, and since the depreciation is due not to the use of the abuttors alone but to public use. Since the increase in the value of property arising from a public improvement is generally slow, and since the immediate payment of the whole assessment might embarrass the property owner, it is customary to provide that the payment plus interest on unpaid portions may be spread over a term of years.[3] Although the idea of the special assessment has not found favor in some of the older centers of population, it has proved to be a very practical means of financing public improvements which in the newer and more rapidly expanding municipalities would have been otherwise impossible.

Miscellaneous Revenues. In addition to the foregoing sources of revenue, certain small sums are usually secured from license fees and fines. To these are sometimes added grants from the state in aid of education and of charity, and the income from trust funds bequeathed by benevolent persons for charitable or educational purposes. These, however, taken together are an almost negligible portion of the city's revenues.

Municipal Expenditures. An outstanding fact in municipal finance is the rapid rate at which expenditures have risen, a

[3] Shurtleff and Olmsted, Chap. III.

rate greater than the increase in either population or assessed valuation in the cities. This tendency has been so pronounced and without visible signs of abatement that it has aroused concern, not only among taxpayers, but also among disinterested students of municipal affairs.

Recent tendencies may best be emphasized by a review of certain available statistics, but since statistics based upon governmental costs in war-time would be uninforming, those of an earlier period may be chosen. In 1902 the expenditures of New York City for maintenance and operation of municipal activities were $87,000,000, as compared with $174,000,000 in 1912, an increase of one hundred per cent. In the ten cities next smaller than New York similar expenditures rose during the same period from $115,000,000 to $203,000,000, or seventy-six and five-tenths per cent. In the period from 1903 to 1915, in the one hundred and forty-six largest cities at the earlier date, the net cost payments of municipal government rose from $514,000,000 to $996,000,000, an increase of ninety-three per cent. This shows a per capita increase from $24.64 to $34.53, or forty and one-tenth per cent.[4]

It has already been found that the interest payments on the ever mounting volume of debt form a large and increasing portion of the present cost of government, and seem to continue so far into the future. The cause of this increased expenditure is in part the rising cost of labor and supplies, but more especially the increasing demand of the public that the city perform a constantly widening range of social services. Ex-mayor McClellan of New York has said that the present tendency to increase expenditures is due to "the fact that of those voters who control the spending authority, only about four per cent are the taxpayers who provide the bulk of the city income."[5] It is in the facts indicated as above, coupled with the fact that the limit of productivity under existing systems of taxation is near, which make the problem of municipal finance today one of gravity.

Spending Authorities. The authorities having to do with the

[4] Bureau of the Census, "Financial Statistics of Cities," 1917, p. 17.

[5] *Atlantic Monthly*, Vol. CVII (April, 1911), p. 433.

expenditure of city money may be divided into two groups. The first embraces those who fix the amount to be spent, and the second those who actually expend the money appropriated. It was formerly held to be axiomatic that the appropriating and the spending of funds should be in different hands, though in English cities no such distinction has been maintained. Within recent years it has come to be believed in this country that when there is provided a definite centralization of responsibility the appropriating and spending functions may be safely conferred upon a single authority.

Among the authorities composing the first group, which determines the amounts to be expended, may be distinguished those who prepare the budget and those who make the appropriations. In American cities the work of preparing and presenting the budget as distinguished from voting the money may be performed by either of three authorities: the city council itself, a finance board or the mayor.

The Municipal Budget. The municipal budget may be defined as a plan for financing the city government with respect both to revenues and expenditures for a definite future period, presented to the legislative body of the city, whose approval is necessary before it can be put in execution.

"To speak concretely, a scientific budget is both an instrument and a process of government. As an instrument, it is a means of getting before the representative body, which has the power to control the purse, a well considered plan, with all the information needed to determine whether the plan should be approved before funds are made available for its execution. As a process of government, it is a procedure for insuring complete accountability for past grants, and for requiring those whose future acts are to be controlled to assume full responsibility for preparing, explaining and defending their plans and proposals for future grants, such plans for the future to include: (1) an expenditure program based on estimated service needs, and (2) a revenue program indicating what grants of authority are desired to enable them to raise the money to make purchases as well as to meet outstanding obligations.[6]

[6] "Municipal Research," No. 80 (December, 1916), p. 3.

The essential parts of a budget in its most complete sense may be said to be:

1. A work program showing what work has been done by the government with costs classified by functions or services rendered and presenting a plan for the future with the estimated costs of the several functions or services.

2. An analysis of cost of things used or to be used in doing work, or rendering service, such as personal service, supplies, materials, etc.

3. An estimate of appropriations to be developed into an act of appropriation—a statement of the amount of appropriation or drawing accounts to be placed at the disposal of the spending officers to cover the cost of the work to be done.

4. An estimate of revenue and borrowing—a statement of the ways and means of raising the funds to pay for the work authorized.[7]

These essentials are, in a complete budget, accompanied by supporting schedules of details necessary to a critical study of the summaries above enumerated.

In American city government the term budget is given a more restricted meaning. Here it is commonly applied to the compilation of estimates of expenditures presented to the city council together with the appropriation ordinance embodying the substance of those estimates as modified by the council. With these may sometimes be found a statement of anticipated revenues for the information of the legislative body. Since the idea of executive responsibility is but feebly developed, the budget is not made a showing of work done by the executive nor a scheme for financing the plan submitted.

Preparation of the Budget. The traditional method of making the appropriations was and still is in a very large number of cities somewhat as follows:—The heads of the various departments submit to the comptroller or auditor a statement of the estimated needs of their departments. Since they are not called upon at the same time to justify their expenditures of the last appropriation, the estimates are exaggerated in anticipation of a probable reduction by the council. Since the council's commit-

[7] "Municipal Research," No. 80 (December, 1916), p. 19.

tee on finance has no adequate means of investigating the needs of the departments, it is compelled to accept the inflated estimates, or suspecting them to be inflated, assume the responsibility of changing the amounts without reliable information. The committee reports its conclusions in the form of an appropriation ordinance to the council for action. The procedure of a city council upon an appropriation measure prepared in this manner is illustrated by a description of a session of the Chicago city council many years ago. "In 1893 the city council of Chicago passed appropriation ordinances on March 27th, 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 finances 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, covering $11,810,969 in all, over five hundred items, had been enacted."[8]

Within the last two decades municipal budget making has made much progress and among the cities where a more enlightened practice has superseded the one above described a somewhat uniform system has been worked out. A chief point of difference is as to the authority in whom is vested the preparation of the budget, whether the council, a finance board or the mayor.

In either case the administrative departments are required to submit their estimates for the coming period under appropriate heads, as personal services, contractual services, supplies, materials, etc. Accompanying these for purposes of comparison is a statement of actual expenditures under corresponding heads for the current and the last preceding year. These estimates are investigated by the budget-making authority and a tentative budget prepared. Public hearings are then held at which all persons interested, including representatives of the administrative departments, may present their views supported by argument as to what the budget should contain. In the light of the information thus brought out the budget is revised and sub-

[8] Clow, "City Finances in the United States," Publications of the American Economic Association, 1901, p. 44.

mitted as a tentative appropriation ordinance to the council.

