

usually a small town, at a distance from the most populous city or cities of the State, and therefore a place neither attractive socially nor convenient for business men or lawyers, and which, it may be remarked in passing, is more shielded from a vigilant public opinion than is a great city, with its keen and curious press. Pennsylvanians who might be willing to serve in a legislature meeting at Philadelphia are less inclined to attend one at Harrisburg. An eminent citizen of Connecticut observed to me that, whereas everybody in that little State could reach Hartford in a few hours from its farthest corner, a member attending the legislature of Illinois or Wisconsin might often have to quit his home and live during the session at Springfield or Madison, because these capitals are remote from the outer parts of those large commonwealths. He thought this a factor in the comparative excellence of the Connecticut legislature.

IV. The nature of the business that comes before a State legislature. As already explained, by far the largest part of this business excites little popular interest and involves no large political issues. Unimportant it is not. Nothing could well be more important than to repress special legislation, and deliver cities from the fangs of the spoiler. But its importance is not readily apprehended by ordinary people, the mischiefs that have to be checked being spread out over a multitude of bills, most of them individually insignificant, however ruinous in their cumulated potency. Hence a leading politician seldom troubles himself to enter a State legislature, while the men who combine high character with talent and energy are too much occupied in practising their profession or pushing their business to undertake the dreary task of wrangling over gas and railroad bills in committees, or exerting themselves to win some advantage for the locality that returns them.

I have not mentioned among these depressing conditions the payment of salaries to members, because it makes little difference. It is no doubt an attraction to some of the poorer men, to penurious farmers, or half-starved lawyers. But in attracting them it does not serve to keep out any better men. Probably the sense of public duty would be keener if legislative work was not paid at all. But, looking at the question practi-

cally, I doubt whether the discontinuance of salaries would improve the quality of American legislators. The drawbacks to the position which repel the best men, the advantages which attract inferior men, would remain the same as now; and there is nothing absurd in the view that the places of those who might cease to come if they did not get their five dollars a day would be taken by men who would manage to make as large an income in a less respectable way.

After this, it need scarcely be said that the State legislatures are not high-toned bodies. The best seem to be those of some of the New England States, particularly Massachusetts, where the venerable traditions surrounding an ancient commonwealth do something, though not enough, to sustain the dignity of the body and induce good men to enter it. This legislature, called the General Court, is, according to the best authorities, substantially pure, and does its work passably well. Its composition is, however, inferior to that of the General Courts of sixty years ago, and has not improved of late. Connecticut has a fair Senate, and a tolerable House of Representatives. It is also reported to be reasonably honest, though not free from demagogism. Vermont is pure; New Hampshire, a State where constituencies are reproached with bribery, less respectable. Next come some of the North-Western States, where the population, consisting almost entirely of farmers, who own as well as work their land, sends up members who fairly represent its average intelligence, and are little below the level of its average virtue. There are no traditions in such States, and there are already corporations rich enough to corrupt members and be themselves black-mailed. Hence one is prepared to find among the legislators professional politicians of the worst class. But the percentage of such men is small in States like Michigan, Iowa, Minnesota, Oregon, probably not more than from five to ten per cent, the other members being often ignorant and narrow, but honest and well-intentioned. In Ohio and Indiana the proportion of black sheep may be somewhat higher.

It is hard to present a general view of the Southern States, both because there are great differences among them, and because they are still in a state of transition, generally, it would seem, transition towards a better state of things. Roughly speaking, their legislatures stand below those of the North-

West, though in most a few men of exceptional ability and standing may be found. Kentucky and Georgia are among the better States, Mississippi and Arkansas are reported as among the less pure. Louisiana, infected by New Orleans, is admittedly the worst.

The lowest place belongs to the States which, possessing the largest cities, have received the largest influx of European immigrants, and have fallen most completely under the control of unscrupulous party managers. New York, Philadelphia, Baltimore, Chicago, Cincinnati, San Francisco have done their best to poison the legislatures of the States in which they respectively lie by filling these bodies with members of a low type, as well as by being themselves the centres of enormous accumulations of capital. They have brought the strongest corrupting force into contact with the weakest and most corruptible material; and there has followed in Pennsylvania and New York such a Witches' Sabbath of jobbing, bribing, thieving, and prostitution of legislative power to private interest as the world has seldom seen. Of course even in these States the majority of the members are not bad men, for the majority come from the rural districts or smaller towns, where honesty and order reign as they do generally in Northern and Western America outside a few large cities. Many of them are farmers or small lawyers, who go up meaning to do right, but fall into the hands of schemers who abuse their inexperience and practise on their ignorance. One of the ablest and most vivacious of the younger generation of American politicians<sup>1</sup> says:

