in taxes may be regarded as a profit to the city, though even this is a doubtful item.

The Union street line is proving a better money maker than the Geary street line. It is about half the length, costs only \$312,000, or about one-sixth the cost of the Geary street line, and took in \$29,715.10, or \$958.55 a day, during March, against a daily average of \$1,902.24 for the Geary street line.

The service on Geary street has been much improved by the city's line, and this has had an effect of stimulating similar improvements on the parallel lines of the United railroads. The municipal service has not, however, had any noticeable effect in eliminating the "straphangers." It remains true on public as on private roads that the standing passengers pay the profits. The employees, however, are polite and accommodating, and there is an evident effort in the management of the road to suit the public convenience. The men appear well content, receiving a wage of \$3 a day for eight hours of work, and except for the extra men hired on the "rush hour" runs, most of them complete their eight hours of work in a total of ten hours. (The rate paid on the private roads is from twenty-five to thirty cents an hour depending on length of service.) The men are selected by civil service examinations and hold during good behavior. They may, however, be dismissed without trial.

Altogether the people of San Francisco are well pleased, thus far, with their experiment in municipal ownership of street railroads. It has not proved the gold mine that some of its over-enthusiastic promoters promised. But it has improved service, bettered the condition of the working force, paid its way, and given promise of securing the extensions that could not be secured under the regulations imposed on private ownership.

E. A. WALCOTT.²

THE GOETHALS POLICE BILLS

PRO

UNDER the New York city charter a policeman is entitled to a trial upon written charges before he may be disciplined or discharged. He has the further privilege of having the action of the police commissioner reviewed by the courts. On a writ of *certiorari* he may have the paper record of his trial at police headquarters reviewed by a judge of the supreme court, and he may carry such review to the highest court in the state. The court does not hear nor see any witnesses and no new testimony may be introduced; but the action of the police commissioner may be reversed on such review.

²Executive Secretary, Commonwealth Club of California.

Mayor Mitchel's police bills constitute the first real challenge which court review has received. But the subject is by no means new to New York City. General Bingham, Judge McAdoo, and District Attorney Cropsey each left the police commissionership convinced of the evils of court review. Ex-mayors Low and McClellan also reached the same conclusion. On the other hand the aldermanic police investigation of 1912-13 reported in favor of its retention, and the citizens' committee, while in grave doubt, made no recommendation for its abolition. And even though the abolition of court review was favored this winter by the City Club, the Citizens' Union, the Chamber of Commerce, the Merchants' Association, and other powerful organizations, it is probably true that a solid consensus of opinion has not yet been established in favor of such abolition.

There is still existing a considerable and honest belief that court review is a protection to the honest policeman against bad commissioners on the one hand, and on the other, against law-breakers and politicians who seek to secure the dismissal of good men from the force.

If this belief were justified by the facts, it would constitute an ample public reason for continuing court review; but I am personally thoroughly convinced that the facts lead to a very different conclusion.

The assumption that court review constitutes a protection to the honest policemen against a dishonest police administration is pure assumption and nothing else. Court review was in existence all through the Devery régime. It was Devery's custom to hear at least the more important cases, and even when perpetrating the grossest injustice he would defy the policemen to secure redress through court review. Any commissioner who is dishonest and who has made up his mind to get rid of any particular man can and will so frame his case that there will be no legal flaws in the record which goes to the court. Perjury on paper can be in as good legal form as the truth.

Similarly, perjury on the part of the law-breakers or politicians, if not detected during the trial at police headquarters, will not be upset by court review. Again, court review is quite expensive. The ordinary honest policeman will find it difficult to finance such a proceeding. The large majority of appeals are carried up by inspectors, captains and other officers, not by patrolmen.

Hence court review has been the most important refuge of the corrupt and unfit officers of the New York police force. The testimony on this point is almost unanimous, except for General Greene, who was commissioner under Mayor Low. In a letter to the *New York Times*, dated January 28, 1914, General Greene contended that the present law is sufficient and that he operated satisfactorily under it.

Those familiar with New York's development will immediately recognize that General Greene was one of our very good police commissioners.

Fortunately, however, his contention can be disproved by the records of his own administration. The City Club worked with him steadily during his term of office and in October, 1903, published a report on the condition of the department. On page 63 of that report there occurs the following paragraph:

The dismissals made by Commissioner Greene have included some of the worst officers in the department. *There are still men in the force who have bad reputations and who are known to have been grafters; but they have managed to cover their past operations so well that it has not been possible to secure legal proof against them.*

The paragraph then goes on to give special credit for the dismissals of Inspectors Grant and Cross, Captains Gannon and Stephenson, and Sergeant Shiels. Of these all but one were reinstated by the courts as follows:

Inspector Grant in April, 1904.