When the budget is prepared under the auspices of a council committee there still persists the difficulty that the committee has not the knowledge of the needs of the departments to enable it to recommend with intelligence; neither does the committee, which is not charged with the duty of securing results with the funds appropriated feel a responsibility for a possible failure to recommend appropriations wisely.

A second method of preparing the budget is to place this duty in the hands of a finance board made up mainly of administrative officers, including in some cases the mayor, and sometimes one or more representatives of the council. In New York, the board of estimate consists of the mayor, comptroller, president of the board of aldermen and the presidents of the five boroughs into which the city is divided. The board may sometimes have very extensive financial powers. Sometimes a greater than ordinary majority of the council is necessary to amend the estimates; in other cases the council may be given power to reduce but not to increase the amounts of appropriation proposed by the board. The purpose of such a board is to bring to the work of budget-making knowledge of administrative needs such as is lacking in the case of a council committee, but there remains the objection that centralization of responsibility is still wanting. It is believed that by forbidding the increasing of items in the estimates by the council extravagance, political jobbery and log-rolling will be prevented.

The third alternative as to budget-making authority is to place the sole responsibility for the budget upon the mayor. When this plan is applied it is not uncommon to add the limitation of the power of the council with respect to increases. In these cities the mayor is the real head of the administration. Consequently there is complete centralization of responsibility both for the estimates proposed and the results obtained with the funds appropriated.

The Budget as an Instrument of Control. A method formerly almost universally employed in the preparation of the appropriation bill was to grant lump sums to departments or for specified purposes, leaving their detailed appropriation to the authority

immediately in charge of the work. This was done in the belief that the administrative officers were in a position to make a more intelligent use of funds when given discretion as to their exact application. The lump sum appropriation has been found constantly to lead to abuse in the diversion of funds to serve political ends or private aggrandizement. These forms of misuse and waste have developed for want of any sufficient means of controlling the officers to whom is entrusted the spending of the money appropriated. Under our forms of city government, except in the cases of commission and city-manager governed cities, there is provided no means by which these officials can be held responsible to the council for their use of lump sums, nor by which the council may be informed of the precise purposes for which monies have been expended.

To remedy this evil there has been developed the segregated budget, which places in the act of appropriation itself a detailed statement of the items for which funds are granted and the purposes to which they must be applied. While this method prevents the diversion of funds from one purpose to another, at the same time it works to limit that discretion which, when exercised by a faithful administrator, will result in the most effective and economical use of the money available. A practical solution of the dilemma is to make lump sum appropriations for specified classes of objects, such as personal services, materials, etc.; itemization of lump sum appropriations in schedules which are to be binding unless transfers are granted; provision for transfers upon approval of the chief executive, and a requirement that all transfers be reported to the council.

Obstacles to an Effective Budget System. The effectiveness of a budget system in American cities is impaired by the fact that ordinarily the budget does not include the extraordinary expenditures defrayed from the proceeds of loans or special assessments. 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 too often, however, no 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 by a unique provision 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 city streets and school houses, for acquiring new docks, and for increasing the plant of its water works.

It is a fact, too, that 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. In some instances the minimum salaries of teachers are fixed by the state law and in the case of New York 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 as to take away much of the importance of the formal budget-making authorities. Thus, in New York City it is said that more than half of the expenditures for salaries and wages are fixed by state law. These compulsory expenditures are enforced by the courts on the application of parties interested.

Powers of City Council in Appropriation. Whatever the form of the budget and however it may be prepared, the final act of appropriation, like the levy of the tax, is made by the legislative body of the city. The power of this body is subject to the veto power of the executive wherever the executive exists as a coördinate branch of the government. This power commonly extends to separate items of appropriation, but in any case the veto may be overridden by the council. The council's power is sometimes further limited, as before mentioned, by the prohibition to increase any item of appropriation presented in the budget.

Expenditures in European Cities. In England naturally the whole matter of city expenditures is in the hands of the council. Certain expenses are, however, obligatory. Ordinarily as in the

United States the provision for such expenses may be enforced by the courts at the instance of persons interested. This judicial control is supplemented by an imperfect administrative control exercised by the Local Government Board in all matters but schools, where the Board of Education is to act. The estimates often go to a Finance Committee which puts them into the form in which they are submitted to the council. But the council where it has adopted no standing order to the contrary may increase as well as reduce them.

In both France and Germany the determination of expenses is made by the council on the proposition of the executive. In France proposals made by the mayor to spend money may be changed by the council by either additions or reductions. In Germany the council may reject the proposals of the executive, when appeal goes to the administrative courts. Provision for obligatory expenses may be enforced on the continent of Europe by the superior administrative authority to which the budget of receipts and expenses must be presented before it has any legal effect. This may be changed so as to make it conform to the law.

Disbursing Officers. The second class of authorities having to do with expenditures are those who actually expend the money appropriated. The expenditure of money involves the discharge of two distinct functions: the one consists in 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: Is the expenditure one authorized by law or by competent authority, and has the service been rendered or have the goods been delivered for which the expenditure is to be made? The second function consists in the actual payment of the money to the person entitled thereto. In the smaller cities of the United States 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 the greatest differentiation of the functions of munici-

pal financial administration is to be found, there are three officers:—a comptroller, who is the chief financial officer in general control of the financial administration; an auditor who examines into the character and legality of the claims against the city, and a treasurer, or chamberlain, who receives, cares for and pays out the money. In the smaller cities of the United States all these duties are sometimes performed by a single officer. More frequently, as in the case of New York, the functions of comptroller and auditor are performed by the same person, but the treasurer's office is kept distinct. Usually the treasurer is elected by the people, though sometimes he is appointed by the council, or where there is a highly centralized executive, by the mayor. The comptroller, whether or not acting as auditor, is most frequently elected by the people, though sometimes appointed. It may be said that the financial administration of the city, even where the executive has broad powers, is less under executive control than the other administrative departments.

In England payments are regularly made by the borough treasurer, appointed by the council, on orders signed by three members of the council and countersigned by the town clerk. The Municipal Corporations Act provides that an order so made which is not authorized by act of Parliament may be removed by writ of *certiorari* on the application of a rate-payer to the Court of King's Bench, which on motion and hearing may disallow or confirm such order.

In France the mayor is the only authority in the city government who can authorize the payment of city monies. He is responsible for his action to the city council, which at the budget session examines his account for the past year with the idea of ascertaining if his orders of payment correspond with the appropriations made. The mayor's accounts must also be submitted to the prefect for approval. The orders or warrants of payment issued by the mayor must be honored by the city treasurer, who is appointed by the prefect or president of the republic from a list containing the names of three persons presented by the city council.

