

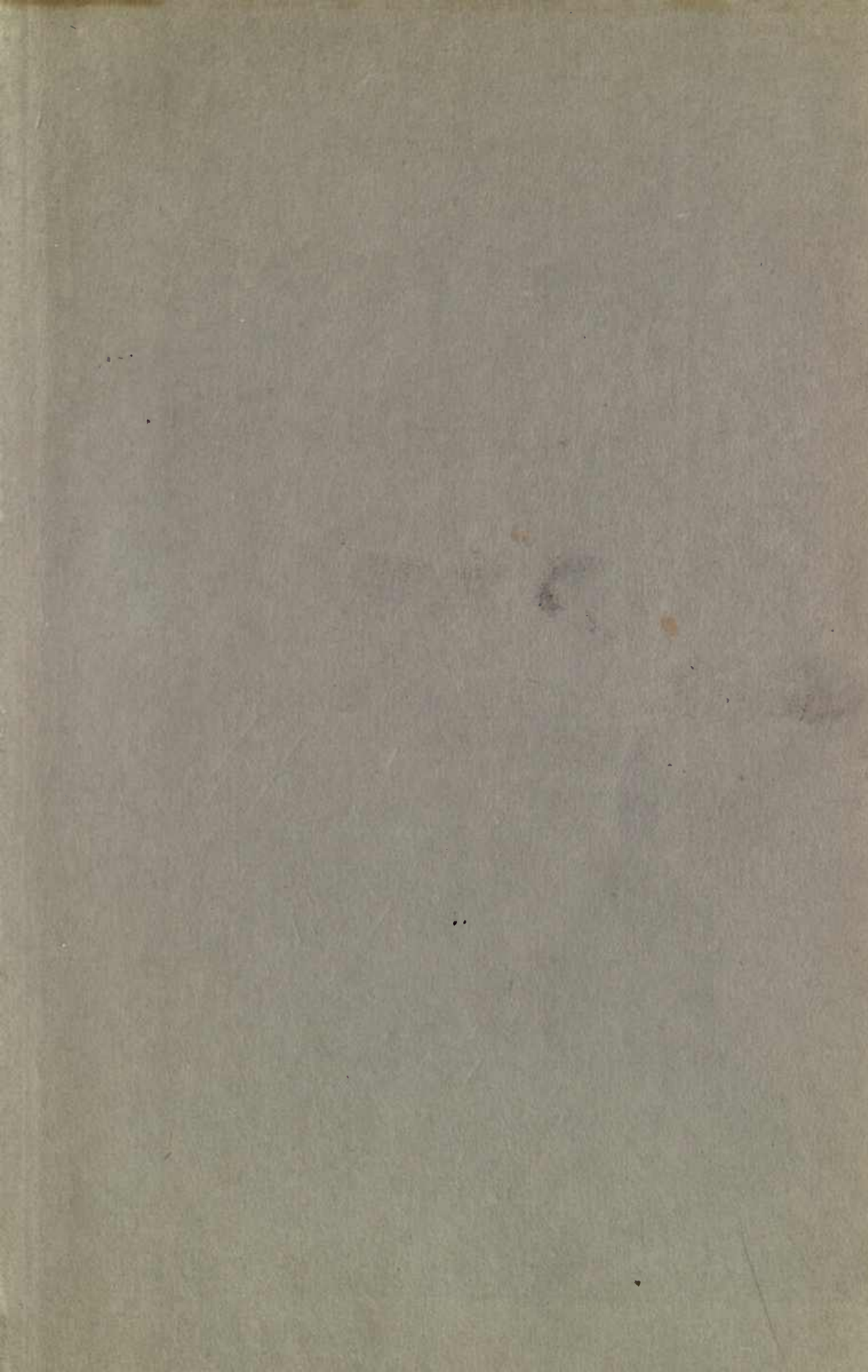


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# The American Municipal Executive

RUSSELL McCULLOCH STORY, PH.D.





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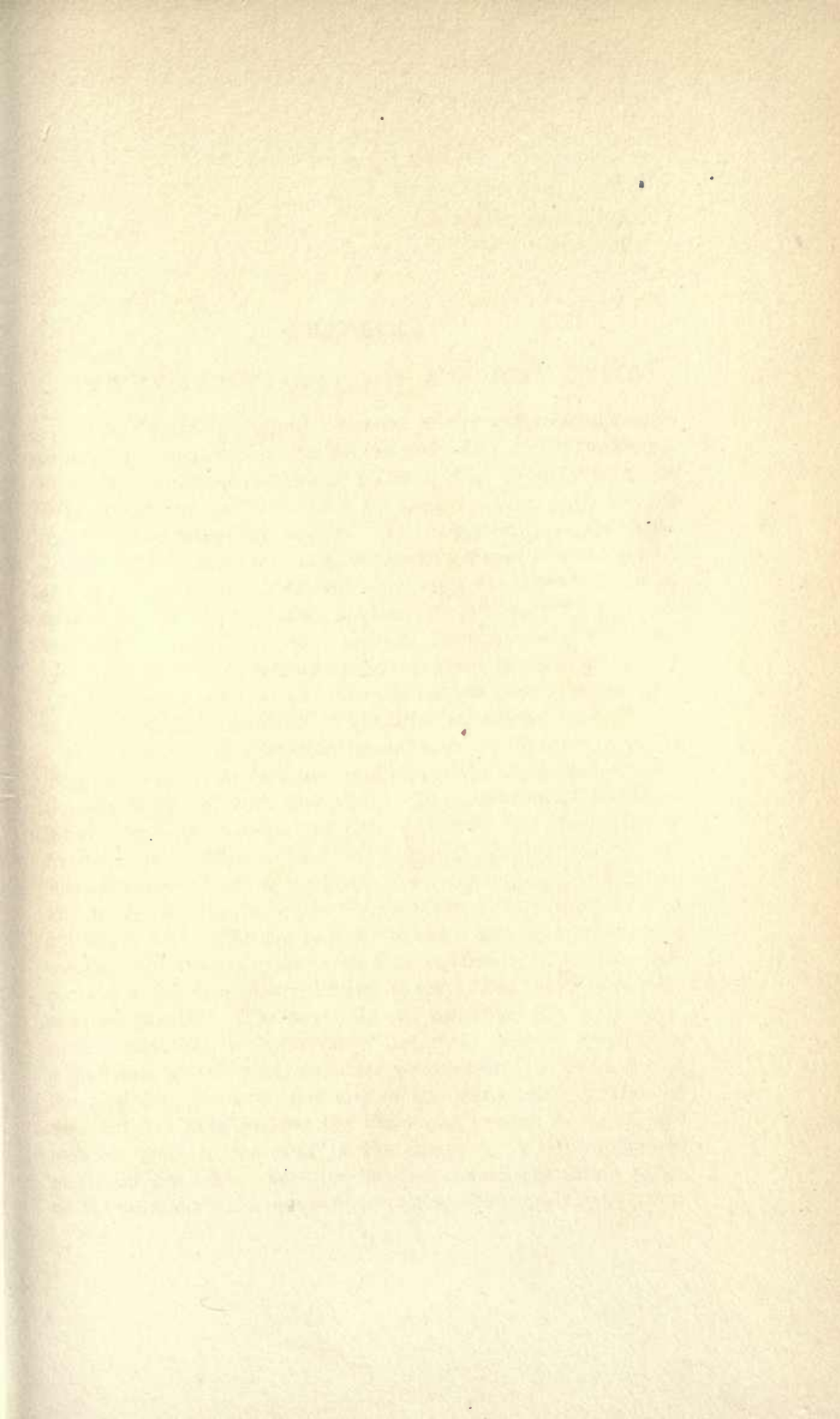
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## CHAPTER I

### THE EXECUTIVE OFFICE IN AMERICAN CITIES

For half a century popular interest in city government in this country has centered in the person and office of the municipal executive. Both in matters of policy and of administration he has commanded confidence to a far greater degree than has the organ of legislation, the council. The result has been the rapid decline of the latter and a corresponding growth in the power and position of the executive. Not even the newer forms of municipal organization have successfully stemmed the drift toward executive domination. Mayors, commissioners, and managers continue to attract the public interest in their plans and activities while councils and commissions are passively tolerated as necessary but unworthy of sustained attention.

The weakness of municipal government in this country has long been bound up with the condition of the municipal council, tho obviously not with that alone. The weakness of the legislative organ as an object of citizen interest has seemed to be fundamental. Whether due to bicameral organization, to the council's lack of power, to legislative interference, to the ward system, to the long ballot, to the executive veto, to traditions of a corrupt and inefficient past, or to these and other reasons in combination, the condition is one that apparently is of more vital concern and is much more difficult to solve than is any deficiency in administration. The American city seemingly has not devoted to this situation the attention it deserves. Neither home rule, commission government, manager government, the short ballot, the abolition of wards, nor any of the many other reforms of recent years have revived the municipal council to its alleged rightful place in the mind of the citizen or in the conduct of public affairs. The executive has resisted all the forces which would normally have operated to restore the council to its prop-

er power and prestige, and to subordinate administration to its supervision and control.

The drift toward executive domination has been noted in many fields of government in recent years. Presidential authority in our national system increasingly forces Congress to do its will, and executive usurpation is a frequent subject of protest on the floors of the national legislature. The growing authority of the British cabinet over the house of commons and the apparent inability of the latter to maintain the substance of the parliamentary system points to the triumph of the executive where the legislative organs have been touted as omnipotent. The breakdown of control by the council is apparent in Chicago where council government has made its last stand in the larger American cities. Meetings of commissions in commission governed cities are not objects of widespread public interest; indeed, the very opposite is notoriously the case. The city manager threatens to swallow up the commission or council which selects him, and the meetings which hear his reports and approve his recommendations do not call forth those discussions of public policy or those criticisms of public administration which reflect a vigorous and healthy legislative life. Whether one prefers it or not, the expanding activities of modern government have reduced municipal councils no less than national and state legislative organs to a condition of dependence upon the executive. The predominance of the latter in American city government is the outstanding fact of municipal organization and operation.

Despite the multiplied demonstrations of the incapacity of modern organs of legislation to deal with the problems of modern government, orthodox opinion continues to cling to the notion that the council should be the controlling factor in municipal life. The fact that it is not dominant and probably will never again be in control has not been fully appreciated. What is to take its place is being determined by processes not subject to the logic of theorists who worship the old order. Rather, there is being worked out a popular forum which wisely or unwisely assumes the responsibility of making decisions on questions of public policy and which directly controls the executive to whom it commits administrative affairs. Councils and other legislative bodies may retain the shadow of authority, may still fill in the details where the public at large has not voiced its will, may even



select the administrative expert, but the responsibility of both council and executive is immediately to the people and every wise executive recognizes this fact.

If, then, there is being evolved some new form for the expression of democracy in which the people and the administrative agencies are to constitute the most important factors and the legislative organs are to be a less consequential feature than in past municipal history, it is the part of wisdom to take stock of the executive office in American municipalities today. The public can intelligently determine its course only as it is familiar with the situation now existing in administration. Too long the processes of development have gone on without an adequate analysis of this situation, with the result that extravagant claims have been made for this or that type of executive organization and for one or another method of supervising administrative agencies. It is in the hope of supplying in part such a survey of the office of the municipal executive that this study is offered to a public already aroused to progressive activity in municipal affairs.

There are over two thousand American cities in which the municipal executive is called by the title of mayor; in approximately four hundred others he is known as president or mayor-commissioner or as commissioner; and in less than one hundred municipalities he is styled the city manager. The mayoralty obtains in all but half a dozen of the larger and more important cities. It is the oldest of the three offices and until the opening of the twentieth century was found in practically all American cities. The history of the mayor-commissionership and of the commissionership lies wholly within the present century and that of the managership within the last decade. These facts impart significance to the figures indicating the extent to which the newer types of organization have been adopted. The favor with which they have been greeted demonstrates the dissatisfaction with the old order and the active character of the search for a municipal constitution adapted to the twentieth century city. Such a constitution must recognize two facts, viz., the dominating position of the executive organ, and the immediate supervisory authority of the municipal electorate in administration. The outlook for a restored council is not promising and to those who long for such a revival must appear positively discouraging. At best it

will but share in the important decisions of public policy, the executive and the electors playing the influential and decisive parts. It may develop into a sort of electoral body to choose the municipal executive; but as in school administration the executive, when chosen, will be actually responsible to the people and will largely dictate the council's decisions.

The actual and the relative importance of the executive office increases with the concentration of population in urban centers. The heads of municipal administration often preside over populations aggregating hundreds of thousands and in some cases millions. Three cities in this country rank higher in population than do twenty-five of the states. Twenty-five cities have a higher population than do two of the states. Nine cities exceed and eleven states fall below the half million mark. The office of municipal executive is therefore frequently a commanding one and vies in dignity and salary, tho not in authority, with the governorship.

The spread and development of local autonomy undoubtedly contributes to the importance of municipal office holding, and in this accretion of strength the executive shares. While it may be truly urged that the relative importance of municipal chief magistrates does not now appear to be much greater in the home rule states than in others, it should be noted that the greater cities are almost all located in the states where municipal home rule does not obtain. One can hardly conceive of home rule for New York City, Philadelphia, or Chicago without an accompanying increase in the power and influence of the executive authority. The electorate, however, will absorb the major portions of the new strength conferred by a thoro-going regime of local self-government. The so-called revival of the council is more apparent than real.

Among recent developments which indicate a growing importance for the office under review there should be noted the appearance of an executive consciousness on the part of the incumbents. This is shown in the formation of leagues, associations, and similar organizations for the study of municipal problems. Many of these organizations are the offspring of earlier associations of the mayors. Their prominent and active members are principally executives. National and sectional conferences of mayors have been held, one for the consideration of public utility problems,



the others dealing prominently with the question of national preparedness. The city managers have a national organization and hold annual conferences. The immediate results of these developments are not of such momentous importance, but the recognition of a common interest in municipal and other problems of the day and the effort to approach them semi-professionally in a spirit of mutual helpfulness are highly significant of the place of the municipal executive in American life.

The mayoralty is the most common and the most important type of municipal executive organs. The mayor represents the municipality in its dealings and relations as a corporate entity. On behalf of the city he welcomes its distinguished visitors and extends greetings to conventions and assemblies which gather within its bounds. He delivers memorial and other addresses on occasion, opens local festivals and pitches the first ball of the baseball season. The mayor is marked for responsibility. The office is immune from many of the weaknesses which appear in every executive unit made up of more than one person.

Legally it usually lacks that basis in fundamental law which is supplied the chief executive offices in state and nation; its existence depends upon the will of the state legislatures and its constitution and powers are defined in statute law, municipal charters, and council ordinances. On the other hand the term mayor is well worked into the political conceptions of the American public and even where changes of a radical nature are taking place in municipal executive organization, the title often remains to indicate the one who represents the unity, dignity, and authority of the city.

The movement toward mayor government which was so conspicuous twenty-five years ago has subsided during recent years. This movement had its origin and basis in the stress which modern municipal problems placed upon the administrative organization of the earlier council system. For the handling of these problems there was necessary the directive force of some single agent, together with the greater freedom of action and ease of control which administrative unity made possible. The development of the mayoralty followed, but it proved to be neither uniform nor adequate.

The forces which produced the mayor system are more potent today than ever before. They have, however, taken more varied

methods of attaining the desired administrative goal. Thus it is that commission government and manager government have come into being, and are successfully contesting with the mayor system for the public favor. Both of these newer forms have made spectacular growth and both have achieved remarkable results. In the commission system the mayoralty remains, tho largely shorn of its powers. In the manager form the mayor usually disappears, tho in some cases remaining to perform the distinctively political as differentiated from the business and administrative functions of the executive.

The evolution of the commission plan is proceeding steadily and its application in larger cities will produce features and results not now foreseen. In its impact upon mayor government it has undoubtedly stimulated and purified the latter and has, perhaps, contributed to its permanence and stability. At the same time it has experienced a vigorous reaction in the strengthening of the mayoralty, in the demand for greater centralization of administrative authority and responsibility and for the separation of legislative and executive functions, in the increasing need for expert administrators, and in the appearance of the manager plan. It is significant also that in the commission form the mayor-commissioner has a more favorable position than did the mayor of a century ago. All the factors which have aided in creating the mayor of today are either present to enhance that position in commission government or are likely to appear as the commission plan undergoes the test of metropolitan conditions.

In the manager plan the attempt to restore the municipal council and the emphasis upon administration by experts are features that constitute a sharp challenge to both the mayor and the commission systems. The executive is apparently subordinated to the council. Nevertheless, the history of government in democracies evidences a tendency toward executive leadership. Indeed, in our modern life with its large governmental constituencies and its complex and highly technical problems it is doubtful if any adequate form of municipal organization can be devised which will assure efficiency and at the same time deny executive leadership. There are those who believe that the city manager, tho nominally elected by the council, will in fact become the dominating factor in the regime of which he is a part, and that the council will sink into practical subordination. The



manager plan, on the other hand, is held to make possible a vigorous and responsible council operating in conjunction with a trained and wide-awake executive, chosen because of his fitness, and clothed with ample authority to control and direct the administrative forces of the city. One may gauge the importance attached to the coming of the manager form of municipal organization by the universal interest in its development and achievements. It is also significant that this form has supplanted the mayor plan in the "model charter" prepared and presented by a committee of the National Municipal League in 1915.

With the exception of the managership the municipal executive office is largely devoid of standards indicating the fitness of the holder for the performance of his duties. The mayoralty and the mayor-commissionership alike are open to the good, bad, and the indifferent, and in almost all cases to the untrained and to the politically ambitious. The establishment of high standards and traditions in the municipal service generally depends in no small degree upon their establishment first in the office of the chief executive. The prompt achievement of the latter task is one of the problems before those who would retain the one or the other of the above forms of organization.

It is not to be expected that the type or position of the municipal executive office will ever become uniform thruout the country. There is already considerable diversification in organization and practice with respect to the office, and this is true of each of the three principal systems. It is probable that this diversification will continue, especially as the principle of home rule for cities comes to fuller definition and acceptance and permits of experiments designed to meet the political conceptions and conditions of the communities undertaking them. The progress that has been made as a result of such experiments has nowhere been more conspicuous than in the recent history of the municipal executive. Not a little of the strength and virility of the commission and manager plans is due to the freedom and ease with which cities have adapted them and developed them thru local self-government. The experiences of the past and the experiments of today may confidently be expected to stimulate and hasten the evolution of more perfect organs for executing the public will and administering the public business.

## CHAPTER II

### THE HISTORICAL DEVELOPMENT OF THE MAYORALTY

The term "mayor" is an ancient one. Originally it comes from the Latin "magnus," being the comparative of that adjective, but having the form "mayor." It does not appear to have been applied to the domain of city government by the Romans, tho an officer called the "prefect" seemed to have exercised functions much similar to those we commonly associate with the office of mayor. The term gradually acquired political significance in the kingdom of the Merovingian Franks. The chief officer of the royal household was the major domus or mayor of the palace. In the degeneracy of the Merovingian rulers came the opportunity of the mayors — they became the chief officers of state and finally usurped the royal title itself.

#### *English Antecedents*

The use of the term mayor became general wherever the Frankish influence was felt. Today forms of the word are found in Germany, Portugal, France, Great Britain, and some of the British Dominions. In Germany the "meier" exercises functions similar to a bailiff, tho as a steward he may be a purely private functionary. In Portugal the "maior" or "mayor" and in France the "maire" are titles to which are attached a distinct political significance. It is in England that the immediate antecedents of the American mayor are to be found. Its beginnings there are not fully known, being wrapt in the obscurity that hides much of the origin of things in England. It is known that the office existed *de facto* before it was recognized *de jure* in the municipal charters. It is generally accepted by the authorities that there was no mayor in London prior to 1189, that there was a mayor by 1193, and that the title was a Norman importation. Norman influence in London was very strong and there was a



tendency to copy French titles. The use of the term "mayor" to designate the chief officer in cities had been extant in northern France some years before 1189. The application of the title to the portreeve, bailiff, or head officer of English cities and boroughs certainly began under the Normans.

By 1216 some of the most advanced among the English towns had succeeded in obtaining the charter right to elect their mayors. This early emergence of the mayoralty gave it strength during the following centuries when the organization of English municipal government was being definitely shaped, tho the permanency of the title does not seem to have been assured until at least the late thirteenth or early fourteenth century. While Edward I, in organizing his parliament, seems to have recognized the boroughs, he made the sheriff and not the mayor the returning officer, thus indicating that no borough constitution of an independent character or fixed type had as yet come into existence.

The standard form of organization in municipalities was one of the products of the fourteenth and fifteenth centuries and was incomplete until the realization of the legal personality of the municipal corporation. By the close of the fifteenth century, however, the organization of municipal government had taken permanent shape and the mayor was the chief magistrate. He was one of the close corporation which the charter either created or which custom had come to recognize, following some early and successful usurpation, as having the right to exercise charter powers. The general powers of these corporations differed according to the respective charter terms and local practice. But the form of English municipal government became fixed and remained practically unchanged until long after the transplanting of English stock and ideas to the shores of the New World.

In this early period of municipal history the obligation of office holding was not unknown, and the custom of compelling the one chosen as mayor to serve in that capacity was well established. In the Cinque Ports and probably elsewhere a refusal was punished by the demolition of the home of the delinquent. In the case of London and other chartered cities the election of the mayor was an annual affair, tho the incumbent was often retained in office, and was sometimes reëlected for many terms. The mayor was "presented" to the king in the procedure prescribed by the charters, and this was done following each elec-

tion; and upon such presentation, the mayor-elect vowed his loyalty to the ruler.

In his political capacity the mayor was from the first an officer of no small consequence. The mayor of London was named as one of the committee who were to enforce, if necessary, the *Magna Charta* against John. The Londoners are quoted as announcing that "come what may, they should have no king but their mayor." The mayor undoubtedly brot considerable standing and prestige to the office, for he was one of the city's barons or chief men. London's first mayor was a leader in the efforts to secure charter privileges. Of the details of his power we have little exact knowledge, but there is no reason to doubt that he exercised considerable control in the government and administration. In the oath taken by the common councilor he agrees not to leave the council without the mayor's permission. The mayor as chief of the aldermen presided at assize, pleas, and hustings. In the communal oath of 1193, as in that of the London freeman of today, one of the vows taken is that of "obedience to the mayor," a phrase which probably meant more in that day than in this. One of the titles by which the corporation of London was known in the late thirteenth century was "The Mayor and the Commonalty of London."

The developments of the fourteenth and fifteenth centuries made the mayor the most prominent official in municipal life. The early charters of the fourteenth century often made provision for the election of the mayor by the burgesses; but during the fifteenth century there was a marked contraction of the electorate, and the mayor usually came to be chosen by the council, consisting of the aldermen and the common councilors. In administrative and in legislative matters affecting the city he occupied a position of authority, one that is still reflected in the seventeenth and eighteenth centuries. In the dealings of the municipality with the king and with the outside world in general the mayor, as the head of the corporation, stood foremost. Of course London was somewhat in advance of the other cities and her influence was widely felt in the organization and development of the municipal constitution both in its chartered and its customary forms.

The history of the mayoralty from 1600 to the American Revolution, at which time the direct influence of English local insti-



tutions in American life may be deemed to have ceased, is not easy to trace. At the opening of the Tudor regime there were between one hundred and two hundred chartered towns and boroughs organized on the basis of the typical municipal constitutions of mayor, aldermen, and common councilors, tho there were numerous variations in detail. The tendency toward oligarchic control by this governing group was a feature of the sixteenth and seventeenth centuries. The body of mayor, aldermen, and common councilors became an ever narrowing one and the drift to the "close corporation" was steady. In the later seventeenth century the policy of the Stuarts was openly antagonistic to the continued existence of the old town charters, and they were forfeited and surrendered in large numbers under pressure from the crown. Even London sank so low as to become a victim of this movement and the slight opposition to the forfeiture of its charter shows the depth to which the spirit of local self-government had fallen in England. Royal interference and direction and local oligarchies became dominant factors in municipal life. The mayoralty suffered no little impairment of its former position of leadership, tho remaining as an important factor in municipal life.

There was a recovery in municipal government after the fall of the Stuarts but the recovery can hardly be said to have been in the direction of constructive reform. There is rather a transfer of the control over municipal life from the crown to the landed aristocracy. There were no important developments in the municipal constitution except as the process of petrification may be deemed important. Of new life there was a plenty during the eighteenth and nineteenth centuries, but in municipal government it was unable to break thru the old shell until 1835. Therefore, from the standpoint of municipal constitution, the period is properly considered to be one of stagnation, if not one of positive decline. From the standpoint of the mayoralty, as will be pointed out later, it was also one of decline, a tendency which culminated when the mayoralty lost out almost entirely in the reforms initiated under the Municipal Corporations Act of 1835, an act which established council government in English cities.

It was during the seventeenth and eighteenth centuries that the municipal institutions of the English were transferred in

spirit, in nomenclature, and in form to the shores of America. It is important, therefore, that the English mayoralty of those centuries be more carefully examined with a view to ascertaining how far it served as a model for the municipal executive in the American colonies. Both the title and the position of the mayor in the English municipal corporation were matters determined by the borough charter. This instrument conferred upon the executive considerable tho somewhat indefinite powers extending to every feature of municipal borough life. In legislation he presided over all assemblies of the corporation. In judicial matters he was the chief magistrate and clothed with all the powers of a justice of the peace, an office which was then more important than it is in America today. He also presided at the borough quarter sessions, and held whatever courts the borough maintained, either in the capacity of sole judge or jointly with the recorder. His judicial duties included service as coroner for the borough and a number of quasi-judicial functions such as those of escheator, or keeper of the borough gaol. The executive and administrative authority of the mayor reveals the chief source of his power, notwithstanding the wide judicial authority of a local nature which he possessed. His appointive power was extensive, sometimes including all but the few offices specified in the charter. He was empowered to regulate trade, administer public property, manage coöperative and quasi-public enterprises, and to enforce the laws. In this latter capacity he rose to a commanding place in municipal life. The mayor was the "lord of the town;" he was "almost omnipotent;" the honor and supreme authority of the seventeenth century city "subsisted in his person;" he enjoyed the "first voice in all elections and other things that concern(ed) the town." Despite the steady decline in the mayoralty in England during the eighteenth century due to the slow development of new forces within the cities, a great part of his authority survived until the reform legislation of 1835.

With respect to their methods of choosing the head of the corporation or mayor, English municipal corporations, during the seventeenth and eighteenth centuries, may be divided into three main groups. By far the largest proportion — from two-thirds to three-fourths — were close corporations and the mayor was elected by the members of the corporation from among their own



number. The second group comprised those in which there was a restricted electoral power conferred upon the freemen or burgesses, the members of the corporation retaining a strong control either thru power of nomination or thru exclusive eligibility to the mayoralty. In the third group there was a real approach to municipal democracy, the freemen electing the councilors and participating in general assembly in the nomination of the mayor or chief officer of the corporation; but the final choice of the latter was usually left to some smaller body, such as the council.

The English custom in respect to mayoral salaries was not materially different then from what it is today. There were, it is true, certain nominal allowances and perquisites. "But it may safely be assumed that even the largest of these allowances never did more than cover the out-of-pocket expences of the holder of the office, and seldom sufficed to meet the innumerable charges . . ." "The Headship of the Corporation, whatever its nominal emoluments, was in fact, in 1689 as in 1835, always an honorary office of considerable personal labour, rewarded only by the prestige, power and social consideration universally conceded to the Chief Magistrate of the Borough." And there are cases on record in which the boroughs adopted during this period the principle of requiring free service of their officers, the mayor among others.

#### *In Colonial Times*

When one turns from the position of the mayoralty in the mother country to consider the place which it held in the English colonies in America, a contrast is at once apparent. The reproduction here of the close corporation, the custom of annual selection, and even of the studied attempt to copy after the English model in the establishment of the mayoralty did not suffice to prevent a marked differentiation. The strength of the office in England, whether due to charter custom, or the personal standing of the mayor or to all three in combination, was to no small degree lost in the atmosphere of a new country, owing to the leveling conditions of pioneer life, and to the tendency of transplantings generally to manifest new characteristics and to follow new lines of development. The effort to reproduce the English mayor was partly a conscious one, for in the Elizabeth, New Jersey, charter it was provided that the mayor should have

charge of the borough "in as full and ample manner as is usual and customary for other mayors to have in like corporations in our realm of England." The gradual introduction of English "methods of government" was one of the prudent achievements of Colonel Nicolls according to William Smith, who made this comment in connection with the incorporation of New York under the care of the mayor, five aldermen, and a sheriff. No doubt the colonists imagined that the English mayor was being reproduced in the colonies. The colonial mayors, it is true, often received considerable prestige thru their appointment by the provincial governors, as in New York. They thus represented the general government of the colony in local affairs. The mayors were frequently reappointed, some serving for ten years. In this way they were able at times to gain no small amount of personal influence. But in general the powers of the corporation were absorbed by the municipal council. The colonial mayor was relatively insignificant in both legislation and administration as compared with his English fellow. He was in a real sense the servant of the council.

If we view the position of the American mayor during the period prior to 1796 from the purely legal point of view we find that the standing of the office more nearly approached uniformity during its early history than it has at any time since. Its development has followed very diverse lines in different cities and general uniformity in legal status is now beyond realization, even tho it were desirable. But in the colonies the mayors were all subordinate to their respective municipal legislatures. Tho the detail varies slightly the general picture presented is always the same. Even the judicial powers which were employed to raise the mayor to such prominence in English boroughs were allowed to lie dormant in the colonies and today are of little consequence.

The position of the American mayor before 1796 may be summarized as follows:

(1) The title was employed by municipal corporations in New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Maryland and Delaware; altho it was first provided for in Maine, yet, except for Boston's appropriation of the title after the Revolutionary war, it had not been in vogue in New England before this date. The title of the office which in



New England corresponded to the mayoralty was "moderator."

(2) The charter position of the mayor was not strong. He had few powers other than minor ones. He was legally a part of the council and often subordinate to the governor, and enjoyed, therefore, no large independence.

(3) He was an officer of some prestige socially and politically, depending largely on his personality.

(4) There was a marked absence on the part of the mayoralty of discretionary activity in matters of police, sanitation, and morals. In this respect there is a striking contrast with the English mayor of contemporary years.

(5) Owing to frontier conditions and the leveling influences under which the mayoralty was set up in this country the office lacked much of the strength which custom and precedent gave to it in England.

(6) The failure of the office to develop importance prior to the adoption of the federal constitution may be traced to the absence of appointive power, the want of a complex municipal life, the active participation of the municipal councils in borough administration, and the failure of the mayors to exercise fully judicial powers which they already possessed. In this respect the early American mayor signally failed to follow the course marked out by the mayors of English boroughs.

#### *Since Colonial Times*

It is extremely difficult to periodize the history and development of the mayoralty in the United States since the close of the colonial era. The development of the office has not been in any sense uniform and any effort to generalize must recognize numerous exceptions. This leads to the conclusion that it will be well to emphasize certain dates which have some general acceptance or special significance in the history of the mayoralty and describe the conditions then obtaining, with such reference to the intervening years as the history of the office may seem to justify. The years selected for this purpose are 1796, 1823, 1870, 1900, and the present time.

The year 1796 is significant both from the standpoint of the American municipal constitution and of the mayoralty as a part thereof. Both had been relatively unimportant in a population of which less than four per centum lived in incorporated cities

and boroughs. The years which had so much meaning in the early history of the country stood for little in municipal history. With the year 1796 it is different. It has real interest from the point of view of the mayoralty for it betokens the play of new forces and new ideas, and it introduces the years of development and growth in the position of the mayor.

Many writers have called attention to the influence of the federal principles of government in our municipal organization. It was but nine years after the framing of the federal constitution and but seven years after it went into effect that the evidences of this impact became discernible. Municipal government was in a formative and primitive stage of its development in this country. It therefore yielded quickly to the pressure of the ideas found in the new federal organization. The predominance of these ideas in the Baltimore charter of 1796 was overwhelming. In the case of the mayoralty its development may properly be said to date from this charter. Provision was made for the choice of a mayor thru an electoral college chosen by popular vote; the mayor was given a veto which was of substantial character, a three-fourths vote of the municipal council being necessary to override it; a limited power of appointment, responsibility in law enforcement, supervisory authority in municipal finance, and the duty of making recommendations to the council were bestowed upon him; he was to receive an annual salary. A more striking triumph of the ideas which created the national executive can hardly be conceived.

This victory proved to be too complete to be permanent. It was to be a century distant before the real position of the municipal executive was to approximate relatively that of the federal executive. The Baltimore charter was a prophecy — not the fulfilment. It was a thing born out of due season. Some one has observed that the institutions which change most slowly, which possess the most vitality, are the institutions of local governments. It is an observation which holds true in American municipal history. The council was too firmly rooted in the public esteem and in the municipal constitution, the conditions demanding change were too feeble to force a general and immediate acceptance of the theories of the federal constitution as applicable to organization in municipalities. Every step in the ulti-



mate victory of the federal analogy was won only by a long and painful process of development. And when the federal principles finally triumphed in municipal life generally, when it had created the federal plan with its strong executive, it was heralded to the world as a conspicuous failure. Stress and circumstance had been creating other "plans." Intelligent care and scientific investigation are modifying all plans.

The year 1796, however, marks an important point in municipal history. The Baltimore charter, tho premature, signifies the emergence of the mayoralty into independence and importance. And the development of the mayoralty from this date constitutes one of the main features of the evolution of American municipal life and organization. The Baltimore mayoralty of 1796, with some few, tho not unimportant, modifications, is the mayoralty now to be found in most American cities. It is one of the few contributions of our municipal democracy to the theory and practice of our municipal organization and differentiates the American municipal executive from others in foreign lands.

In the course of the struggle of the federal ideas for recognition and supremacy in the municipal field, the year 1823 is significant because of the contribution which was made in that year and the years immediately following it to the conception of the municipal executive. It is not possible to separate the development of institutions from those personalities in which they find expression. If the Baltimore charter of 1796 was a prophecy of the mayor of a century later, Josiah Quincy was the later nineteenth century mayoralty incarnate. He became the chief magistrate of the recently chartered city of Boston in 1823. Under the charter of 1822 the office of mayor had supplanted that of moderator. Yet the position was not an imposing and a commanding one. The importance of executive leadership was not expressly recognized. Popular election alone appears as an important element in strengthening the mayoralty, tho Boston was not the first to introduce the popularly chosen municipal executive. But popular election plus the personality and vigor of Mr. Quincy produced a demonstration of the mayoralty and its possibilities that has left its mark to the present day. Moreover Mr. Quincy consciously cultivated the intelligence, confidence, and appreciation of the municipal electorate in the work which he

was doing. He not only set the standards of the office for many years in advance, but he left in the mind of the municipal citizen a definite conception of a new type of municipal executive.

The contribution of Mr. Quincy was not the work of a man lustful for power in order that he might aggrandize himself, or further partisan interests. The strength which he brought to the office and the interpretation which he gave to its place and function in municipal organization were imparted with a full appreciation of what he was doing. In describing the events of his first inauguration as mayor Mr. Quincy says of himself "The Mayor, in his inaugural address . . . deduced the spirit of the city charter from its language and the exigencies which led to its adoption, and explained his views of the powers and duties of the office of Mayor, and the principles by which he should endeavor to execute and fulfil them." He then outlined the defects in the old town organization and especially those of division of executive power, lessened responsibility, want of relationship in the work of the former branches of the executive. The remedy was provided for "in the powers of the Mayor," which he conceived to be "requisite" for the efficient exercise and fulfilment of the duties imposed upon the municipal executive. The purpose which moved him during his mayoralty is clearly expressed in his own words thus: "To postpone, and if possible, to prevent the occurrence of such a state of indifference to the essential qualities of the executive [as he was described in the preceding paragraphs] . . . the Mayor elect deemed it his chief official duty to produce and fix in the minds of all the influential classes of citizens a strong conviction of the advantage of having an active and willingly responsible executive, by an actual experience of the benefits of such an administration of their affairs; and also of their right and duty of holding the mayor responsible, in character and office, for the state and the police and finances of the city." To bring the responsibility of the executive officer into distinct relief before the citizens, was accordingly a leading principle, by which he endeavored to regulate his conduct in that office. This purpose he avowed, and never ceased to enforce by precept and example, during his administration of nearly six years.

No student of municipal history who has perused the career of Mr. Quincy, either as recorded by himself or by others, or who



has studied his messages and addresses to his fellow officers and citizens in Boston can reasonably question but that he approximated the ideals of the mayoralty as he saw them. He did not escape scathing criticism of either his views or his acts. "The Mayor assumes too much himself. He places himself at the head of all committees. He prepares all reports. He permits nothing to be done but by his agency. He does not sit solemn and dignified in his chair, and leave general superintendence to others; but he is everywhere, and about everything, — in the street; at the docks; among the common sewers; — no place but what is vexed by his presence." In these words Mr. Quincy quotes the complaints of his adversaries. To a man with his convictions and firmness of purpose they must have been the assurance that he was in some measure achieving his purpose.

It is not easy to realize the full influence of such a mayoral career as that conceived and worked out by Mr. Quincy. The tracing of this influence in Boston is not so difficult, but elsewhere the problem is a much harder one. Nevertheless one may not doubt the fact that the effect of the demonstration which had been thus consciously staged in Boston was an important factor in the future development of the office. There was no little correspondence between officials in the principal cities of the day, for example, between Boston and New York, Philadelphia, and Charleston, South Carolina, respectively. The achievements of this administration in Boston were known elsewhere. It is not possible to say to what extent mayors elsewhere were inspired to larger efforts and more vigorous service by reason of Mr. Quincy's example. Even less is it possible to say to what extent the latter's methods had laid hold upon the ordinary municipal citizen, or those who had to do with the drawing up of municipal charters in the years following. There was a reaction from mayor government even in Boston following Mr. Quincy's retirement, yet no succeeding mayor failed to feel his influence. An influence of this sort is no less real because it is hard to measure. Such conceptions as his do not permeate the public consciousness nor command general acceptance all at once. But that there is a real connection between a Quincy and a mayoral type such as we are familiar with today cannot be seriously questioned. By seizing upon the opportunity to show the possibilities of an office that was passing thru a formative period Mr.

Quincy proved himself to be one of those creative spirits who from time to time leave their impress upon even the institutions with which they come in contact.

The acceptance of the elective mayoralty in Boston in 1822, tho not the first instance of the elective principle being applied to this office, is also significant because it foreshadows the triumph of the executive over the bonds which had heretofore been the guarantee of council predominance. The overthrow of the latter did not come all at once, but it has steadily declined in influence and power from that day to this. Popular election of the mayor spread rapidly and with popular election came independence. From being the servant of the council the mayor was suddenly confronted with the opportunity of becoming its master. The course of municipal development, the inability of the councils to adjust themselves to the rapidly shifting conditions of the following century, the like futility and ineffectiveness of legislative interference, coupled, as it was, with waste and spoils, the greater ease with which the mayor could be brot to feel the pressure of public opinion and with which responsibility could be fixed upon him, all these factors and others combined to give the executive its opportunity. Mr. Quincy seized upon this opportunity with more zeal and with larger comprehension than did most of his successors. But that the latter, too, did not fail is evidenced by the fact that between 1822 and the present time the mayoralty has received no serious setback in its movement toward the most commanding position in the mayor and council plan of government.

The importance of the triumph of popular election can hardly be overestimated. It is an indication of the serious and honest effort that was being made to apply the principle of the separation of powers to municipal government and organization. It was a development that has changed the character of American municipal institutions. The theory of the separation of powers is impracticable. It works out in the establishment of some extra-legal mastery, or as in the case of city government, the triumph of one of the divisions of power set up. It was inevitable in the municipal field, where the work of government is so largely administrative in its character, that, once the principle of separation of powers was recognized, the mastery should gravitate toward the administrative organ or head of municipal govern-



ment. Popular election gave to the mayor the strategic position. Mr. Quincy made the most of it. He always made it a point to inform the electors with regard to his policies and plans. He perceived very clearly that with the support of the electors behind him he could readily dominate the council. His success has perhaps never been excelled; but his methods, and others which he was not able to employ under the less favorable conditions then obtaining in law and custom, have been assiduously utilized by many a mayor in succeeding years. Had popular election of the mayor never come, the council might have been saved, but with popular election once established the supremacy of the council in the field of municipal government was ultimately doomed. The same forces are at work in varying degree in state and nation, tending to exalt the administrative arm of the government and to depress the legislative; and the steady increase of the presidency and the governorship at the expense of the congress and the state assemblies respectively, and in spite of a resistance fortified by the provisions of written constitutions, shows how logical and irresponsible was the growth of the mayoralty.

If the establishment of popular election for the mayoralty was not a direct blow at the power of the council, the bestowal of the veto upon the mayor must be accepted as the beginning of the positive movement against the position and integrity of the legislative branch of the municipal government. This development in the mayoralty appeared in the New York charter of the year 1830, and in the words of Mr. Greenlaw constitutes the "first marked encroachment on the powers of the council." Moreover this veto was an absolute one — the signature of the mayor was necessary to the enactment and validity of ordinances. The absolute veto gave way to the qualified veto in the course of its development, and this in turn to the selective veto when appropriation bills were concerned; but the net result was the development of a most important power of the municipal executive in legislation, a power which in New York state has been extended to include local and special legislation affecting municipalities.

The time when the mayoralty generally was vested with a legal control over administration is not easy to determine. The tendency in that direction antedates the year 1850, but it is between 1850 and 1860 that some of the more important and permanent steps are taken. Out of twelve representative cities five of them

made some progress toward vesting the mayor with varying measures of authority over appointments, and four of them vested in him either complete or partial supervisory powers over administration. Feeble powers of removal appear in three of them, while the vague responsibility of being "chief executive" is imposed in five. In the charters issued in the smaller cities between 1850 and 1870 the mayor's administrative control is quite noticeable. In Illinois, for example, the charters of Macomb, Jacksonville, and several other cities confer upon the mayor the power of appointing the school board, a power not given under the general municipal act of 1872 and bestowed today in only a few of the larger cities. Altho the following decade appears to have been a period of relatively little change, with reaction showing itself here and there, as in Pittsburgh (where the veto power was temporarily lost in 1867), yet there was no important setback in the development of the mayoralty. The year 1850 therefore marks the point when the mayoral office "finds itself," so to speak, and it is definitely recognized in law as the principal repository of administrative authority and responsibility. It must be said, however, that the definite coördination of the mayor's powers and responsibilities was not seriously attempted during this period.

Roughly speaking the significance of the year 1870 lies in the fact that counciliar supremacy and legislative interference had both been tried and found wanting by this time. Corruption and self-seeking were the usual product of the former and were coupled with gross inefficiency. Confusion and irresponsibility followed the train of legislative efforts to remedy the situation in municipal government. The preliminary tryouts of the mayoralty had been made. Frequently the results had been favorable. From this year, therefore, there is noticeable a distinct acceleration in the trend toward mayor government. The mayor became the "hostage" for the good government of the city, even before authority commensurate with this responsibility was committed to him. But this was not long the case. Within the next thirty years the mayor system, with comparatively few exceptions, became the rule in those parts of the country where municipal government was a problem of consequence. The steps which were taken to effect this predominance of the municipal executive were the extension of the mayor's power of appointment and removal,



a point upon which there was remarkable agreement among the charter makers of the period, the lengthening of the mayor's term of appointment to office, the express announcement in many charters of the mayor's liability for the good government of the city, and the expansion of the mayor's power in municipal legislation and finance thru the bestowal of positive rights and duties and the strengthening of his veto.

The development of the mayoral office to its position of responsible leadership is largely the fruit of the last half century. "The mayor system," "mayor government," and like expressions by which we characterize the predominance of the executive in the majority of American municipalities, represent comparatively recent efforts to describe the result produced by the evolution of organization in cities operating under the "federal" principles. This result was so nearly achieved in 1900 that it had called forth general recognition and no little treatment. Moreover, with few exceptions, it was a result that was accepted in large measure in all parts of the Union. It had no serious rival systems with which to contend. True the council was still powerful in many cities. In states like Illinois, the general municipal law did not admit the supremacy of the executive in municipal affairs, but in practice he was very much more powerful than the legislative acts alone would indicate. The place of the office in the municipal regime appeared secure and in many places complete. Its supremacy was now rooted deeply in the past, and there were advocates, not a few, who urged continued exaltation of the office as the most promising hope for good city government in the United States. The hopes of reformers were centered upon it and the enlargement of its influence and power. The judicial functions of the office alone had declined in importance, except in some parts of the south and in Indiana.

Everywhere, practically, the mayor's power to mold the rest of the administrative service, so far as it was under the control of the local government, was recognized, tho to a much greater degree in some cities than in others. Sometimes his powers of appointment and removal were complete, but the practice was more general of requiring the consent of the council, or of one house thereof, to appointments, and often removals by the mayor might be overruled by the council. The tendency was strongly in the direction of making the authority of the mayor independ-



ent of any interference on the part of the council in administrative appointments and removals. In cities where this authority was already complete a statement of reasons or a report to the council of the grounds for the exercise of the power to remove officials was sometimes provided as the sole check upon arbitrary action. Mr. Greenlaw concluded in 1899 that in no other point were the city charters so generally in agreement as in the dependence of administrative officers upon the mayor.

The relation of the mayor to municipal legislation was expressed in an almost universal recognition of the veto power in its qualified form and in a wide acceptance of the selective veto. The veto, indeed, was in the process of a vigorous and healthy development and was being strengthened in matters of finance, including appropriations and indebtedness, and franchise grants. The mayor sat in the council as presiding officer, and he was usually clothed with authority to cast the deciding vote in case of a tie and at times in other matters. In Chicago the mayor had wrested from the council the acknowledged right to appoint the committees of the latter, a victory for the executive that was won by Carter H. Harrison, Sr., as a result of a hard struggle. In New York City the influence of the mayor did not cease when his term of office was ended, but he was given a seat and voice, tho no vote, in the council meetings as long as he was a resident of the city.

Only a few years more were required before the application of the federal principles brot forth the plan of municipal organization, in which the mayor became the prototype within the municipality of the president in our national government with the administrative service grouped into great departments headed by his appointees. In municipal charters and general laws the mayor was made responsible for the government of the city, for the honesty, efficiency, and economy of administration, the character of its laws and the good order, peace, and safety of the community. The attempt to find pure city government and successful administration by the concentration of great powers and even greater responsibility in the person of one man, in the opinion of Mr. Greenlaw, was "almost pathetic." "There is," says Mr. Brand Whitlock, the ex-mayor of Toledo, Ohio, "a strange, almost inexplicable belief in the almost supernatural

powers of a Mayor." Says Mr. Whitlock, "I have been waited on by committees — of aged men — demanding that I stop at once those lovers who sought the public parks on moonlit nights in June, I have been roused from bed at two o'clock in the morning with a demand that a team of horses in a barn four miles on the other side of town be fed; innumerable ladies have appealed to me to compel their husbands to show them more affectionate attention, others have asked me to prohibit their neighbors from talking about them. One Jewish resident was so devout that he emigrated to Jerusalem, and his family insisted that I recall him; a Christian missionary asked me to detail policemen to assist him in converting the Jews to his creed; and pathetic mothers were ever imploring me to order the release of their sons and husbands from prisons and penitentiaries, over which I had no possible jurisdiction." To one sorrowful suppliant the mayor was "the father of all." Moreover, "this exaggerated notion of the mayoral power was not confined to those citizens of the foreign quarters; it was shared by many of the native Americans, who held the mayor responsible for all the vices of the community."

Mr. Whitlock wrote, of course, a decade or more later than Mr. Greenlaw and others who were describing the mayor system of the close of the nineteenth century, yet his words fairly describe the popular opinion of the degree of responsibility which had been heaped upon the municipal executive during the closing years of that period, and indicate how impossible it was for the mayor to approximate in performance the conceptions more or less generally held regarding his position, powers, and functions. Nor did the more intelligent escape this conception of the mayoralty. The "Conferences for Good City Government" gave large space on their programs and in their published "Proceedings" to rehearsals of the campaigns for the mayoralty in various cities; the progress forward or backward was to no small degree measured by the success of reform or independent mayors: the mayor was to make up for the sins of the past, he was the prophet whose coming was the promise of better things, and as executive he appeared the sole hope and refuge of a people who despaired of attaining good city government. The mayor was to be the savior of a municipal citizenship that had not yet perceived that its only salvation could come thru its own exertions, that in



truth was almost convinced of its own incapacity for self-help. The measure of responsibility heaped upon the mayor had far surpassed the means at his command for meeting the multitudinous demands and obligations that pressed upon him. Indeed, the means for meeting the responsibilities placed upon him were not fully bestowed upon the mayor, even when the measure of his authority appeared to be the greatest.

By the close of the century the federal principles of government as conceived and worked out in the American national government had wrought an almost complete change in the organization of American cities. Some things yet remained to be done if a true copy of the federal system was to be realized in municipal government, but, barring a revolutionary upheaval in thinking and in tendencies, the complete application and acceptance of these principles did not appear to be far distant. Moreover, most men were hoping that this time might come speedily. Only here and there arose rare and scattered voices of protest and pleas for the revival and restoration of council government. The tide toward mayor government and the exaltation of the executive seemed to be sweeping ahead irresistibly. The mayoralty seemed destined to become the center of that centralization in our municipal democracies toward which De Tocqueville asserted all democratic governments were tending.

How altered is the situation today! At the very moment of its triumph the mayor plan was successfully challenged. Now nearly a half thousand vigorous and aggressive municipalities enthusiastically proclaim that they have found something better, and in these the mayor is either largely shorn of his power, or dispensed with altogether. Every year adds some scores to the number of cities which relegate to the past the federal analogy as developed in the field of municipal government. To take its place the commission plan and the city manager plan have appeared. They have not won recognition without a struggle, but they have won it. The old order is changing rapidly.