"Where a number of men, many of them poor, some of them unscrupulous, and others elected by constituents too ignorant to hold them to a proper accountability for their actions, are put into a position of great temporary power, where they are called to take action upon questions affecting the welfare of large corporations and wealthy private individuals, the chances for corruption are always great; and that there is much viciousness and political dishonesty, much moral cowardice, and a good deal of actual bribe-taking at Albany, no one who has had practical experience of legislation can doubt. At the same time, I think the good members outnumber the bad. . . . The representatives from the country districts are usually good men, well-to-do farmers, small lawyers, or prosperous storekeepers, and are shrewd, quiet, and honest. They are often

<sup>1</sup> Mr. Theodore Roosevelt of New York, in the *Century Magazine* for April 1885.

narrow-minded, and slow to receive an idea; but they cling to it with the utmost tenacity. For the most part they are native Americans, and those who are not are men who have become completely Americanized in their ways and habits of thought. . . . The worst legislators come from the great cities. They are usually foreigners of little or no education, with exceedingly misty ideas as to morality, and possessed of an ignorance so profound that it could only be called comic were it not for the fact that it has at times such serious effects on our laws. It is their ignorance quite as much as actual viciousness which makes it so difficult to procure the passage of good laws, or to prevent the passage of bad ones; and it is the most irritating of the many elements with which we have to contend in the fight for good government."<sup>1</sup>

The same writer goes on to say that after sitting in three New York legislatures he came to think that about one-third of the members were open to corrupt influences, but that although the characters of those men were known to their colleagues and to the "lobby," it was rarely possible to convict them. Many of this worst third had not gone into the legislature meaning to make gain out of the position, but had been corrupted by it. They found that no distinction was to be won there by legitimate methods, and when temptation came in their way they fell, having feeble consciences and no statesmanlike knowledge. Or they were anxious above all things to pass some local measure on which their constituents were set, and they found they could not win the support of other members except by becoming accomplices in the jobs or "steals" which these members were "putting through." Or they gained their seat by the help of some influential man or powerful company, and found themselves obliged to vote according to the commands of their "owner."<sup>2</sup>

<sup>1</sup> Any one with experience of legislative bodies will agree with the view that ignorance and stupidity cause more trouble than bad intentions, seeing that they are more common, and are the materials on which men of bad intentions play.

<sup>2</sup> "There came before a committee (of the New York House) of which I happened to be a member, a perfectly proper bill in the interest of a certain corporation; the majority of the committee, six in number, were thoroughly bad men, who opposed with the hope of being paid to cease their opposition. When I consented to take charge of the bill, I stipulated that not a penny should be paid to ensure its passage. It therefore became necessary to see what pressure could be brought to bear on the recalcitrant members; and accordingly we had to find out who were the authors and sponsors of their political being. Three proved to be under the control of local statesmen of the same party as themselves, and of equally bad moral character; one was ruled by a politician of

The corrupt member has several methods of making gains. One, the most obvious, is to exact money or money's worth for his vote. A second is to secure by it the support of a group of his colleagues in some other measure in which he is personally interested, as for instance a measure which will add to the value of land near a particular city. This is "log-rolling," and is the most difficult method to deal with, because its milder forms are scarcely distinguishable from that legitimate give and take which must go on in all legislative bodies. It is, however, deemed so mischievous, that four new Constitutions have expressly enacted that it shall be held to constitute the offence of solicitation or bribery, and be punishable accordingly.<sup>1</sup> A third is black-mailing. A member brings in a bill either specially directed against some particular great corporation, probably a railway, or proposing so to alter the general law as in fact to injure such a corporation, or a group of corporations. He intimates privately that he is willing to "see" the directors or the law-agents of the corporation, and is in many cases bought off by them, keeping his bill on the paper till the last moment so as to prevent some other member from repeating the trick. Even in the North-Western States there is usually a group of such "scallawag" members, who, finding the \$300 they receive insufficient, increase their legislative income by levying this form of taxation upon the companies of the State. Nor is the device (technically called a "strike") quite unknown in New England, where a ten hours' labour bill, for instance, has frequently been brought in to frighten the large corporations and other capitalists into inducing its author to drop it, the inducements being such as capitalists can best apply. Every considerable railway keeps an agent or agents continually on the spot while a State legislature is in session, watching the bills brought in and the committees that deal with them. Such an agent sometimes relies on the friends of the railway to defeat these bills, and uses the usual expedients for creating friends. But it is often cheaper and easier to

unsavoury reputation from a different city; the fifth, a Democrat, was owned by a Republican (!) Federal official, and the sixth by the president of a horse-car [street tramway] company. A couple of letters from these two magnates forced the last-mentioned members to change front on the bill with surprising alacrity."—Mr. Theodore Roosevelt, *ut supra*.