The German system of providing for expenditures is much like the French except that the officer having charge of city funds is

appointed by the municipality. As in France, warrants issued by the competent authority, generally the burgomaster, must be honored by the officer who has possession of the funds, usually a chamberlain or receiver, who is appointed by the city authorities.

Municipal Debts, Extent and Origin. The startling rise in recent years in municipal expenditures already referred to is rivalled by the increase in municipal indebtedness. An examination of statistics prepared by the Census Bureau discloses the fact that one hundred and forty-six of the largest cities of the country had, in 1902, a total net indebtedness of over $900,000,000, and that in the same cities, in 1913, it had risen to over $1,800,000,000, an increase of over one hundred per cent. During the same period the debt of New York City had risen from $276,000,000 to $723,000,000, or over one hundred and sixty per cent. In the same space of time the entire national debt had grown from $969,000,000 to $1,015,000,000, or four and eight-tenths per cent.[9]

If the per capita increase is considered it will be found that in spite of the rapid growth of the cities, in the group under consideration, the per capita increase in debt had grown from $44 to $67, and in New York from $76 to $145.

Municipal debts may be classified in various ways, for example: as funded, floating and current, or as gross and net debts. Funded debts are those which are evidenced by bonds or certificates of indebtedness upon which interest is to be paid and which have a considerable time to run, but for the amortization of which no assets other than those of sinking funds have been specifically provided. Floating debts are those for which no long term obligations have been issued and for the payment of which no funds have been specifically provided. These are chiefly evidenced by short time notes, including loans in anticipation of taxes. Current debts are those for the payment of which provision is already made by cash on hand, by revenues levied but not collected, or by other assets appropriated for the purpose. The gross debt is the total of all debts outstanding, while

[9] Bureau of the Census, "County and Municipal Indebtedness, 1913, 1902, 1890."

the net debt is the gross debt less all assets specifically provided for its repayment.[10]

Purpose and Justification of Municipal Debts. As in a private business, the justification of a municipal debt is, primarily, to be found in the purpose for which it is incurred, and, secondarily, in the arrangements for its proper repayment. Considered with respect to the purpose for which they were incurred, debts may be for current expenses, for permanent improvements or for public utilities.[11]

Current expenses should be paid out of current taxes and should not be made a source of debt except in the case of loans in anticipation of taxes which should be extinguished from the proceeds of the next tax levy. Unfortunately, in many instances, such loans have not been so extinguished, but have accumulated and have been made a part of the funded debt of the city. This indefensible policy has saddled upon the future not only the cost of that which the past has consumed but also an added burden of interest.

In the making of permanent improvements it has been seen that some have been of such benefit to surrounding property that a portion of their cost may be charged to the property owners affected. It is usually necessary for the city to assume a part of the cost of improvement even in such cases. There are also permanent improvements the benefits from which are so general that their cost must be borne by the whole city. Such are, particularly, trunk sewers, public buildings, fire alarm systems, and sewage and garbage disposal plants. Such improvements may sometimes be paid for from current taxes, but usually the initial cost is so large that to make a tax levy sufficiently large to pay the whole in a single year would work undue hardship. Furthermore the improvement in question is expected to endure and render service for a considerable period of time. It is held to be no more than just, then, that those who are to enjoy its benefits in the future should be made to pay their share of the original cost. Under these circumstances it is cus-

[10] Bureau of the Census, "Financial Statistics of Cities," 1917, pp. 41–43.
[11] James, "Municipal Functions," p. 328.

tomary to incur an initial debt the payment of which shall be distributed over a period of years.

A third cause of municipal indebtedness is the purchase or erection of public utility plants. Although the initial expense is large, the plant should be so conducted that not only will the interest on the investment be met, but a fund provided for the ultimate amortization of the initial cost of the property, out of the proceeds of operation. Where such financial arrangements have been made and measures taken for the businesslike administration of the enterprise, the borrowing is justified and may be considered an evidence of thrift rather than of unthrift.

Municipal Securities. The question of the repayment of municipal debts may be approached through a study of the securities issued by the city. Municipal securities issued as evidence of debt fall into two classes: short-time and long-time securities. Short-time loans, known variously as warrants, notes, revenue bonds and anticipation tax loans, are ordinarily payable from the proceeds of the tax levy of the current year or of the years in the immediate future, and may or may not bear interest. These form but an inconsiderable part of the city debt. Through bad financing, as has been above pointed out, these loans may remain unpaid and finally be incorporated in the bonded debt of the city.

Long-time loans are represented by securities of two kinds, known as sinking fund bonds and serial bonds, which together make up the funded debt of the city. When sinking fund bonds are issued the whole debt falls due at the same time which is the date of maturity of the whole issue of bonds. It is provided that each year there shall be paid into a sinking fund an amount such that the sum of the annual payments together with accumulated interest shall be sufficient to extinguish the whole issue of bonds at maturity. In practice the sinking fund system has been subject to great abuses. It has repeatedly happened that the appropriating authority has failed to pay into the sinking fund the appointed annual payments. In other instances the city has borrowed its sinking funds giving as security its own bonds, and in still other cases, where the payments to the sinking fund

have been regularly made, the funds have been managed with such lack of skill or fidelity that at the maturity of the bonds the sinking funds have been insufficient to redeem them.

The serial bond plan, which avoids the dangers inherent in the attempt to accumulate and conserve a large sum of public money through a series of years, has been growing in popularity within recent years. By this plan the bonds securing a loan are divided into groups or series and the several series of bonds fall due in successive years until the whole issue is extinguished. When the several series are made equal as to principal it results that, as the interest charges on the unpaid series decline from year to year, the total annual charge on account of the loan grows less and less. By this means the burden is still further equalized from the fact that the annual burden of the loan decreases as the charges for repairs tend to increase with the lapse of years. A further advantage, when a wise serial plan is adopted, is that the total cost of the loan is under this somewhat less than under the sinking fund plan.

Since one of the arguments in justification of incurring debts for permanent improvements is that thereby those who are to enjoy the benefits of the improvement in the future may be made to contribute to the cost, it follows that the term of final payment should not extend beyond the life of the improvement. To do otherwise is to work obvious injury to succeeding generations. It is, therefore, bad finance to issue bonds of the same term for macadam pavements with a life of perhaps five years and for the purchase of land for a park which may be enjoyed by many generations. It is not uncommon, however, for cities to find themselves paying for the first cost of an improvement long after the improvement has been worn out. A degree more reprehensible is the failure to provide any funds whatever for the payment of debts of justifiable origin.

