

## CHAPTER XLIV

### THE WORKING OF STATE GOVERNMENTS

THE difficulty I have already remarked of explaining to Europeans the nature of an American State, viz. that there is in Europe nothing similar to it, recurs when we come to inquire how the organs of government which have been described play into one another in practice. To say that a State is something lower than the nation but greater than a municipality, is to say what is obvious, but not instructive; for the peculiarity of the State is that it combines some of the features which are to Europeans characteristic of a nation and a nation only, with others that belong to a municipality.

The State seems great or small according to the point of view from which one regards it. It is vast if one regards the sphere of its action and the completeness of its control in that sphere, which includes the maintenance of law and order, nearly the whole field of civil and criminal jurisprudence, the supervision of all local governments, an unlimited power of taxation. But if we ask, Who are the persons that manage this great machine of government; how much interest do the citizens take in it; how much reverence do they feel for it? the ample proportions we had admired begin to dwindle, for the persons turn out to be insignificant, and the interest of the people to have steadily declined. The powers of State authorities are powers like those of a European parliament; but they are wielded by men most of whom are less distinguished and less respected by their fellows than are those who fill the city councils of Manchester or Cologne. Several States exceed in area and population some ancient European monarchies. But their annals may not have been illumined by a single striking event or brilliant personality.

A further difficulty in describing how a State government

works arises from the endless differences of detail between the several States. The organic frame of government is similar in all; but its functional activities vary according to the temper and habits, the ideas, education, and traditions of the inhabitants of the State. A European naturally says, "Select a typical State, and describe that to us." But there is no such thing as a typical State. Massachusetts or Connecticut is a fair sample of New England, Minnesota or Iowa of the North-West; Georgia or Alabama shows the evils, accompanied no doubt by great recuperative power, that still vex the South; New York and Illinois the contrast between the tendencies of an ignorant city mob and the steady-going farmers of the rural counties. But to take any one of these States as a type, asking the reader to assume what is said of it to apply equally to the other forty-three commonwealths, would land us in inextricable confusions. I must therefore be content to speak quite generally, emphasizing those points in which the colour and tendencies of State governments are much the same over the whole Union, and begging the European reader to remember that illustrations drawn, as they must be drawn, from some particular State, will not necessarily be true of every other State government, because its life may go on under different conditions.

The State governments, as has been observed already, bear a family likeness to the National or Federal government, a likeness due not only to the fact that the latter was largely modelled after the systems of the old thirteen States, but also to the influence which the Federal Constitution has exerted ever since 1789 on those who have been drafting or amending State Constitutions. Thus the Federal Constitution has been both child and parent. Where the State Constitutions differ from the Federal, they invariably differ in being more democratic. It still expresses the doctrines of 1787. They express the views of later days, when democratic ideas have been more rampant, and men less cautious than the sages of the Philadelphia Convention have given legal form to popular beliefs. This difference, which appears not only in the mode of appointing judges, but in the shorter terms which the States allow to their officials and senators, comes out most clearly in the relations established between the

legislative and the executive powers. The National executive, though disjoined from the legislature in a way strange to Europeans, is nevertheless all of a piece. The President is supreme; his ministers are his subordinates, chosen by him from among his political associates. They act under his orders; he is responsible for their conduct. But in the States there is nothing even distantly resembling a cabinet. The chief executive officials are directly elected by the people. They hold by a title independent of the State governor. They are not, except so far as some special statute may provide, subject to his directions, and he is not responsible for their conduct, since he cannot control it. As the governor need not belong to the party for the time being dominant in the legislature, so the other State officials need not be of the same party as the governor.<sup>1</sup> They may even have been elected at a different time, or for a longer period.

A European, who studies the mechanism of State government—very few Europeans so far having studied it—is at first puzzled by a system which contradicts his preconceived notions. "How," he asks, "can such machinery work? One can understand the scheme under which a legislature rules through officers whom it has, whether legally or practically, chosen and keeps in power. One can even understand a scheme in which the executive, while independent of the legislature, consists of persons acting in unison, under a head directly responsible to the people. But will not a scheme, in which the executive officers are all independent of one another, yet not subject to the legislature, want every condition needed for harmonious and efficient action? They obey nobody. They are responsible to nobody, except a people which only exists in concrete activity for one election day every two years, when it is dropping papers into the ballot-box. Such a system seems the negation of a system, and more akin to chaos."

