

## NEEDED REFORMS IN MUNICIPAL CHARTERS AND GOVERNMENT.

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MUNSON PRIZE THESIS, BY FRANCIS W. TREADWAY.

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Were democratic institutions in America to be measured by the results which have been attained in the local management of cities, rather than in the State or nation-at-large, the verdict of history would undoubtedly pronounce them a failure. A people who have proven themselves in the highest degree capable of self-government in the nation, have found the greatest difficulty in coping successfully and economically with the problem of local government in the great cities. This may be accounted for, however, more because of the novelty of the problem presented than on account of any inherent defect in the democratic principle, although it is probable that the latter has been carried beyond its legitimate field. The growth of our cities has been rapid and of recent date. In 1790 there were but thirteen cities having a population of more than five thousand and none had attained a size of forty thousand inhabitants. The growth of a city from such a size to one numbering nearly two millions within the space of one hundred years is something of which history furnishes no precedent; but more wonderful still has been the rise of cities throughout the West, to-day numbering hundreds of thousands of inhabitants where but little more than fifty years ago stood the outposts of the nation.

This growth of our cities has presented problems which may well have engaged the attention and earnest endeavor of the brightest minds, but they have been neglected in the magnitude of the issues and the wider field of action which the affairs of the

general government have offered. The result has been that municipal matters have been left to the petty schemer or the corrupt politician and offices have too long been treated as the legitimate reward for political services to those who have been raised thereby to greater honors and influence in the State or nation. Of recent years, however, corruption and extravagance in municipal affairs have become so wide-spread and so notorious that popular interest has been aroused, but as usual the remedies suggested have been so numerous and so antagonistic that they have but served to render the subject more confusing and difficult. One result has been to take from the municipalities many of their powers and to restrict them in the exercise of those which remain ; in short, to pronounce them incapable of self-government and vest a general oversight in the State legislature. Or, if this has not resulted, the legislature has so interfered in the management of local affairs by amending, repealing and enacting laws which henceforth become a part of their charter, that local responsibility has been lessened and the chief check in the interest of good government thereby lost. Never was there a greater fallacy than that a cure for all municipal ills is to be found in legislation. All attempts at reform to be effective must strike at the root of the evil, a fact which has too long been lost sight of.

With a healthy public sentiment aroused and awake to its own interests, the ideal government would be that which allowed the greatest freedom of action to the municipality—which gave home rule in its truest sense. Such sentiment will never be aroused when people feel that their efforts are futile and that their actions are controlled by the State government. In this respect New York perhaps furnishes the best example, where even such subjects as a street railroad franchise, a driveway in Central Park, or the sweeping of the streets, must be passed upon at Albany, and in a less degree this may be said to be the condition in many of our States.

The first remedy then to be suggested is a limitation upon the power of the State legislature to interfere in municipal affairs, and this can be attained only by constitutional amendments. Without such limitation the power of the legislature over municipal corporations is practically unlimited, save in a very few matters in which such corporations may acquire vested rights as against the State, and to such extent stand upon the same grounds as private corporations. "Political powers conferred upon a corporation for the local government of a place are not vested rights as against the State, and where there are no constitutional restric-

tions upon the action of the legislature it has absolute control to create, change, modify or destroy them at pleasure."<sup>1</sup>

Provisions are found in many of the State constitutions evidently intended to so restrict the action of the legislature, by requiring all acts relating to municipal corporations to be general in their nature and forbidding the passage of special acts. Whether I am correct in this interpretation of the spirit of such provisions or not, they have been generally avoided by the classification of cities into grades and classes. When such classes are changed and altered from time to time and care is taken that but one city within the State shall conform to each particular class, special legislation is as assuredly accomplished as though such prohibition were not contained in the constitution, yet this is sanctioned by the courts.<sup>2</sup> Under such a limitation and such an interpretation in Ohio, "ripper legislation," as it is known, occupies a considerable portion of the time of each legislature. During the sessions of the Sixty-ninth General Assembly ripper bills were passed materially altering the charters of Cleveland, Columbus and Cincinnati in addition to many of the smaller cities. To the former was granted a charter long sought for and urgently demanded by a majority of its citizens; from the latter was taken away its self-government in a large degree, vesting it in a board of commissioners appointed by the Governor. This board existed six months when the law was repealed at a special session of the legislature called for that purpose, so great was the corruption of this non-partisan, State-appointed board. So much for this absolute control of the legislature and the wisdom which actuates its exercise.

