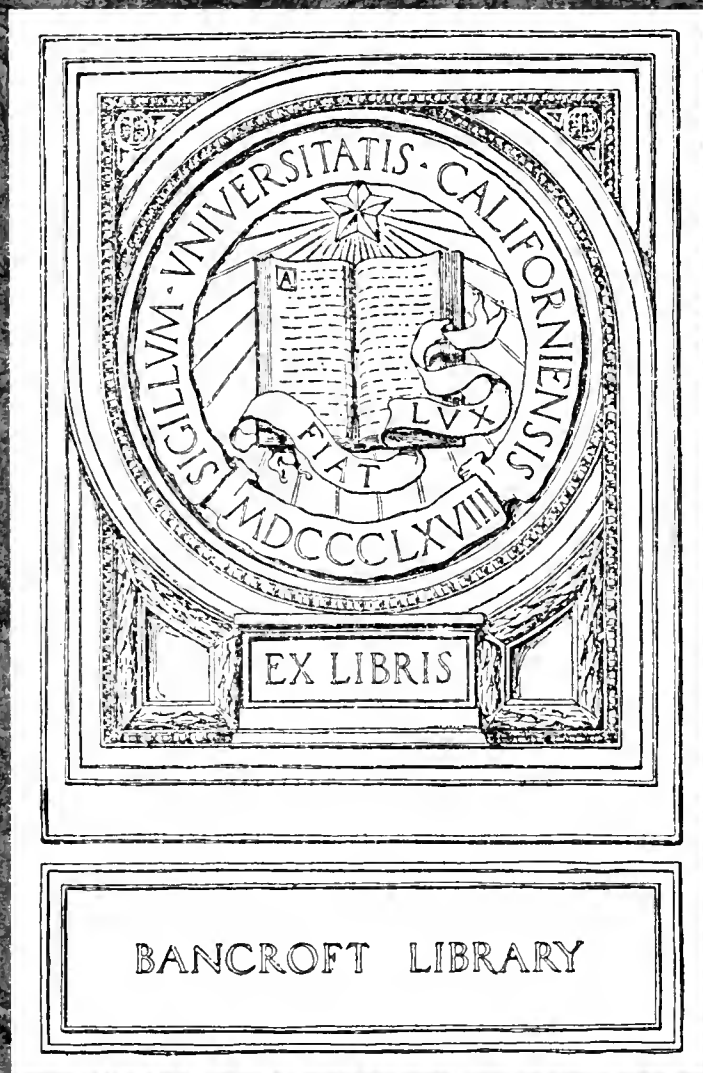


Adams, California Municipal Waterworks

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Should California Municipalities

OWN THEIR OWN

Water-Works

AND IF SO

HOW SHALL THEY BE ACQUIRED



BY

ARTHUR L. ADAMS

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INTRODUCTION

How to secure the most extended and useful development of water supplies in California and how to control these supplies, to the end that capital may feel that degree of security that invites investment at low rates of interest, and that the people may, at the same time, reap the benefits of such development at the least cost possible for the service rendered, is a question than which there is to-day none of greater importance to the State of California. For years the most bitter strife between water companies and the public has accompanied the operation of existing law for the control of rates charged for the use of water, while the farther voluntary investment of capital in such enterprises has long since ceased. In the present uninformed and misinformed condition of the public mind, all attempts at improvement on the part of those realizing the importance of the subject must fail. Ignorance is the parent of suspicion, and suspicion is always the effective tool of opposition. The recent failure of the California Water and Forest Association to secure the passage or even consideration of a much-needed bill codifying the water laws of the State, so far as they affect uses outside of cities and towns, although the bill was formulated by men of unusual power and public spirit, is conclusive as to this need for greater dissemination of knowledge.

The writer, in putting forth this discussion of the method of ownership and control best adapted to the conduct of works supplying cities and towns, hopes it will awaken interest and inspire analytic thought and discussion along lines that will later make possible remedies that will lead to progress and peace. What is said is the result of intimate contact with both sides of the question, throughout a period of years. That he is an official of a water corporation, and has many times acted in very similar capacities for municipal corporations, will hardly make this expression of his convictions less deserving of thoughtful consideration by those who are anxious to ascertain the truth.

ARTHUR L. ADAMS.

Oakland, California.

March, 1903.

