PRIMARY ELECTIONS

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PRIMARY ELECTIONS

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To Hilda

PREFACE TO REVISED EDITION

It is now nearly twenty years since the volume on *Primary Elections* was published. Since then many interesting experiments have been made in the nominating process and many important developments have occurred, alike in the local, state, and national fields. This present volume is written in order to present an analysis of these recent changes, an interpretation of the nominating process in the light of new tendencies, and some suggestions for a constructive program of nominating development.

Since the original volume was published, the writer has been a candidate in some five primary elections and has taken an active part in several others. He has observed the primaries in action in Wisconsin, Iowa, Michigan, Indiana, New York, Massachusetts, and Colorado, and has consulted with many types of authorities on primaries in many other states. In addition to this, the writer's students have collected a mass of material analyzing the nominating process in many parts of the country.

For a number of years I have urged that a comprehensive survey of the nominating system be undertaken through a commission for such a purpose, or through some other form of co-operative inquiry. It has never been possible, however, to obtain the funds necessary for this important piece of research, and there seems to be no immediate prospect that such a thoroughgoing

investigation will be made. In the meantime I am submitting the results of my own observation and reflection, for whatever value they may have in the field of political prudence. Perhaps the limitations and inadequacy of this study may move someone to undertake and execute the type of research that needs to be done in this important field. If such a result should follow, I should count my work as well worth while, and should rejoice in the assembly of richer and more complete data regarding our nominating process.

The first three chapters of the earlier volume stand as published. Chapters iv and v have been brought down to date and rewritten by Dr. Overacker. Chapter vi, on "Judicial Interpretation of Primary Election Legislation," has been brought down to date and rewritten by Mr. Merriam. Chapter vii, on "Presidential Primaries," is a new chapter written by Dr. Overacker, but based largely on the volume on *The Presidential Primary* published by the Macmillan Company. Chapter viii, on the "Analysis of Primary Forces," is a new chapter by Mr. Merriam. Chapters ix, x, xi, xii, on the "Practical Working of the Direct Primary System" and "Summary and Conclusions," have been almost entirely rewritten by Mr. Merriam.

The Appendixes are largely the work of Dr. Luella Gettys, without whose diligence in the analysis of primary laws and in the collection of bibliographical material this volume would have been impossible. We are also under great obligation to Clarence W. Peterson, of whose study of *Primary Election Decisions* much use has been made, and to Professor Glenn A. McCleary for valu-

able assistance with manuscript and proof. Acknowledgment is also made to the many students whose special studies have been utilized at various points in preparation of this volume. Many useful suggestions have been made by my colleagues, Dr. White, Dr. Gosnell, Dr. Wooddy, and Dr. Kerwin, but they must not be held accountable for error, omissions, or aberrations.

CHARLES EDWARD MERRIAM

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CHAPTER I

EARLY LEGISLATION REGARDING PRIMARIES

In the early days of the Republic the nominating system, as now known, did not exist. Candidates for local office were presented to the electorate upon their own announcement, upon the indorsement of mass meetings, or upon nomination by informal caucuses,[1] while aspirants for state office were generally named by a "legislative caucus" composed of members of the party in the legislative body, or later by a "mongrel caucus" in which legislators and outside representatives of the party united to select party nominees.[2] In the national field, candidates for president were named by the congressional caucus. After a long struggle the legislative caucus and the congressional caucus were overthrown, and a system of representative party government developed. When the delegate system was adopted it was regarded as a great triumph for the plain people over the aristocracy. Andrew Jackson had been one of the bitterest antagonists of King Caucus, as the congressional caucus was known, and it was the Jacksonian Democracy that definitely established the representative party system. By 1840 the delegate convention system had

[1] See Ostrogorski, *Democracy and the Organization of Political Parties*, II, 1–204.

[2] Dallinger, *Nominations for Elective Office*, chap. i; Luetscher, *Early Political Machinery in the United States.*

been generally adopted, and entered upon its period of trial. Without interference from the law, the political party was left free to carry on the nominating process in such manner as party tradition, custom, or rules might provide.

This experiment in unregulated representative government of the parties did not begin or continue, however, under wholly favorable auspices. Accompanying the adoption of the new nominating system certain other important political practices were introduced. The Jacksonian Democracy established the doctrine that political offices are the legitimate spoils of the party in power, and may properly be employed to advance the interests of the party organization. The famous principle of rotation in office as a necessary safeguard of free government, and the idea that office should be made elective rather than appointive, when possible, were also generally adopted. At the same time the application of the new principle of universal suffrage increased the number of those entitled to participate actively in party affairs from a restricted electorate, based upon property and religion, to a constituency including practically all adult white males.[1] Thus the new nominating system entered on its career in a period in which the number of voters was increased, the number of offices was increased, and all office was regarded as a party perquisite.

Within a few years other elements of difficulty were introduced into the problem of successful government. The great influx of population into the United States

[1] See Merriam, *History of American Political Theories*, chaps. ii, iv.

necessitated the rapid assimilation of various racial elements into the nation, and tended to produce a political situation much more difficult to control than with like numbers of any one of the several races concerned. At the same time there occurred a rapid concentration of population in the great cities. In 1840, when the nominating system was inaugurated, the percentage of population in cities over 8,000 was 8.52 per cent; in 1850 it was 12.49; in 1860, 16.13; in 1870, 20.93; in 1880, 22.57; in 1890, 29.20; and in 1900, 33.10. These great centers of population altered the conditions under which American democracy had first developed, and made necessary important adjustments to the new environment. With the growth of cities came new communal needs, requiring governmental action and increasing the number and importance of public positions. Public works, such as street paving, sewers, water systems, and public building were necessitated, while many new public services were required. Departments of public health and safety, education, and charities and corrections were organized.[1] The same expansion of governmental activity was found in the state and in the national system, where offices and spoils rapidly multiplied. Under such conditions greater and greater prizes were offered for the control of the party machinery.

Moreover, this rapid increase in the number of offices and opportunities occurred under the influence of the theory that offices should be made elective and for short terms only. It was also a prevalent doctrine of this day that political power should be decentralized as

[1] See John A. Fairlie, *Municipal Administration.*

far as possible, in state and local affairs. In the absence of centralizing and co-ordinating agencies *within* the government, the party organization began to assume the functions of centralization denied the government. This tended to strengthen the party organization and increase its importance by making it in fact an organ of the government.[1]

Furthermore, following the Civil War there came an era of material prosperity on a scale seldom seen in the life of any nation. The influx of new population, the settlement of the great West, the development of transportation, manufacturing, mining, agriculture, and other giant industries were economic facts that powerfully influenced political life. They tended to divert the attention of the people from the course of political events at the very time when intelligent and honest public action was most necessary; and they offered to an unscrupulous party manager unusual opportunities for enrichment. Public rights might be bartered away for private gain, or legitimate private rights attacked in the name of the public.

It was under such conditions as these that the new nominating machinery was compelled to work. Any one or more of these influences might not have interfered seriously with the system, but the combination of all these political and economic forces powerfully stimulated corruption and abuses. Possibly such temptations as were offered in the early days by the spoils system might have been overcome, but the vastly greater allurements under later conditions proved too great to resist.

[1] See Goodnow, *Politics and Administration*, chap. iii, *et passim*.

Conditions developed that were so intolerable as to arouse indignation and protest, and led to the formulation of a policy of public regulation and control of the nominating machinery.

The abuses that arose under a system that staked the immense spoils of party victory on the throw of a caucus held without legal regulation of any sort were numerous and varied. They ranged from brutal violence and coarse fraud to the most refined and subtle cunning, and included every method that seemed adapted to the all-important object of securing the desired majority and controlling the convention.[1]

In the first place it soon became evident that there was no guaranty that participation in a party caucus or primary would be confined to members of the party immediately concerned. In the rural neighborhoods where general acquaintance acted as a barrier against the intruder there was less serious difficulty, but in the rapidly growing and shifting population of cities, abuses of this character were exceedingly common. Party primaries were invaded and controlled by men of a different or of no political persuasion, and from other districts of the city. Sometimes this was done peaceably and with a show of decency and order; or again it was accompanied by violence and disorder of the most outrageous character. Both sneaks and sluggers were employed as the occasion dictated. Again, the test for participation in the party councils might be made so

[1] See F. W. Dallinger, *op. cit.*, pp. 95–126, for specific cases of abuses of this character. See Duncan C. Macmillan, *The Elective Franchise in the United States* (1878), pp. 55 ff.

stringent as to exclude many bona fide voters of the party, and thus leave the control in the hands of the group managing the machinery, as was done in Tammany Hall.[1] Bribery of voters in an election, although subject to severe penalties under the law, did not constitute an offense in a primary or caucus and was not punishable. Voters might be bought and sold with no pretense of concealment, for there was no remedy or penalty at law.

Another device was the manipulation of the count of the votes. Where the issue was determined by a mass meeting of voters, an autocratic chairman might easily decide the controversy, and from his ruling there was no opportunity for appeal. There was no guaranty that a vote by ballot would be permitted; or if sufficient progress had been made to provide for a written or printed ballot, then the temptation to trickery and fraud was often found irresistible. The ballot-box might be stuffed, the count of the ballots might be falsified, and any one of a hundred ingenious devices might be employed to insure the result desired. Even if otherwise properly conducted, primaries might be held upon wholly insufficient or inadequate notice, so that only the few "interested" would be found in attendance; or, if properly called, caucuses might be held in inaccessible places or in rooms wholly inadequate for the number of voters eligible to participate.

In short, the primary election, having become one of the most important steps in the process of government, was open to every abuse that unscrupulous men,

[1] Bernheim, *Political Science Quarterly*, III, 99.

dazzled by prospects of almost incredible wealth and dictatorial power, could devise and execute. Not all of these evils appeared in one place and at one time; but they were likely to occur at any time when factional rivalry became sufficiently intense. Especially were these abuses felt in the great cities where opportunities were largest and rewards most alluring, and where the shifting population rendered personal acquaintance among all the voters impossible.

These evils might have been remedied by action within the party, either by organized effort on the part of those opposed to such practices, or by refusal to support candidates who had been nominated by such methods. Indeed, some attempts were made to regulate party affairs from within by means of party rules designed to secure order and regularity in the nomination process. The Republican organization of New York City adopted in 1883 a primary plan intended to eliminate some of the worst evils of the old system.[1] The County Democracy of New York City also adopted a liberal plan.[2] Similar measures were taken by other organizations from time to time.[3]

But these plans were not as a rule effective in operation, and no material, or at least no adequate, improvement of conditions was apparent. The appeal of the voters was generally made to the law, and therefore the progress of primary reform may be traced through the channels of legislation. The growth of primary re-

[1] Dallinger, *op. cit.*, p. 105.

[2] *Ibid.*, 107.

[3] *Ibid.*, chaps. vii, viii.

form in the South is, however, largely a product of party rules.

The first law was enacted in the state of California on March 26, 1866 (chap. 359), and was entitled "An Act to Protect the Elections of Voluntary Associations and to Punish Frauds Therein." This was closely followed by the New York Act of April 24, 1866 (chap. 783), "An Act to Protect Primary Meetings, Caucuses, and Conventions of Political Parties."[1]

The immediate occasion for the passage of the California law was the desperate struggle between the "long hair" and "short hair" factions of the Union party.[2] This contest was accompanied by scenes of great violence, disorder, and glaring fraud, especially in San Francisco and Sacramento. The subject of primary reform was not discussed in the platform of either party, but the session of the legislature in 1866 took up the topic and passed what was known as the Porter Bill.

[1] For illustrations of early methods of controlling the nominating process, see Cortlandt F. Bishop, *History of Elections in the American Colonies*. A notable instance cited is the East Jersey regulation of 1683. Names of all persons eligible to the Great Council were written by the sheriff on pieces of parchment. These pieces were placed in a box and 50 were drawn out by a boy under ten years of age; then 25 were drawn of the 50; the 25 remaining were the nominators and they selected 12 names from the 25 drawn. Before voting the nominators must declare that they would not name anyone "known to them to be guilty for the time, or to have been guilty for a year before, of Adultery, Whoredom, drunkenness, or any such Immorality, or who is insolvent or a Fool." Then three of the twelve were elected by ballot. See I *New Jersey Archives*, 397.

[2] See Davis, *History of Political Conventions in California*, chap. xvii. The *Placerville Mirror* said (July, 1865): "For the last week battalions of blowers and strikers from San Francisco, Sacramento, and San Quentin have been detailed here to operate at the primaries" (p. 214).

The California Act was a purely optional statute, applying only to such political associations or parties as might invoke its protection and subject themselves to its provisions.[1]

In case the law was accepted by any party then, a number of regulations applied to the conduct of its primaries. The law required that the notice of the proposed election of candidates, delegates, or managing committee should state the purpose, time, manner, and conditions of the primary, together with the place or places of holding such elections and the authority by which the call or notice was published. The call must also name the person to preside over the election and declare the qualifications of persons to vote at the election, provided such qualifications were not inconsistent with the act itself, which prescribed that no person not a citizen of the United States and a qualified voter of the county should participate in the primary. The law further provided that notice of the primary must be published in some newspaper of the district in which the election was called, and posted in at least three polling precincts at least five days before the election. Additional safeguards were supplied by the requirement that the supervisor of election must be sworn to faithful performance of his duties, and he was authorized to appoint assistants, who must be "reputable citizens" and legally qualified voters. The supervisor was empowered to examine, under oath, all prospective voters and to interrogate them as to their qualifications.[2]

Penalties were provided for offenses against the law.

[1] Sec. 6. [2] Sec. 4.

Violation of the oath to conduct the election "correctly and faithfully," or to protect it against all fraud and unfairness, was declared a misdemeanor and made punishable by fine of not less than $50 or more than $200, or imprisonment not to exceed six months, or both. Wilful false statement by a prospective voter under examination by the supervisor was declared to be perjury and punishable as such. Furthermore, voting by one not qualified (if challenged) or double voting was declared a misdemeanor. Finally, the law specifically provided that the expense of such a primary must be borne by the party: "No expense shall be incurred to the county or state in the conduct of elections under its provision."[1]

The New York statute of the same year was mandatory, but far less comprehensive. It merely provided that anyone who should "by bribery, menace, or other corrupt means or device whatever, either directly or indirectly, attempt to influence any person, delegate, or substitute, entitled under the call of any political party of this state to vote in any primary meeting, caucus, or convention of any such party, in giving his vote or ballot, or deter him in giving the same, or hinder him in the free exercise of the right of suffrage at any such primary meeting, caucus, or convention," should be declared guilty of a misdemeanor and fined not to exceed five hundred dollars, or imprisoned not to exceed one year.[2]

Neither of these laws contemplated anything like complete public control over party primaries. The California law was wholly optional, and even when adopted

[1] Sec. 7. [2] Acts of 1866, chap. 783.

provided only for public call of the caucus, for sworn supervision of elections, and for the prevention of illegal voting. The New York law was mandatory in character, but covered only bribery, or intimidation of voters or delegates. Incomplete and inadequate as such provisions were, they marked, nevertheless, an important epoch in the development of political parties. An attempt was being made to place under governmental regulation the procedure of voluntary associations, hitherto practically unknown to the law. These organizations obtained no special privilege, franchise, or charter from the state, and were recognized in no legal way as public or private corporations or as parts of the government. It was, moreover, an attempt to accomplish by law what was apparently impossible of execution within the ranks of voluntary association. It was, therefore, a significant step in the evolution of the party system and in the growth of the American government.

The subject of party primaries was an important one at this time. The Union League Club of Philadelphia offered a prize for the best essay on the subject of party nomination.[1] The successful competitor offered a plan by which all candidates should be chosen by direct, plurality vote of the political party, and all such nominations should be made on a fixed day, by all parties, and should be conducted under the same rules and regulations as control the regular election. The direct primary features of this scheme were actually adopted

[1] See Dallinger, *op. cit.*, p. 145, and bibliography in Appendix C; *The Nation*, VII, 4, 5; VIII, 86; D. C. Macmillan, *Elective Franchise* (1880) (1st ed., 1878), p. 127, on "The True or Democratic System." This chapter is not in the first edition.

in Crawford County, Pennsylvania,[1] as well as in California, Virginia, and other sections of the country.

In 1871, two states, Ohio and Pennsylvania, followed the lead of California and New York. The Ohio law[2] was similar to the statute enacted by California. It was, in the first place, optional with the parties. It required public notice of the proposed caucus, specified that the supervisors of elections should be sworn to faithful performance of their duties, and forbade fraudulent voting and bribery. Persons convicted of illegal voting were punishable by a fine of not exceeding $100, "and by imprisonment in the county jail, and to be fed on bread and water only, not less than ten nor more than thirty days."[3] Any attempt to corrupt voters was declared a misdemeanor, punishable by disqualification from voting at primary elections.[4]

In 1875 a similar law was passed in Missouri for counties having a population of over 100,000.[5] The law was optional in its provisions and covered the same field as the California and Ohio acts. The Pennsylvania act covered elections in Lancaster County only, and merely provided that officers of election should act under oath; that they might administer the oath and inquire into the qualification of intending voters; and contained a prohibition against bribery of voters. The law was made optional, and might be adopted by a vote of the executive committee, or of the party. It was expressly

[1] See Hempstead, *Proceedings of the National Municipal League*, 1901, p. 197.

[2] Acts of 1871, p. 27; amended in 1872, 1874, 1877, 1878, 1879.

[3] Sec. 5. [4] Sec. 6. [5] P. 54.

stipulated that the supervision of primaries should not involve the state or county in any expense. Similar acts passed in 1872 for Crawford and Erie counties and in 1879 for Beaver County were designed to authorize and legalize the new types of primaries in these counties.

In the Revised Laws of California (1874) additional requirements were inserted.[1] Returns of elections must be made to the secretary of the party committee, and one list must be retained by the judges for at least twenty days. Furthermore, certain provisions of the general election law were extended to primaries, and thus the protection of the general election system was thrown around the party primary.[2] These provisions covered the use of certain forms for poll lists, the challenging of voters, and the canvass of votes. In fact, almost all of the safeguards of the election law were applied to the primaries, except those regulating the form of the ballot and the secrecy of voting.[3] This list also included the prohibition of the peddling of tickets within 100 feet of the polls, the exhibition of a ballot intended for use by a voter within 100 feet of the polls, and the use of distinguishing marks on the back or outside of the ballot, or the folding of a ballot in such a way as to indicate its contents.

Thus the California law included practically all of the general election provisions of that day, and outlined a scheme for the protection of nominations almost as com-

[1] *Political Code of California*, 1872, p. 211; 1874, p. 74.

[2] *Ibid.*, secs. 1357 ff.

[3] Acts of March 26, 1874; Code of 1876 (sec. 1357, note), p. 74, including secs. 1192, 93, 94, 95, 96, and 99.

plete as that then existing for the protection of the elections. This early statute marked an advanced stage in the development of state control over parties. The act was, however, wholly optional in character, and became effective only upon adoption by a political organization.

These acts were followed by a few scattered statutes. Nevada in 1873 made bribery in caucus or convention a felony.[1] A New Jersey law of 1878 prohibited the participation in primaries of other than legally qualified voters.[2] Another act of the same year provided for the punishment of bribery of delegates.[3]

Down to 1880, then, primary legislation had made but little progress. The state of California alone had a law of a comprehensive character, and this was left optional with the political parties. The Ohio law was likewise optional, and was still less complete, and the Missouri law was both optional and local. The New York and New Jersey acts were primarily intended to prohibit only the participation of illegal voters in the primaries. Public regulation of party primaries had barely begun to develop and was in a rudimentary condition.

[1] 1873, chap. 121, sec. 90. An Indiana law of 1877 forbade the sale of liquor on election day, and included primary elections.

[2] Chap. 113. [3] Chap. 204.

CHAPTER II

PRIMARY REGULATION, 1880–90

During the decade 1880–90, the question of the legal regulation of elections occupied the attention of the public in an increasing degree. The attack upon the evils of the party system was successfully directed against the fraud and trickery in the use of the ballot, and resulted in the adoption of the Australian system in modified form. The general discussion of this question tended to fix public attention upon the party system and to stimulate interest in the nomination as well as the election.

In 1878 Macmillan's volume on *The Elective Franchise* appeared, with its discussion of the frauds and abuses of the primary system; and in the second edition of 1880 the remedy of direct nominations was proposed. Other works were those of Dorman B. Eaton, *The Independent Movement in New York*, in 1880, G. W. Lawton, *American Caucus System*, in 1885, and Albert Stickney, *Democratic Government*, in 1885.[1] The subject of primary reform was also freely discussed in the periodical literature of the time.

Many of the laws enacted during this period contained only simple prohibitions of the most evident kinds of fraud in the primaries. Of this character were the laws of the state of Pennsylvania in 1881 and 1883;

[1] See "Bibliography" in Dallinger, *op. cit.*, pp. 221–24; *Proceedings of the National Municipal League* (1894), pp. 341–81.

Connecticut in 1883; New Jersey in 1884; Ohio in 1886; Nebraska, Michigan, and Maine in 1887; South Carolina in 1888; Indiana and Missouri in 1889. These commonwealths attempted the mildest form of regulation. They were satisfied to eliminate, in theory at least, the more objectionable practices in primaries. In Nebraska the law was so tempered as to be optional with cities of the first class having a population of less than 60,000; and in the very rudimentary act of Maine only cities having a population of over 25,000 were disturbed. In fact, the Maine law seemed to give the caucus only the same protection as would be granted to an ecclesiastical assembly. The act provided for the punishment of anyone who "by rude or indecent behavior, or in any way wilfully or unlawfully disturbs or interrupts any public primary, political meeting, or caucus or convention . . . . or creates a disturbance in any hall, walk, or corridor adjacent or leading to the room where such caucus or convention is held."

The Colorado law of 1887 was an improvement over the others in that it specifically enumerated eight different classes of fraud.[1] These were double voting, folding tickets together, stuffing the ballot-box, advising fraud, impersonating a voter, advising impersonation, bribery, or intimidation, or receiving a bribe. The law also forbade candidates to expend money except for printing or for the purpose of holding public meetings.

A second class of laws was composed of those modeled after the original California act. Of this optional

[1] P. 347.

type were the laws of Kentucky in 1880 and 1882,[1] Maryland 1882 and 1884,[2] Colorado 1883 and 1887,[3] Illinois 1885 and 1889,[4] and Massachusetts in 1888.[5] Even in this group there are limitations to be observed, for the law of Kentucky applied only to certain selected counties,[6] and that of Maryland only to Baltimore. These laws contained provisions requiring notice of the proposed primary, stating the purpose, time, manner, conditions, place, and authority under which held; that election officers should be under oath; made provision against illegal voting; and outlined penalties for failure to comply with the regulations laid down.

The constant tendency, however, was to give in greater detail the procedure to be followed. Thus, in the Maryland law of 1884 the hours of voting were specified and candidates were required to send in their names with a statement of the amount assessed upon them. The qualifications to be required of voters must have been "prescribed and published" by the managing committee of the party calling the election. The party committee must furnish the board of police with a copy of the party resolutions providing for the conduct of the primary, and a copy of the registration lists. The method of voting must be by ballot; ballots must be preserved; and provision was made for count, certificate,

[1] Chap. 1018; optional with Bourbon, Campbell, Harrison, and Kenton counties. The act of 1882, chap. 336, applies to Boone, Greenup, Lewis, Nicholas, and Robertson counties.

[2] 1882, chap. 290; 1884, 190.

[3] 1883, p. 187; 1887, p. 347.

[4] 1885, p. 187; 1889, p. 140.

[5] Chap. 441.

[6] 1882, chap. 336.

and recount. The Illinois law[1] provided for the creation of primary districts by party committeemen, and for full representation of candidates by challengers. It prescribed the size and color of the ballots and prohibited the use of distinguishing marks on the ballot. Colorado required that the primaries be held under the general election law, so far as contained in a few specified sections, and thus gave the nominating machinery practically the same protection as the general election.[2] This act was repealed, however, in 1885.[3]

More significant than the laws thus far considered was the enactment of statutes containing mandatory provisions that cover the conduct of primaries in some detail. Of this type were the New York law of 1882[4] (applicable to counties containing a town or city of over 200,000, and not including New York County) and the later law of 1887; the Nevada statute of 1883;[5] the Alabama law of 1886, applying to Mobile County; the Delaware law of 1887, applying to Newcastle County only;[6] the South Carolina law of 1888;[7] and the Maryland act of 1888, applying to the Democratic party in Queen Anne's County[8] and optional with other parties. These laws, although limited in their application to particular parts of the state (except Nevada and South Carolina), made up for their restriction in area by their mandatory character and the detailed nature of their

[1] 1889, p. 140. [2] 1883, p. 187. [3] P. 200.

[4] Chap. 154; application extended to New York in 1883, chap. 380, and in 1887, chap. 265.

[5] Chap. 18. [6] Chap. 21. [7] Chap. 9.

[8] Chap. 299; extended to Allegany County (chap. 181).

regulations. They constitute a new and advanced type of primary election legislation and mark the transition from invitation to command.

The New York law of 1887 may be examined particularly with a view of determining the character of these regulations. This law, after requiring due notice of the primary, fixed the hours within which the election must be held, specified that the polling-place should be large enough to hold at least ten electors, required the use of a poll list with a ballot-box in full view of the electors, certification of the result of the election, and filing of returns with the governmental authorities. The force of this was broken, however, by the provision that ballot-box, poll list, hours of opening, and oath might be waived if party rules did not require a ballot, or by the primary itself, except upon protest of five electors.

The Delaware law was also fairly complete in its provisions, and especially so in regard to the count of the ballots and the granting of certificates of election. In fact, the care taken in specifying the manner in which ballots shall be counted, and the requirement that they shall be carefully preserved, is one of the features of the legislation of this period.

The question of party suffrage also became a problem. Aside from gross fraud, which these statutes endeavored to make impossible, there was still a serious question as to what constituted membership in a political organization. Generally this was left to the party itself, with the stipulation that only legal voters should participate. Certain states, however, endeavored to define party allegiance more exactly. Colorado de-

clared that if a voter, when challenged, swears "he is a member bona fide of the party holding such election," his vote must be received.[1] A later statute of 1887 provided that "the question of the good faith of the voter shall be left as a question of fact to the jury." The Maryland requirement was similar.[2] In Illinois it was declared that the voter might be required to state that he had not voted in the primary of another party within one year.[3] The Delaware test of party allegiance read as follows: "You do solemnly swear (or affirm) that you are a legally qualified voter under the rules of party or organization or association authorizing this election."[4] A singular commentary on the state of affairs is the declaration of the New York statute that the party rules must not authorize electors of the opposite party to vote in the primaries.[5]

Another question of increasing importance was the payment of primary expenses. The Maryland laws of 1882 and 1888 declare that no expense shall devolve upon the city by reason of the party primary. The Ohio law of 1886, on the other hand, provides that the regular judges of election shall serve at the primaries, and that they shall be paid two dollars a day from the public funds. But generally speaking, the charges devolved on the organization conducting the primary. The right of the state to regulate the nominating process was recognized, but not the necessity of covering the expense incurred by such requirements.

[1] 1883, p. 187. See also 1887, p. 347.

[2] 1888, chap. 299, sec. 6.

[3] 1889, p. 140

[4] Chap. 21, sec. 8.

[5] 1887, chap. 265.

By 1890, then, it is evident that primary legislation had made substantial progress. Half of the states had placed on their statute books laws regulating in various ways the conduct of primary elections. Such states as Delaware, Maryland, Nevada, New York, and South Carolina had enacted mandatory laws governing in some detail the procedure in primaries, although all of these were local in their application with the exception of the laws of Nevada and South Carolina.

California, Illinois, Kentucky, Massachusetts, Missouri, Ohio, and Nebraska possessed optional laws.[1] Of these, the laws of California, Illinois, Massachusetts, and Ohio were general in application and might be adopted anywhere in the state, while those of Kentucky, Missouri, and Nebraska were only local in scope. The California law was the most complete of these acts, since it provided for the application of practically all of the guaranties of the general election, in case the party chose to adopt the law. The other laws covered about the same points as were found in the acts of states making the regulation of primaries mandatory.

Other states had passed laws forbidding the more obvious kinds of offenses against the purity of elections. Under this head were Colorado, Connecticut, Georgia, Indiana, Maine, Michigan, Minnesota, Missouri, New Jersey, Pennsylvania.[2] Some of these laws were very fragmentary, as, for example, the Georgia act, which merely forbade the sale of liquor on primary day. The Maine law and the Indiana act were also of minor im-

[1] See also Maryland, 1888, chap. 299.

[2] New York had passed a mandatory act of this character.

portance. The other states, however, made a serious effort to prevent or punish flagrant abuses in the course of party nominations. The most stringent laws were those enacted for the benefit of cities where the difficulties of unregulated party rule were most apparent, as in Delaware, Maryland, Minnesota, Nebraska, New York, and Ohio. Practically all of the mandatory acts, complete in character, were directed at the evils appearing in urban communities, while most of the optional laws also were found in states containing important centers of population.

Summing up the characteristic features of this period it may be said that where the laws were at all complete they were mainly optional in nature; that where mandatory, they were generally local and special; and hence that the primary was still almost wholly under party control. The appearance of the mandatory and detailed act, even though local in application, was a distinctive feature of this period.

The most important problems of this time were whether the expense of such elections should be made a public or a private charge; what form the test of party allegiance should take and by whom it should be prescribed; whether the primary should be fully assimilated to a general election and governed by identical laws; whether the primary law should be optional with parties or mandatory in its terms.

CHAPTER III

PRIMARY LEGISLATION, 1890-99

The next period of primary reform covers the decade immediately following the adoption of the Australian ballot, and extends to the date marked by the passage of the regulated convention systems of Illinois, New Jersey, and New York in 1898 and the passage of the mandatory direct primary law in Minnesota in the year 1899. Beginning with the state of Massachusetts in 1888, the Australian ballot system was quickly taken up and soon became the general law throughout the country.[1] The regulation of party primaries also aroused widespread interest, and the orderly conduct of this part of the election machinery attracted almost as much legislative attention as the ballot reform itself.

The motive that led to the adoption of the Australian ballot law was, in general, the desire to prevent bribery, intimidation, and fraud in the conduct of elections. Bribery and intimidation, it was believed, would be made difficult by the enforced secrecy of the ballot, while the possibilities of fraud would be minimized by the legal safeguards thrown around the election process. The effect of such regulations, it was hoped, would be the reduction of the power of the boss and the facilitation of reform movements.[2] Thus the Australian ballot

[1] E. C. Evans, *History of the Australian Ballot System in the United States;* Kentucky, special act, February 24; and Massachusetts on May 29, 1888.

[2] Evans, *ibid;* Ivins, *Machine Politics.*

reform had much in common with primary election reform.

Not only was this true, but the adoption of the new system involved legal consequences of a far-reaching character. The Australian ballot law recognized the political party and gave it legal standing. Since the government was to print all ballots there must be a method of determining what names were to appear upon the ballot, and under what party designation; in short, a legal definition of a party. Therefore the law provided that nominations for office might be certified by party officers to the proper legal officers, and then be printed as the officially recognized party list of candidates. In order that the ballot might not be cumbered with lists of names presented by relatively unimportant groups of voters, provision was made that such nominations might be made only by parties polling a certain percentage of the total vote, as, for example, 2 per cent at the last general election. In this way certain political parties, and in nearly all cases only the two leading parties, the Republican and the Democratic, were given what amounted to legal recognition. The leading political parties, generally against the will of the party chieftains, thus obtained a certain legal status.

When the party was given a legal standing, the way was opened toward regulation of the entire nominating process. The public became familiar with the idea of legislative control of affairs of what had generally been regarded as a voluntary association, and was less reluctant to undertake the labor. Furthermore, a legal way was provided by which the party might be made more

readily amenable to regulation. Parties of a certain size, which had been given a privileged position for their nominees upon the ballot, were, in return for this privilege, subjected to special restrictions. It was an easy step from permitting the two great parties to have their candidates placed upon the ballot, when certified by the party officials, to requiring that these nominations should have been made only in accordance with such rules and regulations as might be deemed necessary; in short, to prescribing in detail regulations governing the entire procedure of party primaries. The party ceased to be a purely voluntary association and became a recognized part of the nominating machinery.

Primary reform therefore advanced at a rapid rate and spread over the whole country, with the exception of the South, where party rules carried out the same program. The most striking features of this movement will now briefly be passed in review.

It may be observed, in the first place, that the tendency toward *optional* laws which had marked the beginning of the movement and its early stages during this period began to wane. A number of states enacted laws of the optional class, but the period of offering party organizations the opportunity for reform was quickly coming to a close.

In the early years of the decade there were a number of such laws, as in Washington and Wyoming in 1890, in Kansas and West Virginia in 1891, in Kentucky in 1892; but this form of regulation became less and less frequent. The tendency was to establish a mandatory minimum of regulation for the entire state, and leave

the more advanced features of the new laws, whether optional or mandatory, to the localities. In Massachusetts, for example, a general law covered the state, but additional regulations were made mandatory upon Boston and optional for other cities. In Illinois (1898) a carefully considered law was made mandatory upon Chicago, but was left optional with other counties of the state. In New York (1898) a similar law was made mandatory upon cities of the first and second classes and left optional with cities of the third and fourth classes, while the rest of the state was covered by certain general regulations only.

There were also some states that endeavored to regulate the nominating process merely by penalizing certain offenses against the purity of primaries. New York, which had begun this attempt in 1866, continued the work, and in 1895 and 1897 added to the list of offenses prescribed at first, though without material changes.[1] Texas also forbade a few of the more evident evils,[2] and Iowa[3] and Washington followed in the same path.[4] Of the same general type were the laws of Georgia,[5] Louisiana,[6] Montana,[7] and North Dakota.[8]

Rapid progress was made in the passage of laws local in scope and intended to meet the peculiar evils en-

[1] Laws of 1895, chap. 721; 1897, chap. 255; 1898, chap. 197.

[2] 1895, chap. 34.

[3] 1898, chap 111. The Iowa law, however, excepted caucuses from the operation of the act.

[4] 1895, chap. 145.

[5] 1891, p. 210.

[6] 1890, p. 62.

[7] 1895, I, p. 179.

[8] 1890, p. 330.

countered in large cities. Proceeding in this fashion, fairly complete laws were often obtained. In 1891 Missouri cities of over 100,000 were covered; in the same year Oregon cities of 2,500 and Wisconsin cities of 150,000 were treated in the same manner. In 1892 Maryland passed similar laws for Queen Anne's County; in 1893 Michigan legislated for cities of 15,000 to 150,000 population, and for Wayne County; in 1894 Massachusetts acted for Boston; in 1895 California legislated for cities of the first class; in 1897 Delaware provided for Newcastle County; in 1898 Ohio made like provision for Cincinnati and Hamilton County. Finally, the important cities of New York and Chicago were covered by the acts of New York State and Illinois in 1898.

By 1899, then, most of the large cities were placed under the protection of primary laws of varying degrees of severity. Boston, New York, Baltimore, Detroit, Cleveland, Cincinnati, St. Louis, Chicago, and San Francisco were protected by laws containing legal guaranties for the good conduct of the primaries.

Closer examination of the laws of this period is now necessary in order to show more clearly the character of the advance that was made. The most conspicuous feature of this primary legislation was the gradual approach toward the system employed in general elections. In some states this change was made by general reference to, and adoption of, the regular election law, as far as applicable. This was the case in California (1895)[1] and in Illinois and New York in 1898. In other instances

[1] Declared unconstitutional in *Marsh* v. *Hanley*, 43 *Pac. Rep.* 975.

the Australian ballot was adopted, as in Missouri (1891), where a printed ballot was required and furnished by the government.[1] In Maryland (1892), in Massachusetts (1894), in Michigan (1895), and in Delaware (1897) provision was made for ballots printed by the governmental authorities for the use of the party. In some cases the law required that the voting booths be used, even where an officially printed ballot was not required.

There were, however, certain exceptions to this tendency, notably in the South. In the laws of Kentucky, Georgia, and Mississippi the tendency was to leave far more to the discretion of the party managers than in the North and West. In these cases the policy followed was to leave as large a measure of authority as possible in the hands of the party managing committee. Party officers were authorized to prescribe the qualifications of the voters, to appoint judges of election, to determine how delegates should be chosen, to canvass the vote cast; and in general a broad field of discretion was left them in working out the details of the process.

A step of great importance was the requirement that delegates must be chosen by ballot, or that a vote by ballot might be demanded by a small percentage of those present at the caucus. This made it impossible for a minority to overrule a majority on a *viva voce* vote, and guaranteed a semblance of order and fairness in the proceedings. It prevented carrying a caucus by brute force or strength of lungs. Bribery of voters, fraudulent vot-

[1] The Wisconsin law of 1891 (chap. 439) required the county chairman to supply ballots, but permitted the use of other ballots than those furnished.

ing and counting were not, however eliminated by this requirement. Yet, in spite of the obvious openings still remaining, the vote by ballot was a decided improvement upon the earlier system, and indicated clearly the tendency to regulate the primary in the same manner as the regular election.

Another feature of the primary laws was the tendency to require that the expense of the primary should be made a public charge. In the early acts this was carefully avoided, and express stipulations were made that no additional expense should devolve upon the public.[1] In the first laws during this period, even, there were cases of this description, as in Missouri (1891), Maryland (1892), Kentucky (1892), and in Mississippi (1892). The Missouri law marked a transition stage, in that it made the primary expense a public charge, but required fees from delegations in such amount as to cover the cost. For every delegation a fee of $20 was required, and any citizen might become a candidate on payment of $10 for every ward affected. Outside the southern states, however, by the end of the period the principle had been established that the expense of party primaries, like that of general elections, was to be paid from the public treasury. In one sense this was unfair to the partisan and the independent, since it required them to contribute toward the expense of nominations in which they were not directly concerned, or to which they might even be opposed. The controlling purpose of primary reform was, however, the improvement of political conditions in the interest of the whole com-

[1] See *ante*, p. 11.

munity, and on this broad ground the propriety of the payment for party primaries by public funds rested.

Another important feature of the primary legislation of this period was the development of a definite test of party allegiance. In the laws first passed the qualifications of primary voters had generally been left to the party itself. It was required that these qualifications should be publicly stated in advance of the primary in the published call, but beyond the minimum guaranty that the voter was a legally qualified elector, requirements were seldom made. To some extent this was still done, particularly in the South. But in many of the states the qualifications of the voters were expressed in the law itself in the form of an oath to be required of, or a test to be imposed upon, the intending voter.

Thus the West Virginia law of 1891[1] provided that no one should vote "who is not a known, recognized, heretofore openly declared member of the party included in the terms of the call." In Wisconsin[2] the voter must swear that "he did not vote against such regular candidates at such last preceding election." In Minnesota the form of the test required was "that he voted with the political party holding the primary election at the last election; that he intends to vote for and support the nominees of the convention." It was also provided that no one should vote in more than one political party during one calendar year. In Michigan he must declare "I am a [name of party] and a resident of this ward for the last ten days, and am in sympathy with its aims and objects, and will support its principles and objects." In

[1] Chap. 67, sec. 4. [2] 1893, chap. 249, sec. 3.

California the affirmation covered a "bona-fide present intention of supporting the nominees of such political party or organization at the next ensuing election." The California law also contained the requirement that the voter must not have signed a nominating petion before the primary, or sign one after it.[1] In Massachusetts the voter participating in the primaries must be a "member of the political party holding the same, and intend to support its candidates at the polls at the election next ensuing." A significant provision was the requirement in a Massachusetts law of 1894 that no one was to be debarred from participating in the primary because he had supported an independent candidate. Perhaps the fairest test was that furnished by the New York law of 1898. This required the voter to swear:

> I am in general sympathy with the principles of the ——— party; that it is my intention to support generally at the next election, state or national, the nominees of such party for state or national offices; and that I have not enrolled with or participated in any primary election or convention of any other party since the first day of last year.[2]

Not only were tests of party allegiance prescribed in the law, but provision was made for official enrolment of party voters. In this movement Kentucky was the pioneer. The law of 1892 provided that at the regular registration voters might make a declaration of party allegiance.[3] Where registration books were used

[1] See also local acts, Wyoming, 1891, chap. 32, sec. 5; Michigan, 1895, chap. 411, sec. 9.

[2] 1898, chap. 179, sec. 3. For the year limit, see Massachusetts, 1898, chap. 435; Minnesota, 1895, chap. 276, sec. 5.

[3] Chap. 65, art. xii, secs. 6–10.

for regular election purposes, space should be left for a primary registration in a column headed "Party Affiliation." When the voter registered he was to be asked "What party do you desire to affiliate with?" In case he desired to make a declaration, his answer was recorded in the proper column. This registration list might be copied by the party committees interested, and the lists might then be used as a basis for the next primary. Persons necessarily absent, ill, or prevented by sickness, death, or other calamity, or who had moved into the city since the last registration might swear in their votes at the primary. The persons authorized by the party to copy the lists of registrations from the regular books were required to take oath to discharge their duty faithfully and honestly, and penalties were provided for neglect of duty. Where there was no regular registration, such provisions were, of course, inapplicable. No provision was made for a change or transfer of registration.

A similar system was provided by the New York law of 1898.[1] Although similar to the Kentucky law in its main outlines, the New York law differed from it in many important particulars. Provision was made for a special enrolment in December before the custodian of primary records, as well as for a supplemental enrolment on the second Tuesday of March in each district. The New York law, moreover, placed the entire primary process under the control of the regular election officials, and hence gave it a stronger guaranty of fairness.

[1] Chap. 179, applying to cities of over 5,000; party registration was authorized in the Michigan law of 1895 (chap. 411, local acts).

In the first primary laws passed no attempt was made to fix the date for holding the primary. The purpose of the lawmakers was merely to insure publicity in regard to the date selected by the party managers. Thus the original California law required that notice be given at least five days before the primary, and succeeding acts endeavored to establish the same security regarding the time. The later enactments, however, went beyond this point and in many cases either fixed the date absolutely or established a period within which the primary might be held.

In the Mississippi law of 1892 the requirement was made that primaries must be held between July 1 and September 1 preceding the general election. In the Virginia law of the same year it was prescribed that primaries must be held not more than thirty nor less than twenty days preceding the election. The Massachusetts act of 1894 required that all party primaries be held on one of two consecutive days fixed by the party committee. California in 1895 went a step further and fixed the second Tuesday in July as a general primary day for all primaries of all parties, and, furthermore, established this day as a legal holiday. Michigan in 1897 made the second Tuesday in July a primary day for general election nominations, and New York in 1898 established the seventh Tuesday before the election as the primary day of all parties. Ohio in 1898 fixed the primary day for Cincinnati and Hamilton counties as the first Tuesday after the second Wednesday in September.

Not only was a fixed date a feature of the primary laws, but requirements were made that all primaries of a

party, in certain districts at least, should be held on the same day. Wisconsin in 1891 required that all primaries of a party be held simultaneously, but forbade the holding of the primaries of both parties on one day; Mississippi in 1892 provided that the committee in charge of the primaries should designate a uniform day for holding them; Massachusetts in 1894 directed that all of certain primaries of a party should be held on one of two consecutive days, but forbade the holding of the primaries of two parties on the same day.[1]

This uniformity of primary day was a decided advance. It prevented the holding of caucuses long before the convention and in advance of adequate publicity. Where primaries had been held upon a series of days, opportunity was given for the migration of floaters, in case sufficient safeguards against such invasion were not provided. And even where there was no such danger, it intensified the partisan strife which was carried from county to county. Candidates and workers roamed about from one battlefield to another, encompassed by a cloud of corruption and undue influence, and toward the close of a hard-fought battle the pressure became terrific. The results in many cases were unfortunate, particularly where campaigns were long drawn out and bitterly contested. The requirement of a uniform primary day helped to eliminate many of those evils and gave an opportunity for the choice of delegates under more favorable circumstances.

An important phase of the primary movement was

[1] See Michigan, 1895, chap. 411; Minnesota, 1895—all of county or city on same day; also 1897—all on same day in state primary or district primary.

the regulation of party committees. From the first, the laws had referred to and recognized party committees as essential parts of the nominating process. Their duties in relation to the call of the primary, its conduct and supervision, and the canvass of the vote had been outlined in more or less detail. But it was assumed that such a committee had come into existence by methods wholly of party creation, and was outside the pale of the law. In the later acts, however, regulation of the choice of committeemen began. The Wisconsin law of 1891 provided that at the time when candidates for county office were chosen, committeemen in wards or townships should be chosen, "by acclamation or otherwise."[1] Mississippi in 1892 required that the county executive committee, on petition of one-fifth of the party electors of the county, should be chosen in the party primary, and that there should be thirteen members of this committee, two for each supervisor's district and three at large. Massachusetts in 1894 and New York in 1898 made provision for the election of various party committees in the party primary.

Thus it is seen that the committee, which was at first given plenary power with respect to the adoption of primary laws and later was given certain duties in regard to laws that were no longer optional, was finally itself brought within the same circle of regulation that covered the conduct of the primary. In fact, duties of so fundamental a nature devolved upon the committees under the new laws that it became more important than ever that the election of these committees should be

[1] 1891, chap. 439, sec. 27.

carefully safeguarded, and their responsibility to the majority of the party definitely ascertained.

To some extent the regulation of conventions was also undertaken. Proxies were forbidden in North Dakota in 1890 to non-residents of the district from which the delegates were sent. In numerous other states the use of proxies was forbidden, as in Wisconsin in 1893, in Michigan and Minnesota in 1895, and in California in 1897.[1]

There were also other regulations regarding the convention. The time of holding the convention was limited in the California law of 1897 to some date within seven days of the primary. In Massachusetts (1896) a municipal caucus must be held not earlier than four days after a primary. A Massachusetts statute provided that candidates must be nominated upon roll-call in conventions (except state) on motion of one-fourth of the delegates present.[2] New York (1898) specified by whom the convention should be called to order, and that the temporary chairman should be chosen by roll-call. Similar provisions were contained in the Illinois law of 1898. These attempts indicate the difficulties experienced in securing fair and orderly conventions even after the primaries had been carefully protected.

In some cases regulations were made regarding the apportionment of delegates to districts. In Mississippi each county was declared entitled to twice as many delegates as it had representatives in the house of representatives; California in 1895 fixed the ratio of delegates to the party vote at 1 to 200; while New York (1898)

[1] One proxy was permitted. [2] 1897, chap. 530, sec. 23.

required that the delegates be as nearly as possible equally apportioned according to the party vote at the preceding general election. In general, however, the method of districting was left to the party authorities to determine in their discretion.

Although the mandatory direct primary did not develop during this period, there were instances where it appeared in an optional form. The Kentucky law of 1892 provided for an optional direct primary for all candidates, leaving the details of the plan to be worked out by the party committees. The Mississippi law of the same year also made provision for a direct vote upon candidates, but this law was inoperative because of insufficient penalties. If such a primary were held it was required that candidates for legislative, county, or county district office should be chosen by majority vote, unless all of the candidates had previously agreed upon choice by a plurality. In case a majority was not obtained by any one candidate, then a second primary must be held between the two candidates receiving the highest votes. Virginia in 1894[1] also provided for an optional direct primary for Richmond and Norfolk. The Massachusetts law of 1894 contained a few provisions for a direct primary. The Delaware law, applying to Newcastle County only, made provision either for choice of candidates or of delegates.[2] The Ohio law (applicable to Cincinnati and Hamilton County) made the direct primary optional; in fact, it provided that the direct system should be used in the absence of any decision to the contrary by the party committee.[3]

[1] 1894, chaps. 354, 741. [2] 1897, chap. 21. [3] 1898, p. 652.

In many other places, especially in the South and West, the direct primary was adopted by voluntary act of the party and became the recognized method of nomination. In Ohio, Indiana, Iowa, Kansas, and in the Carolinas, Tennessee, and other southern states the movement made rapid progress. The legal establishment of the direct nominating system dates, however, from the end of this period, and will be discussed more fully in a later chapter.

By the close of this period two-thirds of the states had enacted primary laws of one kind and another, and these laws were about equally distributed among the several sections of the country. No state had yet passed, however, a mandatory act placing the primary on the same plane as the election and making it uniformly applicable throughout the commonwealth. Most of the laws in force were still either optional, or, where mandatory, were either local or aimed only to regulate a few of the more evident abuses of the primary. None of the southern states possessed a complete law of any type, with the exception of Kentucky and Missouri, and the far-western states were equally backward. Massachusetts, Maryland, and New York of the northeastern group, Ohio, Illinois, Michigan, Minnesota, and Wisconsin of the central group, had fairly complete laws, applicable, however, only to particular localities.

The characteristic feature of the legislation of this period was the legal regulation of the party primary by mandatory act, particularly in the great cities like New York, Chicago, and Boston. The general tendency was to surround the primary with practically all of the new-

found guaranties of the regular election. The optional law and the halfway regulation still survived and new types appeared, but the drift of legislation was plainly away from such forms of control and toward complete and effective regulation. These types of rigid regulation were, however, generally local in character, and applied only to particular cities or counties where primary evils were especially acute. Yet every indication pointed toward thoroughgoing regulation. The expense of the primaries tended to become a public rather than a private charge; the qualifications for party suffrage were outlined in increasing detail; the guaranties of the regular election were more and more approximated; in some cases systems of party registration were provided; the dates of primaries and conventions were fixed in several acts, and the procedure of conventions was prescribed by law; the laws began to cover the election of party officials. In the background appeared the movement for the direct primary, already widely developed in voluntary form in numerous states of the South and West. In spite of many laws that were passed in imperfect form as a result of compromise and concession, in spite of the nullification in whole or in part of many otherwise effective laws, the process of primary elections was rapidly being covered by a network of public regulation. The opposition of certain interested politicians only served to inflame public opinion to a higher degree, and insured the victory of the regulative idea.

CHAPTER IV

REGULATION OF THE CONVENTION SYSTEM, 1899–1927

The period from 1899 to the present has been one of remarkable activity in the field of primary legislation. Law has followed law with kaleidoscopic rapidity. In all parts of the country this has been evident. Every state in the Union, except New Mexico, has enacted a primary law of some sort, while Massachusetts and New York have made annual contributions. Several states have deemed the matter of such importance that they have inserted provisions in their constitutions requiring the enactment of primary laws by the legislature.[1] Widespread disgust with political processes and results prompted a sweeping policy of legal regulation and control which completely transformed the party from a voluntary association to a state-controlled agent in the electoral process. That this period of experimentation has not brought the political millennium is indicated by recent attacks upon these primary laws.

Looking at this period as a whole, one is struck by four developments of importance. First, the general acceptance of mandatory, state-wide primary laws and the

[1] California (1900), art. 2; Alabama (1901), sec. 190, but with the provision that primary elections shall not be made "compulsory"; Virginia (1902), art. II; Oklahoma (1907), art. III, secs. 4 and 5; Arizona (1912), art. VI, secs. 3 and 5, and art. VII, secs. 10, 14; and Ohio (1912), art. V, sec. 7. Mississippi and Louisiana had already made such provision in their constitutions.

application of statutes governing regular elections to primary elections; second, the almost total eclipse of the regulated convention system by the *direct* primary; third, the development of the presidential primary; and fourth, the recent attacks upon the direct primary and its partial abandonment in a few states. The final steps in the transformation of the caucus or primary into an election and the history of the regulated convention system will be taken up in this chapter, leaving for later chapters a consideration of the direct primary and the presidential primary.

Certain developments of the period apply to both the indirect and to the direct primary. Generally speaking, the regulatory acts were made compulsory and were state-wide in their operation. A definite date was frequently fixed for holding all primaries of both parties; the ballot was placed under full official protection, and the election boards as well; elaborate provisions were made for safeguarding the process throughout; and very frequently a blanket clause declaring all provisions of the regular election law applicable was included in the primary act. In short, the caucus was transformed into an election.

Looking more closely at the details of this regulative process, we find that the bulk of the laws passed were obligatory in character. The optional features characteristic of the early acts were found in a few cases, as in the Utah law of 1899, and the Montana and Oklahoma laws of 1905, but in every case subsequent amendments made the law obligatory. In many cases the option of nominating candidates either by direct vote or by the

delegate system was offered, and in six states this is still the case,[1] but the privilege of choosing between regulation and no regulation was rarely extended. The public was no longer satisfied to suggest timidly the desirability of primary regulation, but now boldly demanded binding laws.

In the next place, it is seen that many of the laws enacted were general in nature, instead of being restricted to a particular city or county. This is by no means true of all the statutes, but the tendency is unmistakable. The political abuses aimed at were earliest evident in the great cities, but the demand for regulation became eventually almost as strong in the rural districts as in the urban communities. The Minnesota act of 1901, the Mississippi law of 1902, the Wisconsin statute of 1903, the Oregon law of 1904, were among the first of the state-wide mandatory laws, but latterly practically all statutes have been made general in their provisions. Rhode Island still has different caucus laws for different cities and towns,[2] and the *direct* primary is sometimes applied in certain cities and counties and not in others; but the general tendency has been strongly toward uniform legislation for the entire state.

A further evidence of the tendency to imitate the general election in many of the more recent laws is found in the legislative determination of the date upon which the primary shall be held. Originally it was deemed suf-

[1] Alabama, Arkansas, Delaware, Georgia, Kentucky (for some offices), and Virginia.

[2] *Acts and Resolves* of 1902, chap. 1078 as amended 1914, chap. 1049; 1917, chap. 1547; 1921, chap. 2153; 1925, chap. 688; and 1927, chap. 938, 1018.

ficient to require that notice of the primary be given to all those concerned. The next step was to fix the limits within which the primary should be held, as, for example, that it must take place not less than forty nor more than sixty days before the election. Even this option is taken away in most of the later acts, and a definite date for the holding of the primary is established by law. In the most recent acts this date is not only the same for both parties, but the primaries of both parties must be held in the same place. This virtually establishes a new election day—a primary or preliminary election day in preparation for the final election. The exceptions to this are Connecticut, Delaware, Maryland, Mississippi (except for congressional nominations), and Rhode Island, where the date must fall within certain limits. In Delaware and Rhode Island no two parties may hold primaries on the same day.

The tendency to follow the regular election law is seen also in the regulations respecting the ballot. By the end of the period there are few exceptions to the general rule that the Australian ballot system is to be applied to primary elections. Minnesota (1899), Maryland (1902), New Jersey (1903), Wisconsin (1903), Montana (1905), North Dakota (1905), and Pennsylvania (1906) early in the period provided for the printing of ballots by public authorities and for the secrecy of the vote. With the spread of the direct primary this has become the rule, Arkansas, Connecticut, Delaware, Georgia, Mississippi, Rhode Island, South Carolina, Texas, and Utah being the only states where ballots are not printed by public officers.

At numerous other points the increasing resemblance of the primary to the regular election is apparent. The expense of the primary is made a public charge and the choice of election officers, originally a party matter, is legally regulated. In the same spirit of determination to secure fair play in the primary, full and detailed regulations were made to cover the primary election, the count of the votes, the return of the result, and to guarantee the right to a recount where a prima facie case is made out by the complainant. Finally, in most of the more recent laws there appears a blanket clause applying to the conduct of the primary all general election laws, where consistent.

Important exceptions to this general tendency are found in the South, where some states place much of the responsibility for the fair conduct of elections upon the party committees. In this section of the country there is practically but one party, fewer great cities are found, the industrial and labor situation is less acute than in the North, and the prizes of political success are less attractive. Under such conditions the need for minute regulation of the details of the nominating process has been less keenly felt than in the North. In Arkansas, Georgia, Mississippi, South Carolina, and Texas the expense of the primary is still borne by the party, ballots are not furnished by the public authorities, and the primaries are not presided over by the general election officials. Legal regulation of the primary process is still less complete in the South than elsewhere, but Florida (1913), Alabama (1915), and Virginia (1914) have amended their original laws to take away from the party authorities the control and management of the primary and put

it under control of the state. It should be noticed, however, that there are states outside of the South which are exceptions to the general rule. In Connecticut[1] and Rhode Island,[2] which retain the convention system, the primary or caucus is still largely a private affair, and the Idaho law of 1919[3] specifically provides that while the ballots are furnished and paid for by the state, the salaries of officials and the cost of polling places are not to be a charge upon the state, and election officials are to be appointed by the county central committees.[4]

A conspicuous feature of recent primary legislation is the regulation of the party committee. The mode of election, structure, term of office, and powers of the party officers have been regulated in some detail. In most states the members of the party committees are elected at the primaries, and since the adoption of the woman suffrage amendment some states have stipulated that the committees be composed of an equal number of men and women from each unit represented.[5]

Having pointed out the general tendencies in the primary legislation of this period, it is necessary to consider in some detail the regulations applying particularly to the indirect or convention method of nomination.

After 1899 the convention system was subjected to

[1] See *General Statutes*, 1918, chap. 37, secs. 685–701, with amendments of 1921 (p. 3311), and 1925 (p. 3964).

[2] General Laws, 1923, chaps. 11 and 12, as amended 1925, chap. 688, and 1927, chaps. 938, 1018.

[3] Chap. 107, sec. 12.

[4] The earlier Idaho law providing for the direct primary placed the whole conduct of the primary in the hands of the regular election officials. See 1909, p. 196, and 1911, p. 178.

[5] See New Jersey, 1921, p. 17; Tennessee, 1923, p. 81; Michigan, 1927, p. 3; Ohio, 1927, p. 175; Washington, 1927, p. 287.

regulations more detailed and widespread than in any earlier period. But even before such regulations became complete the direct primary practically wiped out of existence the convention as a nominating body. In considering the history of the convention system in this period, therefore, it will be convenient to picture first the broad scope of the regulations to which the convention has been subjected, and then to summarize briefly the present status of the regulated convention system.

The basis of representation in the convention is a matter of great importance if that body is to be subject to popular control, but there is little detailed legislation regarding it. Usually the decision as to the unit of representation and the apportionment of delegates is left to the party committees. Where the unit is made the precinct, there is comparatively little possibility of a gerrymander in the interest of any faction seeking to obtain or continue party control except when new precincts are created. Where delegate districts are made by the party, however, there is great temptation to adjust the boundary lines in favor of the faction in power, and hence the party gerrymander becomes possible. The principles, methods, and results of this plan are the same within the party as in the field of legislative representation. The purpose is to obtain the maximum number of delegates with the minimum of votes. The method is the careful drawing of district lines. The result may be to place a minority of the party in control of a majority of the delegates and to make revolution exceedingly difficult, even when the majority of the party is seditiously inclined. The process may also be employed to create comfortable

districts for the favored, and correspondingly uncomfortable ones for the hostile. In state conventions where the county is generally the unit, no little difficulty has arisen from this practice.

In some of the earlier laws this problem was attacked by placing the duty of creating primary districts upon the election officials.[1] Such regulations were usually ineffective, however, because the election officials were prone to follow the recommendations of the party committee and favor the faction in power.

In the more recent laws it is customary to leave the apportionment of delegates to the party committees with the proviso that the delegates be distributed on the basis of party strength, or to provide that each county or assembly district be allotted one delegate for every group of party voters of a specified size. Montana (1905),[2] New York (1921), Minnesota (1921), and Michigan (1909) provided that delegates were to be apportioned by the state committee on the basis of the party vote. In all of these laws except that of New York the unit is the county; in the New York law the assembly district is taken. The Minnesota law provided for three delegates at large from each county, in addition to the delegates allotted on the basis of the party vote. In determining the basis of allotment the vote for governor is usually taken, but Michigan takes the vote for secretary of state.

The laws specifying a definite ratio to be used in apportioning delegates to the state convention are New

[1] California, Missouri, and Illinois.

[2] Law no longer in effect.

Jersey (1903), Texas (1903), South Dakota (1905),[1] Indiana (1915), Idaho (1919), and Nevada (1921). Indiana provides, moreover, that the total number of delegates allotted to any county shall be apportioned among the precincts, wards, and townships of such county in proportion to the voting strength of such districts. The party strength of each county is determined in a novel way in Idaho. Instead of taking the vote for some one office, the total votes cast at the last general election for *all candidates* of that party is divided by the number of candidates and the quotient is the "party vote." The two southern states of Mississippi[2] and South Carolina[3] take as the basis of representation, not the party vote, but indirectly the population. In Mississippi each county in the state convention has twice the number of its members in the House of Representatives, while in South Carolina the number of delegates from each county is double the representation of that county in the General Assembly. Perhaps the most interesting regulations governing representation in a convention are to be found in the present South Dakota law.[4] Here each county convention, made up of three representatives from each precinct, selects three representatives of that county to the state convention. But in voting in both the state and county conventions each delegate casts a vote equal to one-third the number of votes cast at the last general election in his precinct or county for his party's candidate for governor. Thus, in spite of an

[1] Since amended. [2] 1902, p. 105. [3] 1915, p. 163.

[4] The Richards law, see Session Laws of 1916–17, p. 320. So far as nominations are concerned, the convention is a *proposal* body only.

equal number of delegates, each county has an influence exactly in proportion to its voting strength, and every precaution is taken to insure the dominance of the majority faction in the state convention.

Delegates to state conventions are sometimes directly elected, sometimes chosen by county conventions, and sometimes the law is silent upon this point, presumably leaving the matter to be settled by the party authorities. The laws of Indiana (1915), Maryland (1910), New York (1921), and Ohio (1908) definitely require direct election, and in Alabama and Georgia the delegates "may" be elected. The Connecticut and Rhode Island laws imply direct election. In thirteen states[1] at the present time, however, the delegates to the state conventions are elected by county conventions, and in eight cases[2] where delegate conventions are provided for the law is silent as to how they are to be chosen. It should be pointed out that, as the sphere of activity of the state convention has become more circumscribed, the tendency has been in the direction of indirect selection of delegates.

The date of the convention has been regulated in a number of instances. Iowa, Michigan, South Dakota, Illinois, Nebraska, Nevada, South Carolina, Texas, and Wyoming setting a definite date, and New York, Indiana, Michigan, Maine, Minnesota, and West Virginia requiring it to fall within certain limits. In the

[1] Iowa, Michigan, South Dakota, Arkansas, Illinois, Minnesota, Mississippi, Nebraska, Nevada, South Carolina, Texas, Washington, Wyoming.

[2] Colorado, Delaware, Georgia, Kentucky, Maine, Utah, Virginia, and West Virginia.

other cases the laws leave this matter to be determined by the state committee or are silent upon the point.

Attention has already been directed to the prohibition of the use of proxies in conventions during the preceding period. This safeguard was even more generally applied in the period under discussion. Iowa (1907), Michigan (1901), Idaho (1903), Minnesota (1921), Ohio (1904), New York (1921), South Carolina (1915), South Dakota (1918), Texas (1905), and Washington (1915) are some of the states which legislated against this practice. In most cases the laws provide that any vacancies occurring in a county delegation are to be filled by the other members of that delegation, or that the full vote to which the county is entitled is to be cast by the members present. The Nevada law of 1921[1] provides that a delegate unable to attend a convention may be represented by a "duly appointed" proxy. In many cases regulations have been made governing the call of the convention to order,[2] seating capacity of the hall, election of officers by roll-call, making nominations by roll-call, and methods of voting. The North Dakota law of 1905 provided that all nominations should be made by secret ballot, and forbade the use of the unit rule in county delegations.[3] The Texas law of 1905 provided that the lowest candidate on any ballot should be dropped, and the process continued until a nomination was effected.

[1] Chap. 248.

[2] See Iowa (1907), Minnesota (1921), New York (1921), South Carolina (1915), South Dakota (1918).

[3] Chap. 109, sec. 8.

The provisions of the New York law of 1921[1] are as comprehensive as any and may well be given in detail as an illustration of these regulations. The law provides that the room designated must have ample seating space for all the delegates and alternates; that the convention is to be called to order by the chairman of the state committee, or by a person designated in writing by him; that the convention may not be called to order before the hour specified or until a majority of the delegates are present, but if a majority of the delegates are present the roll-call may not be delayed more than one hour after the time specified for beginning the convention; that the temporary chairman must be chosen upon call of the official roll; that committees are to be appointed by the convention or by the temporary chairman as the convention may order; that when more than one candidate is placed in nomination for any office the roll must be called and each delegate arise and announce his choice, except that the chairman of a delegation from any assembly district may announce the vote of the delegation unless a member of the delegation objects; and finally, that the minutes of the convention must be filed with the secretary of state within seventy-two hours after the adjournment of the convention.

The instruction of delegates to vote for certain candidates has been included in several laws which endeavor to combine the indirect and direct methods of nomination.[2] The New Jersey law of 1903, the Iowa law of

[1] Chap. 479, p. 1451.

[2] Preference votes for president and vice-president will be considered below in the chapter dealing with the presidential primaries.