Private corporations are especially protected by the Constitution of the United States and of each State, while the municipal corporation involving the comfort and interests of a multitude of people and the raising and expenditure of vast sums of money annually is rendered unstable and insecure by virtue of this constant liability to interference on the part of the State legislature. One State only, however, has seen fit to place any effectual limitation on the action of the legislative authority in this respect. The constitution of California provides that any city containing a population of over ten thousand may frame a charter for its own government consistent with, and subject to, the constitution and

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<sup>1</sup> Municipal Corporations—15 Am. & Eng. Ency. of Law 976. See also *People v. Draper*, 15 N. Y. 532; *Daily v. St. Paul*, 7 Minn. 390.

<sup>2</sup> *State v. Hawkins*, 45 O. St. 108, and cases cited.

laws of the State. If approved by the majority of the electors of such city it must be submitted to the legislature for its approval or rejection as a whole, without power of alteration or amendment; and if approved it becomes henceforth the charter of such city and can only be amended by a similar process.<sup>3</sup> This provision certainly accomplishes the desired end. It is a question, however, if it is not more stringent than the interests of good municipal government demand, yet it cannot be doubted that in leaving the entire responsibility in local affairs with those most deeply interested in the proper management of the corporation, viz., the inhabitants themselves, the best results have been obtained and such a constitutional limitation must eventually be copied in many of the Eastern States.

A second very fruitful cause of corruption in our cities has been the division of responsibility, or rather the total lack of it. The system of government by boards of commissioners, each looking after a certain portion of the city's affairs, is one which has largely prevailed in the large cities. A method less fitted to the conduct of the affairs of a municipality could hardly be devised, where power is divided among a dozen or more boards of equal authority, elected by the people, and each supreme in its sphere. Cleveland, the most recent city to abolish boards, furnishes an example of the system. Prior to April 6, 1891, Cleveland was a board-ridden city with all that the word implies; in addition to the council, mayor and other officials there were fifteen boards of commissioners, elected or appointed in various ways, each independent of every other authority save a very slight oversight which existed in the council. Each of these boards was composed of five members, as a rule, serving without pay; each exercised legislative and executive functions within its sphere and constituted a court for the trial of subordinates by a species of impeachment; each purchased its supplies and dispensed its own revenues. Under such a system there can be no such thing as responsibility, where each member of a board may cast the responsibility upon his fellow members and where the board itself may fall back on the council or mayor, or vice versa, as the case may be.

One hundred years ago the supreme executive authority of the nation was placed in the hands of one man — the president — and the legislative, separate and distinct from the executive, in Con-

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<sup>3</sup> Constitution of California, Art. X, Sec. 8, as amended Apr. 12, 1887.

gress. Such a division was justified by history, and its wisdom has been again proven in its results, yet its application to cities has been of recent date. *The foundation principle of all municipal government should be direct responsibility*; it matters not where such is vested, but it should be vested somewhere so that the public voice can say "Here is the responsible party." Acting upon this idea, we find most of the recent reform movements casting upon the mayor this personal responsibility and in him is certainly the most fitting place for it. In him should be vested the appointment of his assistants and all inferior officials, with perhaps a power of confirmation of the heads of departments only vested in the council. From the council should be taken all executive functions and its duties restricted solely to legitimate legislation, the voting of taxes and ordering of improvements. Such a remedy, to be sure, is of the heroic order, but it would have the effect of arousing the public to the necessity of electing only the most able men to office and the salary should be sufficiently large, in addition to the powers conferred, to attract the best men in the community. In case of inefficiency or corruption at any rate, under such a system the people have but themselves to blame. The remedy is in their own hands, and, it has been said, no people are worthy of any better government, State or municipal, than they themselves want. If they sit quietly by beholding corruption in office, it may be assumed that such is what they desire or at least that they are content with it.