In his attempts to penetrate this mystery, our European receives little help from his usually helpful American friends, simply because they do not understand his difficulty. Light dawns on him when he perceives that the executive business

<sup>1</sup> Thus Massachusetts elected in 1891 (and again in 1892) a Democratic governor, but her other State officials from the Republican party.

of a State is such as not to need any policy, in the European sense, and therefore no harmony of view or purpose among those who manage it. Everything in the nature of State policy belongs to the legislature, and to the legislature alone.

Compare the Federal President with the State Governor. The former has foreign policy to deal with, the latter has none. The former has a vast patronage, the latter has scarcely any. The former has the command of the army and navy, the latter has only the militia, insignificant in ordinary times. The former has a post-office, but there is no State postal-service. Little remains to the Governor except his veto, which is not so much an executive as a legislative function; the duty of maintaining order, which becomes important only when insurrection or riot breaks out; and the almost mechanical function of representing the State for various matters of routine, such as demanding from other States the extradition of offenders, issuing writs for the election of congressmen or of the State legislature, receiving the reports of the various State officials. These officials, even the highest of them who correspond to the cabinet ministers in the National government, are either mere clerks, performing work, such as that of receiving and paying out State moneys, strictly defined by statute, and usually checked by other officials, or else are in the nature of commissioners of inquiry, who may inspect and report, but can take no independent action of importance. Policy does not lie within their province; even in executive details their discretion is confined within narrow limits. They have, no doubt, from the governor downwards, opportunities for jobbing and malversation; but even the less scrupulous are restrained from using these opportunities by the fear of some investigating committee of the legislature, with possible impeachment or criminal prosecution as a consequence of its report. Holding for terms which seldom exceed two or three years, they feel the insecurity of their position; but the desire to earn re-election by the able and conscientious discharge of their functions, is a less effective motive than it would be if the practice of re-electing competent men were more frequent. Unfortunately here, as in Congress, the tradition of many States is, that when a man has enjoyed an office, however well he may have served the public, some one else ought to have the next turn.

The reason, therefore, why the system I have sketched rubs along in the several States is, that the executive has little to do, and comparatively small sums to handle. The further reason why it has so little to do is two-fold. Local government is so fully developed that many functions, which in Europe would devolve on a central authority, are in all American States left to the county, or the city, or the township, or the school district. These minor divisions narrow the province of the State, just as the State narrows the province of the central government. And the other reason is, that legislation has in the several States pushed itself to the farthest limits, and so encroached on subjects which European legislatures would leave to the executive, that executive discretion is extinct, and the officers are the mere hands of the legislative brain, which directs them by statutes drawn with extreme minuteness, carefully specifies the purposes to which each money grant is to be applied, and supervises them by inquisitorial committees.

It is a natural consequence of these arrangements that State office carries little either of dignity or of power. A place is valued chiefly for its salary, or for such opportunities of obliging friends or securing commissions on contracts as it may present though in the greatest States the post of attorney-general or comptroller is often sought by able men. A State Governor, however, is not yet a nonentity. In more than one State a sort of perfume from the old days lingers round the office, as in Massachusetts, where the traditions of last century were renewed by the eminent man who occupied the chair of the commonwealth during the War of Secession and did much to stimulate and direct the patriotism of its citizens. Though no one would nowadays, like Mr. Jay in 1795, exchange the chief justiceship of the United States for the governorship of his State, a Cabinet minister will sometimes, as Mr. Folger did a few years ago, seek to quit his post in order to obtain the governorship of a great State like New York. In all States, the Governor, as the highest official and the depository of State authority, may at any moment become the pivot on whose action public order turns. In the Pennsylvania riots of 1877 it was the accidental absence of the Governor on a tour in the West which enabled the forces of sedition to gather strength. During the more recent disturbances which large strikes, espe-

cially among railway employés, have caused in the West, the prompt action of a Governor has preserved or restored tranquillity in more than one State; while the indecision of the Governor of an adjoining one has emboldened strikers to stop traffic, or to molest workmen who had been hired to replace them. So in a commercial crisis, like that which swept over the Union in 1837, when the citizens are panic-stricken and the legislature hesitates, much may depend on the initiative of the Governor, to whom the eyes of the people naturally turn. His right of suggesting legislative remedies, usually neglected, then becomes significant, and may abridge or increase the difficulties of the community.