Inspector Cross in November, 1904.

Captain Stephenson in March, 1904.

Sergeant Shiels in August, 1904.

The charge in each case was of a serious nature, namely, the failure to suppress disorderly houses. In the case of *People ex rel. Cross v. Greene*¹ the court summed up by saying that proof of neglect was not such as would warrant a jury in finding Inspector Cross guilty and they ordered his reinstatement!

Court review thus has established the principle, not that officers of the New York police department should be above suspicion, but that they shall be retained on the force until they become convicted criminals; and that they cannot be separated from the force except by substantially the same proof that would be required to convict them of a crime.

It is not my intention to indulge in a criticism of American criminal law. There is ample basis for the belief that it unduly favors the criminal as against society; but still there is some justification for such a condition when society is proposing to deprive the accused of his personal liberty and freedom. But there is no necessity of applying the rules of criminal law to the discipline of a great police department; and when so applied we have no right to feel shocked or surprised at the existence of a sullen insubordination on the part of the higher officers, nor of a false *esprit de corps* which holds it to be the honorable duty of one police officer to perjure himself for the benefit of a fellow officer. If we are to get rid of these evils in police administration, we must abolish court review.

ROBERT S. BINKERD.²

¹98 App. Div., 620.

²Secretary of the New York City Club.

CON

Notwithstanding the fact that the New York assembly voted against the so-called Goethals police bills by an overwhelming majority, it does not follow that the plan of police control as proposed by Mayor Mitchel is essentially wrong or right. I think it will be conceded, the vote does show that legislators, usually responsive to the views of their constituents, believed the measures unpopular enough to warrant them casting their votes against the wishes of a city administration at the beginning of four years of power and patronage. So far as the popularity of the bills are concerned there has never been a doubt in my mind regarding the attitude of the people, and I do not believe any candidate for governor or for assembly next fall will care to stand upon a platform in which advocacy of the Goethals bills is a plank.

In the open campaign against the police bills, the writer has declared publicly that the measures were unnecessary and dangerous. As the fight progressed and I found myself opposing with the great power at my command a young and efficient mayor, to whose administration I had looked forward with hope, I frequently asked myself the questions I put to others when public matters are debated, namely: (1) are you qualified to discuss the subject? (2) will success benefit you financially?

I have found that in discussions of public affairs debaters have either given little study to the subject or they benefit materially by the success of the cause they preach. If a quarter of a century of experience with police affairs qualifies one to give an opinion on a police problem the writer owed it to the public and to the mayor to take a stand for or against the proposed legislation. So far as any benefits derived by the defeat of the bills there have been and can be none. On the contrary the success of the mayor's plans meant radical changes in the great force of 11,000 men, more dismissals, more appointments, more promotion examinations,—all that goes to advance the circulation of a newspaper read by them and to create a demand for books. Hence it was that, after having, at the mayor's invitation prior to election, discussed with him police affairs, and having received from him a satisfactory signed statement of his attitude toward the police, I was amazed to learn of his desire that the protection of the courts be taken from all policemen.

So successfully did the mayor make his appeal for power over the police that influential organizations like the city club, the merchants' association and the chamber of commerce, responded to the call and united in an effort to pass the bills. Opposition was expected from the "system," that bug-a-boo that may be applied to any body of men, whether lawyers, merchants or police, who find a necessity for organization in order that they shall accomplish by united action that which would be impossible to the individual.

But the real opposition to the police measures came from the public, from men who cast their ballots for Mr. Mitchel, from members of his own cabinet, from newspapers that were foremost in supporting his candidacy. Mr. Hearst was firmly convinced the mayor was wrong, and the bills vicious. He did not hesitate to say so and placed his great machinery of publicity at the command of the writer in order to stop the mayor in what Mr. Mitchel's close friends regarded as a suicidal policy. The *New York Times*, also a Mitchel supporter, opposed the bills as did *The Sun* and the *Brooklyn Standard Union*.

While the city club and the merchants' association were sending out appeals to organizations and influential citizens to rally to the support of the mayor, the tide of popular opinion was set against the measures. The people were opposed to such legislation and their handwriting was seen upon the legislative walls by representatives who seldom make errors in interpreting the popular will.

I have listened to every argument put forth by those who favored the bills. I heard the mayor at the city club and at the press club in both of which I have the honor of membership. I heard the mayor make his appeal to the joint legislative committee. Yet every argument made for the bills, when put to the test of my own knowledge and experience, made me more than ever convinced that to take away from policemen protection from unjust removal was far more perilous to the people than to the policemen, and altogether unnecessary as a means of enforcing discipline.

