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-

clined to fear that the governor, not being accountable to the legislature, would retain too great an independence. The recent creation of various administrative officers or Boards has gone some way to meet the difficulties which the incompetence of the legislatures causes, for these officers or Boards frequently prepare bills which some member of the legislature introduces, and which are put through without opposition, perhaps even without notice, except from a handful of members. On the whole, the executive arrangements of the State work well, though they might, in the opinion of some judicious publicists, be improved by vesting the appointment of the chief officials in the governor, instead of leaving it to direct popular election. This would tend to give more unity of purpose and action to the administration. The collisions which occur in practice between the governor and the legislature relate chiefly to appointments, that is to say, to personal matters, not involving issues of State policy.

The real blemishes in the system of State government are all found in the composition or conduct of the legislatures. They are the following: —

Inferiority, as respects knowledge, skill, and sometimes also conscience, of the bulk of the men who fill these bodies.

Improvidence in matters of finance.

Heedlessness in passing administrative bills.

Want of proper methods for dealing with local and special bills.

Failure of public opinion adequately to control legislation, and particularly local and special bills.

The practical result of these blemishes has been to create a large mass of State and local indebtedness which ought never to have been incurred, to allow foolish experiments in law-making to be tried, and to sanction a vast mass of private enterprises, in which public rights and public interests become the sport of speculators, or a source of gain to monopolists, with the incidental consequence of demoralizing the legislators themselves and creating an often unjust prejudice against all corporate undertakings.

What are the checks or remedies which have been provided to limit or suppress these evils? Any one who has followed the account given of the men who compose the legislatures and

the methods they follow will have felt that these checks must be considerable, else the results would have been worse than those we see. All remedies are directed against the legislative power, and may be arranged under four heads.

First, there is the division of the legislature into two houses. A job may have been smuggled through one house, but the money needed to push it through the other may be wanting. Some wild scheme, professing to benefit the farmers, or the cattlemen, or the railroad employés, may, during its passage through the Assembly, rouse enough attention from sensible people to enable them to stop it in the Senate. The mere tendency of two chambers to disagree with one another is deemed a benefit by those who hold, as the Americans do, that every new measure is *prima facie* likely to do more harm than good. Most bills are bad — *ergo*, kill as many as you can. Each house, moreover, has, even in such demoralized State legislatures as those of New York or Pennsylvania, a satisfaction, if not an interest, in unveiling the tricks of the other.

Secondly, there is the veto of the governor. How much the Americans value this appears from the fact that, whereas in 1789 there was only one State, Massachusetts, which vested this power in the chief magistrate, all of the now existing States except four give it to him. Some constitutions (including all the new ones) contain the salutary provision that the governor may reject one or more items of an appropriation bill (sometimes even of any bill) while approving the bill as a whole; and this has been found to strengthen his hands immensely in checking the waste of public money on bad enterprises. This veto power, the great stand-by of the people of the States, illustrates admirably the merits of concentrated responsibility. The citizens, in choosing the governor to represent the collective authority of the whole State, lay on him the duty of examining every bill on its merits. He cannot shelter himself behind the will of the representatives of the people, because he is appointed to watch and check those representatives as a policeman watches a suspect. He is bound to reject the bill, not only if it seems to him to infringe the Constitution of the State, but also if he thinks it in any wise injurious to the public, on pain of being himself suspected of carelessness, perhaps of complicity in some corrupt design.

The legislature may, of course, pass the bill over his veto by a two-thirds vote; but although there may exist a two-thirds majority in favour of the measure, they may fear, after the veto has turned the lamp of public opinion upon it, to take so strong a step. There are, of course, great differences between one governor and another, as well as between one State and another, as regards the honesty with which the power is exercised, for it may be, and sometimes is, used by a "Ring" governor to defeat measures of reform. But it is a real and effective power everywhere; and in the greatest States, where the importance of the office sometimes secures the election of an able and courageous man, it has done excellent service.[1]

Thirdly, there are limitations imposed on the competence of the legislature. I have already mentioned some of these limitations, the most numerous, and at present the most important of which relate to special and local (or what would be called in England "private") bills. These bills, while they destroy the harmony and simplicity of the law, and consume the time of the legislature, are also so fertile a source of jobbery[2] that to expunge them or restrict them to cases where a special

[1] Although the existence of this ultimate remedy tends to make good members relax their opposition to bad bills, because they know that the veto will kill them, this is a less evil than the disuse of the veto would be.