It is not, however, as an executive magistrate that a State Governor usually makes or mars a reputation, but in his quasi-legislative capacity of agreeing to or vetoing bills passed by the legislature. The merit of a Governor is usually tested by the number and the boldness of his vetoes; and a European enjoys, as I did in the State of New York in 1870, the odd spectacle of a Governor appealing to the people for re-election on the ground that he had defeated in many and important instances the will of their representatives solemnly expressed in the votes of both Houses. That such appeals should be made, and often made successfully, is due not only to the distrust which the people entertain of their legislatures, but also, to their honour be it said, to the respect of the people for courage. They like above all things a strong man; just as English constituencies prefer a candidate who refuses to swallow pledges or be dictated to by cliques.

This view of the Governor as a check on the legislature explains why the Americans think it rather a gain than an injury to the State that he should belong to the party which is for the time being in a minority in the legislature. How the phenomenon occurs may be seen by noting the different methods of choice employed. The Governor is chosen by a mass vote of all citizens over the State. The representatives are chosen by the same voters, but in districts. Thus one party may have a majority on a gross poll of the whole State, but may find itself in a minority in the larger number of electoral districts. This happens in New York State, on an average, in two years out of every three. The mass vote shows a dem-

ocratic majority, because the Democrats are overwhelmingly strong in New York City, and some other great centres of population. But in the rural districts and most of the smaller towns the Republican party commands a majority sufficient to enable them to carry most districts: Hence, while the Governor is usually a Democrat, the legislature is often Republican. Little trouble need be feared from the opposition of the two powers, because such issues as divide the national parties have scarce any bearing on State affairs. Some good may be hoped, because a Governor of the other party is more likely to check or show up the misdeeds of a hostile Senate or Assembly than one who, belonging to the group of men which guides the legislature, has a motive for working with them, and may expect to share any gains they can amass.<sup>1</sup>

Thus we are led back to the legislature, which is so much the strongest force in the several States that we may almost call it the Government and ignore all other authorities. Let us see how it gets on without that guidance which an executive ministry supplies to the Chambers of every free European country.

As the frame of a State government generally resembles the National government, so a State legislature resembles Congress. In most States, it exaggerates the characteristic defects of Congress. It has fewer able and high-minded men among its members. It has less of recognized leadership. It is surrounded by temptations relatively greater. It is guarded by a less watchful and less interested public opinion. But before we inquire what sort of men fill the legislative halls, let us ask what kinds of business draw them there.

The matter of State legislation may be classified under three heads:

I. Ordinary private law, *i.e.* contracts, torts, inheritance, family relations, offences, civil and criminal procedure.

<sup>1</sup> Sometimes, however, inconvenience arises from the hostility of the State Senate and the Governor. Quite recently the Senate of New York persistently refused to confirm the nominations made to certain offices by the Governor, with the effect of securing the retention in office long beyond their legal term of several officials, these old officials holding on and drawing their salaries because no new men had been duly appointed to fill their places. The Senate was thought to have behaved ill; but the Governor was not trusted and neither exerted nor deserved to exert any moral authority.

II. Administrative law, including the regulation of municipal and rural local government, public works, education, the liquor traffic, vaccination, adulteration, charitable and penal establishments, the inspection of mines or manufactories, together with the general law of corporations, of railroads, and of labour, together also with taxation, both State and local, and the management of the public debt.

III. Measures of a local and special nature, such as are called in England "private bills," *i.e.* bills for chartering and incorporating gas, water, canal, tramway, or railway companies, or for conferring franchises in the nature of monopolies or privileges upon such bodies, or for altering their constitutions, for incorporating cities and minor communities and regulating their affairs.

Comparing these three classes of business, between the first and second of which it is no doubt hard to draw a sharp line, we shall find that bills of the second class are more numerous than those of the first, bills of the third more numerous than those of the other two put together. Ordinary private law, the law which guides or secures us in the every day relations of life, and upon which nine-tenths of the suits between man and man are founded, is not greatly changed from year to year in the American States. Many Western, and a few Eastern States have made bold experiments in the field of divorce, others have added new crimes to the statute-book and amended their legal procedure. But commercial law, as well as the law of property and civil rights in general, remains tolerably stable. People are satisfied with things as they are, and the influence of the legal profession is exerted against tinkering. In matters of the second class, which I have called administrative, because they generally involve the action of the State or of some of the communities which exist within it, there is more legislative activity. Every session sees experiments tried in this field, generally with the result of enlarging the province of government, both by interfering with the individual citizen and by attempting to do things for him which apparently he either does not do or does not do well for himself.<sup>1</sup> But the general

<sup>1</sup> See the chapter on "Laissez Faire," in Vol. II.

