LEGAL REGULATION OF POLITICAL PARTY ORGANIZATION IN THE UNITED STATES

BY

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THESIS

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INTRODUCTION

Ours is a government by party. Most students of the American political system readily admit that the motivating force in our huge governmental organization is to be found, not in the regular organs of constitutional government, but in the dynamic machinery of the dominant political party.[1] In view of the important position that political parties have long held as an agency of government, it is surprising that almost a century should elapse, after the establishment of our government, before any serious steps were taken to recognize party organizations as legal institutions and bring them within the limits of statutory control.[2]

The early laws were designed to correct the abuses arising out of party functions. Little interference with the ordinary processes of party government was included and most of the legislation on the subject during the nineteenth century may be called protection rather than restriction of the powers of party organizations.[3]

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1. For a most excellent discussion of the place of the party organization in the American system of government see J. Bryce, Modern Democracies, Vol. 2, pp. 27-46. Note that Bryce discusses the party as a purely extra-legal institution.

2. The first law to recognize political parties as such was passed by the California legislature and approved Mar. 26, 1866. California Statutes, 1865-66, pp. 438-440. It, like most of the earlier acts, was a law to prevent corrupt practices.

3. A number of the early statutes expressly conferred upon party authorities the power to prescribe membership requirements, conduct primaries and conventions, make rules, etc. Note especially the South Carolina law enacted Dec. 22, 1888. Acts of South Carolina, 1888, pp. 10-12.

However, the prevalence of "boss-controlled" politics in the latter years of the last century cast serious aspersions upon party machinery. Consequently, legislative measures of reform sought, in the interest of good government, to help these voluntary political associations that had proved either unable or unwilling to help themselves and obtain by statutory enactment what party rules had been powerless to accomplish.[4]

From the beginning of the twentieth century the growth of public control of party government has been steady and rapid. Today in the laws of most of the states party organizations are recognized legal institutions of government, receiving the same legislative attention as other associations more commonly regarded as proper subjects of regulation.

With the acceptance of the party as an official instrument of the state and a realization of its supreme importance in the conduct of government, there has come a changed conception of party organization. If parties were to be reintegrated with the government and openly acknowledged as public agencies, then it was but natural that efforts would be made to democratize the party organization and make it conform to the principles of representative

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4. For a contemporary discussion of the inadequacy of existing primary regulation and the need for a frank recognition of parties as quasi-public institutions see an article by E. Insley, "How to Reform the Primary Election System", Arena, Vol. 17, pp. 1013-1023.

government.[5] This effort of state legislatures to bring party machinery within the scope of republican government---to enforce democracy in that government which really governs---takes its place as one of the most significant trends in American government.[6]

It is unusual that a subject of such moment should so nearly escape the attention of writers on political parties. Such literature as there is deals primarily with regulation of the functions of parties; the matter of public control of the organizations themselves has received but slight mention in the various texts and treatises.[7]

It should be clear to the reader that this work will not attempt to treat, in any manner, that vast field of legislation

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5. Various writers have dealt with the oligarchic tendencies of party organizations. Most noteworthy is R. Michels' Political Parties. See also Bryce, op. cit. For another aspect of the subject see M. Ostrogorski, Democracy and the Organization of Political Parties.

6. This appears to be a purely American tendency. Professor Sait observes that it is peculiar to America and has experienced a development without analogy anywhere. American Parties and Elections, p. 174. The incorporation of the one-party governments of Russia, Germany, and Italy as public institutions is regulation of a different nature.

7. The most extensive treatment is found in C. E. Merriam and L. Overacker, Primary Elections, pp. 1-140. This treats regulation of organization only in connection with the regulation of primaries. For brief references to the subject see E. B. Logan, The American Political Scene, (ed.) pp. 83-88; E. M. Sait, American Parties and Elections, pp. 174-179; C. E. Merriam & H. F. Gosnell, The American Party System, pp. 266-270; P. O. Ray, Introduction to Political Parties and Practical Politics, pp. 12-13. On early regulatory laws see F. W. Dallinger, Nominations for Public Office, pp. 173-188.

relating to primary elections. The writer feels that only such parts of the various statutes as deal directly with the party organization can be properly treated under the subject at hand. The functions of party machinery are distinguished from the machinery itself; only the latter will be dealt with here.

In order to gain a better understanding and appreciation of the entire scheme of regulation it was thought best to trace its development as well as to treat the present practice. Consequently, the first part of this work is based on the session laws rather than the different state codes and compilations, and citations are made from the statutes as passed from year to year. Naturally a great many laws have been repealed, or amended so as to change entirely their original purpose and meaning. The writer has accepted these changes as trends in development and treated them as such.[8]

Under our system of government the judiciary has a part in the legislative process, the opinion of the courts often expanding, altering, or nullifying the law. For this reason it has been considered important to study the cases and court decisions arising out of the laws relating to party organization. Much litigation

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8. There are, of course, instances where laws were invalidated because of technical defects. Several statutes were voided by the courts in California and Illinois on grounds of constitutionality. See Britton v. Board of Election Commissioners, 61 P. 1115, (1900); Marsh v. Manley, 43 P. 975 (1896); Spier v. Baker, 52 P. 659 (1898); People v. Board of Election Commissioners of Chicago, 77 N.E.321, 221 Ill. 9 (1906); Rouse v. Thompson, 81 N.E. 1109, 228 Ill. 522 (1907); People v. Strassheim, 88 N.E.821, 240 Ill. 279 (1909); People v. Deneen, 93 N.E. 437, 247 Ill. 289 (1910); People v. Fox, 128 N.E. 505, 294 Ill. 263 (1920); McAlpine v. Dimick, 157 N.E. 235, 326 Ill. 240 (1927). In such cases repeal or amendment cannot be said to reveal a trend or development.

has occured where no law directly pertaining to organization was involved, and the status and powers of party organizations have been dealt with only in an indirect way. Such cases, as well as the dicta of decisions relating to this subject, have been examined and studied with a view of obtaining a full picture of the judicial attitude toward party organization.[9]

Party government naturally falls into two divisions--- permanent and non-permanent. The committee system, with all its ramifications, constitutes the permanent organization. Under non-permanent organization the convention system, with its various parts---caucuses and clubs--may be classified. This work treats regulation of party organization under these two familiar divisions of the party machinery. Such an arrangement is found better though regulation of both these major organs is oftentimes found in the same statute.

It is commonly accepted that Congress is restrained by the Constitution from passing legislation regulating political parties.[10] Consequently, the regulation of national party organization, such as there has been, has come through the action of state legislatures. Though this control it not highly important it was considered proper, in order to obtain a complete picture of the system of regulation,

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9. Numerous cases involve the powers of party organs as instruments of voluntary private associations. In most such cases the courts have assumed the role of protector of the party organizations.

10. Newberry v. U. S., 256 U. S. 232, 65 L. Ed. 913 (1921).

to include herein a separate chapter on national party organization.

Any conclusions based upon existing laws without taking into account the operation of those laws in actual practice would be hazardous. This is especially true in regard to legislation on political parties where the law is often stretched, twisted, or openly ignored. Nevertheless, because of the broad and extensive nature of this subject it has been necessary to omit any material relating to the actual workings of party organizations under legislative control. It is possible that a study of such legislation in practice would modify considerably the picture that is presented here. For any misleading statements resulting from a purely legal study, the writer assumes full responsibility.

No attempt has been made to treat the regulation of organization by voluntary rules of the parties themselves.[11] Though the importance of such regulation is fully understood and appreciated the examination and analysis of these scattering and elusive enactments of party authorities could have little effect on the work undertaken here. Such regulation properly belongs to another study.[12]

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11. In a few states the party rules are easily obtainable in printed form. In other states they are not printed and in some states are not accessible in any form.

12. This study extends only to the year 1936. No changes of importance, however, have been effected during the last year.

CHAPTER I

DEVELOPMENT OF LEGAL REGULATION

The earliest laws referring to party organization can hardly be called regulatory. They may be more properly termed acts of acknowledgment---measures by which parties gained the first semblance of legal recognition. For three decades following the passage of the first act the laws in the various states were little concerned with the nature of the internal machinery of the party, but were confined chiefly to a recognition of the existence of such machinery and to a protection of the party against abuses. About the beginning of the present century a different attitude was evident and the next fifteen years witnessed a wave of legislative activity in this respect, during which party organization came into the full light of legal cognizance. Coincident with this extensive regulation of the party machinery was a widespread movement to regulate the process of nomination. Though there has been little extension of regulatory laws during the past two decades, there has been no important regression, and the amendment of various laws to bring political parties under the direct jurisdiction of the regular courts has added the final touch to the regulation process.

A

Recognition and Protection of Party Organization

The first legislative act relating to party machinery was the corrupt practices act passed in California on March 28,

1866.[1] Section 1 of that law provided:

> "All elections to be holden by any voluntary political association or party in this State, for any delegate or managing committee, or for the nomination of candidates for public office may be called or ordered by published notice which shall state the purpose, time, manner, conditions, together with the place or places of holding such elections; also the authority by which the call or notice is published..."

It will be readily seen that this provision was little more than recognition of the existence of the political party, and further provisions that the act should apply only to such political associations or parties as might invoke its protection and subject themselves to its provisions[2] rob it of any real importance as a regulatory act.[3] A New York law of the same year entitled "An Act to Protect Primary Meetings, Caucuses, and Conventions of Political Parties", though less comprehensive than the California act, recognized the meetings of party members and sought to free them from corrupt influences by making bribery or other improper means of influencing voters a misdemeanor, punishable by fine and imprisonment.[4] Other early acts, prohibiting corrupt practices in party gatherings and recognizing the party machinery

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1. California Statutes, 1865-66, pp. 438-440

2. Section 6.

3. Sections 3 and 4 of this act contained prohibitions, with penalties, of corrupt practices in party elections.

4. This law was enacted April 24, 1866. Acts of New York, 1866, p. 1687. The act was mandatory.

were passed in Ohio in 1871,[5] Nevada in 1873,[6] Missouri in 1875,[7] and New Jersey in 1878.[8]

In 1882 the procedure of party organs was referred to in an act of Maryland which provided that elections of "any political association or party in the city of Baltimore, for any delegates or managing committee, or for the nomination of candidates for public officers may be called or ordered by published notice upon a vote of the executive committee of such political association or party..."[9] A Nevada act of the following year prescribed certain duties and powers for committees or bodies "authorized by the rules or customs" of the party and made it a crime to disregard the voting qualifications laid down by such committees.[10] An act of Connecticut of the same year was typical of the legislation in a number of states merely prohibiting fraud in conventions or primaries under control of the party machinery.[11] An Illinois act of 1885, regulating primary elections

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5. Acts of Ohio, 1871, pp. 27-29, amended in 1872, 1874, 1877, 1878, 1879. A Pennsylvania act of 1871, mentioning party committees, applied to only one county.

6. Laws of Nevada, 1873, pp. 197-215.

7. Laws of Missouri, 1875, pp. 54-57. This applied only to counties having a population of over 100,000.

8. New Jersey Laws, 1878, pp. 318-319. The first California act was amended and additional requirements added in 1874. See Political Code of California, 1876, Secs. 1357-65.

9. Maryland Laws, 1882, pp. 439-440. This was an act amending the code of local laws.

10. Nevada Laws, 1883, pp. 28-32.

11. Public Acts of Connecticut, 1881-1885, p. 304. See also: Pennsylvania Laws, 1881, Ch. 77; Ibid., 1883, Ch. 85; Laws of Nebraska, 1887 pp. 454-457; Maine Laws, 1887, pp.39-40.

was typical of protective laws in various states, the application of which was made purely optional with the party authorities.[12] The Colorado act of 1887 differed from other laws in that it was more specific in its definition of fraud, though its application was also made optional with the parties.[13] Typical laws applying to a locality were enacted in Maryland in 1886[14] and in Delaware in 1887.[15] Laws in South Carolina and Maryland in 1888 were noteworthy in the recognition of party organization in that they provided for elections to be held under the full control of party rules.[16] The South Carolina law made a primary election manager violating any of the duties imposed by such rules guilty of a misdemeanor and subject to fine and imprisonment.[17]

The first legal definition of the party was the feature of four acts passed in 1889 which defined "conventions" as formal gatherings of a political party rather than as meetings of citi-

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12. Laws of Illinois, 1885, pp. 188-193.

13. Session Laws of Colorado, 1887, pp. 347-350.

14. Maryland Laws, 1886, pp. 841-850.

15. Laws of Delaware, 1887, Ch. 21.

16. Acts of South Carolina, 1888, pp. 10-13; Maryland Laws, 1888, p. 264. The Maryland act applied only to Allegeny county. Another Maryland act of that year, applying to Queen Anne's county, prescribed certain duties for the central committee. Ibid. pp. 505-506.

17. Section 4.

zens. A Missouri law restricted the meaning of conventions to delegate gatherings of parties polling at least three per cent of the entire vote of the state at the preceding election;[18] an act of Massachusetts[19] fixed the same limit, while statutes in Rhode Island[20] and Indiana[21] limited the statutory meaning of convention to parties that had, at the last general election, polled not less than two and one per cent, respectively, of the total vote.[22] All these acts required that conventions, through their presiding officers and secretaries, certify the nominees to the proper

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18. Laws of Missouri, 1889, pp. 105-106.

19. Acts & Resolves of Massachusetts, 1889, pp. 1111-1112.

20. Rhode Island Acts & Resolves, 1889, pp. 176-177.

21. Indiana Session Laws, 1889, pp. 157-186.

22. An act of Vermont in 1890 and one in Minnesota in 1889 also fixed the limit at one per cent. Laws of Vermont, 1890, p. 27; Minnesota General Laws, 1889, pp. 12-39. This act applied to cities of 10,000 inhabitants or more. Later acts of the same nature may be found in: Laws of Illinois, 1891, pp. 107-122; Laws of West Virginia, 1891, pp. 233-238; General Laws of Oregon, 1891, p. 18; Nevada Laws, 1891, p. 40; California Statutes of 1891, pp. 165-170; Session Laws of Colorado, 1891, pp. 143-144. The limit fixed in this group ranged from two per cent in Illinois to ten per cent in Colorado.

officials.[23]

An act of Vermont in 1890 recognized committees by declaring their powers of nominating candidates when authorized by convention resolution.[24] An optional law passed by the Washington legislature in the same year recognized party organizations by mentioning them in providing for the holding of primary elections,[25] a Massachusetts act confirmed the power of party machinery to fill vacancies in nominations,[26] and similar provisions were included in laws of Colorado and Nebraska the following year.[27] Acts in Iowa, New York, and Ohio in 1892 provided the same authority for party committees in requiring the certification of the nominees of conventions.[28]

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23. This provision was also contained in similar laws in 1891 in California, Colorado, Illinois, Nevada, Oregon, West Virginia. Certification of nominees only was the principal feature of laws of the same year in six other states. See: Acts of Arkansas, 1891, pp. 42-44; Session Laws of Idaho, 1891, pp. 57-108; Public Acts of Michigan, 1891, pp. 256-271; Laws of New Hampshire, 1891, pp. 348-349; Laws of North Dakota, 1891, pp. 171-184; Session Laws of South Dakota, 1891, pp. 152-156. Certification was required of convention officers in all states except Indiana and Michigan where committee officers were so charged.

24. Laws of Vermont, 1890, p. 27.

25. Washington Laws, 1889-90, pp. 419-427.

26. Acts & Resolves of Massachusetts, 1890, p. 477.

27. Session Laws of Colorado, 1891, pp. 143-167; Nebraska Laws, 1891, pp. 338-360.

28. Acts & Resolutions of Iowa, 1892, pp. 47-50; New York Laws of 1892, pp. 1618-1625; Ohio Laws, 1892, pp. 434-437.

The strengthening and expansion of corrupt practices legislation may be found in various laws requiring the filing of statements of campaign expenses by campaign committees. This requirement is found in laws in Colorado and Michigan, passed in 1891.[29] The tendency to make such laws increasingly severe is evident in three laws passed in 1893 in California, Kansas, and Missouri.[30] The California law was more severe than those of the other two states, its penalty for "dereliction or misconduct of committee members" being one to seven years' imprisonment. Later laws apparently recognized that the campaign committees were usually the regular party executive committees.[31] Other laws that were chiefly concerned with corrupt campaign practices were enacted in Connecticut and Minnesota in 1895,[32] Ohio in 1896,[33] Wisconsin in 1897,[34] Nebraska in 1899,[35] and in New York and Pennsylvania in 1906.[36]

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29. Session Laws of Colorado, 1891, pp. 170-171; Public Acts of Michigan, 1891, pp. 256-271.

30. California Statutes, 1893, pp. 12-29; Laws of Kansas, 1893, pp. 103-104; Missouri Laws, 1893, pp. 162-163.

31. The California law implied that the campaign committee might be a special group. It fixed the number of members at five.

32. Public Acts of Connecticut, 1895, pp. 701-703; General Laws of Minnesota, 1895, pp. 661-674.

33. Ohio Laws, 1896, pp. 123-132.

34. Laws of Wisconsin, 1897, pp. 912-919.

35. Nebraska Laws, 1899, pp. 151-161.

36. Laws of New York, 1906, pp. 1385-1390; Laws of Pennsylvania, 1906, (Ex) pp. 36-44.

The later laws tended to define the campaign committee from which statements were required in such language as "two or more persons ...elected, appointed, or chosen... for directing the raising, collecting, or disbursement of money...to further or defeat the nomination or election of any person or group of persons."[37] After the adoption of the direct primary, provisions concerning campaign committees came to be quite common and were included in most of the laws.

By the beginning of the last decade of the nineteenth century, some twenty states had enacted laws that recognized the organs of party machinery or protected party government. The first statutes were designed to prohibit abuses in party meetings rather than to provide real regulation. The original act of California and a number of other early acts were optional with the party authorities. But the optional laws gradually gave way to mandatory measures, and the simple prohibitions of fraud were replaced by more stringent provisions. Later acts with respect to corrupt practices, notably those of Ohio in 1871, of New Jersey in 1878, and of Colorado in 1887, tightened the hold of the law on these practices of parties and, beginning in 1891, full statements of party campaign expenses were often required. The gradual extension of the law to determine what constitutes a political party is also noticeable. From such generalities as "political association", found in the California statute, the laws tended

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37. This excerpt is from the Nebraska law.

to become increasingly explicit until by 1889 legal definitions of parties in terms of voting strength were to be found in various laws. Such provisions were quite common after 1890. The placing of duties upon party organs was also a feature of legislation that grew more important with the multiplication of the laws on parties. The first laws recognized only such minor tasks as the certification of nominees but the increase in number and importance of duties was rapid. The acts of Massachusetts in 1888, of Wisconsin in 1891, and of Mississippi in 1892 showed the development of legal duties to the point of real regulation. Beginning with the Ohio law of 1887 internal procedure of party assemblies soon became a recognized subject of legislation.

Many of the beginning laws were optional and were only the ground work for the regulation process that really began after 1890. But the question of the legal position of a political party was apparently settled. Thereafter laws were rapidly expanded to regulate all phases of the organization.

B

Regulation of the Party Organs

The early statutes prohibiting corrupt practices at party gatherings served the double purpose of purifying these meetings and establishing a foundation for legal control of the party machinery. Before the beginning of the present century the legal position of the party in the commonwealth was fairly well settled and the way was open for a clearer assertion of the state's power over the party mechanism.

1. Caucuses

The caucus was referred to in some of the early laws on corrupt practices. However, it was not until 1888 that any legislation that may be called regulation was enacted. The Massachusetts act of that year, though not comprehensive, undertook regulation of the internal procedure of party caucuses, providing for the officers to be chosen and for ballot voting upon the request of ten or more of the persons present. Public notice and call of such meetings was also stipulated.[38] The 1894 law of the same state was more important. It required all caucuses of a political party to be held on one of two consecutive days, to have certain officers, to observe plurality voting in nominations and elections, and to follow a general order of business. Qualifications of caucus officials were also included in the law.[39] This act was divided into two separate statutes by the Massachusetts legislature of 1895, in order to make the parts applicable only to Boston a single law, and was amended in 1897 to provide for the selection of additional caucus officers.[40] A Maine law of this year made the enforcement of certain regulations concerning the caucus, passed in 1887 and 1893, and relating

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38. Acts & Resolves of Massachusetts, 1888, pp. 516-518. This law was closely copied by the Wyoming law of 1891. Laws of Wyoming, 1891, Ch. 32.

39. Acts & Resolves of Massachusetts, 1894, pp. 617-630. For a discussion of this law by a member of the legislature that enacted it, see F. W. Dallinger, Nominations for Elective Office, pp. 192-196.

40. Acts & Resolves of Massachusetts, 1897, pp. 581-582.

to honest voting, the duty of city committees.[41] Laws in Kansas and New Hampshire of that year defined caucuses as bodies representing parties that polled three and five per cent, respectively, of the vote in the preceding election, and provided for a certification of their nominees by the party committees.[42]

North Dakota and Rhode Island went further with caucus regulation in 1899. The North Dakota act contained requirements as to notice to be given, hours, and proper certification of nominees, placing these regulations under the direction of the county committee.[43] The Rhode Island law was more detailed, providing for election of caucus wardens and clerks, fixing procedure,[44] and regulating similar matters. In 1900 Massachusetts

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41. Acts & Resolves of Maine, 1897, p. 353. See the earlier acts in: Maine Laws, 1887, pp. 39-40; Ibid., 1893, pp. 308-309. The 1897 act did not apply to cities of more than 25,000 population. The population limit was raised to 35,000 in 1903 and made general by a law of 1923. Ibid., 1903, p. 177; Ibid., 1923, pp. 354-355.

42. Laws of Kansas, 1897, p. 251; New Hampshire Laws, 1897, pp. 68-70.

43. Laws of North Dakota, 1899, pp. 36-37.

44. Laws of Rhode Island, 1899, pp. 200-212. This act applied only to the cities of Providence and Pawtucket. An act of 1901 extended it to Newport. Ibid., 1901, p. 289. The word "warden" used refers to a presiding officer.

extended her caucus law to apply to caucuses held to choose delegates to conventions for selecting delegates to national nominating conventions,[45] and in 1901 Connecticut and New Hampshire passed laws providing for the selection of necessary caucus officials, specifying voting qualifications, and placing the general supervision of such meetings in the hands of local executive committees of the party.[46]

Massachusetts and Maine amended their laws in 1903. Massachusetts added only the provision that caucuses and primaries be "joint meetings", and Maine regulated internal procedure of the meetings in regard to single voting and the use of ballots.[47] Amendatory acts in Connecticut and Maine in 1909 sought to purify caucus procedure,[48] and two other laws of Connecticut in 1911 concerned the qualifications for voting at caucuses and party meetings.[49]

The general abandonment of the caucus after the rise of

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45. Acts & Resolves of Massachusetts, 1900, p. 81

46. Public Acts of Connecticut, 1901, pp. 1375-1377; Laws of New Hampshire, 1901, pp. 604-605.

47. Acts & Resolves of Massachusetts, 1903, pp. 478-482; Laws of Maine, 1903, pp. 174-177. The Maine law prohibited persons from voting more than once.

48. Public Acts of Connecticut, 1907-1909, pp. 1252-1253; Laws of Maine, 1909, pp. 628-630. The Maine act applied only to the city of Old Town.

49. Public Acts of Connecticut, 1911, pp. 1491, 1562-1563.

the direct primary resulted, naturally, in an absence of regulation and it was not until 1935 that another law of importance was enacted. In that year Michigan regulated caucuses that were made the electing bodies for delegates to the state conventions and for choosing members of the ward and township committees.[50] In 1930 Rhode Island enacted a comprehensive law on other phases of government though its provisions concerning caucuses did little more than repeal the previous local laws and provide for ballot voting and the filling of vacancies.[51] Two caucus acts were passed in 1934. Both indicated a legislative tendency to leave the conduct of caucuses to party rules, subject only to general provisions to prevent fraud and irregularity. The Rhode Island act provided a special caucus system for the town of Portsmouth; the New York law was applicable to unofficial caucuses in all cities, towns, and villages.[52]

The laws discussed above do not include all the legislation relating to the caucus. Often laws that are primarily for the purpose of regulating the committee or convention include a provision that certain features of the law apply to caucuses also. Other laws imply the regulation of caucuses through such general terms as "primary meetings", "associations", or "political

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50. Public Acts of Michigan, 1935, pp. 557-561.

51. Acts & Resolves of Rhode Island, 1930, pp. 75-97.

52. Ibid., 1934, pp. 239-253; Laws of New York, 1934, pp. 723-724.

organizations". Some laws regulate what is commonly defined as a "caucus" under the name of conventions or mass meetings. The statutes included here are those of chief importance, however, and present a fair view of the development of regulation along this line. A beginning period of regulation, followed by a period of extensive primary legislation during which there was almost no legislation on caucuses, with a slight increase in caucus legislation in recent years, make up the statutory picture.

2. Conventions

It would be hard to draw a line showing the exact date at which the actual regulation of party conventions began. Certainly some of the acts that sought only to prohibit fraud and irregularities carried, expressly or impliedly, some regulation. But the distinction between nominal and actual regulation is not clear.

An act of the Ohio legislature, passed on March 21, 1887, was the first to enter the field of internal procedure of conventions, thus perhaps marking the beginning of actual regulation. Besides providing for the proper certification of delegates, it prohibited proxy voting.[53] An Illinois act of 1889 went a step further by making primary election judges and clerks, and party committeemen ineligible to serve as delegates or alternates to conventions,[54] and in the same year the North Dakota legislature

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53. Ohio Laws, 1887, pp. 188-189.

54. Laws of Illinois, 1889, pp. 140-148. This act repealed an earlier enactment of 1885.

followed the example set by Ohio by prohibiting proxy voting.[55] A law in Mississippi in 1892 was a landmark in the development of convention regulation. It fixed for the first time the basis of apportionment of delegates, thus removing this important power from the party organization. Other provisions, stipulating that "each precinct or district in a county shall have fair and equitable representation in county meetings or conventions", providing for proportional representation of factions in county meetings, and that conventions "prorate" the votes of delegates so as to represent, as nearly as practicable, the popular vote cast at the primary election, were far in advance of convention legislation in other states.[56] A law in Wisconsin the following year also went deep into party affairs by stating the time and place of conventions, apportioning delegates, and prohibiting proxy voting.[57] Other states followed this lead cautiously. Montana did hardly more than recognize conventions in an act of 1895, requiring certification of nominees,[58] and acts in Minnesota and Michigan the same year were regulatory chiefly in that they prohibited proxy voting. Utah enacted a similar law the follow-

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55. North Dakota Laws, 1890, p. 330.