<sup>1</sup> North Dakota, Montana, Idaho, and Wyoming.

square the assailant.<sup>1</sup> Of course the committees are the focus of intrigue, and the chairmanship of a committee the position which affords the greatest facilities for an unscrupulous man. Round the committees there buzzes that swarm of professional agents which Americans call "the lobby," soliciting the members, threatening them with trouble in their constituencies, plying them with all sorts of inducements, treating them to dinners, drinks, and cigars.<sup>2</sup>

In these demoralized States the State Senate is apt to be a worse body than the House, whereas in the better States the Senate is usually the superior body.<sup>3</sup> The reason is two-fold. As the Senate is smaller—in New York it consists of 32 members against 128 in the Assembly—the vote of each member is of more consequence, and fetches, when venal, a higher price. Other things being equal, a stronger temptation is more likely to overcome virtue, and other things practically are equal, because it is just as hard to fix responsibility on a senator as on an Assembly man, and the post is no more dignified. And the second reason is that the most adroit and practised intriguers work their way up into the Senate, where their power (which includes the confirmation of appointments) is greater and their vote more valuable. There is a survival of the fittest, but as fitness includes the absence of scruples, this comes in practice to mean the natural selection of the worst.

<sup>1</sup> The president of a Western railroad, an upright as well as able man, told me that he was obliged to keep constant guard at the capital of the State in which the line lay, while the legislature was sitting, and to use every means to defeat bills aimed at the railway, because otherwise the shareholders would have been ruined. He deplored the necessity. It was a State of comparatively good tone, but there was such a prejudice against railroads among the farming population, that mischievous bills had a chance of success, and therefore desperate remedies were needed.

<sup>2</sup> "One senator, who was generally known as 'the wicked Gibbs,' spent two years at Albany, in which he pursued his 'business' so shamelessly that his constituents refused to send him there again; but he coolly came out a year later and begged for a return to the Assembly on the ground that he was financially embarrassed, and wished to go to the Assembly in order to retrieve his fortunes on the salary of an Assembly-man, which is \$1500 (£300)!"—Mr. J. B. Bishop of New York, in a paper entitled *Money in City Elections*, p. 6.

<sup>3</sup> Some of my informants would not admit this; and some fixed the percentage of corrupt men, even at Albany, lower than Mr. Roosevelt does. Writers of the pessimistic school make it even higher. I give here and elsewhere what seem to be on the whole the best supported views, though, as Herodotus says about the legend of Cyrus, "knowing three other paths of story also."

I escape from this Stygian pool to make some observations which seem applicable to State legislatures generally, and not merely to the most degraded.

The spirit of localism, surprisingly strong everywhere in America, completely rules them. A member is not a member for his State, chosen by a district but bound to think first of the general welfare of the commonwealth. He is a member for Brownsville, or Pompey, or the Seventh district, and so forth, as the case may be. His first and main duty is to get the most he can for his constituency out of the State treasury, or by means of State legislation. No appeal to the general interest would have weight with him against the interests of that spot. What is more, he is deemed by his colleagues of the same party to be the sole exponent of the wishes of the spot, and solely entitled to handle its affairs. If he approves a bill which affects the place and nothing but the place, that is conclusive. Nobody else has any business to interfere. This rule is the more readily accepted, because its application all round serves the private interest of every member alike, while members of more enlarged views, who ought to champion the interests of the State and sound general principles of legislation, are rare. When such is the accepted doctrine as well as invariable practice, log-rolling becomes natural and almost legitimate. Each member being the judge of the measure which touches his own constituency, every other member supports that member in passing the measure, expecting in return the like support in a like cause. He who in the public interest opposes the bad bill of another, is certain to find that other opposing, and probably with success, his own bill however good.