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Should California Municipalities Own Their Own Water-Works

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The Problem of Public Utilities

THIS inquiry is a specific application to one class of works of the broader general question, WHAT SHALL WE DO WITH OUR GENERAL UTILITY CORPORATIONS?—a question which, though heretofore applying in the public mind only to such industries as the dispensing of water, light, urban transportation, and wire communication, is under the stimulus of modern consolidation and centralization of corporate interest and management, rapidly coming to include all industries that are already or are coming to be essentially monopolistic in character. The whole subject is one of constantly increasing interest. The highly organized state of modern society, with its constantly increasing state of dependence, the one upon the other, of all classes of citizens; the extreme sensitiveness of the public to the possession by any of arbitrary power affecting its welfare or convenience, and the inherent selfishness of human nature have produced a state of general unrest, which emphasizes the necessity for study of the subject, with view toward a more perfect popular understanding of existing conditions and principles, and the possible modernizing of present relations between the industries and the public which they serve.

The whole subject is fraught with difficulties. All great issues, because of human limitations, engender intense prejudice and zealous partisanship, and like a boiling pot bring to the surface as filth and dirt a host of human vampires, who, by the raising of false issues and the setting up of false standards, seek to perpetuate that condition of strife which best enables them to prey upon the body politic. All these influences render slow and tedious that ascertainment of truth which must always precede effective remedy, though they serve their

purpose in a wise economy as manifestations of a pressing need, like the squeaking of a car axle or the barking of a watch-dog. The remedies are, however, always found by those whose minds are developed above prejudice, by those who approach great problems with the scientific spirit, the judicial temper, with optimistic, constructive faith. Such, by gathering together the various elements of truth as they are revealed by processes of experience and logic, are able to point the way, not perhaps to ultimate attainment, but in its direction.

Thus, in seeking such a solution of this question as shall in a manner consistent with the highest ethical standards effect the greatest good to the greatest number, each one interested will have his part. The future will in the light of revealed truth write some down as those who saw clearly the end in advance of their day, others as guide-posts pointing in the wrong direction, and many as only dogs that helped to swell the general alarm. But the desired result will somehow be achieved. How soon depends finally upon the inclination of the great middle classes.

The selection of wise council makes most effective haste. It is, therefore, to the prudent, the thoughtful, the experienced, we must look for guidance. Jurists, economists, statesmen, sociologists, and those actively engaged in the creation and management of such industries, can contribute toward an ultimate solution, and should do their part in rightly educating the public mind and the public conscience. For without bringing conviction to the public, nothing of enduring benefit can be accomplished.

The Best Method of Handling Water-Works Still an Open Question

Much has, indeed, been already said and written by such men, especially by professors of economics in our universities; and the superficial observer may have concluded that so far as water-works are concerned the question had already been resolved in favor of municipal ownership. Statistics prove such conclusions to be premature. According to the government reports of 1898, there are in the United States 3,326 water-works, four-fifths of which have been built since 1880. Of the total number 53.8 per cent are owned by municipalities, a percentage which is still less than that prevailing in 1875, exactly the same as prevailed in 1855, but higher than has prevailed in the interim. The remainder are privately owned. Owing to the fact that most of our large cities own the water-works, the investment in municipal

plants greatly exceeds the investment in private plants. To base opinion on the mere fact that the number of municipally owned plants in the United States now exceeds the number of privately owned plants, and that the ratio is increasing, is to anticipate the result before the experiment is complete; is to argue from the standpoint of sentiment, rather than sense; is to revert to philosophic processes in vogue before the time of Bacon; is to assume that public tendencies must be enduring, and therefore founded on established economic truth. Such a process of reasoning would have justified the institution of slavery any time before 1850; indeed, would have perpetuated every great fallacy that has gained currency in times past, and would render anything in nature of reform out of the question.

Experience is the final test of every truth, and few such experiments are tried out to final conclusions in a generation.

Different Methods in Vogue

There are three methods by which public utility works may be administered:—

First, by private interests unrestricted;

Second, by private interests under public regulations;

Third, by the public direct (municipal ownership), and the problem is, WHICH OF THESE METHODS IS BEST CALCULATED TO AFFORD A SERVICE OF A SUITABLE DEGREE OF EXCELLENCE AT THE LEAST EXPENSE TO THE CONSUMER? It may be thus simply stated, for in the final analysis all allied questions of ethics and economics resolve themselves into the SCIENCE OF WISE EXPENDITURE, which must finally determine the average of rates. We have seen that by far the larger part of the works of public water supply in the United States have been built during the past twenty-two years. Relatively few have been constructed by private companies and operated without some recognized form of public restriction. The great majority have been built either under municipal ownership, or under private ownership, with some form of restriction as to the rates to be charged. Outside of California these latter works have usually been built under a franchise, in the nature of a contract between the company and the municipality, running for a period of twenty years or more, the franchise usually specifying the schedule of maximum charges that should be made for supplying water for both private and public purposes. Seldom has any provision been made for any supervision or modification of rates by the public authorities during

the life of the franchise. An option has frequently been given the municipality to acquire such properties at an appraised valuation at the expiration of the franchise period.