Let those who are inclined to favor the Goethals bills study the question carefully. The mayor has said that the bills, if enacted, would make the policemen "more responsive" to their commissioner, that the reinstatements by the courts had a demoralizing effect and that the fact that the policemen had tenure of office while the commissioner had none made the passing heads little respected by the men.

In the past twenty-five years the court of appeals has directed the reinstatement of only nine policemen. In one of these cases a new trial was ordered, and upon the re-trial the officer was again dismissed, which dismissal was finally sustained by the court.

According to the report made by the Curran aldermanic committee covering a period of fourteen years, 683 policemen appealed to the courts against dismissal. In all only forty-six were reinstated by the courts. This does not include at least 200 additional policemen who were dismissed and who did not seek reinstatement through the courts. So that of a total of nearly 900 dismissals forty-six or approximately five per cent, were restored by the courts.

Is it possible that the discipline of the police force has been, or can be, shattered because of the reinstatement of these forty-six men out of 900 in fourteen years?

The question of depriving members of the force of the right to present their grievances to the courts is not a new one. Such legislation has been repeatedly advocated, but the great danger of vesting such powers in the police commissioner and the consequent demoralization of the force was so obvious that the attempt was abandoned. Recently the Curran committee thoroughly investigated this subject and examined many witnesses. Finally it embodied the following recommendations in its report:

The right to a court review is a protection to honest members of the force. Any policeman who fearlessly performs his duty necessarily makes enemies who are only too willing to injure him. If the commissioner were vested with arbitrary power of dismissal, injustice would more likely result than under the present system which requires sworn testimony in support of charges. The arguments usually advanced against the preservation of this substantial right have less force than when it is realized that reinstatements by the courts have been so few.

Very frequently charges preferred against members of the police force are *quasi*-criminal in their character and involve a crime. Would it not be a travesty upon justice to vest in the police commissioner the arbitrary power of dismissal upon such charges without the necessity of a trial and sworn testimony, and sentence the accused to the loss of a position from which he earned a living for himself and family, and send him forth into the world with the stigma of dismissal, which could not fail to interfere with his obtaining other responsible employment and earning a living for them without the right to test the justice of such dismissal in court?

The police bills provided that any policeman dismissed would be entitled to all the money he had paid into the pension fund plus interest upon the same. Thus under such a law in the period of fourteen years above stated about 854 dismissed men who lost all because of dismissal would have received substantial sums to offset their punishment while the forty-six innocent men who were dismissed by perhaps the whim of a temporary superior would have been examples of injustice sufficient to demoralize any body of men.

A policeman with twenty years' service to his credit has much more to lose by misconduct under the present law than he would under a Goethals act. To-day he would lose all, his contributions to the pension fund and the right to a pension as well as his position. Under the proposed legislation he would receive a substantial sum of money. The statistics show that ninety-five per cent of the men dismissed would be benefited financially by the change. This does not argue well from the viewpoint of the public treasury which would lose tens of thousands of dollars now held for pensions of those who perform duty faithfully over the required period of time.

But the real peril of the police bills lies in the great power they would place in the hands of one man to say what laws shall or shall not be enforced in a community of 5,000,000 people. Government is maintained only by a system of checks. Experience has taught us that whether it is the nation, state, city or a great corporation, to the extent that great power without checks is given, to that extent has there been danger of corruption or abuse of authority. The nation to-day is struggling to free itself from the domination of financial combinations that are legacies of days when there were no checks upon their work. The state of New York has been awakened to grafting among high officials and yet such misconduct has been the result of unchecked power. The metropolis has not forgotten the years that have gone by when its treasury was mulcted annually out of thousands of dollars because of the absence of a system of checks upon those in temporary power.

After the experience of the decades, why should any community give over its precious right of government by law into the hands of any man chosen by another after a successful political campaign? Why ask your newly appointed patrolmen to swear to enforce the laws, if obedience to a passing superior is more important to his own wellbeing?

How long will a police force be free from politics when the members of it know their tenure depends upon the discretion of a commissioner and his deputies, who, perhaps, owe their own appointments to the assistance they gave in a political contest that preceded their selection? Fortunate, indeed, is that commissioner who has not such despotic power over so many thousands of fellow citizens.