Nevertheless the mayor plan will not disappear. In the course of the contest for public favor it is being stimulated and purified. Many of the more important achievements of the past fifteen years stand to the credit of cities governed under a mayoral regime. In these accomplishments the leadership of the mayors



has been conspicuous. Education in local problems has very often been the product of a mayor's leadership and vision. The organization of mayors' associations in many states testifies to a desire and determination to furnish constituencies with intelligent political leadership. The most active members of state and national organizations for municipal betterment are frequently mayors of cities. The mayoralty has undoubtedly held its own in the great cities of the country, and the total number of cities under mayor government is probably not very many less than it was at the beginning of the century. Moreover, it must not be forgotten that there has been a continued development of the power and position of the mayor, and that its predominance in the system based upon the federal analogy is more firmly established than ever before. The desire to supplement popular control and clearly defined responsibility with efficiency has caused the further strengthening of the executive, and the success of rival schemes of municipal organization has hastened and accentuated this development.

Despite this apparent position and continued growth of the mayoralty, it must be observed that it is no longer the most striking feature of municipal life and organization. Tho by no means inconspicuous, recent surveys of municipal tendencies have often omitted to mention it, an oversight which would have been inconceivable little more than a decade ago. It is more difficult to watch a three-ringed performance and the tendency is to watch most intently the latest development. It is true, too, that having set up an organ of government that was both powerful and responsible the attention of reformers was turned toward other problems of municipal life and government, especially that of securing efficiency in the public service. To the solution of this problem both the commission and the city manager plans have rendered signal help. These plans have been the offspring of the movement for efficiency. The evolution of mayor government gradually prepared the electorate for that concentration of authority which efficient administration demands. The splendid successes of the newer forms of government have not sprung full-grown from the fertile womb of disaster; they are rather the product of earlier struggles, the end of which was the reconciliation of democracy and efficiency in American city government. It

now appears that mayor government, commission government, and city manager government are to participate in achieving that end. For today each of these forms is potentially and actively full of promise that the end will be realized. The municipal citizen who is still in the prime of life has a reasonable expectancy of living to see good government become the normal thing in American cities, whether their executives are mayors, mayor-commissioners, or city managers.

## CHAPTER III

### THE MAYORAL CONSTITUTION TODAY

A survey of the mayoral constitution as one finds it today does not reveal striking dissimilarities with the constitution of the office fifteen or twenty years ago, at least not in the municipalities retaining the mayor and council plan. Marked changes have occurred in the constitution of the office in commission and city manager governed cities, but these will be considered in the chapters devoted to the executive under these two types.<sup>1</sup>

#### *Qualifications*

The qualifications for the mayoralty are properly considered from two standpoints, the legal ones imposed by statute upon the holder of the office, and the practical requirements imposed by the exigencies of practical politics. The legal group of qualifications varies widely in its details, but there is great similarity, amounting almost to uniformity, in the principles applied. In the political group the qualifications are almost everywhere the same, and, on the whole, have operated to produce a mayoral type somewhat different from the other leading executive types of American officialdom. The legal group of qualifications has exercised an almost negligible influence in determining the kind of men who occupy the office. The influence of political forces and requirements has been potent and constant and therefore most effective.

In the legal group of qualifications three are almost universally required, viz., local residence, United States citizenship, and suffrage right. In many of the larger urban communities age and property qualifications are added. The requirement of local residence has no important exceptions in this country. In

<sup>1</sup> An excellent short review of the constitution of the office is presented in the second chapter of Mr. Bayles' monograph published in 1895. The chapter title is "Present Constitution of the Office."



states where cities operate under general statutes, as in Illinois and Indiana, the general municipal act usually imposes the residence requirement.<sup>2</sup> In other cases the requirement is a feature of the special charter under which the municipal corporation is operating. Thus the charters of Boston, Philadelphia, Rochester, Baltimore, Detroit, St. Louis, Denver, Kansas City, San Francisco, and many other cities specifically require local residence. The New York City charter of 1901 did not specify residence in the city as a requirement, but the proposed charter of 1909 inserted such a qualification for the office of mayor. The specification of the requirement has, of course, been unnecessary in those cases in which it has been omitted, political availability heretofore imposing the residence requirement where the law has refrained.

The length of the residence required varies considerably. In the city of Rochester but five months suffice to satisfy the legal requirement. In many cities it is but one year, especially in the smaller cities and those operating under general state law in Texas. In Mississippi it is two years. In Louisville, Ky., the period of residence must have been three years. In Kansas City, Baltimore, Philadelphia, and St. Louis the residence demanded of the mayor prior to his election is five years.

The purpose of the residence qualification is not expressly indicated in the charters and statutes which give it force. The theory underlying it has a twofold basis, viz., local residents are most familiar with local conditions and every locality has residents capable of filling the office satisfactorily. The flavor of local patriotism has not confined its influence to our representative bodies alone but has heretofore been equally potent in the effect it has had upon executives in municipalities. No doubt it has been entirely unnecessary in the past to incorporate a residence requirement in the charter or general law. Proposals that residence within the state suffice, or that there be no residence requirement whatever have scarcely received a respectful hearing at the hands of charter conventions and state legislators, and indeed, of municipal citizens and electors themselves. A non-resident, until within the present renaissance, would rarely if

<sup>2</sup> Note for example, the provisions of the Municipal Laws of Illinois, Art. 2, Sec. 21: "The chief executive officer of a city shall be a mayor, who shall . . . reside within the city limits . . ."

ever have had any opportunity of even coming before the electors as a candidate. Partisan politics as developed in American cities have amply guaranteed local residence. Moreover, there appears to be no breakdown in this requirement with respect to the mayoralty. While experts may be sought for among non-residents this enlightened tendency has not been manifest in the search for mayors. The force of custom, the weight of inertia, and the elective character of the mayoralty are large factors in the maintenance of the residence qualification.

If the residence qualification has any justification it seems reasonable that the practice in some cities of requiring a residence of from three to five years is to be commended. Whatever force the residence qualification may have appears to be lost under the five month requirement of Rochester. In smaller cities three years would suffice, while in the metropolitan centers five years does not appear to be unreasonable if familiarity with local conditions is to be presumed on the part of the holder of the office. The thirty to sixty day residence qualification serves no purpose except to make sure that the mayor is a qualified elector at the time of the election.

The requirement of citizenship is imposed upon mayors in most municipalities, tho not always in specific terms. In St. Louis, Baltimore, Kansas City, and many other cities there is an express provision establishing citizenship as a qualification for the office of mayor. The general municipal act of the state of Illinois fixes a like requirement for mayors in all cities of the state. In Philadelphia and Pittsburgh state citizenship is required. In Cleveland, New York, Portland, and a few other cities citizenship is not made a qualification either directly or indirectly in the municipal charter.<sup>3</sup> Indirectly citizenship is required by the provision that the mayor shall be a qualified elector of the city or state, a method which is effective inasmuch as all but ten of the states provide that electors shall be bona fide citizens of the United States.<sup>4</sup> In some of these ten states the charter provi-

<sup>3</sup> Not even the qualification of being an elector is specified, probably owing in part to the fact that practically speaking such specification is unnecessary.

<sup>4</sup> Beard, C. A., *American Government and Politics* (new and revised edition of 1914), pp. 454, 455. These states are Alabama, Arkansas, Indiana, Kansas, Michigan, Missouri, Nebraska, Oregon, South Dakota, and Texas.



sions of the municipal constitution supplement the state electoral code by specifying citizenship as a qualification for the office.<sup>5</sup>

In some of the cities referred to in the foregoing discussion the qualifications for both citizenship and electorship are specified. If there is practical value in specifying either, the twofold requirement is not wholly superfluous, inasmuch as the bases of the two qualifications are by no means the same and citizenship is not always a prerequisite to the suffrage. On the other hand there are in all our cities vast numbers of citizens who are not qualified electors, and the requirement of citizenship alone might in some cases admit to the office those who were not privileged to vote. The first program of the National Municipal League suggested only that a candidate be a qualified elector.<sup>6</sup>

In general it may be said that the tendency in the states has been to make citizenship a condition upon which suffrage rests. It is improbable that this tendency will be relaxed; certainly we will not soon witness the extension of the suffrage to larger numbers of those who are not citizens. In the case of male citizens twenty-one years of age and upward the suffrage may usually be presumed, but this has not been true of female citizens, especially in those states in which the process of urbanization has proceeded furthest. The requirement that a mayor be a qualified elector presumes therefore in most cases that he is a citizen of the state or of the United States. Many important cities specify the requirement of suffrage right and this qualification is likely to maintain its place in the charters of the future. The city of Boston even limits the eligibility list to the "male qualified registered voter." The new city charter of St. Louis on the contrary omits the requirement that the mayor be an elector. No marked trend toward or away from this qualification is discernable in the municipal history of the past two decades.

In addition to the requirements noted above as qualifications for the mayoral office there are some others which are less gen-

Five of the great metropolitan districts lie wholly or in part within these states, viz., St. Louis and Kansas City in Missouri, Detroit in Michigan, Indianapolis in Indiana, and Portland in Oregon.

<sup>5</sup> This is true in all but one of the metropolitan centers lying in the states named in the preceding note. Cf. St. Louis, Charter, Art. 7, Sec. 2; Kansas City, Charter, Art. 4, Sec. 2; Detroit, Charter, Sec. 89.

<sup>6</sup> National Municipal League "Program," Art. 3, Sec. 1.



erally recognized, but which are still of considerable importance. The age qualification of twenty-one years, is, of course, quite commonly recognized either directly or indirectly and may as a rule be assumed. It is rarely if ever, expressly inserted in the municipal charter, or in the general laws of the state. The provision specifying that the candidate must be a qualified voter indirectly fixes a minimum age limit. The charters of the larger cities, however, quite commonly fix a higher age, some of them in express terms, others indirectly. The charters of Philadelphia, Baltimore, Kansas City, Pittsburgh, Charleston, and the general law of the state of Montana prescribe that the mayor must be twenty-five years of age. The new charter of the city of St. Louis follows the former St. Louis and New Orleans charters in fixing the minimum age at thirty years. The charter of San Francisco indirectly specifies the age qualification as twenty-six years by requiring that the mayor has been an elector of the city and county for five years.

The property owning and tax paying qualifications, while not generally imposed, still maintain their places in some of the important cities of the land. In Baltimore the mayor must for two years have paid taxes on property in the city to the value of two thousand dollars. In Kansas City the mayor must have paid city and county taxes for two years just preceding his election to the office. The charter of Seattle provides that the mayor must have been a tax payer of the city for at least four years preceding his election to the office. The general municipal act of Montana lays down the qualification for all mayors within the state that they shall be tax paying freeholders within the limits of the city in which they hold office. The recently adopted St. Louis charter provides that the mayor shall have been an "assessed tax payer of the city for two years." Writing twenty years ago Mr. Bayles thought the imposition of property holding qualification was "very rare," and concludes that the value of such a requirement is not apparent, inasmuch as "in practice it need never disqualify a candidate." There seems to be no tendency, however, to omit this qualification in cities where it has heretofore existed. Failure to require property ownership and tax paying has not demonstrably lowered the character of those holding the municipal executive office in cities which do not require them. On the other hand these qualifications have not

given evidence of their power to elevate the standards of the office in those cities which retain them.

Quite rarely the provision is to be found in the charters that the mayor is not to hold any other official position during his term. The new Cleveland charter provides that the mayor "shall not hold any other public office or employment, except that of notary public or member of the state militia." The provisions of the general municipal act of the state of Illinois and of the Rochester charter prevent the mayor from holding more than one municipal office during the term for which he may be elected. The old St. Louis charter prohibited the mayor from holding any state or federal office while mayor. By judicial decision a number of offices have been held in certain states to be incompatible with the office of mayor.<sup>7</sup> In general, however, the question of the mayor holding two or more offices is one that takes care of itself. Tradition in the American municipal democracy is in accord with the general sentiment of the nation regarding any effort on the part of one individual to secure an undue share either of honor or more particularly of emoluments. The number of those who are willing and anxious to serve the public is too great to permit their votes or influence to be ignored by prospective candidates.

In any extensive survey of the mayoral office one finds numerous special qualifications. In New York City the mayor may not be one who is a pensioner of the city. In Pennsylvania cities holders of the office may not succeed themselves. The charter of the city of Detroit prescribes that the mayor be able to read and write the English language "intelligibly," and authorizes the council to declare void the election of any person not so qualified. A number of cities prohibit the mayor from having any interest whatever either as principal or surety in city contracts. Defaulters to municipal corporations, and those who have been convicted of malfeasance in office, bribery, or other corrupt practice or crime are declared to be ineligible in Illinois and in St. Louis respectively. The Baltimore charter declares that the mayor shall be a person "of known integrity, experience and sound judgment."

Despite the imposing array of legal qualifications which are demanded of those who would fill the office of mayor, it may be

<sup>7</sup> Bayles' *The Office of Mayor in the United States*, p. 21.



confidently asserted that few of them serve to bar from office those who are eligible from a political or partisan standpoint. Occasionally, it is true, the existence of these legal qualifications may serve a purpose. The spectacle of San Francisco casting more than thirty thousand votes in 1915 for a mayoral candidate who had served a term in prison for being associated with a former era of corruption in the government of the city would have been prevented by the presence of legal qualifications which would have nullified such candidacy had it been successful. American municipal democracy will not, however, secure the more desirable type of mayors through the imposition of mere legal qualifications. The real standards and qualifications which those who aspire to be mayors must meet are those which exist in the political consciousness of the municipal electorates. From the standpoint of practical politics the extra-legal qualifications, constituting the "availability" and "acceptability" of mayoral candidates, are of vastly greater importance.

Mayoral candidates are usually party men and even when this is not the case as sometimes happens in the reform and fusion movements which characterize American municipal political strife, they must be men either of known or potential strength with the electors. The qualities that give men such strength vary considerably with the time and the city. Political activity prior to the period of candidacy and office holding has been an unquestioned asset in the great majority of cases. Experience in public office, especially if the record of service be generally acceptable, is an advantage not lightly despised. A "safe" candidate is always acceptable to large numbers of the electorate. Inasmuch as a successful candidate for mayor tends to become a power in the party organization the leaders in established party circles must be satisfied with a prospective candidate. To this end recognition won in party endeavor and leadership established by successful party work is desirable. An attractive personality, a known sympathy with many classes in the community, a reputation for being public spirited, power as a "mixer" and as a writer or speaker, an absence of puritanical tendencies in the enforcement of law, and a capacity for overlooking or for dealing mildly with the petty delinquencies of humanity, secret or open acknowledgment of the powerful private interests that deal directly with the municipal government, a declared regard



for the safety and liberties of the individual and an avowed determination to curb vice and crime, ability to manage, bluff, or bulldoze municipal councils, a habit of thinking and willing for oneself and a sort of courage that dares to counter private and party bosses or even the public opinion — all these qualities in varied measure go to make up the mayoral type of the American municipality. Social distinction, wealth, expert training for the work of the municipal executive, and advanced educational attainments have not been conspicuous as characteristics demanded of the American mayor. Yet the extra-legal qualifications which he must satisfy have been quite exacting, the extent to which one group of characteristics or another must predominate depending upon the circumstances surrounding the campaign, the qualities of the opposition candidate, and the temper of the electorate.

It should be further observed that such legal qualifications as those of residence, reasonable maturity, citizenship, and suffrage right are so powerfully enforced by the purely political exigencies of American public life and by that intensity of local pride and self-sufficiency as to render their inclusion in charter provisions and general municipal acts almost superfluous. On the contrary extra-legal conditions have been fostered consciously by the professional politician class partly for its own benefit, and partly to check opposing partisans, and partly from a sincere belief that these conditions are eminently desirable. In general they have harmonized with the more common legal qualifications imposed upon mayors and have rendered such qualifications largely unnecessary.

### *Nomination and Election*

With the exception of the city manager the chief magistrates of American cities are elected by popular vote. This method of choice renders necessary the development of adequate systems of nomination. In the course of American municipal history there have been five distinct methods of placing in nomination candidates for the mayoral office. These methods are as follows:

1. Self-announcement by the candidate or an informal caucus of his friends.
2. Nomination by a municipal party caucus or primary.
3. Nomination by a delegate convention composed of representatives of a city party or at least of its organized units.

4. Nomination by petition or nominations papers signed by a proportion of the qualified voters.

5. Nomination by direct primary.

There have been other methods used especially when the power of choosing the mayor was vested in the hands of the governor as in colonial times or in the council as in the early national period and in Tennessee down until the close of the nineteenth century.<sup>8</sup> But, as Mr. Edward Stanwood remarks in his *History of the Presidency*, from the meager materials at hand, it is not easy to reconstruct the political machinery in use during the first thirty years under the Constitution. Nor must it be supposed that, where many communities were developing political institutions without much help from one another, because not in close intercourse, any general statement regarding their practice is true at all.<sup>9</sup> Of the methods named, however, the first three have largely passed out of use, the second alone being still employed in some of the smaller cities in states where the general laws have not standardized the practice regarding nominations and elections thruout the state. In the case of the third method or nomination by delegate convention, it appears that until 1913, state law still permitted its use in cities of the third class in the state of Utah, but the same law permitted also the nomination of candidates by the use of nomination papers.<sup>10</sup>

It is difficult to determine whether relative predominance belongs to nomination by petition or to nomination by direct primary, the two methods which are most common today. In general it may be observed that they have an almost equal hold upon the municipalities, tho the direct primary method appears to find favor in the larger cities. The practices with respect to nominations vary so widely in details that it is only with respect to the more general principles followed that it is possible to make note in this discussion.

Nomination by petition involves the filing of a request that the name of the candidate for the mayoral office shall be printed

<sup>8</sup> Cf. Bayles' *The Office of Mayor in the United States*, p. 21. This is not the case today in important cities such as Memphis and Nashville, the latter now operating under the commission form of government.

<sup>9</sup> Stanwood, Edward, *A History of the Presidency*, p. 170.

<sup>10</sup> The earlier systems of nomination overlap so in their use that a general statement as to the probable predominance at any given time of any one of them must be accepted cautiously.



upon the official ballot. This petition must be signed by a certain number or proportion of the qualified electors of the municipality and must be accompanied by the addresses of the signers and the attestation, usually a sworn statement, of the one who secured the signatures certifying that they are valid and are believed to be in conformity with the election laws. This petition is filed with the election authorities, its validity investigated by them, and if satisfactory, certified by them and the nomination placed upon the ballot. To these general features there are added many others, the details exhibiting some variation in almost every important locality. Thus there are opportunities provided for candidates withdrawing their names, for signers withdrawing their signatures, and for the filling of vacancies in nominations. In some places there are requirements that candidates must accept in writing the nominations made.<sup>11</sup> In Boston the signers must be registered as well as qualified voters.

Certain important questions appear in connection with the method of nomination by petition. The first of these has to do with the number of nominating signatures that is to be required. In Boston the number is three thousand registered voters. There has been at least one serious effort to have the figure reduced to one thousand. Apparently this effort was sponsored by the Democratic machine tho its purpose in doing so is not clear. Party organizations find their opportunity in the surmounting of obstacles which serve to deter less united and perhaps less actively interested citizens. In fact political organizations have filled a real place in American political life by caring for just such tasks and thereby relieving the voter of the burden, and too often, in his thot, of his responsibility. The Boston charter at first required five thousand valid signatures in order that a few very good men might have a chance to get their names on the ballot. But in practice the requirement of this number of signatures was expensive, some of the petition gatherers charging as high as twenty cents per name; while to provide against signatures being rejected there must always be secured a large surplus to insure acceptance of the petition.<sup>12</sup> The success of the large

<sup>11</sup> Cf. Cleveland, Charter, Sec. 7. Failure to file the acceptance as required causes the name of the candidate to be omitted from the ballot.

<sup>12</sup> Cf. a note in the *National Municipal Review* for April, 1914, p. 376, by H. S. Gilbertson. Mr. Gilbertson cites the *Boston Globe* as authority



petition in securing for Boston a higher type of municipal executive has not been conspicuously noticeable. It is true, however, that the issues in the Boston mayoralty elections have been rendered more clear cut.<sup>13</sup>

The adoption of the English system of nomination upon the petition of a comparatively small number of names, or some other equally simple process has been suggested as a possible way out of the rather intricate methods now in use. If practical in American political life such a step would be highly desirable but one may well question whether a system which is characterized by ease of nomination, inexpensiveness of operation, simplicity of procedure would not come to grief in American municipalities because of the absence of the stabilizing forces which characterize English and European municipal electorates. The presence of a highly educated governing class, the long established social and political traditions of the communities, the willingness of men of means and standing to spend and be spent in the public service—these factors are not conspicuous in American municipal democracies. Rather spoils, rotation in office, large salaries, vast legal power, the conception that almost every citizen is capable of filling responsible positions in the public service, and the immensely valuable franchises and concessions of municipalities have hindered the development of the restraints which more simple methods require. The transition to some less complex method of making nominations is one that is probably now under way. With the collapse of the convention system the work of experimentation has been undertaken on a large scale and if the present activity continues some method approximating

for the statement regarding the expensive character of nomination procedure. The Boston *Advertiser* is also referred to as pointing out that the situation thus created is unfair to the poor man who wants to fight the machine but has no wealthy backers. The charge that the system encourages perjury and fraud is also made though no evidence to that effect is produced. One may not accept these statements unreservedly; the mayoralty in Boston has been continually in the hands of those not aligned with the well meaning and well-to-do reform element of the Back Bay.

<sup>13</sup> See the discussion of the workings of the Boston plan and the need of simplification by Dr. W. B. Munro in *The Government of American Cities*, pp. 136-139. Dr. Munro concludes that the Boston system of requiring 3000 names has served "the cause of independence in municipal politics better than any of the nominating systems which preceded it . . ."

a solution of the problem of placing candidates in nomination may reasonably be expected to be worked out. The city of St. Paul has developed a method of "presentation for nomination" at the direct primary which requires but fifty genuine qualified signatures.<sup>14</sup> These must be presented in the form of individual certificates attested and acknowledged before a notary public. Altho this rather simple method precedes a primary election, experience may demonstrate that it is applicable on a broader scale. The practice which is current in Los Angeles of requiring the payment of a fee at the time the nomination petition is filed may prove to be of permanent value in connection with the method of nomination by petition. In the charter which was proposed for Seattle in 1914, the filing fee was fixed at one per centum of the annual salary.

Nomination by petition has tended to gain in favor if one may judge from some of the more important recent charters. The charter revisions in Boston, 1909, Detroit, 1914, Columbus, 1914, Cleveland, 1913, Cincinnati, 1914, Minneapolis, 1913, and Seattle, 1914, besides those in many smaller cities, all provided for nominations by petition. Moreover there was noticeable advance toward simplifying the procedure. Thus in the Minneapolis proposals nominations could be made on the petition of one hundred qualified voters, in Detroit of five hundred voters in case of the mayoralty, in Columbus of two per centum of the registered voters. Not all of these charters were accepted but in no case does rejection seem to have turned on the provisions for nominating candidates.

One of the most widely used methods of making nominations today is the direct primary or election to nomination under official supervision and upon an official ballot. The strength of political organizations has determined that it shall be the closed or party primary.<sup>15</sup> For this reason, in part, it has failed to achieve all that was expected of it and that was prophesied for

<sup>14</sup> St. Paul, Charter, Chap. II, Sec. 12. Further details of the system are contained in the Sections Nos. 11 to 19 inclusive.

<sup>15</sup> A summary description of the direct primary in its various phases and forms is found in Beard, C. A., *American Government and Politics*, pp. 691-699. A discussion of the subject will be found in Munro, W. B., *The Government of American Cities*, pp. 125-136. A more complete account of the method and its development will be found in Merriam, C. E., *Primary Elections*. There has been development, however, since this work was published.



it in the direction of encouraging independence in nominations. It was designed to supplant the convention system whose abuses so frequently scandalized municipal as well as state politics. Yet it has to no small degree come under the control of the very forces from which it was hoped it would free the voter. It has proven costly and has placed heavy burdens upon the electorate. In the opinion of many it has prolonged the period of domination of state politics in municipal affairs. There has been a determined movement, however, toward the non-partisan primary in municipal nominations, especially in commission governed cities, the result of which is to render somewhat more difficult the task of the professional politician to retain his leadership and control, but the advantages of organization and party backing are too great to be denied even in the non-partisan primary. As for the open primary there is little to suggest that it has a future in the United States.<sup>16</sup>

The dominating position of the executive in American cities today finds its fundamental basis in popular election. The price of leadership and supremacy in municipal democracy as in our state and national governments is the maintenance of close and immediate contact with the electorate. The mayor, to a larger degree than any other officer in city government, is the spokesman for the municipality, the mouthpiece of the voters. In New York, Chicago, Boston, Los Angeles, and many other cities, only those who register may take part in the elections. In most cities, however, the elections may be participated in by the qualified voters. Thus out of thirty representative cities twenty of them provide in their charters for election at the hands of the "qualified voters." The San Francisco charter and the Wisconsin general municipal act specify election "by the people." The provisions in Keene, Maine, call for election by the "legal voters." These various provisions have, in practice, about the same significance in that they refer to those who, under the laws of the state, are qualified to vote. In an increasing number of states, of course, this includes women.

Mayoral elections, in common with the usual American practice, are decided by the plurality of votes. Many charters spec-

<sup>16</sup> Nebraska tried the open primary and reverted to the closed primary. Wisconsin still retains the open primary together with the non-partisan primary in an optional form.



ify that a plurality shall determine elections.<sup>17</sup> Others assume plurality elections in accordance with the general practice in the state under state law. In general, however, plurality elections are recognized by students of municipal government and life as undesirable. In Salem, Mass., in 1909, a mayor was elected by twenty-four per centum of the votes, so divided was the opposition. These divisions are not infrequently the product of careful political scheming and are planned to defeat the will of the majority with regard to a particular candidate. One of the recognized merits of the non-partisan primary is that it insures majority elections. The same argument is advanced in behalf of the majority-preferential ballot. The majority and plurality principles are both utilized in the charter of Toledo, Ohio. The preferential ballot is employed in municipal elections and a majority of first choice votes elects, but if no candidate has a majority of first choice votes, then a plurality of first and second choice determines the outcome.

Non-partisan elections for municipal officers including the mayor imply the absence of partisan designations from the ballots voted. The city of Boston is conspicuous among the mayor governed cities in this respect, tho it is not uncommon among commission governed cities.<sup>18</sup> There are many municipalities, however, especially among the smaller cities, that do not permit the state and national party organizations to dominate local political life. In their place, however, there appear local party organizations, often very similar to the state and national branches in their purposes and aims. Aspiring leaders do not hesitate to use their power in the local organizations to further their ambitions in larger fields of political endeavor. In New York, Philadelphia, and Chicago, partisan elections obtain, tho in both New York and Philadelphia fusion and other independent tickets have always commanded strong support and have frequently been victorious at the polls. The problem of divorcing local and state political activity must be successfully solved if the interests of the city are to be happily served, but the solution becomes

<sup>17</sup> Cf. the charters of Hartford, Conn., Chap. II, Sec. 13; New Britain, Conn., Sec. 10; St. Paul, Minn., Sec. 25, which reads, "In all municipal elections a plurality of votes shall constitute an election." Also charter of Grand Forks, N. D., Sec. 114.

<sup>18</sup> See Amended Charter, 1909, Secs. 45, 46. See also Cleveland, Charter, Sec. 8.

increasingly difficult to achieve as American cities grow in population and consequently in political importance. State and national parties must retain a considerable vitality in the shot and attachment of the municipal voter if they are to succeed in the larger political field. Even in Boston, with its non-partisan elections, the Democratic organization had not failed to keep its hand on the city hall and the mayoralty.

Occasionally an election for mayor may result in a tie vote. Two methods are provided for deciding the election in such a case. The more common method appears to be that of casting the lot.<sup>19</sup> In other cases the city council elects the mayor, a "more honest way."<sup>20</sup> In Cleveland preferential voting obtains, and a tie is decided in favor of the candidate having the largest number of first choice votes.<sup>21</sup> This review of the methods of choosing mayors indicates some dissatisfaction with plurality elections tho these still prevail in most municipalities. The introduction of assured majority elections thru the preferential ballot or the system of non-partisan nominations reveals a determination to have the mayoral office represent as large a proportion of the people as possible. It is somewhat early to estimate finally the effect of substitution of nomination by petition and by the direct primary for the convention system upon the character and type of municipal executive produced; on the one hand there have not been the momentous transformations which were prophesied, and on the other hand there seems to be no good reason for returning to the convention as an organ for making nominations. The enlargement of the municipal electorate by the inclusion of women appears to be eminently justifiable from the standpoint of the mayoralty, tho the immediate influence is difficult to analyze and estimate.<sup>22</sup> There is apparent a widespread desire to

<sup>19</sup> Thus the charter of St. Paul, Sec. 25, provides that "the election shall be determined by the casting of lots in the presence of the council . . ." So also the city election law in Illinois, Art. 5, Sec. 11.

<sup>20</sup> As in Pittsburgh and Philadelphia. In the former the vote must be *viva voce*.

<sup>21</sup> Charter, Sec. 8. See also Toledo, Charter, Sec. 23. The lot is also utilized in the case of Toledo and Cleveland, in case the tie persists thru the first, second, and third choices in the number of votes cast for the respective candidates.

<sup>22</sup> See an interesting article in the *National Municipal Review* for July, 1915, entitled, "Are Women a Force for Good Government?" by Edith Abbott.



simplify the processes of choosing the mayor and this promises well in a day when the electors are in a mood to consider experiments. There appears to be no desire to make the office less dependent upon the popular support which has contributed so largely to making it what it is. Rather, the tendencies toward simplification aim to increase this dependence and responsibility to the electorate and to improve the position of the mayor as regards his relation to the other organs of government. The three principal objects to be kept in view in future development are ease of nominations, reasonable expenditures in behalf of candidacies, and majority elections.

#### *Removal from Office*

Mayors may be removed from office, (1) by action of the municipal council, (2) by judicial proceedings before a court of competent jurisdiction, (3) by a state officer, the governor, or (4) by recall elections. In his survey of the mayoral constitution in 1895 Mr. Bayles noted briefly that the first three of these processes were then provided for either in municipal charters or under the general laws of the state.<sup>23</sup> The fourth process, that of the recall, has developed since that time, and bids fair to become the most generally employed of the four.

The power of the council to remove the mayor has been held to be a common law power vested in municipal corporations. It arises out of the recognized right of corporate bodies, public and private, to select their own officials and to hold them responsible for the conduct of the affairs of the corporation. In the states of New York, Tennessee, West Virginia, and New Jersey, this power has been recognized as one which may properly be exercised by the representative body or council of the corporation. Dr. John F. Dillon in his *Commentaries on the Law of Municipal Corporations* ventures the opinion, in the absence of judicial settlement on the question, that the municipal council in the United States possesses the authority to remove, for cause, the corporate officers of the municipality whether elected or not.<sup>24</sup>

<sup>23</sup> Bayles' *The Office of Mayor in the United States*, p. 23. There is no serious effort to classify the processes in Mr. Bayles' brief discussion. The topic is one that has not received large attention from those who have discussed the mayoralty, yet in recent years its importance has been revealed on more than one occasion.

<sup>24</sup> The New York decision is cited in Bayles' *The Office of Mayor in the*



This may of course be modified in municipalities in which the charter confers or limits the power of removal in express terms.

The charters of many cities, however, expressly provide for the removal of the mayor by the council. Thus the recently adopted charter of the city of St. Louis authorizes the board of aldermen to remove the mayor for crime, misdemeanor in office, grave misconduct showing unfitness for public duty, or for permanent disability. So also do the charters of Kansas City and Seattle.

The procedure for carrying out removal by the council varies from city to city. The St. Louis charter indicates the principal steps. The charges must be specific and must be presented in writing. Accompanying them a notice is required which states the time and place of a hearing. The mayor shall either be served with the charges or the notice of these shall be published three times in a daily newspaper. The charter provides for the public character of the hearing and grants the mayor the right to appear and defend himself, either in person or by counsel, and confers upon him the privilege of the process of the board of aldermen to compel the attendance of witnesses in his behalf. The vote on the proposal to remove the mayor is to be taken by yeas and nays and made a matter of record. Three-fourths of all the members of the board must vote for removal to effect such action. In Seattle the vote to remove takes effect if two-thirds of the council support it. In Minneapolis a bare majority suffices to effect removal. In some of the states provision is made by general law for the removal of the mayor by the council. For example, in Wisconsin, the General Charter law authorizes the council to remove the mayor upon the preferment of charges against him and a hearing upon the same, the mayor having an opportunity *United States*, p. 26, footnote 2. The entire subject is treated from its legal point of view in Dillon, *Commentaries on the Law of Municipal Corporations*, Vol. II, Chap. XII, especially Secs. 460-465, 475-477, 484, 485. The citations to cases and a summary view of them in the states other than New York are to be found in Dillon, Vol. II, pp. 782, 783, footnotes 3 and 1 respectively. In the state of Michigan it has been held that a city council derives its powers from express legislative enactment and has no inherent power to remove for cause a statutory officer appointed by the mayor for a fixed term, but this would not seem seriously to impair the more generally accepted view that the authority inheres with respect to corporate officers.

to be heard in his defense. A vote by three-fourths of the council is necessary to effect removal. In the general law of Michigan governing fourth class cities the provisions are similar except that a two-thirds vote of all the aldermen elect is specified.

The second method available for the removal of the mayor involves judicial process before a court of competent jurisdiction. Of course the safeguards which have been thrown about removal by the council have tended to give that method the appearance of a judicial proceeding.<sup>25</sup> The word "impeachment" is used in the charter of Seattle thus implying the organization of the council as a court of impeachment. But procedure in cases of this kind is very similar to that which obtains in the cities where the terms "impeachments" and "court of Impeachment" are not employed. The council really acts as the representative body of the corporation rather than as a court.

The courts which are vested with the power to remove the incumbents of the mayoral office are not the same in the various states. In Illinois the circuit courts, or the municipal and city courts of concurrent jurisdiction, may receive and try an indictment of a mayor for "neglect, oppression, malconduct or malfeasance in the discharge of the duties" of his office and upon conviction the defendant shall be fined not more than \$1000 and be removed from office. In Indiana prosecution may be by affidavit instead of indictment.<sup>26</sup> In Scranton, Pennsylvania, and other cities of that commonwealth the court of common pleas of the proper county has jurisdiction and acts as a court of impeachment, the charges being preferred by not less than twenty freeholders of the city. The court then appoints a committee of five to make investigation of the charges. This committee has power to take and compel testimony, and to examine books. It makes a written report to the court and the latter transmits it to the select council, which then sits as a court of impeachment. A judge of the court of common pleas presides and is empowered with the authority of a court. If the court of impeachment finds the officer guilty of the charges presented the court of common

<sup>25</sup> Thus the power to summon witnesses, compel testimony, etc., the requirements respecting notice and hearing, and the provisions that the proceedings shall be a matter of record all savor strongly of a judicial nature.

<sup>26</sup> *Cf.* Indianapolis, Charter, Sec. 240. This section is a part of the general municipal laws of the state.



pleas is directed to enter judgment and to declare the office vacant.<sup>27</sup> The charter of the city of Norfolk, Va., provides for the removal of the mayor by the corporation court of the city, the motion for removal being instituted by a two-thirds vote of the city council and being prosecuted before the court by the council. The charter of Rochester, N. Y., substitutes the appellate division of the supreme court and requires a three-fourths vote of the council to institute proceedings.

Numerous examples might be cited to show the liability of the mayor both to judicial process and to impeachment proceedings. One of the more recent cases is that of Mayor James Rolph, Jr., of San Francisco, who was charged with contempt in the superior court on August 6, 1916. The charge was not sustained by the court as indicated in its decision reported in the *Municipal Record* of Aug. 26. The controversy arose over the operation of certain cars owned by the municipal railways over the tracks of the United Railways, a private corporation. An earlier decision had enjoined the city from operating its cars over the tracks on lower Market street and had thereby seriously impaired the efficiency of the municipal lines and had put them face to face with a possible loss in revenue of almost \$150,000 per year. The mayor had refused to obey the injunction. Mayor Bell of Indianapolis was recently charged with complicity in election frauds in the conduct of an election within the city. He was acquitted by a jury; but the contrast between the position of the governor of the state and that of the mayor of the chief municipality within the state was rendered quite clear as far as the jurisdiction of the ordinary courts of law are concerned.

One of the most conspicuous cases in recent years is that of Don Roberts, mayor of Terre Haute, Indiana. He was accused of fraud in connection with elections in the fall of 1914, and was tried and found guilty. During the course of the judicial proceedings in which he was involved he used all the power of his office to coerce witnesses and otherwise influence the course of matters before the court. For example he promptly dismissed from office those who pleaded guilty or who threatened to do so.

<sup>27</sup> *A Digest of the Laws and Ordinances of the City of Scranton* (1907), pp. 261, 262. It is difficult to see what further obstacles could have been put in the path of those who might be bent upon effecting the removal of a municipal officer.



He threw every possible obstacle in the way of the investigation. Even when convicted he insisted on the retention of his office and was impeached by the city council before removal was effected.

The power of the courts to review the decisions of the councils sitting as courts of impeachment and of lower courts which are authorized to make removals is comparatively limited. Usually appeals may not be taken upon issues of fact, but upon questions involving the jurisdiction of the removing power, or the legality of the cause assigned for removal.<sup>28</sup> The charter of Norfolk, Va., however, expressly reserves to the accused the right of appeal to the supreme court of appeals.

The practice of authorizing a state officer such as the governor to remove a mayor is current only in the states of New York and Ohio. It was recommended also by the National Municipal League in its Municipal Program, but beyond this it has received no important consideration at the hand of states or municipalities. In the New York charter the governor is authorized to direct the attorney general to conduct the inquiry respecting the mayor and pending the investigation he may suspend the mayor for a period not to exceed thirty days. This feature of the New York charter dates back to an act of 1882, and has evidently impressed itself favorably upon succeeding charter commissions, for not only was it incorporated into the present charter, but it was also retained in the charter proposed in 1909, and was expanded to include such other executive officers as the president of the council, the comptroller, and the borough presidents.

In Ohio a provision was enacted in 1913 by the assembly of that state in obedience to a mandatory provision adopted in an amendment to the state constitution in 1912. The charges are filed in the form of a petition for removal and must be signed by twenty per centum of the qualified electors as determined by the vote at the preceding general election. The charges are deposited with the judge of the court of common pleas of the county and the defendant is to be served with a copy thereof either by the court or by the direction of the governor at least ten days before the hearing thereon. The hearing is to be had within thirty days and the proceedings are to be public. The decision is to be made public with the reasons therefor and is to be filed

<sup>28</sup> Dillon, *Municipal Corporations*, Vol. II, p. 815. (Fifth Edition.)

for record in the office of the secretary of state. In the case of the decision by the governor, the decision is final, but in the case of a decision by the court of common pleas there is an appeal reserved to the court of appeals. In 1915 complaints were made to Governor Willis against Mayor Keller of Columbus. The governor issued a formal statement announcing his refusal to take any action and stating that he would take a similar attitude with regard to the mayors of other cities concerning whom objections had been raised. The position taken by the executive of the state was that only dangers of a positive nature, such as pillage, disorder, and the like, would justify the exercise of the authority conferred upon him. He justified his action by the necessity of maintaining the right and the responsibility of municipalities to govern themselves. Moreover the remedy of judicial process was pointed out as available and the inference is that this method is more desirable except in rare cases. Such an interpretation of his authority by one governor does not, of course, bind his successors to do likewise. It establishes, however, a sound precedent and one that should have a wholesome influence in the municipal life of the state by discouraging the tendency of dissatisfied portions of municipal electorates to run to the state for relief from undesirable conditions instead of working out their own salvation. As an aid to the latter the removal of a mayor by the governor has little to offer and constitutes in the hand of a willing state executive a real menace to municipal self-reliance.

The recall as a method for getting rid of municipal officers, including mayors, whose continued occupancy of public office is open to serious objections has met with widespread favor among municipalities in every part of the country and under each of the principal forms of municipal government. While it is often associated with the commission form, probably because it has usually been incorporated as a feature of the commission plan, yet its origin and earlier development were under the mayor system, and it has since been made a feature of the mayor and council plan in numerous cities and in a number of the states. The value of the recall appears to lie rather in the possibility of its use than in the likelihood that it will be used, tho it has been used effectively many times. There is no question but that it



has been an effective means of encouraging a sense of responsibility on the part of municipal executives as well as other holders of positions of public trust and responsibility.

There are two principal forms in which the recall has been adopted in cities: first, the original form as it appeared in Los Angeles, and as it exists with but minor modifications in most of the cities which have adopted it; and second, the Boston form of the recall as expressed in the revised charter of 1909.

The recall as developed in Los Angeles provides for the recall of both elective and appointive officers in the municipal service, including, of course, the mayor. The election to recall the mayor is held upon petition of twenty per centum of the entire vote cast for all candidates for the office at the preceding mayoral election. Such petition is addressed to the municipal council and filed with the city clerk, and contains a brief statement of the reasons for which removal is sought. The petition may not, however, be filed earlier than three months after the incumbent has entered upon his term of office. The statement of reasons given with the petition is not subject to review but the petitions are subject to the examination and require certification at the hands of the city clerk. In case they prove to be deficient, it is permissible to amend them. The sufficiency of the petition is in no case subject to review by the council. The latter body, under the mandatory provisions of the charter, is required to call a special election upon its receipt of a recall petition, properly certified. The charter specifies that the election must be held not less than fifty nor more than sixty days after the date of certification, except that the recall election may be combined with any other general or special municipal election that may be held within the sixty day period.<sup>29</sup>

The ballot for the recall of mayors in Los Angeles contains the following question: "Shall (inserting name of officer sought to be removed) be removed from the office of mayor by the recall?" Opposite the question appear the words "yes" and "no" with voting squares. There also appear upon the ballot the names of those who have been nominated as candidates for the office in

<sup>29</sup> See the provisions of the charter of Los Angeles, Sec. 198. For the provisions regarding the form, mode of signing, filing, examination, and certification of petitions see the selections dealing with the initiative petitions, Sees. 198a and 198b.



case the incumbent is recalled. These nominations are made by petition, except that the name of the incumbent is placed upon the ballot as a candidate unless he resigns his office or declines to be a candidate. If a majority of the electors voting on the question vote "yes," the officer is removed from office upon the declaration of the returns by the council, and the candidate receiving the highest number of votes for the office is elected to succeed him. The incumbent may be recalled and reelected at the same election and under such circumstances continues in office for the balance of the term for which he was first chosen. If another candidate is elected he serves for the same period. The recall of a mayor or his resignation in face of a recall bars him from being appointed to office for a period of two years.<sup>30</sup>

Such is the recall as applied to the mayoralty in Los Angeles. The provisions in the charters of San Francisco, Seattle, St. Louis, and Cleveland are strikingly similar to those in Los Angeles. San Francisco provides for a petition signed by thirty per centum of the entire vote cast at the preceding mayoral election and requires that the election be held within forty days. Seattle requires the signature of twenty-five per centum and makes the election mandatory within forty days. St. Louis requires twenty per centum of the registered vote at the time of the preceding mayoral election with the further requirement that twenty per centum of the registered voters in each of at least two-thirds of the wards of the city must be secured and the date for the election is fixed at not more than ninety days from the time the board of election commissioners has mailed notice of the sufficiency of the petition to the incumbent whose removal is sought. In St. Louis the death or resignation of the incumbent at any stage of the proceedings stops the election. In Cleveland a petition for the recall of the mayor must be signed by not less than fifteen thousand electors and the sixty day time limit for the holding of the election obtains. In all the above cities except San Francisco amended or supplementary petitions may be filed if the first one appears insufficient.

The recall provided for in the Boston Charter is different from that which prevails elsewhere in that every mayor must face the possibility of a recall thru a provision which automatically

<sup>30</sup> Charter of the city of Los Angeles, Secs. 198q, 198r, 198s, 198t. The provision regarding the method of nomination is found in Sec. 198u.

places the question "Shall the mayor be recalled?" upon the ballot at the end of the second year of his four year term. The regular November election is used for the purpose of testing the opinion of the electors upon this question. If fifty per centum of the registered vote of the city is cast "yes", then the mayor must stand for a reelection at a recall election following in December. In practice the Boston plan has never proven effective enough to recall a mayor, despite a hard fight put up against Mayor Fitzgerald in 1911. The total vote for the recall was approximately only one-third of the registered vote, though it constituted a majority of the vote cast on the recall proposition.<sup>31</sup> The results which have been obtained with the Boston recall have apparently not appealed to municipal charter makers elsewhere for it has had no vogue outside the city of its origin. The theoretical values which attach to the Boston recall are, however, worthy of consideration. The mayor is assured that he will have a long enough period in which to inaugurate his policies and make the preliminary tests thereof. If he is not recalled his continuance in office and the further development of his plan cannot be menaced or interrupted by the machinations of his enemies, either personal or political. The insertion of the recall proposition upon the ballot automatically obviates the effort to secure signatures for the recall petition, prevents the intimidation of those who would like to sign such a petition and minimizes the rancor and bitterness which the application of the recall inevitably invites. Opposite tendencies must also be reckoned with. The successive efforts to put the recall into operation having failed, apathy toward such efforts even when most desirable is likely to result. The failure of a majority of those voting on the proposition to make their will effective because the inertia of a body of inactive citizens as large in number as their active opponents has been thrown in the scales against them is most discouraging. Practically speaking the Boston recall, like that obtaining in the commission governed cities of Illinois, becomes effective only when something akin to a political revolution against the existing authorities occurs. The comment of the *Kansas City Star* in 1911 was, "The Boston election proves

<sup>31</sup> The figures may be obtained by consulting the *National Municipal Review*, Vol. I, pp. 127, 128.



. . . that the public official who makes good need not fear the recall, even if he offends the politicians and the men who want to use his office for personal gain. He can trust the people when he knows the people can trust him." This comment tells but half the story regarding the operation of the Boston recall. The other half is that the public official known as the mayor of Boston does not need to fear the recall even under exceptional failure to measure up to his responsibilities.

It would probably be unfair, however, to indicate that the presence of the recall in Boston has accomplished nothing in the way of restraint. Doubtless the incumbent breathes somewhat more easily when the usual announcement is made that no recall has been ordered, for there is the rare possibility that it might be. This possibility, while not a matter of immediate concern to the holder of the mayoralty is nevertheless one that is ever present and politicians as astute as those in control of Boston politics are reputed to be, would not altogether overlook its presence. Were the proportion necessary to carry, lowered to a majority of the total vote cast either at the election or on the proposal to recall the Boston plan would become an effective weapon with which to secure responsible and decent city government — at least so far as the recall can ever become such a weapon.

### *The Term of Office*

The mayor's term of office has tended to become longer as the amount of power entrusted to him has increased. There are notable examples in which this has been true. The six largest cities in the country have adopted the four year term.<sup>32</sup> There are also many lesser municipalities operating under the mayor system which have adopted the four year term.<sup>33</sup> In one the term is five years.<sup>34</sup> But the most favored term appears to be two years, except in New England where some cities still retain what was formerly customary, a one year term. Thus out of thirty cities selected so as to represent the country geographically fifteen of them elect their mayors for two years. The general municipal

<sup>32</sup> New York, Chicago, Philadelphia, St. Louis, Boston, and Baltimore.

<sup>33</sup> These are widely scattered. For example, Los Angeles, Calif.; Columbus, Ohio, and Charleston, S. C.

<sup>34</sup> Jersey City, New Jersey. Munro, *Government of American Cities*, p. 214.



acts of a number of the states such as Illinois, Indiana, Wisconsin, and Nebraska specify a term of two years.<sup>35</sup>

Once the longer term has been adopted there appears to be no disposition to return to the earlier practice of short terms.<sup>36</sup> In general, the longer term has given satisfaction, though it has not achieved all that its advocates hoped and prophesied that it would. It was hoped that the longer term would serve to increase the importance of the office to such an extent that the electors would be stimulated to see that better men were chosen to fill it. Yet it is hard to affirm that any such result has been achieved. The memory of the election of Van Wyck in New York is fresh as an instance of the failure of the newly created four year term to do just this thing. The lengthened term has probably justified itself in that it has made it possible for the mayor to be more of an administrator and less of an active politician, it has given the holder of the mayoralty a better chance to demonstrate his policies and manifest his abilities, and it has tended to allay somewhat the pressure of frequent municipal campaigns. On the whole, too, it has prevented the frequent disruption of the municipal service thru changes in the office of chief executive and has therefore resulted in more uniform and perhaps better service. There is a sense, too, in which length of service tends to produce improved service. Official life and the constant, tho often feeble sense of responsibility which is ever present tends to attract so conspicuous an officer as the mayor toward higher levels of thought and conduct. Respect for decency and the public interest is sometimes acquired thru long years of service in positions of eminence and trust. The difference between the two year and the four year term consists partly in that this factor is allowed opportunity to get in its work, and in the case of longer service the force of the acquired point of

<sup>35</sup> An exception to the rule that one year terms are more common in New England is Montana in which state there is a constitutional provision against the term exceeding two years and where the legislature under general law has provided for a one year term. Laws of Montana, Sec. 4748. (Political Code.) Also Constitution, Art. 16, Sec. 6.

