

# A TREATISE

ON THE

## LAW OF MUNICIPAL CORPORATIONS.

### CHAPTER I.

MUNICIPAL INSTITUTIONS. — INTRODUCTORY HISTORICAL VIEW. —  
MUNICIPAL ABUSES. — REMEDIES SUGGESTED.

§ 1. As this treatise is designed strictly for the practising lawyer, it does not fall within its scope to give a detailed account of the origin and rise of cities and towns, or to trace minutely the history of the rights, powers, and jurisdiction with which they are now generally invested. Such inquiries more appropriately belong to the legal antiquary, to the historian, or to the general scholar; and yet a brief historical survey of municipalities will conduce to a more intelligent understanding, even in its practical bearings, of the subject of which it is proposed to treat.<sup>1</sup> The existence of towns and cities, and probably the exercise by them, to a greater or less extent, of local jurisdiction, may be ascribed to a very remote period. PHœNICIA and EGYPT were noted for their large and splendid

<sup>1</sup> Mr. Dicey has some just observations on the different purposes of the historical and of the legal inquirer. "An historian is primarily occupied with ascertaining the steps by which a constitution has grown to be what it is. He is deeply, sometimes excessively, concerned with questions of 'origins.' He is only indirectly concerned in ascertaining what are the rules of the Constitution in the year 1886. To a lawyer on the other hand, the primary object of study is the law as it now stands; he is only secondarily occupied with ascertaining how it came into existence."

Dicey, Law of the Constitution (2d ed.), Lect. I. The present work is intended for the use of courts and lawyers, and the historical view of the development of municipal institutions in this country is entirely subordinated to the legal and strictly technical view. In the course of the present chapter and elsewhere, the sources of historical information are more or less indicated, and the author specially refers with pleasure to the valuable series of publications on Local Government in the United States, in The Johns Hopkins University Studies.

cities. In the latter country we find Memphis, one of the Old World's proudest capitals, even whose site was, until recently, a matter of learned conjecture. It was, centuries ago, buried beneath the sands of the encroaching desert, and in our own day it has been exhumed in the midst of Bedouins too wild to be interested in the wondrous revelations of its entombed mysteries. Temples and buildings, vast and magnificent, dating probably fifteen centuries before the Christian era, and preserved by burial from decay and spoliation, may to-day be seen almost in their original perfection. "The pyramids themselves," as Fuller quaintly says, "doting with age, have forgotten the names of their founders." There, too, in "old, hushed Egypt and its sands," on the banks of the Nile, are the massive ruins of Thebes (Diospolis), the city of "the hundred gates," antedating secular history, and claimed by the Egyptians to have been the first capital, as undoubtedly it was one of the oldest cities of the historic world. As the eye runs along the colonnades of ruined temples, the mind runs back through the Egypt of the Ptolemies to the Egypt of the Pharaohs, four thousand years ago, when Thebes was in its glory and its pride. But in the midst of these stupendous remains of an early civilization, we find but little evidence of their municipal history and organization. The chief lesson they teach is that they were the centres of great wealth and power in the ruling classes, and that the *people*, who constitute the true wealth of modern cities, were at the absolute disposal of their masters, bound down and degraded by servitude and oppression.

§ 2. Notwithstanding the people of GREECE were of a common blood, language, and religion, Greece was never politically united. Political power resided not in a number of independent states, but in a large number of *free, independent, and autonomous cities*, with districts of country adjoining or attached to them. Each city, except in Attica, was sovereign; was the sole source of supreme authority, and possessed the exclusive management of its own affairs.<sup>1</sup> The citizen of one was a foreigner in the others, and could not, without permission or grant, acquire property, make contracts, or marry out of his own city. The Grecian heart always glowed with patriotic fervor for the city, but it rarely, except in times of great common danger, kindled with a love for the whole country. Although, according to Chancellor Kent,<sup>2</sup> the "civil and political institutions of

<sup>1</sup> Hearn, Government of England, chap. xvii. p. 467; Grote, Hist. Greece, ii. 302; *ib.* 348.

<sup>2</sup> 1 Kent, Com. 268, note.

some of the states of Greece bear some analogy to the counties, cities, and towns in our American States," the analogy, it must be confessed, is remote, uncertain, and without practical value in the inquiries we are to prosecute.