California occupies the rather unique position of having attempted by constitutional enactment to place rate fixing absolutely under State control, having declared "the use of all waters now appropriated or that may be hereafter appropriated for sale, rental, or distribution to be a public use," and having made it mandatory upon the boards of city trustees to fix rates annually.

It will be observed that these two methods of dealing with this industry are in theory essentially different. In the former case the right of private contract is mutually exercised, a condition precedent to the building of the works; and both parties in interest, the public and the investor, take their chances thereunder for better or for worse. In practise this has apparently operated far more favorably to the consumer than to the investor, as is indicated by the statistics of the Fourteenth Annual Report of the United States Commission of Labor, published in 1898. Of 373 privately owned plants whose finances were investigated by the department, 65, or 17 per cent, were not only earning no interest on their investment, but were sustaining an additional loss; 188 of the remainder, or 50 per cent of the whole, were earning less than 5 per cent on their investments; 222 of those earning any interest, or 81 per cent of the whole, were earning less than 6 per cent; and only 86, or 22 per cent, were earning 6 per cent or more. Thus from 50 to 80 per cent of the works were not even earning the rate of interest borne by their bonds. Readjustments incident to the expiration of franchises have usually been accompanied by friction.

In the case of the State reserving the right to determine the rate to be charged, as in California, THIS RIGHT OF PRIVATE CONTRACT IS OF COURSE DENIED, OR RATHER NO LONGER EXISTS. The business is treated as monopolistic in character, therefore unsuited for the free exercise of this right in the securing of reasonable rates to the consumer. In lieu, therefore, the State undertakes to say each year what rates shall constitute a *fair return only* to the owners of such properties for the service which they render.

It is deemed unnecessary in this discussion to more than make mention, as has been done, of unrestricted private ownership. Such a method of dealing with this problem is believed by the author to be infinitely superior to the prevailing faulty and uneconomic application of the method of State control, but is at present out of the question

through almost entire unanimity of public sentiment in favor of the other methods.

This brief general review of practise and theory brings us to the specific consideration of our subject, SHOULD A CALIFORNIA MUNICIPALITY OWN ITS WATER-WORKS? AND, IF SO, HOW SHALL IT BE ACQUIRED?

Present Condition of the Question in California

Let us briefly review the history and present condition of this question in California. Prior to the adoption of the present State constitution in 1879, municipalities were free to secure water service by such means as they deemed most advantageous, either by building their own works or by granting to private persons or corporations such franchises as would induce them to construct and operate such systems. The organic law imposed no restrictions. A badly mixed system of statutory laws, while preserving the right of contract, provided, also, a means whereby the rates to be charged could be determined by a local commission, appointed jointly by the city and the water company. Nearly if not all the cities decided this question in favor of private ownership, and the works in nearly all our larger places were so created. The people, however, in the adoption of the present organic law, changed all this, and resolved to try the method of control by a public body of rates to be charged, and to that end having declared the appropriation of water for sale, rental, or distribution, to be a public use, subject to the regulation and control of the State, made it mandatory upon the city boards of trustees to annually fix rates to be charged by such dispensing individuals or corporations, and this without defining in any way what should constitute the basis for or manner of determining the rates.

The State Supreme Court has interpreted the Constitution by declaring "that it was not the intention of the framers of the Constitution to distinguish between rights then existing and those thereafter acquired in the business of supplying cities and towns with water, nor was it their intention to confiscate private property, but the meaning of the section in regard to the fixing of rates for such business is that the governing body of the municipality, upon a fair investigation and with the exercise of judgment and discretion, shall fix reasonable rates and allow just compensation."

Subsequent legislation made it the duty of water companies to file annually with municipal authorities certain financial statements, calcu-

lated to show the company's investments, revenues, and expenditures, for information and guidance in the fixing of rates.

To complete this revulsion in the method of dealing with these public utility industries, the State granted to any one by constitutional provision the right to lay pipes in any public street of any town or city, *not owning its own works*, and to dispense water and collect payment therefor, subject only to supervision of municipal authorities as to the manner of using the streets and the rates to be charged for the water sold.

Here was thus produced a remarkable situation, the intention of which was no doubt good as far as it was calculated to protect the consumer against extortionate charge for a necessity, the dispensing of which is essentially monopolistic in character, but which could by its deficiencies and strange mixing of economic laws scarcely have been formulated in a manner calculated to produce consequences of greater evil.

What are these defects, and what have been the consequences? To recapitulate:—

1. The State has destroyed the right of free private contract in the determination of the price to be charged for the commodity, both as between the company and the city authorities as representatives of the public, and between the company and the individual consumers.