<sup>36</sup> The charter of New York City has undergone one change from the four to the two year term, but the latter has since been altered to provide for the longer period.

view may lead to a practical break with former practices and associates.<sup>37</sup>

The number of terms that a mayor may serve is not determined by any general tradition. In practice reëlections are quite common, tho the number of single terms is sufficiently large to indicate that second terms do not follow as a matter of course. The incumbent generally has the advantage of a well organized group that is immediately interested in his reëlection. In smaller cities opposition parties often go begging for candidates. Especially is this true where the salaries attached to the office are not attractive in themselves, and where no vital question of local public policy has arisen to stir up an active contest. In Pennsylvania and Indiana reëlection is prohibited, at least for successive terms, but there is no evidence of any wide approval of this practice. It should be said, however, that the persistence of the single term notion is but an evidence of the strength which still characterizes the popular fear of executive power or tyranny in local administration. The development of longer terms for the mayoralty will command wider support in proportion as the methods for effective control over executive action by public opinion are perfected. The advantages of the longer term are pretty well appreciated in cities of size and importance. It is in these that opportunity for trying out policies and time for acquiring skill and mastery in administrative work are most imperative. The prospect for the future favors the longer term and this, in turn, promises increased effectiveness and responsibility on the part of the municipal executive.

### *The Filling of Vacancies*

The subject of vacancies involves a consideration of what constitutes a vacancy and what are the methods by which it is filled.

<sup>37</sup> The career of Carter H. Harrison, Jr., former mayor of Chicago, illustrates this tendency. During his six terms as mayor of Chicago he alienated one by one the forces which had been mainly instrumental in enabling him to acquire public office. At the same time he failed to acquire the positive attitude toward reform which would bring him new strength. His elimination from active candidacy in the primaries of his own party by a decisive majority in favor of his opponent witnessed to his isolation, too good for a host of former supporters, not good enough for the many who desired more than negative virtues.



Vacancies in the office of mayor are of two kinds and they are usually treated differently. The first kind is the temporary vacancies. They are those which are caused by the mayor's absence from the city temporarily, by his being incapacitated for his duties thru illness or accident of a temporary nature, or by his suspension from his office during the course of an investigation. The permanent vacancies are those which occur by reason of the death or permanent disability of the incumbent, his resignation, his removal from office thru some one of the methods already described, or, in very many cities, by his change of residence from the city in which he holds office to some locality outside its limits.

Temporary vacancies are commonly filled by the president or chairman of the council in cities where the mayor does not preside over that body. Thus in Madison and other first class cities in Wisconsin, in Rochester, St. Louis, and many other cities this practice is provided for in the municipal charter, or in the general law of the state. In the case of St. Louis and Baltimore the presiding officer of the board of aldermen must meet the same qualifications as the mayor, a precaution which does not seem to obtain in all cases.<sup>38</sup> There are exceptions to the practice of permitting the council to fill temporary vacancies in the mayoral office. In Indianapolis and other Indiana cities which have the office of controller the latter or the city clerk acts as mayor in case the chief executive is unable to fulfil his duties. The Cleveland charter provides for the temporary performance of the mayoral functions by the director of the department of law.

Permanent vacancies are not, as a rule, provided for in the same way as temporary ones. In a few cases no provision is made for the popular election of a new incumbent, but as a general thing the practice is to choose a successor at a special election,

<sup>38</sup> See charters as follows: St. Louis, Art. 4, Sec. 3; Baltimore, Sec. 214. The president of the second branch of the council succeeds to the mayoralty in case of the absence or incapacity of the mayor. The charter of Seattle illustrates the failure to require the same qualifications of the temporary successor as are required of the mayor himself. The Seattle charter imposes a tax paying qualification upon the mayor, but no such qualification is imposed upon the members of the city council, the president of which is chosen from among its membership and may succeed to the mayoralty and all its powers. See Art. 4, Sec. 2, Subdiv. D, and Sec. 6, First; Art. 5, Secs. 1 and 11.



unless the former mayor's term is about to expire. For example, in Minneapolis a vacancy in the mayoral office is to be filled by special election within twenty days after the vacancy occurs.<sup>39</sup> In Illinois the general municipal act provides for the holding of an election if the vacancy occurs one year or more before the end of the term. If less than a year of the term remains the council is authorized to elect one of its members to act as mayor. Practically the same provisions obtain in Pennsylvania cities, in Los Angeles, and in the municipalities of Wisconsin and some other states. In such cases the council is often authorized to make appointment to fill the vacancy temporarily. Where possible elections to fill vacancies are made to coincide with the regular elections; but as in Minneapolis and in Norfolk, Virginia, limits within which the elections must be held are not uncommon.

On the other hand it is sometimes the practice to fill a vacancy in the mayoral office by authorizing the council to elect for the unexpired term. Thus in San Francisco the council is authorized to fill the vacancy by election, the incumbent to serve until the next general municipal election. There is no limitation as to who may be elected except the qualifications imposed upon incumbents selected in the ordinary way.

In cities in which the mayor does not preside over the council, the usual custom is that the president of that body, or of one of its branches in case there is more than one, shall succeed to the office of mayor in the event of a vacancy. The charter usually covers this contingency and provides also that the requirements and qualifications which are demanded of the mayor must also be satisfied by his successor. In many cities in which these conditions obtain the president of the council is elected by popular vote. Baltimore, New York, Rochester, and Seattle fill permanent vacancies in this manner. The new St. Louis charter, however, provides for the succession of the president of the board of aldermen only temporarily, tho the president is elected at large as in the other cities mentioned.

Still another practice is to have the succession fall upon some officer of the city government outside of the council. Thus in the cities of Indiana the controller succeeds, except in cities which

<sup>39</sup> Charter, Chap. II, Sec. 2. Exception is made so as to permit merging this special election with a general election if the latter occurs not less than ten or more than sixty days from date of the vacancy.

have no such officer, in which cases the councils elect. In the comparatively recent charter of Cleveland a similar method of filling a vacancy was adopted, the order of succession being elaborated rather fully, and the mantle of the chief executive falling in turn upon the heads of departments appointed by the mayor.<sup>40</sup> This feature of the Cleveland charter is unique in that it is possible to have a mayor whose selection for public office has not been submitted to popular vote, a contingency that is guarded against in almost all charters that do not entrust the choice of a successor to the council. There seems to be no good reason, however, for preferring council to mayoral selection of one to whose lot it falls to carry out the policies approved at the time the mayor was elected.

There seems to be no tendency toward uniform methods in the selection of those who succeed to a vacancy in the office of mayor. Variation in practice may be explained, perhaps, by the fact that in this country the electorate is content to take a chance on what it will get in the event of a vacancy in executive office. Only thus can one explain the nonchalance with which the nomination and election of weak candidates for the vice-presidency and for the lieutenant governorships are countenanced in national and state politics. In fact the question of succession to the mayoralty was not one of great moment in the earlier history of the office and the methods of filling vacancies have been largely the inheritance from times when the importance of the position was not as great as it has become today. The proper and most desirable method of handling vacancies is one that has not yet been found. There are more or less serious objections to each of the methods now in vogue. Election by councils which have tended to become less influential and less able appears to be rather anomalous when the growing power and position of the mayor is considered. Popular election imposes an added burden of expense upon the municipality which the financial circumstances of most American cities can ill support. The succession of administrative officials who have been appointed by the mayor appears to be a step in the direction of recognizing the increased prominence of the

<sup>40</sup> Cleveland, Charter, Sec. 74. The order of succession is as follows: Director of law, director of public service, director of public welfare, director of public safety, director of finance, and director of public utilities. There is little likelihood that Cleveland will soon be without a mayor.



office and the authority of its holder. The succession of the president of the council gives no adequate assurance of satisfaction and serves only to vacate another rather important office, leaving it to be filled usually by the council. It is not certain that the election of vice-mayors would meet the situation in view of state and national experience. On the whole the Cleveland plan appears to point the way in the right direction, especially where the method exists in conjunction with efficient methods for insuring executive responsibility thru adequate process of removal, such as impeachment, judicial action, or the recall. As these processes exist today they do not give entire satisfaction. Their development as agencies for securing better controlled executives in mayor governed cities, or the substitution for them of some better means, is highly desirable.

The successor of the mayor inherits all of his powers in the case of a permanent vacancy, but in the event of temporary vacancies it is not uncommon to restrict the authority of the temporary incumbent. In New York City the president of the board of aldermen when temporarily acting as mayor during the sickness or absence of the mayor is forbidden to exercise the appointive and removal powers within thirty days, or to sign, approve, or disapprove resolutions or ordinances within nine days. The Seattle charter, on the other hand, expressly clothes the acting mayor with all the powers of the mayor even during temporary vacancies while other charters appear to assume that he shall enjoy full authority.

### *Salaries and Bond*

The mayors of practically all communities of size and importance now receive a salary. Not so many years ago the office of mayor was a fee office and the transition to the fixed salary has become the rule only within the past quarter century. In cities where the judicial functions of the mayor are still a matter of some consequence the fees are still collected, tho in case a salary is paid these fees are usually turned over to the city. In some communities mayors still serve with little or no pay and in many states they are dependent upon the will of the council for the amount they receive.<sup>41</sup> The practice which obtains in the larger cities and in an increasing degree in the smaller cities is to fix

<sup>41</sup> This is the practice in states which create municipal corporations under general law, at least with regard to the classes of smaller cities. Compare



the mayor's salary in the municipal charter. This is usually the custom in those states in which cities may draft their own charters under municipal home rule privileges, while it is notable that in charter enactments for great cities the salaries are always specified.<sup>42</sup> It does not appear, however, that there is any standardization in the remuneration paid. With larger responsibilities and greater power the salary of the mayor of New York City is three thousand dollars less than that paid the mayor of Chicago and but twenty-five hundred dollars more than that paid by Dayton, Ohio, to its city manager.<sup>43</sup> With less than one-fourth the population of Minneapolis, Minn., Evansville, Indiana, pays its mayor twice the salary paid in the former. Similar instances might be multiplied to witness to the absence of uniform standards in calculating the value of the mayoral services of the reward to be offered for them.

There is some difference of opinion as to whether salaries should be declared in the charters or left to be determined by the municipal council. The municipal league program endorsed the latter plan<sup>44</sup> and safeguarded the executive by providing that the salary should not be changed during the term of an incumbent so as to operate either against him or in his favor. This proposal followed in the main the practice which already obtained

for example, the situation in Illinois. Cities under ten thousand commonly pay their mayors from \$300 to \$600. Mendota gained some notoriety in 1915 by the generous act of its council in raising the mayor's compensation from an average of sixteen cents per day to an average of a little less than one dollar per day or three hundred dollars per year.

<sup>42</sup> The mayor of New York City is paid \$15,000; the mayor of Chicago, \$18,000; the city manager of Dayton, \$12,500; other cities pay as follows: Boston, \$10,000; Minneapolis, \$2,000; San Francisco, \$6,000; Philadelphia, \$12,000; Evansville, Ind., \$4,000; Utica, N. Y., \$1,600. The list might be increased indefinitely. Some of these amounts are fixed by charter; others by ordinance. The charter of Madison, Wis., provides that the mayor shall receive no salary. *Cf.* Sec. 26.

<sup>43</sup> In general it may be noted that the tendency appears to be to pay fairly good salaries in those cities which are most alive to the need for capable administration and which have put forth some effort to secure it. This, however, hardly explains the fact that Chicago pays its mayor the largest salary received by any municipal executive in the country. The good salaries which are paid to commissioners and city managers are, however, in line with the development noted.

<sup>44</sup> Art. 3, Sec. 8.

in many of the general municipal acts of the states. As far as the amount of the salaries paid is concerned there seems to be little in actual practice to indicate that one method has any advantage over the other. Charters and councils alike are now generous, now parsimonious. Local conditions and standards seemed to have played a prevailing part in determining the salaries paid, tho doubtless the present tendency to pay more liberally is having a country-wide influence. Authorities agree that salaries in American cities compare favorably with those in the cities of the principal European countries, especially France and England, in neither of which do the mayors receive substantial remuneration.

American experience seems to demonstrate one thing with respect to salaries. It is better to pay good salaries, or no salaries, than to pay low ones. However low they may be they attract the professional politician, the individual who is in politics for a living. In smaller communities good mayors will be found who will serve without salary whereas the same man could not be attracted by a small remuneration. On the other hand where the office demands the entire attention of the incumbent or any large part of his time and that it is wiser to offer a salary commensurate with the responsibilities imposed. It will prove cheaper in the long run, a statement that is abundantly demonstrated from the experience of commission governed cities.

Many cities and some states thru their general laws require the mayor to give bond for the proper fulfilment of his duties. The amount of the bond is sometimes fixed in the state law,<sup>45</sup> sometimes determined by the municipal council.<sup>46</sup> The premiums are as a rule paid from the municipal treasury. In a number of cities no provision is made for a bond from a mayor, but he is charged with careful oversight of the bonds given by other members of the municipal staff.<sup>47</sup>

<sup>45</sup> The general law in Illinois provides that in no case shall the bond be less than \$3,000.

<sup>46</sup> This is the more general practice. See the charter of Cleveland, Sec. 190, and of St. Louis, Art. 8, Sec. 4.

<sup>47</sup> Cf. Los Angeles, Charter, Art. 5, Secs. 62, 64. Under Sec. 63 it is possible the council might compel the mayor to give bond, tho Sec. 64 renders such an effort of doubtful validity. No bond is specified in Kansas City.



*Induction into Office*

The process by which the mayor is inducted into office constitutes a ceremony which is usually regarded with little attention. In general it consists of the administration of an oath by some competent or authorized officer in the state or municipal service. In Boston the oath is administered by the justice of the supreme judicial circuit or by a judge or justice from some other court of record. The administration of the oath takes place before the municipal council and a certification of the act is entered upon the journal. The custom provided for in Kansas City differs from the above in that the oath is administered by the city clerk or other municipal officer, in the presence of the common council and citizens who may desire to attend. The oath to be taken is the same as that required of common councilors. In New York and Cleveland the practice is similar to that of Boston, except that the oath must be subscribed to and filed in the office of the city clerk. In Philadelphia the record of the oath having been taken must be filed with the controller.

The content of the oath or affirmation appears to differ among municipalities. The New York charters require that the mayor take and subscribe to the declaration "faithfully to perform the duties of his office." The following declaration is used in many cities: "I do solemnly swear (or affirm as the case may be) that I will support the Constitution of the United States and the Constitution of the State of———, and that I will faithfully discharge the duties of the office of Mayor according to the best of my ability."<sup>48</sup> A recent variation from this form is that required by the St. Louis charter which specifies a declaration including the following items: (1) The mayor has all of the qualifications for the office named in the charter; (2) he is not subject to any of the disqualifications for the office; (3) in addition to the United States Constitution and that of Missouri he will support the St. Louis charter and ordinances; (4) he will be influenced in the appointment, promotion, demotion, suspension, or discharge of officers or employees by the consideration of fitness only; (5) he will not expend or authorize the expenditure of

<sup>48</sup> Los Angeles, Charter, Art. 2, Sec. 10. See also the municipal laws of Illinois for the same statement.



money otherwise than for adequate consideration and efficient service to the city.<sup>49</sup>

While the constitutional oath appears to be the general practice, supplemented here and there by special provisions inserted by charter makers, it has not been unknown for councils to be authorized to demand an additional oath, or for no oath whatever to be necessary.<sup>50</sup> On the other hand many charters specify that failure to take the oath of office works forfeiture of the title which the mayor elect may have to it.

### *Miscellaneous Features*

In addition to the foregoing constituent features of the mayoral office there are miscellaneous items which are more or less common and which are properly noted at this point. In all cities of size or importance it is customary for the mayor to have secretarial assistance of a private and confidential character provided for him. The extent of this assistance varies according to the size of the city and the conditions which obtain. In San Francisco the mayor appoints a stenographer, an usher, and a private secretary to aid him in caring for his duties. The mayor of St. Louis under the old charter was given an office force of five: a secretary, an assistant secretary, a stenographer, a page, and a janitor,<sup>51</sup> and over them his power was complete. But no provision for a staff as formidable in numbers was made in the charter adopted in 1914. In fact the matter appears to have been left to the determination of the municipal council. Charters, indeed, quite frequently omit to mention this custom. Often they declare that the mayor shall have his office in the city hall; and in Indiana the mayor is expected to devote regular periods of the day to office hours.

Moreover the mayor may frequently call to his assistance those who are specially qualified to render aid, either in the capacity of citizen groups with advisory functions or as in the case of St. Louis a certified public accountant to help him maintain the annual audit of the financial affairs of the city, a duty imposed upon him by charter. The creation of "the mayor's eye" in

<sup>49</sup> St. Louis, Charter, Art. 8, Sec. 3.

<sup>50</sup> Bayles, *The Office of Mayor in the United States*, pp. 25, 26, with citations, especially those in the first and last paragraphs.

<sup>51</sup> The salary budget of the five was \$5,220 per year.

New York witnesses to the tendency to augment the organization of the mayoral office so as to enable the holder to perform his duties more effectively.<sup>52</sup>

The mayoral constitution today gives evidence of some development when compared with what it was in the last decade in the nineteenth century. While there have been few changes in the legal requirements imposed upon candidates, the extra-legal qualifications demanded have been appreciably elevated owing to the increasing alertness and intelligence of influential and public spirited citizen groups. Nomination by petition or by direct primary have practically displaced the delegate convention, tho the influence of organized political parties has not been greatly weakened. Some gain has been achieved thru non-partisan elections, but it is a gain that is maintained by eternal vigilance.<sup>53</sup> On the whole there has been progress in the direction of ease of nomination and the establishment of a direct and immediate bond between the mayor and the electorate. In part this is due to the application of the recall to the office as a means of supplementing the processes of removal which were available a quarter of a century ago. Other methods of removal do not appear to have increased in importance or effectiveness. The movement for longer terms has continued unabated and two and four year terms are the most common today, with the four year term gaining in popularity. Coincident with this has been the disposition to increase salaries until today the American mayor is well in the lead of his contemporaries in other countries. On the other hand there is an impressive want of standardization, many cities remaining parsimonious, others paying more than the circumstances seem to require. In general the constitution of the office exhibits no such radical changes as characterized its progress in the latter half of the nineteenth century. The changes that have been observed have rather seemed to popularize and strengthen the office and to accentuate its tendency to displace the council as the most effective organ in municipal democracy. These changes further witness to the demand for responsible and responsive organs of government in American cities.

<sup>52</sup> This institution is discussed more fully in a later chapter.

<sup>53</sup> The Municipal League of Seattle in the spring campaign of 1916 refused its endorsement to Socialist candidates for municipal office on the ground that they were running on a party ticket and thus violating the spirit of the non-partisan elections act.



## CHAPTER IV

### THE MAYOR AND ADMINISTRATION

“An administration which should neither court the few, nor stand in awe of the many, which should identify itself exclusively with the rights of the city, maintaining them not merely with the zeal of official station, but with the pertinacious spirit of private interest; which in executing the laws, should hunt vice in its recesses, turn light upon the darkness of its haunts, and wrest the poisonous cup from the hand of the unlicensed pander; which should dare to resist private cupidity, seeking to corrupt; personal influence, striving to sway; party rancor, slandering to intimidate; . . .”<sup>1</sup>

In American cities the mayor is the head of the administration, a position which he holds by reason of charter or statutory provisions. It is a responsibility that is the product of his comparative successes and the occasion of his most lamentable failures. It was clearly defined by the end of the nineteenth century, but has not ceased to develop since that time, except in those cities now quite numerous in which the mayor plan has been supplanted by other forms of government. Thru the relation which exists between the mayor and administration municipal government has become more sensitive and more responsive to the public will. If, as one prominent observer of American government says, the cities of the United States are today better governed than are the states of the Union, the explanation must be sought in their administration.<sup>2</sup> The purpose of this chapter is to describe the nature and extent of the mayor's responsibility in administration, to define the powers he enjoys and the methods by which they are exercised, and to note the forces which continue to augment the importance of the mayor as an administrative officer.

<sup>1</sup> This excerpt is taken from Josiah Quincy's farewell address as mayor of Boston. See his *Municipal History*, pp. 261, 262.

<sup>2</sup> An assertion made by Mr. Elihu Root to the N. Y. Constitutional Convention in 1915.



*General Authority*

The nature of the relation which the mayor bears to administration may be either advisory, supervisory, or active and managerial. Quite commonly, indeed, the actual practice of incumbents of the office will exhibit all of these characteristics. In the case of one department the relations maintained between the mayor and the head of the department are chiefly advisory. The supervision is casual or perfunctory. Active interference is not dreamed of. In the case of another department the supervisory relation of the mayor is constantly felt. In still other cases the interference of the mayor in the direction, plans, and operation of municipal departments is so constant as to make his relation an active one and his counsel become orders rather than advice. The advisory position of the mayor is illustrated by the career of Mayor Blankenburg of Philadelphia. When he appointed each of his directors he said to them: "You have absolute control of your department. The responsibility must be yours. Come and consult me whenever you wish, but for results I look to you."<sup>3</sup> Mayor Mitchel of New York expressed this conception of the relation of the mayoralty to administration chiefs in somewhat different terms as follows: "The theory of the relation of the mayoralty to these departments in the past has been this: That the mayor should appoint the head of the department and send him out to make good, send him out to administer; if he got into trouble then try to help him out; if he got into too serious trouble or failed to make good or did something calling for such action, then remove him and appoint a successor. That theory has been due very largely to the enormous amount of time which the mayor must devote to other duties of his office, to his participation in the work of . . . various boards and commissions, to the time he must devote to interviews in his office."<sup>4</sup>

Municipal charters define the mayor's responsibility for supervision in the broadest terms. In Baltimore it is provided that

<sup>3</sup> Quoted from an article entitled "What is the City?" by Mr. Blankenburg and published in the *Independent*, Vol. LXXXV, pp. 84, 85 (January 17, 1916).

<sup>4</sup> "The Office of Mayor," by John Purroy Mitchel, mayor of the city of New York, published in the *Proceedings of the Academy of Political Science in the City of New York*, Vol. V, pp. 479-494. (April, 1915.) See p. 491 for the quotation.

the mayor has "general supervision over subordinate officers." These provisions are typical of very many other charters. A variation is found in the charter of Tacoma which provides that the mayor has supervision of "departments, officers and employees" and which charges him to "vigilantly observe the official conduct of all public officers."<sup>5</sup> The degree with which this duty is complied with depends very largely upon the local traditions of the office in the case of ordinary men, and upon the force and personality of men of unusual talent and determined purpose. Local conditions also determine the degree of supervision which is exercised. Quite frequently it is active and intelligent with respect to departments in which matters of immediate political or community interest are being dealt with, and at the same time it may be quite indifferent with regard to departments and officers further removed from the public eye. In larger cities it is small wonder that the supervisory duties of the mayor are not performed with equal effectiveness thruout the entire organization of government. The means which have been placed at his disposal have made it impossible in most cases to comply with the provisions of the charter in a literal and active sense. In some places the deficiencies have been more keenly appreciated than in others and the means supplied. But in view of the characteristic American belief in the all sufficiency of mere declaration of desire in law the majority of the cities are still without those agencies which enable a mayor to become a real supervisor in administration. It is for this reason that in practice his advisory relationship is more commonly in evidence. The theory of his supervision as expressed in charters implies an omniscience and a capacity for being in several places at the same time that taxes the strength and ability of the most gifted incumbents of the office. Adequate personal supervision becomes impossible except in spots or at odd seasons. Effective managerial machinery is largely wanting, and perfunctory oversight or casual review is the inevitable result.

Nevertheless the mayor's part in administration is sometimes more than advisory or supervisory in its character. Occasions arise which appear to demand his participation in it. At other

<sup>5</sup> Tacoma, Charter, Art. 4, Sec. 51. The San Francisco charter states that the mayor shall "vigilantly observe" the official conduct of all public officers. Art. 4, Chap. I, Sec. 2.



times he participates whether the occasion seems to warrant his action or not.<sup>6</sup> Such activity is more likely to occur in connection with police administration. Charters very often lay upon the mayor the express duty to see that proper measures are taken to preserve peace and order,<sup>7</sup> or by investing in him complete power of removal from office, make possible his interference in all parts of the administration if he is so minded. It is noteworthy that one of the most successful mayors in recent years believed in this direct participation. Said Mayor Mitchel of New York City, “. . . it has seemed to me that the mayor ought to be more than merely the head of the city government sitting in the City Hall ready to receive the public, appointing the heads of the departments and sending them out to make good independently, or to fail independently; that he ought to be really the business manager of the city of New York, that he ought to have the close contact that would enable him to become an effective business manager. There are problems of pure administration in the departments that ought to come back to the mayor for settlement. There are problems of policy in the departments that ought to come back to him for settlement.”<sup>8</sup>

One can, without strain, imagine the spirit of Josiah Quincy, to whom active participation in administration was of the essence of his oath of office, rejoicing in the utterance of doctrine like the foregoing. It is a doctrine that becomes increasingly difficult of application as the city grows in size and as the problems of government become more numerous, complex, and technical. The mayor of the smaller community quite commonly takes an active part; for the mayor of millions the possibility of interference is limited, unless special instruments are provided for that purpose.

The extent of the administrative authority of the mayor is, indeed, almost as great as that conferred upon the city itself. It would be incorrect, however, to say that he exhausts this authority even where he is most powerful. On the other hand there

<sup>6</sup> The mayor of Aurora, Ill., attained something more than local fame in 1916 by taking charge of some of the municipal departments and announcing that he was “king.”

<sup>7</sup> Note for example the charter of San Francisco, Art. 4, Chap. I, Sec. 2.

<sup>8</sup> *Proceedings of the Academy of Political Science in the City of New York*, Vol. V, p. 492. (April 1, 1915, p. 14.)



are few lines of municipal activity that do not feel his power and influence, either directly or thru his appointees. General grants of authority are everywhere the rule, tho usually supplemented and defined by specific enumerations. The definition of those powers is of course far from being uniform thruout the country, tho certain powers are generally recognized in some form or other. Of these the most far-reaching is that of appointing the heads of administrative departments, and, in many cases, members of municipal boards and commissions and minor officials. Complementary to this power is that of removal, assuring the mayor of the continuance of harmony and coöperation in his official family. In almost all cases he is empowered to call meetings of the most important officials, and in some cases this is made a duty. He enjoys the privilege of investigating all official acts, records etc., and with this is associated the power to require regular and special reports. By some charters the mayor is made a member *ex officio* of appointive boards, tho not always with the right to vote. The mayor may institute and maintain suits in behalf of the city against delinquent officials. He may, in most cities, reinforce the ordinary police by calling upon the governor for the aid of the militia. In the administration of justice he is not so important as he once was; but he is still in many cities clothed with the authority of a justice of the peace, an authority that is exercised with varying degrees of activity. He may remit fines and penalties imposed for violation of municipal ordinances.

The actual importance of the mayor's power in the field of administration is of course affected also by his relation to the council. The favor of the latter body is rarely disassociated from his policies, and is secured by dealing gently with this constituent and by generous distribution of the patronage of his office, a situation which most municipal executives accept as unblushingly as has the President of the United States in his dealings with Congress. Finally the position of the mayor in local politics has a direct bearing upon his administrative influence and authority. If he is but the figurehead for the real and dominating personality in local politics, if he serves simply as the decoy to attract the electors or to receive their wrath, if it is his part to dream and prattle over impracticable schemes of municipal development while the real political leaders direct the

performance of the work at hand, his position as head of the administration becomes a source of danger to the public interest.<sup>9</sup>

### *Power of Appointment*

A consideration of the powers enumerated, one by one, and in further detail, will aid in gaining a clear appreciation of their significance. The power of appointing other officers in the municipal service is not only the most important but it is generally the most highly developed. Where it has gone furthest in its evolution the administrative chiefs stand in the relation of cabinet members grouped about the mayor. The principle followed is similar to that of presidential government as differentiated from ministerial government. The recognition of this cabinet form of organization has gone much further in American cities than it has in the state governments, and the term "mayor's cabinet" is frequently used in describing the relationship which is established by reason of his appointing power and the consequent responsibility to him of the departmental heads.<sup>10</sup> The development of the appointing power has not, however, been uni-

<sup>9</sup> Such was the situation in the case of Philadelphia from 1907 to 1912. The mayor's "principal interest in municipal affairs was in a series of magnificent dreams, which he called comprehensive plans," for a splendid art gallery; a huge "convention hall" with a stadium and aviation field; the moving of the Schuylkill river, which bisects the city; the laying out of boulevards and diagonal thoroughfares; and the creation of a great system of wharves, warehouses, and industrial establishments. Not one of these grandiose plans ever got beyond the paper stage; but while the mayor mooned and dreamed over them the political leaders who had put him in office and named the subordinates whose commissions he signed were busy with practical things. From "Philadelphia's Strabismus," by George W. Norris, *The Outlook*, Vol. CXI, pp. 1049, 1050 (December 29, 1915). On the whole this picture is not overdrawn, tho Mr. Norris was a member of the Blankenburg administration which succeeded the one described. The danger to the public interest in this case arose from the activities of two contractors who were then and are now the real political leaders in Philadelphia's administration and whose activity in exploiting the municipality has become notorious.

<sup>10</sup> The report of one of the National Municipal League committees at the meeting held in Los Angeles in 1912 advises that in every large city the mayor ought to have cabinet officers to advise him and applies to the group described by the term "the mayor's cabinet." From a reprint of the report published in the *Cleveland Municipal Bulletin*, p. 16, September, 1912.



form in American cities, and the variations which obtain are sufficiently diverse to warrant description and comparison. Especially is this the case with regard to the restrictions which in the majority of cases are imposed upon its exercise.

In many cities the mayor's power of appointment is discretionary. He is unrestrained by the legal necessity of securing confirmation of his appointments. The entire responsibility for the character of the administrative personnel, at least in the higher offices, is upon him. He becomes in fact as well as in theory the center of the municipality's executive services. This situation obtains most conspicuously in New York City and in Cleveland and represents the extreme concentration of executive power in the hands of the mayor. In another and larger group of cities the mayor's power of appointment is restricted by the necessity of having its exercise confirmed. This confirmation in most cases must come from the city council, or, in bicameral councils, from the board of aldermen. A most important exception is the city of Boston, where the appointments must be confirmed by the Massachusetts Civil Service Commission, a state authority.

The extent of the mayor's appointing power is determined by three sorts of provisions. The first vests in him the appointment of department heads and all other charter officers, boards and commissions, etc., not elective by the people, and other municipal employees as they may be provided for by ordinance. The second recognizes the authority of the mayor in the appointment of departmental chiefs, but grants to the latter the power of appointing their own subordinates. The third restricts the apparently wide sweep of the power of appointment by erecting a civil service commission the function of which is to examine and test the fitness of applicants and to select qualified individuals. The appointments to subordinate positions in the service must then be made from eligible lists supplied by the commission. The three types of provisions cited above will be discussed in turn.

Los Angeles is typical of those cities in which the appointment of all officers for whose selection the charter does not make specific provision is vested in the mayor. The exceptions specified are not numerous, but include such officials as the superintendent of the city schools who is appointed by an elective board of edu-



cation. The appointments, however, are subject to confirmation by the majority of the council.<sup>11</sup> In voting, the council members must record their votes, publicly given on roll call. Broader powers of appointment are conferred upon the mayors of New York and of St. Louis. "He shall appoint . . . all non-elective officers and all employees" excepting those whose selection is expressly provided for in other ways by the charter. In these cases the consent of the council is not required. Similar provisions appeared in the charter proposed in the report of the Cambridge, Mass., charter commission of 1913.<sup>12</sup> Except where the confirmation of appointments by the council is retained, the power vested in the mayor under these provisions represents a tremendous concentration of authority in the hands of a single individual.

The second type of provisions is illustrated in the case of the Cleveland charter. The mayor is vested with the power to appoint directors of all the administrative departments, and the officers and members of commissions not included within the regular departments. The directors of the departments appoint the commissioners in charge of each of the divisions in the department; and the commissioners in turn, with the approval of the director, appoint all officers and employees in the division. Most of these positions belong to the classified service and the appointing authority is restricted to the eligible list presented by the civil service commission to the city, but the appointing power of the mayor is unrestricted inasmuch as it lies wholly in the unclassified service.<sup>13</sup> The provisions proposed for the city of Toledo, Ohio, by the charter commission of 1914, were very similar to these in the Cleveland case, but excepted all heads of divisions and all ordinary unskilled labor from the classified service, thus increasing the authority of the directors and division heads respectively. These provisions undoubtedly recognize a tendency

<sup>11</sup> Cf. Scranton, Pa., *Digest of Laws and Ordinances*, p. 23; Seattle, Charter, Art. 5, Sec. 4.

<sup>12</sup> Sec. 10. Note also the charter of San Francisco, Sec. 4; The Municipal League program, Art. 4, Sec. 1.

<sup>13</sup> Charter, Secs. 71, 77, 80, 83, 129, 131, 134. It will be observed that the directors of departments have some discretion in appointments as provided for in Sec. 131 (1), (e) and (f), relating respectively to the selection of advisory boards and certain heads of divisions.

which is present under the first set of provisions, viz., for the mayor to entrust the selection of deputies and subordinates to his department heads, or to rely upon them for recommendations as to who should be appointed.

A third sort of provision found in charters and of importance in determining the appointive power of the mayor is that which relates to the selection from minor officers and employees by the merit system. These provisions are usually found in cities that have charters embodying the second sort, and in almost all modern charters whether drawn by states or cities the merit principle finds recognition. The customary practice is to divide the entire civil service into two groups, one the unclassified list and the other the classified list of officers. In the unclassified list are placed the elective, departmental, and other important places, the list being generally specified in the charter itself.<sup>14</sup> The effect of the application of the merit principle is to restrict the exercise of the appointive power within the bounds of proved fitness for the place. The appointing authority is assisted in the intelligent performance of its duty, a duty that is by no means a simple undertaking, but inasmuch as the assistance must be accepted the restriction is real and to some degree effective. It should be observed, however, that these restrictions are often only partially able to exert their influence and that sometimes the restraint exerted is more apparent than real. This is partic-

<sup>14</sup> The following list from the recently adopted St. Louis charter illustrates the offices in the unclassified service:

“(a) all officers elected by the people;

“(b) all heads of departments, offices and divisions;

“(c) the members of all boards appointed by the mayor, or serving without compensation, however appointed;

“(d) one secretary, deputy or assistant and one stenographer for each officer or board in the unclassified service, who are or may be provided by ordinance with such subordinates;

“(e) all officers of the board of aldermen;

“(f) surgeons, physicians or other experts serving in a consulting or other capacity without compensation.

“(g) In addition to the above, on unanimous vote of the board (of Public Efficiency), there may be included in the unclassified service such other offices or positions requiring exceptional scientific, mechanical, professional or educational qualifications as may be ordered by rule of the Board.”

See Charter, Art. 18, Sec. 3.



ularly true where the power of appointing and removing the members of the civil service commission is vested in the mayor.<sup>15</sup> The temptation which political pressure brings to the municipal executive proves beyond the power of many to resist. This fact accounts for the tendency to except the civil service commissioners from the removal power of the mayor, even tho appointed by him, or to make their removal possible only upon adequate cause being established. In New York State the municipal commissions are subject to a supervisory authority vested in the state civil service board, an authority which in 1914-1915 was exercised by an investigation of the New York City commission.<sup>16</sup> The conviction is deepening that the permanent administrative service of the cities should be placed beyond the reach of the local appointing authorities. Various suggestions have been advanced to achieve this end by relieving the mayor and his staff of the power to use the patronage as a reward for party service. Among these are the appointment of the local civil service board by the governor and the selection of local commissioners by the merit system under the auspices of the state commission.<sup>17</sup>

Opinion is divided as to the advisability of putting practically the whole of the administrative service, including department heads, into the classified service. So eminent a student of municipal government as William Dudley Foulke, for five years president of the National Municipal League, affirms that civil

<sup>15</sup> As for example, in Chicago under Mayor Thompson. Cf. *The New Republic*, Vol. VII, pp. 36-38, for article on "The Fall of a Mayor." The civil service commission was made the pliant tool in the demoralization of the municipal service, and conservative friends of good administration have been led to protest against the obvious and flagrant attempts to intrench the adherents of a political machine in the municipal civil service. Within four months Mr. Thompson had made 9,163 temporary appointments "the spoils men's method" of evading civil service restraint.

<sup>16</sup> The investigation and its results is described fully in the *National Municipal Review*, Vol. V, No. 1 (January, 1916), pp. 47-55. Although the investigation assumed the nature of a persecution, and failed to establish a serious case against the New York City commission, its work will probably aid in correcting practices which have been tolerated, both in city and state. The Mitchel administration was vitally interested in the investigation inasmuch as in New York City the mayor may appoint and remove civil service commissioners at pleasure.

<sup>17</sup> In Massachusetts the state commission exercises a direct control over the work of the city commissions.



service "rules could be well applied" to department heads.<sup>18</sup> On the other hand there is the view that "there is no objection to the higher positions being filled with party men."<sup>19</sup> The point of view of an experienced and responsible administrator is well expressed by Mayor Mitchel of New York, who selected his staff of assistants solely on the basis of training and fitness, from within party lines if possible, from without them if necessary.<sup>20</sup> Under the conditions which obtain in the political life of most American cities at the present time the introduction of the non-

<sup>18</sup> Presidential address before the National Municipal League in 1915. Published in the *National Municipal Review*, Vol. V, No. 1 (January, 1916), p. 15.

<sup>19</sup> Quoted from an address by Augustus Lynch Mason before the Economic Club of Indianapolis, delivered January 25, 1915. Published in pamphlet form. The quotation is taken from p. 18.

<sup>20</sup> Mr. Mitchel said: "The theory of selection upon which the fusion [which nominated and elected him as mayor] . . . was predicated, was that appointments to the headship of . . . departments should be based solely upon qualification, training and fitness to discharge the duties of the office, and without regard to political service rendered. . . There had been a number of political parties contributory to the fusion movement. Each of these parties felt that, subject, of course, to the prime requirement of competency and efficiency, it ought to receive recognition in these appointments. My point of view toward the selection of the heads of departments was that, first of all, I had to find men qualified; that if qualified and trained men could be found within the lines of these political parties contributory to fusion, I should be glad to find them, to select them, and to appoint them. But if I could not find them within the lines of those parties within a reasonable length of time, or if I could find better qualified men outside the organizations of these parties, I felt that it was my duty to select those men."

Mr. Mitchel selected some organization men for positions on his staff; a great many were not party men. The position in which he was placed would, however, have proved the undoing of a man less resolute. He thus described the temptation to which he was subjected: "The pressure, the perfectly natural pressure, that comes from each one of the parties is great. You are urged that this particular applicant recommended by the party is quite as good as any other you may find elsewhere. He may, in fact, have some excellent qualifications. Perhaps the balance is almost even between him and the other man; and yet that other man may have some particular qualification or some particular experience, that recommends him more strongly; and when the selection is made, then the party that recommended the other feels aggrieved, because it says, 'After all, he was pretty nearly as good.'" See *Proceedings of the Academy of Political Science in the City of New York*, Vol. V, No. 3 (April, 1915), pp. 2, 3.

partisan expert would be inopportune. Municipal electorates will have to be brought to the point of supporting such a policy thru gradual education and as the result of experiments made in the more progressive and enlightened centers. The responsible executive, appointing his principal assistants only from the best qualified of his party associates is the intermediate stage which municipal administration has now generally reached in its evolution and it is a step far in advance of conditions a half century ago. It constitutes the justification of continued endeavor toward the goal set by Mr. Foulke. When that goal is reached the appointive power of the mayor will be less significant than it now is, but until then it will continue to be of the utmost importance, despite the restrictions in the filling of subordinate positions.

Perhaps the most promising development of recent years in the direction of restricting the appointing of the mayor as regards department heads and other major officials is the use to which the Massachusetts State Civil Service Commission has been put in the effort to secure expert administrative chiefs for Boston. Upon the commission is imposed the duty of passing upon the appointments made by the mayor. The charter provides that the latter shall appoint all heads of departments and members of municipal boards. The confirmation of the council is not required. It is specified, however, that the appointees shall be recognized experts in the work that shall devolve upon them, or that they shall be specially fitted for the performance of their duties by reason of their education, training, or experience. To secure this expert service the mayor is required to present certificates giving in writing his opinion of the appointee. These certificates are in one or two forms as follows:

"I appoint (name of appointee) to the position (name of office) and I certify that in my opinion he is a person specially fitted by education, training or experience to perform the duties of the said office and that I make the appointment solely in the interest of the city." The certificate is to be signed by the mayor and filed with the city clerk.<sup>21</sup> The latter forwards a certified

<sup>21</sup> The mayor has the option of which certificate he will use. The inclusion of the second form as one which might be used indicates some divergence of opinion among the framers of the charter as to whether the head of a department or the member of a board need always be a "recognized



copy of the certificate to the state civil service commission. The commission inquires into the appointee's qualifications, and if satisfied as to the character of the appointee's qualifications it becomes its duty to file a certificate similar to that of the mayor's in the office of the city clerk. When this is done the appointment becomes operative, subject to the usual provisions governing the induction of appointees into office. If, however, the commission is not satisfied as to the qualifications of the mayor's appointee, it may void the appointment by failing to file a certificate within thirty days of the time when it received notification from the city clerk. The operation of the foregoing provision in Boston has commanded the attention of students of municipal organization thruout the country. The city has been spared many poor appointments thru the failure of the commission to approve the certificates submitted by the mayor, and doubtless executives have been deterred from submitting some names for which there was obviously no hope of approval. The plan has been suggested for adoption in Cincinnati and in a somewhat modified form in Indianapolis. Doubtless it is a step in the direction of state control and for that reason fails to attract the support of ardent believers in municipal home rule. Experience in Boston leads one to surmise that the mayors of that municipality take some long chances, and in an effort to pay off political debts submit names for which they must realize there is little hope of approval.<sup>22</sup>

A choice between the three principal methods of exercising the expert." As a matter of experience the forms have meant but little, apparently, to the mayors who have filled them in and signed their names. In his book, *The Government of American Cities*, p. 231, Professor W. B. Munro points out that from the very first the mayor of Boston has attempted to appoint those who "under the broadest interpretation of the terms" could not be considered qualified. The commission which investigates the appointments has failed to approve a very large percentage of them. In explaining the reasons which led to the adoption of the plan Mr. Munro says: "The Boston plan rests upon the conviction that aldermanic confirmation as a check upon the mayor is an open farce, if nothing worse; that the average mayor cannot be trusted to appoint competent heads of departments if he has sole responsibility in the matter; and that the system of competitive civil-service examinations does not procure, for department headships, men of adequate administrative capacity or political vision."

<sup>22</sup> The reports of the Boston Finance Commission contain many illustrations of this practice. Cf. especially Vol. V, pp. 18-20; Vol. IX, pp. 17-20.



appointive power of the mayor should be made with due regard to conditions obtaining in respective cities. On the whole the experience of Boston does not appear to have secured a higher grade of public officials than have been secured in cities like Cleveland and New York where the appointing power of the mayor is comparatively free from all except the more formal restrictions. The record of the Boston plan indicates that it will serve to check the improper use of the appointing power in the hands of a man who is willing to prostitute his office by placing in positions of authority and responsibility men who are incapable, untrained, and unscrupulous. It will not assure the appointment of highly desirable chiefs. It fixes a minimum standard below which appointees must not go, but it does little to raise that minimum,—the power of the commission is inadequate for that purpose. The maximum qualifications in public servants cannot be established by any cut and dried charter device. It is the product of citizen interest, activity, and support. Cleveland has enjoyed a long period of honest and relatively efficient government and will not tolerate anything else. Political conditions in Boston are less favorable than in many other cities. The persons who could be expected to back such efforts quite often live in adjoining cities and do not participate in the municipal politics of Boston, and among those who reside in the city there is wanting the degree of coöperation between different social groups that is necessary to success. The Boston plan is not one that commends itself to those cities willing to undertake their own redemption without the interference of state authorities. It does not contribute to the establishment of that clear and definite responsibility in administration which is so desirable, especially when the appointive authority of the city is elected by one great party, while the state civil service board may be appointed by a governor elected by the opposite party. Of the three methods, that of confirmation by the council seems to be the least desirable, tho still the most prevalent, especially in cities operating under general state laws and in the smaller urban communities.

There are further restrictions upon the appointive power which do not at first appear. Commonly the terms of the members of boards and commissions and sometimes of officers created by law or charter do not all expire with an outgoing administra-

tion. It is thus possible for the dead hand of one administration to be powerfully felt in a succeeding one.<sup>23</sup> An interesting restraint is found in the Los Angeles charter which permits the recall of appointive officers. In the qualifications which are fixed for the incumbents of many offices there are also restrictions which operate with greater or less degree of effectiveness. Moreover there can be little doubt that the exercise of the appointing power is more and more being subjected to close and searching scrutiny by organized groups of the electorate and public spirited agencies. Public opinion as well as political and partisan considerations also tend to narrow down the field of the appointing power.

### *Power of Removal*

In close connection with the power of appointment is that of removal. In fact the latter, with certain limitations, almost supplements the power of appointment and gives to the latter much of its significance. It makes it possible for the mayor to enforce the responsibility to him which the power of appointment is presumed to create. In general the removal power is exercised in one of three ways: (1) at will, (2) for cause only, (3) with the consent of the council, or other confirming authority.

Removal of incumbents from office at the discretion of the mayor is the goal toward which the development of this power has been tending. Thus Baltimore permits the removal of an appointee in this manner during the first six months of his service, but restricts the exercise of the removal power following that date. Superior, Wis., authorizes the mayor to remove watchmen, policemen, and firemen at will. The city of New York vests in the mayor complete power to remove heads of departments at any time.<sup>24</sup> In Toledo, Ohio, the removal power is practically discretionary with regard to all public officers except members of the civil service commission or of the commission of

<sup>23</sup> Thus in the charter adopted by Toledo in 1915 the terms of some of the officers appointed by the mayor are five years. For example, the members of the Commission of Publicity and Efficiency (Sec. 181), and of the City Plan Commission (Sec. 189).

<sup>24</sup> In New York City the members of the Board of Education and of the Aqueduct Commission and trustees of the College of the City of New York and of the Bellevue hospital and the judicial officers of the city are excepted from the removal power of the mayor.



publicity and efficiency, but laconically adds: "A removal by the mayor shall be final." The Boston charter confers this power of complete removal upon the mayor only with regard to the employees of his office, who are excepted from the civil service rules and denied all protection.<sup>25</sup>

Removal by the mayor for cause only is the practice most generally recognized in charters of late years. The mayor's authority is variously affected by these efforts to avoid giving him arbitrary power. In Boston the method of removal for department heads and board members, except in the case of election commissioners, school committeemen, etc., is for the mayor to file a written statement of the removal setting forth in detail "the specific reasons" which prompted him to the act. A copy of the statement is delivered to the person removed from office. If the latter so desires he may file with the clerk a written statement in reply. This reply does not, however, have any other value than that of bringing the mayor's action into publicity. It does not affect the action taken by him unless he himself so determines. There is little difference between this situation and that which exists in Toledo. In the Boston case the filing of the reasons is mandatory; in Toledo it is necessary only upon the demand of the party removed. In both cases the action of the mayor is final. The Boston type of removal is the most powerful now employed under the restriction that causes may be assigned. Very inadequate reasons may be given, so that the power is after all restrained principally by the degree of publicity which is likely to follow its exercise.<sup>26</sup>

<sup>25</sup> Amended City Charter, Sec. 15. The paragraph is unique among charter provisions and reads:

"The civil service law shall not apply to the appointment of the mayor's secretaries, nor of the stenographers, clerks, telephone operators and messengers connected with his office, and the mayor may remove such appointees without a hearing and without making a statement of the cause for their removal." Cf. San Francisco, Charter, Art. 4, Chap. I, Sec. 1.

<sup>26</sup> Amended City Charter, Sec. 14. One mayor of Boston has used the power of removal rather vigorously. In March, 1914, Mayor Curley ousted sixty-three employees from the department of public works, justifying the act by announcing the saving of approximately \$76,000 per annum to the city, that sum representing the total of their salaries. In 1914 also the entire board of appeals was removed. The only other case under the present charter was the removal of the fire commissioner in 1912. The same party has, however, been in control since the amended charter was adopted.



The recently adopted St. Louis charter indicates a slightly more conservative development. The mayor may remove all non-elective officers and all employees; "but shall not remove from any office, department or division head appointed by him, except for cause." Another provision in the charter follows the Toledo plan, and enables the employees of the city other than those excepted above to require a statement of the reasons for discharge to be filed with the efficiency board of the municipality. The charter does not specify the nature of the causes or the manner of their presentation, and in its practical operation there appears to be but a shade of difference between the St. Louis provisions and those obtaining in Boston. The St. Louis provisions, indeed, expressly authorize the appointing officer to "suspend or discharge or reduce in rank or compensation any officer or employee under him, with or without cause," cases specified in the charter alone excepted.<sup>27</sup> These instances, however, represent a very weak survival of the requirement that removals may be for cause only.

Earlier practice is indicated by the general municipal law of Illinois and the general charter statute for Indiana cities. In these states any officer appointed by the mayor may be removed by him, but the reasons for the action must be reported to the city council and in Indiana to the person removed.<sup>28</sup> The Illinois statute empowers the mayor to act whenever the interests of the city demand it, but protect an officer against removal from office a second time for the same offense. The reasons must be filed with the council within ten days. If this is not done or if the council by a two-thirds vote disapproves of the removal, the officer is restored to his position. It is easy to see, however, that many cases might arise in which the opposition of the mayor's action could not command the necessary two-thirds majority and the action of the executive would stand with or without satisfactory reasons. Of all the requirements that provide for removal for cause only those similar to the provisions of the Baltimore charter guarantee that the cause will have something of reality

<sup>27</sup> In classified service, removals, etc., on account of religious or political opinions or affiliations are prohibited. Art. 18, Sec. 12.

<sup>28</sup> General Municipal Laws of Illinois, Art. 2, Sec. 27. It is interesting to observe that in the Chicago charter convention of 1904 this feature of the removal power of the mayor was retained intact.

in them. After the appointee has held office for six months of his term he may be removed only for cause and after a hearing upon the case.