[2] "In twelve States the legislature is forbidden to create any corporation whatever, municipalities included, except by general law, and in thirteen others to create by special Act any except municipal corporations, or those to which no other law is applicable. In some States corporations can be created by special Act only for municipal, charitable, or reformatory purposes. Such provisions are not intended to discourage the formation of private corporations. On the contrary, in all these States general laws exist under which they can be formed with great facility. Indeed the defects in some of these statutes, and their failure to provide safeguards against some at least of the very evils which they were intended to meet, might well suggest to legislators the question whether in avoiding the Scylla of special legislation they have not been drawn into the Charybdis of franchises indiscriminately bestowed. Perhaps the time will come when recommendations such as those urged by the New York railroad commission will be acted on, and the promoters of a new railroad will be obliged to furnish some better reason for its existence, and for their exercising the sovereign power of eminent domain, than the chance of forcing a company already established to buy them out — or, failing that, the alternative of being sold out under foreclosure, pending a receivership." — Hitchcock, *State Constitutions*, p. 36.

"A great field for favouritism and jobbery exists, when special Acts of incorporation are required for each case in which special favours and special privileges may be given away by a legislature that may be corruptly influenced, without imposing any reciprocal obligation on the corporation. Fully

statute was really needed, would be a great benefit. The constitutional prohibitions described effect this to some extent. Illinois, for instance, has by such prohibitions reduced her sessional statutes to about 300 pages, and Iowa averages only 200–250 pages, whereas the Wisconsin statutes of 1885 reached 2000 pages, there being in that State far less effective restrictions. But the powers of evil do not yield without a battle. All sorts of evasions are tried, and some succeed. For instance, there is a prohibition in the Constitution of New York to pass any but general laws relating to the government of cities. An Act is passed which is expressed to apply to cities with a population exceeding one hundred thousand, but less than two hundred thousand. There happens to be only one such city in the State, viz. Buffalo, but as there might be more, the law is general, and escapes the prohibition. So the Constitution of Ohio expressly provides that the legislature "shall pass no special act conferring corporate powers." But in 1890 nearly fifty such acts were passed, the provision being evaded by the use of general enacting words which can in fact apply only to one place. One act, for instance, authorized villages with a population of not less than 1903 nor more than 1912 to issue bonds for natural gas developments; another empowers any city having a population of 15,435, by the census of 1890, to levy a library tax.[1]

Provisions against special legislation are also evaded in another way, viz. by passing Acts which, because they purport to amend general Acts, are themselves deemed general. Here is a recent instance. The Constitution of New York prohibits the legislature from passing any private or local Act incorporating villages, or providing for building bridges. A general Act was passed in 1885 for the incorporation of villages, with general provisions as to bridges. Next year the following Act was passed, which I give verbatim. It amends the Act of 1885, by taking out of it all the counties in the State except

two-thirds of the lobbyism, jobbery, and log-rolling, the fraud and trickery that are common to our State legislatures, is due to this power of creating private corporations." — Ford, *Citizens' Manual*, ii. p. 68.

[1] Mr. Hitchcock (from whose address I take the Ohio instance) adds that the Supreme court of Ohio has held such evasions unconstitutional, but that they continue notwithstanding, the legislature, and the villages or cities taking their chance.

Westchester, and then excludes the application of the Act to two towns in Westchester. It is thus doubly a "private or local Act," but the prohibition of the Constitution is got round.[1]

CHAP. 556.