The defects noted (Chapters XIV.-XVII.) as arising in Congress from the want of recognised leadership and of persons officially bound to represent and protect the interests of the people at large reappear in the State legislatures, on a smaller scale, no doubt, but in an aggravated form, because the level of ability is lower and the control of public opinion less. There is no one to withstand the petty localism already referred to; no one charged with the duty of resisting proposals which some noisy section may demand, but whose ultimate mischief, or pernicious effect as precedents, thoughtful men perceive.

There are members for districts, but no members for the people of the State. Thus many needless bills and many bad bills are passed. And when some difficult question arises, it may happen that no member is found able to grapple with it. Sometimes the governor comes to the rescue by appointing a commission of eminent men to devise and suggest to the legislature a measure to deal with the question. Sometimes the Constitution contains a provision that the judges shall report upon all defects in the judicial system in order that the needed reform may be thereupon carried. Such are the roundabout ways in which efforts are made to supply the want of capacity in the legislators, and the absence of a proper system of cooperation between the executive and legislative departments.

There is in State legislators, particularly in the West, a restlessness which, coupled with their limited range of knowledge and undue appreciation of material interests, makes them rather dangerous. Meeting for only a few weeks in the year, or probably in two years, they are alarmingly active during those weeks, and run measures through whose results are not apprehended till months afterwards. It is for this reason, no less than from the fear of jobbery, that the meeting of the legislature is looked forward to with anxiety by the "good citizens" in these communities, and its departure hailed as a deliverance. I once asked the governor of a far Western commonwealth how he got on with his legislature. "I won't say they are bad men," he answered, "but the pleasantest sight of the year to me is when at the end of the session I see their coat tails go round the street corner."

Both this restlessness and the general character of State legislation are illustrated by the enormous numbers of bills introduced in each session, comparatively few of which pass, because the time is too short, or opposing influences can be brought to bear on the committees.

There were introduced (in the sessions of 1885 or 1886) —

In Alabama	1469 bills	(442 passed)
" Kentucky	2390 "	(1400 " )
" Illinois	1107 "	(131 " )
" Pennsylvania	1065 "	(221 " )
" New York	2093 "	(681 " )

In ten States the total number of bills introduced was 12,449, of which 3793 passed. The vast majority of these bills were local or special.<sup>1</sup> In 1889 there were introduced in the legislatures of eleven States 10,838 public bills, of which only 1878 were passed, besides 3639 private Acts passed in four of these States.<sup>2</sup> In South Carolina, during the four years preceding 1886, out of about 900 Acts passed, only 256 related to matters of general public concern. Acts of incorporation, grants of inheritance, changes of names and releases from indebtedness, had consumed a large proportion of the time of the legislature at a great public expense, and to the serious detriment of the State. Yet South Carolina is not a State in which there is much capital or many large undertakings. The place which the petty matters mentioned take in it would, in more prosperous communities, be taken by bills relating to railroad and other companies, and to cities. The expense to which the States are put by their legislatures, with results rather injurious than beneficial, is very great.

"In South Carolina, where the session is short, the cost is reported by the secretary of state at only \$52,000. But in Pennsylvania, with 158 days of session, it is \$686,500 (£137,300). In Connecticut the last session of ninety days cost \$98,000, while the general expenses of the legislature of California are \$130,000 for a session of sixty days. The cost of printing, of travelling, and other incidental expenses must be added in order to form an accurate estimate of the burden imposed on the tax-payers of the States to carry on this badly-managed business of law-making, which varies from a daily average cost of about \$1000 per diem

<sup>1</sup> Even among the Acts which appear in the statute-books of the States, under the heading of general laws there are many of a local or special character. I find, on referring to the laws of Louisiana passed in 1886, that of 96 so-called general Acts passed, 30 were really local or special. In Nebraska, in 1887, there were passed 114 general Acts, 22 of which, while classed among general laws, were really local or personal, and 17 were described as special. In Minnesota, in 1887, of 265 classed as general Acts, 36 seem from their titles to be local or special. But it is not always easy to discover the substance from the title, so the number of special Acts classed as general may be still larger. Some States (*e.g.* Wyoming) now forbid the passing of any private Acts.

As remarked in an earlier chapter, the total number of bills of all kinds introduced in 1885 into the British Parliament, which is the sole legislative authority for a population of thirty-eight millions, was 481, of which 282 passed.