§ 3. Municipal Corporations, as well as Private Corporations, were familiar to the Roman Law. The learned Savigny, under the style of Juristical Persons, has traced the origin and stated the nature of *Corporations in the Roman law* with great clearness. It corresponds in essentials almost exactly with our own conceptions of corporations. Thus, he says, "The essential quality of all Corporations consists in this, that the Subject of the right does not exist in the individual members thereof (not even in all the Members taken collectively;) but in the ideal Whole; hence, by a change of an individual member, indeed even of all the members, the Essence and Unity of a Corporation is not affected."<sup>1</sup> Communities, towns, and villages are, he says, mostly older than the State, and have therefore a natural existence. Their Unity is of a geographical character, since it is based upon the local condition of dwelling and ownership of land. The governing body represents the collective Whole. Such corporations are to be distinguished from the State, since the State is not the subject of private law relations.<sup>2</sup> The communities (*i. e.*, municipal corporations as we style them) "had on the one hand need of property, and the opportunity for its acquisition, but, on the other hand, such a dependent character that they could be arraigned (unlike the State) before a court of justice."<sup>3</sup> In the required sanction of the State to their existence, in the power of the majority,<sup>4</sup> in responsibility for the obligations and frauds of their representatives,<sup>5</sup> in their property rights,<sup>6</sup> it is interesting to observe the close analogy between the concept of the Roman Corporations and our own.

Other aspects of the subject may be briefly noticed. "To conceive," says a modern author, "of ancient Rome as the capital of Italy in the same sense that London is the capital of England, or Paris of France, would be a great mistake. London and Paris are the chief cities of their respective countries, because they are the seat of government. The people of these cities and their surrounding districts have no privileges superior to those of other English or French citizens. But the city of ancient Rome, with her surrounding territory, was a great corporate body or community.

<sup>1</sup> Jural Relations, by Rattigan, sec. 86.

<sup>2</sup> *Ib.* sec. 86.

<sup>3</sup> *Ib.* sec. 87; *post*, sec. 556.

<sup>4</sup> *Ib.* sec. 97.

<sup>5</sup> *Ib.* secs. 92, 95.

<sup>6</sup> *Ib.* secs. 90, 91.

holding sovereignty over the whole of Italy and the provinces. None but persons enrolled on the lists of the tribes had a vote in the popular assemblies or any share in the government or legislation of the city."<sup>1</sup> The common division of civic communities established by the Roman government was three, — *prefectures, municipal towns, and colonies*. The *prefectures* did not enjoy the right of self-government, but were under the rule of prefects, and the inhabitants were subjected to the burdens without enjoying the privileges of Roman citizens. But with the *municipal towns* it was different. They at length received the full Roman franchise; "and hence," says the writer just named, "arose the common conception of a municipal town; that is, a community of which the citizens are members of the whole nation, all possessing the same rights, and subject to the same burdens, but retaining the administration of law and government in all local matters which concern not the nation at large," — a description which answers almost perfectly to municipal organizations in England and America. The *colonies*, composed of Roman citizens, were established by the parent city, sometimes to reward public services, but generally as a means of securing and holding the country which had been subdued by Roman arms. The constitution of these colonies, and the rights of the citizens and communities composing them, varied; but it is not necessary for our purpose to trace these differences. The colonies were obliged to provide for the erection of a city, and cities thus erected were called *municipia*. We thus perceive the justness of the observations of a distinguished modern historian and statesman, who says that "the history of the conquest of the world by Rome is the history of the conquest and foundation of a vast number of cities. In the Roman world in Europe there was an almost exclusive preponderance of cities and an absence of country populations and dwellings."<sup>2</sup> The

<sup>1</sup> Dr. Liddell, Rome, chap. xxvii. sec. 8.

<sup>2</sup> M. Guizot, History Civilization in Europe, Lect. II. "Rome, in its origin, was a mere municipality, a corporation. In Italy, around Rome, we find nothing but cities, — no country places, no villages. The country was cultivated, but not peopled. The proprietors dwelt in cities. If we follow the history of Rome, we find that she founded or conquered a host of cities. It was with cities that she fought, it was with cities she treated, into cities she sent colonies. In the Gauls and Spain we meet with nothing but cities; the country around is marsh and forest. In the monuments left us of ancient