1904, and the Illinois law of 1906, all superseded by direct primary laws subsequently, contained such provisions. In Maryland and Indiana instructions of this kind are still used. The Maryland law[1] makes provision for preference votes for nominees for all state offices, and these preference votes are binding upon the delegates to the state convention, while the Indiana law[2] makes possible preference votes for United States senator and governor which are to be considered final if any candidate receives a majority. The purpose of such provisions is to preserve the convention and at the same time to permit a direct vote on candidates within the delegate district. It may easily result, however, in nomination by a minority. Under the Illinois law of 1906 several minority candidates received a majority of the delegates and were nominated. In an effort to obviate this difficulty the framers of the Maryland and Indiana statutes[3] resorted to provisions for second as well as first preferences. In Maryland the "first-choice candidate" of the delegates of a particular county is that person who receives a majority of first-choice votes in the county. In case no candidate has a majority of first-choice votes, the candidates receiving the fewest first-choice votes are dropped and their votes distributed among second choices until some candidate does have a majority. The "second-choice candidate" is determined by taking the ballots cast for the first-choice candidate polling a majority in that county and distributing them among the

[1] 1912, chap. 2.

[2] 1915, chap. 105, as amended 1917, chap. 117.

[3] Maryland, 1912, chap. 2; Indiana, 1915, chap. 105.

remaining candidates according to the second choices. If, then, no candidate has a majority of first- plus second-choice votes, the lowest candidates are dropped in order and their votes distributed among second choices. In voting in the convention the delegates from a particular county must vote first for the first-choice candidate of that county. The dropping of candidates continues until someone has a majority. The Indiana law of 1915 contained similar provisions, but these sections were repealed in 1917.[1] Now, in that state, if no candidate receives a majority the choice goes to the convention.

So much for the regulations to which the convention has been subjected. We have yet to consider the extent to which the convention survives. In one state—the newest state in the Union, interestingly enough—the party has never been subjected to legal regulations of any kind. In New Mexico caucus and convention, indeed the whole nominating process, is carried on as the party authorities see fit.[2] In two New England states, Connecticut and Rhode Island, the convention, more or less regulated, is retained as the sole method of making nominations. The Connecticut law applies to parties casting at least 10 per cent of the vote at the last general election. The caucus is regulated to the extent of requiring members of a party to be enrolled as such in order to participate, and voting to be by ballot if fifteen

[1] Chap. 117.

[2] The 1927 re-codification of the New Mexico election laws provides that the officers of each party convention shall, not less than forty days previous to the election, certify to the secretary of state the names of all candidates nominated at such conventions. See Laws of 1927, chap. 41.

electors request it.[1] The convention is practically unregulated, there being no restrictions governing the basis of representation, but a recent amendment requires a roll-call upon request of one-fifth of the members of the convention.[2] In 1907, and again in 1909, legislative committees in this state recommended the passage of a compulsory, state-wide, direct primary law, but such action has never been taken.

In Rhode Island, party caucuses are regulated in some detail, there being special acts for special cities and towns and groups of cities and towns. The caucus is "closed," no person being permitted to cast a ballot who within twenty-six months participated in the caucus of any other party or signed the nomination papers of a candidate for elective office, and a jail sentence being provided for persons who attempt to take part when they know themselves to be ineligible.[3] No two parties may caucus on the same day. The law leaves the convention unregulated.

A fourth state—Utah—has accepted the direct primary principle only for nominations in first- and second-class cities, all other nominations being made by conventions.[4] Caucuses are conducted by officers appointed by the parties, and only duly qualified voters who are eligible according to the rules of the party may participate. Any officer intentionally receiving the vote of an

[1] 1909, p. 1246, and 1911, p. 1491. The provision that voting must be by ballot upon the request of fifteen electors was added in 1911. Previous to that date it took the request of 25 per cent of the electors to force voting by ballot.

[2] 1925, p. 3964. [3] 1902, p. 35.

[4] 1899, p. 118, as amended 1901, p. 72, and 1911, p. 234.

individual not entitled to vote is guilty of a misdemeanor. The conventions are unregulated, except that the presiding officer must certify the names of the nominees.

In the six states of Alabama, Arkansas, Delaware, Georgia, Kentucky, and Virginia the parties are free to use either the direct primary or the convention method, although in the case of Kentucky this option exists only for state officers and United States senators, the direct primary being mandatory in other cases. In all of these states if nominations are not made at direct primaries, the party authorities are left practically free to regulate the election of delegates and the nominating convention as they see fit.[1] The Delaware law, moreover, specifically provides that the regulations governing the direct primary shall not apply to any election of convention delegates, and that the party shall bear the expense of such an election.

We come now to a group of states in which the convention is used for nominating purposes for certain offices or under certain circumstances only. Idaho, having adopted a direct primary law in 1909 for all state nominations, returned to a modified convention system in 1919.[2] Candidates for United States senator, representatives in Congress, and all state officers elected by the state at large are now chosen in a state convention composed of delegates elected by the county conventions, each county being entitled to one delegate for each 400

[1] Alabama, 1915, p. 218; Arkansas, 1909, p. 505, as amended 1919, p. 11; Delaware, 1925, p. 259; Georgia, 1917, p. 183; Kentucky, 1912, p. 47, as amended 1920, p. 335.

[2] Chap. 107, p. 372.

votes. The date of the convention is fixed, but the procedure is practically unregulated.

In Indiana the state convention nominates all officers voted for by the state at large, but a popular preference vote for governor and United States Senator is provided and is binding upon the convention if any candidate receives a majority of the popular vote.[1] Delegates to the state convention are popularly elected at the May primaries when congressmen and county nominees are named, each county being entitled to one delegate for each 400 party votes. The primaries are conducted like general elections, but convention procedure is not regulated. It should be noticed that the repeal of the second-choice vote provisions in 1917[2] gives the convention a freer hand than formerly, inasmuch as candidates are less likely to get a majority in the primary and the choice is more likely to go to the convention.

In Iowa county, district, or state conventions nominate whenever the highest candidate fails to receive 35 per cent of all votes cast by the party in the primary.[3] Delegates to the state conventions are elected by the county conventions. The law provides that the state convention shall be called together by the chairman of the state central committee, and forbids the use of proxies.

Maryland provides for the nomination of all officers elected by the state at large, including United States senators, by the state convention, but in voting in the convention delegates are so closely bound by popular expressions of first- and second-choice preferences in

[1] 1915, p. 359. [2] Chap. 117, p. 354. [3] 1907, p. 51.

their counties that they have little freedom of action.[1] In Michigan, on the other hand, although the convention has no control of nominations for governor, lieutenant-governor, and United States senator, it has free rein in nominating all other officers elected by the state at large, which include secretary of state, treasurer, auditor, and attorney-general. In spite of its rather wide range of activity, the state convention is composed of delegates elected by the county conventions, and although the law fixes the date and the basis of representation in the convention, its procedure is not regulated in detail.[2]

New York is the last of the states in which the convention and the direct primary are combined for nominating purposes. Here all offices filled by the voters of the whole state are nominated by the state convention, and justices of the supreme court are nominated by judicial district conventions.[3] In making its nominations the state convention has a free hand, but delegates must be distributed among the assembly districts on the basis of the party vote, and procedure is regulated in some detail.[4]

In two states, although the convention does not actually make the nominations, it functions as a proposal body. The Colorado law, passed in 1910, provides that the convention shall take a ballot for candidates and

[1] 1910, p. 113, as amended 1912, pp. 7, 18. The preference vote was added in 1912. For the details of the counting of these preference votes, see pp. 52–53 above.

[2] 1925, p. 556. [3] 1921, p. 1451.

[4] For details of regulations of procedure, see p. 51 above.

that any candidate receiving 10 per cent or more of the votes shall have his name printed upon the primary ballot.[1] In South Dakota candidates of the majority of the convention and of a protesting minority are printed upon the primary ballot.[2] In 1921 Minnesota provided for the proposal of candidates by a convention, but this was repealed in 1923.[3]

The foregoing states are the only ones in which the state convention has anything to do with nominations. But in Illinois, Maine, Nebraska, Nevada, Ohio, Texas, Washington, West Virginia, and Wyoming delegate conventions function as platform-drafting agencies, and in Minnesota, Mississippi, and South Carolina delegate conventions are specifically provided for. Discussion of these conventions rightly belongs with a discussion of the framing a platform where the direct primary is used, and will be considered in that connection.

As a result of more than half a century's movement toward legal regulation of party primaries every state in the Union except New Mexico has legislated against the abuses arising under the voluntary party system of nomination. All but a handful of states have laws which are state-wide in their operation, mandatory in character, and fairly complete in their provisions. Only three of the states which have primary laws retain the convention as the dominant method of nomination. These states are Connecticut, Rhode Island, and Utah. In all of these states regulation of the convention is extremely rudimentary. In six other states—Alabama, Arkansas,

[1] 1910 (special), p. 15.

[2] 1916–17, p. 320.

[3] 1921, chap. 322; 1923, chap. 125.

Delaware, Georgia, Kentucky (for most offices), and Virginia—the choice of direct or indirect nomination is left with the party authorities. In these six states if the party authorities prefer to nominate by means of conventions they are hampered but little by legal restrictions. In another half-dozen states—Idaho, Iowa, Indiana, Maryland, Michigan, and New York—the convention retains its power over certain nominations or under certain circumstances. In all of these states except Idaho regulation of the party is quite comprehensive.

From this summary of the period 1899-1927 it is evident that recent development of regulation of the nominating process has become largely the history of the direct primary, which we shall consider in some detail in the following chapter.

CHAPTER V

DIRECT PRIMARY LEGISLATION
1899–1927

The legal regulation of the convention system, however complete and thoroughgoing in its provisions, was unable to meet the demand for popular control of the party system. Despite the fact that in many cases the primary had been surrounded by practically all of the safeguards of an ordinary election, the public remained unsatisfied. Advancing even more rapidly than the movement for legal regulation of the nominating process came the attack upon the indirect method of nomination provided by the convention system and the demand for nomination by direct vote of the party.

The direct primary idea, however, was not original with this period, but was already a generation old. Pennsylvania had experimented with various forms of it in the sixties,[1] and for many years it had been in use in the southern and western states. In these cases direct nomination was optional and without legal protection, except such as was involved in the recognition of nominations so made as legal nominations, which might properly be placed upon the official ballot when certified by the party authorities. In the period under discussion the tendency was to make the direct primary *mandatory* and to surround it with all the legal safeguards to which the indirect primary had been subjected.

[1] See p. 12, above.

The direct primary movement was at least in part a democratic one, and was animated by a desire for wider popular participation in government. In this sense it was part of that broad tendency in the direction of popular control of all the agencies of politics which wrote the initiative, the referendum, and the recall upon the statute books of many of our states. In many directions there was manifest a democratic sentiment which was reaching out for new ways by which more direct responsibility of the governor to the governed could be secured.

In the second place, the demand for the direct primary grew out of the general discontent regarding social and industrial conditions. The party system was regarded as an important element in these conditions, and popular opposition converged upon the convention as the source of much of the evil it was desired to eliminate. Startling disclosures respecting the betrayal of public trust by party leaders aroused the people to a crusade for responsible party government.

So swift and complete was the movement that by 1917 all but four states of the Union had adopted direct primary laws covering some state offices. Some of these laws were mandatory, others were optional; some were general in application, while others were limited to certain districts or certain nominations; and finally some subjected the party to complete legal control, while others placed upon the party officials much of the responsibility for the conduct of the primary.

In 1901 Florida, Oregon, and Minnesota enacted important direct primary laws, all of which were subsequently superseded by more far-reaching acts; in 1902

Mississippi followed; and in 1903 Delaware enacted an optional law and Wisconsin passed the first state-wide law with fairly complete provisions for legal supervision. In 1904 a similarly comprehensive law was enacted by Oregon by means of the initiative, and Alabama passed an optional law. In 1905 Texas passed what is still her basic law, and Illinois, Michigan, Montana, and South Dakota enacted laws which have been repealed by more comprehensive acts; while in 1906 Louisiana and Pennsylvania joined the ranks of the direct primary states. The years 1907, 1908, and 1909 were banner years for the direct primary movement. In 1907 Iowa, Nebraska, Missouri, North Dakota, South Dakota, and Washington passed such laws; in 1908 Illinois, Kansas, Oklahoma, and Ohio followed; and finally, in 1909, Arizona, Arkansas, California, Idaho, Michigan, Nevada, New Hampshire, and Tennessee were added to the list. All of these laws except those of Ohio, Arkansas, and Michigan were complete both as to the offices affected and the degree of legal regulation to which the party was subjected. In 1910 Colorado and Maryland accepted the direct primary idea, and Maine, Massachusetts, New Jersey, and Wyoming followed with complete laws in 1911. In 1912 Kentucky, Minnesota, and Montana adopted complete laws, and Virginia an optional law. In 1913 complete laws were enacted in Florida, New York, Ohio, and Pennsylvania, and finally in 1915 Indiana, North Carolina, South Carolina, Vermont, and West Virginia were added to the list.

Many of the states adopting direct primary laws early in the movement experimented with the principle

in a cautious sort of way. With the exception of Wisconsin and Oregon, all of the laws put into operation before 1907 were optional or local in their application or rudimentary in the sense that the responsibility and expense of the primary rested upon party officials. Thus the Minnesota law was at first (1899) applicable to Hennepin County only, but was later extended over the entire state (1901). The Michigan law began with experiments in Kent County, and later was applied to the whole of Michigan. The Delaware act of 1903 affected only Newcastle County, but in 1913 was extended to the rest of the state. Nebraska in 1905 enacted a law covering cities of 125,000, but in 1907 this was superseded by a state-wide law. Missouri made direct primaries optional for cities of 300,000 in 1901, and covered the state in 1907. Massachusetts and Maryland offer further examples of the same sort of interesting evolution.

So rapid was the progress of public opinion and of legislation that in many instances a compromise measure of one session was followed by a thoroughgoing law in the next. For example, the North Dakota law of 1905 authorized direct primaries for all district nominations, but did not include state offices; in 1907 a sweeping act was passed covering practically all offices. South Dakota, in 1905, provided for a state-regulated primary, and left the direct primary optional in case of county offices and the state legislature, but in 1907 a comprehensive act was obtained from the lawmakers. New Jersey in 1903 provided for the direct nomination of certain district officers and for an advisory vote for candidates for governor and other state officers; in 1907

provision was made for the direct nomination of state senators and assemblymen and various county officers, and finally in 1911 and 1915 the scope of the primary was broadened to include all public officers to be voted on at general elections. The successive acts of Texas in 1903, 1905, and 1907 show similar rapid progress.

Perhaps the best illustrations of this interesting process of evolution are to be found in New York and Illinois. In New York a long fight for the direct primary resulted in the passage of the compromise Dix law in 1911. This applied the direct principle to nominations for congressional, judicial, state senatorial, assembly district, county, and city offices, but left the nomination of all offices to be filled by vote of the state at large in the control of the state convention. In 1913 the direct primary was extended to all these offices. Illinois furnishes an even better example. In 1898 that state provided a legally regulated primary for Cook County which was left optional for other counties of the state. In 1905 a state-wide, legally regulated system was adopted, and in this law provision was made for an advisory vote on governor, and direct nomination of county officers outside of Cook County. This act was declared unconstitutional, however, and the legislature provided a system in 1906 which permitted an advisory vote on practically all officers and required that the delegates to state, congressional, and senatorial conventions should support the candidate receiving the highest vote in their delegate districts. In no case, however, was direct nomination secured. This act was also declared unconstitutional, and finally in 1908 the legislature passed a mandatory, di-

rect primary law covering practically all offices. The law of 1908 was also rendered void by the state courts, but the succeeding acts of 1910, 1919, and 1927 embodied the same sweeping provisions. These laws are cited to show how swift was the advance of public sentiment during this period, and how little disposition there was to accept anything short of a complete direct nominating system.

The first states were likely to adopt the direct primary idea in piece-meal fashion, but after 1907 we find many states which had had no previous experience with direct nominations adopting laws which were sweeping and complete in their provisions. This was the case in Arizona, California, Colorado, Idaho, Maine, Montana, Nevada, New Hampshire, West Virginia, Wyoming, and Vermont.

During this period there was an unmistakable tendency to make direct nominations mandatory, but optional laws survived in Alabama, Arkansas, Delaware, Georgia, and Virginia. In the same way there were a few exceptions to the general tendency to bring the nomination of all elective state, county, and district officers within the scope of the direct primary. Michigan retained the convention for nominating all officers elected by the state at large except governor, lieutenant-governor, and United States senator; in Maryland state offices and United States senator were nominated by a convention which was, however, bound by an advisory vote; Indiana retained the convention for nominating all state officers, with an advisory vote for governor and United States senator binding when any candidate re-

ceived a majority; and in North Carolina the direct primary was mandatory in some counties for county offices and members of the lower branch of the state legislature only if adopted by a referendum vote in those counties. Finally, there were exceptions to the general tendency to make the direct primary a legally regulated election. In Arkansas, Georgia, Mississippi, South Carolina, and Texas the primaries were conducted largely under party rules. Here the test of party affiliation was left to the party, with or without a minimum requirement; the appointment of judges, the printing of ballots, and the canvass of the votes were placed under the control of the party; and finally, the expense of the primary was borne by the party and was not a public expense, provision being made for assessing the cost of the primary upon the candidates.

These were exceptions to the general tendency, however. By 1917, thirty-two of the forty-four direct primary states had mandatory, legally regulated direct primaries covering all nominations for state offices and for many local offices as well. In brief, thirty-two states had adopted the direct primary principle completely.

The main outlines of the direct primary laws are similar, but there are important and interesting differences in detail. The time of holding the primary election, the party test for participation, the method of placing names on the ballot, the order of the names on the ballot, the vote necessary to elect, and the drafting of the party platform are all questions which require careful scrutiny.

The direct primary states show wide diversity in fix-

ing the time when nominees are to be chosen, the dates ranging from April to September. Illinois[1] holds its primary in April, and the primaries of Nebraska and Pennsylvania fall in this month in presidential years. Indiana, Oregon, and South Dakota hold their primaries regularly in May; while Alabama, New Jersey, and West Virginia nominate in that month in presidential years, and Pennsylvania has a May primary in non-presidential years. The June primaries occur in Florida, Iowa, Maine, Minnesota, New Jersey, North Carolina, and North Dakota, and two states—Montana[2] and Texas—hold their primaries in July. The sixteen states of Alabama, Arkansas, California, Idaho, Kansas, Kentucky, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, West Virginia, and Wyoming hold their primaries regularly in August; although three of these states, Alabama, Nebraska, and West Virginia, nominate in May in presidential years. Finally, in thirteen states, namely, Arizona, Colorado, Georgia, Louisiana, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New York, Vermont, Washington, and Wisconsin, the primary falls in September. It is apparent from this enumeration that although there is a wide range of dates, more than two-thirds of the direct primaries occur in August and September.

Although there has been much tinkering with pri-

[1] Throughout this discussion the Illinois law of 1927 is referred to. This act, declared unconstitutional by the Cook County Circuit Court, was upheld by the Supreme Court of Illinois.

[2] Montana changed from August to July in 1927. See *Laws of 1927*, p. 4.

mary dates, few states have made radical changes, and few general tendencies are shown by the changes which have been made. The three states of Minnesota,[1] New Jersey,[2] and Oregon,[3] have changed their primary dates from fall to spring, and Illinois,[4] which began with an April date and changed to September in 1913, changed back to April in 1921. This might indicate a slight trend in the direction of the spring primary. On the other hand, Arkansas[5] switched from May to August in 1919. It is perhaps significant that both of those states which have tried holding their primaries in March have abandoned them for later months, indicating that that time is unsatisfactory.[6] New York probably holds the record for having changed her primary date oftener than any other state, having tried in succession the seventh, fifth, seventh, ninth, seventh, fifth, seventh, ninth, seventh, eighth, and seventh Tuesdays before the general election.[7] California,[8] Massachusetts,[9] and Nebraska[10] have experimented with various dates in August and

[1] 1912, p. 4; 1913, p. 542. [2] 1909, p. 160; 1925, p. 29.

[3] 1905, p. 7; 1913, p. 390.

[4] 1908, p. 51; 1910 (special), p. 77; 1921, p. 483.

[5] 1917, p. 2287; 1919, p. 11.

[6] Indiana changed from the first Monday in March to the first Monday in May (see 1915, p. 359; 1917, p. 354). South Dakota changed from the fourth Tuesday in March to the fourth Tuesday in May (see 1916–17, p. 320; 1927, p. 131).

[7] 1911, p. 2657; 1913, p. 2318; 1916, p. 1612; 1918, p. 981; 1920, p. 2235; 1922, p. 1326.

[8] 1909, p. 691; 1911, p. 769; 1913, p. 1379.

[9] 1911, p. 570; 1919, p. 243; 1926, p. 116.

[10] 1907, p. 202; 1909, p. 245; 1925, p. 207.

September; Idaho[1] has placed her primary in July, August, and September at various times; and Montana[2] has changed from August to July. None of these changes has been significant, however.

Almost without exception the present direct primary laws require that the voter have the same qualifications for participating in the primary as in the general election. But when it comes to imposing an additional test of party affiliation the greatest diversity is found. There are only two states which still retain the "open" primary, that is, where the decision as to party affiliation is left entirely to the voter's conscience and is made in the privacy of the voting booth. In Montana[3] and Wisconsin[4] a voter is given the ballots of all parties, votes the ballot of the party he chooses, and discards the unvoted ballots in a box provided for such blanks. In two states, although the primary is closed, technically, there is no test of party affiliation. In Michigan[5] and Vermont[6] the voter must ask publicly for the ballot of the party with which he desires to affiliate, and that ballot must be given to him. He is at liberty to change his party at each primary and wait until the day of the primary to do so.

All the other states, however, make some attempt to

[1] The last Tuesday in August in 1909, p. 196; the last Tuesday of July in 1911, p. 571; the first Tuesday of September in 1913, p. 347; and the second Tuesday of August in 1919, p. 372.

[2] In 1913 (p. 570) the primary was seventy days before the general election; in 1925 (p. 198) it was 91 days before the general election; and in 1927 (p. 4) it was fixed at the third Tuesday in July.

[3] 1913, p. 570.

[4] 1903, chap. 451.

[5] 1915, p. 564.

[6] 1921, p. 6.

judge of the voter's fitness to participate in the primary of a particular party. In general this is done in one of two ways: by establishing a test of party membership and requiring the voter when challenged to swear that he meets this test, or by requiring an enrolment of party membership previous to the primary and permitting him to participate only in the primary of that party. The former method is usually referred to as the "challenge" method, the latter as the "enrolment" method. Both are subject to many variations and are combined in various ways.

Eight states use the challenge method exclusively, but the challenges are of various kinds. In West Virginia[1] and Tennessee[2] the voter merely swears that he intends to affiliate with that party, while in Missouri[3] and Washington[4] he goes a step further and promises to support the nominees in the coming election. The test of *past* affiliation is applied in Illinois,[5] and Ohio,[6] where the voter may be asked to swear that he voted that ticket at the last general election. Minnesota[7] and Indiana[8] make the test a combination of past and future affiliation, asking the voter to swear that he supported the candidates of that party, generally, at the last general election, if he voted, and that he intends to support them at the next.

The enrolment method is used in over half of the forty-four direct primary states, the laws of Arizona,

[1] 1916 (extra), p. 14.
[2] 1917, p. 338.
[3] 1909, p. 481.
[4] 1909, p. 471.
[5] 1908, p. 48.
[6] 1913, p. 476.
[7] 1912 (special), p. 4.
[8] 1915, p. 359.

California, Colorado, Florida, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, and Wyoming containing such provisions. In all of these states a record is made of party affiliation, usually at the time of registration, and this record is referred to when the voter offers to participate in the primary. In Iowa, Kansas, Massachusetts, and New Jersey the party enrolment is made at the preceding primary, and in Colorado and Wyoming an enrolment taken at the first primary stands until changed by the voter. The laws of Colorado, Iowa, Kansas, and Wyoming make it possible to change one's party enrolment at specified times before the primary election;[1] and the enrolment features of the Iowa and Wyoming laws are rendered little short of valueless by clauses enabling a voter to change his enrolment on primary day by swearing that this change is made in good faith.[2] New Jersey is one of the most tightly closed of the closed primary states. One may not vote in the primary of a political party in that state unless one's name is on the enrolment lists made at the last primary as having participated in the primary of the same party. As no provision is made for changing enrolment between primaries, one is under the necessity of refraining from

[1] In Iowa not less than 10 days before the succeeding primary; in Kansas not less than 30 days before the primary; in Massachusetts the change must be made 30 days before it is to take effect; and in Wyoming, not less than 10 days before the primary.

[2] See Iowa, 1924 (extra), chap. 5, sec. 46; and Wyoming (1911), chap. 23, sec. 25.

voting in one primary if one wishes to change one's party affiliation.

In the states where the enrolment is made at the time of registration, party affiliation may, of course, be changed at each succeeding registration. In many of these states provision is made, in addition, for changing one's enrolment between the time of registration and the primary.

The challenge and the enrolment systems exist side by side in some states. In Kentucky,[1] Nebraska,[2] and Pennsylvania[3] party enrolment exists in the cities where registration is required, while the challenge system is used in the rest of the state. There are other states, however, like Nevada, New Jersey, North Dakota, South Dakota, and Wyoming, which require party enrolment throughout the state, where the voter is not free from challenge in spite of the enrolment feature.

There are eleven states in which the determination of a person's right to participate in a party primary is left to the party, with or without a statement of minimum requirements in the law itself. In Louisiana[4] and Florida[5] party enrolment is required and voters may participate only in the primary of the party in which they are enrolled, but the party determines who may and who may not enrol. South Carolina[6] provides for what are called "party clubs." Only voters who are enrolled in these clubs may participate in the primaries, but the party determines qualifications for membership in them.

[1] 1914, p. 399.
[2] 1911, p. 216.
[3] 1919, p. 846.
[4] 1916, p. 66.
[5] 1913, p. 242.
[6] 1915, p. 163; 1923, p. 67.

In Mississippi the party specifies the qualifications for participation, but the voter, when challenged, must swear that he intends to support the nominations, has been in accord with the party during the last two years, and is not excluded by party regulations.[1] Virginia[2] requires the voter to swear that he is a member of the party (the qualifications for membership being determined by the party) and that he supported the party nominees in the last general election in which he participated. The qualifications for membership in the party in Delaware[3] are determined by the party authorities, and the voter if challenged must swear that he is legally qualified to vote under the rules of the party and has not voted and will not vote at the primary of any other party at that election. In Alabama,[4] Arkansas,[5] Georgia,[6] Idaho,[7] South Carolina,[8] and Texas[9] the party is free to impose and enforce the qualifications it sees fit. Texas, in 1923,[10] provided that Negroes were not eligible to participate in Democratic primaries, but this act was declared unconstitutional by the United States Supreme Court.[11]

Such are the tests for participating in party primaries provided for in the laws at the present time. We have yet to consider the tendencies shown by the legis-

[1] 1902, p. 105.

[2] 1912, p. 611; 1924, p. 415.

[3] 1897, chap. 393.

[4] 1903, p. 356.

[5] 1917, p. 2287.

[6] 1917, p. 183.

[7] 1919, p. 372.

[8] 1915, p. 163.

[9] 1907, p. 328.

[10] Second special session, p. 74.

[11] In *Nixon* v. *Herndon*, 273 *U.S.* 536.

lation of the last twenty-eight years. The trend seems to have been in the direction of the closed rather than the open primary. We have already seen that most of the laws enacted during the period provided for closed primaries. It is equally significant that Colorado,[1] Idaho,[2] Massachusetts,[3] Michigan,[4] and Vermont[5] have abandoned the open primary. It should be noticed, however, that the present laws of Michigan and Vermont are closed only to the extent of requiring the voter publicly to announce his party affiliation. Among the "closed" primary states the trend is clearly away from the challenge method and toward party enrolment. Arizona,[6] Florida,[7] Kansas,[8] Kentucky,[9] Louisiana,[10] Maryland,[11] Nevada,[12] North Dakota,[13] Oklahoma,[14] Pennsylvania,[15] and South Dakota[16] are eleven states which have in-

[1] The law of 1910 (p. 15) was open; the closed primary was provided for in 1927 (p. 319).

[2] Law of 1909 (p. 196) was open; the laws of 1913 (p. 347) and 1919 (p. 372) were closed.

[3] The first direct primary law (1911, p. 570) was closed. In 1914 (p. 959), the open primary was provided for, the candidates of all parties being printed on the same ballot. In 1916 (p. 156) the closed primary was provided for.

[4] The law of 1909 (p. 514) was closed. In 1913 (p. 201) the open primary was adopted, the candidates of all parties being printed on one ballot. In 1915 (p. 564) the closed primary again was provided for.

[5] The first direct primary law, 1915 (p. 58) was open. In 1921 (p. 6) the closed primary was provided for.

[6] 1915, p. 89.

[7] 1913, p. 242.

[8] 1927, p. 257.

[9] 1914, p. 399.

[10] 1916, p. 66.

[11] 1912, p. 7.

[12] 1913, p. 520.

[13] 1911, p. 327.

[14] 1916, p. 32.

[15] 1919, p. 846.

[16] 1923, p. 169.

cluded party enrolment provisions in amendments to their earlier laws. Apparently American statute-makers are convinced of the inefficacy of the challenge method as a means of keeping impostors out of the party.

A variety of methods have been devised for placing names upon primary ballots. The simplest method has been a declaration of candidacy by the person desiring to run for office. This is used in Delaware,[1] Indiana,[2] Oklahoma,[3] and West Virginia.[4] Ten states—Florida,[5] Idaho,[6] Kentucky,[7] Louisiana,[8] Maryland,[9] Minnesota,[10] Missouri,[11] Montana,[12] North Carolina,[13] and Washington[14]—require a filing fee in addition to the declaration by the candidate. The more popular method is by a petition signed by a certain number of the political supporters of the candidate for the nomination. The petition alone is used in Arizona,[15] Illinois,[16] Iowa,[17] Maine,[18] Massachusetts,[19] Michigan,[20] New Jersey,[21] Tennessee,[22] Vermont,[23] and Wisconsin,[24] while in two other states—Ohio[25] and Virginia[26]—a filing fee and

[1] 1897, chap. 393.
[2] 1915, p. 359.
[3] 1908, p. 358.
[4] 1916, p. 14.
[5] 1913, p. 242.
[6] 1919, p. 372.
[7] 1912, p. 47.
[8] 1906, p. 66.
[9] 1908, p. 107.
[10] 1912 (special), p. 4.
[11] 1909, p. 48.
[12] 1923, p. 381.
[13] 1915, p. 154.
[14] 1907, p. 457.
[15] 1912 (special), p. 272.
[16] 1910 (special), p. 46.
[17] 1907, p. 51.
[18] 1913, p. 313.
[19] 1911, p. 570.
[20] 1909, p. 514.
[21] 1920, p. 615.
[22] 1917, p. 338.
[23] 1915, p. 58.
[24] 1903, p. 754.
[25] 1913, p. 476.
[26] 1912, p. 611.

declaration by the candidate are required in addition. In six states—Kansas,[1] Nebraska,[2] Nevada,[3] New Hampshire,[4] Oregon,[5] and Texas[6]—either the declaration of candidacy or the petition may be used, while in California,[7] North Dakota,[8] Pennsylvania,[9] and Wyoming[10] a declaration or acceptance by the candidate and a petition are required.

Two states, Colorado and South Dakota, have provided for preprimary conventions which may propose names to be printed on the primary ballot. The Colorado law provides that one ballot shall be taken in the preprimary convention upon candidates for each office and that the name of every candidate receiving 10 per cent or more of the votes in the convention shall be placed upon the primary ballot.[11] In South Dakota[12] majority and minority factions within the convention may have "representative proposals" and lists of candidates printed upon the primary ballot. In both Colorado and South Dakota provision is made for the filing of additional names by independent petitions. A preprimary convention with power to make nominations was provided for in Minnesota in 1921,[13] but this was repealed at the next session of the legislature.[14]

[1] 1908, p. 59; 1915, p. 249.
[2] 1907, p. 202.
[3] 1909, p. 273; 1917, p. 276.
[4] 1909, p. 520; 1913, pp. 505, 737.
[5] 1905, p. 7; 1915, p. 124.
[6] 1907, p. 328.
[7] 1927, p. 1686.
[8] 1907, p. 151.
[9] 1913, p. 719.
[10] 1911, p. 25.
[11] 1910, p. 15.
[12] 1916-17, p. 320.
[13] P. 401.
[14] 1923, p. 124. A discussion of the operation of this law is to be found in *Minnesota Municipalities*, VIII (December, 1922), 170.

The laws of several southern states—Alabama, Arkansas, Georgia, Mississippi and South Carolina—leave the filing provisions to be regulated by the party, or are silent upon this point and it is to be assumed that the party committees regulate the matter.

Where filing fees are required the amount is fixed on a sliding scale, depending upon the importance of the office, and sometimes it is expressed in terms of a percentage of the salary to be received. The fees in Maryland[1] run as high as $270 for governor, and in Nevada[2] as high as $250, but these are unusual. In most of the states the maximum is $100 or less.[3] Where the filing fee is expressed as a certain percentage of the salary of the office it ranges from as low as one-half of 1 per cent in Ohio[4] to 3 per cent in Florida,[5] and 2 per cent in Virginia.[6] In certain southern states where the cost of the primary is borne by the party, the laws provide that the expenses may be assessed against the candidates. This is true in Alabama, Mississippi, and Texas, for example.

The number of signatures required where names are placed on the ballot by petition is often expressed as a certain percentage of the vote cast in that district at the last general election. The minimum specified for offices to be filled by the state at large ranges from one-half of 1 per cent to 3 per cent. In states where a definite number of signatures is named the number varies widely. In Nevada ten electors may place the name of a candi-

[1] 1902, p. 105. [2] 1917, p. 276.

[3] In Montana, Nebraska, North Carolina, Oregon, Ohio, and Wyoming it is $50 or less.

[4] 1913, p. 476. [5] 1913, p. 246. [6] 1912, p. 611.

date on the ballot; in Nebraska, Tennessee, and Texas twenty-five signatures are sufficient; and in California, according to a recent amendment, petitions of candidacy must be filed by from 10 to 100 "sponsors" of the candidate.[1] At the other extreme are Illinois and Massachusetts, with a minimum of 1,000 for governor, and Vermont, with a requirement of 500 for the same office.

In concluding this summary of filing requirements it should be noted that Missouri[2] and Montana[3] have substituted declaration of candidacy for the petition method, and that the laws of Kansas,[4] Nevada,[5] and Oregon,[6] which originally provided for placing names on the ballot by petition only, have been amended to offer declaration of candidacy as an alternative. On the other hand, New Hampshire,[7] which originally provided for declaration only, now makes possible placing names on the ballot by petition as well. The tendency seems to be in the direction of making it easier, rather than more difficult, to place names upon the primary ballot. The most interesting development in this connection, however, is the designation of candidates by preprimary conventions, which has already been discussed. A somewhat similar idea was introduced into the ill-fated New York law of 1911.[8] In that act, which made provision for the direct nomination of a limited number of officers only, the party committees were given power to draft a "slate" of candidates, which was to be given the most

[1] 1927, p. 1686.
[2] 1907, p. 263; 1909, p. 480.
[3] 1913, p. 570; 1923, p. 381.
[4] 1908, p. 59; 1915, p. 249.
[5] 1909, p. 273; 1917, p. 276.
[6] 1905, p. 7; 1915, p. 124.
[7] 1909, p. 520; 1913, p. 179.
[8] P. 2657.

desirable position at the extreme left of the ballot. Other names might be proposed by petition. The law was quickly superseded by the act of 1913,[1] which extended the application of the principle of direct nomination and provided for placing the names on the ballot by more orthodox methods.

The order in which names are to be printed on the ballot might appear to be a simple matter, but it has occasioned no little difficulty to lawmakers. Arrangement may be alphabetical, by lot, by order of filing, or by some system of rotation which puts each candidate's name at the top of the ballot an equal number of times. All of these methods have been used, although at present arrangement in the order of filing is used only in Illinois and only for less important offices.[2] Arkansas,[3] New Jersey,[4] Pennsylvania,[5] and Texas[6] require all names to be placed on the ballot by lot; Kentucky[7] uses this method for candidates for offices not filled by the voters of the state at large, and in New York[8] any candidate may request that this method or arrangement be used, otherwise the matter is settled by the officer preparing the ballot. In thirteen states[9] the names are arranged

[1] Extra, p. 2318.

[2] Washington in 1908 (p. 457) so provided. Rotation has been substituted.

[3] 1917, p. 2287.

[4] 1922, p. 468.

[5] 1921, p. 680.

[6] 1907, p. 328.

[7] 1912, p. 47.

[8] 1922, p. 468.

[9] Alabama (1903), p. 356; Delaware (1897), p. 375; Florida (1913), p. 242; Georgia (1922), p. 97; Idaho (1919), p. 372; Louisiana (1922), p. 178; Maine (1913), p. 313; Maryland (1912), p. 7; Massachusetts (1911), p. 570; Nevada (1917), p. 276; Tennessee (1917), p. 338; Vermont (1915), p. 58; Wyoming (1911), p. 25.

alphabetically, while in twenty[1] some form of rotation is provided for. Indiana[2] requires rotation where there are four or more names, otherwise the arrangement is alphabetical. In Colorado[3] the names certified by the convention are printed on the ballot in the order of the votes received in the convention, others following alphabetically, while in South Dakota[4] the names proposed by the representative groups and by independent petitions are printed in parallel columns with the office at the left, indicating that there is a relationship between the names in one column. Mississippi[5] leaves the determination of the order of the names to the party committees, and the laws of South Carolina and Virginia are silent on this point.

Unquestionably the legislation of the past twenty years shows a sharp trend in the direction of rotating the names on the ballot. Arizona, Iowa, Kansas, Missouri, Montana, Nebraska, Ohio, Oregon, and Wisconsin, originally providing for alphabetical order, have amended their laws to require rotation of the names on the ballot, and Illinois and Washington have changed from order of filing to rotation. Only two states—Idaho

[1] Arizona (1912), p. 272; California (1909), p. 691; Illinois (1913), p. 310; Iowa (1909), p. 63; Kansas (1915), p. 249; Kentucky (1912), p. 47 (for statewide offices); Michigan (1909), p. 514, and 1925, p. 544; Minnesota (1912), p. 4; Missouri (1911), p. 242; Montana (1923), p. 381, and 1927, p. 19; Nebraska (1911), p. 216; New Hampshire (1909), p. 520; North Carolina (1915), p. 154; North Dakota (1907), p. 151; Ohio (1917), p. 25; Oklahoma (1913), p. 319; Oregon (1911), p. 445; Washington (1917), p. 233; West Virginia, 1916 (extra), p. 14; Wisconsin (1909), p. 1.

[2] 1915, p. 359.

[3] 1910 (special), p. 15.

[4] 1916–17, p. 320.

[5] 1902, p. 105.

and Nevada—have returned to alphabetical order after having tried rotation.

In most states the question who shall be the successful nominee is decided in favor of the candidate receiving a bare plurality of votes. In some of these states, however, the successful candidate must receive a certain percentage of the total vote cast in that election or in some previous election. In Iowa the successful nominee must receive 35 per cent of the party vote. North Dakota has provided that the total vote for any office must equal 25 per cent of the average total vote of the party for governor at the last general election[1] and that no person is to be deemed nominated unless he receives as many votes as the number of signatures required on the petition to have his name placed on the primary ballot.[2] In Nebraska[3] the highest candidate is declared the nominee if he receives 5 per cent of the total party vote at that primary election; in Washington[4] he must receive 10 per cent of the party vote, and Wisconsin[5] provides that *all candidates* of one party for one office must receive 5 per cent of the party vote for governor at the last election, otherwise the highest candidate appears on the final election ballot as an *independent* nominee, not as the nominee of that party.

Some of the states which permit a person to run as a candidate in the primaries of more than one party impose certain other requirements. In California,[6] for example, the law provides that a primary candidate failing

[1] 1913, p. 360.
[2] 1925, p. 160.
[3] 1925, p. 302.
[4] 1919, p. 462.
[5] 1923, p. 65.
[6] 1917, p. 1341.

to receive the nomination of his own party (that is, of the party with which he was affiliated as shown by his registration) cannot receive the nomination of another party. In case a nominee is thereby declared ineligible the state central committee of the party designates the candidate.[1] Nebraska[2] disbars a candidate from more than one primary ticket, and if his name is "written in" he cannot accept the "written in" nomination unless he also gets the nomination of the party in which he is an avowed candidate. In Oregon[3] a candidate who fails to get the nomination of his own party may not be a candidate of another party.

Plurality nominations are the rule; but some states have guarded against the election of minority candidates in a variety of ways. In two states this is done by throwing the choice to the convention if the highest candidate does not receive a certain percentage of the vote. The Iowa law provides that unless the highest candidate receives 35 per cent of the party vote the choice of the nominee shall rest with the convention of the appropriate division, and in Indiana,[4] where an advisory vote is provided for governor and United States senator, the convention makes the choice if no candidate receives a majority of the instruction vote.

In the South, where a nomination is equivalent to an election, six states have provided for "run off" or second primaries if no candidate receives a majority in the first,

[1] 1919, p. 53. For a discussion of this point, see Victor J. West, "The California Direct Primary," in the *Annals of the American Academy of Political and Social Science* (hereafter cited as *A.A.A.*), CVI (March, 1923), 116.

[2] 1925, p. 299. [3] 1919, p. 793. [4] 1915, p. 359.

and three states rely upon preferential voting to prevent minority nominations. Georgia,[1] Louisiana,[2] Mississippi,[3] North Carolina,[4] South Carolina,[5] and Texas[6] use the "run off" primaries. Georgia combines a run off primary with a county-unit system of voting. Any candidate for a nomination who receives the highest number of votes in a county is entitled to the entire vote of that county, apportioned on the basis of two votes for each representative in the lower house of the state legislature. If no candidate for governor or United States senator receives an absolute majority of these county-unit votes a second election on the county-unit basis is held between the two highest candidates. A majority of county-unit votes is not required in the case of other nominations. The Louisiana law specifies that if a candidate for governor receives a majority in the first primary, no second primary need be held. In Mississippi if candidates for nomination to legislative, county, and district offices sign an agreement to that effect before the first primary a plurality vote is binding. Texas leaves the decision as to whether or not a "run off" primary shall be held to the party committees in the case of county nominations.

Preferential voting has been used at one time or another by eleven states,[7] but survives in but three—Ala-

[1] 1917, p. 183. [2] 1902, p. 105. [5] 1915, p. 163.

[2] 1922, p. 178. [4] 1915, p. 154. [6] 1907, p. 328.

[7] Alabama (1915), p. 218; Florida (1912), p. 242; Idaho (1909), p. 196, as amended 1911, p. 571 and 1913, p. 347, repealed 1919, p. 372; Indiana (1915), p. 359, repealed 1917, p. 354; Louisiana (1916), p. 66, repealed 1922, p. 178; Maryland (1912), p. 18; Minnesota (1912), p. 4, repealed 1915, p. 223; North Dakota (1911), p. 321, repealed 1913, p. 360; Oklahoma (1925), p. 36; Washington (1907), p. 457, repealed 1917, p. 233; Wisconsin (1911), p. 194, repealed 1915, p. 80.

bama, Florida, and Maryland.[1] The method of voting is similar in all of these laws, but the way in which the second- and third-choice votes are used differs materially. In Alabama,[2] and in the North Dakota law of 1911,[3] for example, if no candidate received a majority of first choices, all but the two highest candidates were eliminated, and to their first-choice votes were added *all* of the second-choice votes cast for them. In the present Florida law,[4] on the other hand, only the two highest candidates are left in the running, but to their first-choice votes are added only the second-choice votes cast for them by those voters whose first-choices are eliminated by these provisions. In Maryland,[5] where preferential voting is used to instruct delegates to the state convention, and in the Minnesota law of 1912,[6] the successful nominee was determined by a process of dropping the lowest candidate and distributing his votes among the remaining candidates according to the second choices indicated. This process was continued until some one candidate had a majority or only two candidates remained, in which case the highest was declared the nominee. A most unique as well as complicated system of counting votes was provided by the Oklahoma law of 1925.[7] According to this statute, if no candidate received a majority of first-choice votes, one-half the number of second-choice votes cast for each candidate were to be added to his first-choice votes. If there were

[1] For a discussion of preferential voting, see B. F. Williams, "Preventing of Minority Nominations for State Offices in the Direct Primary," *A.A.A.*, CVI (March, 1923), 111.

[2] 1915, p. 218. [4] 1912, p. 242. [6] 1912, p. 4.

[3] 1911, p. 321. [5] 1912, p. 18. [7] P. 36.

four or more candidates and no one of them had a majority of first- plus second-choice votes, then one-third the number of third-choice votes were to be added and the candidate receiving the highest number of first-, second-, and third-choice votes was to be declared the nominee. This law was declared unconstitutional because the voter was required to indicate more than one choice.[1] In Alabama, however, the law provides that "single shot" ballots shall not be counted.

The elimination of preferential voting in all of the northern states in which it has been tried indicates a strong feeling that it is either unnecessary or useless.

Illinois[2] is the only state which has experimented with cumulative voting in primaries. In nominating candidates for the general assembly, as well as voting in the final election, the voter has three votes which he is at liberty to distribute among two or three candidates or cast for one candidate.

The substitution of direct nomination for the delegate system at once raises the question of how the party platform is to be framed. Various solutions of this difficulty have been evolved. In the six optional primary states[3] the convention may still function, and presumably the platform is drawn up by that body. In Indiana, Maryland, Michigan, and New York (since 1921), where the conventions perform nominating functions; and in Minnesota, Mississippi, South Carolina, and Washington, where they do not, delegate conventions are expressly provided for which may function as platform-

[1] *Dove* v. *Ogleby*, 244 *Pacific Reporter*, 798. [2] 1927, p. 492.

[3] Alabama, Arkansas, Delaware, Georgia, Kentucky, and Virginia.

drafting bodies. In Florida, Louisiana, North Carolina, Oklahoma, Oregon, Pennsylvania, and Tennessee the platform is not mentioned and no provision for delegate conventions is included in the law. In Oregon, however, every candidate for nomination may include in his declaration of candidacy a statement of the measures he especially desires to advocate, and a twelve-word summary of principles is printed after his name on the primary ballot.[1] The statements of principle by the successful candidates presumably become a vague sort of platform in the final election campaign.

The remaining twenty-four states make definite provision in their laws for the framing of the platform by a delegate convention, by a party conference or council, or by a combination of the two. Maine,[2] Nevada,[3] South Dakota,[4] and Wyoming[5] provide for the holding of their platform-making conventions before the primary is held and the nominees are chosen. In the case of South Dakota, however, the platforms drafted by the majority and minority factions in the state proposal convention are really voted upon in the primary, and the actual adoption takes place at that time rather than in the convention itself. In Idaho,[6] Illinois,[7] Iowa,[8] Nebraska,[9] Ohio,[10] Texas,[11] and West Virginia[12] conventions are held after the primary. The Ohio law, however, provides for the framing of the platform by a delegate convention in presidential years only.

[1] 1915, chap. 124.
[2] 1913, p. 313.
[3] 1917, p. 276.
[4] 1916–17, p. 320.
[5] 1911, p. 25.
[6] 1919, p. 372.
[7] 1910 (special), p. 46.
[8] 1924 (special), p. 33.
[9] 1919, p. 225.
[10] 1908, p. 214.
[11] 1907, p. 328.
[12] 1919, p. 289.

In the nine states of Arizona,[1] Colorado,[2] Kansas,[3] Missouri,[4] Montana,[5] New Jersey,[6] North Dakota,[7] Vermont,[8] and Wisconsin,[9] and in Ohio[10] (in non-presidential years) the platform is drawn up by some form of party conference or council meeting after the primary. This council is made up in a variety of ways. In North Dakota the party state central committee acts in this capacity; in Arizona, Colorado, and Vermont the nominees for state offices frame the platform; in Wisconsin the council is composed of the hold-over senators acting with the nominees for state office; in Missouri the nominees for state office, United States senator and congressman, and the party committee act together; in Montana and New Jersey the council is made up of the nominees for state office, United States senator, congressman, the state committee, and hold-over senators; and in Kansas the candidates for state office, United States senator, congressman, the national committeeman, the chairmen of the county committees, and hold-over United States and state senators are included.

Three states—California,[11] Massachusetts,[12] and New Hampshire[13]—provide a combination of party council and delegate convention for drafting the platform. A recent amendment to the California law provides for the election of delegates from each senatorial

[1] 1912 (special), p. 272.
[2] 1910 (special), p. 15.
[3] 1908, p. 59.
[4] 1907, p. 263.
[5] 1913, p. 570.
[6] 1920, p. 615.
[7] 1907, p. 151.
[8] 1915, p. 58.
[9] 1909, p. 1.
[10] 1913, p. 476.
[11] 1927, p. 1686.
[12] 1911, p. 570.
[13] 1909, chap. 153; 1913, p. 737.

district who sit with the party council composed of candidates for congressional and state office. The Massachusetts law provides for a council made up of elected delegates, the state committee, and those United States senators who may be members of the party. The New Hampshire platform council is made up of nominees for governor, councilor, state senator, and representative and delegates who are elected at the time of the primary.

A discussion of the variations in the details of these direct primary laws should include a consideration of some unique experiments which have been tried in certain states. Several states have introduced the publicity pamphlet, common in the campaign preceding the general election, into the preprimary campaign. The Oregon law[1] permits any candidate for nomination to file with the secretary of state a copy of his portrait and a statement on behalf of his candidacy, and any opponent of a candidate may file a statement in opposition. The amount of space available for each candidate is limited and must be paid for at rates varying with the importance of the office. These statements are printed in a pamphlet circulated to registered voters at public expense. Florida, in her law of 1913,[2] provides for a publicity pamphlet which is distributed to registered voters. Space in it is paid for by the candidates. North Dakota[3] likewise provided for a publicity pamphlet, but a 1923[4] amendment limited its use to elections in which initiated or referred laws or proposed amendments to the

[1] 1909, p. 15; amended 1913, p. 395.

[2] P. 242.

[3] 1911, chap. 129; 1913, pp. 365, 366.

[4] P. 275.

state constitution are up for consideration. Publicity pamphlet provisions have been repealed in South Dakota, Wyoming, and Montana. On the other hand, California has just adopted an amendment permitting each candidate to state in his declaration of candidacy in not more than fifty words "his special fitness, training, or experience in the line of work which he will be called upon to perform in case of his election,"[1] and requiring that these declarations, together with the list of "sponsors" supporting his candidacy, be printed in a pamphlet for distribution to all registered voters before the primary election.

An interesting clause providing for the payment of the expenses of delegates to state conventions was inserted in the South Dakota law of 1917.[2] A similar provision was included in the Idaho law of 1919, only to be repealed in 1925.[3]

By far the most unique and interesting single piece of direct primary legislation produced by our legislators is the Richards law of South Dakota.[4] Some of the provisions of this law have already been touched upon, but a survey of the legislation of this period would hardly be complete without sketching in the main outlines of the act as a whole. The Richards law is unique for several reasons: because of its emphasis upon principles and

[1] 1927, p. 1686. [2] Chap. 234, sec. 30.

[3] 1919, p. 372; repealed 1925, p. 8.

[4] For a sketch of the history and provisions of this law, see Clarence A. Berdahl, "The Richards Primary," a note in the *American Political Science Review*, XIV (February, 1920), 93. An interesting discussion of the operation of the law by the same author is to be found in "The Operations of the Richards Primary," *A.A.A.*, CVI (March, 1923), 158.

policies, because of its frank recognition of factions within the party, and because of the degree of regulation to which it subjects the party. The final nominations are made at direct primaries, but the proposal of candidates is not left to spontaneous combustion within the party. Instead, a carefully regulated series of precinct, county, and state proposal meetings advance candidates and platforms. In proposing candidates and issues the minority faction is recognized as well as the majority faction, and in addition independent nominations may be made by petition. The names of candidates are arranged upon the primary election ballot in columns with the "paramount issues" of the majority and minority heading those lists.

In its effort to emphasize principles rather than individuals in the preprimary campaign, the Richards law incorporated some other novel features. In addition to the publicity pamphlet already mentioned, the original law provided for a series of sixteen joint debates between the candidates for the gubernatorial nomination within each party, which were to be confined to discussion of each candidate's "paramount issue." An elaborate system of challenges was provided for, and failure of a candidate for the nomination to accept in person a challenge given according to law operated as a legal withdrawal of his name unless he could plead illness.

Other novel features of the law were the indorsement of candidates for appointive positions, state or national, by the party state committee after hearing applications and receiving written recommendations; the "postmaster primary," in which the party voters of a particular

municipality were given an opportunity to select a candidate to be recommended for the appointment; the party recall, which might be invoked against any official who failed to adhere to the party principles or was charged with misconduct, crime, or misdemeanor in office by a written affidavit of a certain percentage of the electors of his party or of the party committee; and finally, detailed regulations concerning political record books.

The Richards law was shorn of some of its unique features by the legislature of 1921, which repealed the provisions for publicity pamphlets, joint debates, official indorsement of appointments by the state committee, and the postmaster primary.[1] In spite of these repeals, however, the law stands as one of the most interesting and far-reaching pieces of primary legislation on our statute books.

A consideration of the problems raised by nomination by petition and non-partisan primaries fall outside the scope of this study, inasmuch as they ignore completely the party as a nominating agency. Nevertheless we must consider the extent to which these methods of nomination have cut into the sphere of the direct, partisan primary.

Non-partisan nominations were first used in cities, and it is in this field that they have been used most widely, especially since the vogue of commission and city-manager government. At the present time the nominations are non-partisan in all municipal elections in North Dakota and Wisconsin; in California this method

[1] 1921, p. 449.

is required for cities organized under the general law, and may be adopted by cities with home-rule charters; in Minnesota and Utah it is required in cities of the first and second classes; in Nebraska and Iowa it must be used in cities having the commission form of government; and in Montana in commission and city-manager cities. In addition the non-partisan primary is incorporated in many home-rule and special legislative charters. The movement has spread to other local units, county officers in California, Minnesota, and North Carolina, and many school district and township officers being nominated thusly. The non-partisan primary has been equally popular in the field of judicial nominations, some or all of the judges in Arizona, California, Idaho, Minnesota, Nebraska, Nevada, North Dakota, Ohio, South Dakota, Washington, Wisconsin, and Wyoming being nominated in this way. Three states which have had non-partisan judicial nominations have repealed their laws.[1] This method of nomination has been extended to members of the state legislature in one state —Minnesota.[2] Proposals to nominate all state officers on a non-partisan ballot have been defeated at referendum elections in California[3] and North Dakota.[4]

From this brief survey of the spread of the non-

[1] Kansas, adopted 1913, p. 309, repealed 1915, p. 264; Iowa, adopted 1913, p. 91, repealed 1919, p. 75; Pennsylvania, adopted 1913, p. 719, repealed 1921, p. 423.

[2] 1913, p. 542.

[3] Passed 1915, p. 239; defeated at a referendum, October 16, 1915, by a vote of 112,681 to 156,967.

[4] Passed 1923, p. 246; defeated at a referendum by a vote of 54,867 to 65,747 (see *Laws of 1925*, p. 327).

partisan idea it is evident that the direct primary has a serious contender in certain fields. It is probable that non-partisan primaries will become the dominant form of nomination in cities, counties, and judicial districts, and its development in the field of state offices will be watched with interest.

Within twenty years after the enactment of the first complete, direct primary law in Wisconsin the movement had spread until all of the forty-eight states except Connecticut, Rhode Island, New Mexico, and Utah had enacted some form of state-wide direct primary. The breadth of the movement may be indicated by grouping the states according to the extent to which the idea of direct nominations has been applied in them.

I. There are thirty-two states which have had laws mandatory in form, covering all state offices, United States senators and congressmen, and complete in the sense that the primary was conducted largely under general law, usually by the regular election officials, and that the expense was a public charge. These are Arizona, California, Colorado, Florida, Idaho,[1] Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

II. There are five states in which *optional* laws covering state offices, United States senator, and congress-

[1] In Idaho, Kentucky, and New York the scope of the direct primary has been modified by recent amendments. For discussion, see p. 106 below.

man have never been superseded by mandatory laws. These are Alabama, Arkansas, Delaware, Georgia, and Virginia.[1]

III. There are four states which have mandatory laws which have never been extended to all state offices and which have always retained the convention in some form. These are Indiana, Maryland, Michigan, and North Carolina.[2]

IV. There are five states which have laws which are rudimentary in the sense that the primary is conducted by party authorities, largely under party rules, and at party expense. These are Arkansas, Georgia, Mississippi, South Carolina, and Texas.[3] Two of these states—Arkansas and Georgia—fall into Group II, preceding, as well. In another optional primary state—Delaware—the ballots are furnished by the parties.

The generation following the enactment of the first mandatory, state-wide direct primary law saw the convention system almost completely supplanted by the new method of direct nomination. Non-partisan nominations loomed as a dangerous rival in the field of local nominations and nominations for judicial office, but elsewhere the direct primary was generally accepted as the dominant form of nomination by the outbreak of the World War. During the war public attention was too engrossed in other problems to give consideration to the pros and cons of nominating methods. But since the close of the war there has been a noticeable revival of interest in these problems. Interest in academic circles

[1] Kentucky falls into this group at the present time.

[2] Idaho and New York would fall into this group at the present time.

[3] At the present time Idaho would fall into this group.

has been evidenced by studies of the operation of the direct primary in the states of New Jersey,[1] Wisconsin,[2] Maine,[3] and California,[4] and by a number of the *Annals*[5] devoted to a consideration of nominating problems. In a recent number of the *Congressional Digest*[6] the attempt was made to answer the question "Is the Direct Primary System Sound?" numerous articles have appeared in such journals as the *American Political Science Review* and the *National Municipal Review*, and more recently organized labor has sponsored a series of articles on the primary in the *American Federationist*.[7]

There has been a revival of interest in nominating problems; but more significant is the fact that a reaction against the direct primary is noticeable. The opposition press has become bolder in its attack upon the primary; public men of the prominence of Vice-President Charles G. Dawes and Senator David A. Reed have criticized it publicly; the National Industrial Council has taken the trouble to enlist industrial associations in a campaign to have the primary repealed;[8] reformers have indicated their disappointment with the results; scholars in the field of politics have criticized the whole primary principle or suggested modification in the scheme; political

[1] Ralph S. Boots, *The Direct Primary in New Jersey*, 1917.

[2] Waldo Schumacher, *The Direct Primary in Wisconsin*, unpublished University of Wisconsin doctoral dissertation.

[3] O. C. Hormell, *The Direct Primary with Special Reference to the State of Maine*, 1922.

[4] Oliver E. Norton, *The Direct Primary in California*, unpublished Stanford doctoral dissertation.

[5] Vol. CVI (March, 1923). [6] Vol. V, No. 10 (October, 1926).

[7] December, 1926; February, 1927; May, 1927.

[8] *Manufacturers Record*, July 8, 1926, p. 55.

parties have condemned it in their platforms; and, finally, legislators have introduced bills repealing or modifying the direct primary. No survey of the development of the direct primary would be complete without including a discussion of the scope of this reaction, the types of proposals made, and a summary of the extent to which the movement has been or may be expected to be successful. In the present chapter attention will be confined to a consideration of those attacks upon the direct primary principle of nomination involving the state-wide primary, leaving for a later chapter discussion of the efforts to repeal or modify the presidential primary.

The extent of the efforts to repeal or amend the state-wide direct primary will appear if we consider these attacks by geographical groups of states.

In every one of the states of the Northeast in which the direct primary is in use, it has been under fire during the last eight years. In Maine in 1919 and 1925 bills to repeal the direct primary law were before the legislature, and in October, 1927, an initiated measure was defeated which called for a repeal of the entire direct primary law, the nomination of candidates "for any and all state or county offices" by caucuses and conventions in the same manner as nominations were made prior to the passage of the direct primary act, and the re-enactment of all laws regulating caucuses and conventions which were in force before the passage of the direct primary law.[1] What the framers of the initiated law proposed, then, was a complete return to the ancient régime.

[1] From a copy of the initiative petition supplied by the Secretary of State. The measure was defeated by a vote of 37,114 to 20,027.

From 1921 to 1925 the direct primary was before the Vermont legislature almost continually. In 1921 a bill to repeal passed the senate, and in 1925 a similar measure was defeated only by the deciding vote of the lieutenant-governor in the senate. The fact that no repeal bills were introduced in 1927 indicates that opponents of the direct primary have given up the attack temporarily at least. In New Hampshire attempts were made to repeal the primary in 1925, and in 1927 a bill providing for a return to the convention system was the principal subject of contention throughout the legislative session. It was finally rejected, although the governor and the dominant party favored it.[1]

Persistent attempts have been made to modify or scrap entirely the Massachusetts direct primary law. During the 1921 legislative session two bills were introduced, one providing for nomination of minor officers by convention, and another for indorsement of candidates by preprimary conventions. In 1922 and 1925 various bills were introduced, and in 1927 the direct primary became one of the leading issues of the legislative session. Five bills were introduced, including one by the chairman of the state Republican committee and one by the chairman of the Democratic state committee, both providing for preprimary conventions. The two party organizations seemed to be in entire accord on the desirability of such a step. The Committee on Elections finally reported a substitute measure, providing for preprimary conventions and adding a party primary in non-presidential, general election years for the election of mem-

[1] Letter of Secretary of State, July 5, 1927.

bers of the state committee and delegates to the state convention. In presidential years this primary would have coincided with the present presidential primary.[1] The bill was referred to a recess committee, which did not recommend the preprimary convention but proposed a return to the convention method of nominating secretary of state, treasurer, auditor, and attorney general.[2]

In New York, New Jersey, and Pennsylvania the direct primary has been under fire also. In New York bills to repeal the whole primary law were before the legislature of 1919, but died in committee. Two years later the opponents of direct nominations won a partial victory when the convention was restored for nominating candidates elected by the state at large. A return to the direct primary has been advocated repeatedly by Governor Smith, but without success.

The direct primary has been under consideration during three legislative sessions in New Jersey and has been an issue in one campaign in that state. In 1926 a bill repealing the direct primary law failed by one vote and the question became a party issue in the campaign of 1926. The Republican state convention advocated the elimination of the direct primary for governor and United States senator, while the Democrats declared

[1] Data are taken from *Bulletin of the Massachusetts League of Voters*, April and May, 1927.

[2] The majority of the Committee expressed itself in favor of the preprimary convention bill but decided it would be impossible to pass it through the legislature "until such time as the public had obtained further education concerning it." See *Report of the Joint Special Committee on the Administration and Operation of the Election Laws*, December, 1927.

against any change.[1] In his 1927 message to the legislature Governor Moore (Democrat) opposed any change. That the Republicans were not united in their opposition was indicated by the fact that former Senator Frelinghuysen and National Committeeman Hamilton F. Kean spoke in opposition to modification of the primary.[2] This division in the Republican ranks explains why the Stevens bill, providing for the restoration of the convention for the nomination of United States senator and governor, was not pressed, although the Republicans controlled both branches of the legislature in 1927. It explains, also, why the primary plank in the Republican platform of July 5, 1927, was couched in the following moderate terms: "We pledge ourselves to study the several methods of nominating party candidates for the purpose of improving our system if possible."[3] This temperate pronouncement indicates that for the time being, at least, the Republicans have abandoned the attempt to make the repeal of the direct primary a party issue.

Pennsylvania, during the Pinchot administration, remained free from serious attempts to modify the direct primary, and during the 1927 legislative session discussion was postponed by the appointment of a recess committee which will go over the whole field of elections and make recommendations to the next legislature.

The opponents of the direct primary have been less active in the southern states than in any other section.

[1] *New York Times*, September 21, 1926.

[2] *Ibid.*, January 25, 1927.

[3] Information supplied by the legislative reference department of the New Jersey State Library.

No attempts to repeal or modify the existing systems have been reported from Delaware, Virginia, South Carolina, Georgia, Arkansas, Alabama, Mississippi, Louisiana, or Oklahoma. In these sections attempts to repeal have been confined almost entirely to the border states. Kentucky[1] has made the direct primary optional instead of mandatory for state-wide offices; in West Virginia bills to restore the convention for areas larger than a county were before the 1919 and 1921 legislatures, but there have been no serious attempts to modify the law recently; and in Maryland (1920) and Tennessee (1925) repeal bills have been introduced. The only states of the "solid south" so far touched by the reactionary movement have been Florida and Texas, and here the attempts to modify the law have failed.

