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RESTRICTIONS UPON LOCAL AND SPECIAL LEGISLATION IN THE UNITED STATES.[1]

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I.

The Treatment of Local and Special Legislation in England and the United States.

The existence of a right of petition for redress of grievances is a fundamental principle of the British constitution, and the exercise of this right was in old times a very necessary supplement to the action of the courts, whose slow and cumbrous machinery often failed to administer complete justice.[2] Complaints of inequitable dealings between man and man were made to the crown, or crown in chancery; those concerning violence or oppression, such

[1] The following is the first of a series of six articles by the same author on local and special legislation. The importance of the subject, the confusion which exists in the minds of the profession concerning it, and the entire absence from legal literature of all intelligent treatment of it in detail has appeared to the editors to warrant devoting considerable space to its critical discussion.—Eds.

[2] May's Law and Usage of Parliament, 7th ed., 541.

as the ordinary courts could not or dared not redress, including abuses of official power, were made to the crown in council; while petitions for a change in the law were addressed to Parliament.[1]

With advancing civilization, as private rights received better legal protection, especially by the development of equitable remedies, petitions for the redress of wrongs between man and man, or of those inflicted by officers of the government gradually came to an end, and the aid of Parliament was sought chiefly for the purpose of obtaining new and special rights and privileges not granted to the community in general. Measures introduced for these purposes at the request of persons outside of Parliament gradually came to be known as "private bills," to distinguish them from those measures of public policy in which the whole community were interested, which were regarded as originating in Parliament itself, and were known as "public bills."

While the difference between private acts and public acts, after their passage, was recognized from an early day, yet for a long time the subject-matter of a bill was not strictly regarded in determining whether it should be public or private, many acts being passed as public which concerned only particular localities, and not the whole community. As the volume of necessary legislation increased, parliamentary work became more systematized, so that now among the most important and most carefully observed rules for the management of the business of Parliament are those regulating the passage of private bills, which include all bills for the particular interest or benefit of one or more individuals or private corporations, and even bills for the particular interest or benefit of a county, city, parish, or other public corporation. As to bills concerning particular localities, however, it is impossible to keep the respective fields of private and public legislation wholly distinct, as such bills always affect the public more or less. Bills relating to particular cities were indeed at one

[1] See Anson's Law and Custom of the Constitution, Part I, 239.

time usually held to be private, but the growth of cities in area and population, and the great increase in the varied interests which centre in or are connected with them, necessarily make the affairs of every large city, and of London especially, a matter of public concern.[1]

The distinction between public and private bills is not more clearly recognized than that which marks the functions of Parliament with regard to them. Public bills, as already stated, are regarded as originating in Parliament itself, which body conducts, for its own information, such inquiries as it deems necessary, enacting, amending, or rejecting the bills as its judgment may dictate, without any direct participation of outsiders in the matter; whereas private bills are recognized as introduced in behalf of persons outside of Parliament, must be advocated by them, and can be attacked by any persons who may ask to be heard in opposition to their passage. In the former case the function of Parliament is purely legislative, while in the latter it is judicial also, it being necessary to determine the right to the privileges sought, and to decide between or adjust the conflicting interests, as in a court of justice;[2] and hence a private bill is treated as a case on trial, the procedure being as carefully regulated, and as fair a hearing given to both sides, with the same publicity, and before as impartial judges, as is customary in a court of law or equity.[3] As a result of this thoroughly systematized

[1] May, 670.

[2] May, 679; Anson, 239.