The third method of exercising the removal power is with the consent of the council or other confirming power. The situation in Los Angeles is typical. There the charter provides that with regard to appointed officers the appointing power shall have the power of removal in all cases, but "where confirmation is required, the assent of the confirming body shall be requisite for removal." The action of the council or other assenting body is to be taken by an open ballot or call of the roll and the respective votes made a matter of record. The number of cities which require procedure of this kind in effecting removals is comparatively small and is diminishing. None of the later charters proposed or adopted include this method, although it was quite the usual method when the power of removal was first being vested in the mayor.<sup>29</sup>

There are other methods of removing officers extant, but the number of cities in which they apply are limited. One of the methods denies to the mayor the power to remove but enables him to prosecute charges before the council or other competent authority.<sup>30</sup> In some cities the subordinate officers may be removed from office by the recall and are ineligible for reappointment if recalled. In still others the council alone may remove, but in these cases it still retains the power of appointment.<sup>31</sup> The last method to be mentioned is that of vesting the power to

<sup>29</sup> Other cities which still retain this method are Waltham, Mass., Charter, Sec. 30; Detroit, Mich., Charter, Sec. 162, but this requires a majority vote only; Worcester, Mass., and Newton, Mass., kept this method until 1903 and 1910 respectively; *cf.* also charters of Providence, R. I., Sec. 9, Clause 9; Pawtucket, R. I., Sec. 7, Clause 7, requiring two-thirds and three-fifths votes respectively to remove; and for Butte, Mont., the Political Code of Montana, Sec. 4781.

<sup>30</sup> See Kentucky General Act for the Government of Second-class Cities, Sec. 184. The mayor, however, may dismiss officers who are found to have been interested in contracts with the city without the consent of the aldermen. The ordinary method of reaching this practice of municipal officers being interested in public contracts is to declare that such contracts are void.

<sup>31</sup> Milwaukee, Charter, Chap. XIX, Sec. 7; Minneapolis, Charter, Chap. II, Sec. 1; cities of the fourth class in the state of Michigan, General Act of Incorporation, Sec. 103.



remove in the mayor, but authorizing an appeal from his action to the local courts, the decision of the latter to be final.<sup>32</sup> This list may not be exhaustive, but it is at least indicative of the variety of the processes that still obtain in the exercise of the power of removal. The centralization of administrative authority in the mayoral office is by no means so complete as the survey of the more important cities would lead one to think. In scanning the numerous methods by which the removal power is called into play one sees the weak mayoralty of a century ago side by side with the most highly developed and powerful executive of the twentieth century.

As has been noted, removal power is intended to enable a mayor to bring the rest of his administration into harmony with his own policy, or to curb maladministration. But many times it proves difficult to bring the power into play. The mayor often hesitates to offend powerful groups or interests that may be interested in the misconduct of an officer. The existence of the power of removal, however, enables the public to fasten responsibility upon the mayor and in that respect its development has been eminently justified. There are of course instances of its gross abuse. It was most notoriously employed in Terre Haute, Indiana, during the election fraud cases in 1915. The mayor announced that those city employees who pleaded to the indictments for election fraud returned in the federal court would be dismissed from the service. The mayor himself being under indictment at the time and later being found guilty of charges which revealed him as the leader in the fraudulent practices charged, the threat to remove could be interpreted only as an attempt to coerce his fellow defendants into a more vigorous defense. There can be little doubt that the power to remove is one that is frequently employed to bulldoze employees of the city into subservience that is far from the kind of harmony which the power was intended to promote. Despite this situation one cannot seriously question that the power has produced the results which were expected of it and has been a potent element in mayor government. The cause of good government appears to be best served where the power of removal is complete or nearly so, at least with regard to heads of departments and other important

<sup>32</sup> Cf. Norfolk, Va., Charter, Sec. 11. The mayor must specify his reasons to the party removed.



functionaries not included within the permanent civil service of the municipality. The best guarantee for its proper exercise is the publicity which must inevitably attend its application to important offices.

### *Power of Suspension*

Closely allied with the power of removal is that of suspension. Frequently it is not mentioned in the municipal charters,<sup>33</sup> but often it is conferred in connection with the power to appoint and the power to remove.<sup>34</sup> In Newport, Rhode Island, the mayor may suspend any city official. If the action is sustained by the aldermen, the officer is removed from office.<sup>35</sup> In Superior, Wisconsin, the mayor may suspend and reinstate any employees in the police and fire departments, and may suspend other officials against whom charges have been preferred until the latter have been disposed of. In some cities — those of Indiana for example — the reason for the suspension must be sent to the city council. The party suspended must be notified of the action, but the decision of the mayor seems to be final. In all of the foregoing cases the power of suspension is expressly conferred but its use and application to individual cases lie within executive discretion. In San Francisco the exercise of this power becomes a duty and the authority conferred upon the mayor is couched in mandatory terms.<sup>36</sup> In general the power to suspend depends upon its being explicitly bestowed, but in case the appointive power of the mayor is complete and exclusive and the terms of appointive officials are not fixed, as in New York or Cleveland, the power to suspend becomes a part of the measure of executive discretion vested in the mayor.<sup>37</sup>

There has been a disposition in a number of cities to extend

<sup>33</sup> For example the charters of Boston and Baltimore.

<sup>34</sup> Cf. the charter of Indianapolis, Sec. 80; of Superior, Wis., Sec. 22.

<sup>35</sup> *Vide* description of the Newport plan by E. E. Chadwick in the *Proceedings of the Providence Conference on Good City Government*, p. 172 (1907).

<sup>36</sup> Charter, Art. 4, Chap. I, Sec. 2. The language is as follows: "When any official defalcation or wilful neglect of duty or official misconduct shall come to his (the mayor's) knowledge, he shall suspend the delinquent officer or person from office pending an official investigation."

<sup>37</sup> This feature of the power of suspension is discussed from the standpoint of administrative law in Bayles' *The Office of Mayor in the United States*, pp. 55, 56.

the mayor's power of suspension to elective officers as well as to subordinate appointive officials. It was retained in the new charter of St. Louis and is found in the charter of San Francisco. The former charter of St. Louis permitted the mayor to suspend elective officers for cause. He must then file charges with the register and convene the council for the purpose of stating his ground of action. The approval of the council removed the incumbent from his position. Failure to approve operated to reinstate the one suspended. The provisions in the new charter are very similar. A three-fourths vote of the board of aldermen is necessary to sustain the charges and fix the time and the place of the hearing. A rather formal trial ensues. The members of the board must record their vote by the yeas and nays and their action is certified to the mayor. If the suspension is not sustained the immediate reinstatement of the defendant is mandatory. The provisions in the case of San Francisco are practically identical with the foregoing. In both cities the mayor enjoys the power of appointing some person to perform the duties of the office vacated by the suspension.

In general the power of suspension with regard to an elective office is vested either in some state authority or it is vested in the council.<sup>38</sup> When vested in the mayor it signifies a development of the doctrine of centralization in administrative power and responsibility that is cumbersome and on the whole undesirable. It has none of the advantages that are to be gained by the adoption of the short ballot and the concurrent recognition of the mayor's power of appointment and removal. Nevertheless it may be accepted as an evidence of a tendency to exalt the position of the mayoralty in administration, even at the expense of the elective principle.

The power of suspension can hardly be viewed except in relation to the power of removal. In the case of appointive officers in the administration it is often used but chiefly as a preliminary to the more vigorous discipline of complete removal, not with a view of chastening the individual affected. Occasionally a reinstatement occurs but it is not the rule.

The powers of appointment, removal, and suspension have been the center of prolonged controversy, and the discussion over them

<sup>38</sup> See the charter of the city of Los Angeles, Art. 2, Sec. 9.



is worthy of brief consideration. The municipal charter of the National Municipal League placed in the hands of the mayor the power of appointing practically all subordinates.<sup>39</sup> The wisdom of this feature of the charter was questioned by some of the conference which adopted it, and has been questioned since that time on the ground that this power over department heads is sufficient. It also has been urged that any further extension of his control has a demoralizing effect on the municipal service, while the moral effect of responsibility on the part of subordinates to department heads "is great and should not be sacrificed except for very cogent reasons." In the address by former Governor W. E. Russell of Massachusetts, he expressed the opinion that the power of the mayor to appoint should be limited, but his power to remove, complete.<sup>40</sup> Municipal practice has tended to invest the mayor with complete authority over department chiefs and to create a subordinate service that is chosen under the merit system and responsible to department heads.

### *Power of Investigation*

One of the most universally recognized powers which the mayor possesses is that of investigating all branches of the administration and the conduct of departmental and subordinate officials. Upon no other feature is there such unanimity in municipal charters, unless it is upon the provision that he shall be the chief executive officer of the city. By far the most generally employed phraseology for conferring this power is that which declares that the mayor "shall have the power at any time to examine any books or records of any employee of the city." These words or their equivalent are found in scores of municipal charters and in many general charter statutes.<sup>41</sup> Slight variations

<sup>39</sup> Municipal Corporations Act, Art. 4, Sec. 1. The provisions were that the mayor should appoint all heads of departments except the controller; also subject to civil service regulations the subordinate administrative officers and employees except that laborers were to be appointed and removed by the heads of departments. In New York City the direct and indirect appointing power of the mayor affects approximately seventy thousand persons, drawing salaries totaling more than sixty-five and one-half millions of dollars. Cf. *Short Ballot Bulletin*, Vol. III, No. 7 (February, 1916), p. 7.

<sup>40</sup> Quoted in Reinsch, *Readings in State Government*, pp. 8, 9.

<sup>41</sup> Cf. the General Law relating to the Incorporation of Cities of the Fourth Class in Michigan, Sec. 50; The Cities and Villages Act of Illinois,



occur: the word "inspect" is used in place of the word "examine;" the words "papers" and "manner of doing business" are added now and then; the phrase "without notice" appears occasionally; now and then the employment of experts for the investigation is authorized; and in some cases "departments" are specified as coming within the power of investigation.<sup>42</sup> Indeed these provisions have been common in charters since the emergence of the mayoralty into more than merely nominal leadership. Taken by themselves, however, they have provided for little more than nominal powers of investigation and to assume that the authority is or has been diligently or intelligently exercised appears to be very largely unwarranted. Occasionally, as in the case of Josiah Quincy, a mayor has taken this power seriously, but its vigorous exercise is not popular among municipal employees; it demands a large measure of tact on the part of the executive; it lays heavy tribute upon the mayor's time and energy; and finally it presumes a training and a knowledge of what constitutes "legal and proper" methods of doing business, keeping records and accounts that many mayors do not have. In this matter of inspection, too, local tradition has had no little to do with actual practice, and very frequently the sudden introduction of adequate inspection or examination has been regarded as casting unwarranted suspicion upon the official concerned, or as evidencing an unjustifiable and prying concern on the part of the mayor. Doubtless, too, there have been cases in which mayors did not care to employ this authority, vaguely realizing that it might not cast credit upon the record of their own administration.

It should be observed, on the other hand, that the mayor has actually enjoyed no such sweep of authority as the general language employed would seem to indicate. To remedy this situation and to render the mayor capable of conducting investigations efficiently the National Municipal League program advised that the mayor be empowered to compel the attendance and testimony of witnesses in connection with his investigations. Some

Art. 2, Sec. 31; Baltimore, Charter, Sec. 21; Tacoma, Charter, Art. 4, Sec. 51; Rochester, Charter, Sec. 49.

<sup>42</sup> Baltimore specifies "departments, sub-departments, municipal board, officer, assistant, clerk, subordinate or employee." Sec. 21. The Illinois act specified any "agent" of the city.

of the more recent charters recognize this suggestion. The charter of Cleveland, for example, provides that "the mayor may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. Any person or persons appointed by the mayor to examine the affairs of any department or the conduct of any officer or employee, shall have the same power to compel the attendance of witnesses and the production of witnesses' papers and other evidence and to cause witnesses to be punished for contempt, as is conferred upon the council or a committee thereof by this charter." Substantially the same provisions are found in the Toledo and St. Louis charters. There is also created in the case of Toledo, a commission of publicity and efficiency whose functions are: (1) to investigate any and all departments and offices; (2) to make semi-annual reports of its conclusions to the mayor and to other municipal authorities; (3) to recommend improved methods to the council; (4) to publish or to furnish to any person at its discretion any reports, recommendations, or information it may have concerning affairs; (5) to investigate and publish information concerning the improvement and development of municipal administration elsewhere; (6) to publish all municipal records and reports; and (7) to collect information for and to advise with all offices and departments. This commission not only furnishes the mayor with the means of conducting an investigation, but maintains such an investigation constantly and by the publicity secured stimulates his constant interest and activity along the same lines. A somewhat similar provision is found in Cleveland in the bureau of information and efficiency, but its powers are less apparent.

Two very interesting developments in the direction of vitalizing the mayor's power of investigation have appeared in New York and Boston respectively. In New York the mayor is made responsible for the administration, an obligation that involves the oversight of some twenty-nine departments and nearly seventy thousand employees. The interests cared for by these departments are vast and important and involve an annual expenditure running up into hundreds of millions. Obviously the mayor needs some efficient agency for exerting his power of investigation. "The Mayor's Eye" has been created for this



purpose, a commissioner of accounts employing almost one hundred skilled persons who "day in and day out" furnish the chief executive with information that enables him to keep in touch with all branches of the administration. It has proven a most effective instrument for aiding the mayor in his efforts to secure good government.<sup>43</sup>

The Boston charter creates a finance committee whose duty it is "from time to time to investigate any and all matters relating to appropriations, loans, expenditures, accounts, and methods of administration affecting the city of Boston or the county of Suffolk, or any department thereof, that may appear to the commission to need investigation, and to report . . . to the mayor, the city council, the governor or the general court." An annual report to the state legislature is required. It is also provided that "whenever any payroll, bill or other claim against the city is presented to the mayor . . . he shall, if the same seems to him to be of doubtful validity, excessive in amount, or otherwise contrary to the city's interest, refer it to the finance commission, which shall immediately investigate the facts and report thereon . . ." The commission is made independent of voluntary appropriations by the municipal council and is authorized to incur such expenses "as it may deem necessary" and the city is made liable for the payment of these expenses to an amount not exceeding twenty-five thousand dollars upon requisition by the commission. The city is obliged to make an annual appropriation of twenty-five thousand dollars for investigations, besides the salary of the chairman of the commission. The commission is clothed with authority adequate to enable it to do its work effectively. It will be observed that the Boston plan provides the mayor with an effective agent for carrying on such investigations as he may care to inaugurate; it further makes sure that investigation will proceed whether the mayor initiates it or not. These two features are highly desirable and will doubtless find place in many future charters. But the finance commission is appointed by the governor and is a state as well as a municipal agency. It is hardly to be anticipated that municipal charter commissions will incorporate these latter provisions into the charter drafts which they submit. The Toledo

<sup>43</sup> See pamphlet, *The Mayor's Eye*, pp. 3-5.



plan appears much more likely to commend itself, strengthened, perhaps, by the acceptable features which the Boston charter offers.

The mayor's power of investigation is frequently enlarged by the council thru ordinances empowering him to act along specific lines. One has but to turn the pages of the numerous volumes of compiled ordinances which are accumulating so rapidly today to discover that the council is defining with great detail the inspectional duties of the mayor. Every new regulatory ordinance provides for records to be kept, conditions of one or many sorts to be maintained in stores, shops, industrial establishments, etc., and the mayor's office is charged with the investigation of such records and conditions. This tendency is especially marked in smaller cities where the departmental establishment is not highly organized, or where the council still remains a very powerful organ of government; <sup>44</sup> but it is far from absent in the more important municipalities. <sup>45</sup>

### *Reports and Conferences*

An important element of the mayor's administrative authority is his powers of calling meetings of department heads, members of boards, commissions, and bureaus, and the allied power of calling for reports from them either at regular intervals or at his pleasure. These powers are frequently conferred in express terms in the municipal charters, while in cases in which appointees hold office at the pleasure of the mayor the latter has ample authority to make such demands. The phraseology in which these powers are bestowed varies greatly. The Cleveland charter provides for annual reports from the directors of departments to the mayor and for the furnishing to the mayor "at any time" such information as he may desire. The Baltimore charter employs somewhat happier phraseology. An annual confer-

<sup>44</sup> See for example, the *Principal Ordinances of Superior, Wis.*, pp. 187, 188, 197.

<sup>45</sup> The Revised Code of St. Louis furnishes many examples. In larger as well as smaller cities mayors make personal tours of inspection from time to time. It may be observed that the increasing accessibility of municipal ordinances opens up a wide field for study in municipal legislation. In some of the more important branches of it such as franchise legislation the trails through the wilderness have been blazed, but the larger part of this field has received little attention beyond spasmodic attempts at local codification.

ence is mandatory, but the mayor may summon heads of departments "to a conference on municipal matters . . . oftener, if he thinks the public interests will be promoted thereby." Reports either oral or written, as the mayor may prefer, are to be made once every month. The St. Louis charter enables the mayor to require any department, board, or officer to "make reports to him," besides requiring annual reports and the furnishing of information "at any time." An example of the exercise of the mayor's power of calling for information is given by Mayor Mitchel in a discussion of the office of mayor. Prior to his administration, department heads had been submitting budget estimates to the board of estimate and apportionment. Upon his accession department heads were instructed to submit their estimates to the mayor, enabling the latter to review them and to present to the board of estimate and apportionment an executive budget. The result was that the amount asked for in the budget represented a decrease from the actual appropriations of the year before.<sup>46</sup> In this case the exercise of the mayor's authority secured not only economical estimates of departmental needs, but it made possible the inauguration of a desirable feature in municipal budget making. The mayor system has considerable to learn regarding the value of frequent meetings of heads of departments with the executive, a value which is being demonstrated in cities under commission and manager governed systems. It is equally true that the power to call for information and reports may be made the means of securing more responsible and enlightened administration.

#### *On Boards and Commissions*

In some cities the position of the mayor in administration is enhanced by his being made ex officio a member of local boards and commissions, or in case membership is denied him, being privileged to attend and take part in board meetings. In San Francisco, for example, he is a member of the board of library trustees and is privileged to attend the meetings of any other boards and to offer suggestions during their proceedings. Cleveland makes the mayor president of the board of control and of the sinking fund commission; and Cleveland and Toledo make

<sup>46</sup> *Proceedings of the Academy of Political Science in the City of New York*, Vol. V, No. 3 (April, 1915), p. 8.



him president of the board of revision and assessments. In New York City the mayor sits as chairman of the boards and commissions of which he is a member, viz., the board of estimate and apportionment, the sinking fund commission, the banking commission, the armory board, and the board of city record.<sup>47</sup> St. Louis and Rochester, New York, follow the practice of making the mayor a member of the board of estimate and apportionment,<sup>48</sup> and Baltimore places the mayor on the board of estimates. The latter city also makes the mayor a member of the board of charities and corrections, of the art commission, and of the board of review and assessment. Occasionally, as in some Illinois cities which retain their special charters issued before the constitution of 1870 was adopted, the mayor is a member of the board of education.

It should be observed that the policy of making the mayor a member of municipal boards and commissions may easily be carried to the point where it imposes an unnecessary burden upon him. Except in the case of boards whose function it is to unify and direct the work of important branches of administration or to coördinate the efforts of various administrative districts, such as the boroughs of New York City, or to prepare the budget and apportion the distribution of the annual revenue, there seems to be little gained by making the mayor a member of a board that could not be gained by giving him adequate powers of appointment and removal, supervision, and control. The later charters, in so far as any tendency may be said to exist, appear to recognize this fact, and it cannot be said that there is any disposition to extend the practice.

### *Power of Approval*

Perhaps the power which lays the heaviest demand upon the time of the mayor is that of approval. At his discretion literally hundreds of measures and acts that feature the conduct of administration are subject to his approval. A complete enumeration of these would serve no good purpose, but the following

<sup>47</sup> See article by Mayor Mitchel in *Proceedings of the Academy of Political Science in the City of New York*, Vol. V, No. 3 (April, 1915), pp. 4, 7.

<sup>48</sup> Charter, Art. 16, Sec. 1. One of the criticisms made of the St. Louis charter before and after its adoption was that it did not make the mayor powerful enough. Rochester, Charter, Sec. 61.

classification of matters subject to the mayor's approval indicates the range within which cities confer the power of approval:

1. Blanket provisions that the mayor may approve all matters requiring approval for which the charter has failed to provide some other method.

2. The bonds of city officers and bidders and contractors for city work, and of those holding licenses and permits.

3. The settlement of disputes as to jurisdiction between officers or branches of the administration.

4. The institution of suits at law on behalf of the city.

5. The appointments made by the controller and other officers of the administration.

6. The assignment of rooms and offices to the departments, or renting of additional space for administrative purposes.

7. The inauguration or extension of special administrative undertakings such as investigations.

8. The adjustment and settlement of claims against the city.

9. The rules and regulations of municipal departments, boards, and commissions.

10. Multitudinous and varied matters upon which the approval of the mayor is required by city ordinances. Market leases, settlements made by street commissioners, deposits of city funds, the release of mortgages, water rates, and the like.

It is worthy of observation that in more recent charters the amount of this work requiring the approval of the mayor has decreased, at least so far as incorporation of the requirements in the charters themselves is concerned. At the same time the power itself remains practically intact through the larger and more immediate control which the mayor has gained over the administrative service by the elimination of the council as a factor in appointments and the development of a complete power of removal. Exceptions to this tendency may be noted in isolated paragraphs in such charters as those of Cleveland and Toledo. For some of the exceptions there appear to be reasons, especially in the expenditure of public funds. Thus in Toledo, contracts which involve the expenditure of five hundred dollars or more may not be entered into unless approved by the mayor and the head of the department interested.



### *Public Safety*

In the administration of departments which involve the public safety the mayor usually enjoys exceedingly broad powers and the charters freely specify that the position of the mayor is one of supremacy in this particular. In the Cleveland charter, for example, the director of public safety who is the executive head of the police and fire divisions is specifically "under the direction of the mayor." In the San Francisco charter it is provided that the mayor "may use and command the police force." The Los Angeles mayoralty is not as imposing in its authority as that of many other cities, but a charter amendment of 1911 gives the chief of police the supervision and control of the police force "subject only to the orders of the mayor." In cities like Boston, Baltimore, and St. Louis, where the police are under the control of commissioners responsible to state authority, the mayor's powers are limited except in cases of extreme danger. In the smaller fourth class cities of Michigan, and in other cases, the control of the local police is vested in the council.<sup>49</sup> The mayor is frequently clothed with the powers of a sheriff for the purpose of enforcing law and suppressing disorder. It is obvious where the chief of police or the police commissioner hold office at the pleasure of the mayor that the latter's authority is both immediate and effective, even though special provisions are not incorporated in the charter to that end.<sup>50</sup>

The relation of the mayor to the fire department is not by any means uniform thruout the country. In general the practices fall into one of two groups, those in which it is on the same basis as the police department, and those in which there is a distinct differentiation. Cleveland and Seattle furnish very good examples of the first group, tho widely differing from each other. In the former the chief of the division of fire is responsible to the mayor as well as to the director of public safety, and the mayor enjoys the sole power of suspension prior to a hearing

<sup>49</sup> Michigan, laws relating to the incorporation of cities.

<sup>50</sup> The administrations of Mayors Whitlock in Toledo and Gaynor in New York indicate the influence of the mayor in police affairs; even in a city like Chicago with the council occupying a strong position, the mayor is the dominating figure in police administration. The Newburgh Survey, pp. 43, 44, found that the discipline of the police department was largely in the hands of the mayor and the chief of police.

by the civil service commission. The determination of the policies of the department are subject to the will of the mayor thru his effective control over the director of public safety. The mayor of Seattle appoints the chief of the fire department from those who have qualified under the civil service rules. The mayor is charged with the prescription of rules for the department, and may remove the head of the department in accordance with the rules of the civil service code. The Kansas City charter gives to the mayor the appointment of the board of fire and water commissioners. To this board is given the authority to appoint the fire chief and to organize the water supply system as well as the fire fighting system. The board consists of three members, one retiring each year, a fact which materially lessens the effectiveness of the mayor's control, tho he is *ex officio* a member of the board and may, therefore, exert a great personal influence. New York City offers the best example of a city in which the mayor may dominate completely if he so desires; he may remove the head of the department of fire commissioners, at pleasure. An interesting variation is found in Los Angeles where the mayor is by charter made a member *ex officio* and president of the board of fire commissioners, there being two other electors appointed by him subject to the confirmation of the council. The chief engineer or fire chief, is however, appointed by the mayor and expressly subject to being removed by the latter. San Francisco takes great pains to establish a non-partisan board of fire commissioners, by providing that not more than two out of a membership of four may be of the same political party. The mayor, however, may attend the meetings and take part in the board's deliberations, tho without a vote.

The twentieth century has witnessed an increasing tendency to vest in the mayor an authority over public safety commensurate with the responsibility imposed. In states like Illinois, where the elected chief of police or city marshal was found frequently thirty or forty years ago, the almost universal practice today is appointment by the mayor, subject to confirmation by the council. Elsewhere the tendency has been to free the police force from political influence through the adoption of civil service reform measures, but to retain the mayor's control over the head of the department and to give the mayor either independent, supervisory, or concurrent police authority. With re-



spect to the fire department differing tendencies are noticeable and the place of the mayor is certainly not so clear and commanding as is his position in police administration. The disposition indicated in the Cleveland, Toledo, and St. Louis charters, the amendments to the Los Angeles charter in 1911, and the practice that obtains in New York and Boston reveal a decided trend toward concentration of power in the mayoral office; on the other hand the system of board control has been retained in important centers such as Baltimore, Kansas City, and San Francisco, the mayor enjoying at best a somewhat limited authority.<sup>51</sup>

Normally it may be said that the mayor's power in respect to the conduct of departments such as police, fire, and health, is not conspicuously exercised. The major part of the task is committed to the heads of the departments, or directors or boards entrusted with the immediate performance of the work. There are many occasions, however, when the mayor takes an active part in the formation of the plans and policies of these departments and in supplying the energy and vigor with which they are put into execution.<sup>52</sup> The problems connected with the public safety offer large opportunity for gross abuse of the vast powers conferred. Not a few municipal executives have either proven incapable of dealing with these problems, or have permitted the agencies which were intended to protect the public to be converted into instruments for personal or partisan advantage, particularly in the field of police administration. The best that can be said for the mayor's relation to these agencies is that conditions have materially improved, thanks to the efforts of courageous mayors like Jones, Whitlock, Johnson, Gaynor, Mitchel, and others, and the tendency to call into directorship men of vision and training. On the other hand, the mayoralty has undoubtedly failed to furnish the consistent, enlightened, progressive, and efficient leadership that the measure of its authority has in many places demanded of it.

<sup>51</sup> In Minneapolis the mayor has powers concurrent with those exercised by the chief of police.

<sup>52</sup> See for a recent example, the account of Mayor Mitchel's handling of the police problem in the *National Municipal Review*, Vol. V, No. 1 (January, 1916), pp. 30, 31.

*Finance Administration*

The special powers of the mayor in the field of finance administration call for a more individualized consideration than their previous mention in association with other powers indicates. It is in this field that many conspicuous developments in mayoral authority have taken place during the last two decades. In New York and St. Louis the mayor is a member of the board of estimate and apportionment and participates in the work of financial direction and control entrusted to that body. In New York City he is also a member of the sinking fund commission, and in that capacity acts as one of the trustees of all the sinking funds of the city and helps to determine the interest rate on public bond issues. As chairman of the banking commission the mayor shares the responsibility of selecting the depositories of city funds; by creating an executive budget he has assumed an immediate control over the finances of the various municipal departments.<sup>53</sup> In Cleveland and Toledo the mayor prepares the annual budget, in performance of which duty he is obliged to know the conditions obtaining in each department, and to pass upon numerous questions of departmental finance and administration. Within certain limitations the mayor of Boston is not only authorized to prepare the annual budget, but may approve the transfer of appropriations from one fund to another. The importance to Boston of the mayor's financial powers is revealed in the report of the Boston finance commission on the administration of Mayor Fitzgerald in 1912. The mayor is held responsible for extravagance in payrolls, his neglect of the fire department, his tendency to permit increases of appropriations and his approval of propositions which would have wiped out the margin of the city's borrowing power; on the other hand it was noted that he had given more funds to the permanent improvement projects, had checked the increase in the municipal debt, and had bettered the conditions under which contracts were awarded.

In many cities, of course, it is still true that the power of the mayor in finance administration is comparatively limited. The usual power to inspect books and accounts obtains, but the real

<sup>53</sup> Charter, Sec. 204; also *Proceedings of the Academy of Political Science*, etc., Vol. V, No. 3 (April, 1915), p. 9.



authority in finance administration still vests in the council.<sup>54</sup> Yet even in council governed Chicago the mayor appoints the city comptroller; in Kansas City the mayor is one of a committee of three to select the depositories of city funds; in Baltimore the mayor must approve the appointees of the elective controller and is a member of the board of estimates and of the advisory department of review and assessment. In Seattle he is merely a member of the auditing committee. On the whole it appears that his power in financial administration is increasing, a conclusion which is borne out by a survey of the recommendations of practically all the recent charter commissions.

### *Judicial Administration*

The survey of the relation of the mayor to administration would not be complete without some consideration of his position in the work of meting out justice. Formerly the mayor actually possessed considerable judicial authority, traces of which are still abundant.<sup>55</sup> It has been very generally held that this judicial power of the mayor is tending to disappear, and there is much to confirm this opinion. Later municipal charters do not recognize former practice in this particular and generally omit provisions which confer such power upon the executive.<sup>56</sup> In some cases, however, this loss of judicial authority is more apparent than real, for, as in Ohio, the law of the state may do what the charter makers have refused to do. In Ohio the judicial authority of the mayor was actually increased by legislative enactment of April 28, 1913. The mayor was given jurisdiction in counties over such subjects as food adulteration, the protection of children, the enforcement of liquor laws, the laws governing food

<sup>54</sup> For example in Los Angeles, Chicago, and the cities of Illinois, Kansas City, and Seattle.

<sup>55</sup> A rather detailed description of the judicial authority of the mayor will be found in Fairlie, *Municipal Administration*, Chap. XIX, p. 421. Cf. also Bayles' *The Office of Mayor in the United States*, Chap. V. In brief the mayor was a justice of the peace, possessed of some civil and criminal jurisdiction, and held court. In 1895 Mr. Bayles prophesied that his judicial authority would in the future either be ignored or expressly withdrawn (p. 74). Earlier practice is illustrated in the code of N. C., Sec. 2934.

<sup>56</sup> Cf. the charters of St. Louis, Los Angeles, Cleveland, the proposed Cincinnati charter, those of Kansas City, Seattle, and many more.

stuffs, sanitation in dairies, bakeries, and restaurants, and the inspection of weights and measures. In the charters of New York and Baltimore the mayor still is vested with the power of a magistrate and a justice of the peace respectively.<sup>57</sup> The Missouri legislature confers upon the mayor the power of the county courts with respect to specified matters. State law in Minnesota makes the mayor one of a group of three who are authorized to prepare the list of those who are to act as jurors in the municipal courts. The power and duty of holding court regularly still exists in Indiana and some southern states; and to be married by the mayor is still regarded by some seekers after marital bliss as the most desirable method of solemnizing the marriage contract. On the whole, however, the position of the mayor as a judicial officer appears to be declining, owing largely, perhaps, to the development in the cities of other and better agencies for the administration of justice, and to the pressure of other matters upon the mayor's time and strength.

Of much more immediate consequence is the mayor's authority to modify the results of judicial findings through the remission of fines and penalties and the release of persons imprisoned for violation of municipal ordinances. Thus in New York and Illinois the mayor may suspend sentences, release prisoners, remit fines, etc.; the same under restriction is true in Kansas City and many other places.<sup>58</sup> The power is often abused, especially when administrations are under pressure to "enforce sumptuary and liquor laws." Great display is made of the searching out of violators; their prosecution, conviction, and the penalties imposed are heralded to the public. The wrath of the public, aroused to

<sup>57</sup> New York, Charter, Sec. 116; Baltimore, Charter, Sec. 21. The New York provision is laconic: "The Mayor is a magistrate." For Ohio see Act of April 28, 1913.

<sup>58</sup> Cf. New York, Charter, Sec. 707, Par. 3. The mayor enjoys this power by reason of being a magistrate. In Illinois the mayor is expected to report to the council the release of prisoners. See Municipal Laws of Illinois, Art. 2, Sec. 29. The Chicago charter convention of 1904 proposed to continue vesting this authority in the mayor and incorporated a provision to that effect in the instrument it drew up. The mayor of St. Louis is by ordinance given the power to remit fines, penalties, etc. In Kansas City the word "Forfeitures" is added to the list enumerating the penalties to which the mayor's power of remission extends. In Madison, Wis., (Charter, Chap. XII, Sec. 21) the mayor may grant pardons, commutations, etc.



demand such actions, is appeased, and the mayor may safely slip around to the scene of the recent prosecution and enter his order of remission in behalf of those convicted. Notwithstanding the temptation to pervert this power in order to curry political favor there is not sufficient evidence to warrant the claim that its abuse is the normal condition. In the first place the power itself has disappeared from many charters; in the second place the mayors of larger cities seldom interfere personally, preferring to act upon the recommendation of subordinate investigators or boards created to look into applications for clemency; and finally the more liberal interpretation of sumptuary legislation in large cities has tended to limit the occasion for the abuses to the smaller municipalities.

### *Miscellaneous Powers*

In addition to the foregoing powers of the mayor there is a large group of miscellaneous powers conferred upon him either in state statutes, city charters, or municipal ordinances. These powers include the prescription of parade routes, granting consent to place building material in the street, the inspection of pawn brokers' registers, the designation of local holidays, the authorizing of municipal officers to appear before state legislatures, the sending of indigent sick to hospitals at public expense, the deportation of resident insane, contracting for the care of foundlings, the direction of the employment of the workhouse prisoners, the issuance of death certificates, the abatement of nuisances, the arrest of lawbreakers, and the muzzling of dogs; and the more important powers of revoking licenses, directing a secret service, mediating strikes, and so on. The number of these powers which lie in the discretion of the mayor for their exercise is very great. They relate to every branch of municipal life and service. There are literally a thousand and one duties imposed upon the mayor and calling for the exercise of his authority. One marvels at the detail with which this vast multitude of powers has been set forth; at the folly which believes that good government and efficiency are to be found in the direction of one man power; at the comparative success which many mayors have achieved in the wise exercise of the varied authority thus committed to them.<sup>59</sup>

<sup>59</sup> Cf. almost any of the older municipal charters, the general municipal laws of Missouri, Illinois, or Michigan, the revised codes or compiled ordi-

There are certain matters with respect to which the exercise of mayoral authority is mandatory. Thus in Evansville and Indianapolis the mayor shall, upon three days notice, hear any complaint against a person to whom a license has been issued. In Boston the mayor is obliged to issue licenses for theaters and public halls if the applicants comply with the prescriptions laid down. In Minneapolis, at the request of the board of park commissioners the mayor must appoint park police. The charter of Kansas City requires him to proclaim to the inhabitants any danger from malignant, infectious, or contagious disease that may threaten to become prevalent or the occurrence of public calamity from flood or other disaster. The list might be continued. Indeed in the case of many powers previously cited such as the power of appointment, the power to call meetings of heads of departments, etc., mandatory provisions are to be found in some charters. Thus in Baltimore the mayor is obliged to hold an annual conference of his chief subordinates, and in appointing boards and commissions he must recognize a minority party. In New York City the mayor must exercise his power of appointing officers to fill vacant offices. The usual method for calling these powers into operation is for some interested citizen to sue out a writ of mandamus in a court of competent jurisdiction. Another method employed to bring recalcitrant mayors to time is that of indicting them for failure to fulfil their manifest duty. The former offers a positive means of reaching the incumbent, the latter merely a negative one.

The exercise of the foregoing powers does not by any means exhaust the duties of the mayor. There are numerous clerical or ministerial duties that he must perform. His signature must be affixed to numerous public documents, such as the council journal in those cities in which he presides at council meetings, "council enactments, certificates of election to municipal office, commissions, licenses, warrants, drafts or other evidences of obligation," such as bonds and mortgages, "leases, deeds and all other instruments for the conveyance of real estate to which the corporation is a party."<sup>60</sup> He represents the municipality in

nances of any of the following cities: St. Louis, Kansas City, Minneapolis, Indianapolis, Evansville, Ind., and the statutes relating to Boston.

<sup>60</sup> Numerous citations might be given to indicate the extent to which the mayor's signature is required. Mr. Bayles discusses its importance espe-



projects for the annexation of contiguous territory, especially suburban cities, and in the settlement of controversies between the city on one hand and private individuals or corporations or public service corporations on the other. He receives and approves claims not chargeable to any department. In some places he must give his entire time to the work of his office, in others but part time is expected. His correspondence is enormous in the metropolitan centers, and the demands upon his time, energies, and wisdom due to the personal calls and solicitations of citizens is exhausting.<sup>61</sup> His social duties as chief executive threaten to become oppressive. He is expected to attend local meetings of one kind or another and to support movements and enterprises of a public character and he must represent the city in associations of municipal officials and in its dealings with the state and nation.

#### *General Estimate*

It is difficult to say how far the mayor is actually held responsible for the character and efficiency of his administration. Many things promote confusion of responsibility. The lines of authority between him and his subordinates vary considerably in their directness and their distinctness. The effectiveness of his control depends as largely upon his political leadership as upon his legal authority. In many cases it is sadly true that legislative, councilmanic, or machine or boss interference cut roughly across the mayor's authority, and materially lessen the degree to which he is actually responsible for the administration. It is true, nevertheless, even in cities in which the council is as strong as it is in Chicago, or in which the legislature interferes as actively as it does in New York, or in which the rule of the boss is as well established as it is in Philadelphia or Cincinnati, that the electorate especially as affecting the validity of these documents. He points out that there is a broad distinction between the mayor's signature and his approval; also that in the case of ordinances, the omission of the signature may not invalidate the ordinance especially where the omission is due to clerical error, etc.

<sup>61</sup> Cf. statement by Mayor Mitchel of New York in *Proceedings of the American Academy of Political Science in the City of New York*, Vol. V, No. 3 (April, 1915), p. 14. Among other things Mr. Mitchel says: "There are a thousand things that consume time and effort and there is not enough time left for the mayor to supervise the work of the departments and to be actually as well as theoretically responsible for it."

holds the mayor responsible for the conduct of the administration. Indeed the mayoralty, even where it is weakest, has been marked for responsibility. The office is exposed to the influences of public opinion as is no other municipal office. It is unable to escape answering for its use of power, at least in matters upon which the public has made up its mind. To this scrutiny the mayoralty has responded. The following observations on the extent to which the mayoralty feels its responsibility were made more than a decade ago, but are more true today than when they were uttered: "In every city in which the mayor has been given independent powers of appointment and has been made the real head of the administrative organization of the city, the sensitiveness of the government to public opinion has been considerably increased. When rightly viewed the change (from council government) involves possibilities of popular control which we have hardly begun to realize. Almost every city in the country offers instances in which the mayor, when supported by popular opinion, has been able to withstand the combined influences of the council and any machine organization that attempted to direct his action. The lessons of this experience have left their impress upon the political thinking of the American people and explain the tendency to look to the executive rather than to the legislative authority for the solution of every difficulty." "To an increasing extent the American people are looking to the executive not only for the execution but also for the planning of municipal improvements . . ." "The vital interest of the citizen in strengthening the administration."<sup>62</sup> The record of the past decade has not tended to impair this estimate of the responsible character of the mayoralty. The appearance of many able and gifted men in the mayor's chair, the achievements they have been able to realize in administrations like those of Rolph, Hunt, McCormick, Head, Baxter, Johnson, Whitlock, and Mitchel, and above all the gradual augmentation of the powers entrusted to the mayoralty — all these bear testimony to the larger degree of responsiveness which the mayoralty begets in municipal government when its leadership and authority is established in administration.<sup>63</sup>

<sup>62</sup> See address by L. S. Rowe in the *Proceedings of the New York City Conference on Good City Government* (1905), pp. 174-175.

<sup>63</sup> Rolph of San Francisco, Hunt of Cincinnati, McCormick of Harris-



While one recognizes the foregoing facts, and admits the decided betterment which mayor government has meant to municipal administration, it is nevertheless true that this betterment has come chiefly with respect to the larger, more obvious, or more important features of municipal administration. There is still very much of irresponsibility, still many opportunities to dodge or shift liability for policies and promises not realized, for appointments not the best, for petty graft not eliminated, and for opportunities not seized. The problem of administrative responsibility is not adequately solved by the mayor system, even where its power is most nearly complete. The strength of the mayoralty is also its weakness; it is a political office and may be won by the popular as well as by the worthy; the people must "trust to luck to get a paragon" of virtue as well as of ability.<sup>64</sup> If the mayor system has done much to lift American city government out of the "hodge-podge of responsibility," inefficiency, and extravagance, it has at the same time fallen far short of producing and assuring in administration that liability for results, that skill and efficiency in administration, and that economy in operation that should normally characterize good government. The mayor system contains no guarantee that trained, expert, and professional talent will always be in charge of the interests and services of the municipality.

In concluding this survey of the mayor and administration it should be noted that on the whole the power of the mayor has tended to increase if the later charters which have adopted the mayor systems may be taken as the basis for judgment. The power of appointment and removal has been strengthened, and

burg, Pa., Head of Nashville, Tenn., Baxter of Portland, Me., Johnson of Cleveland, Whitlock of Toledo, Mitchel of New York.

<sup>64</sup> To put the matter concretely the election of administrators cannot fail to open the question of whether a city is to be governed by a political adventurer like Thompson of Chicago, or a trained administrator like Mitchel of New York. The opportunity for making a choice between these two types is not always presented, the elector sometimes being confronted with the job of selecting the lesser of the evils from the list of undesirable candidates. At best, the elector has not always demonstrated his ability to pick able and competent administrators, tho this apparent inability cannot be separated from the necessity under which he now labors of passing at the same time upon questions of public policy for which the respective candidates stand.

is now very widely recognized; the power of investigation has now been effectively developed in some cities; and with the exception of his judicial authority there seems to be little deterioration, if any, in the other administrative authority with which he has been clothed. The increase which is thus indicated in the mayor's position, does not, however, reveal the true extent of the development which has taken place. The latter can be appreciated only by taking into account the growth of American cities in size and importance. The mayors of many of our cities are today the administrative heads of corporations that include larger populations than some countries and many states. The mayor of New York City guides the destinies of a larger population than did the President of the United States a century ago. This element of size and growth of population promises to continue a more or less constant factor. Another development that will ultimately affect the position of the mayor is the movement for municipal home rule. But whatever the future has in store the directive force and power of the mayoralty in administration is today one of the most conspicuous features in our municipal system. This is in keeping with the trend in state and nation, especially in the latter where the dominance of the executive is largely established. It should not be forgotten, however, that American cities are in the midst of a season of almost feverish activity in experimentation with municipal forms and administration reconstruction. Approximately five hundred municipalities have altered their charters in the past fifteen years, and in the larger proportion of these alterations the mayor as the authoritative head of the administration has passed away. It is evident that the mayor system in administration is not only on trial, but has before it a struggle for existence.



## CHAPTER V

### THE MAYOR AND LEGISLATION

The development of the mayor's influence and power in municipal legislation has kept pace with the expansion of his authority over administration. The English doctrine has been that the mayor as an integral part of the municipal corporation must be present at council meetings if the latter are to be considered valid. Altho this rule does not obtain in the United States, except where specifically provided for, yet the actual position of the American mayor is relatively much more important in respect to legislation than it is in England, or than it has ever been heretofore in this country.<sup>1</sup> Not only does the mayor enjoy the growing authority which he exercises in the work of the city council, but he has, in some places, acquired important influence in the enactment of state legislation affecting municipalities. In certain cities he also has clearly defined powers with respect to the ordinance making function of boards and commissions which have tended to supplant the council. In this chapter the relations of the mayor to legislation, both in the legal and the political aspects will be considered. Attention will be directed in turn to his relations with the city council, with the municipal boards or similar agencies of local government, and with the state legislature.

#### THE MAYOR AND THE COUNCIL

First in importance and interest is the relation of the mayor to the city council, the representative body of the municipal corporation. This relationship may be viewed from three different angles: (1) the general status of the mayor as a factor in municipal legislation; (2) the powers of the mayor with regard to

<sup>1</sup> The word legislation is employed here to cover all enactments that have the force of law in municipal government, whether they emanate from the state legislature, the city council, or other bodies vested with ordinance making power.

council procedure and action; and (3) the extra legal influence exerted by him as party leader or administrative chief.

### *General Status*

The general status of the mayor in legislation approaches uniformity in its fundamental characteristics. As has been pointed out the English doctrine which would make him an integral part of the municipal legislature is not recognized in this country. This is due to the general theoretical acceptance of the principle of the separation of powers. Yet in practice American city governments of the mayor and council types nearly agree the mayor shall exert large influence upon legislation. The measure of his influence depends upon a variety of considerations. Among them are the following: (1) his charter powers and prerogatives; (2) his personality and party standing; (3) his position as contrasted with that of the council and other municipal authorities<sup>2</sup> in the general scheme of organization; (4) his legal relation to the council as a part of the legislative mechanism. The last two considerations demand our further attention at this point; the treatment of the first two constitutes the main body of the chapter.

The position of the executive is effectively contrasted with that of the municipal council or other local authorities in the organization of city government by indicating his relative position in the more important organizations which embody the mayor and council form. Thus New York, Baltimore, Chicago, and other cities differ greatly in the relative positions assigned to the different organs of government. In New York City, for example, the board of aldermen is relatively less important than is the city council in Chicago. This situation is produced by the powerful mayoralty which the New York charter creates, and is accentuated by the establishment of the board of estimate and apportionment and by its tendency to become the policy making body of the municipality. The result is that even the legislative functions of the council are limited to a marked degree. In New York City also the mayor's relation to municipal legislation is

<sup>2</sup> Such as boards of estimate and apportionment, borough presidents, and state controlled commissions or like agencies operating in the field of local government. In New York City the first two of these are especially important.



important, not only because of the weakening of the council, but by reason of his strong position on the board of estimate and apportionment, in which he has two votes. In Chicago, on the other hand, despite a strong mayoralty, the council continues relatively vigorous, insomuch that in municipal campaigns voters are urged to pay special attention to the election of councilmen rather than the choice of mayors, on the ground that a weak or vicious mayor can do comparatively little harm if the council is made up of clean and able men, while a good mayor would be more or less helpless if confronted by a council dominated by "gray wolves."<sup>3</sup>

The mayor of Baltimore is less powerful in legislation than is the executive in either Chicago or New York. The charter of Baltimore provides that "The mayor and City Council of Baltimore shall have power to pass all ordinances," etc., phraseology which recognizes the mayor as a distinct branch of the municipal legislature and which requires the coördinate action of both mayor and council to validate enactments.<sup>4</sup> In Seattle the legislative function of the mayor is even more clearly defined in the words, "The legislative powers of the City of Seattle shall be vested in a mayor and city council."<sup>5</sup> A similar situation exists

<sup>3</sup> This was especially noticeable in the campaign of 1915 when many voters felt that there was little choice between the candidates for mayor, both being something less than desirable. Those who were concerned for the character of Chicago's government centered their energies on the aldermanic contests. Their foresight has amply justified its exercise in the determined opposition which the council has offered to many of the policies of the mayor, especially those representing a distinctly backward step such as the partisan exploitation of the civil service. The controversy between the mayor and the council led in 1916 to one of the most bitter aldermanic campaigns in municipal history, the mayor throwing the whole force of his administration into the struggle in order to defeat certain "rebel" councilmen. The result was the vindication of the council.

<sup>4</sup> See the charter of the city of Baltimore, Sec. 218. Note also Secs. 1, 6, 220, and 221, the last two especially. To quote, "The style of all ordinances shall be: 'Be it ordained by the Mayor and City Council of Baltimore,' " and "Every legislative act of the mayor and the City Council of Baltimore shall be by ordinance or resolution." See, however, the discussion of the veto further on in this chapter.

<sup>5</sup> Charter, Art. 4, Sec. 1. This statement is subject, however, to the reservation that the people of the city of Seattle may legislate through the initiative and referendum.

in the cities of Milwaukee and Madison, Wis., in the last of which the mayor and aldermen form the common council, while in Milwaukee the mayor and common council form the "Municipal Government."<sup>6</sup> In general it may be observed it weakens the mayoralty to integrate it so closely with the legislative mechanism. This is true both in the mayor's legislative and administrative relations. Comparative independence is essential to strength in his legislative activity, while administrative interests seldom fail to suffer when swept into the legislative vortex. On the other hand the absence of close association of the mayor with the council, as in the recent St. Louis charter, does not necessarily produce relative superiority for the mayoralty.<sup>7</sup>

There have been many efforts to set up municipal governments that would comply substantially with the theory of the separation of powers. Two conspicuous examples are Philadelphia and Pittsburgh. The bicameral council obtains in both cities. The mayor occupies a much less favorable position, however, than does the president in the national model. The council is strong in both cities; in Pittsburgh the city council possesses all legislative power not expressly conferred on some other body or officer.<sup>8</sup> The mayor appears to somewhat better advantage in Philadelphia, but does not possess the means or the authority to dictate and control municipal legislation.<sup>9</sup> Perhaps the most striking instance of the incorporation of the doctrine of Montesquieu in a city charter is to be found in the case of Quincy, Mass. It is provided that "The executive department shall never exercise any legislative power, and the legislative department shall never exercise any executive power."<sup>10</sup> In more recent charters, how-

<sup>6</sup> In each of the two charters consult Art. 4, Sec. 1.