In every one of the central states except North Dakota attempts have been made to repeal or seriously modify the direct primary. A repeal bill was before the 1925 session of the Illinois legislature, but when the whole primary law was rendered void by a decision of a hostile state court in 1927 the legislature embodied the principle of direct nominations in the new law.[2] Indiana, a state which adopted the direct primary principle only in part and under the lash of a firm national administration, has been flirting with a return to the convention system ever since 1919. In that year a bill to restore the convention system was decisively defeated in the senate. In 1921 a more persistent attempt was defeated after active opposition by the League of Women Voters and former Senator Beveridge. After similar at-

[1] 1920, p. 335. [2] 1927, chaps. 189, 190, 191.

tempts to repeal failed in 1925 the platforms of both political parties contained planks in favor of modification of the existing system. The Republicans contented themselves with advocating "modification," while the Democrats declared themselves unequivocally in favor of restoring to the state convention the power of nominating all candidates for state-wide offices and making the primary optional in lesser units. During the 1927 session of the legislature a bill was introduced providing for the repeal of the primary outright. After it was made clear that this bill would not receive a favorable committee recommendation a compromise measure was substituted. This restored the convention method of nomination for all offices except governor. Although even this compromise measure failed, the opponents of the primary are likely to renew the attack in the next session of the legislature.[1]

Opponents of the direct primary in Ohio are faced with the necessity of amending the constitution. That document, as amended September 3, 1912, provides[2] that all nominations for elective state, district, county, and municipal offices in cities of 2,000 or over shall be made at direct primary elections or by petition. Attempts to change the constitution culminated in the election of November, 1926, when an initiated amendment giving the legislature the power to determine the method of nomination was decisively defeated by the people of the state.

[1] This is the opinion of Mr. Kettleborough, of the Indiana Legislative Reference Bureau, to whom I am indebted for the foregoing information.

[2] Art. V, sec. 7.

In Michigan there were attempts to repeal the direct primary law in 1925, but these were not repeated in 1927. Wisconsin, the first state to have a comprehensive mandatory direct primary, has not been free from efforts to modify the primary radically. In that state the proposal to legalize the preprimary convention has received much support but no legislative sanction.

The Iowa legislature of 1919 had before it two bills, one restoring the convention for all state-wide nominations, the other for all state-wide nominations other than United States senator, governor, and lieutenant-governor. Both of these bills were rejected. The same fate met a bill providing for preprimary proposal conventions, introduced in 1921. Since that time there have been no attempts to repeal the primary, although important amendments have been proposed. In 1925 a bill including most of the features of the Richards law of South Dakota was introduced. The proposal which received the most active support in this state in 1925 and 1927 was the elimination of the 35 per cent provision of the present law. Apparently the direct primary idea is firmly intrenched in Iowa.

In Missouri attacks made upon the direct primary law during the legislative sessions of 1921 and 1925 were without success.

The direct primary has been a lively issue in Kansas. A repeal bill introduced in 1919 failed. In 1925 Governor Paulen, in his message to the legislature, favored a return to the convention system for the nomination of all state offices except governor, and a bill was introduced which would have restored the convention for all

nominations except United States senator and congressman, governor, and county and township offices. The bill received serious consideration, but failed to pass. In 1927 opponents of the primary introduced three bills, one restoring the convention method for all nominations, the other two retaining the primary for the more important state nominations. None of these bills was passed, and the enactment of an amendment to the primary law providing for party enrolment of votes indicates that the majority of the legislators were not hostile to the direct primary.

In Nebraska an act providing for a return to the convention system for nominating minor state officers, passed by the 1919 legislature, was decisively beaten at a referendum in 1920. A similar fate befell a 1921 act to except delegates and alternates to state and national conventions from the direct primary. In spite of these defeats, the opponents of the direct primary introduced a repeal law in 1925, which, however, failed to receive legislative support. The South Dakota legislature has repealed some of the more unusual features of the Richards law,[1] but an initiated measure providing for the nomination of all state officers, except governor, by state conventions was decisively defeated by the voters.[2] North Dakota, alone, of this group of states has seen no serious attempt to weaken the state primary law.

In every one of the western states except Nevada the direct primary has been given legislative consideration in recent years. The Montana legislature in 1919 passed a bill restoring the convention for state-wide nomina-

[1] 1921, p. 449. [2] November, 1920, see *Laws of 1925*, p. 13.

tions, but this was defeated at a referendum vote.[1] In 1921 and 1925 efforts to get a repeal bill through the legislature failed, and in 1927 no such attempt was made. Apparently the repeal of the state-wide direct primary is a "dead" issue in Montana. In Idaho opponents of the direct primary have succeeded in restoring the convention for making congressional and state nominations,[2] and a measure providing for a re-enactment of the direct primary was defeated in 1921. Colorado came dangerously near eliminating the direct primary in 1925, when a repeal bill passed both houses of the legislature but was vetoed by the governor. In Wyoming bills which would have restored the convention for practically all nominations were defeated in 1921 and 1925. Arizona, another state in which the constitution makes direct nominations obligatory, defeated by a vote of 26,302 to 7,774 a proposal submitted by the legislature which would have taken that provision from the constitution. In New Mexico, one of the states retaining the convention system, a direct primary law was proposed in the legislative messages of Governor Mechem in 1921 and Governor Hinkle in 1923, but no action has been taken.

Even on the Pacific coast the direct primary has been under fire. In Oregon there is a strong and well-organized movement among Republicans to bring back the convention system. In 1925 this group introduced a bill providing for preprimary recommending conventions,

[1] Bill passed in 1919 (see *Laws*, p. 214), defeated at referendum in the same year.

[2] 1919, p. 372.

which received a favorable committee recommendation but went down to defeat by a 38 to 18 vote upon third reading in the house. On the other hand, supporters of the direct primary in 1925 proposed to meet some of the objections to the existing law by providing for a *post*-primary convention with power to draft a platform and make nominations where no candidate receives more than 40 per cent of the vote cast in the primary. This bill was defeated by a vote of 20 to 10 in the senate. The attack upon the primary was not renewed in 1927, but it is the opinion of competent observers that the issue is by no means dead.[1]

Primary legislation has been a lively issue in Washington for years. Repeal bills were introduced in the 1919, 1921, and 1927 legislative sessions, and in 1921 Governor Hart, in his message to the legislature, urged the restoration of the convention. In 1927 three bills providing for radical changes in the primary law were considered by the House. One restoring the convention for all partisan nominations was indefinitely postponed, while another providing for a preprimary proposal convention received a favorable committee report, but was finally indefinitely postponed. A third bill providing for a curious combination of partisan and non-partisan primary[2] was rejected by a vote of 34 to 50. There seems to

[1] For this information about Oregon the writer is indebted to Miss Mulheron, of the Library Association of Portland, Oregon.

[2] This bill was a most curious proposal. The names of all candidates appeared on the same primary ballot under the office for which nomination was sought. Candidates might have a party designation printed after their names if they saw fit. The names of the candidates who were first and second in number of votes at the primary were to appear on the general election ballot.

be reason to believe that the attack upon the primary will be renewed in the session of 1929.

In California there is apparently no serious movement against the primary, although bills providing for a return to the convention system have been introduced. The recent investigations of the Commonwealth Club of that state brought to light objections to particular features of the existing law rather than any widespread opposition to the direct primary principle as such.

It may be well at this point to summarize the extent of the repeal movement and the results to date. In thirty-four of the forty-four states in which the direct primary has been put into effect bills providing for a complete or partial return to the convention system have been introduced. In at least nineteen of these thirty-four states the repeal or radical modification of the direct primary has been given serious consideration. All sections of the country have been touched, but there is little opposition to the direct primary in the southern states. Unquestionably this movement has been so widespread as to be considered a general attack upon the direct primary. Unquestionably, too, this is a recent movement. Some of the repeal bills date back to 1917, but most of them have appeared since 1921. But what has been the result so far as legislative action is concerned? Only three states—New York, Idaho, and Kentucky—have restored the convention system for nominating to any state office. Measured by legislative achievements the movement has not been successful. There has been much smoke but little fire. It is equally clear that proponents of the direct primary may gain courage from the fact that the voters have supported the

state-wide direct primary handsomely wherever they have been given the chance. In 1916 the voters of Washington refused to repeal the direct primary law by a vote of 200,449 to 49,370. In Nebraska the direct primary has been sustained by the voters at two referendum elections. A 1919 act providing for the nomination of minor state officers by convention was defeated by a vote of 49,410 to 133,115,[1] and a 1921 measure providing for the election of delegates to all conventions by caucuses and conventions instead of at direct primaries was defeated by a vote of 95,494 to 208,261 in 1922.[2] The South Dakota voters (November, 1920) defeated by a vote of 65,107 to 82,012[3] a return to the convention system for all state nominations except governor. Montana in 1919 voted 50,483 to 77,549 against restoring the convention system for certain state offices. Arizona voters in 1922 refused to approve a proposition which would have removed the mandatory direct primary provision from the constitution by a vote of 26,302 to 7,774. The voters of Ohio rejected 743,313 to 405,152 a constitutional amendment which would have made it possible for the legislature to substitute the convention system for the direct primary.[4] Apparently the direct primary meets with popular approval.

If the repeal movement has reached its height at the present time the supporters of the direct primary have little to fear. Whether or not that is the case only time can tell.

[1] Information supplied by the Nebraska Legislative Reference Bureau.

[2] *Ibid.*

[3] *Laws of 1925*, p. 13.

[4] Figures supplied by the Secretary of State.

CHAPTER VI

JUDICIAL INTERPRETATION OF PRIMARY LAWS

Since the process of legislation under our system of government is not complete without the approval or acquiescence of the judiciary, it is important to inquire into the attitude of the courts toward primary legislation in the several states.[1] The number of cases is not great; in fact, for almost twenty years, from the time when such laws were first passed, there seems to have been no case at all. The few decisions rendered are, however, of fundamental importance in a study of primary legislation. To what extent, then, have the courts approved or vetoed primary legislation, and by what process of reasoning have their conclusions been reached?

There were some faint indications in early decisions regarding related questions that the courts might not look with favor upon the attempt to regulate by law the affairs of a voluntary political association. In Michigan

[1] See the excellent discussion by Professor Mechem, "Constitutional Limitations on Primary Legislation," *Michigan Political Science Association Proceedings*, 1905; Alonzo H. Tuttle, "Limitations upon the Power of the Legislatures to Control Political Parties and Their Primaries," *Michigan Law Review*, I, 466; Meyer, *Nominating Systems*, chap. x; *American and English Encyclopedia of Law*, Vol. X, *s.v.* "Elections."

In the revision of this chapter I have drawn heavily upon *Judicial Interpretation of Primary Election Legislation*, a master's thesis by C. W. Peterson, one of my students, and a similar study on "The Law of Primary Elections," *Minnesota Law Review*, II (1918), 97–109 and 192–205, by Noel Sargent, another of my students.

it was held that a law requiring registration commissioners for the city of Detroit to be chosen from the two leading political parties was unconstitutional.

> Parties [said the court] however powerful and unavoidable they may be, and however inseparable from popular government, are not and cannot be recognized as having any legal authority as such. The law cannot regulate or fix their numbers, or compel or encourage adherence to them.[1]

In Pennsylvania[2] it was decided that a wager on a primary election was not contrary to the law forbidding betting on the regular or general elections. An election within a party, it was said, differs widely from the election of officers. "Such primary election," the decision ran, "is as plainly without the purview of the act of 1839 as is the election of officers for a private corporation." It was not denied, however, that the provisions of this act could be extended to cover primary elections, by appropriate legislation.

On the other hand, the right of the legislature to regulate in some detail the method of voting had been early recognized by the courts. In the famous case of *Capen* v. *Foster*,[3] Justice Shaw expounded the principles applicable to the control of elections. The Massachusetts law of 1821[4] required the mayor and aldermen of Boston to make out a list of qualified voters, and prohibited anyone from voting whose name did not appear upon this list. This act was attacked upon the ground

[1] *Attorney-General* v. *Detroit Common Council*, 24 *N.W. Rep.*, 887; 58 Michigan, 213 (1885).

[2] *Commonwealth* v. *Wells*, 110 Pennsylvania State, 463 (1885).

[3] 12 *Pickering*, 485 (Massachusetts, 1832).

[4] 1821, chap. 110; 1822, chap. 104; also 1802, chap. 116; 1813, chap. 68.

that it provided "new and additional qualifications" for suffrage, and was therefore unconstitutional. The Court said, however, that

in all cases, where the constitution has conferred a political right or privilege, and where the constitution has not particularly designated the manner in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power, to adopt any reasonable and uniform regulations, in regard to the time and mode of exercising that right, which are designed to secure and facilitate the exercise of such right, in a prompt, orderly, and convenient manner. Such a construction would afford no warrant for such an exercise of legislative power, as, under the pretense of and color of regulating, should subvert or injuriously restrain the right itself.

Other and later registration acts were also upheld upon similar principles in various states.[1]

The first examination of the constitutionality of a primary law by a supreme court appears in Colorado in 1886.[2] The legislature, having under consideration a primary bill, inquired of the Supreme Court, as the law of that state permits, its opinion on the question of the constitutionality of the pending measure. The inquiry was as follows:

1. Is it constitutional to enact any law attempting to regulate the machinery of a political party in making nominations of candidates for public office?

2. Can the law take any cognizance of political parties as such?

3. Can the law interfere in any wise with the modes and methods

[1] See opinion by Justice Brewer in *State* v. *Butts*, 31 Kansas, 537 (1884); *People* v. *Hoffman*, 116 Illinois, 587 (1886). In a number of instances, however, registration laws were held unconstitutional. See *Dell* v. *Kennedy*, 49 Wisconsin, 555 (1880); *Daggett* v. *Hudson*, 43 OhioState, 548 (1885); *White* v. *Co. of Multnomah*, 13 Oregon, 317 (1886); *State* v. *Conner*, 22 Nebraska, 265 (1887).

[2] In the matter of House Bill No. 203, 9 Colorado, 631.

employed by a political party in the nomination of its candidates for public office?

4. Are the provisions of the bill properly subject matter of legislation?

To this the court replied, without elaboration, that it found no constitutional objection to the bill submitted.

In an important Pennsylvania case, involving the constitutionality of the act of 1881 prohibiting bribery and fraud in nominations, the principle of primary regulation was raised and discussed in 1886.[1] It was strongly urged by those contesting the validity of the law that the legislature had no power to regulate the internal affairs of a party. It was argued, that "whilst the legislature undertakes to fix a certain penalty, yet it attaches and can be enforced only when the cause for it is legislated into existence by some unincorporated, unknown, and irresponsible body, acting without authority of and not responsible under any law." This amounted, it was contended, to a delegation of legislative power to political parties, and was therefore contrary to the constitution of Pennsylvania. To sustain such legislation would "stretch the arm of the criminal law to an unwarranted extent over the citizen, in derogation of the constitutional right of citizens to assemble together for their common good; for what is a convention or primary meeting but such an assemblage."[2]

Had this view of primary regulation prevailed generally, the course of legislation might have been wholly

[1] *Leonard* v. *Commonwealth*, 112 Pennsylvania, 607 (1886).

[2] *Ibid.*, 618.

changed. The court approached the question, however, from the side of public interest and policy. Far from being a purely private affair, it was said, party primaries are of general public interest. They are, in fact, in many cases equivalent to elections. The opinion declared:

> The importance of the relation of the primary is evident to everyone who does not shut his eyes that he may not see, and stop his ears that he may not hear. Primary elections and nominating conventions have now become a part of our great political system, and are welded and riveted into it so firmly as to be difficult of separation. . . . .[1]

In the conduct of primaries there have arisen evils of the very gravest character, which are patent to every observer.

> These evils [said the Court] more than anything else have undermined and weakened our whole system of government. To say that the legislature may not lay its hand upon a public evil of such vast proportions is to say that our government is too weak to preserve its own life. There is not a line in the Constitution which, in express terms, or by any reasonable implication, forbids this legislation.

A similar position was taken by the Illinois court in 1891[2] in the case of *Shiel* v. *Cook County*. The constitutionality of the primary law of 1889 was called in question, but the act was sustained by the court in a strong opinion:

> Whatever [it is said] tends to corrupt elections in a free government or detracts from the efficiency and honesty of the public service must needs be a matter of grave public concern, and all methods which have for their object the prevention of those abuses which every good citizen has observed with profound apprehension, by which incompetent and corrupt men have been chosen to offices of trust and power, should be commended and upheld.

[1] *Ibid.*, 625. [2] 27 *N.E. Rep.*, 293.

In the meantime the movement in favor of the adoption of the Australian ballot system began. In 1888 the law was first accepted by Massachusetts, and this initial step was rapidly followed by the majority of the states.[1] The most important feature of this legislation, in its bearing upon primaries, was the provision for an official ballot, upon which the names of the candidates of all parties should be printed. This process involved the legal recognition of such parties as were entitled to certify their candidates to the appropriate officers. This necessitated an intimacy of relation between political parties and the law closer than had hitherto been known. A series of attacks was made upon the constitutionality of the ballot laws, but in general the action of the legislatures in creating the new regulative scheme met with emphatic judicial approval.[2]

The decision in the line of cases regarding registration and the Australian ballot naturally smoothed the way for favorable treatment of the acts regulating the conduct of primaries. With such precedents established, the courts have experienced little difficulty in finding grounds for the support of primary legislation. In a few instances acts have been declared unconstitutional, notably in California[3] and in Illinois, but in these cases

[1] E. C. Evans, *The Australian Ballot System.*

[2] See John H. Wigmore, "Ballot Reform: Its Constitutionality," *Amer. Law Review,* XXXIII (1899), 719; *American and English Encyclopedia of Law,* X, 586; Eldon C. Evans, *History of the Australian Ballot.*

[3] In *Marsh* v. *Hanley,* 43 *Pac. Rep.,* 975, the act of 1895 was declared unconstitutional; in *Spier* v. *Baker,* 52 *Pac. Rep.,* 659, the act of 1897 was declared unconstitutional; in *Britton* v. *Board of Election Commissioners,* 61 *Pac. Rep.,* 1115, the act of 1899 met the same fate. A constitutional amendment was then adopted.

particular and relatively unessential features of the laws have been called in question rather than the general authority of the legislature to regulate the nominating process.

An examination will first be made of the broader grounds upon which primary laws have been attacked and sustained. The early contention regarding the natural right of political parties to free association and action has not been wholly abandoned in recent assaults upon primary measures. In a Mississippi case, *McInnis* v. *Thames*,[1] the power of the legislature to provide rules and regulations for party government was strenuously contested. "What," said the appellants, "would your honors think of an act of the legislature which undertook to provide for, and regulate the election of the officers of, a religious denomination in this state?" Could the legislature, it was asked, prevent any two or three citizens of the state from assembling and agreeing that a particular individual was especially qualified and fitted by education, habits, and brain force to fill creditably the office of governor of the state? And if three could not be restrained, how could three hundred constitutionally be restrained?

In New York this position was strongly stated in a dissenting opinion.[2] Here the right of a party committee to expel for disloyalty a member who had been duly chosen in a legal primary was in question. The majority

[1] 80 Mississippi, 617 (1902).

[2] *People* v. *Democratic Committee*, 164 New York, 335 (1900). Compare the earlier decision in *McKane* v. *Adams*, 123 New York, 609 (1890). See *Cummings* v. *Bailey*, 104 New York Supplement, 283 (1907).

of the court upheld the law against the committee. Justice Cullen in a dissenting opinion said:

> The right of the electors to organize and associate themselves for the purpose of choosing public officers is as absolute and beyond legislative control as their right to associate for the purpose of business or social intercourse or recreation. The legislature may, doubtless, forbid fraud, corruption, intimidation, or other crimes in political organization the same as in business associations, but beyond this it cannot go.

It was also contended that the "rules and principles on which political parties are to be conducted must necessarily lie largely beyond the domain of legislative interference, because they related to the action of the people, the ultimate source of sovereignty, in what is unquestionably their prerogative, the election of public officers."[1]

The doctrine of the natural rights of parties has not, however, found general favor. In *Ladd* v. *Holmes*[2] it was said that "legislative authority is adequate to prescribe all reasonable rules and regulations looking to the security and safeguarding of these sacred rights and privileges. In so doing, the right of the adherents of the respective parties to assemble and consult together for their common good is in no way impinged upon."

Far from being contrary to the letter or the spirit of the Constitution, such legislation is in reality designed to

[1] A radical statement of this general doctrine was made in Louisiana (1908) in the case of *Labauve* v. *Michel* (civil district court), but the decision was overturned by the Supreme Court in *State* v. *Michel*, 46 *So. Rep.*, 430; 121 Louisiana, 374 (1908).

[2] 66 *Pac. Rep.*, 714 (Oregon, 1901).

insure the rule of the majority. "Party management [said the Court] is of such vital importance to the public and the state that its operation, in so far as it respects the naming of candidates for public office, is an object of special legislative concern, to see that the purposes of the Constitution are not perverted, and the people shorn of a free choice."

In New Jersey the objection had been raised that the Act of 1903 interfered with the rights of political parties to prescribe terms of membership and make rules and regulations for their own government.[1] The court distinguished between "the determination by the legislature of conditions of things already in being, and enactments by the legislature that bring into existence conditions that previously have not, and but for such legislation would not have, any existence." The regulation of the law to preserve the peace of a camp-meeting and regulations to protect the political party were declared to be the same in nature.

> If in place of camp-meeting we read political parties and if for the avowed object of such religious gatherings we substitute the known purposes of such political associations, we shall have in its simplest form, the domain of fact which the legislation in question must have recognized as subsisting before exercising over it the regulative and protective features of the statute under review.

Such statutes involve, therefore, "only the recognition of an existing state of facts, and a determination to throw over them the protection of police regulation." With the wisdom of such regulations the judicial branch of the government has nothing to do, or at least must

[1] *Hopper* v. *Stack*, 56 *Atl. Rep.* 1 (New Jersey, 1903).

not presume in advance unworthy conduct or abuse of power on the part of a co-ordinate department.

An interesting line of attack upon the validity of primary laws was the contention that expenditure of public money for the conduct of a primary is a disbursement for a private purpose and consequently unconstitutional. In 1916 the Texas primary law was held invalid for this reason.[1]

Parties serve a great purpose, the court conceded, "but the fact remains that the objects of political organization are intimate to those who compose them. They do not concern the general public." Parties are not an agency of government, nor do they perform a governmental function. Hence the powers of the state cannot be used to aid any or all political parties, and the expenditure for such an undertaking would not be for a public purpose.[2]

This line of reasoning was not followed, however, even in the South, where the custom of requiring fees of candidates was very common and had been employed as a method of defraying the expense of the election. In Louisiana the court found that "beyond all question the primary is a part of the election machinery of the state, and that therefore for the state to pay a part of its expense is not to apply public funds to a mere private purpose, but simply to defray a legitimate state expense."[3]

In Massachusetts and Ohio strong ground was taken and the court held in very emphatic terms that the pri-

[1] *Waples* v. *Marrast*, 184 *S.W. Rep.*, 180, 182 (1916).

[2] See also *Beene* v. *Waples*, 187 *S.W. Rep.*, 191 (1916), to the same effect.

[3] *State* v. *Michel*, 46 *So. Rep.*, 430 (1908).

mary expense is a reasonable public purpose. "The expense," said the Massachusetts tribunal, "considered as a whole is for the purpose of making it easier and more certain that the community shall elect the public officers whom it wants."[1]

On the whole, the courts have not been much inclined to recognize the "natural rights" or the right of association of political parties, strongly defended though they have been. The claims of the party as a voluntary association to regulate its own affairs have been completely broken down. The determination of the qualifications for membership in parties, specifications regarding the structure of its official organization, and the minute regulation of its procedure, have all been upheld, either as incidents of the privilege to certify nominations for the official ballot or as regulations in the interest of purety of elections.

Another ground of support for primary legislation has been the plenary power of the legislature in the absence of constitutional provisions to the contrary. In several cases the courts have laid down the principle that since the legislature has all power not prohibited to it either by the state or under the United States Constitution, and since there are no constitutional prohibitions restraining the legislature, the validity of the law must be upheld. When the Maryland act of 1904 was under fire, the court said: "The General Assembly being, then the depository of all legislative power except when re-

[1] *Commonwealth* v. *Rogers*, 63 *N.E. Rep.*, 421, 181 Massachusetts, 184 (1902); *State* v. *Felton*, 84 *N.E. Rep.*, 85, 87, 77 Ohio State, 554 (1908). In this case there was a very elaborate dissenting opinion, which, if it had been a majority opinion, would have revolutionized primary practice.

strained by the organic law, it follows that it is clothed with full power to enact a primary election law, if there is no provision in the Constitution depriving it of that authority."[1]

"We are aware," said a South Dakota tribunal, "of no decision wherein it is held that the legislature is without power to prescribe any mandatory rule whatever for the regulation of party procedure so far as it concerns nominations to public office."[2]

The easiest, and what might be termed the typically legal, method of upholding a primary law is to declare that its provisions are a part of the Australian ballot law. Since certain parties are accorded under this plan special privileges upon the ballot, they must in return submit to special requirements. The privilege of having the names of candidates placed upon the ballot upon certification of party officials, instead of by petition, is, so the argument runs, to be paid for by minute legal regulation of the procedure of the party.

Justice Holmes stated this clearly when he said in *Commonwealth* v. *Rogers*:[3] "The legislature has a right to attach reasonable conditions to that advantage, if it has a right to grant the advantage"[4]—that is, the right to have the names of candidates placed upon the ballot without a petition.

To the broad question, then, whether the legislature

[1] *Kenneweg* v. *Allegany County Commissioners*, 62 *Atl. Rep.*, 249 (Maryland, 1905); cf. *McInnis* v. *Thames*, 80 Mississippi, 617 (1902).

[2] *Healey* v. *Wipf*, 117 *N.W. Rep.*, 521 (1908).

[3] 63 *N.E. Rep.*, 421 (1902).

[4] P. 423. Cf. *Ladd* v. *Holmes*, 66 *Pac. Rep.*, 714 (Oregon, 1901).

has power to enact a primary law regulating the internal affairs of a political party, the judiciary has generally returned a favorable answer. In principle, such legislation is universally conceded to be constitutional. No court has yet held to the contrary.

The courts were careful to point out, however, that this legislative power to regulate party affairs must be exercised within the bounds of reason and not arbitrarily. "Within reasonable limits" or some similar phrase was conspicuous in the decisions of the judges.[1]

While the general principle of the power of the legislature to regulate the affairs of political parties has been sustained by the courts, particular provisions of these legislative experiments have been subjected to searching criticism, and in more than one instance the law has been overthrown because of some specific provision violating the principle of reasonableness. It is therefore important to scrutinize these specific points, and to this we now proceed.[2]

All primary laws contain a limitation of some sort, confining the scope of the primary law to parties polling a certain percentage of the total vote, a figure ranging from 1 to 10 per cent. This has exposed such statutes to attack from the smaller parties who were, upon this

[1] *Corpus Juris*, XX, 113, under paragraph 110 cites seventy-six primary election cases in which this doctrine was embodied.

[2] A wide variety of technical questions are not discussed in this review as, for example, call, notice, and conduct of primary elections; irregularities in conduct; absence of officials; filing; number on and signing petitions; difficulties regarding names; lost papers; ballots, kind of paper, form, etc.; voting by proxy; vacancies; death of candidates; election officials; conflicting nominations; count of votes; returns and canvass; contests; acceptance; declination and withdrawal of candidature.

basis, required to secure a petition in order to obtain places upon the ballot, as well as from others who saw here a joint in the harness of the primary law.

In California[1] a decision was given against the act of 1899, which recognized parties polling 3 per cent of the total vote. The court held that this was a discrimination against minor parties, and that it deprived them of privileges and immunities to which they were justly entitled. If this principle were once recognized, there would be no logical halting place, and parties polling 49 per cent of the vote might be as readily discriminated against as those polling only 3 per cent. In this way a party in control of the legislature might frame a primary law to the very great disadvantage of its opponents.

In general, however, classifications of parties for primary election purposes have been sustained as reasonable regulations incidental to proper control of nominations. Thus in Minnesota[2] it was said that the legislature "may classify political parties with reference to differences in party conditions and numerical strength; and prescribe how each class shall select its candidates, but it cannot do so arbitrarily, and confer upon one class important privileges and partisan advantages and deny them to another class, and hamper it with unfair and unnecessary burdens and restrictions in the selection of its candidates."

Again, it has been declared in Nebraska[3] that "to say

[1] *Britton* v. *Board of Election Commissioners*, 61 *Pac. Rep.*, 1115 (1900).

[2] *State* v. *Jensen*, 86 Minnesota, 19 (1902), a case brought by the Prohibitionist Party.

[3] *State* v. *Drexel*, 105 *N.W. Rep.*, 174 (1905). Cf. 58 *Ohio State*, 620; 89 *N.W. Rep.*, 1128, (1898).

that any number of voters, however small, may associate themselves together as the embodiment of some political principle or policy of government, and be entitled to representation on the primary ballot, is to pave the way to endless confusion and to destroy in a large measure the objects sought to be attained by such a law."

In a Maryland case[1] it has even been held that the legislature may regulate one party alone, if it sees fit, without regard to the others. In fact such laws have actually been passed in some instances, as in Texas, where the statute of 1905 was mandatory only upon parties polling 100,000 voters at the last general election—a regulation which covered only the Democratic party.

In some states where the percentage of voters necessary to constitute a party was raised above the common figure of 5 or 10 per cent, the provision for party classification was held to be unreasonable, and consequently invalid. In North Dakota a provision requiring 30 per cent was attacked, and while sustained in the first case,[2] was overthrown in a succeeding case.[3]

Political parties in the judgment of the court are entitled to the benefit of the uniformity provision, and "Therefore, in failing to comply with the tests prescribed by this precept, such attempted legislation falls under the ban of 'class legislation' pronounced against

[1] *Kenneweg* v. *Allegany County Commissioners*, 62 *Atl. Rep.*, 249 (1905). A Texas act of 1905 (*Special Acts*, chap. 25, sec. 10*a*), provided that a certain charter question should be submitted to a popular vote of the Democrats at the regular party primary, and that the council should be bound by this referendum.

[2] *State* v. *Anderson*, 118 *N.W. Rep.*, 22 (1908).

[3] *State* v. *Hamilton*, 129 *N.W. Rep.*, 916 (1910).

those laws that practically operate in such manner as to affect diversely various persons or aggregations of persons not differentiated from each other by any natural or reasonable lines of demarcation." And again, an act fixing the party line at 25 per cent of the voters was held invalid[1] in a succeeding case.

One of the leading cases on this whole subject is that of *State* v. *Phelps*, in Wisconsin (1910).[2] The court laid down three purposes of regulation: to keep the ballot within working compass, to promote party integrity by discouraging electors of one party from invading another, to stimulate exercise of the right of voting.[3]

On this basis the majority of the judges concluded that the percentage adopted (20) was not so high as to indicate clearly any bad motives or sinister purposes.

Whether a primary law applicable only to a certain part or to parts of the state falls within the prohibition of special and local legislation found in many of the state constitutions has been a frequent subject of controversy in the courts. In general such objections have not been sustained, although there are notable exceptions to this. The California law of 1895 applying to two counties only was promptly declared unconstitutional by the supreme court of that state.[4] The law did not have uniform application; a general law was applicable to the case; the constitution required such a gen-

[1] *State* v. *Flaherty*, 169 *N.W. Rep.*, 93 (1915).

[2] *State* v. *Phelps*, 128 *N.W. Rep.*, 1041.

[3] See strong dissenting opinions by Winslow (1060–61) and Timlin (1054–60).

[4] *Marsh* v. *Hanley*, 43 *Pac. Rep.*, 975 (1896).

eral law, where possible; and therefore the act was void. In Ohio the act of 1898, applying to cities of the first grade of the first class, was held to be special legislation in a case where the Constitution called for a general law.[1] It seemed to the court that in such a case there was no justification for a special law, although special legislation in Ohio had for many years been allowed full swing in many other respects. The Illinois law of 1905 was also held to be unconstitutional[2] because of the special legislation involved in creating a different system for counties over 125,000 population (intended for Chicago) from that prescribed for the rest of the state: "Diversity of rights between legal voters," said the Court, "cannot arise out of or rest upon the number of people in the county where a voter happens to reside. The fact that there are many other people in the same political situation has no relation whatever to political rights."

In the majority of cases, however, special legislation has been upheld; in fact, the greater part of the laws considered have been special in character. In discussing the Oregon law of 1901, applying to cities having a population of 100,000 or over, it was held that difference in population afforded a reasonable basis for discrimination in the nature of primary laws.[3] In New Jersey the same conclusion has been reached.[4]

Tests of allegiance.—The test of party allegiance or affiliation has been considered in many cases, but the

[1] *City of Cincinnati* v. *Ehrmann*, 6 *Ohio N.P.*, 169 (1899).

[2] *People* v. *Board of Election Commissioners of Chicago*, 77 *N.E. Rep.*, 321 (1906).

[3] *Ladd* v. *Holmes*, 66 *Pac. Rep.*, 714 (1901).

[4] *Hopper* v. *Stack*, 56 *Atl. Rep.*, 1 (1903).

right of the legislature to regulate this matter has generally been sustained as reasonable. In an early California case, however, the requirement of a party test was declared illegal.[1] The right to determine the prerequisites of party membership was thought to be too dangerous a power to trust to the legislature.

It would be possible, said the Court, for a Democratic legislature to make the test at a primary election a belief in free coinage of silver, or Republicans to make adherence to a protective tariff a requirement. "If such a power may be sustained under the Constitution, then the life and death of political parties are held in the hollow of the hand by a state legislature." Even if the test were itself reasonable, the mere possession of such a power is dangerous and intolerable, and therefore inadmissible.

Commonly, however, the prescription of a test of party allegiance has been sustained. In the case of *Britton* v. *Board of Election Commissioners*,[2] the California act of 1899 which omitted any party test was declared to be an unwarranted invasion of the rights of political parties.

> A law [it is said] which will destroy party organization or permit it fraudulently to pass into the hands of its political enemies cannot be upheld. . . . . The control of the party and of its affairs, the promulgation and advocacy of its principles, are taken from the hands of its honest members and turned over to the venal and corrupt of other political parties, or of none at all. . . . . It is expressly declared in the declaration of rights that the enumeration therein contained shall not be construed to impair or deny others retained

[1] *Spier* v. *Baker*, 52 *Pac. Rep.*, 659 (1898).

[2] 61 *Pac. Rep.*, 1115 (1900).

by the people (art. I, sec. 23). A law which thus permits the disruption or misrepresentation of a political party is an innovation [*sic*] of these reserved rights.

In Nebraska it was declared by the court that "an indiscriminate right to vote at a primary would tend in many instances to thwart the purposes of the organization and destroy the party."[1]

And this was followed in a long series of cases in which the importance of maintaining the integrity of parties was emphasized. The refusal of a test would be "putting a premium on deceit, dishonesty, and fraud;" it would involve us "in political anarchy," and would make the primary laws and system wholly unworkable.[2] In Oregon it was held that the exclusion of members of other parties in the primaries of a given party is not an infringement or denial of any constitutional right or privilege and does not interfere with the freedom of elections.[3]

In Massachusetts Justice Holmes, in discussing the legality of the requirement that the intending voter shall not have participated in the primaries of another party within twelve months, said that it is impossible as a matter of law to say that "this is not a reasonable precaution against the fraudulent intrusion of members of a different party for sinister purposes."[4]

[1] *State* v. *Drexel*, 105 *N.W. Rep.*, 174 (1905).

[2] See *ex parte* Wilson, 125 *Pac. Rep.*, 739, 746 (Oklahoma, 1912); *Socialist Party* v. *Uhl*, 103 *Pac. Rep.*, 181, 155 California, 776 (1909); *Baer* v. *Gore*, 90 *S.E. Rep.*, 530 (West Virginia, 1916).

[3] *Ladd* v. *Holmes*, 66 *Pac. Rep.*, 714 (1901). See also *Hager* v. *Robinson*, 157 *S.W. Rep.*, 1138, 1143, 154 Kentucky, 489 (1913); *State* v. *Michel*, 46 *So. Rep.*, 430 (Louisiana, 1908).

[4] *Commonwealth* v. *Rogers*, 63 *N.E. Rep.*, 421 (1902).

The specific charges that the test interfered with the freedom of elections, violated the secrecy of the ballot, or added additional qualifications to the constitutional requirements for suffrage were all rejected in numerous decisions, all running the same way. In New Jersey it was urged that the right to vote is a natural right, and the challenge of the voter interfered with the secrecy of ballot. The court took a different view of the question, however, and said:[1]

> The argument therefore that the affidavit to be made by a challenged voter violates any natural or constitutional right to secrecy possessed by him is entirely without foundation. Moreover, as the voter is not required to say for whom he voted, but only that he voted for a majority of the candidates of the party with which he claims to act, it is difficult to see wherein such partial avowal is any more inimical to secrecy than is the open and avowed partisan cooperation that has hitherto constituted the voters' credential. Apart, however, from these considerations, the matter, as an incident of police regulation, is clearly within the legislative province."[2]

The test does not constitute an additional qualification for voting, it was held in South Dakota and elsewhere.[3] The law is not designed as a test of electors, it was said, but as protection against imposition of voters of one party against another.

The underlying basis of these decisions was well summed up in the language of Mechem: "A man has a constitutional right to be a partisan, but he has no con-

[1] *Hopper* v. *Stack*, 56 *Atl. Rep.*, 1 (New Jersey, 1903).

[2] See *Rebstock* v. *San Francisco*, 80 *Pac. Rep.*, 65 (1905).

[3] *Morrow* v. *Wipf*, 115 *N.W. Rep.*, 1121, 1124, 22 South Dakota, 146 (1908).

stitutional right as a non-partisan to participate in partisan proceedings."[1]

Not only has the right to prescribe qualifications for participation in primaries been recognized, but the power of party committees to fix tests has been overruled by the courts in several instances. In *Ginter* v. *Scott*[2] a rule of the Republicans in a Pennsylvania county forbidding known Democrats, Prohibitionists, or Populists from voting, unless, if challenged, the intending voter affirmed that he voted the entire Republican ticket at the preceding election and would vote the ticket nominated at the primary, was overruled by the court. The court said: "It cannot be said with any show of reason that a member of long standing in a party ceases to be such by occasionally voting for one or more candidates of another party. There come times when members of a political faith conceive it to be their duty, as well as their right, to vote for candidates of another faith, and it would certainly be contrary, not only to sound public policy, but also to the fact, to hold that they cease to be members of the party for whose candidates, with such occasional exceptions, they have always voted and still intend to vote." This rule applied also to candidates, one of whom had signed a Democratic nominating paper in 1898 and voted for the candidates not on the Republican ticket. In *Young* v. *Beckham*[3] it was held that the party committee had no right to determine eligibility to office. "It can call primary elections and make proper rules for

[1] *Michigan Law Review*, III, 374.

[2] 8 *Pa. Dist. Rep.*, 536 (1899).

[3] 72 *S.W. Rep.*, 1092 (1903).

their government, but has no right to say who is eligible to be a candidate before the primary." In *Nixon* v. *Herndon*[1] the Texas "white primary" designed to eliminate the colored vote from the nominating process was held by the United States Supreme Court to be invalid, on the ground that the restriction constituted a violation of the Fourteenth Amendment. In *Dapper* v. *Smith*[2] the Michigan law requiring the candidate to declare on oath that he is a candidate was held to be unconstitutional. It "excludes the right of the electorate of the party to vote for the nomination of any man who is not sufficiently anxious to fill a public station to make such a declaration." The legislature cannot "impose any condition which will destroy or seriously impede the enjoyment of the elective franchise."

Rights of candidates.—The right of the legislature to regulate the rights of candidates or the field of candidature raised many interesting and perplexing questions. Must a candidate be a member of the party nominating him? May a candidate be the candidate of two or more parties at the same time? May a candidate be required to pay a fee as a condition of candidacy? Upon all these points there is wide diversity of opinion, and there seems to be no approach toward anything like a settled conclusion.

One group of states proceeds upon the theory ex-

[1] *Nixon* v. *Herndon et al.*, 47 *Sup. Ct., Rep.* 446 (1927). The clause provided that "in no event shall a Negro be eligible to participate in a Democratic party primary election held in the State of Texas, and should a Negro vote in a Democratic primary election such ballot shall be void and election officials shall not count the same."

[2] 101 *N.W. Rep.*, 60 (1904).

pressed by the South Dakota court when it said: "No person can serve two masters. . . . . To effectuate responsive and responsible party government requires that a political party shall choose its candidates from its own party."[1] Others held that the voter must "not be deceived by false labels."[2] Republicans must not be deceived by Progressive labels or vice versa, it was thought in Illinois and elsewhere.[3] "To hold otherwise," said a Kentucky court,[4] "would utterly defeat the object designed in the enactment of the primary election law and make of it a farce."

Statutes providing that one defeated in the primary shall not become an independent candidate at the ensuing election were sustained in several jurisdictions as falling within the reasonable powers of the legislature.[5]

On the other hand, many striking decisions are found in which the right of the elector to become the candidate of any party or of any party to choose him, is strongly enunciated by the judicial branch of the government, notably in New York and New Jersey. "Any body of electors," said Justice Cullen, "has the right to choose whom it will for its candidate for office, and to appeal to the whole electorate for votes in his behalf."[6] "It has

[1] *Smith* v. *Ward*, 197 *N.W. Rep.*, 684 (1924).

[2] *State* v. *Wells*, 92 Nebraska, 337 (1912).

[3] *State* v. *Graves*, 109 *N.E. Rep.*, 590, 91 Ohio State, 36 (1914).

[4] *Francis* v. *Sturgill*, 174 *S.W. Rep.*, 753, 757, 163 Kentucky, 650 (1915).

[5] See *Lacombe* v. *Laborde*, 61 *So. Rep.*, 518 (Louisiana, 1912); *State* v. *Moore*, 92 *N.W. Rep.*, 4, 87 Minnesota, 308 (1902).

[6] *In re* Callahan, 93 *N.E. Rep.*, 262; 200 New York, 59 (1910).

been settled law," said he, "from the earliest period in the history of our state that the legislature cannot enact arbitrary exclusions from office. By the same logic it cannot enact arbitrary exclusions from candidacy for office." "Personally," he continued, "I should think it a subject for public congratulation that a candidate was so well qualified for the office he sought as to command the support of other political bodies." Justice Gummers of the New Jersey court declared, "It certainly would be a step backward to say that a political party shall not select a good man for its candidate, perhaps a better man than they have in their own ranks, because he does not wear its style of political garment."[1]

May the same person become a candidate of two parties at the same election and for the same office? The same question had arisen when the Australian ballot came into use, and there had been variation of opinion at that time.[2]

Two lines of decisions are evident here, and no clear weight of opinion is evident. The Illinois court took the extreme position on the one hand, and the New York court on the other.

In the case of a Republican candidate for county commissioner named by the Progressive party for the

[1] *In re* Clerk of Paterson, 88 *Atl. Rep.*, 694 (1913); *Hutchinson* v. *Brown*, 54 *Pac. Rep.*, 738, 122 California, 189 (1898), also 168 California, 321 (1914); *Payne* v. *Hodgson*, 97 *Pac. Rep.*, 132, 34 Utah, 269; Henderson's case, 222 Pennsylvania, 307 (1908); *Donovan* v. *Dougherty*, 174 *Pac. Rep.*, 701, 703, 31 Idaho, 622 (1918).

[2] Upholding the double candidacy, *Fisher* v. *Dudley*, 22 *Atl. Rep.*, 2, 74 Maryland, 242 (1891). To the contrary, *State* v. *Bode*, 45 *N.E. Rep.*, 195, 55 Ohio State, 224 (1896).

same position his right to appear upon both tickets was denied. The court believed that this would "involve the destruction of the party system of government." It would signify the "utter destruction of political parties and the defeat of the purpose of the primary law."[1] It would be a violation of the right of the party elector to assume that those in his column were real Republicans and not at the same time candidates of the opposition.

Judges in Missouri also believed that this would in effect constitute the practice of deceit.[2] Others held that it was at least within the power of the legislature to provide such a requirement in their discretion.[3]

On the other hand, New York state courts in a series of sweeping decisions held that the limitations of the candidate's name to one place on the ballot was an arbitrary exclusion.[4] A statute prohibiting the name of a candidate from appearing more than once for the same office was held invalid as an unreasonable discrimination and restriction upon freedom in voting.

Chief Justice Beatty of California declared: "The right to be chosen to a public office is as much a constitutional right as the right of suffrage, and to deprive any person possessing the constitutional qualifications for office of the opportunity of competing with other candidates upon equal terms is a denial of his constitutional

[1] *People* v. *Czarnecki*, 266 Illinois 372, 379 (1914).

[2] *State* v. *Coburn*, 260 Missouri, 177, 191 (1914).

[3] *Helme* v. *Board of Election Commissioners*, 113 *N.W. Rep.*, 6, 49 Michigan, 390 (1907); *Gardiner* v. *Ray*, 154 Kentucky, 509, 518, 157 *S.W. Rep.*, 1147 (1913); *State* v. *Brodigan*, 142 *Pac. Rep.*, 520 (1914).

[4] *Hopper* v. *Britt*, 133 New York Supplement, 778; 204 New York, 524–32 (1912).

rights. Each competitor is entitled to receive not only the votes of every elector who supports him upon the ground of personal preference, but of all who would support him as their party nominee."[1]

Payment of fee.—The requirement that a fee be paid by the candidate in order to have his name placed upon the ballot has been a subject of controversy in several states, and has been differently decided in different jurisdictions. In Illinois,[2] Nebraska,[3] and North Dakota[4] the requirement of a fee has been held to be an unconstitutional provision. The Nebraska act of 1903 provided for a payment of 1 per cent of the emoluments of the office sought by the candidate. It was held that there was no relation between this charge and the expenses incident to candidacy or to the value of services rendered in filing the nominating petition.[5] The charge was therefore declared to be "arbitrary and unreasonable." It was also held that this payment really constituted a form of property qualification, and was there-

[1] *Murphy* v. *Curry*, 70 *Pac.* Rep., 461–63, 137 California, 479 (1902). See also *State* v. *Sheldon*, 113 *N.W. Rep.*, 802, 80 Nebraska, 4 (1907); *Payne* v. *Hodgson*, 97 *Pac. Rep.*, 132 (Utah, 1908); *Pease* v. *Wilkin*, 127 *Pac. Rep.*, 230 (Colorado, 1912); *State* v. *Wells*, 138 *N.W. Rep.*, 165, 92 Nebraska, 337 (1912); *Gardiner* v. *Ray*, 154 Kentucky, 509 (1913); *State* v. *Wileman*, 143 *Pac. Rep.*, 565 (Montana, 1914).

[2] *People* v. *Board of Election Commissioners*, 221 Illinois, 9 (1906).

[3] *State* v. *Drexel*, 105 *N.W. Rep.*, 174 (1905).

[4] *Johnson* v. *Grand Forks County*, 113 *N.W. Rep.*, 1071 (1907); also 136 *N.W. Rep.*, 76 (1912).

[5] *State* v. *Drexel*, 105 *N.W. Rep.*, 174 (1905); cf. 221 Illinois, 9 (1906). The Illinois court pronounced the fee "purely arbitrary exactions of money to be paid into the public treasuries as a monetary consideration for being permitted to be a candidate."

fore in contravention of the constitution. It was also held that the fee interfered with the freedom of elections, and the rights both of candidate and voter. Such provisions are "an unwarranted hindrance and impediment to the rights of the candidate and the voters, alike, and illegal and void," said the Illinois court, in passing upon a similar requirement in that state. In North Dakota the court denied that the payment of a fee tended to diminish fraud or was conducive to orderly election, and declared that the question of multiplicity of candidates was "beyond the purview of legitimate legislation."

The same line of decisions is found in South Dakota, Tennessee, Missouri, and Indiana, where similar statutes have been held to be unconstitutional upon like grounds.[1]

On the other hand, the requirement of a fee has been upheld in Maryland[2] and Minnesota,[3] in the face of the same arguments as were made in Nebraska and Illinois. The fee does not constitute a property qualification, said the Maryland court.

Primary contests necessarily require the expenditure of money for the purposes just indicated, and the money must be procured from some source. The requirement that the individuals who, through the primaries, seek to secure nomination shall pay the expenses which the governing body of the party is compelled to incur

[1] *Ballinger* v. *McLaughlin*, 116 *N.W. Rep.*, 70, 22 South Dakota, 206 (1908); 125 *S.W. Rep.*, 1036, 122 Tennessee, 570 (1910); *State* v. *Seibel*, 171 *S.W. Rep.*, 69, 71, 262 Missouri, 220 (1914); *Kelso* v. *Cook* 110 *N.E. Rep.*, 987; 184 Indiana, 173 (1916). Compare *State* v. *Tallman*, 143 *Pac. Rep.*, 874, 82 Washington, 141 (1914) where candidates whose names were written in were not held liable for fee.

[2] *Kenneweg* v. *Allegany County Commissioner*, 62 *Atl. Rep.*, 249 (1905).

[3] *State ex rel. Thomson* v. *Scott*, 108 *N.W. Rep.*, 828 (1906).

for their benefit and in their behalf is neither unreasonable nor unjust, and most certainly is not the super-addition of a property qualification for holding the offices to which they aspire.[1]

In Minnesota the fee was held to be a reasonable regulation:

> To prescribe an orderly and systematic method by which the people may select their candidates for public office is within the province of the legislature and apparently the exaction of a fee in filing as a candidate tends to prevent an indiscriminate scramble for office.

This fee may be fixed at a point which would not impose a hardship upon anyone, and within such limits will be sustained as a proper regulation.[2]

In the courts of Kentucky, Washington, California, Oregon, West Virginia, and Nevada provisions for fee payments have been challenged and have been sustained by the courts upon similar grounds. In general the tendency was to refrain from general comment on the fee system and to hold that the requirement is not unreasonable or arbitrary, and may be looked upon as a mode of primary regulation, not outside the power of the legislative branch of the government.[3]

[1] P. 251.

[2] In Kentucky (*Montgomery* v. *Chelf*, 82 *S.W. Rep.*, 388 [1904]) the assessment of primary costs upon candidates was sustained on the ground that the primary was not a regular election and hence that the constitutional requirement that election be free and equal did not apply.

[3] *State* v. *Nichols*, 97 *Pac. Rep.*, 728–30, 50 Washington, 508 (1908); 109 *Pac. Rep.*, 444–56, 32 Nevada, 400 (1910); *Socialist Party* v. *Uhl*, 103 *Pac. Rep.*, 181, 155 California, 776 (1909); *State* v. *Brodigan*, 142 *Pac. Rep.*, 520, 37 Nevada, 488 (1914); 159 *Pac. Rep.*, 78, 81 Oregon, 210 (1916); *State* v. *Board of Election Commissioners*, 96 *S.E. Rep.*, 1050, 82 West Virginia, 645 (1918); *Montgomery* v. *Chelf*, 82 *S.W. Rep.*, 388, 118 Kentucky, 766 (1904).

A recapitulation of these cases shows, then, that the courts are almost unanimous in their agreement upon the power of the legislature to regulate the affairs of the political party, but discloses wide differences of opinion upon specific points at which the reasonableness of these laws is challenged. Classification of acts upon numerical grounds, the tests of party allegiance, the question of double candidature, the requirement of fees —these are all problems to which diverse answers are given; and down to this time there is no clear line running through them. In this diversity of opinion the courts doubtless reflect the wide difference of opinion prevailing in the legislatures themselves and in the community at large.

Running through many of the decisions upon primary laws was the question, Is the primary an election? If so, it is governed by the same restrictions and requirements as encompass a regular election and its regulations must be held to much stricter accountability. If not, a much wider and more liberal range of interpretation may be used in construction of the laws.

Do provisions regarding betting and bribery apply to primaries as to elections? Do regulations regarding fraud, false statement, destruction of ballots, voting machines, and electioneering cover primaries as well as elections? Do laws regarding local option in elections, purity of elections, and corrupt practices acts also apply to primary elections? Are the constitutional rights of electors and candidates the same in primaries as in elections? And do constitutional provisions regarding freedom of elections and uniformity, apply to nominating processes as well as to regular elections?

In a few states it has been held that the primary is an election, notably in California, Oregon, Nebraska, and Illinois.[1] In Illinois this constitutional provision was invoked with disastrous effect for the overthrow of five primary laws in a period of 20 years.

In many other states it has been held that the primary is not a regular election in the strict sense of the term, and its governing provisions may consequently be more elastic in their composition and construction. This list includes Louisiana, Tennessee, Kentucky, Oklahoma, Missouri, Indiana, Arkansas, Rhode Island, and possibly the United States Supreme Court.[2]

On specific points various decisions go out in various ways, sometimes contradicting themselves. In the well-known Newberry case four judges held flatly that primary elections are not the same as regular elections. They "are in no sense elections for an office, but merely methods by which party adherents agree upon a candidate whom they intend to offer and support for ultimate choice by all qualified electors."[3] On this basis

[1] *Marsh* v. *Hanley*, 43 *Pac. Rep.*, 975, 111 California, 368 (1896); also *Spier* v. *Baker*, 52 *Pac. Rep.*, 659, 120 California, 370 (1898); *Ladd* v. *Holmes*, 66 *Pac. Rep.*, 714 (Oregon, 1901); *State* v. *Junkin*, 122 *N.W. Rep.*, 473–75, 85 Nebraska, 1 (1906); *People* v. *Board of Election Commissioners*, 77 *N.E. Rep.*, 321, 221 Illinois, 9 (1906); *Rouse* v. *Thompson*, 81 *N.E. Rep.*, 1109 (1907); *People* v. *Strassheim*, 88 *N.E. Rep.*, 821 (1909); *People* v. *Deneen*, 93 *N.E. Rep.*, 437, 247 Illinois, 279 (1910); *People* v. *Fox*, 128 *N.E. Rep.*, 505, 294 Illinois, 263 (1920).

[2] *State* v. *Michel*, 46 *So. Rep.*, 430, 436 (Louisiana, 1908); *Legerwood* v. *Pitts*, 125 *S.W. Rep.*, 1036, 1039 (Tennessee, 1910); *ex parte* Wilson 125 *Pac. Rep.*, 739, 740 (1912); *Gardner* v. *Ray*, 157 *S.W. Rep.*, 1147 (Kentucky, 1913); *State* v. *Coburn*, 260 Missouri, 177, 190, 168 *S.W. Rep.*, 956 (1914); *Kelso* v. *Cook*, 110 *N.E. Rep.*, 987, 184 Indiana, 173 (1916); *McClain* v. *Fish*, 251 *S.W. Rep.*, 686 (Arkansas, 1916); *in re* Jamestown Caucus Law, 112 *Atl. Rep.*, 900, 901 (Rhode Island, 1921).

[3] *Newberry* v. *United States*, 256 U.S. 232 (1921).

they arrived at the conclusion that Congress was not granted authority to regulate party primaries and conventions under the grant of power to regulate the manner of holding elections.[1] This must not be taken, however, as the ground upon which the decision really rested.

On the whole, the courts have sustained the constitutionality of primary legislation of the last forty years with few exceptions. In California and in Illinois[2] con-

[1] The dissenting opinion of Justice White is notable. He found that "the relation of the primary to the election is so intimate that the influence of the former is largely determinative of the latter." For criticism of the decision of the majority, see "Federal Control of Senatorial Primary Elections," *Columbia Law Review*, XXII (1922), 54–57. The numerous and somewhat conflicting opinions rendered in this case made the determination of the dominant line of reasoning extremely difficult.

[2] In Illinois seven primary laws have been declared unconstitutional, in the following cases: *People* v. *Board of Election Commissioners of the City of Chicago*, 221 Illinois, 9 (1906); *Rouse* v. *Thompson*, 228 Illinois, 522 (1907); *People* v. *Strassheim*, 240 Illinois, 279 (1909); *People* v. *Deneen*, 247 Illinois, 279; *People* v. *Fox*, 294 Illinois, 263 (1920); *McAlpine* v. *Dimick*, 157 *N.E. Rep.*, 235 (1927). *Kreeger* v. *Sweitzer*, Circuit Court of Cook County, B-153251; reversed in *People* v. *Kramer*, 328 Illinois 512 (1928).

The first act was held invalid for delegation of legislative power to the party committees; for amendment of an act by reference to its title only; for providing that not more than a certain number of persons of the same political party should be elected from senatorial districts; for requiring a filing fee; for violating the constitutional principle prohibiting special legislation.

In the second case the act was held invalid because the subject of the act was not embraced in the title; because it attempted to lodge legislative powers in the party committees; because it provided that when vacancies in elective office occurred the managing committee of the party should nominate the candidates; because it required registration as a condition precedent to voting but failed to provide a means of registration within 30 days of the primary date; because it permitted the voter to vote for only one candidate for the General Assembly while the Constitution gives him a right to vote for one, two, or three candidates.

In the third case the primary law was held invalid because of defective

siderable difficulty has been experienced in securing the passage of a law that would meet the approval of the courts, but elsewhere the judicial veto has been very sparingly exercised. In no field of legislation has the judiciary shown itself more friendly to experiment than in the regulation of political organizations. The law of registration, the Australian ballot system, the legal regulation of the primary, have all been treated with greatest consideration. No particular property rights have been involved, the pressure of public opinion has been strong and steady, the judges have been conversant with the facts and the philosophy of the party system, and hence have experienced little difficulty in justifying

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registration provisions; because it permitted the senatorial committee of each party to fix the number of candidates to be nominated for the General Assembly.

The fourth act was held invalid because it gave the senatorial committee the right to fix the number of candidates to be nominated for the General Assembly.

The fifth act was held invalid because it delegated certain powers in certain areas to the political party committee and because it violated the principle of freedom of elections in discriminating between the voting power of different wards and districts.

In the sixth case the act was invalidated because it violated the principle of equal elections in certain voters by the construction of the party committee.

The seventh act was held unconstitutional because more than one subject was contained in the act and that subject was not expressed in the title; because it violated the principle of freedom and equality of elections in certain registration features; because it violated the provision requiring equality of voting in the election and voting power of committeemen.

This last decision by a lower court was subsequently set aside and the primary law sustained by the Supreme Court. The reasoning of the court in these cases is one of the most interesting studies in the field of judicial interpretation of election laws.

almost every kind of a primary system that has been adopted by a legislative body. There has been unusually little of the "law's delay" to hinder the advance of primary legislation. If primary laws are not perfect, the courts cannot be blamed.

The objection of "special legislation," of unfair discrimination between political parties, of interference with the freedom and equality of elections, and of unwarranted invasion of the rights of political parties as voluntary associations have all been met and overruled. The theory of the party as a voluntary association has been completely overthrown by the contrary doctrine that the party is in reality a governmental agency, subject to legal regulation and control. The element of public concern in the making of nominations has been strongly emphasized, and the right of the legislature to make reasonable regulations to protect and preserve the purity and honesty of elections has been vigorously asserted. The police power has been invoked against the unregulated party. The absence of any constitutional prohibition or regulation has been advanced in behalf of the lawmaking body of the state, and made a part of the general argument in behalf of laws attacked. And finally the privileged position of the party upon the ballot, under the official ballot system, has been used as a means of justifying all manner of restraint and regulations in return. As Justice Holmes said, "The legislature has a right to attach reasonable conditions to that advantage, if it has a right to grant the advantage."[1]

[1] *Commonwealth* v. *Rogers*, 63 *N.E. Rep.*, 421 (1902).

CHAPTER VII

PRESIDENTIAL PRIMARIES[1]

The extension of legal regulation to the process of nominating the president of the United States was one of the last developments of the direct primary idea. By providing for the direct election of delegates to the conventions, or the instruction of such delegates as to the popular preference for president, or both, the members of the party endeavored to secure more direct control of the national conventions. The term "presidential primary" is used to include all such measures.

As early as 1905, Wisconsin, after an unhappy experience with contesting delegations in the Republican convention of 1904, provided for the direct election of all delegates to national conventions.[2] The Pennsylvania law of 1906 contained a similar provision concerning *district* delegates and made it possible for these delegates to have printed after their names on the ballot their preferences for president.[3] Direct election of all delegates to the national convention was provided for

[1] *Presidential Primary:* For a more complete analysis of the questions considered in this chapter see Overacker, *The Presidential Primary* (The Macmillan Company, 1926). The authors are under obligation to the Macmillan Company for permission to use materials in this chapter.

[2] 1905, chap. 369.

[3] Special session of 1906, No. 36.

also in the South Dakota law of 1909.[1] The first state to adopt the presidential preference idea was Oregon, which in 1910 approved a measure, initiated by the People's Power League, providing for a preference vote for president and vice-president as well as the direct election of delegates.

The Oregon idea was adopted by Wisconsin, Nebraska, New Jersey, North Dakota, South Dakota, and California in 1911 and by Maryland, Massachusetts, and Illinois early in 1912. In addition, Pennsylvania and Ohio had provisions for the direct election of district delegates, New York provided that district delegates might be popularly elected at the option of the state committees, and the optional primary laws of Georgia and Florida made Democratic preference primaries possible. Between 1912 and 1916 the nine states of Michigan, Montana, Iowa, Minnesota, New Hampshire, Vermont, West Virginia, North Carolina, and Maryland adopted the presidential primary in some form, and New York, Ohio, Massachusetts, California, and Illinois amended their laws. In addition Texas passed a law which was declared unconstitutional.[2] Since 1916 only one state—Alabama—has adopted any form of presidential primary, and that act was held unconstitutional. The two states of Minnesota and Iowa abandoned their laws after they had been in operation during the one presidential contest of 1916. Twenty-six states in all have taken action to control their delegates in the national convention; twenty-two have had compulsory laws actually in operation; two others have had such

[1] Chap. 297, sec. 66.

[2] See *Waples* v. *Marrast*, 108 Texas, 5.

laws declared unconstitutional; and two have had experience with optional laws.

Many of these presidential primary laws were passed in anticipation of the cleavage which was to split the Republican convention in 1912, or as a result of the events of that year, and are necessarily colored by the exegencies of a particular situation. Many of them were achieved only after the "old guard" had forced amendments vitiating their usefulness. It is not surprising, therefore, that the laws are filled with ambiguities and many of them are ineffective when faced with a situation totally different from that of 1912.

In studying these presidential primary laws one is at once struck by wide and important variations in them: they are literally as varied as finger prints. Before any attempt can be made to evaluate the effectiveness of these laws as a whole, the substance and effect of these differences must be considered.

Fixing the date of the presidential primary involves placing it in relation to the national conventions and the state primaries as well as its position in the calendar year. The dates of the primaries range from early March to late May, but eleven of them fall in late April or May, and there has been a noticeable tendency toward the elimination of the earliest dates, which are unsatisfactory because of the inclemency of the weather and the difficulty of crystallizing public opinion so far in advance of the convention, and the latest dates, which make it difficult to canvass the election returns before delegates must start to the conventions. South Dakota[1] has shift-

[1] 1927, p. 130.

ed from March to May, and Montana,[1] Oregon,[2] and New Jersey[3] from April to May; while California[4] and West Virginia[5] have changed from late May and June, and the North Carolina[6] law, which provided for a June primary, has been repealed.

Placing the presidential primary with reference to the state primary causes more difficulty. Nine of the seventeen states in which presidential primary laws are now in operation hold them in conjunction with the state primary; three hold them with local elections of one sort or another; and in five states the presidential primaries are held separately from all other elections. The experience of the states so far shows that holding state presidential primaries jointly is less expensive and tends to result in a larger vote in the presidential primary. Nor do most of the objections to such practice seem well founded. A confusion of state and national issues does not necessarily result, nor does holding the primaries separately secure a separation of the issues. Moreover, it must not be forgotten that United States senators and congressmen are nominated in what are called "state" primaries, and that a logical separation of state and national issues calls for the nomination of senators and representatives in the presidential primary rather than in the state primary. Little objection to the longer state campaign is evident in those states where the two primaries are combined, and there appears to be no reason why this should not be done where the state

[1] 1921, p. 410.
[2] 1915, chap. 242.
[3] 1925, chap. 8.
[4] 1915, chap. 137.
[5] 1916 (special), chap. 5.
[6] 1927, chap. 82.

primary ballot is "short." Combining the two primaries removes one of the objections so often made against the presidential primary—that it is an expensive luxury seldom used.