Many of these measures have been prepared by associations outside the legislature, who embody their wishes in a bill, give it to a member or members.

or "public" legislation, is dwarfed by the "private bill" legislation which forms the third of our classes. The bills that are merely local or special outnumber general bills everywhere, and outnumber them enormously in those States which, like Virginia, or Mississippi (down till 1890), do not require corporations to be formed under general laws.<sup>1</sup> Such special bills are condemned by thoughtful Americans, not only as confusing the general law, but because they furnish, unless closely watched, opportunities for perpetrating jobs, and for inflicting injustice on individuals or localities in the interest of some knot of speculators. They are one of the scandals of the country. But there is a further objection to their abundance in the State legislatures. They are a perennial fountain of corruption. Promoted for pecuniary ends by some incorporated company or group of men proposing to form a company, their passage is secured by intrigue, and by the free expenditure of money which finds its way in large sums to the few influential men who control a State Senate or Assembly, and in smaller sums to those among the rank and file of members who are accessible to these solid arguments, and careless of any others. It is the possibility of making profit in this way out of a seat in the legislature which draws to it not a few men in those States which, like New York, Pennsylvania, or Illinois, offer a promising field for large pecuniary enterprises. Where the carcass is there will the vultures be gathered together. The money power, which is most formidable in the shape of large corporations, chiefly attacks the legislatures of these great States. It is, however, felt in nearly all States. And even where, as is the case in most States, only a small minority of members are open to bribes, the opportunity which these numerous local and special bills offer to a man of making himself important, of obliging his friends, of securing something for his locality and thereby confirming his local influence, is sufficient to make a seat in the legislature desired chiefly in respect of such bills, and to obscure, in the eyes of most

and get it passed, perhaps with scarcely any debate. Thus not only the Labour organizations, such as the Knights of Labour, and the Grangers (farmers' clubs), but the Women's Christian Temperance Union, the medical profession, the dentists, the dairymen, get their favourite schemes enacted.

<sup>1</sup> In 1890, the Kentucky legislature passed 176 public and 1752 local or private acts.

members, the higher functions of general legislation which these assemblies possess. One may apply to these commonwealths, though in a new sense, the famous dictum, *corruptissima republica plurimae leges*.

One form of this special legislation is peculiarly attractive and pernicious. It is the power of dealing by statute with the municipal constitution and actual management of cities. Cities grow so fast that all undertakings connected with them are particularly tempting to speculators. City revenues are so large as to offer rich plunder to those who can seize the control of them. The vote which a city casts is so heavy as to throw great power into the hands of those who control it, and enable them to drive a good bargain with the wirepullers of a legislative chamber. Hence the control exercised by the State legislature over city government is a most important branch of legislative business, a means of power to scheming politicians, of enrichment to greedy ones, and if not of praise to evil-doers, yet certainly of terror to them that do well.<sup>1</sup>

We are now in a position, having seen what the main business of a State legislature is, to inquire what is likely to be the quality of the persons who compose it. The conditions that determine their quality may be said to be the following:—

I. The system of selection by party conventions. As this will be described in subsequent chapters (Part III.), I will here say no more than that it prevents the entrance of good men and favours that of bad ones.

II. The habit of choosing none but a resident to represent an electoral district, a habit which narrows the field of choice, and not only excludes competent men from other parts of the State, but deters able men generally from entering State politics, since he who loses his seat for his own district cannot find his way back to the legislature as member for any other.

III. The fact that the capital of a State — *i.e.* the meeting-place of the legislature and residence of the chief officials, is

<sup>1</sup> Although this tinkering with city government is most harmful where the cities are large, it is abundant even where the cities are small. For instance, in Wisconsin, a Western State with only one large city (Milwaukee), there were passed in the session of 1885 about 500 acts granting or dealing with city charters, filling 1342 pages of print. All the other acts of the year filled only about 600 pages.— Address delivered by Dr. Albert Shaw (in 1888) at Cornell University.