The Abnegation of Self-Government

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THE ABNEGATION OF SELF-GOVERNMENT.

The fundamental idea underlying the government of every State of the American Union is that the people rule. Upon this the American people have erected their constitutional structure, and to this their laws and their conduct are supposed to conform. Their constitutions, State and National, tho they may be said to have grown out of their circumstances, were not forced upon them by the circumstances, and simply accepted with little or no volition on their part, as has very commonly been the case with government in other countries; but the controlling principle was adopted deliberately by them, from a conviction that it was exactly suited to their condition, their political traditions, their habits of thought and action, and their needs. They therefore made formal agreement that not only were the people of a country the rightful source and fountain of all legitimate authority in government, but that in the United States it was proper and expedient that they should retain in their own hands this authority, and exercise it. They had by their Declaration of Independence rejected as unfounded the assumption that by divine selection, or otherwise, any one without their consent had been made their rightful master, and they perpetuated in their constitutional system the "self-evident" truth that all men by nature are equal in right and privilege. Conceding the impossibility of all the functions of government being exercised by themselves directly, they created trusts and provided for their being performed by officers, but these officers were to be chosen by themselves in strict subordination to the principle that sovereignty belonged to and was to be retained by the people, and that all governmental powers in the hands of individuals were to be exercised by mere delegation. The underlying principle of their political structure
was, therefore, not a mere invention of convenience to meet a
temporary necessity and provide for a crisis in public affairs,
like the theory of original contract in England, but through con­stitutional forms it was given such effective vitality and force
that the validity of legislative enactments and of other govern­mental action could be determined by it. The body that made
the laws under the delegated authority must keep within the dele­gation, or its enactments would be mere idle fulminations, to
which no one would owe obedience or need give any attention.
Officers of all grades were to have their authority carefully mea­sured out and limited; and this authority the people would not
only recall if they saw reason for so doing, but while it con­tinued they would periodically pass judgment upon the official
conduct of those exercising it, and displace them if dissatisfied.
Even the courts, with power to decide upon and apply the law,
were, like all other agencies, to be under the law, and the re­straints thrown around them were such as to make them under­stand and feel at all times their subordination to the sovereign
power.

In the government of a State is implied the making of its
laws and the establishment of rights thereby. The diversities
of circumstances, opinions, aims, desires, interests, and passions
on the part of the governed are such as to make this a task of
infinite difficulty and nicety; and it requires for its performance
not only great ability, long experience, constant and patient
thought and reflection, and a willingness to be taught by events,
but also a complete subordination of private to public interests,
so that at all times that may be done which in the judgment
of the ruler the public good demands. It is also implied that
the laws made shall be enforced; that there shall be such pro­vision for and adjustment of remedial and restrictive forces as
shall give to the rights established effectual protection, and
make life, liberty, and property secure. To this end every per­son concerned in the administration of the laws must be made
to perform his duty, so that the laws may not be idle com­mands, but vital forces. The fact must be recognized that
there are elements in society which tend perpetually to disorder
and lawlessness, and that to hold these in due subjection per­petual vigilance on the part of the ruler is essential. If he re-
laxes this vigilance for his own ease, convenience, or private interest, he not only fails in duty and becomes deserving of severe censure, but he, in a degree, abdicates his authority in favor of those disorderly elements, who substitute their own will for the law which has, nominally, been made for their control. It is evident, therefore, that rare mental and moral qualities, and great self-renunciation, are required in the ruler of a State, and that he will very imperfectly perform his duty unless the public interest is constantly uppermost in his thoughts and the chief subject of solicitude.

It is, of course, not to be assumed that every member of a political society will be sufficiently enlightened and virtuous to make a wise ruler; but the aggregate wisdom and virtue of the community may be supposed superior to that of any one individual, so that the collected sense of the people respecting their own affairs is likely to be better than that of a single person, however great or eminent, and better deserving of expression in the laws of the State and in their administration. The self-government of a State is not only, therefore, theoretically the best, but it only requires that the sense of the people on public affairs shall be properly collected and given effect, to make it best in reality.