56. Laws of Mississippi, 1892, pp. 148-150.

57. Laws of Wisconsin, 1893, pp. 310-318. This act replaced the 1891 law, relating chiefly to committees, that had been repealed. The 1893 law applied to cities and counties of 200,000 or more.

58. Montana Codes, Vol. I, 1895, Secs. 1310-1322.

ing year.[59] The next important act in regard to convention regulation came in 1898 when the New York legislature enacted a law embracing both conventions and committees. It required conventions to be composed of delegates apportioned according to the number of voters of the subdivision and selected by popular vote. Internal procedure was outlined, especially in regard to the manner of voting and roll-call, and conventions were guaranteed the authority to decide questions relating to contested seats. Though this act was restricted in its application, it was highly important in the development of regulatory legislation.[60] Acts in Illinois and California added little to the regulation in those states in 1899,[61] and a local act of Maryland in 1900 merely imposed a scheme of proportional representation by providing that delegates to the county convention be elected in exact proportion to the number of registered voters in the district.[62]

The movement to bring the convention system completely under the law proceeded steadily.[63] Laws in Kansas[64] and Indiana

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59. General Laws of Minnesota, 1895, pp. 661-664; Public Acts of Michigan, 1895, pp. 264-269; Laws of Utah, 1896, pp. 184-191.

60. Laws of New York, 1898, p. 351 ff. This act applied to cities and villages of over 5,000 inhabitants.

61. Laws of Illinois, 1899, pp. 211-215; Statutes & Amendments to Codes of California, 1899, pp. 48-50. This act was declared unconstitutional in Britton v. Board of Election Commisioners, 81 P. 1115 (1900).

62. Laws of Maryland, 1900, p. 632. This act applied to Allegeny County.

63. Laws of Kansas, 1901, pp. 311-313.

64. Acts of Indiana, 1901, pp. 498-505.

in 1901 merely recognized conventions and made requirements concerning certification of nominees. Acts in Missouri and Illinois, however, both restricted in scope, outlined the method of apportionment of delegates; they also regulated internal procedure by requiring roll call, a majority vote for election of officers, the establishment of certain committees, the keeping of records; and, in general, outlined convention procedure.[65] A Mississippi law of 1902 allotted to the state convention, composed of delegates chosen by local party conventions, the duties of choosing the state central committee, delegates to the national convention, and candidates for the office of presidential elector. County conventions were required to meet every four years with delegates equally apportioned among the supervisors' districts.[66] In Maryland a law, repealing previous local legislation, provided that all delegates to conventions and all managing bodies not appointed by conventions be elected at a primary.[67] Mild regulation of conventions was contained in a New

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65. Laws of Illinois, 1901, pp. 173-198; Missouri Laws, 1901, pp. 162-163. Both acts applied to counties of 125,000 or more. A Missouri act similar in nature applying to counties from 175,000 to 300,000 was passed.

66. Laws of Mississippi, 1902, pp. 105-112. This was the first comprehensive, mandatory, statewide primary law.

67. Laws of Maryland, 1902, pp. 405-412. Twenty-three counties were excepted.

Jersey act of the following year which fixed the apportionment of delegates and the salient features of their election.[68] An Idaho law was more detailed; it not only regulated closely the election of delegates but prohibited proxy voting and corrupt procedure.[69]

A comprehensive act passed in Iowa in 1904 regulated both branches of the party machinery. Conventions were provided for the purpose of actually nominating candidates, though delegates were elected and instructed in the primaries. Careful provisions for the conduct of the convention were included in order to assure the nomination of the persons for whom delegates were instructed in the primaries.[70] Laws of the following year in Illinois, Montana, Texas, and South Dakota regulated conventions in a detailed manner, especially in regard to membership and internal procedure. In each of these acts the number of delegates was fixed in direct proportion to the number of votes cast by the party in the district; and in various ways such as voting, order of business, and general conduct, the procedure of the assembled conventions was brought under the law.[71] The powers accorded the executive committees in the various provisions of these

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68. New Jersey Laws, 1903, pp. 606-619.

69. Idaho Laws, 1903, p. 363 ff.

70. Acts & Resolutions of Iowa, 1904, pp. 29-37.

71. Laws of Illinois, 1905, pp. 213-234. This law was declared unconstitutional in People v. Board of Election Commissioners of Chicago, 221 Ill. 9 (1906). Laws of Montana, 1905, pp. 198-215; General Laws of Texas, 1905, pp. 520-565; Session Laws of South Dakota, 1905, pp. 150-151.

laws, and more especially in a North Dakota act of that year,[72] show conclusively the increasing domination of the committee system over the older and outmoded convention machinery. An increasing tendency to make committees the rule-making bodies for conventions is evident in a Pennsylvania law in 1906.[73]

A more rigid act regulating conventions was passed in Iowa in 1907. It placed the calling of county conventions under the control of existing county committees and regulated procedure, including the prohibition of proxy voting, in all conventions.[74] The South Dakota law of that year fixed specifically the apportionment of delegates to state conventions and an act in New Hampshire required the selection of alternate delegates to conventions.[75] A law in Kansas provided for a kind of convention

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72. Laws of North Dakota, 1905, pp. 209-210. These powers were: filling vacancies in nominations, calling and arranging for conventions, certifying the election of delegates, etc.

73. Laws of Pennsylvania, 1906, (Ex.) pp. 36-44.

74. Acts & Resolutions of Iowa, 1907, pp. 61-64.

75. Session Laws of South Dakota, 1907, pp. 307-308. Sections 8, 10, 65, and 67 of this act were declared unconstitutional in Morrow v. Wipf, 22 S. D. 146, 115 N. W. 1121 (1908). Sections 8 and 10 were invalid because they required the payment of fees by candidates filing nominating petitions. Section 65, providing that state convention delegates be apportioned according to the party vote was held unconstitutional as class legislation because it deprived small counties of representation. Section 67, giving county committees power to decide on method of selecting delegates national conventions was declared invalid as a delegation of legislative power. New Hampshire Laws, 1907, pp. 105-106.

in a unique "party council" consisting of candidates, county committee chairmen, national committeemen, and certain state officials, and required that it draft the party platform.[76] An Ohio law of the same year showed the general trend toward the domination of the committee system. It provided for strict apportionment of convention delegates among the different subdivisions but left general control to the committee of the state or district.[77] The Illinois law of that year regulated carefully the selection of delegates, manner of voting, and general procedure of conventions.[78]

The multiplicity of laws after the beginning of the "progressive" era of 1909 or 1910, did not add materially to the regulation of the convention system. In most states it was already under strict control and the increasing number of primary laws rendered it more and more impotent as a party organ. In some ways the regulation was removed from the statute books to the rules of the parties by provisions making the different committees the governing authorities for conventions. Combinations of the convention system of nominating candidates and electing committeemen with such methods as popular selection and selection by candidates served to weaken the powers of the convention. Such laws

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76. Laws of Kansas, 1908, (Ex) pp. 76-77.

77. Ohio Laws, 1908, pp. 214-225.

78. Laws of Illinois, (Adj. Sess.) 1907-08, pp. 52-55. This act was declared unconstitutional in People v. Strassheim, 240 Ill. 279, 88 N. E. 821 (1909).

were enacted in California and Tennessee in 1909.[79] New Hampshire enacted a similar law the same year[80] and an amendatory act in Nebraska reverted from the candidate method of selection of committees to give this task to the county convention.[81] The law in Tennessee in this year gave the conduct of the state convention over to the state central committee, and an act of the following year in Colorado providing for a convention with the unique function of proposing candidates for the primaries, left regulation largely to party rules.[82] The Illinois act of 1910, however, was of a detailed nature. It combined the county convention and committee by making the committee meeting for choosing delegates to the higher conventions the regular county convention. The different conventions were strictly regulated as to organization, number of delegates, and procedure, and voting strength in the county meeting was required to be in proportion to the popular vote cast in the primary.[83]

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79. Statutes and Amendments to Codes of California, 1909, pp. 706-709; Acts of Tennessee, 1909, pp. 281-313.

80. New Hampshire Laws, 1909, pp. 527-528; Nebraska Laws, 1909, pp. 254-255.

81. Nebraska Laws, 1909, pp. 254-255.

82. Session Laws of Colorado, 1910, pp. 16-17. See also Laws of Maryland, 1910, p. 123.

83. Laws of Illinois, 1909-10 (Ex) pp. 51-52.

The first state platform convention was established in Idaho by a law of 1911, its delegates to be chosen by the county committees,[84] and the process of platform-drafting was included in a law in Maine regulating procedure in the state convention.[85]

Novel legislation in South Dakota in 1912 sought to establish a recognition of factions within the party organization by providing for proposal groups, chosen specially for the task at a direct primary, to propose candidates and formulate campaign principles.[86] Though this was essentially primary legislation it also was an unusual adaptation of the convention. California provided another novel form of the convention in 1913. The law in that state set up a state convention composed of candidates of the party with elective delegates in districts having holdover senators. This group was carefully regulated as to organization and procedure and was assigned the task of formulating the party platform and selecting a state central committee.[87]

The law in Washington in 1915 outlined a complete system of conventions, beginning with the precinct caucuses and

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84. Session Laws of Idaho, 1911, pp. 571-581. The state committee was allowed the option of calling a platform convention by an act of 1909. Ibid., 1909, pp. 197-211.

85. Laws of Maine, 1913, pp. 313-315. This act was approved by the voters at a special election in 1911.

86. Session Laws of South Dakota, 1911, pp. 355-388. This law was initiated by the people and adopted at the election of 1912.

87. Statutes and Amendments to Codes of California, 1913, pp. 1379-1413.

proceeding to the state conventions. All meetings, however, were placed under the direction of the corresponding committees.[88] South Carolina followed closely the rules of the Democratic Party in the same year with a law providing for "clubs" in precincts where county committeemen were to be chosen. State and county conventions were to be held under the direction of their respective committees, the clubs to select delegates to county conventions who were, in turn, to elect the members of the state convention.[89] A Nevada act of this year reverted slightly from the tendency to make conventions subject to committees by providing that conventions, whose members were elected in the primaries, should make all nominations for office. These bodies were closely regulated in regard to internal procedure and were given the task of drafting the party platform.[90] This was the general content of a law of this year in Indiana though conventions were only allowed to nominate part of the candidates for office.[91]

An initiatory measure in Arkansas in 1916 sought to democratize the party machinery by requiring the election, by primary, of a county convention whose tasks included that of

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88. Session Laws of Washington, 1915, pp. 176-181.

89. Acts of South Carolina, 1915, pp. 164-165.

90. Statutes of Nevada, 1915, pp. 453-456.

91. Indiana Acts, 1915, pp. 359-379. Section 13 of this act, relating to fees of candidates, was declared unconstitutional in Kelso v. Cook, 184 Ind. 173; 110 N. E. 987 (1916).

choosing the members of the state convention. As in most laws of this period, the county committees were assured extensive powers over the conventions.[92] An act of Michigan the following year made state and county conventions the selecting bodies for the corresponding executive committees but the detailed provisions for convention procedure, as well as the extensive regulation of the committee system, made this power less important than it would appear.[93]

Nevada was added to the list of states providing for candidate conventions in 1917, in an act making the party nominees the conventions of the county and state with powers to choose the respective executive committees and formulate platforms.[94]

Beginning in 1919 there was an evident trend toward more convention legislation. Though most of the laws were strict in regard to organization and procedure, there was a noticeable increase in the number of duties assigned to conventions, indicating a recovery of some of their earlier importance. A law in Illinois gave evidence of this tendency. It provided for county, congressional, judicial district, and state conventions, the

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92. Kirby & Castle, Statutes of Arkansas, 1916, pp. 844-846. These powers included the placing of names of candidates for delegate on the ballot, selecting candidates for delegates where there were none, control of primaries, and the declaration of delegates chosen.

93. Public Acts of Michigan, 1917, pp. 449-450.

94. Statutes of Nevada, 1917, pp. 285-286.

power to nominate certain of the candidates for public office appertaining to all. Congressional conventions were given the power to choose the state committee, and a combination of methods of apportionment was enacted. Full regulation of the whole convention system in regard to time of meeting, procedure, and organization was included in the act.[95] The Idaho law of that year was of little importance, so far as changing the powers of conventions was concerned,[96] but the New Jersey law in the following year was notable. It provided for a convention in that state consisting of state officers, nominees for state offices, and members of the state committee, with the power to adopt a platform.[97]

Convention regulation was the major part of the legislation relating to political parties in 1921. In Minnesota the law included detailed provisions for county, congressional district, and state conventions, with the apportionment of delegates left to the respective committees. Delegates to all higher conventions were to be chosen by the county conventions. Both state and county conventions were made platform-drafting agencies, and the

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95. Laws of Illinois, 1919, pp. 477-484. This law was declared unconstitutional in People v. Fox, 294 Ill. 263 (1920).

96. Session Laws of Idaho, 1919, pp. 372-376.

97. Acts of General Assembly of New Jersey, 1920, p. 631 ff. A South Dakota act of this year providing for a return to the convention method of nomination was defeated in a referendum vote.

state group endorsed candidates for the party primary.[98] The amendatory act in Nebraska was similar to the Minnesota statute in its strict regulation of the apportionment of delegates and internal procedure but varied to make all committees elective by the respective conventions.[99] The committees were placed in charge of arranging conventions and were given the usual powers belonging to committees. In Nevada the amendatory act made elaborate provisions for the election of delegates to county conventions, but these constituted the only party officers subject to a vote of the people; the delegates to the state convention were chosen by the county convention and state and county committees apportioned and selected by their respective conventions. This act gave considerable freedom to conventions in the conduct of party affairs.[100] An act of the same year in Indiana made specific provisions for apportionment of delegates to state conventions on a proportional representation plan.[101] A similar act of little significance was passed in Washington.[102] A Vermont law was important in the development of special conventions. It made the nominees for state offices the delegates to a state convention and gave such convention the power to adopt a state platform, choose

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98. Session Laws of Minnesota, 1921, pp. 401-406

99. Nebraska Laws, 1919-1921, pp. 304-306.

100. Statutes of Nevada, 1921, pp. 395-399.

101. Acts of Indiana, 1921, p. 413.

102. Session Laws of Washington, 1921, p. 689.

presidential electors, and to act as county groups in choosing county committees and in nominating men and women members of the regular state convention---the election to be the task of the whole candidate convention.[103]

New York brought regulation of party conventions in that state up to the present in a law of 1922 that provided for both the primary and convention systems of nominating candidates. The chief nominating conventions---the state and judicial district bodies---were closely regulated in regard to internal procedure, but general arrangements and apportionment of delegates were left to party rules and authorities.[104] A law in Minnesota only added strict regulation of convention procedure and gave additional nominating powers to them,[105] and a similar law in Nebraska merely added strictness to the regulations of conventions that nominated candidates for office.[106]

In 1924 Iowa enacted legislation restoring to conventions some of the powers that had been placed elsewhere by earlier laws. In a statute outlining the work of county and state conventions, county conventions were given the task of choosing

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103. Acts & Resolves of General Assembly of Vermont, 1921, p. 8.

104. Laws of New York, 1922, p. 328 ff.

105. Session Laws of Minnesota, 1923, pp. 124-127. This law repealed the 1921 act relating to proposal of candidates.

106. Nebraska Laws, 1923, pp. 207-209.

county and district committees and both conventions were re-assured the power of nominating candidates to fill vacancies.[107] A law of the following year in New Jersey made provision for convention or caucus nomination of candidates, such method of nomination, if employed, to be properly certified by a duly organized group.[108] A law in Michigan of the same year regulated all branches of the party machinery, providing for a "spring" and a "fall" convention--each with different nominating duties.[109]

In 1927 Illinois, still striving for a law that would suit its supreme court, re-enacted its statute of 1910 except for minor changes in the choice of delegates to state conventions.[110]

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107. Acts of General Assembly of Iowa, 1924, pp. 48-50. A New Jersey law of this year provided only for a committee to assist in drafting a platform while the convention was in recess. New Jersey Laws, 1924, pp. 671-672.

108. Acts of General Assembly of New Jersey, 1925, pp. 27-29.

109. Public Acts of Michigan, 1925, pp. 557-561. The "fall" state convention nominated all candidates for state office, except that of governor and lieutenant-governor, whose terms expired in even-numbered years. The "spring" state convention nominated such officers whose terms expired on odd-numbered years. Corresponding county conventions selected delegates to these meetings.

110. Laws of Illinois, 1927, pp. 462-465. In counties of 200,000 or more the number of delegates was to be fixed by the precinct committeemen.

Another Michigan act of this year prescribed in detail the composition, organization, and procedure of county conventions and made its delegates elective at the primary if such a method was approved by the people in a referendum vote.[111] South Dakota brought her oft-amended system of party regulation up to the present in 1929 with a statute providing for a simplified committee system, as well as close regulation of conventions. A state convention, its delegates chosen by primary election, with the function of nominating candidates for all elective offices except governor was provided, and its procedure strictly regulated.[112] Another Michigan act of this year only changed the former law on conventions by making delegates to county conventions elective by primary vote.[113]

California amended her unique statute on the composition of the state convention in 1929. This law made certain state officers belonging to the party, party nominees at the last primary, and an appointive group chosen by the state committee to represent other state offices, the members of the state convention. The convention was made a part of the state committee, and this body was closely regulated.[114] Idaho added a different type of the platform convention in 1931 with a law declaring that candidates

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111. Public Acts of Michigan, 1927, pp. 147-148.

112. Session Laws of South Dakota, 1929, pp. 124-141.

113. Public Acts of Michigan, 1929, pp. 792-794.

114. Statutes & Amendments to Codes of California, 1929, pp. 1767-1774.

for elective state and congressional offices and chairmen of county committees were to compose such a convention which had the function of formulating a platform and selecting, by county groups, one person from each county to compose the state central committee.[115] Massachusetts contributed another "pre-primary" convention, in 1932. The amendatory law of that year made the state convention, composed of delegates chosen in strict proportion to the number of votes cast at the preceding primary, an endorsing group for candidates to be nominated at the party primary. This convention was also charged with the duty of drafting a platform, electing members-at-large of the state committee, and nominating presidential electors.[116] Another Idaho law of 1933 prescribed a special state convention for selecting delegates to the national convention and members of the national committee.[117] A North Dakota act of 1935, repealing the presidential primary, provided a special convention for choosing delegates to national conventions.[118]

Legislation on conventions has not been consistent. The vast amount of regulation to which these organs were subjected from 1890 to 1905 was followed by a noticeable decrease in such legislation in the following decade. The "progressive" period of

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115. Session Laws of Idaho, 1931, pp. 30-47.

116. Acts & Resolves of Massachusetts, 1932, pp. 3-12. For earlier examples of the proposal convention see the Colorado law of 1910 and the Minnesota act of 1921.

117. Session Laws of Idaho, 1933, pp. 348-351.

118. Laws of North Dakota, 1935, pp. 171-173.

party history was notable for extensive legislation on direct primaries which tended to take away the powers of conventions under earlier laws. The committee system came to the front as the most important part of the party machinery. Following the Great War there was an increasing number of laws which related to conventions, some of them restoring some of the original powers held by these bodies. Novel forms of the convention were also introduced by law in a number of states and the convention system regained some of its original importance as a nominating body. The laws did not, however, slacken the regulation upon party conventions. With each restoration of power there was an increase in legal regulation. That fact makes the convention system more highly regulated today than ever before. Practically every power exercised is regulated by detailed statutory provisions that leave little to the discretion of the convention.

3. Committees

Any review of legislation on one branch of the party machinery will treat, generally, the same laws that deal with the other branch. For, though there are many laws which regulate especially one or the other of the two branches, most legislation deals with both conventions and committees. There are periods, as indicated in the preceding paragraph, when one or the other of the two organs received the greater part of legislative attention. Nevertheless, considerable overlapping must be expected in any survey of these laws.

The recognition of committees may be found in some of

the first laws dealing with corrupt practices. The Wisconsin law of 1891 was the first to provide any actual regulation. This act, applying to counties of 150,000 or over, regulated executive committees of such counties in regard to membership, procedure, and powers.[119] The number of members was fixed at one from each township and ward, to be chosen at a primary election. Only resident, qualified electors were made eligible for such positions. The time of meeting of the committee was fixed and the selection of the usual committee officers required. Important powers were assured to the party committeemen. They were legally authorized to arrange for the primary by which their successors were to be chosen; they were assured the right to fill vacancies in their own membership and the authority to hold office until their successors had been named and qualified.

An increasing amount of attention to party committees was evident in a number of laws of 1892--the result, in part, of an increased interest in primary elections. The supervision of such elections was the proper duty of the permanent part of the party machinery and the increasing legalization of primaries brought with it a corresponding increase in statutory recognition and regulation of the committee system. An act of Kentucky legalized the power of party committees to judge of the advisability of holding

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119. Laws of Wisconsin, 1891, Vol. I, pp. 633-643.

a primary election, to hold such election, "count the votes... and declare the nominee".[120] A local act of Maryland fixed the number of committeemen and outlined similar duties in regard to primaries,[121] and a law in Mississippi was quite specific. It provided for the selection of committees by the appropriate conventions, but made popular selection by the county committees possible. Such powers as the determination of qualifications for party membership, the filling of vacancies, the ordering of primary elections, and the settlement of contested primary nominations were assured to the various committees. The supremacy of the state committee over lower committees was provided for by allowing this body to arrange for a special election of a county committee when two groups claimed recognition.[122] Committees were regulated to some extent in the Massachusetts caucus act of 1894. Elected by the caucuses, these groups were required to elect certain officers and were allowed to fill vacancies in their own membership as well as in nominations for public office. Town and city committees were required to consist of three members and were given general charge of the party caucuses.[123] Acts in Arkansas and California in 1895 added to the authority of state and

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120. Acts of Kentucky, 1891-93, p. 106 ff.

121. Laws of Maryland, 1892, pp. 7-8, 11.

122. Laws of Mississippi, 1892, pp. 148-150.

123. Acts & Resolves of Massachusetts, 1894, pp. 617-630.

ocunty committees, respectively, by requiring the certificate of the officers of these committees in order to make nominations by conventions or primaries valid.[124] Massachusetts amended her law the same year to provide for the selection of a state committee of one member from each senatorial district to be chosen at the senatorial convention with provisions for such committeemen to have a one-year term of office and to be properly organized by the selection of a chairman, secretary, treasurer and other necessary officers.[125] A local act in Delaware that gave county committees full charge of arranging party primaries,[126] and another act in California, conferring the same powers upon committees in that state,[127] completed the principal legislation down to 1898.

The New York law of 1898 provided for the popular election of committee members, apportioned according to the size of the party vote, and allowed such committees as the party rules may prescribe.[128] This act marked the beginning of extensive regulation of party committees in that state. Laws in Tennessee and Illinois in 1899 gave executive committees extensive powers over

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124. Acts of Arkansas, 1895, p. 340; California Statutes, 1895, pp. 207-218. This law was declared unconstitutional in Maron v. Manley, 43 P. 975. (1896).

125. Acts & Resolves of Massachusetts, 1895, pp. 582-588.

126. Delaware Laws of 1895-99, pp. 395-399, pp. 395-397.

127. Statutes & Amendments to Codes of California, 1897, pp. 115-134; this law was declared unconstitutional in Spier v. Baker, 52 P. 659. (1898).

128. Laws of New York, 1898, Vol. I , p. 351 ff.

party primaries,[129] and a California law made the governing committees of parties the administrators of the election of delegates to state and district conventions.[130]

The extensive regulation of conventions of this period did not fail to include committees in most cases. In Oregon an act of 1901 provided for county committees to be chosen at the primaries and conferred powers of filling vacancies and apportioning delegates to county conventions upon them.[131] In Indiana and Missouri acts were passed providing for popular election of committeemen and for an organization of the elected members.[132] In California, Colorado, and Florida acts of 1901 recognized the committee hierarchy in providing that the state central committee was the final judge as to the validity of any lower committee or authority and the supreme authority as to any controversy arising within the party ranks.[133]

The primary law in Mississippi in 1902 showed signs of the trend of authority from the convention to the committee. Though this act made committees elective by the respective con-

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129. Tennessee Laws, 1899, pp. 963-964; Laws of Illinois, 1899, pp. 311-315. These powers were to appoint the election judges in Illinois and to appoint judges and clerks and to provide the ballot in Tennessee.

130. Statutes & Amendments to Codes of California, 1899, pp. 49-50.

131. General Laws of Oregon, 1901, pp. 327-328. This applied to cities of 10,000 inhabitants or more.

132. Acts of Indiana, 1901, pp. 495-499; Missouri Laws, 1901-1903, p. 181.

133. Statutes & Amendments to Codes of California, 1901, p. 591; Session Laws of Colorado, 1901, pp. 169-170; Acts & Resolutions of Florida, 1901, pp. 160-165.

ventions, it fixed the term of office for members, regulated procedure, and conferred the power of investigating and deciding contests over primary nominations.[134] This trend was likewise evident in a law of Texas in which committees were designated as the authority in arranging and conducting primaries and calling conventions, and in Alabama and Florida where committees were given authority to make special rules concerning primary elections.[135]

The statewide primary law in Wisconsin in 1903 was the most important up to that time in committee regulation. It not only provided for popular election of precinct committeemen but provided that the vote of these committeemen, composing the intermediate committees, should be in proportion to the popular vote cast in their respective precincts at the preceding general election. The candidate for precinct committeeman receiving the highest vote was made chairman, and other committee officers were required to be chosen by ballot. The weighted vote in committee meetings, as well as other features of the law, made it important in forecasting the trend of legal development.[136]

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134. Laws of Mississippi, 1902, pp. 105-112.

135. General Acts of Alabama, 1903, pp. 356-365; Acts & Resolutions of Florida, 1903, p. 242. The Florida act extended only to city committees.

136. Laws of Wisconsin, 1903, pp. 754-766. The selection of the state committee was by a state platform convention composed of party nominees for state office.

The spread of the movement to elect party committees by popular vote was significant in 1905. The Iowa law of the previous year included such a provision for county and city committees and in this year eight states passed original or amendatory acts to bring this branch of the party machine more closely under the control of the party members.[137] Most of these laws provided that the lower committees only be elected at the primary and that these committeemen make up the higher committees. Simple organization of these groups was generally provided for. A North Dakota law of the same year made the county convention the body for selecting the county committee and made various provisions outlining the organization and duties of such conventions.[138] Laws in Florida and New Jersey of that year were important only in

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137. Indiana, Illinois, Nebraska, Oregon, South Dakota, Tennesee, Texas, Wisconsin. Acts of Indiana, 1905, pp. 122-127; This act was limited to counties containing towns from 35,500 to 43,000 population and to parties polling ten per cent of the total vote at the last election. Laws of Illinois, 1905, pp. 313-325. This act was declared unconstitutional in People v. Board of Election Commissioners of Chicago, 221 Ill. 9 (1906); Nebraska Laws, 1905, pp. 332-342. This act applied to counties with a population of over 125,000. General Laws of Oregon, 1905, pp. 39-40. Session Laws of South Dakota, 1905, pp. 150-151. Session Laws of Tennesee, 1905, p. 748. General Laws of Texas, 1905, pp. 520-565. Laws of Wisconsin, 1905, pp. 541-543.