[3] The method of procedure in regard to private bills may be summarized as follows:

Private bills must be brought in upon petition, signed by some or all of the parties who are suitors for them (except that occasionally bills of a local character are brought in, by order, without the form of a petition), and every bill and petition must be deposited in the private bill office of that house in which it is proposed to introduce the bill. (May, 670, 709.) All bills of a local character, including railway bills, are subject to certain standing orders in regard to advertisements, notices to parties affected, deposit of documents, plans, etc. The fact of compliance with these standing orders is decided by the "examiners for standing orders," who sit publicly, examine into each case, hear arguments and testimony in behalf of unopposed bills and both for and against all opposed bills,

method of procedure it may be said, in general, that the issues involved in the passage of private bills (which include all that goes in America by the name of special legislation, and, to some extent, local legislation also) are carefully and impartially tried, and that the decisions rendered, and the acts passed in accordance therewith, are fully up to that high standard of legislative and judicial work which is expected of every civilized community. Changes are introduced in the method whenever they are

endorse the decision upon each petition with, in the case of non-compliance, such statement of the facts as may be necessary, and return the petitions to the private bill office, when their introduction by a member can be arranged for. May, 690, *et seq.*

If the examiner report that the standing orders have not been complied with, it is still in the power of the House of Commons to dispense with such compliance after a report by the Standing Orders Committee upon the facts of the case. Anson, 242.

Every private bill must be solicited by an agent, who enters his appearance in the private bill office. No member of Parliament can be an agent, and all agents must be registered and can, in case of misconduct, be prohibited from practicing. May, 702.

Private bills are considered at the times fixed for the "private business list," and after the second reading railway and canal bills are referred to the general committee on such bills, divorce bills to a similar general committee, and other bills to the "committee of selection." Each of these committees classifies the bills referred to it, and arranges the time of sitting of the committee who are to consider them, and the bills to be considered by each. The committee of selection nominates a chairman, three other members, and a referee, as a committee for each opposed bill, or for a road bill whether opposed or not, except that the chairmen of committees on railway and canal bills are nominated by the general committee on such bills.

Groups of bills similar in character may be referred to one committee. Unopposed bills (except road bills) are referred to the chairman of the Committee of Ways and Means, the member who has been ordered to bring in the bill, and another member not locally or otherwise interested, and unopposed railway and canal bills can be similarly referred if the general committee see fit.

Before these committees sit, all private bills are examined by the chairman of the Committee of Ways and Means and the speaker's counsel, whose duty it is to call the attention of the house and of the chairman of the appropriate committee to all matters in a bill which they think ought to receive special attention. They may also introduce amendments within the scope of the bill, and similar amendments can be introduced by public departments, like the Board of Trade.

Before a committee on one or more opposed private bills proceeds to

seen to be required, and the usefulness of the system has been thoroughly demonstrated. It is true that with the increase in the number and importance of the imperial matters that demand the attention of Parliament the time that is given to the consideration of private and local affairs can sometimes ill be spared, but the modern tendency is unquestionably toward comprehensive general legislation whenever possible, and the volume of other bills will be gradually reduced, especially as the machinery of local government is made more effective.[1]

The colonial legislatures of America were founded before the conduct of the business of Parliament was as thoroughly systematized as it is now, and in the simpler life of the colonies private affairs assumed a greater propor-

business, each member must sign a declaration "that his constituents have no local interest and that he has no personal interest" in the bill or bills, "and that he will never vote on any question which may arise without having duly heard and attended to the evidence relating thereto." If a member subsequently discover that he is in any way interested in any bill before his committee, he must report the fact, and will be discharged from further attendance. It is the duty of all such committees to hear arguments and testimony for and against all bills referred to them, and to make such inquiries as they may deem necessary, before they make their report to the house, and all the proceedings in regard to private bills are recorded in the private bill office, where they are subject to public inspection. Office fees and costs are required to be paid at the various stages of the proceedings on a private bill, as court costs are required to be paid in litigation, and in the case of opposed bills the costs due to such opposition may be made to fall upon the losing party. May, 723, *et seq.* See, as to costs, Williams *v.* Swansea Can. Nav. Co., L. R., 3 Ex., 158; Swansea Can. Proprs. *v.* G. W. R. Co., L. R., 5 Eq., 444. The costs of vexatious opposition to a private bill can be summarily recovered in an action of debt. See Mallet *v.* Hanly, L. R., 18 Q. B. D., 303.