Candidates for the presidential preference and for delegate to the national convention are proposed in a variety of ways. The names of presidential aspirants usually appear upon the ballot as a result of a personal declaration of candidacy or a petition signed by the political supporters of the candidate in that state. Eleven states[1] have used the petition method, and four[2] of these specify that a candidate's name shall be placed upon the ballot without any petition or acceptance on his part. In New Jersey, although the candidate's consent is unnecessary, the law allows him to keep his name off the ballot if he so desires; while in Vermont the written consent of the presidential nominee is necessary before his name may be put upon the ballot. The laws of Illinois, Indiana, Michigan, Minnesota, and Pennsylvania contain no stipulations regarding the candidate's consent. In five states the candidate may get his name upon the ballot only by filing a "declaration of candidacy,"[3] while in Oregon either the petition or declaration may be used. The Texas[4] law gave the state central committees of the parties the power to propose names, while in

[1] Illinois, Maryland, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Dakota, Pennsylvania, Vermont, and Wisconsin.

[2] Montana, Nebraska, North Dakota, and Wisconsin.

[3] Alabama, Iowa, Maryland, North Carolina, and Ohio. In Maryland a fee of $270 is required.

[4] 1913, chap. 46. Declared unconstitutional.

South Dakota the names of presidential aspirants are proposed by the same methods other candidates are: by the majority or minority in the proposal convention or by independent petition.

The chief problem arising in this connection is whether it is possible or desirable to force unwilling or bashful candidates to permit their names to be entered in the primary. This question became pertinent in 1916 when Hughes and Roosevelt—the only real possibilities for the Republican nomination—refused to permit their names to be submitted to the voters. Without exception, secretaries of state have acceded to the wishes of individuals who have requested the withdrawal of their names, regardless of the fact that in some cases the law provides that names shall be printed upon the ballot without any petition or acceptance from the candidate. In two states the question has been taken to the courts and diametrically opposed decisions have resulted. The Oregon Supreme Court granted a mandamus to a Hughes supporter, compelling the Secretary of State to put Hughes's name upon the ballot after it had been removed at his request.[1] In North Dakota, on the other hand, after La Follette's name had been removed at his request and his supporters had appealed to the courts for an order restraining the Secretary of State from issuing ballots without his name, the courts finally decided that the writ could not be granted. In this decision the court took into consideration the fact that upon several previous occasions the Secretary of State had interpreted the law to permit the withdrawal of candidates'

[1] *McCamant* v. *Olcott*, 156 *Pac. Rep.*, 1034 (1916).

names at their request and the legislature had not amended the law to provide differently. Similar reasoning in other states would mean the upholding of the removal of names by secretaries of state in the absence of more specific statutory provision to the contrary.

The advisability of permitting voters to "draft" their candidate is questionable. So long as the presidential primary is in use in comparatively few states it is difficult to see how a real expression of opinion can be secured in the preference primary unless the candidates can be forced to permit their names to be used; on the other hand a person may have very good personal reasons for not wishing to enter the contest, and if names may not be withdrawn one faction may propose the names of several of the leaders of an opposing faction in order to split the vote of that faction. The difficulty of meeting this dilemma adds weight to the plan proposed in some detail later on—that the preference vote be eliminated and emphasis be put upon securing delegates known to support the popular preference for president. This plan is in use in California and Massachusetts, and in other states the laws operate in this way because the preference vote is disregarded. No secretary of state has ever refused to certify a candidate for delegate because he expressed a preference for a presidential aspirant who had withdrawn his name from the preference primary. Under such an arrangement reluctant candidates need not declare themselves and yet voters are not limited to active candidates.

In most of the states which have provided for the election of delegates their names are proposed by peti-

tion, but in Minnesota, Ohio, and West Virginia a simple declaration of candidacy is sufficient, and in New Hampshire and Oregon either method may be used. In South Dakota the proposal convention functions as for other nominations. The most interesting development in this connection is the way in which these simple legal provisions have been supplemented by more interesting extra-legal processes. In actual practice lists of delegates are sometimes made up at unofficial conventions, at informal caucuses of important party members, by the campaign committees of the various presidential candidates and even by the party state central committees or the national committeemen. The unofficial preprimary convention has played an important part in New York, North Dakota, California, Nebraska, and Wisconsin. Oregon is the only state in which delegates have never been proposed in "slates" by state committees or preprimary conventions. There are serious objections to such activity on the part of the state committee. It is unfair to put the power and influence of the state organization at the disposal of one candidate if there are several in the field, and it sometimes makes it difficult for the state committee to unite all factions in the final campaign against the opposing party. The unofficial preprimary convention, however, supplements the law in a very useful way. Unless delegates are proposed and voted for in groups, ridiculous complications result and the voter is often acting in the dark.

Preprimary conventions are desirable and inevitable, but should they be legalized? South Dakota is the only presidential primary state in which that has been done,

and there the use of the convention has resulted in no lack of contests or diminution of interest in the primary. However, there would seem to be occasions—the Democratic situation in 1916 would be a case in point—when the holding of such preprimary conventions would be entirely unnecessary. On the whole the unofficial convention appears to serve the same purpose as well and to give the flexibility which is desirable.

Delegates to national conventions may be elected by the state at large or by congressional districts. Most of the presidential primary laws have provided for the election of two delegates from each congressional district and the election of the remainder by the state at large, but in California, North Dakota, and South Dakota the laws provide for the selection of all delegates at large, and in Montana, although the law is somewhat ambiguous on this point, delegates have been elected at large for the most part.[1] The Iowa law attempted to compromise the two ideas by providing for the election of delegates by districts and for taking a vote on the question whether they should be instructed by the presidential preference vote of the state at large or of the districts,[2] while in at least one state—Oregon—custom

[1] An explanation of this curious situation in Montana is to be found in Overacker, *The Presidential Primary*, pp. 48–49, footnote.

[2] The provision did not operate successfully in 1916, the one election in which the law was in operation. The voter was asked to vote "yes" or "no" on two propositions: "Shall the district delegates be instructed by vote of the state at large?" and "Shall the district delegates be instructed by vote of the congressional districts?" *Both* propositions carried; but as the affirmative vote for state-wide instruction was 5,000 greater than the affirmative vote for district instruction, the Secretary of State advised the delegates that they were bound by the vote of the state at large.

has held the presidential preference of the state at large binding upon all the delegates.

Election of delegates by districts has been supported because it makes possible the representation of different groups within the party, where such groups are identified with certain geographical sections; it makes the ballot less clumsy; it enables the voters to select delegates of whom they have some personal knowledge; and because it is easier to break the control of the "machine." In 1912 the point was made that the district plan of election conformed to the call of the Republican National Committee. On the other hand, election of all delegates at large conforms to our method of choosing presidential electors,[1] insures harmony between the preference of voters of the state at large for president and that of the delegates who are to carry out that preference in the convention, gives the state more weight in the national convention, and on the whole seems to bring to the surface clear-cut, state-wide issues between the groups within the party and to promote responsible leadership rather than to play into the hands of the "machine." Certainly the contests in California, North Dakota, and South Dakota have been, on the whole, over definite, clear-cut issues, and these states elect all their delegates at large.[2] It does not follow that this method of choosing

[1] In support of this point the *Fresno Republican* said: "For one of the purposes of nominating a party candidate is to select the man who can get the electoral votes which will put that party in power and its principles into effect" (March 14, 1912).

[2] Take, for example, the California Republican contest of 1920, when Johnson and Hoover delegates were proposed and the issues were the League of Nations and the more subtle contest between the Johnson and Richardson forces for control of the state.

delegates should be extended to all states. To elect the ninety delegates of New York State at large would require a cumbersome ballot and would be opposed because of the antagonism between "up state" and New York City. It seems to the writer that by using the list system of proportional representation the advantages of election at large might be combined with a short, wieldy ballot.[1]

In taking up the methods of controlling delegates in the convention we are dealing with the heart of the presidential primary problem. For unless the members of the party can influence the action of the conventions regarding candidates and platforms, thereby assuring responsibility of the party to the rank and file, the presidential primary fails at an important point.

The problem of securing control of the convention has been attacked from two different angles: by providing for a popular preference for president and holding that binding upon delegates, or by selecting delegates whose preferences as to candidates and platform correspond to those of the people whom they are selected to represent. All possible variations and combinations of these methods have been used.

The laws may be classified into five groups:

1. Those providing for the election of delegates to the convention with no other safeguards. Used in New York,[2] in Wisconsin in 1908, and in Ohio in 1912.

2. Those providing a preference vote for president, the delegates being selected by state conventions. Used

[1] This idea will be developed more fully below in connection with constructive proposals for a presidential primary.

[2] Since 1921 district delegates only are elected.

in Indiana, Maryland, Michigan, North Carolina, and Vermont, and in Illinois in 1912.

3. Those providing a preference vote for president with the election of delegates (*a*) without knowledge of the delegate's preference, as used in Iowa, Illinois (according to the law of 1927), Montana, North Dakota, and Nebraska; (*b*) without knowledge of the delegate's preference, but with a statement saying whether or not the delegate will support the popular preference, as used in Pennsylvania and West Virginia; and (*c*) with a statement of preference by the delegate which is printed after his name on the ballot, as used in Illinois (before 1927), Minnesota, New Jersey, Ohio, Oregon, Wisconsin, South Dakota (since 1916), and in California and Massachusetts in 1912.

4. Those providing for the election of delegates whose preferences are stated on the ballot, but without a preference vote. Used in California, Massachusetts, and New Hampshire.

5. Those providing for a preference vote for president, the delegates being chosen by the successful candidate. Provided for in the 1923 Alabama law[1] and proposed in Illinois and Iowa.

The mere election of delegates insures the voter little control over their action in the convention, for the voter may not know the delegate's position on presidential candidates when he casts a ballot for him, and the most conscientious delegate has no idea of the popular preference for president after the primary is over. This type of law has proved effective only where the formal pro-

[1] Declared unconstitutional.

visions of the law have been supplemented by newspaper publicity.[1] The best that can be said of such a system is that it makes possible popular control of the delegation when the voters are sufficiently aroused.

Six states have provided for presidential preference votes which serve the purpose of instructing the delegates so far as the nomination is concerned, but leave the state conventions with power of selecting the delegates. In other words, they have endeavored to make the convention delegate the sort of automaton our presidential electors are.

This type of control has proved ineffective in those cases where the popular preference and the sympathy of the state convention have been at variance. Perhaps the most flagrant case of violation of the spirit of the presidential primary occurred in North Carolina in 1920. At that time the Republican state convention ignored the presidential primary completely, selecting delegates before the date of the convention and instructing them for a "favorite son." Hiram Johnson was the choice of the primary, but only one delegate voted for him on the first ballot and the other delegates soon swung to Lowden.[2] In other cases the delegates cast their votes for the popular preference on the first few ballots but show a tendency to slip away from him at the crucial point in the balloting. Michigan, Indiana, and Maryland have had

[1] For example, in the Pennsylvania and Ohio Republican primaries of 1912 the feeling between the Taft, Roosevelt, and La Follette groups ran so high that each faction put up a set of delegates and the press gave so much publicity to their preferences that most voters knew of them.

[2] The experience of the Republican party in Illinois in 1912 is another case in point.

such experiences.[1] We have instances also where delegates follow their instructions to the letter in balloting for nominees, but ignore the spirit of these instructions in voting on temporary chairman of the convention, the seating of contesting delegations, and the party platform.[2] Altogether this is a poor system, for it gives the party voters the least effective control when they need the most. The delegate to a national convention cannot be made a mere automaton for two reasons: he has to act upon more than one question, and in a prolonged convention he must use his discretion on the one question upon which he has been instructed. Moreover, "iceberg" delegations will never win support for their candidate in the convention, and the presidential aspirant who enters the convention with such support finds it melting away at the critical moment. There is still another objection to this type of law: as the selection of delegates is left with the state convention we find the same mad scramble for control, and there is the same likelihood of contesting delegations typical of the old convention system. The least one should expect of a presidential primary law is that it provide a fair and orderly method of selecting convention delegates.

[1] In Michigan in the 1920 Republican primary Johnson won the preference vote against Wood, Lowden, and Hoover, but a majority of the delegation favored Wood. In the national convention all the delegates voted for Johnson on the first five ballots, but on the crucial sixth, eleven went to Wood. Others slipped away gradually until on the ninth ballot Johnson had only eight of the delegates; Wood, fifteen; and Lowden and Harding, one each.

[2] In 1912 the Illinois Republican preference vote was for Roosevelt, but seven Taft sympathizers in the delegation voted for Root for temporary chairman and six voted for the seating of the Taft delegates from the second California district.

By far the largest group of states have combined the two possible methods of control by providing for the direct election of delegates and also for their instruction by means of a preference vote. In some of these states no provision is made for indicating the presidential preferences of the delegates on the ballot.[1] In actual operation one of two things happens: the preferences of the delegates become known through the newspapers, or difficulty arises because the presidential preference vote and the personal preferences of the delegates fail to coincide. Take the 1912 Democratic contest in Nebraska, for example. In that year the Hitchcock and Bryan factions agreed upon a "harmony" delegation, including Bryan and Hitchcock. In the preference primary Clark received the highest number of votes. Yet Bryan, as the leader of the Nebraska delegation, led the fight which ultimately swung the convention to Wilson. Similar confusion arises where only one candidate files for the presidential preference and there are contesting sets of delegates, as was the case in the North Dakota Republican primary of 1920.[2]

In two states—Pennsylvania (since 1916) and West Virginia—although the presidential preferences of the delegates do not appear upon the ballot, they are required to state whether or not they will support the popular preference. The experience of these two states indicates that delegates so elected are in about the same

[1] Montana (repealed), North Dakota, Nebraska, and Iowa (repealed).

[2] Two sets of delegates were upon the ballot, one representing the conservative group and the other the Non-Partisan League faction. Hiram Johnson's name was the only one entered in the preference contest, but all of the delegates elected were hostile to his candidacy.

position as delegates who are not required to make such a promise—they carry out their pledges perfunctorily or not at all.

Most of the states combining the preference vote with the election of delegates provide that the personal preference of each delegate must be printed after his name on the ballot. The idea is, of course, that the voters will then select delegates whose personal preferences agree with their own. Experience shows, however, that this is not always the case. The Massachusetts primaries of 1912 furnish a good illustration of this. In the Republican party Taft and Roosevelt ran a close race, and the final returns showed that the voters of the state at large had indorsed Taft in the preference vote, but had elected the eight delegates at large favoring Roosevelt. Often the personal popularity or unpopularity of a particular candidate for delegate will win for him or lose for him a place on the delegation regardless of his presidential preference.[1] Where such conflicting instructions are given the delegate quite naturally follows the instructions which correspond to his own inclination. To the delegate who has stated no preference on the ballot or who has announced his willingness to comply with the popular preference, no such choice would appear to be open. And yet in 1920 an Oregon delegate to the Republican convention refused to be bound by the preference vote for Johnson, even on the first ballot. The instructions given district delegates

[1] In the Ohio Republican primary in 1920 the unpopularity of Daugherty as a candidate for delegate at large pledged to Harding resulted in the election of one Wood candidate, although Harding won the preference vote of the state at large.

may be even more confusing. For while delegates at large may be instructed two ways at once, a district delegate may be instructed three different ways at the same time. In the Republican primary in 1920 the tenth Illinois district (in Chicago) elected one delegate who had run as an avowed Johnson delegate, but cast a preference vote for Wood, while the presidential preference of the state at large was Lowden.

From an analysis of those laws in which a preference vote is combined with the election of delegates whose personal preferences are known, it is clear that confusion often results. Unless a method can be devised whereby the instructions and the delegates' preferences can be brought into accord, one or the other method of control had better be dropped. In actual practice this tends to happen. In Oregon, for example, few delegates indicate a preference, and the emphasis is placed upon the presidential preference of the state at large. In Wisconsin, on the other hand, the preference vote has been allowed to drop into desuetude and the emphasis is placed upon the delegates' preferences.

We come now to the fourth group of states—California, Massachusetts, and New Hampshire—in which the preference vote has been eliminated and attention has been concentrated upon securing delegates whose preferences correspond to the popular preference. Two of these states[1] eliminated the preference vote after using it in 1912. The laws of California and Massachusetts make it possible for candidates for delegate to be grouped under the name of the candidate whom they

[1] Massachusetts and California.

prefer for president, the idea being to focus attention upon the presidential candidate, where it belongs, instead of upon the personality of the delegates. The California law goes even further and makes it possible for the voter to indicate his choice of a group of delegates with one cross-mark, thus discouraging, although not rendering impossible, the "splitting" of votes among delegates favoring different candidates for president.

The California and Massachusetts type of law eliminates the kind of confusion which accompanies a combination of the preference vote and the election of delegates whose personal preferences are known, without sacrificing either control of the delegates or the expression of a presidential preference. Two objections have been made to the elimination of the direct preference vote: that the direct expression of a preference appeals to the voter in a way that the indirect preference does not, and that presidential aspirants are discouraged from entering a state where it is necessary for them to secure lists of delegates to support them. The first objection has not been borne out in practice. Certainly in California there was a larger vote in 1920, without direct expression of a preference, than in 1912 with such a preference.[1] The second objection, that it hampers the presidential candidate, has little weight. Unless a candidate has sufficient support in a given state to arouse some activity in his behalf by local supporters his name might just as well be left off the ballot.

There is one method of control which secures agree-

[1] In 1912 the presidential primary vote was 55.1 per cent of the general election vote, while in 1920 it was 70.5 per cent.

ment between the presidential preference and the personal preferences of the delegates without sacrificing the preference vote: by providing for a preference vote and the selection of delegates by the successful candidate. Such a plan has never been put in operation.[1] If it were, objection would be raised to permitting a presidential candidate from outside the state to select the delegation to represent the state in the national convention. Also many would oppose any such proposal because delegates so selected would feel no responsibility to the people of the state. These objections might be removed, at least in part, by requiring names of presidential candidates to be placed on the ballot by a small group of state proposal-men, who should file with the secretary of state a list of delegates to represent the state in the convention if that presidential candidate won the preference vote at the primary. The names of these delegates would not be printed upon the ballot, but would be given wide publicity before the primary.[2]

There are two other problems which must be taken up briefly in considering the control of the convention: How long should delegates be bound by their pledges or instructions? and, Can control be extended to the platform? Some states attempt to bind their delegates through the entire convention, and the South Dakota law specifically provides that they shall be bound for three ballots. It seems impossible to fix any rule which

[1] The Alabama law of 1923, which was limited to "favorite son" candidates, contained such a provision, but it was declared unconstitutional before it was put into effect. The plan has been advocated in Illinois and Iowa.

[2] This plan will be amplified later when constructive proposals are considered.

will operate effectively under all circumstances, for the nomination may be decided by three ballots and it may take thirty. The best protection which the voters can have is a group of delegates whose personal preferences correspond to their own. In most cases this will mean that the delegates will support the popular preference until released by the candidate.

In a few states some attempt has been made to instruct delegates on matters of policy,[1] but these provisions have had little effect. Whatever development is made toward directing policy in the conventions, however, will come probably through encouraging the enunciation of definite principles by the presidential aspirants, which statements will be taken into consideration by the voter in casting a preference vote or a vote for delegates. As long as widely scattered primary dates make it possible for a presidential candidate to express one set of principles in North Dakota in March and a different set of principles in West Virginia in May, this will be difficult.

Our experience with presidential primary laws shows conclusively that effective control of the convention can be secured only where the presidential preferences of delegates harmonize with the presidential preference of the people whom they are representing. Such harmony is not obtained where delegates are elected with no statement of preferences, where the delegates are selected by the state convention, where delegates are

[1] South Dakota provides a "summary of principles," while in Oregon it is possible for the candidate for delegate to have a short statement of principle placed after his name.

elected whose preferences are not known at the time of the primary, or where delegates merely express a willingness to support the popular preference for president. Harmony is sure to be obtained by eliminating the preference vote and voting for delegates grouped under the name of their presidential preferences, or by eliminating the vote for delegates, retaining the preference vote, and giving the successful presidential candidate or his representatives the power to select the delegates. Such harmony may be obtained by coupling a preference vote for president with the election of delegates whose preferences are printed on the ballot if the relationship between the delegates and their presidential preferences is clearly indicated by the arrangement of the ballot.

One feature of the presidential primary which has received little consideration is the arrangement of the ballot. Yet this is a matter of great importance, for if the voter is confronted with a complex, badly arranged ballot which forces him to hunt among a large number of names and offices for what he wants, if there is no indication of the preferences of the delegates, or if the relationship between delegates having the same preferences is not indicated, the voter very often defeats the ends he wishes to attain. Great confusion has arisen from the attempt to introduce into these presidential primary laws two principles which have become very popular with American legislators: that "straight" tickets should be discouraged, and that the names of candidates for the same office should be rotated by districts so that no candidate may have an unfair advantage because his name appears first on every ballot. These ideas are not

adapted to the presidential primary. In selecting delegates to a national convention there is no more excuse for "splitting" one's vote than in choosing presidential electors. Yet voters are prone to let the personality of candidates for delegate influence their choice, a tendency which too often results in casting votes which counteract each other. For this reason every effort should be made to indicate clearly the personal preferences of the delegates upon the ballot and to group them in such a way as to encourage and not discourage casting a "straight" ticket for the group.

In many states the task of the voter is made extremely difficult. Take North Dakota, for example.[1] In that state the voter is presented with a list of names, arranged alphabetically and rotated by districts, with no indication of their presidential preferences. In the 1924 Republican contest there were thirty-nine candidates for delegate, thirteen of whom were for La Follette, thirteen for Johnson, and thirteen for Coolidge. But the only way a man could be sure of casting his vote for Coolidge delegates was to familiarize himself with the names of those delegates or provide himself with a printed list beforehand. It is not surprising that the delegation was composed partly of Coolidge supporters and partly of La Follette supporters. In Ohio and Oregon, although the delegates' preferences are indicated on the ballot, the voter must hunt through the list to find the ones who favor his presidential candidate. In those states providing for a presidential preference vote as

[1] Facsimiles of the ballots mentioned below will be found in Overacker, *op. cit.*, Appendix D.

well as the election of delegates, the relationship between the delegates and the presidential candidate as well as between the delegates favoring the same candidate should be indicated clearly. Where delegates are elected partly at large and partly by districts it is necessary to indicate the relationship between district delegates and delegates at large favoring the same presidential aspirant.

The writer suggests that the following types of ballot will carry out the principles outlined. If only the preference vote is used, the presidential aspirants being put forward by proposal-men who select the delegates, the ballot needs to contain merely the names of the presidential candidates and the names of the proposal-men beneath, with provision for choosing any one of these candidates or voting for an uninstructed delegation.[1] Where there is no preference vote and all delegates are elected at large, the present California ballot with the names of delegates favoring the same presidential candidates arranged in columns below the name of respective candidates, with provision for casting one vote for all the delegates in one list, admirably meets the needs of the situation. The same form might be used in connection with the list system of proportional representation by changing the instructions to the voter. If delegates are elected partly at large and partly by districts, either with or without provision for a preference vote, a combination of the California, South Dakota, and Massachusetts ballots could be used, the names of the delegates favoring a particular presidential aspirant appearing in col-

[1] See p. 91 of Overacker, *op. cit.*, for a model form.

umns underneath his name.[1] The use of ballots following substantially the forms indicated will eliminate much of the confusion which has reacted so unfavorably against the presidential primary.

A presidential primary may be either "open" or "closed." The laws which have been put into operation have varied from wide open to tightly closed. The problem of whether the primary should be limited to members of the political party concerned, and if so, of defining that membership, is not peculiar to the presidential primary, however, and has already been considered in connection with our discussion of the direct primary.[2]

Minor problems arising in connection with the presidential primary include the questions of preference votes for vice-president, second-choice votes for president, and the problem of the uninstructed delegation. These will be considered briefly.

Twelve states have provided for vice-presidential preference votes,[3] with uniformly unsatisfactory results both as to the type of candidates and the size of the vote obtained. Either no names are entered at all, or a complimentary vote is cast for a "favorite son," or persistent notoriety seekers use it as a method of bringing themselves before the public eye. In no case have the results of the preference vote had any effect upon the action of

[1] See pp. 92 and 93 of Overacker, *op. cit.*, for model forms.

[2] See chapter v.

[3] Maryland, Iowa, Minnesota, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oregon, and Wisconsin. Massachusetts and South Dakota had such provisions, but abandoned them.

a convention. It is not putting it too strongly to say that the vice-presidential preference has been a farce and should be abandoned. So long as the office of vice-president is nothing more than a nominal office the nomination will continue to be awarded as a consolation prize to the section of the country losing the real plum—the presidency.

No state has as yet tried any scheme of preferential voting in the presidential primary. But in Ohio the voter has a choice between delegates whose *second* as well as *first* choices for president are indicated on the ballot. This provision has served no useful purpose, for the delegates have always given as their second choice some native son whose chances for the presidency are nil.

The final question to be considered in dealing with the variation of the presidential primary laws is the necessity or desirability of providing for an uninstructed delegation. In 1916 many states discovered that their laws made no provision for the situation which confronted the Republican party. Both Hughes and Roosevelt refused to permit their names to be entered, and when it was not possible to send an uninstructed delegation, Cummins, Burton, or various favorite sons were used as "John Does" for the real candidates. In some cases there was keen opposition to a law which forced voters to instruct for candidates they did not favor. Moreover there is sometimes a demand for uninstructed delegates when sentiment within the party is so unsettled that it is difficult to bring public opinion to a focus very far in advance of the conventions. On the other

hand, the uninstructed delegation does offer a loop-hole which enables the political manipulator to control the convention. The real solution of this problem lies much deeper than the elimination of the uninstructed delegation. After all, the uninstructed delegation is simply a by-product of a system in which the voters have no control over the bulk of the convention delegates. As long as uninstructed delegates from non-primary states control the nomination it will be easy for the "bosses" to force uninstructed delegations or "favorite sons" upon the states which do have presidential primary laws. If the primary were extended to all of the states, this would be more difficult. Until that millennium comes to pass, however, it would be undesirable to make the system too rigid, and the uninstructed delegation should be provided for.

Having compared the more important features of the different presidential primary laws, it is possible to consider the general effect of the presidential primary as an instrument of democratic control.

The issues which have been brought forth in the primary contests have been as varied as the laws themselves. Sometimes we find a clear-cut cleavage on national questions running through all the contests in one party. The Republican primaries of 1912 give us our best example of a fundamental difference of opinion between two wings of the party which found expression in all of the primary contests. The real issue in California and Oregon was the same as the real issue in Massachusetts and Illinois—whether the conservative or progressive forces within the party should control. In some

cases the 1916 and 1920 preconvention campaigns in the Republican party turned upon national issues primarily, but there was no one national issue running through all of the contests, and the national issues were always inextricably bound up with state questions. In 1920 the League of Nations was one of the principal questions in Oregon and California, but in North Dakota and Montana the voters were concerned about the Non-Partisan League and its control over the state organization, while in New Jersey and Indiana labor policies and "law and order" overshadowed everything else. State issues are often the deciding factor in the presidential primary contests. Numerous illustrations might be given of this, but no better examples can be found than the Republican contests of 1920 and 1924 in California, which were largely battles between the Johnson and anti-Johnson forces for control of the state. Factional contests for state leadership figure frequently, and sometimes become the sole question at issue. For example, in Illinois in 1916 the Republicans there united in support of Sherman for the presidential preference, but a three-cornered fight was waged between the Deneen, Thompson, and Brundage forces for control of the delegation; while the Harrison and Sullivan groups in the Democratic party fought a bitter battle for control of the party machinery, although both leaders supported Wilson. Sometimes the only question at issue has been whether the delegates should be sent pledged or unpledged; sometimes the primary contest turns upon an effort to defeat a certain prominent candidate for delegate in an effort to weaken that candidate's power in the state; and final-

ly, there are numerous cases where the presidential primaries have come and gone without a contest of any kind. It is evident that the presidential primary laws as at present in operation do not insure clear-cut, nation-wide divisions of opinion within the party. That would, of course, be impossible under any system. The most that can be expected is a system which brings to a head any underlying differences of opinion threatening to poison the party from within, which brings public opinion to a focus upon questions at issue, which shows up the strong and weak points of the candidates, and which forces party leaders to show their colors in the open. But it cannot be claimed that the presidential primaries have met this test. Under existing circumstances it is practically impossible to force issues to a focus unless divisions within the party are extremely sharp. Unquestionably it would be highly desirable if this could be done, but several circumstances make this practically impossible. Less than a majority of the states have any form of presidential primary, and the primary dates are scattered over so long a period that it is possible for candidates to vary their issues from state to state, making it difficult to focus public opinion in all of the primary states upon the same issues. But although nation-wide alignments have been rare, the presidential primaries have served to bring to the surface many state-wide differences of opinion which have national significance and have made it possible for a protesting group within the party to bring to popular vote issues which were formerly settled in the dark of the "unofficial conference."

The campaign which a presidential aspirant makes

for delegates in the primary states is part of a general plan of attack extending into non-primary as well as primary states in which the economic, social, and religious background of various groups and geographical districts is taken into consideration. No attempt is made here to consider this general plan of attack, but merely to analyze the technique developed in the primary states.

The activities of presidential candidates falls into three stages: the preparation or "stimulation" period; the active campaign for presidential preference votes, and the support of delegates; and the post primary activities. The groundwork for the campaign may be laid months and even years in advance, and is partly a "feeling out" process and partly a "stimulation" process. Public, non-political speeches by the candidate, the movies, the Sunday picture supplements, biographies, and sketches help potential "backers" of candidates to estimate their strength and at the same time stimulate interest in them. Every effort is made to make the candidate well known and favorably known without definitely connecting him with a presidential boom. The active campaign begins when the candidate or his friends put him forward as an avowed contender for the nomination. It is then necessary to establish some kind of organization to arrange for filing the candidate's name, to answer inquiries, to arrange meetings and distribute literature. This organization may be a "one-man and one-woman" affair,[1] or may include a compli-

[1] This was how William L. Chenery described the Johnson organization in 1920. See *New York Times*, May 2, 1920, sec. vi.

cated network of central, regional, and state committees rivaling in elaborateness the organization of the two major parties in the final election campaign.[1]

After an organization has been perfected, its task becomes largely one of publicity—of "selling" the candidate to the public. All sorts of publicity are used: speechmaking tours by the candidate and his friends; newspaper advertising, both paid and unpaid; handbills, banners, and billboards; and even such expensive activities as luncheons, banquets, and personal telegrams.

In planning his campaign a candidate may adopt the policy of presenting himself in all, or practically all, of the primaries, or he may try to make a respectable showing in a few primaries and depend upon instructed delegations for most of his support, or (if he is a Republican candidate for re-election) he may practically ignore the primaries and depend upon patronage-controlled southern delegations and uninstructed delegates for his support. In deciding upon the issues to be stressed in the campaign every aspirant has a choice between taking a definite stand on a single dramatic issue (as Johnson did in 1920), or making a direct attack on several different issues, or dealing in glittering generalities in an effort to stand for all things to all men. In his own state a candidate is usually sure of winning the delegation if he stresses the state pride issue strongly enough. Local pride has been stressed so strongly that it is sometimes a tactical blunder for any candidate to enter the home

[1] Perhaps the most elaborately organized preprimary campaign was that of Wood in 1920.

state of another. In 1920 it was claimed that Wood lost ground by antagonizing favorite sons, but in 1924 Coolidge carried California, the home state of Hiram Johnson, without losing his prestige. There are certain fetishes of great value to the candidate who can claim identity with them. For example, in the Middle West every presidential candidate makes a mighty effort to prove that he is a son of the soil, a real "dirt" farmer. Other associations, as too close an alliance with "big business," may prove a serious handicap in some quarters.

The activities of a presidential aspirant do not end with the primaries. There is an important post primary stage in which his managers endeavor to win support from uninstructed delegates and to get other delegates to promise to throw their support to him if the chances of their first choice begin to fade.

Managers of presidential primary campaigns resort to all the intricate organization, elaborate publicity methods, and clever technique which characterizes the campaigns preceding a general election. A certain amount of such organization and publicity is essential, but it is extremely doubtful if the more elaborate publicity campaigns are necessary or effective. In 1920 Hiram Johnson, with a limited organization and almost no publicity campaign except his own speeches, polled 250,000 votes more than General Wood, who had one of the most elaborate organizations ever perfected in a pre-primary campaign. A little more experience will probably show political managers where the law of diminishing returns begins to operate. It is true, also, that the

present variety in primary dates tempts the campaign manager to adopt the methods of the itinerant circus. If all primaries were held on the same day such intensive campaigning would be more difficult.

So far as the state party organizations are concerned, the presidential primary has not eliminated their activities in the preconvention campaign. In spite of the fact that the state committee is the organization of the party as a whole and might be expected to remain neutral in primary struggles, it not only suggests lists of delegates but frequently throws the whole weight of the organization to one presidential aspirant or another.[1] Usually this support is given quite openly, and may include the expenditure of party funds and the use of party stationery as well as arranging tours and giving him the "moral" support of the members of the committee. Such practices are to be condemned, but it is difficult to see how they could be stopped. If members of the committee are prohibited from acting as a group they may still act as individuals. It is significant that the support of the state organization does not always bring victory to the candidate to whom it is given, as was almost always the case when delegates were selected by state conventions.

The effect of the presidential primary upon popular

[1] This was the case in the 1912 Republican primaries in Illinois, Maryland, Massachusetts, New York, Ohio, and Pennsylvania, when the organization opposed Roosevelt and supported Taft. In 1920 the Republican organizations in Illinois and Ohio supported Lowden and Harding, respectively, against Wood, and opposed Johnson in Indiana, Maryland, Michigan, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, and South Dakota.

interest in preconvention activities can be measured to a certain extent by the size and enthusiasm of the meetings and the amount of newspaper discussion, but the most accurate index is the size of the vote cast in the presidential primaries and its relation to the vote in other elections. Unfortunately we have practically no records of the vote cast for delegates to state conventions before the use of the presidential primary. But we can compare the vote cast in the presidential primary with that cast in the general election or the state primaries of the same year.

A comparison with the general election figures reveals some interesting facts. In eleven cases a lack of interest is indicated by the fact that no candidate, or only one candidate, entered the primary, and under the provisions of the law no election was held. Confining our attention to the states in which the voters were given an opportunity to participate, we find that the vote in the presidential primary is much lower than the general election vote. In 1912 it was 57.2 per cent of the general election vote; in 1916, only 30.5 per cent; and in 1920, but 33.7 per cent, or an average of 40.5 per cent of the general election vote for these three elections. In 1924 the La Follette vote is so disturbing a factor that exact comparisons are impossible; but if the total vote cast in all presidential primaries in that year is compared with the total Coolidge, Davis, and La Follette vote, the ratio is 34.8 per cent, while if the La Follette vote is omitted, the ratio is 43.4 per cent.[1] These are the aver-

[1] Detailed tables of these votes will be found in Overacker, *op. cit.*, Appendix C.

ages; but at one extreme we have cases where the presidential primary vote exceeded the general election vote,[1] and at the other extreme we have the Democratic vote in the presidential primary of Massachusetts in 1916, which was only 7.9 per cent of the general election vote, and the 1920 Democratic vote in Vermont (3.4 per cent). In general, however, the presidential primary vote varies from about a third to something over a half of the vote in the general elections.

It is evident from these figures that the presidential primary vote varies greatly from campaign to campaign, depending upon the intensity of the contests. The largest vote was cast in 1912, the lowest in 1916, with 1920 and 1924 falling between. Generally the ratio between the votes in the four contests in each state corresponds closely to the relationship between the votes in the four contests in the country as a whole, but there are interesting exceptions. In California the Republicans voted more heavily in 1920 than any other year, while in several states the Republican vote was higher in 1916 than in 1920.[2]

It is evident also that the presidential primary has been used to a greater extent by the Republicans than by the Democrats. This apparent lack of interest by Democratic voters may be explained by the lack of significant contests in that party, which in turn is the result of the weakness of the Democratic party in many of

[1] In North Dakota in 1912 the vote in the Republican presidential primary was 122.2 per cent of the general election vote, and in South Dakota in the same year it was 117.2 per cent.

[2] Pennsylvania, Massachusetts, and Nebraska.

these states. Only four of them are normally Democratic. Of the five states in which the Democratic vote has exceeded or closely approached the Republican vote, all but one are normally Democratic or doubtful.

Another point which is brought out by these figures is the wide variation in the size of the vote in different states and geographical sections. Leaving out of consideration the southern states, where the primary has not been used sufficiently to afford an accurate basis of comparison, it is evident that participation in the presidential primaries increases as we go westward. On an average only 32.8 per cent of the general election vote was cast in the Northeast,[1] 43.7 per cent in the Center,[2] and 53.2 per cent in the West.[3] With the exception of 1912, the same relationship holds for the vote cast in each year. The presidential primary vote in the Northeast is always the lowest, and in 1916, 1920, and 1924 it is highest in the West. In 1912 the ratio cast in the Center slightly exceeds that cast in the West. From these comparisons it is clear that it is dangerous to make sweeping generalizations as to the effectiveness or ineffectiveness of the presidential primary as judged by the size of the vote.

A comparison of the presidential primary vote with the general election vote affords a good basis for studying the relative effectiveness of the primaries at different

[1] Including the New England and Middle Atlantic states.

[2] Including Illinois, Maryland, Iowa, Michigan, Minnesota, Ohio, and Wisconsin.

[3] Including Nebraska and the Dakotas as well as the Mountain and Pacific states.

times and in different states, parties, and geographical sections. But it gives us no absolute standard by which to measure the effectiveness of the presidential primary as an instrument of popular control. Absolute interest is to be measured, not by the general election vote, but by the vote in other party primaries. Our best basis for comparison would be the votes for delegates to state conventions before the introduction of the presidential primary, but since these are lacking we must substitute the votes in the state primaries.

Taking all states and all years, we find that by and large 75 per cent of the people participating in the state primaries take part in the presidential primary. In Nebraska, Wisconsin, and Oregon the average for the four campaigns is over 100 per cent, while in Minnesota, New Hampshire, Montana, Iowa, and Vermont it falls below 50 per cent. It is also significant that in 1912 the vote cast in the presidential primary was over 90 per cent in seven of the eight states, and in 1920 it was over 90 per cent in eight of the eighteen states. On the whole, the amount of interest displayed in the presidential primary compares favorably with that in the state primary. Whatever test of interest is applied in measuring the value of primaries generally, the presidential primary will meet it about as well as the state primary.

Unquestionably in certain cases the interest displayed in the presidential primary has justified its existence. Surely there was no lack of interest in the Republican primaries of 1912 when 70.3 per cent of the general election vote was cast, nor in the Republican

primaries of 1920 in South Dakota, Wisconsin, Oregon, Nebraska, and California, where a uniformly large vote was cast in the presidential primaries.

The expense of the presidential primary is borne partly by the government and partly by the candidate. The candidate must incur the financial burden of bringing his candidacy before the people, but the printing and counting of ballots and the payment of election clerks has been taken over by the government in practically all of the states.

It is impossible to get accurate data covering the cost of the primaries to the government.[1] From the figures available the writer estimates that where state and presidential primaries are held separately the cost of the presidential primary would average between seventy-five cents and one dollar a vote. The cost per vote is probably higher in the presidential primary than in the state primary. However, the writer does not feel that too much emphasis should be placed upon this point. A really effective nominating system would be worth what it cost. Moreover, eliminating the presidential primary would not eliminate all of the expense involved, for if delegates are selected by the state conventions these delegates to the state convention must be elected.

The financial burden of the preprimary campaign

[1] The expense is usually shared by the state and some unit of local government, or is borne entirely by a local unit which keeps no itemized records. Where figures are available, the cost of all elections, general as well as primary, are lumped together, and even where accounts are kept separately, registration costs are usually included as part of the cost of the primary.

falls partly upon the candidates for delegate and partly upon the candidates for the presidential preference and their supporters. An examination of the expense accounts filed by candidates for delegate in those states where such statements are required shows no tendency toward lavish use of money in the campaigns. There is no record of an expense account of more than $1,000, and usually the amount is below $100. Even allowing for discrepancies between the declarations and the actual amounts spent, there is apparently no cause for alarm about the amount of money spent by candidates for delegate.

When we come to candidates for the presidency the case is not so clear. In 1920, following charges by the *New York World* that presidential candidates were spending excessive amounts of money in their preconvention campaigns, an investigation was made by the Kenyon Committee.[1] After taking testimony from April 24 to July 10, 1920, and questioning hundreds of witnesses, this committee reported that $1,773,303 had been spent on behalf of Wood, $414,984 on behalf of Lowden, and $194,393 on behalf of Johnson. The average expenditure of Wood per state entered was $25,000; of Lowden, $35,000; of Johnson, $12,100. Unquestionably these amounts do not include all that was spent. Where the bulk of the campaigning was financed by local organizations or clubs the Committee found it im-

[1] The committee was a subcommittee of the Committee on Privileges and Elections, appointed in accordance with Senate Res. 357, 66th Congress, 2d session, authorizing it to investigate campaign expenditures of the presidential candidates in both parties.

possible to get any information about the expenditures made.

Some interesting points are brought to light by a comparison of expenditures of Wood and Johnson in the primary states with the votes which they received. The Wood organization spent from $0.34 a vote in New Hampshire to $4.35 a vote in Montana, while Johnson's campaigns cost him from $0.03 a vote in Nebraska to $0.50 a vote in Maryland. Taking all of the primary states, Wood spent over $1.00 for every vote he polled, while Johnson spent only $0.20. Putting it in a different way, with a total expenditure one-fifth of Wood's, Johnson polled one and one-third times as many votes. The significance of this is not that Wood spent more money than Johnson, but that it was unprofitably spent. The objection to the use of large expenditures in primary elections arises from the danger that such expenditures will control the result of the election. Apparently this was not the case in 1920.

Perhaps the most significant point brought out by the Kenyon investigations was that there were no charges of *corrupt* expenditures in the presidential primary states. To turn from the testimony about primary campaigns in Michigan and New Jersey to that about the preconvention activities of certain candidates in Missouri and Georgia is to turn from openness and directness to the dark ages of subterranean political methods. The presidential primary may cost the candidate more or less than other methods, but what is spent must be spent openly.

The evidence presented before the Kenyon Commit-

tee brought into sharp relief the impossibility of state regulation of expenditures in presidential primaries. The collection and distribution of funds is done on a national scale; contributions made in New York may be expended in Montana, and a central headquarters may supply most of the "sinews of war" by preparing, printing, and mailing directly to the voters material which would never be accounted for in the statement of expenditures made in that state. On the whole it will be better to attack the problem of the use of money in presidential primaries by giving publicity to *contributions*, rather than limiting expenditures, but no state can hope to do this effectively. National limitation might be more effective, but there are difficulties which even a national law could not eliminate: false and incomplete statements would be made; free newspaper support would not be included; and the indirect support of other political organizations could not be traced.

In attempting to weigh the effect of the presidential primaries we come finally to their influence upon the national conventions and the political situation generally.

It cannot be claimed that the votes in the presidential primaries have controlled the action of the conventions. In fact, the choice of the primaries and the choice of the convention has been the same in only three of the eight possible cases. In 1916 Wilson's control of the Democratic party was so secure that he would have received the renomination under any conceivable system, while in 1924 the verdict of the Republican primaries was decidedly in favor of Coolidge and against Johnson, and the former was nominated on the first ballot. In

1912 Wilson received more primary votes than any of his opponents, but his vote was exceeded by the combined vote of Clark and Harmon, and more Clark than Wilson delegates had been elected. It is not altogether clear, then, that the convention was carrying out the will of the primaries when it nominated Wilson in the Democratic convention. With the exception of these three cases, the verdicts of the primaries and of the conventions have not coincided. In 1912 Roosevelt received approximately a million votes and Taft 648,000, but Taft was the choice of the convention. In 1916 Hughes might have controlled a majority of the delegates elected from the primary states if he had permitted his name to be used, but he did not, and the bulk of the delegates were either unpledged or pledged to favorite sons. In 1920 the Republican convention ignored the leading candidates and chose as the nominee of the party a man who had entered his name in only two primary states and who barely carried his own state. In the same year the Democratic vote was so scattered that it was impossible to ascertain the popular verdict. In nominating Cox the convention chose the man who had received the highest number of votes, although his name was entered in but one state—Ohio. In 1924 the verdict of the Democratic primaries was for McAdoo, but the convention chose Davis.

In considering the control which the primaries exercise over the convention it must not be forgotten that in 1912 a majority of the delegates were not elected in the primaries, and that in the other years the majority of the primary-elected delegates was so small that in order to

control the convention through the primaries it would have been necessary for one candidate to have carried practically all of them.

Taking these things into consideration, the effectiveness of the presidential primaries must be judged more in the light of their effect in the individual states than in their control over the situation as a whole. Well-drawn presidential primary laws have served the purpose of eliminating the disgraceful contests which prevail under the convention system, and they have given the states which have them an amicable and certain way of deciding between various party factions. One may cite the experience of the Republicans in California, Wisconsin, Pennsylvania, and North Dakota, and of the Democrats in Nebraska, New Jersey, and Illinois in support of this statement. It cannot be doubted, moreover, that the presidential primaries have materially affected the action of the conventions and the course of political events generally. The presidential primary may, in part, be responsible for the Progressive "bolt" in 1912. "Steam-roller" tactics in the Republican convention gave the Roosevelt delegates a grievance; but it was the tremendous support accorded Roosevelt in the primaries which encouraged them to risk the venture of a third party. In 1916 the Republican primaries did not choose the nominee, but they made it clear that the convention could not safely choose a candidate with militaristic tendencies. The popularity of Johnson in the 1920 primaries may have had its effect upon the League of Nations plank in the platform of the Republican party that year. It is important, too, that the

delegates elected in the presidential primaries feel a sense of responsibility to the people electing them and to the candidate whom they represent which keeps them from jumping on the "band wagon" at the first opportunity. In the 1920 Republican convention the swing to Harding came primarily from the non-primary states. Of the 692⅛ votes which he received on the final ballot, 348 came from non-primary states and 344⅛ from primary states. If we analyze these votes a little more carefully we discover that the largest part of the vote which Harding received from primary states came from states where the laws are so ineffectively drawn that the preferences of the delegates did not coincide with the popular preference, or from states which had sent their delegations unpledged, or pledged to favorite sons.

After the Republican convention of 1912 it was freely predicted that the presidential primary would spread to all or to most of the states. From Massachusetts to California the leading newspapers of progressive tendencies foretold the coming of a new method of making presidential nominations.[1] These prophecies have not been realized. Mandatory presidential primary laws have never been extended to more than twenty-two states. Opponents of the direct principle of nomination have been more successful in their attacks upon the presidential primary than upon the state-wide primary generally. The presidential primary movement has not only been halted; it has actually been turned backward.

[1] See *Christian Science Monitor*, May 24, 1921; *Boston Globe*, March 9, 1912, p. 10; *Baltimore Sun*, June 14, 1912; *Cleveland Plain Dealer*, June 15, 1912; *Chicago Tribune*, January 8, 1912; and the *Fresno Republican*, March 7, 1912.

That Iowa[1] and Minnesota[2] repealed their laws in 1917 is not particularly significant, for these laws were in effect during only one preconvention campaign, and that was a campaign in which there was no real contest in either party. But in 1921 Vermont[3] followed; in 1924 the Montana presidential primary was repealed by vote at a popular referendum; and the North Carolina[4] legislature took the same step in 1927. In 1927 the legislature of one other state—North Dakota—passed a bill repealing the presidential primary law, but this act was vetoed by the Governor.[5] Two other states, while retaining their presidential primary laws, have amended them to interfere seriously with their effectiveness. New York in 1921[6] provided for the selection of delegates and alternates at large by the state convention. A 1927 amendment goes even further and provides that delegates and alternates at large to national conventions shall be elected by the state committee or by a state convention, "as the rules of such party adopted at a state convention held for the nominations of state officers may prescribe."[7] The 1927 Illinois law also takes from the voter

[1] 1917, chap. 14.

[2] 1917, chap. 133.

[3] 1921, p. 8.

[4] 1927, chap. 82.

[5] H.B. 25, introduced by Mr. Fowler, vetoed March 10, 1927, largely because the election of delegates to the county conventions and the meetings of the county and state conventions would take place in March, April, and May, when it is difficult for North Dakota farmers to leave their work. The Governor suggested that the date of the presidential primary (now in March) be changed to later in the spring.

[6] 1921, chap. 479.

[7] 1927, chap. 362. Both parties have provided for the selection of delegates at large by the state committee.

the choice of delegates at large, and in the case of candidates for district delegate eliminates the provision for printing the presidential preference of each delegate after his name on the ballot. The preference vote is retained, but it is merely to secure "an expression of the sentiment and will of the party voters."[1] These repeals and serious modifications of the laws would indicate some genuine dissatisfaction, and it becomes necessary to analyze the case for and against the presidential primary.

Some of the arguments against the direct primary generally are urged against the presidential primary: that members of one party participate in the primaries of the other, that there is lack of interest, that the primary is expensive to the state, and that the contests stimulate bitterness between candidates to such an extent that it is impossible for the party to present a united front in the election. These objections are not peculiar to the presidential primary, nor do they weigh particularly heavily against it. Consequently they need no special consideration here.

Other difficulties arise from technical defects in the laws. It is claimed that the laws are intricate and ambiguous, that it is difficult to control the action of the delegates in the convention, and that the real candidates refuse to present themselves. These are difficulties which can be eliminated by skilfully redrafting the laws. By securing delegates whose personal preferences are in harmony with the popular preference, control of them will be assured, and if declarations of candidacy by

[1] 1927, chap. 189.

presidential aspirants are eliminated, the voters may cast their ballots for delegates favoring these aspirants without forcing them to become avowed candidates.

Certain serious objections to the presidential primaries arise because of their limited application. The unpledged and favorite son delegation will be sent from the primary states as long as unpledged convention-selected delegates control the national conventions. But if the presidential primary were of more general application and it were possible for some presidential aspirant to present himself in every state of the union and secure control of the convention it would become much more difficult for a state leader to urge the desirability of an unpledged delegation. Also, if the primary were in general use a state would be throwing away its force in the convention by selecting "favorite son" delegates, and the payment of these pretty compliments would become less frequent. In the same way definite, clear-cut contests on national lines and effective control of the action of the convention are impossible except in unusual cases as long as the primaries are used in less than half the states and are held at different times.

Finally, there remain for consideration two criticisms, the remedies for which seem to be beyond effective state control: the immunity of the national convention from the control of state laws, and the limitation of candidates' expenditures. It is quite true that the national conventions are beyond the reach of state law, and that in the Republican convention of 1912 two Taft delegates from California were seated in direct opposition to the law of that state. But it is true also that

such a storm of protest greeted this decision that the call for the 1916 convention expressly recognized the right of the state to control. The principle that the convention will recognize the provisions of the state law seems firmly established. Effective regulation of the use of money in preprimary campaigns is impossible, but there is little in our experience with the presidential primary to indicate that expenditures have been extravagant or that the use of money controls the result of the election.

Briefly stated, the position of the presidential primary with regard to the criticisms made of it are about as follows: certain arguments made against direct primaries in general are made against the presidential primary, but with no peculiar force; and certain other difficulties which have not proved very serious in actual practice may be eliminated only by national action. By far the most serious objections to the presidential primary may be removed by redrafting our existing laws, by extending presidential primary laws to practically all of the states, and by securing uniformity in a few important provisions.

Having emphasized the technical defects in existing laws, it behooves us to offer a few constructive suggestions. The date of the presidential primary should be fixed not earlier than the last week in April, and may coincide with the date of the state primary where the state ballot is "short." Personal declarations of candidacy should not be required of presidential aspirants. Delegates should be elected at large, as this tends to secure significant state-wide contests and to encourage responsibility for individual candidacies. Control over the ac-

tion of the convention should be secured by making certain that the presidential preferences of the delegates elected coincide with the popular preference for president. This may be brought about either by eliminating the preference vote and voting for delegates whose preferences for president are printed on the ballot, or by eliminating popular election of delegates and voting for a group of proposal-men representing a particular aspirant, the delegates being selected by the proposal-men. The ballot should be arranged in such a way that the relationship between delegates favoring the same presidential candidate is clearly indicated, and provision should be made for voting for these delegates as a group. Preference votes for vice-president and direct election of presidential electors and alternates should be eliminated.

The following two plans are suggested as carrying out these ideas. In Plan I it is proposed to eliminate the preference vote, electing all delegates at large. Provision should be made for proposing these candidates in groups, and these groups should be arranged in lists upon the ballot with the name of the presidential preference of the group, or "For an Uninstructed Delegation," at the top of the list. The voter would then be called upon to make but one decision and cast but one vote in order to vote for the list. By providing for proportional representation no geographical or political minority need be barred from representation. In Plan II the presidential preference vote would be retained and popular election of delegates eliminated. The law should provide that the names of presidential aspirants be placed upon the bal-

lot upon the request of five proposal-men, eligible voters of the state, who should at that time file a list of delegates, equal to the whole number of delegates to which the state is entitled, who might represent the candidate in the convention. There would be no reason why the same presidential aspirant might not be proposed by more than one group of proposal-men or why a group of proposal-men should not support "An Uninstructed Delegation." On the ballot should appear only the names of the presidential candidates, with the names of the proposal-men beneath, and "For an Uninstructed Delegation," with the names of the proposal-men (if any) sponsoring such a proposition. The voter should be called upon to cast a vote for the presidential aspirant he favored or for an uninstructed delegation. After the primary each presidential candidate should be allotted a proportion of the whole delegation equal to the ratio which his vote bears to the whole vote cast. The secretary of state should certify as elected the requisite number of names from each of the lists filed with him, beginning at the top of the list as prepared by the proposal-men. The writer believes that such a plan would secure a short ballot, proportional representation, a direct vote for the presidential candidate, and responsibility for candidacies.

Inertia is the only obstacle in the way of the elimination of technical defects. The securing of uniformity is a more difficult matter. In any such movement the minimum amount of uniformity should be insisted upon. That minimum would seem to be: a uniform date, uniform provisions for filing candidacies, and a uniform

method (or at least a uniformly *effective* method) of controlling the delegates. Such questions as qualifications for participation in the primary and whether the presidential primary should be held in conjunction with the state primary should be settled by each state in its own way. Any campaign for uniformity may gain hope from the fact that a certain tendency toward uniformity has been evidenced. The states are abandoning the earliest and latest primary dates, and in actual practice it is the preference expressed by the delegates before the election which binds them when they vote in the convention.

The real stumbling-block to making state control effective is the difficulty of extending presidential primary laws to more states. Here we have reached an *impasse:* until the primary is extended to more states it can be an effective weapon of control nationally in rare instances only; and yet the lack of such control is advanced as one of the arguments against the presidential primary. Most of the criticism of existing presidential primary laws has proceeded on the assumption that we have a presidential primary system which can be judged in the light of its national effectiveness. This is, of course, not the case. What we have is not a *system* at all. Only when well-drawn laws are extended to all or most of the states can we hope to test the presidential primary as a weapon of national control. In the light of recent repeals that possibility seems remote.

The impossibility of securing control of national conventions or of effectively limiting campaign expenditures by state action, and the difficulty of extending the presidential primary to all of the states, has led many

observers to suggest the desirability of a national presidential primary law. In 1913, when the Democratic administration came into control, a temporary impetus was given to the movement by President Wilson's message urging the passage of such a measure. No action was taken, and very soon public interest shifted to the war. In 1924 the La Follette platform urged the passage of a constitutional amendment giving Congress power to pass such a law.

The proposals for a national presidential primary may be classified as follows:

1. Those which combine the primary idea with the existing conventions, the sphere of the convention being limited.

2. Those which combine the convention and the direct primary, but reverse the usual order, making the convention the proposal body and the primary the ratifying body.

3. Those which eliminate the convention and provide for a direct, nation-wide primary for nominating presidential candidates.

The drafting of a national presidential primary law is extremely intricate; problems of the utmost importance must be faced at every turn. Whatever plan is adopted raises the vexing question of whether it should be conducted by state or national officials, or partly by each. The use of national election officials would create endless duplication, confusion, and antagonism; yet if state officers were used they would hold it within their power to render the law ineffective. The question of Negro voting in the South would inevitably be raised. If

a uniform test of party affiliation were applied in the national primary, separate state and national party enrolments would be necessary. There is also the question of defining a political party and of deciding to what parties national regulations should apply. Finally, there is the difficulty of fixing a primary date which would fit in with the election schedules of all of the states.

Any plan which provides for the retention of the convention raises the question of the basis of representation and whether nomination should be made by a majority of all of the delegates, or by a simple plurality, or by a majority of all of the delegates from a majority of the states. Any plan involving nomination by means of a direct primary meets such problems as: How should names be proposed? Should a simple plurality vote be sufficient to nominate, or should a majority in a majority of the states be required? How should minority choices be avoided? How should a platform be drafted?

The difficulty of meeting all of these problems is well-nigh insurmountable, and the following suggestions are merely exploratory. Whatever plan is adopted should provide for a uniform date which allows a much shorter period of time to elapse between the nomination and the election than under our present system. In order to avoid as much friction as possible, the fixing of qualifications for voting, including the party test, should be left to the states, and the general conduct of the election should be in the hands of state rather than United States officials. On the other hand, the United States government should be given the power to act if any state failed to do so. The conventions as at present con-

stituted are unwieldy bodies wholly unfitted for effective deliberation, but provision should be made for the drafting of the platform by a representative body.

The following plans seem best adapted to carrying out these ideas. According to the first plan provision should be made for a national preference vote for president. Names should be proposed by petitions signed by about one-half of 1 per cent of the party voters in at least five states. These petitions should be circulated by a small group of proposal-men whose names should appear on the ballot under the name of the presidential aspirant they are supporting. With the nominating petition should be filed in the office of a superintendent of elections in Washington a list of not more than 150 names of representatives of the candidate who might function in the subsequent conference. Voting should be for the presidential candidate only, and if any aspirant should receive a majority of the votes cast he should be declared nominated. The total number in the conference should be about 150. Each candidate should be represented in this body by a proportion of the total number equal to the ratio his popular vote bore to the total popular vote. To this body should be given the power to draft the platform and select the vice-presidential nominee. If no candidate for the presidency had received a majority of the popular votes, the conference should also select the presidential nominee; but in doing so its choice should be limited to the two highest candidates in the primary.

This plan is far from perfect, but it does avoid the perplexing question of the proper basis of geographical

representation; it insures a majority choice without the use of either a second primary or preferential voting; and it provides a method of drafting a platform which insures harmony between the candidate and the platform. It would probably insure clear-cut contests on national lines.

The alternate plan adopts the party-conference idea, but makes the conference the proposal, rather than the ratifying, body. The conference would be an ex-officio body made up of nominees for the House and Senate, hold-over senators, and national and state committeemen, and would meet early in the fall to draft a platform and suggest the names of not more than three presidential possibilities, who should be voted on at a national presidential primary early in October. This plan is open to several serious objections: the platform and the candidate might not harmonize; the candidate might be a minority choice; and terrific pressure might be brought upon members of Congress by a president seeking renomination and election.

The writer is frank to admit that neither of these plans is ideal. They are presented largely in the hope of provoking discussion.

There are many obstacles in the way of the passage of any national presidential primary law. There is little doubt that such a law would have to be preceded by a constitutional amendment, and the Constitution of the United States is not easy to amend. Moreover, any discussion of an amendment giving Congress control over presidential nominations would lead to a discussion of the advisability of direct election of the president,

lengthening the term of office to six years, prohibiting the re-election of a president, changing the date of inauguration, regulating campaign expenditures, and perhaps also the desirability of a uniform, national primary act governing the choice of nominees for Congress as well as the presidency. The possible ramifications are almost infinite. Another obstacle is the difficulty of formulating a law after the necessary amendment is in effect. Finally, such a law would be opposed, not only by all those who object to the extension of the direct primary principle, but also by those who object to extending the power of the national government to include control of any of the election machinery.

It seems to the writer that in deciding the question whether it is preferable to urge the extension of the presidential primary idea by state legislation or by act of Congress the difficulties in the way of either course of action should be weighed carefully. On the whole the outlook for further control through state action is less dark than the outlook for a national presidential primary law, and essentially the same results may be obtained.

CHAPTER VIII

ANALYSIS OF PRIMARY FORCES

It would be a sorry conclusion to find that primaries consist of constitutional provisions, statutes, and judicial decisions. These are not the end but the beginning; and indeed relatively few of the participants in primaries are fully versed in all of the numerous statutory requirements that nowadays encompass the selection of candidates. The professional is more concerned with practices than with laws, and with the human aspects of the situation than with the legal.[1]

The real primary is a cross-section of social life, and no one need strain himself to catch the spirit of what is going on. Political politics is no more complicated than ecclesiastical politics, or trade-union politics, or woman's club politics, or chamber of commerce politics, or academic politics, or any other unpolitical politics. It is always more open and more obvious than any of the others, and for that reason more easy to follow and to understand. Consider how the office-holding group is selected in any organization, where there is advantage in being chosen, and you will discover a process not much unlike the nomination of candidates in the political party. Even the American Academy of Science once had to re-

[1] This chapter is written in response to innumerable requests for some analysis of the primary, outlining its main features and giving some clue to what is going on. To do this adequately would require a book, and I suggest reading Wooddy's *The Chicago Primary of 1926*. Perhaps the present sketch will help some of the many who in years past have asked me the questions here raised, if not answered.

vise its method of voting in order to prevent "political" methods of choice from becoming effective.

How many non-voters are there in the club election? How were the leaders actually chosen? How were policies really determined? What is the interplay of personalities, factions, interests, issues, out of which emerge some trustees of authority at the top?

To understand a primary it is not necessary to exert one's self to grasp an artificial and arbitrary system, but on the contrary it is better to relax a little, to think of what commonly goes on in any group, and then allow for the political differentials—after all not so numerous as might be.

The actual process of nomination is like the process of the general election itself, with factions often substituted for parties. What happens varies widely, of course, in differing situations. A primary in a rural district is different from a primary in an urban district or in a mixed district. A primary in a one-party area may be different from a primary in a two-party area. Whether the district is under boss or ring rule in one or both parties is important. What the predominant racial, religious, class, and regional characteristics of the area are is significant. Likewise the dominant personalities and their rivalries and combinations affect the nature of the primary. The nature of the leading issues, if any, gives the color to the primary at times. Finally, multicolored types of primary are woven from the materials just mentioned, in patterns sometimes simple and sometimes highly complex, sometimes sober and sometimes vivid and colorful.

A working analysis of a primary is not very difficult, although of course a technical account would involve very serious effort.[1] It does not require an expert to gain a fairly good view of the forces and personalities at work in determining the result, even if this picture is not as complete or reliable as that of the professional who understands and practices the inside game of politics. A community consists of trained followers as well as trained leaders, and often the followers are just as expert in estimating leaders as leaders are in estimating their followers or political leaders. It was the earliest of great political scientists who said that even though a man is not a cobbler he may be able to tell whether a shoe pinches his foot or know whether the roof leaks without being able to build a house. There is no great mystery about a primary which ordinary common sense cannot resolve. There are, to be sure, factions and personalities and interests and issues and stakes of the game, but most of these are on public exhibition for anyone who wishes to observe and appraise.

The outstanding personalities in the area, whether it be local, state, or national, are usually the most interesting part of the primary process. Whether bosses or leaders, official or unofficial, they are usually well known, and their tendencies and characteristics may readily be understood. One may inquire whether their chief interest is in graft or in patronage, or in special

[1] Carroll H. Wooddy, in his *The Chicago Primary of 1926: A Study in Election Methods*, has brilliantly analyzed and characterized a difficult primary situation, and shows how the problem may be approached in other situations. Many other such studies are urgently needed in many other communities.

group interests or more general issues, or in some combination of these attitudes. Or one may inquire into the nature of their leadership, analyzing their traits and tendencies, their experience and their general outlook on political life.[1] The subject of leadership is no longer regarded as a mystery, and it is entirely possible to make fairly good estimates of the type of men bidding for public or party support. A little Who's Who of political leaders and a rough analysis of their traits will go a long way toward simplifying the complications of the primary and toward making it possible to discriminate not only between the white and the black but between various shades of gray sometimes.

In smaller areas these characters are known personally; in larger, through the agency of the press, the periodical perhaps, and the judgments of organizations in the cities especially, as, for example, the Citizens' League of Cleveland or the Citizens' Union of New York, or through the judgments of citizens whom we know and trust. For this purpose, of course, newspapers, like individuals, must be checked against each other, and appropriate corrections made for the personal equation. It is not possible for all of these sources of information to be permanently in conspiracy to conceal the truth from the inquiring elector.