138. Laws of North Dakota, 1905, pp. 214-216. This act did not apply to counties of less than 5,000.

giving duties concerning primaries to city and county committees.[139]

Louisiana took the last step in the popular control of committees, in regard to method of selection, in 1906. The law in that state declared that "members of all committees shall be elected in a direct primary" and prescribed that the state committee should consist of one member from each parish (one from each ward in the Orleans parish) with three members-at-large from each congressional district. The state committee was made the authority for directing the number, organization, and term of office of lower committees.[140] Laws in Pennsylvania of that year added to the powers of committees by conferring some control of arrangements for conventions upon them.[141]

The movement for direct election of party committees went forward with alacrity in 1907. Florida joined Louisiana in providing for the choice of all committees by popular vote in the primaries, specifying varying terms of office, and prohibiting proxy voting in committee meetings.[142] Missouri, North Dakota, and Washington provided for direct election of the lowest branches of

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139. Acts & Resolutions of Florida, 1905, p. 168; Acts of New Jersey Assembly, 1905, pp. 11, 223-224.

140. Acts of Louisiana, 1906, pp. 79-80.

141. Pennsylvania Laws, 1906, pp. 78-83. Ibid. (Ex) pp. 36-44. The committees were given the power of apportioning delegates to conventions.

142. Acts & Resolutions of Florida, 1907, pp. 93-95.

the committee system.[143] Nebraska, however, reverted from the primary plan of choosing county committees to make these groups the choice of the nominees for county offices.[144] Iowa regulated organization and procedure in both state and county committees but continued the convention method of selection.[145]

Oklahoma became the third state to provide for the direct election of all party committees in 1908. The law fixed the number of members of the state, county and city committees as well, and gave the county committees power to create district committees and endow them with proper powers.[146] Laws in Kansas and Ohio provided for the primary election of members of the precinct and county committees, respectively, but stipulated other means of choosing the higher committees.[147] Laws in Georgia, Maryland, Massachusetts, and Mississippi only added to the routine duties of executive committees and confirmed powers necessary to perform these duties.[148]

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143. Missouri Laws, 1907, pp. 368-369; North Dakota Laws, 1907, pp. 164-165; Session Laws of Washington, 1907, pp. 457-476. Amendatory laws were also passed in Indiana, South Dakota, and Wisconsin.

144. Nebraska Laws, 1907, pp. 214-216.

145. Acts and Resolutions of General Assembly of Iowa, 1907, pp. 61-64.

146. Oklahoma Laws, 1907-08, pp. 394-395.

147. Laws of Kansas, 1908 (Ex) pp. 140-141; Ohio Laws, 1908, pp. 214-225.

148. Georgia Laws, 1908, pp. 55-57; Laws of Maryland, 1908, p. 463; Acts & Resolves of Massachusetts, 1908, p. 378; Laws of Mississippi, 1908, p. 140.

A Nevada act was the most important committee regulation in 1909. It provided for the selection of all the regular party committees, except the county group, by the assembled candidates of the state or district who had been nominated at the primary. The number of members of committees and their power to fill vacancies and discharge other duties was stated in the act, though the decision of contested nominations was made a part of the jurisdiction of the courts.[149] A law in Tennessee provided for a combination of the primary and convention methods of choosing committees, and stipulated that failure, neglect, or refusal of any committeeman to perform the duties outlined in the act should be a misdemeanor and constitute a vacancy in the office.[150] Another novel combination of methods of selection was contained in the California law of that year which provided that county and state committees be chosen by their respective conventions but that the state assembly, state senatorial, and congressional district committees be selected by the candidates nominated in those districts.[151] Idaho and New Hampshire also provided some form of candidate selection of local committees in laws passed in this year.[152] Nebraska changed from the candidate method of selecting

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149. Nevada Laws, 1908-1909, pp. 388-391.

150. Acts of Tennessee Assembly, 1909, pp. 281-313.

151. Statutes & Amendments to Codes of California, 1909, pp. 708-709.

152. Session Laws of Idaho, 1909, pp. 197-211. New Hampshire Laws, 1909, pp. 527-528.

county committees in an amendatory act that made this selection a task of the county convention, with other committees to be chosen as the state committee of the party may direct.[153] Amendatory laws in New Jersey and Oklahoma, requiring the primary election of municipal committees, completed the committee legislation for the year.[154]

The Colorado regulatory act of 1910 was unique in its provision that women have equal representation with men on precinct committees. The further provisions of the act made the precinct committee members the county or city committee, the chairmen of the county committees to constitute the state central committee. Additional members of the state committee were provided for if the voting strength of the party was sufficient.[155] In the Illinois law of this year the elaborate provisions for committee machinery called for popular selection of the members of the state and precinct committees, the intermediate committees to be composed of the precinct committeemen of that district.[156] In both these states the laws made provision for the term of office, organization, and duties of the committees, though confirmation of undefined powers may be found in both statutes. Mississippi, Ohio, and

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153. Nebraska Laws, 1909, p. 254.

154. Acts of New Jersey Assembly, 1909, p. 158; Laws of Oklahoma, 1909, pp. 366-367.

155. Session Laws of Colorado, 1910, pp. 28-44.

156. Laws of Illinois, 1909-10, (Ex) pp. 50-51. An earlier law of this year in Illinois had been declared unconstitutional in People v. Deneen, 247 Ill. 289, 93 N. E. 437 (1910).

Rhode Island passed amendatory laws to require the selection of committees by popular vote, Mississippi and Rhode Island making this requirement for municipal committees and Ohio for congressional committees.[157]

In 1911 New York presented the most elaborate system of committee regulation that had been passed. This law called for ten regular committees and such others as the party authorities may provide--all to be chosen by direct vote in the primaries. These committees were not only required to select officers and file certificates of such selection with public officials but were also compelled to adopt rules of procedure and to file records of such rules with the custodian of primary records. The law envisaged the same members on several of the lower committees, serving in different capacities, though the state committeemen were to be separately chosen by direct vote.[158] Wyoming changed to direct election of members of lower committees in 1911 and North Dakota shifted the method of selecting the county committee to the party nominees for county offices.[159] Other legislation of that year

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157. Laws of Mississippi, 1910, pp. 211-212; Ohio Laws, 1910, pp. 41-43; Public Laws of Rhode Island, 1909-10, pp. 38-40.

158. Laws of New York, 1911, pp. 2678-2684. Section 58 of this law, relating to the number of times a name might appear on the ballot, was held unconstitutional in Hopper v. Britt. 204 N. Y. 534. 98 N. E. 86 (1912).

159. Laws of North Dakota, 1911, pp. 319-320; Session Laws of Wyoming, 1911, pp. 25-39.

included unimportant laws conferring routine duties on committees in Colorado, Idaho, and Maine.[160]

South Dakota suddenly tood a place in the vanguard of the regulation movement in 1912 with a bizarre piece of legislation that sought, by a frank recognition of party factions and complete democratization of the entire system, as well as provisions to insure the responsibility of party officials, to attain the millenium of party government. Besides proposal groups for recommending candidates for the primaries, a separate system of state and county committees was provided for and the internal procedure of each of the committee meetings was regulated. The direct election of regular state and local committeemen was required, the organization of the state committee even being assumed by the voters with a provision for the election of the chairman at the primary.[161] An Arizona law of this year outlined a symmetrical system of committee organization, the precinct committeemen to be elected and to make up the county committees, the chairmen of which composed the state committee with additional members to be chosen by the county committee.[162] Unimportant laws adding to the duties of executive committees were also passed in Louisiana,

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160. Laws of Colorado Assembly, 1911, pp. 336-369; Session Laws of Idaho, 1911, pp. 571-581; Laws of Maine, 1911, pp. 218-235.

161. Session Laws of South Dakota, 1911, pp. 255-288.

162. Acts, Resolutions, and Memorials of Arizona, 1912, pp. 295-297.

Mississippi, and Virginia, and an initiatory measure in Montana provided for the election of precinct committeemen who, besides forming the county or city committees, had the function of choosing the state committee.[163]

Committee regulation decreased slightly in 1913. In Pennsylvania the primary law required the direct election of local committeemen, the higher divisions of the system to be chosen by the committee just below in a progressive order.[164] In Massachusetts the law provided for the direct election of state, ward, and town committees, though the number of members was left largely to party authorities, and in Nevada the election of state and county committees was made a part of the duty of the platform conventions, composed of the candidates of the state or county.[165] Amendatory laws that did not change the regulation already existing were passed in Florida, Michigan, and Ohio, and in Idaho the popular election of county committees was provided for.[166] In Illinois the law of 1910 was amended to provide for proportional

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163. Acts of Louisiana, 1912, p. 388; Laws of Mississippi, 1912, p. 309; Acts of the Assembly of Virginia, 1912, pp. 611-619; Laws of Montana, 1913, pp. 586-588. The Montana law was adopted at the general election of November, 1912.

164. Pennsylvania Laws, 1913, pp. 719-721.

165. Acts and Resolves of Massachusetts, 1913, pp. 737-738; Statutes of Nevada, 1913, pp. 523-524.

166. Acts & Resolutions of Florida, 1913, pp. 242-268; Public Acts of Michigan, 1913, p. 130; Ohio Laws, 1913, p. 480; Session Laws of Idaho, 1913, pp. 347-360.

representation in the voting of county and congressional committees, and the ward committeemen in certain cities were declared to be the city committee,[167] and in California a broad statute required the election of county committees by a complex system of proportional representation.[168]

Further democratization of the committee system is evident in a number of laws passed in 1915. West Virginia enacted a law making all committees elective by direct vote, confirming the superiority of the state committee over the other parts of the system.[169] In Washington the law was amended to require the election of precinct committeemen at the primary and an Indiana law that repealed existing legislation on the subject in that state set up a complete committee system. Precinct committeemen, chosen by popular vote in the primaries, were to make up the county or city committees. The chairmen of the county committees were declared to be congressional committees, their chairmen, in turn, to constitute the state committee. Strict regulation of the committees in regard to voting and time of meeting was set out in the law.[170] The platform convention of party nominees was made the selecting group for state and county committees in a law of

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167. Laws of Illinois, 1913, pp. 310-330.

168. Statutes & Amendments to Codes of California, 1913, pp. 1379-1413.

169. Acts of Legislation of West Virginia, 1915, pp. 223-246.

170. Session Laws of Washington, 1915, pp. 177-181; Indiana Acts, 1915, pp. 359-379.

Vermont in this year, Michigan provided for selection of a state committee by a state convention, and an act of California set up congressional committees.[171] Unimportant acts relating to committee organization were also passed in New Jersey and North Carolina.[172]

Arkansas required popular election of county committees in 1916.[173] An amendatory law in New York in this year required one member of the state committee from each assembly district.[174] Indiana sought to give judicial dignity to party committees in 1917 by providing that a committee should have full right, not only to remove any member refusing to conform to rules, but to maintain suits in mandamus to enforce obedience to its rules as fixed by the state committee. Any case of this sort was to have precedence over all other cases except trials for capital offenses.[175] Another amendatory law in New York required at least one member from each assembly district on county committees and a California law simplified the system of popular election of county committees, and went further to uphold the supremacy of the state committee,

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171. Laws of Vermont, 1915, pp. 62-65; Public Acts of Michigan, 1915, p. 392; Statutes & Amendments to Codes of California, 1915, pp. 264-265.

172. New Jersey Laws, 1915, pp. 156-360; Public Laws of North Carolina, 1915, pp. 154-168.

173. Kirby & Castle, Statutes of Arkansas, 1916, pp. 844-846.

174. Laws of New York, 1916, pp. 1625-1626.

175. Indiana Acts, 1917, pp. 354-360.

regulate its procedure and prescribe how vacancies may be filled by party committees.[176] In Georgia, duties concerning party primaries were prescribed for the state committee.[177]

The years from 1905 through 1915 were important in the regulation of the committee system. During this time they came to supplant the convention system in performing many party functions and were elevated to a dominating position in the party machine. Since that time, however, there has been far less legislation on committees. Part of this is due to the fact that most states had already set up a system of regulation by this time and only minor amendatory laws were necessary to keep the regulation up to date. Some decrease resulted from the increase in regulations and statutory importance of party conventions. A tendency to require less elaborate committee systems and more simple methods of selection and organization is quite evident in legislation passed after the Great War.

The short-lived Illinois primary law of 1919 provided for a hierarchy of committee organization with popularly-elected state and precinct committees.[178] An amendatory act in Michigan of that

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176. Laws of New York, Vol. III, 1917, p. 2240; Statutes & Amendments to Codes of California, 1917, pp. 1360-1361.

177. Georgia Laws, 1917, pp. 183-189. These duties were the control of special primaries and the declaration of results.

178. Laws of Illinois, 1919, pp. 477-484. This law was declared unconstitutional in People v. Fox, 294 Ill. 263, (1920).

year provided for a state committee of three members from each congressional district and a law in California required congressional committees to be chosen by joint action of the executive group of the state central committee and the party nominees for Congress.[179] The comprehensive regulatory act of New Jersey in the same year provided for direct election of state, county, and municipal committees, local groups to be chosen annually and the state committee for a three-year term.[180]

The general regulatory act of Minnesota in 1921 made the state central committee a combination of elective members from congressional districts and members appointed by persons endorsed for primary nomination by the state convention.[181] The amendatory act in Nebraska made all committees elective by the respective conventions but gave them the usual powers belonging to executive committees, and a similar law in Nevada provided the same method of selection but conferred fewer actual powers on the committees.[182] Acts in Massachusetts and New Jersey provided for women members of state and county committees, respectively.[183]

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179. Public Acts of Michigan, 1919, pp. 101-102; Statutes & Amendments to Codes of California, 1919, pp. 52-53. An amendatory law in Massachusetts in this year made the term of state committeemen two years. General Acts of Massachusetts, 1919, p. 203.

180. Acts of the General Assembly of New Jersey, 1920, p. 631 ff.

181. Session Laws of Minnesota, 1921, pp. 401-406.

182. Nebraska Laws, 1921, pp. 304-306; Statutes of Nevada, 1921, pp. 395-399.

183. Acts & Resolves of Massachusetts, 1921, p. 460; Acts of General Assembly of New Jersey, 1921, p. 19. This provision was made for the state committee in New Jersey by the 1920 act. Ibid. 1920, p. 631.

Louisiana and New York changed and added to their systems of party regulation in 1922. The law in Louisiana made provisions for special districts, changed the 1920 statute in regard to the number of state committeemen-at-large, and outlined the internal procedure of committee meetings, allowing proxy voting. New York made both state and county committees elective in the primaries and provided strict regulation of internal procedure but left the number of members and general arrangements to party rules. Rules of the party were also left to govern the creation of new committees and various details of the system.[184]

Amending laws in Minnesota and North Dakota in 1923 were of some significance. The Minnesota act changed the state committee to a group elected by the party nominees for office and the North Dakota law required county committees, made up of precinct committeemen chosen in proportion to the vote of the party at the preceding presidential campaign, to select an executive group, and choose certain members of the state committee.[185] Iowa and Missouri were added to the list of states requiring equal representation of the sexes on party committees.[186]

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184. Acts of Louisiana, 1922, pp. 178-202; Laws of New York, 1922, p. 1328.

185. Session Laws of Minnesota, 1923, pp. 124-127; Laws of North Dakota, 1923, p. 249.

186. 40 Acts of General Assembly of Iowa, 1923, pp. 5-6; Missouri Laws, 1923, pp. 197-199.

Iowa reverted from the popular selection of county committees in 1924, giving the task of selecting county and district committees to county conventions.[187] The following year Michigan passed amendatory legislation regulating the membership and procedure of ward and town committees and a law of Indiana regulated committee procedure to require that women be given a place, not only in the membership but in the organization of such bodies.[188] An unimportant law in New York the following year modified committee procedure so as to give greater freedom to party rules.[189]

Illinois re-enacted its primary law of 1910 in 1927 with stricter regulation of internal procedure of committees and Michigan, Ohio, and Washington required women members on committees.[190] A notable piece of legislation was enacted in Texas in that year in which the state conferred on the executive committee the power to prescribe qualifications for party membership.[191] Unimportant acts on committee regulation were passed in Massachusetts, Mississippi, and New Jersey in 1928.

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187. Acts of General Assembly of Iowa, 1924, pp. 48-50.

188. Public Acts of Michigan, 1925, pp. 557-561; Indiana Acts, 1925, pp. 354-358.

189. New York Laws, 1926, p. 1128-1129.

190. Laws of Illinois, 1927, pp. 462-465; Public Acts of Michigan, 1927, p. 5; Ohio Laws, 1927, p. 176; Laws of Washington, 1927, p. 287.

191. General & Special Laws of Texas, C. S. 1927, pp. 193-194.
See p. 190 of this manuscript.

The South Dakota law of 1929 provided a simplified committee system with state and precinct committeemen elected at a primary, the precinct members to constitute the county committee.[192] An amendatory act in Michigan in this year provided for elective state and county committeemen with the intermediate committees to be composed of, or selected by, the county committees.[193] In California a law set up a combination of officers, party nominees, and appointees of the state committee, as a state convention and made this group, along with three additional members chosen by each delegate, the state committee. An executive committee was provided for.[194] In Oregon an amendatory law of that year provided that congressional committees were to consist of the committeemen of the district and prescribed the organization of county and city committees.[195] A Florida law regulated the filling of vacancies in executive committees, and a law in Arkansas declared party committeemen to be public officers and subject to mandamus as all other public officials.[196]

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192. Session Laws of South Dakota, 1929, pp. 124-141.

193. Public Acts of Michigan, 1929, pp. 792-794.

194. Statutes & Amendments to Codes of California, 1929, pp. 1767-1774.

195. General Laws of Oregon, 1929, pp. 535-539.

196. Laws of Florida, Vol. I, 1929, p. 482; Acts of Arkansas, 1929, pp. 570-571. An amending statute in Indiana of this year made the resident county committee the city committee, and another repealed the preference vote in the presidential primary. Indiana Acts, 1929, pp. 223, 868-869.

The Rhode Island act of 1930 provided for the popular election of ward committees and that these committees make up the city and town committees. Organization of committees as well as their powers and duties were included in the act, but the power of lower committees to make rules, not inconsistent with those of the higher body, was affirmed.[197] Michigan again added to her often-amended law in 1931, giving county committees power over appointing delegates to county conventions, and prescribed that the local members of the county committee, with additional members chosen by the local caucus, should constitute the local committee.[198] California amended her regulatory legislation in this year to make the size of elective county committees vary in different systems of proportion to the size of the county.[199] The Alabama act reiterated previous legislation in that state in leaving the matter of selection, qualifications, and general powers of party committees to the discretion of the state executive committee, and an amendment to the law in Ohio made the chairmen and secretaries of the county committees composing judicial, senatorial, and congressional districts the district committees.[200]

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197. Acts & Resolves of Rhode Island, 1930, pp. 75-97.

198. Public Acts of Michigan, 1931, pp. 180-181.

199. Statutes & Amendments to Codes of California, 1931, pp. 2011-2012.

200. General Acts of Alabama, 1931, pp. 73-86; Ohio Laws, 1931, p. 686.

Regulatory laws in 1933 generally affected the committee system but slightly. Idaho amended her laws to require that the state committee be composed of one man and one woman selected by each county committee and authorized an executive group within such state committee to which powers and authority may be delegated.[201] The Georgia law of this year, while leaving the conduct of municipal primaries to party rules, required city executive committees consisting of one member from each ward.[202] A similar law in Virginia was restricted to cities of a certain size but the committee was given the power to recommend candidates for office and to decide whether such candidates were to be chosen by convention or primary election.[203] Three other laws of this year conferred unimportant powers on party committees. A Michigan act gave the county committee power to appoint nominees for special elections; a Utah statute gave this committee power to endorse a person to fill a vacancy in the legislature before his appointment by the governor; and a law in Washington gave party committees power to fill vacancies resulting from failure of candidates to get the required ten per cent of the total vote in the primary.[204]

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201. Session Laws of Idaho, 1933, pp. 348-351.

202. Georgia Laws, 1933, pp. 227-233.

203. Acts of Virginia, 1933-34, pp. 554-555. Voters were given the right to petition for primary election.

204. Public Acts of Michigan, 1933, pp. 39-40; Laws of Utah, 1933, p. 33; Session Laws of Washington, 1933, pp. 147-148. The Utah law apparently makes such recomendation a pre-requisite to appointment.

North Dakota passed the most important regulatory legislation in 1935. This law made the elected precinct committeemen the county committees, prescribed their organization, and made them elective groups for choosing a state committee to consist of one member from each legislative district. The organization of the state group was also outlined.[205] In Illinois the committee system was changed to provide for a ward committeeman in each ward of cities of half a million or more and for a township committeeman in each township in cities of 300,000 or more, and prescribed their voting strength in committee meetings.[206] In Massachusetts an amendatory act only gave the state committee power in the apportionment of delegates to pre-primary conventions.[207] Another law in Florida provided for a municipal committee when the party authority decided to have a municipal primary, the county committee to serve as the municipal committee in such a case.[208] The corrupt practices act of that year in Mississippi gave the courts jurisdiction over contested nominations, thus taking a valuable and firmly-established prerogative from party committees.[209] A New Mexico act, in keeping with the state's consistent policy of non-inter-

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205. Laws of North Dakota, 1935, pp. 171-173.

206. Laws of Illinois, 1935, pp. 807-809.

207. Acts of Massachusetts, 1935, pp. 657-658.

208. Laws of Florida, Vol. I, 1935, pp. 477-480.

209. General and Local Laws of Mississippi, 1935, (Ex) pp. 33-52.

ference with party affairs, was explicit in requirements for filing of party rules and regulations with public officials, but left to the executive committee "or other governing body" full power to make such rules for organization, methods of nomination, and related matters.[210]

The above survey of legislation dealing with the committee branch of party organization shows various trends. Selection of committees by the appropriate conventions--the method most commonly employed at the beginning of the regulation movement--was supplanted, during the course of the movement, by the direct primary or candidate methods with popular selection in more general favor. Provisions to insure popular control of committees have followed the method of selection to some extent. Trends in the volume of regulatory legislation can also be discerned. The "progressive" period of the regulation movement, 1905-1915, was the time in which the bulk of committee regulation was passed. Following this wave of extensive law-making on the subject there was a general retardation. Not only were fewer laws passed but the legislation enacted was less comprehensive and outlined less intricate committee machinery.

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210. New Mexico Laws, 1935, pp. 107-109.

Regulation of the Nominating Process

Most of the legislation of the American states dealing with party organization is the result of efforts to control the nominating process. Though this phase of regulation is not a part of this study it seems appropriate here to survey briefly the more important laws that have dealt with nominations in order that a clearer picture of the whole scheme of regulation may be given.

The laws enacted before 1890 were of little importance. Those pertaining to conventions were simple prohibitions of fraud, while primary laws were hardly more. Though about half the states enacted legislation relating to primary elections, most of them were optional with the party authorities. A few states had mandatory laws but they were local or special in their application. These laws presaged a vast program of primary legislation in the future but their immediate effect was not important and the nominating process was still almost entirely under control of party authorities.[211]

Following the introduction of the Australian ballot

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211. The New York Act of 1868 referred to "primary meetings, caucuses, and conventions". The California law of the same year covered most of the phases of nomination but was optional in character. It was amended in 1874 to make it a comprehensive statute, regulating nominations much in the manner of elections. It retained its optional character.

system in Massachusetts in 1888,[212] the laws on nominations became more numerous and the regulation of party primaries, as well as the requirement of the direct primary election, became quite general. Optional primary laws were passed in Washington, Kansas, Wyoming, and West Virginia in 1889 and 1891, and in Massachusetts a general law was passed though certain provisions were made mandatory for Boston and optional for other cities.

The passage of primary laws for cities was also feature of the regulation movement of the period 1880-1900, and by the end of the period practically all the larger cities were under the protection of primary legislation.

Four laws stand out as important in the development of the regulation of nominations before 1900. The Wisconsin law of 1891 was important as forecasting the trend of legislation on the direct primary; the Mississippi law of the following year set a new pace in the regulation of the convention method of nomination; the Massachusetts act of 1894 was the first comprehensive law regulating caucus nominations; and the New York law of 1898 was typical of the later laws that sought to apply to primary elections the same provisions that were applied to regular elections. Each of these laws, in a different way, contributed something to the movement to bring nominations under the full protection of the law.[213]

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212. This act was approved May 23, 1888. Acts & Resolves of Massachusetts, 1888, pp. 513-518.

213. Laws of Wisconsin, 1891, ch. 439; Laws of Mississippi, 1892, pp. 148-153; Laws of Massachusetts, 1894, ch. 504; New York Laws, 1898, p. 351 ff.

The Minnesota direct primary law of 1901 was a landmark in the development of this type of nomination. Though it applied only to certain offices, it was state-wide and thus a new venture in such legislation.[214] The Mississippi act of the following year was the first general state-wide primary law. It was mandatory and applied to all offices.[215] A similar act was passed in Wisconsin the following year and thereafter primary laws became so numerous that a general movement for this type of party nomination was evident. Though the Florida law of 1901 and the Delaware act of 1903 were optional they were important in the growing movement. In 1904 a law similar to that of Wisconsin was enacted in an initiative movement in Oregon, and Alabama was added to the list of states passing optional laws. Illinois, Michigan, Montana, South Dakota, and Texas passed laws in 1905;[216] in 1906 Louisiana and Pennsylvania enacted primary legislation. The following year Iowa, Missouri, Nebraska, North Dakota, South Dakota, and Washington passed primary laws; in 1908 Illinois, Kansas, Oklahoma, and Ohio followed; and the following year Arizona, Arkansas, California,

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214. Minnesota Laws, 1901, Ch. 216. For discussions of this law and its predecessor, see F. M. Anderson, "The Test of the Minnesota Primary Election System", Annals of the American Academy of Political Science, Vol. 20, pp. 616-636; A.L. Wearkle, "Minnesota Law Governing Primaries", Review of Reviews, Vol. 24, pp. 464-468.