Rome we find great roads extending from city to city; but the thousands of little by-paths now intersecting every part of the country were unknown. Neither do we find traces of the immense number of churches, castles, country seats, and villages which were spread all over the country during the Middle Ages. The only bequests of Rome consist of vast monuments impressed with a municipal character, destined for a numerous population, crowded into a single spot. A municipal corporation like Rome might be able to conquer the world, but it was a much more difficult task to mould it into one compact body." *Ib.* See also 2

nation was a vast congeries of municipalities bound together by the central power of Rome. When the Romans colonized and settled the countries they had conquered they established fixed governments, and carried with them, and to some extent necessarily imparted their arts, sciences, language, and civilization to their new subjects. Although the political condition of the vanquished people was far from being desirable, still the immediate residence among them of the civilized Roman did not fail to produce effects more or less beneficial; and thus the *municipia*, securing what the Roman arms had achieved, became the efficient means of spreading civilization throughout the Roman world.

§ 3 a. The City of Ancient ROME had, in what we would call its municipal aspects, many features which correspond with those of the large cities of our own day, and whose study will afford us lessons of interest and value, since it shows that large and compact aggregations of people *necessarily* give rise to conditions and create wants peculiar to such circumstances, and which, as pointed out in the preceding section, are not common to rural populations and to the state at large. Special provisions are therefore necessary for the health, safety, convenience, and good government of populous communities crowded within a narrow space, and these must be supplied. In its essential municipal wants and in the means of meeting them Ancient Rome bears a close analogy to London, Paris, or New York. To secure the comfort and health of the city, and to prevent and extinguish fires, Rome in the course of time provided itself with a *magnificent water supply*. Its system consisted of fourteen aqueducts whose aggregate length was 359½ miles, of which 304 miles were underground, often through mountains and along valleys, and 55 miles were above ground, the channel being carried on what is really triumphal arcades, sometimes rising to the height of more than 100 feet. As a sanitary necessity, the city constructed drains to carry off the sewage. The Cloaca Maxima is not only a large but it is a wonderful work — "an immense sewer, built twenty-five centuries ago, on unstable ground, under enormous practical difficulties, which still answers its purpose well, and which ranks among the greatest triumphs of engineering skill." For the health and pleasure of the people Rome also supplied itself with *public places of resort* more adequately, perhaps, than have any of the great modern cities. Lanciani, as the result of explorations and of his own examinations and researches, says that "towards the

Kent's Com. 276, note; Dr. Adam Smith's Book III. chap. ii.; Hearn, Government interesting chapter, Wealth of Nations, of England, chap. xvii. p. 468 *et seq.*

end of the third century after Christ, there were in Rome eight *campi* or commons, green spaces set apart mostly for foot-races and gymnastic exercises; eighteen *fora* or public squares, and about thirty parks or gardens, which, first laid out by wealthy citizens for their private comfort or that of their friends, had been absorbed into the imperial domain by purchase, by bequest, or by confiscation. The city was not only surrounded and enclosed by them, but intersected by them in every direction." Modern cities have nothing fully answering to these forums or public squares, either in cost, area, or magnificence. They gave to the people of Rome more than twenty-five acres in extent for various public uses. In the public baths 62,800 citizens could bathe at the same moment. Rome had also its Police and Fire Departments. The public safety was entrusted to a select body of 7,500 men, whose function corresponds to that of the 9,000 policemen of London. The Roman policeman, however, performed the double duty of fireman and policeman.

In a most important particular, however, Rome suffers by comparison with modern cities. Its public places *were not lighted*. All business closed with the daylight. The streets at night were dangerous. Property was insecure. No attempt at public illumination was made. The idea does not seem to have occurred to them. Persons who ventured abroad on dark nights were dimly lighted by lanterns and torches.<sup>1</sup> Its condition was similar to that of London two hundred years ago, so graphically described by Macaulay, and whose description is partly given in the note.<sup>2</sup> No more forcible

<sup>1</sup> The data for this section so far as relates to Ancient Rome, are derived from Professor Lanciani's late work (1889), *Ancient Rome in the light of Recent Discoveries*. Indeed the text is simply an abridgment or transcript of those portions of his work which treat of the Sanitary Condition of Ancient Rome (chap. iii.), of Public Places of Resort (chap. iv.), and of the Police and Fire Department (chap. viii). Modern excavations and archaeological researches have enabled us to see for the first time Ancient Rome as it was, and have invested it with an interest more intense and absorbing than ever. "The principal cause of disorder was that the metropolis was kept in perfect darkness at night. Why the idea of a system of public illumination was not conceived and adopted, is a mystery hard to solve. Excavations fully confirm the fact. Not a trace of a bracket fixed to the front of a

house, or of a rope or small chain drawn across the street to support lamps or lanterns, has as yet been found, and probably none ever will be." *Ib.*, chap. viii.

