

CHAPTER XII

THE CITY AND THE PUBLIC SERVICE CORPORATION

IN the preceding chapters we have discussed the city from the point of view of forms rather than of functions; we have analyzed the machinery with which the city is endowed for the doing of its work and have seen that the legal limitations which surround it are such as make efficiency difficult, if not impossible. We have found that many of the failures of the city are traceable to legal and institutional evils created by our constitutions and laws.

Another explanation of our failure is to be found in the policy adopted toward those corporations which use the streets for the supply of water, gas, electricity, telephone, and transportation services, a policy which is more largely responsible for the corruption of our cities than any other single cause. These corporations have stood in the way of reform and have prevented needed changes in municipal charters. Back of the surface explanations of the city is to be found another institutional evil, which has been generally overlooked by students and reformers in their study of the city.

Municipal Franchises.

Cities quite generally own the water supply but intrust the other municipal services to private operation. The grant is usually made by the

council but sometimes by the State legislature. The grant or franchise is in the nature of a contract, and provides for the period of its enjoyment, the service to be rendered, the prices that may be charged, and many other conditions, all of which affect the earnings of the company. It is this that distinguishes the public service corporation from other business, for it can only operate with the permission of the city and its capitalization and profits depend upon the liberality of the grant.

A generation ago, when the policy of private ownership was entered upon, these grants had but little value. The art was in its experimental stage and the cities were for the most part small. As the towns grew in population the franchises became valuable. The transfer from horse to electric traction, the increase in the size of cars, the improvement in the arts, and the economies in operation still further increased the earnings of the companies. For the street-railway, gas, electric-light, water, and telephone industries are industries of increasing returns—that is, their profits increase more rapidly than do the operating expenses. In addition, they are natural monopolies and are not subject to the regulating power of competition. There is no place for two gas or electric lighting plants in the same town, and, while many cities tried competition, in the end the companies consolidated or reached a working agreement as to territory, so that after a few years' warfare competition came to an end and the companies passed under a single management.

Advent of Corporations into Politics.

About 1890 the value of these grants began to be appreciated. Securities were issued far in excess of the value of the property. The value of these securities depended upon the terms of the contract with the community. The terms also determined the dividends which could be paid. This led the corporations into politics. They wanted to be free to charge what they would for the service rendered, to avoid competition, regulation, and municipal ownership. They struggled to evade taxation, to be free to open and repair the streets at will. A hundred influences drove them into politics for the strengthening of their privileges.

Early in the nineteenth century, too, the United States Supreme Court established the doctrine, in the Dartmouth College Case, that a grant from a city was in the nature of a contract, which could only be altered with the consent of both parties. The courts held that permission from the city to use the streets was not a license that could be revoked or altered at pleasure; it was a legal and binding contract. In addition, under that provision of the Constitution which provides that private property shall not be taken without due process of law, cities have been restrained by the courts from reducing rates and charges or from ascertaining at what rates these services could be rendered. Fortified by constitutions, laws, and judicial decisions, the public service corporations have succeeded in establishing an almost complete monopoly,

which monopoly depends for its continuance upon a control of the politics of the city and the State as well as the courts which interpret these laws.

The Value of Franchises.

The value of public service franchises is colossal. In most cities of over 10,000 people it exceeds the city's debt. Mr. John Moody, the editor of *Moody's Manual*, has stated that the value of the franchises of the public service corporations in New York exceeds \$750,000,000. In Toledo, according to Mayor Brand Whitlock, the street-railway company "had about \$5,000,000 of actual investment, while it had a capitalization in stocks and bonds of nearly \$30,000,000, and the difference of \$25,000,000 was the community value, which the magnates had been exploiting for their own benefit."¹ Some years ago the physical property of the seven Chicago traction companies was appraised at \$44,932,011, while the market value of the securities issued upon the property was \$120,235,539. Two thirds of the securities were based upon the grant from the city. The street-railway company in Cleveland claimed that its franchise was worth \$20,000,000, while in many cities of 500,000 population stocks and bonds have been issued against the franchises alone of from \$50,000,000 to \$75,000,000.

A Corrupting Influence in Politics.

In order to pay interest on these inflated securities the corporations must be free from regulation or competition; they must preserve a monopoly of the service. And this is only possible through pol-

¹ *Forty Years of It*, Brand Whitlock, p. 337.

itics. Councilmen and city officials are bribed; sometimes openly, more often they are given contracts or some indirect payment. The corporations identify themselves with the party organizations. They contribute to campaign funds. In order to secure votes at elections they enter into partnership with the saloon and with vice, as has been shown by the disclosures in a score of cities. They control or influence the press, sometimes through ownership, more often through advertisers, for the securities of these corporations are owned by the influential men in the community. They are also identified with the banks and through the banks with the entire business community. For the banks control credit, and through credit they influence the business men and advertisers. When the election of an honest and independent administration may impair the value of these privileges, the banking, professional, and business interests are united with the public service corporations in an effort to protect the grants. On the one side is the wealth and talent of the city, interested in the maintenance of improper privileges. On the other hand is unorganized democracy, badly equipped with political machinery for a contest and limited in a score of ways by the State, by the constitution and the courts, in its efforts to secure redress.