215. Laws of Mississippi, 1902, Ch. 68.

216. In all these states except Texas, more comprehensive laws were passed later. The South Dakota law of 1912 set up the famous Richards Primary that sought to give the voters a part in all the party processes. For a discussion see, C.A. Berdahl, "The Richards Primary", American Political Science Review, Vol. 14, p. 93.

Idaho, Michigan, Nevada, New Hampshire, and Tennessee were made direct primary states. In 1910 Colorado and Maryland adopted the direct primary and the next year Ohio, Massachusetts, New Jersey, and Wyoming were added to the list. Kentucky, Minnesota, and Montana adopted complete laws in 1912; in 1913 comprehensive laws were enacted in Florida, New York, Ohio, and Pennsylvania; Indiana, North Carolina, South Carolina, Vermont, and West Virginia joined in the general movement in 1915.

It will be readily seen that the spread of the direct primary in the first and second decades of the present century made this an almost universal method of nominating party candidates. So complete was the movement that by 1917 all but four states had passed laws providing this form of nomination for some or all of the state offices. The laws were of varying kinds. Some were general while others were local or special in application; some sought to apply all the features of election laws to primaries while others left much to party rules; some laws were of a mandatory character while others left the application to the discretion of the party authorities.[317]

The supplanting of the convention and caucus methods of making nominations by the direct primary naturally reduced the importance of the convention as well as the regulatory legislation pertaining to it. The emphasis in legislation on nominations was

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317. Connecticut, New Mexico, Rhode Island, and Utah, have no primary laws.

on the side of democracy and the whole process was made subject, in varying degree, to the will of the people. Four states, however when enacting primary laws did not extend the system to cover all state offices but retained the convention in some form.[218]

Following the direct primary wave there was a noticeable reaction that not only stopped the spread of the institution but began modification of some of the laws that had been enacted. In Idaho and New York the movement to repeal the direct primary resulted in the restoration of the convention for making nominations for state-wide offices.[219] In Kentucky a law making the direct primary optional instead of mandatory for state-wide offices was passed in 1920.[220] Indiana returned to the convention method of making state-wide nominations in 1929 and the same year South Dakota repealed the unique Richards primary and provided the convention system for nominating part of the candidates for state offices.[221] Massachusetts culminated the movement against the direct primary in that state in 1932 with the adoption of a pre-primary convention system that contained the elements of both the primary and convention system.[222]

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218. Indiana Maryland, Michigan, and North Carolina.

219. Idaho Laws, 1919, ch. 107; Laws of New York, 1921, Vol. 2, ch. 479. The Idaho law also extended to congressional offices.

220. Acts of the Assembly of Kentucky, 1920, p. 335.

221. Session Laws of South Dakota, 1929, p. 125. Laws of Indiana, 1929, p. 223.

222. Acts & Resolves of Massachusetts, 1932, No. 310.

Three recent primary laws have been passed that would indicate that the reaction against primary legislation is not genuine and lasting. In 1931 Idaho, after a twelve-year period of convention nomination, returned to the direct primary method of making state-wide nominations.[223] In 1935 Kentucky again made this kind of nomination compulsory by adopting another mandatory direct primary law.[224] The "blanket primary" law enacted in Washington in this year, making primaries open and non-partisan, revealed that the period of radical experimentation with primary legislation is not over and showed anything but conservatism in regard to party nominations.[225]

This sketch of the more general features of regulation of the nominating process shows the direct primary as a fixed feature of party nominations in the United States. Beginning with regulation of the existing type of convention nomination, the trend of legislation turned suddenly to a new institution and in a short space of less than two decades almost entirely supplanted the old method of nomination with the more democratic process of primary election. Following the War this movement came to a sudden stop and, as has been sketched above, efforts to repeal or modify the

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223. General Laws of Idaho, 1931, p. 30.

224. Kentucky Laws, 1935, (Ex) ch. 1. The "run-off" primary adopted in the 1935 law was discarded by the mandatory law of 1936.

225. Session Laws of Washington, 1935, p. 60.

primary have been quite general. However, if this reaction is to be judged on a basis of actual legislation accomplished it is not serious enough to hold any threat for the primary system of making nominations. Of forty-four states that have adopted state-wide primary laws five have restored the convention system for part or all of the state offices. Idaho, New York, Kentucky, South Dakota, and Indiana have passed laws that gave back to conventions some powers of nominating candidates for state offices and a law in Massachusetts has seriously impaired the importance of the primary by the adoption of a pre-primary convention. Of these states that have abandoned the primary, two, Idaho and Kentucky, returned to it after experience with the convention. Thus the movement has lost ground in only three or, at most, four states.) That the primary has not spread to the four remaining states of the Union and shows no signs of doing so is quite clear. That it has lost ground in states where it has been used is also clear; the changes in primary laws have been to the advantage of the convention method of nomination. But it is not clear that slight modifications of existing primary laws condemn the system, or even forecast further modification. The changes may be the natural result of legislation that was ill-advised and hastily drawn; the objections may be technical instead of fundamental. At any rate they do not illustrate a general reaction against the primary election or presage a revival of the convention method of nomination. The most that can be said from a study of recent laws is that simplification of the primary election is gaining ground. Even this

tendency is counteracted by [illegible] checks [illegible] by the [illegible] which [illegible].[226]

Judicial Review of Party Decisions

Legislation [illegible] duties, organization and functions is effective [illegible] the question of court decisions [illegible] if the party establishes part of the [illegible] the legislative body. As [illegible] who contain matters [illegible] involving the [illegible] the law [illegible] by the results given them by the party committee. Hence laws are found that confer upon the courts the power to [illegible] party decisions and set aside conclusions deemed to be [illegible] as contrary to the law.

The first act expressly conferring jurisdiction upon the courts to interfere with the affairs of parties was passed by the New York legislature in 1866. This law, which remained [illegible] branches of the party machinery, provided that courts might review "any action or neglect of the officers or members of [illegible] committee..." with authority to issue the appropriate writ of certiorari or mandamus. This law, seeking to provide the same remedy for persons offended in party elections as for those

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226. This survey does not include any legislation designed to control the action of national conventions, usually known as presidential primaries. The statements and conclusions [illegible] are now based on such legislation. See Chapter IV of this manuscript.
The whole question of primary elections is well treated in Merriam and Overacker, Primary Elections. Early legislation on the nominating process is treated in Ballinger, Nominations for Elective Office.

nistrated in the regular elections, was soon copied in other states.[227]

In 1898 Georgia made contests over party nominations subject to the jurisdiction of the regular courts.[228] Five years later this provision was included in the direct primary law in Oregon,[229] and thereafter the adoption of such provisions became quite general. In 1906 a law in Illinois, regulating conventions and primaries, gave the county courts jurisdiction in contests over primary elections and provided that such cases should have precedence over all other litigation.[230] Though such a law appeared stringent at that time it was no more so than many of the others that were passed in rapid succession in a number of other states. Nebraska, North Dakota, South Dakota, and Washington included provisions for judicial review of the decisions of party authorities in 1907.[231] In 1909 Nevada and Texas were added to the list giving courts jurisdiction over contested nominations.[232] In the following

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227. Laws of New York, 1898, p. 381 ff.

228. Georgia Laws, 1898, pp. 40-41.

229. Laws of Oregon, 1905, Ch. 1.

230. Laws of Illinois, 1905-06, (2x) pp. 436-438. This law was declared unconstitutional in House v. Thompson, 22 Ill. 522, 81 N. E. 1102 (1907). Another such provision was included in the act of 1910.

231. Nebraska Laws, 1907, pp. 214-216; Laws of North Dakota, 1907, Ch. 150; Session Laws of South Dakota, 1907, p. 328. Washington Laws, 1907, p. 471. The provision of the South Dakota law was included in the act of 1912.

232. Statutes of Nevada, 1909-09, pp. 388-391; General Laws of Texas, 1909, pp. 451-454.

year the primary law of Colorado was passed which made party nominations a part of the business of the courts in that state.[233] In 1911 Wyoming was added, and the next year the states of Arizona, Kentucky, Minnesota, and Montana passed original or amendatory laws with such provisions.[234] In 1913 laws in California, Florida, Ohio, and Pennsylvania added these states to the list; in 1914 Virginia was added, and West Virginia and Vermont moved to make primary contests a part of the regular jurisdiction of the courts in the following year.[235] The initiative measure in Arkansas in 1916 provided that the certification of any nomination was contestable in the circuit court of the district where it had occured, and in 1920 New Jersey, after a four-year lapse in such legislation, passed a similar act.[236] Louisiana passed an act giving candidates in primaries a right of appeal to the courts on nomination decisions in 1932 and seven years later a Missouri law accomplished the same thing in that state.[237] Indiana and North Carolina gave contestants

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233. Session Laws of Colorado, 1910, p. 33.

234. Wyoming Laws , 1911, ch. 23; Arizona Laws, 1912, (Ex) ch. 84; Kentucky Laws, 1912, c. 47; Minnesota Laws, 1913, ch. 3; Laws of Montana, 1913, pp. 586-588. This law was adopted at the general election of 1912.

235. Statutes & Amendments to Codes of California, 1913, p. 1379; Acts of Florida, 1913, Sec. 55; Ohio Laws, 1913, p. 480; Pennsylvania Laws, 1913, p. 735. Virginia Laws, 1914, pp. 513-528; Acts of Legislature of West Virginia, 1915, ch. 26; Laws of Vermont, 1915, No. 4.

236. Kirby & Castle, Statutes of Arkansas, p. 2287 ff.; New Jersey Laws, 1920, ch. 349.

237. Laws of Louisiana , 1932, pp. 178-202; Missouri Laws, 1939, p. 194.

over primaries the same appeal that they provided for election contestants in 1913,[238] and two years later Mississippi was added to the list, when she passed a law which took away a cherished prerogative of executive committees by giving the courts authority to decide nomination contests.[239]

The laws that have been listed not only the initial measures issued by the states on this subject. A number of the laws have been amended and re-enacted from time to time to make them more comprehensive and extend to other things than nominations. The New York law of 1911, for instance, besides re-enacting the earlier provisions concerning the decisions of party authorities, went into the internal affairs of the committee meetings to provide that a committeeman, removed by his associates, should have the right to have his case reviewed by the Supreme Courts. On the other hand the Indiana legislature, before providing for judicial settlement of contests over nominations, stipulated that a committee should have full right, not only to remove any member refusing to conform to rules but to maintain suits in mandamus to enforce obedience to its rules as fixed by the state committee. Provisions by which the courts could be used to enforce party rules were also included in the New Mexico act of 1925.[240] Here in different

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238. Indiana Acts, 1933, ch. 248; North Carolina Laws, 1933, ch.165.

239. Laws of Mississippi, 1935, (Ex) pp. 32-33.

240. Laws of New York, 1911, pp. 2072-2084. Indiana Acts, 1917, pp. 354-360. New Mexico Laws, 1925, pp. 107-109. See also an act of Arkansas in 1933 declaring party committeemen to be public officers and subject to mandamus. Acts of Arkansas, 1933, pp. 570-571.

states are illustrated the extreme measures for which judicial process has been invoked.

The curve of legislative control of the power of party organizations and decision-making follows closely that of those laws regulating the activities of candidates. Noticeable decline in concern after the period of the Civil War, and, though new methods were constantly added to the list, the movement was very slow. It is interesting to note, however, that no state has repealed its laws in contrast to the old system whereby the party subscribers were the final judge of their own contests. Many states have permitted the most minimal control or even retained others the same as the slight prohibition of a direct interference. This fact could well be disadvantageous for legislation that seeks more severely to regulate political parties. Regulations may be simplified or strengthened as the courts, by direct statutory provision, can advise the activities of party tribunals or party organization will remain a public institution in the eyes of the law. Judicial review is <u>the</u> <u>thin</u> of legal control.

The regulation of party organization has not followed a logical course. It reveals periods of progression and retrogression for which there is no visible explanation. Chronologically, the course of regulation falls into three fairly well-defined periods. Up to 1901 the laws on organization were chiefly protectory, offering the protection of the state to party organizations so that they might conduct their meetings without fraud, to themselves or the general public. Then, as though legislatures

suddenly realized the menace of party disorder, there was a general movement to regulate all the details of organization. This period reached, as we have seen, practically every phase of party activity brought under the provisions of the law. Then, from 1911 to the present time, regulation seems to have ceased to make further headway, even showing signs of reaction and indicating a revulsive sentiment. This evidence of reaction is by no means general; neither does it apply for all phases of regulation. However, it is too important to be casually dismissed as the natural course of a legislative program. This reaction may be the result of external influences that only incidentally affect the regulative legislation. On the other hand, it may be the outward sign of a change in the public conception of the place of party organization in our system of government---a converted opinion that parties function best with some control of their own devices.Y

CHAPTER II

EVOLUTION OF THE CONVENTION SYSTEM

Next to the caucus, the convention is the oldest institution of party government.[1] Already firmly established in the state party systems, it came into prominence as a nominating system for candidates for President and Vice-President in the early years of the nineteenth century.[2] Though it remains universally accepted as an organ of national party government, the prestige of the convention has declined in most of the states. Stripped of their most important function by the advent of the direct primary system of nomination, state conventions have become platform-drafting agencies, means of selecting state and national party officers, or bodies for reconsidering candidacies at the primaries. Only in a few states do they retain their position as instruments for nominating candidates for public office; in some states the laws indicate that they have

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1. Ballinger calls the Pennsylvania meeting at Harrisburg in 1788 the first regularly called state convention. Nominations for Elective Office, p. 36.

2. The Federalist convention of 1812 that nominated DeWitt Clinton for the presidency was, in some respects, a national nominating convention. See J. S. Murdock, "The First National Nominating Convention", American Historical Review, Vol. I. p. 680. Properly speaking, however, the first such gathering was the Anti-Masonic convention of 1831.

disappeared altogether. But the convention system is still an important part of the party machinery, and, though definitely inferior to the committee system in power and influence, on a basis of legislation during the past ten years, shows no signs of further loss of position.

Today most states have provisions in their laws for some form of the party convention. These provisions range in nature from simple recognition as in New Mexico to the careful regulation of every detail such as is found in the laws of New York or South Dakota. The conventions stipulated range from local caucus meetings to elaborate well-integrated systems. Included in the list are curious types and peculiar hybrids. Few states require the same system of convention machinery.[3]

A

Conventions

The varying forms and types of conventions make it seem proper to treat the general parts of the system in separate divisions. Even with such grouping, however, the variety of forms and the difference in the requirements made as to the rank and number of the different parts of the system, make considerable explanation necessary.

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3. The laws of Florida, Louisiana, North Carolina, Oklahoma and Pennsylvania contain no reference to conventions. Oregon makes conventions possible for minor parties.

1. State Conventions

In thirty-six states the state convention is required or allowed by statutory provisions.[4] A majority of these provisions are of long standing, having been changed only by minor amendments since the original acts. Some are of recent origin.

(1) Composition and Selection. In Delaware, Maine, and Rhode Island the state central committees are left free to arrange for the number, method of selection, and apportionment of delegates without any legal restriction whatever, and in Connecticut and

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4. Arizona, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming. See: Compiled Election Laws of Arizona, 1935, p. 46; Statutes and Amendments to Codes of California, 1928, pp. 1767-1774; Compiled Election Laws of Colorado, 1935, pp. 46-47; Compiled Election Laws of Connecticut, 1936, pp. 148-149; Compiled Election Laws of Delaware, 1936, p. 78; Session Laws of Idaho, 1931, pp. 30-47; Compiled Election Laws of Illinois, 1935, pp. 141-143; Compiled Election Laws of Indiana, 1936, pp. 61-63; Compiled Election Laws of Iowa, 1938, p. 22; Compiled Election Laws of Kansas, 1935, pp. 23-24; Laws of Kentucky, 1900, (Ex) p. 6; Laws of Maine, 1913, pp. 313-315; Compiled Election Laws of Massachusetts, 1934, pp. 116-117; Compiled Election Laws of Maryland, 1936, p. 125; Compiled Election Laws of Michigan, 1936, pp. 71-72; Compiled Election Laws of Minnesota, 1936, p. 61; Mississippi Code of 1930, Sec. 5866; Compiled Election Laws of Missouri, 1936, p. 89; Compiled Election Laws of Montana, 1936, p. 66; Nebraska Laws, 1933, pp. 207-209; Compiled Election Laws of Nevada, 1935, pp. 50-51; Compiled Election Laws of New Jersey, 1936, pp. 23-25; New Mexico Laws, 1927, pp. 77-78; Laws of New York, 1922, pp. 1384-1385 as amended, Ibid., 1926, pp. 1138-1139; Session Laws of North Dakota, 1935, ch. 135; Compiled Election Laws of Ohio, 1932, Sec. 4785-74; Compiled Election Laws of Rhode Island, 1936, p. 206; Acts of South Carolina, 1915, pp. 168-170; Session Laws of South Dakota, 1929, pp. 124-41; General Laws of Texas, 1905, pp. 520-565; Compiled Election Laws of Utah, 1933, pp. 14-16; Compiled Election Laws of Vermont, 1934, p. 87; Compiled Election Laws of Virginia, 1934, p. 71; Compiled Election Laws of West Virginia, 1936, p. 34; Compiled Election Laws of Wisconsin, 1933, Sec. 5:20; Compiled Election Laws of Wyoming, 1934, pp. 44-46;.

Utah the vagueness of the statute indicates that such is the intention.[5] The selection of the members of the Colorado pre-primary convention is required to be "as certified by the rules and regulations of the respective political parties". In most cases the state committee acts as the agent of the state in conducting the selection of delegates in accordance with statutory regulations of varying particularity.

The primary election is one of the chief methods used in selecting delegates to state conventions. Six states prescribe the direct election of delegates in this manner and in eleven other states the members are indirectly chosen by popular vote.[6] In Maryland and New York the apportionment of delegates is left largely to the state central committees, but in Indiana and West Virginia the number of delegates is in strict proportion to the votes cast at the primary and in Massachusetts in proportion to the party vote at the preceding election. The Indiana law specifies one delegate for each four hundred votes or fraction of two hundred or more, and

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5. It should be noted that the laws of Kentucky and New Mexico mention conventions only in requiring certificates of nominations and the laws of Virginia recognize the right of parties to hold conventions but make no provisions or requirements. Hence these states are not further treated here.

6. Indiana, Maryland, Massachusetts, New York, South Dakota, and West Virginia. States where committeemen or nominees for public office form a part of the convention may be said to have indirect election of convention delegates.

West Virginia provides delegates "in proportion to the votes cast". The Massachusetts convention is made up of one delegate from each ward and town and "one additional for every fifteen hundred votes, or major fraction thereof, above the first fifteen hundred cast at the preceding state election in such ward or town for the political party candidate for governor". South Dakota fixes the number of delegates at three from each county.

Ten states use the convention method of choosing delegates to their state gatherings.[7] In these states the state central committee has charge of arrangements for delegate selection. In Iowa and Wyoming the law makes no requirements as to how this power shall be exercised in regard to apportionment, but seven other states prescribe the method of apportionment in various ways. In Michigan, Nebraska, Nevada, and Texas the apportionment is made on the basis of the vote cast for the party candidates at the preceding election. In Illinois the popular vote is used as a basis of apportionment though a delegate representing a fraction of the unit has his vote in the convention reduced in proportion. In Mississippi and South Carolina the basis of apportionment is the representation in the lower branch of the legislature, each county being allowed twice the number of delegates that it has members in the law-making body. In Montana the members are equal in number to the total membership

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7. Illinois, Iowa, Michigan, Mississippi, Montana, Nebraska, Nevada, South Carolina, Texas, and Wyoming.

of both houses of the legislature.[9]

North Dakota offers an unusual method of choosing delegates to state conventions. The 1933 law in that state made these representatives the choice of the assembled precinct committeemen in each county and fixed the apportionment at one delegate for each three hundred votes cast.[9a]

Several states have conventions with unique combinations of members in which some or all of the party nominees are included.[10] Arizona provides that nominees for Congress, for state offices, for the state legislature, together with the national committeemen, the chairman and executive committee of the state committee, and the chairmen of the county committees of the state make up its party council. Idaho requires the same membership except for national and state committeemen.[11] Kansas has a similar makeup for its convention except that it does not include state committeemen and adds the members of the state and United States senate. Minnesota

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8. Montana has two conventions. A delegate convention has the function of nominating presidential electors. A party council consisting of nominees and state committeemen elects a state chairman, chooses delegates to national conventions and drafts the party platform.

9a. The members of the selecting groups in Illinois and Wyoming are identical to this though in those states the committee meetings are called conventions.

10. Arizona, California, Idaho, Kansas, Minnesota, Missouri, Montana, New Jersey, Ohio, Vermont, Wisconsin. In Arizona and Kansas these meetings are called party councils.

11. Idaho makes nominating conventions legal for minor parties.

provides that the nominees for state offices, senators and representatives in congress shall constitute the state convention.[12] Missouri and Montana include the members of the state central committee, together with the party nominees for state offices, for the national congress, and for the state legislatures in the special meetings provided. The Ohio convention consists of all candidates for state offices (except judicial offices), candidates for the state legislature, and the members of the state executive and central committees of the party. Vermont requires a state convention composed of the party nominees for state officers, state senators, county officers, and representatives to the general assembly; and Wisconsin specifies a platform convention made up of the party candidates for state offices, senate and assembly candidates, and senators with unexpired terms. The New Jersey meeting is made up of three groups: first, party candidates who have been nominated at the primaries preceding the convention for governor and for both houses of the national congress and the state legislature; second, party members of the national congress and of the state legislature; third, members of the state executive committee of the party. California offers a still more complicated composition. The

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12. Minnesota provides for a separate state convention, held under the direction and rules of the state central committee, for nominating presidential electors. Iowa provides for a special judicial convention, chosen in the same manner as the regular convention for the sole purpose of nominating judges of the supreme court.

from each county each cast the "number of votes equal to one-third the number of votes cast in his county at the last general election" though in the absence of part of the county delegation the remaining delegate or delegates may cast the vote of the entire group. Proxies are prohibited. In South Carolina the regulation is that the convention shall be called to order by the state committee chairman and have "a president, vice-president from each congressional district, two secretaries, and a treasurer" as officers.

Besides New York and South Carolina, eight other states stipulate convention officers.[14] Voting procedure is regulated in ten other states. Massachusetts, Texas, and Wisconsin require a majority vote. The Colorado statute requires that only one ballot be taken on aspirants for each office and that twenty per cent of the assembly must favor a candidate in order to make him the choice of the body. Maryland requires that delegates vote for candidates for nomination according to the vote cast for these candidates at the party primaries. Together with New York, Connecticut provides roll-call voting, if one-fourth of the delegates so request.[15] Idaho, Iowa, Kansas, and Montana join South Dakota in prohibiting proxy voting. In two states convention committees are required by statute. California specifies a committee on credentials, and the organization of the New Jersey convention is re-

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14. Arizona, Idaho, Illinois, Kansas, Maine, Massachusetts, Texas, and West Virginia. A chairman and secretary are also implied in the Colorado statute. Illinois prescribes a two-year term for convention officers.

15. This is the convention of elected delegates.

quired to include a committee on resolutions.[16]

(3) Powers and Duties. All the states with laws carrying direct provisions for state conventions set forth in some detail the duties of these conventions. The traditional function of the convention as a nominating body is abandoned in several of the states and in others is coupled with various other duties.

In Connecticut, Indiana, Maryland, Michigan, New York, Rhode Island and Utah the convention is the means of nominating candidates for state offices.[17] In four other states the duty of nominating some of the candidates for state office is imposed upon the state convention.[18] In South Dakota most of the nominees must be chosen by the convention, and unless other candidates receive thirty-five per cent of the total vote they also become subject to the action of the convention.[18] Iowa requires the making of regular nominations where no candidate receives thirty-five per cent of the vote in the primary and adds the duty of nominating where vacancies exist for certain causes. Illinois and West Virginia give the power of nominating some state-wide

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16. The New Jersey committee has the function of drafting a tentative platform. A week's recess between the proposal of the platform planks by the different delegates and the submission of the committee draft is prescribed.

17. In Connecticut, Rhode Island and Utah the statutes merely mention this power without specifying regulations.

18. State offices for which candidates are nominated by the convention are: lieutenant-governor, attorney-general, secretary of state, state auditor, state treasurer, superintendent of public instruction, commissioner of school and public lands, and railroad commissioner.

candidates to their respective conventions.[19] In eighteen states the choice of candidates for presidential elector rests with the state conventions.[20]

The selection of party committees or committeemen may be called the duty of conventions next in importance to that of nominating candidates for public office. Fourteen states require the selection of some or all of the members of state or rural committees in this manner.[21] In Maine the state convention selects all committees---state, district, and county--- in "such manner as the convention may determine". In Montana and South Dakota the state chairmen only are elected by the conventions.[22] In Iowa, Maryland, Michigan, Mississippi, Nebraska, Nevada, Texas and Wisconsin the convention performs the task of selecting all members of the committee though in most of these states the laws prescribe the method of apportionment. The California law re-

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19. Illinois nominates candidates for trustee of the University of Illinois and for presidential elector. West Virginia nominates candidates for judge of the supreme court of appeals and for presidential elector.

20. California, Connecticut, Illinois, Indiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nevada, North Dakota, Rhode Island, South Dakota, Texas, Vermont, West Virginia, Wisconsin, and Wyoming. This refers to the delegate convention in Montana.

21. The Montana convention referred to here is composed of party committeemen, nominees, etc.

22. In Rhode Island no direct provisions for choosing the state committee are to be found though the law implies that the body is to be chosen by the convention. In Utah the law is less detailed but the implication is the same.

quires that each delegate select three persons who, added to the membership of the convention, make up the state central committee. Massachusetts requires the election of members-at-large of the state executive group. The Minnesota convention has the single duty of selecting congressional and state central committees. In Nevada, North Dakota, and South Dakota the selection of national committeemen and committeewomen is required of state conventions.

In twenty-two states the statutes give state conventions the task of drafting the party platform or declaration of principles.[23] In five states[24] this is the only specific requirement made of these meetings; in the others this duty is bestowed along with others of a varying nature. Nine states provide that some or all of the delegates to the national conventions be chosen in state conventions.[25]

Colorado and Massachusetts provide conventions with the unique function of recommending candidates for the primaries.[26]

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23. Arizona, California, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, South Dakota, Texas, Vermont, West Virginia, Wisconsin, Wyoming.