How frequently have we heard of the police problem in the solution of which so many have apparently failed? Is there a police problem? If so, what is it and how may it be solved? The police problem is the complex social and industrial conditions peculiar to all large American cities, but more intensely peculiar to the metropolis. It is the problem that caused Mr. Roosevelt to give up his police commissionership in disgust. In Mr. Roosevelt's days it was vice, gambling and excise just as it is to-day. I talked with him at the time on these topics. Two of his three colleagues, Commissioners Grant and Parker, opposed his methods of solving the problem and the board was deadlocked for weeks.

Other commissioners passed along, some favoring "liberal," others strict enforcement of the law. The police force followed. They "winked" at violations of law when they knew the head of the force didn't mean to have the spoken orders obeyed. The policemen have known when their commissioners really meant what they said and when they didn't. When one realizes the hypocrisy and corruption that permeated the police throne in the years gone by, it is a wonder that the force is as good as it is to-day.

Whenever an order has been given to the police, they have obeyed it literally. It is when the policeman interprets the law, himself, as he is frequently required to do, that he finds himself in trouble with clever lawyers ready to entrap him. Only once has the real head of New York's police force (the mayor) ever instructed the police what to do and how to do it. The mayor was the late William J. Gaynor. The force found itself in the midst of public clamor that followed the Rosenthal murder. The police were in doubt as to their authority in enforcing the excise law in restaurants after one a. m. In previous administrations they had been left to shift for themselves. Mayor Gaynor issued his orders. There was no quibbling. He directed the police to "drive out" those who were found in restaurants where liquor was sold after one o'clock. The police obeyed. They had received an interpretation of the law and orders, too, from a man who had been a justice of the appellate division of the supreme court. But on the third night the district attorney stepped in and ordered the arrest of the inspector and a dozen policemen who had carried out the orders of the mayor. Such was the spectacle presented on the very first occasion when a mayor told the police what to do and how to do it.

The police are not told what to do and how to do it because their highest superiors do not wish to take that responsibility upon themselves. Mayor Gaynor did it once, but never repeated the proceeding. The police do the best they can under the most difficult circumstances. The law which they have sworn to enforce may read to them as plainly as A, B, C, but they soon learn that even the A, B, C, is interpreted a dozen ways by as many magistrates, that ordinances to be enforced must have the approval of the particular magistrate then sitting in the district where the arrest is made.

Comparatively few people understand the difficulties that beset the policeman in his everyday work. He is, indeed, a magistrate on his post, but his usefulness would be ended quickly if he attempted to enforce the hundreds of laws that are upon the statute books. He learns by experience that the concrete will of the people, as expressed by orders, newspaper clamor, or specific complaints, is to be recognized.

The policeman is well posted on the law. He requires only to know what is wanted of him. He is as good as the community he serves. He never hesitates to sacrifice life in performance of duty. He is tempted more than his fellow citizen. Over him are placed officials that are creatures of political favoritism. He stands in the center of a great mixture of people, thousands of whom are held in check by his presence. He has sworn to enforce the law. He obeys the last order first. His work is obnoxious and at best unpopular.

This is the man—the policeman—who to-day is protected by the law he has sworn to enforce. Do American citizens wish to jeopardize their own rights by giving into any official's hands the despotic power of dismissal over any one or all of the police army of New York City?

JOSEPH J. O'REILLY ³

MINNESOTA HOME RULE AND WISCONSIN REGULATION

THE FINDINGS OF THE MINNESOTA HOME RULE LEAGUE ON STATE REGULATION OF PUBLIC UTILITIES IN WISCONSIN

THE Minnesota home rule league, an organization whose purpose is "to promote the principle of home rule in the control and regulation of public utilities in Minnesota," has recently issued a pamphlet in which it "draws the following indictment against the Wisconsin system of state regulation of public utilities as administered by the railroad commission:

1. The commission has not given relief to the public in the way of lower rates and better service in any such measure as has been secured by the municipalities of Minnesota under home rule, and in notable cases in other states not under state regulation.

2. It has shown a strong leaning towards the interest of the utilities as against public interest, as revealed in its findings of high rates for service, more than reasonable profits and excessive valuations. Originally created as an agency for the protection of the public from the exploitation of utility companies, it has become rather an agency for the protection of the companies and the means of increasing the value of their investments.

3. It has moved with exasperating slowness in rate and service cases involving great public concern, with the companies profiting enormously in the interim by its inaction.

4. It has put a big financial burden upon the state at large for the alleged benefit of the cities.

5. It has been an obstacle in the way of the cities securing for themselves relief from oppressive conditions of rates and service through municipal ownership, by inviting competition, or by other methods.

6. It has compelled the cities in many cases to go to large expense to defend their interests, both before the commission and the courts, when the theory of the law is that the commission is created to do exact justice towards all parties concerned.

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