The "Invisible Government."

In most of our cities the public service corporation is the "invisible government" behind the boss

and the political parties. Identified with it are the steam-railways, which desire water-front terminals, sidings, and switches. They, too, fear regulation; they, too, desire privileges. Together they are united into a sympathetic organization which ramifies into every class. In order the easier to control the city, these interests enter State politics, for the State controls the city's charter and the powers which it enjoys. Together they oppose charter changes, home rule, the initiative, referendum, and recall, for all of these agencies of democracy endanger their power. The courts interpret grants; they pass upon the powers of the city. There are innumerable personal-injury suits, so the courts are involved in the system. Any understanding of municipal conditions during the past twenty years is impossible without an appreciation of the extent of the control of our politics by these interests.

This, up to very recently, was a universal condition. There is, so far as I know, no exception in any city of any size. It has been found in Philadelphia, Pittsburgh, Cleveland, Toledo, Cincinnati, Columbus, Detroit, Milwaukee, Chicago, Denver, San Francisco, and in almost every city where an attempt has been made to regulate the public service corporation, to control its rates and charges, or to convict prominent citizens of bribery or corruption.¹

¹ For graphic stories of the contests of several cities with the public service corporations, see the personal experience of Tom L. Johnson in *My Story*, of Brand Whitlock in *Forty Years of It*, of Ben B. Lindsay in *The Beast*. See also Lincoln Steffens, *The Shame of the Cities* and *The Struggle for Self-Government*.

An Ohio Example.

Few States have been as ruthlessly sacrificed by these interests as has Ohio. In 1901 Mr. Tom L. Johnson was elected mayor of Cleveland. The franchises of the street-railway companies were about to expire. For years the companies had been seeking renewals which Mr. Johnson would only approve on a three-cent-fare basis. A competing street-railway company offered to build a line or buy out the existing companies and carry passengers at this rate. It also agreed to take over the lines of the old company when the franchises expired. Grants were made to the new company, which laid several miles of track. Then further operations were suspended by an order of the supreme court, which declared the charter of Cleveland to be unconstitutional because it involved a classification of cities.

At that time Cleveland had a nearly model charter. It had been draughted by public-spirited citizens and approved by the legislature. The courts had previously sustained the classification of cities according to population and the adoption of charters adjusted to the needs of the cities in each class. This decision had remained unchallenged for years. Under this charter the mayor of Cleveland enjoyed large powers. He appointed all the executive officials, who formed a city cabinet. The charter of Cleveland was attacked in the courts, as was the charter of Toledo, where Samuel Jones, familiarly known as Golden Rule Jones, was also making

trouble for the public service corporations. To the surprise of the State, the supreme court reversed its previous holdings and declared the charters of Cleveland and Toledo to be unconstitutional. It enjoined the officials of Cleveland from further considering any street-railway legislation and restrained the city from exercising its proper municipal functions. A similar order was directed against Toledo.

Both the Republican and the Democratic parties in Ohio were under the control of the men who owned or represented the street-railway properties of Cleveland, Cincinnati, Columbus, and Toledo. They nominated governors and State officials and controlled the legislature. A special session of the assembly was called to enact a uniform municipal code for all cities to meet the decision of the supreme court. A law was prepared by attorneys of the public service corporations which was adopted by the legislature in the face of the protest of the State. It destroyed the charters of over sixty cities and provided a municipal code which created an almost unworkable machinery and added millions of dollars to the cost of city administration. The new charter went back to the "board system." Under it the powers of the mayor were taken from him and distributed among a large number of officials to be elected by the people. The governor was authorized to remove mayors on charges, while a large council was created designed to make effective organization impossible.

It was assumed that the people could not work

such an instrument; that they could not nominate councilmen, administrative officials, a law director and mayor who would work together. Each was expected to be a check upon the other.

By these means it was expected that the Cleveland and Toledo movements would be destroyed. In this it failed. It did, however, cripple and increase the cost of administration of all the cities of the State.

San Francisco.