24. Arizona, Kansas, Missouri, New Jersey, and Ohio.

25. Connecticut, Idaho, Illinois, Indiana, Maryland, Mississippi, Montana, North Dakota, and Wyoming.

26. This is the sole duty of the special assembly in Colorado.

such meetings are unusual and present a peculiar attempt to secure party responsibility.[27]

The powers of state conventions to settle questions arising from and pertinent to their duties as organs of party machinery are unlimited by the law except in two states. In West Virginia and New York there are specific provisions for judicial review of such powers. In West Virginia the statutes provide that contests over the selection of delegates to conventions, after being heard and determined by the county executive committee, shall be subject to review "by mandamus or other proper proceeding" by the regular courts.[28] The New York statutes go further to give the courts power to direct re-assembling of party conventions upon objections as to regularity of any of its proceedings.[29] On the other hand, a number of states make express provisions in their laws for conventions to exercise all the powers properly belonging to them. Illinois, for example, stipulates that its convention, besides certain duties stated, "may perform all other functions inherent to such political organization and not inconsistent with this act".[30] Nebraska provides that its state

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27. The states of Minnesota and South Dakota have also experimented with the pre-primary convention. See Minnesota Laws, 1921, pp. 401-406; this law was repealed in 1933, Ibid., 1923, ch. 125. Session Laws of South Dakota, 1911, pp. 235-288; this law was repealed in 1929, Ibid., 1929, pp. 134-141.

28. Compiled Election Laws of West Virginia, 1935, pp. 31-32.

29. Laws of New York, 1932, ch. 558, as amended Ibid. 1937, Ch.118.

30. Laws of Illinois, 1927, p. 463 ff. as amended Ibid. 1935, pp. 807-809.

convention shall have "such powers as ordinarily vest in conventions"[31] and the Maryland statutes allow the state convention "full power and authority, in all respects whatsoever, to act in respect to all matters appertaining to the organization, conduct, affairs and interests of the party".[32]

The matter of the jurisdiction of the courts over convention deliberations where no jurisdiction is expressly conferred has been the subject of much of the litigation arising out of convention contests. The varied interpretations of this power of judicial review in the different states, and the changing position of the same court in some states is probably the reason why primary nomination contests have been made subject to court review by statutory enactment in so many states where the primary is the chief means of nominating candidates.[33]

One of the most significant trends in convention development is the marked change in the composition and functions of this body during the past three decades. Originally a body of specially-elected delegates, the laws of recent years have made the convention a group in which party nominees, executive committeemen, or public officials may be members. From a gathering

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31. Nebraska Laws, 1935, pp. 207-209.

32. Compiled Election Laws of Maryland, 1936, p. 135.

33. See a later section of this chapter for treatment of the judicial interpretation of convention powers as regulated by the laws.

with the principal function of nominating candidates for office the convention has become an agency for drafting platforms, electing party officials, or recommending candidates for the primaries.

This shift in the makeup and duties of conventions is not without cause. It shows a definite and accurate correlation with the movement for the direct primary. With the advent of the primary as a means of nominating candidates for office, parties were confronted with the practical problem of devising a means for providing a platform. Naturally, the choice fell upon the state convention. The plan of having a body of delegates draft a platform for candidates who were selected by another method, however, presented the difficulty of party declarations or promises in which the party nominees had no part and with which they did not agree. Consequently, conventions were changed to meet this situation and nominees, party officials, and public officers came to be included in the convention membership. The extent of this movement is indicated by the fact that eleven states now have conventions in which some or all of the party nominees are included.[64]

The effort to better locate party responsibility has gone further than permitting primary nominees and party officers to

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64. Arizona, California, Idaho, Kansas, Minnesota, Missouri, Montana, New Jersey, Ohio, Vermont, Wisconsin.

take part in drawing up the platform. A few states have assigned to conventions the task of pre-nominating candidates to be voted on in the party primaries. Such functions may be the result of an effort to circumvent the direct primary but they show, nevertheless, a unique adaptation of an old institution to modern needs.[35]

5. District Conventions

Thirteen states make some provision in their laws for district conventions, that is, delegate meetings in areas larger than the county.[36] In the earlier years of regulation the intermediate conventions were usually mentioned in the statutes, but more recent laws have tended, naturally, to omit mention of other conventions than those to elect delegates for the entire state. Where provisions are found they are meant and unimportant, and contain little restriction of the meetings.[37]

In Georgia, Alabama, and Colorado the selection, organization, and powers as well as other features, of district conventions are left entirely to the party authorities. In Georgia

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35. Colorado and Massachusetts now have pre-primary conventions. Minnesota and South Dakota have adopted them and repealed them.

36. Alabama, Arkansas, Colorado, Georgia, Idaho, Illinois, Massachusetts, Minnesota, New York, Tennessee, Texas, West Virginia. Idaho provides special conventions for minor parties. Tennessee allows them for making nominations to fill vacancies if so ordered by the district committee.

37. See, for example, the first regulatory law in Mississippi, Laws of Mississippi, 1892, pp. 148-150, and an early law in South Dakota, Session Laws of South Dakota, 1905, p. 147.

the law prescribes only the place of holding such [38]; in Alabama the city central committee may [illegible] district committee [39]; and in Colorado each party committee may deal with matters of draft platforms, among other things [illegible] regarded by the legislators [40].

(4) Composition and Selection. In Arkansas, [illegible], Illinois, Massachusetts, Minnesota, and Texas the selection of delegates to district conventions is the task of county conventions or other local meetings [41]. The law in Iowa leaves the arrangement up to the district committee; in Minnesota the same procedure is followed [42]. In Arkansas and Massachusetts the law makes [illegible] quirements and committees presumably have full control [43]. Illinois the membership of the judicial district committee is

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38. General Laws, 1935, p. 321.

39. General Acts of Alabama, 1915, pp. 248-249.

40. Compiled Election Laws of Colorado, 1936, p. 57.

41. Massachusetts prescribes the caucus as the method of nomination.

42. Compiled Election Laws of Iowa, 1936, p. 33. Iowa also provides for a judicial district convention with the sole function of nominating judges.

43. Compiled Election Laws of Minnesota, 1938, p. 33.

44. Kirby & Castle, Digest of Statutes of Arkansas, pp. 843-844, as amended Acts of 1919, pp. 11-12.

45. Laws of Massachusetts, 1932, Ch. 310 Sec. 4 as amended Ibid., 1934, Ch. 43, Sec. 1.

more closely re lated; the county convention is required to select delegates in exact proportion to the county vote for governor with delegates representing a fraction of a unit to have their votes reduced accordingly.

In New York the selection of members of judicial district conventions is left to party rules.[47] The West Virginia law is more specific and the Texas statute qualifies this requirement only by providing that the number of delegates be in proportion to the vote cast in the preceding election. Idaho requires a minimum membership of one hundred persons.[48]

(c) Organization and Procedure. Five states that legally authorize or require district conventions make some stipulations as to their organization and procedure. The law in Texas is quite elaborate, requiring the election of a chairman, voting in alphabetical order of counties represented, and prohibiting proxies. The New York law gives members from the same district in the convention the power to fill vacancies when part of or whole

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46. Laws of Illinois, 1917, p. 481 ff., as amended in 1921.

47. Laws of New York, 1932, pp. 1894-1896. The law requires that delegates be elected at the primary and be generally pledged and adding to the party vote.

48. Laws of West Virginia, 1915, pp. 448-452.

49. General Laws of Texas, 1908, pp. 534-535, as amended Ibid., 1927, p. 330.

50. Idaho Laws of 1909, 1931, pp. 31-47.

delegations are absent. Whereas section 5 of the revised principles fixes the minimum [illegible] which the vote may be taken [illegible] [illegible] [illegible]

the purpose thereof". It may be used to [illegible] party machinery, to [illegible] extent that the state convention, are [illegible] by the organizational executive committees.[X]

[illegible] party activities.

[illegible] to, or participation in, party [illegible] may be found in the laws of twenty-one states.[52] Here, again, the [illegible] generally [illegible] by the party organization [illegible] party [illegible] [illegible].

Eleven states with [illegible] party [illegible].[53] In [illegible] and Hawaii the legislature [illegible] city and county committees. Committees [illegible] city conventions,[54] those in which [illegible] nominations are of any importance. [illegible] Minnesota [illegible].[X]

(1) Organization and [illegible]. In [illegible],

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52. [illegible] include [illegible] Only in Ala. [illegible] convention has the sole function of assisting in the selection of national committeemen [illegible] party affairs. These are treated in a later chapter.

53. [illegible], California, Colorado, Idaho, Illinois, Iowa, Michigan, Minnesota, Nebraska, Nevada, South Carolina, Tennessee, [illegible], West Virginia, Wyoming, Montana.[X]

54. Arizona, New Hampshire, Rhode Island, and Washington. The remaining [illegible] may by implication [illegible] [illegible] [illegible] of the vote in the state. The Kansas law makes a city convention responsible for nominations [illegible] by a local organization. Revised Statutes of Kansas, 1923, Ch. 25, Art. 1.

and Tennessee the laws omit any reference to the manner of selecting the members of the county convention.[54] The Texas statute refers to primary nominations only by prescribing the place of voting and requiring that ten days' notice be given; Tennessee provides for county conventions to fill vacancies in nominations if so ordered by the county committee; and the Delaware law merely requires selection only in acquiring that a party successfully "obtains a primary election for delegates to a city or county convention shall bear the expense of such election. In Mississippi, Nebraska and Nevada, the precinct mass meetings or caucus is the method of selecting county convention delegates, and in South Carolina the local party "clubs" have this function. In each of these two the county executive committee is given the duty of determining who delegates to the conventions, though in South Carolina the number is set as one for each twenty-five club members and in Mississippi the delegates are required to be equally distributed among the county districts.[57] In Illinois and Kansas the county committees sit as county conventions, and in Alaska the convention is composed of the precinct committeemen

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54. Texas Laws, 1918, p. 331.

55. Tennessee Laws, 1921, Ch. 12, Sec. 3.

57. Compiled Election Laws of Delaware, 1933, p. 79.

58. Laws of Mississippi, 1932, pp. 148-150, as amended by Code of Mississippi, 1930, Sec. 3017; Compiled Laws of Nebraska, 1929, Vol. 2, Art. 21; Acts of Nevada, 1917, Ch. 276, as amended, 1919, Ch. 213; Acts of South Carolina, 1915, pp. 168-170.

in the county.[59]

[illegible] the provision that county or city convention delegates be elected by popular vote.[60] In these states the number of delegates and the apportionment of them among the county districts is left largely to the county executive committees.[61] In Nebraska and Arkansas the law states that delegates must be chosen by wards or county districts; in Texas the law allows one delegate for each twenty-five votes cast; and in Louisiana and Nevada the committee is required to allot the number of members in proportion to the popular vote in the preceding election. Washington allows parties that once under any party convention law to nominate delegates by caucus to be voted on in the primaries and Arkansas makes candidates and office-holders ineligible for delegate positions.

(2) Organization and Procedure. Internal machinery and working are not greatly affected by laws relating to county conventions. Fragmentary regulation is found in eight states. Three

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59. Laws of Illinois, 1937, p. 402 ff; Compiled Election Laws of [illegible], 1941, p. 19; Compiled Election Laws of Montana, 1940, pp. 102-103.

60. See Kelly and Castle, Digest of the Statutes of Arkansas, pp. 838-844, as amended by Acts of 1939, pp. 11-12; Compiled Election Laws of Iowa, 1938, pp. 30-38; Compiled Election Laws of Maryland, 1939, p. 164; Compiled Election Laws of Michigan, pp. 70-71; Compiled Election Laws of Missouri, 1936, pp. 101-118; Compiled Election Laws of New Hampshire, 1939, pp. 17-18; Acts of Texas, 1905, pp. 530-535; Washington Compiled Election Laws of Washington, 1936, pp. 53-56; Compiled Election Laws of West Virginia, 1938, pp. 33-34.

61. Fifty delegates are required to form a county convention in Idaho.

of these, Nebraska, Montana, and Arkansas, the laws define the power to fill [illegible] with delegates in case states are absent. In Texas the law mentions proxies, and in Illinois and Nevada the only provisions are that county conventions "shall organize". Only in Iowa, Missouri, Montana and South Carolina do the laws really regulate convention procedure.[X] Iowa and Montana provide that the meeting be called to order by the chairman of the county committee; Iowa outlaws proxies, and requires the presence of a majority of delegates before any nominations can be made. The law in Missouri gives similar authority to the county chairman and makes its county convention competent to decide all questions concerning contested seats. South Carolina is more explicit in outlining organization that consists of a president, vice-president secretary-treasurer, and credentials committee. It also requires the keeping of records of its proceedings.

[X] (3) Powers and Duties. Most of the states where laws contain provisions on county and city conventions also provide duties and powers for these bodies. Only in Georgia and Delaware do the statutes omit reference to functions.

In six states these conventions have actual or potential nominating powers.[X] In West Virginia the county convention for the regular means of nominating judges of the inferior court, and in Iowa nominees for vacancies in county offices are regularly chosen by these bodies.[52] In New Hampshire and Rhode Island the

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52. Where no candidate receives thirty-five percent of the vote in the primary regular nominations are made.

city conventions are legal means of nomination candidates for municipal offices. In Missouri cities and counties within certain population limits may make nominations in this manner, and Washington gives this power to conventions in cities and towns for cities that do not qualify for the primary law.

In the laws of Wyoming and Iowa cited above, as well as in the existing statutes of Arkansas, Illinois, Kentucky, Maryland, Nebraska, Nevada, South Carolina, and Texas, county conventions have the function of selecting delegates to state party assemblies. In Illinois, Michigan, Montana, Nebraska, and Texas, this is the sole legal function of such conventions.[64] In the other states listed, this duty is combined with other functions of a similar nature. In New York and Kentucky the selection of the county committee is added. In Arkansas the convention is empowered to decide by a majority election in addition to choosing delegates to higher conventions, and South Carolina adds the duty of selecting the county executive committee and the power to review decisions of the county executive committee on the formation of new clubs. The Nevada law gives the county organization authority to select a county platform. Maryland makes a similar grant of unimportant powers to its convention.

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63. Compiled Election Laws of Rhode Island, 1938, p. 207.

64. The Nebraska law requires these delegates to be chosen from the membership of the county committee.

giving "full power and authority to act in all matters appertaining to organization, maintenance, and conduct of the party except nominating candidates, and choosing delegates and party executives".

The county convention, as this survey indicates, is still to be considered a real part of the convention machinery. Though of importance chiefly as an instrument for choosing the membership of higher party gatherings, it, nevertheless, performs therein a vital function and is not likely to be discarded, either by law or by party rules.

B

Caucuses

The statutes on party organization confuse the reader by using the terms "caucus" and "convention" synonomously. There is apparently no clear definition of terms, at least not in the laws of the several states, and often the two words are applied to the same type of meeting, or different meetings are designated by the same name. The words "caucus" and "primary" are also used interchangeably. For the purposes of this study a caucus is understood to mean a meeting of party members who convene without having been designated for attendance at such a meeting by other members of the party.

In a number of states, especially of the New England group, early laws on caucus procedure remain on the statute books, though the caucus has ceased to be of importance since the adoption of the direct primary as a means of choosing party

officials and nominating candidates for public office. In a few states, however, it still has a place as part of the party machinery.

Provisions relating to caucuses are found in the laws of eighteen states.[65] Of these the Colorado law refers to caucuses only in connection with the prohibition of corrupt practices in nominations, and Texas merely lists both city committees the power to call for party meetings for nominating purposes. In the remaining thirteen states these gatherings are under some statutory control.

(1) Organization and Procedure. All caucuses recognized by statute are expressly or impliedly of a local nature. Here again the town, city, or county committees are the chief units concerned. In Massachusetts the city or town committee is given power to make regulations for [illegible], but the requirements about order of business and manner of [illegible] are included in the call therefore in a number of other states which make the local committee a powerful in-

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65. [illegible], Connecticut, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New York, [illegible], Rhode Island, Texas, Vermont, Wisconsin, Wyoming.

66. Compiled Election Laws of Colorado, 1935, p. 154.

67. Acts of Texas, 1905, p. 542 ff., as amended, Title 50, Art. 1211, p.10.

68. Compiled Election Laws of Massachusetts, 1934, pp. 132-133.

fluence.[69] In Massachusetts,[70] Rhode Island,[71] North Dakota,[72] New York,[73] and Connecticut certain officers are nominated[74] and the manner of their selection prescribed. There is [illegible] noted as "no duties, except [illegible] clerk" in [illegible]; assistant and clerk in South Dakota; chairman, secretary and judges in New York; "two judges and a canvasser" in Connecticut; and "moderator, clerk, and five inspectors", in addition to the number of these, in Massachusetts.

In Wisconsin,[75] Nevada,[76] New Hampshire,[77] Maine,[78] Mississippi,[79] as well as South Dakota, Rhode Island, Connecticut [illegible]

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69. Ibid.

70. Compiled Election Laws of Rhode Island, 1938, pp. 326-328.

71. Compiled Election Laws of South Dakota, 1936, p. 111.

72. Laws of New York, 1932, Sec. 143, as amended, Ibid. 1934, pp. 734-734.

73. Compiled Election Laws of Connecticut, 1933, pp. 141-142.

74. In Rhode Island and Massachusetts temporary officials are nominated by the local committee.

75. Compiled Election Laws of Wisconsin, 1933, pp. 77-78.

76. Compiled Election Laws of Nevada, 1935, p. 30.

77. Compiled Election Laws of New Hampshire, 1929, pp. 24-28.

78. Revised Statutes, Sec. 30-31, as amended in 1931, 1933, and 1935.

79. Code of Mississippi, 1930, Sec. 5806.

chusetts, the laws require voting by ballot.[80] Various other
points of pro[illegible] are covered. [illegible], Rhode Island,
and Wisconsin provide the steps to be taken if a vac[illegible] occurs.[81]
Maine is unique with statutory laws "[illegible] by [illegible]". In North
Dakota and Massachusetts a plurality is held sufficient vote
for [illegible] to be elected; in Nevada vacancies in [illegible] may be
[illegible] filled by the county executive committee. Obviously
all the states make some provision for [illegible] given
before ballot consideration and the requirement that [illegible]
be thirty voters in good standing, as evidenced by the check list
or the official registration books, is a [illegible]. Massachusetts
goes further than other states to set forth the actual order of
procedure as; "First, preliminary business; second, balloting;
third, other business".[82] Obviously this does not prohibit certain
the caucus will.

(5) Powers and Duties. In Connecticut, Massachusetts,

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80. North Dakota requires viva voce voting for caucus officers; Connecticut provides ballot voting on request of fifteen members; and Massachusetts allows the caucus to decide whether or not it will use the official ballot.

81. Its rules are to be determined by caucus officers in Massachusetts; in Rhode Island they may be handed in a second meeting following a recess or by the local executive committee; in Wisconsin they may be settled by it.

82. See, Sec.

Maine,[83] Rhode Island, Michigan, New Hampshire,[84] Vermont, New York,[85] Wyoming, and in certain counties of Texas[86] have adopted similar prohibitions for office.[87] In Wyoming and Maine this power extends only to the filling of vacancies for an unexpired term, but in Maine and Vermont the officers not included in the ordinary election laws may be thus designated. In practice the persons receiving the highest and next highest votes are placed at the electoral ballot.

In Connecticut, Maine, Rhode Island, New Hampshire, New Jersey, and Wyoming, the selection of delegates and other conventions is included in the powers and duties mentioned. This authority is also granted in the laws of Michigan,[88] Texas, Nevada, and North Dakota. The county convention is the body such delegates are usually chosen for, though in some of the laws there is no limitation of this power to the county section.

Some states confer upon caucuses the important function of choosing the local party executive committees. This provision is found in the Michigan law and in the statutes of Wyoming. In each of these states the power of selection thus conferred upon the caucus seemingly appears to be nullified by the extensive

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83. Compiled Election Laws of Maine, 1930, pp. 76-77.

84. Compiled Election Laws of Vermont, 1934, pp. 78-105.

85. Election Laws of Wyoming, 1931, (1933) Ch. 10, Sec. 4.

86. Compiled Laws of Nebraska, 1929, Ch. 32, Art. 11.

powers of calling and directing future caucuses given to the local committee---making it the lord of its creator.

It may be readily seen that caucuses, as known to the law, are purely local in character and powers and have few legal, stated functions. To what extent the regulations imposed are carried out, as well as the lengths to which these meetings go in assuming extra-legal functions, are matters beyond the scope of this study. It is reasonable to believe that the earlier powers of caucuses, though perhaps not legally confirmed nor conferred by law, have not diminished as rapidly as may be generally supposed.[87]

Caucuses of which the law has no cognizance are probably of greater importance as a cog in the party machine than those treated in the foregoing paragraphs. These are found in ward elections, rural campaigns, or legislative assemblies. They are irregular, unofficial, and informal, but none the less effective. Unlike legal caucuses they are not restricted to local "pow-wows", but may be state-wide or national in expanse and influence, even affecting international policies. It is well to bear in mind that these meetings are also to be considered if one is to have a full appreciation of the system. Legal caucuses are only a part of the picture.

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87. For a discussion of the powers assumed and the abuse of these powers see, F. M. Early, "The Sine Qua Non of Caucus Reform", Review of Reviews, Vol. 16, pp. 328-334, (Sept., 1897).

V

Judicial Intervention in Convention Affairs

The role of the judiciary in political party conventions in the various states have usually resulted from matters then subject to the jurisdiction of the courts. There are laws in which such jurisdiction is expressly conferred just as there are instances where it is directly or indirectly denied, but in most statutes there is no mention of the right of appeal to the courts. The extent to which the judiciary intervenes in convention affairs has been settled, therefore, largely by the courts themselves. Through the decisions on applications for such legal or equitable remedies as mandamus, certiorari, and injunction, the courts have interpreted the legislative laws in some instances and have indicated the lenience to which they will go in controlling organization, procedure, and powers of political conventions where there is no statutory alignment.[88]

The most common question of what constitutes a party convention has been before the courts in a number of cases. In the more recent decisions the conception of a convention as a body of elected delegates generally prevails, but the term had no such restriction in the earlier opinions. Thus a law of Tennessee in

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88. The decisions discussed or cited are not restricted to those arising under existing laws or to the laws at any period. The cases have been examined with a view of obtaining the judicial attitude toward convention control.

1907, referring to a "narrow line of delegates" was held to include [illegible] Since [illegible] [illegible] [illegible]

[illegible] court granted an injunction to keep [illegible] official
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the
[illegible] [illegible] [illegible] [illegible] [illegible] [

A Kentucky case that typifies the early judicial attitude is of interest. The question involved was the legality of the work of a party committee that had been officially recognized by the state convention. A statute confirming the power of party authorities to settle their own affairs was upheld and exalted in these words: "The voice of the convention was the very voice of the Democratic party. The word of the convention is the law of the party and the courts cannot look beyond this word or this law because there is no other. When counsel questions the authority of the state convention in party organization, it is as if the Mohammedan should doubt the Koran or the Christian the Book of Books..."[97] In less emphatic, but none the less certain language the supreme court of North Dakota, in a series of cases, declared the independence of the party convention. In 1900 the court asserted that judicial tribunals were incompetent to pass on the correctness of parliamentary rulings or tactics in a political convention;[98] in 1902 the authority of a convention to be the final judge of what constitutes a regular convention was given judicial approval;[99] and in a decision of the same year the

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97. Cain v. Page, 18 Ky. 977, 42 S. W. 336 (1897).

98. State v. Lavik, 9 N. D. 461, 83 N. W. 914 (1900).

99. State v. Porter, 11 N. D. 309, 91 N. W. 944 (1902).

bench confirmed the power of conventions to settle political nominations without the possibility of appeal to the courts.[100] In 1904 the decision of a committee, approved by the state convention, was held to be conclusive upon the courts.[101] Following this same philosophy the supreme court in Washington refused to interfere with a convention because of alleged error and declared that courts have no power to interfere in the affairs of a political convention except in cases of fraud and oppression.[102] Where the law conferred express jurisdiction over nominations upon the courts, there was a tendency to follow the determinations of the party councils. Thus in New York the highest tribunal ruled that in reviewing nominations it was the duty of the officers and courts to consider the decisions of the regularly constituted conventions as to the validity of such certificates and, if such party decisions were found to agree, follow their conclusions.[103] A more recent case that exhibits the extreme attitude of non-intervention was decided in Wisconsin in 1938. Here the courts were asked to enjoin the holding of conventions and the election of delegates to them on the grounds that the

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100. State v. Liudahl, 11 N. D. 220, 91 N. W. 350 (1903).

101. State v. Larson, 13 N. D. 430, 101 N. W. 315 (1904).

102. State v. Moore, 43 Wash. 273, 86 P. 766. See also Shipple v. Stevenson, 25 Colo. 427, 55 P. 188 (1898) and Shipple v. Reed, 25 Colo. 407, 55 P. 172 (1898).

103. In Re Fairchild, 151 N. Y. 359, 45 N. E. 943 (1897).

state committee, in ordering these elections and conventions, had violated the state primary law in several particulars. The court took no cognizance of the alleged and undisputed violations of the law, declaring that it had no jurisdiction over party elections and conventions and was thus incompetent to examine the irregularities charged.[104] In another recent case the high court of Michigan declared that it could not direct certification of another than the nominee announced by a convention chairman, in the absence of fraud or oppression, after refusal of reconsideration by the convention.[105]

Some decisions that tend to recede from the unalterable position taken in these cases are to be found. In an important case in Idaho that went into the whole question of party regulation, the court took a firm stand for the protection of the legal rights of citizens and declared that, where there was a law concerning primary elections, the court would not be governed or controlled by the action or decision of the party authorities in such matters but would determine and protect the legal rights of citizens participating therin. The decision further set forth the right of the courts to determine any party matters which were in-

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104. Howard v. Sheldon, 151 Miss. 294, 117 S. 839 (1928).

105. Rogers v. Lawrence, 253 Mich. 594, 235 N. W. 265 (1931).

cluded in the law.[106] A later case in the New York supreme court held, in interpreting a law giving political conventions the right to decide all questions as to delegates to it, that the court, under its statutory power to review any action or neglect with regard to any right given the convention, may determine that the convention had improperly refused to seat certain delegates and seat others in their places.[107]

It is but natural that judicial authority should be often invoked in questions arising out of the organization and conduct of conventions. The validity of nominations, formerly made chiefly by the convention method, frequently depends upon the conduct of the convention making them, and, through the mediums of mandamus and injunction, seeking to compel or restrain the official in charge of placing names on the ballot, the internal proceedings of political conventions have been repeatedly aired at the bar.

A deep and abiding respect for the ordinary principles of majority rule and parliamentary regularity is evident in the decisions where the courts had little legal guidance. Where these principles have conflicted the courts have taken different positions, some upholding one principle and some the other. In an early Michigan case the court held that it would respect the customary procedure

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106. Walling v. Langdon, 15 Id. 383, 87 p. 333 (1908).