[1] In the writer's *Four American Party Leaders* some significant party men have been discussed—Lincoln, Roosevelt, Bryan, and Wilson; and the method there employed may be applied to other leaders. More detailed studies are those of Harold F. Gosnell, *Boss Platt;* C. O. Johnson, *Carter Harrison as a Political Leader;* Marietta Stevenson, "William Jennings Bryan" (unpublished manuscript); Roy V. Peel, "James G. Blaine" (unpublished manuscript). Of value is W. B. Munro's *Personality in Politics.*

These leaders may not be candidates, but if not they will be backers and sponsors of candidates. They may in large measure reveal the nature of the candidate or group of candidates. The practical politician always asks of a given candidate: "Who does he look to?" or "Who is he with?" "Who does he train with?" "Who is back of him?" "Who is putting up?" or some such inquiry designed to locate him on the political map.

Naturally the candidates must also be analyzed as far as possible. This is especially true of candidates for the more important positions, but far less so for the minor positions. The horde of candidates for minor places frequently found in large cities may be understood either in the light of their backers or of the various groups making a business of studying them and offering their recommendations. The wise elector learns to focus his interest on the key positions, reserving his analysis for them, and realizing that the smaller places have little value in the final reckoning of power.

In many communities the primary battle centers around party factions, which may be purely ephemeral or more permanent. If the combinations are largely personal they may be subject to many changes, unless they rest upon personal feuds, in which case they may be very durable and important. If the combinations rest upon regions, or races or religions, or classes, or upon issues like the wet and dry, or the machine and antimachine, or corporation and anticorporation, they may also be enduring in their nature. In any case the outstanding factions and rings and bosses are never difficult to discover and to understand, even where some of their oper-

ations may be difficult to follow. What sometimes seem like complicated crisscrosses or patterns may be far more readily grasped if the personality of the outstanding leaders and their general tendencies are fairly well comprehended.

Factions are often more readily understandable than parties themselves, as the lines of cleavage are sharper and more clearly defined. There is no mistaking the La Follette and anti-La Follette factions in Wisconsin, or the Johnson and anti-Johnson factions in California, or the Vare and anti-Vare groups in Pennsylvania, or wet and dry elements sometimes perpetuate themselves in local politics for years, as do radical and conservative factions in other localities. In short, anyone whose eyesight is sharp enough to tell one party from another ought to have less trouble in distinguishing one factional group in a party from another. It is necessary to observe, however, that while factional lines are distinct in particular battles, they are not as long-lived as parties nominally are. A prominent leader once said that the life of an organization is seven years; others say ten years; but in any case the duration of the faction is not likely to be much greater than ten and may indeed be much shorter. There are of course instances of factions following the same leader for twenty or more years, or dividing upon the same issue or interest for a like period of time. The elector must readjust his sights occasionally in passing upon party factional alignments.

A careful observer of primary struggles will take close account of the stakes of the battle. He will look to see what the prizes of war are, and what can be won or

lost in the engagement. It may be assumed that considerations of prestige and power are involved in all contests of this character. Many of the individuals engaged seek the satisfaction of no other desire, and all of them are affected by this drive of their nature. The struggle for the symbols of leadership and its actualities is not new, and the primary furnishes only an additional variation of an ancient theme.

The personal interests of a more material nature, the larger group interests, sometimes almost as large as the public, and the issues at stake—all these require some examination and rough measurement by the voter. The most material stakes may be patronage and graft, sometimes classed together under the head of spoils. It is always important to inquire what is the amount of patronage involved in the primary; what offices, elective and appointive, and at what salary or other compensation? What is the total pay-roll to be won or lost? A related question is, What is the size of the respective pay-rolls engaged on the different sides of the battle? Perhaps faction A has 200 men and a pay-roll of $400,000, as against faction B with a force of 300 men and a pay-roll of $600,000, as against faction C with a force of 400 men and no pay-roll at all. Any one of the numerous political experts can supply the elector with an approximate figure to meet this query, for the value of all "positions" and "perquisites" is as carefully calculated as the tonnage range and equipment of a modern navy. Other things being equal, the god of battle smiles upon the heaviest tonnage. But not always, for otherwise there would be no game or war.

Other stakes more difficult to calculate are the sums obtained through the process of graft in its various forms. Just what is the total of the Big Fix is not so easily determined. But many figures are fairly accessible and not at all hard to find, while others may be had by a little digging. Bootlegging, contracts, interest on public funds, various forms of "protection," loom largest and may be estimated very roughly even by amateurs with the help of some of the talent. Precision of accounting in this field is not necessary, and in fact is not encouraged by the producers.

It is not difficult to gain a fair idea of how these rewards are or would be distributed among factions and individuals engaged in the primary controversy. If they cannot be usefully estimated in terms of dollars and cents they may be roughly computed in more general terms, valuable for the purposes of analysis of the primary process. Thus a weak, colorless, or pliable candidate, supported and surrounded by gentlemen who are evidently in the Big Fix, may be judged accordingly, and adversely.[1]

If now we have an idea of the leading personalities and of the material interests immediately involved, it is important to inquire what material interests of groups are concerned. Spoils is of course a material interest itself, and a very material one, but is for the moment put to one side for the estimation of more generalized forms of advantage. The specific interest concerned may be

[1] An analysis of the spoils system is given in the writer's *American Party System*, chaps. iv–vii. Of course, new forms of spoils are constantly being developed.

that of a railroad seeking favorable relation with the government; or it may be that of the farmer striving for a better adjustment; or of labor struggling for better treatment; or the interest of a region or a section of the country or the state, county or city; or of an industry seeking protection through tariff or other device. The location of a courthouse or a county seat or a waterway or a good road or a canal may after all be the decisive factor in the campaign, to which all other questions may be in point of fact subordinate.

In a wide range of primaries, as in elections, there are no such questions clearly defined; but it is necessary to take a look in order to see whether they are operating in a given case. The central point of the campaign may actually be the traction company, or the railroad, or the farm or the union, or the east or the west, and then it is all-important.

Sometimes these interest problems may take the form of broader issues in which the interest is generalized and made to equal or approximate that of the public interest. Thus plutocracy, protection, prohibition, race, creed, may be the dominant problem in which decisive interest is fixed. The form of issue actually invoked may be either real or genuine, but this matters little as far as the actual forces engaged are concerned if the issue is effective. For what we are dealing with here is the ways and means by which men's votes are influenced, and these means may be rational or irrational.

In most primaries, as in most elections, there are few issues, but these few are likely to be important. Particularly in one-party jurisdictions the issue is vital,

for the decision reached will become the policy of the government unless the solidarity of party lines is broken. It must be presumed that the elector appreciates the fact that his fellow-electors have feelings as well as intellect, and that their political behavior must be considered from the irrational as well as the rational point of view. He must allow for the interplay of selfish interest and ideals, of narrow hate and broader philanthropy, of tradition and invention, of hope and fear. He must give due recognition to human pugnacity and ambition, to the struggle for recognition and prestige, to indifferentism and cynicism, to the alternate preoccupation with other than political affairs, and the intense and absorbing interest evoked by dramatic and vital political crises. The primary runs the gamut from political theory to crowd psychology.

What probably disturbs the elector most, in primaries as well as in elections, is the frequent failure of candidate and issue to coincide. The right candidate and the right side of the case do not always fit. The right candidate is on the wrong side of the case, and the wrong candidate is in the right. What is to be done? This is a puzzling question, and has given many a voter an anxious hour of indecision, regret, and reluctant choice. But in this respect the primary is a miniature of human life, which is full of many similar regrets and indecision and bitter choices. I know of no panacea for such cases. And if I did, I might throw it away.

If now the elector knows something of the leaders in the political dramatis personae, something of the candidates as well or the leading ones, something of the

stakes of the game, something of the interests and issues involved, he will be well on his way toward a fair appraisal of the situation and toward the formation of an intelligent judgment.

If he wishes to analyze more closely the factors in the case he may examine the various elements in the social composition of the various groups. He may look at the racial elements concerned. He may scrutinize the religious factors and forces. He may concern himself with the various class interests, labor, agriculture, business. He may take a glance at the regional or sectional aspects of the case, from the point of view of the geographer. And all these views will aid him in the formation of a clearer picture of the field, although it cannot be said that they are all indispensable.

If he wishes to pursue the study of primaries he may press farther on into the technique of campaigning and observe the methods of the combatants. He may go farther and busy himself with the interesting *Kriegspiel* (war game) played in every battle on the political field. He may observe the types of group and class appeals for support; he may note the forms of appeal to prejudices and hates, traditions and ideals. He may delve more deeply into campaign methods, into the holding of meetings, the use of "literature," the uses of advertising, the secrets of "organization," and the deeper mysteries of campaign financing. In short, the science of primary warfare may attract his attention, and he may go with it as far as his time and attention will permit. It is one of the most fascinating studies in the domain of human nature, and will both interest and amuse him progres-

sively as he advances in breadth and maturity of view and judgment.

The elector may wave a blanket ballot with names of candidates or of delegates and say, How can any busy citizen pass judgment on such an array of names and positions? What can we know of personalities, of candidates, of interests, of issues and situations? Most of the places are relatively unimportant, and should not be on the ballot. If they worry the elector, he can concentrate his attention on the important positions. The task of appraising them is no more difficult than the same task in a club, an association, a union, or other group of which one is a responsible member. If you cannot choose, you can always lean upon a sponsor; and there are plenty of them in a primary, as there are in all other groups of which the citizen is a member. Those who wish to abdicate the privileges and responsibilities of responsible citizens can of course have no complaint regarding the action of those who do not abdicate but take the reins of authority.

There are many guides in every community, and no inquiring elector fails to have fairly adequate information regarding the things necessary to know. There are newspapers, and citizens' leagues, and group journals, and trusted leaders in every group, political leaders and non-political leaders. Every elector is acquainted with key men in his range of social contacts, and to assert that he cannot acquire adequate information for rough judgment is to fly in the face of the facts. The chief difficulty often lies with those who will neither lead nor follow, who will neither accept the judgment of anyone

else, nor form a judgment of their own, who murmur and complain, but never develop a drive that leads to any affirmative political action. Of such is not the kingdom of politics, and they do not belong.

The long jungle ballot brings woe to the voter, and we cannot promise him real relief, until he is willing to simplify his own task. The suggestions offered above are palliatives only, and they cannot cure the fundamental evils of the long ballot and inadequate political education.

CHAPTER IX

THE PRACTICAL WORKING OF THE PRIMARY

An examination of the practical workings of the primary system during the last twenty years reveals the fact that many of the predictions made by the friends and the foes of the direct primary have not been realized, and that many tendencies unforeseen either by friend or foe have appeared.

Those who opposed direct nominations predicted with some confidence that the new system would favor the urban at the expense of the rural district, because it would be easier for the city population to vote than for those in the country, particularly at times when the weather was adverse. Consequently they warned the farmer that he was losing his hold upon political power, and depicted dire consequences in case the new plan went into effect. The result predicted did not appear, however, and there is no reason to conclude that the rural districts are weaker under one system than under the other. This has been clearly demonstrated by Hormell in his Maine study,[1] and is confirmed by observations in other states.

Again, it was urged that the direct nomination sys-

[1] O. C. Hormell, "The Direct Primary with Special Reference to the State of Maine," *Bowdoin College Bulletin No. 13* (December, 1922); "The Direct Primary Law in Maine and How It Has Worked," *A.A.A.*, CVI (March, 1923), 128.

tem would result in complete newspaper domination of the party choices. Much was made of the fear that newspaper publicity and newspaper preferences and recommendations would prove decisive in primary contests. It was even alleged that the newspapers would become the dictators of nominations in both parties, and that an irresponsible journalistic oligarchy would be substituted for the open rule of the convention. While it is true that the press is highly influential in the making of nominations, the fear of newspaper domination proved to be a bugbear. In the larger cities the newspapers struggle hard to hold their own in primaries, and not infrequently are as much interested in picking winners as they are in making them. In the smaller cities and in the rural districts the newspaper recommendations have no degree of finality, because of the facility with which candidates may make personal contacts with the voters. Undoubtedly the influence of the press is very strong, either in the making of direct or of indirect nominations, but it cannot be said that the anticipated rule of newspaperdom has developed as was predicted.

Those who opposed the direct primary sometimes predicted that the proposed system would result in the destruction of party organization, or sometimes there were dismal forebodings that the party system itself could not survive the primary plan. Possibly these very predictions induced some persons, for opposite reasons, of course, to vote for the adoption of the new plan. Obviously these prophecies have not been fulfilled. Both the Republican and the Democratic parties still contrive to maintain a party organization which cannot

fairly be characterized as anemic. The two parties still survive and perform their functions even under the direct primary. Both great national parties have won notable victories during this period. There are many states in which there has been only one active party, but the number of these has neither been increased nor diminished by the new nominating plan.

It was further predicted that the direct primary would bring out a very large number of candidates for offices, and that in consequence candidates would be nominated with a very small percentage of the party vote, and without as wide support as is desirable for a party nominee. It was urged that nominees having only 30 per cent or 20 per cent or possibly 10 per cent of the party strength would be inferior to those selected by the majority of a delegate convention. It is true that in some instances candidates have been named by a very low percentage of the party vote, but these have been the exception rather than the rule. In many cases there has been but one candidate, an outcome found in a surprisingly large number of cases. In many elections there are only two candidates, and in most instances it may be said that even where there are a number, the bulk of the vote centers upon two candidates, owing to the psychology of the American voter who fears to throw his vote away, as he says, even upon a superior candidate. A considerable number of cases may be accumulated in which candidates have been selected in a field of five or six with a small vote relatively. But on the whole, notwithstanding their absolute number, these must be regarded as exceptional rather than typical. In some in-

stances there has been division of the vote in a field of three candidates where it seemed that the convention might have produced an agreement between two of the groups as against the winning third. But these are rare, and especially rare in elections where a significant issue or personality is involved. On the whole, the fear of a flood of candidates has been proved to be without foundation in actual practice.

On the other hand, some of the glowing prophecies of the advocates of the direct primary have faded in the light of experience. For example, it does not appear that the "bad" candidates automatically slink away and the "good" remain triumphant in all cases. Judged by any standard upon which reasonable men might agree, some very "bad" candidates have been selected in direct primaries and some very excellent ones have been defeated. In certain wards of the cities and in certain other strongholds of the rural Robin Hoods, the Bath House Johns and the Honest Johns have pursued the even tenor of their way undisturbed by such details as the shift in the form of nomination. On the other hand, there have been many disappointments in the defeat of conspicuously desirable candidates by rogues and demagogues as the result of the party balloting. Which way the balance inclines, on the whole, will be considered in later paragraphs.

Proponents of the new primary plan sometimes held out the hope that the new system would destroy the power of the boss and the machine. Some went so far in their enthusiasm as to declare that these results would inevitably and naturally follow. They and those who

took them seriously were doomed to disillusionment by the pitiless course of political events. The machine and the boss supported by the array of graft and spoils still stand in many conspicuous places, notwithstanding the change in the system of nominations. Large-sized and small-sized rings of Republican and Democratic complexion are not difficult to find. Whether the power of the boss and the machine has been checked or compelled to exercise greater discretion, or on the whole tends to decline, or, if so, to what causes this may be properly attributed, is another question, later to be discussed. But if we are considering for the moment the prediction that boss and machine would automatically disappear with the advent of the primary, it is perfectly clear that this was not the case. Many of our cities have abandoned both the convention and the primary system for the non-partisan ballot or the non-partisan primary, or double election system; and these need not be reckoned in. But in counties and states where the direct primary operates one has only to look around him to see the evidences of the survival of conspicuous types of the old régime, ranging from the more prudent spoilsman to the highwayman who does not even trouble to put on a mask.

It appears, then, that the exaggerated predictions regarding the workings of the direct nominating system, both by friends and foes, were not fulfilled in practice, although some of them linger in the minds of those who place loyalty to a plan above loyalty to a fact.[1]

[1] In the previous edition of this volume (1909) I said: "Some bosses are wondering why they feared the law; and some reformers are wondering why they favored it" (p. 132).

Unforeseen tendencies.—It may now be useful to examine some of the unforeseen tendencies related to the primary system, escaping the calculations of both sides at the time the primary system came into general use. Among these developments are the following: the preprimary slate, the preprimary convention, the nonpartisan primary, woman's suffrage.

Neither those who were for nor those who were against the direct primary anticipated the development of the preprimary "slate." That party managers or others would meet in advance of the primary and agree upon a list or slate of candidates, and that such lists might then be uniformly adopted by the party voters, was not generally expected, either by the bosses themselves or by their opponents. The new system had not long been in use, however, before this practice in various forms began to appear and in some units to come into general use. In places where the party organization was very strongly intrenched these slates might become in effect the nominations, if they were almost certain to be ratified by the voters; and in this case the imporant thing became the position upon the slate. In other cases rival slates might be made up by rival organizations, and the result determined by the party voters at the polls. In a very considerable number of areas, however, slates either are not made at all or are unpopular and likely to bring about the defeat of those who are found upon them. This is more likely to be true in certain country districts where a free primary is preferred to a predetermined result in which the ring or bosses have combined on a certain slate. This interesting situation was

not predicted by either side of the controversy, and apparently was not foreseen by them as a possibility.[1]

Hughes, however, while governor of New York, observed this tendency and recommended legislation authorizing formal nominations to be made by the managing committee of the party, subject to later consideration by the party voters in a direct primary.[2] His recommendation was not accepted by the Legislature, nor has it been adopted by any state, although a frequent subject of discussion.[3]

Instead there has been organized in certain cases a so-called party "convention," prior to the primary, as in Chicago in 1926.[4] This was, however, in reality a ratification of the previous action of the party managing committee rather than a genuine convention for actual choice of candidates. The real purpose was that of making an impressive demonstration of factional strength, useful for the initiation of the primary campaign.

In some cases, however, there has been found the development of a genuine preprimary convention. The most notable instance of this is seen in Colorado, where a representative convention precedes the party primary and presents a list of recommended candidates. Other

[1] See Schuyler Wallace, in *Annals* (March, 1923), on "The Preprimary Convention."

[2] See Message to the Legislature in *Public Papers of Governor Hughes* (1910), p. 94.

[3] The National Municipal League's Committee on Election Reform indorsed a modification of this method in 1921. See *National Municipal Review* (1921), 603–16.

[4] See Wooddy, *The Chicago Primary of 1926*, chap. ii, "Making Up the Slates."

candidates may appear upon the party ballot by petition, and also candidates receiving 20 per cent of the convention vote without the requirement of a popular petition. The candidates presented by the convention are likely to be ratified by the party voters, but this does not always occur; and the convention conclusion has in many cases been overruled by the voters when finally submitted to their decision at the polls.

An interesting variation of this plan is found in the Richards law of South Dakota, which provides for a preprimary convention of proposal-men. This preprimary body recommends candidates for the coming primary, and also suggests planks for the party platform.[1] Without further discussion of the details of these interesting plans, it is sufficient for this immediate purpose to cite them as striking examples of a primary tendency unanticipated in the discussion of nominating methods either by those who clung to the convention or by those who trusted the direct primary. Neither foresaw these possible variations from the previous line of development.

Non-partisan primary.—An unanticipated development in the last twenty years is the spread of the non-partisan ballot and the so-called non-partisan primary. In urban elections the national party system was never strong in the United States, and in the last twenty years has been still further weakened. An examination of the laws governing cities might lead one to the conclusion that party politics had almost been driven from urban elections. But in spite of non-partisan ballots the party

[1] See Berdahl, "The Operation of the Richards Primary," *A.A.A.*, CVI (March, 1923), 158.

survives. The significant point for this purpose is not the survival of the party in some instances, but its almost complete disappearance in some or severe restriction in others, and in the general tendency to disregard national party lines in city elections, whatever the form of the ballot.

The non-partisan ballot for city elections is a recognition of this fact, as is the separate date for the municipal election, now almost universally recognized as desirable. The non-partisan primary, which is in reality a double election system, is another recognition of the same general tendency at work throughout the urban areas of our country.

Here we have a new and competing form of primary or election, as it may be called, taking the place of the older convention system and of the direct primary as well. That neither the delegate convention nor the direct primary would be used in a great variety of important elections is an unforeseen tendency, not anticipated by many of those who discussed nominating systems twenty years ago. Yet the removal of this large area of political selection is a consideration of prime importance in any comprehensive discussion of the tendencies of nominating systems.

Of like significance, although developed upon a smaller scale, is the institution of proportional representation or preferential voting in American cities, in such outstanding cases as cities of the size of Cleveland and Cincinnati. This is another way out of the nominating dilemma, differing in principle from the convention system, the direct primary, or the non-partisan or double-

election systems. While the number of cities employing this system is small in the United States, and while there is acute discussion regarding the merits of the plan, for our immediate purposes it is significant that we have here another way out of the tangle. And in view of the widespread discussion and experiment with preferential voting and proportional representation (P.R.) all over the world, it cannot be ignored in any intelligent consideration of the present problem of party nominations. A partisan of P.R. would say that this is the way to avoid the pitfalls of all the older systems hitherto employed.[1]

Woman's suffrage.—An unexpected factor affecting the primary situation was the entrance of woman into the political field. Almost at one stroke the electorate was doubled and millions of women were added to the voting lists. This event has brought with it a number of new situations unanticipated by the early students of nominating systems or by the practical manipulators of political control. The size of the vote, the cost of campaigning, the mode of organization, and the methods of party propaganda are all involved in the readjustment to the new conditions. Not the least significant factor in the world is the wish of woman herself in regard to the form of nominations.

Potentially the vote was doubled with the appearance of woman's suffrage. But practically the voting habits of women had not been fully formed, and their vote still lags behind that of men in most units, although

[1] See Hoag and Hallet, *Proportional Representation* for full discussion of this point.

not in all. On the face of the figures it sometimes appears that the interest in primaries is declining because the percentage of primary votes to election votes is in many cases smaller; and likewise that the interest in voting itself, even in general elections, is diminishing. In reality the explanation is found in the fact that women have been unaccustomed to the ballot and many of them assume its responsibilities somewhat slowly, as was foreseen. The primary vote is now greater in numbers, but sometimes smaller in percentage than twenty years ago.

Further, the cost of campaigning was somewhat increased with the expansion of the electorate. Not all costs were doubled, but many were, and others were advanced materially, as in the case of special types of organization workers and propaganda adapted to the new conditions. Primaries as well as elections showed the influence of the newly enfranchised citizens. Just what percentage of increased expenditures should be allocated to womankind as distinguished from the development of the art of advertising and the rising prosperity of the period no one can say with any degree of confidence on the basis of figures now available.

Modes of campaigning also showed the effect of the new electorate, although not as much as had been anticipated by optimists and pessimists on both sides. The saloon went out as women came in, and thus it is not possible to trace its position in the new political world. Whether the new appeal has been more intelligent, or more moralistic, or more emotional would require more delicate scales for measurement than we now possess, although this is of course a legitimate and im-

portant subject of inquiry, open to anyone with curiosity and intelligence and leisure.

More readily susceptible to measurement is the place of woman in the convention and in the primary. The figures regarding male and female participation in delegate conventions are at hand in a number of cases, but not available of course in all. The figures showing woman's participation in primaries are not usually available, but may be found in a certain number of instances.[1] These figures show that a much larger percentage of women take part in primaries than in conventions. Just what the exact ratio is we do not know, but from facts at hand it would perhaps be fair to say that perhaps 40 per cent of the primary vote is cast by women, while the percentage of women in conventions is much smaller, perhaps 10 to 20 per cent. This fact of wider use of the primary by women has influenced many women to urge the retention of the primary until something better could be found. Women have found difficulty in entering the inner circle of political influence and power as distinguished from the outer circle of decorative and artistic effect. They have often been welcome on committees and in conspicuous positions for honorific reasons, but with the tacit understanding or expectation that they would not interfere with the conduct of affairs by others in a position of leadership.[2]

[1] Helen M. Rocca, in *Bulletin of National League of Women Voters*, 1927.

[2] The *Chicago Tribune* once said: "'On the platform sits a lovely lady,'" writes Madame X from New York, "'dressed in accordion plaited white crêpe de chine and a close fitting little felt hat, wearing big hoop earrings and holding two formidably large bouquets of pink roses.'

"This adds a note of charm to democratic politics. We like to think of

The primary seems to offer a wider field of activity and effectiveness for women than does the convention with its combinations, intrigues, and stampedes. Groups of women may support or oppose types of nominations in primaries or present lists of their own if none are found to be acceptable. And even if not highly organized, the individual votes of women may be thrown in specific directions more effectively than in conventions as a rule. The margin here is not a very wide one, but is

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Andrew Jackson and pink roses, of Grover Cleveland and hoop carrings, of a little white felt hat and blown kisses and the bold blurbs of Pat Harrison. It will add sweetness to the program and grace and visual beauty to conventions that no radio can transmit.

"Campaign technique is changing. What the gentler arts of dancing, petting, kidding have done to Cicero and Shakespeare in the colleges is well known. What crêpe de chine will do to Patrick Henry or Al Smith can easily be guessed. 'A skin you love to touch' will compete with Mr. Bryan's 'Lips that touch liquor shall never touch mine,' as a party slogan. Parties, like art and learning, will be directed gently but firmly from the street corner and arena to the parlor.

"Resistance is useless, for the rosebud revolution in party methods is upon us. When canned beans came, and the vacuum cleaner, women entered factories and colleges, offices and politics. Home once was the inclosure for all things feminine. But machinery has come, and with it industrial concentration. It took work from the home. And women, armed with a new leisure, have followed. To what result no man dares predict.

"In politics a lively amateurishness may well replace the grim professionalism of the men. For woman's stakes in politics rarely will be bread and butter or the raw lust of power. She will play the game of politics while she enjoys it. And men will find it to their interest to make it enjoyable. She will change her vote with frank frailty when she wants to. As a four-flusher she will not succeed, for it is not in her. But she will be easily bluffed.

"For all that, it is doubtful if her faults in politics can be greater than her brother's. It will be hard, no doubt, to accommodate a hard-sounding, tobacco-chewing party to crêpe de chine. She must step lightly. But it will be less hard for ordinary party males after they catch a glimpse of her."

real if narrow, and the margin is in favor of the direct vote rather than the indirect choice.

No one foresaw the modern development of the art of political advertising and publicity, in the form they now tend to take, either as applied to the convention or to the direct primary. Those who have attended recent national conventions have witnessed remarkable developments of the art of organized enthusiasm, reinforced by all the aids of modern organization and science, while those who observe primary campaigns are struck by the wide development of the arts of modern advertising in the press, in prints, posters, campaign meetings, and in bizarre methods of campaigning. Those who wish to criticize the convention point with horror to the employment of artificial noise-makers as evidences of popular enthusiasm and stimulators of calm deliberation from which statesmanship theoretically ensues. Those to whom the primary is anathema find in modern campaign advertising a frightful warning against the impending dangers of mob hysteria.

The fact is that the whole art of publicity and advertising has advanced with tremendous strides during the last twenty years. Modern business has stimulated the art of advertising to a very high pitch, and the art of salesmanship has been the subject of the most minute study and the most exhaustive experiment. This is particularly true of the American type of salesmanship, in some ways unique in modern business. Psychology and mechanics have been mustered into service, often with most interesting results.

Likewise in political campaigns dealing with great

masses of consumers, or, as we call them in this case, voters, use has likewise been made of this new technique, with results that are revolutionizing many of the older aspects of what we choose to call politics. This is true whether we think of the "informal spokesman" of the White House or the summer residence in the Black Hills, or, on a lower scale, of the mayor of a great city who sings himself into office, or the alderman who entertains his audiences by giving an exhibition of the skilful use of Indian clubs or of sleight of hand with a pack of cards, the candidate who carries on his campaign in aeroplane flights or writes his name in smoke upon the sky, so that he who reads may run.

The political manager who will not deign to advertise is likely, in short, to find himself in the same position as the business manager who will not stoop to advertise. They must both meet the conditions imposed upon them by the conditions of modern publicity as it has been developed and applied both in business and politics. The dramatic has always been a powerful factor in the development of political leadership, but in later times this has been supplemented by the demand for organized dramatics, and inevitably this has led in a certain number of instances to crude and artificial dramatics.

The purpose of the preceding paragraph, however, is not the study of advertising, but to direct attention to the new conditions under which modern nominations are made, whether in convention or in the choice of delegates for a convention or in the direct selection of candidates for the party. For in the analysis of these changing conditions will be found a clearer understanding of

what is going on in the present-day party and political world.

It is evident that the unforeseen results of the primary were in many respects more important than those that were seen. The development of the preprimary slate and the preprimary convention, the growth of the non-partisan primary and other special forms of proportional and preferential voting, the emancipation of womankind, the development in the arts of publicity and propaganda; all these situations fundamentally affected the method of conducting contests for party nominations. In addition to these factors we cannot leave out of the reckoning the unprecedented period of prosperity closely coinciding with the period of widest use of the direct primary (although not caused by the change in primary methods)—a type of prosperity which has upset many established ways of life and introduced significant changes in many walks of men.

Broad questions regarding workings of primary system. —The direct primary has been in operation in a number of states for some twenty years, and it now is possible to consider seriously some of the fundamental questions that are commonly raised regarding significant features of the system. It is unfortunate that the whole field of primary operation has not been thoroughly canvassed by competent and impartial students of the subject, but in the absence of such an inquiry there is a considerable mass of material which may be employed as a basis for judgment. In New Jersey, Maine, Wisconsin, California, Illinois, careful studies have been made by trained

observers, and these are available for examination.[1] In addition to this, important observations have been made by others on a less pretentious scale.[2] Expressions of opinion and judgment based on a wide observation and study of the subject are also available. Among the more important of these are the opinions of Ray, Sait, Munro, Holcomb, Brooks, Hall.[3] A useful symposium on the entire subject is reported in the *Annals of the American Academy for Political and Social Science* for March, 1923, and another in the *Congressional Digest* for October, 1926.

The writer has repeatedly urged the great importance of a thoroughgoing inquiry into the whole subject of nominating methods, but thus far the requisite means have not been forthcoming for this important purpose. It is to be hoped that in the near future it may be found possible to undertake and carry through the type of basic inquiry upon which might be based a revision of our whole nominating policy and electoral mechanism as well. In the meantime we must content ourselves with such data as are at hand, interpreting them as carefully as possible and fully conscious of their serious limitations.

[1] See Boots, *The Direct Primary in New Jersey;* Hormell, "The Direct Primary Law in Maine and How It Has Worked," *op. cit.;* Norton, *The Direct Primary in California;* Wooddy, *The Chicago Primary of 1926;* Schumacher, *The Direct Primary in Wisconsin.*

[2] See *A.A.A.* (March, 1923) and Appendix B.

[3] P. O. Ray, *Political Parties and Practical Politics;* E. M. Sait, *American Parties and Elections;* W. B. Munro, *The Government of the United States;* A. N. Holcombe, *State Government in the United States;* R. C. Brooks, *Political Parties and Electoral Problems;* A. B. Hall, *Popular Government.*

There has been wide division of opinion regarding the merits of primary laws. On the one hand men of the type of Taft[1] and Dawes[2] have criticized the system, while on the other hand Hughes,[3] Borah, Smith,[4] Pinchot, and others have come to its defense. The National Association of Manufacturers[5] has condemned the direct primary, while the American Federation of Labor,[6] the League of Women Voters,[7] and the Anti-Saloon League have arrayed themselves in its favor.

Certain questions are commonly raised in regard to the actual working of the primaries, and to these we may now turn. One of the first of these queries is: Are better

[1] W. H. Taft, *Popular Government*, pp. 96–121.

[2] Charles G. Dawes, "Need of Reforming the Primaries," *N.A.R.*, CCXXIV (1927), 193–99.

[3] See *National Municipal Review*, X (January, 1921), 23.

[4] See *Message of Governor Smith* (1923–28): "It is a fundamental policy with which no one can quarrel, unless he is prepared to make the charge that the people who elect are incapable of nominating" (1925), pp. 11–12.

[5] "In my opinion, it all goes back to the unhappy day when the direct primary became a tragic fact. . . . . It has caused a pronounced process of degeneration in the type of men attracted to the public service. It has diminished the number of those who know the right and have courage to follow its course, regardless of the cost to themselves. By means of the direct primary and other devices it has almost transformed the legislative department of our government into a mere sounding-board to catch and throw back the babble of the voices of the mob. If it can now emasculate the judiciary by the injection of a spurious democracy, the last citadel of our liberties will be reduced to smoking ruins, and the way will be prepared for the triumphal entry of the Soviet King just waiting outside the gates" ("Presidential Address," *N.A.M.*, Annual Report, November, 1924).

[6] See John P. Frey, *American Federationist* (1927), pp. 34–281. Indorsed since 1907.

[7] See publications, *passim*.

candidates chosen under the direct primary than under the old system? While many dogmatic answers are made to one effect or another, the replies and the data upon which they rest must leave the observer in doubt. And that for several excellent reasons. In the first place there is no agreement upon what is meant by a "better" candidate. One means a candidate "better" or more competent intellectually; another, a candidate "better" morally; another, a candidate more representative of the boss; another, a candidate less or more representative of special interests; another, a candidate more likely to insure party success; and so on through a long list of possible categories of goodness or badness. Possibly an agreement might be reached which eliminated many of the difficulties, but this must first be attained, and then the collection of the data, a slow and expensive process, must follow. Perhaps there would be wide variations in intelligent judgment even then. Another difficulty is that of ascertaining whether, in case of a specifically better or worse candidate or a series of them, the result is properly attributable to the primary or to some other more fundamental economic or political factor at work in changing the situation. Obviously this underlies all other judgments on the workings of the primary[1] system.

It is easy to make out a shocking list of undeniably "bad" candidates, and a list of undeniably "good" ones, both chosen under the direct primary. It would also be possible to make out a similar list for the convention system. Anyone who wishes to content himself with

[1] Schumacher and Norton (*op. cit.*) have worked with tests of age, education, and experience of candidates, with interesting but not conclusive results.

such a list supporting his prejudice in favor of one or the other of the systems is of course welcome to do so, but he cannot expect his list to be accepted by impartial observers and students.[1]

It is sometimes contended, however, that the direct primary in some way favors the demagogic type of candidate, and that the solid and respectable citizen is kept out of the contest, or that he fares badly; that a premium is placed on the lower-level type of candidature. It is easy to name plenty of demagogues and shallow pates who have been named in the primaries. Their name is legion and their tribe is pernicious. But if one traces the history of party nomination through the urban industrial period and the period of rural decay since the Civil War he will find abundant illustrations of the choice of the identical type under the convention system. The same argument could be made against the convention when it took the place of the caucus. Our forefathers were not all saints; in fact, few of them have been politically canonized.

The charge is made all over the Western world that the character of elective representatives is declining, not alone in America, but in England, in Germany, in Italy, where fascism proclaims the impossibility of the elective democratic system. In America also the fabulous opportunities for success in the business world, and the swift development of professional opportunities, have set up a severe competition with the political world for men of

[1] An interesting example of an earnest effort to obtain the answer to this question is found in the study made by the Commonwealth Club of San Francisco, but the results are not reassuring to anyone. See *Transactions of the Commonwealth Club of California*, XIX, No. 10 (December, 1924), 553.

competence, particularly in a period of unparalleled prosperity. These factors and our failure to build up public administration as a career may have far more to do with the character of personnel in public life than the type of nominating methods employed in the several election areas.

It is perhaps true that there are modest and diffident men of ability who could not hope for success in a direct primary, but anyone who supposes that conventions spend their time in eager searching for such rare and shrinking violets has yet to be sophisticated in the doings of the deliberators. And if such a man is nominated, how can he be elected with these same qualities which have disqualified him for the primary? Obviously in a popular system we cannot so organize the electoral machinery as to offset the handicap of those aspirants who do not possess the requisite traits of democratic leadership. If the office really seeks the man, as sometimes does and should happen, it is quite possible that he may have no opposition in the primary, or an opposition of a perfunctory nature only. I have known a number of such cases, and in fact went through the process myself on one occasion—but only once.

Again, it is sometimes alleged that in the direct primary candidates are named of a type so unworthy that no convention would dare to present them, or, in another form, that the boss or the machine takes refuge behind the "people" and obtains candidates otherwise impossible. It is entirely possible to produce a list of very "wicked" men selected by the voters directly in primaries—men of ignorance, inexperience, and even criminal

records. But this list could readily be matched by a similar array of unworthies chosen by conventions in the same or other areas. Thus, the first ward of Chicago selected the same type of men under the convention that it did in the direct primary, and for that matter under the non-partisan primary. The convention was unanimous and the primary found only one name on the ballot, and there was no need for a second election in the non-partisan primary. And this same situation may be duplicated in New York or Boston or Philadelphia and many other electoral areas. This is an argument to the forgetfulness of the voter.

Nor do the boss and the machine escape responsibility in the primaries any more than in the convention. If they put up a slate of candidates in the primary the elector may hold them responsible just as in the convention. In either case the machine or the ring may be voted up or down. The boss may feebly say that the convention was stampeded in favor of an undesirable candidate, or that the voters got away from him in the direct primary, but nobody will take him seriously in most cases. Boss X cannot carry through a primary slate in the dark, blaming someone else for it, any more than he can nominate a man in convention without disclosing his hand. If Boss X wins or loses in the primaries, everyone knows it, even the most naïve of political tyros.

It may be said, however, that the number of candidates to be chosen is frequently so large that intelligent selection is out of the question, and that discriminating votes are impossible. The same charge may be made re-

garding the election of delegates to conventions and of officials in regular elections. In both cases the answer is the shortening of the ballot to a point where finer discrimination becomes possible. Even in the selection of competing delegates to conventions a large number of choices must be made by the party voter, and he is not able to pass upon the qualifications of the delegates who are the prospective king-makers. Where there are delegates and alternates chosen to a county convention, and delegates and alternates to a state convention, and delegates and alternates to a district convention, and several sets of competing delegates and alternates, the voter may not invariably make a sound choice of delegates; for he may not know the capacity and tendencies of the competing list of delegates. He may abdicate his authority to the political "experts" in the minor offices, and they may proceed to the great game of swapping offices, in a friendly deal.

Generally speaking, the number of serious contenders for the more important offices is not so large that an intelligent choice cannot be made by any intelligent citizen willing to give even a modicum of attention to the electoral process. If we persist in electing coroners, or having coroners at all, in choosing surveyors, and clerks of the criminal court, I confess I do not think the direct primary will work well; nor will the convention system do any better. The jungle ballot will destroy any system of nomination that tries to overcome it. Those who are interested in clearing the jungle cannot waste too many shots on each other.

A serious and interesting question is raised by those

who believe that the direct primary tends to weaken the party system, or to destroy the party system or hinder its effective functioning.[1] In another form this assertion is that the direct primary tends to promote the *bloc* system in the United States. Now the significance and value of party leadership cannot be ignored, and most careful consideration must be given to any carefully supported reasoning tending to show that the direct nominating system weakens its functioning.

In just what ways and directions is it maintained that the party or the party's leadership is being undermined? And what is the proof of these challenges? The charge that the direct primary enabled La Follette to "destroy" the Democratic party in Wisconsin may not appeal to Democrats, but to orthodox organization Republicans this might well be an argument in its favor. Why not do the same thing in other states? Or why not with equal logic maintain that the convention system has made New York State Democratic under Smith? There are insurgents in Congress, and many of them come from states having the direct primary; but there have been insurgents of various types ever since Congress convened, and they have appeared under all systems: the direct primary, the delegate convention, and the old-time legislative caucus. The present sad condition of agricultural interests in the United States produces an agrarian *bloc*, as it has done before; just as a manufacturing situation produces a tariff *bloc*, or a southern situation produces a southern *bloc*. But none

[1] A. B. Hall, "The Direct Primary and Party Responsibility in Wisconsin," *A.A.A.*, CVI (March, 1923), 55.

of these have any relation to a specific type of nominating system; nor did they ever have. Nor can they have under our system of local elections, where the several districts choose their own men in congressional districts or in the state at large.

What is the situation in cities, in counties, and in states? The parties long ago abdicated responsible leadership of cities, and the non-partisan ballot and the non-partisan spirit and practice have become common in urban elections. This was not the result of the direct primary, but if so it would have been a good result which few would wish to change if they could, least of all the great party leaders of the type of Roosevelt and Wilson, by whom the parties swear.

Likewise in counties party government does not effectively function. The counties of the United States are the most backward element of its government, and they are not organized to encourage or permit responsible party government. They are the strongholds of the spoils system and of petty graft.[1] There is little party leadership in the counties for any nominating system to destroy, nor will there be until county government undergoes a complete reorganization.[1]

In the state government the organization for party leadership is very inadequate, although distinct improvements have been made in the last twenty years through the determined efforts of men of the type of Governor Lowden, Smith, and others. But on the whole as it has been repeatedly said, not alone by friends of any particular nominating system, the state is woefully

[1] See Gilbertson's *The County, the Dark Continent of American Politics.*

organized for leadership of any sort. Real directing power in the state must be exercised through informal channels. In most states the formal governing power is split up among the governor and a series of other elective and independent state officers, two houses of a state legislature, and the likewise unorganized officials of a considerable number of counties. Likewise the party leadership of a state is badly split up. Does it lie in the state central committee of the party, or in the governor, or in the Federal machine centering around the senator, or in some group of county bosses or rings, or does it perhaps lie in a state boss who dominates the whole situation?

It is evident to any observer that the political party is now, and has been for many years, badly organized on the side of responsible public leadership, and is in urgent need of rehabilitation in order to keep up with the progressive movement of responsible organization elsewhere. As an organization for the formulation and expression of public opinion, the party is hard pressed by many other competing groups whose efforts are potent in the making and enforcement of law, and which are sharply challenging party prestige and power. But this situation has existed for a long while. It was not caused by the advent of the direct primary, nor is it easy to see how the direct primary interferes with any legitimate function of responsible party leadership in any state.

Evidently the direct primary did not prevent the leadership of effective men where the conditions were ripe for advance of a significant type. It did not stand

in the way of the leadership of Johnson in California, or of Wilson in New Jersey, or of Lowden and Deneen in Illinois, of La Follette in Wisconsin, of Capper in Kansas, or Reed in Missouri, or Ritchie in Maryland, or of Cummins in Iowa. Just what or whose leadership is being frustrated by this special type of nominating system it is pertinent to inquire.

There is need for the development of more energetic and effective leadership in many of our states, but my observation is that the difficulty does not arise from any form of nomination. The prevalence of spoils politics and graft, the lack of state issues upon which general agreement can be secured, the form of the state government itself—these are situations unfavorable to the rise of vigorous leaders, and all of these are much more fundamental than the form of the primary.

In the national field the direct primary has never been applied in more than a tentative and partial form, and consequently it is difficult to draw any reliable conclusions from this field. The direct choice of members of the lower House and the Senate may, it is true, have influenced the national party, but it is difficult to see how they have materially changed the situation with respect to party leadership in either of the political parties.

Wilson was able to maintain the guidance of the Democratic party for eight years, using the direct primary where it was found in the several states and preserving in remarkable manner the unity and strength of the party as a national agent. The Republican plurality in 1920 was 7,004,847 and in 1924 was 6,988,473.[1]

[1] Statistics from *World Almanac* for 1925.

It has been found possible to preserve the strength of the Republican party under Presidents Harding and Coolidge. It would surely be reckless to say that the Republican party had disintegrated in the last ten years, for never before has its strength been greater than in this very period of the primary. In fact, one might even maintain that the primary system in question had brought about the greatest triumphs in the history of the Republican party. This would not be true; but neither is it true that Republican or Democratic leadership has declined because of it. There are factions in the Republican party now, and there are factions in the Democratic party. But when were there not? And how can it be otherwise under a two-party system which combines in two large groups various shades of opinion, reconciling them for the moment upon some question of principle or power? In the period from 1880 to 1900 there were factions in as great number as from 1900 to 1920. One has only to glance over the history of the individual states or of Congress to discover them: high tariff and low tariff in both parties, gold bugs and silverites in both parties, reflected in state and national government by men of widely differing opinions, returned, however, by the same party. The silver senators formed a distinct group which we should now call a *bloc* in Congress; likewise the tariff congressmen formed a *bloc* in Congress and in the national parties. In the nineties there were powerful groups of radicals in both parties. There were also powerful groups of reactionaries, for some reason seldom called *blocs*. In the period from 1870 to 1890 there were groups and *blocs* of still greater frequency and power which tore the parties asunder and

made united responsible party action very difficult from time to time.

The party leaders cannot discipline a recalcitrant congressman under the primary system, it is said. Nor can he be effectively disciplined under the convention system. Randall, of Pennsylvania, was a Democratic protectionist, but what could the Democracy do about it? Or if the good Democrat, Senator Gorman of Maryland, chose to defy President Cleveland on the issue of tariff reform, what could be done about it? If Senator Teller and the other senators from the silver states refused to go along with the Republican caucus, what could be done about it? A battle might be fought against the recalcitrant in the district or the state, but it might be won or lost, and if the local insurgent won he was still a Republican or a Democrat, as the case might be, notwithstanding the fiat of the national party. The party might if it chose exclude him from the party caucus, which they had not the courage to do, but they could not enjoin him from the use of the word Republican or Democrat in his local territory. Nor can they do so now.

In short, of all the arguments against the direct nominating system, the charge that it destroys or tends to destroy the party system and party responsibility is the least tenable, and least deserves to be taken conclusively by intelligent observers of American parties. It is not and cannot be supported by the history of American parties. It ignores the basic facts and situations underlying the party processes in this country, and their relation to governmental responsibility.[1]

[1] See my *American Party System* for fuller discussion of party responsibility.

One of the questions most frequently raised regarding the direct primary is whether it tends to weaken or strengthen the party machine and the party boss. Occasionally one encounters the assertion that the direct nominating system tends to strengthen the party machine, and that its managers prefer it to the older convention system. It is said that the primary makes it possible for the boss to name candidates he would not have dared to present to an old-time convention, because he is now relieved of the responsibility of choice. This argument must be taken, however, with several grains of strong salt. To show that the newcomers in the field of nominations are more malodorous than the old-timers would be an unlovely task, and in the end it would be difficult. It would be necessary for one to take so unsophisticated an attitude as to assume the angelic character of departed convention nominees, and set over the departed saints against the modern sons of darkness. This comparison I leave to those who are interested in the collection of such unprofitable statistics, pausing only to express my profound skepticism as to the value of the result.

That the party managers, as a whole, of the boss type prefer the direct primary is contrary to fact. Doubtless such men will be found, but in the main the organizations are better pleased with the delegate system than with the direct vote. They opposed the adoption of the direct system and they likely are to be found supporting efforts for its repeal whenever they are in a position to do so. They are not unanimous in this, but their preferences are readily learned in conversation and

in public record; and their choice is the older system. I am not referring now to all party leaders, but to those of them most closely identified with the machine side of party life. They are able to set up slates which in most cases are adopted by the voters, and they are able to deliver large blocks of votes to their favorite candidates, but they are not satisfied with these results. They prefer the more comfortable family party of the convention type, and they dislike the possibilities in the direct vote, which even when they control they fear. They do not now oppose the primary system with the blind terror which was at first characteristic of their frantic assaults upon it, for they have learned to tame and ride it; but they fear the runaway they can never quite foresee or anticipate, and which may prove disastrous to the best-laid plans of the organization.[1]

What can the voters do with the primary when they have it? This has never been more clearly stated than by Charles Evans Hughes, and I quote him here:

> It places a weapon in the hands of the party which they can use with effect in case of need. They are no longer helpless. This fact puts party leaders on their best behavior. It is a safeguard to the astute and unselfish leader who is endeavoring to maintain good standards in line with sound public sentiment. It favors a disposition not to create situations which are likely to challenge and test.
>
> The fact of this control gives to the voters a consciousness of power and responsibility. If things do not go right, they know the trouble lies with them. The importance of this should not be overlooked in any discussions of the apathy of the electorate.

The precise measurement of the facility with which resistance to the machine may be developed under one

[1] Beard, *History of American Civilization*, II, 556.

system or another would not be easy under any circumstances, and cannot be attempted here. Indeed, the complete record of victories and reverses would by no means tell the tale. Every wise manager avoids as much as possible open revolt, preferring to bend rather than run the risk of breaking, or to make concessions and recognitions rather than to arouse active and possibly awkward rivals. One of the marks of the adroit leader of the organization is a tendency which some call timidity, but which is in reality caution arising from long experience with the cost of political wars and the danger of political feuds. "Make peace with thine adversary quickly," is his motto in most cases. He reserves war for the extreme situations, which of course are inevitable, but which he does not welcome or seek. In general one may say that the greatest warriors do not hunt for war.

There are conspicuous examples of the successful overthrow of the old machine under the direct primary. Among the better known of these is the triumph of Johnson over the old oligarchy in California, of Cummins over the organization in Iowa, and, in the later period, of Brookhart over the Iowa machine which now defended Cummins himself; of Beveridge over the Indiana combine; of Pinchot over the presumably impregnable machine of the keystone state; of Howell over the Republican organization of Nebraska. Undoubtedly the most conspicuous of all cases was the triumph of Roosevelt over Taft in most of the states where the direct vote was allowed. In 1920 Lowden, Johnson, and Wood all made remarkable advances against the organization where there was an opportunity to get away from the dele-

gate convention and make a direct appeal to the party voters.

It should of course be borne in mind that in many sections of the country no highly developed machine controls or attempts to control all the nominations; but they are held as free primaries without official or semi-official indorsement of a formal slate of candidates. This is notably true in many of the county elections and in a large number of cities.

The urban machine is rapidly losing much of its authority, especially in the smaller and medium-sized cities. The separate date of city elections, the rise of the independent spirit, the weakening of the spoilsmen, the rise of public administration on a technical basis, the appearance of the city manager—all these factors tend to reduce the power of the local city organization and make it a less formidable factor than ever before. These tendencies have been especially noted by two observers of great competence, Dr. Joseph Harris, in his recent field study of party registration systems in the United States, and Dr. Leonard D. White, in his study *The City Manager*. It cannot be doubted that a great transformation is slowly going on in American public life, and that the resisting power of the organization is slowly being undermined. At the very moment when the machine seems most securely intrenched and its authority most nearly absolute, the revolution may come, as in Cincinnati or in Indianapolis in most recent times. Where and to the extent that this is true the primary affords an avenue of advantage for the community able to employ it.

The reason why opposition is more easily organized

under the direct system lies in the nature of primary warfare. In the first place public sentiment is usually slow in awaking to a political situation. Not until long after the machine has laid its plans does the unprofessional public begin to realize what is happening and begin its slow and delayed action. Often the opposition does not really crystallize until the last week or two of a campaign.

Under the delegate system, in order to insure success in a convention, delegates and alternates must be selected in every district, or in most of them, and this must be done long before polling day. These delegates and alternates must be just the right type of men in each particular locality, and the strategics of this selection is better understood by the local organization representative than by his amateur opponent, as a rule. Furthermore, the local machine representative insists that he must be elected as one of the delegates, and that unless this is done he will lose his political position—which is probably true. He may make what is termed a "bread and butter" argument, asking support for his job in effect. The antimachine forces are slower to act, and in fact may be too late to file delegate lists with alternates. They are not so skillful in selecting just the right men for each locality with reference to all the interests involved. They may find some of the men they count upon already selected as delegates by the opposition.

Furthermore, delegate lists in a county or statewide campaign must be filed in a wide variety of districts. In a city like Chicago it would be necessary to set up delegates and alternates in some 600 districts if the convention is to be captured. But the protest movement is often too slow or too ill-organized for this, and in

many places there will be no lists at all, or very hastily selected and inadequate ones.

When the candidates are chosen directly, the necessity for the delegate technique disappears, and votes cast in any polling place are counted for the candidates in the whole unit of nomination. The candidates are not the local man defending his job, and a few carefully selected local types, but the candidates are the aspirants for the several offices concerned, as governor, congressman, or whatever may be at stake at the given primary. Often the precinct managers are kept busy electing themselves as committeemen, and devote relatively little attention to the rest of the ticket. It happens from time to time in such a movement that districts, wards, and counties are carried where it would have been utterly impossible to muster delegate lists. I have known of cases where wards were carried in which it had not been possible to find anyone to preside over a primary meeting. Yet as the momentum of the movement swept along, the vote on primary day indicated quite a different situation.

Naturally there is no certainty that a corrupt or unrepresentative organization will be overthrown by any such method as here described, but the question for the moment is whether the chances are greater under the direct than under the indirect system? Upon this specific point it seems to me that the answer is favorable to the type of protest that may be organized under a system where the vote is upon candidates rather than upon sets of delegates. Practical politicians also realize this, and understand very well the possibilities of revolt under the direct primary when they say it is not so easily handled or managed.

Furthermore, the delegate convention system is a game in which only the recognized holders of blocks of delegates sit. The outsider who does not sympathize with the methods of the regular organization and may have criticized or antagonized them cannot readily get a start. He must have a majority of the convention delegates, which obviously he may not get. If not, he must fall back upon pleading with, or argument with, or intimidation of, those who do have the control of the delegates in question. If he has not made, or cannot make, his peace with them, his chances are small indeed. Possibly the pressure of public sentiment may induce the convention unwillingly to name a candidate they do not wish to have; and at times this has occurred, but not frequently. The primary enables the outsider to sit into the game, or at least at times he may sit in and become more effective. Nothing disturbs the profession like the possible rival, the unknown knight who may upset the best-laid plans, and in any case compels a modification of them. In our territory we had once a very flourishing ward club which met frequently and discussed all manner of public questions. It was discontinued because, as the local boss said, it was too much of "a nursery for statesmen, and I have too d—— many of them on my hands now." Every new figure becomes a potential menace, and it is better not to encourage them.

Most organizations are constantly endeavoring to recruit new members and new helpers, but the party does not proceed upon this basis. It tends toward monopoly and oligarchy, and toward the exclusion of new members who are actively engaged in "politics." Women often

imagine that they are being "kept out" of politics; but so are men, on the principle that the newcomer is a stranger whose behavior may not be anticipated. And if we are already in power what is to be gained by adding another member to our group? Such is the logic of a certain type of political manager—not always the highest, to be sure, and by no means universal, of course.

This is what some politicians have in mind when they charge that the direct primary tends to destroy the party organization or, in more excited moments, the party itself. They refer to the tendency to arouse new and wider political interest and activity, and sometimes victorious interest in those who have not hitherto been recognized as parts of the ruling group. They believe it makes insurgency easier. And probably it does. And perhaps this is a good thing, for the community as a whole.

On the whole the machine understands much better than in earlier years the methods of dealing with the direct primary, and have lost their panicky feeling regarding it; but the fact remains that they are still hostile to the system and that they find greater difficulty in manipulating it than the convention of delegates.

An organization resting upon sound principles and headed by strong leaders is usually able to maintain itself under the direct system, and prefers to make the appeal to the party voters rather than to the delegates directly. An organization founded upon types of action and men who instinctively shun publicity and prefer privacy will naturally find a wider and more comfortable range of action in dealing with a group of delegates as-

sembled for the purpose of making nominations, and dissolving, perhaps never to meet again.

It may be contended that there is more bitterness following a direct primary than in the case of a delegate convention, and that this bitterness is not assuaged by the reconciling ceremonies and compromises of the convention process. It may be urged, therefore, that there is a greater amount of factionalism under the direct than under the indirect system, or that this is the tendency. In support of this position many specific instances of feuds and factions following primaries may be adduced. However, it is also possible to prepare an imposing list of feuds and factions following convention struggles. The unfair seating and unseating of delegates, the prolonged deadlocks, the trading and bribery of delegates, the charges and counter-charges of sharp practice and trickery—these are a fertile source of long-standing grudges and civil wars within the party. The Republican National Convention of 1912 and the Democratic National Convention of 1924 are classic cases in the national field, and no state or county is without them in the local area.

An analysis of most instances will show that party quarrels are due either to personal rivalries and jealousies or more commonly to underlying social and economic conditions, rather than to the form of the nominating system. Sometimes these differences are patched up in a convention and sometimes they are precipitated there; or sometimes the compromises actually reached are not of any advantage to the public, as in patronage contests or straddlings of issues.

CHAPTER X

THE PRACTICAL WORKING OF THE PRIMARY—*Continued*

Expense.—The question has frequently been raised whether the expenditure of money in the direct primary is not necessarily greater than under the delegate system, and further, whether financial power cannot more readily control the nominating system under the direct than under the indirect system? Does the direct primary really lend itself to easier control by the very interests it was hoped to curb, namely, the combinations of bosses and special privilege interests? And if so, does it not really defeat its own purposes? This is an interesting field of inquiry, and it is regrettable that more adequate data are not available for conclusive study of the whole situation.[1]

At the outset it may be pointed out that (1) we have much more detailed information regarding the costs of primaries and elections than in previous periods when these matters were shrouded in impenetrable mystery; (2) unquestionably the art of public advertising has been greatly developed, and publicity drives are much more expensive than in earlier periods.

Various corrupt practices laws have been enacted in the states and others have been more effectively en-

[1] See on this subject J. K. Pollock, *Party Campaign Funds in Elections;* see also the congressional inquiries, notably the Clapp report and the Reed report.

forced than before. The federal corrupt practices act has gone into effect, and this has been the means of unearthing much valuable information regarding the workings of the electoral process. In earlier days no one took the trouble to find out how much was being expended, where the money came from, for what purposes it was expended, and what obligations, express or implicit, were incurred. While our knowledge of this field is still lamentably inadequate, we now have important sources of information of the utmost value. Who is putting up? has become a common inquiry in political battles, and while the answers are by no means complete or even reliable, the public is at least aware of the existence of the problem, and masses of facts are available for study. In earlier periods the most elementary figures were not available, nor did the electorate seem to display any real interest in the problem of campaign financing. It seemed to be assumed that this was the private affair of the candidate or his immediate backers, and too great curiosity in such cases was not approved. We have then much more light upon outlays under the direct primary than under the indirect.

The art of political advertising has developed very rapidly in recent times, following the general commercial development of organization and expenditure for advertising purposes. It is estimated by the Bureau of Advertising of the American Newspaper Publishers' Association that 3,500 national advertisers spent $235,000,000 for advertising in 1926.[1] Edward Bok estimated the total annual outlay for advertising at $1,284,000,-

[1] *Printers Ink*, March 17, 1927.

000.[1] Further details are given in Stuart Chase's interesting volume on *The Tragedy of Waste*. As a result,the expenses of campaigning, both in the election and the primary, have very greatly increased. Pollock indicates that campaign funds have increased about 65 per cent in twelve years, but points out also that prices have come up 63 per cent during the same period.[2] He concludes "that party expenditures are not too large, and are not out of proportion to the circumstances of the times." He further finds that "Party funds are not dangerously large, nor are they corrupting, and the best service will be performed by carefully watching the income and outgo without paying too much attention to the total sums raised."[3]

Compared with previous periods the costs of campaigning for nomination tend to rise rapidly. The spellbinder was the backbone of the early campaign, but now the costs for speakers are relatively low, while the expenditures for organization and advertising are very high. It is also to be observed that the number of voters to be reached has doubled with the grant of the suffrage to women. The cost of newspaper advertising has advanced, and the use of it has become more common. The cost of workers has increased with the general level of wages and salaries. The cost of meetings has also advanced with the general level of prices.

The new sources of information upon the costs of campaigning and the general increases of costs have combined to create the impression that the direct primary is

[1] *Atlantic Monthly*, October, 1923.

[2] *Op. cit.*, p. 174. [3] *Ibid.*, p. 178.

far more expensive than the older plan, with which comparison is difficult. Neither expenditures incurred in the election of delegates nor in the purchase of delegates when elected were commonly made public in the earlier period. These considerations must be preliminary to any consideration of the complex problem which we now approach more closely.

Two recent cases are commonly cited, that of the Pennsylvania primary of 1926 and the Illinois primary of the same year.[1] It may be noted in passing that in neither case did the largest amount win the election, and in both cases the truth came out, as it would not have in the case of a convention nomination. On the other hand, nominations are frequently made without appreciable expense in various jurisdictions. Thus, Senator Brookhart expended the sum of $453 in the 1922 primary battle in Iowa.

Hughes pointed out some years ago that if there is a real contest for the nomination the expense to the candidates who are campaigning will be about as great under the delegate system as under the direct vote.[2] For example, the spectacular battle between Deneen, Yates, Lowden, and Sherman for the Republican nomination for governorship of Illinois in the year 1904 was a desperate struggle for the capture of delegates to the state convention in the 101 counties of Illinois and the districts of Chicago. This was as expensive as a direct primary, and

[1] See the Reed inquiry, *op. cit.* In Pennsylvania $800,114 was spent on behalf of Vare and $1,804,979 for Pepper; in Illinois, $354,616.72 was spent by McKinley and $253,547 by Smith.

[2] *Nat. Mun. Rev.*, X (1920), 23.

in some cases more so, and was followed by a state convention lasting for weeks, to the very great expense of the delegates and to some extent of the candidates and their backers. The battle for delegates to national nominating conventions in cases where there is a heated struggle illustrates the same situation.[1]

The expense of maintaining an organization, the outlays for workers and for advertising are as great for selecting delegates as for selecting candidates. It is possible that the area of the conflict may be somewhat limited if certain districts are regarded as fixed in their affiliation, but in such case the expense in the contested districts may be all the greater. Of course, if there is no contest there will be no expense, whether the primary is direct or indirect. This may happen when there is no opposition to a candidate for renomination or for nomination, or in the convention system when all of the delegates are uninstructed. If it could be agreed that the delegates to the convention should have a free hand without any instructions from the party electorate, some money might be saved in campaigning costs; but the outcome would probably be much more expensive to the community. In any case this did not actually occur, and may therefore be dismissed from serious consideration. If there is a real contest for delegates, the expenditures will not be much different from those incurred under the present system.

Vote-buying is a phenomenon that may occur either in a direct primary or in a convention, and unfortunate-

[1] The Borah report on campaign expenses throws much light on this point.

ly is not unknown in practice in both cases. Delegates to convention have been bought, sold, and traded like cattle on numerous occasions under the most distressing circumstances. In other cases their expenses to conventions have been paid, and likewise their entertainment while in attendance. Voters are also bought and sold from time to time in direct primaries, and in the election of delegates to conventions. Sometimes voters are bought outright for a cash payment, and sometimes the transaction is disguised under the form of payment for workers who do no work, or at least none adequate to the compensation. There is ground for belief that the purchase of votes in elections is on the decline, but the practice is still widespread in elections and is found in primaries as well. The venality of delegate conventions like that of legislative bodies is still a matter of conjecture, with appalling disclosures from time to time regarding its existence. In the nature of the case it is more difficult to develop the evidence regarding the transactions with delegates, but there is enough testimony available to prevent whole-hearted acceptance of the doctrine of the immaculateness of the delegate in cases where the stakes are large and the temptations correspondingly great. The corruption of the party electorate is probably more difficult than the corruption of the delegates representing the electorate.

It does not seem to me that the expense involved in these undertakings is the decisive factor in determining the type of nominating system we should adopt. Some of the problems arising from this situation I shall deal with under another section of this volume in connection

with the democratic financing of campaigns and the regulation of receipts and expenditures. The more important question is, not whether the nominal expenditures are greater under one system or another, but whether plutocratic influences control one system more easily than another, and whether the rich man is given an undue advantage over the poor man in the primary contest. These are inquiries that go to the root of the whole case, particularly in view of the fact that one of the prime purposes of the adoption of the direct primary was the lessening of the power of the special industrial interest in alliance with the political boss.

There is little evidence to indicate, and none to demonstrate, that the use of wealth is more effective in direct primaries than in the election of delegates and the control of the convention. It cannot be forgotten that conventions have often been controlled by small groups of men, representing wealth and privilege, in times past. Railroads, mining interests, liquor interests, concerned in the passage of special laws or in their defeat have not been idle. The elaborate mechanism of delegates and conventions lends itself to management by intriguing and corrupt interests or individuals, and the revelations regarding their sordid machinations are a sad page in the history of American democracy. The old-time convention was by no means an assembly of high-minded and idealistic gentlemen calmly considering what were the soundest policies of state, and who were the wisest and most capable men to formulate and execute them. Not merely was bribery and corruption rampant in many cases, but the representatives of corrupting interests

were on the floor of the convention and sometimes presiding over its affairs. Fortunately this was not always the case, but there were altogether too many instances to make tenable the fiction of an uncontrolled body of representative Republicans or Democrats.

Whether, or if so in what ways, the power of these interests has been controlled by the direct primary is a question not easy to answer in view of the swift development of industrial America during the last few years. It was predicted before the general adoption of the direct vote, and is now sometimes charged, that the poor man is excluded automatically from the primary, or that he is placed under a very great handicap with relation to the man of wealth. In looking over lists of popularly nominated officials there is little to support this assertion. On the whole the official class is still recruited from those with relatively limited financial means, and on the whole the number of wealthy men in governing positions is still very small, and there seems to be no tendency for it to increase. In fact, a greater number of men of means in public life would in many ways be an aid to our political system, and some of those who have come into public life in recent years have been distinct additions to the personnel of government. Types of this kind are Pinchot, Lowden, Couzens, Cox. The number of wealthy men with sinister purposes who have won their way through primary elections is very small, so small indeed that no serious defense can be made of the assertion that only a rich man can compete in the direct primary. Of the 750,000 elective officials in the United States, only a handful have more than the most modest

competence, and our real problem is, not how to keep these men out of public affairs, but how to get more of them to assume direct responsibility instead of indirect, as at present.