<sup>7</sup> The failure to create a powerful mayoralty was one of the criticisms urged against the St. Louis charter. The charter, on the other hand, appears to have gone as far in this direction as the laws of the state would permit.

<sup>8</sup> Cf. Pittsburgh, Charter, Sec. 1494. In Sec. 1492 it is affirmed that the council possesses "the power of the corporation."

<sup>9</sup> One of the principal defects in the recent Blankenburg administration was the inability of the mayor to get results from the council. The latter became increasingly hostile and contributed not a little to the defeat of the reform administration. The powers of the mayor in legislation are to be found in the charter, Chap. II, Secs. 11-31.

<sup>10</sup> Charter, Title 1, Sec. 2. With a minimum of exceptions such as pro-



ever, the recognition of the federal analogy has been accompanied by modifications that have tended to obliterate the formal independence conferred upon the legislative and executive departments. On the whole the executive has gained as a result of these modifications. The charter of Cleveland serves as an example. The council and the mayoralty are distinct and in the organization of their respective fields are independent of each other. In the conduct of their work, however, they are closely related, and on the whole the advantage in the coöperation provided for is decidedly with the mayor. While losing his position as presiding officer with the privilege of voting in the case of a tie, he gains for himself and his department chiefs the right to sit in council meetings, to take part in discussions, and to introduce ordinances. In addition the preparation of the budget is given to the mayor. Charter commissions in Los Angeles, Detroit, Baltimore, Toledo, Cincinnati, Newark, and other cities have recognized the desirability of increasing the influence of the mayor, generally at the expense of the council.

Various explanations have been offered for the decline of the municipal council as an organ of government and the corresponding increase in the position of the mayor. Quite generally the incapacity and corruption of the council is proffered as the reason for the rise of the mayor. The query inevitably presents itself — why are the councils incompetent? Inadequate systems of representation, the presence of corruption, and other reasons given hardly suffice to explain an incompetency that is thoroly established, especially in those cities whose problems of government have changed rapidly and have acquired increasing complexity. The explanation may, in part, be found in the nature of the council. It has many members, and numbers constitute a source of weakness in a period of readjustment. The average mind is not easily adjustable especially at the age when men become councilors; and councils are composed mostly of men with average minds. There may be some men in a council who are able to adapt themselves to the rapidly shifting exigencies of modern municipal life and social change, but they are comparatively few and always in a hopeless minority. The majority make its adjustments very slowly, sometimes not at all. The stimulus for coöperation in laying out of streets, the charter adheres to this principle.

which may be applied to assist members in extending their vision and readjusting their conceptions lose much thru being diffused upon many minds. There is a far better chance of finding one man gifted with a creative mind, one whose back is to the past, not to the future, and who is not wanting in moral and intellectual courage. Not nearly all mayors, nor even any large proportion of them have shown marked qualities of initiative and leadership. But in cases where these qualities are not wholly wanting, stimuli may be applied with some degree of success. The average mayor is of a somewhat higher type than the average councilman. The problem of readjustment is not so formidable. The pressure of increased responsibility, the demand for leadership, and the ease with which public opinion may concentrate upon him, combine to call into activity whatever imagination, whatever power of constructive thinking, and whatever capacity for leadership the mayor may possess. The expansion of the field of municipal activity and the consequent growth of administration have offered a fruitful field for the best he had to give. Handicapped by the millstone of checks and balances which the eighteenth century political theory bequeathed to municipal organization in this country, the mayoralty and its incumbents have nevertheless achieved a success which, when compared with the record of the councils, largely justifies the confidence which the public has come to repose in them.

In comparing the status of mayor in relation to legislation today with that of a quarter of a century ago, one must conclude that there has been a distinct advance in the position which he occupies. In those cities in which the most noticeable steps have been taken to increase his importance there is evident a tendency to establish some degree of responsible relationship between the mayor and the council, with the mayor as the acknowledged leader. It cannot be said, however, that this tendency is very far developed, and in no case does the mayor appear as a branch of the legislative organ. Finally, the continued decline of the council has served to augment somewhat the relative importance of the mayor, even in cities where no legal or charter alterations have occurred.

### *Legal Powers*

The legal powers of the mayor in respect to legislation are those which relate (1) to the initiation of municipal legislation,



(2) to the enactment of municipal legislation, (3) to the enactment of state legislation affecting municipalities.

In the initiation of municipal legislation the mayor has the authority to call special meetings of the city council, the power of sending messages to the council in which the affairs of the municipality are presented and in which measures may be recommended for dealing with the conditions described, the right to introduce bills for the consideration of the council and the power to prepare and submit the annual budget.

The power of the mayor to call special meetings of the council is almost universally recognized.<sup>11</sup> Its exercise lies, practically, in the discretion of the mayor. In Kentucky a general law provides that a call may be issued "when the interests of the city demand it," or "for special reasons."<sup>12</sup> In some charters occasions are specified when this power must be exercised. In St. Louis the organization of a new administration and the installation of officers-elect constitute such an occasion; in Beardstown, Illinois, after an election, the mayor is enjoined to call a special session of the council "to ascertain the outcome of the election." In the majority of cases, on the other hand, there is no effort to limit or prescribe the exercise of this power. It is very common, however, to provide that the reasons for the calling of the special meeting shall be communicated to the council members in writing.<sup>13</sup> The method of making the call is defined in a number of cities and includes personal service, the leaving of notices at the residences of councilmen, or publication in the official news organ of the city.<sup>14</sup> In the case of New York City the notice may also be

<sup>11</sup> Los Angeles' charter is an exception.

<sup>12</sup> Kentucky, General Charter Law for Second Class Cities, Sec. 56.

<sup>13</sup> This is true in New York (Charter, Sec. 37), Cleveland (Charter, Sec. 31), San Francisco (Charter, Art. 4, Chap. I, Sec. 5), Detroit (Charter, Chap. 7, Sec. 12); but assignment of reasons is not specified in the case of St. Louis, Seattle, Baltimore, and a number of other cities.

<sup>14</sup> Cf. New York, Cleveland, and Detroit charters, Secs. 37, 31, and 148 respectively. The New York provisions are typical and read: "Three days before any special meeting of the Board of Aldermen is held, notice of the time of the intended meeting and of the business proposed to be transacted, signed by the mayor, shall be published in the *City Record*, and at the same time the city clerk shall cause a copy of such notice to be left at or sent by post to the usual place of abode or of business of each member of the board of aldermen, but want of service of a notice upon any member shall not affect the validity of a meeting."

sent to the alderman's place of business, or may be sent by mail, tho failure to notify any member does not invalidate the meeting held. The latter provision does not appear in other city charters. In addition to the foregoing, the business specified in the call for a special meeting is usually the only business that may be considered. There are exceptions to this rule, however, as in the case of Kansas City, in which it is within the power of the council, when called in special session by the mayor, "to transact business as at a regular meeting."<sup>15</sup> In calling special meetings, the mayor must frequently observe certain requirements as to the time that must expire between the call and the time of meeting. There is no uniformity in this particular. Somerville, Mass., leaves the matter to the mayor; the general law of Wisconsin fixes six hours, Cleveland twelve hours, and the city of New York three days as the time which must elapse between the call and the meeting. In many cases, of course, no mention is made of this feature. On the whole there seems to be a disposition among charter makers to elaborate the clauses which bestow upon the mayor the authority to call special meetings, tho it can hardly be said that municipal executives have exploited the power to initiate legislation which this authority places within their reach.

The mayoral message is the second important means by which the municipal executive may initiate legislation. The message serves two purposes. In the first place it is used to inform the council as to the state of municipal affairs or to report upon local conditions. This use of it appears to be almost universal and is frequently enjoined as a duty.<sup>16</sup> The employment of the message

<sup>15</sup> Kansas City, Charter, Art. 2, Sec. 14. An interesting call for a special session of the council of Kansas City was sent out by Mayor Henry Jost on July 14, 1915, in which he convened the two chambers "to remain in constant and continued session until the council shall have passed requisite ordinances appropriating money adequately and properly to care for the entire business of the municipality," appropriations which the lower house had previously refused.

<sup>16</sup> The submission of such reports would appear to be mandatory in many cases, even the time for the submission of the annual report or message being specified. Cf. Seattle, Charter, Art. 5, Sec. 7; Baltimore, Charter, Sec. 22; Los Angeles, Charter, Art. 4, Sec. 41. The charter of Quincy, Mass., omits mention of such a duty, though as in the case of Charleston, S. C., the council is probably able to impose such a duty.



as a means of information or for the purpose of conveying reports has in a very large proportion of cases become more or less perfunctory, and in the hands of the majority of municipal executives appears to have developed no particular importance. A perusal of many of them reveals the fact that the majority are dull and colorless. They amount to little more than letters of transmittal accompanying departmental reports, or summarizing the latter. Many are made the means for comparing the work of one party with its predecessor in power, portraying the evil condition in which the administration found things and the great progress that has been made since the incumbent assumed the direction of affairs. In not a few cases these reports are either misleading or uninforming. On the other hand a considerable and respectable proportion of these reports on local conditions are worth reading. They are vigorous and illuminating, and betray a grasp of local conditions that is comprehensive and at the same time conscious of the significant features,—as viewed from the standpoint of the public interest.<sup>17</sup>

<sup>17</sup> For examples of messages that are wanting in color see the following: Message of Louis P. Fuhrmann, mayor, to the city council of Buffalo, January 3, 1910; message of Hon. Wm. J. Gaynor, mayor, to the board of aldermen, New York City, January 23, 1912. This message is quite typical of a large group of mayoral messages, tho it should be said that not all of Mayor Gaynor's were of this type. See also the message of Wm. Thum, mayor, to the city council of Pasadena, Calif., May 5, 1913; and the message of John Schon, mayor, to the city council in San Diego, Calif., April 30, 1906, and May 6, 1907. The sixth annual message of Mayor George W. Tiedeman of Savannah, Ga., on January 22, 1913, will illustrate the tendency to compare the achievements of an administration with the conditions which had existed under a prior regime. Of messages that are uninforming that of Charles F. O'Neill, mayor, to the common council of San Diego, Calif., on May 5, 1913, is a good example. The annual message of Mayor John F. Miller of Seattle, dated January 4, 1909, dealt with the cost of operating the departments of the city government and represents a good piece of work; likewise the two annual reports and messages of Mayor George F. Cotterill of the same city, dated January, 1913 and 1914 respectively, are worth while efforts. On the other hand messages often represent little but bombast. Note the following from a message by Mayor J. G. Utterback of Bangor, Me., during the year 1913-1914: "In most convincing tones the voice of the people has been heard demanding a strict business administration of their affairs." The message suggests the creation of the office of city auditor and then near the close is to be found this choice specimen: ". . . consider Bangor's interests first. Eat Bangor

Of greater importance is the second purpose which the mayoral message serves, that of being a vehicle thru which the mayor may make recommendations regarding measures which he deems to be expedient for the welfare of the city. In the majority of cities the submission of recommendations is laid upon the mayor

bread, smoke Bangor-made cigars, trade with Bangor merchants." Even this is somewhat more definite in the way of a recommendation than the suggestion of Mayor George Alexander of Los Angeles to the city council on January 6, 1913. He was discussing municipal markets and the high cost of living and by way of recommendation said, "Why not return to the good old-fashioned way of carrying baskets to the market—only make it a public market—and cut down the high cost of living." Some messages, however, carry recommendations that give evidence of constructive thought and a program, the parts of which are clearly related. See the message of Mayor Rudolph Blankenburg, dated September 19, 1912, relative to the problem of increasing the current revenues and the borrowing capacity of Philadelphia. It was well worked out both in conception and presentation. Also the special message of Mayor George F. Cotterill of Seattle, dated March 17, 1913, relative to public utility regulation and administrative efficiency and economy illustrates the importance of adequate and readable treatment and executive vision. There are many examples of messages that have been intended for other audiences than the city council, and one of the most striking messages of this character was the annual message of Mayor James C. Haynes of Minneapolis, dated June 14, 1912. The message was a plea for municipal ownership and the data compiled showed painstaking effort. Copies of the message were mailed together with a letter of explanation and a return post card, to many citizens. The letter was signed by the mayor and read as follows: "Herewith I am sending you copy of the mayor's annual message for the current year. It is addressed to the people as much as to the city council on the assumption that each citizen is as much interested in the future of this city as is the mayor or any other public official.

"This message points out how the city council can save annually over one million dollars and use the same to beautify and improve the city, thereby making Minneapolis preëminent among American cities within the next decade; and it contains information and ideas which if true are vitally important to every citizen, and if wrong should be corrected at once. May I therefore request you to give it early and careful consideration and to forward any criticism or suggestion you may have to offer as soon as convenient. Also to fill out and return the enclosed card. The latter requires no signature."

The enclosed card provided for a sort of straw vote on the question of municipal ownership. Three questions were asked, upon the first two of which the person filling it out was asked to answer "yes" or "no." They were, (1) Do you favor municipal ownership and operation of all public



in directory language, especially in connection with the annual message. For example the Seattle charter provides that "It shall be the duty of the mayor annually . . . to recommend the adoption of such measures as he may deem expedient and proper." In this and similar cases, however, a clause is added authorizing the sending of special messages "from time to time" as the mayor may deem useful and proper. It is apparent at once that in the opportunity which the message in this form offers there lie large possibilities. In effect, it has "become a right to initiate measures" in the council; "for a message from the mayor is invariably referred to the appropriate council committee for report, and this report puts the matter squarely before the council for action."<sup>18</sup> Moreover, it enables the mayor to

utilities using the streets, and (2) Do you favor such ownership of both of the plants of the lighting companies. The third question asked the recipient to indicate which of the lighting plants he preferred for municipal ownership if he favored the ownership of but one on the part of the city.

Not infrequently the mayors use their message power in the way just described, but a development of this power is to be found in the disposition to address messages to the "citizens" of the municipality. Occasionally mayors publish and distribute their messages at their own expense.

There is available today a large body of material comprising mayoral messages and the reports that mayors make from time to time. Much of it is fugitive but the work of collecting it has been begun. Within a few years it should be possible to make some intensive studies within the field which this material covers. Indeed this material, together with much other material in the form of municipal documents, is beginning to assume formidable proportions. It has yet to be thoroly explored and so retains something of the character of a "primeval forest."

<sup>18</sup> Cf. Munro, *The Government of American Cities*, pp. 222, 223. Mr. Bayles in *The Office of Mayor in the United States*, rather takes the contrary views and intimates that the recommendations made by mayors in "conventional" messages are buried in committees. It must be acknowledged that the force of the mayor's communications is often less than might be desired. The mayors of Providence have for half a century urged the acquisition by the city of the water front, but the matter has never received serious consideration by the councils. Even when the mayor presents bills already drawn, and places the administration squarely behind them the councils often fail to face the issue presented on its merits. On the whole it appears that Professor Munro's statement describes the prevailing tendency accurately, though there are many exceptions to this tendency. Some of these are indicated by Dr. Munro in the paragraph following the one from which the quotation is taken. It seems, too, that the situation is somewhat modified in the smaller cities where the council retains a some-

select the policies and measures about which his friends and partisan supporters in the council may rally, a situation which becomes increasingly significant in proportion as the mayor is a party leader, or as his proposals coincide with or antagonize the views of the majority party organization.<sup>19</sup> Finally, the power of making recommendations regarding municipal affairs permits the mayor to attract public attention to the more important issues and to focus public opinion upon the council while these issues are under consideration. Indeed, by means of special messages the main issues may be taken one by one so that a mayor gifted with political insight and devoted to the public interest may rally to his assistance such citizen support as is available in behalf of his proposals. Some mayoral messages read as tho they were intended for another audience than the respective councils to which they were addressed.<sup>20</sup>

Not only may the mayor call special meetings of the municipal council, and deliver reports, send communications, and make recommendations by means of the mayoral message, but he is in many cities authorized to introduce measures. The presentation of administration measures has, indeed, been frequent enough in cities where the mayor lacked express authority for pursuing such a course. Nevertheless, it is significant that the power to offer measures, full drawn, and with the stamp of administration upon them, is now being expressly conferred upon the mayor by municipal charters. The charter of Cleveland, for example, provides that "the mayor shall have the right to introduce ordinances. Practically the same phraseology is to be found in the charters of Toledo and St. Louis, both twentieth century charters. Whether this development will be followed by other cities,

what more important place in comparison with the mayoralty than it does in larger centers where the development of administration has tended to overshadow it. For the reference to Bayles see the work cited, pp. 35, 36.

<sup>19</sup> For a somewhat fuller discussion of this point see Munro, W. B., *The Government of American Cities*, pp. 222, 223.

<sup>20</sup> See reference to the message by Mayor Haynes of Minneapolis. A direct appeal to the electors was made by Mr. Blankenburg in "A New Year's Letter to the Citizens of Philadelphia" on January 1, 1913. It was a readable account of the work of the administration during the preceding year. A perusal of some of the messages of Josiah Quincy almost a century ago reveals the fact that he appreciated keenly the value of writing for a larger audience than the municipal council.



in the amendment and revision of their charters, it is too early to say. It may foreshadow the ultimate establishment of some sort of responsible government, tho the path of its evolution promises to be materially different from that followed by the English parliamentary type. In effective leadership the Boston charter of 1909 appears to be far in advance of any others in this country. Indeed, its provisions are almost revolutionary, in that the mayor may force the early considerations of measures which he proposes. In the words of the charter (Section 2): "The mayor from time to time may make to the city council in the form of an ordinance or loan order filed with the city clerk such recommendations other than for school purposes as he may deem to be for the welfare of the city. The city council shall consider each ordinance or loan order presented by the mayor and shall either adopt or reject the same within sixty days after the date when it is filed as aforesaid. If the said ordinance or loan order is not rejected within sixty days *it shall be in force as if adopted by the city council unless previously withdrawn by the mayor.* Nothing herein shall prevent the mayor from again presenting an ordinance or loan order which has been rejected or withdrawn." In commenting upon the operation of the charter amendments the finance commission in its report of January, 1914, remarked: "Only those provisions which were intended to restrain the abuse of power have been fully tested. . . . The provisions which afford an opportunity to conduct the city's business upon a high plane of efficiency and morality have not been properly utilized." With respect to the passage of loans, however, there was noted a "marked improvement." One need hardly marvel at the failure of the ordinary mayor to exploit all the powers which the Boston charter bestows. Indeed, it is quite pardonable in the municipal executive modestly to doubt his sufficiency for all the opportunities opened up to him by those who see in the mayoralty the hope of city government, in the field of legislation as well as administration. The Boston charter, however, presents a logical development of mayor government, a development which makes him responsible for the government of the city and clothes him with powers adequate to meet his responsibility.

The power of the mayor to prepare the municipal budget is properly classed among his more important prerogatives with re-

spect to the initiation of legislation. There has been a decided tendency toward vesting this power in the mayor, tho in some cities such as New York and St. Louis the authority is shared by the board of estimate and apportionment.<sup>21</sup> But in Boston, Cleveland, and a few other cities the mayor prepares and proposes the budget to the council. In the case of Boston this power becomes very important because the council may neither originate a budget, nor increase any item in the one proposed, nor increase the total of the mayoral budget.<sup>22</sup> It has power only to reduce or reject the proposals made to it. In Cleveland the charter specifies the nature and extent of the duty which this power to prepare and propose the budget carries with it.<sup>23</sup> The drafting of the appropriation ordinance is specifically reserved to the council, in Cleveland and Toledo, tho in Boston, St. Louis, and some other cities the appropriation bill is drafted either by the mayor or by the board of estimate and apportionment.<sup>24</sup> In practice also, the mayor, even in cities where he is not vested

<sup>21</sup> Cf. St. Louis, Charter, Art. 16, Secs. 1, 2, 3; New York, Charter, Sec. 226. The situation in New York City has not been materially altered so far as the mayor and the board of aldermen are concerned by the mayor's decision to present an executive budget to the board of estimate and apportionment.

<sup>22</sup> Boston, Amended Charter, Sec. 3. The mayor may also submit supplementary budgets any time prior to the date upon which the annual tax rate is determined.

<sup>23</sup> The budget is expected to set forth the following: (1) an itemized estimate of the expense of conducting each department; (2) comparisons of such estimates with the corresponding items of expenditure for the last two complete fiscal years and with the expenditures of the current fiscal year plus an estimate of expenditures necessary to complete the current fiscal year; (3) reasons for proposed increases or decreases in such items of expenditure compared with the current fiscal year; (4) a separate schedule for each department showing the things necessary for the department to do during the year and which of any desirable things it ought to do if possible; (5) items of payroll increases as either additional pay to present employees or pay for more employees; (6) a statement from the director of finance of the total probable income of the city from taxes for the period covered by the mayor's estimate; (7) an itemization of all anticipated revenues from sources other than the tax levy; (8) the amounts required for interest on the city debt and for sinking funds as required by law; (9) the total amount of outstanding city debt with a schedule of maturities of bond issues; (10) such other information as may be required by the council.

<sup>24</sup> Cf. Cleveland, Charter, Sec. 42; also St. Louis, Charter, Art. 16, Sec. 3. The mayor of New York has assumed responsibility for the preparation of



with budgetary authority, does really exercise a very powerful influence. The Chicago budget of 1916 was known as the mayor's budget and was adopted by the council after an exceptionally bitter struggle.<sup>25</sup> There seems to be general agreement among students of municipal government that the mayor should be largely responsible for the budget in preference to having it prepared by the council itself. As yet, however, no general or charter acceptance of this principle obtains but there has been a decided trend toward it or some modification of it, especially in the larger centers.

### *Enactment of Legislation*

In the enactment of municipal legislation the mayor's authority includes the following powers: (1) to preside over the sessions of the council; (2) to sit in council meetings and take part in the discussion of measures; (3) to cast the deciding vote in case of a tie; (4) to approve and sign ordinances; (5) to veto acts of the council. The first four of these are positive in their nature; the last and most important is negative.

The power of the mayor to preside over meetings of the council is evidently passing away. Writing in 1895 Mr. Bayles said: "It is very generally today an express duty of the mayor to preside at meetings of the city council. The exceptions are found chiefly among the largest cities such as Boston, New York, Brooklyn, Philadelphia, Cincinnati, Detroit, and Omaha, and where the strictly executive powers of the office have been most developed." In 1913 Professor Munro observes: "It is true that in a few cities, notably in Chicago, the mayor is the council's presiding officer; but this is a practice quite out of accord with the general rule, for in by far the larger number of American cities the council chooses its own presiding officer, and the mayor does not take any part in its sessions, or even attend them." An examination of the charters of a representative number of cities, and also of general state laws, indicates that the number of large cities in which the mayor presides at council meetings is very small, Chicago and San Francisco being the most important.<sup>26</sup> There are,

an executive budget which he submits to the board of estimate and apportionment.

<sup>25</sup> The state legislature by act of June 29, 1915, authorized the council to create a board of estimate, but the act had not yet gone into effect.

<sup>26</sup> Chicago operates under the general state law of Illinois; the position

however, many cities operating under general state law in which the mayor still acts as the presiding officer. In the states of North Dakota, Wisconsin, Illinois, Indiana, and Idaho, for example, the mayor presides over the council meetings.<sup>27</sup> It should be observed, however, that, despite the number of cities which come under the general law cited and others similar to them, it can no longer be said that it is "very generally" "an express duty" of the mayor to preside. But the survival of this power serves in many places to bring the mayor into an important relation with regard to the enactment of legislation. On the other hand it is highly improbable that this power or duty materially strengthens the mayor's position. Indeed if one compares the real authority of the mayor in cities where the mayor presides over the council with his influence in legislation in cities like New York, Boston, Cleveland, Seattle, and many others where he does not preside, one is led to conclude that the power to preside contributes no strength to the mayor's position in legislation except under circumstances where the council possesses substantially greater authority than it does in most of the larger cities. Moreover, this authority of the mayor in legislation is secured at the expense of his independence in administrative affairs especially when he becomes enmeshed in the logrolling methods of the council.<sup>28</sup> It is significant that in none of the more important modern charters is the mayor expected to function as the presiding officer of the council.

of the mayor in San Francisco is declared in the charter, Art. 4, Chap. I, Sec. 5. In New York and San Francisco ex-mayors may sit in council meetings but have no vote.

<sup>27</sup> The charter law in North Dakota provides that the mayor shall "preside at all meetings" of the city council. In Wisconsin he presides in cities of the "second, third and fourth classes" (General Charter Law, Sec. 38); in Indiana he presides in cities of the "third, fourth and fifth classes" (An Act Concerning Municipal Corporations, Sec. 49).

<sup>28</sup> In his dissertation on *The Office of Mayor in the United States*, published in 1895, Mr. Bayles favors the passing of the mayor's right to preside over municipal councils. He says: "The exemption of the mayor from this tiresome and often uncongenial task of acting as presiding officer will surely develop many advantages. The executive and legislative departments of municipal government will become more distinct, and their influence upon each other will broaden and deepen, and responsibility, that necessary balance wheel for all political machinery, will become more and more a factor to be relied upon." In another place he indicates that such exemption would be an advance in administration (pp. 36, 37).



While the mayor has thus been losing the right to preside in council meetings he has in many cases the right to sit in these meetings, and to discuss the measures which are presented. This practice has met with recognition in such cities as Cleveland, St. Louis, and others, and was proposed by the charter commission of Cincinnati in 1914.<sup>29</sup> In Boston the mayor is privileged to attend council meetings to address that body "upon such subjects as he may desire."<sup>30</sup> He may also be required to attend for the purpose of answering inquiries previously submitted in writing.<sup>31</sup> The right of attending council meetings and of taking part in the discussion appears to offer all the advantages that may flow from the right to preside, except that of applying the rules and of voting in case of a tie. It enables the mayor to retain his administrative independence and at the same time exert upon the council directly whatever measure of personality, influence, and argumentative ability he may possess. The separate organization of the legislative and executive departments are more clearly maintained and yet an important and effective relationship between these departments is established.

The power of the mayor to vote in the enactment of ordinances is usually vested in him as presiding officer and is restricted to cases in which the council has balloted to a tie. Thus in Illinois cities, including Chicago, the general law of the state provides that the mayor "shall not vote except in case of a tie, when he shall give the casting vote." Provisions that are similar in form or substance are found in the general laws of other states.<sup>32</sup> In

<sup>29</sup> See Cleveland, Charter, Sec. 75: "the mayor shall have the right . . . to take part in the discussion of all matters coming before the council;" St. Louis, Charter, Art. 7, Sec. 1; the charter proposed for Cincinnati but defeated on July 14, 1914, Sec. 66; Toledo, Charter, Sec. 70; Utica, N. Y., Sec. 32.

<sup>30</sup> Amended Charter of 1909, Sec. 7. The mayor may be represented by the head of a department.

<sup>31</sup> *Ibid.* This development is interesting inasmuch as it recognizes the principle of the interpellation as employed in European governments. It has not been copied in any of the later charters. The distinction between it and the council's right of investigation has, perhaps, not been clearly appreciated.

<sup>32</sup> Indiana, An Act Concerning Municipal Corporations, 1905, Sec. 49. This is true of the cities of the third, fourth and fifth classes only. North Dakota, The Municipal Charter Act, Sec. 17. See also Wisconsin, General Charter Law, Chap. VII, Sec. 49. Cities of the first class are not included.

Charleston, South Carolina, where the mayor is an integral part of the council, his voting power is apparently not restricted, tho he does not have a veto. A number of cities expressly prohibit the mayor from voting in meetings of the council and where ex-mayors are permitted to sit in the council the right to vote is denied.<sup>33</sup> Broadly speaking there has been no gain in the importance of this power during the last twenty years. Certainly it has no place except where the mayor continues to function as the presiding officer, or where the council shares in the appointment of administrative officials. It does not contribute to the mayor's position and strength in the municipal government to compensate for the confusion of legislative and administrative functions to which it leads in actual operation. In common with the power to preside, the right to vote is rejected by more modern charters.

#### *Approval and Veto*

The first three of the mayor's powers in the enactment of council measures, viz., the right to preside, the right to a seat and to discuss, and the right to give the casting vote may be described as his powers of immediate or active participation. There remain two other powers which are very closely bound up with each other inasmuch as a refusal to exercise the one is in a few cases tantamount to an exercise of the other; these are the power of approval and signature and the power of veto and may be described as powers exercised in detachment from the actual proceedings of the council.

The power of approval and signature is almost universally recognized by municipal charters and general laws as a feature of the mayoral system. In some cases it extends to every act of the council except those which relate to its own organization, or internal affairs. Thus in Somerville, Mass., "every ordinance, order, resolution or vote of the board of aldermen" with the exception just noted, "shall be presented to the mayor" for his approval.<sup>34</sup> His approval is indicated by his signing the record

It is interesting to note that in this law the mayor is not to be counted in determining whether or not there is a quorum. Compare with Charleston, S. C., where the mayor and a proportion of the aldermen do constitute a quorum. (Act of December 23, 1879.)

<sup>33</sup> St. Louis, Charter, Art. 7, Sec. 1; Cleveland, Charter, Sec. 75.

<sup>34</sup> Somerville, Charter, Title 3, Sec. 16. Cf. also the charters of the following: Quincy, Sec. 17; Baltimore, Sec. 23; Covington, Ky., Sec. 60;



of the council. It is not generally agreed, however, that all council acts other than those relating to its own internal affairs shall be submitted to the mayor. The Kansas City charter specified the submission of ordinances only.<sup>35</sup> The charter of Detroit expressly excepts from presentation to the mayor, "resolutions making appointments to or removal from office" and "ordinances and resolutions for the fixing of the annual estimates and salaries, and for the payment of debts and liabilities previously and lawfully contracted."<sup>36</sup> The question of what constitutes "approval" by the mayor is one upon which the courts have not been entirely agreed, some holding that the mayor's signature was essential to indicate his approval. The specific provisions of some charters warrant this view. The New York charter, for example, provides that if the mayor "approve it (an ordinance or resolution), he shall sign it." The language is directory, but the signature is the evidence of the executive's approval. In some states other acts such as an affirmative vote, publication as having been approved, the attestation of the minutes, etc., have been accepted as indications of the mayor's approval of council acts.<sup>37</sup> The exercise of the power cannot, however, be delegated and "involves in the highest degree the exercise of the discretion of the chief executive."

There has been little change in the mayor's power of approval in the last two decades. The language employed in conferring this authority is very much the same in the later charters as in those of a quarter of a century ago.<sup>38</sup> The extension of the mayoral veto to include items in bills or ordinances has, of Lewiston, Sec. 119; Boston, Amended Charter of 1909, Sec. 4; New York City, Sec. 40.

<sup>35</sup> Charter, Art. 3, Sec. 5. In Rochester, New York, and Seattle, all legislative acts must be by ordinance and these are to be presented to the mayor. Rochester, Charter, Sec. 122.

<sup>36</sup> Detroit, Charter, Chap. VII, Sec. 13.

<sup>37</sup> New York, Charter, Sec. 40. Bayles, *The Office of Mayor in the United States*, pp. 40-44, contains a summary of the power of approval from the standpoint of administrative law, and cites numerous decisions affecting the method by which the power is exercised in the various states.

<sup>38</sup> Cf. the charter of Cleveland, Sec. 40; St. Louis, Art. 4, Sec. 17; proposed charter of Cincinnati, Sec. 59. The phraseology in the Boston charter of 1909 is similar to that which obtains in the Quincy charter of 1888, except that the latter enumerates as additional exceptions the following: measures relating to council "officers or employees, to the election or duties

course, enlarged the power of approval to the extent that it may now be applied to parts of measures and denied to other parts. The actual importance of the power is difficult to determine. In nearly all cases want of approval by the mayor does not invalidate the measures, and, indeed, the latter usually go into effect within a fixed time, unless the mayor expresses his disapproval by the veto. In practice it may be said that the power, coupled with that of the veto, assures the mayor that he will be consulted in municipal legislation, it secures an opportunity for a review and consideration of enactments aside from that given in the council chamber, and it calls forth the opinion of the administration with regard to legislative proposals and ordinances.

The time which has been granted to the mayor for the consideration of council enactments is usually ten days,<sup>39</sup> but there is some disposition to lengthen this period. Thus in Boston he is given fifteen days, and in St. Louis twenty days. With the increasing mass of legislation the exercise of the power of approval becomes largely perfunctory with respect to much of it unless the executive is given a longer period.

The power of approval when exercised with respect to items in appropriation bills gives to these items the full force of an ordinance "in like manner as a bill approved."<sup>40</sup> The value of this power is apt to be overlooked in contrast with the more obvious importance of the power to veto items in such bills.

Of the legal powers of the mayor in respect to legislation none except the power of approval is more widely recognized than is the veto power.<sup>41</sup> Copied from the executive veto in the national and state governments it has been applied to municipal government wherever the mayor and council type of organization has undergone serious development. Municipal charter makers

of the auditor of accounts or comptroller, to the removal of the mayor, or to the declaration of a vacancy in the office of mayor." Charter, Sec. 17.

<sup>39</sup> Ten days is set in New York, Baltimore, Cleveland, Kansas City, Seattle, San Francisco, and Los Angeles, while in Illinois, North Dakota, and Norfolk, Va., the period is but five days. Many other cities might be added to this list but enough have been cited to show that the ten day period is by far the most common one.

<sup>40</sup> Cf. St. Louis, Charter, Art. 4, Sec. 17.

<sup>41</sup> Twenty years ago as well as today the only important exceptions under the mayor and council plan were the cities of North Carolina and Tennessee. The mayor of Charleston, S. C., does not have the veto power.



have experimented with it in many forms, from that which requires but a majority vote to overrule it, to the absolute veto, with the pocket veto, the selective veto, and the most common qualified veto in which from two-thirds to three-fourths of the council is necessary to overrule it. In all of its forms it expresses some active and positive disapproval of legislation by the executive and has become his most important means for the control of such legislation.

The suspensive veto, or that which requires a bare majority vote of the council to overrule the mayor's negative, exists in some cities of Texas. The veto of the mayor merely operates to delay an ordinance from going into force, pending repassage by the council. At best it is a check upon hasty legislation and gives opportunity for a determined opposition to make its power and influence felt. The suspensive veto also exists in the selective form, applicable to ordinances and resolutions making appropriations. It is evident, however, that the creation of a strong mayoral control and responsibility in legislation is not to be effected under veto provisions of this sort. The suspensive veto, except for its selective power, is the earliest form in which it was employed in American cities and the whole history of its development has been in the direction of requiring a larger proportion of the council than a mere majority to overrule it.

The pocket veto has rarely been found in municipal governments though it has not been unknown. In Kentucky, for example, the general law for second class cities under the federal plan provides that "should the mayor fail to approve a proposed ordinance or resolution within twenty days after presentation to him, he shall be deemed to have disapproved the same, and thereupon the same course shall be pursued in the council with reference thereto, as if he had in fact disapproved the same."<sup>42</sup> On the other hand most city charters expressly deny the pocket veto, by providing that if the mayor fails to approve a measure or to return it with his objections it shall "take effect as if he had ap-

<sup>42</sup> General Charter Law, Sec. 60. The existence of the pocket veto in city government has usually been ignored or denied. Cf. Munro, *The Government of American Cities*, p. 224. There are now no cities operating under this act, since 1915 all of them having adopted the alternative commission form.

proved it.”<sup>43</sup> The pocket veto appears to be without justification either in experience or theory as far as the field of municipal government is concerned. It has existed only in isolated cases, and has failed to commend itself to those responsible for drafting the charters under any one of our principal municipal systems. It may properly be considered as an unusual and unpromising feature.

The most generally accepted form of the veto is that which requires a vote of from two-thirds to three-fourths of the council to overcome the negative of the mayor. The proportion varies considerably, tho the large majority of cities operating under individual charters and many general laws provide that two-thirds of all the members elected to the council must vote to set aside the veto.<sup>44</sup> In Baltimore and Rochester and under the general laws of Wisconsin the proportion is fixed at three-fourths of the entire council. In San Francisco fourteen out of eighteen supervisors are necessary to defeat a mayoral veto. But whether the proportion is two-thirds or higher the result is an effective executive veto. It is difficult to overcome and in the hands of a determined mayor becomes a powerful factor in the relations between the municipal legislature and the executive. Strengthened as it usually is by the selective feature it illustrates very clearly the disposition of municipal charter makers to trust to one man power in the control of legislation as well as of administration. The selective veto permits the mayor to veto items in appropriation ordinances,<sup>45</sup> an authority which when combined with his power to initiate the municipal budget, is of imposing proportions, and certainly impairs the responsibility of the council in the field of municipal finance. With the exception of some smaller cities and a few general state laws the selective veto is today an established feature in municipal charters. The propor-

<sup>43</sup> San Francisco, Charter, Art. 2, Chap. I, Sec. 16. This provision is typical in substance, tho the phraseology frequently differs.

<sup>44</sup> Cf. the charters of Los Angeles, Seattle, Kansas City, Detroit, St. Louis, Cleveland, Toledo, Indianapolis, and the general charter laws of North Dakota, Illinois, and Indiana for the requirement that a vote of two-thirds of the council is necessary to overcome the veto.

<sup>45</sup> See the Kansas City charter, Art. 3, Sec. 6, for examples of provisions conferring the selective veto. Also the St. Louis charter, Art. 4, Sec. 17.



tion of council votes necessary to overcome it is the same as for the ordinary veto.

An absolute veto is vested in the mayor in the cities of New York and Boston. In the former the strength of the veto power varies according to the kind of measures under consideration. Ordinary measures, if vetoed, may be reënacted by a vote of two-thirds of the aldermen. Financial measures give to the mayor a power which it takes three-fourths of the members of the board to overcome. In the case of franchise measures the negative of the mayor is final. Boston has gone one step further. In the amended charter of 1909 it is provided that every appropriation, ordinance, order, resolution, and vote of the city council must be presented to the mayor, and if returned by the latter within fifteen days with objections, or if in the case of appropriation measures he objects to any items either in whole or in part, the actions of the council to which he objects "shall be void." This is the absolute veto. Coupled with the mayor's control over financial legislation,<sup>46</sup> the veto tends to make the mayor the dictator in municipal legislation.

The development of the veto in the American municipal system is unique. It has run the entire gamut from the weak suspensive veto, to the qualified, selective, and finally now the absolute veto. Its growth in importance has kept pace with that of the mayor's other prerogatives, and there can be little doubt that it has contributed very largely to the exaltation of the executive over the council. The veto power was originally intended to be the means by which the executive might protect itself from the encroachments of the legislative branch of the government. The power does not now need to be justified on this ground in municipal government, if indeed there was ever such warrant. In fact, no one imagines that it was meant to serve that purpose in present day charters. It is rather intended that it shall be used to check and curb municipal legislation, and its increased use in this direction has been followed by the enlargement and further strengthening of the power itself.

<sup>46</sup> This control enables him to initiate "all appropriations" either in the annual or supplementary budgets and only permits the council to "reduce or reject any item, but without the approval of the mayor" not to "increase any item in, nor the total of a budget, nor add any item thereto," nor "originate a budget."

A perusal of many of the veto messages penned during the past fifteen years by mayors of a dozen representative cities reveals no flagrant abuses of the power entrusted to them. Some vetoes are defended on broad grounds of public policy, some for reasons of economy, some because of non-compliance with charter provisions or state law, some on account of poor drafting and the incorporation of vague or indefinite provisions, and occasionally a veto for the purpose of protecting some other organ of city government, such as a board of estimate and apportionment, in its functions. A study of these vetoes and the acts which gave rise to them together with the circumstances surrounding them in so far as they could be ascertained indicated that on the whole the mayoral power had been wisely exerted. Mr. D. B. Eaton in his *The Government of Municipalities* suggests that the veto power of the mayor tends to secure careful deliberation on the part of the council and large majorities for measures enacted. He contends also that its possession renders the mayoralty more dignified and responsible and therefore more attractive to men of high character and honorable ambition.

It is apparent, on the other hand, that the executive veto as employed in actual practice is not to be understood or described merely by a consideration of the veto messages delivered, nor by the observations and conclusions offered in charter conventions, nor by comparing it with its prototypes in federal and state government. The veto messages show the power at work under the most favorable conditions, charter makers' speeches are apt to be little more than expressions of personal opinions based on theory, and comparisons are likely to be misleading. The mere threat of the veto may be as effective as its actual use and may render the latter entirely unnecessary; and its effectiveness is scarcely diminished because the threat is directed against a good measure, or is employed for trading purposes to gain support for the executive, or is used to befog issues and shift responsibility to the confusion of the electorate. Indeed, the real significance of the veto power lies not so much in its exercise as in its existence and the possibility of its being exercised. This fact has led Professor W. B. Munro to question whether "the veto has, or ever had, any proper place in the domain of local government," a question which he answers by denying the necessity of the veto to maintain a theoretical balance of power as long as the power



of the state is at hand to effect readjustments. He further indicts the abuses of the power in actual practice, abuses characterized by the bulldozing and browbeating of councils "in cases without number," and by trading and "political juggling." These defects, he suggests, warrant the relegation of the mayoral veto power to "the political scrap-heap."<sup>47</sup> Occasionally there have been proposals made for taking the veto power from the mayor, as in the Chicago charter convention of 1906. In this case it was proposed that the veto be lodged with the president of the council, but the proposal received little consideration, and in fact the mayor's veto was retained without roll call.<sup>48</sup> On the contrary, in cities having the mayor system the tendency is to strengthen the veto either in its qualified form or by the adoption of the absolute veto.<sup>49</sup>

<sup>47</sup> *The Government of American Cities*, pp. 224-226. An earlier discussion of the veto power by Mr. Bayles contributes almost nothing to settlement of the question raised by Dr. Munro, being content with viewing it from the standpoint of administrative law. See *The Office of Mayor in the United States*, pp. 45, 46, and 47.

<sup>48</sup> In fact there was no discussion. Following a motion that the proposal to transfer the veto to the president of the council be laid on the table, a proposal that the veto be made suspensive in character and subject to being overruled by a majority vote was rejected without discussion. The qualified veto proposal was then reached. A motion to adopt it prevailed without argument. Cf. *The proceedings of the Chicago Charter Convention, 1906*, pp. 74, 93, 94.

<sup>49</sup> The Boston Finance Commission in its recommendations for the adoption of the absolute veto said:

"If there is to be but one elective council, there should be a check upon its action more effective than the qualified veto power now possessed by the mayor. Such a check can be secured by enlarging the power of the mayor over appropriations, loans, franchises and ordinances. The commission recommends that the mayor be given a concurrent vote in all matters passed on by the city council. This means either an absolute veto, or the right of initiative on his part. The commission recommends a combination of the two plans. The annual appropriation bill or budget should originate in legal theory, as it does now in practice, with the mayor; while all other acts and votes of the city council should be subject to his approval."

"Appropriations from revenue and taxes should be submitted by the mayor to the city council, which should have the power to eliminate or decrease items, but not to increase or add items. A similar provision, but varying in details, is found in the charters of New York, Baltimore and Cleveland, and is recommended by the National Municipal League for general adoption by the cities of the country. All other acts, votes and reso-

In concluding this survey of the mayor's actual authority to participate in municipal legislation one is forced to recognize that the positive powers which he possesses are with few exceptions much less important, either singly or collectively, than is the power to veto the acts of the council. In a few cases this power has been one of the important means by which the charter makers have sought to establish responsible organs of legislation; almost everywhere it has been recognized as a desirable feature.<sup>50</sup> Despite the attacks made upon it the veto power appears to be thoroly intrenched in the municipal constitution of the mayor type, a type which continues to seek good government thru the creation of executives who are dominant both in legislation and in administration.

#### EXTRA-LEGAL INFLUENCE

The legal powers which are bestowed upon the mayor in regard to municipal legislation are by no means the sole measure of his influence in this field. Indeed, it may often be doubted whether they constitute the most important factor in determining his position. His personal influence, his standing in his party, the patronage which he controls, and his ability to direct public attention to favored measures either thru the press or thru pamphlets and addresses are sources of extra-legal power that are not only difficult to define but are incapable of accurate measurement as to their potency in operation. Yet it is well recognized that the power and influence which flow from these sources not only determine the character of city government during any given mayoral term, but frequently override entirely, now for good and now for ill, the ordinary legal provisions laid down in municipal charter and state law.

lutions and orders of the city council should require the affirmative approval of the mayor." Cf. The Finance Commission of Boston, *Reports and Communications*, Vol. II, p. 244. Dated January 29, 1909.

By an act of November 10, 1908, the mayor of Boston is also given a veto power over all appropriations and votes of the board of aldermen, acting as county commissioners.

<sup>50</sup> Except in commission or city manager governed municipalities. As a rule commission charters do not recognize the veto power, tho there are a few that do. The absence of the mayor's veto has been pronounced "not the least among the merits of the commission plan" by Dr. Munro. Cf. *The Government of American Cities*, p. 226.



The personal influence of the mayor in legislation rests upon numerous personal qualities which will be discussed in the chapter on the personality of the municipal executive. It is pertinent to observe at this point, however, that to exert any great personal influence in a council a mayor must command the respect of his politically hostile opponents as well as of his immediate supporters and friends, and he must be able to coöperate with those who disagree with him, and to compel their coöperation in return. Not all successful mayors are men who have exercised a commanding personal influence, but for those who are able to do so, men like Josiah Quincy, Carter H. Harrison, Sr., and a few others, the bonds of legal definition offer little restraint.

A factor that is by no means negligible is the standing of the mayor in the party to which he belongs, for the party is the agency thru which the people determine and carry out the policies of government. Recognized leadership in party affairs is almost indispensable to the successful mayor. Past loyalty and service, flavored with a touch of independence in judgment and action make a strong partisan appeal even where leadership is not undisputed as in the career of the late William J. Gaynor. Even fusion and independent mayors seriously endanger their legislative programs when they ignore the parties which put them into office. Indeed the success of many mayors has been possible because of their dominating position in their respective parties and their common sense recognition of the value of party organization and support.<sup>51</sup>

When one discusses the use of the mayor's patronage to control local legislation it becomes necessary to deal with the more or less hidden, tho generally acknowledged, workings of the machinery of legislation. The temptation to which the mayor yields is strong and pressing. Mayors are, as a rule, elected not as chief executives, but "because of advocacy of some particular legislative policy" and with little or no attention to their capacity as administrators. To secure the legislation to which the mayor is pledged becomes imperative. Small wonder that the interests of sound administration are sacrificed to achieve that end and that the mayor trades patronage for the votes of recalcitrant councilmen. Nor is this power utilized only to secure legislation; it is

<sup>51</sup> The administrations of Mayor Mitchel and Mayor Blankenburg furnish instructive contrasts in this particular.

also employed to forestall and block the acts and plans of the council. An example is afforded by the fate of a proposed investigation by the council of school finances in Chicago in 1916, an investigation to which the mayor was opposed. So successful was he that Alderman Robert M. Buck remarked: "If the mayor can throttle or buy enough councilmen with his patronage the investigation of school finances will never be properly made. We found out just which Republican and Democratic aldermen the mayor had bought with patronage or hopes of patronage."<sup>52</sup>

The mayor's power of appeal to the public thru the press and pamphlet literature as well as by speeches is often employed to influence pending legislation or to bring public opinion to bear upon members of the municipal council. Thru the daily papers the mayor is able to speak as frequently as he may choose to the reading public of the city, and because of his control of many news sources he is able to make sure that his views and the data which he presents will receive space even in opposition newspapers. Doubtless there are exceptional cases in which the mayor is unable to command a hearing or is subject to deliberate misrepresentation, but the importance of his power and influence over the news service usually is not to be denied.<sup>53</sup> The use of pamphlets is not widespread, yet it is employed on frequent occasions for the purpose of informing the citizens about work actually accomplished, or to prepare the public for the intelligent reception of policies yet to be worked out. One of the most interesting uses of the pamphlet was that employed by Mayor Clifford B. Wilson of Bridgeport, Conn., in 1912. In August of that year he sent a message to the common council reciting "a number of pressing needs and improvements" and suggesting a special election at which the voters should be permitted to determine the fate of the proposals made. The carrying out of the plan in-

<sup>52</sup> Cf. *Chicago Sunday Tribune* of July 4, 1915. American municipal history is not wanting in many flagrant cases in which the mayor's patronage was made to serve his legislative program.

<sup>53</sup> In a pamphlet issued on May 10, 1909, and entitled *What Should New York's next Mayor Do?* the Bureau of Municipal Research specifies among other things the systematizing of the city's news service for the purpose of enabling the press to obtain authentic statements of facts regarding important proposals. The cases in which the mayor is misrepresented deliberately appear to be more frequent than those in which he is denied a hearing. The news value of his acts takes care of abuses of the latter sort.



volved in some cases the issuing of bonds for the financing of sewer systems, bridges, and parks proposed, and the alteration of certain administrative features thru charter amendments. The election was duly called and Mayor Wilson in order "to set before the voter a few facts concerning each proposition" in order "that he may vote intelligently" published a ten-page pamphlet that was free from partisan appeal explaining the projects and charter changes. Its author characterized it as "an experiment to get an intelligent expression from the people themselves, based on a complete knowledge of the facts."<sup>54</sup> It is a fact, however, that mayors have not, as a rule, employed their opportunities for publicity either with skill or effectiveness. They are prone to follow rather than lead and create public opinion, or such publicity as is sought is tainted with partisan or personal objectives and lacks that candid and full presentation of facts that alone can command respect and support.

The reference above to the mayor's interest in the fate of charter amendments brings up the question of the power and influence of the municipal executive in the framing and enactment of charters. In general it may be said that while the mayor frequently takes a leading part in the initiation of charter revisions his influence in charter conventions is not conspicuous.<sup>55</sup> There are in some cases opportunities for the exercise of such influence, as in the case of Chicago, where the commissions that have considered charter revision have been appointed by the mayor.<sup>56</sup> Occasionally, as in New York, the mayor has interested himself in promoting the amendment of the municipal charter by legislative action.<sup>57</sup> Likewise mayors not infrequently advocate or endorse proposed changes which they believe will serve the public welfare.<sup>58</sup> But it can hardly be maintained that the mayoralty

<sup>54</sup> Cf. *Proposed Charter Amendments and Bond Issues, What They are and What They are For*, by Clifford B. Wilson, Mayor. The pamphlet contained two maps in addition to the reading matter.