[1] "A private act is an exception from the general law; and powers are sought by its promoters, which cannot be otherwise exercised, and which no other authority [than Parliament] is able to confer. It is obvious, however, that the public laws of a country should be as comprehensive as may be consistent with the rights of private property; and it has accordingly been the policy of the legislature to enable parties to avail themselves of the provisions of public acts, adapted to different classes of objects, instead of requiring them to apply to Parliament for special powers in each particular case. The same principle may be still further extended hereafter." May, 683.

tionate importance in the mind of the public than they did in England, besides which, the representations being on a more popular basis, the relations between a colonial legislature and the people were much closer than was the case with Parliament. To these causes it is probably due that in the legislatures of the colonies and of all the States until about fifty years ago, public and private, general, special, and local laws were passed indiscriminately, as is still the practice in a few States, as well as to some extent in Congress. Measures of both kinds, even such as had absolutely no connection with each other, were frequently joined in the same bill, becoming law by the same vote, and by a single signature on the part of the executive.[1] What may be called the science of legislation—the careful adaptation of laws both to the needs of the State and the various classes of people composing it, and to the body of law already existing, the determination of the proper scope of general laws, and of the circumstances which call for legislation of a local or special character—was too little regarded, and as time went on not only was the volume of special and local legislation needlessly increased, such acts being frequently passed as to matters that could have been provided for under a general system, but private schemes were often pushed through the legislatures by unscrupulous men, to the sacrifice of public interests, each separate locality was liable to unwise interference in its affairs, and distracting changes of its governmental system, and the law, as to many matters, was thrown into confusion.

The natural consequence of all this was the growth of a very general feeling of hostility to all local and special legislation.[2] One State after another sought, by changes

[1] The most striking instance of this in Pennsylvania is the very important law of 1848, in regard to the rights of married women, its provisions forming a part of an act in regard to five different matters, including the settlement of the affairs in Le Raysville Phalanx, and the extension of the boundaries of the borough of Ligonier.

[2] See the remarks made over sixty years ago by Gov. Morton, of Massachusetts, quoted in an article on Special Legislation, 25 Am. Jurist, 317.

in its Constitution, to check the excesses into which its legislature had fallen in this respect, and the influence of the example so set is seen in the Constitutions of all the more recently organized States. That some effectual restrictions upon special legislation were needed has been repeatedly testified to by the courts of various States when called upon to enforce these restrictions. Thus, in Indiana, the earliest State to adopt them, their object was stated as being "to restore the State from being a coterie of small independencies, with a body of local laws like so many counties palatine, to what she should be, and was intended to be, a unity, governed throughout her borders on all subjects of common interest by the same laws, general and uniform in their operation.[1] So in Pennsylvania, which did not follow the lead of Indiana until 1874, thirty years after the start had been made, the Supreme Court has observed: "Prior to the adoption of the present Constitution there was hardly an approach to uniformity in the fees of public officers throughout the State. Local acts had been procured for many of the counties, in some instances through the influence of the officers themselves, fixing the fees more in harmony with their own greed than the interests of the people, who may fairly be presumed to have known nothing of it until they came to pay the fees. It was to cut this system up, root and branch, with other evils of like nature, that the clause in question was inserted in the Constitution.[2] Still more recently the same court has said: "During the session of the legislature immediately preceding the adoption of the present Constitution, nearly 150 local or special laws were enacted for the city of Philadelphia, more than one-third that number for the city of Pittsburg, and for other municipal divisions of the State about the same proportion. This is by no means exceptional. The pernicious system of special legislation, practiced for many years before, had become so general and deep-rooted, and the evils resulting therefrom so alarming

[1] Maize *v.* State, 4 Ind., 342.