There are few cases where candidates who possessed real ability and stood for some significant issue have not been able to find adequate financial support among those of common attitude. Men of the type of La Follette and Johnson have been able to finance their campaigns through a series of years without incurring undesirable obligations, and they are only typical on a larger scale of men in less conspicuous positions. The man of conspicuous wealth has in fact certain handicaps to carry. If he is known to be rich, he must foot his own bills, for few will help him; and he cannot economize effectively for fear that he may be looked upon as mean and stingy. In addition to this, he may be suspected of some ulterior purpose in seeking public office, in some way connected with the special form of wealth he holds. The poor man's campaign has also certain advantages in the possibility of economical operation and in popular drive and confidence. He cannot be charged with any alliance with special industrial interests, and his obvious lack of means may be accepted in many quarters as a passport of sincerity and democracy.

It would be unfortunate if either men of wealth or without wealth were automatically excluded from the nomination lists, and there is no evidence to show that this has happened. If anyone is excluded it is the man of wealth, not the man of moderate means. In this respect the primary stands in somewhat the same general po-

sition as the general election system itself in our democracy. The electoral machinery has not been found to be a means of excluding the poor and favoring the rich in our elections, local, state, and national, but on the contrary has tended to favor the man of middle class and smaller means. Presidents and governors are not as a rule rich men, nor do the rich make the best candidates commonly. Notable cases of men of wealth are found, but they are not frequent, and the doctrine of availability is against them in the selection of popular candidates.

The convention system.—The old convention system is now often gilded with a halo of sanctity, as if it were a deliberative assembly of the highest parliamentary type.[1] Contrasts are drawn between the modern direct primary in its worst form and the old convention in its best form, as if these contrasts were typical of what actually went on. That the old-time convention was a "deliberative" body, where truly representative elements

[1] In 1843 Governor Duncan of Illinois refused to accept a nomination offered by a Whig convention, expressing his violent opposition to the whole convention system, "This convention system, if adopted by both parties, will make our government a prize to be sought after by political gamblers. It throws the chains of slavery and degradation around its votaries, prostrates the fine feelings of nature, extinguishes every spark of patriotism, creates jealousies, distrusts, and angry divisions in society, and will ultimately make us an easy prey to some fiend, or despot, at the head of an army or church, whose followers, like themselves, love the spoils of power better than the liberty of their country. . . . .

"In fact, I look upon the convention system as designed by its authors to change the government from the free will of the people into the hands of designing politicians, and which must in a short time drive from public employment every honest man in the country. Is it not so to a great extent already?"

of the party came together and piously consulted for the common good, is a pleasant fiction not to be taken seriously by political realists. Conventions were usually or often opened with prayer, but often closed in anything but a pietistic spirit.

It is worth while to look again at some of the specific evils arising under the old convention plan, and at some of the difficulties encountered even in contemporary practices. Among the problems presented in the heyday of the convention period, even after there had been a considerable amount of legal regulation of the process, were the following:

1. Uncertainty in regard to the right of delegates to their seats in convention. In view of the difficulty in determining the title to contested seats, there were many cases where delegates were seated by outright fraud, trickery, and occasionally by violence. From time to time blocks of delegates holding the key to convention control were seated by the most dubious methods and decisions. In the Republican National Convention of 1912, the control of the convention and the nomination for the presidency were determined by what seemed to about half the convention at least arbitrary decisions of the presiding officer. In the Illinois Republican convention held in 1922 the seats of almost half of the delegates were contested and the decision rested in the hands of a hold-over state central committee. It is unnecessary to pile up an array of cases, although this could be done, but it is perhaps sufficient to direct attention to the very serious problems commonly arising under the system where the control of the delegates was at stake.

2. Disorder and tumult in conventions of 1,000 to 2,000 delegates, and accompanying stampedes, organized and unorganized.

3. The purchase and sale and trading of delegates, either for cash or for spoils of various types; the failure of delegates to respect instructions given by their constituents.

4. The frequent appearance of dummy candidates intended to hold the local delegation solely for trading purposes. For example, in a heated contest between A and B the local man, C, was presented for the purpose of giving the local leader something to trade with in the convention.

5. Usually the voter was limited to a set of delegates committed to one candidate, but uninstructed for others. Thus Brown County, with a local candidate for attorney-general, gives its vote and delegates to him, so that he may trade with these votes as he will. But upon the candidate for governor or other officers the voter has no real choice, except such as may appear from the deal or arrangement made with the candidate for attorney-general. The same situation was found in a county election. In any such case the party voter expresses a choice on only one office, and that not necessarily the most important.

In the discontent with the failure of the direct primary to effect a political millennium, the problems of the older system are naturally forgotten, especially as a new generation comes on the stage every few years. But a very little inquiry into the not very distant past will present a picture of convention experience which is not

encouraging to those who look upon a return to the old days as a source of help.

I recall my last local convention under the old "deliberative" régime. The delegates had been chosen on the day before, and as soon as the returns began to come in the bosses gathered and began to appraise their strength in terms of the new battle. All night long the leaders counting their blocks of delegates had been sitting in high conclave, dividing the places on the ticket, trading back and forth, combining and recombining, bluffing and finessing. There were so many commissioners here and so many there, a county office here and another there, the patronage value of each carefully calculated in the bargain, sub-jobs, arrangements, understandings in regard to a wide variety of perquisites and privileges, all nicely calculated in determining the equitable balance. Over all hung the shadow of possible war in the convention, possible combination for control between some two or more of the trading powers.

We assemble at high noon, a restless multitude of delegates; half-past twelve comes and nothing happens; one o'clock and we become impatient; but we are told that "They" have not arrived. "They" have not finished the slate. "They" will soon be here. "They" are coming and finally "They" arrive, and the convention solemnly opens. A motion is made here and there. A vote is called for and there is a murmur of voices. Many votes, for they must all be named by roll-call and the incantation continues. Another and another. Who was named then? And finally we hasten out, buying copies of an evening extra, and learn the names of the nominees.

The ritual is over. And this is sometimes called "deliberation."

Do not the bosses or the leaders do much the same thing now under the direct voting system? Yes, in a way, but after they have finished their work, the voters have an opportunity to pass upon it and ratify or reject it in whole or in part. If the organization has done the work well, the list may be ratified; or if there are two or more factions, they may each select their own list and enter the field of combat; or they may compromise their respective claims. But at least there is an opportunity to exercise some choice in the matter. The organization may be so powerful, for good or bad reasons, that it will ruthlessly bear down all opposition, but this will be done either in primary or convention if there is power enough to do it. A more recent case is especially interesting. Governor Small of Illinois had been charged with failure to account for interest on public funds while he was treasurer, and the supreme court of the state had held that he must make an accounting.[1] Judge Stone, one of the majority rendering the decision, was a candidate for re-election and was opposed by Governor Small. The nominations were made under the convention system.

The total number of delegates was 97, of which Stone on the face of the credentials had 59. Peoria County delegates (25 in number) were contested, however, and without these the convention stood Stone 34, anti-Stone 38. It was the plan of the anti-Stone forces to organize the convention, capture the credentials committee, and seat the 25 anti-Stone delegates from

[1] In the final settlement the Governor paid over $600,000.

Peoria County, thus giving them complete control over the convention.

The Stone forces decided not to submit. They issued "tickets" to the convention, and with the help of the friendly Peoria police controlled admission to the hall. What happened is described in the following paragraphs.

Peoria, Illinois, March 15.—Rapid-fire action, real machine-gun speed, today brought about the renomination of Justice Clyde E. Stone by the Fifth Supreme Court District Convention.

The Convention then adjourned, but the Small forces remained in their seats and made the gesture of nominating their own candidate, Speaker Robert Scholes.

Justice Stone's certificate of nomination is on file at Secretary of State L. L. Emmerson's office, having been rushed there this afternoon, and Col. A. E. Inglish, Small's son-in-law, who at the last moment appeared openly as commander-in-chief of the governor's outfit, said the Scholes certificate would be filed at the capitol the first thing tomorrow.

MUCH NOISE; NO VIOLENCE

The session or sessions in the ballroom of the Pere Marquette Hotel today had as many thrills as any similar gathering ever held in Illinois. There were threats to break down doors of the meeting place, there were indications that arms had been brought in; one improvised slingshot was taken away from a Small delegate. There was yelling and shouting galore; there was every indication of impending violence. But none occurred.

Those leaders who rallied to the defense of Justice Stone after Governor Small announced he would beat the man who voted against him in the $1,000,000 interest suit were forced to take the action they did today. Apparently they faced insurmountable obstacles in the convention arranged by political trickery, dependent on the Governor's power to deal out jobs, hard roads, and other compensation.

WHAT STONE MEN FOUND

At noon today they found this situation: Governor Small yesterday summoned to Springfield the chairmen of the county committees

he thought he controlled. The orders were to bring at least two men from each county, and the chairmen were to come if possible. At the same time Gus Johnson, of Paxton, chairman of the Republican state committee, was at the capitol.

There had been talk of making Johnson temporary chairman of the convention. At that time it was thought he was unprejudiced. But when he arrived here, it is said, he announced, before considering the merits of the case, that he would rule that the Stone delegates from Peoria could not vote at any time.

This was the nub of the whole situation. The Stone delegation from Peoria was elected by a regularly called and organized convention. They had the only credentials signed by a county chairman and secretary. And yet Johnson took the position, it was reported, that they had no standing in the convention.

STEAM ROLLER LOOMS

This would have left the Stone forces with only thirty-four votes —twenty-one from La Salle County and thirteen from Knox County. And the Small forces, having captured the rural counties by means of concrete road inducements, could muster a total of thirty-eight votes.

Had they submitted to this program they would have been steam-rolled flatter than any pancake that ever graced a breakfast table. Under the circumstances they determined they would not lie quiet with what they believed right on their side. It meant what politicians call strong-arm work, and such leaders as State Treasurer Kinney, former State Senator Essington, Omer N. Custer, of Galesburg, W. C. Jones, and Cecil C. McAvoy are not accustomed to using that sort of tactics.

CHECKMATE SMALL FORCES

Having heard that the Small forces were prepared to go to any length to get possession of the convention hall, that they had issued orders for their henchmen to be on hand and capture the chairs half an hour before the time for convening, the Stone forces rushed out tickets which were issued to the county chairman and to the press.

At least one of the Small chairmen, William R. Teece, of Bureau County, refused to accept his tickets. He insisted that the doors be

opened to all comers. He stood in a dangerous jam outside the doors and made his demand on the policemen stationed there.

The crush at this point was terrific. One report was that a door had been smashed down. That was untrue, but it was necessary for their safety to hustle away a number of women who had been caught in the jam.

And when the crowd was admitted to the ballroom, the La Salle and Knox County delegations and the regular delegation from Peoria County were in their seats. They totaled fifty-nine in a convention of ninety-seven delegates.

CUSTER HEADS CONVENTION

There was considerable confusion, but business started when former Senator Essington nominated former State Treasurer Custer for temporary chairman. His motion was seconded by W. C. Jones, of Streator. Essington put the motion. It was carried by acclamation and Custer literally leaped to the platform in a manner that would have done credit to a man several years his junior.

In spite of the disturbances the Stone organization put through a clear-cut record of business. Delegate Jones, with seconds from several, moved that the convention renominate Justice Stone. This was passed by a roll-call by counties.

CONVENTION ADJOURNED

Harry J. Cook, chairman of the La Salle county committee, moved that the convention adjourn. The La Salle and Knox delegates and the regular delegation from Peoria county walked out of the room.

In the meantime the Small delegates were milling around on the ballroom floor. After numerous conferences they determined to proceed with the irregular Peoria delegation seated and voting. As a matter of fact this group climaxed the operations by voting to seat itself after the credentials committee had gone through a lot of motions calling for an investigation of the supposed contest.

Later the Small convention accepted its credentials committee's report with open arms. Its main point was the seating of the contesting Peoria delegation, and on that point the contesting Peoria

delegation cast its twenty-five votes. And without those votes there would have been only thirty-eight for the report, less than the necessary majority, as the total convention vote is ninety-seven.

But if the local police had been otherwise inclined, the outcome might have been different.

In the national conventions the deliberative process is made extremely difficult by reason of the size of the convention, which now numbers over a thousand delegates with as many alternates, and a great concourse of spectators numbering from 10,000 to 15,000 in number.

The demonstration in the Democratic Convention of 1924 indicated the high-water mark thus far attained in organized non-deliberative action. It is described as follows:

> They raised the roof, bulged the sides, depressed the floor, and shook the rafters of the Garden with every sort of noise, from the soprano squeak of some golden-haired tots, especially placed to attract attention, to the bellow of a dozen tubas, the blare of a hundred trumpets, and the wild wails of a fire-department siren. They marched, sang, shouted, squeaked, yelled, and went into frenzied fits, fantoads, and catalepsies. They rang every welkin, woke every echo, clamored, brawled, bawled, and ballyhooed. They raised bedlam, raised pandemonium, raised hell.[1]

In the midst of this swirling excitement a platform must be adopted, embodying the principles and policies of the party, and candidates must be named for the most important offices in the political world. This environment is in no sense favorable to calm or thorough deliberation, and to apply this term to the national con-

[1] Samuel G. Blythe in *Literary Digest*, July 12, 1924, quoted by Sait, p. 467. See also W. J. Bryan, *A Tale of Two Conventions*, chap. x, "The Convention as a Photograph of the Nation"; Bryce, *American Commonwealth*, XI, 191 ff.; Bishop, *Our Political Drama*.

ventions is a misnomer of the grossest type. If there is appeal to mob psychology in the direct primary, there is also a similar appeal in the heat of the great convention. Undignified and demagogic appeals by irresponsible persons may be and are found in the stump speeches of the primary, but who, having witnessed the Indian war dance of the national convention, can call one deliberation and the other mob appeal? Organized demonstrations, stage noise-makers, electric sirens, cunning appeals to crowd emotions, attempts to wear down the opposition by sheer fatigue—these are all among the favorite devices employed to break the morale of the opposition or perhaps to start a stampede toward some favorite son or dark horse. The Republican convention of 1912 and the Democratic Convention of 1924 are striking examples of the "deliberateness" of the process under certain conditions.

At the very apex of the convention system, when we approach the choice of the president of the United States, we arrive at a situation which only by the wildest stretch of the imagination can be characterized as deliberate, and which would commonly be characterized by an impartial observer as a mad procedure in which anything but reason might prevail. If reason does prevail, it is in spite of the setting and the machinery, and not because of it[1].

On the whole, then, what is commonly set up is a false comparison between the direct vote and the deliberative convention, between an appeal to crowd psychology and an appeal to the reason of an orderly as-

[1] For fuller discussion see my *American Party System.*

sembly, between the stumper in the market place and the colder and more logical appeal to sober judgment in some well-organized conference. The actual fact is that there is tumult, passion, violence, demagoguery in one picture as in the other, and it is quite arguable that the average primary is as deliberative as the average convention. No impartial observer of wide experience can find all the good in one and all the bad in the other. The aches and pains of the primary are a little nearer to us than the aches and pains of the delegate convention, and we are naturally inclined to think of the ills we have rather than those we once had, even if they are likely to recur in the event of a change.

If conventions are made up of a majority of instructed delegates, as they frequently are, they are not free to deliberate on the candidates, although they may do so on the platform. They have become mere recording instruments. If a convention, as sometimes happens, is made up wholly or largely of uninstructed delegates, it will usually be found that these delegates are controlled by political managers, and their deliberation probably limited to ratification of the agreements of the managers. In cases where no candidate has a majority, there is of course a wider opportunity for selection and deliberation, but not as a rule under conditions at all favorable to intelligent selection of personnel.

The hasty conclusion should not be drawn that all conventions are brainstorms and that there is never any element of deliberation in them. One may readily find types of conventions in which the procedure is eminently reasonable and the genuine quality of delibera-

tion is found, and it would be absurd to say that this is never possible or never encountered. But one of the prime difficulties with the convention is that it involves the element of careful selection of personnel on the one hand and on the other the element of ceremonial and demonstration; the interplay between the leaders and the delegates and between both of them and the party electorate and between three of them and the general electorate. Generally speaking, the convention is likely to be more effective in proportion as the parties are evenly balanced and as there is a definite issue or dominant personality dividing the parties.

Some important considerations.—In any consideration of the nominating systems of America we cannot neglect that fact that about one-half of the governing units are one-party units. In these cases the party nomination is equivalent or practically equivalent to an election. Half the time a Republican or a Democratic certificate of nomination is almost as good as a certificate of election. About one-half of the states of the Union are one-party states, and the nomination at the hands of the dominant party is assurance of election in the overwhelming majority of cases.

Of what value is a Republican nomination for a state office in any of the following states: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, North Carolina, South Carolina, Texas, and Virginia?

Of what value is a Democratic nomination for a state office in Illinois, Iowa, Maine, Michigan, Minnesota, Oregon, Pennsylvania, Rhode Island, Vermont,

Wisconsin? And in many other cases the chances, while a little better, are not worth much as political assets.

These one-party states include about half of the population of the country, while in the other half the number of regularly doubtful states is not large.

Of the 3,000 counties in the United States it is safe to say that one-half of them are one-party counties in which nominations are equivalent to elections. In Pennsylvania, for example, there are three counties that have been uniformly Republican in the last eleven elections, namely, Delaware, Lancaster, and Philadelphia. In addition there are eleven others that have been Republican every year except 1912. There are sixteen others that have been Republican ten times in eleven. Of Democratic counties there is one unbrokenly partisan since 1859, Columbia County. There are four others that have been Democratic ten times in eleven elections. The population in the counties that are almost invariably Republican or Democratic is approximately two-thirds of the population of the state.

There are, it is true, occasional "irregularities" in rock-ribbed counties, but these are the exception rather than the rule; and in the main the primaries are the elections in these jurisdictions.

Legislatures, likewise, are likely to be one-party on their election and composition in half of the cases. There are 7,468 legislators, half of them are chosen in the primaries as a matter of practice; and a considerable number of state legislatures are determined as soon as the primary results are known, probably half of them.

The legislature of Illinois, to take a specific case, is

chosen in the primary, and the election cannot change the result in many cases. In the election of 1924 there were 27 districts of 51 in the state, electing 81 representatives with only 81 nominees of the major parties. Under the cumulative system these 81 were elected unless some third party came in to win a seat, a very unusual thing. One hundred members of the legislature were practically sure of election as soon as the primary was over, owing to the dominance of their party in the district.

The fact is that the primary is the election in about one-half of the states, one-half of the counties, and one-half of the legislative congressional districts of the nation. The voter's power is practically ended in these instances when the party nominations are once made. Theoretically and legally he can choose members of another party, but practically he will not do so in these jurisdictions. The significance of the primary as a part of the governing process is therefore very great, and should be examined with all the care given to an electoral process of a final nature.

In many of the southern states this situation has been recognized by the establishment of a double-election system in the primaries, so that in case no candidate receives a majority of the votes cast in the first primary, the highest two are candidates in a run-off or final primary. This final primary is to all intents and purposes an election, and not infrequently more votes are cast in the primary, so called, than in the formal election following. In Louisiana, for example, the Democratic vote in the primaries in 1926 was 164,603, and in the election

afterward, 54,180. In Georgia the Democratic primary vote in 1926 was 190,090, and the vote in the election was 47,366. In this and similar cases it becomes entirely clear that the abolition of the primary would place the selection of public officials in the hands of groups of delegates assembled in convention for the purpose of naming candidates, but actually with the function of naming officials. In such cases the older plan, now abandoned, of choosing state officials by the legislature would be preferable, since the legislators are more responsible than the delegates. In the South this situation is so clear that there is little or no demand for the return to the convention system. The facts are the same in other states where the one-party rule is found in practice, although not so clearly accentuated as in the southern group of states.

There can be little question that the voters prefer the direct primary and wish to retain the system. One may, of course, say that they are wrong and are acting contrary to their own interest, but that fact is indisputable at the present time.

When the electorate has an opportunity to pass upon the question they express themselves decisively (see Table I).

Nor can there be serious question that the primary is widely used by the voters. When there is a real situation interesting the electorate with respect to some vital personality or issue it will be found that the primary vote in the majority party compares favorably with the party vote in the election. Almost as large a percentage of the party electors vote as the percentage of the actual

electors to the total possible vote in the regular election. About 50 per cent of the adult citizens of the United States did not exercise the suffrage in a spirited contest over the office of president of the United States. Fifty per cent of the party vote may be considered a fair proportion of the party electorate. Such a vote or even larger is likely to be polled in an important primary.[1]

TABLE I

Year	State	Against Primaries	For Primaries
1911	Maine (adoption of law)	21,744	65,810
1912	Ohio (constitutional amendment, adoption)	183,112	349,801
1916	Washington	49,370	200,449
1919	Nebraska (partial repeal)	49,410	133,115
1920	South Dakota (on repeal so-called "Richards Law")	65,107	82,012
1919	Montana	50,483	77,549
1922	Nebraska	95,494	208,261
1922	Arizona (repealing constitutional provision)	7,774	26,302
1925	North Dakota	54,867	65,747
1926	Ohio (repealing constitutional amendment)	405,152	743,313
1927	Maine	20,027	37,114

The real test is not that frequently made by adding together the vote of a strong majority and that of a weak minority party, but the vote in the majority party, and particularly on occasions when there is a real contest.

In the southern states the primary is often more largely attended than is the election, as in Louisiana, where the Democratic primary vote in the year 1924

[1] In Appendix B will be found a full list of all the available printed statistics on primaries in the United States. It will be observed that these figures are nowhere complete.

was one-third larger than the total presidential vote in the same year. In the eastern states the vote is uniformly smaller than in the middle or western states, although in Massachusetts there is likely to be a significant vote.

In the 1926 primaries the voting was well over 50 per cent in many states in the majority party where the real contests were being fought out. In fact, the primary vote in a number of states was larger than the presidential vote of the party in 1924, owing to the three-party vote of that campaign. But even allowing for this situation, the participation of the voters was impressive and significant. An analysis of fourteen states over a period of about ten years shows a primary vote ranging from 19 per cent of the vote in the election in New York to 113 per cent in North Dakota (see Table II). Midway between these two poles the great majority of the states surveyed fall around 50 and 60 per cent. These figures understate the effective use of the primary by combining the vote in majority and minority parties. In the majority party the percentage is much higher.

It must be remembered in computing the ratio of primary to party vote that there are many regular party voters who will not disclose their party affiliation or cast a ballot in a party primary. I have seen men go away from the polls without voting when asked to indicate which ballot they wished to vote. And I have seen others make no verbal answer, but reach out and take the ballot. In addition to this there is a large independent vote that determines its attitude after the primaries rather than before, awaiting the discussion of issues and the attitudes of candidates of the rival parties. A 100

per cent primary vote is therefore not to be expected in a primary contest.

The addition of women to the electorate has tended to accentuate some of these tendencies. Women are not habituated to political duties and opportunities and may

TABLE II*

State	1908–16 (Percentage of Vote in Election)	1920 (Percentage of Vote in Election)	1926† (Percentage of Vote in Election)
New York	(1914) 27	19	
New Jersey	(1913) 59	(1919) 63	59
New Hampshire	(1914) 35	43	51
North Carolina	(1916) 40	22	64
Michigan	(1910) 56	36	103
Illinois	(1908) 52	(1919) 51	79
Wisconsin	(1910) 46	62	90
Minnesota	(1912) 60	43	79
Iowa	(1910) 53	28	84
Missouri	(1910) 62	54	58
Nebraska	(1910) 44	50	63
North Dakota	(1910) 70	(1918) 113	108
Oregon	.....	55	70
California	(1914) 55	71	97

* Figures compiled by Edward Stern, one of my students. The elections were sometimes local and sometimes national.

† Percentages for 1926 are based on the vote for United States senator as given in tables by Simon Michelet in *New York Times* of March 28, 1927, except New Jersey, where congressional vote is the basis, and Michigan, Minnesota, and Nebraska, where the gubernatorial vote is the basis.

not vote in a primary at all, or they may be of the independent group and decline to affiliate with any party for a time, or perhaps permanently.

These are important facts to consider in estimating the size or percentage of the primary vote to the party vote in a given district. Furthermore, if the candidates named by the organization or otherwise are generally satisfactory, the vote in the primaries will be very light.

Only the most enthusiastic will come out to vote when there is no contest or no real contest, and there is no reason why they should. It is indeed surprising that so large a vote comes out in a primary where there is no contest whatever, or where there is no other reason for voting than to make a demonstration of party strength. The test of the primary is the occasions when there is a genuine contest between important personalities or issues, and this test indicates a general desire or willingness to take part in primary contests.

The frequent failure of the voter to exercise his hard-won franchise is one of the surprises and disappointments of modern democracy upon which many observers have commented. But in view of the newness of the vote and the recent rise of universal and compulsory education with a reasonable amount of leisure, it need occasion no surprise. Democracy presupposes more effective use of the vote as men and women become accustomed to the common burdens of their common life, assumed with the adoption of self-governing forms of political organization. After all, the political group is not the only one in which non-voting occurs; nor are its evils any more serious than those in modern corporate organization or in ecclesiastical or social groups of different purposes. There is no reason why we should set up higher standards for political voting than for any other type of voting in the numerous human relationship groups.[1]

[1] See Ripley, "Stop, Look and Listen," *Atlantic Monthly*, September, 1926, p. 380.

CHAPTER XI

SUMMARY AND CONCLUSIONS

The problem of party nominations, it must be conceded, presents extraordinary difficulties for any system to surmount. This is especially true of the field of state and local offices, where the chief field of controversy lies. We have to deal (1) with campaigns in which there is a dearth of significant issues growing out of the local situation, and frequently a dearth of national issues; (2) with the choice of a large number of officials whose position is wholly unadapted to popular choice, as in the case of coroners, surveyors, clerks, recorders. The total number of elective offices in the United States is about 750,000; (3) with a highly developed spoils-based organization or machine on the one hand and a lack of leadership outside the machine.

This situation offers a puzzling problem, which has not yet been solved by any nominating system, and it is difficult to see how it can be solved as it stands. The Continental party system has smaller parties more compact in principle and more prolific in special types of leaders. The English party system is or has been dual in nature, but it has inherited a type of leadership on the right wing and developed a type of leadership on the other; and it has succeeded in subordinating the spoilsmen in the administrative service. In neither case is there a large number of offices to be filled by election. These conditions have greatly simplified the task of

selecting party candidates, and have made it unnecessary to resort to the legal regulation of the party nominating process.

With us the number of offices is so great that the constant selection of personnel becomes almost a professional task; the task devolves upon professionals who recoup themselves through the spoils system; these professionals soon become so powerful that they dominate instead of serve the party electorate; and as a result the rank and file of the party become apathetic and indifferent, which in turn aids again the power of the machine. So we swing around a vicious circle from one disaster to another. Thus far we have not been able to extricate ourselves.

What is the next step in the improvement of nominating methods? What constructive program may be presented for the consideration of those who are not so much devoted to any existing system as to the progressive development of new and better methods? This is not a matter upon which anyone is authorized to speak dogmatically, but in the judgment of the writer the following types of change in the existing system would tend to improve its adaptability to its apparent functions. What is wanted is a system in which democratic control and popular leadership may prevail, using the framework of the party system as an agency for that purpose.

A study of primary election legislation shows that the desired results cannot be obtained until other and important political changes have been made. Unless primary laws are accompanied or followed by other de-

velopments of the political situation, comparatively little will result from the movement. No friend of direct or indirect nomination should indulge the pleasant dream that the adoption of a law providing for such a system will of itself act as a cure for all the present-day party evils. Disillusionment and discouragement are certain to follow in the wake of any campaign conducted on such a theory. It is necessary to understand that the political conditions are far too serious and far too complicated to be cured by so simple a specific.

In the first place, it is not likely that any nominating system will achieve its full results until the number of elective officers is materially reduced. When thirty or forty offices are to be filled at one primary, it is not probable that uniformly good choices will be made from the great number of candidates presented. The variety of qualifications required for the several offices, the multiplicity of candidates clamoring for recognition, the obscurity of many of these candidates, the possibility of "deals" and "slates," make satisfactory selection difficult.

The reduction of the number of elective offices is not undemocratic, as might perhaps be charged, but is, on the contrary, calculated to give the people more complete control over their own government. To provide for popular choice of a large number of officers does not increase, but, quite the contrary, diminishes their power. As was said in the *Federalist*, "The countenance of the government may become more democratic; but the soul that animates it will be more oligarchic. The machine will be enlarged, but the fewer, and often the more

secret, will be the springs by which its motions are directed."[1]

A great array of elective public offices means control by the few rather than by the many. Amenability to popular control will be better secured by reducing the number of offices, so that the requirements of the candidates for each such position may be carefully scrutinized, and the most intelligent choice be made.

This simplification of the machinery of government may most easily be made by eliminating administrative offices from the elective list. There can be no good reason why such officers as auditor, engineer, and surveyor should be elective. An auditor must be accurate and honest, and there is no such thing as Republican auditing or Democratic auditing. Nor is there a Republican way, or a Democratic way, or a Prohibitionist way of administering the office of engineer. Certainly there can be no form of surveying that could be characterized as Socialistic or Democratic or Republican.

The true principle is that the people should choose all officers concerned primarily with the formulation of public policies. Policy-framing or legislation is a matter upon which there may be differences of opinion, and men intrusted with the work of drawing up such plans must be elected by, and be immediately responsible to, the people. Regarding the execution of policies once enacted into law, there is less room for difference of opinion. The making of law is partisan, but the enforcement of law should be non-partisan. When the enforcement of law becomes a political issue, the times are out of joint.

[1] No. 57.

Laws should not be administered in a partisan way, but efficiently and justly. Administration requires technical skill, and partisanship is destructive to its best development.

If any administrative offices are to be voted upon, the number should be confined to the chief executive officers, such as the mayor and the governor. If these officers are chosen by the people and given the duty of selecting and supervising other public servants on the administrative staff, the result is certain to be a higher degree of popular control than is now generally secured. This principle has been established in the federal government from the beginning, is now being adopted in our municipal governments, and few new elective offices are being provided in state and county government. We are coming to realize that what is needed is popular control over policies, with non-partisan, skilled, and permanent administration of these policies.

Such a change may be denounced as undemocratic in spirit and tendency, but on second thought it will be seen that instead of weakening popular control over government the result will be to strengthen that control. A system that imposes upon the electorate the choice of a mass of officials strengthens the hands of partisan or private interests at the expense of the public. With a smaller number of elective officers, the results obtained under the direct primary system would be far more satisfactory than they can be under existing conditions. Public attention could be focused upon a few offices and a few candidates with better prospects than at present for the elimination of the undesirable and the survival of

the fittest. Until this is brought about, the success of any nominating system must be seriously menaced.

In a discussion of nominating methods in 1909, I expressed the belief that neither the direct primary nor the convention system would work well in situations where a large number of minor administrative offices were elective. I still believe that we will not make progress in the better nomination of coroners, and surveyors, and county clerks, and state auditors under any system that the combined ingenuity of the elder and junior statesmen together may devise. The main road is the short ballot with what it involves in the way of governmental direction.

In state and county governments with which we are now concerned there is manifest a slow but strong tendency toward fundamental reorganization, somewhat resembling that which has been seen in the more progressive city governments during the last generation. More than ever vigorous and effective state and local governments are needed to offset the centralizing tendencies of the Federal government, and are desired even by the most ardent nationalists. A more modern organization of these governments would do much to clear up the difficulties surrounding the nominating system, and might change the whole character of the problem, as has happened in cities where non-partisan elections and proportional representation are now the chief centers of electoral interest. If counties were to adopt a council-manager plan, how would nominations be made? Or if, as some day may happen, a state adopts a simple form of government, such as the council-manager, or one in

which executive responsibility is more strongly organized, how then will nominations be made?

The short ballot will tend to concentrate power and responsibility, and to focus attention upon the significant offices to be filled. If only the governor and members of the legislature, together with one or two county officials, were chosen at one time, it would be far easier for the voters to concentrate their attention upon these key officials and to exercise their powers of discrimination more effectively than at present. With the short ballot, the task of the primary will be made much lighter, while the degree of popular control will tend to be greater.

Precisely here it must be recognized that with the development of greater power in fewer officials it will be all the more necessary to exercise effective popular control over them. The larger authority conferred upon officials through the process of consolidation and through the gradually increasing authority exercised by the government over social and industrial affairs will be likely to require a balance in more direct control. This counterpart to the short ballot may be the direct primary.

But the short ballot is no more a panacea than is the direct primary, and we delude ourselves if we assume that the mechanical device of shortening the list of candidates will of itself cure all the ills the body politic is heir to. Government is no more a matter of mechanisms than it is of values and attitudes, of intelligent discrimination, of sound sense and practical judgment on the part of the community. The fundamental attitudes of the people go deeper down than either the direct or

the indirect primary, important as these are. We shall be drawn aside from the main purpose and needs of our time unless we recognize the vital importance of technical administration, applying the best results of intelligence and science to common affairs, unless we recognize the fundamental need of the broadest possible social and civic training, unless we recognize the significance of the feeling of justice which the state must strive to realize in the lives of men and women.

Notable progress in the direction of simpler government has recently been made in New York State and elsewhere, but there still remain states in which no advance has been made, and even in the most progressive commonwealths there is still much to be done in the direction of the simplification of the ballot.

It is important to consider other possibilities that may arise in the course of governmental development. It may be that in the reorganization of county and state government proportional or preferential representation will play a larger rôle than in the past. If this proves to be the case, the methods of nominations would be materially affected, as is now seen in cities using proportional representation. Here again, of course, the question may arise as to how the primary or original selection of candidates will be made.

Another essential change is the return to the original form of the Australian ballot.[1] The party emblem, the party circle, and the party column have nothing to do with the Australian ballot, and were engrafted on the system by American legislatures. In adopting the system,

[1] E. C. Evans, *op. cit.*

secrecy of the ballot was secured, but the party obtained the advantage of arranging party candidates in columns and permitting the voter to select a list of candidates by marking in the party circle. This mechanical arrangement places a premium upon undiscriminating voting, and often results in the election of unworthy and unfit candidates by sheer advantage of position upon the ballot. If the head of the ticket is elected, the others are likely to be carried along with the leader, regardless of their own merits. Fortunately this plan has not been applied to the conduct of preliminary elections, where voting an organization slate with one mark might have worked great damage; but the fact that this practice prevails in the regular elections throws its shadow back over the primaries. The knowledge that candidates, when nominated, will be placed under the protection of the emblem or the circle makes the party, especially in districts where it is strongly in the majority, less careful in its choice of candidates than would otherwise be the case. It is only human nature to be less studious of the public wishes in a situation where a nomination is equivalent to an election and where defeat, even of the unworthy, is a remote possibility. Ballot reform is, therefore, a necessary accompaniment of primary reform. The ballot in the regular election should be made up in the same form as the ballot in the primary election, with the party designation placed after the name of the candidate.

Another constructive factor in the development of the nominating system is the further extension and enforcement of the merit system, or perhaps better stated,

the establishment of sounder principles of public administration.[1]

As long as an army of officials can be thrown into the field in support of a particular "slate," it will be difficult for the candidate not so supported to succeed. The odds are too greatly in favor of the regular army against the unorganized and undisciplined volunteers. Occasionally victory may perch on the banners of the straggling group of reformers and "antis," but habitually will rest upon the side of the well-disciplined army of officeholders. The honest and intelligent application of the merit principle to administrative appointments reduces the number of workers under the control of a faction and makes the support of the "slate" far less formidable. If the group in power centers around some principle or policy it will continue to be powerful and effective in the primaries, even under the merit system; but if the chief element of cohesion was public office, it will be far less vigorous than before.

Patronage is not only the force that holds an organization together, but it is the strongest single element, and no practical politician is ever guilty of despising the power of appointing men to, and removing them from, office. There are, of course, many exceptions, but the general practice is for the appointing power to control the political activity of the appointee. When the office is obtained by merit, however, and not by favor, this sense of obligation on the part of the officer and of power on the part of the party ruler ceases. Hence the mobilization of an army for effective use in a primary cam-

[1] L. D. White, *Public Administration.*

paign becomes far more difficult, and the opportunities for success on the part of the opposition correspondingly greater. To the extent that the merit system is not rigidly carried out, the effects just indicated do not follow. In any event it is not to be presumed that civil service reform is a panacea. It is merely a palliative. It will materially help, but cannot be relied upon to accomplish a complete cure for our political ills. The merit system merely abolishes the feudal tenure under which many officers now hold, and the obligations of service incident to that relationship. It will remove one handicap to an even race between candidates for nomination.

But even more important than the success of what was once called civil service reform is the recognition of the importance of public administration in the governmental system. It cannot be too strongly stated that the weakest spot in the American governmental plan as thus far developed is the lack of a permanent staff of competent public servants, adequate for the tasks of public service. With the specialization of industry and the professionalization of tasks this is rapidly coming about, but it comes more slowly than is consistent with the very rapidly growing needs of governmental service. In great fields like taxation and police, progress is very tardy, while in health and engineering we advance with greater speed. If we have a trained technical staff, the storms of political controversy may rage as they will, but the commonwealth is safe. Whatever policies are determined upon, they will be wisely and competently administered. But without such a staff, what we decide upon matters little.

A well-trained administration may also be relied upon to make many suggestions for the consideration of the legislative body, and its administrative initiative will always be of great value, even if not always accepted by the policy-determining body. The tasks of political leadership are made easier by competent administration, and the limits of danger are narrower than under other circumstances.[1]

Raising the level of administration and leadership has its inevitable effect upon the party system and upon the nominating system of the party. The relation is not remote but immediate, and not only immediate but indispensable. It is idle to suppose that the mechanism of nominations will avail against the trend of a system in which party leadership cannot emerge without the very greatest difficulty. Forces far deeper and stronger determine the course of political events and control the political destinies of candidates for official position and popular favor and support.

Commonplace as it may seem, then, one of the basic conditions for improvement of the nominating system is the establishment of a different type of public administration upon which a different type of political leadership may rest.[2] When all of the forty-eight states and all of the three thousand counties and all of the urban centers are under the merit system, and the federal government has reduced its "free list" of patronage, and when these systems are not merely based upon laws, but are reinforced by professional organizations on the one hand

[1] See L. D. White, *The City Manager*, p. 180, for pertinent comment.

[2] W. D. Foulke, *Fighting the Spoilsman.*

and a strong public sentiment on the other, the primary contests will take on a different color.

Political education.—Improvement of the nominating system in our political parties is conditioned upon the improvement of the political education of the electors. The great tasks of the voter are (1) selection of personnel for offices, and (2) discrimination between issues. Neither our elementary nor our adult educational process is well adapted to secure these ends, and for this reason the party system, and with it the primary system, must limp along.

In every group it may perhaps be said that the inner circle of professionals tends to preserve its own trade secrets and keep from the general eye its private skills. This may be as true of doctors and lawyers and preachers as of politicians, and in all cases constituents find obstacles in knowing accurately what is going on. In law and medicine professional criticism tends to maintain standards and to enlighten those who are observant. But the professional politicians are not openly critical of each other, nor do they take the public into their confidence regarding their technique. Nor does our educational system, using the term in its broadest sense and not in the limited academic use, fill the gap. Only in recent years has there been any systematic attempt at serious study of the party process as it is, and these attempts have not gone far enough to accomplish their result.[1] The elector's political education may be obtained from newspaper accounts of criminal trials or legislative

[1] See Frank Kent, *The Great Game of Politics;* the writer's *American Party System;* C. H. Wooddy, *The Chicago Primary of 1926.*

investigations, or from some first-hand but limited contacts with politics. But on the whole we lack political sophistication regarding either what the political game actually is or how it might be under other conditions. What the politician knows and what is common talk among the political "talent" is something of a mystery to a great part of the electorate. Simple comments often seem astonishing to the electors, who appear not to know in what world they are living, and who look upon political "revelations" as if coming from some other sphere of human life. Many seem baffled by the rudiments of political motive and technique, even though they may be entirely familiar with "politics" in their own affairs. Many voters assume a protective attitude of complete cynicism, so universally inclusive as to be of no value in a world of constructive action. The easiest victims of political chicane are those who proudly proclaim their unbelief in the political world. In the midst of their cynicism they are easily managed by those who understand them.

The public attitude may be characterized as suspicious rather than discriminating. But undiscriminating suspicion is futile and impotent, as likely to be unintelligent in origin and result as otherwise. "We know," they say, "that all politicians are crooked, or would be if they had the chance. We know that all politics is rotten and cannot be otherwise. We know that both parties are equally criminal, that both factions are equally culpable, that both candidates are untrustworthy"—whether this is true or not. Thus disarming their minds they allow their prejudices to rule them in the making of the

final decision. All is black, and nothing is white or gray or whiter or less black.

Thus the faculty of discriminating is paralyzed, and the differential advantage that might come to the superior type of candidate or the more intelligent type of issue is lost. "X and Y[1] are both crooks, so what is the use of action." But one may be better or worse than the other, in general or in a special situation. Neither A nor B is perhaps wholly trustworthy, but A is more trustworthy than B. Smith's issue is buncombe, and Brown's is only a little better, but on the whole superior. These are points upon which the politicians are informed and upon which the voter might be, but which in large measure he ignores in his political calculations. It is not to be presumed that the amateur who devotes an hour a year to the political situation will be as well informed as the professional who starts with unusual talent and gives 365 days in the year to this task. But it is quite possible for any citizen of ordinary intelligence to set up certain standards of discrimination in the political world and follow them through. Candidates are often simpler than the relative merits of pitchers, running horses, golfers, boxers, and political maneuvers are no more difficult than those of bridge, bunco, or poker. It is not at all unreasonable to suppose that the electors may acquire a fair degree of discrimination in political choices and apply their conclusions to nominating processes as well as to elections. Our educational effort might well be directed toward that end.

[1] Cf. Roosevelt's *Autobiography*, and *Latitude and Longitude among Reformers*.

The political mind may furthermore be not only undiscriminating but severely traditional and inflexible. The elector may be so disturbed by the constant necessity for discrimination that he takes refuge in devotion to traditions, which he assumes do not change and which therefore give him a solid base for the operation of his lazy mind. Now in a rapidly changing and evolving country like America, where urban and industrial life is rebuilt every decade, the man who becomes a traditionalist is likely to be a very violent one; for the theory is contrary to all the facts of his daily life and experience. He must be on his guard to protect it against vivid reality, and must be more than jealous of everything that in the most indirect way might seem to be an attack upon it. Change per se, in consequence, becomes an object of fear and distrust. Out of this comes a certain wooden inflexibility which is the counterpart of the undiscriminating attitude or its complement. This is the sub-base of the slogans of the religion of party regularity, or of patriotic, racial, and moralistic slogans in the hands of pirates. All the familiar clichés of traditionalism are available for use in nominating campaigns and in all types of political struggle, for their use is not peculiar to primaries. Thus the refuge of the tired traditionalist becomes the easiest point of attack for the demagogue who finds fundamentalism his faithful ally. Thus the elector who in a world of change believes in changeless politics finds himself bewildered and befuddled, the ready captive of those who know how to entangle him in his traditions, whose inventive minds play around his fixed ideas like a hunter around his prey.

There are many basic contrasts that perplex our advance along the political way. There is a wide gap between the theory of the changeless political world and the modern movement of industry and affairs; between the flaming youth movement of our time and our archaic political education. There is a striking contrast between the so-called "professional politician" and his refusal to adopt professional ways or even to permit them in the narrow field of public administration. He is in a sense an unprofessional professional. There is a great gap between the standard doctrine of the sacredness of party regularity as announced by the regulars and the disregard of the doctrine in the working world of politics.

The chief task of the voter is after all the selection of his representatives in the government and their discharge or continuance at the end of their terms. In this sense every voter is a personnel agent, selecting his public servants. It may be granted that as long as he has the task of selecting a wide variety of minor officials or delegates equally minor, he will not be able to set up satisfactory standards, although even in such a situation he might go farther. But for major offices it would be possible to build up a much more effective system of choice on the part of the voter, effective in the sense of reflecting more completely his own interest or that of his group or the common interest as he may view them. From this point of view more adequate education in the traits and technique of leaders would be helpful to the intending voter. If we understood types of leaders, if we knew what might reasonably be expected of them, what the limits of their probable action would be, in

what situations they arise, a more intelligent choice might ensue. A baseball crowd knows the points of the game, and applauds them at the right time. They do not boo a pitcher because he does not throw a strike with every ball, or because he walks a batter now and then, or the batter because he does not make a hit whenever he comes up. They know the bone-head plays and the clever ones. As a part of rooting of the local group they may sometimes wilfully boo the umpire for a ruling or boo an opposing player, but they really know better and their judgment is not involved. In political play the standards of discrimination are not always as fine; but this is a matter of training, and almost anyone can become reasonably skilful in judging the game. The layman does not see inside baseball or football with the eye of the expert, but he sees enough to warrant a judgment; and as baseball is played for the spectators, and not for the experts, in a larger sense this is true of politics.

In other words, as our knowledge of the traits and technique of leaders improves, it becomes increasingly possible to raise the level of discrimination and the level of the successful type of leader. Sophistication and discrimination in this field are the marks of political civilization under a democratic system, and indeed are indispensable under any system.

Individual leadership may, however, be intertwined with issues affecting individual or group interests, and here the problem becomes more complex. The desirable leader may be on the "wrong" side of the policy for which the voter stands, and the undesirable or less desirable may be on the "right" side from his point of

view. This involves a double discrimination between issues on the one hand, personnel on the other, and between the combination of them in a specific situation confronting the voter. Here again the cynically minded flees the field and finds himself unable to make a judgment on which he can rely. The consequence again is either political indifferentism or a decision based upon some inconsequential prejudice of the moment, a decision deliberately removed from the field of ordinary responsibility. The analysis of issues is susceptible to much more intelligent study and political education than has hitherto been the case. The background of economic and social and political forces involved, the possibilities or probabilities of action within the given field, the weighing of judgments of experts for the purpose of limiting the field of problems at issue—all these are useful processes in the judgment of issues. If experts disagree, it may be said, How is it possible to obtain a skilled popular judgment? The answer is that even if the experts disagree they delimit the area of controversy. They agree upon some things and sharpen the issue upon the remaining points in controversy. Judgment is then removed from the extremes to the center in which disagreement really lies, but in a far more restricted field.[1]

Unfortunately history is often taught so exclusively in a fossilized spirit that the actual problems of the nation or the state or city are really obscured. Washington and Lincoln and Jefferson are now national heroes, and deservedly so; but their lives were not without severe

[1] See the suggestive comments on this situation by Walter Lippmann in *The Phantom Public.*

struggle and their action was often based upon hard and bitter decisions upon which there was wide difference of opinion among contemporaries. The fate of every one of them hung in the balance on more than one hazardous occasion. But it is precisely these crises and tensions that are most likely to be obscured in the development of tradition. Their partings of the way, their errors, their strokes of resourcefulness, their ingenious inventions, how they met the difficult situations in which they found themselves—these are a part of the double study of issues and leaders in their interrelationships. Interpreted in this way the record of the past becomes, not merely a narrative, but a study of recurring situations which have a permanent value in the reconstruction of modern life. Both the traditional and the inventive have a place in the political disposition of a people, but the tendency usually is to overemphasize the traditional and underemphasize the inventive faculty. This is particularly important in the United States, where rapid change is going on, and where the traditional attitude of mind throws the political life of the society out of gear with the other sections of our experience.

A more thoroughgoing political education, both preparatory and adult, is therefore an indispensable prerequisite to the improvement of the choices made in nominating systems, whether direct or indirect. This cannot, of course, be accomplished by legislative enactment, but necessitates a readjustment of social point of view and training, in the nature of the case requiring a long time for its development. I do not urge any patent process for this purpose, but emphasize the underlying

necessity for the cultivation of a more adequate form of discernment and discrimination.

Non-partisan ballot.—A further ballot change is the adoption of the non-partisan ballot for local elections and for judicial offices where elective. In municipal and local affairs the national party primary has no place and it tends to introduce confusion into the situation. In practice party lines are almost wiped out in most city elections and the form of the party ballot does more harm than good. The party primary under such conditions is an absurdity. Its maintenance is due only to the insistence of the party managers, for the advocates of the direct primary have not asked for such a method of choosing local officials and are not responsible for its existence in these jurisdictions.

For such elections there are competing methods of choice: nomination by petition only and election by simple plurality; nomination by petition only and a second election if no majority is obtained in the first (non-partisan) primary; some system of proportional representation or preferential voting. It is not the purpose of this chapter to discuss the interesting subject of the relative merits of these plans, but to indicate that neither the direct nor the indirect primary is applicable to such choices. Any of the systems enumerated is better than the party nominating plan for local offices.

Only the tyro will conclude that changing the form of the ballot will of itself eliminate national parties from the election campaign. The national parties will and do exercise great and sometimes dominating influence in local choices, but they do not maintain the artificial ad-

vantage of the national party column, name, or emblem. Furthermore, in many cases the national party influence will either recede entirely or be held within closer bounds than would otherwise be the case. It will not be so easy to raise the cry of party regularity among the partisans or crack the whip among the members of the party organization, and the general effect will be the lessening of the national party influence, a consummation of advantage not only to the city but also to the party itself. Local elections are seldom of value to the national party; in fact, in many cases the local rings and other similar groups are a burden rather than an aid to the party in its state or national battles. The national party in the local election is either a reminiscence or an appetite, and in neither case does it bode any good to the community. The gratified appetite does not feed the national party, and the reminiscence or party tradition does not help the forward-looking city; and consequently they are better by themselves.[1]

In any case the party nominating system is not applicable; and so much of the burden is removed from either the direct or the indirect system. Rapid progress is being made in this direction, and the population and wealth of governments under the non-partisan ballot system seems likely to include more than half of the country in a short time.[2]

[1] Under European conditions local parties often follow national platforms. The administration, however, remains largely non-party.

[2] Cushman, "Non-partisan Nominations and Elections," *A.A.A.*, CVI, 83; Ray, *Political Parties* (1924), pp. 87–89; C. G. Hoag and G. H. Hallett, *Proportional Representation* (1926), bibliog., pp. 514 ff.

Approaching more closely the specific forms of nomination, we may examine the possibilities of use of the convention system and the direct primary.

Party tests.—There are certain problems common to all nominating systems, direct or indirect. One of the most significant of these is the method of determining party membership. Who or what is a Republican or a Democrat, and under what terms shall he be allowed to participate either in the choice of delegates or the selection of candidates? Ordinarily this is determined by law, although in some instances, especially in the South, the party committee is the agency for this purpose. The theoretical objection to allowing a legislative body controlled by one party to fix the terms of membership in both parties has already been considered. In times past, however, the party managers abused their authority by imposing artificial and even fraudulent limitations upon participation in party nominating procedures, and as a result there has been general acquiescence in the determination of the party test by law. The legislature, moreover, has usually confined itself to the general procedure by means of which party membership might be ascertained. The statutory enactments have set up two main types of primary, the open and the closed.

The open primary, used chiefly in Wisconsin, applies the principle of the secret ballot to primaries. The prospective voter is given the ballots of all parties and is allowed to select whatever ballot he wishes, and this in entire secrecy. He is given all party ballots, retires in the booth, marks and folds the ballot of his choice, and returns the others. Of course, the same procedure might

be followed, if desired, in the selection of delegates as well as in the choice of candidates.

A storm of controversy has raged around this provision both in Wisconsin and outside. Partisans contend that unless there is some form of party test, the whole system of party responsibility breaks down. Democrats may vote freely in Republican primaries and vice versa; and specific instances are cited in which this has actually occurred. If one party has no contest, it is easy for party members to help in making the other party's choices, or if the contest in one party is more dramatic than in the other there is a tendency for everyone to come in where the excitement is greatest.

On the other hand, it is urged that the test of allegiance excludes only the more tender-minded, while the tough-minded are not kept out if there is much at stake. It is held that the partisan test makes intimidation possible in the case of employees, and tends to keep out the considerable number of persons who will not make a party declaration, and that on the whole the interests of the whole community are better served by the free system of choice.

Of the closed primary there are two main types, the challenge system and the enrolment system, either of which may be applied to direct or indirect nomination. The challenge system provides that the voter either may be required to take some test of party allegiance or that he may be challenged, and if so must subscribe to some test. In the simplest form, as found in Illinois, the voter may be challenged, and if so must swear that he is "a member of and affiliated with the —— party." Record

of party affiliation is presumably (but not always) preserved on the registration books, and he cannot take part in the primary of another party until two years have elapsed. In other cases the requirements are more specific.[1] In the southern states, where party tests are made by the party authorities, rigid requirements are frequently laid down for the purpose of excluding the colored voter from the primaries. In South Carolina, for example, the Democratic party rules specify that "Every negro applying for membership in a Democratic Club, or offering to vote in a primary, must produce a written statement of ten reputable white men, who shall swear that they know of their own knowledge that the applicant or voter voted for Gen. Hampton in 1876, and has voted the Democratic ticket continuously since." In Texas the attempt to incorporate Negro exclusion provisions in the state law led to the federal Supreme Court decision against the constitutionality of the act.[2]

The registration or enrolment system provides that the primary voters must have previously registered or enrolled as partisans. These lists of party voters are then made available for the purposes of the primary, whether for choice of delegates or candidates. Commonly the enrolment takes place at the time of the regular registration preceding the primary, but the choice of party is usually not disclosed until after the election. Provision is of course made for supplementary and additional enrolment, and for change of enrolment from one party to the other, within a period which varies somewhat in different jurisdictions. This is sometimes called

[1] See chap. v. [2] See *ante*, chap. vi.

the New York system, but is employed in various parts of the country, both east and west. The enrolment in the party lists is fairly large in many states, although of course not inclusive of the entire party membership.

The dilemma in all closed primary systems is how to make sure on the one hand that the intending voter is

TABLE III*

State	Party	Enrolment	Party Vote
Arizona, 1926	Republican	30,801	39,580
	Democratic	75,490	39,979
New York, 1926	Republican	1,483,780	1,276,137
	Democratic	1,344,574	1,523,813
Oregon, 1926	Republican	184,714	122,737
	Democratic	71,997	93,470
Pennsylvania, 1926	Republican	2,279,031	1,102,823
	Democratic	657,329	349,134

*See Holcombe, *State Government*, p. 77, for enrolment figures.

really a member of the party, and on the other hand how to allow for changes in party membership. The weak spot in all systems thus far developed is the provision for change of party affiliation, and this is true whether we consider the challenge system or the enrolment plan. If the voter is allowed to change his party every two years, and if the elections are biennial, he is practically allowed to change his party at every primary. If the term is made four or six years, this would seem to be too long, and might accomplish more than is desired. After all, the hardest boiled Republican or Democrat wishes to leave the latchstring out so that the sinners on the other side may come if, as, and when they repent.

The partisan wants the closed primary, but not too much closed.

The challenge system has much to commend it in simplicity of operation. The voter may not be challenged at all, for there is very great reluctance among party workers to challenge anyone. Who knows whether the voter may not be a real convert to the real party? If he is challenged, he makes the simple affidavit that he is a Republican or otherwise, as the case may be. Every two years he may change his party primary affiliations.

The chief difficulty comes in connection with local and often municipal elections which may occur in the odd years between the biennial state or national elections. The remedy in these cases is, however, the adoption of the non-partisan city election, with two stages if desired, or some form of preferential or proportional election. If this is done, the voter may change his party every two years, and whether he is enrolled or challenged or whether there is an open primary will not be so significant, although advocates of each of these systems will point out specific advantages for them.

The fundamental difficulty is that party membership is not a fixed and unchanging quantity. Of one hundred party voters, possibly one-third are continuing members, fixed in the faith; one-third incline toward the party and usually vote its ticket, but are not thick-and-thin partisans; and the other third of the party vote is represented by the independents and those who have come over from the middle third of the other party for some particular candidate or upon some specific issue.

Furthermore, local neighborhood sentiment can no

longer be relied upon to administer the social discipline or check upon the party intruder. In earlier times he might be jeered at or thrown out or otherwise roughly handled. But especially under modern urban conditions this check has disappeared. Under these conditions, the determination of a just solution of the problem of who is a Republican or a Democrat requires the wisdom of a Solomon. And Solomon is not holding party court. If parties become more coherent, the problem will solve itself. If they become less coherent, as in cities, the party lines tend to disappear in the non-partisan primary or election.

Expense.—How shall the expenses of primaries, whether for the election of delegates or candidates, be met? For a long time generally, and still in certain sections of the South, the financial support of primaries was regarded as a charge upon the candidates, and they paid, not only their own campaigning bills, but the entire cost of the primary election. In recent years, however, it has been conceded that the cost of the primary election is properly a public charge and may appropriately be met from the public funds. This has become almost the universal practice.[1] Payment for polling places, election officials, ballots, and other charges incidental to a primary are defrayed from the general funds of the political unit. The candidate's cost still remains, however, an item of serious proportions, and careful thought must be given to this situation.

At bottom the problem is much the same as the earlier question, although in changed form. The answer is

[1] But this is not always the case. See chap. v, *ante*.

that the expense of campaigning should not be regarded as the private expense of the candidate, but as the cost of (1) some group supporting him, or (2) of the party itself, or (3) in some measure of the state.

A candidacy for a significant position is not a private affair under modern conditions, but should be a struggle for some policy or for some type of statesmanship represented in the person of one or more individuals. The large number of candidacies for insignificant positions obscures the real situation and leads to the conclusion that the whole contest is a personal struggle, of interest to no one except the ambitious aspirant. If these places are to remain as a general free-for-all, I do not know of any effective way of dealing with them. But for the really important places a candidacy should have the financial as well as the voting support of a group of persons who look upon the case not as one of personal but of general importance. The machine appreciates this already, and contributes as a group accordingly. But the general public has not fully awakened to the importance of financing the campaigns of their representatives. The presidential office is an exception to this, as no one now expects the presidential candidate to pay all of his own expenses in the primaries or in the election.[1] With adequate interest and organization, the problem of adequate financial support of the candidate becomes a less difficult, although always a serious, problem. Traditionally, the spoils group has responded most readily to the

[1] In earlier times larger shares of the campaign fund were paid by the candidate. Blaine, for example, was almost bankrupted by the heavy costs he was obliged to defray.

requests for campaign funds; then the patronage group; then the business group. In more recent times the labor group has responded in certain cases; also a number of men of wealth and general interest. The agricultural groups have acted in certain cases, but not consistently; and the middle class of cities and smaller towns, intermittently. At this point, then, in the recognition of the public or general, rather than private, character of candidacy lies the key to this particular problem.

The party itself is also interested in the intramural party candidacies going on within its borders. The responsible party managers owe it to the party they serve to aid in the promotion of candidacies within any reasonable limits. To some this may seem an absurd doctrine; but in considerable sections of the country, especially in the rural districts, the party manager often assumes a proprietary interest in party candidacies. He will often "get up a meeting" for any party candidate, whether he opposes him or not. The county courthouse or the public square may serve as a convenient and inexpensive meeting place, and the local party magnate may preside over the meeting in the interest of candidacies he does not espouse. In cities this is not likely to occur; and the suggestion might even seem a little queer to the heads of hostile organizations. An active and responsible managing committee of a party could noticeably reduce the expenses of candidates by aiding in joint distribution of campaign material, perhaps in joint meetings, and in other ways. This assumes, of course, that the committee is acting in good faith and fairness, only too often a condition contrary to fact. Yet, as we are considering a

bona fide party with a genuine sense of responsibility in those who conduct it, this is an eminently reasonable suggestion.

The public is also interested in candidacies and in their financing. Usually the public attitude, however, has been negative rather than positive. The evils of undesirable expenditures have been met negatively by the passage of various corrupt practices acts, applicable to primaries as well as elections. These statutes are designed chiefly to provide publicity regarding campaign receipts and expenditures, and to prohibit certain types of expenditures and receipts.[1] These laws leave much to be desired from the point of view of maturity of consideration, care in drafting, adequacy of enforcement; but Pollock's conclusion is that "They have been largely instrumental in producing better political conditions today, and no amount of criticism should permit this fact to be covered up."[2]

The laws forbidding bribery or other forms of expenditure have been most successful. Those providing actual publicity regarding the amounts contributed in campaign have often been disregarded. The crude attempts at limitation of expenditure have often been ignored or evaded, but corporations have been more careful regarding the use of trust funds for campaign purposes. On the whole these laws have been useful, especially in directing attention to the entire problem and

[1] See Pollock, *Party Campaign Funds*, for full account of these laws with some reference to their practical operation; Perry Belmont, *The Abolition of the Secrecy of Party Funds*.

[2] *Op. cit.*, p. 258.

in compelling consideration of the question. The national inquiries into the subject of election and primary finances have had a most salutary effect upon public opinion and a more limited effect upon party practices.

On the positive side much less has been done. President Roosevelt suggested in a message of December 3, 1907, that public appropriation be made to cover the cost of party election expenses. This has been widely discussed,[1] and the state of Colorado actually passed a law for the purpose of covering state campaign expenses. This was held by the supreme court of that state to be unconstitutional.[2] In many cases the government does allow the use of public buildings and places for the conduct of primary meetings, as schoolhouses, courthouses, public squares.

Certain states have also provided for the candidates' publicity pamphlets. Oregon took the lead in this movement, and was followed by other states.[3] This experiment has not thus far been successful, but still seems to offer attractive possibilities for use in primary election campaigns. If the costs of printing are met by the candidates, and the cost of distribution by the state or other unit, or even some part of the cost of distribution, very material aid would be given to candidacies otherwise somewhat handicapped. In the large cities

[1] See the notable discussion in the 1913 *Conference of Governors*, pp. 137 ff. Also Pollock, *op. cit.*, pp. 89 ff.

[2] Original proceedings 7372 *McDonald* v. *Galligan;* no decision rendered, and in any case did not apply to primaries, where the distribution of public funds would evidently present far more serious difficulties.

[3] See Pollock, *op. cit.*, p. 104; Brooks, *Political Parties*, p. 349.

and in certain rural areas linguistic difficulties would be encountered, but possibly these could be overcome.[1]

Another plan is the insertion of the same type of material regarding candidates in several newspapers of general circulation, so that practically all voters could be reached. It is also a fair question to consider whether the use of the Federal frank might not be legitimatized for the distribution of campaign material by the states or counties, or if there might not be a low rate for this purpose. As a matter of fact a very considerable amount of campaigning is now done under the frank in one form or another, and this special purpose would be just as defensible from the community point of view.

It would also be possible for the party itself to maintain a periodical in which candidates' material might be circulated, including, not only the arguments of the regular organization, but of all other groups or individuals on the payment of a reasonable fee. Or the party organization could undertake the circulation of a campaign pamphlet, either through the mails or through the services of the organization in distribution. This would be a legitimate function for the party to perform, and if fairly done, would tend to strengthen the hold of the party on its several rival groups and individuals.

Other possibilities that may be utilized are the use of the radio, which the party might organize for the several candidates, dividing time among the principal offices, if

[1] In Oregon (1926) the cost of the publicity pamphlet was $12,452 in the primaries and $9,457 in the regular election; and this has been about the annual cost for the last ten years. In North Dakota the cost for the last fifteen years has been from $3,500 to $13,000. See also South Dakota, Florida, Wyoming, Montana, California (1927).

there is a large number of them. This would enable the candidates to reach a very large number of party voters at very small expenditure of energy and a very small expense. Likewise, there are interesting possibilities in the more general use of the movie in party primary campaigns. The individual—or better, the joint—use of a reel would be a very useful method of presenting the candidate to the voters and for some brief statement from him to receive the attention of large numbers of voters at a favorable moment. As in the case of the radio, it would be necessary to confine the appearances to the more important officials to be chosen, in order to avoid swamping the attention of the voters with a flood of candidates for minor offices. Vitaphone and television offer still other possibilities.

In short, if serious thought were given to the problem of expense it would not be difficult to devise ways and means by which, either in the choice of delegates or candidates, the present burden upon individuals or small groups could be very greatly lightened. All this depends, however, upon the willingness of the party organization to assume a responsible attitude toward the whole party, and not that of a predatory group maintaining itself against the mass of voters by spoils and chicanery. There will doubtless be a change in the temper of the machine if the party is to maintain and develop its usefulness.