<sup>2</sup> Macaulay's *History of England*, vol. I, chap. iii., entitled "The State of England in 1685." "When the evening closed in, the difficulty and danger in walking about London became serious indeed. The garret windows were opened, and pails were emptied, with little regard to those passing below. Falls, bruises and broken bones were of constant occurrence. For till the last year of the reign of Charles II. most of the streets were left in profound darkness. Thieves and robbers plied their trade with impunity; yet they were hardly so terrible as another class of ruffians. It was a favorite amusement of dissolute young gentlemen to swagger by night about the town, breaking windows, upsetting sedans, beating quiet men, and offering rude ca-

illustration of the necessity and advantages of lighting a city can be given than the pictures drawn by Lanciani and Macaulay of the state of a great city buried in the darkness of night; and they show how clearly the power to provide for this is essentially and peculiarly one pertaining to municipal rule and regulation. Nor are these studies, and the facts that they reveal, without practical value to the jurist. They demonstrate that a large and dense collection of human beings occupying a limited area have needs peculiar to themselves, which create the necessity for municipal or local government and regulation, and this in its turn the necessity for corporate organization. The body thus organized, as it has duties, so it acquires rights peculiar to itself as distinguished from the Nation or State at large, which rights, especially those that pertain to property acquired under legislative sanction, it is a mistake to suppose have nothing individual in their nature, and that they are subject to the absolute and unlimited power of the legislature. Subject they are indeed to the largest measure of legislative regulation for the general good, but not subject to absolute destruction. Modes of life, modes of thought, conceptions of rights and of duties, and the essential conditions of existence, precede constitutions, whose

resses to pretty women. I am confident that Milton was thinking of these pests when he dictated the noble lines:—

'And in luxurious cities, when the noise  
Of riot ascends above their loftiest towers,  
And injury and outrage, and when night  
Darkens the streets, then wander forth the sons  
Of Belial, flown with insolence and wine.'

The machinery for keeping the peace was utterly contemptible. There was an Act of the Common Council, which provided that more than a thousand watchmen should be constantly on the alert in the city from sunset to sunrise, and that every inhabitant should take his turn of duty. But this act was negligently executed. Few of those who were summoned left their homes; and those few generally found it more agreeable to tipple in the ale-houses than to pace the streets.

"In the last year of the reign of Charles II. began a great change in the police of London, a change which has, perhaps, added as much to the happiness of the body of the people as revolutions of much greater fame. An ingenious projector, named Edward Heming, obtained letters-patent conveying to him, for a term of years, the exclusive right of lighting up

London. He undertook, for a moderate consideration, to place a light before every tenth door, on moonless nights from Michaelmas to Lady Day, and from six to twelve of the clock. Those who now see the capital all the year round, from dusk to dawn, blazing with a splendor beside which the illuminations for La Hogue and Blenheim would have looked pale, may smile perhaps to think of Heming's lanterns, which glimmered feebly before one house in ten, during a small part of one night in three. But such was not the feeling of his contemporaries. There were quarters of London peopled by the outcasts of society where even the warrant of the Chief Justice of England could not be executed without the help of a company of musketeers. Such relics of the barbarism of the darkest ages [sanctuaries for criminals] were to be found within a short walk of the chambers where Somers was studying history and law, of the chapel where Tillotson was preaching, of the coffee-house where Dryden was passing judgment on poems and plays, and of the hall where the Royal Society was examining the astronomical system of Isaac Newton."

chief value is to give organic security to such antecedent and existing conditions and rights as are deemed to be vital and fundamental. Accordingly the Constitutions of the American States recognize the existence and contemplate the continuance of incorporated communities, and that they shall enjoy, in accordance with immemorial usage the right of local government; and it is a fair inference, even in the absence of special provision, that their property rights and rights of a pecuniary character are within the protection of important provisions of the State and Federal Constitutions. Constitutions are not to be interpreted alone by their words abstractly considered, but by their words read in the light of the conditions and necessities in which the provisions originated, and in view of the purposes sought to be attained and secured. Constitutions are devised not so much to create rights, as to guarantee and secure the enjoyment of those which are considered primordial and indestructible. The subject of the extent of legislative authority over municipalities and its limitations is considered in subsequent chapters.<sup>1</sup>

§ 4. After the subversion of the Roman Empire the towns of EUROPE from the fifth to the tenth century were in a state neither of servitude nor liberty, though their condition differed greatly in different countries. During this period the power and influence of the towns were, in general, on the decline. The power of the church was great, and the inhabitants found their chief protection in the clergy.