2. It has denied the applicability of the law of supply and demand in determining price.

3. In lieu thereof, it has in recognition of the monopolistic character of the industry reserved to the public the exclusive right of saying how much shall be charged, and has limited this amount to only so much as shall constitute a "fair" return.

Thus far these acts rest upon sound theory, although a theory radically different from that which it supplanted and under which some of the larger works were originated. In the language of a prevailing opinion of our Supreme Court: "In effect the State may be said to have appropriated the water and the plant to public use." "For that appropriation it is bound to make just compensation." But having applied a theory of control which is nothing more than a forced loan for the public benefit, in which the principle of competition can have no economic or ethic part in the determination of the return to be made for such loan, and which it has effectually prevented in the case of city ownership by denying the use of the streets by a competing company, it lets the bars down in the case of the private company and invites competition in this industry by throwing the use of public streets

open to any who choose to use them. Thus *it provides that rates shall be limited to that which is but fair and just, and coincidentally invokes competition to effect farther reduction.* Here is the first great economic error and infringement of simple justice.

Again, the power of determining the rates to be charged is vested in town councils and boards of city trustees, themselves rate payers, elected by rate payers, and almost never in the present condition of practical politics in this country representative of a community's average intelligence and morals. What is to be said in justification of such a provision in this age, when in all ages and among all peoples governed by law it has been recognized that impartiality, morality, and intelligence are the very bases of an effective judiciary? This is the second blunder, so apparent as to be inexcusable.

In failing to define what constitutes a just return for the rendering of such service, and in requiring that the whole question must be reopened every year, the opportunity of largely undoing the consequences of the mistake of delegating this power to an incompetent, self-interested tribunal was lost, and the utter failure of the whole plan guaranteed, with the realization of all the attendant evils of civic warfare, avarice, intrigue, reprisals, destruction of confidence, degradation of private and public morals, and tremendous waste of vital energies, invaluable were they directed in the profitable pursuits of peace,—*evils which are the direct outgrowth of placing vested interests so largely at the mercy of such a tribunal, and which will never be wholly remedied until this fundamental cause is removed.*

There are other defects of importance only less than those enumerated, which space here forbids mentioning, all calculated to make management along sound, conservative, and economical lines impossible, resulting of course in a high cost of production, and corresponding high water rates or a financial loss to the operating companies.

Through this open door of sinfully defective law, which has strangely set at defiance every principle of ethics, the devil entered California municipalities, and we are to-day face to face with his destructive work of more than twenty years.

Let it not be ignorantly thought that either corporate or community interests have flourished under these conditions. Only waste has resulted, and waste confers no permanent benefits.

Let not effect be carelessly mistaken for cause, and citizens seeing only the adversary instead of the error that makes him such, continue to act like strange cats in a box, requiring only the prodding of the third party (always an ignorant or a designing party) to keep them in

incessant struggle. *All have been alike the victims of economic error incorporated in our organic law*, and all that we see in our present condition is but the fruits of that error, regretted unquestionably no less sincerely by corporate than by private interests.

Has the experience been altogether without profit?—Absolutely, so far as it determines anything regarding the economic advantages of *right public control of private corporations as a means of handling our public utilities*. Negatively, it has with tremendous force shown how not to do it. Morally, it shall have been worth almost what it has cost, if men shall thereby have been taught that no lasting gain in either peace or profit can be secured at the price of an unfair act, whether conceived in ignorance or design; and that not even the State can successfully enforce a law distinctly lacking in justice or prudence.

A Change of Program Required

This brief review of the conditions in this State growing out of the experimentation of the past generation makes apparent the necessity for a change of program. What shall it be, the correcting of the defects of the present laws, made manifest by experience, in a farther effort to secure a wisely formulated scheme of public regulation and control, or shall it be the abandonment of this method in favor of municipal ownership? To repeat the test of expediency, *Which of these methods is best calculated to afford a service of a suitable degree of excellence at the least expense to the consumer?*

The general question of private ownership (unrestricted) *vs.* public ownership, as an academic question, has been for many years a subject of almost constant debate and discussion by public speakers and writers on economics and social questions; but almost all disputants in California have failed to recognize that the question here is a radically different one. Indeed, the public at large almost invariably assume *unrestricted freedom* on the part of the corporation to be the condition prevailing in this State, and, applying the well-known arguments in such cases, reach conclusions having absolutely no logical application to conditions here. In absence of any knowledge drawn from intimate personal contact with both sides of the question, and of any authentic public information suitable for making comparisons and deductions, such discussions have always been wholly opinionative, without test or proof, and so largely profitless, however interesting.

In these discussions those associated with corporate interests are seldom heard from, though none should be better fitted to speak.