[2] Morrison *v.* Bachert, 112 Pa., 322, 328.

that the people of the Commonwealth determined to apply the only remedy that promised any hope of relief. Doubtless it was a proper appreciation of the magnitude of these evils as much as anything else that called into existence the convention that framed the present Constitution, and induced its adoption by an overwhelming vote. One of the manifest objects of that instrument was to eradicate that species of legislation, and substitute in lieu of it general laws whenever it was possible to do so."[1]

Until 1886 no adequate restrictions were imposed upon special or local legislation in the territories,[2] and the fact that the Constitutions of all the States admitted to the Union in the past thirty years contain provisions more or less complete as to this, was due to their own experience as territories. Thus the Supreme Court of Nevada refers to the practice of the territorial legislature of "passing local and special laws for the benefit of individuals instead of enacting laws of a general nature for the benefit of the public welfare;"[3] while the Colorado court observes: "It is a historical fact that prior to the adoption of the Constitution the jurisdiction and practice of courts of the same class were often as diverse as if such courts were located in different States or territories. . . . The Act superseding indictments, in two counties of the State, in cases of crimes and misdemeanors not capital, by requiring informations to be filed in such cases, and local acts defining the jurisdiction and practice of justices of the peace in certain counties, furnish illustrations of the character of the territorial legislation which had prevailed."[4]

The foregoing extracts, and many others that might

[1] Ayars' App., 122 Pa., 266, 277. The restrictions upon local and special legislation were adopted by the Pennsylvania constitutional convention of 1873, with very little discussion, and it is clear from the published debates that the delegates considered that in adopting these restrictions they had performed the chief part of their work.

[2] This was done by Act of July 30, 1886, 24 U. S. Sts. at Large, c. 818, p. 170.

[3] Evans *v.* Job, 8 Nev., 322.

[4] *Ex parte* Stout, 5 Col., 509.

be added,[1] show a remarkable consensus of judicial opinion in regard to the evils of unrestricted local and special legislation, and there can be no doubt that it produces the same results to-day whenever no restrictions or inadequate ones have been imposed.

The American constitutional restrictions do not, however, attempt to secure the judicial treatment of local and special legislation. On the contrary, they seem to evince a belief that legislatures are by nature utterly careless of the public welfare, if not hopelessly corrupt,[2]—that they cannot be trusted to deal with this species of legislation, which must, therefore, be stamped out as far as possible, if not altogether. To effect this purpose some Constitutions have forbidden such legislation as to a few subjects, some as to very many, while others forbid it in every case to which a general law can be made applicable; regulation of such laws being wholly confined to the form of their titles, their containing but one subject, the giving notice before their passage, etc.

[1] See among other cases San Francisco *v.* S. V. W. W. Co., 48 Cal., 438; McGregor *v.* Baylies, 19 Io., 43; State *v.* Lawrence Bridge Co., 22 Kan., 438, 456; Pell *v.* Newark, 40 N. J. L., 71; affirmed, *id.*, 550; Cass *v.* Dillon, 2 Ohio St., 607, 617; Mayor *v.* Shelton, 1 Head (Tenn.), 24.

[2] The existence of this unfortunate belief among the members of the Pennsylvania constitutional convention of 1873 was pointed out by one of the delegates, the late Theodore Cuyler, Esq., who vainly protested that "we must find some method by which we can secure a pure legislature, and then entrust them with the large powers which the necessities of the public interest may demand. We are starting with the proposition that we cannot secure a pure legislature, that we must deal with them as if they were rogues, men who should not be entrusted with power, and framing our Constitution accordingly." Journal of the Const. Conv., vol. 5, p. 259.

That special legislation was prohibited as to certain matters in order to restrict the power of the legislature's power, and that uniformity in the practical operation of laws was only a secondary consideration, is the inevitable inference from the decision in Von Phul *v.* Hammer, 29 Io., 222. There a general act allowing any city or town acting under a special charter to amend its charter for itself, was upheld, although a want of uniformity in city government might result, the restraining clause of the Constitution not being regarded as "so far-reaching as to prevent such consequences." In other words, as long as the legislature did not itself promulgate the special form of government adopted, its difference from those of other cities and towns was immaterial.