A vague notion is afloat, much acted upon without being expressed, that when the people have exercised the most important act of sovereign authority—the adoption of a Constitution—they are thereafter to manifest their sovereignty only in the elections, when they choose their representatives and other official agents, and pass upon such propositions as may by law be referred to popular vote. The absurdity of any such notion, when applied to the government of a king or other single ruler, would be apparent at a glance, for the responsibility of the government is upon him, not upon his subordinates and agents, and the duty to see that the laws are enforced is a personal duty, of which he cannot effectually relieve himself by any delegation. But it is still more absurd when applied to a popular government, where offices, for the most part, are held for definite terms, and the incumbents are not removable at will by the sovereign, but only at fixed periods. If, during their incumbency, the people are charged with no responsibility in respect
to the performance of official duties, the sovereign power of the State, for all practical purposes, must be considered as lying dormant from one election to another, and what is called the rule of the people can be little more than the privilege of making periodical choice of masters. This is so far from being the theory of American government, that the exact opposite is the fact; for the American Constitutions, State and National, assume that the sovereignty of the people is to be of controlling force at all times and under all circumstances, and they contain numerous provisions for making it so. All officers are subordinates and agents, who are chosen on the implied understanding that they are to represent the popular judgment, and give effect, so far as they may in their official conduct, to the sovereign will in the government. If they fail in this they are chargeable with misconduct either to the State or to some one or more of its citizens, or possibly to both, and it is the business of the sovereign authority to give redress.

Wrongs in government may be chargeable to either official personages or to private citizens. When chargeable to officers, they may be due to ignorance or incompetency, whereby, without intention, public duties fail in performance or are imperfectly or unwisely performed, or they may come from positive and intentional disregard of law and duty. It is not the purpose of the constitution that any such wrong shall be suffered without redress; but it may be well to survey the means of prevention which have been devised by the sovereign power, and the ways in which it is supposed to make its constant presence and superintending authority felt and respected.

The device of delegating to distinct departments of government the legislative, executive, and judicial powers is supposed to be of very high value, as it puts each department in a position where, for the protection of its own jurisdiction, it must aid in limiting to its proper authority each of the others. The checks and restraints which this division of authority establishes operate continuously, and to a large extent without attracting attention; and in so far as they accomplish the intent, they are to be regarded as continuous manifestations of the sovereign authority of the people which established them. If they fail of full effect, they at least show the purpose of the
Constitution, that every officer and each department of the government should at all times be in due subordination to the sovereign ruler.

The guarantee of liberty of speech and of the press, which is so effectual that no legislature can take it away and no court or officer hamper or abridge it, is meant to be as well a guard against public wrongs as a means of redress in case they are committed. The intent is that by the free utterance of feeling, sentiments, beliefs, and even suspicions, in respect to public affairs, warning may be given of any threatened danger or wrong, and the public heard in condemnation; or if the wrong shall be actually accomplished, the general voice may be at liberty to arraign the wrongdoer at the bar of public opinion, and inflict upon him such punishment as is involved in a public exposure of his abuse of trust or of his failure to meet the requirements of his position. The free use of this liberty is supposed to be an important part of the self-government of the people. It checks abuses; it punishes public offenders; it prepares the people for the proper and intelligent exercise of their duty in elections; it assists in driving unworthy characters from public life, and it enables those in office to understand public sentiment, and leaves them without excuse if they fail to respect it. Whoever makes use of this liberty to enlighten his fellow-citizens on public affairs, or on the conduct of public officials, is exercising a function of government, and if he does this conscientiously and with a view to just results, is performing a public duty which is imposed upon him by virtue of his citizenship in a free State.

The right of the people to bear arms in their own defence, and to form and drill military organizations in defence of the State, may not be very important in this country, but it is significant as having been reserved by the people as a possible and necessary resort for the protection of self-government against usurpation, and against any attempt on the part of those who may for the time be in possession of State authority or resources to set aside the constitution and substitute their own rule for that of the people. Should the contingency ever arise when it would be necessary for the people to make use of the arms in their hands for the protection of constitutional liberty, the pro-
ceeding, so far from being revolutionary, would be in strict accord with popular right and duty.

The continuous sovereignty of the people is sometimes manifested in a very striking manner when a department of the government assumes to take action which is not within the authority that has been delegated to it. The legislature, for example, adopts some enactment which is not authorized by the constitution. In a legal sense this enactment is void, because the people, in limiting the authority of the legislature by their constitution, have in effect declared that when the limit shall be exceeded the law-making function shall be inoperative. The people, therefore, nullify the unauthorized enactment by refusing to obey it; and this any one of them may do with the most perfect impunity, because the law will be with him in doing it. He needs for the purpose no judicial decision, no official assistance; he simply obeys the constitution, which is the law made by the sovereign, and is therefore paramount, instead of the law attempted to be made by the subordinate, which must necessarily be inferior, and if conflicting, inoperative.