<sup>55</sup> Cf. Mayor Fitzgerald's part in the initiation of charter revision in Boston prior to the creation of the Finance Commission. His first proposals along this line failed to get support in the city council.

<sup>56</sup> Both of the Chicago charter commissions since 1900 have been appointed, the second one being named in the closing year of the Harrison regime.

<sup>57</sup> The most notorious instance is that of the "Tammany-Gaynor charter." See *National Municipal Review*.

<sup>58</sup> Endorsements and suggestions are frequently found in mayoral messages.

has had undue influence on the formulation of the charters drafted by commissions and conventions organized for that purpose.

The same conclusions may be reached in regard to the mayor's influence in the work of those boards and commissions that have been given authority to determine public policy along certain lines of municipal activity. The boards of education are conspicuous among those which enjoy large powers of a legislative character. In some cities, notably in New York and Chicago, the board of education is appointed by the mayor.<sup>59</sup> In Detroit the mayor is ex officio a member of the board and has a veto upon its proceedings. Two-thirds of the members elected to the board must support a measure to carry it over the mayor's veto.<sup>60</sup> In other cities, however, no such authority appears to exist. The members of the board of education in New York are specifically excepted from the operation of the removal power of the mayor,<sup>61</sup> the latter appears to be able to influence their decisions thru the selection of members known to be in accord with his views,<sup>62</sup> and thru his influence as a member of the board of estimate and apportionment, which is charged with the authority to receive the school budget and to act upon the same prior to its submission to the aldermen. The board must also submit certain reports to the mayor, including an annual report. With these exceptions and others of less importance the mayor may be said

<sup>59</sup> Cf. New York, Charter, Sec. 1061. It cannot be doubted that this power of appointment enables the mayor to exercise an important influence upon the educational policy of a great city, even tho no subsequent interference by the mayor be recognized.

<sup>60</sup> Detroit, Charter, Sec. 617. No pocket veto is recognized. The Detroit board of education is elective.

<sup>61</sup> New York, Charter, Secs. 95, 1096. The latter section permits the mayor to remove upon proof of official misconduct etc., the removal to be preceded by notice to the incumbent and a hearing upon the charges preferred. In Chicago the authority of the mayor to interfere thru the exercise of his power of removal is recognized. Thus Mayor Harrison interfered in 1914 in behalf of Mrs. Young, the superintendent of schools and prevented her being dismissed by the board.

<sup>62</sup> Mayor Mitchel is credited with having "assumed the right to counsel with the members of the board of education respecting policies initiated by them." He assisted in an investigation which resulted in notable developments in school policy, particularly in vocational education and the trial of the so-called Gary plan. See, *Mayor Mitchel's Administration of the City of New York*, by Henry Bruère in the *National Municipal Review*, Vol. V, pp. 24-37, especially pp. 32-34.



to have little immediate power over education, owing to the prevailing American practice of separating this function from other municipal activities.

In municipal finance a new body has appeared to absorb power from the city council and to augment the power of the mayor, viz., the board of estimate and apportionment. In New York "it in very large measure makes the policy of the city."<sup>63</sup> In somewhat less power it has appeared in many other cities—"a new organism imposed upon the old."<sup>64</sup> The mayor invariably retains a place upon it and may thus be expected to influence very largely its decisions. That it will become a permanent feature of municipal organization does not, however, appear to be probable, except in some large municipalities retaining the mayor system. In Boston, indeed, the mayor appears to have absorbed the functions which the boards of estimate and apportionment perform in cities other than New York.

#### STATE LEGISLATION

The relation of the mayor to state legislation affecting cities has found legal definition in but one state, viz., New York, and in this case it is negative in character, consisting of a suspensive veto upon special city laws. But in all the states in which there

<sup>63</sup> See article by Mr. Mitchel in the *Proceedings of the Academy of Political Science*, etc. on "The Office of Mayor." Vol. V, p. 4. Mr. Mitchel explains as follows: "By that I mean that it determines such broad questions as the construction of our rapid transit system, and the terms and conditions on which that system should be constructed and operated. It determines the plan upon which our port is to be developed. It authorizes the institution of the various portions of that plan. It determines the financial policy of the city, as it did recently when by resolution it declared the institution of a new plan for financing permanent public improvements of a non-revenue-producing class, and said improvements of that kind should hereafter be financed in increasing proportions out of the tax budget of the city of New York, instead of thru the issue of fifty year bonds. All these duties that board performs, and I can assure you that it is about as busy a deliberative body as sits anywhere in this country or elsewhere. . . . In a great many instances public debate is had. . . . In addition the Board of Estimate has created under this administration a series of standing committees to determine questions of policy and the preparations of great construction plans."

<sup>64</sup> Cf. Charters of Baltimore, Rochester, and St. Louis, tho in none of these has the board developed such powers as it enjoys in New York.

are metropolitan cities the mayor must assume the more positive rôle of a special leader in behalf of the interests of the city which he represents. In this capacity he heads delegations of city officials in their conferences with important legislative committees, and assists in the organization and presentation of the city's case. The effectiveness of his endeavors depends upon a great many elements other than the merits of the case which he presents. The coöperation of the city's representatives in the legislature is not always forthcoming owing to want of harmony on the legislative program within the city itself. Party factionalism and jealousy between the rural and urban constituencies are important factors. But on the whole it can be affirmed that "many vicious and unwise bills" affecting cities would never be enacted and "fewer desirable bills" would "fail" if all available facts and data were "adequately presented."<sup>65</sup> The obligation to undertake this presentation undoubtedly rests upon the mayors of many large cities today. It has been expressly insisted upon in mayoralty campaigns in New York City and has been prominent among the tasks which candidates for the office have promised to perform in Chicago and other centers.

The suspensive veto with regard to special city laws is conferred upon the mayor by the constitution of New York state.<sup>66</sup> It is provided that following its passage by both houses of the legislature a special city law shall be transmitted by the house in which it originated to the mayor of the city or cities affected. The mayor shall within fifteen days return the bill to the house from which it was sent, or to the governor, with a certificate stating whether or not the bill has been accepted by the city.<sup>67</sup>

<sup>65</sup> Cf. pamphlet issued by New York Bureau of Municipal Research, under date of May 10, 1909, entitled *What Should New York's next Mayor Do?* p. 7, par. No. 18 under what are specified as "Some of the Things New York's Next Mayor *Must* Do." It should be said the record of the Mitchel administration supports the contention set forth in this paragraph.

<sup>66</sup> See Constitution of New York, Art. 12, Sec. 2. This provision was retained in the constitution drafted and submitted in 1915, but the term "special city law" was more narrowly defined. Cf. "The New York Constitutional Convention" by Charles A. Beard in the *National Municipal Review*, Vol. IV, p. 644 (October, 1915).

<sup>67</sup> The mayor alone acts for the city in cities of the first class, in others the council or a majority of it must concur with him. The state legislature may require the concurrence of the council in cities of the first class also.



In 1900 the state legislature, in pursuance of the directory provisions of the constitution, passed a law providing for a public hearing on such "special city laws," one to be held in each city affected by a bill. In cities of the first class the hearings are held before the mayor, in other cities before the mayor and the legislative body of the city. Provision is made for public notice of the hearing being given thru the press in all cases, and in cities of the third class the mayor is instructed to serve copies of the notice upon each council member either personally or by mail. The mayor is authorized to append to the notice "any explanatory statement" that he "shall deem advisable." It is significant that if the bill is returned without having been accepted, or is not returned within fifteen days, it may be repassed by the assembly by a majority vote. In any case, whether accepted or vetoed and then repassed, the bill is subject to the action of the governor. In its final form the act of the legislature must show in its title whether or not it has been accepted by the city. All expenses incurred in connection with hearings must be borne by the city or cities in which hearings are held.

The retention of the mayoral veto on "specified city laws" in the proposed New York constitution of 1915 indicates that the cities consider it of some value in their struggle against legislation of this type. There are many evidences, however, that the veto is not so effective as the cities might wish it to be. The hearings provided for have tended to be perfunctory in character and productive of little information that would guide the mayor or the mayor and municipal legislature in making a decision. The New York campaign of 1909 brot out a demand for a more effective use of the power by the mayor, together with a presentation of the facts which justified a veto or an approval as the case might be. It was contended that proper marshaling of the facts would "largely determine later action by legislature and governor,"<sup>68</sup> tho in the past the mayoral veto had been overridden by the legislature so frequently as to discourage its vigorous use.

See Constitution, Art. 12, Sec. 2 and also Act of 1900, "The General City Law "Art. 2, Sec. 33, cited in Ash, *The Greater New York Charter, etc., with Notes, etc., together with Appendices, etc.* (Third Edition), Appendix 1, pp. 1062, 1063.

<sup>68</sup> *What Should New York's next Mayor Do?* For Mr. Seth Low's opinion of the value of the mayor's veto on special city laws see Bryce, *American Commonwealth*, Vol. I, p. 660, (3rd edition revised). Mr. How-

As a method for protecting the city against special legislation and yet permitting needed action, the veto has but one rival, the provisions found in the constitutions of Illinois and Michigan in which municipalities are permitted by popular vote to accept or reject special legislation.<sup>69</sup> At best the part the mayor can play is exceedingly limited.

In addition to the foregoing the mayor may influence the fate of state legislation thru appeals to the governor to exercise his veto power. Instances of appeals of this sort are, indeed, quite frequent and they offer an excellent opportunity for a summary of the position of the city with respect to pending legislation, particularly special bills affecting municipal interests. The effectiveness of such appeals is not such as to warrant any reliance upon them as a means of protecting the interests of the municipality.<sup>70</sup>

ard Lee McBain praises the veto as well worth while and thinks it superior to the Illinois and Ohio practice.

<sup>69</sup> In Illinois this protection is applied to Chicago only, for other cities are protected by a constitutional restriction on the power of the legislature to enact such laws except for Chicago. The Michigan constitution of 1908 contains a general provision for a local referendum on special legislation.

<sup>70</sup> See a letter from Mayor Mitchel to Governor Whitman of New York, dated May 9, 1916, appealing for a veto of fourteen million dollars in the appropriation bills before him on the ground that taxable property in the city of New York bears as great a burden as it can sustain without disaster to the owners. The following excerpts from the appeal show how well the opportunity for presenting the city's case was utilized in this instance:

"Unless you veto at least \$14,000,000 from the state appropriations now awaiting your signature, it is evident that within a year it will be necessary for the State to impose another direct tax. This direct tax will create an additional burden, which, added to the other taxes which New York City must carry, may very easily produce a general collapse of real estate values in New York City.

"The City of New York itself has done everything humanly possible to reduce its own expenditures to an irreducible minimum. The appropriations for the administrative expenses of the City Government are \$2,125,000 less than the corresponding appropriations for 1914. The city now asks that the State Government be as economical as the city itself has been. When last year's appropriations were before you I made the same appeal for the vigorous use of your veto power that I am now making in regard to this year's appropriation. At that time you were unable to agree with my conclusions, but I am emboldened to make the appeal again because, with a wider experience, I feel sure that you have come to realize the justice of the city's position last year."



A summary view of the mayor and legislation reveals a disposition to continue the process of withdrawing the mayor from membership in the council or immediate participation in its work. His relative activity in the work of legislation appears to be increasing, however, owing to the development of his power to recommend measures, to attend council meetings, to introduce administration measures, and to veto nearly all council acts. The tendency to make him the responsible organ of city government in the field of finance has enabled him to gain in power and prestige at the expense of the council. In legislation as well as in administration the mayor is approximating the importance of the old English mayor who was described as "the lord of the city." Of his various powers, that of veto appears to be exercised most effectively for the accomplishment of his purposes; but it is worthy of note that this power has been seriously challenged as unnecessary and undesirable and is rarely retained in any but mayor and council plan charters. The relation of the mayor to state legislation can hardly be pronounced an effective one and no expansion of his legal powers is noticeable along this line. The net results of developments in recent years warrant the conclusion that the mayoralty is both relatively and absolutely more powerful in the field of legislation than ever before.

## CHAPTER VI

### THE MAYOR AND POLITICS

Intense partisan activity and strong party organizations have been outstanding features of American political life. Especially has importance been attached to the position and strength of the national party organizations. State and local issues and interests have been subordinated in order to assure the success of the national organizations and to provide the means for their effective maintenance and support during the intervals between campaigns. In this process the municipalities have suffered tremendously. Whatever of honor, reward, and opportunity their offices have held forth for their citizens has been seized by the great national and state organizations for the promotion of the interests and purposes of the latter. The mayoralty, with its power and influence, has been no exception to the rule. Times without number it has been sacrificed upon the altar of national party loyalty.

This tendency to exalt general at the expense of local political interests is accentuated by the existence of a professional politician class that has consciously emphasized the importance of success for the national and state organizations. The members of this class look to their political activities to furnish them a livelihood. They are in politics "for what there is in it." The opportunity offered them by the modern city and its government has been unparalleled in former generations. It is a field that can be most successfully exploited when the interest of the municipal citizens is centered upon other than municipal problems. The absence of tradition in local politics, the transient character of much of the urban population, the indifference of large portions of the population due to preoccupation in industrial and commercial enterprises, all supplement the efforts of the professional politician to magnify other than local programs and



issues, or to exhaust political energies in vain and unprofitable sham battles.

Even when the urban electorates have been aroused to the importance of municipal politics and have undertaken to discriminate between local and general issues and to analyze the former with a view to the adoption of intelligent policy and the introduction of efficient administration their efforts have been largely neutralized. The municipality has not been free to defend itself from state interference. The state has often been only too willing to assume an active hand in local affairs, even to the extent of ripper legislation. The necessity of having local patronage with which to reward branches of state and national political organizations has led both to flagrant negation of the expressed will of municipal electorates, and to the imposition upon them of burdens which serve no local good. The city has been the victim of unrefined political conditions and of a political philosophy that defines success only in terms of victory at the polls, the assumption of the chief offices of government, and the seizure of the major portion of the positions in the civil service. Failure on the part of local party organizations to retain their hold on municipal governments not infrequently resulted in state authority being invoked to thwart the will of the local electorate.

The worst conditions have arisen when powerful private interests have sought to intrench themselves in richly productive public utilities, an end that could most easily be achieved thru an alliance with local political organizations. The result has usually been the establishment of a bipartisan regime, in which professional politicians of all parties and predatory privilege leagued to promote their respective interests irrespective of the public welfare. It is quite obvious that under such conditions the control of the municipal executive was an objective of primary importance.

The mayoralty has reflected the political conditions in which it has developed. The mayors of important urban centers have usually been party men, at least in the sense that they have been affiliated with a local branch of some national party organization. They have been elected by party men, who cast their votes "for a mayor, who if he were elected President would do this thing or that thing with reference to national expansion or the cur-

rency question or something of that sort; . . .” It remained possible for him to develop a local party leadership that would be sensible of its responsibilities to the community it served and possessed of sufficient influence and power to prevent the wholesale and wanton subordination of municipal interests to partisan or private self-seeking. It was much easier, however, for him to become the pliant tool of those aggressive forces that are in politics for mercenary purposes. Probably no program of local policy had been projected in the campaign for his election. He had cautiously refused to commit himself to definite lines of action on local issues. Having been chosen out of concern for some national or state policy to the realization of which he could contribute little or nothing he remained largely free to give “the street car company or the gas company a new franchise.” In this fashion the loyal party voter who supported him “has foolishly bartered away his own rights, and his neighbor’s rights and his children’s rights for half a century. He thought, perhaps, he was voting for Lincoln or Jefferson, but in reality he was voting for some contractor or for some political boss or for some public service corporation.”

There is generally a certain point, however, beyond which the national and state political organizations may not safely disregard the interests of local communities. Parties and politicians desire above all else to retain their lease on office and power and are therefore to some degree, more or less vaguely defined, responsible to the manifest will of the local electorate. The mayoralty because of its conspicuous position in the scheme of local government is among the first of the organs of the municipality to feel the pressure of public opinion and because of its centralized authority is the least likely among those organs to offer a successful resistance. It has been frequently true that mayors who have been chosen as machine candidates and for given partisan purposes have broken with their backers when confronted with a wave of public sentiment that was determined in character. The action of Mayor John Weaver of Philadelphia, in breaking with the Republican organization by dismissing from office two of his directors and opposing the proposed gas steal, is a conspicuous illustration of the fact that the mayor is so positioned that he is inevitably sensitive to public thot and



feeling.<sup>2</sup> Like independence and responsiveness were exhibited by Mayor McClellan in insisting upon non-partisan appointments to membership on the New York City water supply board, even when the state assembly at the behest of party interest had made partisan nominations possible; by Mayor James N. Adam of the city of Buffalo who kept in touch with his party, yet was so largely independent of it as to make possible an honest, economical, clean, and efficient administration. The number of illustrations might be multiplied many times from the records that are accessible and doubtless there are very many examples that have never had more than local publicity.

The determination of political parties to control municipal politics has led to many notable struggles. In the present century the most flagrant example of the methods to which parties will resort to accomplish this end was the abolition of the mayoralty in Pennsylvania cities in 1901. The party in control of the state had lost many local elections, the mayoral campaign among them. The office of mayor was forthwith abolished by the notorious ripper legislation of that year, and the controller made chief executive in the municipalities. Another and more recent attempt to set up a mayoralty which would be responsive to the desires of the party in control of the state was embodied in the Tammany-Gaynor charter proposed for New York in 1911. The charter conferred great power upon the mayor, probably with the view of serving temporary ends. Among other things it would have given the mayor a substantial and somewhat irresponsible control over the city's budget. The proposal was defeated by the fortunate circumstance that the city had within it public spirited organizations that were able to voice their protests quickly, persistently, and to stir up behind them a wave of public protest.<sup>3</sup>

In pursuit of their objectives party organizations do not hesitate to "knife" independent or doubtful candidates of their own. The defeat of Mayor Fagan in Jersey City in 1907 was the result of party treachery rather than a popular repudiation of his efforts and independence during his administration. The more recent careers of Mayor Hunt in Cincinnati and Mayor

<sup>2</sup> See address by Mr. White, "The Revolution in Philadelphia" in Atlantic City Conference for Good Government, *Proceedings*, p. 136.

<sup>3</sup> Cf. account in the *National Municipal Review*, I, p. 67.

Blankenburg in Philadelphia testify to the tendency of even the so-called reform parties and fusion organizations to turn and rend those who will not serve them.<sup>4</sup> A mayor in his constructive work must watch the wiles of those who because of his independence will stop at nothing to discredit his efforts, to bring him into conflict with other state or local authorities under their control, or to "put him in a hole" in the execution of his own program. In the case of Mayor Dempsey of Cincinnati, in 1906, the ingenuity of local politicians and antagonists was exhausted in the conflict, and the controversy with the governor of the state further imperiled municipal reform. A striking example of a mayor being compelled to veto a portion of his own election promises is that of Mayor Blankenburg of Philadelphia, who was forced into the position of vetoing eighty cent gas, a thing he had expressly pledged himself to secure. An opposition council had outmaneuvered him and had rendered possible the cheaper rate but on conditions which he could not approve.

There are few instances on record in which mayors have successfully defied their party and been reelected. Sometimes, however, this failure to secure a second term has been due primarily to other causes than party defection. A conspicuous example is found in the career of Mayor Timanus of Baltimore, who established a gratifying record for independence. He refused to countenance spoils, yet won the respect and support of his own party, and was renominated. His opponent, however, was a man of good character able to command the normal majority of the opposition party and won the election. There was no evidence of considerable defection within the ranks of Mr. Timanus' former supporters.

Among other causes none, perhaps, has been more potent than the principle of rotation in office. As Professor A. B. Hart observes, "Cities seldom permit anyone to serve more than . . . four years . . . in the mayoralty. Rotation in office pushes a man out just as he is becoming a real force."<sup>5</sup> To this there are, of course, many exceptions, but the mere inspection of the lists of "former mayors" and other municipal officials which

<sup>4</sup> See the Providence Conference on Good City Government, *Proceedings*, p. 107 (1907) for the mention of the defeat of Mayor Fagan.

<sup>5</sup> Address at the Providence Conference of Good City Government, *Proceedings*, p. 70 (1907).



some cities publish in connection with their manuals or reports confirms the statement. It should be observed, of course, that municipal executives in this country have been drawn from the ranks of a busy citizenship and that quite often men feel impelled to give up their public duties after a few years in office in order to attend to their own business interests. In some cities, too, mayors may not succeed themselves and this of course augments the number of changes. In other cases men tire of the struggle which the mayoralty involves and return to private life at the first opportunity.

In their efforts to gain control of the mayoralty with its appointive power, parties and candidates do not hesitate to use the most deceptive slogans as campaign bait. National party loyalty is appealed to, not only in large cities like Philadelphia and Chicago, but in very many of the smaller municipalities.<sup>6</sup> Opposition candidates are usually dubbed "socialistic" if they have exhibited the slightest disposition to question the demands which vested interests have made upon them, and the description is one that has been peculiarly effective with conservative American electorates. On the other hand known conservatism invites the charge of being "capitalistic," and the consequent suspicion of the labor and radical groups of the voters. Frequently such aggressive slogans as "Get Busy," "A Business Administration," "Home Rule," and "Prosperity" are employed to rally support and conceal from the elector the true purpose of the spoilsman. A "Get Busy" campaign waged in Philadelphia in 1907 seems to have had particular reference to the task of circumventing the civil service law of 1906 and of providing places for those "martyrs" who had lost out in the upheaval of 1905. The Busse campaign in Chicago in 1907 was typical of one conducted on a "Business Platform." Mr. Busse frankly recognized the evil constituents of his party, saying, "No man can win in politics with the help of the good alone. All elements are necessary to success." In the Chicago mayoralty contest of 1915 there were many issues, but it was declared while the campaign was on that it was to be a division on national party lines and that the Wilson administration was on trial. The election at-

<sup>6</sup> National politics and partisanship played a notoriously large part in the Philadelphia election of 1915. The "tariff" was one of the chief issues in the campaign.

tracted much attention and the attitude of the mayor elect was evidenced in the following statement concerning his victory: "Chicago has spoken to the nation in this overwhelming vote given the Republican candidates today. It means that Illinois and the middle west will swing into the Republican column. The country can get ready for a return of prosperity." The prosperity appears to have fallen chiefly to the lot of the party henchmen who labored for the new mayor. The demoralization of the municipal civil service stands out as one of the most striking undertakings of the victors.

When measures such as the foregoing do not suffice the campaign tends to degenerate into vilification. Candor and fair play are supplanted by malice and vituperation. "Mud-slinging and muckraking take the place of arguments over programs of municipal advance. Abuse, slander, and falsehoods are at a premium and eleventh hour misrepresentations are circulated with cool and calculated effectiveness."<sup>7</sup> Sham candidacies to split the independent vote are not uncommon, and seldom fail to lead astray some of the unsophisticated. In short, all the devices known to the political game are so frequently called into use in struggles for the mayoralty that cases of gross and flagrant corruption stain the election annals of every important American city. Frequently, the worst offenders are either organized under the banners of a national political party or are closely affiliated with one.

With the mayoralty looked upon as a legitimate and desirable prize in the warfare between the two great political parties of the nation, and the consequent tendency to reduce the independence of the municipal executive by making him subservient to party interests, it is small wonder that mayors frequently put forth strenuous efforts to dominate the life and organization of political parties. Occasionally a mayor with strong and vigorous personality and gifted with political sagacity will succeed in controlling not only local party activities and interests but in wielding a powerful influence in the party life of the state. There are,

<sup>7</sup> Striking examples of such methods are found in some of the campaigns of Carter H. Harrison, Sr., of Chicago, Tom L. Johnson of Cleveland, and "Golden Rule" Jones of Toledo. See Abbot, W. J., *Carter Henry Harrison, A Memoir*, pp. 124-126; Lorenz, Carl, *Tom L. Johnson, Mayor of Cleveland*, p. 24; Whitlock, Brand, *Forty Years of It*, pp. 130, 131.



of course, many more who fail than there are those who succeed. It is, indeed, an undertaking in which municipal executives rarely succeed. But it is also one which is inevitably forced upon spirited and ambitious mayors, both in the interest of the community they have been elected to serve and for the preservation of their own independence of action. Such a course is necessary also for the man who aspires to state or national political honors. The struggle for partisan advantage is so keen that it becomes a question of the mayor controlling the party or the party controlling the mayor. This condition is likely to be aggravated in states in proportion as home rule is not recognized.

Municipal history has produced many mayors who have succeeded in achieving control of the local party organization, but fewer have been able to exercise effective leadership in state politics. Men like Carter H. Harrison, Sr., of Chicago, Mayor James Dahlman of Omaha, and Tom L. Johnson of Cleveland, have not hesitated to push the organization of their own party control, even a reformer like Mr. Johnson not hesitating to go to questionable limits in order to assure himself that his policies and decisions would be registered in law.<sup>8</sup> Both Mayor Dahlman and Mayor Johnson played an active part in state politics and sought at one time or another to dominate them. The close relation between the city of Chicago and the political activities of Illinois has always tended to draw the mayor of the former into the arena of state politics. Mayors Dunne, Busse, Harrison, Jr., and Thompson have all figured with prominence in the direction of their respective parties in the state. The temptation to build up personal machines in order to render this party control stable and effective has been one of the curses of municipal government. It tends to debauch the administration by giving more or less free rein to spoils appointments; it paralyzes municipal councils as organs for the discussion of public policies and often reduces them to the position of mere vehicles for recording the executive will;<sup>9</sup> even in the case of well meaning men it eventually produces astigmatism of the executive vision, as they confuse personal success with the public good; it invariably subordinates

<sup>8</sup> Cf. the Report of the Municipal Association of Cleveland, a non-partisan organization. Citation in the *Proceedings of the Providence Conference on Good City Government* (1907), pp. 113, 114.

<sup>9</sup> *Ibid.* Cf. also, Lorenz, *Tom L. Johnson*, pp. 89-112.

local policies and issues to the considerations of expediency presented by the political situation at large; and in actual campaigns it tends to submerge the importance of selecting good councilmen in the tide of popular interest and absorption in the selection of the mayor.<sup>10</sup>

On the other hand the mayor of the average American city cannot leave the political situation either local or general out of consideration in any of his more important undertakings. Doubtless this is due in part to the political character of the mayoralty and the necessity of obtaining support thru political parties. Opponents of the mayor system and advocates of the controlled executive plan have been quick to seize upon the mayor's necessary participation in political life as the chief menace to administrative efficiency. Undeniably this is the weakest point in the mayor plan. Political expediency demands and receives consideration at the expense of quality in service rendered. But the weakness is not without its compensating advantage, and the vast influence which a popularly chosen mayor, the acknowledged leader of the political life of a community, may have upon public policy is not to be lightly cast aside for the divided counsels of a municipal legislature selected by crude methods of securing representation and commanding a somewhat colorless expert service in administration. Indeed, the emancipation of the city from the domination of state and national political parties and issues has probably been hastened by the leadership of strong mayors.<sup>11</sup> Few believe that the mayor plan even where most perfectly developed and most satisfactorily operated represents the last word in municipal organization. But it has represented a distinct advance, it has contributed richly to the improvement of American city government, and it has cultivated that inde-

<sup>10</sup> The records of the Municipal Voter's League of Chicago indicate how much more successful is the effort to secure good councilmen in years when there is not also a campaign on for the election of mayor. The editorials and cartoons of the Chicago press during the 1915 campaign were continually seeking to remind the elector that the councilmanic election must not be lost sight of in the attention paid to the struggle for the mayoralty.

<sup>11</sup> Cf. the address of William Dudley Foulke, retiring president of the National Municipal League, delivered at Dayton, Ohio, November 17, 1915, and published in the *National Municipal Review*, Vol. V, p. 12, under the title "Coming of Age. Municipal Progress in Twenty-one Years," especially p. 15.



pendence in the electorate which will enable the achievement of higher standards in administration and hasten the reduction of partisan and political considerations to the minimum.

Evidence of the independence of the electorate with regard to the mayoralty has been steadily accumulating. Some very striking examples are at hand. Mr. James Dempsey was elected mayor of Cincinnati in 1905 in a campaign noteworthy for the independent stand of Mr. W. H. Taft against the partisan machine dominated by Boss Cox. Independent appointments followed and the education of the electorate began. The fact that reform in administration had a comparatively poor chance owing to the hostility of the council did not prevent the utilization of the meager opportunity that was presented. The leadership of Mr. Taft came while he was a member of the national administration during Mr. Roosevelt's second administration. Doubtless it encouraged to the point of action many voters who were thinking along independent lines. The reform administration of Mayor Hunt was possible only because of these earlier influences which tended to "free" the elector in Cincinnati. Brand Whitlock's career in Toledo followed close upon that of "Golden Rule" Jones, and produced an intelligent response that resulted in a sympathetic council. Tom L. Johnson's repeated success in Cleveland was due not only to his political skill within his own party but to the cultivated independence of voters in the opposite party who approved his conduct and policies in local affairs.

At one time it was remarked that it had become almost a custom in Providence to choose a mayor from the opposite party than that to which the council belonged, a condition which did not contribute greatly to harmony in the city government, but which justified itself under the enlightened leadership of Mayor McCarthy. Mr. McCarthy sought the counsel of groups of able and prominent citizens in making up his nominations for appointment and his suggestions to the city council, thus throwing a burden of proof upon that body which they could not lightly escape when they refused to confirm his nominees or adopt his proposals. It was easier to get a Blankenburg administration in Philadelphia because of the "revolution" of the first decade of the century. The Mitchel regime in New York is the product of an independence in spirit and action that has been fostered appreciably by so-called Tammany mayors as well as by fusion

and independent incumbents of the office. The independence of Mayor Gaynor was frequently the occasion of comment, tho he was himself a member of the Tammany society and was elected on a party ticket. Of course this independence was not always in evidence, but "the recent Tammany mayors of New York, McClellan and Gaynor, were very much better men than the earlier ones such as Van Wyck or Grant."

Nor are these examples furnished by larger communities alone; they are becoming increasingly common in the smaller cities. The case of the city of Lapeer, Michigan, is rather unusual, but indicates the trend in many small communities. The majority of the electors in Lapeer are Protestants, yet in 1912 they elected a Roman Catholic priest, Father Dunnigan, as mayor, owing to his attitude toward the liquor problem and despite the fact that he thereby became a member *ex officio* of the school board. In almost every case the mayors are found in the lead, even under circumstances in which they owe their election to the very lack of independence which was formerly so common in municipal politics.

Altho undoubted gains have been made in the character and independence of municipal politics, stability is far from assured. The independence of the elector is fitful, originating sometimes in temporary disgust, a desire to chasten, or in reliance upon the promises of the reform leaders. At times the old fealty reasserts itself, or the reform movement has struck closer home than was anticipated, or has failed to do all that it promised to do — at any rate periods of reaction are frequent and make up many chapters even in recent municipal history. Often it appears that independence and struggle have been futile and that no results are evidenced by the shift to the candidate of the opposition. In other cases it is much easier to push forward the tide of reform than it is to maintain it. Political habits are not easily changed. Yet in the reactions which follow strong mayors and reform administrations, and despite many pyrrhic victories of independent movements, the city rarely slips back into conditions as bad as they were before, nor the elector into the smug complacency or preoccupation which characterized him before once being aroused. At times there may be little choice among the candidates set before the voter and the election returns may hide the record of a brave tho unavailing struggle, or a dignified



and considered refusal to choose.<sup>12</sup> Over a period of years, however, the evidences of progress are unmistakable. To this result independent mayors have not failed to contribute.

The opportunities which are opened up in the field of political activity by the increasing position of the mayor in American cities are vast and numerous. The clash of economic and social interests, the battles of industrial warfare, and the rising consciousness of community interest in the outcome of these struggles all tend to elevate the mayoralty in authority and influence. Frequently, it is true, municipal executives fail to realize their opportunity to deal with situations that are ominous and threatening, or more often merely annoying and unsatisfactory. But the number of mayors who will interfere to settle a threatened tie-up of local transportation due to the strike of the employees or the bulldozing attitude of magnates in a traction controversy, or who will attack the problems of unemployment, poor housing, public extravagance, and petty graft, is already large and growing. State associations of mayors are studying these and other municipal problems; a national gathering of mayors has considered the questions presented by public utilities; while many chief executives have seized upon chances to champion measures that will promote sound social organization and insure efficiency. Whether politics be considered as the process of getting into and retaining public office, or be viewed in the larger sense of developing, establishing, and maintaining a just and responsible organization of society, such action is more and more recognized as good politics. Mayor Mitchel's efforts to cope with unemployment in New York City in 1915; Mayor Thompson's settlement of the traction strike in Chicago in the same year; and Detroit's prompt organization of motor bus facilities for transportation in reply to the traction companies who threatened to cease operation unless their demands for franchise privileges were acceded to; the action of Mayor Henry T. Hunt of Cincinnati in forcing the traction interests of that city to arbitrate the difference with their employees or to face an action for a receivership on the ground that the company's public duty was not being

<sup>12</sup> Such was the case in the Chicago election of 1915. The Independents failed to place a candidate in the primary race when Thompson defeated Judge Olson. Thousands felt there was little to choose between Thompson and his opponent, Mr. Sweitzer.

performed; and many other similar instances illustrate the possibilities of mayoral leadership. The continued growth of the mayoralty will be due no less to the influence and authority of the incumbent in the "good politics" just mentioned than to the ordinary and more obvious political leadership which the office has called forth.

The responsibility which attaches to the mayors of our cities for overcoming the disturbances in municipal government due to the play of national politics or to the pettiness of local differences of opinion has hardly been recognized by them. This responsibility belongs primarily to the mayor as a leader of the majority party, a leader whose business it is to carry out the party program with the least disturbance to the interests and welfare of the municipality. But it also inheres in the office itself. The mayor is something more than a party leader. He is the official head of the municipality; he is the mayor over all its inhabitants. It is his duty to study the things that make for coöperation and for the suppression of irrelevant or inconsequential differences. In speaking of the failure of Mayor Baker, one of Cleveland's most enlightened leaders, to contribute materially to the solution of this pressing problem, Professor C. C. Arbuthnot says: "It behooves the majority in municipalities without surrendering the power that the electors have placed in their hands, to put the minority members into active service, load them with some share of responsibility for the public work, entangle them indeed in the execution of the administration's policies and by sheer force of working together put the minority in a positive relation to the city government. The policy of isolating the group in comparative ineffectiveness draws the partisan line sharper, turns energy that should be constructive into obstructive tactics, sours the milk of common interest and sacrifices matters of local concern to an over emphasized national distinction. The cities will never begin to free themselves from this incubus unless they commence in substance as well as in form.<sup>13</sup> An enlightened majority must start the unloading process."

<sup>13</sup> The changes in form referred to are those which relate to the alteration of the election machinery, especially those which seek to eliminate contests by national parties on other than local issues. Mr. Baker's failure to further the development of this reform is "all the more keenly felt because



In concluding this review of the relation of the mayor to the party and political life of the time it is well to call attention to the fact that the large number of municipal executives who have served as local political leaders have contributed a relatively small proportion of the men who have achieved recognition in the political life of the state and nation. There are some striking exceptions, especially in states like New York and Illinois which include great urban populations.<sup>14</sup> But too often the exigencies of practical politics tend to render the stronger man unacceptable for the municipal service. When this influence is supplemented by the retirement of valuable public servants either voluntarily or thru the tendency to pass offices around, it is not difficult to perceive why the cities do not furnish from among their executives a larger percentage of those prominent in the larger units of government. It would seem to be altogether desirable that men who have experienced as valuable training as the chief magistracy of modern cities affords should not be lost to a people whose higher forms of government have need of the most skilled and trained ability. Fortunately there is encouragement in the number of mayors who have won recognition from state and nation within the past decade.

Mayor Baker has taught many a republican in this city to forget national party affiliations when voting for himself as city solicitor or as mayor." *National Municipal Review*, Vol. V, pp. 235, 236.

<sup>14</sup> Grover Cleveland served as mayor of Buffalo, governor of New York state, and President of the United States. Governor Dunne of Illinois had already served as mayor of Chicago; Secretary of War Baker served two terms as mayor of Cleveland; David R. Francis, ambassador to Russia, served as mayor of St. Louis; Brand Whitlock, minister to Belgium, had been mayor of Toledo; and there have doubtless been a number of others.

## CHAPTER VII

### THE PERSONALITY OF THE MAYOR

Ten years ago a prominent student of municipal government made the statement that "tho there have been plenty of notable governors there is hardly a man in the country who has made a national, or even a state reputation as a highly successful mayor of a city."<sup>1</sup> In the intervening years there have been a number of men who have been known within their respective states for their success in the mayor's office and some who have been known thruout the nation for the same reason. The majority, however, may never hope to achieve fame of more than local scope, not because their work might not merit broader recognition, but because of other conditions over which they have no control. The facilities for extending a mayor's reputation were not so well organized ten years ago as they are now. The formation of state and national mayors' associations, of municipal leagues, the publication of many journals devoted to the municipal field either local, state, or national, or to some particular phase of municipal government, the rising interest in municipal affairs and systems of organization, and the striking advance in the betterment of administration have served to give successful mayors an opportunity to achieve more than local recognition. Moreover, there has been created during the past quarter of a century a constituency which is primarily interested in learning of successes which are worthy, and which keeps abreast of municipal affairs in the more important cities and states, if not in the nation as a whole. It must be remembered also that many able mayors have not been men with political ambitions that would lead them to seek the advertisement and public acclaim essential to the establishment of a so-called reputation. Municipal executives have not infrequently been men called from private life for a few years

<sup>1</sup> Address before the Providence Conference on Good City Government; see *Proceedings*, p. 69 (1907).



of public service; then quietly reabsorbed into the body politic as one of the mass. The means by which many of our well-known public men have come to the front and the rewards which success achieved in this way offers have not attracted the attention of individuals whose ambition lies in other channels. Equally true, too, is the fact that the importance of the mayoralty as a position in the public employ and as a channel thru which to serve the public has been quite generally underrated when compared with state and federal positions. The short term which formerly obtained generally gave only a few men a tenure sufficient to attain more than local prominence. Others accounted it a source of quick relief from a very arduous and quite thankless responsibility. On the other hand popular election frequently cut short promising careers in the mayoral office. Want of popular sympathy with municipal programs and broad gauge planning usually gave statesmen small opportunity for leadership, especially where the council continued to retain and exercise considerable power in administration. Many mayors despaired because of the mire of intrigue, petty politics, ward and district squabbles that must be faced and mastered before constructive movements could begin. These conditions have not been abolished today, but very marked improvements have taken place and the mayoralty is tending to attract a distinctly abler class of individuals into the public service. This tendency will increase in proportion as the conditions in municipal government improve and as the mayor plan feels the impact of other types of executive organization.

No history and description of the mayor's office is adequate that overlooks the personality of the incumbent. There have been mayors who like some accomplished actors "take a small part and make of it a great one." The opportunity to play the part with distinction comes to almost every mayor; it may be offered in the chance to clean up corrupt and vicious practices in city government, it may come in a conflict with outside forces that seek to dominate the city's life and welfare, it may come in struggles to define and direct municipal programs of action, or it may appear in the ever present problem of interpreting the ordinary powers and duties of the office. The mayoralty has felt the personality of great men in every one of these lines, and in others. Whatever other factors may contribute to the impor-

tance of the office in the municipal field it owes much to those individuals who have left the impress of their own personality upon its development. To portray that obligation fully would require too extended a treatment, but a survey of the more important personalities of the past two decades will indicate its extent. In earlier years one may mention such remarkable mayors as Josiah Quincy of Boston, in many respects the most forceful character in the history of the office, Mr. Abram S. Hewitt in New York, and Mr. Carter Harrison, Sr., of Chicago, who not only made a name for himself but cast such a spell over the electors in his city that a less forceful son has been able to exercise a predominate influence in Chicago during the greater part of the present century, he himself being mayor for twelve years.<sup>2</sup>

The record of the mayoralty in the twentieth century inspires new hope and establishes hopes already aroused with regard to the future of city government in the United States. No index to this record is more significant than the personalities of the men who have held the office during these years. It is true there have been men of the type of Eugene Schmitz of San Francisco and "Doc" Ames of Minneapolis, men whose administrations were malodorous with corruption and inefficiency,<sup>3</sup> and who have faced trials for misconduct or who have become fugitives from justice. One can also turn to the careers of the great majority to find their work fairly honest, tho often characterized by mediocrity, want of notable force and vision, and subject to the conventional methods and demands of practical politics. The record of Carter Harrison, Jr., of Chicago is typical, except in length

<sup>2</sup> For an account of the life of the elder Harrison see a work by Willis John Abbot, *Carter Henry Harrison, A Memoir*, New York, 1895. Accounts of the municipal activities of Mr. Quincy will be found in his *Municipal History*, etc., Boston, 1852, and in the *Memorial History of Boston*, Vol. III. The nature of his public service is indicated in his closing address to the two houses of the council sitting in convention at the end of which he uttered this challenge: "I inquire, as I have a right to inquire . . . Have you found in me anything selfish, anything personal, anything mercenary? In the simple language of the ancient seer, I say: 'Behold here I am; witness against me. Whom have I defrauded? Whom have I oppressed? At whose hands have I received any bribe?'"

<sup>3</sup> The Don Roberts case in 1915 indicates that the worst type of municipal chief executive is not yet extinct.



of service. John F. Fitzgerald of Boston and George B. McClellan of New York also belong to this group. Occasionally too, there appears a mayor who is wanting in the qualities which would bring enduring recognition, but who possesses a picturesque personality and a semi-independence in action that win for him more than local recognition. Before his election it was prophesied of William J. Gaynor that with him as mayor, "New York would not know one dull and uninteresting day." "His picturesque and inscrutable character supplied the basis for much genuine curiosity." "But at least his policies were all his own. Citizens opposed to him were glad to feel that their chief executive was incapable of submitting to crude dictation, that he had reasons or motives for every official act — in short, that he was mayor in fact as well as in name." "His strong and unusual personality will doubtless be remembered by New Yorkers for a longer time and more vividly than will any particular acts and policies of his administration." More frequently the office attracts the type of man quite commonly described as a war horse of reform.

Recent years appear to be evolving a new type of mayor, a type skilled and practiced in the art of municipal administration and devoted to the application of sound principles and methods and the development of sound traditions. It is being justified by its substantial achievements.<sup>4</sup>

One of the most unique personalities that has occupied the mayoral post in this country was Samuel M. Jones, more familiarly known as "Golden Rule Jones," of Toledo. Mr. Jones was considered eccentric. In public and in private life he became a national and an international figure. He tried to practice the golden rule, not in a limited sense but so completely that "every act of his life, no matter how trifling and insignificant it may have seemed, suddenly took on a vast and vital significance." When the golden rule "seemed not to 'work', he would truly say it was only because he didn't know how to work it."<sup>5</sup> In the

<sup>4</sup> Mitchel as mayor of New York serves to illustrate this later type; also Newton D. Baker, recently mayor of Cleveland, a city declared by non-resident students of city government to be the best governed city in the United States, a reputation for which there was considerable basis, at least up until the close of his administration.

<sup>5</sup> For a sympathetic, yet searching portrayal of the career of Mayor

field of municipal government, Mr. Jones, as mayor of Toledo, is credited with two great contributions. In stating these, Mr. Brand Whitlock, a later mayor of the same city and minister to Belgium during the first years of the Great War, says:<sup>6</sup>

"I regard it as Jones' supreme contribution to the thought of his time that, by the mere force of his own original character and personality, he compelled a discussion of fundamental principles of government. Toledo today is a community which has a wider acquaintance with all the abstract principles of social relations than any other city in the land. . . .

"Jones' other great contribution to the science of municipal government was that of non-partisanship in local affairs. That is the way he used to express it; what he meant was that the issues of national politics must not be permitted to intrude themselves into municipal campaigns, and that what divisions there are should be confined to local issues."

Mayor Jones' achievements as mayor differed from those of the ordinary office holder. "There is not a public building which he erected, no reminder of him which the eye can see or the hands touch." Lincoln Steffens remarked of him, "Why, that man's program will take a thousand years." Nevertheless, his attitude toward public service franchises, toward the right of society to inflict punishment, toward machine controlled politics, and the rights of property made a distinct impression upon his city. With regard to the problem of the enforcement of law in cities, Jones must be hailed as a major prophet. For the policeman's club, or the rigors of the law as a means of "making people good" he had no use.<sup>7</sup> He believed that only hatred, not love, could appear in the processes of force, and therefore he shunned them. His leniency was the despair of conventional, orthodox, or reforming folk, who opposed him bitterly. Being an independent in politics, he was relentlessly opposed by the organized polit-

Jones see Brand Whitlock's *Forty Years of It*, pp. 112-150. A collection of his letters have also been published by the Bobbs-Merrill Co. of Indianapolis.

<sup>6</sup> *Forty Years of It*, pp. 137, 138.

<sup>7</sup> His position on this subject is probably most lucidly expressed by his fellow worker, and disciple, Mr. Whitlock, in his "Open Letter" addressed to certain "Representatives of the Federation of Churches, Toledo," published in booklet form, Indianapolis, 1913. The letter was written in 1910.



ical forces of the community, especially the Republican party organization. Aided by fellow partisans who controlled the Ohio state legislature a special act was secured which deprived the mayor of Toledo of control over the police force and gave it to the governor of the state operating thru an appointive commission. Jones' determined resistance to this statute resulted in the reversal by the courts of doctrines and precedents long established and the overthrow of "the whole fabric of municipal legislation in the state," opened up the entire question of the status of municipalities in relation to the state, and gave the opportunity for the agitation which resulted in the adoption of a liberal measure of home rule by the constitutional amendments of 1912. Says Mr. Whitlock, "the decision had ultimate far-reaching effects in improving the conditions in Ohio cities, and was the beginning of a conflict that did not end until they were free and autonomous."<sup>8</sup>

Few men have left a more permanent mark upon municipal life and that in this country than Tom L. Johnson of Cleveland. He was among the first to give a practical demonstration of what was meant by clean administration at a time when the movement to purify municipal politics and government was acquiring popularity and momentum.<sup>9</sup> Under him Cleveland became one of the best and most honestly governed cities in America.<sup>10</sup> "To the last Mayor Johnson and his administration marched abreast with the times assimilating and putting into practice the most advanced theories on the governing of a modern city."<sup>11</sup> Cleveland became a source of inspiration for the advocates and friends of clean and honest administration everywhere. Representatives of other cities came to see and to study. Johnson's methods were often new and original, for Cleveland was a sort of laboratory or experiment station as well as a live, going concern.

Even more important than the foregoing was Mr. Johnson's struggle for municipal freedom; freedom from the domination

<sup>8</sup> *Forty Years of It*, p. 137.

<sup>9</sup> Cf. Carl Lorenz, *Tom L. Johnson, Mayor of Cleveland*, p. 85.

<sup>10</sup> Lincoln Steffens called Johnson "the best mayor of the best governed city in the United States." Cf. *McClure's Magazine*, July, 1905. Also, Lorenz, *Tom L. Johnson*, p. 48, expressed the same opinion.

<sup>11</sup> Lorenz, *Tom L. Johnson*, pp. 49, 50.

of privileged interests and from the restrictions imposed by state law. To do this it was necessary to awaken and educate the Cleveland electorate on the vital problems of the municipality. He succeeded so well "that they overthrew him, when they believed that his usefulness had come to an end. Today the people of Cleveland are perhaps better versed in public affairs than the citizens of any other city of the United States."<sup>12</sup> One observer concludes, "he did perhaps more than any other man in America to make possible the coming of the free city in this land."<sup>13</sup> Another believes that "his struggle for three-cent railway fares in Cleveland, which was but a roundabout method of securing municipal ownership in a state where the legislature in those days would not permit cities to own their public utilities, was his great work."<sup>14</sup>

Whether one accepts the judgment of his friends and supporters or the more moderate views of detached observers one is impressed with the strong personality of Mr. Johnson and the extent to which it pervaded every branch of the administration of which he was the head. Mr. Whitlock pictures it as follows: "I used to like to go over to Cleveland and meet that charming group Johnson had gathered about him. There was in them a spirit I never saw in such fullness elsewhere; they were all working for the city, they thought only of the success of the whole. They had the city sense, a love of their town like that love which undergraduates have for their university, the esprit de corps of the crack regiment." Tho a man with a vision of Cleveland as "a city set on a hill," he was essentially a man of action. Mr. Johnson was aggressive, resourceful, and dissatisfied with aught less than domination in any undertaking in which he was involved. The latter characteristic he once clearly expressed in reply to a proposal from Mark Hanna for a partnership and the consolidation of their interests. Mr. Johnson refused on the ground that he and Hanna were too much alike; that "as associates it would be a question of time, and a short time only until one of us would 'crowd the other clear off the bench.'"<sup>15</sup> His

<sup>12</sup> Lorenz, *Tom L. Johnson*, p. 65.

<sup>13</sup> Whitlock, *Forty Years of It*, p. 174.