107. In Re Lazarus; In Re Harding, 125 N. Y. S. 414, 140 App. Div. 406 (1910).

of having contests over the seating of delegates determined by the credentials committee.[108] The principle of the supremacy of a majority of the assembled delegates to a convention, notwithstanding election pledges, was upheld in another case in this same period,[109] and a Montana case went further to uphold majority rule at the expense of parliamentary order by validating the election of a temporary chairman, chosen in the absence of the presiding officer and in violation of his instructions.[110] Consideration for the will of local conventions, properly arrived at, even though they were refused recognition by a higher party authority, is shown in two other Montana decisions.[111] Regularity in convention procedure has also received judicial favor. The South Dakota court in 1904 upheld the nomination certificates of a county convention, regularly called, even though delegates of a rival faction were absent, allegedly for fear of bloodshed.[112]

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108. Beck v. Board of Election Commissioners, 103 Mich. 193, 61 N. W. 346 (1894).

109. Hutchinson v. Brown, 122 Cal. 199, 54 P. 738 (1898). The court used this language: "Delegates to political conventions are, no doubt, trustees in a large sense of the word but they discharge a trust with which the courts do not meddle. They obey or disobey instructions as they see fit and the only remedy for their disobedience is the censure of the people, expressed at the polls".

110. State v. Smart, 24 Mont. 413, 62 P. 591, (1900). See also Phillips v. Gallagher, 73 Minn. 538, 76 N. W. 285 (1898). For a slightly different attitude see State v. Arme, 24 Mont. 407, 63 P. 401 (1900).

111. State v. Martin, 24 Mont. 403, 62 P. 588 (1900); State v. Keaton, 31 Mont. 218, 78 P. 487 (1904).

112. State v. Metcalf, 18 S. D. 393, 100 N. W. 923 (1904).

Another court upheld the second meeting of a convention, regularly called, even though a small minority of the delegates present at the first session were in attendance.[113] The same reverence for regularity of proceedings is evident in another Colorado case where an adjournment in violation of the ordinary rules of parliamentary decorum was declared unauthorized[114] and in a number of later cases the same court took a position that only those conventions which were regularly and legally called would receive its approbation. Minority groups of delegates that observed the conventional procedure in regard to the authority of a credentials committee and the legal chairman were declared valid in three cases decided in 1900.[115]

Where there are laws covering convention organization and procedure the courts have evidenced a disposition to enforce the requirements with alacrity. Thus the supreme court of Rhode Island, in declaring that a caucus, though evidently fraudulent, had been held in compliance with the statutory requirements, re-

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113. Phillips v. Smith, 25 Colo. 398, 55 P. 177 (1898).

114. Liggett v. Bates, 24 Colo. 314, 50 P. 880 (1897).

115. Beckwith v. Hicker, 28 Colo. 31, 62 P. 836 (1900); Spencer v. Maloney, 28 Colo. 36, 62 P. 850 (1900); Berry v. Beckwith, 28 Colo. 30, 62 P. 856 (1900). A decision of a somewhat opposite nature was rendered by the court in Whipple v. Broad, 25 Colo. 407, 55 P. 172 (1898). See also Palmer v. Ruland, 28 Colo. 65, 62 P. 841 (1900) A more recent Rhode Island case rendered the nomination of a caucus invalid because it did not observe the rules of parliamentary procedure in the absence of statutory regulation. Como v. Sprague, 46 R. I. 235, 126 A 378 (1924).

fused to allow the holding of another caucus because such action would be adding to the statutory provisions.[116] Strictness of the same nature was shown in a decision by the New York supreme court where the statutory limits for the time of meeting were rigidly enforced.[117] In Ohio the high court, in enforcing a statutory provision that the chairman and secretary of a convention are proper officers to execute certificates of nominations, held that a person acting as secretary of two rival conventions may be compelled by mandamus to execute certificates of each.[118] A number of supreme court cases in New York followed this line of judicial thought.[119]

The litigation concerning the internal conduct of conventions follows a somewhat inconsistent course. The earlier decisions reveal a tendency to allow the meetings to proceed in their own way requiring only that the proper deference be shown for either or both of the principles of majority rule and regular procedure. But when the laws began to outline the conduct of such bodies the judiciary, in general, did not hesitate to apply the law to its full effect, though such application upset the

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116. Greenborough v. Kelly, 27 R. I. 355, 62 A. 213 (1905).

117. In Re Halpin, 185 N. Y. S. 811, 108 App. Div. 271 (1905).

118. State v. Jones, 74 O. S. 418, 78 N. E. 505 (1906).

119. In Re Thomas, 113 N. Y. S. 684, 128 App. Div. 330 (1908); In Re Harding, 106 N. Y. S. 430, 121 App. Div. 656 (1907); In Re Byrne, 112 N. Y. S. 699, 128 App. Div. 334 (1908); In Re Freund, 103 N. Y. S. 420, 53 Misc. Rep. 354 (1907). The latter case was decided at a special term of the Supreme Court in Westchester county.

expressed will of the assembled delegates and disregarded entirely the traditional independence of the party convention. For the most part, however, it may be said that conventions have been little hampered by either rigorous or loose interpretation of regulatory legislation.

The powers of party conventions have been respected by judicial decisions in most states. The dogma of the ultimate supremacy of the convention over all party organs within its jurisdiction has been a guiding star where the point in litigation involved the competency of party bodies beyond control of the law. And, as in matters of jurisdiction, the courts have tended to respect the theory that the powers of parties are sufficient unto themselves. This consideration for the authority of the convention is evident even when the laws directly declare what powers these bodies shall exercise.

An exposition of the doctrine of the supremacy of the party convention over all party agents and councils is found in the case of State v. Liudahl.[130] Here the authority of the state convention in determining which of two rival factions was regular declared that any person accepting nomination or election by a lower party group did so at the peril of action by the state convention, declaring such selections irregular. The opinion also stated that the powers of state conventions were so well known

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130. 11 N. D. 380, 31 N. W. 950 (1902)

that courts would take judicial recognition thereof.[121] In Missouri this theory was also defended in the determination of the qualifications of delegates.[122] This idea was carried to the point of allowing two rival conventions to have their nominees printed on the ballot in Nebraska. The high court in that state held that the powers of the state convention were beyond the control of the courts as well as the discretion of the official designated for placing names on the ballot, and that, where two factions in good faith nominated candidates at conventions called and held in accordance with party usages, the secretary of state was compelled to certify both names.[123]

Reluctance to infringe upon the powers of party conventions is evident in numerous cases where the intervention of the courts has been sought. Thus a West Virginia court held that, in passing on the right of nominees to appear on the ballot, it would recognize the right of the convention making them to judge of the elections, qualifications, and returns of its own members and would not go back of the convention action to inquire as to

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121. On this point see, also State v. Larson, 13 N. D. 420, 101 N. W. 315 (1904); State v. Porter, 11 N. D. 309, 91 N. W. 944 (1902); In Re Redmond, 26 N. Y. S. 221, 5 Misc. Rep. 369 (1893). The latter case was decided at a special term of the New York Supreme Court in Monroe county.

122. State v. McDuffery, 108 Mo. App. 48, 82 S. W. 1104 (1904).

123. State v. Piper, 39 N. E. 378 (1896); The same point was determined in State v. Piper, 69 N. W. 984 (1896); State v. Allen, 43 Neb. 651, 62 N. W. 35 (1895); and People v. District Court of Arapahoe County, 19 Colo. 28, 31 P. 339 (1892).

the right or title of delegates admitted by it as members.[124] In the same vein of aloofness the high court of Minnesota refused, in the absence of arbitrary or oppressive action, to interfere with the power of a convention to make nominations as a majority of its members determined.[125] A recent Texas case expounds the innate powers of political parties in general and of party conventions in particular in upholding the authority of such a body to exclude Negroes from voting in party primaries. This court declared that such authority was inherent in the nature of the political party and was beyond the power of the legislature to take away.[126]

The attitude that the courts should respect the powers of the party convention, as stated in party rules and regulations, as well as the statutes relating to districts for electing delegates was stated in a case before the New York supreme court in 1908.[127] A tendency to interpret statutes loosely where the question

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124. Marcum v. Ballot Commissioners of Lincoln, Logan, Wayne, and Boone Counties, 42 W. Va. 263, 26 S. E. 281 (1896).

125. Phillips v. Gallagher, 73 Minn. 528, 76 N. W. 385 (1898).

126. Bell v. Hill, 74 S. W. (2nd) 113 (1934). The opinion stated that the convention resolution appeared to be in conformity with the requirements indicated in the case of Nixon v. Condon, 286 U. S. 73 L. Ed. 484 (1932). The decision of the state court was restated and followed by the United States Supreme Court in Grovey v. Townsend, 295 U. S. 45, 79 L. Ed. 1292 (1935).

127. In Re Murphy, 110 N. Y. S. 1020, 126 App. Div. 88 (1908). The Court of Appeals of the same state in 1897 expressed its willingness to be guided by the decision of a party convention in applying the law regulating nominations. In Re Fairchild, 151 N. Y. 359, 45 N. E. 943 (1897).

of party powers was involved is revealed in the decision in State v. Barber[128] before the high court of Wyoming in 1893. The statute of that state relating to the form of nomination certificates was held to be directory only and not violated if the will of the convention was expressed in an intelligible manner. The North Dakota court showed a similar disposition to give rein to party powers by loose interpretation of the statutes when it declared the power of a party convention to make nominations for special elections was unaffected by a primary law repealing provisions for other methods of nomination.[129] The supreme court of Nebraska showed the same temperament in declaring that it would construe statutes relating to the nomination of candidates by political party conventions in the light of a constitutional provision guaranteeing free elections and the right of the qualified voter to exercise the elective franchise without hindrance or impediment.[130]

However obvious it may appear, the circumspect observer would hardly say that the courts have been inconsistent in their treatment of party conventions. Though courts of the same state have sometimes reversed or modified previous opinions, much of

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128. 32 P. 14 (1893).

129. State v. Hall, 37 N. D. 269, 163 N. W. 1055 (1917). The repealing clause only mentioned "conflicting laws" and the court held that the power of the party to make nominations for special elections did not conflict with the primary law.

130. Morrissey v. Wait, 92 Neb. 271, 138 N. W. 186 (1912).

the changeableness has been the result of intervening action by the legislative branch of the particular government, leaving the judiciary no alternative. To offset this legislative codification of decisions there are instances where, despite statutory enactments that might give grounds for a reversal of judicial attitude, the courts have displayed consistency to an unusual degree.[131] In a federal union of forty-eight different states, operating under varying and conflicting legal and constitutional systems, the courts of one state are not bound by decisions on the same general subject in another state. Yet the courts tend to respect opinions of other tribunals and there are examples in the decisions relating to party conventions where the courts of a number of different states arrived at similar decisions by the same process of reasoning. The highest tribunals in Kentucky, Texas and Mississippi are in almost exact agreement.[132] The point that this similarity results from the influence of the one-party system and the racial problem, both of which are common to all southern states, may well be considered. Nevertheless, the unanimity of opinion in the courts of a large section of the country remains a fact worthy of attention.

On the whole, it may be said that the courts have pro-

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131. Note the respect shown for previous opinions of the same tribunal in cited cases in North Dakota, Colorado, and Montana.

132. See Cain v. Page, 18 Ky. 377, 42 S. W. 336 (1897); Bell v. Hill, 123 Tex. 531, 74 S. W. (2nd) 113 (1934); Howard v. Sheldon, 151 Miss. 384, 117 S. 838 (1928).

tected the independence of party conventions as far as was consistent with the ordinary rights of citizens and the mandates of legislative bodies. Where conventions have been deprived of rank or powers it has usually been the work of legislatures rather than the judiciary.

After half a century of activity in this respect it may be said that no part of the party convention has escaped the effect of regulatory legislation. All branches of the system— from the ward caucus to the national convention — have been touched upon. The activity began with the general movement to control the process of nomination by parties; it extends, with little retardation, up to the present time. The smallest as well as the largest of party gatherings have been brought under the surveillance of the law. A statement that the system has been over-regulated would hardly be correct. But to say that the powers allowed the convention have not been commensurate with the duties levied upon it would be entirely true. Regulation of the processes and procedure of the convention has not diminished with the lessening of its powers by legislative action. Today the convention has lost most of its importance as a nominating body as a result of the enactment of direct primary laws. Yet its impotence as a party organ has not brought about any slackening of legal control. Where its powers have decreased its regulation has increased and it appears today in the paradoxical role of a party body with few functions but so strictly governed in regard to

these residual duties that it can hardly perform them.

Notable among the ordinary and essential powers of conventions that have been removed is that of calling and arranging the conduct of the convention itself. In a great number of states these details are placed by law in the hands of the party executive committee. The convention, therefore, becomes, or may become, a tool of the permanent branch of the party machinery and is, in reality, robbed of the few powers it is supposed to possess.

In two states where the state convention has been restored as a nominating body in recent years the party committee,[133] with vast powers over the conduct of the convention, is in no way subject or responsible to it.[134] This usurpation of the natural powers of conventions, by legal or non-legal methods, is quite as evident in a number of other states. It is but natural, under such circumstances, that the convention should decline.

Whether the remedy for such a situation--if it should be remedied--is more regulation or less regulation, is not a question to be discussed at this point. As has been stated earlier in this chapter, there is no evidence that the convention will lose further legal ground as a party institution. It would seem, therefore, that if it is to perform its legal duties in a legitimate manner its powers should be made adequate for the task.

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133. New York and South Dakota.

134. In South Dakota the state chairman is chosen by the convention.

CHAPTER III

REGULATION OF THE COMMITTEE SYSTEM

Political committees are ingrained in the fiber of American government. They antedate the constitutional system under which we live by a number of years, and were an important factor in the agitation for the Revolution.[1] Proving efficient and serviceable as propaganda agents the earlier committees were soon charged with duties of greater moment. They became instruments for nominating candidates for delegate to the Continental Congresses and played a prominent part in the selection of some members to those memorable gatherings.[2] Though these early committees represented no political party and were chiefly the campaign agents of caucuses, they bore considerable resemblance to more recent groups of the same name.

Party committees, as they are now known, were first set up in this country about the beginning of the nineteenth century. They were apparently the answer to the demand for agents to conduct party affairs and before long were established in a manner fairly comparable to the present system.[3] National conventions of

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1. Illustrations of the work and importance of the Committees of Correspondence may be found in Cushing, Works of Samuel Adams, Vol. I, p. 184 ff.

2. Flick, History of the State of New York, Vol. III, pp. 228-250.

3. Dallinger says that a complete system of state and district committees were in existence in many of the states by 1830. Nominations for Elective Office, p. 44.

parties established permanent national committees toward the middle of the century and since that time parties have found it advantageous to maintain a complete system of permanent committees.[4]

The early conception of the committee as an agent of a larger group--a caucus or convention--and having only such powers as might be delegated by that group, persisted until fairly recent times. But, just as the Committees of Correspondence grew more important than the organizations which gave them life, so the party committee came to dominate its parent, the convention. The committee has been aided in this process by acts of legal regulation that have gradually separated it from the convention and made it a distinct system, with its selection, organization, and duties prescribed by law. Consequently the convention retains, in most states, little control over the executive committee. Though still chosen in some states by the convention, the committee feels, and can feel, but little responsibility toward a body that operates in a legal straitjacket. The party committee is, therefore, an integral portion of party machinery, powerful because of its permanent character and administrative functions, and pre-

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4. The committee appointed by the Democratic convention of 1848 appears to be the first national committee. See James A. Farley "History and Functions of the National Committee" (Pamphlet) p. 7; reprinted from The Congressional Record, 73 Congress, 2 Session, p. 2134. The first Republican convention of 1856 was called by a permanent national committee. Proceedings of the Republican Convention of 1856, pp. 1-2.

dominant because of legal regulation which has not only removed it from convention control but has helped to bring that body under its influence.

The laws of all the states make some provision for party committees. As in the case of convention regulation some of these statutes are brief and vague and may perhaps be said to provide more properly recognition rather than regulation. Most states, however, have legislated quite fully on the subject of permanent party machinery.

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Permanent Committees

The regular part of the committee system, as distinguished from the committees that are non-permanent in nature and have only special duties, is an elaborate hierarchy of party organs. The different committees vary in number and size as well as in powers and importance. One feature is, however, common to all systems. The state central committee, either by express statutory provision or by necessary implication, is the most important committee in every state organization.

1. State Central Committees

All states make some statutory reference to state committees. However, in Connecticut, Deleware, Kentucky, New Mexico, North Carolina, Oklahoma, and Utah the laws on the subject are so vague that these states can more properly be said to have these committees by virtue of party rules or authorities. The law in Connecticut refers to such a body only by requiring that it file

a financial statement of campaign expenses.[5] The Utah statutes provide that parties may use such committees for conducting party business.[6] North Carolina makes statutory reference to state committees in providing for the conduct of primary elections.[7] New Mexico gives her state committee the task of filling vacancies in primary nominations and of controlling the party emblem.[8] Oklahoma is similarly vague in requiring that its state committee shall declare primary nominees that are unopposed and in providing that it may change the party emblem.[9] Delaware refers to this body only by providing that it have "a presiding officer and secretary" in certifying nominees.[10] Kentucky is least definite, implying the existence of such a committee only by referring to the chairman and secretary of the party "governing authority".[11] Some other states provide scarcely any more regulation of the selection and conduct of committees than those listed above, yet the importance of the powers, defined and undefined, which they confer upon these bodies makes it seem appropriate that they be treated in the category of regulated committees.

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5. Compiled Election Laws of Connecticut, 1936, p. 123.
6. Revised Statutes of Utah, 1933, Tit. 25, Ch. 4.
7. North Carolina Code of 1935, Sec. 6018-6051.
8. New Mexico Election Code, 1936, pp. 20-32.
9. Compiled Election Laws of Oklahoma, 1935, pp. 36, 72.
10. Compiled Election Laws of Delaware, 1936, pp. 91-94.
11. Baldwin's Kentucky Code of 1930, Secs. 1549-1550.

(1) Selection and Composition. Fourteen states prescribe that members of the state central committee be chosen by the state convention.[12] Eleven provide that this group be composed of persons chosen by direct election at the party primaries.[13] Various other means of selecting this committee are specified in other states.

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12. California, Georgia, Idaho, Iowa, Maine, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, Texas, Vermont, and Wisconsin. See: General Laws of California, 1931, Act. 2256, Secs. 24-25; Georgia Code of 1933, Ch. 34, Sec. 32; Idaho Code of 1932, Tit. 33, Ch. 6; Compiled Election Laws of Iowa, 1936, p. 24; Primary Election Laws of Maine, 1935, pp. 1-22; Compiled Election Laws of Maryland, 1935, pp. 135-136; Compiled Election Laws of Michigan, 1936, pp. 72, 78, 95-96; Mississippi Code of 1930, Sec. 5866; Nebraska Compiled Statutes of 1929, Ch. 32, Art. 11; Compiled Election Laws of Nevada, 1935, pp. 31-32; Compiled Election Laws of New Hampshire, 1929, pp. 14-15; Compiled Election Laws of Texas, 1914, pp. 39-56; Compiled Election Laws of Vermont, 1934, pp. 95-99; Compiled Election Laws of Wisconsin, 1933, pp. 73-75.

13. Florida, Illinois, Louisiana, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, South Dakota, Tennessee, and West Virginia. See: Primary Election Laws of Florida, 1935, pp. 14-15; Compiled Election Laws of Illinois, 1935, pp. 139-143, 171-173; Primary Election Laws of Louisiana, 1935, pp. 1-33; Compiled Election Laws of Massachusetts, 1934, p. 88; Compiled Election Laws of New Jersey, 1936, pp. 22-23; Cahill's Code of New York of 1930, Ch. 16, Secs. 10-21, 130-144; Compiled Election Laws of Ohio, 1932, pp. 52-54; Purdon's Pennsylvania Statutes of 1936, Tit. 25, Secs. 1041-42; South Dakota Code of 1929, Sec. 7096; Tennessee Code of 1932, Secs. 2190-2227; Compiled Election Laws of West Virginia, 1936, pp. 14-16.

Arizona[14], Colorado[15], Kansas[16], Montana[17], North Dakota[18], Oregon[19], Washington[20], and Wyoming[21] provide that the county committees select the members of the higher body, while Missouri[22] gives this task to congressional committees. Minnesota is unique in requiring that the party nominees for state offices select this committee.[23] In Arkansas and Rhode Island the laws are silent as to the method of selection; in Virginia the method is as the party "sees fit"; and in Alabama "as party authorities may provide".[24] Various restrictions and conditions are included in the laws relating to committee selection. In twenty-five of the states regulating this matter the committeemen are required, directly or indirectly, to come from districts of varying size and nature. The county is the unit usually employed but other subdivisions have been included in regulating composition of state committees. New York requires two members from each assembly district; Massachusetts, Pennsylvania,

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14. Compiled Election Laws of Arizona, 1935, pp. 45-46.
15. Compiled Election Laws of Colorado, 1935, pp. 35-36.
16. Kansas Revised Statutes of 1923, Ch. 25, Art. 2.
17. Compiled Election Laws of Montana, 1936, pp. 64-65.
18. Compiled Election Laws of North Dakota, 1936, pp. 109-110.
19. Compiled Election Laws of Oregon, 1936, pp. 73-76.
20. Compiled Election Laws of Washington, 1936, pp. 35-36.
21. Wyoming Revised Statutes of 1931, Ch. 38, Art. 6.
22. Compiled Election Laws of Missouri, 1936, p. 69.
23. Compiled Election Laws of Minnesota, 1936, pp. 61-62.
24. See: Compiled Election Laws of Virginia, 1934, pp. 73-81; Alabama Code of 1923, Secs. 601-673.

Texas, and West Virginia use the senatorial district as a basis of apportionment, Massachusetts and Texas allowing one member for each district and Pennsylvania and West Virginia two and four respectively.[25] Illinois, Iowa, Michigan, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin apportion committeemen on the congressional district principle, with Iowa, Michigan, Missouri, Ohio, Tennessee, and Wisconsin allowing one man and one woman from each district, Mississippi stipulating three members from each district, and Illinois providing one.[26] In addition to the prescribed number of district members three states require committeemen-at-large. Louisiana requires twenty-four members-at-large, chosen by the elected district members, and West Virginia specifies the selection of three members-at-large by the elected district members. Massachusetts gives its state convention the power to select members-at-large with the number to be determined by the convention.

Some state central committees are of unique composition. In Kansas the body is composed of the chairmen of the different county committees; in New Hampshire the combined membership of all

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25. West Virginia requires two men and two women from each district

26. Wisconsin makes no requirement in regard to sex. The total membership of these committees follows: Illinois, 25; Iowa, 18; Michigan, 34; Missouri, 26; Mississippi, 21; New York, 300; Ohio, 44; Pennsylvania, 100; Tennessee, 18; Texas, 31; West Virginia, 63; Wisconsin, 30. The size of the Massachusetts committee varies.

county committees makes up the state central committee[37]; and Colorado and Arizona require that the chairmen of the county committees constitute the central committee, with additional members, selected by the county committees, in proportion to the popular vote cast at the preceding election. In Indiana the chairmen and vice-chairmen of congressional district committees[38] make up the state body.

A few states prescribe the term of office of state committeemen though in most laws this feature is ignored entirely or is only implied in other regulatory provisions. The length of the terms vary from two to four years. Illinois, Florida, Massachusetts, Michigan, Nevada, New York, and Ohio prescribe a two-year term; New Jersey provides a three-year term; and Mississippi and West Virginia stipulate a four-year tenure.

As in the case of other features of party organization that are fixed by state law, there is wide variety among the states as regards the provisions governing the composition and methods of selection of state central committees. No particular principle or

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37. County committees are chosen by the state convention in New Hampshire. The number of members of county committees is not specified.

38. In Colorado the county vice-chairmen are also members of the central committee and in Arizona the additional state committeemen must be members of the county committee. The total number of members in the state committee of Kansas is 105 and in Indiana 24. On the basis of the 1934 vote the total memberships of the major party committees of Arizona are: Democratic, 174; Republican, 156.

theory appears to be followed in determining the system to be employed and the legislatures of most states evidently provide the means or method most expedient in the particular case. The absence of regulation in a considerable number of states indicates that party rules concerning these bodies are still of some significance.[29]

(2) Organization and Procedure. Twelve states make no statutory requirements concerning the internal affairs of state central committees.[30] Of the remaining thirty included in this study Pennsylvania requires only that the group "shall organize",[30] and the Washington law merely states that the first meeting shall be called by the retiring committee.[31] A few statutes place certain features of organization under control of separate agencies. Thus in Idaho,[32] Nevada,[33] South Carolina,[34] South Dakota,[35] Texas,[36] and Wisconsin[37] the laws require that the state convention name the chairmen of the central committees, and Montana requires that this official be chosen by the

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29. Arkansas, Georgia, Indiana, Maryland, Minnesota, Mississippi, Nebraska, New Hampshire, Tennessee, Vermont, Virginia, Wyoming.

30. Purdon's Pennsylvania Statutes of 1936, Tit. 25, Secs. 1041-42.

31. Compiled Election Laws of Washington, 1936, pp. 35-36.

32. Idaho Code of 1932, Tit. 33, Ch. 6.

33. Compiled Election Laws of Nevada, 1935, pp. 31-32.

34. Session Laws of South Carolina, 1915, pp. 168-175.

35. South Dakota Code of 1939, Sec. 7096.

36. Compiled Election Laws of Texas, 1914, pp. 39-56.

37. Compiled Election Laws of Wisconsin, 1933, Sec. 5:19-33.

party nominees.[38] A majority of the states that regulate this feature of the committee system, however, allow the committees to select their own officers. In some states there is no requirement as to the number and kind of officers.[39] The usual statutory requirement is for a chairman, secretary, and treasurer, with the choice of other officers left to the discretion of the committee.[40] It is ordinarily stated or implied that the committee officials be chosen from the membership, though in some laws there is no reference to such a qualification and in Idaho, New York, North Dakota, Oregon, and South Carolina the statutes explicitly declare that officers need not be members of the committee. Where the central committees are large, or where there are apparent reasons for such a body, the statutes usually allow or require an executive committee within the main body.[41] Thus in Arizona,[42] California, and Colorado,[43] where large memberships are found, executive committees

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38. Compiled Election Laws of Montana, 1936, pp. 64-65.