When official wrongs are committed for which other remedies are ineffectual, a resort to the courts for the infliction of criminal penalties remains. The institution of a criminal prosecution may perhaps be made the official duty of some public prosecutor or other officer; but this duty is not exclusive. It is the right of every citizen to be complainant when the Commonwealth is wronged, and what is his right may become his duty if the law appears not likely to be otherwise vindicated.

Where wrongs proceed from private persons there is commonly a double wrong: first in the individual who violates the law, and next in the officers who fail to prevent the misconduct or to punish it. But the neglect of officers does not excuse the people for like neglect. If a bully shall flourish weapons and threaten violence, or shall actually be committing violence upon his family or other helpless persons, no citizen can innocently ignore the fact on the pretence that it is not his business to right the wrongs of others; for to right wrongs is precisely what he undertakes to do when he assumes the privileges and obligations of government.
It seems very obvious, when we consider the rights reserved to the people in forming their constitutions, and in choosing their official agencies, that the position of the American sovereign,—the aggregate citizenship,—as regards the enforcement of the laws and the protection of rights under them, is strictly analogous to that of the individual sovereign of a country, and is subject to all the same responsibilities and duties. The business of the sovereign is to govern; to make laws and to compel obedience to them; to give to the people the benefit of the laws in the protection of the public peace, and of individual liberty and right. And tho the duty to exercise functions of government may be delegated as a trust to individuals selected for the purpose, and in general must be so delegated, yet these persons can act as subordinates and agents only, and their responsibility is secondary to that of the principal who makes use of them as instruments. Agents are to perform not their own work, but the work of the principal; and if they fail in duty, and disorders occur in consequence, the principal, upon whom the final and continuous responsibility rests, must find the remedy. The sovereign himself must rule the State, whether he employs for the purpose many agents or few, just as much as if he employed none at all. The American sovereign, it is true, takes no oath to do this, such as is customary for hereditary rulers; but the reservation of the power by their constitutions is of itself a pledge to the coincident duties, and an oath could add nothing to the obligation.

Are these duties regularly and habitually performed under a sense of responsibility involved in the reserved power of self-rule? No conscientious and thoughtful person can answer this question in the affirmative. It is matter of common observation that laws are made by the representatives of the people which are afterwards suffered to be violated with impunity, the violators being not only never punished, but never complained of. We make no allusion now to such isolated and secret offences as under a vigilant government might escape detection or proof, but to open, bold, and contemptuous violations of law, where not only are the offenders known, but the proofs of guilt notorious.

Take, for example, the case of statutes to restrain or suppress
the sale of intoxicating drinks as a beverage. Some of these absolutely prohibit the manufacture and sale of intoxicating drinks in the State enacting them; some of them simply surround the sale with securities for the protection of public order and private rights, and require heavy license fees from dealers. All of them are supposed to express the sovereign will on the subject to which they relate, and if that will is, for practical purposes, the law of the land, they will be obeyed. That they are not obeyed is notorious. There is not a State in the Union having laws on this subject which are at all stringent in whose large cities, at least, they are not disobeyed with practical impunity. Attempts to enforce them are spasmodic; they are made by single individuals or classes, while the general public look on with unconcern, or at least without giving active aid; and if they succeed in some cases they bring no warning, because the successes are exceptional. The dealers decide that they will not obey the statute, and it fails of effect; there is therefore one law upon the statute-book and another in the drinking places, and it is the latter which prevails. The sovereign will of the State succumbs to the will of the classes it attempts to restrain, and pro tanto there is an abdication of government.

To a considerable extent the same truth holds good in respect to the laws against gaming. If we inquire in any leading city of the country, we shall expect to learn that gambling places are open in various parts of it in which the laws of the State are habitually violated; that this fact must be known to the mayor and the aldermen, to the superintendent of police and his subordinates, to the sheriff and his officers, and to considerable numbers of business men and other citizens. But probably not one of all these persons is making vigorous effort to enforce the sovereign will of the State as against the conflicting will of the "sporting" classes, or is apparently conscious of a personal responsibility resting upon himself, as a participant in the sovereignty, to do what he can to make the law respected.