<sup>14</sup> *Ibid.*

<sup>15</sup> Tom L. Johnson, *My Story*, New York, 1913, p. 25. This autobiography is not the least among Mr. Johnson's contributions to municipal gov-



love for power and political ambition was mingled with admitted sincerity of purpose and desire to serve the public interest. Selfishness and personal hatred undoubtedly asserted themselves at times during his career but they were the errors of a well meaning, determined leader. There were other apparent contradictions in this great mayor who "liked a straight course and went a crooked way" — at times. In the end the very training and traits of character that made him a valuable and indispensable leader in the terrific struggle his city was making for the privilege of working out its own salvation proved to be his undoing, once victory had been won.<sup>16</sup>

There can be no question of the added significance which Mr. Johnson gave the mayoralty as a result of his incumbency. "The secret of a good executive," he writes in his autobiography, "is this — one who always acts quickly and is sometimes right."<sup>17</sup> He was possessed with what he calls a "civic consciousness" in addition to superior ability and a reputation as a successful business man. He had no use for boodlers nor for many of the ways of practical politics, though his skill in political strife was usually of a high order. But above all else he set a new standard for constant and persevering labor in behalf of the public interest, for fearless and tenacious struggle in its behalf, and developed and exhaustively exploited the powers of the office. The mayoralty had a different meaning in Cleveland when he left it than it had when he entered upon its duties, and the value and importance of this change has not been lost upon other municipal executives.

Two of the remarkable figures that have held the mayoralty since the opening of the present century are Henry T. Hunt of Cincinnati and Rudolph Blankenburg of Philadelphia. Both men were essentially "reform" mayors. The political conditions in the respective cities were somewhat different, but there was little to choose between them as regards the depth of their degradation in this country. It should have a wide reading among municipal officials, many of whom have doubtless profited from its perusal since it was first published in 1911.

<sup>16</sup> Mr. Lorenz's chapter entitled "A Pyrrhic Victory" illuminates this statement. Cf. also Mr. Whitlock, *Forty Years of It*, p. 174.

<sup>17</sup> *My Story*, pp. 121, 122. Mr. Johnson admits many mistakes in his early appointments, for example, cf. pp. 121, 167.

dation. Hunt had his council with him, Blankenburg did not. Both men refused to compromise with their supporters' demands for the spoils of victory and thus alienated many.<sup>18</sup> The failure to take account of "politics" betrayed idealistic tendencies which the municipal electorate was not educated to appreciate and left their reform programs without that cohesive and substantial support which is still usually necessary for victory at the polls. Both were opposed by machine organizations that had been long organized and that were implacable. By their impartial execution of law both men alienated some of those who had been friendly to them. Hunt was charged with having exploited the powers of the office unduly; Blankenburg with failure to exhaust them in the fulfilment of some of his pledges.<sup>19</sup> Their personalities were different in many respects. Hunt was young, and had served in the state legislature and as prosecuting attorney of the county. He was "single-minded, brave, outspoken, able."<sup>20</sup> The leading press of the country joined in praise of his character, ability, faithfulness, judgment, loyalty to public interest, and his progressive attitude toward social betterment.<sup>21</sup> Mr. Blankenburg, on the other hand, had long been associated with the movement for reform in Philadelphia and at the time of its culmination was looked to as "the one man qualified for the task" which the reformers had undertaken.<sup>22</sup> He was a typical "war horse" in agitation, picturesque and severe in his denunciations. He was courageous, enthusiastic, even vehement in his

<sup>18</sup> In both cities the campaigns had been waged on the promise that no wholesale displacement of office holders should take place. The keeping of that promise proved costly in each case. Cf. *National Municipal Review*, Vol. III, pp. 519, 520, for a discussion of the procedure followed by Mr. Hunt, and Vol. V, pp. 213 and 223, for the discussions of the course taken by Mr. Blankenburg.

<sup>19</sup> *Ibid.*, pp. 522, 523 in Vol. III, and 218-220 in Vol. V.

<sup>20</sup> Cf. "Mayor Hunt's Administration in Cincinnati," by A. Julius Freiberg in the *National Municipal Review*, Vol. III, p. 518.

<sup>21</sup> See *Harpers' Weekly*, October 11, 1913; *Boston Transcript*, September 24, 1913; *New York Evening Post*, September 20, 1913; *Chicago Tribune*, October 13, 1913. Extracts from these and other editorial opinions that appeared during the campaign for reelection were published as a part of a pamphlet entitled "An Account of the Administration of Henry T. Hunt and His Associates."

<sup>22</sup> Editorial in the *Philadelphia North American* for January 3, 1916, reproduced in the *National Municipal Review*, Vol. V, pp. 217-222.



temperament, qualities which found motive power in his "innate abhorrence of venality, chicanery and oppressive abuses." He was experienced, however, in public administration. One observer judges his work as follows: "Very few men with such a temperament possess also in large degree the virtues which enter into the making of a successful administrator in an extensive public office elected by the people and involved in active politics. Patience, reticence, a shrewd knowledge of human nature, practical concentration of purpose, a keen perception of public opinion in all its fluctuations and eccentricities, the faculty for ready co-operation with all sorts of men who represent the varied life of the community, and the cool judgment or insight by which the useful man discerns the things which can be done and avoids those which can't be done are among the qualities which are to be found in the mayoralty or any kindred office when it is well and satisfactorily administered. In these respects Mr. Blankenburg has not been strong. But in honesty, in sincerity, in a sense of fidelity to conception of the mayoralty as a trust, in a pure love of the city and in eagerness to serve it to the very best of his ability, there is no man among us to whom he stands second."<sup>23</sup>

Both Mr. Hunt and Mr. Blankenburg appear to have had the faculty of being able to select able subordinates; and to retain their devotion and respect. Of the two Mr. Hunt appears to have been the more practical in his turn of mind, Mr. Blankenburg the more visionary.<sup>24</sup> Hunt was defeated for reelection; Blankenburg was ineligible to succeed himself and his protégé was defeated. Nevertheless each man contributed to the conception of what a mayor should be, and this contribution was a general one. Their administrations attracted wide attention in other cities and their achievements made impossible a complete

<sup>23</sup> Cf. article by William Perrine in the *Philadelphia Evening Bulletin*, December 30, 1915, and published in the *National Municipal Review*, Vol. V, pp. 223, 225.

<sup>24</sup> "It is in the understanding of the underlying principles, and sympathy with the problems of the people, that the mayor (Blankenburg) and his assistants have done their best." One recalls also the "courses" which the mayor and members of his staff took in the University of Wisconsin. The value of Mr. Blankenburg's vision of municipal problems should not be underestimated. The calling of the conference of American mayors to consider "Public Policies as to Municipal Utilities" may prove to be one of the principal achievements of his administration.

return to former conditions in their respective cities. Mr. Blankenburg, by calling the first "Conference of American Mayors" to meet in Philadelphia, November 12-14, 1914, made a distinct contribution to the development of a spirit of professional service in the ranks of municipal executives (a development which it must be recognized is yet in the embryonic stage) and gave new meaning to the halting progress which has often attended the efforts to organize effective associations of municipal executives, or to the work which those already in existence were accomplishing in the various states. Nor did it fail to call the attention of the cities to the fact that fundamentally their public utility problems are very much alike. Mr. Hunt continues to be an active contributor to the understanding and solution of municipal problems in general and in such effort his practical experience and observations are invaluable factors.

Two mayoralties in recent years constitute developments that are little short of epochal, viz., the Baker administrations in Cleveland and the Mitchel regime in New York. Both Newton D. Baker and John Purroy Mitchel were experienced and trained public servants before they were elected mayors. Mr. Baker had been city solicitor while Tom L. Johnson was in power and had made a splendid record for efficient service in that capacity. Upon him fell the mantle of his chief when Cleveland denied to Mr. Johnson continued support.<sup>25</sup>

Mr. Baker was a "scholar in the mayor's office," a man unlikely to renew the "storm and stress" of the Johnson period, yet imbued with devotion to the public interests and equally determined that they should find expression and protection. He faced the "wearing task of constructive and conciliatory upbuilding of the city's interests. The mayor's aptitude for positive achievement fitted him well for the need of the time. He showed a power of adjustment and an ability for negotiation that reduced strained relationships, and sought the equitable way out of conflicts between public and private interests. . . . To draw a parallel between his career and that of the general run of mayors in this country would be provocative of adulation distasteful to a man of his fine fiber. . . . That he will rank in history as

<sup>25</sup> There was an interval of two years between their periods of service, this being the period of Mayor Baehr's term.



one of the few great mayors of American cities is certain."<sup>26</sup> The personal qualities which contributed to his success as mayor were "a splendid intelligence influenced by a wholesome sympathy," a personality that was "radio-active, graciousness, a cultivated taste, and a wide intellectual outlook, united with a catholicity in judgment."<sup>27</sup> Coupled with his political idealism there was an insight into the practical which gave him the appearance, at times, of being an opportunist, especially in his relation to party politics.<sup>28</sup> The contribution of Mayor Baker to the mayoralty lies not merely in the failures or successes of his administration, striving as it did to consummate a worthy municipal program, but is rather to be found in his expression and cherishing of "a civic spirit of extraordinary vitality."<sup>29</sup> He imparted to it elevation, assisted it to consciousness of its powers and possibilities, and gave to it leadership and opportunity. Such achievements are rare among statesmen in American democracy and that they should have been recorded in municipal administration is most significant. Cleveland's example and influence will long encourage recognition and stimulate the development of like leadership in other cities. As for Mr. Baker, it is noteworthy that he found large range for his ability in the office of secretary of war. Indeed it is indicative of the altered character of American municipal administration that the national government is drawing many of its servants from the ranks of those who have served their respective cities well.

While still a young man when chosen mayor of New York City in 1913, Mr. Mitchel brought to the office previous training in the city's service. Under Mayor McClellan he had been commissioner of accounts, and for the four years prior to his election as mayor he had been president of the board of aldermen, a posi-

<sup>26</sup> Cf. article by Prof. C. C. Arbuthnot on "Mayor Baker's Administration in Cleveland," *National Municipal Review*, Vol. V, pp. 226 ff. The above quotation is found on pp. 240, 241. This survey of the Baker administration is appreciative, yet free from partisan exaggeration; critical yet without taint of antagonism. It is a refreshing portrayal of the subject dealt with. Mayor Baker's failures and unfinished tasks are indicated as well as his successes.

<sup>27</sup> *Ibid.*, p. 240.

<sup>28</sup> *Ibid.*, p. 235.

<sup>29</sup> *Ibid.*, pp. 239, 240. Mr. Baker not only helped to draft the Cleveland charter but enjoyed during his two terms as mayor the opportunity of interpreting it.

tion which also made him a member of the board of estimate and apportionment and enabled him to exercise a powerful influence in the determination of municipal policy under Mayor Gaynor. For a short time he had served the national government as collector of the port of New York. Altogether he brought an unusual fund of experience to the office of mayor, a fact that was the more significant inasmuch as he had shown himself loyal to principles of sound administration, viz., economy, efficiency, and fidelity to the public interest. In speaking of the general contribution which Mr. Mitchel's administration has made to municipal government Mr. Henry Bruère says:

"It has given the city a government of a non-partisan character. It has emphasized the professional character of municipal administration by seeking qualified experts for administrative positions. It has brought to the forefront the social welfare aspects of government activity, and given emphatic and continuing emphasis to economy and efficiency.

"The administration has not had presented to it, nor has it created an opportunity for general popular appeal. It has kept itself in the position of recognizing from week to week and month to month the obligation it assumed on entering office to conduct the affairs of the city government with efficiency and to devote the resources of the city exclusively to public welfare."<sup>30</sup>

The personal qualities which enabled Mr. Mitchel to make a distinct success as mayor of the country's metropolis were in keeping with the solid and substantial character of his public service. He was a man of clear perceptions, broad vision, and courage. His insight was demonstrated in the establishment of an executive budget by the exercise of powers which the mayor already possessed. He was skilled in the art of securing effective coöperation, both on the part of subordinates and from those not in the public service. Says Mr. Bruère, "the mayor [Mr. Mitchel] has not stood alone in the traditional isolation of New York's chief executive. He has had the sympathetic and effective coöperation of his fellow members of the board of estimate and apportionment. . . .

<sup>30</sup> *Ibid.*, Vol. V, p. 24. The article by Mr. Bruère from which the quotation is taken is an illuminating discussion of the subject, "Mayor Mitchel's Administration of the City of New York." It covers the first two years of his term.



"I do not recall in any previous administration an equal use of coöperating citizen committees. Committees not only representing all classes of citizens and types of interests have been summoned to assist in the consideration of problems of emergent or continuing character, but, what is of greater consequence, practical results have been obtained from this coöperation. Not only have there been committees appointed by the mayor on such questions as unemployment, markets, ports, terminals and taxes, but various department heads have affiliated with their activities interested groups of citizens to assist them either in developing public interest or providing special experts to help in solving technical questions."<sup>31</sup> Mr. Mitchel impressed the public with his sincerity as well as his ability, and the want of "political pharisaism" did not fail to evoke an enthusiastic response from the public.

It is important, also, that Mr. Mitchel retained the point of view of a true representative of municipal democracy. He said, "Everybody wants to see the mayor and see him personally . . . no matter how trivial the business . . . they feel they must see the mayor. He is called upon to keep the door of his office open to the public, and after all *it is proper that he should*, because the public ought to have direct contact with the mayor; people ought to have access to him, and he must reserve enough time to see the people who come to the office and want to see him." This view contrasts strongly with that of Tom L. Johnson, who advised Mr. Brand Whitlock as follows: "Don't spend too much time in your office. A quarter of an hour each day is generally too long, unless there are a whole lot of letters. Of course," he went on reflectively, "you can get clerks who can sign your name better than you can." Patience, tact, and executive ability of a high order, especially his powers of selection and decision, and undoubted promptness and forcefulness in action, have all aided in making conspicuous Mr. Mitchel's "exceptional success in doing the right thing in the right way both at the outset of his administration and as each successive emergency has arisen."<sup>32</sup>

<sup>31</sup> *Ibid.*, pp. 24, 25. Mr. Bruère contrasts his political sincerity with the customary "political pharisaism" in the city's administration and describes the city's enthusiastic response.

<sup>32</sup> Mr. Johnson is also reported as defining executive ability as follows:

Moreover, one finds in Mr. Mitchel's record evidences of the qualities of initiative and thoroness, both being abundantly demonstrated in his labors in behalf of the city during the sessions of the New York state legislature. Indeed his thoroness in the formulation and presentation of the city's interests made it difficult for "vicious and unwise measures" to be passed, and easier for necessary and desirable measures to secure support. This was especially noticeable in the legislative session of 1916, tho his efforts fell short of being crowned with complete success, particularly his efforts to curb appropriations that would necessitate an increase of taxation in New York City.

It is altogether too early to define in detail Mr. Mitchel's contribution to the mayoralty except as related to New York City. Of one thing, however, those interested in the future of municipal administration may well feel assured, viz., that a new standard has been set for the office in the principal city of the land, and that this standard cannot fail to be felt elsewhere. Mr. Bruère prophesied as follows: "New York's present administration promises to be the climax of a period of progressive, hard-won transition and the beginning of a period of revolutionary change in the government of the city."<sup>33</sup> There can be no question but what the character and position of the office has been strengthened, a result which can hardly fail to be felt in many other cities. It is rather significant, also, that the mayor system has evolved two administrations headed by men who can satisfy the demand for skilled and trained executives just at the moment when the city manager plan appears to lay special emphasis upon the necessity for public servants of that type.

The roll of those who have left their impress upon the mayoralty has by no means been exhausted. One likes to think of the constructive leadership of Mr. Vance McCormick of Harrisburg, Pennsylvania, a leadership conspicuous for pluck, determination, and earnest spirit, and notable results.<sup>34</sup> The initiative and devo-

"It's the simplest thing in the world; decide every question quickly and be right half the time and get somebody who can do the work. That's all there is to executive ability." Brand Whitlock in *Forty Years of It*, p. 207. See also the *National Municipal Review* for the estimate of the success of Mr. Mitchel's administration, Vol. V, p. 24.

<sup>33</sup> *National Municipal Review*, Vol. V, p. 24.

<sup>34</sup> Cf. article on "The Harrisburg Plan: Celebration of a Dozen Years



tion of the Hon. James M. Head as mayor of Nashville, Tennessee, placed that municipality under lasting obligation to him for the modern character of its franchise grants and other forward looking steps.<sup>35</sup> Portland, Maine, recognizes in the mayoral service of James P. Baxter the loyalty and public spirit of "a citizen, who, more than any other man in his generation, has devoted himself in many ways to her [Portland's] welfare," having held the office for six terms.<sup>36</sup> Toledo shares with Belgium the fortune of having known the ability and sympathy of Mr. Brand Whitlock, one who has done much to place the "police problem" and the problem of law enforcement in their proper settings and so to hasten their ultimate solution, a consummation of immediate importance to every municipality. It was his privilege also to have no unimportant part in the campaign which won for constitutional home rule the approval of the Ohio electorate, a fitting climax to eight years of earnest effort in the mayor's chair.<sup>37</sup> Space permits but the mention of the late Seth Low of New York, of Messrs. David I. Jones of Minneapolis, William B. Thompson of Detroit, George F. Cotterill of Seattle, James Rolph of San Francisco, and James N. Adam of Buffalo, to say nothing of executives in smaller cities and with less opportunity to gain wide repute, many of whom have done service in the development and maintenance of the rising standards and traditions of the mayoralty.<sup>38</sup> It should be observed also that men

of Municipal Betterment," by J. Horace McFarland in the *National Municipal Review*, Vol. V, pp. 71 ff. It should be noted that Mr. McFarland himself had the honor to be singled out as the "one man above others who stands out preëminently as a patriot in all these years of improvement campaigns . . ."

<sup>35</sup> *Atlantic City Conference for Good City Government Proceedings*, 1905, p. 296 *et seq.*

<sup>36</sup> See *Proceedings of the Atlantic City Conference on Good City Government*, pp. 170-180. This conference was held in 1906. See also the *Proceedings of the Providence Conference*, 1907, p. 27.

<sup>37</sup> Few men have given us a clearer picture of some of the problems of the mayoralty than has Mr. Whitlock in his book, *Forty Years of It*. For the account of his own struggles and labor in that position see especially pp. 205 ff. See also his open letter "On the Enforcement of Law in Cities," published in booklet form, 1913.

<sup>38</sup> For further information concerning Mayor Jones, see statement by Stiles P. Jones, *Proceedings of the New York City Conference on Good City*

who have not become mayors have made their contribution to the development of higher standards in becoming candidates at the times when the public interest demanded an effective protest, and often to no small sacrifice to themselves. There are probably very few cities that could not furnish similar examples of public spirited citizens who have aided the cause of good government in this fashion, even when without well based hope of immediate success.

In this brief review of the men who have been successful mayors during recent years it is noticeable that only men who possess executive ability to an extraordinary degree can creditably fill the office. Mr. Tom L. Johnson defined executive ability as follows: "It's the simplest thing in the world; decide every question quickly and be right half the time. And get somebody who can do the work. That's all there is to executive ability." But Mr. Johnson's definition is incomplete. It overlooks the imponderables. Mr. Whitlock, with finer insight, puts it thus: "Executive ability is a mysterious quality inhering in personality, and partaking of its mysteries."<sup>39</sup> This statement does not imply that personality, though possessed and cultivated, is a mark of executive ability. It rather summarizes the observations and facts which have been noted in this chapter. The municipal executives who have contributed to the significance and growth of the mayoralty have been men of strong and vigorous personality. Their work becomes most intelligible only when the men themselves are known; tho, on the other hand, they may frequently be known in their works. It is not intended here to attempt any definition or analysis of the mysteries of personality.<sup>40</sup> The truth of Mr. Whitlock's statement is obvious. The debt of the American mayoralty to men of personality constitutes an obligation that had assumed large proportions by the close of Josiah Quincy's six years service as chief magistrate in

*Government*, 1905, pp. 120-132. For the record of Mayor Thompson see notations in *Providence Conference Proceedings*, 1907, p. 119, and in the *National Municipal Review*, Vol. I, p. 726. Mr. Thompson won special recognition for his probe of graft in the city council, an investigation which was privately financed and which involved eighteen aldermen, a number of whom confessed.

<sup>39</sup> *Forty Years of It*, p. 205.

<sup>40</sup> Cf. *The Riddle of Personality*, by H. Addington Bruce.



Boston, that continued to increase during the years of the nineteenth century and that has been tremendously augmented during the opening years of the present era of municipal renaissance. For at best its powers and possibilities sink to the level of the commonplace when disassociated from the personal qualities of its incumbents. Municipalities can ill afford to neglect the personality of those who would administer their affairs and represent them before the state and nation.

## CHAPTER VIII

### THE MAYOR-COMMISSIONER <sup>1</sup>

The movement for concentration of power and responsibility in municipal government received a tremendous impetus from the success of the commission plan in Galveston and later in Houston. Prior to the introduction of this plan the movement had found expression chiefly in the growth of the mayoralty. From the time of the tidal wave of 1901 it has been expressed in a variety of forms, notably the commissionership and the managership in addition to the mayoralty. Beginning with Galveston a mayor-president and a group of four commissioners — the latter a term that is primarily administrative in meaning — were entrusted with all the legislative and executive functions of the municipality. Since that time approximately four hundred cities have adopted the essential principles of the commission plan.<sup>2</sup> Most of them, however, add features which aim at very complete responsibility on the part of the commissioners to the electorate and which make it possible for the latter to act directly in the expression of its will. In all cases, however, the concentration of executive power remains intact.

While it is the purpose of this chapter to consider the chief executive office under the commission system it is essential to call attention at the beginning to the fact that one of the "predominating" features of the plan is a much greater concentration of power than the mayoralty had ever known. It is in this larger measure of power that the chief executive under the commission plan shares and in the exercise of which he has a prominent and

<sup>1</sup> This term is a combination of the official titles "mayor" and "commissioner," the chief executive serving in both capacities under the commission plan.

<sup>2</sup> In reality all but two of the cities participating in this movement toward commission government have joined it since 1907, a fact that emphasizes the rapidity with which it has spread.



influential part. While in many cases he retains some of the powers which he formerly enjoyed under the mayor and council form, his relative position as chief executive is very much weaker than is that of the mayor, for there are other executives with important powers. Nevertheless it is altogether too early to affirm that the relative weakness of the mayor-commissioner in the commission plan will continue. The Royal Commission on Municipal Government of the Province of British Columbia reported in 1912 that "the tendency . . . is strongly toward one-man government."<sup>3</sup> Others have observed that there is the opportunity for the mayor-commissioner to acquire a "dominating influence." Certainly the chief executive under the commission form is in a more favorable position than was the mayor of a century ago.

By way of general description it may be said that the mayor-commissioner, mayor-president, or whatever title he may be given, is the principal member of the small group of from three to seven commissioners to whom, under the commission plan, is entrusted the determination of public policy and the administration of public affairs in a city. He is usually the head of a department over which he exercises immediate supervision. As a rule, also, he enjoys a general supervisory authority over the other departments, headed by his fellow commissioners. He is the ceremonial head of the corporation in matters of a social or legal nature. In municipal legislation he is an active participant, being the presiding officer of the commission, having a vote upon all matters, and enjoying certain other powers of varying degrees of importance. Apart from the commission plan of government viewed as a whole the office of mayor-commissioner has received little or no study, yet both because it is differentiated from the rest of the commission and because of its inherent possibilities it is worthy of attention and study.

#### I. CONSTITUTION OF THE MAYOR-COMMISSIONERSHIP

The title of mayor is generally employed to distinguish the chief member of the commission from the other members who are known as commissioners or councilors. The early Galveston charter retained the title and combined it with that of the presi-

<sup>3</sup> Report, published at Victoria, B. C., 1913, p. 16.

dent of the board of commissioners, and the recent Buffalo charter provides that one of the five members of the council shall be styled the mayor. There have been a number of cases, however, in which the title has been dropped. In some Ohio cities, in Marshall, Texas, and in the North Dakota statute of 1907 the title of chairman or president is substituted for that of mayor. The title is occasionally applied to one holding an office who is comparatively distinct from the commission proper, as in St. Paul, Minnesota.

### *Qualifications*

The qualifications which obtain for the office of mayor under the commission plan are usually the same as those laid down for members of the commission.<sup>4</sup> A number of charters require candidates to be citizens either of the state or of the United States or of both. In some of the cities of Alabama the charter specifies citizenship in the city. The requirement of residence is quite general but the length of it varies greatly. In Chattanooga, Tennessee, it is one year; in New Jersey and in some cities of Oklahoma, two years; in Portland, Oregon, three years; in Oakland, California, four years, and in Houston, Texas, five years. In a majority of cases the mayor must have been a qualified elector. While Denver was under commission government the mayor had to qualify as a tax payer. In Chattanooga he must be a freeholder at the time of his election and in Kentucky and Nebraska it is merely provided that he shall be of "good character." The age qualification ranges from twenty-one years, a figure that is usually determined by the provision that the candidate shall be an elector, to twenty-five years in Oklahoma City and some of the cities of Alabama, and to thirty years in Chattanooga. In the latter city the age requirement for the mayoralty is five years higher than that fixed for the office of commissioner.

In addition to the legal qualifications which are imposed upon candidates for the office of mayor-commissioner there are certain conditions which operate to disqualify individuals from holding the office and which in effect tend to become qualifications that

<sup>4</sup> In a number of important cases no qualifications are mentioned in the city charter. Cf. charters of Buffalo, New Orleans, and Pasadena, Calif. Inasmuch as considerations of availability are really of much greater importance than are the legal qualifications, this would seem to be a step in the right direction.



those who seek the office must satisfy. Frequently the incumbent must be able to devote his whole time to the work of the office. He is often forbidden to hold any other public position.<sup>5</sup> In many cases he may not be interested in contracts or franchises, nor be an employee of any holder of a contract or franchise. A few charters provide that he may not be indebted to the state, city, or county for taxes, nor have been convicted of malfeasance in office, bribery, or other corrupt practice. In Dallas, Texas, he is excluded from being a member of any political party or serving on any party committee.

### *How Chosen*

The process of choosing the mayor under the commission plan presents many variations. Three methods of nomination are in vogue, the convention method, the direct primary, and nomination by petition.<sup>6</sup> Of these the direct primary enjoys the most favor, the petition method being a poor second and the convention method being rarely employed. Under the direct primary method petitions in the form of statements of candidacies are sometimes employed, and, in the absence of any system of preferential voting, the primary election becomes a qualifying election to determine which candidates shall be nominated to the office. This procedure is both costly and cumbersome. Owing to the *embarras des richesses* in the number of candidates who "are willing to govern . . . at from \$3,000 to \$6,000 a year" some means for weeding out candidacies appears to be imperative.<sup>7</sup> The primary election serves this purpose in a crude way, *e.g.*, "the two candidates receiving the highest number of votes for mayor shall be the candidates and the only candidates whose

<sup>5</sup> Exceptions are usually made to permit him to be a notary public and to hold a place in the militia.

<sup>6</sup> For the convention method see the charter of Huntington, Va. The Illinois general law relating to the commission form incorporates the direct primary method. See also the general acts of Nebraska and Pennsylvania and the charters of Buffalo, N. Y., Chattanooga, Tenn., Wilmington, Del., and others. The charter of Portland, Ore., and the late charter of Denver, Colo., provide for nomination by petition. The charter of Dallas, Tex., permits nominations by "written requests," petitions, primaries, the provisions governing these methods being found in Art. 3, Secs. 2-5.

<sup>7</sup> In the first election of Spokane ninety-two candidates appeared for the office of commissioner, there being five places to be filled.

names shall be placed upon the ballot for mayor'' at the regular election. In Dallas any candidate for the office of mayor who receives a majority of votes at the first election is declared elected, but failing a majority on the part of any one of the candidates a second election is held. Nomination by petition together with a system of preferential voting as worked out in a few cities appears to be preferable.

The election of the mayor is brot about in one of three different ways. In some cities he is a candidate for the office of mayor and is elected to this office by popular vote.<sup>8</sup> In others any candidate for the office of commissioner who receives the highest number of votes cast for commissioners thereby becomes the head of the commission and receives the title of mayor.<sup>9</sup> In still other instances the voters elect commissioners only and the latter elect one of their number to act as mayor.<sup>10</sup> It will be readily perceived that the position of the mayor is much stronger when he is chosen by the first method, while under the third his responsibility to the commission and dependence upon it appears fairly complete. Of course, the full significance of election by the commission as contrasted with election by the voters can be developed only as it obtains over a longer period of time than has elapsed since its introduction. It is significant that two cities which approved of election by the commission have returned to popular election, Denver by the abolition of commission government and Wilmington, North Carolina, by charter amendment.

The proportion of votes necessary to elect under popular election ranges from a plurality, or a "preponderance," in Galveston, New Orleans, and in some other cities, to a clear majority, the rule in most places. The majority result is possible usually because of the action of the direct primary election in eliminating

<sup>8</sup> Cf. the charter of Dallas, Tex., Art. 3, Sec. 2: "Candidates for mayor and for places on said board of commissioners shall be voted for separately." Also the charter of Oakland, Art. 5, Sec. 14, and Art. 4; the charter of Portland, Secs. 18a, 18b, 22, and 35. The charters of Buffalo, New Orleans, and many other cities and the general laws of Illinois, Iowa, Alabama, Pennsylvania, and some other states provide for popular election.

<sup>9</sup> See the general act of W. Va., Art. 5, Sec. 20. Also the charter of Wilmington, N. C., amended in 1913 to provide for popular election.

<sup>10</sup> This practice was introduced in New Jersey in 1911. Laws, Chap. CCCLXVI, Sec. 3. Cf. also charters of Spokane, Art. 3, Sec. 9, and Pensacola, Sec. 9.



all but two candidates for the office. In a number of cities, Grand Junction, Colorado, being an example, the majority result is secured by the adoption of a form of preferential voting. Of the three methods of making the count, the plurality system has the least to recommend it, while the preferential system contains sufficient promise to gain for it increasing recognition and adoption among cities operating under this form.<sup>11</sup>

### *Removal from Office*

The determination of municipal electorates to find effective means by which they may get rid of undesirable public servants is abundantly manifest by the provisions to be found in commission government charters. Of these provisions the most common is the recall. It is present in the general acts of many of the states and in numerous special charters.<sup>12</sup> It is applicable to the mayor as well as to the other commissioners. The next most important method of removal is by a vote of the commission, a process which usually obtains where the commission elects the mayor and sometimes in other cases also.<sup>13</sup> Mayors may also be removed by judicial proceedings as well as by the recall or other process. In Huntington, West Virginia, there is created a Citizen's Board, popularly chosen, and competent to remove municipal officials for certain causes specified in the state constitution. In New York the governor may remove the mayor as in the case of cities operating under the mayor and council plan. Impeachment as well as the recall are available in Houston and Corpus Christi, Texas. In Louisiana the constitution provides for removal by

<sup>11</sup> The preferential system has been adopted since 1909 in more than a score of the cities under commission government. For list of them, see *Equity*, Vol. XVII, p. 51 (January, 1916). For explanation of the preferential system see article on "Preferential Voting," by Robert Tyson in Beard's *Digest of Short Ballot Charters*, p. 21501.

<sup>12</sup> Bradford, *Commission Government in American Cities*, p. 276. To the list given by Mr. Bradford should be added the states of Georgia, Florida, Missouri, Nebraska, Wisconsin, and perhaps some others. The recall is usually found in special charters.

<sup>13</sup> In Battle Creek, Mich., by a vote of four-fifths of the commission; in Bluefield, W. Va., by a vote of two-thirds of the commission. In Kentucky the vote must be unanimous on the part of the other members. Cf. Act of 1910. In Denver the mayor was not only chosen by the commission but was "removable at will" by it under the charter discarded in 1916.

the district court upon suit instituted at the written request of twenty-five resident tax payers.

### *Term of Office*

The term of office of the mayor-commissioner is usually the same as that of his fellow commissioners and varies from one to six years. In some cases, however, the mayor serves for a shorter term. Thus in Pensacola, Florida, the mayor is elected by the commission and serves for but one year, a situation which is doubtless related to the fact that one of the three commissioners is elected each year, making the body a continuing one. The shorter term for the mayor is also found in certain cities in Oklahoma and California. In the Kentucky general act, on the other hand, the term of the mayor is four years, that of the commissioners but two. Practice is far from uniform as to the time at which the mayor shall be chosen, even in those cities and states in which the length of the mayor's term is the same as that of the commissioners. In many cases the mayor and the other commissioners are all elected at the same time; in others the mayor and part of the commission are chosen at one election, the remaining commissioners at another.<sup>14</sup> As a rule, however, this variation does not appear to affect the length of the term for which the mayor is elected.

### *The Filling of Vacancies*

In the filling of vacancies in the mayoralty the commission plan is far from achieving uniformity of method in the cities which have adopted it. Four principal methods are employed; of these two are much more important than are the others. The first in importance is that of the temporary appointment or election by the commission "of an eligible person" to fill the vacancy until the next general municipal election, at which time "the vacancy shall be filled by election for the unexpired term." This method obtains in Buffalo, Portland (Oregon), Oakland and Pasadena (California), Chattanooga (Tennessee), Spokane, Oklahoma City, Pensacola (Florida), the third class cities of Utah,

<sup>14</sup> For further discussion of the length of the term and the practice of alternating elections, see Bradford, pp. 157-160. The author points out (p. 160) that the average term of the mayor is somewhat shorter than the average term of the commissioners, a fact which may indicate some recognition of his greater authority and the need for proportionately greater control.



and many other places. Of like importance are the provisions found in the general laws of Illinois, New Jersey, Nebraska, and in the charters of St. Paul, Birmingham, Wilmington (North Carolina), and other cities granting to the commission the power to fill such a vacancy "during the balance of the unexpired term." In both of these methods the task which the council performs is important, but in the second method the failure to resort to popular election is worth noting, especially as this feature has been made the object of attack by those who have opposed the adoption of the commission plan in cities proposing to come under it. Of the other two methods in vogue that of calling a special election to fill the vacancy appears to be the most important. It is found in the charters of Lowell and Lynn (Massachusetts), Houston (Texas), the general act for second class cities in Kentucky, and some other cases.<sup>15</sup> The last important method of filling vacancies is that provided for in cities between twenty-five and fifty thousand inhabitants in Alabama, in which the governor of the state makes the appointment for the remainder of the unexpired term.<sup>16</sup>

Vacancies are defined in terms very similar to those employed under the mayor system. Death, resignation, removal, absence from the city for a specified period, usually six months, incompetency, judicially declared, failure to qualify, continued disability, or conviction for felony constitute the causes which are declared to effect a vacancy.<sup>17</sup> In the case of Portland, Oregon, and a few other cities the voluntary acquisition of an interest in public service enterprises or public contracts operates to vacate the office "at once."<sup>18</sup>

<sup>15</sup> Lowell, Charter, Sec. 56. If the vacancy occurs within four months prior to the annual city election the council is authorized to fill the vacancy. The same is true in Lynn. See Charter, Sec. 60; but no such exceptions are made in the other cases cited. *Cf.* Kentucky, Act of 1910 as amended in 1912, Sec. 22; and Houston, Charter, Art. 9, Sec. 17a, an amendment of 1913.

<sup>16</sup> See Act of 1911 as adopted by Montgomery, Sec. 14. The fact that the act was intended to apply primarily to the capital of the state may be significant in this case. In Pensacola the governor appoints temporarily under certain circumstances.

<sup>17</sup> *Cf.* the charter of Spokane, Art. 2, Sec. 8; also the general act for cities of the second class in Kentucky, Sec. 22.

<sup>18</sup> Charter, Sec. 18f. "If he shall become so interested otherwise than

As under the mayor system, the commission plan knows an "acting mayor" or "mayor pro tem," who is usually selected by the commission or council from among its own number, tho in cities in which there is a president of the council in addition to the mayor, the president becomes the acting mayor.<sup>19</sup> The acting mayor enjoys the powers of the mayor and performs his duties during the temporary absence or disability of the mayor, subject to the restriction that in matters admitting of delay he shall await the return of the mayor.<sup>20</sup> In Houston, Texas, the mayor pro tem acts during the interim between the occurrence of a vacancy and the holding of the special election and enjoys "all the rights and powers of the Mayor, and performs all of his duties." In some cases, as in Buffalo, the office of acting mayor is not provided for, the council merely being authorized to choose another presiding officer temporarily but nothing more.

### *Salaries*

The mayor-commissioner is usually paid a larger salary than his fellow commissioners. There is no agreement in the practice of the various states and cities in this regard, however, and the difference in the amounts paid to the mayor and to a commissioner ranges from little or nothing at all to several times the salary of the commissioner.<sup>21</sup> Both of these extremes are excep-

tionably he shall within ninety days divest himself of such interest, and failing to do so his office shall become vacant upon the expiration of the said period of ninety days." This provision supplements that part of the section cited above.

<sup>19</sup> As in the city of Portland, Ore. See Charter, Sec. 19. Cf. also Lynn, Mass., Charter, Sec. 60. The method of selecting the mayor pro tem shows some variations. In Houston, the mayor nominates him from among the aldermen at the first regular meeting of the council. He receives no additional salary. See Charter, Art. 4, Sec. 2. In other cases the president of the council is elected by the council, or, as in the case of Illinois the commissioner of accounts and finance is by state law made vice president of the council and becomes acting mayor. See Act of 1910, Sec. 32.

<sup>20</sup> Cf. Houston, Charter, Art. 6, Sec. 3; also Lynn, Sec. 61. The restrictions in Houston have to do more particularly with the exercise of the appointive power. In Kentucky cities the acting mayor appears to be without limitations except those operating in case of the mayor also. Some charters omit the "rights and powers" but impose the "duties" upon the temporary incumbent.

<sup>21</sup> Waco, Tex., pays its commissioners one thousand dollars and its mayor



tions to the usual custom which gives the mayor anywhere from one-seventh to four-fifths more than the commissioners receive.<sup>22</sup> There are a few cities, however, which make no distinction between the mayor and the other members of the commission in this particular. With but few exceptions the mayor-commissioner is better paid than was the mayor under the old form of government. The salaries to be paid are, as a rule, specified by the charter or by the law of the state, but in Wilmington, North Carolina, the council is permitted to exercise its discretion within a prescribed maximum of three thousand and minimum of eighteen hundred, the mayor having no vote on this question.

### *Miscellaneous Features*

There are comparatively few miscellaneous features found in connection with the constitution of the mayor-commissionership, and none of them may be called characteristic of the office as differentiated from the other places on the commission. The prescription of the oath of office, the process of induction into the position, etc., are similar to like features described under the mayor system. The incumbent must give bonds, the amount of which is often quite large. Provision is sometimes made for secretarial and other assistance. In none of these respects, however, has the mayoralty under the commission system developed any marked departures from that which obtains under the mayor plan.

A comparative survey of the chief magistracy as it is constituted in the mayor and commission plans respectively shows many interesting and a few important lines of differentiation in the commission plan. In the first place there is some tendency to substitute a new title for that of mayor, a development that does not appear to be making great headway. The efforts put forth to free the mayor from professional political affiliations twenty-four hundred dollars. Marshall, Tex., is even more abnormal, paying its mayor eighteen hundred dollars and the commissioners three hundred.

<sup>22</sup> Buffalo pays the mayor eight thousand, the commissioners seven thousand; Portland pays the mayor six thousand, the commissioners five thousand; St. Paul pays the mayor five thousand, the commissioners four thousand five hundred; New Orleans pays the mayor ten thousand, the commission councilmen six thousand.

have been of little value. The retention of popular election as the method of choosing him appears to be permanent. Preferential voting has increased the political effectiveness of the elector with respect to this office. The desirability of longer terms seems to have gained some recognition under the commission system. The filling of vacancies thru election by the commission is an innovation that has worked no ill, but it is debatable in principle and of doubtful value. The requirement of full time service and regular office hours together with a disposition to increase salaries constitutes a step in the direction of efficient and professional service.<sup>23</sup> The essential differences between the mayor-commissionership and the mayoralty are not indicated, however, by their respective constitutions, but rather in their relations to municipal administration and legislation.

## II. THE MAYOR-COMMISSIONER AND ADMINISTRATION

The relation of the mayor-commissioner to municipal administration is determined, in general, by two well defined conceptions of his position and authority. According to the first view the office occupies a place very similar to that found in connection with the federal plan. It is the chief executive office of the corporation. Its incumbent should have authority of a greater or less degree over all the administrative services of the city. The second view recognizes the mayor-commissioner as merely the first among equals, the commission itself being responsible for the administration. No special powers attach to the mayoralty, and its incumbent enjoys only the added dignity which his function as presiding officer may bestow, together with that which may be involved in the performance of his social and ceremonial duties as titular head of the city government. In both of these conceptions and the practices in which they are embodied the position of the mayor as one of the commissioners, and as such the head of a department, is much the same.

### *The Strong Mayor Type*

The charters of many cities and the statutes of some states have embodied the conception of the mayor-commissioner as the head of the administration.<sup>24</sup> This embodiment is, however, by

<sup>23</sup> For an example of a provision relating to office hours, etc., see Oklahoma City, Charter, Art. 2, Sec. 13.

<sup>24</sup> Cf. the charters of Buffalo, Portland, Ore., New Orleans, St. Paul,



no means uniform either in expression or in purpose. The provisions which bestow special authority upon the mayor may carry with them little more than powers of general supervision. Thus in the city of Buffalo the mayor is required "to acquaint himself with the conduct of each of the other city departments" and is authorized to recommend changes or innovations that will promote their efficiency and economical operation.<sup>25</sup> In the commission government act of Kentucky the mayor is authorized to exercise "a general advisory supervision over the affairs of all the departments." The Nebraska act imposes a similar duty upon the mayor in the following terms: "the Mayor shall, in a general way, constantly investigate all public affairs concerning the city's interest and investigate and ascertain, in a general way, the efficiency and manner in which all departments of the city government are being conducted." He is also empowered to make recommendations with respect to matters of administration.

There are many cities, however, which go much further than the group just described and which give to the mayor-commissioner power and opportunity for the active direction of administration. The power of appointment subject to the confirmation of the council, is vested in the mayor of Houston, Texas. In Portland, Oregon, in St. Paul and a number of other cities the mayor assigns the commissioners to their respective departments and in some cases he may reassign them "at his discretion."<sup>26</sup> The mayor of Dallas, Texas, "nominates" all appointive officers of the city except the auditor, the confirmation of the council being required and the mayor being denied a vote in this matter.<sup>27</sup> The removal power is found in Houston and St. Paul,<sup>28</sup>

Houston, Dallas, Oakland, and Wilmington, and the statutes of Nebraska, Kentucky, Pennsylvania, New York, and Massachusetts.

<sup>25</sup> Charter, Sec. 42.

<sup>26</sup> Portland, Charter, Sec. 20a. The order making the assignment has the force of an ordinance and is preserved and filed as such. Cf. also Sec. 20a. For St. Paul, see Charter, Sec. 57, 58. It will be observed that the mayor of St. Paul has but one such opportunity, viz., the first Monday in December following his entrance upon the duties of his office, while the mayor of Portland may make reassignments "whenever it appears that the public service will be benefited thereby."

<sup>27</sup> Charter, Art. 3, Sec. 6.

<sup>28</sup> Houston, Charter, Art. 5, Sec. 2. The council also possesses the power

and the power of suspension pending an investigation in Portland and in Wilmington, North Carolina. The power to conduct investigations into official conduct carries with it the right and authority to compel attendance and testimony, administer oaths, and examine witnesses.

A number of other cities which do not vest the powers of appointment in the mayor assure his active participation in the conduct of the administration by other means. Thus in New Orleans the mayor is *ex officio* a member of each board, commission, or body created or authorized either by the charter or by any subsequent ordinance. In addition he is charged with the general oversight of the administration, and with the enforcement of the state laws and municipal charter and ordinances. In Dallas it is made his special duty to see that the provisions of franchises and contracts are complied with, and in Oakland he is particularly charged with the supervision of public utilities, contracts, and the enforcement of law. In Wilmington, North Carolina, the mayor is *ex officio* chairman of all departments of the city.

### *The "Strong" Mayor vs. the Ordinary Mayor*

The foregoing indicates what is meant by the strong mayoralty under the commission plan. Except in a few cases, among which Houston is the most prominent, the "strong mayor" exercises very much less authority than does a mayor under the federal plan. On the other hand, the tendency to retain the mayoralty with many of its powers unimpaired is most evident in the

to remove. It will be observed that the mayor's power extends to "all officers or employees" in the city service. The provision "for cause" is so broad as to leave the action in the discretion of the mayor. He may, however, be required to file a statement of the reasons in the public archives of the municipality. For St. Paul provisions see Charter, Secs. 59 and 60 of Art. 5. It will be observed that he may start proceedings for the removal of any councilman either as councilman or as the head of an administrative department. The mayor's action in the case of non-elective officials and employees must be preceded by notification of the officer or body having the power to appoint and requesting removal. If the request is not complied with the mayor may then "in his discretion" make the removal, but must, on demand, file a bill of particulars with the city clerk. The mayor of St. Paul is also restrained from removing the appointees of the controller, an official who, in practice, has proven to be of much more consequence than any other elective officer.



larger cities that have adopted the commission plan. While it is undoubtedly true that in the great majority of commission governed cities the mayoralty has been "merged in the board," the mayor apparently being little more than presiding officer, yet it is pertinent to note that in those centers of population where the plan is likely to be put to the greatest strain, the office maintains something of its individuality. The "tendency to one man government" noted by the Royal Commission of British Columbia in its investigation of commission government in the United States can under ordinary circumstances have but one direction, viz., toward the development in the commission plan of a powerful mayoralty. Such a development may not obtain legal recognition until some time after it has actually assumed importance in the affairs of government. Such an evolution would gratify many critics and opponents of the commission plan who have contended that the absence of a central dominating mind empowered to coördinate and control administration constitutes a serious defect in the plan.<sup>29</sup>

#### *As Commissioner*

The mayor-commissioner is generally the head of a department, tho this function was not imposed upon him in the original commission plan as developed in Galveston, and has not been a feature of the office in some other cities.<sup>30</sup> The department of which he is the head is usually specified in the charter, but there are frequent exceptions to this rule.<sup>31</sup> The most favored departmental assignment for the mayor is that of public affairs. On the other hand, in some commission cities the departments of public safety, of finance and public affairs of administration, of accounts and finances, of public affairs and public education, and of water and waterworks, are respectively designated as the posts

<sup>29</sup> For brief reviews of the mayoralty under the commission plan, see Woodruff, C. R., *City Government by Commission*, pp. 121, 123; Bruère, Henry, *The New City Government*, pp. 63-68, and Bradford, *Commission Government in American Cities*, pp. 204-207. Mr. Bruère's work contains an enumeration of the mayor's powers in selected cities.

<sup>30</sup> For example Houston and St. Paul and Haverhill, Mass.

<sup>31</sup> In Portland, Ore., the mayor appears to be free to select the department of which he becomes the head. The same is true in Huntington, W. Va. In many cities the council or commission may designate the department to which each member shall devote his attention.

to be filled by the mayors.<sup>32</sup> With very few exceptions the mayor, as commissioner, enjoys all the rights and privileges accorded to the other members of the commission. He shares in the general executive and administrative authority vested in the commission as a whole, and frequently exercises great influence in its conduct of the affairs of the city. As commissioner he is responsible for the conduct of his department, and often enjoys considerable power of appointment and removal within the department.

In addition to the foregoing description of the position of the mayor-commissioner in administration, it should be noted that he often enjoys considerable reserve and emergency powers conferred under the general laws of the state, a factor that contributes something to his standing and dignity.<sup>33</sup> He may also be charged with certain ministerial duties similar to those imposed upon the mayor under the federal plan.<sup>34</sup> In a few cases he retains judicial powers of some consequence.<sup>35</sup>

### III. THE MAYOR-COMMISSIONER AND LEGISLATION

In accordance with the principle of commission government which seeks to concentrate the administrative, legislative, and other authority of the municipality in the hands of the commission and then distribute a share of each of these branches of power among the various commissioners, the mayor-commissioner exercises important powers in legislation. These may be divided into the powers which he enjoys by virtue of his position as mayor and those which are his by reason of his membership on the commission.

As mayor, president, or chairman of the board or commission,

<sup>32</sup> Cf. the charters of Salem, Mass., Lawrence, Mass., the Massachusetts statute of 1915, Plan "C," the charters of Gardner, Me., Cartersville, Ga., the Louisiana statute of 1910, the charters of Colorado Springs and a number of other cities for examples of different commissionerships that may be filled by the mayor. The commission government acts of Illinois, Arkansas, and Pennsylvania and the charters of many cities will give the provisions specifying the department of public affairs.

<sup>33</sup> See, for example, Oklahoma City, Charter, Art. 2, Sec. 4.

<sup>34</sup> The first part of section 4 in the charter of New Orleans enumerates some of these duties, such as the custody of the seal of the city, the signing of all contracts, bonds, and other instruments, etc.

<sup>35</sup> Cf. the Code of Criminal Procedure of 1911, State of Texas, for the provisions relating to the issuing of warrants, the keeping of dockets, etc., by the mayors of cities in that state.



the chief executive may call special meetings,<sup>36</sup> presides over all sessions at which he is present,<sup>37</sup> and is entitled to submit proposals, recommendations,<sup>38</sup> and in some cases to prepare and lay before the council the annual budget.<sup>39</sup> In a number of cities he retains the veto, either in its suspensive or its qualified form,<sup>40</sup> and in one case he has the selective veto with respect to items in appropriation measures.<sup>41</sup> His signature is often required to be affixed to ordinances and other records of the council. It is apparent, however, that his powers of coercion in matters of policy determination are largely curtailed; the influence of the powers of appointment, removal, and veto being quite generally denied to him.<sup>42</sup> On the other hand, his position as commissioner in

<sup>36</sup> See, for example, the charter of Lowell, Mass., Sec. 23. This power is also entrusted in this case to the president of the council and to any two members of it. The usual provisions for notice of time and place obtain. Many charters omit any mention of this power.