39. Iowa prescribes only the "usual officers". Compiled Election Laws, 1936, p. 24.

40. Colorado, Idaho, Indiana, Missouri, and Ohio require vice-chairmen.

41. Compiled Election Laws of Arizona, 1935, pp. 45-46.

42. General Laws of California of 1931, Act. 2258, Secs. 24-25.

43. Compiled Election Laws of Colorado, 1935, pp. 55-56.

are provided for, and in Florida,[44] Illinois,[45] Indiana,[46] Kansas,[47] Montana,[48] Nevada,[49] Oregon,[50] Rhode Island,[51] and West Virginia,[52] the statutes give authority to appoint sub-committees if the main body so desires, though the size of the committees in some of these latter states does not make them cumbersome or unwieldy.[53] The laws of Kansas and Ohio[54] make executive committees mandatory.[55] All except

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44. Compiled Election Laws of Florida, 1936, pp. 14-15.

45. Compiled Election Laws of Illinois, 1936, pp. 139-143, 171-173.

46. Compiled Election Laws of Indiana, 1936, pp. 44-46.

47. Revised Statutes of Kansas of 1923, Ch. 25, Art. 2.

48. Compiled Election Laws of Montana, 1936, pp. 64-65.

49. Compiled Election Laws of Nevada, 1936, pp. 31-32.

50. Compiled Election Laws of Oregon, 1936, pp. 73-76.

51. Compiled Election Laws of Rhode Island, 1936, pp. 205-207.

52. Compiled Election Laws of West Virginia, 1936, pp. 14-16.

53. The size of state committees in this group are: Arizona, (Dem.) 321, (Rep) 310; California, (Rep) 574; Colorado, (Dem) 174, (Rep) 158; Florida, 134; Illinois, 25; Indiana, 24; Kansas, 105; Montana, 112; West Virginia, 63. In Nevada the size of the committee is determined by the state convention with a minium of one from each of seventeen counties; in Oregon and Rhode Island the number is not specified.

54. Compiled Election Laws of Ohio, 1932, pp. 52-54. The Ohio committee has 44 members.

55. The Kansas executive committee is made up of the district committee chairmen.

two of the statutes allowing or prescribing executive groups within the state committees plainly state or clearly imply that these groups may have powers delegated to them; the Illinois and Missouri laws expressly prohibit the delegation of powers by the central committees.[56]

Various other points of procedure in committee meetings are controlled by law. Arizona, California, Florida, Louisiana, and North Dakota provide that proxies may be used in voting, though the statutes in the first three states named seek to prevent the abuse of such voting by requiring proper authentication of such votes. California and Oregon define a quorum of the committee as a majority of its membership, and Missouri, North Dakota, and Ohio require that the decisions of the assembled committeemen be made by a majority vote of those present.[57] Illinois provides unit representation by requiring that in committee meetings each member be allowed one vote for each ballot cast in his district at the preceding election.

It will be readily seen that the laws are less specific in regard to the internal workings of state committees than in

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56. Three primary laws were declared unconstitutional in Illinois because of the delegation of legislative power to party committees. See: People v. Strassheim, 240 Ill. 279, 88 N. E. 821 (1909); People v. Deneen, 247 Ill. 289, 93 N. E. 437 (1910); People v. Fox, 294 Ill. 263, 128 N. E. 505 (1920).

57. A plurality vote is prescribed for the election of committee officers in Indiana.

respect to other features. This is but natural since such bodies are usually expected to follow their own procedure, and it is hardly important to the legislator to know the methods used in performing duties or exercising powers so long as those duties are properly done and the powers legitimately exercised.

(3) Powers and Duties. All states that legislate on state central committees prescribe duties and powers for them. Some of these functions are optional but most of them are obligatory. Naturally, this phase of regulation is the most important both from the standpoint of the legislator and that of the party authorities.

The power of state central committees to fill vacancies in their own membership is confirmed in the laws of fifteen states.[58] Where this power is not expressly stated it is usually implied in such broad grants as "the usual powers", "own rules and regulations" and similar provisions. Four states, however, deny this power to the central committee. In Montana, New Jersey, Pennsylvania, and Wyoming the statutes name the county executive committee as the agency for filling vacancies occuring in the respective counties.

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58. Alabama, Florida, Indiana, Idaho, Louisiana, Massachusetts, Michigan, Mississippi, Nevada, New York, North Dakota, Ohio, South Carolina, Texas, and West Virginia. In Florida vacancies are filled by the committee chairman.

Perhaps the most important power given or secured to the central committees of state party organizations is that of filling vacancies in nominations that occur on the party ticket after the primary election or the adjournment of the convention. This authority is conferred by law on state committees in twenty-six states.[59] In none of the states is the power to fill vacancies in nominations denied by negative provision but the requirements for other methods of supplying them has the same result.

The power to make regular nominations and elect party representatives is held by the state central committee in Vermont if authorized by the state convention of the party. In Idaho, New York, South Carolina, and Washington the selection of nominees for presidential electors is the task of the state committee;[60] in Montana, Pennsylvania, and West Virginia this group is a means of selecting members of the national committee;[61] and in Arkansas, Michigan, New York, Ohio, Washington, and Wisconsin statutes give state central committees the power to elect or arrange for the

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59. Alabama, California, Florida, Idaho, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, West Virginia, and Wyoming. In South Dakota vacancies in district offices may be filled by district members of the state committee.

60. The Idaho law requires that the committee "provide for" such nominations.

61. In South Dakota and South Carolina the state committees fill vacancies in the national committee.

election of delegates to the national convention.[62]

Another significant power of state committees is found in the control allowed them over the state conventions. Naturally, this is most important in states where the convention is important as a party organ. In sixteen states the central committee is charged with the duty of calling the state convention.[63] Appurtenant to the power of calling conventions are a number of other powers, expressed and implied, that committees exercise over these gatherings. In Alabama, Massachusetts, Michigan, Nebraska, Ohio and Wyoming the committee has the task of apportioning delegates to the state convention or of making provisions for such apportionment. In Minnesota, New York, and Ohio the laws declare that the time and place of conventions must be fixed by the state executive group and this power is implied in a number of other laws.[64] Indiana gives full control of the convention to the state committee including the power to regulate proxies, fill vacancies in delegations, and control the "manner and method" in general.

Other powers granted by statutes are less common but equally important. Florida, Louisiana, Mississippi, Oregon, and

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62. This only extends to alternate delegates in Wisconsin and for delegates-at-large in New York.

63. Alabama, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Rhode Island, South Dakota, Texas, Vermont, Washington and Wyoming. In Iowa the state convention is called by the committee chairman.

64. In California and New Jersey the committees form a part of the convention.

Virginia give committees the power to assess candidates for nomination.[65] In Virginia the state committee has the power to certify the method of party nomination to the proper public officers and in Georgia and Tennessee the laws give strong powers over primary elections. Tennessee makes her state committee the state primary election board with full power over nominations, including the authority to settle contests. Wisconsin and Minnesota recognize that state committees have some of the functions of campaign boards by granting them specific power to expend funds within a limit of ten thousand dollars.[66] North Dakota gives the task of drafting a party platform to her state committee and in a number of other states such minor duties as adopting the party name, emblem, or vignette are required of the central body.

Blanket grants of powers are important in a few states. Indiana is perhaps the most notable in this respect, the statute establishing the supremacy of the state committee over internal party affairs by declaring it to be the highest authority with power to "provide for all matters of party government" not controlled by law. This power is made enforceable by mandamus of the regular courts and cases of this type are given precedence over other litigation.[67] Pennsylvania also bestows broad powers on her committee by allowing it to "make or alter rules as it deems ex-

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65. Oregon provides that nominees may be assessed.

66. In Arizona the state committee is a part of the campaign committee.

67. Compiled Election Laws of Indiana, 1936, p. 45.

pedient, not inconsistent with law"[68]; Nevada gives her central committee "general charge of party affairs of the state"[69]; Colorado, New York, and West Virginia confer the power to adopt rules for party government. Rhode Island makes her central committee competent to deal with "any contingency"[70] and Oregon declares that its state committee is the highest party authority. Alabama accomplishes the same object in different language by giving her committee "all power not vested elsewhere"[71]. Two states confer disciplinary powers of significance upon central committees. Both California and New York allow these bodies to remove any member guilty of disloyalty to the party.

The powers conferred by law upon state central committees, vast as they seem from an examination of the statutes, are not all included in the legislative grants. A great many result from the statutory provisions requiring that certain party duties be performed but designating no particular organ for the purpose. Important non-legal powers also accrue to state committees by virtue of their convenience for handling expediently problems that arise. These unprescribed powers naturally give the central committee a position of dominance in the state party organization.

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68. Purdon's Pennsylvania Statutes of 1936. Tit. 25, Secs. 1041-1042.

69. Compiled Election Laws of Nevada, 1935, pp. 31-32.

70. Compiled Election Laws of Rhode Island, 1936, pp. 205-207.

71. Alabama Code of 1923, Secs. 601-673.

through legal provisions or party rules it is unquestionably supreme in authority. Any laxity or omission of regulatory legislation serves to enhance this superiority.

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2. District Committees

In analyzing the statutes regulating party committees it is evident that provision is made for several types that come between the state central and the county committees. These intermediate committees, inferior to the state committee in authority and covering more territory than county committees, may be grouped together under the general heading "District Committees". As is true of the laws in other respects, great variety in the name and composition of these committees is to be found. Vagueness is another feature of many of the provisions touching on district groups of this kind. In many cases their existence depends upon the discretion of the party authorities, and it is possible, therefore, that they may never really be set up even though their organization and functions are fully outlined in the statutes.

Twenty-five states have laws that recognize or require district committees.[72] This number must be reduced, however, if actual regulation is made the criterion. Maryland does not name

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72. Alabama, Arkansas, California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, North Carolina, Ohio, Oregon, Tennessee, Texas, West Virginia, Wisconsin, Wyoming. This section does not include metropolitan districts.

any particular committee but allows district managing bodies to be set up in accordance with party usage if the members are chosen by popular vote.[73] North Carolina refers to district committees only in general provisions for the conduct of primaries and the filling of vacancies in primary nominations.[74] Though mandatory by implication in the latter cases, the committees of both these states will be omitted in the following paragraphs.

All except two of the states that designate the name of district committees use one or more of the terms "congressional", "senatorial","judicial", and "representative". Tennessee requires a "flotorial" committee in addition to senatorial and congressional committees,[75] and Mississippi stipulates senatorial and "flotorial" committees.[76] Alabama, Kansas, Missouri, Ohio, and West Virginia provide for congressional, senatorial, and judicial committees.[77]

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73. Compiled Election Laws of Maryland, 1936, p. 383.

74. North Carolina Code of 1935, Secs. 6018-6055.

75. Tennessee Code of 1932, Sec. 2185.

76. Mississippi Code of 1930, Secs. 5866-87. The Mississippi and Tennessee statutes, though spelling the word differently, refer to the same kind of district. "Flotorial" denotes districts that elect a "floater representative" to the legislature. The term is not generally used and is not found in standard dictionaries. For a discussion see A. C. Reed, "Territorial Basis of Government Under State Constitutions" Columbia University Studies, Vol. 40. p. 533; Luce, Legislative Principles, p. 377.

77. Alabama Code of 1923, Sec. 892. These committees are optional with the party authorities; Revised Statutes of Kansas of 1923, Ch. 25, Art. 2; Compiled Election Laws of Missouri, 1936, pp. 68-83; Compiled Election Laws of Ohio, 1933, pp. 52-54; Compiled Election Laws of West Virginia, 1936, pp. 14-16, 21.

Colorado and Michigan add to these the representative district committee.[78] Illinois and Wisconsin require only congressional and senatorial committees;[79] California, Florida, Indiana, Louisiana, Minnesota, Montana, and Oregon require only a congressional committee;[80] Iowa and Wyoming make legal provisions for only judicial district committees.[81] Arkansas, Maine, and Texas do not directly specify just what district committees parties may have. The Arkansas statute refers to "circuit and district committees (including congressional districts)..."[82]; and the laws in Maine and Texas give no indication of what districts are to have committees.[83]

(1) Selection and Composition. The selection of members of district committees is usually combined in some way with that of other party committeemen. Only in Florida, Illinois, and

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78. Compiled Election Laws of Colorado, 1936, pp. 55-58; Compiled Election Laws of Michigan, 1936, pp. 73-74.

79. Compiled Election Laws of Illinois, 1935, pp. 139-143, 171, 179-183; Compiled Election Laws of Wisconsin, 1933, Sess. 5:14, 5:19.

80. General Laws of California of 1931, Act 8256. Sec. 24; Compiled Election Laws of Florida, 1935, pp. 14-15; Compiled Election Laws of Indiana, 1936, pp. 43-51; Compiled Election Laws of Louisiana, 1935, pp. 1-33; Compiled Election Laws of Minnesota, 1936, pp. 61-62; Compiled Election Laws of Montana, 1936, pp. 34-35; Compiled Election Laws of Oregon, 1936, pp. 73-76.

81. Compiled Election Laws of Iowa, 1936, p. 31; Wyoming Code of 1931, Ch. 36, Art. 6.

82. Crawford & Moses, Statutes of Arkansas, 1930, Sec. 3789.

83. Compiled Election Laws of Maine, 1935, p. 4; Compiled Election Laws of Texas, 1914, pp. 33-58.

Louisiana, where committeemen are chosen by popular vote, in the selection of this branch of the organization removed from other party control.[84] Often other committeemen have the duties of membership on district committees in addition to those of the position for which they were primarily chosen. Thus in Colorado, Indiana, Tennessee, and Texas the chairmen of the county committees within the district compose the larger committee;[85] in Ohio the whole membership of the county bodies are members of the district committee, and in Kansas, Michigan and Missouri county committees form, or may form, a part.[86] In Mississippi, Montana, Oregon, West Virginia and Wisconsin the district committees are chosen by the county executive committees of the district. Wyoming makes the district members of the state committee the district committee and California gives the task of selection to the executive committee of the state central committee. Maine requires selection by the state convention, Iowa employs the county convention, and Minnesota completes the list of unique methods by requiring that congressional committees be chosen by the nominees for state and congressional offices.

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84. This applies only to senatorial committees in Illinois.

85. Vice-chairmen are included in Colorado and Indiana. In Illinois if the congressional district is within a county or not coterminous with county lines the committee is composed of the precinct, township, or ward committeemen of such district.

86. In Michigan party district nominees may, if they like, choose the committees.

Various restrictions are placed upon party committees with regard to composition of these committees. These restrictions usually require that each county of the district be represented on the committee, though in a number of states the apportionment is left to the party authorities. Only three states specify the term of office,[87] though the term of other committees with which the district committees are connected control the tenure in a great many others.

(2) Organization and Procedure. As may be expected in committees of no great significance, the organization and procedure of district committees are not regulated by law to any great extent. Seven states whose laws call for such bodies ignore this phase of regulation entirely.[88] The usual requirement is that these bodies have an organization with the customary or needful officers. Tennessee specifies that the chairman shall be the county committee chairman polling the largest vote in the primary. Colorado, Florida, Indiana, and Missouri further restrict the choice of officers by requiring that both sexes be represented among such officers. In Texas the law requires the chairman to be a member of the committee and such is apparently the intention of a number of other laws that do not specifically refer to this

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87. Florida and Wyoming prescribe two-year terms and West Virginia specifies a term of four years.

88. Alabama, Arkansas, California, Iowa, Minnesota, Mississippi, and Wyoming.

point. Missouri and Oregon, however, expressly allow committee officers to be non-members. A quorum is defined as a majority of the members in the case of Tennessee and Oregon. Five states regulate voting in committee meetings. In Florida and Oregon the laws permit proxy voting in committee meetings. In Michigan the chairman is allowed to vote on all questions; Ohio requires that all proceedings be decided by majority vote; and Illinois requires that her congressional committeemen be allowed one vote in meetings for each ballot cast in their local districts in the preceding primary.[89] Sub-committees or executive committees are authorized by law in Florida, Indiana, Louisiana, West Virginia, and Wyoming.[90] The distinct subordination of district committees to the central committee of the state, or the control implied in requiring them to be chosen by lower committees, makes it seem plausible that organization and procedure in the lower groups, unless mentioned in the statutes, may be controlled by the central committee of the system.

(3) Duties and Powers. A great many of the duties of district committees, as well as the powers resulting from these duties, are undefined and are legally authorized only by blanket grant. It should also be remembered that the functions and author-

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89. Indiana requires plurality vote for the election of officers.

90. The executive committee in Louisiana consists of the members of the state central committee from the district.

ity which are the property of other party committees are often withheld from district committees because of the relatively subordinate and unimportant character of these agencies.[91]

The power to fill vacancies in their own membership is allowed in Illinois, Indiana, Montana, and Texas. In Colorado, Florida, Iowa, Kansas, Maine, West Virginia, and Wisconsin this power is denied them by statutory provisions placing it elsewhere. In a number of states the nature of the district committee makes the filling of vacancies the proper duty of bodies other than itself.

The more important duty of filling vacancies in nominations is, on the contrary, conferred by the laws of most states on district committees. In Colorado, Illinois, Ohio, Oregon, West Virginia, Wisconsin, and in Florida, Indiana, Louisiana, Minnesota, and Montana this function is combined with one or more other duties. Tennessee approximates this power by allowing district committees to arrange for special primary elections for filling vacancies in nominations, and Florida comes nearest to giving actual powers of nomination by specifying that regular nominations for district offices may be made by the committee unless one candidate receives a majority in the primaries.

Miscellaneous powers and duties stated in the statutes

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91. Senatorial committees in Illinois have the peculiar and important task of determining the number of candidates to be nominated from the district for the legislature under the proportional representation system of that state.

for district committees include that of canvassing members of the state central committee in Missouri; the calling of district conventions in Iowa, Minnesota, and Texas; the certification of district nominees in Mississippi and Texas; and the task of conducting the campaign of congressional candidates in California. Several statutes confer undefined powers of varying importance. Thus Maine requires that district committees perform "duties imposed by the state conventions"; Illinois, Kansas, and Wisconsin confirm the authority to exercise the "usual powers" held by such bodies.

The significance of district committees lies in the position which they fill in adjunction of other branches of the committee system. In various ions they have been implemented to serve the purposes of county or state central committees and to perform duties that could not be properly done if these bodies acted in their own capacities. However, the district units are an essential part of the committee system and, even if confined to the statutory provisions, would be indispensable to a well-rounded permanent party machine.

3. County and Municipal Committees

Next in importance to state central committees in the permanent branch of the party mechanism are the county and municipal committees. It is but natural that bodies with so important a share in the party functions should be the subject of a considerable amount of regulatory legislation. Though the amount and elaborateness of such legislation does not equal that

pertaining to state central committees there is no doubt of the value which legislatures have placed upon the proper functioning of these local units.

Four states make no statutory provision for county or city committees.[92] In five others, Kentucky, Minnesota, New Mexico, North Carolina, and Tennessee, the references are so brief as to preclude any extended treatment here. New Mexico and Tennessee specify county committees as the means of filling vacancies in nominations,[93] and Kentucky, Minnesota and North Carolina mention them only in giving general duties in regard to party primaries.[94] Thus only thirty-nine states have laws with any features that may be called regulatory. Eighteen states provide for only the county committee.[95]

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92. Connecticut, Georgia, Iowa, and Virginia.

93. New Mexico Code of 1929, Sec. 305; Tennessee Code of 1932, Sec. 2184.

94. Kentucky Code of 1932, Secs. 1543-55; Compiled Election Laws of Minnesota, 1936, pp. 51-52; North Carolina Code of 1935, Sec. 6063.

95. Alabama, Arkansas, Delaware, Florida, Idaho, Iowa, Louisiana, Maryland, Nebraska, Nevada, New Hampshire, New York, North Dakota, Ohio, South Carolina, South Dakota, Vermont, West Virginia. See: Alabama Code of 1923, Secs. 801-72; Arkansas Code of 1921, Secs. 3717-70; Compiled Election Laws of Delaware, 1936, pp. 56-90; Compiled Election Laws of Florida, 1936, pp. 14-46; Idaho Code of 1932, Ch. 33, Art. 6; Compiled Election Laws of Iowa, 1936, pp. 20-22; Louisiana Code of 1932, Secs. 2579-21; Compiled Election Laws of Maryland, 1935, c. 283; Nebraska Code of 1929, Ch. 32, Art. 11; Compiled Election Laws of Nevada, 1935, pp. 28-33; Compiled Election Laws of New Hampshire, 1929, pp. 16-17; Cahill's New York Code of 1930, Ch. 16, Art. 2; Session Laws of North Dakota, 1935, Ch. 135; Compiled Election Laws of Ohio, 1932, pp. 52-54, 73; Laws of South Carolina, 1915, pp. 169-175; South Dakota Code of 1929, Sec. 7086; Compiled Election Laws of Vermont, 1934, p. 97; Compiled Election Laws of West Virginia, 1936, pp. 15-34.

However, in some of these states the establishment of committees for cities is made optional with the party authorities. In Massachusetts and Rhode Island only city committees are provided for.[96] Nineteen states stipulate or allow both city and county committees.[97] Most of the states that specify both city and county committees give them practically equal rank and powers. Exceptions may be found in the laws of Maine, Michigan, Mississippi, and Washington. In Maine the organization of the party in the particular city is left free to act as the party committee for that area; in Michigan city committees are mentioned but with no provisions for selection or duties; in Mississippi municipal committees are regulated but

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96. Compiled Election Laws of Massachusetts, 1934, pp. 70-71, as amended by Session Laws, 1934, Ch. 286; Compiled Election Laws of Rhode Island, 1936, pp. 209-210.

97. Arizona, California, Colorado, Illinois, Indiana, Kansas, Maine, Michigan, Mississippi, Missouri, Montana, New Jersey, Oklahoma, Oregon, Pennsylvania, Texas, Washington, Wisconsin, and Wyoming. The provisions relating to these committees may be found in: Compiled Election Laws of Arizona, 1935, pp. 45-46; California Code of 1931, Act 2955, Secs. 23-25; Compiled Election Laws of Colorado, 1935, pp. 55-56; Compiled Election Laws of Illinois, 1935, pp. 139-143; Compiled Election Laws of Indiana, 1936, pp. 48-51; Kansas Code of 1933, Ch. 25, Art. 2; Compiled Election Laws of Maine, 1935, p. 4; Compiled Election Laws of Michigan, 1932, pp. 70-73; Mississippi Code of 1930, Secs. 5955-57, 5905; Compiled Election Laws of Missouri, 1936, pp. 66-67; Compiled Election Laws of Montana, 1933, pp. 64-65; Compiled Election Laws of New Jersey, 1936, pp. 10-21; Compiled Election Laws of Oklahoma, 1935, pp. 76-77; Compiled Election Laws of Oregon, 1936, pp. 73-75; Purdon's Pennsylvania Statutes, 1936, Ch. 25, Sec. 1041; Compiled Election Laws of Texas, 1934, pp. 33-34; Compiled Election Laws of Washington, 1936, pp. 35-36; Compiled Election Laws of Wisconsin, 1933, pp. 75-76; Wyoming Code of 1931, Ch. 36, Art. 6.

are not made part of the state machinery of nomination; and in Washington the law provides that a city candidate "may be elected". All these states regulate county committees in a different and more extensive manner.

γ(1) Selection and Composition. Popular election of county and city committeemen is required in most of the states. This election is frequently indirect because of the provision that local committeemen make up the county or city committee, but membership on the higher body is consequently the principal task of the persons elected. In Arkansas, California, Florida, Idaho, Iowa, Louisiana, Maryland, Missouri, New Jersey, Ohio, Oklahoma, Pennsylvania, Texas, West Virginia, and Wisconsin members are directly elected for membership on the county or city committee and in Alabama, Colorado, Illinois, Indiana, Kansas, Massachusetts, Montana, North Dakota, Oregon, Rhode Island, South Dakota, Washington, and Wyoming these committees are made up of local committeemen chosen by popular vote.[98] Besides these two common methods other plans of selection may be noted. In Maine, New Hampshire, and Vermont the members are chosen by the state convention or parts thereof, and in Mississippi, Nebraska, and Nevada the county convention chooses this branch of the permanent machinery.[99] Michigan allows the party candidates for

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98. In Washington city committees are chosen by direct popular vote and in Wisconsin city committees are composed of the precinct and ward committeemen in the city.

99. The Nebraska law states that a committee "may be chosen" by the convention.

county office to choose county committees and in South Carolina this group is chosen by local party clubs.[100]

The usual restriction of area is placed on the selection of county and city committeemen. In two states which this limitation is not contained in the provision requiring that the committee be made up of local committeemen, it is nevertheless required. The county precinct and the city ward are the usual units of representation, though in California and New York the election district is the basis. In Mississippi the supervisor's district is used, and in West Virginia the magisterial district is the unit.[101]

The term of office varies with the different states. The two-year term prevails in all but four of the states that directly state the tenure. Mississippi and West Virginia prescribe a four-year term while New Jersey and New York stipulate annual election of these committees. The term of office usually corresponds with that of the county or city officers in the particular locality.

(3) Organization and Procedure. Regulation of the internal proceedings of county and city committees is slight. A number of states ignore it entirely and others prescribe only the most general requirements.

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100. In North Dakota the party nominee for the legislature is allowed to add one member-at-large to the county committee and in Vermont the members of the state convention who are party nominees select the county committee. In California party nominees for the legislature are ex officio members.

101. In Alabama, Florida, Louisiana, Maine, Maryland, and Pennsylvania there are no provisions as to representation of territorial units.

A chairman, secretary, and treasurer are the usual officers specified for these bodies, and it is usually stated or implied that these officers are to be chosen by the committee from its own membership.[102] Rhode Island, however, provides that city committees may elect these officers who are not members of the committee and South Carolina gives the county conventions the task of selecting the committee chairmen. Michigan is also different in requiring that the chairman, secretary, and treasurer of its county and city committees be selected by the party nominees for office. Colorado, Florida, Indiana, and Missouri require that the principal offices of the committees be divided between the sexes.

Executive or sub-committees are authorized by law in Florida, Illinois, Indiana, Montana, North Dakota, Ohio, Iowa, and Wyoming, though the appointment of such inner committees is optional in all states except North Dakota and Ohio. Voting is regulated in Florida, Illinois, Iowa, Nevada, New York, and South Dakota. Iowa and South Dakota require a majority vote on all matters of business; Florida allows the use of proxies and Illinois and New York prescribe systems of weighted voting based on the vote of the party cast at the preceding primary.[103] Nevada and Indiana require ballot voting in the selection of officers.

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102. South Carolina also provides that other officers need not be members.

103. This applies only to members from districts having but two committeemen in New York.

No distinction is observed between the regulation of county and city committees where both are included in the provisions of the statutes. Where there are regulations that i for only one committee it is usually implied that the procedure outlined applies to both.