The establishment of the feudal system worked a great change in the condition of the towns. Before that, towns, as we have seen, were the centres of wealth and population. The ruling class lived within them. The land was cultivated by persons who were not recognized as having political rights. After feudalism was established this changed. The proprietor then lived upon his estates, instead of living within a town; the town became part of the lands of the lord, or enclosed within his fief. It, with its population, thus became subject to his arbitrary exactions, oppression, and pillage. Still the towns gradually prospered; with prosperity came wealth; and with wealth came power. Such, in general, was the condition of the towns of continental Europe down to the eleventh century. About this time, without any union or concert, many of them in most of the countries of Europe rose against the lords, and demanded for the burgesses, commonalty, or inhabitants a greater or

<sup>1</sup> *Post.*, chaps iv., vii., viii.

less measure of enfranchisement. Sometimes a town failed in its struggle, and its oppression was redoubled by the victorious lord. Sometimes the towns were aided by the king, who was frequently not unwilling to humble the arrogant and haughty nobility, and thereby acquire the influence and affection of those whom he had assisted. Not unfrequently, however, the struggle had to be maintained by their own unaided resources, and when successful, the result was the granting by the lords to the burghers of CHARTERS, conferring more or less extensive municipal immunities and rights. These charters, as Guizot justly observes, were in the nature of "treaties of peace between the commons and their lords;" were in fact, "bills of rights" for the people.<sup>1</sup> During the twelfth century "all Europe, and especially France, which for a century had been covered with insurrections by burghers against their lords, was covered by charters more or less favorable; the corporators enjoyed them with more or less security, but still they enjoyed them."<sup>2</sup>

§ 5. After the overthrow of the Roman Empire and the decay of the civilization which accompanied the Roman power, Europe became largely indebted to cities and to the authority and jurisdiction which they acquired and exercised for the creation of the third estate, — popular power, and for the development of the principles of constitutional or free government.<sup>3</sup>

THE ITALIAN CITIES, especially Venice, Genoa, and Pisa, grew rich out of the commerce resulting from the vast armies that the Crusaders for two hundred years had successively pushed forward into the Holy Land. The oppressive feudal system was at this time in full force throughout Europe. These Italian cities used their power and wealth to secure their independence. Cities and towns, as well as people who dwelt in the country, were alike sub-

<sup>1</sup> *People v. Morris*, 13 Wend. (N. Y.) 325, 334, per *Nelson, J.*

<sup>2</sup> Guizot, *History Civilization in Europe*, Lect. VII. This philosophic and valuable work is the source from whence are drawn most of the statements of the text as to the condition of the towns of Europe from the fifth to the tenth century. See similar account, *Wealth of Nations*, Book III. chap. iii.; *Hallam's Middle Ages*, chap. ii. Part II., and notes to later editions.

<sup>3</sup> "The institution of cities into communities, corporations, or bodies politic, and granting them the privilege of muni-

cipal jurisdiction, contributed more, perhaps, than any other cause, to introduce regular government, police and arts, and to diffuse them over Europe." *Robertson's Charles V.*; see *Hallam's Middle Ages*, chap. ii. Part II. M. Guizot considers the three great elements of modern civilization to be the Feudal System, the Christian Church, the Commons, or free corporate cities. *Civilization in Europe*, Lect. VII.; see also *Wealth of Nations*, Book III. chap. iii., on "The Rise and Progress of Cities and Towns, after the Fall of the Roman Empire."

ject to the arbitrary domination of their feudal masters. Some of the cities, in the eleventh century, obtained their freedom by purchase, some by force, and some by gift. They, in effect, constituted so many little republics, with the right to manage their own concerns. In this way, before the end of the thirteenth century, nearly every considerable city of Italy was enfranchised or had received extensive corporate immunities from the sovereign or lord. The happy effects were soon perceived in the increased population and improved condition. Liberty and prosperity ever go hand in hand.