Limitation of Indebtedness. The proneness of municipalities, like individuals, to pay for present enjoyments with future promises and to postpone the date of ultimate payment has led to limitations by the state upon municipal borrowing. These limitations have been fixed with respect to the total amount of indebtedness to be permitted, the form of security to be issued,

and the term for which they are to run. The first of these forms of limitation is most common and may be fixed either by constitutional or statutory mandate. It is usually expressed in terms of percentage of total assessed valuation, though sometimes the percentage is based upon real estate valuation or the annual revenues of the city. The percentage of valuation varies from two to ten per cent. In New York the limit is fixed at ten per cent of the assessed valuation of real estate. In many cases debts beyond a specified maximum may be incurred only after a referendum vote.[12] In Massachusetts both the form of the security and the term of the loan are fixed by law. The sinking fund system has been abolished in favor of the serial plan and the term varies from five to thirty years according to the nature of the improvement.[13] Thirty years are fixed as the maximum term of municipal bonds by the constitution of Pennsylvania. It is sometimes provided, however, that in applying the legal limitation debts which are incurred for the purchase or construction of revenue producing public utilities shall not be taken into account.

A serious objection to the percentage basis of limitation is found in the well nigh universal tendency to under assessment. Under this practice a percentage limit which would, on a basis of true values, be sufficiently liberal, may be so seriously restricted as seriously to hamper the municipality in the providing of improvements essential to the elementary needs of the inhabitants.

In construing the limitations thus placed upon the borrowing power of cities the courts are quite strict, giving a wide interpretation to the words "debt" and "indebtedness." Furthermore, debts incurred for other than public purposes are held void on the ground that since debts must ultimately be paid by taxation, they are subject to the same limitation as to purpose as is the power to tax.

[12] Secrist, "Economic Analysis of the Constitutional Restrictions upon Public Indebtedness in the United States," Bulletin, Univ. of Wisconsin, No. 637, p. 75.

[13] Acts and Resolves, Massachusetts, 1913, Chap. 719. In New Jersey the term of the loan is determined upon the same principle as in Massachusetts, Laws of New Jersey, 1916, Chap. 252; 1917, Chap. 240.

The fundamental difficulty with attempts to limit municipal indebtedness in the United States is that the control exercised is legislative rather than administrative. It is therefore inflexible, applying alike to all cities and under all conditions. There can be no percentage of debt to assessed valuation which is *à priori* correct, nor can any percentage limit apply with equal propriety to different municipalities. The justification for the total of indebtedness in each case is to be sought in all the circumstances surrounding that case and this can be determined only by an administrative authority acting under general law. Strong evidence of the impropriety of fixed percentage limitations is to be found in the wide variation in percentages fixed by different states.[14]

Upon the continent of Europe, and to a less degree in England, the control of the power of the cities to incur debt is exercised by an administrative, rather than by a legislative authority. In England the law which authorizes municipal borrowing fixes a limit beyond which debt may not be incurred without the consent of an administrative authority, and also a maximum period for the repayment of loans. Within this maximum limit the exact term of the loan is determined by the same central authority. This central authority is in most cases the Local Government Board, which acts after local inquiry by its staff of trained inspectors.[15] In Prussia the incurring of any debt which increases the debt of the city must receive the approval of the central government.

In very rare instances is any provision made for a special appeal to the legislature for the increase of the debt limit. This, however, is done in France by the law of 1884 and is almost the only instance of the exercise by the legislature of a control over cities by means of special legislation. In England, on the contrary, a limit to the indebtedness of cities is fixed by statute, but within that limit the approval of the debt by an administrative authority of the central government must very commonly be secured in order that the debt may be incurred. This ap-

[14] Secrist, "Problems of Municipal Indebtedness," *Journal of Accountancy*, Vol. XVII, p. 273.

[15] *Ibid.*, pp. 271 et seq.

proval may be refused both because of the amount of the indebtedness of the particular city and because in the opinion of the supervisory authorities the purpose for which the debt is to be incurred is not a proper one.

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. In England the power is vested in the council; in France the rule is the same, because of the fact that the power is regarded as legislative in character. In Germany the power is exercised by the council and the executive; in the United States the council must ordinarily take action, but the executive must in nearly all cases participate as a result of his power to veto.

Municipal Accounting. The inefficiency, waste and corruption which have so often been the reproach of American city government have arisen and have been perpetuated in larger degree through lack of information on the part of the citizens with respect to the city's business. The methods of accounting and reporting in use in a great majority of the cities of this country have been so clumsy, inaccurate and incomplete that they have been of little value as sources of information either for the mayor and council or for the public. The accounts should serve as evidence both of economy in administration and of the fidelity of officials, but too often they have been mere records of receipts and expenditures designed to testify to the fidelity of those having the custody of funds, but revealing little besides. Indeed, in but few cities of moderate size is there any requirement of law that financial reports be printed. Mere ascertainment of fidelity with respect to fiduciary obligations should surely not be the sole aim of the accounting system of a great business corporation such as the modern city has become. Efficiency and economy of administration are quite as important of determination as is integrity of public servants.

The proper function of municipal accounting, then, is "to produce complete, accurate and prompt information about business transactions and results."[16] It has been said that "to do this

[16] N. Y. Bureau of Municipal Research, Metz Fund, "Handbook of Municipal Accounting," p. 9.

some method must be employed which will insure completeness, accuracy and promptness. One of the ends also to be reached is to locate responsibility for waste, inefficiency and infidelity; another is to make and preserve the evidence of efficiency and proper regard for the duties and responsibilities of office. To do this requires that each act be recorded in such manner that the evidence may be preserved; that the many facts be analyzed and summarized so that their significance may be readily understood; that the results be promptly reported; that the forms of report be such that each subject of immediate concern may be brought to the attention of the officer or the public; and that further means be provided for knowing whether the information thus made available is acted upon."[17]

A primary fact which both the official and the citizen should desire to know is how the city stands as a result of the operations of the past year. To secure the means of appraising the stewardship of the past financial period and guidance for future planning there should be furnished as a part of the budget, financial statements showing the revenues which have accrued to the city, the cost of operation and maintenance, and, finally, a statement of the assets and liabilities or balance sheet.[18]

Just at the close of the last century there was undertaken, in this country, a campaign of education looking to an improvement in the methods of municipal accounting and reporting, and as a result there has been a marked improvement in these respects in a large number of cities. In some instances provision has been made by the city for regular or occasional audits either by certified accountants or by special accounting officers independent of the financial department of the city government. In other instances the work has been undertaken by the state. Certainly no political reform is more to be desired than that the citizen should have placed before him in simple and intelligible form, complete, prompt and accurate statements of the results of the city's business operations.

Administrative Control of Debts and Accounting. The inef-

[17] N. Y. Bureau of Municipal Research, Metz Fund, "Handbook of Municipal Accounting," p. 9.

[18] *Ibid.*, p. 3.

fectiveness of attempts to regulate the financial operations of cities through legislative control enforced by the courts has been followed, in a considerable number of states, by recourse to a limited degree of administrative control. As a first step there has been an attempt to secure the benefits of publicity and comparisons by requiring that financial data shall be reported by the cities to some central authority for compilation and publication. Elsewhere there have been created state departments of accounts whose functions include a periodic audit of the accounts of all municipalities; the prescribing of uniform systems of accounting and reporting, and the publication of statistics of municipal finance.

