

## CHAPTER VI

### THE CITY AND THE STATE

THE political status of the American city is traceable to the Middle Ages, when charters were issued to the towns by feudal lords or the crown in exchange for a money payment or as the outcome of a struggle for freedom. As described in an earlier chapter, the towns came into existence on the landed estates into which Europe was divided. The inhabitants were vassals, or serfs, and as such were subject to dues, rents, and taxes. These were incidents to the feudal organization of the time. The towns were in reality the property of the lords. As the towns grew in wealth the citizens became restive; they resented the dues; they desired to administer their own affairs, to levy their own taxes, to maintain markets and regulate trade without intervention by the suzerain. And, as they were richer and more easily organized than the serfs, they obtained substantial freedom long before the end of the feudal régime. And when such freedom was secured a charter was granted to the inhabitants as an evidence of their rights. It was like Magna Carta obtained by the English barons from King John. This was the origin of the city charter.

In Germany the cities became almost independent

of the state, and the German city continues to enjoy a position very similar to that of the *freistädte* of the later Middle Ages. But in England towns remained subject to the King. And as the colonies and states succeeded to the British crown they assumed the right to issue charters to the towns just as they did to the business corporations created by them.

Through this evolution the city has become the creature of the State. It is, and always has been, a political subdivision covering such area and having such powers as the constitutions and laws extend to it. Legally it is not dissimilar from a county or a township.

#### **The Status of the City.**

In some States charters are granted by general laws applicable to all cities, in others by special laws for a single city. In many States the constitution requires that all laws of a general nature shall have uniform operation throughout the State, and in these States all cities must be governed alike, no matter what their size or needs may be. Other constitutions permit the classification of cities, and under such a permission almost every city in Ohio was formerly in a class by itself. In the absence of constitutional limitations the legislature can do as it pleases with the city.

The city has no powers beyond those specifically given to it and it has no rights which the legislature is bound to respect. Its charter can be changed or taken away at will; offices can be abolished or created. Whole departments of administration can be

taken from elected officials and lodged in the hands of men appointed by the governor. In so far as its legal rights are concerned, the American city has less dignity than the mediæval town whose charter had the sanctity of a binding contract.

### **The Subjection of the City.**

In practice the States have kept the cities in subjection. Rarely have they granted generous or even adequate powers. Influenced partly by partisan considerations, partly by private interests, partly by the suspicion of agricultural members, the liberty of the city has been only grudgingly widened. As a consequence urban needs have grown more rapidly than the power of the city to meet them. Abuses have become so firmly intrenched that when the city finally secured authority to correct them it was unable to do so because of powerful private interests identified with their preservation.

Generally speaking, the American city has large power over persons and but little control over property. Only within carefully prescribed limits can it regulate the street-railways, gas, electric-lighting, water, and telephone companies, or their rates, charges, and services. Up to very recently it could not limit the height of houses or the amount of space to be covered by them. It has meagre power over tenements, factories, or steam railroads. It cannot compel the landlord to lay out his property in harmony with the city's needs or a prearranged plan. In all these matters individual property enjoys a license not tolerated in foreign countries, a

license which is further insured by the narrow interpretation of municipal powers by the courts.

**Lack of Power.**

Nor can a city issue bonds beyond a very limited percentage of the taxable valuation. It cannot incur indebtedness in excess of a certain amount. It must collect its taxes as the State directs and from such objects as the legislature enumerates. In almost all States the rate of taxation is arbitrarily limited, in Ohio at a point so low that cities are unable to take on new activities or perform such functions as they have assumed in an adequate way.

Only in a few States, although the number is increasing, are cities permitted to frame their own form of government. They cannot decide for themselves between the council, the federal, or the commission form. Nor can they determine the number of elective officials, the length of their term, or how they shall be nominated and elected. The charter of the city, as well as the things it may do, are all fixed by the constitution or laws of the State, which are rarely adjusted to the needs of the city.

Even in little things the city is helpless. Salaries of employees are oftentimes beyond its control, while frequently men can only be discharged under rules laid down by a State law. Almost every department of administration is cramped by inelastic laws which check efficiency and destroy initiative.

As indicative of these limitations, the city of Cleveland found some years ago that it could not banish dogs, chickens, or other noise-making animals from

the city. It could not manufacture ice for charitable distribution; prohibit bill-boards and protect the streets from disfigurement by signs and advertisements. It was unable to require the erection of gates by railroads at grade crossings or the isolation of tuberculosis patients. It was not able to provide public lectures and entertainments as a part of its recreational programme. For none of these powers had been specifically granted to it.

### **Evils of Enumerated Powers.**

As a consequence of these restrictions cities are constantly appealing to the legislature for powers which they should enjoy as a matter of course. As examples of such legislation the Municipal Government Association of New York enumerates the following special laws demanded in that State: a law for Binghamton, authorizing the appointment of a stenographer by the corporation counsel; for Newburgh, to use city funds for band concerts; for Cohoes, to borrow money to equip a fire department; for Mount Vernon, to borrow money for building for fire and police departments; for Johnstown, for compensation of the chief of police and policemen; for Oneonta, for sprinkling and oiling the streets; and for Buffalo, for power on the part of the board of police to grant leave of absence.

