

those who must pay the expense. No small proportion of corruption and abuse in municipalities has had its source in their authority to make public and local improvements. The power is usually conferred without sufficient care, and the rights of the property owners (often made liable for the whole cost of the improvement or amount of the expenditure) are not sufficiently respected and guarded. In many of its more important aspects a modern American city is not so much a miniature State as it is a business corporation, — its business being wisely to administer the local affairs and economically to expend the revenues of the incorporated community. As we learn this lesson and apply business methods to the scheme of municipal government and to the conduct of municipal affairs, we are on the right road to better and more satisfactory results.¹

§ 16. As it is the part of wisdom to *organize municipal corporations under general laws* so that defects and abuses, being generally seen and felt, will be the more speedily and better remedied by the legislature, so municipal corporations should be shorn of the power to grant special privileges, except under ordinances general in their character, and which, on equal or fair terms, will make them available to all. The courts, too, have duties, the most important of which is to require these corporations, in all cases, to show a plain and clear legislative grant for the authority they assume to exercise; *to lean against constructive powers*, and, with firm hands, to hold them and their officers within chartered limits. As a rule this duty has, in our judgment, been faithfully performed.

§ 17. If we *analyze the complex powers usually conferred upon a municipality* in this country we shall discover that these are of two general classes, viz., 1. Those which relate to health, good government, efficient police, &c., in which all the inhabitants have an equal interest and ought to have an equal voice. 2. Those which directly involve the expenditure of money, and especially those relating to local improvements the expense of which ultimately falls upon the property owners. As respects these, the controlling voice ought to be with those who have to bear the burden. No municipal management, will, in the long run, be other than extravagant and unwise where the members of the governing body have no substantial interests in the municipality, and where they have more to gain by plundering than by protecting it. To insure good government there must be a real identity of interest between the

¹ 1 Bryce, Am. Com., chap. lii. p. 625. *Ante*, sec. 12 a and note.

members of the governing body and the municipality. The problem of satisfactory municipal rule in populous cities is one which is urgently demanding solution, but it is also one which, it is feared, must be slowly wrought out by experience. It is estimated that the indebtedness of the public and municipal corporations in this country already exceeds \$1,000,000,000; much of it was created without the sanction of those who will have to pay it, and it is in many places, especially in the newer States, pressing with heavy weight upon the burdened taxpayer. A remedy is imperatively demanded, and suggestions herein made have been offered in the hope that some of them may not be wholly undeserving of attention.

But with all the drawbacks we have mentioned (many of which are remediable) our system of popular municipal organization and local administration is, beyond controversy, the fairest to the individual citizen, and, on the whole, the most satisfactory in its operations and results, of any that have yet been devised. Any other conclusion would be equivalent to admitting that the people are incapable of enlightened self-government; that holders of property ought alone to be respected, and alone to be invested with political and municipal rights; that the few ought to govern the many; and that our representative system, the flower of modern civilization, based upon the equal right of every man to a voice in the local and general government, is a failure. That it is a failure we cannot admit. That it is not a failure is demonstrated by the experience of more than two centuries. It is not improbable that we sometimes overestimate the shortcomings, chiefly felt in the larger cities, in the practical workings of our municipal system, for the system is an open one, in which all are interested to bring its abuses into the light of day. The fine observation of Lord Bacon fitly applies: "*The best governments are always subject to be like the fairest crystals, wherein every icicle or grain is seen, which in a fouler stone is never perceived.*"¹

¹ It is frequently said that New York is among the worst governed of cities. The complexity and magnitude of its municipal functions necessarily present great difficulties in the way of thorough and efficient administration. Abuses are difficult entirely to suppress. The city has charge of charities and corrections, a law department, a department of public parks, of public works, of health, of police, of street cleaning, of fire, of education. Appropriations for these purposes for the year 1889 amounted to nearly twenty millions of dollars. The aggregate appropriations for the several departments of the city of New York for 1888 and 1889 will appear from the following table:—

	1888.	1889.
Finance Department	\$276,000 00	\$287,000 00
Law Department	250,544 00	216,544 00
Public Works	3,180,809 00	3,124,221 00
Public Parks	1,014,650 00	1,212,200 00
Charities and Corrections	2,348,372 00	2,197,050 00
Health Department	394,277 00	413,800 00
Police	4,415,255 66	4,409,550 94
Street cleaning	1,259,459 00	1,272,040 54
Fire	1,976,492 00	2,186,048 00
Taxes and assessments	112,000 00	117,200 00
Education	4,808,167 00	4,079,008 86
	\$19,525,525 66	\$19,464,158 84

To enable it to pay interest on its public debt and for other purposes twelve or thirteen millions more is required; so that at this time the annual operations of the city government require to be raised by taxation between thirty-three and thirty-four millions of dollars, necessitating a tax rate of somewhat over two per cent on the assessed values of taxable property. The official statement of the retiring mayor, Honorable Abram S. Hewitt, made the 31st of December, 1888, at the end of his term of two years, shows the condition of the city government to be much better than is commonly supposed. He says: "Every department of the city government is in admirable working order. No private business is better organized or more closely attended to than the public service in this city. Every outstanding claim that could be collected has been; all disputes have been adjusted; the public property has been carefully conserved

and made productive, and there are no claims against the city of any considerable magnitude. The credit of the city, as indicated by the prices bid for its bonds, has never been so high as at the present time. Its securities command a higher price than those of any other city in the world. At the outset of my term of office I adopted the principle of calling together the heads of departments to consult as to legislation which might be required for the advantage of the city and the better conduct of its business. Every act proposed was carefully considered by this conference. One hundred and ninety-one bills directly affecting the city of New York were passed by the legislature during the last year. The passage of many objectionable bills was thus defeated, but in some important cases the legislature acted directly against the recommendations of the city authorities."

CHAPTER II.

CORPORATIONS DEFINED AND CLASSIFIED. — PRIVATE, PUBLIC, AND MUNICIPAL CORPORATIONS DISTINGUISHED. — THE NEW ENGLAND TOWN.

§ 18 (9a). **Corporation defined.** — A corporation is a legal institution, devised to confer upon the individuals of which it is composed powers, privileges, and immunities which they would not otherwise possess, the most important of which are continuous legal identity or unity, and perpetual or indefinite succession under the corporate name, notwithstanding successive changes, by death or otherwise, in the corporators or members. It conveys, perhaps, as intelligible an idea as can be given by a brief definition to say that a corporation is a *legal person*, perfectly distinct from the members which compose it, having a special name, and having such powers, and such only, as the law prescribes. The most accurate notions of complex subjects come not from definition, but description; and in the course of the present work we shall describe the class of corporations with which it deals, by their creation, constitution, faculties, powers, objects, duties, and liabilities. Some of the definitions and deductions in the earlier reports amuse by their quaintness, but are without much practical value. "As touching corporations," says Lord Coke, "the opinion of Manwood, chief baron, was this: that they were invisible, immortal, having no conscience or soul; and therefore, no subpœna lieth against them; they cannot speak, nor appear in person, but by attorney."¹

Chief-Justice Marshall's *description of a corporation* is remarkable for its general accuracy and felicitous expression: "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of the law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed to be best calculated to effect the object for which it is created. Among the most important are *immortality* [in the legal sense that it may be made *capable* of indefinite duration], and, if the expression may be allowed, *individuality*, — properties by which a perpetual succession of many persons are considered

¹ 2 Bulst. 233; Willc. Corp. 15. *Ante*, sec. 3.