The whole economic basis of nominating systems is significant. It is possible at this point to make significant changes if it is desired to do so. Many of these have already been considered, and it is only necessary here to

recapitulate them. The list includes the adoption of corrupt practices acts, certain governmental aid to campaigns, and the democratic financing of campaigns.

The assumption of the burden of campaign finances by a larger number of the party voters does not require legislation, but an attitude of mind and a disposition of the pocketbook. If those with a large stake of privilege are allowed and encouraged to finance candidates' campaigns, and secretly at that, the outcome is likely to be realization on the original investment, and with a high rate of profit in view of the hazard involved. For the candidate to bear the burden is both unfair and in many cases impossible. The primary after all is a public matter rather than a private enterprise. There is now a growing tendency for various types of organizations to contribute to nominating campaigns, and probably this will tend to increase as the specialization of group organizations goes on and as organization for propaganda purposes continues.

The average middle-class voter seems least disposed to interest himself in campaign expenses, and often escapes entirely from any other than conversational obligation. That any form of exhortation will change this situation seems unlikely. It is idle to appeal to the duty of the voter in this particular. For my part, I do not pretend to say what his duty is; but his undoubted interest and that of the community is to make the financing of campaigns a general rather than a special charge. An army moves upon its belly, said Napoleon. The belly of candidates should not be the party machine, the underworld, special privilege, or a few benevolently

minded men of means. The candidate's economic basis should be more broadly democratic if it is desired to hold him responsible to broader forms of interest.

Party conference.—Parts of a constructive program both in the direct and indirect systems have already been outlined in preceding paragraphs. Broadly speaking, these may now be summed up under the head of changes within the party itself, organized and carried through by its responsible leaders. Much might be accomplished by party action without appeal to legislation, based on thorough study of the party problem and inspired by a determination to change the level of party activity in the future. For example, the establishment of a party court for the adjudication of contested cases and the organization of a party commission for the preparation of a platform discussed in connection with the convention system.

A step in the direction of party leadership would be the adoption of the party conference plan.[1] In view of the uncertainty regarding the future both of the direct and the indirect systems and the evident advantages and difficulties of both, there would be a distinct gain in organizing some sort of a conference or council. Such a conference or council either in nation or state might assume many functions which a convention theoretically performs, but which in fact it does not seem to deal with. A conference might consider annually perhaps important questions of party management and policy. It might appoint and receive reports from various commissions considering significant questions of party policy or organi-

[1] See my *American Party System*, p. 298.

zation, such as the nominating system itself, party finances, party propaganda. A conference might serve as a clearing-house for party ideas of various types, and it might bring together significant types of party personalities and aid in establishing the party in social relationships of a very valuable type. It is a singular fact that the party system has not been the subject of serious consideration by any party in respect to party organization, party propaganda, party functions, in one hundred years—a condition impossible in any other of the competing organizations in the United States. Millions have been spent to win campaigns, but nothing to study the nature and trend of party organization and functions. If the party is to survive it must examine more carefully the foundations of its existence and conform more closely to the conditions of modern social life.

Such a conference in the state might include: (1) the governor of the state, or the last candidate of the minority party, and their leading opponents in the preceding primary or convention; (2) state officials elected at large or minority candidates; (3) members of the state central or executive committee; (4) party members of the state legislature; (5) representative members appointed by the governor, the state central committee, party leagues, clubs, and societies, members designated by industrial, agricultural, labor, cultural, or other groups. This might make a total of two or three hundred members brought together in a state party conference.

In the national field the conference might include: (1) the president, vice-president, and cabinet (of the

dominant party), and leading candidates at last primary; for the minority party, the candidates in the election and the principal candidates in the convention; (2) party members of Congress, say two hundred; (3) party governors and runners-up; (4) national committeemen and chairmen of state central committees; (5) party leaders chosen by national or state committees, or by party leagues or associations; (6) members designated by national bodies representing labor, commerce, agriculture, and perhaps other cultural groups.

In such conferences the great men and women of the party might be heard from time to time. Party managers and technicians might also be heard on the problems of party administration and operation.

How much legal power would such a conference have? The form of the question defeats its answer, for the powers would not be legally definable. In the legal sense, none whatever. Practically they would have such powers as they deserved, and this would depend on how they functioned in actual practice. It is possible that such a conference might amount to nothing, accomplish nothing, and never meet but once. It is also possible that such a body might perform a very useful service to the party in some cases and acquire a position of leadership in its party's affairs, either from the educational point of view or even from the point of view of prestige or authority.

It is even conceivable that such a conference might suggest candidates for office in state and local elections, and that their recommendations might be transmitted to the voters for their ratification or rejection in the com-

ing primary. Or the same course might be taken in the national conference.[1]

If such a conference undertook to name candidates it would probably encounter difficulties that would wreck it; but if it merely undertook to recommend a list of candidates or to take a ballot upon them the situation would not be as acute. The conference might of course confine itself to questions of management, organization, policies, and propaganda, and to the furtherance of personal acquaintance and relations between members of the party.

Such an agency might be of great value to the parties and to the political public. If a party cannot confer on its common problems, what is wrong with it? Why does it differ in this respect from all other types of modern social organizations, commercial and cultural alike? Why is the party the only one among all the social groups that needs no revision of its organization, of its methods, or serious consideration of its functions?[2]

Of the heterogeneous character of parties I am well aware, but they are not the only bodies within whose ranks there is sharp division on interest and opinion. This is true also of business and labor organizations of every type, but this does not prevent their assembling to consider their common course of action. There is nothing peculiar about the party in this respect. While the party adheres to tradition and refuses to organize its course, the state legislature steps in, and with the most

[1] See suggestion of Justice Hughes and Dr. Boots, *National Municipal Review*, X (1919), 23, 192; VIII (1919), 472.

[2] For examples of preprimary conferences, see Wallace, *op. cit.*

drastic regulation determines the most minute detail of the party organization and procedure. That the party as such hides its head in the sand does not prevent the state from seeing and regulating it at will.

The party may well be warned before it is too late of the necessity of more vital organization and more fundamental lines of direction of public interest. In cities parties have been almost wiped out by the failure to develop a local policy or even to maintain ordinary standards of public decency and competence. A like fate may follow in counties and even in states. The electric siren and the ballyhoo will not save the party if it cannot adapt itself to modern conditions and if it cannot rise above the level of spoils and demagogery. Organizations like the Anti-Saloon League, the United States Chamber of Commerce, the American Federation of Labor, and others are quietly supplanting the parties as agencies of accomplishment, and will continue to do so unless the party mends its ways. It will be observed that in all these associations the very greatest care is given to the consideration of the most effective organization and propaganda, and the place of the group in the community.

Time of holding primary.—The time of holding primaries, although at first thought it might seem somewhat immaterial, is a question of no little importance. In general the period between the primary and the election is too extended. Where a spring primary precedes a fall election, anomalous situations may arise. For example, a member of the national House may begin his campaign for renomination before he has taken his seat for the term to which he had been elected, thus com-

pletely overturning the theory of responsibility for official conduct at the expiration of the term for which chosen. In many other instances where there are short terms of office an early primary necessitates a campaign for renomination before the incumbent is fairly established in his position, before any policy can be put into execution, and before the public can properly pass judgment upon the candidate. A spring primary emphasizes this danger. It also involves two widely separated campaigns on the part of the candidate, one for the nomination and one for the election.

On the other hand, a midsummer primary is unwelcome in the country, since it breaks into the busiest season of the year. To the urban district such a campaign is ill adapted because of the inroads made by the summer holiday and because of the general discomfort of city campaigning in hot weather. In neither rural nor urban districts will a summer primary arouse the fullest public interest, and hence one of the main objects of the movement is defeated.

Too short a period between primary and election is opposed by many, however, on the ground that the animosities engendered in the fight for the nomination are not given time to subside before the battle for election begins. A longer time, it is argued, affords a better opportunity for the adjustment of factional grievances and the operation of the "harmonizing" process that is favorable to party success. This is a favorite argument of organization leaders who fear the effect of the criticism and bitterness of the primary campaign upon the candidate's prospects in the election.

On the whole, however, the public interest requires a

brief campaign. The heavy outlay, the business loss, the great physical strain upon the active candidates, all point in the direction of a reasonably short period covering both primary and election campaign. It is well, too, that the facts developed in the campaign for nomination should be fresh in the mind of the people at election time. The September primary for the fall election gives adequate time for purposes of public discussion and debate. When national conventions are held the primaries must be fixed at a different date, if national nominations are to be made in June or July. In such cases separate primaries may be held in the same year for state and national purposes.

CHAPTER XII

SUMMARY AND CONCLUSIONS—*Continued*

Convention problems.—If the delegate convention is to be employed, a number of very important questions are presented for consideration, and some of these may now be examined here.

First of all, it might be maintained that the wisest course would be to repeal all legal regulation of the nominating process and allow the party committee or convention to determine such methods as in its judgment seemed expedient. The voter might then choose between sets of candidates selected by these unregulated conventions held in such manner as the party might provide. But with few exceptions this course finds no advocates.[1] Even the most bitter opponents of the direct primary are unwilling to return to the untrammeled convention. In the South, where the party organization is given the freest hand, there remains a considerable body of statutory regulation of the nominating process.

It is necessary to examine accordingly the conditions under which the delegate convention may operate most successfully as a nominating agency. Here we may consider such important phases of the convention method as the apportionment of delegates, the regulation of the choice of delegates, the instruction of delegates, the time and procedure of the convention, the elimination of indirection in choice of delegates, the preparation of the

[1] See Bernard Freyd, *Repeal the Direct Primary.*

platform, the possible reduction in the number of delegates. All these and many other problems are intimately related to the workings of the delegate plan.[1]

The district gerrymander.—The fairest method of distributing delegates is that in proportion to party strength, and this is the usual method, but not the only one. Population is occasionally employed, or some similar ratio. In some cases a minimum representation is guaranteed to each county or other local unit. In the national convention the system of representation is based upon population, and very disturbing discriminations are encountered under this system. In the Republican convention, notwithstanding important revisions of the rule, the grossest inequality is still found. The latest plan allows one delegate for each congressional district, or two if 10,000 votes for the party are cast in the district, and three extra delegates at large if the state was carried for the presidential candidate at the last election. In spite of this Table IV illustrates the wide discrepancies in party representation still remaining.

These widening discrepancies have frequently been the subject of the very severest criticism[2] since 1900, and for a quarter of a century since. States which cast no electoral votes for president have a choice of one-fourth of the convention. These states are usually controlled by the national administration, if the Republican party is in power, through the agency of patronage; and the situation thus produced is often a very acute one. By a

[1] On the early regulation of convention methods, see *ante*, chap. iii.

[2] Convention of 1900, pp. 95–97.

curious combination of contrivances in the national nominating system, the one-party or rock-ribbed Republican states have relatively little influence in obtaining candidates, while the doubtful states have very great power in selecting candidates and the no-party states are very greatly overrepresented. Notable changes have recently been made in the hope of remedying this situation, but still there remains a very wide divergence

TABLE IV

State	Party Vote, 1924	Representation in Convention	Party Votes per Delegate
New York	1,820,058	91	20,000
Massachusetts	703,476	39	18,037
Illinois	1,453,321	61	23,824
Ohio	1,176,130	51	20,637
Mississippi	8,494	12	708
South Carolina	1,123	7	125
Florida	30,633	10	3,063
Louisiana	24,670	13	1,896
Total party vote	16,187,878	1,109	Average, 14,596

in the distribution of representation, and much discontent must necessarily linger in the party sections underrepresented by the system. In the Democratic party the difficulty is less pronounced, owing to the more equal distribution of the party's strength. But the use of population as a basis of representation produces obvious misrepresentation even here.

In both cases the analogy of representation in the electoral college has been followed, although it is certain to produce grave injustice to various sections of the country, or even within the same state. Thus a district

in Illinois (7) casting 133,563 Republican votes has two representatives, while another has two delegates with a party strength of only 14,730 (5); another with a vote of 126,383 (10), while another with the same representation has 13,853 voters (8). In New York a district (1) with a Republican vote of 82,090 has the same representation as another with a vote of 10,688. Many similar cases may be found in any state. My own district, the second district of Illinois, cast in 1924, 113,349 votes for the Republican candidate for Congress, as many as were cast by twenty states of the Union for President and in many cases three or four times as many. Three residential districts in Chicago with a Republican vote of 450,000 are given six delegates in the convention, while three districts in the Democratic territory with a vote of 50,000 are given the same number of delegates. The same situation is found in any large city, and it applies as well to the Democratic vote as it does to the Republican.

These inequalities are serious and point to the need for drastic change in the system of representation in the chief stronghold of the convention plan. It is difficult to see on what basis the present system of misrepresentation can continue in an orderly system where the rule of reason is to prevail. Following the principle generally adopted in the states, the fair procedure would be to give to every district a quota based upon the preceding vote for the party candidate for president, a practice which would completely change the method of national representation. The present system discriminates (1) in favor of southern districts which have no party votes,

(2) in favor of the rural districts which tend to hold their old representation, (3) in favor of the city districts of the same type, and (4) in all cases in favor of the total population rather than Republican voters. If the convention system is to continue, it is imperative that these striking examples of party injustice be eliminated and that equality of representation be restored.

The obvious advance in this direction is the apportionment of representation in the national convention on the basis of party votes, not only as between states, but within the states themselves. This change would give to every Republican or Democrat, as the case might be, the same weight in the councils of the party, and would go far to establish the equality that has been lost. The present system of privilege is wholly contrary to the avowed purpose of the delegate convention, which is that of organizing the party members fairly and for their common purposes. The continuation of the present elaborate gerrymander in the national convention would be a severe blow at the whole delegate system, indicating inability to adjust the plan at its most significant points.

On a smaller scale there are gerrymanders of delegate districts where the formation of such areas is left to the choice of local election officials. In a city like Chicago the power to form the districts is a very important asset, and may readily be employed for important discriminations between party factions and groups. Like all other forms of gerrymander, it places in the hands of the district-making power an authority which is equivalent to a considerable percentage of the number of delegates involved. Thus, if there are twenty delegates to be chosen

in groups of four, for example, the right to draw the district lines is very useful to the group in power. They may concentrate their opponents in a small number of districts, and leaving narrower majorities for themselves, capture an unfair number of the twenty. In all cases it is wiser to have the districts fixed in some fashion. It is possible to take the county as the unit for the choice of delegates, or the town or township or the legislative district or the ward, and avoid the creation of special areas, almost inevitably causing political juggling of an unfair type.

Indirect election.—Another important change possible in the delegate system is the elimination of the practice of indirect election of delegates. When the voter chooses delegates to a county convention and the county convention chooses delegates to a state convention and the state convention chooses delegates to a national convention and the convention proceeds to consider candidates for the presidency, the control of the voter over the process is very far removed. In the original choice of the first set of delegates the question of candidates may not have been raised, or only very casually, and the whole selection may have been a very blind one. Even if the state convention is made up of delegates chosen by counties, in turn chosen in local areas, the choice is very indirect and the final group far away from the original source of power.

It is quite possible to provide for direct election of all delegates to the conventions for which they are eligible, and remove all intermediary agencies. The county, the ward, the town or township, the small city—all may be

employed as units of representation, and on the whole will be more satisfactory than the indirect process. Delegates may be instructed, preferences may be expressed, and in every way the command of the voter over the representative will be strengthened.

One of the most difficult problems presented by the delegate system is the satisfactory development of ways and means for the fair and just choice of delegates. More than one convention and more than one campaign has been wrecked upon the rocks of contesting delegations. The classic example in the national field is the Republican convention of 1912, in which the contested delegates upset the convention and the party also. But every state can furnish similar examples, and many counties as well. The bitterness engendered by these contests is often of long standing and sometimes becomes the basis of political feuds of the most disastrous kind.

Seating of delegates.—By what method can parties be insured against the blight of rankling injustice in the seating of delegates? In ordinary cases appeal would be taken to the courts of law, but time is not adequate for this, and it has not been thought desirable to place the convention at a remote day from the choice of the delegates. The action of the average credentials committee does not command general confidence. If the temptations are great, it breaks down exactly when most needed in many instances.[1]

There are several possibilities at this point. The convention date might be a little farther removed from

[1] See chapter vii on the presidential primary and the plan there suggested.

primary day, and the courts might be given, or assume, more summary jurisdiction than they now possess or exercise, so that the contested questions could be threshed out before the assembly of the convention. The possibilities of delay under our procedure are very great, however, and it is quite probable that the contests could not be decided in any reasonable time.

Another method of procedure would be to set up a party tribunal in advance, a tribunal composed of men of such character and distinction that their determination would command party confidence and would be ratified by the convention in the great majority of cases. Both parties contain an abundant supply of eminent judges who might readily be formed into a panel or committee for the purposes of deciding contested cases, and who would be able to render decisions that would remove the controversy from the field of factional propaganda. It would of course be desirable to have a standing committee rather than a group formed for a particular occasion, or at least a panel from which selection might be made at a particular time. In the case of a national convention abundant time might be taken for the hearing of cases and the consideration of the decision to be rendered. This might then be transmitted to the committee on credentials, with the expectation that it would be followed by them, or agreement might be reached in advance among the contestants themselves. A state panel might pass upon state contests, or, if requested, upon contests of a local nature in county or other districts smaller than the state.

In the national field this procedure would not be diffi-

cult, and it seems feasible in other and smaller units, if taken in time. The party court might thus become the instrument of party justice, and if it proved to be fair and reasonable in its rulings might become an institution of great value to the party.

In many cases it has been thought desirable to regulate the procedure of the convention, sometimes in considerable detail.[1] It may seem unusual and peculiar to prescribe by statute the intimate detail of the meeting of a party; but as a result of experience this was found desirable and even necessary. Just how the convention shall be called to order, the use of the roll-call, the use of proxies, filing of the minutes of the convention with the government—all these and other items of convention procedure have become subjects of legislation in various places. New York has the most complete of the regulatory systems thus far developed, but some new feature of convention practice is constantly appearing and requiring new adjustment.

It might seem as if an autonomous party should be free from these numerous detailed rules and regulations, but without them, under present conditions, it is probable that the outcome may be the triumph of fraud and trickery. If, for example, there is no regulation of the choice of candidates by roll-call, an unscrupulous chairman, by arbitrary rulings, may control the convention in his own interest or that of his faction. As many as favor the nomination of X will say "aye"; opposed, "no," and the deed is done—and has been done without regard to the actual sentiment of the delegates.

[1] See chap. iv.

Therefore unless the delegate system is prepared to proceed upon a voluntary and unregulated basis it will probably be found necessary to prescribe by law many more of the details of convention procedure. Indeed, the conventions have by no means exhausted the possibilities of legislative trickery and sabotage, and it is probable that an increasing number of rules would be required to meet these new developments as they come along. The breaking of the quorum, the filibuster, the adjournment until a later day—these and many other devices may yet be called in play when the occasion seems appropriate. The state of Texas has even gone so far as to legislate against convention deadlocks by providing that the lowest candidate on any ballot shall be dropped and the balloting go until a choice is made by elimination, if in no other way. North Dakota in 1905 enacted a dubious law providing that nominations should be made by secret ballot—a process opening up new possibilities of manipulation.

We must, in short, face the probability of continued regulation of the delegate convention in order to insure fair play and prevent the domination of the convention by unscrupulous factions. Unfortunately there is no legal way in which stampedes may be prevented or deliberation induced under penalty of the law. It may become necessary to restrict the length of demonstrations to, say, fifteen minutes, unless an agreement upon the division of time can be amicably reached; or even upon the type of noise-makers and the total volume of sound permitted, in relation, of course, to the cubage and acoustics of the place of assembly.

The instruction of delegates, either by a convention or by the voters directly, raises a question of prime importance, both in local and national bodies.[1] Unlike most deliberative bodies, the convention often comes to its task instructed definitely upon the major question before it. Under these circumstances, how shall it keep faith with the constituency and yet consider the whole problem of a policy and a candidate *de novo*? The same situation may arise, to be sure, in a legislature, but is not so likely to do so on more than one or two of many items of business. Ordinarily a state convention takes no official cognizance of instructions given to delegates by county or other conventions. Nor would preference votes of an informal character be recognized commonly. But where there is a combination of direct and indirect choice and preference votes are a part of the general plan, these are recognized by the convention, as in Maryland and in the Indiana law of 1915. The further question is, How long are the instructions binding, if at all? Do they hold for one ballot only, or are they permanent in their effect?

The common convention practice with respect to all kinds of instructions, formal and informal, is that they are binding upon the delegates until they are released by the candidate in question. The assumption is that he will not be unreasonable, and that if he persists to the deadlock of the convention, his delegates may reasonably regard themselves as released. This seems to be a sound rule, adequate to the situation, and probably easier to administer than any legal regulation of the matter.

[1] For discussion of the problem on a national scale, see chap. vii.

Platform preparation.—The preparation of the declaration of principles of the party, as a rule, leaves very much to be desired, and at this point there is a notable opportunity for improvement of the methods commonly in use. Every convention organizes a committee on resolutions, but the method of considering the resolutions is in many cases farcical, and the consideration of the report of the committee by the convention is perfunctory. There are exceptional instances where specific planks in platforms or the whole platform may be the subject of serious consideration, but these instances are few; and the ordinary procedure is wholly out of relation to the importance of the issues under consideratin. In the conventions of the states, controversy over the platform is rare either in the committee or in the convention; indeed, in many cases the delegate who questions or proposes to amend the platform is looked upon as an intruder, and likely to be howled down without a hearing. If the platform is read by a delegate with a strong voice and if the body remains in order, the delegates will know what it contains, but otherwise not. In any case they are almost certain to adopt it with a loud shout, after the manner of a ritual rather than a piece of deliberation.

The national conventions have developed a method of devoting more time to the work of the resolutions committee, but even this is wholly inadequate to the importance of the situation. Hearings are so limited in length as to preclude the possibility of serious consideration of matters of the most grave significance in the life of the nation, and affecting the course of political events in the entire world in some cases. In 1920 the Republi-

can National Committee prepared a mass of preliminary material for the consideration of the Resolutions Committee. This task was adequately performed, but the material was by no means adequately handled by the Resolutions Committee; in fact, it was lost sight of in the general convention confusion. The debate upon the platform in the national convention may be seriously conducted, and discussions of a high order have been held on significant planks, such as the liquor question, the League of Nations, the Klan, the currency question, the tariff. The discussions are conducted with great difficulty in a crowd of 15,000 persons, but they have a certain dramatic value and some of them have been significant. With the mechanical aid of the loudspeaker it is now possible for any delegate to participate, and for all the audience, and for that matter all the country, to hear distinctly what is being said.

The following suggestions are offered as possible improvements in the present practice. The national or state committee or a party conference might draw up a party platform in advance, either acting directly or through some commission, for later submission to the committee on resolutions. Interested groups might be heard before this commission either orally or through their briefs. An appropriate platform embodying the permanent position of the party might then be drawn up. Such a platform might refrain from definite action on contested questions or might make a definite recommendation, with due regard, however, to the position of the minority. Subsequently the platform and the record of hearings and discussions might be turned over

to the Resolutions Committee for their further consideration and action. This would make their task more simple and their procedure more intelligent.

The action of the Resolutions Committee would then be presented to the convention as a whole for its final disposition, with such of the material prepared by the original commission as the Committee might care to transmit and distribute among the delegates, as a basis for their convention discussion and action.

In conventions it would seem that wise party leaders and managers might well encourage a more tolerant attitude toward minorities and dissentients, and a less distinctly hostile outcry against every form of variation from the majority opinion. The false appearance of complete unanimity deceives no one as to the real situation, and the views of minorities are not likely to be changed if refused an adequate hearing or subjected to convention hazing of a primitive character. The convention, it is true, is partly ceremonial in character, and to that extent must be traditional and artificial, but the convention is also a modern agency for the determination of important problems of political and economic significance, and these are constantly changing with new developments in the worlds of science, business, and international relations.

Under a two-party system it is perfectly clear that complete agreement cannot be reached, and also that the level of agreement must be at a point where many differences have been canceled out. But this need not drive the convention to evasions and platitudes so marked as to produce a flabby and uninspiring plat-

form. On the contrary, it might put the party managers on their mettle to produce a declaration of principles distinctive in style and as sound as may be in reasoning and judgment, or if it is emotional appeal that is sought, as artistic as possible.

The party, after all, is in sharp competition with many other social groups, and cannot hope to survive them without careful consideration of their methods and results in the competitive field. What steps are the parties taking in this direction?

It is evident that the delegate convention presents many serious problems of organization, action, and temper. The convention is designed partly for deliberation and partly for demonstration, and alternates between these moods and tensions. At one moment it is seriously considering the merits of complicated questions of tariff, or currency, or finance, or corporate regulation; in the next moment it is a tumultuous sea of emotional demonstration in behalf of some symbolic hero or tradition. Now it is a personnel-selecting agency, passing upon the qualifications of a governor or a president, and in the next moment an Indian war dance; returning hoarsely, however, to its sober choice of an executive manager and leader. Now it is dominated by its lungs; now by its brains; now they are in conflict. No one knows when it will become a parliament and when it will become a mob.

Under these unique conditions the task of the convention requires the most thoughtful consideration, if its merits are to be developed and its weaknesses avoided. It is believed that the preceding suggestions will

help to operate the convention plan more successfully, if and where it is desired to continue it in operation. An equitable basis of convention representation, an orderly and direct choice of delegates, a mechanism for dealing with contests, a minute regulation of convention procedure, more adequate systems of platform-making—all these might be useful in preserving the values of the convention plan where it is desired. More than that, however, the level of the convention must be raised through thoughtful consideration of its significance in the party life and in the political order of which it is a part. Only as the temper of the convention is lifted above chicanery and spoils and as its results reflect a different spirit can it hope to gain the confidence and respect of the political community.

Many of the purposes of the convention would be better served by a smaller body than now ordinarily assembles. If it is desired to foster acquaintanceship among the party members, the number is now far too large; and this particular function of the body is largely, although not wholly, submerged in the crowds that go milling about. A group of 1,000 or even 2,000 is altogether too large for purposes of friendly encounter between various sections of the state or nation, especially if the session lasts for a few hours only. Likewise, a body of such a size is not well adapted to the exercise of the function of deliberation, if it is hoped to revive this aspect of the convention's work. Bodies half or one-fourth the present size would be far more effective in carrying out the theoretical purposes of the convention, upon which emphasis is so often placed. They would increase

very greatly the possibility of friendly intercourse among the party representatives, and make serious consideration of significant party problems more probable. The smaller size would tend to make the convention less an instrument of demonstration and more an agency of deliberation; less an affair of showmanship, and more a matter of statesmanship.

After all, a living and growing convention system must be genuinely representative of the party and of the community in another and broader sense. The convention began to go down when its personnel fell into the hands of spoilsmen, who in turn put forward their own interest and that of their privilege-seeking clients in the background. Their failure to represent the spirit and temper of the party begot a lack of party confidence and a lack of public confidence in the delegate convention process which endures down to this day. The difficulties of the direct primary have tended to distract attention from the abuses of the convention plan; but they are real and important, and they must be met if it is hoped to restore the convention plan to a position of public esteem.

DIRECT PRIMARIES

It seems probable that for some time to come the direct primary will be retained as an integral part of the nominating system. In the case of county offices the system is well intrenched everywhere and almost as strongly in most state-wide offices. In both cases there is a noticeable tendency toward non-partisan election, and in the urban counties this is likely to develop in the relatively near future. In the states such a movement is

less probable, although recent referendum votes in California and elsewhere give occasion for reflection. It is important, therefore, to examine some of the more significant problems arising in the operation of direct nominations.

Order of names.—The style of the ballot is not uniform in the different primary systems. In some states names of candidates are arranged alphabetically; in others, in the order in which nominating petitions are filed by lot; and in still others the order is changed as many times as there are candidates for the particular office. Objection is made to the alphabetical order on the ground that the candidate whose name appears first on the list has an unfair advantage over the candidate whose name is printed lower down or last. For example, Andrews, if placed first on the list for nomination for sheriff, is likely to receive votes solely by virtue of his position; while Zeller, at the foot of the list, loses votes on that account. Where there are many offices to be filled and where there are many aspirants for each office, the leading names undoubtedly possess a distinct and appreciable advantage. If any unfairness is seriously feared, it may be obviated by providing that the order of arrangement should rotate. For example, if there are five candidates for sheriff, A, B, C, D, and E, the order of printing may be changed in such a way that the name of each of these candidates shall appear first an approximately equal number of times. In this fashion the alphabetical advantage may be eliminated. Arrangement in accordance with the time of filing nomination petitions is wholly arbitrary and the least desirable of any of the

systems mentioned. In practice, it enables the filing official to control the order in which names appear on the ballot.

Fees.—Whether, in addition to the petition, a fee shall be required is a question upon which there is some difference of opinion. At the beginning of the primary legislation movement, and still to some extent in the South, the cost of the primary is imposed upon the candidates themselves and they are assessed to meet the expense. In many states this practice of requiring a fee is still found, although, as already shown, the courts in several cases have declared such measures to be unconstitutional. There seems to be no sound reason why the primary election, which is fundamentally a matter of public concern, should be regarded as an event in which individual candidates are chiefly interested. Indeed, it would be much more reasonable to grant the candidate a sum of money for the purpose of conducting his campaign than to require from him a fee to defray primary expenses. Fees are defensible, therefore, only as regulations designed to show good faith on the part of the candidate and to prevent malicious overcrowding of the ballot, and, on the whole, are undesirable.

Platform framing.—In framing direct primary laws, an important problem arises in connection with the formation of the party platform. In local areas the question of the platform has not occasioned serious trouble. In larger districts, like states, however, the question becomes more important, for, although distinct state issues are not so common as state campaigns, there are occasionally serious divisions of opinion in state elec-

tions, and for such emergencies provision must be made in the law.

Several answers have been given. Sometimes provision is made for the formation of a state platform by a candidates' convention. This body is made up of all the party candidates for state office and for the legislature, and the party's hold-over members of the state senate. In this way members both of the legislative and executive departments may be committed to a definite party policy, and this party policy formally presented as the platform. Another law provides for the formulation of the platform by the state central committee acting with the party nominees for state office, for congress, and for the legislature.[1] In the Oregon law express provision is made for declaration by the candidate of the principles upon which he stands in not exceeding one hundred words, and twelve words are permitted to be printed upon the ballot.[2] But where no legal provision is made for such a declaration upon the ballot, the candidate may of course make such a statement the basis of his campaign. The platform may also be drafted by a regular party convention held after (in some cases before) the party primary. Each of these systems has its own peculiar perplexities.

Where there is serious difference of opinion regarding policies the platform is likely under any system to be

[1] See chap. v.

[2] "If I am nominated and elected, I will, during my term of office [here the candidate, in not exceeding one hundred words, may state any measure or principle he especially advocates and the form in which he wishes it printed after his name on the nomination ballot, in not exceeding twelve words]." 1905, sec. 12.

shaped by the dominant group, and will be practically the program outlined and defended by this faction in the battle before the primary. Generally such issues are as clearly and sincerely defined during the primary as they would be in the debates or discussions of a convention, for the average party platform is verbose and perfunctory. It is quite possible, and it sometimes happens both under the direct and indirect nominating systems, that the leading candidate and the platform do not wholly agree. One may be a little wet and the other a little dry, or one a little radical and the other a little conservative. Under both systems it is possible to arrive at useful or harmful compromises, if the leaders are disposed to do so; and quite out of the question if they are irreconcilable. How the state convention can bind the individual legislators locally chosen is a problem not yet solved either under the direct or the indirect system. The party council comes nearest to this, and is an interesting experiment in this direction; but it still leaves the question far from answered.

After all the chief embarrassment in county and state affairs is not the difficulty of setting up machinery for framing a platform, but that arising from the bankruptcy in respect to issues of a distinctive nature. It is often easier to find evidences of strong interest in graft and spoils than sharp difference of opinion upon questions of public policy. Given vital divisions upon interests and issues, there is little difficulty in formulating the platform.

Percentage of vote for nomination.—Under a system which provides for the selection of candidates by direct

vote, the percentage of the total vote necessary for a choice is a subject of considerable importance. The common plan throughout the North and West is to require merely a plurality vote. The candidate receiving the highest number of votes is made the nominee. In the southern states a clear majority is often required, and when no candidate receives the necessary vote, a second primary is held, in which the two leading candidates participate.[1] As another alternative, it may be provided, as in Iowa, that in case no candidate receives 35 per cent of the total vote, the convention shall then make the selection.

In the South the second primary, necessitated by the requirements of a majority for nomination, occasions no particular difficulty and the system appears to work very well. As there is really but one party, and as the regular election is generally perfunctory, the second primary is usually well attended. In fact, this second primary, when held, is in reality the election. In other sections of the country where the party system is in vogue it is not likely that the second primary is practicable. The number of elections is already so great that an additional primary would probably be poorly attended and the results unsatisfactory. The difficulty of securing a full and representative vote is already so formidable that no new complication should be added. In many instances the second primary would involve the holding of two primaries and an election in the spring, followed by two primaries and an election in the fall, a situation which seems to favor the professional politician rather than the general public.

[1] See also Michigan (1905), chap. 476, special acts.

The preferential system is designed to obviate the necessity for a second ballot, and at the same time to prevent the choice of a candidate by plurality only. It is also intended to meet cases where a majority as to a policy is divided as to a candidate, and is likely to be overridden by a minority united on a single candidate. Thus an "anti-machine" group may muster 50,000 votes as against 30,000 "machine" supporters, but if the reform votes are divided between the two candidates, the solid vote of the "organization" will place the candidate of that faction in nomination. The preferential system is somewhat complicated, however, especially where two or more candidates must be selected for the same grade of office, and is not widely used even where authorized. The ballot is still somewhat of a mystery to many voters, and additional requirements are not likely to meet with general favor under present conditions.

Preferential voting has been tried in a number of states and is now in use in Alabama, Florida, and Maryland. It has been abandoned in other states, including Idaho, Indiana, North Dakota, Louisiana, Minnesota, Oklahoma,[1] Washington, and Wisconsin.[2] This preferential feature of the law was given up partly because the systems employed were somewhat defective in some cases, but more commonly because the voter did not avail himself of his opportunity. The number of second

[1] *Dove* v. *Ogleby*, 244 *Pac. Rep.*, 798.

[2] *Ante*, chap. v; B. F. Williams, "Preventing of Minority Nominations for State Offices," *A.A.A.*, CVI (March, 1923), 111. In the Oklahoma law of 1925 the marking of preferences is made compulsory on pain of the invalidation of the ballot. Guild, on "The Indiana Experiment," *A.A.A.* (1923), p. 174.

and other choices actually marked was in many instances remarkably small.

The most common method of nomination is the choice by simple plurality vote. This is the ordinary method outside of the southern states, and in general has proved satisfactory where employed. The objection frequently urged is that it makes possible the choice of a candidate by a small faction of the party decidedly in the minority. If there are six candidates, for example, and the vote is somewhat evenly divided, it is possible that the highest candidate may receive not more than 17 per cent of the total vote cast. In short, the argument is that there is not a sufficient guaranty that the successful candidate really commands broad enough general support in the party to warrant his choice as its representative. Where the system has actually been employed, however, these objections are not generally held. In practice the result of the primary is accepted by the several contestants with as good grace in the case of a plurality as of a majority. The number of candidates is, as a rule, not so great as might be expected, and where any really important issue is involved, the list is likely to be narrowed down to two. Where there is no overshadowing issue and the sole question involved is the personality of the candidates, a plurality nomination need not arouse any antagonism or division in the party.

A modification of the plurality system is the minimum percentage plan tried in Michigan, where 40 per cent was required for governor and lieutenant-governor; in Iowa, where 35 per cent and in South Dakota where 30 per cent was required. In these cases nomination by

convention is the alternative. This plan is open to the same objections that apply to the majority scheme, namely, the possibility that the leading candidate at the polls may be beaten in the convention, and that dummy candidates may be put up for the purpose of so dividing the vote that choice must be made by the delegates. The lower the percentage, however, the less is the likelihood that choice will not be made by the voters in the primary, and the less the opportunity for such maneuvers.

On the whole, it seems probable that the simple plurality will be adopted outside of the southern states, where peculiar conditions prevail. Experience has shown that this is a satisfactory system, and that it neither destroys nor disrupts the party. The demand for a majority primary or a minimum percentage is generally based on apprehension rather than experience. It ignores the fact that the number of candidates under the direct primary system is not ordinarily large, and that minority nominations for important positions or where there is a real issue are exceptional. In case the objection to any minority choices is strong, there are of course the alternatives of the majority, the minimum percentage and the preferential vote.

Preprimary slates.—Numerous suggestions have been made as to the presentation of a preprimary slate or list of candidates to the voters in the primary.[1] The most notable of these are the plan presented by Governor Hughes in New York, the plan of the National Munici-

[1] See original suggestion of Robert H. Whitten in *Municipal Affairs*, VI, 180. First edition of this volume, p. 131.

pal League's Committee on Electoral Reform,[1] and the Richards law of South Dakota. The Hughes plan provided for the presentation of a primary slate by the party organization acting through the party committeemen, in open session. This slate would be printed upon the primary ballot and other names might be added if there were no contest.

The League Committee's plan called for the election of party committeemen at the general election, and for the subsequent framing of a slate by those committeemen. If no petitions were filed for others, the list of candidates would become the party nominees. If other names were submitted by petition, a party primary would then be held.[2]

The Richards law already described requires the preliminary election of proposal-men who prepare both a platform and a list of candidates for the primary which is subsequently held. Likewise, in Colorado a preprimary convention is held, and candidates receiving 10 per cent of the vote are placed upon the primary ballot, together with the names of others who may have filed petitions.[3]

There are many grave difficulties in further legal regulation of a preprimary convention or preprimary com-

[1] For Governor Hughes's plan, see *National Municipal Review*, X (January, 1921), 23; for plan of the National Municipal League, see *National Municipal Review Supplement* (December, 1921), p. 12.

[2] The *Independent* proposes preprimary conventions with other candidates eligible for the primary if they obtain petitions with at least 20 per cent of the eligible voters (September 4, 1926).

[3] Under the Illinois law the party committeemen constitute the county convention and have the power to nominate judges of the circuit court of the county, but there is no appeal from their decision to a subsequent primary.

mittee slate, as another stage of complexity is reached at this point. The complete regulation of all the details of a preprimary election and convention entails a very great burden on the law, and in a way defeats its own purpose. The choice of candidates by the committeemen alone seems to leave the elector in worse situation than before. Committeemen must be chosen long before the issues of the campaign are developed, and as a rule they are not selected for making choices of party candidates.[1]

The informal party conference, already discussed, might afford a means of party discussion and recommendation if it could be developed and become a "going concern." This cannot be done by law, however, but would require the general assent of the party authorities. Otherwise it will not be possible to bring into its deliberations representative party men of different types, assembling to consider the problems of the party. Such a conference, representative or unrepresentative for that matter, made up of committeemen or public officials or of those not holding any office would have the privilege of making recommendations of candidates to the voters in the primary. If only one name is suggested there is of course no real campaign. Such a conference to be genuinely effective must include not only party and public officials, but also representative men and women from various areas and groups of the party. It might well be made an annual event, and need not conflict with the regular party convention held after the primary.

[1] See *National Municipal Review, op. cit.*, pp. 615–16, for criticism of League Committee's suggestion.

It is possible that such a conference might in time acquire so great confidence among the party electors and such general prestige that its recommendations would always be ratified by the voters. In such a situation it might be desirable to abolish the primary, and also the convention, which by the same logic would be superflous. If such a party conference were to appear and were to command general confidence of the party voters, and if this should become a recognized condition, it might then be possible to dispense with the direct primary and also with the convention system. Both might become unnecessary, and no longer appear as indispensable agents of party organization or public necessity. I do not expect this to happen, at least not in the near future, but am pointing out possibilities of partisan development upon other than traditional lines.

Instead of a return, then, to the old-style convention, it is possible (1) to go forward to a party conference; (2) to go forward toward the reduction in the number of elective officials—the short ballot.[1]

The presidential primary has never been given more than a partial and imperfect trial in some of the states concerned. There is at present a tendency to give up the presidential preference vote in a number of states, and it is possible that this may go on until the direct vote for president is entirely eliminated. It seems more probable that a number of states will retain both the election of delegates to the national convention and the expression of a choice for presidential nomination.

Where the preferential vote is retained there is much

[1] Dr. Gosnell humorously suggests a return to the legislative caucus.

difference of opinion as to how the delegates should be selected and the form of instruction to be given them. The most meritorious proposal seems to be that of allowing the delegates to be divided in proportion to the candidates' relative strength in the states, and of allowing the candidates or their proposal-men to name their own delegates after the primary. Of course it would be desirable to allow also an opportunity to vote for uninstructed delegates with no preference for presidential candidates. These might be distributed in the same ratio. Thus, if there were fifteen delegates to be chosen, and 100,000 votes were cast for A, 100,000 for B, and 100,000 uninstructed, each group would have five delegates. Or, if the district system is retained, it would be useful to allow for preferential preference and for uninstructed or no preference as well.[1]

It might be presumed that in the national field where the party's vitality is greatest and where personalities and issues are most vivid the party conference might emerge. Private conferences in considerable number are held; but thus far there is no real indication of a national public conference.

The congressional committees and caucuses are the nearest approach to party conferences of a formal character, but they lack the important element of executive participation and responsibility from the party point of view. This is vital in the case of the majority party. A progressive conference was called in the Republican party in 1912, but this included, naturally, only one element of the party. Private conferences of leaders in

[1] See chap. vii for fuller discussion of this topic.

various groups are common in Washington and elsewhere, but they do not answer the purpose of a more general party convocation.

A very imposing array of national organizations assemble annually for the consideration of their problems, program, and propaganda, but the national parties are not included in this list. Have the organizations called parties ceased to exist as parties in the sense of groups with common political and economic policies which they unite to advocate and execute? Have they become some thing more nearly approaching electoral agencies, enabling us to make a preliminary and final selection of personnel and policies?[1]

It is arguable that the nominating systems in the federal, state, and county organs of government may go the way of the city and be resolved into non-partisan primaries or elections, or into some form of preferential or proportional choices. If we were to look at the urban tendencies in the United States and at the party tendencies abroad there might be ground for such a conclusion. The range and sweep of the non-partisan movement on the one hand and the proportional system on the other must challenge the attention of any serious student of party tendencies.[2] Most of all should it challenge the responsible party managers, who may well inquire which way they are moving. But generally speaking they prefer to hide their heads in the sand.

[1] See the thoughtful comment of Herbert Croly in *Progressive Democracy;* also Ostrogorski, *Democracy and the Organization of Political Parties;* Walter Lippman, *The Phantom Public.*

[2] See Hoag and Hallett, *Proportional Representation,* pp. 514 ff. For an unfavorable view from an English source, see Horwill, *Proportional Representation.*

There is good ground for concluding that the county may go the way of the city, especially in cases where the city is an important, or the most important, part of the county, or where metropolitan areas are strongly developed. In the rural districts the change seems less likely. The county is now the least progressive organization in our political life, and when attention finally centers upon it, changes may come very rapidly. County managers similar to city managers, and county independence of national party lines, may spring up sooner than is commonly expected.

One of the main functions of the political party is that of aiding the electorate in the selection of personnel and the determination of policies. Within the party the primary process has the function of facilitating the choice of personnel and the fixing of policies. If sharply divided party groups do not appear, or if they are not sufficiently distinct, or for other reasons, such as weight of graft and spoils, do not serve a clear public purpose, then the double election or elimination system is likely to appear. This has occurred in our municipalities, where the party system has broken down in a large number of cases. In its place there has come a double election; the sifting process is thus carried on by the two elections instead of by the two parties. The two-party system in these cases is carrying too heavy a weight of graft and spoils, and does not really function. A similar tendency is found in many counties, particularly urban counties, and even in states. Less noticeably it appears now in our national party life.

Party lines have a hard struggle for maintenance in the states, where the local issues are often far removed

from national questions. However, significant changes are being made in the direction of responsible leadership in the states, and it is not unlikely that these may be reflected in more effective party leadership and more significant party or factional struggles. The California attempt to adopt a state-wide system of non-partisan elections was defeated in the referendum vote, but with strong support, as was also the case in Nebraska and North Dakota. The organic position of the state in the federal Union and the election of senators through the agency of states will tend to preserve the national party, even in state affairs. But if at any time the states were to begin experimenting with state managers and with simpler forms of government akin to those of the city, it would be easy to forecast the appearance of a demand for other than national party mechanisms of government. If the spoils system continues to develop its full harvest, as in Indiana, it is time to look for important experimentation with the machinery of state government. I should not be surprised to see a state manager in some of our commonwealths within the next ten years.

On the other hand, even in cities it must be observed that non-partisan ballots are not equivalent to non-party elections, and that national parties still play a large, and in many cases a dominating, rôle in urban affairs. They are modified parties, having little or nothing to do with national parties, but maintain a technical relationship with them, as in New York and Chicago. If the national party itself became more vital, the effect would doubtless be felt in the quickening of the local organization in the urban community.

In the national government the present party system seems firmly rooted. The probability of non-partisan elections or of the adoption of preferential or proportional systems of representation seems remote in this field. The substance of power may be passing to various groups more compact in their interests and more modern in their campaigning methods, but they do not attack the machinery of the party as it does not interfere with the attainment of their purposes. From one point of view a weak and ineffective party system best serves their group interests.

From time to time the *bloc* system seems to emerge and to threaten the older parties; but this is the commonplace of American history, and does not forecast any fundamental change of the party system at this time. *Blocs* imply the existence of cohesive interest groups of a somewhat permanent nature. These may emerge in the course of our national development as social or sectional groups, and may crystallize as parties, but at present they are too ill defined and fluctuating to do more than intimidate the older parties, as has been their wont from the beginning of party life. Farmers, manufacturers, labor, religions, and regions educate, persuade, belabor, and threaten party groups, and often attain their ends in this way, but at present there seems no real prospect of definite crystallization of any of these groups into permanent form. The mobility of social organization is too great, and the parties are too ready to yield and compromise, to make this alternative a plausible one at this time. In one sense the weakness of the party is its strength.

It seems probable, then, that for some time to come we shall have to deal with a formalized type of nominating system in the national and state governments, and the alternative devices already discussed will be confined to local, urban, and rural units of political organization. There will doubtless be no little experimentation in these jurisdictions with nomination by petition only, double elections, preferential and proportional systems. Other political inventions will inevitably emerge from the struggle.

From the European point of view, our whole machinery of nomination, including both primary and convention, is impossible to understand. On the Continent the various parties, under the multi-party system, are much more cohesive in policy and personnel; and they find relatively little difficulty in reaching informal agreement upon candidates. There are very few elective positions to pass upon, and the influence of spoilsmen is relatively small. The English party system still goes cheerfully on without anything resembling our primary devices, and English experts find it difficult to comprehend them. Of course it may well happen that with the passing of the older types of British leadership other contrivances may be set up for popular control over the party; but just now this is not in sight.

It is thinkable that we might repeal all statutes regulating primaries and permit the party machines to make their own nominations with such public help as they might call in for the purpose of making medicine. If we reach a stage in which this improbability becomes possible and actual, then the direct and the indirect meth-

ods of nomination are likely to give way to some such arrangement as that described under the name of the party conference.

It is also possible that we are moving toward a form of executive leadership in which the party may become less important than before, or in which it may play a different rôle from that now assumed.[1] In city affairs the municipal dictator idea in the form of the powerful mayor has played a significant part in the creation of an executive type. It is true that this has been supplanted in recent years by a legislative body or commission and a city manager. But in the states and in the federal government there are striking evidences of the rise of the executive authority, and that even in hands not particularly powerful. Any form of government in which executive leadership plays a larger rôle tends to throw the party organization and machine into the background and provides for a more direct appeal to the democratic community.

This volume is a limited study of party nominating systems in the United States, and the caution must again be repeated that these systems are only a part of the larger political problem and are dependent upon the general course of other events. The nominating system is a phase of the American party system; this is in turn a phase of the larger problem of modern democracy. And

[1] Croly says: "If the two-party system is breaking down as an agency for democratizing an undemocratic government, the remedy is not to democratize the party which was organized to democratize the government, but to democratize the government itself. Just in proportion as the official party government becomes genuinely democratic, it can dispense with the services of national parties" (*Progressive Democracy*, p. 343).

democracy is a phase of the political order now existing, and this in turn of the economic and social order of the present day and the Western world. All of these are under fire and all are subject to rapid change. We do not know whether the party system may be materially modified; whether the democracy we now know is destined to survive; whether the modern political or economic order can resist the revolutionary forces that are hammering at its gates; what science will do to the whole social order in another generation.[1]

Only the most enthusiastic and inexperienced would therefore expect that changes in the nominating system would produce a fundamental effect, whether through an indirect or a direct method.

The primary is a phase, an important phase, of our political life, and significant advances might be made in its processes, but it should not be expected that these will contribute the last word to our political problems. Too much was expected of the mongrel caucus when it was established; too much was expected of the convention when it overthrew King Caucus; too much was expected of the regulated convention; and too much was expected of the direct primary in its day. Perhaps there must always be a myth as a preliminary to progress, but the myth must not become a tradition, a memory rather than a hope. My wise colleague, Dr. Herrick, warns us to beware of making our hypothesis a religion.

The level of politics is in the long run the level of intelligent public interest in men and affairs political. Under any system the largest and most skilful group of

[1] See my *New Aspects of Politics*.

interested and active citizens will determine public policies and will select the persons to formulate and administer them. The uninterested, or the spasmodically interested, or the ineffectual who wish well feebly will be the governed, not the governors. It was Montesquieu who said that "A slave people can have only their chains," and it is impossible to escape the conclusion that only an intelligent and interested electorate habituated to political practice can use the mechanism of democracy or the systems of nomination in use here.

There are those who foresee the decline of parties, of democracy, of politics itself, in the development of modern life.[1] But they deceive themselves with words, for when politics is destroyed the set of relations formerly called politics emerges under some other name, whether economics or what not. Men may not be vitally interested in the mere mechanisms of government, but they were never more intensely interested than now in the patterns of human leadership, domination, co-operation; and there were never more fascinating types of political leaders in the social and political worlds than in our day. Roosevelt, Wilson, Lloyd George, Clemenceau, Streseman, Lenin, Trotzky, Mussolini, Gandhi—these are great figures of vivid interest to mankind. In America urban and rural leaders of many colors attract the interest of millions of citizens and outshine even movie stars, boxers, baseball heroes.

Nor was there ever a time when the functions of government were more important in the field of social relations than at the present time. Notwithstanding the

[1] Wallace, *The Passing of Politics.*

furious denunciation of governmental activity and interference, it advances at a rapid rate, usually with the support in one field of those who condemn it in another. There is likely to be more government and politics before there is less, and political crises and tensions are likely to become increasingly significant. Likewise, political leaders are likely to become more important in the near future than in the past.

All systems of government require some form of general judgment on leaders and policies, and some method of indicating toleration or approval of the dominant leaders and their policies. This is necessary in times of peace as well as of war, for the sake of morale if for nothing else. Murmuring, discontent, unwillingness, scattered protest, outbreaks, resistance, rebellion, revolution—these are the classic methods of expressing these popular judgments. Democracy provides an orderly way of passing judgment upon leaders, replacing them with others, and of indicating approval or disapproval of public policies as well as of types of leaders; and further provides that practically all of the adult population shall be eligible to participate in the process. Those who are satisfied or not much dissatisfied, or lazy, or incompetent, or careless, either do not participate, or are ineffective in their participation. An election and a primary election reflect this situation.[1] They present the issue which is basic to modern democracy, namely, Are the people interested enough and competent enough to choose leaders and determine policies? The well-known

[1] See the admirable passages in E. L. Godkin's *Unforeseen Tendencies of Democracy.*

answer was, "Let them vote until their stomachs ache, but do not let them decide anything." Our political order is based upon the democratic assumption that there is material in the electorate for the formulation of sound policies of state and the choice of wise leadership, and difficulties found in this direction are on the whole less than those met with in alternative directions of dictatorship, hereditary monarchy, military or theocratic rule. We are engaged in testing this assumption.

Most of the objections raised against primaries apply to elections as well as to universal suffrage, and to the whole plan of democracy. Disbelievers in popular government are constantly asserting that many are ignorant, that many are incompetent, that many are indifferent, that many are lax, lazy, and drifting, that nothing can come from this mediocre mass of yokels and boobs, that the mass should abdicate in favor of the few and kiss the rod that condescends to rule them, thanking God that they are allowed to live and be cared for by their betters—these are common charges among those to whom modern democracy is unwelcome.

All these criticisms should be examined, and the wheat carefully sifted from the chaff, but for some time to come it is clear that the democratic experiment will continue, and the broad outlines of the basic political order will not be changed. What the outcome of the experiment may be, no one can safely predict. It seems to me that there are more signs that democracy will succeed than any of the alternatives suggested; but I do not know this and can only register my own judgment that the interests of society will be best served by the con-

tinuance of the democratic assumption and the political order based upon it.

It is quite true that there may be democracy without primaries, or without conventions for that matter. It is also possible that primary devices may develop later in the political life of a larger number of modern states. It may logically be contended that political parties should not be subject to any legal regulation of any description, but should be left to the political rebuke of the electorate. But if the objection to the primary system is to democracy itself, that should be clearly understood. And the remedies proposed need not be simply reversion to an earlier type of nomination, but should be constructive attempts to make the democratic assumption more readily workable. The short ballot, organization of conspicuous responsibility, development of technical public administration, sounder civic training, better organization of political prudence, more fundamental study of the science of politics, elimination of maladjustments in our economic and social life—all these are significant.

There is nothing sacred about our American nominating systems, direct or indirect, regulated or unregulated. They are all parts of the larger democratic experiment and should be subject to change and adaptation, as new experience or new conditions may indicate. The caucus, the convention, the regulated convention, the direct primary, the nomination by petition only, the double election, proportional and preferential voting—these are all phases of an attempt to organize the system of selecting leaders and determining policies more and more effectively, under constantly shifting conditions,

rural, frontier, urban, with shifting systems of education, industry, intercommunication.

Experienced, intelligent, and disinterested men and women differ on the details of the nominating system and upon the areas within which the direct or indirect system is preferable. In so far as this represents intelligent difference of opinion and is intelligently supported, it is beneficial. It would be unfortunate, however, if this discussion were to distract interest, intelligent and persistent, from the broader problem of the reorganization of our whole electoral system, the raising of the standards of political practice, and the possibility of improvements of such types as have been discussed in previous pages of this study. The success of the democratic experiment will not be determined primarily by the direct or indirect system of nomination, but by our attitude toward the wider problems of political organization and practice which affect much more fundamentally our political future. Whether we cling to the spoils system or adopt some more scientific system of public administration; whether we retain the ballot's burden or adopt the short ballot; whether we centralize more closely authority and responsibility in cities, counties, and states; whether we develop sounder standards of leadership or fall into the hands of bosses and demagogues; whether we are able to work out a more effective system of civic training better adapted to a changing society, looking to the future as well as the past; whether we are able to adapt our representative system to modern needs and escape the gerrymanders of tradition; whether our political system reflects the deeper trends down under the sur-

face of social and economic life and the still more revolutionary tendencies of modern science—these and many other like problems are pressing hard upon our political order, and require the united effort of those interested in the development of our political system. As these questions are attacked it is not improbable that other and better types of nomination may emerge and take their place in the political world, competing with the older for survival under new conditions.

APPENDIX A

SUMMARY AND DIGEST OF PRIMARY LAWS

EXPLANATORY NOTES

In the following pages an attempt has been made to give in the briefest possible form the salient features of the primary laws of the forty-eight states. Condensation has necessitated the omission of much legislation affecting primary elections; for example, no attempt has been made to include the provisions of corrupt practices acts and absent voters laws where these laws apply to primary elections.

Citations are always to the session laws. The basic law, or the latest complete revision of the law, is given in bold-faced type.

Some definition of terms is necessary. A *mandatory*, direct primary is one which obliges the political parties affected to make their nominations in the manner specified; an optional law permits the party to nominate in the manner specified or not, as it sees fit. An *open* primary is one in which it is not necessary for the voter to make any declaration of party affiliation whatever, either at the primary or before. The term *party enrolment* is always used to indicate any record of party affiliation upon which one's right to participate in the primary of a particular party may depend, and should not be confused with *registration*, which may be a prerequisite for voting in all elections, primary or general. The party enrolment is, of course, frequently made at the time of registration. A party *council* is a gathering made up partly or wholly of party officers or nominees for offices acting ex officio, while a *convention* is composed entirely of delegates chosen to act in that capacity and no other.

ALABAMA

Constitution 1901, sec. 190; **Laws 1903, p. 356;**[1] **Laws 1911, p. 421;** Laws 1915, p. 218; Laws 1919, p. 969; Laws 1923, p. 269 (presidential primary, unconstitutional); Laws 1927, p. 89.

[1] Laws in bold-faced type indicate the basic direct primary law or the latest revision of the primary.

1. DIRECT PRIMARY

Optional.—Applies to state, district, county, and municipal offices as decided by party authority; convention delegates *may* be chosen by direct vote.

Time of primary.—Second Tuesday in May of presidential years; second Tuesday in August of other even-numbered years; special primaries as designated by party authority.

Open or closed ballot.—Closed; qualifications of party voters specified by party authority.

Placing names on ballot.—Certified by state or county chairman of party; party may levy assessments against candidates.

Order of names on ballot.—Alphabetical.

Preferential voting.—First and second choices expressed when three or more candidates for the same office, but may *not* be expressed for the same candidate.

Vote necessary to nominate.—Majority of first choices or highest when first and second choices added.

2. CONVENTION

State and local conventions as provided by party authority.

ARIZONA

Laws 1905, p. 139; Laws 1909, p. 60; Constitution 1912, Art. VI, secs. 3 and 5; Art. VII, secs. 10 and 14; Laws 1912 (special, p. 272; Laws 1915, p. 89; Laws 1921, pp. 245, 429; Laws 1923, p. 150 (defeated at referendum), 1927, pp. 23, 76.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state, county, city, and town offices; (*non-partisan* ballot for supreme and superior court judges); precinct committeemen are chosen by direct vote.

Time of primary.—Eighth Tuesday prior to a general or special election; 30 days prior to city election.

Open or closed ballot.—Closed; party voters determined by party enrolment.

Placing names on ballot.—By *petition* signed by 1 per cent to 10 per cent, 3 per cent to 10 per cent, 5 per cent to 10 per cent party voters in specified number of election districts of state, county, city, and precinct, respectively.

Order of names on ballot.—Rotation.

Vote necessary to nominate.—Plurality.

Party platform.—Formulated by *party council* composed of nominees for United States Senate and House, state officers, state senate and house, party national committeemen, state executive committee, and county chairman meeting the Tuesday after the last Monday in the month of the primary preceding general election; platform made public by 6 P.M. next day.

2. PETITION

Independent nominations may be made by petition not later than 10 days after primary; petitions must not be signed by electors who voted at primary or who signed other petitions.

ARKANSAS

Laws 1905, p. 782; Laws 1909, p. 505; Laws 1917, p. 2287 (Initiative Act of 1916); Laws 1919, p. 11.

1. DIRECT PRIMARY

Optional.—Applies to United States senator, congressmen, state, district, county, township, and city offices, and state legislature; precinct committeemen and delegates to county convention chosen by direct vote.

Time of primary.—Second Tuesday in August prior to general election.

Open or closed ballot.—Closed; qualifications for party voters specified by party authority.

Placing names on ballot.—Not specified.

Order of names on ballot.—Determined by lot at public meeting of county central committee.

Vote necessary to nominate.—No provisions.

2. CONVENTION

Delegate conventions as authorized by party authority may make nominations.

3. PETITION

Nominations may be made by petition of electors.

CALIFORNIA

Constitution 1900 and 1908, Art. II, sec. 2½; 1926, Art. II, sec. 2¾, Laws 1901, p. 606; Laws 1903, p. 118; Laws 1905, pp. 173, 441; Laws 1907, pp. 641, 677; Laws 1909, p. 691; Laws 1911, p. 769; Laws 1911 (extra), pp. 66, 85; Laws 1913, pp. 225, 1379; Laws 1915, p. 239 (defeated at referendum), p. 279; Laws 1916, p. 5 (defeated at referendum), p. 36; Laws 1917, pp. 1336, 1341; Laws 1919, pp. 39, 319, 381, 720; Laws 1921, p. 1217; Laws 1923, p. 38; Laws 1925, p. 1401 (constitutional amendment adopted 1926); Laws 1927, pp. 528, 608, 1686.

1. DIRECT PRIMARY

Mandatory.—Applies to all elective public offices *except* those filled at special elections, offices in cities, counties, or cities and counties whose charters provide other system of nominating, freeholders elected to frame charters, offices in cities of fifth and sixth classes, and school district offices; (*non-partisan* ballot for school, county, township, and municipal offices); county committeemen chosen by direct vote.

Time of primary.—Last Tuesday in August prior to November election; others, three weeks prior to election.

Open or closed ballot.—Closed; party voters determined by party enrolment.

Placing names on ballot.—By *declaration* or acceptance of candidacy and sponsor declarations with filing fee. Sponsor declarations must be signed by 65–100 sponsors for state office or United States senator; by 40–60 sponsors for congressman, member of board of equalization, and offices to be voted on in more than one county but not state-wide; by 20–30 sponsors for state senate and assembly, county, or subdivision of county office; by 10–20 sponsors for other offices; fees range from $10 to 2 per cent annual salary of office

sought; names may be *written in* on ballot also, but foregoing filing fees must be paid if written-in name receives nomination; (no references to party affiliation by sponsors for non-partisan offices).

Order of names on ballot.—Alphabetical for names of candidates for legislature and municipal offices; others, rotated by assembly or supervisorial district of state or subdivision.

Vote necessary to nominate.—Plurality; but if candidate does not receive the nomination of the party with which he is registered, he cannot be the nominee of another party.[1]

Party platform.—Formulated by *party council* composed of candidates for congressional and state offices (except school and judicial), senate and assembly, holdover senators, and one delegate from each senatorial district not represented by a holdover senator of the party, meeting third Tuesday in September after primary; platform made public by 6 P.M. next day.

2. PRESIDENTIAL PRIMARY

Mandatory.—For election of delegates.

Time.—First Tuesday in May.

Placing names on ballot.—By *petition* signed by not less than one-half of 1 per cent nor more than 3 per cent of party vote for governor at last election.

Method of control.—Delegate *may* file declaration of preference in which he promises to support that preference to the best of his judgment and ability. Delegates may be grouped. In order to appear in any group, a candidate must have the approval of the presidential aspirant whose name appears at the top of his group. A "no preference" column includes those not endorsed by presidential candidate supported, as well as those stating no preference.

3. PETITION

Independent nominations may be made after the primary by petition of electors equal to 1 per cent of entire vote cast at last general election in state or subdivision; petitions may not be signed by

[1] In actual practice a large number of candidates receive the nominations of more than one party.

those who voted at primary and may not be filed by candidates defeated at primary; fees, as specified previously, must be filed with petitions.

COLORADO

Laws 1887, p. 347; Laws 1910 (Special), p. 15; Laws 1913, p. 267; Laws 1921, p. 292; Laws 1927, p. 319.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state, district, county, city, city and county, ward, and precinct offices; precinct committeemen chosen by direct vote.

Time of primary.—Second Tuesday in September of even-numbered years; others, four weeks prior to election.

Open or closed ballot.—Closed; party voters determined by party enrolment.

Placing names on ballot.—By *petition* of 300 electors for state or district office and 100 electors for other offices; *or* by certificate of designation by *pre-primary convention;* names may be *written in* on ballot also; for state offices petitions required in each congressional district and signatures equal to 2 per cent of highest vote cast by the party at the last previous general election.

Order of names on ballot.—Those nominated by certificate placed in order of vote received in convention; those nominated by petition follow alphabetically.

Vote necessary to elect nominee.—Plurality.

Party platform.—Formulated by *party council* composed of candidates for state office and for legislature meeting fourth Tuesday in September after primary, made public within 5 days.

2. PETITION

Independent nominations may be made by petition after primary; signers must not have voted at primary or have signed any other petition.

CONNECTICUT

Public Acts 1905, p. 477; Special Acts 1907, p. 283; Public Acts 1909, p. 1246; Public Acts 1911, p. 1491; Special Acts 1913, pp. 72, 841; Public Acts 1921, p. 3311; Public Acts 1925, p. 3964.

1. CAUCUS

Scope.—Nominates candidates for town offices (except for Manchester) and state legislature; elects delegates to nominating conventions.

Time of caucus.—At least three weeks prior to general election.

Party qualifications for participating.—Must be enrolled in party.

Restrictions upon voting.—Must be by ballot if fifteen electors so request.