The case of laws purporting to regulate the sexual relations is still worse. Nominally, prostitution is prohibited; but in all considerable towns it is practically allowed, and the penalties against it are seldom enforced except when other disorders follow. The law, therefore, is that prostitution may be carried on,
and that statutes to the contrary may be disregarded. In every State there are also statutes which restrict divorce to certain specified causes; but the actual law is different, and every day divorces are being granted for causes unknown to the statutes. The courts, which often are not very vigilant, and do not always care to be so when there is no contesting party, suffer fictitious and collusive cases to pass into judgment; and we seem to be almost approaching the period when marriages will be arrangements of temporary convenience, to exist at the will of the parties concerned. This is a crying evil, and some persons have supposed a remedy might be found for it in a national divorce law, which should make the causes for divorce uniform throughout the country. Such a law would take away the opportunity for fraud by means of fictitious residences in States whose laws were most liberal; but this would do very little towards reform. The real evils arise from the very lax public sentiment on the general subject. A national divorce law would almost certainly be a very liberal one; but if it were possible to enact and enforce one of a different character, an inevitable result would be that the irregular and illegal relations now so common would find considerable countenance in public sentiment, or at least considerable tolerance, and would increase in number and publicity.

A more flagrant example of the nullification of statute law, and one involving several very gross and palpable wrongs, is to be met with in the case of homicide for alleged family offences. The two principles that in the administration of justice are absolutely without exception are, that no man shall be judge in his own cause, and that no person shall be condemned without a hearing on the evidence. These are fundamental; but we repeat them in our constitutions in order to emphasize them and put them beyond question. The Constitution of the United States, in prohibiting the States to deprive any one of life, liberty, or property without due process of law, renders the States powerless to set aside either of these principles. But what the State is powerless to do, the Honorable Mr. Smith, or Colonel Jones, or Judge Robinson is suffered to do with impunity. Accusing a neighbor of an offence against his family rights, he proceeds to give judgment upon his own accusation; he allows
no delay, no hearing; he condemns, and he executes his own sentence. In the eye of common and statute law this is murder, with many circumstances rendering it peculiarly atrocious; among the least of which is that the punishment inflicted for an unproved offence is such as the State would not sanction if the offence were confessed or established on trial. But in some parts of the country an individual is not only suffered in this way to put aside the common law, the statute law, and the constitution, and to make and administer a law which is the mere outburst of his passions, but the public give this nullification of their own will approval, and if called upon to sit as jurors sanction it by their verdict. Intentional homicide with malice aforethought is thus excused upon a plausible story of personal injury in the perpetrator, which the other party, being promptly put to death before he could be heard, is unable to contradict. This is an advance upon the practice of the amusing primitive magistrate who refused to listen to the defendant after the plaintiff had told his grievances; for, tho he refused to hear one party, he at least stopped short of death in awarding judgment.

Other illustrations might be taken from the laws to secure freedom and purity in elections, but it is not needful. That evasions of those laws are calculated upon by managers and connived at by parties is well understood; and as many persons perhaps are amused as are indignant when one votes "early and often," or otherwise renders the law a lifeless utterance.

The most conspicuous instance of constitutional reservation of a share to the citizen as such in the ordinary administration of the laws concerns the jury service. Jury trial is preserved by every American constitution, and is given a certain sacredness, as something the value of which has been put by time and experience so far beyond question, that it is not to be submitted to legislative discretion or judgment. The right, and the correlative duty, to participate in it is a part of the people's sovereignty; the right to have one's rights determined by it only the people themselves by formal and deliberate action can terminate.

Whether it is wise thus to consecrate jury trial may be and is a serious question; but there is certainly much good reason
for it. In theory this method of trying the facts seems the best possible. What is the theory? It is that twelve freeholding citizens, selected without bias, and representing different employments, different classes of society, different parties, and different religious and social organizations as may happen, but wholly impartial as between the litigants, shall be the judges of the facts in controversy; consulting together upon them, weighing and canvassing the evidence, rejecting whatever to their common-sense appears false or improbable, and giving what seems its due weight to the rest, until a conclusion is reached in which all can unite. There is value in every feature of jury trial—in the requirement that the jurors shall be freeholders; in the investigation to determine their impartiality; in their being taken indifferently from the various conditions and circumstances of life, so that the prepossessions and prejudices of one class, if any there be, may be corrected or neutralized by the others; in the considerable number required for the panel, and even in the most doubtful particular—the requirement of unanimity. The sifting of conflicting evidence and the canvassing of witnesses is simply the application of the common-sense of the triers to the stories told on the witness stand, and the probability that an aggregate body, not too large for calm consultation and deliberation, will reach the truth is presumably greater than that it will be reached by a single judge, tho he may be more able and wise than any one of the twelve. The theory of jury trial seems, therefore, to be sound and right, and we see abundant reason for preserving it, independent of the inherited veneration we feel for its service to liberty in former times.