By limiting the suffrage too to the election of the council and mayor the attention of the people is concentrated upon the candidate for but two offices (councilmen being elected by districts) with the result that, the number being so few, the people may easily inform themselves as to the merits of each and choose understandingly at the polls. When the whole government must stand or fall with its responsible head, a much stronger blow for good government may be struck at a single election, than if a dozen or more officials are dependent upon the popular vote and each must be removed in turn, perhaps at different elections. As far back as 1871 Mr. Charles Nordhoff attributed nearly all evils in municipal government to this cause alone. In an article in the *North American Review* of that year he said: "The folly of obliging the people to decide at the polls upon the fitness for office of a great number of persons, lies at the bottom of nearly all the misgovernment from which we suffer, not only in the cities but in the State. It is a darling device of the political jobbers and a most successful one; for under the hollow pretence that thus the

people have greater power, they are able to crush public spirit, to disgust decent and conscientious citizens with politics, to arrange their 'slates,' to mix the rascals judiciously with a few honest men whenever public sentiment imperatively demands that much, and to force their stacked cards upon the people."<sup>4</sup>

In connection with these reforms the term of office of the mayor, and likewise in the administrative departments, should be lengthened. Indeed the only excuse which can be offered for annual elections is to be found in the proposition that all office-holders are thieves, and it is therefore necessary to change them once a year ; in other words that municipal government is an evil to be tolerated, since necessary, but that the least harm is done when changes are frequent. Only endless confusion can result from such constant rotation in office ; men of ability will not be attracted to the public service, extensive reforms cannot be instituted, and no permanent policy can be developed when the tenure of office is so uncertain and so short as it is to-day in many of our cities.

The analogy of municipal to private corporations is very great, and the nearer that analogy can be carried out, the better will be our municipal governments. Municipal corporations are defined to be "bodies politic and corporate \* \* \* established by law to assist in the civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town or district which is incorporated."<sup>5</sup> The former duties are slight and inconsiderable when compared to the latter. The laws of the State and by-laws of the city are administered by the State judiciary or by city courts which either are, or should be, a part of the former. Of the executive departments that of police is the only one whose duties are in any considerable degree directly concerned with the civil government of the country. The affairs of the other departments bear a close resemblance to those of a large corporation, a fact too often lost sight of in the past. Exercising business rather than political or civil functions, the methods of business should be introduced into their management of affairs—a reform which no amount of legislation can attain, but which must be dependent in a large degree upon a public sentiment which shall demand fitness and ability as the prerequisite for office, whether elective or appointive, rather than party affilia-

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<sup>4</sup> "The Misgovernment of New York—A Remedy Suggested." N. A. Rev., Oct. 1871, p. 327.

<sup>5</sup> 1 Dillon on Municipal Corporations, 26.

tions. The departments must be conducted as parts of one whole rather than as separate corporations in themselves. They must act together and in harmony with each other, coöperate in the purchase of supplies and in every way work in the common interest of the public for whose convenience and comfort they primarily exist. To accomplish this result, as far as it lies in the power of legislation to accomplish it, the new charter of Cleveland contains a very salutary provision to the effect that the heads of departments shall constitute what is known as the Board of Control, who shall meet for consultation at least twice each week, and "shall consult and coöperate in such way as to adopt and follow a systematic method to secure the most economical purchase of supplies for all departments, at uniform rates throughout."<sup>6</sup> Such a provision in municipal charters cannot fail to check in a large degree the wasteful and extravagant expenditures of money which arise from a want of coöperation even where corrupt motives are absent.