AN ACT to amend chapter two hundred and ninety-one of the laws of eighteen hundred and seventy, entitled "An Act for the Incorporation of Villages."

Passed June 4, 1886; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows: —

Village Incorporation Act of 1885, as to bridges, to apply only to part of Westchester County.

Section 1. — Section two of chapter four hundred and fifty of the laws of eighteen hundred and eighty-five, is hereby amended so as to read as follows: —

Section 2. — All of the counties in this State are hereby exempted from the provisions of this Act except the county of Westchester, but nothing in this Act contained shall be construed so as to apply to the towns of Greenburgh and Mount Pleasant in said county of Westchester.

Section 3. — This Act shall take effect immediately.

Where evasions of this kind become frequent the confusion of the statute-book is worse than ever, because you cannot tell without examination whether an Act is general or special.

The reader will have noticed in the heading of the Act just quoted the words "three-fifths being present." This is one of the numerous safeguards imposed on the procedure of the State legislatures. Others have been specified in Chapter XL. Their abundance in the newest Constitutions shows how these efforts to deal with the symptoms have failed to eradicate the disease, and their increasing minuteness bears witness to the endless evasions they seek to anticipate.[2]

[1] The Constitution of North Dakota (§ 70) expressly prohibits this evasion.

[2] For instance, it is sometimes provided that no bill shall be introduced within a certain period after the beginning or before the end of the session, so as to prevent bills from being smuggled through in the last days. This provision is evaded "by introducing a new bill after the time has expired when it may constitutionally be done, as an amendment to some pending bill, the whole of which, except the enacting clause, is struck out to make way for it. Thus, the member who thinks he may have occasion for the introduction of a new bill after the constitutional period has expired, takes care to introduce sham bills in due season, which he can use as stocks to graft upon, and which he uses irrespective of their character or contents. The sham bill is perhaps a bill to incorporate the city of Siam. One of the member's constituents applies to him for legislative permission to construct a dam across the Wild Cat River. Forthwith, by amendment, the bill, entitled a bill to incorporate the city of Siam, has all after the enacting clause stricken out, and it is made to provide, as its sole object, that John Doe may construct a dam across the Wild Cat. With this title, and in this form it is passed; but the house then considerately amends the title to correspond with the purpose of the bill, and the law is passed, and the Constitution at the same time saved!" — Cooley, *Constit. Limit.* p. 169 note.

The inventive genius of American legislators finds or makes many holes in the net which the people have tried to throw over them by the Constitution. Yet, though there be none of the restrictions mentioned which is not sometimes violated or evaded, they have, on the whole, worked well. The enemy is held at bay, and a great deal of bad legislation is prevented. Some bills have to be dropped, because too plainly repugnant to the Constitution to be worth carrying farther. The more ignorant members do not always apprehend where the difficulty lies. They can barely read the Constitution, and the nature of its legal operation is as far beyond them as the cause of thunder is beyond cats. A friend of mine who sat for some years in the New York Assembly was once importuned by an Irish member to support that particular member's little bill. He answered that he could not, because the bill was against the Constitution. "Och, Mr. Robert," was the reply, "shure the Constitootion should never be allowed to come between frinds."

Some bills again the governor can scarcely help vetoing, because they violate a Constitutional restriction; while of those that pass him unscathed, a fair number fall victims to the courts of law. It may be added that the enforcement of the limitations imposed by a State Constitution necessarily rests with the judges, since it is they who pronounce, if and when the point is brought up in a suit between parties, whether or no a statute has transgressed the bounds which the fundamental instrument sets, or whether a Constitutional amendment has been duly carried.[1]

[1] A remarkable instance of the technical literalism with which the courts sometimes enforce Constitutional restrictions is afforded by the fate of a recent liquor Prohibition amendment to the Constitution of Iowa. This amendment had been passed by both Houses of the State legislature in two successive legislatures, had been submitted to the people and enacted by a large majority, had been proclaimed by the governor and gone into force. It was subsequently discovered that one House of the first legislature had,