In the state of Massachusetts the further steps have been taken of requiring that before municipal loans can be floated they must be submitted to a state official for a certification of genuineness which works as a certificate of legality. The department is authorized, upon the request of a municipality, to make an audit of its accounts and to install a system of accounting.[19] While in that state individual municipalities may seek and receive legislative permission to borrow in excess of the established debt limit, such permission is given only after an investigation and report on the financial condition of the municipality made to the appropriate legislative committee by the same administrative officer. The state of New Jersey has created a state department of municipal accounts, but its activities are as yet confined to the supervision of sinking funds.[20]

The chief criticism of the work of such state authorities to the present time is that their attention has been directed to the conservation of public funds, rather than to the work of making easily accessible to the citizens in simple and intelligible terms information as to the financial condition and operations of the city government. The beginnings already made, however, point the way to the wide control of municipal finance and, it is to be

[19] Gettemy, "Municipal Debts in Massachusetts," National Municipal Review, Vol. II (1913), p. 531; Gettemy, "New Massachusetts Legislation Regulating Municipal Indebtedness," *Ibid.*, Vol. III (1914), p. 682.

[20] Laws of New Jersey, 1917, Chap. 154.

hoped, to the ultimate substitution of administrative for legislative control of the whole range of municipal activities with which the state sees fit to concern itself.

The provisions in England for the auditing of borough accounts are not entirely of a satisfactory character. The Municipal Corporations Act provides for a local audit only. This is made semi-annually by three borough auditors, two of whom are elected by the rate-payers, while the other is a member of the council appointed by the mayor. This local audit is as a matter of fact often supplemented by the audit of a professional accountant, employed by the borough, whose report is published. In some cases also, by special act of Parliament, provision is made for an audit by the district auditors of the Local Government Board at London. School accounts are always to be audited by the Local Government Board. The law also requires the treasurer, after the second semi-annual audit, to publish a full abstract of his accounts, and the town clerk to forward to the Local Government Board at London an annual report of the receipts and expenditures for the year made up in accordance with a form prescribed by the Board.

In Prussia the rule is much the same as in England, i.e., the audit is a local one, but the accounts are filed with the central government, but in France elaborate provisions are made by the law for a central audit. The mayor's account of his orders of payment, it has been shown, is submitted to the council for its action and to the prefect for his approval. But as the mayor never handles any money the system of audit would be incomplete were no further step taken. Some provision must be made to secure honesty upon the part of the city treasurer, who actually receives and pays out city funds. This officer must every year send in his accounts, which consist of statements of receipts and payments with accompanying vouchers, to the Court of Accounts at Paris, whose members are appointed for life by the President. The duty of this authority is to see that the treasurer accounts for all the money he has received either by producing orders of payment issued by the competent authority, i.e., ordinarily the mayor, or a cash balance for the remainder.

The Court of Accounts has nothing to do with the legality of the orders of payments issued by the mayor, who alone is responsible for his action and who, as has been said, accounts to the city council and the prefect.

CHAPTER XVI

CONCLUSIONS

Cities Subordinate Governments. It has been seen that the existence of cities is due in large measure to the congregation in favored spots of large numbers of persons who have been moved to gather at these spots because of favorable opportunities for carrying on occupations incident to the pursuit of commerce and industry; that the larger cities are usually commercial cities whose growth during the past three centuries has been due to the widening of the area over which trade is carried on and to the increase in length of the trade routes of which such cities are the termini; that the effect of industry, different from that of commerce, is to favor the development of the smaller rather than the larger cities; and finally, that city populations in the nature of things, must, and as a matter of fact do, have the qualities which characterize the commercial and industrial portions of the community.

It has also been seen that in the past city populations have shown themselves incapable of themselves attending to all the functions of government which must be discharged within the municipal area. Only twice in the history of Europe have cities attempted such a task, once during the period when the city-state of the Greeks and Romans flourished, once during the period of the revival of commerce in the middle ages. In the early days of the Greeks and Romans the city-state flourished because it was the only political form conceived of by Europeans. In the middle ages the city-state again emerged from the humble conditions in which it was placed in the states growing out of the Roman Empire, because it was only through the development of a law suited to commercial needs that commercial populations could exist and develop, and because in the political conditions of the time such a legal development could take place only through the independent action of the com-

mercial populations of which the cities were composed. In both cases, when the area of commerce widened and economic units expanded, the independent cities fell from their high estate and became portions of greater states which assumed the discharge of most of the functions of government attended to by the cities in the days of their independence. At the time that the administrative system of Constantine was established and again at the time the kings and princes of Europe extended their authority over the cities, hardly a function of government was left to the cities to discharge independently of state control.

The great increase of urban population in the eighteenth and nineteenth and the present centuries, due to the widening of the area of commerce and the introduction of the factory system, has, it is true, caused a revival of the idea of municipal independence. The very increase of city population has caused new needs to develop, largely local in character, to which attention has had to be directed. The centralization of social conditions in all highly developed communities, however, is gradually depriving these branches of activity of their merely local significance, and causing the states of which the cities are parts either themselves to assume the discharge of these functions or to tighten their control over the cities where they have been permitted still to act.

Cities Undemocratic. The gradual centralization of social conditions, to which allusion has been made, is not, it is believed, entirely responsible for the extension of the state's activity at the expense of the city. A study of the history of cities can hardly fail to convince the student that city populations have been in the past and are now incapable, without assistance from the state, of securing the kind of government which is demanded in the modern western world. City populations, if permitted to develop free of state control, evince an almost irresistible tendency to establish oligarchical or despotic government. They are apparently unable of themselves to organize a form of government under which the mass of the city population will not be exploited by the wealthy few. They are therefore not permitted to frame their own charters, which are conferred upon them by

the state. This is the policy which has been adopted almost everywhere throughout the western European world.

The only apparent exception to this statement is to be found in those states of the United States in which the plan of "home-rule" city-made charters has been put into force. The exception here is less significant than at first appears because the conditions of suffrage under these charters are fixed, not by the city but by the state, because many constitutional provisions such as those imposing debt and tax limitations, and protecting the civil liberty of the individual, limit the city's powers, because limitations are sometimes placed upon the form of organization to be adopted, and lastly, because the courts of the states concerned have given a very narrow interpretation to the rights given to cities by this plan.

Not only did oligarchical government develop in most European cities in the time when these cities organized their own form of government, but even in the cities of the United States, where the formal system of city government is framed by the state, a system of boss rule has commonly developed through the operations of extra-legal forces, which must be regarded as the result of the existing social conditions.

The cities of the western world corroborate thus the theory of social causation propounded by Giddings.[1] Giddings' fundamental propositions as stated in his own words are: "First, that the character of the environment determines the composition of a population as more or less heterogeneous, more or less compound, second, that the composition of the population determines its mental characteristics, its potentialities of coöperation, its capacity for progress, its ideals, and its organization as more or less democratic."