This because the public, influenced by powerful enemies, is arrayed against them, and they usually see neither inspiration nor hope in speaking to ears so deafened by distrust and suspicion as to dismiss and discredit all that may be said, without applying to it the test of reason or experience to see if it be true. The writer believes this policy of silence to be wrong, for only educational processes can permanently right wrongs, and truth, if it be truth, must finally be heard.

To supply the needed facts drawn from actual experience, the United States Commissioner of Labor in 1898 undertook to ascertain the relative advantages of public and private ownership by an analysis of the results in the case of about one thousand out of the thirty-three hundred plants in the United States. While a vast amount of valuable statistical matter resulted, the direct object professedly failed, as might have been anticipated, because of the dissimilarity of conditions under which all water-works are invariably built and operated. Were water manufactured and distributed by established uniform processes and means, comparisons of value might be made. Instead, it must be secured where found by any means and at any distance and distributed in the manner best suited to the locally prevailing conditions of construction cost, of topography, and of use present and prospective. It is a problem without constant factor. The cost of production must, therefore, *always be a local question largely without precedent elsewhere for guidance*, and only comparisons of the most general and tentative character can be made and conclusions most cautiously drawn therefrom.

Municipal Ownership Vs. Private Ownership Publicly Controlled

When, however, the question is confined to municipal ownership *vs.* private ownership *under equitable public regulation and control*, the whole problem is immensely simplified, and may be analyzed on purely academic lines without risk of experiment developing very serious errors in the resulting conclusions.

Before discussing this question, "equitable public regulation and control" must be defined. The right of ownership and of protection to property is assumed. In a sentence, public regulation and control of rates or works is equitable when it affords annually sufficient revenue to meet the reasonable cost of producing the service rendered plus a suitable profit as a reward for the undertaking. *Justice can go no farther than this in conferring benefits upon the people.*

Whether works are owned by a private or municipal corporation, the revenues must be sufficient to meet cost of production, or a loss is sustained. The question thus narrows itself down to this, *Under which system of ownership will this resulting cost of production be the least?* The costs of production may be enumerated as follows:—

1. Interest on investment.
2. Sinking fund contribution sufficient to replace all structures perishable or of limited utility.
3. Insurance on all risks.
4. Taxation.
5. Current operation and maintenance expenditures. These five items equal cost of production, and plus net profit equal an equitable revenue.

How would these items, or to what extent need they, be affected by the exigency of ownership, public or private?

Interest rates for a given time and place, other things being equal, are determined by the security offered. Municipal bonds pledging the property of every citizen in payment will sell at a lower interest rate than bonds pledging only the works which their proceeds are designed to create, although this difference would not exceed one-half to three-fourths of one per cent, if the rate-fixing power were certain to be exercised always with rectitude and intelligence. For the saving of one-half to three-fourths of one per cent in interest rate, the municipality exacts of the taxpayers the loan of their credit. Can anything be regarded as a saving for which the equivalent is paid either in money or credit?—Certainly not.

Cost of insurance is an element of expense in determining the cost of producing any commodity where risks are involved, which can not be omitted if results are to be made certain and secure. It is evident that this item need not be to any large degree affected by the question of ownership.

A sinking fund, to provide for the return of capital invested in structures of usefulness limited as to time, is a method of preserving intact the invested capital, and is unaffected by ownership, but is affected in the aggregate by the amount of the investment, and so is dependent upon the economic skill of the builder of the works. It has been customary to enter the advantage in this to the credit of the privately owned plant, which, when such plants are unrestricted by the public, is probably correct, but which under the conditions here considered would probably be without marked economic tendency the one way or the other.

Taxation is a negligible quantity. Publicly owned plants pay no taxes, but just that amount of property is by this means taken out of the communities' assessable value. The taxation of a privately owned plant under the conditions assumed is but an indirect tax upon the rate payers, which, if the property were unassessed, they would not be required to pay.

Current maintenance and operation expenditures afford the chief field for argument.

These charges always make up the larger item, save interest, and are chiefly influenced by the character of the operating forces from the chief official down, and the condition and limitations under which the property is managed.

The success of any industry is first and chiefly affected by the degree of wisdom exercised in its financial inception and conduct; second, in the intelligence of its management, and the efficiency of the entire organization.

It seems to the writer that, in absence of anything in the nature of absolute proof, for there is none such, the assumption is warranted that our great successes as a people,—those successes that have made us the economic producers of the world,—are chiefly due to that freedom of the individual which has given full play to the development of individual capacity, and to that industrial freedom which has brought together in the erection and conduct of works these marked individual capacities.