While the absence of all restriction upon special and local legislation is unquestionably a serious evil, yet the absolute or nearly absolute prohibition produces in its turn results which are far from satisfactory. That this is inevitable is clear from the fact that such legislation, when properly regulated and employed, is not only a perfectly legitimate exercise of legislative power, but is a valuable means of providing for the needs of the different parts of a State, and even of corporations or individuals under exceptional circumstances.[1] There is nothing essentially wrong in the thing itself. It is perfectly natural and fitting that some legislation should be of this character, and what it needs is to be adequately regulated, as is done in England, so as to secure its proper use while preventing its abuse.[2]

The chief objections to the prohibition of special and local legislation are that it interferes with the proper adaptation of legislation to particular cases, that it is utterly

[1] The advantage of the power to incorporate by special act, when properly exercised, may be illustrated by the Massachusetts Act of May 21, 1891, to incorporate the Trustees of Public Reservations. It incorporates that body "for the purpose of acquiring, holding, arranging, maintaining and opening to the public, under suitable regulations, beautiful and historical places and tracts of land" within the State, with power to acquire and hold real estate for this purpose up to $100,000 in value, and other property, both real and personal, up to a like limit, to support or promote the objects of the corporation, all its personal property and all lands which it shall keep open to the public being exempt from taxation. To enable such a corporation to be formed under general laws, with the same powers and rights, it would be necessary that such laws should allow of incorporation for such a purpose, should permit such a corporation to hold real estate and other property of the value above mentioned, and should exempt the property of such a corporation from taxation. Should these laws (as would probably be the case) not provide for such incorporation, powers, and exemption, whatever amendments might be made to cover such a case would have to grant the same power to hold property and the same exemption from taxation to all corporations of the same general class that might at any time be formed, grants which a legislature might perhaps hesitate to make for all cases, although their propriety in the particular case might be indisputable.

[2] Perhaps the recent Massachusetts law in regard to legislative counsel and agents (Laws of 1890, c. 456; Laws of 1891, c. 223) may be the beginning of a reform which will lead up to a system of judicial treatment of local and special legislation.

ineffectual as regards those cities and corporations which differ so greatly from the others in a State as to constitute a class by themselves, and that it subjects every law to a needless risk of being at some future time declared unconstitutional for purely technical reasons.

In regard to many matters both of ordinary private law, that which affects the everyday relations of life, and of administrative law as well, the prohibition of special legislation is both effectual and useful. Thus, the changing of names, adoption, legitimation, the coming of age, divorce, citizenship, individual rights, privileges, and liabilities, the rate of interest, liens, civil and criminal procedure, and other like matters can not only all be regulated by general laws, but it is vastly better for the community that in regard to such matters every one's actions should be controlled by the same law, and that no one should obtain from the legislature rights or immunities which enable him to override the law by which the rest of the community is bound. Whether, for instance, a usury law be wise or unwise, it is clear that as long as it is in force every one in the State should be bound by it. It is equally important that courts of the same grade throughout the State should have the same powers and administer justice in the same way, subject, of course, to the right of any court to establish reasonable rules for the transaction of business before it in matters not regulated by the legislatures. So a tax may be wise or unwise, just or unjust, but as long as it is levied there should be no exception of individuals or localities from it, unless such exception is for the benefit of the whole community, as in the case of municipal property and that devoted to public religious and charitable purposes.

Even in these matters, however, the absolute prohibition of special and local legislation may sometimes result in hardship, while in the case of both private and municipal corporations and those quasi corporations which exist for the purpose of rural government, it is clear that such prohibition often fails of good results, the distinction between general and special laws being in many instances

purely a matter of form, while in others a special consideration of each particular case is really necessary.

The immediate effect of the prohibition is to prevent any legislation from being passed directly and expressly in regard to any one or more particular corporations, the intention of the Constitution being that whatever powers any corporation should have for the purpose of its corporate existence should be granted on the same terms to all similar corporations, but the legislature is allowed to judge both as to what differences exist between corporations and what powers they shall possess. It cannot, however, discriminate between corporations of the same kind. All railroad companies must have the same powers; all cities where the same circumstances exist must have the same form of government; no law can be passed in regard to a single street or ward in a city. The stop thus put to discrimination is beneficial as far as it goes, but it is not a complete stop, nor is discrimination the only danger to be avoided.