By the jury system every substantial citizen is a judge, and the life, liberty, and property of his fellows may be passed upon by him. He is not set apart to be a judge at all times and in all controversies; but he is a judge when the lot selects him, and he undertakes, as a party to the constitution of the State and nation, that he will faithfully perform his duty as such, and do justice to the best of his ability. This duty is most important in the great cities, not only because there the cases to be tried are likely to be most weighty and complicated, but also because in the cities the number of those who have the legal qualifications of jurors is relatively smaller than elsewhere.
Let us now ask how the substantial citizens of the country, and especially of the cities, perform this duty, which by institutions of their own making has been imposed upon them. Do the men of wealth and leisure in New York, the great merchants and manufacturers, the artisans and builders, the publishers and editors, the managers of banks and railroads and insurance companies, and of the thousand other organizations whose capital, and energy, and business ability make the city the commercial metropolis of the Western hemisphere—do they or any considerable proportion of them exhibit a willingness to perform their part in the government when summoned to this duty, and do they promptly respond to the call, intending with patience and fidelity to discharge the obligation it involves? Or do the leading citizens of any city in the Union show in their conduct that they accept in good faith the duty of jurors, and intend without evasion to perform it?

There is not a person in the United States who is both candid and intelligent but will without hesitation answer these questions in the negative. Jury duty we know is habitually shunned and evaded. Very seldom a man with large business interests puts aside his private affairs that he may perform it; very seldom a banker leaves his counter or an editor lays down his pen, or a prominent business man in any line leaves his business to his subordinates, in recognition of this great duty to the public. The officers who select and summon jurors understand this, and are not likely to call upon him. If he is summoned, he is likely to treat the call with contempt; and if the court takes the trouble to send for him he will escape service by paying a fine. It is no longer the case, therefore, that trial by jury is trial by twelve substan-

1 It has recently been the subject of commendatory remark in the public press, as something deserving of special praise, that a certain leading Member of Congress and candidate for the Speakership, when summoned to jury duty, promptly took his place in the jury-box and avowed his purpose to serve. But why should he be praised for it? Nobody bestows praise upon him for taking his seat in Congress when that body convenes; everybody assumes that to be of course, because it is his duty as a member. But the duty to serve as a legislator is no more imperative than that to serve as a juror; and really fit men are needed as much in the one place as in the other. Special praise for recognizing the duty can only be taken as an admission of general dereliction.
tial citizens freely chosen, but it is trial by such twelve persons as consent to sit. Some may sit from a sense of duty, some from fear of fines, some because they are without business, some because they are corrupt, and hope for an opportunity to make dishonesty profitable. It is an exception—in the cities a rare exception—when a jury represents the average ability, intelligence, and character of the community.

It is under such circumstances matter of course that jury trial shall be ridiculed and denounced; but let him who is without sin cast the first stone. When we condemn it we condemn a system of which we ourselves are a part, and which is ridiculous or corrupt because we fail in duty to it. For our private ease or convenience we put aside the duty, and the idle, the ignorant, and the mercenary assume it. The fit leave their proper places vacant that the unfit may take them, and when afterwards they complain that evil results follow, the complaint is self-condemnation.

If every capable citizen were honestly and conscientiously to accept and perform the service which the constitution and laws require of him as a juror, this method of trial might not only be restored to its former usefulness and dignity, but there is reason to believe it would recover public confidence, and hold with general approval the place it was meant for as one of the chief instrumentalities in self-government. But with individual duty repudiated, the jury is without public respect, and therefore necessarily without usefulness.