Prior to the earthquake in San Francisco the city was under the dominion of a boss, and the mayor and supervisors had traded in all sorts of privileges. Crime and vice had been given protection. It was alleged that \$200,000 had been paid for a valuable trolley franchise. Disclosures led to an organized movement for the prosecution of the offenders. Criminal proceedings were started. They were intrusted to Francis J. Heney, who had previously broken up the Oregon land frauds and who was a fearless prosecutor. Mr. Heney described the political conditions which he found in San Francisco as follows:

“In the Pacific Coast city all corruption flowed from two sources. On the right hand we had the public service corporations—corporations that wanted something from the public for nothing—and on the left hand we had disorderly houses and dives. And strangely enough, although the so-called best citizens were at the head of the corporations, these two sinister influences were joined in an

unholy wedlock, the purpose of the union being a prolific issue of ill-gotten, dishonest profit. The political boss was only an echo of the real boss, the business man who wished to exploit the people.

“The reason is not far to seek,” he says. “The best brains in this country are not active in the work of solving social problems. They are dedicated to Mammon, and often they strike at the very foundation of popular government by methods that would not bear the light.”

The disclosures led to the indictment of many politicians as well as the president of the street-railway company, who was charged with giving a bribe of \$200,000. The trial of the street-railway president was long drawn out; it was bitterly contested, and finally the jury disagreed. The extent to which this single corporation, created by the community and enriched by it, ramified into all classes and became the all-absorbing issue in the city, has been dramatically described by Mrs. Elizabeth Gerberding, who organized a group of women to support the prosecution:

“Since the first years of the century a corrupt Mayor, a corrupt Board of Supervisors, creatures of the supremely corrupt boss, Abraham Reuf, had controlled the city. They had traded in franchises, licenses, permits, and special privileges as perhaps a political ring never traded before. More, they had organized crime and vice, given it protection, entered into partnership with it. The climax came when they accepted a bribe of \$200,000 for a ‘free’ trolley franchise worth millions of dollars to the

city had the city sold it fairly. A group of reformers, led first by the *San Francisco Bulletin* and then by Francis J. Heney, had exposed this condition of affairs, had indicted the little bosses and bribe takers—to the universal applause of the community—and had reached out for the big bribe givers—to the universal horror of the ‘upper classes.’

“What can I do? I asked myself. And the situation, as it grew in intensity, found me an answer. The second Reuf trial was drawing to a close. The guilty and desperate ‘men higher up,’ who were his partners in crime, began a systematic campaign against right thinking. It worked. Men of good private honor vigorously upheld dishonor. Not by discussing the issues at stake—from the first it seemed impossible to get one such discussion—but by wilful evasion of them. It seemed to me that people could not think straight. Perhaps the most wonderful thing which we encountered on this expedition into strange lands was that the most intelligent part of the community insisted on ignoring the basic principles. Side issues, prejudices, petty hatreds, dislikes, family affiliations, and, supremely, business interests—upon these public opinion swung.

“Perhaps because I noticed them more, or perhaps because women are naturally intense partizans, it seemed to me that we met the most violent opposition from our own sex. Heney? It mattered not that he had broken up the Oregon land frauds, that, when the prosecution was attacking only the little grafters, society had petted him. Now he was a ‘persecutor.’ Rudolph Spreckels? It mattered not that he had been irreproachable until he gave a hundred thousand dollars to support the prosecution. Now, he was ‘out for revenge.’ James D. Phelan? It mattered not that he, three-times

mayor of San Francisco, had rightly been considered by society the cleanest, most efficient executive who ever ruled us. Now, he was the 'kid-glove boss,' the 'purchaser of newspapers.' 'It's just a fight between two millionaires, Mr. Spreckels wants to get Mr. Calhoun's railways away from him,' said one elderly woman.

"For an expression of hatred as near to a curse as her gentle breeding would permit, she used to shake her fist at Mr. Spreckels's house whenever she passed it and cry, 'Oh, that dreadful man!' The thing was tearing society apart; as long as this generation lasts, we shall feel it in San Francisco in new social alignments. It was in this period that a man who was not taking sides gave a large ball. Mr. and Mrs. Rudolph Spreckels attended. They were treated so shabbily, so outrageously, that the host, for a rebuke, seated them at his right and left at supper.

"I grew hardened to 'cuts' on the street; in time I adopted the plan of 'seeing' no one. It was the easiest way. We have each our little private vanities and sensitive points; and I shall always remember with amusement the thing which hurt me most. At one stage of the fight, I wrote letters of appeal to four women who are acknowledged leaders in society—leaders not in frivolities alone, but in the finer outlook on life. Avoiding personalities, I asked their help in overcoming the false ethics prevailing in the city and in establishing a worthy code of morals. With one exception, these were acquaintances at whose homes I had been entertained. Not one replied to my letter. Curiously, laughing as I did at 'cuts,' I was hurt when I thought that a letter of mine had gone unanswered.