§ 6. Whether from example, as asserted by Dr. Robertson, or from other causes, the same course was pursued by the cities of other states in Europe. The *King of FRANCE*, Louis le Gros, and his great barons granted many *charters of community*, by which the inhabitants were freed from feudal servitude and erected into municipal corporations, with the power of local government. These charters contained grants of new privileges, and prescribed salutary methods for the enforcement of rights and the redress of grievances. They are interesting and instructive, and a brief view of their general character is given in the note.<sup>1</sup>

<sup>1</sup> *Abstract of municipal charter in the Middle Ages.*—In those turbulent times *personal safety* was an object of the first importance, and this was usually afforded to the vassal by the baron or lord. The communities or free towns which were instituted undertook to provide for the safety of their members, independent of the nobles. For, (1) All the members were bound by oath to assist and defend each other against all aggressors. (2) All residents in a town made free were obliged to take part in the mutual defence of its members. (3) The communities could execute the judgments of their magistrates by coercion, if necessary. (4) The practice of making private satisfaction for crimes was abolished, and provision made for the regular punishment of offenders. (5) A person reasonably suspected to be about to injure another might, as with us at the present day, be compelled to give security to keep the peace. These communities also undertook to provide for the *security of property* by the following: (1) Abolishing the right of the creditor to seize the effects of his debtor with his own hand and by his private authority, and compelling him to proceed before a magistrate, who was

authorized to issue the necessary process for the seizure and sale of property, humane and necessary exemptions being allowed. (2) Every member was obliged to bring some of his property into the town, or build a house, or buy land; and in some places the members were bound for each other. (3) Judgments by magistrates, duly selected, took the place of the arbitrary and capricious decisions of the baron or feudal lord. (4) Arbitrary taxation was prohibited, and regulations for an equal tax were sometimes especially prescribed. Digested from Robertson's Charles V., Vol. I. note xvi., Proofs and Illustrations. "The communities of France never aspired," says this accurate and elegant historian, "to the same independence with those in Italy. They acquired in France new privileges and immunities; but the right of sovereignty remained entire to the king or baron within whose territories the respective cities were situated, and from whom they received the charter of their freedom." *Ib.* *Charters defined, post, secs. 32, 32.* Municipal charters, treated of, *post, chaps. v., vi.* Outline of modern municipal charters in the United States, *post, sec. 39.*

We meet in FRANCE with great diversity in the origin and government of towns and cities. In some of them, especially in southern France, the *Roman municipal system*, more or less modified from time to time, was perpetuated. The Roman system was formed upon an aristocratic model. In each *municipium* there was a senate, called an *ordo* or *curia*. This was, politically considered, the city; it was the governing body. The mass of the population, except in a few cases, had no voice in municipal affairs. This senate was composed of a comparatively small number of families, and the office was hereditary. When the body became reduced in numbers by death or otherwise, it was not filled by the people, but by the survivors. Other towns or communities originated, in the most natural manner, upon the fiefs or estates of the feudal proprietors. Many of these estates became centres or agglomerations of population, composed of the working and industrial classes. Trade sprang up, and towns and cities originated. The lord, or proprietor, was interested in and derived profit from their prosperity. To induce others to settle there, he frequently conceded certain privileges. He did not emancipate them from all feudal restraints and burdens, but these he mitigated. Often he granted lands and privileges to all who settled in towns on his domains, on receiving a moderate fixed rent and specified military services. These concessions had no higher origin than the personal interest of the proprietor, and were often violated. They did not constitute the towns locally independent, or make them true corporations. But, limited and uncertain as these concessions were, the towns which received them prospered and became more or less important.

Other places in FRANCE were chartered towns and true corporations. In the twelfth century there was the general movement, before noticed, on the part of the towns of France for their enfranchisement, or delivery from feudal bondage. The extent of this movement may be judged from the fact that the *royal* charters of this period are numbered by hundreds, and those granted by the *lords*, by thousands. These were, in general, wrested from the feudal proprietors by force, or the fear of it, and conferred an almost independent political existence upon the *commune*, or town. These charters gave the community the power of having its people judged for offences by magistrates of their own choosing; crimes and punishments were defined; arbitrary rents and taxes were abolished, and fixed rents and regular taxes substituted; *main-morte* and other restraints upon the alienation and enjoyment of property were removed. The government of towns thus created, unlike those which were mere perpetuations of the Roman system, was formed upon a *demo-*