If, in so far as self-government is allowed to be supplanted by something else, satisfactory results are being obtained, the fact that the theory of the constitution is departed from is not, perhaps, very important. The excellence of a government is determined, not by its theory or its forms, but by its success in giving order, security, and content to the people; and when experience satisfies the country that any principles of its constitutional structure, or any forms, require change, the gradual modification by custom, to be by and by recognized in express changes in the constitution, may be the best. But none of us is ignorant that discontent with the administration of public affairs has grown and strengthened in proportion as the people have evaded their duty in government. Elections, which we
were predisposed to regard as a specific for the evils in free
government, have wholly failed to answer such expectations.
Some of the most serious of these evils are not within their
reach. This is the case with all such as spring from the neglect
of duty by private citizens. Elections might redress official
wrongs if they were free, and if every man's vote was intelli-
gently cast and controlled by his judgment; but this is far from
being the case. Persons are chosen to be governors and mem-
bers of Congress by the votes of men who in their hearts pro-
test against the compulsion of party that demands it, and men
are defeated by the votes of those who know and admit their
superior worth and fitness. If a bad officer is rejected, he feels
no condemnation so long as his party stands by him, and an
election is so far from being an approval, that it may be found
to come from the votes of a mercenary body of men who, by
holding the balance of power between the parties, are enabled
to control the district or the State. In elections party is more
powerful than public opinion; but party itself is controlled by
the few who make management their business, while the mass
of the voters give this duty their attention only on election day,
or at most on that day and the day for caucus or convention,
after the course of things has been conclusively fixed by self-
elected rulers, who, for practical purposes, constitute the party.¹
Elections under such circumstances are no proof of public ap-
proval; worth may influence the result but slightly; experience,
if taken into account at all, may be taken as a reason for a
change instead of a continuance in public place.² This does not
come from perversity or evil intent, but from failure to recog-
nize public obligations and duties, or at least their continuous
and exacting demands.

These evils are not new, and tho some of them have as-

¹ A curious illustration of the manner in which it is assumed that the mana-
gers are "the party," is had in the recent utterances of a leading politician, who,
in urging a plan for the reformation of "the primaries," speaks of the necessity
of bringing the people into more intimate relations with the party.

² In a recent school election for an important town there was a rally of voters
to put out an experienced board in favor of entire new men, for no other reason
apparently than to show that they had the power to do so. After having suc-
cceeded, the meeting unanimously passed resolutions praising the wise manage-
ment and economy of the board they had expelled.
sumed new forms and are more inveterate than formerly, there is no purpose in this article to say or to intimate that popular government on the whole is less satisfactory than in the early days of the republic. On the contrary, in many particulars there has been a steady if not a satisfactory advance. In other respects there ought to be a like advance when the need of it is once pointed out. To admit that the failures in government which have been indicated are without redress, is to admit the incapacity of the people for self-ruler. To this none of us can assent. If the civil service is ever reformed, as there is reason to believe it is to be, elections will to a large extent be reformed also, and will come nearer a just expression of public sentiment. Side by side with this reform should go a vigorous effort to bring about a general realization of the fact that public duties under popular government are necessarily continuous, exacting, and burdensome, but must nevertheless be performed if the government is to be perpetuated. The absence of a king or a hereditary aristocracy is not popular rule; government is not a matter of caucuses, conventions, and elections merely. Paper constitutions do not establish government: they only lay out a groundwork, and by themselves are worthless and lifeless. However sound or noble may be the principles they attempt to express, constitutions and principles will alike sink into contempt unless the sovereign authority gives them life by giving them efficiency. If a king is king only in name, and subordinates his public duties to his ease and his pleasures, the actual rulers are likely to be his sycophants and flatterers—perhaps his mistresses; and their rule, like all irregular rule, will invariably be selfish and generally tyrannical. And what is true of an individual ruler is true of the aggregate ruler. The American people, with power as absolute as ever existed, have emphasized in their constitutions the declaration of their sovereign authority, and their purpose to exercise it. But their mistake has been in assuming that the declaration was to be self-executing, and that to proclaim self-government was to establish it. The obligation to perform day by day the duties involved in popular government has either failed of recognition altogether, or has been treated as tho, being the obligation of the community at large, it did not charge with duties any particular citizen. It
has been assumed that if individuals perform such services as are expressly commanded by law, and thus escape legal penalties, they are subject to no reproach as citizens, and anything further in the public interest must be matter of choice and voluntary individual action. A necessary result is that public duties are ignored or evaded; disorders follow which no one feels it his duty to suppress; and parties by indirect methods possess themselves of the power of the State and employ it to advance personal interests. Surely when this takes place the government is not self-government, whatever may be the theory or the provisions of the constitution. The necessary condition of self-government is personal and ready participation of the individual citizen wherever participation is needful to accomplish the purposes of the constitution or to ensure the enforcement of the laws. To a certain extent only does the law suffer the duties of the citizen to be delegated to officers, and even then his watchful oversight is assumed. The citizen who evades his duties or leaves them to be performed by self-chosen and mercenary rulers, is guilty of a crime against the State and against free institutions in general.