Environments in which population can exist are classified as poor or rich from the point of view of their resources, and as accessible or inaccessible from the point of view of the ease with which population may congregate therein. In an environment which is at the same time rich and accessible the popula-

[1] "A Theory of Social Causation," Proceedings of American Economic Association, Third Series, Vol. V, No. 5.

tion will be large because of the ability of the environment to support a large population, and heterogeneous because the population attracted by the resources has been able to congregate there on account of its accessibility.

"Generalizing," Giddings concludes, "we may say that the heterogeneous community is normally autocratic or oligarchical in organization. If the leaders can inspire fear, their rule is despotic. If they can inspire veneration, their rule is authoritative. If they can inspire admiration and confidence and confer favors, their power is the rule 'of the boss.' "

Now, in cities we have an environment rich in resources and therefore supporting a large population which on account of the accessibility of the environment is heterogeneous in character. It is composed of persons who have migrated to the city from a distance, which is likely to be great where the city is a large one. In the large cities of the United States, e.g., this population has in large degree come even from countries alien to this country, from the political, religious and racial points of view. To this heterogeneity due to the fact of congregation we have a further heterogeneity due to great inequality in the distribution of wealth and difference in the degree of intelligence. A further cause of heterogeneity is found in the existence of classes due to the ease of class organization in cities and to the fact that so few voters are taxpayers.

The tendency of cities to develop oligarchical government must be borne in mind when the attempt is made to determine the position which is to be accorded to the city in the general governmental system and the organization with which the city is to be endowed.

State Control. The interests both of the state as a whole and of the city populations themselves require that the state shall have a control not only over the organization of the city but also over the discharge by it of the functions which may be granted to it. If leaders of the boss type inevitably develop in cities and if city voters are subject to the influence of bribes and favors, the state must see to it that the law of the city organization is so changed as to force these leaders into a position of responsibility and to prevent the venal voter from controlling the

city government. If these results cannot be secured in a given city and the oligarchical rule which is actually established, whatever may be the character of the formal system of government, becomes so oppressive and the weaker classes are so despoiled by those of greater strength as to make impossible the conservation of the interests of the city population, the exercise of governmental power by that population must be curtailed and the discharge of more of the functions of government must be entrusted to the authorities of the state which, on account of the relatively greater homogeneity of its population, will be more likely to exercise justly governmental power.

The control which it is recognized that the state should have over the city should, however, be so organized that it will be used only when necessary to protect the interests of the state and further the welfare of the urban population as a whole. The experience of the western world would seem to prove that administrative rather than legislative control is the kind of control which will secure the desired results. Administrative control has been most successful when combined with the grant to cities of wide powers as to local matters, powers so wide as to make unnecessary appeal to the legislature when it is desired to extend the sphere of activity or to change the details of the organization, of a particular city.

If, however, it is decided that power may safely be entrusted to a city population some method for its exercise which is suited to the local conditions must be devised. It must be remembered always that in urban populations, which are most heterogeneous in character, particularly so in the United States, social coöperation is difficult and the formation of classes easy; and that the functions of city government are highly technical in character and require for their discharge the expenditure of such large sums of money that unless economy is the rule and great discretion is exercised the resources of the city will be exhausted long before the work which ought to be done is done, notwithstanding the fact that the cities contain the most productive part of the population.

Form of Government Suited to Urban Populations. The form of government which most cities should have is one which is cal-

culated to secure under most adverse conditions both social co-operation and technical efficiency. Few city officers should be elected. For the necessity of electing many officers both confuses the voters and makes them the victims of designing and selfish political leaders, while it forces them to judge of the technical qualifications of candidates, which is beyond their capacity. Many elective officers produce a boss-ridden city and an inefficient administration. Furthermore, city populations should not be called upon to vote for city officers elected at large. For groups of persons representing the class interests which are always present in heterogeneous populations find it so difficult to unite, that elections by general ticket frequently result in the election by well organized minorities of candidates not representative of the majority, which has found it impossible to unite.

This conclusion in favor of district elections, while borne out by the experience of Europe, particularly of Great Britain and Germany, is of course not one which appeals to American opinion. In the United States district representation in city government is no longer regarded with favor by most persons who have made a study of American conditions, although most city councils in the United States are, as a matter of fact, elected by districts. The election at large by the voters of the most important city officers such as the mayor, who of late years has been continually increasing in power, and the rapid development of the commission system of city government, which is based on the general ticket, are indications that the people generally have come to disapprove of the method of district representation. But that district representation is the proper method for organizing the controlling municipal authority is amply proven by theory, experience and present practice.

If, however, American city populations actually find it impossible to secure competent representatives under the district system and have to resort to elections at large, the attempt ought to be made by some system of proportional representation, in accordance with which the voter is permitted to express his second as well as his first choice, the second choices to be accorded weight only when the first choices do not elect, to prevent the election by minorities of officers elected at large. Finally, if

power were denied to a council formed of district representatives to increase the estimates proposed by the city executive authorities, the efficiency of such a council would be increased, since the selfish particularism of the individual members would be diminished.

Organization Should be Simple. Whatever plan of representation is adopted, the supreme powers of the city should be concentrated in some one authority. Only in this way is it possible for the city population, which finds it so difficult under the most favorable conditions to coöperate, to exercise a control over the city government. When governmental powers are distributed among many officers and authorities each one of whom is within the limits of the statutes a law unto himself, official responsibility for acts of government is so difficult of attainment as to be practically impossible except in a most homogeneous population and in political conditions of the greatest simplicity. The only way to ensure a popular control over city government in the conditions which obtain in modern cities is to focus the attention of the voters upon a single person whose character and views are well known. This can be done practically only under a system of single district representation where the representatives of the single districts form collectively the supreme municipal authority and can perhaps best be attained, while at the same time securing centralized administrative responsibility, by applying the principle in conjunction with the city manager plan of organization. If the attempt is made to provide a council or commission whose members are elected at large, individual gives way to party responsibility. Of course it is true that under the single district system of representation party responsibility plays an important rôle, but it does not absolutely displace individual responsibility as is the case where elections are by general ticket.

All attempts to secure popular control over city government will probably be vain which do not base themselves on the fundamental ideas of few elective officers and great concentration of municipal powers. There are many reasons for believing that direct primaries combined with numerous elective officers and a system of city government which apportions governmental

powers among a long series of independent officers and authorities will do little to remedy existing evil conditions, for the voters do not know and cannot know enough to act intelligently in selecting either candidates or officers. Thus, individual responsibility is lost. Because of the difficulty under direct primaries of keeping up the party organization either party responsibility is lost as well through the disorganization of parties, or where organized parties are retained with the accompanying party responsibility this result is secured only through the expenditure of a vast amount of time and money. Politics becomes even more professional than under other conditions. Administrative efficiency is sacrificed through the more frequent bestowal of office as reward for political service, while the money necessary to carry on the campaign is secured either by bestowing office upon men wealthy enough to pay the bill or by selling legislation and privilege. It may be said that this is what now happens in the cities of the United States where direct primaries are not in existence. It is undoubtedly the case that such a statement is true. But there is nothing in the system of direct primaries which is calculated to prevent a recurrence of present evils and there is much to make us fear that their introduction will aggravate those evils. One advantage which direct primaries will have, however, will be to beat in upon the political consciousness of the people among whom they are adopted, through their failure to remedy existing evils, the conviction that popular control of city government is impossible of attainment until the system of government is simple and the attention of the voters is focused on a very few offices.