<sup>37</sup> There are a few exceptions as in San Diego, Calif., but even in cities like Lowell and Portland, Ore., which has a president of the council in addition to the mayor, the latter presides "if present." Ordinarily the charters specify that the mayor shall be the presiding officer. Cf. Oklahoma City, Charter, Art. 4, S Sec. See message of mayor of Lincoln, Nebr., July 17, 1916.

<sup>38</sup> See St. Paul, Charter, Chap. V, Sec. 1; Dallas, Charter, Art. 3, Sec. 15; and the general act of New Jersey, Sec. 5, and of Illinois, Sec. 32.

<sup>39</sup> The budget is prepared and submitted by the mayor in Houston, Dallas, and some other cities in Texas; in Pennsylvania he is expected to keep the board informed as to the financial needs of the city.

<sup>40</sup> Cf. charters of High Point, N. C., St. Paul, and Chattanooga, and Houston, Greenville, Dallas, Beaumont, Denison, Corpus Christi, Marshall, all in Texas, Tulsa, Ardmore, and Salpula in Oklahoma, Colorado Springs, (selective), San Diego, Calif., and Lewiston, Idaho. In Houston and Dallas, Tex., and Tulsa, Okla., the mayor has a vote on the question of sustaining his veto, a power that is clearly due to his being a commissioner as well as a mayor.

<sup>41</sup> Colorado Springs, Charter, Art. 4, Sec. 24. The vote of four members of the council of five is necessary to override this vote. Inasmuch as the mayor is the fifth member, it means that the rest of the council must be a unit against his act.

<sup>42</sup> The special committee of the National Municipal League on City Government by Commission says in its report, Sec. 9: "It is doubtful whether the mayor should have a veto over his confrères or in fact any added powers lest he overshadow the other commissioners and attract the limelight at their expense, leaving them in obscurity where the people cannot intelligently and justly criticise them." *National Municipal Review*, Vol. I, p. 42.

some measure compensates for the powers which he has lost as mayor.

In the capacity of commissioner the mayor may participate and vote on practically all matters coming before the council. Inasmuch as the commissioners are rarely more than five in number, and in smaller cities often only three, it is apparent that his voting power is greatly augmented above that which the mayor under the federal plan, with his casting vote, enjoys. Coupled with whatever other legislative authority he may possess and with his general and administrative powers the mayor-commissioner often exercises an influence in municipal affairs that would compare favorably with that of many mayors under the federal plan. On the other hand, the relatively great powers enjoyed by the other commissioners, especially in matters of public policy, renders it less likely that the mayor will dominate except by the force of his personality and the processes of moral suasion. The pressure of political forces, so common under the mayor system, is usually greatly minimized under the commission plan, a factor which does not, however, necessarily weaken the position of the mayor-commissioner.

A few observations based upon the foregoing survey of the office of chief executive under the commission plan can be made in conclusion. Altho mayoralty has undergone great modifications in its adaptation to the commission plan, it has usually survived as an office of some importance, and in significant instances it has retained much of its former power and prestige. Generally, however, there has been little disposition to magnify it and it has seemed to merge in the executive authority vested in the commission as a whole.

In the second place it should be noted that in actual practice the mayor-commissioner is often much more powerful than the provisions of charters and statutes indicate. This is the result of an undoubted tendency to create a powerful chief executive under this scheme of organization as well as in other fields of American government. It is a tendency that may be expected to become better defined as the plan is adapted to large cities where the exigencies of government will demand the guiding hand of some one man to unify policy and coördinate administration, and also as the legal provisions which now constitute the



office become modified by amendment so as to conform with custom. One can predict the development of this tendency with some assurance. The impact of the manager plan upon the commission form has been felt most keenly at the point of executive organization and in the field of administration. It is also significant that Denver, which tried to snuff out the mayoralty under two years of pure commission government, has returned to the mayor system, and that Wilmington, North Carolina, has substituted a strong mayor-commissionership for a weak one.

Finally, the sweep of the commission plan and its remarkable and consistent record of success have been a continuing challenge to the old mayoralty. The result has been the revival of the latter into new life and vigor, a condition which cannot fail to react upon the commission form. Such reaction will manifest itself, in part, in the strengthening of the mayor-commissioner.

## CHAPTER IX

### THE CITY MANAGER

Nothing is more significant of the trend in municipal government than the country-wide interest which is manifested in the development of the city manager plan. The readiness with which it has been adopted in scores of cities, its recognition in the general municipal statutes of a number of the states, and its advocacy by the National Municipal League in the model charter recommended by that organization in 1915 combine to promise for it increasing consideration and acceptance by municipal charter commissions and electorates. The feature of the plan with which this work is concerned is the introduction of an expert chief executive called the city manager who is responsible to a powerful representative legislative body, the council or commission. The mayoralty barely continues a perfunctory existence. Its incumbent is reduced to the position of a figurehead in administration, tho as councilman or commissioner he may be active and influential in the determination of public policy. The city manager becomes the chief executive.<sup>1</sup>

#### *The Mayoralty*

The condition of the mayoralty under the manager plan constitutes a fitting introduction to a consideration of the place and functions of its successor. As in the commission plan the mayor

<sup>1</sup> There are exceptions as in the case of Phoenix, Ariz., in the charter of which the mayor is made the "chief executive of the city" with authority that gives considerable substance to the title. See Charter, Chap. V. In the charter proposed for Douglas, Ariz., the disposition to retain a powerful mayoralty was quite apparent. The mayor was not only to enjoy the usual authority given him under the manager plan but was charged with "the general oversight of all departments, boards and commissions of the city" and was the sole party thru whom the regulations, directions, and orders of the municipal commission were to be transmitted to the city superintendent (manager) and to such other city employees as might be necessary. It



is a member of the legislative body. He is first a councilor or commissioner, then a mayor with whatever limited prerogatives the latter office may carry with it. The qualifications for the place are the same as those that obtain for councilor.<sup>2</sup> The methods by which the incumbent may be chosen are three in number: first, by direct popular vote; second, by receiving the highest number of votes cast for any member of the commission; and third, by election at the hands of the commission.<sup>3</sup> In Springfield, Ohio, the failure of the commission to choose a president (mayor) brings into operation a fourth method, viz., the lot.<sup>4</sup> The mayor may be removed by the recall, by judicial or statutory process, and in New York and Ohio by the governor of the state.<sup>5</sup> In some charters the mayor is given a term shorter than that which he enjoys as a member of the commission, a practice which is necessitated by the election of part of the commission every second year, thus making it a continuing body.<sup>6</sup>

should be noted that the title of mayor sometimes gives way to that of president or chairman as in the commission form. *Cf.* charters of Springfield, Ohio, and La Grande, Ore.

<sup>2</sup> *Cf.* the provisions of the charters of Dayton (Sec. 6), Springfield (Sec. 3), and St. Augustine, Fla. (Sec. 11).

<sup>3</sup> Direct popular vote on the mayoralty obtains in Hickory, N. C.; Phoenix, Ariz.; Jackson, Cadillac, and Manistee, Mich., and in Amarillo and Sherman, Tex. It also obtains in a number of other cities and is provided for in the general laws of New York state. The candidate for commissioner who receives the highest number of popular votes becomes mayor in Dayton, and in cities adopting the manager form as provided for in the general charter act of Massachusetts. This method was also a feature of the original Lockport proposals. Election of the mayor by the commission is the most common method and tends to place the mayoralty in the same relative position with respect to legislation that it usually occupies under the commission plan. *Cf.* the charters of Springfield and Sandusky, Ohio; Sherman, Tex.; Collinsville, Okla.; Montrose, Colo., and San Jose and Bakersfield, Calif., and the general acts of Iowa and Virginia.

<sup>4</sup> Springfield, Charter, Sec. 6. The lot is to be conducted by the city solicitor.

<sup>5</sup> The recall is not provided for in Massachusetts and New York and in a number of cities with special charters but it is the most widely used of the methods noted.

<sup>6</sup> See the charters of Springfield and Sandusky, Ohio, and Jackson, Mich. In these cases the mayor is chosen for two years, while his term for commissioner is four years. A new mayor is possible following each election of commissioners.

Otherwise his term as commissioner and mayor is usually the same. The salary of the mayor generally is no more than that of any other commissioner, but in some cities he receives a somewhat larger remuneration. In the original Lockport plan it was proposed that he should be paid double the amount paid to other members of the council; in Dayton, Ohio, the mayor is paid eighteen hundred dollars and the commissioners twelve hundred dollars per year.<sup>7</sup> In no case is the remuneration large enough to make the office specially attractive from the standpoint of salary alone. Vacancies in the mayoralty are in almost all cases filled by the council. In some cases it elects the mayor pro tempore at the same time that it chooses the mayor, in others at the time when the vacancy occurs.

The powers of the mayor under the manager form of government are exceedingly limited. He is the presiding officer of the commission or council,<sup>8</sup> and enjoys a voice and a vote in its deliberations.<sup>9</sup> With but one exception he has been denied the veto power.<sup>10</sup> The duty of furnishing the council with information thru messages and reports, and the privilege of submitting executive proposals and recommendations appear to have fallen into abeyance or to have been transferred to the city manager.<sup>11</sup> In a number of proposed charters his power to appoint the committees

<sup>7</sup> The amount to be paid is usually specified as a fixed sum (\$2, \$5, or \$10) per meeting or per month. In some cases the monthly rate is twenty-five or fifty dollars. In Cadillac and Manistee, Mich., no salary is provided. In Jackson the mayor receives seven hundred and fifty dollars, in Ashtabula, Ohio, one hundred and fifty.

<sup>8</sup> The terms "council" and "commission" are employed synonymously in treating of the legislative organ under the manager form. Both terms are found in the charters that are classified in this group. The model charter of the National Municipal League uses the term "council." This term is to be preferred, tho a majority of the cities that have adopted the manager system probably use the other title.

<sup>9</sup> In the charters proposed for Lockport, N. Y., and for Youngstown, Ohio, the mayor was given two votes if necessary to break a tie in the commission, a situation that might arise during the absence of a member or when one of the commissionerships was vacant. Cf. Youngstown, Proposed Charter, Sec. 44.

<sup>10</sup> In Elizabeth City, N. C., the charter enables the mayor to veto ordinances, contracts, and franchises.

<sup>11</sup> An exception is found in the city of Phoenix, Ariz.



of the council has been affirmed and the practice is established in Manistee, Michigan.<sup>12</sup>

The administrative authority and duties of the mayor (or president) under the manager form are usually of minor importance. He is the official head of the municipality for ceremonial purposes and is the officer to be recognized by the courts for the service of civil process and by the governor for military purposes.<sup>13</sup> A charter provision that occurs frequently requires him to perform such duties as may be prescribed by law and ordinance, while other charters give him such powers and duties as are prescribed in the charters "and no others."<sup>14</sup> In Springfield, Ohio, and a few other cities the charter expressly declares that the use of the title of mayor shall not confer upon the holder "the administrative or judicial functions of a mayor under the general laws of the state."<sup>15</sup>

On the other hand the mayor is sometimes invested with emergency power of no small moment. Thus in Dayton, Springfield, and Manistee, and under the general law of New York, the mayor in times of public danger or emergency may assume control of the police and govern the city by proclamation, and in some cases is made the judge of when such conditions exist.<sup>16</sup> In the model charter of the National Municipal League it is proposed that emergency power of this character be given to the mayor subject to the restriction that it be exercised "with the consent of the council."<sup>17</sup> In addition to this occasional emergency authority the mayor sometimes has other duties of importance.

<sup>12</sup> See the charters proposed for Youngstown, Ohio, and for Douglas, Ariz. Also that of Manistee, Art. 4, Sec. 14.

<sup>13</sup> Cf. the charters of Hickory, N. C.; Dayton, Ohio; Wheeling, W. Va.; Manistee, Mich.; Amarillo, Tex., and Phoenix, Ariz. Provisions to these ends appeared in the original Lockport proposals.

<sup>14</sup> For example, Dayton and Springfield use the first method of determining the mayor's range of power and action, while Hickory and Manistee limit the mayor to the sphere outlined in the charter itself. There is doubtless a fear that the former mayoralty may reappear under the new form of government.

<sup>15</sup> See Springfield, Ohio, Charter, Sec. 6. In the case of Cadillac, Mich., no definition of the place and functions of the mayor is incorporated in the charter.

<sup>16</sup> For example, see charter of Springfield, Sec. 6. The New York provisions are incorporated in what is known as "plan C."

<sup>17</sup> "A Model Charter," etc., Sec. 6.

In Sherman, Texas, he is charged with the task of making an audit of the city accounts annually;<sup>18</sup> in Jackson, Michigan, he is clothed with the power of a sheriff;<sup>19</sup> in Phoenix, Arizona, he is authorized to enforce the law;<sup>20</sup> and in Hickory, North Carolina, he may administer oaths.<sup>21</sup> On the whole, however, the magisterial powers which were retained in the Lockport proposals have not found favor with the framers of city manager charters.<sup>22</sup> The judicial powers of the mayor are either expressly abolished as in Springfield or are ignored by the charter makers.<sup>23</sup> In Douglas, Arizona, it was proposed to retain in the mayoralty the power to remit fines, costs, forfeitures, and penalties imposed for violation of municipal ordinances, but this charter was not adopted.<sup>24</sup> In some cases the mayor retains certain ministerial functions such as the signing of ordinances, resolutions, and legal documents and in New York state he is charged with the custody of the seal of the city over which he presides.<sup>25</sup>

It is apparent from the foregoing description that the mayoralty has little opportunity for renewed development under the city manager plan. Indeed, there is no prospect that such development will occur. The office is reduced to a position lower than that which obtained under the council regime of the early nineteenth century and certainly much less prominent than that attained in the Baltimore charter of 1796. However influential the mayor may become in legislation due to personal strength and force of character, the compactness of the council, the latter's collective responsibility for the conduct of municipal affairs, and the appearance of the expert executive as the dominating factor in political execution, all seem to preclude any marked or permanent expansion of mayoral authority and influence. It is to the office of city manager that one must turn in order to describe the chief executive position in cities under this form of government.

<sup>18</sup> See Beard, C. A., *Digest of Short Ballot Charters*, p. 36031.

<sup>19</sup> *Ibid.*, p. 35015.

<sup>20</sup> Charter, Chap. V, Sec. 1.

<sup>21</sup> Charter, Art. 5, Sec. 2.

<sup>22</sup> See Lockport proposals, Art. 6, Sec. 46.

<sup>23</sup> Charter, Sec. 6.

<sup>24</sup> Proposed Charter, Art. 6, Sec. 2, Par. (a).

<sup>25</sup> Cf. Beard, *Digest of Short Ballot Charters*, p. 32001.



### *The City Managership*

The genesis of the city managership in this country is a matter of comparatively recent history. The idea of a municipal executive chosen by a representative council on the basis of his fitness and ability to administer the affairs of the corporation long appealed to Americans who had observed and studied the workings of municipal government abroad, especially in Germany. The idea has, indeed, found expression on numerous occasions and frequently in such opportune places as before charter commissions.<sup>26</sup> It is not altogether unexpected, therefore, during a period of rapid development in municipal government as evidenced by the perfecting of the mayor system and by the spread and development of the commission plan to find the conception of an expert executive finding favor in some one of the many centers of activity. Tho it failed in the effort, Lockport, New York, was the first community to seek to realize the conception now embodied in the city managership. Staunton, Virginia, succeeded in grafting the idea on to the old stem of mayor and council government. Sumter, South Carolina, grasped the opportunity offered it by the legislature of the state to adopt the city manager idea root and branch, a step which was heralded to the world on October 20, 1913, by the appearance of an advertisement for a city manager. Since that date the plan has been adopted, either in a complete or modified form, in scores of cities representing all sections of the country.<sup>27</sup>

A survey and analysis of the provisions creating the city managership discloses many interesting points with regard to the use of the title, the constitution of the office, and the powers vested in it. The contrast with the mayoralty and the mayor-commissionership is usually quite striking. The chief executive under the manager form is in most cases styled the city manager, but this

<sup>26</sup> For example, Messrs. C. E. Merriam, Walter L. Fisher, and Alderman Frank I. Bennett advocated the election of the municipal executive by the council before the Chicago charter convention of 1905. Cf. article by George C. Sikes in the *Proceedings of the Providence Conference for Good City Government* (1907), pp. 191, 192.

<sup>27</sup> There are many discussions of the city manager plan in both magazine and newspaper files. The best work on the subject up to date is found in the National Municipal League Series, *The City Manager*, by H. A. Toulmin, Jr. The volume reveals special familiarity with the operation of the plan in Dayton, Ohio.

title is varied. It is the "general manager" in Cadillac, Michigan, and La Grande, Oregon; the "business manager" in Collinsville, Oklahoma; and in Texas it has been proposed to apply the title of "mayor" to the incumbent of the office.<sup>28</sup> It now seems well assured that the title of city manager will be generally accepted, especially as it has been incorporated in the model charter recently recommended by the National Municipal League and is already employed in such a predominate number of the cities having this form of government.

The constitution of the managership is relatively simple as compared with that of the mayoralty. The qualifications for the office are determined by the legislative organ of the municipal government. The charters very often specify that residence in the city is not necessary, and in practice there seems to be little disposition to discriminate in favor of residents.<sup>29</sup> Provision is usually made for the selection of the manager without regard to his political beliefs, a policy which is also frequently evident in the parts of the charter that deal with the nomination and election of the council.<sup>30</sup> In a number of instances cities have under-

<sup>28</sup> Cadillac, Charter, Chap. XI, Sec. 1. See also the charters of La Grande and Collinsville. The Texas proposal was made by H. G. James, first in his "Model Charter for Texas Cities" and later was incorporated in his *Applied City Government*, p. 72.

<sup>29</sup> For example for this change in attitude see the following charters: Amarillo, Tex., Sec. 20; St. Augustine, Fla., Sec. 30; also see the charters of Dayton, Springfield, and Sandusky, Ohio, and the general acts of Massachusetts and Iowa. Of course there are exceptions. In Jackson, Mich., the charter reads, "The city manager . . . may or may not be a resident or elector of the city at the time of his appointment, but other things being equal, preference shall be given to a citizen of Jackson." Sec. 55. In its advertisement for a city manager in 1912, Sumter, S. C., stated that "a knowledge of local conditions and traditions will, of course, be taken into consideration," but the choice fell upon a non-resident. In the charter proposed for Youngstown, Ohio, there was a notable departure from the usual custom. Five years residence as an elector was required of the "General Director." (Sec. 65.) This charter was not adopted. In Ashtabula, Ohio, the council acted "contrary to the spirit of the charter" and undertook to select one of its own number to act as city manager, and failing in this it chose a local resident without technical or other special qualifications for the place. These exceptions are, however, in marked contrast to the usual elimination of the residence feature.

<sup>30</sup> Cf. charters of St. Augustine, Fla., Sec. 30, and of Sandusky, Ohio, Sec. 31.



taken in a broad way to fix the standards by which the manager shall be chosen. Thus the St. Augustine charter reads "He shall be chosen solely on the basis of his executive and administrative qualifications;" the Massachusetts statute authorizes his selection "for merit only;" and the Iowa general act permits the council to consider "the qualifications or fitness only" of the candidates who apply. In Jackson, Michigan, the qualifications are defined as those of "a man of good business and executive ability, and, if practicable, a civil or mechanical engineer." The first Sumter advertisement announced that the applicant should be competent to oversee public works, that an engineer of standing and ability would be preferred, and that applicants should state their previous experience in municipal work.<sup>31</sup> In practice the applicants who have had technical training, especially in the field of engineering, seem to have commanded the attention of councils and a majority of the city managers may properly be called experts.<sup>32</sup> In addition to the technical qualifications indicated, the charters of Hickory, North Carolina, and of Cadillac and Manistee, Michigan, and some other cities require the manager to furnish bonds and to take the oath of office. Still other cities provide for the disqualification of managers who are interested in the profits of contracts, supplies, or service for the city. Cadillac prohibits its manager from holding any other public office, a feature which was also incorporated in the Youngstown proposals.

The manager is always chosen by the council or commission. The latter is usually free to adopt whatever measures it sees fit to enable it to perform its duty, and the methods which are familiar in private business when an important post is to be filled are frequently employed. Applications are secured from candidates by means of advertising, by personal solicitation, and by invitation to successful managers in other cities. In Taylor, Texas, it is provided that the manager shall be chosen "from among

<sup>31</sup> See the advertisement as reproduced in *Sumter City Manager Plan of Municipal Government*, published by the Sumter Chamber of Commerce, February and April, 1913.

<sup>32</sup> An examination of over a score of city managers indicates that more than half of them have had some engineering training. It should be observed, also, that a number of universities have undertaken to give training to men who aspire to places in municipal service.

all the candidates who apply to public advertisements.”<sup>33</sup> In the case of Sumter the local chamber of commerce coöperated with the council in its first attempt to find a manager.

The removal of a manager from office may be brot about in the following ways: (1) by the action of the council; (2) by the recall; (3) by the expiration of a fixed term. Of these methods the first is everywhere possible and is the feature of the plan which makes the council fully responsible for the kind of management secured. In the majority of cases the council's power of removal is unrestricted, the charters providing for its exercise “at will” or “at pleasure.”<sup>34</sup> In Phoenix, Arizona, there is no restriction on the exercise of the power of removal, but the manager is protected against attempts to oust him by indirect means by a provision that removal may be effected only by a majority of the commissioners “voting affirmatively therefor.” There is, moreover, a disposition on the part of some charter makers to limit this power. Thus, in Tyler and in Taylor, Texas, the removal power may be exercised without restriction only during the first three months of a manager's service; at any time after that date the manager may demand the filing of written charges and the holding of a public hearing before the commission prior to the order of removal going into effect. St. Augustine gives the council six months in which to act without restriction, and the model charter of the National Municipal League fixes the same period, both providing for written charges and a public hearing after the expiration of that length of time. The council, in the meantime, may suspend the manager until after the hearing is held and its decision reached. The purpose of the hearing is merely to throw the restraint of publicity about the action of the council, and apparently the latter's ability to take whatever course of action it may determine upon is not impaired.

The recall may be used against the city manager only in Dayton, and the conditions under which it operates are the same for the executive as for the members of the commission. The peti-

<sup>33</sup> Taylor, Charter, Art. 7, Sec. 2.

<sup>34</sup> Cf. the charters of Springfield, Ohio, Sec. 15; Sandusky, Sec. 31; Dayton, Sec. 47; Amarillo, Tex., Sec. 20; Hickory, N. C., Art. 6, Sec. 3, and many others. In La Grande, Ore., the charter permits the council to remove the manager “with or without cause.” (Chap. VIII, Sec. 4.)



tion for the recall election must be signed by at least twenty-five per centum of the total number of voters registered in the municipality. Precautions to assure the genuineness of the signatures and the form of the petition are provided for in the charter, and the details regarding the filing of the petition with the clerk of the commission, the notification of the manager, and the calling and conduct of the election are specified. In the event of a manager being recalled no successor is elected, but the place is to be filled by the commission. A majority of the votes cast at the recall election determine the result. If the vote be for removal, the manager "regardless of any technical defects in the recall petition," shall be deemed removed from office. There is a provision, however, which makes it impossible to file a recall petition within six months of a manager's appointment or six months of a previous recall election.<sup>35</sup>

The application of the recall to the manager has been one of the most severely criticised features of the Dayton charter. It forces upon the manager the duty of considering his standing before the people in the performance of work which the commission has ordered. It enables the electorate to override the commission instead of making it representative of the public will. Its presence in the Dayton plan is defensible only on the ground that its incorporation was a concession necessary to assure the adoption of the plan as a whole. It is significant that it has not been made a part of any of the city manager charters adopted since that of Dayton.

The removal of the city manager by the expedient of giving him a fixed term and thus reopening frequently the question of his retention obtains only in Tyler, Texas.<sup>36</sup> With respect to any other public office one would hardly count this a method for removing an officer, and with the majority of American municipal executives the fixed term is the rule. In the case of the manager plan, the fixing of a term of office is rare, and the only reason for its presence is to enable removal of a manager without resorting to the "right to fire" him. Indeed, the city manager is in almost all cases chosen for an indefinite term. As long as he gives satisfaction and chooses to remain his place should be

<sup>35</sup> Dayton, Charter, Secs. 13-20 inclusive.

<sup>36</sup> In Taylor the manager is chosen for a fixed period of two years. Cf. Beard, *Digest of Short Ballot Charters*, p. 36031.

secure. There is every reason to believe that many city managers will be able to render as long and acceptable service as have superintendents of schools in many cities.

In almost all the manager governed cities the salary of the chief executive is left to the determination of the council. This practice has not, however, met with universal approval, and the charter of St. Augustine fixes a minimum of three thousand dollars. The model charter of the National Municipal League recommends a like provision. A fixed minimum protects the city against a penny wise commission and guards the manager against petty attacks by a council that might hesitate to remove him. In Elizabeth City, North Carolina, Montrose, Colorado, and La Grande, Oregon, the charters prescribe that the salary of the manager shall not exceed a given maximum. Tyler, Texas, fixes both a maximum and a minimum figure, the one at thirty-six hundred dollars and the other at eighteen hundred. Phoenix, Arizona, permits the council to change, increase, or modify by ordinance the salary of the city manager "as it may deem proper and necessary."

Vacancies in the managership are usually filled by action of the commission. This is always true of permanent vacancies, but in case of absence, disability, or suspension, and vacancies of a temporary character there are different methods of providing for the conduct of administration. In the majority of cities the council is authorized to "designate some properly qualified person to execute temporarily the functions of the office of city manager." In Taylor, Texas, the commission selects one of its own members to act as manager. Jackson, Michigan, gives to the manager the power to name one of his subordinates as assistant manager. The latter becomes the acting manager in case of temporary vacancy "unless the commission provides otherwise."

Few other features are discernible in the constitution of the manager's office. The tendency has been to slough off many of the provisions that had gathered about the mayoralty in the course of its development and to simplify the structure of the executive as well as the other organs of municipal government. The results in the mere simplification of machinery in the manager plan constitute no small part of its claim to public attention and favor.



*The Manager and Administration*

The relation of the city manager to the administration of the affairs of the municipality is the subject of careful and detailed definition in manager charters. In a general way the manager is the executive head of the government, is responsible for the efficient conduct of the departments and divisions, and exercises control over them.<sup>37</sup> This relation is occasionally modified by provisions which make possible the interference and direct action of the council,<sup>38</sup> but in some cases the manager is expressly protected against such activity on the part of the council, the latter being obliged to deal with matters of administration thru him.<sup>39</sup> The organization of the administration is usually determined in the charter or left in the hands of the commission, but the manager is still in a position to influence and modify the plans. In Dayton the commission appoints advisory administrative boards "on request of the city manager." In Springfield, St. Augustine, and Cadillac the manager is the head of all departments except those otherwise provided for by the charter, while in Wheeling, West Virginia, he appoints "such officers . . . as are necessary or proper" to make the authority of the city, the council, or the manager effective and grants to his appointees the power necessary to perform the duties assigned to them. His appointive power is usually broad and extends to all municipal employees except those few such as clerk, treasurer, and municipal judge, reserved by the charter to the commission.<sup>40</sup> This practice with respect to appointments is modified in some cities. Amarillo, Tyler, and Taylor, Texas, and Jackson, Michigan, make the manager's appointments subject to the approval of the council. Frequently the appointees must be named from an eligible list prepared by a civil service commission as in Dayton, San Jose, California, and for certain departments in Wheeling. On the other hand the majority of manager governed cities

<sup>37</sup> See charters of Dayton (Secs. 47 and 48), Springfield (Sec. 16c), Taylor (Art. 9, Sec. 1), Hickory (Art. 6, Sec. 1), Manistee (Art. 6, Sec. 10), and the statutes of Massachusetts, New York, Iowa, and Virginia.

<sup>38</sup> Cadillac, Charter, Chap. XI, Sec. 1 and 4e.

<sup>39</sup> St. Augustine, Charter, Sec. 10.

<sup>40</sup> Cf. charters of Dayton, Sandusky, Montrose, Phoenix, and others. In La Grande, Ore., the appointing power of the manager is "absolute." Charter, Chap. VIII, Sec. 4.

do not maintain a civil service commission, tho it would seem to be eminently desirable in places of any considerable size as a means for assisting the manager to learn of the qualifications and fitness of applicants for positions. In contrast with those cities that require confirmation of appointments by the council stands the provision in the St. Augustine charter that neither the commission nor any of its members shall "dictate the appointment of any person to office or employment by the city manager or in any way prevent the city manager from exercising his own judgment in selecting the personnel of his administration." A few charters, notably those of Amarillo and Montrose, seek to guard against nepotism, the former by prohibiting the city manager from appointing any person "related within the second degree by affinity or the third degree by consanguinity to either of the commissioners, or to the city manager."<sup>41</sup>

Altho the power of appointment is usually vested in the manager, there are exceptions, as in the city of Hickory, North Carolina, where the council appoints or elects the municipal employees for a term of one year. The manager, however, is authorized to supply the council with lists of names from among which the council may choose. In case one list does not satisfy the council may call for as many other lists as it desires.<sup>42</sup>

Along with the power to appoint, the manager is frequently empowered to suspend, remove, or dismiss, and otherwise to discipline members of the municipal service. The exercise of these powers is carefully supervised either by the council or by the civil service commission. Thus in Dayton, the manager may remove officers appointed by him, except that in the classified service removals are subject to an appeal to the civil service commission, a body appointed by the council. The power of suspension is vested in the city manager of Dayton exclusively when exercised with respect to the chief of police and the fire chief. In Cadillac, Michigan, he may suspend any appointive officer "for any just and reasonable cause" including a number of specified offenses such as neglect of duty, drunkenness, and the

<sup>41</sup> Amarillo, Charter, Sec. 30. The Montrose provision is less specific, providing simply that the manager "shall not appoint any relative of his own to any office of trust." Sec. 36.

<sup>42</sup> Charter, Art. 6, Sec. 12. See also the charter of Manistee, Mich., and the explanatory note in Beard's *Digest*, p. 35017.



like.<sup>43</sup> La Grande, Oregon, gives its manager "absolute control and supervision over all . . . employees of the City except the Commissioners and Municipal Judge," including the power to appoint all other officers prescribed by the charter and to employ "such additional help as may be necessary" and "to discharge, with or without cause, any person appointed or employed by him."

The manager's powers of appointment and removal are unquestionably vital features of the plan. In a recent discussion of the professional standards which should characterize membership in the City Managers' Association, the requirement was proposed that members must come from cities operating under approved charters and one of the things for which an approved charter must provide was the manager's appointive power with respect to all city departments.<sup>44</sup> That it may be necessary "for some years" to have the protection which the civil service system offers in the matter of appointments is admitted, by Manager Waite of Dayton. On the other hand the power to dismiss subordinates absolutely is held by many managers to be essential to efficiency. "If you are going to look to an executive for results, he must and should have the power of dismissal." On the other hand anyone familiar with municipal conditions in the United States will recognize that in the exercise of the powers of appointment and removal the manager system will face one of its gravest tests. The disposition of councils to interfere with the appointments made by managers has already been evidenced in Sandusky, Ohio, and some other cities.<sup>45</sup> On the whole, man-

<sup>43</sup> With respect to officers and members of boards and commissions that are not included within regular departments the removal power of the manager of Cadillac is absolute. The power of suspension noted above is exclusive with respect to all other officers, except the few selected by the commission. Charter, Chap. XI, Secs. 5 and 8.

<sup>44</sup> See proposals in a paper by Mr. Richard S. Childs on "Professional Standards and Professional Ethics in the New Profession of City Manager," *National Municipal Review*, Vol. V, p. 197 (April, 1916). This feature was not approved.

<sup>45</sup> See the discussion of the situation in Sandusky in *National Municipal Review*, Vol. V, p. 383. The commission in this case justified its action in removing some of the manager's appointees on the ground that he had fallen with those who were "out of sympathy with the ideals of the people" and had made his appointments "without consulting the commissioners." Consequently it becomes "the imperative duty of the commission to supervise his

agers appear to look with favor upon such assistance as the civil service can render in securing qualified candidates for appointment; opinion is divided with regard to activity on the part of the council. Some believe under such circumstances a manager should retire; others believe that if a community is not ready for "a non-political set of appointments" a manager must stay his hand, get along the best he can, and bide his time. He is the servant of the municipality as represented in its council and should make non-political appointments only when he can make such a course seem worth while to those who employ him. Generally speaking, however, one must agree with the view that communities which cannot vest their managers with broad powers of appointment and removal "are not ready for the ideal;" doubtless also such communities should proceed cautiously before adopting a form of government as simplified and advanced as is the manager plan;<sup>46</sup> on the other hand the establishment of improved conditions in administration and the elimination of spoils politics are goals to be won only by degrees, and in the winning of them the municipal manager will assist more effectively by the patient and tactful education of the public than by ultimata threatening resignation if his powers of appointment and removal are not recognized. The successes which the manager plan has already achieved have not always been realized under conditions which admitted of the unrestricted exercise of the powers in question, but this fact by no means impairs their claim to importance.

The manager's powers of appointment and removal are sometimes accompanied by the right to fix the compensation of employees, subject to the approval of the council.<sup>47</sup> Limitations provide that the rates of pay shall be uniform for like service in each grade of the service.<sup>48</sup> He is also empowered to require and to fix the amount of bonds of appointees.<sup>49</sup>

appointments," p. 384. From an article on "Some Recent Uses of the Recall," by F. S. Fitzpatrick. Phoenix, Ariz., and Niagara Falls, N. Y., are other examples.

<sup>46</sup> See report of a discussion by Manager Waite of Dayton on the manager plan, *New York Times*, March 9, 1916.

<sup>47</sup> Cf. the charters of Wheeling (Sec. 14), Montrose (Secs. 36, Par. 1), and Dayton (Sec. 131).

<sup>48</sup> Dayton, for example, Charter, Sec. 161.

<sup>49</sup> Cf. Wheeling, Charter, Sec. 14, and Dayton, Charter, Sec. 162.



Naturally, the city manager has extensive authority to investigate the conduct of subordinate officers of administration. There are but rare exceptions to the bestowal of this power and few limitations upon it.<sup>50</sup> The authority is usually complete, including the right to investigate without notice, to conduct examinations under oath, to compel the attendance of witnesses and the production of evidence, books, accounts, etc., to punish for contempt, and to delegate his power in these particulars to persons selected by him to conduct such investigations for him.<sup>51</sup> In Dayton the city accountant is required to make for the manager an examination of the accounts of any office vacated by death, resignation, removal, or the expiration of the incumbent's term. In Bakersfield, California, it is one of the duties of the manager to investigate all complaints in regard to public utility services and to take the steps necessary to correct abuses. The power of investigation constitutes one of the most essential features of a managership that is worthy of the title and that aspires to useful and effective service. It is necessary if the responsibility of the executive is to be thoroly established.

The control of the manager further extends to the power of requiring information and reports, either orally or in writing, from his subordinates and from other municipal officers. Such reports are expected at stated intervals, and may be demanded on such other occasions as the manager may direct. Where the manager is not responsible for the conduct of all the departments, such as the department of law, the charters sometimes specify that he may require the submission of opinions or other data.<sup>52</sup>

One of the most important duties imposed upon the city manager is the exercise of his power of approval. Matters from the departments come before him continually, the extent of this power in actual practice depending, of course, upon the disposi-

<sup>50</sup> In Hickory, N. C., the manager is not authorized to investigate the books of the city treasurer.

<sup>51</sup> See the charters of Dayton (Sec. 50), Springfield (Sec. 88), St. Augustine (Sec. 211), Manistee (Art. 6, Sec. 16), Cadillac (Chap. XI, Secs. 8 and 10).

<sup>52</sup> Cf. the charters of St. Augustine (Secs. 35 and 38) and Dayton (Sec. 58).

tion of the particular individual who is manager. There are some things, however, with respect to which the charters require the approval of the chief executive. For example, some cities provide that he must countersign all vouchers for the payment of claims against the city, or that he shall countersign and approve all orders for the purchase or sale of supplies.<sup>53</sup> In Springfield, Ohio, contracts in excess of a given sum, usually one hundred, five hundred, or one thousand dollars, are valid only upon the approval of the manager. Any modification of the terms of a contract may be effected only with his consent. In Taylor, Texas, the charter provides that the board of commissioners shall not act on any matter of administration without first asking the opinion in writing of the city manager, thus making the matter of his approval or disapproval a consideration of primary importance, even tho it is not binding upon the legislative organ.

Frequently the manager is, by charter enactment, a member of important municipal boards or commissions or holds certain offices *ex officio*. He is one of the three members of the board of review of assessments and one of the seven trustees of the sinking fund in Dayton. The manager of Springfield is also platting commissioner and budget commissioner of the city. St. Augustine's charter evidences the influence of the Dayton plan in that the manager is made a member of the equalizing board, and as in Springfield he is also superintendent of plats. In both of the latter cities he is made the purchasing agent of the city, a practice that obtains also in Elizabeth City, North Carolina, and in Montrose, Colorado.

In some of the departments the manager has special powers and responsibilities. The charter laws very often lay upon the manager the duty of seeing that the laws and ordinances are enforced.<sup>54</sup> Thus special emphasis is sometimes laid upon his

<sup>53</sup> See the charters of St. Augustine (Sec. 91), Dayton (Secs. 80 and 85), and Amarillo (Chap. XXVI).

<sup>54</sup> *Cf.* Dayton, Charter, Sec. 48(a); Springfield, Charter, Sec. 16(a); Sandusky, Charter, Sec. 16(a); St. Augustine, Charter, Sec. 33(a). In Bakersfield, Calif., the manager must see that the laws and ordinances are "faithfully enforced by the heads of the departments." Charter, Sec. 36, Par. 1. In Phoenix, Ariz., the manager shares the duty of enforcing the ordinances with the mayor. Charter, Chap. VI, Sec. 2.



control of the department of public safety which includes the divisions of police and fire protection. In Dayton the manager determines the composition of these divisions and has the exclusive right to suspend their chiefs pending a hearing by the commission. Cadillac gives its manager exclusive control of the stationing and transfer of all members of the police and fire forces, subject only to such rules and regulations as the council may lay down. Jackson places its manager in "active control" of the departments of police and fire. The effectiveness of the manager's authority to enforce the laws and ordinances is increased in Cadillac and Manistee by his power to revoke or suspend licenses.

The relation of the manager to the department of finance is, of course, intimate, and his duties in this connection bring him into close contact with every part of the administration. The investigation of accounts, the approval of claims, purchases, sales, and contracts, the revision and equalization of assessments, and other duties have already been mentioned. In reality, however, his relation to municipal finance is even more important than the foregoing would indicate. He must make frequent reports to the commission and be prepared to inform it regarding the finances and the future needs of the municipality. These reports are made weekly in some places, monthly in others, or at the request of the commission; and annual reports are expected in all cases. Of greater significance is the work of preparing and defending the annual budget.<sup>55</sup> This task involves familiarity with all the details of the city's finances and an intelligent appreciation of the departmental needs and services. The Dayton charter provides that the estimates "shall be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the city manager." In practically all cases the budget is presented to the council, but in Bakersfield it is submitted to the auditor.

The miscellaneous duties which the manager is called upon to perform are almost as imposing in number and variety as those which pertain to the mayoralty. Charters frequently provide

<sup>55</sup> Cf. Dayton, Charter, Sec. 156; Springfield, Charter, Sec. 86; also the charters of Sandusky, Ohio, Manistee and Jackson, Mich., Taylor, Tex., and the general acts of New York and Virginia.

that in addition to the duties and functions listed within their limits the manager shall perform such others as may be required by ordinance or resolution of the municipal council.<sup>56</sup> Many are specified in the charters that are more or less miscellaneous in character and of no little importance and interest. In Dayton and St. Augustine the manager serves notices on property owners involved in commission resolutions regarding the repair of sidewalks, curbings, and gutters, the vacating of streets, and condemnation proceedings. In the latter city he distributes the rebates due property owners from the unexpended surplus in special assessment funds. He is required to prepare and display publicly the plans of proposed improvements, together with data and information relating to them. Springfield, Bakersfield, and Montrose expect him to see that the obligations of public utility corporations operating under franchise grants are faithfully observed. Montrose places in his hands the issuance of building permits, the care of city tools and property, and the work of advertising for bids on supplies; Phoenix empowers him to see to the performance of all contracts; Cadillac entrusts him with the management of all charitable, correctional, and reformatory institutions and agencies, the supervision of weights and measures, the keeping of a "complete and accurate system of vital statistics and the enforcement of health, sanitary, and quarantine regulations of every kind." The Iowa general act and the charters of Cadillac and Jackson lay special emphasis upon his management and supervision of all public improvements and enterprises. Clerical and ministerial duties such as the signing of all public documents, licenses, contracts, etc., specified by the commission are enumerated in the charters of Manistee and Cadillac. La Grande expects the manager to see that the business affairs of the corporation are transacted in "a modern scientific and businesslike manner and the services performed and the records kept" to be "as nearly as may be like those of an efficient and successful private corporation." In Collinsville, Oklahoma, he is vested with the judicial power and authority of the city, and in Cadillac and some other cities he may sign warrants and cause arrests. To fill the cup of his authority he is occa-

<sup>56</sup> For example of this blanket provision see Springfield, Charter, Sec 16(h).



sionally authorized to "exercise and perform all other executive and administrative functions and duties" not provided for by the charter or by the commission.<sup>57</sup>

The justification for the concentration of executive and administrative authority which the manager enjoys is threefold: the manager is immediately and continuously responsible to the representative council; the legislative and administrative functions of the municipality are separated from each other, and the confusion resulting from a system of checks and balances is eliminated; <sup>58</sup> and the introduction of trained and expert department heads and of capable employees in subordinate positions is encouraged and facilitated. There can be no question but that in communities where intelligent coöperation, sympathy, and support are accorded this type of administrative organization the results achieved tend to compare very favorably with the best that has hitherto been achieved under either the mayor or the commission plans. On the other hand the possibility that the manager form "might prove to be susceptible to perversion in the interest of a boss in cities with an undeveloped and inactive public opinion" has led the friends of the manager plan to urge caution in its adoption and the National Municipal League to insist that none of the other principal features of the plan be omitted if the administrative provisions are adopted.<sup>59</sup>

### *The Manager and Legislation*

The relation of the city manager to legislation is much more simple than is that of the mayor or the mayor-commissioner. In the manager plan the council is at once the organ for the determination of public policy and the judge and critic of the manager and of his conduct of the administration. It is a restored and powerful representative body. But despite this renaissance of the council the manager retains an influence in legislation that is far from inconspicuous. Tho he enjoys no vote as does the mayor-commissioner, and no veto as in the case of the mayor, he finds still open to him the more important and useful avenues of executive participation in the initiation and enactment of legis-

<sup>57</sup> Jackson, Charter, Sec. 33(f); Cadillac, Charter, Chap. XI, Sec. 4.

<sup>58</sup> Cf. comment by Manager H. M. Waite of Dayton, quoted in the *New York Times*, March 9, 1916.

<sup>59</sup> *A Model City Charter*, etc., p. 29, note 12.

lation. His power to initiate legislation is threefold: he may call meetings of the council or commission; he may submit recommendations; and he prepares and submits the annual budget. His power to call meetings of the council is usually expressed in the charter and is shared by the mayor or president or by a fixed number of commissioners. The method of making the call effective is not always incorporated in the charter provisions, but in Dayton, St. Augustine, and some other cities, the members of the council must be served with written notice, either personally or by messenger at their respective residences at least twelve hours in advance. In Amarillo, on the other hand, the manager may call the meetings "at any time deemed advisable." The model charter of the National Municipal League does not confer this power on the city manager but leaves the matter of calling special meetings with the council to be "prescribed by ordinance."

The manager's power to make recommendations is recognized in the great majority of charters, and in most of them its exercise is couched in directory language. The form which the recommendations shall take is rarely specified, but in Amarillo they are to be "in writing." The value of this provision is somewhat enhanced by the requirement, generally made, that all meetings shall be public and the privilege of access to the minutes and records of the council vouchsafed to any citizen.<sup>60</sup> The right of the manager to introduce proposals is not generally provided for in express terms, but it is frequently the practice to supplement recommendations with measures already drawn and ready for consideration and action. This course is provided for in the charter of Cadillac, the manager being authorized to "draw up resolutions and ordinances for adoption by the commission" and to "introduce" them before the commission. Perhaps, however, the most important function of the manager in connection with the initiation of legislation is that of submitting the annual budget. This does not involve the preparation of the annual appropriation bill, but it does include the recommendations of the manager as to the amounts to be appropriated, together "with the reasons therefor." The estimates as prepared and the manager's recommendations are open to the inspection of the public and following the preparation of the appropriation ordi-

<sup>60</sup> For example, Dayton, Charter, Sec. 39.



nance by the commission and prior to its adoption, the ordinance is published, together with a parallel comparison of the proposals made by the manager. In some cities as much as ten days must elapse after publication before the ordinance may be adopted, and it is obvious that in the majority of cases the council will hesitate to alter the manager's estimates materially, unless there be sound reasons for such action.

The power of the manager to participate in the enactment of legislation is limited to his having a voice in discussions on matters before the council for consideration. The vote is expressly denied to him by many charters, thus differentiating him from most other municipal executives in this country. The right to be heard is of the utmost importance and is generally bestowed.<sup>61</sup> Exception to the manager's presence when the council is considering his removal is made in the model charter proposed by the National Municipal League, but this document goes further than those already in operation in that it provides that the manager may meet with all sessions of council committees as well as with the council, and may discuss with such committees matters under consideration by them. In Taylor, Texas, the board of commissioners may not act on measures which affect administration without first securing the written opinion of the manager. From whatever angle one may view this power of making his opinions known, whether in oral discussion or in written statements, one must recognize its potency. The manager's intimate knowledge of conditions, his grasp of the effect of measures and policies upon all branches of the public service, and the experience which he will in time have acquired in the organization and presentation of his material cannot fail to gain for his opinions a degree of recognition and a measure of approval which will rival the success of even the strongest mayors. The manager's attendance upon all meetings of the commission is almost always made one of his duties. His presence operates to make him an active and influential factor in legislation, especially where his record in the service of the municipality has won for him the respect and loyalty of the community. His judgment will rarely be considered lightly.

<sup>61</sup> Cf. charters of Dayton, Springfield, Cadillac, Jackson, St. Augustine, Montrose, Amarillo, for examples of the bestowal of the right of discussion.

*Conclusions*

There is no doubt but that the manager plan is firmly established in this country as one of the three main types of city government. Of course it is altogether too early to judge of its ultimate place in the municipal life of American cities. Under unfavorable conditions it has registered a record of success and an increase in efficiency that has commanded for it the attention and respect of all who are interested in the improvement of city government and politics. Not all of the problems that are called into being by the appearance of the expert executive have been solved. His relation to the commission has been easier to outline in charter law than to establish in practice and will ultimately be defined only under the pressure of experience. To keep the manager in the background and out of politics and the commission in the foreground where the public eye may follow its every act will be a most difficult and persistent undertaking. The development and maintenance of the active and intelligent public interest in governmental affairs that is essential to the success of the manager plan as well as to any other will be achieved only by degrees. Yet despite these and other difficulties the city manager plan is undoubtedly of great promise. It has been received with enthusiasm by students of political theory as embracing sound principles of government organization. Its entry into the field of city government has been opportune. It has the endorsement of the National Municipal League in its model charter. Already its impact has been felt by the older forms of organization. The administrative system which it incorporates seems to be capable of indefinite development and expansion and therefore qualified to be successfully applied in the large cities, thus coming into effective competition with the mayor system at the point where the commission plan has made the least impression.

The advocates of the respective executive types described in this work are not wanting either in arguments or in enthusiasm. Especially is this true of the commission and the manager plans. It is hardly to be expected, however, that the enthusiasm for a product of long and evolutionary development, such as the mayor plan, could rival that displayed in behalf of plans of more recent devising, lacking as they are in records of conspicuous failure. On the one hand it is said that "there should be no mayor of the



old-fashioned sort," a "chief official having both deliberative and executive powers, and elected at the polls" — "he should not exist."<sup>62</sup> On the other it is said that under commission government there "would often be found one man who would dominate . . ." and that the "tendency, therefore, is strongly toward one-man government," government by a "city autocrat."<sup>63</sup> From another work one learns that the tendency of commission government to invest the elective official "with active managerial functions is an unwise inclination toward the Jacksonian doctrine of the popular election of administrative officials."<sup>64</sup> The principal objections to the manager form are that it does not admit that there are "good men in every locality capable of administering the government of the city,"<sup>65</sup> and that it presumes standards of public life and citizen activity that do not obtain in the average city. As to the validity of these views regarding the municipal chief executive the reader is left to judge. The writer views with favor and hopefulness the future spread of the manager type, the expert executive responsible to a representative council. Certain it is, however, that no revolution is impending that will sweep away the mayoralty or the mayor-commissionership. In the evolution of municipal democracy toward higher ideals and nobler achievements in government, the type of executive organization which proves fit will survive and endure; and in a world which bears witness to the adaptability and permanence of differing forms of governmental organization it would be idle to prophesy the ultimate passing of any one of the three types studied in the preceding pages. Rather, one may reasonably expect that each of them will, under varying conditions, and with divers modifications, develop into agencies adequate for the tasks, responsibilities, and purposes with which they are charged.

<sup>62</sup> "The City Manager Plan with Proportional Representation, otherwise called The Representative Council Plan," by C. G. Hoag. Found in Beard, *Digest of Short Ballot Charters*, p. 21305.

<sup>63</sup> Report of the Royal Commission on Municipal Government, British Columbia, 1912, published at Victoria, 1913, p. 6.

<sup>64</sup> Ryan, Oswald, *Municipal Freedom, a Study of the Commission Government* (New York, 1915), p. 99.

<sup>65</sup> Toulmin, H. A., *The City Manager, A New Profession* (New York, 1915), pp. 262, 263.

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