The writer believes it to be true that any general application to all large interests of government ownership and control would utterly destroy that condition and environment necessary for the development of this high individual capacity upon which this successful structure rests; and that with the passing of the present masters, there would be found none to take their place. The Chinese and other oriental peoples are to-day, in their poverty, their dependence, their general incompetence and degradation, an example of the fruits of paternalism. But it is not clear because an extreme application of a principle brings injury that every application is wrong. We may indulge in socialism perhaps without great risk so long as the field of private and individual initiative is left sufficiently broad to produce the men which are necessary for the successful handling of government-owned properties. It is unnecessary to here attempt to define the practical limits of such a field. Suffice it to say that without risk to our liberties the line of demarcation may be so drawn as to place water-works in the category of public properties.

Private ownership under right public regulation preserves this principle of progress better than public ownership, although regulation on the basis of allowing only cost of production plus a fixed profit destroys the hope of reward of good management, which is the chief actuating force, unless the amount of profit is made conditioned in some effective way upon the efficiency of management.

When the duties and honors of citizenship come to be recognized and appreciated, when those "who would be great among us seek to serve" rather than rule, public ownership will have behind it an actuating force amply sufficient to insure economic success not second to any other method of control. So this, too, becomes in its final analysis for a given community a local question. Whether or not a given community has sufficiently freed itself from the thralldom of debased politics to safely count upon the same competence and attention to public duty on the part of its officials that is given by their directors to the affairs of large industries can not be finally decided by reference to the affairs of other cities, and the conclusion reached prior to an extended period of actual trial will be based rather upon mere opinion than actual proof, of which there can be none.

There are municipalities that are handling their own works with great skill and splendid results, and there are others honeycombed with corruption and all forms of mismanagement.

As an academic question, the writer believes there is little room for choice between the two methods here discussed of dealing with this public utility, so far as these methods need effect the price of the commodity. If equity requires the owners of privately owned plants to receive for their commodity cost plus a margin of profit, the item of profit as an increment of price will likely be offset by the slight advantage of such a plant in securing efficient organization, leaving the price to the consumer under the two methods substantially the same.

The Real Problem and Its Solution

Success or failure, whatever the ownership, will usually, however, be determined by the conditions in law under which the works are operated, and it is here that the best thought should be employed, and yet very little has been said or written on this phase of the subject. By the establishment of a condition of substantial justice between the dealer and the individual consumers; by creating conditions calculated to foster effective management; and by guaranteeing a continuance of these conditions through wise legal enactments, it is certainly possible

for the average American town or city to get reasonably satisfactory results from either system of ownership. But no advance in civic conditions will warrant the adoption of methods of regulation or control not calculated to secure the very best results of which our civilization is capable.

To this end, if we are to continue to have private ownership under public regulation and control in California, the law must define in no uncertain terms what capital is to be allowed by way of returns; the rates must not be subject to disturbance or change oftener than once in five or ten years; the rate-fixing power must be exercised by an impartial tribunal of men of the highest character expert in dealing with such questions; the weight of authority must be given to the financial statements of water companies, and suitable moral restraint placed upon the actions of all parties concerned, by having the accounts of such companies audited by the State. There can be no peace without public intelligence and public confidence. Publicity can alone make the public intelligent, and corporations are without means of inspiring confidence without state auditing of their accounts.

Such modifications of the present law can only be secured by the adoption of a suitable constitutional amendment. The existing law may, however, be made to fulfil in a large measure the just intention of the State; and the abuses that have grown up under it be in large part eliminated if the Supreme Court can and will define its meaning so clearly that the rate-fixing body, whatever its character, will be made powerless to either err or make merchandise of power.

If we are to abandon the present experiment in favor of municipal ownership, the management of works in every particular should be placed in the hands of a commission separate and apart from the town councils and boards of supervisors, under such conditions of appointment, service, and publicity of accounts, as will give guarantee of an intelligent, non-partisan, business management. *No precautionary measure deemed prudent for the safeguarding of the public under private ownership should be omitted under public ownership. Mere transfer of ownership will work no magic.*

After wise methods have been evolved and the protecting arm of wise law thrown about the rights of all parties concerned, still success will finally be determined chiefly by the character of the public conscience, for this, with nations, communities, and individuals, must always define the practical limitations of self-government.