In the case of private corporations what has been complained of in the practical working of the prohibition is not the discrimination for or against any corporation or class of corporations, but rather the excessive liberality in the grant of corporate powers to all who seek them. It is undeniable that the corporation laws in force in most of the States do in their operation give away valuable privileges, for which the community, in whose name they are granted, receives no adequate consideration, directly or indirectly; that they grant enormous powers with no proper restriction upon their exercise, and that they often enable the promoters of companies to acquire wealth while the risk of the undertaking is borne by the stock or bondholders, and that they expose all owners of real estate to the risk of having their property taken away or its enjoyment greatly impaired, with sometimes very inadequate compensation, and frequently none at all. As, however, the right to take, injure, or destroy a man's property exists for public purposes only, its exercise should obviously be

restricted to cases where it is essential to the public welfare, and a similar restraint should be imposed where the exercise of corporate franchises endangers the rights of the public, as in regard to highways, streams and rivers, important features of natural scenery, etc.

It is clear that the legislature has the power to authorize, by a general law, the taking of property for a public use, provided such taking be, as required by the Fourteenth Amendment, "by due process of law;" and it is probably not worth while to deny that the construction of a railroad, for the carriage of the persons or goods of all those who are willing to pay the established rates of transportation, is in every case a public use, whether it be actually of any real benefit to the community or not. The public use, which is essential to the exercise of the right of eminent domain, may fairly be taken to mean "utilization," and not necessarily "utility." There still remains the condition, however, that the right of eminent domain, like every other taking of property, be exercised by "due process of law" only, and it may well be questioned whether when nine or any other statutory number of men subscribe to a certain number of shares of stock, pay in a certain percentage of its par value, execute and file a certificate in a certain form, and receive, as a matter of course, a charter from the State for the construction of a railroad between certain points, and then proceed to locate their line and take property, this constitutes a taking by "due process of law." Certainly such a proceeding has often little in common with that "law of the land," which, as WEBSTER said,[1] "hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial."

The bearing of the Fourteenth Amendment upon the taking of land by a railroad company incorporated under a general law is rather outside the scope of the present treatise, in which it is intended to discuss exclusively the actual operation of the restrictions upon special and local

[1] *Arguendo*, Dartmouth College *v.* Woodward, 4 Wheat. (U. S.), 518, 581.

legislation in the light of the decisions rendered in regard to them. It is impossible, however, to overlook in this connection the maxim, "*Nemo debet esse judex in propria sua causa*," and the anomaly that under the system of general legislation prevailing in most of our States, those to whom is granted the right of eminent domain or other rights which necessarily conflict with those of individuals or the public, are made in almost all cases the sole judges of when, where, and how their rights and powers shall be exercised.

In the case of railroad, telegraph, pipe-line and other companies whose business necessitates a right of a way, or the use of the power of eminent domain, the legislature cannot, by any system of general laws, directly intervene for the protection of individual rights or those of the public. Such direct intervention can only be secured by a system of special legislation based upon a judicial treatment of each case. The same result might also be attained indirectly by general laws providing that all grants of corporate power should be subject to the approval of some properly-constituted public authority, so that no railroad line, for instance, could be begun until the location had been approved after a thorough investigation into the advisability of the line proposed and a fair hearing of all the parties opposed to it.[1] Every law, whether general or special, should protect public and private rights from unjust and unnecessary infringement. So long as this protection is afforded by a proper judicial inquiry in every instance, it is immaterial whether this be made by a committee of the legislature or by any other responsible body.

In the case of municipal corporations and rural local government also, the prohibition of special legislation works fairly well in the great majority of instances. Most cities, and probably all boroughs, villages, towns, counties,

[1] This has been done to some extent in regard to elevated railroads in the city of New York. See Matter of N. Y. Elevated Ry. Co., 70 N. Y., 327, where the court said: "The legislature cannot in a general law determine the necessity of a railroad in any particular locality, or its route, but it may provide the machinery for such determination."

etc., can, for the purpose of their government, be grouped into a few classes, the members of which do not differ greatly from each other in size or other distinctive characteristics, so that a law for one class can reasonably be expected to work equally well for every member of the class; while, if it works ill, it is almost certain to do so in every case, and that for some cause which lies deeper than the mere fact that the law is general. The number of places necessarily affected by a law prevents, moreover, the enactment of laws designed in the interest of one place only. If such a law be against the interest of the other communities affected by it, they will oppose its passage, and thus the unfair grant of special privileges will be prevented.