Municipal Suffrage. A system of city government which is based upon concentration of power and few elective officers may be unsatisfactory if persons who have no permanent interest in the city are permitted to participate in the selection of city officers. It may be laid down as a fundamental proposition that few persons may with safety be permitted to vote at city elections who are not permanent residents of the city. It is of course possible without incurring serious danger to grant, as is done in England, France and Italy, the right to vote to non-residents who pay taxes in the city, since the number of such persons is,

as compared with the total number of persons entitled to vote, so small that they can exercise little influence in the elections. If, however, the right to vote in city elections is, as has been the case in some of the states of the United States, granted to every male citizen of the state who has resided in the city ten days before election, many persons who really have no permanent interest in the city are given a privilege which they find it to their personal advantage to dispose of to the highest bidder. The result will, in the conditions which exist in most cities in the United States, be the colonization and bribery of voters to an extent which may nullify the action of those persons really interested in the welfare of the city. No form of city government, however excellent it may be, will work satisfactorily under such conditions.

Furthermore, while mere permanent residence in a city is probably indicative of the existence in the average voter of an economic interest in the city, the psychology of many voters is such that they are not conscious of their economic interests unless the appeal which may be made to them reaches that most sensitive nerve center, the pocket. For this reason, if we would secure an economical city government, which is one of the most important desiderata in times like the present when demands on the financial resources of city are so great, we should so arrange our system of taxation as to secure the most numerous possible class of taxpaying voters the amount of whose taxes each year depends upon the way in which the city government is being managed. The American method of imposing the tax from which most of the city's receipts are derived, upon the owners of property, while facilitating the collection of the tax, is accompanied by a most serious disadvantage. This is in most cities, where the number of property owners is very small, the formation of a small class of voters who pay all the taxes, and a large class who directly and consciously pay none. The former are inclined to resist all attempts on the part of the city to discharge even necessary functions of government which involve large expenditure, the latter, not feeling directly an increase in the taxes, a part of which they really pay in the shape of increased rent, hurry the city into undertakings, which, however

useful they may be, are in excess of the city's economic resources. Where such a system of taxation is combined, as in the United States, with universal suffrage, the only thing to do is to limit by state law, as is done in that country, the power of the city to levy taxes and incur debt.

Unpaid Service. Attention has been called to the fact that classes are very liable to develop in cities the existence of which adds to the difficulties of city government. If the form and methods of government can be used so as to diminish the evil effects of class interest and cultivate a sense of social solidarity, they should of course be made use of for that purpose. One of the contentions of Gneist, the great student of English political and social institutions, and the founder of the present system of rural local government in Prussia, was that the best way to combat class interest through political institutions, is to oblige the people to assume the active discharge of administrative functions as far as is compatible with administrative efficiency. This principle has been applied, it is believed with great success, by Prussian cities, in each of which hundreds of citizens are daily engaged without pay in aiding the more important city officers in the performance of their duties. No country in the western European world has relied on the work of city government so much as has Prussia upon the compulsory unpaid service of her citizens.

Need of experts. While the attainment of intelligent social coöperation will of itself do much to secure good city government, the best city government will not have been secured unless the organization established for the discharge of municipal functions is technically efficient. The discoveries of preventive medicine and social investigation have shown us that many of the evils both physical and moral of city life are preventable if we act with foresight and intelligence.

The adoption of a proper city plan, well constructed sewers, convenient means of transportation, an ample supply of potable water, good housing conditions, a wise administration of an effective health and building law, and well managed schools which teach what urban populations really need, all these things are necessary if we would have a healthy and happy city life.

And all these things require the organization of a permanent and intelligent administrative personnel, who shall exercise the wide powers necessarily granted to them in the interest of the city people, and who shall rigorously refrain from using these powers in the interest of particular classes or of favored individuals.

How to organize such a force is one of the great problems in city government. For if we accord an administrative force a position which is too permanent in character, i. e., too much relieved from popular control, it is apt to become arbitrary in its action and given up to red tape, and may easily degenerate into an engine of oppression, which is used to further individual interest. If we may judge from the experience of the western world we shall probably reach the conclusion that cities, unaided by the state, find it exceedingly difficult to establish and permanently retain such an expert administrative force. The cities of Great Britain, it is true, have succeeded in doing so without such aid, but in the cities of Prussia, where the administrative force has been probably more efficient than elsewhere, the qualifications of city officers and their methods of appointment have been fixed in great detail by state law. In the United States, on the other hand, it may be said that few if any cities have, even with the aid of the civil service laws passed by the state, succeeded in rescuing from the operation of the spoils system by which American administrative institutions have so long been cursed, any but their most unimportant employees. Even those are appointed for almost purely political reasons in most cases where such action is not forbidden by state law.

Civil Service Laws. So we may say that probably the best way to secure technical administrative efficiency is through state rather than local action. State civil service laws are more effective than municipal civil service ordinances. Inasmuch, further, as the crux of every law is its administration, it is altogether probable that state civil service laws when enforced by state civil service commissions are more effective in securing efficient employees than when enforced by city commissions.

The merit system of appointment as we know it in the United States, is, however, under the most favorable conditions, not adapted to insure real administrative efficiency in city govern-

ment since it affects only the subordinate grades of the service. Something must be done to insure permanence and technical capacity in the higher grades. In England, as has been pointed out, this end has been secured through the existence and influence of an enlightened public opinion without resorting to legal provisions restricting the discretion of the city council or its committees in the appointment or retention of subordinates. That such a method of relying upon the enlightened self-interest of city electors or city authorities is ineffective in the conditions existing in American cities the experience of those cities goes far to prove. That something in the nature of state legal provision with regard to the higher officers will probably do much to improve the service is seen from both the experience of American cities in the case of the unimportant city officers whose character has been much improved by the passage and enforcement of state civil service laws, and from that of the cities of Prussia where the civil service law has covered the higher as well as the lower positions.

It is doubtful, however, whether the same methods which have been adopted in the United States with reasonable success for appointment to the lower positions can be adopted with advantage in the case of the higher positions. Competitive examinations, upon which the greatest reliance is placed in the system of appointment adopted in the United States and indeed examinations generally, do not evidence the kind of ability demanded of the occupants of the higher positions in a municipal civil service. What is needed is the capacity developed by theoretical training and practical experience, in which judgment plays an important rôle, rather than that evidenced by the successful passing of an examination, which lays too great emphasis on mere memory. Therefore any system of appointment to the higher positions in a municipal civil service which is incorporated into legal provision should lay great emphasis on the successful completion of courses of study in approved institutions, as well as practical experience in professional work. Furthermore, inasmuch as practical experience in the work of the city itself is just as valuable as, if not more valuable than, any

other experience, the law regulating these appointments should secure to appointees as permanent an incumbency in the positions held as is consistent with the other needs of city government.