There is need also that we distinctly understand and appreciate the fact that the constitution and laws of a State never do and never can prescribe all the duties of its citizens. In America it is agreed that certain subjects shall be excluded from the domain of government which are regulated by it in other countries; but it is nevertheless supposed that citizens will perform in respect to them such duties as an enlightened conscience shall dictate. This is the case with religion: we will suffer government as such to have nothing to do with it except to protect the people in their exercise of religious privileges. But a very large proportion of all the people are of opinion that religion is a valuable conservative power in the state, and that its influence upon the laws and their administration is in a high degree valuable. It cannot be doubted that upon those who thus believe there rests a public duty to give countenance, encouragement, and support to public worship; and this duty being governmental in purpose and end, has no necessary connection with personal belief or faith. The State also, while providing for the administration of charity, never undertakes to make the provision complete, or
to prescribe to every citizen the full measure of his public obligation. Indeed, the attempt, if made, must necessarily fail. At best the charity of the law must be cold and formal: it can stir no warm feelings; it can excite no gratitude. To have the proper and full effect of charity it needs to be supplemented by the voluntary contributions of the people, collected and disbursed by charitable persons or organizations, who will be moved to what they do by no other compulsion than that which springs from humane impulses and sentiments. Only the charity that is the outward expression of heartfelt sympathy and self-denying benevolence can fully accomplish its purpose, and put the benefactor and the recipient in sympathetic relations as constituent members of the State, with common interests and reciprocal duties. And it may be added, that organized private charity is much less liable than public to foster fraud, and to encourage the idle and the vicious in their depravity. The duty of preventing cruelty to children and to animals almost of necessity is taken up by voluntary organizations, for much of it comes incidentally in family management or in ordinary business, and may take place before the eyes of the community without its significance being recognized or noted. Only an agency specially devoted to its suppression is likely to do effectual service.

The fact ought to be recognized and admitted also that the most effective agencies in bringing about reform of the evils and abuses in government have always been the voluntary organizations. It was not the law or the public prosecutor or the courts that broke up the fraudulent combination which a few years ago had fastened itself upon the city of New York for the purpose of public plunder; and no man can say how long the combination might have retained its power, nor how extensive might have been its robberies, had not private citizens in the performance of their civic duties originated and carried forward the proceedings which at last brought the guilty parties to disgrace and punishment. Other cities have had similar experiences. When corruption is installed in authority it makes use of the law as the instrument for perpetuating its power, and concerted action of private citizens to overthrow misgovernment becomes a necessity. It has been found to be so in State and National government. What could have been more hopeless
than the reform of the civil service, had not private citizens and voluntary organizations begun the work and pushed it forward with vigor and determination, until a sentiment was created which politicians and men in power deemed it wise to bow to and conciliate? But if government is to be self-government; if the people as a verity are to possess and exercise the sovereignty, and are to make the laws and cause them to be executed; if they would have a wise government or a pure government—it is not less essential that they should sometimes act in their capacity of private citizens in cases not prescribed by law, but which nevertheless have a direct and necessary bearing upon good government, than it is that they should cast their ballots for suitable persons in elections, or that they should perform jury duty, or bear arms when summoned to the defence of the State. If the citizen fails to recognize this obligation, and contents himself with the suffrage, and with the performance of such acts as the law commands, and suffers wrong, oppression, fraud, and dishonesty to possess the government or any of its departments or agencies, when his influence or efforts, legitimately directed and employed, might prevent it, he should neither be tolerated in complaining of the consequent injury and wrong to himself, nor be countenanced in any assumption that he is a worthy member of a self-governing commonwealth, and is himself one of its rulers. Whoever refuses to "stand fast in the liberty" to which he is called, by performing courageously its obligations and duties, must be content to be "entangled again with the yoke of bondage."

Thomas M. Cooley.