2. CONVENTIONS

Scope.—Nominate all officers not nominated at caucuses.

Time.—Nominations must be made at least three weeks prior to date of election; exact date fixed by party authorities.

Method of voting.—By roll-call if requested by one-fifth of delegates present.

3. DIRECT PRIMARY

Special direct primary for nominating town officers in Manchester.

DELAWARE

Laws 1897, p. 375; Laws 1903, p. 593; Laws 1913, p. 176; Laws 1915, pp. 267, 268; Laws 1917, p. 296; Laws 1919, pp. 232, 233; Laws 1925, p. 259; Laws 1927, p. 212.

1. DIRECT PRIMARY

Optional.—Applies to public elective offices as decided by governing authority of party.

Time of primary.—Date set by party authority to be after the last registration day in August except for city elections; in May for city of Wilmington; no two parties may hold primary on same day; no party may hold primary for more than two days in any one year.

Open or closed ballot.—Closed; qualifications for party voters specified by party authority; also challenge.

Placing names on ballot.—By notification in writing to party authority.

Order of names on ballot.—Alphabetical.

Vote necessary to nominate.—Plurality.

FLORIDA

Laws 1903, pp. 241, 242; Laws 1905, p. 167; Laws 1909, p. 71; Laws 1913, pp. 242, 268; Laws 1915, pp. 148, 149; Laws 1917, p. 241; Laws 1921, p. 400; Laws 1925, pp. 83, 448.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state and county offices; may apply to city offices if party committee so decides; party committees chosen by direct vote.

Time of primary.—First Tuesday after first Monday in June of even-numbered years.

Open or closed ballot.—Closed; party voters determined by party enrolment, qualifications as specified by party authority, and by challenge.

Placing names on ballot.—By *declaration* of candidate plus filing *ee* equal to 3 per cent annual salary of office sought.

Order of names on ballot.—Alphabetical.

Preferential voting.—First and second choices expressed wherever a majority vote would not otherwise occur; may not be expressed for same candidate.

Vote necessary to nominate.—Majority of first-choice votes or greatest number of first places plus second-choice votes.

2. PRESIDENTIAL PRIMARY

Optional.—As decided by party committee; vote cast for president, vice-president, and convention delegates.

Time.—Same as state primary.

Placing names on ballot.—By *affidavit* stating candidate has paid party assessments.

Method of control.—None.

GEORGIA

Laws 1891, p. 210; Laws 1900, p. 40; Laws 1904, p. 97; Laws 1907, p. 98; Laws 1908, p. 55; Laws 1914, p. 263; Laws 1917, pp. 183, 338, 378; Laws 1922, p. 97; Laws 1924, p. 190; Laws 1925, p. 205. Laws 1927, p. 245.

1. DIRECT PRIMARY

Optional.—As determined by party authority; applies to United States senator, congressmen, governor, state house offices, judges of supreme court and court of appeals, and legislature.

Mandatory.—For elective county offices in Muscogee County.

Time of primary.—Secondary Wednesday in September of general election years and first Wednesday in October if second primary held; special primary, date fixed by state executive committee.

Open or closed ballot.—Closed; qualifications for party voters specified by party authority.

Placing names on ballot.—Not specified.

Order of names on ballot.—Alphabetical.

Vote necessary to elect.—Majority of "county unit" votes; "run off" primary if candidate does not secure a majority.

2. PRESIDENTIAL PRIMARY

Optional.—As determined by party authority; also scope determined by party authority.

Time.—Fixed by party authority.

Placing names on ballot.—Fixed by party authority.

Method of control.—None.

3. CONVENTION

Regulations not specified.

IDAHO

Laws 1903, p. 360; Laws 1909, p. 196; Laws 1911, p. 571; Laws 1913, pp. 347, 433; Laws 1917, p. 454; Laws 1919, p. 372; Laws 1925, p. 8; Laws 1927, p. 275.

1. DIRECT PRIMARY

Mandatory.—Applies to county offices, district judges, and members of legislature; precinct committeemen and delegates of county convention chosen by direct vote.

Time of primary.—First Tuesday in August of even-numbered years.

Open or closed ballot.—Closed; qualifications for party voters specified by party authority; challenge.

Placing names on ballot.—By filing *declaration* by candidate and *fee* equal to 1 per cent salary of office sought or $2 for legislative candidate.

Order of names on ballot.—Alphabetical.

Vote necessary to nominate.—Plurality.

Party platform.—Formulated by *state convention* which meets fourth Tuesday in August after primary.

2. CONVENTION

State convention.—Nominates candidates for United States senator, congressmen, governor, lieutenant-governor, justice of supreme court, and other elective state offices.

3. PETITION

Independent nominations for all elective offices may be made by petition signed by registered voters who have not voted at primary.

ILLINOIS

Laws 1908, p. 49 (unconstitutional); Laws 1910 (Special), pp. 46, 77 (unconstitutional); Laws 1911–12 (Special), p. 43; Laws 1913, pp. 310, 318, 331; Laws 1916 (Special), p. 75; Laws 1917, pp. 229, 454; Laws 1919, p. 475 (unconstitutional), p. 490; Laws 1921, pp. 431, 432, 433; Laws 1923, p. 348; Laws 1925, pp. 372, 373, 376; Laws 1927, pp. 455, 457, 459, 492; Laws 1928 (Special.)

1. DIRECT PRIMARY

Mandatory.—Applies to all elective state, congressional, county (including county and probate judge), city (including officers of the Municipal Court of Chicago), village and town and municipal officers, clerks of the appellate courts, trustees of sanitary districts; does *not apply* to school elections, township elections, or to nomination of circuit and supreme court judges or judges of Superior Court of Cook County; party committeemen chosen by direct vote.

Time of primary.—Second Tuesday in April prior to last Tuesday in February annually prior to first Tuesday in April elections; second Tuesday in March annually prior to third Tuesday in April election; for other offices, 5 weeks prior to general election for such offices.

Open or closed ballot.—Closed; to vote party ticket, voter must declare party affiliation, subject to challenge.

Placing names on ballot.—By *petition* of from 1,000 to 2,000 party primary electors for state offices; for other offices, by one-half of 1 per cent of party electors of district, county, city, town, village, or ward; names may be *written in* on ballot also.

Order of names on ballot.—Candidates for state offices, rotated by senatorial district; judges of municipal court in cities over 300,000 population, rotated in precinct by groups equal to number of candidates; other offices, arranged in order in which petitions were filed.

Cumulative voting.—In voting for candidates for state representative, each elector may cast three votes for one or distribute among two or three candidates.

Vote necessary to nominate.—Plurality.

Party platform.—Formulated by state convention which meets first Friday after first Monday after the April primary.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for president and district delegates to national nominating convention.

Time.—Same as state primary.

Placing names on ballot.—President, by petition signed by not less than 3,000 nor more than 5,000 electors; district delegates, by one-half of 1 per cent of primary voters in district.

Method of control.—Preference vote of state-at-large *advisory* to delegates-at-large and preference vote of districts *advisory* to district delegates.

3. CONVENTION

State convention.—Nominates trustees of the University of Illinois and elects delegates-at-large to national nominating convention.

District convention.—Nominates judges of circuit court, Superior Court of Cook County, and supreme court judges.

4. PETITION

Independent nominations may be made by petition.

INDIANA

Laws 1907, p. 627; Laws 1909, p. 38; Laws 1911, p. 288; Laws 1915, p. 359; Laws 1917, pp. 317, 354, 358; Laws 1919, p. 711; Laws 1921, pp. 413, 514; Laws 1923, p. 550; Laws 1925, pp. 354, 440; Laws 1927, p. 567.

1. DIRECT PRIMARY

Mandatory.—Applies to congressmen, county offices, local judicial offices, city and township offices, prosecuting attorneys, and members of legislature; precinct committeemen and delegates to state nominating convention chosen by direct vote; instruction vote for governor and United States senator.

Time of primary.—First Tuesday after first Monday in May of general election years.

Open or closed ballot.—Closed; challenge.

Placing names on ballot.—By *declaration* of candidate. Candidate for United States senator and governor may have names placed on ballot for *instruction* vote by petition of 500 electors.

Order of names on ballot.—Alphabetical unless four or more candidates for one office (except precinct offices) when names are rotated.

Vote necessary to nominate.—Highest. If a candidate in the *instruction vote* for governor or United States senator receives a majority vote of party for such office such candidate is declared by state convention to be party nominee.

2. PRESIDENTIAL PRIMARY

Mandatory.—Instruction vote cast for president and vice-president, if any candidate requests it; delegates to state convention elected.

Time.—Same as state primary.

Placing names on ballot.—President, by petition signed by 500 voters; delegates, by petition of 10 voters.

Method of control.—Any candidate for president receiving a majority of the preference vote is declared the candidate of the state and delegates to the national convention, chosen by the state-convention, are bound to vote for him as a unit as long as his name is before the convention. If no candidate receives a majority, the

preference vote may be disregarded. In any case the result is certified to the state party chairman and is reported to the convention.

3. CONVENTION

State convention.—Nominates candidates for all elective state offices (unless candidate for governor or United States senator is nominated by *instruction vote* at primary); selects delegates to national conventions.

4. PETITION

Independent candidates may be nominated by petitions which must be filed 30 days *prior* to primary.

IOWA

Laws 1907, p. 51; Laws 1909, pp. 53, 63; Laws 1911, p. 42; Laws 1913, pp. 28, 91, 92, 96, 98, 99; Laws 1915, p. 127; Laws 1917, p. 32; Laws 1919, pp. 75, 304; Laws 1921, p. 65; Laws 1923, p. 5; Laws 1924 (Extra), pp. 33, 56; Laws 1925, p. 27. Laws 1927, p. 13.

1. DIRECT PRIMARY

Mandatory.—Applies to all offices filled at a regular biennial election (except supreme and district court judges), and to city offices in cities of first class and those over 15,000 population unless charter provides otherwise; (*non-partisan ballot in commission cities*); county committeemen and delegates to county convention chosen by direct vote.

Time of primary.—First Monday in June of even-numbered years; last Monday in February in cities of first class and those of 15,000 or more population under special charter; second Tuesday prior to election in commission cities.

Open or closed ballot.—Closed; party enrolment determines party voters.

Placing names on ballot.—By *petition,* signed for state office or United States senator, by 1 per cent of party voters in each of 10 counties, but not less than one-half of 1 per cent of total party vote of state; for congressman and state senator, by 2 per cent of voters in at least one-half of counties in district, but not less than 1 per cent of total vote of district; for county office, by 2 per cent of

party vote; for township or precinct office, by 10 voters; names may be *written in* on ballot also.

Order of names on ballot.—State offices rotated by counties; district and county offices rotated by precinct; other names arranged alphabetically.

Vote necessary to nominate.—Highest, but must equal 35 per cent of party vote for that office; if not, nominations are made by party conventions of political unit concerned.

Party platform.—Formulated by *state convention* meeting after primary.

2. DELEGATE CONVENTION

State judicial convention.—Nominates supreme court judges.

3. PETITION

Independent nominations may be made by petition of from 10 to 500 electors, varying with offices.

KANSAS

Laws 1908, p. 59; Laws 1909, pp. 250, 253; Laws 1911, pp. 312, 313; Laws 1913, pp. 131, 179, 305, 307, 309; Laws 1915, pp. 249, 264, 266; Laws 1917, pp. 226, 233; Laws 1919, p. 254; Laws 1920 (Special), p. 28; Laws 1921, p. 275; Laws 1927, p. 257.

1. DIRECT PRIMARY

Mandatory.—Applies to all elective offices except those filled by special election, by school district meetings, and by city election in cities of less than 5,000.

Time of primary.—First Tuesday in August of even-numbered years; first Tuesday in March annually in cities of 10,000 or over; second Monday before city election of odd-numbered years in first- and second-class commission cities; second Tuesday in March of even-numbered years in second-class commission cities.

Open or closed ballot.—Closed; party enrolment, challenge.

Placing names on ballot.—By *petition* of from 1 to 10 per cent of party voters of state or subdivision varying with offices *or* by *personal declaration* plus filing *fee* ranging from 50 cents to 1 per cent annual salary of office sought; name may be *written in* on ballot also, but only when no nominee by petition or declaration.

Order of names on ballot.—Rotated by division of state or county when more than one candidate for state, district, or county office.

Vote necessary to nominate.—Highest.

Party platform.—Formulated by *party council* composed of candidates for state offices, United States Senate and House, state senate and house, national committeemen, county chairman, hold-over United States and state senators, meeting last Tuesday in August preceding general election; platform made public by 6 P.M. next day.

2. PETITION

Independent candidates may be nominated by petition.

KENTUCKY

Laws 1892, p. 106; Laws 1910, p. 163; Laws 1912, p. 47; Laws 1914, pp. 399, 477; Laws 1916, p. 53; Laws 1920, pp. 335, 274, 513, 672; Laws 1922, pp. 276, 406, Laws 1924, pp. 136, 158.

1. DIRECT PRIMARY

Optional.—Applies to state offices and United States senator as determined by governing authority of party 75 days prior to date of primary.

Mandatory.—Applies to other elective offices except judges of court of appeals and judges of circuit court, trustees of common schools, members of school boards, and trustees in towns of fifth and sixth classes; (non-partisan ballot in commission cities).

Time of primary.—First Saturday in August prior to November election; third Saturday prior to regular election in second- and third-class cities.

Open or closed ballot.—Closed, party enrolment where registration is required, otherwise challenge.

Placing names on ballot.—By *declaration* of candidate plus affidavit of two party members plus *fee* of $1; by *petition* of 100 voters in second-class cities and of 50 voters in third-class cities; candidates for judge of court of appeals and judges of circuit court are nominated by *resolution of party committee or* by application of two electors of any party. These candidates not required to make decla-

ration of party loyalty and name of candidate may appear on general election ballot under as many parties as may have nominated him. Where only one candidate for an office he is issued certificate of nomination and name not put on ballot.

Order of names on ballot.—Those voted on by entire state, rotated by congressional district; others, order determined by lot at public drawing; in second- and third-class cities (non-partisan), alphabetical order.

Vote necessary to nominate.—Highest.

2. PETITION

Independent nominations may be made by petition, but no candidate defeated at primary may run for same office at general election.

LOUISIANA

Constitution 1898, Art. 200; 1921, Art. 8; Laws 1906, p. 66; Laws 1907 (extra), pp. 19, 22, 33; Laws 1908, p. 154; Laws 1910, p. 403; Laws 1914, pp. 148, 162, 460, 519, 547; Laws 1916, p. 66; Laws 1918, pp. 181, 384; Laws 1920, p. 344; Laws 1921 (Extra), p. 240; p. 15 of Constitutional Amendments; Laws 1922, p. 178; Laws 1924, pp. 258, 394.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state, district, parochial, ward and city offices in cities over 5,000 population. Applies to cities under 5,000 at option of party authority; state central committee chosen by direct vote.

Time of primary.—Third Tuesday in January for state, district, parochial, ward offices and state legislature; congressional primary, second Tuesday in September for United States senator, congressmen, state, district, judicial, parochial, and city offices; for other city and ward offices, 60–70 days prior to city election.

Open or closed ballot.—Closed; party enrolment and party qualifications specified by party authority.

Placing names on ballot.—By *declaration* by candidate and filing *fee* ranging from $1 to $100. State committee of party may also make assessments against candidates to defray expenses which must

be paid before name goes on ballot. When only one candidate for an office, he is declared nominee and no primary necessary for that office.

Order of names on ballot.—Alphabetical.

Vote necessary to nominate.—Majority; if no candidate receives majority vote, second primary held five weeks after first and highest two voted on, but if one withdraws, the other is declared the nominee. If governor receives majority vote, no second primary held for other *state* officials but plurality elects.

MAINE

Laws 1913, p. 313 (passed by initiative and referendum, 1911); Laws 1915, pp. 18, 30, 221; Laws 1919, pp. 158, 165, 308; Laws 1923, p. 354; Laws 1925, p. 43; Laws 1927, pp. 13, 209.

1. DIRECT PRIMARY

Mandatory.—Applies to state and county offices.

Time of primary.—Third Monday in June.

Open or closed ballot.—Closed; party voters determined by party enrolment.

Placing names on ballot.—By petition signed by 1 per cent to 2 per cent vote cast for governor in state or political unit.

Order of names on ballot.—Alphabetical.

Vote necessary to nominate.—Plurality.

Party platform.—Formulated by *party convention* not less than 60 nor more than 90 days before the primary.

MARYLAND

Laws 1906, p. 740; Laws 1908, p. 103; **Laws 1910, pp. 113, 112, 131; Laws 1912, pp. 7, 289, 506;** Laws 1914, pp. 210, 372, 458, 790, 792, 842, 862, 1215, 1337, 1359, 1402; Laws 1916, pp. 273, 584; Laws 1920, p. 184; Laws 1922, pp. 770, 882; Laws 1927, pp. 424, 425.

1. DIRECT PRIMARY

Mandatory.—Applies to congressmen, judges, county officers, city officers for Baltimore; party committees, and convention delegates chosen by direct vote.

Time of primary.—Between September eighth and fifteenth as fixed by agreement of parties (if no agreement, second Monday in September) except in presidential years held first Monday in May; first Tuesday in April in Baltimore for municipal elections.

Open or closed ballot.—Closed; party voters determined by party enrolment.

Placing names on ballot.—By *declaration* by candidate plus *fee* ranging from $10 to $270.

Order of names on ballot.—Alphabetical.

Preferential voting.—First and second choices designated in the *instruction vote* for state officers in voting for delegates to state convention which nominates state officers and United States senator. Candidate receiving majority vote of first and second choices entitled to vote of county delegates to convention and majority vote of convention necessary to nominate.

Vote necessary to nominate.—Highest.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for president and state convention delegates.

Time.—Same as state primary.

Placing names on ballot.—By declaration of candidacy plus fee of $279.

Method of control.—District delegates in state convention bound by vote for president in their district. Whole state delegation is instructed to vote as a unit in national convention for candidate receiving a majority in the state convention. If no candidates qualify, the state convention may instruct for whom it chooses or send the delegation uninstructed. Voters may vote for an uninstructed delegation.

3. CONVENTION

State convention.—Nominates state officers and United States senators.

Time of convention.—Not specified.

4. PETITION

Independent nominations may be made by petition, but candidates defeated at primary may not be nominated by this method.

MASSACHUSETTS

Laws 1909, pp. 103, 207, 329; Laws 1910, pp. 30, 468; Laws 1911, p. 570; Laws 1912, pp. 173, 180, 184, 336, 374, 411, 694; Laws 1913, pp. 950, 628; Laws 1914, pp. 403, 959; Laws 1915, pp. 91, 337; Laws 1916, pp. 12, 83, 156; Laws 1919, p. 200; Laws 1920, pp. 497, 592; Laws 1921, pp. 246, 460; Laws 1922, p. 239; Laws 1923, pp. 50, 164; Laws 1924, p. 235; Laws 1925, p. 61; Laws 1926, p. 116; Laws 1927, pp. 16, 17, 81, 350.

1. DIRECT PRIMARY

Mandatory.—Applies to all elective offices except in cities whose charters provide otherwise, and except presidential electors.

Time of primary.—State primary, seventh Tuesday prior to general election; city primary, third Tuesday prior to city election; town primary, second Tuesday prior to town elections.

Open or closed ballot.—Closed; party voters determined by party enrolment.

Placing names on ballot.—By *petition* of 1,000 voters for statewide offices; other offices filled at state and city election, by 2 per cent vote cast for governor at last state election in political unit, but in no case less than 50 nor more than 1,000; names may be *written in* on ballot also.

Order of names on ballot.—Alphabetical (except candidates for ward or town committees and convention delegates determined by lot).

Vote necessary to nominate.—Plurality.

Party platform.—*May* be adopted by a *convention* of elected delegates, the state committee, United States senators, nominees for state offices, or in the years when no election held for state offices by the incumbents of those offices who are members of the party.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for delegates-at-large and district delegates; presidential preference primary.

Time.—Last Tuesday in April.

Placing names on ballot.—By *petition* signed, for delegates-at-large, by 1,000 voters not less than 250 of whom come from each of

four different counties; signed, for district delegates, by 5 voters from each ward or town in the district, but never more than 250.

Method of control.—Presidential preference of each candidate for delegate printed on the ballot after his name, provided that presidential aspirant files his written assent thereto. Delegates favoring a certain aspirant may be grouped together, but must be voted for separately.

MICHIGAN

Laws 1907 (Extra), chap. 4; Laws 1909, p. 514; Laws 1911, p. 481; Laws 1912 (Extra), p. 17; Laws 1913, pp. 189, 201, 748; Laws 1915, p. 369; Laws 1917, p. 227; Laws 1919, pp. 653, 708; Laws 1921, pp. 3, 76, 103, 507; Laws 1925, pp. 544, 564; Laws 1927, pp. 3, 147, 279, 479.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senators, congressmen, governor, lieutenant-governor, legislators, county offices, circuit judges, city offices except in commission cities and those with special charters unless charter makes primary law applicable; applies to village and township offices if adopted by referendum; delegates to county conventions, which select delegates to state convention, chosen by direct vote.

Time of primary.—Tuesday after first Monday in September prior to November election; first Monday in March prior to spring election; third Tuesday prior to charter election in cities; special primary, not less than 20 days prior to special election.

Open or closed ballot.—Closed; voter asks for party ballot he desires to vote; record made of party affiliation, but this is not referred to at any subsequent primary.

Placing names on ballot.—By *petition* of 1 per cent to 4 per cent *party* voters in unit affected except in villages and townships where petition requires 1 per cent to 4 per cent of electors; if only one candidate for city, county, or district office, he is declared nominee and name not placed on ballot.

Order of names on ballot.—Rotation.

Vote necessary to elect nominee.—Highest.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for president only.

Time.—First Monday in April.

Placing names on ballot.—By *petition* signed by not less than 5,000 qualified voters.

Method of control.—None; candidate for president receiving the highest number of votes in the state-at-large declared to be the choice of the party in the state.

3. CONVENTION

State convention.—Nominates state officers not nominated by direct primary and delegates to national conventions.

MINNESOTA

Laws 1901, p. 297; Laws 1902, pp. 55, 56; Laws 1903, p. 112; Laws, 1905, p. 110; Laws 1907 p. 304; Laws 1909, p. 85; Laws 1912 (Special), pp. 4, 23; Laws 1913, pp. 542, 654; Laws 1915, pp. 106, 223, 507; Laws 1917, pp. 41, 231; Laws 1919, pp. 7, 535; Laws 1921, pp. 401, 15, 53; Laws 1923, pp. 124, 100, 128; Laws 1925, p. 525.

1. DIRECT PRIMARY

Mandatory.—All elective offices except in towns, villages, and cities of third and fourth classes, and members of school, park, library boards in cities of less than 100,000, and presidential electors; (*non-partisan* ballot for supreme court justices, district, probate and municipal court judges, state legislature, county offices, and first- and second-class cities).

Time of primary.—Third Monday in June prior to general election; seven weeks prior to city election in first- and second-class cities; special primaries, seventh day prior to special election.

Open or closed ballot.—Closed; challenge.

Placing names on ballot.—By *declaration* by candidate plus filing *fee* ranging from $10 to $100; by petition also; for supreme court judges, 500 signers; for district court judge, 250 signers; if only one candidate for any office, he is declared nominee and name not placed on ballot.

Order of names on ballot.—Rotation.
Vote necessary to nominate.—Highest.

MISSISSIPPI

Constitution 1890, Art. 12; Laws 1902, p. 105; Laws 1904, p. 178; Laws 1908, p. 140; Laws 1910, pp. 210, 211; Laws 1912, p. 309; Laws 1914, pp. 193, 194; Laws 1916, p. 224; Laws 1920, p. 210; Laws 1924, p. 207.

1. DIRECT PRIMARY

Mandatory.—For United States senator, congressmen, state, district, county, county district, and municipal offices, supreme court, circuit court, and chancery court judges; city committee chosen by direct vote.

Time of primary.—Between first and tenth of Aguust prior to November election as determined by state executive committee; congressional primary, third Tuesday in August; city primaries, date set by party committee.

Open or closed ballot.—Closed; party qualifications specified by party authority; challenge.

Placing names on ballot.—Names filed with executive committee of unit affected; when only one candidate, he is declared the nominee and name not placed on ballot.

Order of names on ballot.—Determined by county executive committee.

Vote necessary to nominate.—Majority. If no one receives majority, highest two are voted on at second primary held 3 weeks after first except in cities where held not later than 7 days after first primary. Plurality nominates if candidates for legislature, county, or county district office sign written agreement to that effect before the primary election.

MISSOURI

Laws, 1907, p. 263; Laws 1909, pp. 408, 481; Laws 1911, p. 242; Laws 1913, pp. 330, 334, 335, 420, 517; Laws 1915, pp. 282, 284; Laws 1917, pp. 271, 272, 279; Laws 1919, pp. 328, 329; Laws 1921, pp. 329, 377, 379; Laws 1923, p. 197; Laws 1925, pp. 213, 214, 301; Laws, 1927, p. 185.

1. DIRECT PRIMARY

Mandatory.—Applies to all elective offices except those filled at special elections, city offices not elected at general state elections, town, village, and school district offices, and county superintendents; precinct and township committeemen chosen by direct vote.

Time of primary.—First Tuesday in August of even-numbered years; in cities of 400,000 or over, biennially on Friday of fourth week prior to April election; in counties of 175,000 to 300,000 population, 40 days before general election; in second- and third-class cities, second Tuesday prior to city election.

Open or closed ballot.—Closed; challenge.

Placing names on ballot.—By *declaration* and filing *fee* ranging from $5 to $100.

Order of names on ballot.—Rotation by district or precinct.

Vote necessary to nominate.—Highest.

Party platform.—Formulated by *party council* composed of state committee and party nominees for state offices, judges, United States senator, congressmen, and state legislature.

MONTANA

Laws 1895 P.C. 1330; Laws 1911, p. 94; Laws 1913 (Initiative Act of 1912), pp. 570, 590, 593; Laws 1917, p. 283; Laws 1921, pp. 80, 410; Laws 1923, p. 381; Laws 1925, pp. 12, 16, 198, 489; Laws 1927, pp. 4, 9, 19, 337, 405.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, all elective state, district, and county offices, delegates to constitutional conventions, offices of cities and towns of 3,500 or more population; and mayor and councilmen in commission and commission-manager cities where *non-partisan* ballot is used; precinct committeemen chosen by direct vote.

Time of primary.—Third Tuesday in July prior to general election; 14 days prior to city election; second Monday prior to election in commission cities; last Tuesday in August of odd-numbered years in commission-manager cities.

Open or closed ballot.—Open, separate ticket for each party, all fastened together, elector votes one, detaches the others which are put in "blank ballot box."

Placing names on ballot.—By *declaration* plus filing *fee:* $15 for state senate and house; $10 for any office paying $1,000 or less salary; 1 per cent of salary for any office paying over $1,000; $10 to $40 for county commissioners; $5 for offices compensated by fees; by petition of 25 electors in commission and commission-manager cities.

Order of names on ballot.—Rotation.

Vote necessary to nominate.—Highest.

Party platform.—Formulated by *party council* composed of candidates for state offices, United States senate, congressmen, state legislature, holdover senators and state central committee meeting not later than September 15 preceding general election.

NEBRASKA

Laws 1907, p. 202; Laws 1909, pp. 244, 245, 252, 254, 256, 278; Laws 1911, p. 216; Laws 1913, pp. 215, 247, 321, 383; Laws 1915, pp. 101, 102; Laws 1917, pp. 110, 112; Laws 1918, p. 33; Laws 1919, pp. 219, 221, (p. 223 defeated at referendum); Laws 1921, p. 315, (p. 302 and 336 defeated at referendum); Laws 1923, pp. 207, 210, 212, 214; Laws 1925, pp. 297, 300, 302; Laws 1927, pp. 275, 277, 278.

1. DIRECT PRIMARY

Mandatory.—Applies to all elective offices except those filled by special election, those in cities of less than 25,000 population (unless a commission city), except village, precinct, township, and school district offices, county supervisors in counties under township organization, school boards, and boards of education; ("*non-political*" ballot for supreme, district, and county court judges, state and county superintendents, regents of University of Nebraska, and city officers in commission cities); delegates to county convention chosen by direct vote.

Time of primary.—Second Tuesday in August of even-numbered years; second Tuesday in April of presidential years.

Open or closed ballot.—Closed; party enrolment where registration is required (in cities of over 7,000 population); also challenge.

Placing names on ballot.—By written *application* of candidate *or* of 25 electors, and in either case a filing *fee* ranging from $5 to $50; names may be *written in* on ballot also.

Order of names on ballot.—Rotated (in each office division) for each election district or precinct.

Vote necessary to nominate.—Highest, but must equal at least 5 per cent of party vote at the primary; names of candidates of another party may be written in on ballot, but candidate cannot accept nomination of party writing in name if he is not nominated by his own party.

Party platform.—Formulated by *state convention*, meeting fourth Thursday after Tuesday primary of even-numbered years.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for president, Vice-president, delegates-at-large, and district delegates.

Time.—Same as state primary.

Placing names on ballot.—President, by *petition* signed by 25 electors; delegates at large, by petition of 500 electors in each congressional district; district delegates by petition of 500 electors representing two-thirds of the counties.

Method of control.—None. Each delegate and members of the national committee furnished with a certificate of the votes cast for president.

3. CONVENTION

Candidates for offices not required to be nominated by primary may be nominated by party convention.

4. PETITION

Independent nominations may be made by petition of from 50 to 1,000 voters varying with offices; candidates defeated at primary cannot be nominated by petition.

NEVADA

Laws 1883, p. 28; Laws 1909, p. 273; Laws 1911, pp. 334, 335, 336; Laws 1913, p. 510; Laws 1915, p. 453; Laws, 1917, p. 176; Laws 1921, p. 388; Laws 1923, p. 49; Laws 1925, p. 18; Laws 1927, pp. 205, 287, 289, 290.

1. DIRECT PRIMARY

Mandatory.—For all elective offices except those filled by special election, city offices, and reclamation and irrigation district offices (*non-partisan* ballot for judicial and school offices).

Time of primary.—First Tuesday in September.

Open or closed.—Closed; party enrolment; challenge.

Placing names on ballot.—By *declaration* of candidate plus filing *fee* ranging from $10 to $250, *or* nomination by 10 electors and acceptance by candidate plus fee, as preceding; when only one candidate for any office he is declared nominee and name not placed on ballot.

Order of names on ballot.—Alphabetical.

Vote necessary to nominate.—Highest.

Party platform.—Formulated by *state convention* meeting fourth Tuesday in June of general election years.

2. PETITION

Independent nominations.—May be made (except for judicial or school offices) by petition of 5 per cent entire vote of state or subdivision at last and general election and payment of same fees as candidates filing for primary.

NEW HAMPSHIRE

Laws 1909, p. 520; Laws 1913, pp. 505, 711, 737, 752; Laws 1915, pp. 145, 236; Laws 1919, p. 59; Laws 1919 (special), p. 380; Laws 1921, p. 162; Laws 1923, p. 63; Laws 1926, chap. 25; Laws 1927, p. 156.

1. DIRECT PRIMARY

Mandatory.—Applies to delegates to party council and to all candidates for elective offices *except* city, town (unless elected at biennial elections), school district offices and presidential electors.

Time of primary.—Tuesday after second Monday in September biennially prior to November election.

Open or closed ballot.—Closed; party voters determined by party enrolment; also challenge.

Placing names on ballot.—By *declaration* of candidacy and filing *fee* ranging from $1 to $100 *or* by *petition* of from 5 to 200 electors varying with offices.

Order of names on ballot.—Rotated if two or more candidates for same office are voted on in more than one town or ward, otherwise alphabetical.

Vote necessary to nominate.—Plurality.

Party platform.—Formulated by *party council* composed of nominees for governor, counselors, state legislature, and state delegates meeting not earlier than third Tuesday in September and not later than first Tuesday of October.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for delegates at large and district delegates.

Time.—Second Tuesday in March.

Placing names on ballot.—By declaration of candidacy and fee of $10 *or* petition of 100 voters.

Method of control.—Pledge to support a particular presidential candidate "so long as he shall be a candidate before said convention" is optional with candidates for delegate.

NEW JERSEY

Laws 1898, p. 330; Laws 1903, p. 603; Laws 1907, p. 697; Laws 1908, p. 185; Laws 1909, p. 159; Laws 1910, p. 120; Laws 1911, p. 276; Laws 1912, p. 776; Laws 1914, p. 170; Laws 1915, p. 566; Laws 1916, pp. 72, 586; Laws 1918, p. 97; Laws 1919, p. 66; **Laws 1920, pp. 615, 739;** Laws 1921, pp. 17, 516; Laws 1922, p. 468; Laws 1924, p. 671; Laws 1925, p. 29; Laws 1926, p. 126; **Laws** 1927, p. 250.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state, district, county, and city offices; party committees chosen by direct vote.

Time of primary.—Third Tuesday in June prior to general election; third Tuesday in May of presidential years, special primaries; 20–30 days prior to special elections.

Open or closed ballot.—Closed; party voters determined by party enrolment; also challenge.

Placing names on ballot.—By *petition* of from 10 to 1,000 (varying with offices) party voters who voted for majority of party candidates at last general election and who intend to affiliate with same party at ensuing election, written acceptance must be filed by candidate; names may be *written in* on ballot also.

Order of names on ballot.—Determined by lot by county or city clerk.

Vote necessary to nominate.—Highest.

Party platform.—Formulated by *party council* composed of party nominees for state legislature, governor, holdover senators, and state committee, meeting first Tuesday after primary.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for president, delegates-at-large, and district delegates.

Time.—Same as state primary in presidential years.

Placing names on ballot.—President, by petition of 1,000 voters; consent of candidate not necessary.

Method of control.—Delegates may be grouped together and may have preference for president placed after their names on the ballot. Vote for president "publicly announced."

3. PETITION

Independent nominations may be made by petition (and written acceptance) of 2 per cent entire vote cast for members of general assembly in state or subdivision at last general election, but not to exceed 800 signatures for state-wide office or 100 for other offices.

NEW MEXICO

Laws 1905, ch. 127; Laws 1927, p. 76.

1. CONVENTION

No regulations of convention specified; provisions made for certification to secretary of state or county clerk of nominations made by party conventions not less than 40 days before the election.

NEW YORK

Laws 1898, p. 331; Laws, 1909, p. 14; Laws 1910, pp. 803, 806; Laws 1911, p. 2657; Laws 1912, p. 8; Laws 1913, p. 2211; Laws 1913 (Extra), p. 2817; Laws 1914, p. 714; Laws 1915, p. 2277; Laws 1916, p. 1612; Laws 1918, p. 1040; Laws 1919, p. 1346; Laws 1920, pp. 2235, 2243; Laws 1921, p. 1451; Laws 1922, p. 1326; Laws 1923, p. 896; Laws 1924, p. 31; Laws 1925, p. 844; Laws 1926, p. 605; Laws 1927, chaps. 118, 237, 362.

1. DIRECT PRIMARY

Mandatory.—For public elective offices except United States senator, state-wide offices, supreme-court justices, city offices not filled at general November election, and town and village offices; party committees and convention delegates chosen by direct vote.

Optional.—In towns over 25,000 population where party authority may provide for nomination of town officers at fall primary.

Time of primary.—Fall primary held annually seventh Tuesday prior to general November election and spring primary additional in presidential years first Tuesday in April.

Open or closed ballot.—Closed; party voters determined by system of party enrolment.

Placing names on ballot.—By *petition* of not less than 3 per cent of party voters in political unit affected, but not to exceed 250–1,500 signers varying with size of unit; names may be *written in* on ballot also.

Order of names on ballot.—Determined by officer who prepared ballot, but determined by lot on written demand of any candidate.

Vote necessary to nominate.—Plurality.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for district delegates only.

Time.—First Tuesday in April.

Placing names on ballot.—Petition signed by 3 per cent of total enrolled voters of the party in the district, but not more than 500.

Method of control.—None.

3. CONVENTION

State convention.—Nominates United States senator and statewide officers; elects delegates at large to national convention.

Judicial district convention.—Nominates justice of supreme court.

4. PETITION

Independent nominations may be made by petition of from 1,500 to 12,000 electors, varying with size of political unit.

NORTH CAROLINA

Laws 1915, pp. 154, 168; Laws 1917, pp. 109, 140, 141, 142, 158, 233, 270, 331, 336, 382, 384, 386; Laws 1919, pp. 66, 72, 110, 242, 318, 502, 506, 553; Laws 1921, p. 507; Laws 1923, pp. 213, 221, 234, 265, 428, 547; Laws 1925, pp. 355, 439; Laws 1927, p. 294, 344.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state, district, and county offices, members of general assembly; may apply to county offices and lower house of legislature in counties exempted from its operation if adopted by referendum; may be applied to township and precinct offices at option of county board of elections.

Time of primary.—First Saturday in June prior to general election; second primary, within 4 weeks after first.

Open or closed.—Closed; party enrolment; challenge.

Placing names on ballot.—By declaration of candidate plus filing *fee* ranging from $1 to $50; if only one candidate for an office, he is declared the nominee and name not placed on ballot.

Order of names on ballot.—Rotation.

Vote necessary to nominate.—Majority; if no candidate receives majority, the highest two are voted on at second primary if candidate who was second-highest files within 5 days a request for second primary; otherwise the highest is declared the nominee.

2. PETITION

Independent nominations may be made by petition of 10 per cent vote cast for governor in state or subdivision.

NORTH DAKOTA

Laws 1907, p. 151; Laws 1911, pp. 314, 315, 319, 321, 327; Laws 1913, pp. 88, 202, 206, 360, 362; Laws 1915. pp. 191, 192; Laws 1919, pp. 149, 150, 151; Laws 1923, pp. 271, 272 (pp. 247, 257, and 270 defeated at referendum); Laws 1925, pp. 160, 327; Laws 1927, p. 172.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state and county and city offices, district assessors, supreme and district court judges, legislature, county commissioners, and county superintendent ("*no-party* ballot" for supreme and district court judges, county offices, state and county superintendents, city offices in incorporated cities; precinct committeemen chosen by direct vote.

Time of primary.—Last Wednesday in June of general election years; first Tuesday in March for city offices.

Open or closed ballot.—Closed; party enrolment; challenge.

Placing names on ballot.—By *declaration* of candidate *or application* of 5 electors, *in either case* with *petition:* United States senator, congressmen, state offices, supreme and district court judges require signatures equal to 3 per cent party vote for same office at last general election, but not more than 300 names; county and district offices, signatures equal to 5 per cent party vote, but not more than 200 names; city offices (except incorporated cities, require signatures equal to 5 per cent vote for mayor in city or ward; city offices in incorporated cities (non-partisan) signatures equal to 10 per cent electors of city, ward, or precinct, but not to exceed 300.[1]

Order of names on ballot.—Rotation.

Vote necessary to nominate.—Highest, but vote of party for any office must equal 25 per cent of average total vote of party for governor, secretary of state, and attorney-general at last general election or no party nomination may be made for that office. Any candidate to be nominated must receive as many votes as number of signatures required on the nomination petition.

[1] Provision for payment of filing *fees* declared unconstitutional by the state supreme court.

Party platform.—Formulated by *state central committee*, meeting first Wednesday in September.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote is cast for president, vice-president, and delegates, all elected at large.

Time.—Third Tuesday in March.

Placing names on ballot.—By *petition* signed by 1 per cent of party vote at last election for congressman, or not less than 500 names.

Method of control.—Each delegate takes an oath promising to carry out faithfully the wishes of his party as expressed by the preference of the voters. Certificate of votes received by each candidate for president given to each delegate elected. No indication of personal preferences of candidates for delegate.

OHIO

Laws 1908, p. 214; Laws 1909, p. 7; Laws 1910, p. 104; Laws 1911, pp. 119, 414; Constitution 1912, Art. V, sec. 7; **Laws 1913, p. 476;** Laws, 1914, p. 8; Laws 1914–15, p. 542; Laws 1917, pp. 25, 400; Laws 1919, p. 1156; Laws 1923, pp. 131, 143, 410; Laws 1927, p. 175.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state, district, county, and city offices in cities having a population over 2,000; party committees and convention delegates chosen by direct vote.

Time of primary.—Second Tuesday in August of even-numbered years for United States senator, congressmen, state, district, and county officers; second Tuesday in August of odd-numbered years for township and city officers and justices of peace; special primaries at least 2 weeks prior to special election.

Open or closed ballot.—Closed; challenge.

Placing names on ballot.—By *declaration* of candidate together with *certificate* of 5 party electors of state or subdivision and filing *fee* equal to one-half of 1 per cent of annual salary, but not to exceed $25; names may be *written in* on ballot also.

Order of names on ballot.—Rotation.

Vote necessary to nominate.—Highest.

Party platform.—Formulated by *state convention* in presidential years, in other even-numbered years by *party council* composed of candidates for state offices (except judicial offices), general assembly, state central and executive committees, chairmen of county central and executive committees, meeting second Tuesday after primary; platform made public by 6 P.M. the following Thursday.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for president, vice-president, delegates-at-large, and district delegates.

Time: Last Tuesday in April.

Placing names on ballot.—By declaration of candidacy and certificate of 5 party electors.

Method of control.—Each candidate for delegate *must* file with his declaration a statement of his first and second choices for president, which are printed on the ballot. He may also file a promise to support the candidate who wins the preference of the voters. Results of vote for president certified to each delegate elected.

3. PETITION

Independent nominations may be made by petition and candidates must not have been defeated at primary.

OKLAHOMA

Constitution 1907, Art. III, secs. 4 and 5; Laws 1908, p. 358; Laws 1909, p. 270; Laws 1910, pp. 89, 209; Laws 1913, p. 319; Laws 1915, pp. 245, 303; Laws 1916 (Extra), pp. 33, 51; Laws 1917, p. 347; Laws 1925, p. 36 (declared unconstitutional); Laws 1927, pp. 68, 82, 158.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, members of legislature, state, district (including judges), county, township, and city offices (except in cities under special charter); precinct committeemen chosen by direct vote.

Time of primary.—First Tuesday in August of even-numbered years; special primaries, as specified by governor; city primaries, third Tuesday in March.

Open or closed ballot.—Closed; party voters determined by party enrolment; also challenge.

Placing names on ballot.—By *declaration* of candidate; if only one candidate, he is declared the nominee and name not placed on ballot.

Order of names on ballot.—Rotation.

Vote necessary to nominate.—Highest.

2. PETITION

Independent nominations may be made by petition.

OREGON

Laws 1905 (Initiative Act of 1904), p. 7; Laws 1911, pp. 19, 445; Laws 1913, pp. 390–99; Laws 1915, pp. 124, 348, 507, 596; Laws 1917, pp. 177, 826, 920; Laws 1919, pp. 457, 763, 793; Laws 1921, p. 41, Laws 1923, p. 352; Laws 1927, pp. 104, 249.

1. DIRECT PRIMARY

Mandatory.—Applies to United States, state, district, county, town, precinct, and city offices in cities of 2,000 or more population; precinct committeemen chosen by direct vote.

Time of primary.—Third Friday in May of even-numbered years.

Open or closed ballot.—Closed; party voters determined by party enrolment.

Placing names on ballot.—By *petition* of candidate signed by party voters equal to 2 per cent party vote in state or subdivision for congressman at last general election, but not to exceed 1,000 signers for state offices, or 500 for other offices; *or* by *declaration* of candidacy plus *filing fee* ranging from $5 to $150; names may be *written in* on ballot also.

Order of names on ballot.—Rotated when two or more candidates for same office.

Vote necessary to nominate.—Highest.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for president, vice-president, delegates at large, and district delegates.

Time.—Same as state primary.

Placing names on ballot.—President, by *declaration* of candidacy and payment of a $15 fee *or* by *petition* signed by 1,000 voters; delegates, by declaration of candidacy and payment of a $15 fee *or* by petition signed by 2 per cent of the party vote in the district.

Method of control.—Candidate for delegate promises to use "best efforts" to secure the nomination of the person receiving the highest number of votes in the primary; may have presidential preference and brief statement of principles printed under his name on the ballot.

3. PETITION

Independent nominations may be made by petition of 2 per cent (state offices and congressmen) to 3 per cent (other offices) of vote last cast for governor or presidential elector in state or subdivision, but not by candidates defeated at primary.

PENNSYLVANIA

Laws 1906 (Special), p. 36; Laws 1907, p. 199; Laws 1911, p. 43; Laws 1913, pp. 719, 568, 605, 1001; Laws 1915, pp. 309, 1027, 1044, 1046, 1050; Laws 1917, pp. 242, 244, 753; Laws 1919, pp. 460, 836, 839, 855, 903; Laws 1921, pp. 423, 426, 669, 680; Laws 1923, pp. 256, 920; Laws 1925, p. 361; Laws 1927, pp. 372, 972.

1. DIRECT PRIMARY

Mandatory.—For United States senator, congressmen, state, county, city, ward, borough, township, school district, district, and all other elective public offices (except presidential elector); party officers, and committeemen chosen by direct vote.

Time of primary.—Spring primary, third Tuesday in May of even-numbered years, except presidential years, when held fourth Tuesday of April; fall primary, third Tuesday in September of odd-numbered years.

Open or closed ballot.—Closed; party enrolment in first, second, and third-class cities where personal registration is required, elsewhere challenge.

Placing names on ballot.—By *petition* of from 5 to 1,000 party electors (varying with offices) *and affidavit* of candidate.

Order of names on ballot.—Determined by lot.

Vote necessary to nominate.—Plurality.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for president, delegates-at-large, and district delegates.

Time.—Same as state primary in presidential years.

Placing names on ballot.—President, by petition signed by at least 100 voters in each of at least ten counties; delegates-at-large, by 100 qualified voters in each of 5 counties; district delegate, by 200 qualified voters.

Method of control.—Each candidate for delegate has printed after his name on the ballot whether or not he will support the popular candidate for president in his district.

3. PETITION

Independent nominations may be made by petition, for state offices, of ½–1 per cent largest vote for any state office at last general election; for other offices, 2 per cent largest vote at last general election for any subdivision office.

RHODE ISLAND

Laws 1902, chap. 1078; Laws 1910, chap. 640; Laws 1914, chap. 1049; Laws 1917, chap. 1547; Laws 1920, chap. 1836; Laws 1921, chap. 2153; Laws 1925, chap. 668; Laws 1927, chaps. 938, 1018.

1. CAUCUS

Scope.—Elects party committees in specified cities and towns, and elects delegates to nominating conventions.

Time.—As specified by party committees, but must be held after second Thursday after first Monday in September, but not

later than two days before the last day for filing the certificate of nominations of such caucus; no two parties may hold on same day.

Party qualifications for voting in caucus.—No person entitled to vote or take part who within 26 calendar months voted or took part in the caucus of any other party or has signed nomination papers or voted at any election for the candidates of any other political party, or is debarred from so voting by the regulations of his party.

2. CONVENTIONS

Nominate all candidates for elective offices.

SOUTH CAROLINA

Laws 1888, p. 10; Laws 1896, p. 56; Laws 1903, p. 112; Laws 1905, p. 831; Laws 1912, p. 793; Laws 1915, pp. 163, 81; Laws 1916, p. 921; Laws 1918, pp. 759, 811; Laws 1919, p. 77; Laws 1920, p. 931; Laws 1923, pp. 30, 67; Laws 1927, pp. 196, 269.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state offices, circuit solicitors, county officers, except magistrates and masters (who may be nominated by direct primary at order of county committee), and supervisors of registration.

Time of primary.—Last Tuesday in August prior to general election; second and third primaries each two weeks successively thereafter.

Open or closed ballot.—Closed; party voters must be enrolled in "party clubs" and fulfil other qualifications as specified by party authority.

Placing names on ballot.—Not specified.

Order of names on ballot.—Alphabetical.

Vote necessary to nominate.—Majority; when no candidate receives majority, highest two are voted on at second primary; if tie results, third primary is held.

SOUTH DAKOTA

Laws 1907, p. 285; Laws 1909, p. 459; Laws 1911, p. 249 (adopted at referendum 1912), p. 289; Laws 1913, p. 243 (initiative act de-

feated at referendum 1914); Laws 1915, p. 498; Laws 1916–17, p. 320 (initiative act adopted at referendum 1918); Laws 1918, pp. 50, 52; Laws 1921, pp. 331, 449; Laws 1923, pp. 160, 169 (p. 161 defeated at referendum); Laws 1925, pp. 178, 179; Laws 1927, pp. 130, 131, 135.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state, county, district offices, state legislature, supreme, circuit, and county court judges (on "*non-political*" ballot), also applies to city, town, township, and school district officers if adopted by referendum in these subdivisions; chairman of state committee chosen by direct vote.

Time of primary.—Fourth Tuesday in May of even-numbered years.

Open or closed ballot.—Closed; party enrolment; challenge.

Placing names on ballot.—By "representative proposals" made, for congressional and state offices, by majority of state proposal meetings; for county and district offices, by county proposal meetings, *or* by "*protesting representative proposals*" made by minority of state and county proposal meetings (no reference on ballot to majority and minority); *or* by "*individual proposal petitions*" filed by independent candidates and signed by party electors equal to not less than 5 per cent of party vote for governor at last general election in state or subdivision; when only one candidate for office, he is declared nominee and name not placed on ballot.

Order of names on ballot.—Arranged in columns: one for names of independent candidates, two for those nominated by representative proposals.

Vote necessary to nominate.—Highest.

Party platform.—Adopted at *state proposal meeting.*

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for president, vice-president, delegates, all elected at large.

Time.—Same as state primary.

Placing names on ballot.—Same as nominations for state offices.

Method of control.—Delegates bound to vote for popular choice three times in the convention. Candidates for delegates appear in groups headed by presidential preference and a statement of principles.

3. PETITION

Independent nominations may be made by petition.

TENNESSEE

Laws 1901, p. 54; Laws 1903, p. 553; Laws 1905, p. 748; Laws 1909, p. 281 declared unconstitutional; Laws 1913, p. 396; Laws 1913 (first extra), p. 576; Laws 1917, pp. 338, 305; Laws 1921, p. 16; Laws 1923, p. 81.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, governor, general assembly, railroad commissioners. State executive committee chosen by direct vote.

Time of primary.—First Thursday in August of even-numbered years; special primary as decided by party committee.

Open or closed ballot.—Closed; challenge to determine party voters.

Placing names on ballot.—By *petition* of 25 electors; when only one candidate for office, he is declared the nominee and name not placed on ballot.

Order of names on ballot.—Alphabetical.

Vote necessary to nominate.—Plurality; in case of a tie, second primary held within 20 to 30 days after first.

2. PETITION

Independent nominations may be made by petition.

TEXAS

Laws 1907, p. 328; Laws 1909, p. 451; Laws 1911, p. 18; Laws 1913, p. 101 (p. 88 presidential primary, unconstitutional); Laws 1915, p. 26; Laws 1918, pp. 137, 191; Laws 1919, p. 139; Laws 1923 (second special), p. 74; Laws 1925, p. 334; Laws 1927, pp. 24, 77, 280; Laws 1927 (special), pp. 27, 193.

1. DIRECT PRIMARY

Mandatory.—On parties polling 100,000 votes or more at last general election, and *optional* on parties polling 10,000–100,000 votes. Applies to United States senator, congressmen, governor, state offices, district and county offices, and also city and town offices if so decided by party committee.

Time of primary.—Fourth Saturday in July; second primary, fourth Saturday in August; in cities, not less than 10 days prior to election; special primaries, as decided by party committees.

Open or closed ballot.—Closed; qualifications for party voters specified by party authority.

Placing names on ballot.—By *written request* of candidate or of 25 electors; also payment of expenses as apportioned by county chairman.

Order of names on ballot.—Determined by lot by county committees.

Vote necessary to nominate.—Majority for state and district offices; also for county if so decided by party committee. When no majority, highest two voted on at second primary.

Party platform.—Adopted by *state convention* meeting Tuesday after second Monday after fourth Saturday in August on even-numbered years.

2. PETITION

Independent nominations may be made by petition of from 1 per cent to 3 per cent entire vote of state cast at last general election; those voting in primary may not sign petition.

UTAH

Laws 1899, p. 118; Laws 1901, pp. 72, 73; Laws 1911, pp. 240, 234; Laws 1925, p. 106; Laws 1927, p. 69.

1. DIRECT PRIMARY

Mandatory.—Applies to offices in first- and second-class cities; *non-partisan* ballot.

Time of primary.—Second Tuesday prior to city election.

Placing names on ballot.—By *declaration* of candidate together with *petition* of 100 electors.

Order of names on ballot.—Alphabetical.
Vote necessary to nominate.—Plurality.

2. CONVENTION

Scope.—Applies to all offices except those in first- and second-class cities.
Time of convention.—Not specified.

VERMONT

Laws 1915, p. 58; Laws 1917, pp. 4, 5; Laws 1919, pp. 3, 4, 5; Laws 1921, pp. 6, 7, 8, 9.

1. DIRECT PRIMARY

Mandatory.—Applies to state and county officers elected at general elections; *does not apply* to presidential electors, justices of peace, town, village, school, and fire district officers.
Time of primary.—Second Tuesday in September.
Open or closed ballot.—Closed; voter states his party choice at the primary and receives ballot of that party only.
Placing names on ballot.—By *petition* signed for statewide offices, by 500 electors; by 250 for congressmen; for county offices, by not less than 2 per cent total vote cast for candidate receiving highest vote for that office at last preceding election; state assemblyman, not less than 3 per cent total vote cast for all candidates for that office at last preceding election.
Order of names on ballot.—Alphabetical.
Vote necessary to nominate.—Plurality.
Party platform.—Formulated by *party council* composed of party nominees for state offices, state legislature, meeting on or before first Tuesday of October.

VIRGINIA

Constitution 1902, Art. II; Code of 1904, sec. 1220; **Laws 1912, p. 611; Laws 1914, p. 513; Laws 1918, p. 96; Laws 1924, pp. 8, 415, 648; Laws 1926, p. 82; Laws 1927 (extra), p. 157.**

1. DIRECT PRIMARY

Optional.—Applies to United States senator, congressmen, legislative, state, district, county, city, and town offices.

Time of primary.—First Tuesday in August prior to November election; first Tuesday in April prior to June city election.

Open or closed ballot.—Closed; qualifications for party membership determined by party authority; challenge.

Placing names on ballot.—By *declaration* of candidacy together with *petition* of 250 voters for United States or state office and petition of 50 electors for general assembly or city office, also filing *fee* equal to 2 per cent annual salary of office sought, or $1 if no salary to office; if only one candidate, he is declared nominee and name not placed on ballot.

Order of names on ballot.—Not specified.

Vote necessary to nominate.—Plurality.

2. CONVENTION

As regulated by party authority.

WASHINGTON

Laws 1907, p. 457; Laws 1909, p. 169; Laws 1911, p. 489; Laws 1915, p. 174; Laws 1917, p. 233; Laws 1919, pp. 199, 462; Laws 1920–21, pp. 373, 682 (692 repealed by referendum 1922); Laws 1925; Laws 1925–26 (extra), p. 448; Laws 1927, p. 287.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state legislature, state, county, city, and precinct offices; (supreme and superior court judges on *non-partisan* ballot); precinct and city committeemen chosen by direct vote.

Time of primary.—Second Tuesday in September of even-numbered years; others, four weeks before election.

Open or closed ballot.—Closed; challenge.

Placing names on ballot.—By *declaration* by candidate and filing *fee* of $10 for offices paying up to $100 and 1 per cent above $1,000 and $1 for precinct offices not paying salary.

Order of names on ballot.—Rotation.

Vote necessary to nominate.—Plurality, but must equal 10 per cent of party vote cast in state or district where candidate.

Party platform.—May be adopted by *state convention.*

WEST VIRGINIA

Laws 1891, p. 175; Laws 1915, p. 222; Laws 1916, p. 14; Laws 1919, p. 289.

1. DIRECT PRIMARY

Mandatory.—Applies to all elective offices except those filled at special elections, supreme and circuit court judges, criminal and intermediate court judges, and officers in cities of less than 10,000 population; party committeemen chosen by direct vote.

Time of primary.—Last Tuesday in May of presidential years; first Tuesday in August of other general election years; in cities and towns as fixed by charter, but not less than 21 days prior to election.

Open or closed ballot.—Closed; voters must sign party books to vote; party ticket challenge.

Placing names on ballot.—By *declaration* of candidate.

Order of names on ballot.—Rotation.

Vote necessary to nominate.—Plurality.

Party platform.—Adopted by *state convention* meeting between first and fifteenth of August.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for president, delegates at large, and district delegates.

Time.—Same as state primary.

Placing names on ballot.—By declaration of candidacy.

Method of control.—Delegates state whether or not they will support popular choice for president.

3. CONVENTION

State convention.—Nominates judges of supreme court of appeals.

Circuit district convention.—Nominates circuit court judges.

County convention.—Nominates judge of common pleas.

4. PETITION

Independent nominations may be made by petition of 1 per cent entire vote cast at last general election in state or subdivision, not less than 25 nor more than 1,000 signatures.

WISCONSIN

Laws 1903, p. 754 (adopted at referendum 1904); Laws 1905, p. 593; Laws 1907, p. 2; Laws 1909, p. 1; Laws 1911, pp. 194, 305, 805; Laws 1913, pp. 383, 558, 956; Laws 1915, pp. 58, 80, 163, 432, 609, 878; Laws 1916 (Extra), p. 1; Laws 1917, pp. 3, 132, 139; Laws 1919, pp. 11, 28, 183, 477, 624; Laws 1921, pp. 218, 266, 627; Laws 1923, pp. 20, 24, 25, 65, 104, 430; Laws 1925, pp. 169, 406, 413, 673; Laws 1927, chaps. 176, 269, 278.

Mandatory.—Applies to United States senator, congressmen, and all state, district, county, and city offices except (see note under "Independent Nominations") state, county, and district superintendents of schools, boards of education, constable, justice of peace, and school district and judicial offices; (*non-partisan* ballot for city offices and county offices in counties of 250,000 or more population); precinct and ward committeemen chosen by direct vote.

Time of primary.—First Tuesday in September preceding general November election of even-numbered years; city primaries in spring three weeks before the election; special primaries, date fixed by officer with whom order is filed, to be not less than 25 nor more than 30 days after date of filing of the order.

Open or closed ballot.—Open (for September primary); separate ticket for each party all fastened together; elector votes one, deposits others in blank ballot box.

Placing names on ballot.—By petition of party voters; for state offices and United States senator, not less than 1 per cent nor more than 10 per cent of last party vote in state for presidential elector; for representative in Congress, not less than 2 per cent nor more than 10 per cent of last party vote for presidential elector in district; for district and county offices, not less than 3 per cent nor more than 10 per cent of last party vote for presidential elector in district or county; for city offices (non-partisan), 2 per cent of highest vote for same office at last election; for non-partisan county office (in counties of 250,000 or more population), 1–3 per cent vote for same office at last election; names may be written in on ballot also.

Order of names on ballot.—Rotation.

Vote necessary to nominate.—Highest; all but party candidates for one office must receive 5 per cent party vote for governor at last

election or one who receives highest is considered an independent and not party nominee.

Party platform.—Formulated by *party council* composed of candidates for state offices, legislature, and holdover senators meeting third Tuesday in September.

2. PRESIDENTIAL PRIMARY

Mandatory.—Vote cast for president, vice-president, delegates-at-large, and district delegates.

Time.—First Tuesday in April.

Placing names on ballot.—President and delegates-at-large, by petition signed by 1–10 per cent of party vote at last presidential election; district delegates, by petition signed by 2–10 per cent of the party vote in that district at last presidential election.

Method of control.—Nomination papers and ballot may contain a statement of delegate's principles and presidential preference.

3. PETITION

Independent nominations may be made for general, judicial, special, city, town, and village elections. However, if 3 or more candidates are thus proposed for county board of supervisors in counties of 250,000 or more population or for any judicial office (except police justice) in counties of 300,000 or more population and containing an entire judicial circuit for which more than one circuit judge is provided, or if more than twice as many candidates are proposed for school directors or boards of education in any city, such nominations shall be made by direct primary preceding the spring election.

WYOMING

Laws 1890, p. 157; Laws 1907, p. 169; Laws 1911, p. 25; Laws 1913, p. 192; Laws 1915, pp. 71, 242; Laws 1917, pp. 50, 97; Laws 1919, pp. 85, 89; Laws 1925, p. 19.

1. DIRECT PRIMARY

Mandatory.—Applies to United States senator, congressmen, state, district, and county offices (except presidential electors), and city offices in cities over 6,000 except commission cities; (*non-partisan* ballot for supreme and district court judges and county

superintendents); precinct and ward committeemen chosen by direct vote.

Time of primary.—First Tuesday after third Monday in August prior to November election.

Open or closed ballot.—Closed; party enrolment; challenge.

Placing names on ballot.—By *declaration* of candidate accompanied by *petition* of party voters varying with office from 3 per cent to 5 per cent party vote for congressman at last general election, and also *fee* of from $10 to $25 (supreme and district court judge file declaration and fee only); names may be *written in* on ballot also.

Order of names on ballot.—Alphabetical (except on non-partisan ballot where rotated).

Vote necessary to nominate.—Plurality.

Party platform.—Formulated by *state convention*, meeting second Monday in May.

2. PETITION

Independent nominations may be made by petition except by candidates defeated at primary.

APPENDIX B

BIBLIOGRAPHY AND SOURCES OF STATISTICAL MATERIAL FOR PRIMARY AND GENERAL ELECTION RETURNS[1]

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APPENDIX C

LIST OF IMPORTANT CASES RELATED TO PRIMARY ELECTIONS

UNITED STATES

Spencer v. Board of Registration, 1 MacArthur (District of Columbia), 169 (1873); Mills v. Green, 67 Fed., 818 (1895); United States v. O'Toole, 236 Fed., 993 (1916); United States v. Gradwell, 243 U. S., 476 (1916); Newberry v. United States, 256 U. S., 232 (1921).

ARKANSAS

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CALIFORNIA

Van Valkenburg v. Brown, 43 Cal., 43 (1872); Marsh v. Hanley, 43 Pac. Rep., 975 (111 Cal., 368) (1896); People v. Cavanaugh, 44 Pac. Rep., 1057 (112 Cal., 674) (1896); Spier v. Baker, 52 Pac. Rep., 659 (120 Cal., 370) (1898); Hutchinson v. Brown, 54 Pac. Rep., 738 (122 Cal., 189) (1898); Britton v. Board of Election Commissioners, 61 Pac. Rep., 1115 (129 Cal., 337) (1900); Murphy v. Curry, 70 Pac. Rep., 461 (137 Cal., 479) (1902); Rebstock v. Superior Court, 80 Pac. Rep., 65 (1907); Schostag v. Cator, 91 Pac. Rep., 502 (1907); Katz v. Fitzgerald, 93 Pac. Rep., 112 (152 Cal., 433) (1907); Socialist Party v. Uhl, 103 Pac. Rep., 181 (155 Cal., 776)(1909); Fickert v. Zamansky, 108 Pac. Rep., 269 (157 Cal., 398) (1910); Hart v. Jordan, 143 Pac. Rep., 537 (168 Cal., 321) (1914); Don v. Pfister, 155 Pac. Rep., 60 (172 Cal., 25) (1916); Henry v. Jordan, 175 Pac. Rep., 402 (1918).

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FLORIDA

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GEORGIA

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IDAHO

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Byler v. Asher, 47 Ill., 101 (1868); People v. Hoffman, 116 Ill., 372 (1914); Shiel v. Cook County, 27 N. E. Rep., 293 (1891); People v. Board of Election Commissioners, 77 N. E. Rep., 321 (221 Ill., 9) (1906); House v. Thompson, 81 N. E. Rep., 1109 (228 Ill., 522) (1907); People v. Strassheim, 88 N. E. Rep., 821 (240 Ill., 279) (1909); People v. Deneen, 93 N. E. Rep., 437 (247 Ill., 289) (1910); People v. Czarnecki, 266 Ill., 372 (1914); People v. Fox, 128 N. E. Rep., 505 (294 Ill., 263) (1920); State v. Kramer, 328 Ill., 512.

INDIANA

State v. Hirsch, 24 N. E. Rep., 1062 (125 Ind., 207) (1890); Gray v. Seitz, 69 N. E. Rep., 456 (1904); Kelso v. Cook, 110 N. E. Rep., 987 (184 Ind., 173) (1916).

IOWA

Edmonds v. Banbury, 28 Iowa 267 (1869); Jones v. Fisher, 137 N. W. Rep., 940 (1912).

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KENTUCKY

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MARYLAND

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MASSACHUSETTS

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MICHIGAN

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