<sup>2</sup> I take these figures from the presidential address of Mr. Henry Hitchcock to the American Bar Association at its annual meeting in 1890.

for every legislative session to over \$4000 per diem, making an aggregate in the total number of States, and in Congress, which it is impossible to ascertain with exactness, but which cannot, I think, be less than \$10,000,000 (£2,000,000), not as an exceptional outlay, but as the price paid for current legislation."<sup>1</sup>

Nothing is more remarkable about these State legislators than their timidity. No one seems to think of having an opinion of his own. In matters which touch the interests of his constituents, a member is, of course, their humble servant. In burning party questions—they are few, and mostly personal—he goes with his party. In questions of general public policy he looks to see how the cat jumps; and is ready to vote for anything which the people, or any active section of the people, cry out for, though of course he may be secretly unfriendly, and may therefore slyly try to spoil a measure. This want of independence has some good results. It enables a small minority of zealous men, backed by a few newspapers, to carry schemes of reform which the majority regard with indifference or hostility. Thus in bodies so depraved as the legislatures of New York and Pennsylvania, bills have lately been passed improving the charters of cities, creating a secret ballot, and even establishing an improved system of appointments to office. A few energetic reformers went to Albany and Harrisburg to strengthen the hands of the little knot of members who battle for good government there, and partly frightened, partly coaxed a majority of the Senate and House into adopting proposals opposed to the interests of professional politicians. Some ten years ago, two or three high-minded and sagacious ladies obtained by their presence at Albany the introduction of reforms into the charitable institutions of New York city. The ignorance and heedlessness of the "professionals," who do not always see the results of legislative changes, and do not look forward beyond the next few months, help to make such triumphs possible; and thus, as the Bible tells us that the wrath of man shall praise God, the faults of politicians are turned to work for righteousness.

In the recent legislation of many States, especially Western States, there is a singular mixture of philanthropy and humanitarianism with the folly and jobbery I have described,

<sup>1</sup> Address of Mr. W. A. Butler to the American Bar Association in 1886.

like threads of gold and silver woven across a warp of dirty sacking. Every year sees bills passed to restrict the sale of liquor, to prevent the sale of indecent or otherwise demoralizing literature, to protect women and children, to stamp out lotteries and gambling houses, to improve the care of the blind, the insane, and the poor, which testify to a warm and increasing interest in all good works. These measures are to be explained, not merely by that power which an active and compact minority enjoys of getting its own way against a crowd of men bent each on his own private gain, and therefore not working together for other purposes, but also by the real sympathy which many of the legislators, especially in the rural districts, feel for morality and for suffering. Even the corrupt politicians of Albany were moved by the appeals of the philanthropic ladies to whom I have referred; much more then would it be an error to think of the average legislator as a bad man, merely because he will join in a job, or deal unfairly with a railroad. The moral standard of Western America is not quite the same as that of England, just as the standard of England differs from that of Germany or France. It is both higher and lower. Some sins excite more anger or disgust than they do in England; some are more lightly forgiven, or more quickly forgotten. Laxity in the discharge of a political trust belongs to the latter category. The newspapers accuse everybody; the ordinary citizen can seldom tell who is innocent and who is guilty. He makes a sort of compromise in his own mind by thinking nobody quite black, but everybody gray. And he goes on to think that what everybody does cannot be very sinful.

## CHAPTER XLV

### REMEDIES FOR THE FAULTS OF STATE GOVERNMENTS

THE defects in State governments, which our examination of their working has disclosed, are not those we should have expected. It might have been predicted, and it was at one time believed, that these authorities, consumed by jealousy and stimulated by ambition, would have been engaged in constant efforts to extend the sphere of their action and encroach on the National government. This does not happen, and seems most unlikely to happen. The people of each State are now not more attached to the government of their own commonwealth than to the Federal government of the nation, whose growth has made even the greatest State seem insignificant beside it.

A study of the frame of State government, in which the executive department is absolutely severed from the legislative, might have suggested that the former would become too independent, misusing its powers for personal or party purposes, while public business would suffer from the want of concert between the two great authorities, that which makes and that which carries out the law.

This also has proved in practice to be no serious evil. The legislature might indeed conceivably work better if the governor, or some of his chief officials, could sit in it and exercise an influence on its deliberations. Such an adaptation of the English cabinet system has, however, never been thought of for American States; and the example of the Provincial legislatures of Canada, in each of which there is a responsible ministry sitting in the legislature, does not seem to have recommended it for imitation. Those who founded the State governments did not desire to place any executive leaders in a representative assembly. Probably they were rather in-