The California Water and Forest Association, through its committee on legislation, composed of such men as W. H. Beatty, chief

justice Supreme Court of California; John D. Works, ex-justice Supreme Court; Frank H. Short, attorney; Benj. Ide Wheeler, president of the University of California; David Starr Jordan, president of Stanford University; Frank Soule, Engineering Department of the University of California; Chas. D. Marx, Engineering Department of Stanford University; Elwood Mead, irrigating expert of the U. S. Department of Agriculture, and F. H. Newell, hydrographer of the U. S. Geological Survey, have placed themselves on record as favoring the former method, that is, private ownership publicly controlled; and the association has been before the present State Legislature with a bill drafted by the above gentlemen, embodying a scheme for utilizing the surplus waters of the State, under a well-digested plan of private ownership and public regulation, which should, if it becomes law, have a marked beneficial result on irrigation development. Capital would then again seek such investments, because it would have the guarantee of fair treatment at rates of interest low because of the security thus offered, while the patron of such enterprises would be secured against any unreasonable charge. Water-works distributing to municipalities are excluded from the operation of this proposed law, but the principles of control therein embodied are as applicable to the one as to the other.

But if municipal ownership is earnestly desired by any city of California, and is sought in an honorable way, with recognition of all the equities involved, why should it be denied?

The last query of my subject is, "HOW SHALL IT BE OBTAINED?"

How Shall Ownership Be Acquired by Cities?

Were a city without works, the question need not be asked. But nearly all places of magnitude in California are supplied by private companies, whose works were built, for the most part, before the adoption of the present constitution. For purposes of discussion we will assume this condition.

Municipal ownership may then be attempted in one of two ways, either by the acquisition of the existing plant, or by building a competing one. An apology might almost be asked for suggesting the second method, but it has too many adherents to permit of its being ignored.

Let us not forget that the purpose of municipal ownership, or of any other radical change, is primarily the securing of the desired commodity at the least cost consistent with fairness.

Let us now ask ourselves:—

What are the claims of existing plants?

Will good morals justify the denial of those claims?

Can such plants, regardless of morals, be suppressed by competition? And is such a course adapted to the securing of lower rates?

These questions the writer will endeavor to answer in the order named.

What Are the Claims of Existing Plants? and Will Good Morals Justify the Denial of These Claims?

First: They have a valid, legal existence, having been established by virtue of the laws of the State.

Second: They were originally constructed under legal franchises, issued by the municipalities themselves, and that usually without limit as to time.

Third: Their projectors have undertaken a public service essential to the prosperity—yes, to the very existence of the community.

Fourth: All such properties, by their very nature, must anticipate the future; must precede rather than follow growth, and are, therefore, seldom, if ever, remunerative for many years after first construction. The investments that are necessary in their creation,—and, if necessary, justifiable,—are, therefore, other things being equal, always greatly in excess of the mere estimated cost of duplicating at a subsequent time the structures actually in use.

Fifth: Such investments are continuing, and can not be transferred. They must be increased from year to year in keeping abreast of community growth. They are a hard and fast part of the community they are designed to supply, and of little or no value apart from it.

Sixth: The corporations owning these plants built them with very different legal restriction as to rates to be charged from those now prevailing; and the State is responsible for the present constitutional provision which has fomented the present irrepressible strife.

Seventh: Our Supreme Court has said that “the State has in effect appropriated the water and the plant to public use, and for that appropriation it is bound to make just compensation.

Eighth: These properties are usually owned by private citizens of the cities which they supply, and by destroying them the city is making the economic blunder of impoverishing its own citizens, and destroying taxable values.

The mere recital of these claims shows that they can not be ignored, and that for a municipality to deliberately injure or seek to destroy

such investments is a crime. Nor let it be justified as a reprisal or war measure. This is simply to mistake effect for cause; and, besides, such measures have no moral standing in civil matters. What is to be expected from the conduct of municipal works by any community whose ethics would encourage such a course?

Can Privately Owned Plants Be Suppressed by Competition, and Is Such a Course Adapted to the Securing of Lower Water Rates?

In monopolistic industries, competition never effects permanent price reduction; but, on the contrary, usually results in combination, increased capitalization, and a higher cost and price of the commodity. The principle is too well known to need argument. That one party to the competition is the municipal corporation will hardly change the operation of this rule. Experience has, so far as is known to the writer, produced as yet no exceptions, save in a few villages and small towns.

Owing to the requirements of the California law, most privately owned water-works properties are bonded for approximately one-half the investment. New works, omitting consideration of the water supply, can always be built for much less than works which have grown with the growth of the town, from small beginnings, but not for nearly so much a proportion as one-half. In case of competition with a plant owned by the city, water would, of course, be sold by the older plant, regardless of cost, at whatever price would hold the business. Dividends would be passed and even bond interest would be defaulted if need be. Stock values would, of course, suffer, perhaps to the extent of destruction, but the plant would remain, for it could not be moved to another market; and so long as it remains, whoever the owners, it would be operated for whatever revenue in excess of mere wages and repairs it could be made to earn. The city, by provision of law, must, on the contrary, get revenue enough to pay not only all the costs of production, including interest on the full bonded debt (equal in such cases to the investment), but must also each year pay off one-fortieth of the principal; and if this could not be gotten from water rentals, it must be gotten by special tax levy from the property owners.