In every State, however, there are cities which differ so widely from others that they must be classed by themselves, and a law for a class which though theoretically capable of enlargement actually contains but one or two members, is practically a special or local law, even if it be legally general. In such cases the prohibition is to a great degree inoperative, and, as regards all strictly municipal matters which concern the whole city, special legislation goes on as before, and with the same results. The legislature cannot indeed order the paving of a particular street or in other ways legislate directly for special parts of the city, but it can create and abolish particular offices, direct how the clerks in any special city department shall be appointed, and in many ways regulate the affairs of a single city just as if no prohibition of special legislation existed.[1]

[1] See Mr. Oberholtzer's article, "Home Rule for Our American Cities," 3 Annals of the American Academy of Political and Social Science, 736. The struggle by which an act for an improved form of government for Philadelphia, masked under the title of "cities of the first class," was wrung from an unwilling legislature in 1885 (Act of June 1, 1885, Purd. Dig. Supp., 2281–2291), and the readiness with which the Pennsylvania Legislature of 1887 (Act of April 6, 1887, Purd. Dig. Supp., 2288, pl. 91), all protests of citizens to the contrary notwithstanding, struck out the Civil Service Reform provisions of the same act in the case of two important city offices, prove conclusively that even if minor municipal details have been placed outside the legislative sphere, the power of the legislature over the city government is still absolute as to all important matters, and is exercised without any proper regulation.

In the same way, where there are but one or a very few private corporations of a certain sort, general laws for such corporations are practically special, because they affect only a very limited number, and the passage of such laws is advocated or opposed by the parties to be affected, precisely as if they were named in the bills.

It can hardly be denied that all measures in regard to local government or the regulation of local affairs, as well as those which grant or regulate corporate power, should be treated judicially by the legislatures that enact them. That no such judicial treatment is required in America produces results in regard to legislation that are analogous to what would happen in the administration of justice were our courts of law under no obligation to deal judicially with the matters that come before them. The experience of England shows that the power of special legislation, when exercised judicially, is not a menace to good government, and there is no reason why this judicial method should not be extended even beyond the limits usual in England, and applied to all legislation affecting the affairs of municipal corporations and quasi corporations.

In a few States, however, a remedy for unwise special legislation has been sought by constitutional provisions, authorizing cities of a certain size to frame charters for themselves, and to adopt the same, or amendments thereto, by popular vote, in the same manner in which a State constitution is framed and adopted or amended, and after the adoption of such a charter the legislature has no further control over the city government.[1]

[1] Const. Cal., Art. XI, § 8; Const. Mo., Art. IX, § 16; Const. Wash., Art. XI, § 10. In California such charter or amendment must still come before the legislature for adoption or rejection, but cannot be altered by it. See Mr. Oberholtzer's article, *ut supra*. This form of "home rule" certainly accords with the idea of representative government, which is, properly, government by those who, in whatever capacity they serve, are elected to represent the people who are affected by the acts done or measures adopted. To entrust a legislature with power over matters which concern exclusively districts which the majority of the members do not even profess in any way to represent,

In St. Louis, Mo., and the few other cities which have obtained local self-government by this method, the results are reported to be very satisfactory, and it is claimed that the way has been opened to a removal of the very serious abuses that have long disgraced American municipal government. Local self-government of this kind is still in the experimental stage, however. Should it prove thoroughly successful, and become generally established, all State legislation for municipalities would come to an end, but as long as such legislation is possible, provision should be made for some systematic and judicial method of dealing with it, whether the form of general legislation be retained or not.

The above remarks in regard to legislation concerning public and private corporations illustrate the first two objections already mentioned, that the prohibition of special legislation prevents, as to some matters, the proper adaptation of legislation to the subjects regulated by it, while as to other matters the prohibition fails of its effect. The third objection concerns the difficulty of securing really general legislation, and the consequent uncertainty as to the constitutionality of many statutes.