"Others suffered more materially. Mr. Oliver,

foreman of the famous Oliver grand jury which brought some of the indictments, was so injured in his business of real estate that he had to leave San Francisco. He was the son of a pioneer merchant, which means something in San Francisco, and his standing had been irreproachable. A grocer on that same jury, who voted according to his conscience, lost a thousand dollars' worth of trade a month. On the Sunday following the attempt to assassinate Heney, Dr. David Evans, pastor of Grace Episcopal Church, offered prayer for his recovery. Heney was lying then at the point of death. The pews murmured audibly; many women rose from their knees and left the church. 'I am on earth for a brief time; I must be true to myself; I could not go through all eternity despising my own soul,' said Dr. Evans when we praised him. But, a short time thereafter, Grace Church became Grace Cathedral, rich, endowed, and somehow Dr. Evans was lost in the reorganization. He has now a small church at Palo Alto. The next prosecutor who becomes a martyr to justice may die or recover without the prayers of Grace Cathedral.

"They had subsidized or influenced most of the daily newspapers; had subsidized all save one or two of the weeklies which are so common and so pernicious in San Francisco. These were pouring forth their poisoned statements and twisted truths. As the trial went on, the attorneys for the people found the courtroom packed with paid thugs, whose duty it was to laugh at every serious point made by the prosecution and to seem impressed by every argument of the defense—all this to influence the jury. The prosecution needed support in the courtroom. There was a League of Justice in San Francisco, whose purpose it was to uphold Heney

and the people. But these were clerks and professional and small business men; they had no time to sit through session after session of the trial. So we women, representing the only decent leisure class, formed an auxiliary and prepared to encourage justice by our presence—a little thing perhaps, but more important than any one can appreciate who did not live through that strange episode in our civic history. We knew, as well as we know now, that it would mean ostracism, slander, vilification, unpleasant newspaper notoriety, financial injury, broken friendships. But we organized nevertheless—only a handful at first—and took up the one piece of work which we could do.

“Then were we made to realize what a terrible offense against humanity we had committed when we chose justice in preference to financial power and social position. From the moment that the Calhoun trial began, that which we call ‘society,’ for want of a better name, made the prosecution a bitter personal affair. The ‘better portion’ of the community flouted Heney, slandered the prominent men who stood by him, and ostracized us, his supporters.

“That is what we learned during those five months in court. We filled in the unconnected joints in the system, and matched it with our women’s home morals—we had learned no other code. It is like the house that Jack built. Jack is the ‘boss.’ He sells the privileges of the people to the corporations. The corporations float their bonds through the banks and the banks get their money from Wall Street. And the stick of Wall Street beats the banks and the banks beat the department stores, and the department stores (their stick is called advertising) beat the newspapers and the newspapers

—tell half the news. And corporation, bank, store, newspaper are run by men who have learned home morals at the knees of women like us ‘knitters of the graft prosecution’ and then gone out into the world to practise ‘business morals.’ I am a woman, bewildered by it all, and I can not yet see those business morals though men have tried to explain them to me.”¹

Other Cities.

The same conflict has arisen in Philadelphia, Columbus, Detroit, Chicago, Denver, in a score of cities where an attempt has been made to regulate the public service corporation. It cannot be otherwise. We have offered such colossal opportunities for easy wealth by a contract with city officials that almost any means are adopted to secure it. Once acquired, those who own are interested in the preservation of their privileges. They are the most influential class in the community. They cannot enter city politics even if they desired to do so, for they are distrusted by the public. Their purse is at war with their patriotism. The professional men are also excluded, for they are employed by the privileged interests, while the press is influenced or owned by the same classes.

This is the invisible background of municipal politics; it is the policy of private ownership of a public function that divides our cities into classes and makes it well-nigh impossible for the people to unite on any programme of city improvement.

¹ *The Delineator*, vol. LXXVI, October, 1910.

Summary.

The public service corporations for the supply of water, gas, electricity, and transportation are largely responsible for the corruption of our cities. Unlike Germany and England, American cities have generally left these services in private hands, under franchises granted by the council. These grants are of great value, in the larger cities running into tens of millions, possibly hundreds of millions, of dollars. The grants are by their nature exclusive and, because of the difficulties in the way of effective control, their value has greatly increased in recent years.

In order to retain this monopoly, as well as rates and charges, these corporations are lured into politics; they seek to control parties, to elect mayors, councilmen, and tax officials, and, in addition, to control the press and the agencies of public opinion. An inevitable conflict is created by these conditions, a conflict which aligns the rich and powerful members of the community on the one hand and unorganized democracy on the other.

This has been the experience of almost every American city that has attempted to regulate the public service corporation, to introduce competition, or to bring about municipal ownership. Not content with the preservation of existing privileges, these corporations have thwarted efforts to simplify charters, to secure home rule, and to enlarge the power of the people in the control of their local affairs. In order to do this they have entered State politics for the further protection of their privileges and have sought the control of the judiciary as well.