These, it is true, would in many cases on this account patronize the municipal plant, but in dealing with the public it is usually present price rather than possible ultimate cost that determines the sale. Ten-

ants, and parties using large quantities of water in proportion to their assessed property values, would, of course, buy in the lowest market. Again, the established companies usually have large sources of revenue outside municipal boundaries which can be drawn upon in prosecuting their struggles.

Can anybody believe that out of this cauldron of strife, out of this compounding of economic and moral crimes, anything but disaster to the city and disaster to the private company, and an ultimate purchase of the interests, the one of the other, at tremendous loss, it may be, but still on such a basis as would make still higher rates imperative, would result? It is unthinkable that anything good could result, or that intelligent men should ever seriously suggest it, save as a threat made in hopes of winning some desired concession or advantage.

Conclusions Summarized

What, then, are the conclusions of the whole matter?—Briefly summarized, they are these, confined in their application particularly to California conditions:—

First: The present conflict between corporations dispensing water and the consumers which they supply is institutional and not personal. It is the inevitable consequence of the existing uneconomic and imprudent law of the State.

Second: The existing condition is well-nigh unbearable, alike to both parties to these controversies.

Third: The remedy is threefold:—

(a) The securing by appeal to the courts of an interpretation of the existing organic law, so definite as to leave the present rate-fixing bodies without discretionary power on vital points, to be supplemented, if possible, by securing of complete publicity of accounts by state auditing, and the prevention of competition.

(b) Municipal ownership wisely instituted.

(c) The correction of the defects of the present law by constitutional amendment, so drawn as to secure intelligent and impartial rate fixing at periods of not less than five years, by wisely constituted authorities, by methods definitely defined by law; the prevention of competition; and the publicity of accounts both by means of annual reports and State auditing of accounts.

Fourth: The (a) method so far, as it can be effected by appeal to the courts, is the only one open to the corporations in the present state of public ignorance and prejudice, though it is for many reasons

less desirable than the third, and possibly less desirable than the second.

Fifth: Academically considered, the (*b*) and (*c*) methods wisely employed would give substantially the same rate of charge to the consumer.

Sixth: The difficulties and risks attendant upon effecting a change in both ownership and method of handling such industries, and the inexpediency of sacrificing the results of experience already obtained,—an experience invaluable as an indication of what constitutes the essentials for effective control,—render the third remedy (the correction of the defects of the present law by constitutional amendment), under average conditions more conservative, and preferable to municipal ownership.

Seventh: If cities desire the acquisition of existing works at a valuation fair and reasonable in light of all the conditions under which they have of necessity been created and operated, it should not, as a matter of right or policy, be denied them by their owners.

Eighth: Municipal ownership can be acquired in a manner consistent with good morals, where the demand is already supplied by a private corporation, only by the acquisition at an equitable valuation of the existing plant.

Ninth: Disregarding the question of morals, increasing the investment without widening of the market, must increase and not diminish rates when said rates are determined on a basis of cost plus a fixed profit. Therefore, competition, even by the municipality, must fail of its purpose, unless it can absolutely crush its adversary,—an impossibility, save in the case of very weak corporations supplying small places.

These conclusions are either true or false. If false, they can not become effective. If true, they must obtain recognition. Conjuring with public ignorance, appealing to public prejudice with motives honest, or selfish and dishonest, may, if we let it, continue indefinitely and plunge our moral and financial interests, both public and private, into still greater depths; but some day it will be remedied. How soon depends upon the attitude of those who can, if they will, lead thought aright, and whose responsibility for the right use of that power is greater than they think. Believe me, the forces now in seeming conflict are nearer together in harmonious purpose than we think, and it only requires a little mutual confidence, a little mutual forbearance, a little walking around the subject, that it may be seen from all sides, and a little unimpassioned educational discussion, to

discover friends of those whom we have accustomed ourselves to regard as enemies, and to effect cooperation, to the common end that an effective remedy may be found and applied to an unwise existing order under which all have alike suffered.

What the movement needs is leaders of the right stamp,—men of breadth, men of recognized honesty and high-minded purpose, men who feel inspiration in, and are willing to work for an ideal, and, above all, men who are not afraid of being misunderstood, or of having their motives impugned, but who have unbounded faith in the potency of honest investigation and absolutely honest, fearless speech in the winning of the multitude. With such leaders directing a campaign of education, there is not a remedy hereinbefore suggested that can not, in the course of a few years, be worked out into actual reform. Already the spirit moves, the waters are troubled. Who will help to bring relief to the stricken State?