But one other remedy remains to be suggested which may seem to many a revival of mediævalism, but which is but the logical outcome of the enormous growth of our cities and must be thoughtfully considered as our cities become more populous and wealthy. That question is the restriction of the suffrage so as to secure property representation in cities. Viewed strictly as a corporation there is no more reason why all the inhabitants of a city should have an equal voice in the management of municipal affairs, than that the owner of one share, or none, in a private corporation should have an equal voice with him who owned an hundred. As in private corporations there should be a real identity of interest between the governing body and the governed, and such cannot exist when a mere majority of numbers may control the action of the city and recklessly appropriate moneys for improvements the burden of which must ultimately fall upon the property owners, who are the real tax-payers. The problem is rendered difficult by the fact that certain political and civil powers devolve upon the corporation and the consequent necessity of preserving these as well as the property rights of its members.

This distinction has been clearly pointed out and the rights of property acknowledged by as conservative a legal writer as Judge Dillon, who divides the powers of municipal corporations into two classes, "(1) those which relate to health, good government, effi-

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<sup>6</sup> Municipal Charter of Cleveland, Secs. 16, 68. Vol. 88 Ohio Laws, pp. 109, 117.

cient police, etc., in which all have an equal interest and should have an equal voice, (2) those which directly involve the expenditure of money, and especially those relating to local improvements, the expense of which ultimately falls upon the property owners. As respects these, the controlling voice should be with those who have to bear the burden."<sup>7</sup> The charge that such a restriction would be un-American and undemocratic was ably answered in the report to the legislature of the New York Commission, which was appointed in 1876 to recommend needed reforms in the municipal government of New York city, as follows :

"No surer method could be devised to bring the principle of universal suffrage into discredit and prepare the way for its overthrow than to pervert it to a use for which it was never intended and subject it to a service which it is incapable of performing. \* \* \* To expect frugality and economy in financial concerns from its operation in great cities, where perhaps half of the inhabitants feel no interest in these subjects, is to subject the principle to a strain which it cannot bear. All the friends of the system should unite in rescuing it from such perils."<sup>8</sup>

Universal suffrage may be possible in the local affairs of the smaller cities where the electors generally possess a personal knowledge of the ability of each candidate for office, where the distinctions of wealth are not great, where the possession of property does not necessarily indicate superior intelligence or comparative poverty the lack of it, where the idle and worthless do not collect in large numbers and in distinct quarters, and where municipal expenditures are small and the opportunities for jobbery and corruption slight. Where, however, the opposite of this exists, as it must necessarily exist, in a greater or less degree, in the larger cities, the folly of entrusting the expenditure of hundreds of thousands of dollars annually in the hands of a body of men, who are but barely able to look after their own affairs, is apparent. This class become the willing tools in the hands of unscrupulous politicians ; having no personal interest in the economical management of affairs, nothing to lose in the wasteful, taxes have no terrors for them and their vote is most easily influenced, if not corruptly purchasable for a consideration. Were the rights of property owners recognized in New York such an organization as Tammany could not exist, maintained in office as it is largely by the votes of those resident in the tenement-house district of the East Side, who bear but an infinitesimal part of the

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<sup>7</sup> 1 Dillon on Municipal Corporations, 23.

<sup>8</sup> Report of the New York Commission, 1877, page 40.



burdens of local taxation. How such representation of property owners is to be secured is a question which will require the most serious study and wise and most careful legislative action, but is beyond the limits of the present discussion.

In conclusion, then, to briefly summarize, better municipal government demands (1) constitutional limitations upon the action of the legislature in local affairs, (2) the abolition of the board system and the vesting of responsibility in the mayor, (3) the separation of the legislative and executive functions, really included in the second, (4) restriction of the number of elective offices, (5) lengthening and rendering more certain the tenure of office, (6) the introduction of business methods and the exclusion of petty politics in municipal management, and finally (7) restrictions upon the suffrage so as to secure the proper representation of those upon whom in the end falls the burden of expense.