The boundary between general laws and special or local laws, often seems shadowy and indefinite, and the prohibition of the latter has resulted in a species of conflict between courts and legislatures, rendering the validity of statutes and of rights acquired under them uncertain and unstable. Whether such a result could be wholly avoided is another question. Certainly the distinctions between general and special legislation would be better understood were they more thoroughly studied. The legislatures indeed do not seem to have taken any great pains to examine into these distinctions, both because our legislative methods make careful work almost impossible, and because

and to the people of which they cannot be held responsible, is, therefore, strictly speaking, not representative government at all. That the officers of a city should be appointed by the State executive would not be more at variance with the representative principle.

in many cases the legislatures have evidently desired to use the form of a general law merely as a cloak for legislation intended to secure special ends. In New York especially, where the requirement that a law shall relate to but one subject, which must be expressed in its title, is confined to local and private acts, the temptation to palm off such acts as general is of the strongest character. The result has been the enactment of a great deal of legislation which the courts have held to be unconstitutional, and of a great deal besides, which, as was recently pointed out by the Pennsylvania Supreme Court,[1] cannot stand the test of the constitutional restrictions if rationally applied, and only awaits the adverse decision of a court of last resort, which sooner or later is sure to overtake it.

The number of statutes declared unconstitutional by reason of their violating the prohibitions of special legislation is, however, too great to be accounted for by mere legislative recklessness. It is probable that in some cases the very desire of the framers of the law to make it as effectual as possible without interfering with matters which, though similar to those treated of, did not need the remedy proposed, led to the introduction of special provisions which a court has felt compelled to overthrow. Even the courts of the different States often differ in their construction of constitutional prohibitions couched in the same language, and it is not to be wondered at if courts and legislatures have similarly differed, even when neither body can be charged with hasty and ill-considered action. The possibility of such differences is one of the defects inherent in the system of prohibiting local and special legislation, and, while it is likely to diminish as time goes on, its existence cannot be denied.

Probably the best solution of the problem of how to deal with special legislation would be a resort to both prohibition and regulation. There are unquestionably many matters that can best be dealt with by general laws, operating uniformly throughout the State, while there are others

[1] Morrison *v.* Bachert, 112 Pa., 322, 328.

which, to secure the best results, require a more special treatment. As to the former special legislation could be forbidden, while as to the latter it could be permitted under such regulations as would ensure a fair and judicial treatment of each case.

The policy of prohibiting special legislation is not recognized in equal measure in the various State constitutions, as is seen by their differing provisions. More than this, in some cases where the language of different constitutions is identical or nearly so, it has not received the same judicial interpretation everywhere. The conflicting decisions do not necessarily indicate different views of one principle or doctrine of law, but merely that the courts of each State have had to decide what the framers of their own constitution meant, and that this meaning has depended upon local circumstances. The most conspicuous instance of such diversity of interpretation of the same language occurring in different constitutions is probably that of legislation affecting the affairs of cities, counties, townships, etc. In Pennsylvania it is held that there must be one system of government for all cities of the same class,[1] while in New Jersey there may be many systems as to one or many particulars, and each city may choose the system it prefers,[2] yet in both States the restrictions are practically the same. This matter will be more fully dwelt upon in discussing legislation in regard to local government; it is referred to now in order to point out at the start that while it may be theoretically possible to develop a uniform system of general legislation applicable everywhere, yet as the fundamental law of each State in the Union is a separate instrument, the outgrowth of conditions often widely differing in the different States, no such uniform system exists now, nor could it ever exist except by common consent, and as the result of many changes in

[1] Scranton School Dist.'s App., 113 Pa., 178; Commonwealth *v.* Reynolds, 137 *id.*, 389; Same *v.* Denworth, 145 *id.*, 172.

[2] Paul *v.* Gloucester Co., 50 N. J. L., 585; Warner *v.* Hoagland, 51 *id.*, 66; *In re* Cleveland, 52 *id.*, 188.