Tenure of City Officers. In the United States, however, a prejudice against permanent officials which originated in the days when Andrew Jackson foisted the spoils system upon the country, and when the need for technical ability was not so great as at present, has so far prevented the establishment of a permanent service in our cities. This prejudice has up to now been only partially removed by the successful operation of civil service laws.

When the attempt has been made in the United States to protect officers against arbitrary removal, the method which has been generally adopted has been to give them in the law a fixed term of a given, generally a small, number of years. The protection of their right to the office during the legal term has been either assumed by the ordinary courts or expressly granted to them by express provision of law. These courts have in their decisions been governed, as was only natural for such bodies, by the strict rules of law, rather than by administrative needs. The result has been that protected tenure of office during the usually short terms provided has lessened the disciplinary power of superior officers in many instances to the disadvantage of the service, without giving the service the compensating advantage of permanence of incumbency. In the few cases in which life terms have been provided, as e. g., in the police and school service in some cities like New York, the protection of the official tenure, secured through the exercise by the ordinary courts of the power to reverse the decisions of superiors removing inferiors, has on the whole had an even worse effect on the official services concerned, since it has made it practically impossible for superior officers to get rid of notoriously corrupt or inefficient subordinates except through the use of legal proof of the commission of unlawful acts which it is practically impossible in many instances to obtain. The evil effects of judicial review in these cases is particularly marked in the case of the police force. The New York courts would appear to have been con-

vinced of the evil results of their action and have in their recent cases been careful not to extend their power over other branches of the service.

In the case of short official terms thus judicially protected another evil has become manifest, particularly in the case of the heads of the various municipal administrative branches. A mayor having the power to appoint to these positions has usually been extremely reluctant to reappoint persons already incumbents of the offices in question, since knowing he may not freely remove such persons from office he has preferred to appoint new men in whom he personally has confidence. The result is a lack of permanence of incumbency in the highest positions in the municipal services, which makes administrative efficiency in city government well-nigh impossible.

In the conditions legal and political which now exist in most American cities the proper solution of this most important question would appear to be so to limit by state law the appointing power of the highest municipal authorities as to make impossible the appointment of technically unqualified persons. This may be done by requiring where possible from candidates for the more important positions in the municipal service evidence of the successful completion of courses of study and a certain number of years of practical experience. The proposal made by the commission appointed to revise the charter of the city of Boston, that appointment to the higher positions such as heads of departments should be conditioned upon obtaining from the State Civil Service Commission a certificate that in its opinion the candidate is fitted to perform the duties of the office, is interesting for two reasons. First, it is evidence of a feeling that some change must be made in the American methods of filling the higher positions in the city services demanding the possession by the incumbents of technical ability, and secondly it shows that there is a growing belief that large cities are unable without the aid of the state to solve this question.

Furthermore, officers, when appointed, should not be appointed for a fixed term, but indefinitely, subject to removal at any time either by the appointing authority after giving them an opportunity to be heard, the decision of the removing authority not to

be reviewable by the courts, or as the result of some sort of disciplinary procedure before a body formed partly at any rate of other municipal officers which should not be governed in its actions by the strict rules of legal proof and whose determinations should also not be reviewable by the courts.

A municipal administrative force constituted in this way would probably become quite permanent in character. If fear were entertained lest it should not, as fully as might be, carry out the popular will, and should become too technical in character, resort might well be had to the Prussian device of placing by the side of each of these technically educated and permanent professional officials a small body of citizens who should give their services without pay and who should either exercise powers of control or give advice.

Our examination of the position and organization of cities would lead us to the belief that they should, as subordinate members of the state in which they are situated, be entrusted with large powers of local concern to be exercised under the control of the state which should be exercised by the administrative rather than the legislative authority; that they should be given by the state a simple compact organization which is under the control of that portion of the city population really interested in the welfare of the city and which should be so framed as to make it by law necessary that persons of technical capacity be appointed to the most important positions with an indefinite term of office subject to be ended only for incompetence or behavior inconsistent with the good of the service.

Municipal Functions. Our study of city government should have shown us also that the functions which must be discharged within a city are dependent upon the geographical and social conditions obtaining therein, and that if those necessary for the highest development of life in the city are not performed satisfactorily by private initiative their discharge must be assumed by the city itself. No general rule can, therefore, be laid down as to the sphere of municipal activity. In some cities geographical conditions may make it necessary for the state to do work which might in other cities be left to the city government. In some cities conditions may be such that private initiative is to

be preferred to governmental action on the part of either the state or the city. Again, in large cities the problem of transportation assumes an importance it can never have in cities of smaller size, and its solution may imperatively demand action which would be unnecessary elsewhere. Finally, the industrial character of a city may make it necessary for that city to take measures for the protection of infant life which would be quite unnecessary and even inexpedient in cities where social and economic conditions and the prevailing occupations do not call for the services of married women.

It must also be remembered that the character and extent of the sphere of activity of a given city will have a most important effect on its organization which must expand with the expansion of the city's sphere of activity and will undoubtedly be subject in other respects to its influence.

In other words, there is only in a very general way a problem of city government. For each city is peculiar and must have an organization and discharge functions suited to its peculiar position. Its very relations to the state are peculiar and its position in the state system must depend on the capacity it has for self-government. If that is small its position will rightly be one of considerable dependence, if large, it may be entrusted with large powers of municipal home rule. What that capacity is, is for the state and not for the city concerned to decide. A city's relations to the state, however, should be such that the state will decide the question not for improper reasons but in view of the most nearly complete satisfaction of the best interests of both the state and the city.

The conditions in some cities are such, however, as to cause us to have grave doubts as to the efficacy of any change in the legal and political relations of the city. We can hardly help believing that the economic and social conditions existing in many of the cities of the United States, e. g., are such as to make good popular city government extremely difficult, if not impossible of attainment, until changes in those conditions have been made. On that account attempts to reform city government in the United States should not be confined to the mere structure of city government nor to the change of its relation to the state.

They should be directed as well to the improvement of the economic and social conditions of the urban population.

Almost every cause, therefore, which is dear to the hearts of a certain portion of the people has an important influence in bettering urban life. Election and nomination reform, civil service reform, financial reform, and administrative reform generally, will, if the concrete measures adopted are well considered, improve the political conditions of American cities. Charity reform, child labor and labor reform generally, and reform in housing conditions, the work of neighborhood settlements, and last but not least, the efforts of the various churches and ethical societies, will do much to ameliorate social and economic conditions. There is no improvement in political conditions which does not aid in the amelioration of social conditions; for improvement in social conditions is in many instances possible only where the political organization is reasonably good. On the other hand, there is no improvement in social conditions which does not make easier the solution of the political problem; for the difficulty of the political problem in cities is in large measure due to the social and economic conditions of the city population.

THE END