The general condition of the cities of New York has been described by the Association as follows:

“The cities and villages of the State of New York are absolutely under the domination of the State legislature. The legislature not only determines

what powers they may have but prescribes in what manner they shall exercise these powers. State interference in purely municipal affairs has thus resulted in the New York State municipalities, as in other States, becoming the pawns of political parties. Municipalities may be created or abolished, taxed or untaxed, practically at the whim of the dominant party. The legislature may create needless jobs in any city, and compel the city to pay for them. Unnecessary and undesired agencies of government may be established in the municipalities by the legislature, irrespective of the wishes of the citizens. These things are done in numerous special bills every year."

Commenting further upon the special legislation made necessary by this dependence, the Association says:

"It would require superhuman ability on the part of the legislature to consider adequately the merits of such purely local bills, involving as they do local conditions with which the majority of the legislature cannot possibly be familiar. It is as absurd and stupid for the legislature to be forced to consider these matters as for the board of directors of a railroad company to decide whether a station agent should purchase a dozen lead pencils.

"Many special bills are held up until the end of the session by the leaders of the State machine which happens to be in control, as a threat over the head of the legislator if he fails to support 'organization' measures. It is a condition which makes independent action on measures supported by the machine very difficult for the average legislator, and leads to the consideration of measures on all kinds of grounds

which have nothing to do with their merits. A much needed bond issue in Schenectady may be held up for a year because the Schenectady Senator refuses to vote 'right' on direct primary legislation; or the Saratoga Assemblyman may vote against a Buffalo charter in order to safeguard his \$300,000 local appropriation bill under committee consideration. The New York man knows little of the needs of Watertown, and vice versa. If the Watertown man is 'in right,' his local bill goes through—whether or not it contravenes the policy of the local authorities or the general laws of the State. A single legislator, by sufficient docility to the machine, can 'trade through' a measure to which his whole city administration may be unanimously opposed. This condition inevitably breeds the evils of log rolling (at times it breeds corruption) and makes legislation at Albany a complicated game of trading and petty bargaining.

"For all this the cities pay the bill. Much of the waste and inefficiency that is from time to time discovered in our municipal government is due to no fault of local administrations, but entirely to mandatory legislation from Albany."

Lack of freedom is the most serious institutional burden under which our cities labor. For the city has little of that liberty enjoyed by a private corporation and none of the independence of the State or the nation. It cannot control its own life, provide for its own peculiar needs, or control the property within its limits. Freedom, liberty, home rule is the first need of the city, and in the last analysis it is the lack of this freedom that explains the worst of our failures.

**Some of the Results of State Interference.**

(1) State control of the city discourages initiative on the part of officials and interest among its citizens. Officials are unable to carry through big municipal policies because of obstacles which confront them at every turn. They cannot build with a vision of the city or control property in the interests of the community. The city of Cleveland owned a small electric-lighting plant. The administration planned to enlarge its capacity, to light the streets, and to serve private customers. It required twelve years of litigation and legislation to carry through the project after the policy had been determined on. Even after the bond issue had been approved by the people by an overwhelming majority, it was carried to the courts and delayed by this procedure.

For nearly ten years Cleveland has been working on the grouping of its public buildings. It has acquired almost all of the needed land. The courthouse has been completed and a beginning made on a city hall. But the city is unable to carry out the project because of limitations on its borrowing capacity. For years the city was engaged in litigation with the steam-railways over the lake front, and for a dozen years it has been trying to adjust a controversy for the building of a badly needed passenger station. At least a dozen city elections and as many more State ones were contested over the street-railway question and nearly a hundred injunction suits have been carried to the courts over controverted



questions arising from obscure legislative acts or constitutional provisions.

(2) The inability of the city to govern itself deters men of ability from entering municipal politics. There is little to awaken their ambitions; little to attract talent. For city administration offers little opportunity for a career because of the constitutional and legislative limitations which bind the hands of officials.

(3) The ideals of individuals and of the community are cramped by this poverty of the city. Civic organizations find themselves thwarted in their efforts. New proposals are met with the objection that they are contrary to the constitution or are prohibited by law. Before a new project can be carried out permission must first be secured from the State legislature, which usually meets but once every two years and is composed of men with little knowledge of or sympathy for the needs of the city. New powers once granted must frequently be litigated to the supreme court to meet the protest of some property interests. When power is finally secured it is frequently too late to be of any value or cannot be used because of some overlooked prohibition not provided for.

Municipal enthusiasm is impossible under these conditions. The wardship of the city affects the minds of all the people. There is a feeling of helplessness on the part of the community which palsies effort.

**Summary.**

The American city is a ward of the State. It has little freedom, little of the home rule that prevails in Germany and that characterized the cities of mediæval and ancient times. Such rights as it possesses are granted by the State legislature and are contained in the charter. The city has few implied powers, and those that it does enjoy have only been grudgingly widened by the State.

This is probably the most serious institutional evil of the American city. Its powers have not kept pace with its needs. It has to go to the legislature for every grant of power, and in consequence is helpless before the great urban problems which increasing population has created. This, too, has affected officials and citizens. It has made it impossible to carry through proper municipal policies because of the many obstacles which prevent their achievement. Cities cannot borrow money; they cannot determine how the revenues shall be collected; in many instances they cannot even control their employees. They have little power to regulate the public service corporations, landowners, or builders. Only in a few States are they permitted to own the street-railways, telephone and gas supplies. As a consequence of these conditions the city has been cramped and confined in its development and the process of socialization has been retarded. It lags many years behind the need.