(.) Powers and Duties. The proximity of city and county committees to the voters makes it proper that the administration of the smaller affairs of the party should fall upon these organs. In a great many states these are the lowest organized units of the party machine, and the vast number of small but important tasks that must be performed makes the duties of these committees numerous and their powers extensive.

Twenty-three of the thirty-nine states providing county committees confer upon them the customary power of filling vacancies in their own membership. This power is allowed by implication in several other states where it is not expressly mentioned and the bestowal of the "usual powers" in some statutes makes such authority seem probable. Exceptions are to be found, however, in Florida, Kansas, and New Jersey, where the laws clearly provide other means of supplying vacancies. Florida gives this task to her state central committee; Kansas provides that vacancies be filled by election in the precincts in the manner that its members are originally chosen; and New Jersey allows the "proper municipal

committee[104] to remove the membership of its county committee.[105]

The filling of vacancies in nomination is, naturally, one of the most common, as well as one of the most important, duties re mixed of county and city committees. Thirty-one of the thirty-eight states treated in this section vest it in such committees and in others the power to arrange for the filling of vacancies by primary election or convention is contemplated. Rules in regard to the administration of primary elections are sometimes required by law. Thus in Mississippi the county committee is authorized to "discharge all the functions known" upon county election commissioners except revising registration and roll books,[106] and in Alabama and Arkansas the county committees are made the authorities in charge of primaries with power to select officials, canvass returns, and hear contests. South Carolina provides somewhat similar duties for her county committees, and Texas requires these bodies to exercise supervisory duties over primaries, including

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104. This means the county committeemen in the particular municipality.

105. Ohio provides that the executive committee fill its vacancies. It should be noted, also, that in Montana, Oregon, Wisconsin, and Wyoming, where city and county committees are practically equal in importance, the power of filling vacancies in both is given to the county committees.

106. Mississippi Code of 1930, Sec. 5264.

the canvassing of returns and certifying results.[107]

Various other duties are commonly assigned. In Michigan, Minnesota, Montana, North Dakota, Oregon, Washington, and Wyoming the selection of members of the state central committee is made the duty of county committees, and in a number of states the members assist [illegible] the county chairman in the district or state committee.[108] In Illinois and Nevada the committees act as the county conventions and have nominate duties and powers in the county. Other duties of miscellaneous character include the calling of county conventions, the making of arrangements for the election of delegates thereto, control of county conventions in Missouri, Wisconsin, and Nebraska, the granting of permits to interest in city conventions in Massachusetts and Rhode Island, and the calling of judicial conventions required of county committees in many districts. Iowa and New York give unusual powers of discipline to their county committees, making any members subject to removal by the county committee for disloyalty or incompetence.

The duties of county and city committees are often made doubly important by the failure of the party authorities or the voters, as the case may be, to set up other committees authorized

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107. Cases on contested nominations may be appealed to the regular courts in Arkansas, Mississippi, and Texas but in Alabama and South Carolina the state central committee is the highest authority.

108. In Pennsylvania and South Dakota vacancies in the state committee are filled by the county committee.

by law. Where there is a party organization the county and state central committees are the first organs of the machinery to be established, and if party activity is shortened, because of unfavorable elections, shortage of funds, or other reasons, these are the branches succeed to the tasks ordinarily performed by other committees. Often such functions are not legal or are exercised by virtue of party rules; nevertheless, their existence makes the county and city committees more important agencies than the statutes indicate.

County and city committees, when not definitely subordinate to the state central committee, lose none of their importance because of this inferiority. The most important attribute of these committees is their close contact with the city voters. The performance of the many and varied tasks, many of which are of an administrative nature, that devolve upon them are largely unhampered by the existence of a higher authority. County and city committees are the party agents with which the voters in most states come to deal. The variety of situations, created by the human element, with which these committees are faced make it fortunate, from the party standpoint, that the laws relating to them are seldom strict or elaborate.X

§ 4. Local Committees and Committeemen

Few states take any legal cognizance of local committees as such. More than half the states have no reference at all to local members of committees except in their provisions for county

and city committees. Of those to it do declare or propose to represent a particular area or locality, but ten state in-dications in their laws that these committees are to be seen a separate unit of the committee system. Of the remain number who authorize or provide for local committees as individual bodies it may well be doubted that some committees ever meet or act together, since the principal purpose of most of them is the composition of a higher committee.

In ten states local committees are made a unit of the committee hierarchy. Connecticut, Massachusetts, New Hampshire, and Rhode Island specify town and ward committees;[109] Colorado and Oregon provide for "ward or subdivision" committees;[110] Indiana provides for a precinct committee;[111] Michigan authorizes the establishment of township, ward, and precinct committees;[112] Maine authorizes "city, town, ward, plantation, or representative district committees" as the party of the district may determine;[113] and Vermont mentions

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109. Compiled Election Laws of Connecticut, 1930, pp. 140-147; General Laws of Massachusetts, 1934, Ch. 389; Compiled Election Laws of New Hampshire, 1929, pp. 14-15; Compiled Election Laws of Rhode Island, 1936, pp. 207-223. A representative district committee is provided for the town of West Warwick in Rhode Island.

110. Compiled Election Laws of Oregon, 1936, p. 73; Compiled Election Laws of Colorado, 1935, p. 55.

111. Compiled Election Laws of Indiana, 1936, pp. 44-45.

112. Compiled Election Laws of Michigan, 1936, pp. 75-76, 176.

113. Compiled Election Laws of Maine, 1935, p. 4.

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town committees but a total committee for the calling of caucuses.
Other states make definite provision for committeemen of various
local units. Illinois stipulates a committeeman from ward, town-
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ship or precinct; Iowa and Kansas allow committeemen to be named from
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precinct, ward, town, and village; and Wyoming allows one committee-
man from each precinct but requires that each ward of cities have
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at least two committeemen. The states of Arizona, Idaho, Kansas,
Montana, Nebraska, North Dakota, South Dakota, Washington
also
prescribe one or more committeemen from each precinct.

If the number of local committeemen are, as may be,

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114. Compiled Election Laws of Vermont, 1934, p. 97.

115. Compiled Election Laws of Illinois, 1935, pp. 139-140. The statute allows a committeeman from each ward in cities of over 500,000; one from each township lying outside of cities of 500,000 in counties of 500,000; and a representative from each precinct of counties of less than 500,000.

116. Compiled Election Laws of Wisconsin, 1935, p. 73.

117. Session Laws of 1931, Ch. 58, Art. 6.

118. Compiled Election Laws of Arizona, 1935, pp. 45-46; Idaho Code of 1932, Ch. 33, Art. 6; Kansas Code of 1923, Ch. 25, Pt. 2; Compiled Election Laws of Montana, 1935, pp. 64-65; Nebraska Code of 1929, Ch. 32, Art. 11; Session Laws of North Dakota, 1933, Ch. 155; Session Laws of South Dakota, 1929, Ch. 118; Compiled Election Laws of Washington, 1935, p. 55. Arizona requires one committeeman with an additional one for each seventy-five votes cast at the last election; Colorado and Montana require one man and one woman from each precinct; North Dakota requires one for each two hundred and fifty votes cast. The other states require one from each precinct.

locally organized and statutes prescribe simple organization.X Colorado and Indiana specify one man and one woman from each precinct.[119] In Oregon one person from each precinct is required and in Michigan three electors, chosen at the caucus, are added to the county committeemen of the local district to compose the local committee. In Connecticut, Maine, Massachusetts, and Rhode Island the organization is not specified.

X All local committeemen for which the method of selection is prescribed by law are chosen by popular vote at the primaries except in three states. Michigan and Rhode Island prescribe the local caucus as the method of election and Nebraska places sole duty on the county convention, or, in case of neglect by that body, the county committee. All states that specify the term of office fix it at length of two years except North Dakota which provides a four-year term.X

X The organization of local committees is, naturally, almost entirely ignored by the laws of the various states. In only two states is it referred to and then in only general terms. Massachusetts prescribes that its ward and town committees organize by electing a chairman, secretary, and treasurer; and the law of Michigan provides only that its local committees "shall elect chairmen".X

X Duties and powers of local committees and committeemen

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119. In Indiana the state committee may add others.

are likewise legally insignificant. In only six states do the laws provide any duties or powers. In the remaining states the only function is that of serving as a member of the local committee. Rhode Island confers the most important powers of any state. Here the conduct of the local caucuses is under the control of the ward or town committees; this includes the power to select caucus officials and make nominations in case of a tie.) Similar duties of less importance are exercised by the precinct committeemen in Nebraska where this official is authorized by law to call the precinct caucus and certify the delegates to the county convention.[120] The local committees of Massachusetts, Michigan, and New Hampshire have the important duty of filling vacancies occurring on the their districts, and in Indiana, Maine, Massachusetts, Michigan, and Rhode Island the power to fill vacancies in their own membership is allowed these groups.

The local portions of the committee system, whether a group or individual members, are chiefly important because of the relation they bear to higher units of the organization. As is revealed in the above survey, the only function of significance is that of serving as component parts of the county or city committees. This function is of more than passing moment, however, because of the close relation between the local committeemen and the party voters. In most cases the citizen knows no party official other

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120. In Michigan the local chairman calls the caucus.

than the ward or precinct committeeman and has no other means of expressing his views or attitude in party government. The accuracy with which local committeemen represent the views of their constituents may well be questioned, yet it is the one thing of value that in any way justifies the election of the local committeemen in the only direct connection of the political party to the principles of democracy.

B

Campaign Committees

A branch of the committee system that is neither permanent nor regular is found in campaign committees.[131] They are organized for the special purpose of conducting political campaigns and handling party funds for this purpose. Consequently, they have no purpose or significance after the election. Campaign committees are thus peculiarly classified, with some features that appertain to both committees and conventions.[132]

The statutes relating to campaign committees are so similar that any classification or detailed analysis of them is impossible and unnecessary. Will the laws are general to the point of being vague and few real restrictions on the party will be to

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131. They are frequently referred to in the statutes as "political" committees.

132. It is possible that in some states parties maintain permanent campaign committees but this is unlikely in view of the existence of permanent regular committees.

be found. The most common provision is that persons be placed in charge of campaign receipts and expenditures [illegible] statement of such be filed with a public officer. It is [illegible] found that some of the statutes leave the matter of [illegible] to party discretion and provide only that a statement be filed.[1] No inference is properly drawn, then, that [illegible] provide for committees have only campaign managers [illegible] the necessary functions.

Twenty-five states have statutes requiring some kind of campaign committee.[2] None of these [illegible] the creation of

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[1] Arizona, Connecticut, [illegible], Idaho, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, West Virginia, and Wyoming. For the statutory provisions relating to campaign committees see: Compiled Election Laws of Arizona, 1935, pp. [illegible]; [illegible] Connecticut, 1936, pp. 117-124; Compiled Election Laws of Indiana, 1936 pp. 94-97; [illegible], Ch. 31, Sec. 9; Kentucky Code of 1930, Sec. 1565; Compiled Election Laws of Maryland, 1935, p. [illegible]; [illegible] Massachusetts, 1934, pp. 202-208; Compiled Election Laws of Michigan, 1935, pp. [illegible]; Compiled Election Laws of Missouri, 1936, pp. 127-129; Compiled Election Laws of Montana, 1935, pp. 295-305; Nebraska Code of 1929, Ch. 32, Art. 2; Compiled Election Laws of Nevada, 1935, pp. 88-93; Compiled Election Laws of New Hampshire, 1929, pp. 55-60; Compiled Election Laws of New Mexico, 1927, pp. 83-85; Cahill's New York Code of 1930, Ch. 17, Art. 15; Compiled Election Laws of North Carolina, 1938, pp. 67-70; Compiled Election Laws of Oklahoma, 1935 pp. 43-46; Compiled Election Laws of Ohio, 1932, pp. 153-154; Compiled Election Laws of Oregon, 1935, pp. 161-164; Session Laws of Pennsylvania, [illegible], Ch. 84, Sec. 1; South Dakota Code of 1929, Secs. 7371-7384; Tennessee Code of 1932, Sec. 2263; Compiled Election Laws of Utah, 1933, pp. 47-49; Compiled Election Laws of West Virginia, 1936, pp. 70-72; Compiled Election Laws of Wyoming, 1934, pp. 102-106. There are generally no provisions in the laws to indicate that campaign committees are not part or all of the regular committee system.

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what is considered to be a campaign committee. The remaining states include [illegible] as a contribution such persons. The most common [illegible] found in [illegible], combined or cumulated to [illegible] [illegible], political [illegible], or [illegible]. Fourteen states [illegible] the [illegible] [illegible]; and the [illegible] [illegible] [illegible]. [illegible], banquet [illegible], and [illegible] [illegible], [illegible] [illegible] [illegible]

West Virginia requires that statements be filed before and after the primary or general election, though the other states are content with a statement after the elections. The committee treasurer is the only official required to sign the statements in all states except Alabama, where all officers of the committee must personally sign their statements under oath. The clerk of the county or city or the secretary of state, depending on the locality of the election, are the usual officers designated for receiving the statements. Practically all the states make failure to file statements a misdemeanor, punishable by fine and imprisonment, and in some cases the courts are required to order the statement if not received within an allotted time.

Campaign committees, however, do not properly belong in a study of the regulated committee system. They are, as has been stated, not political, but a part of the permanent machine. Neither are they explicitly or fully provided for in this chapter. But the privileges which they exert over the party organization--and thus over the party as a whole--give them a place which otherwise they would not enjoy.

Judicial Interpretation of Committee Regulation

The close association of committees with the administrative functions of the party such as arranging for and conducting primary elections, filling vacancies in nominations and party offices, and settling the numerous questions that arise therefrom frequently bring these agencies into the courts of justice. The

litigation concerning committees covers a variety of points and brings practically every [illegible] machinery under judicial scrutiny.

The old question of jurisdiction, whether the precedent applications for mandamus, or quo warranto, and right view, have caused the courts to rule upon many of the legal status of party committees. Invariably has the writ of mandamus, issuable only to compel the performance of a public duty, been denied by courts to compel the courts to declare the status of a party officer where, as in most cases, the law has been performed from clarifying that fact. In many states much of the litigation is covered by the passage of legislation that declares party committees to be elective. This statutory affirmance, however, did not serve to dispel the opinion of the county split cases.

The Illinois court decisions of 1913 have served to put quietus the party committee or committeeman bull in the eyes of the law. In an early, broad statement of principle to the nature of political parties in general and which the more specific cases may be inferred. But the few courts that have dealt with the political question are far from agreement.

The courts of Illinois, North Dakota, Ohio, and Tennessee have all been firm in holding that party committees are not public agencies and their members not public officers. The North Dakota supreme court, in ruling on an application for prerogative writs to test the right to office of a state committee chairman, defined a public office as a position to which a portion of the sovereign-

ty, either executive, legislative, or judicial, ... for the time being, and which is established ... public", and declares what the duty of ... ority and what ... [125]. This was also the attitude of the High Court of Impeachment in later case where a state executive committee ... "are public officers... but a subdivision of party ... members thereof, charged ..." [126]. The Illinois court was even stronger in its declaration on this question. In sustaining a demurrer to a writ of quo warranto brought ... committeemen elected under the primary law of 1913, which ... that statutory creation and bestowal of powers ... committeemen public officers, declaring ... such an interpretation would make ... executives subject to the same ... tion. The situation which ... public office was one that involved the delegation ... sovereignty to be exercised ... incumbent for the benefit of the public, and it was ... men. [127] The ... court affirmed this opinion six years later and de-

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125. State v. Coleman, 85 W. Va. 213, 100 S.E. 847 (1919).

126. O'Neilsell v. Ledgerwood, 144 Penn. 633, 234 S. E. 1078 (1921).

127. People v. Brady, 301 Ill. 370, 133 N. E. 87 (1922).

cleared party committees accountable only to the party members. Similarly, the Missouri court in [illegible] contest over the election of [illegible] involved was not a matter of law.[129]

Another group of courts held an almost contrary attitude. The Missouri court in 1908 held that a party committeeman, elected to perform duties of public concern, held a position "at least... analogous to that of a public officer" and thus entitled to mandamus to protect himself from removal by fellow-committeemen.[130] The supreme court of New York also ruled that mandamus would issue to compel a committee to do its duty.[131] The more recent cases reveal a similar attitude. In Louisiana the appellate court, in granting injunction against a member of a state committee, declared "whether or not a member of a committee of a political party is strictly a public officer in law he at least holds a public position and performs public duties, the orderly performance of which is of paramount concern". The supreme court of Texas followed this conclusion in a decision of the same year which cited the

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128. People v. Krauser, 328 Ill. 512, 160 N. E. 80 (1928). See also People v. Litwin et al., 332 Ill. App. 192 (1931). This case was decided in the first district of the Appelate Court of Illinois.

129. Case of Election of Montgomery v. Berry, 158 N. Y. 24 (1927) See also Atty. General v. Berry, 74 N. H. 355, 68 A. 125 (1907); Moore v. Board of Com'rs of Leon County (Fla) 15 So. 476 (1928.

130. State v. Miles, 210 Mo. 137, 109 S. W. 835 (1908). The same opinion was expressed by this court in State v. Hamilton, 240 S. W. 445 (1922).

131. People v. Livingston, 174 N.Y.S.261,106 Misc. Rep. 188 (1919).

132. Dastague v. Cohen, 14 La. App. 475,131 So. 746 (1930)

a state candidate for the office of committee chairman as sufficient proof that such officials were within the reach of the courts by mandamus proceedings.[133]

Yet in the real life of party committeemen the courts have, generally, left them free of interference. Even when one of two groups claiming election as county committee in West Virginia had been recognized by the state executive committee of the party the supreme court refused to intervene to require that it reconsider the method by which the rival body claimed to have been elected.[134] In the same manner the Texas supreme court refused the writ of certiorari to review the action of a county committee which, alleging that county had been illegally divided for the election, refused to seat a member.[135] Perhaps a peculiarly broad discretion was expressed in a decision of the Texas court of civil appeals where the courts are required by law to settle contests over nominations. In a suit to contest the election of a county committeeman, the court declared it had no jurisdiction, that it would not assume any over the selection of party officers unless clearly authorized to do so by the statutes.[136] Reasons for the curious refusal of a party, in the absence of legislation to control the selection of committeemen, was evidenced

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133. Bellamy v. Dowley, 52 S.W. (2nd) 762 (Tex) (1930).

134. Republican Executive Committee v. Wetzel County Court, 68 W. Va. 113, 69 S. E. 522 (1910).

135. Haines v. Stone, 112 S. W. 147, 99 S. W. 353 (1910).

136. Tuck v. Cotton, 293 S. W. 813 (1927).

in a decision of the Supreme Court of [illegible] party's [illegible] seated as a member of [illegible] refusing to [illegible].[137] Another court held that [illegible] provided for the selection and [illegible] of [illegible] only the law applicable to [illegible] party organization.[138]

A few courts have usually [illegible] party committeeman [illegible] primary [illegible] nomination [illegible] election.[139] Thus the statute [illegible] election of a [illegible] committee [illegible] elections [illegible] primary.[140] The same opinion was expressed by the Virginia [illegible] that contests over the election of a [illegible] committee, [illegible] primary law, was held to be included in the term "primary elections" as used in the statute relating to contests. The West Virginia court [illegible] slightly in two cases in 1928, in holding that the primary law requiring that candidates for nomination in the primary be nominated prior to the election would operate to disqualify members of the party executive committee chosen at the primary election.[141]

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137. Porter v. Howe, 169 Wash. 638, 113 P.2d. 1071 (1932).

138. State v. Becker, 324 Mo. 179, 237 S.W. 117 (1928).

139. State v. Hartman, 43 S. W. (2nd) 870 (1931).

140. Beck v. Walker, 127 Ind. 582, 151 N. E. 401 (1926).

141. Shaw v. Evans; State v. [illegible], 144 S. E. 877 (1928).

The right of a committeeman to his office, once selected, is a matter which the courts will readily enforce [illegible] with regard under a direct mandate of the statutes. [illegible] Hampshire, where the laws have vested [illegible] party authorities, the court refused to [illegible] quo warranto proceedings, declaring that [illegible] highest party authority would be necessary [illegible] right of a contesting committee to be recognized, and that [illegible] had no authority in such matters.[143] In New York but slight [illegible] this attitude of aloofness in an early case [illegible] that it would not enforce the right [illegible] as a member of a committee, since the right to such office was one for the parties to decide.[144] [illegible] statute specifying the term of office [illegible] and giving the court jurisdiction over party [illegible], the court handed down an opposite opinion in regard to the right of a committeeman to his office, even [illegible] itself.[145] The High Court of Colorado, [illegible] correct a "wrongful act" in regard to elections, [illegible] greater alacrity by granting mandamus to enforce the right of a

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142. Attorney General v. Barry, 71 [illegible] 233, 69 A. 732 (1907).

143. McKane v. Democratic General Committee of Kings County, 123 [illegible] 110, 25 N. E. 1057 (1890).

144. [illegible] v. Democratic Committee of Kings County, 164 N.Y. 335, 58 N. E. 134 (1900).

state committeeman to his office.[145]

The courts have, in general, been lenient in their attitude toward the organization and procedure of political party committees. Their views have been that they are primarily a disposition to stay out of the matter entirely; that where laws are laws they have been interpreted literally; and only where the statutes are clear and mandatory has there been any judicial interference with internal affairs of committees.

The courts of Nebraska and West Virginia, for example, demonstrated a willingness to refrain from deciding cases of committee procedure. Thus the West Virginia supreme court, in applying a law providing that committeemen might hold office until successors were chosen, refused to decide whether the action of a committee in removing a member constituted a vacancy.[146] In Arkansas, where the law gives the courts jurisdiction over nomination contests, the supreme court ruled that it would not interfere with the judgments of constituted authorities of established political parties in matters involving party government or discipline or to determine disputes as to the regularity of the election of its executive officers.[147] The Colorado court refused, in 1898, to interfere with

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145. People v. Republican State General Committee, 75 Col. 312,32 P. 656 (1924).

146. State v. Kanawha County Court, 79 W. Va. 168,88 S.E. 868 (1916).

147. Patterson v. Montgomery, 142 Ark. 83, 220 S. W. 70 (1921).

the action of a committee in expelling the chairman at a special meeting, although such action previously translated [illegible] of the party in general. [148] In [illegible] the [illegible] court found that a majority of the [illegible], in the absence of party action, could [illegible] that the action of a majority [illegible] the committee itself.[149]

[illegible] the power or discretion of [illegible] in the [illegible] to [illegible] that [illegible] in [illegible] the ballot law in that state be [illegible] to the procedure of a party committee [illegible] that the committee met informally [illegible] minutes would not [illegible].[150] The Illinois supreme court [illegible] the [illegible] of that state [illegible] the [illegible] the fact of the resolution, neither [illegible] of the [illegible] of the law in such cases [illegible] would not prevent by injunction the action of the committee.[151] Likewise the [illegible] would not [illegible]

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148. [illegible] v. [illegible], [illegible]

149. In re [illegible], [illegible]

150. [illegible] v. [illegible], [illegible]

151. [illegible] v. [illegible], [illegible].

to invalidate an act of a county committee because a majority of the committee, who had filled the vacancies by law, did not cast a majority vote of all members in the county at the convention.[151] Similar decision was rendered by the high court of West Virginia when it held that a quorum of election commissioners could be compelled to receive votes cast by duly constituted, but from [illegible] with [illegible] members.[152]

Some courts, however, lean to the side of strict enforcement of any statutory provisions on committee offices. In Kentucky where law on party offices was changed [illegible] requirements of the statutory law as to the time for filing [illegible] was enforced so as to invalidate a vote of the precinct election a different limit.[153] The supreme court of Nebraska also construed its primary law to mean that a party officer, elected in accordance with statutory requirements, was entitled to the express assistance to protect this right from usurpation by one who was [illegible] party organization.[154] A willingness to enforce the terms of statutes relating to parties in much the same manner was expressed in those

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152. State v. Parsons, 31 W. Va. 142 S. E. 1113 (1914).

153. State v. McDowell County Court, 58 W. Va. 478, 108 S. E. 330 (1928). In an early case the Nebraska court threw out a nomination of a committee because only a majority of the members were present. State v. Smith, 57 Neb.41,77 N.W.384 (1898)

154. Taylor v. Democratic Committee of Franklin County, 200 Ky. 672, 77 S.W. 998 (1925).

155. State v. Purse, 77 Fla. 804, 82 So.144 (1919).

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[illegible] by the surface coal [illegible]

[illegible] the [illegible] [illegible] [illegible]

ing of parties as private associations with full power to settle their affairs.

States of the deep south have been outspoken in their attitude that the courts should have no control over the inherent powers of parties. A series of decisions by the Mississippi court give what is perhaps the strongest judicial backing of a committee in the exercise of its powers. Under a statute of that state requiring committees to investigate and correct wrongs in primary elections the court refused mandamus to compel a committee to re-assemble and review its conclusions in the light of the alleged ineligibility of a nominee, setting forth that such use of the writ would be "not to compel action but to control discretion in acting".[157] Though the section of the statute requiring investigation and correction of wrongs was omitted from the code of laws adopted in 1906, this court refused, in two cases before it in 1907, to interfere in nomination contests despite a statutory provision that the election laws, over which the courts had unquestioned jurisdiction, would apply to primary elections unless otherwise stated in the primary law. In Ramey v. Woodward[158] the court refused a litigant in a primary contest the trial by jury provided for contests in a general election, stating that no

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157. Brewer v. Abbey, 82 Miss. 559, 35 So. 153 (1903).

158. 90 Miss. 777, 44 So. 769, (1907).

specific provision for the court to entertain such a suit existed, that being a party affair over which the courts had no jurisdiction.[159] In State v. Brown the courts were again asked to issue mandamus compelling a committee, after the nominees had been announced, to re-assemble and investigate an irregularity. But the court re-affirmed its earlier view that the party committee was the "sole arbiter" of contested nominations.[160] The Arkansas court, prior to the enactment of a statute making the judiciary the agency for settling nomination disputes, declared that it would not seek to infer the power to decide primary contests from an ambiguous statute, and declared that even though a state central committee has acted fraudulently in determining a contest the fraud would not give the court jurisdiction since only political rights were involved.[161] A later case in Georgia revealed the high court in that state of the same attitude when, under a code provision requiring that the results of a primary be declared, it refused to mandamus a party executive committee after the election managers had failed to certify the results.[162] Recent cases decided by the

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159. 90 Miss. 876, 44 So. 768 (1907).

160. Mississippi recently passed an act making the courts competent to decide controversies over nominations upon appeal from the decision of an executive committee. Laws of Mississippi, 1935 (Ex) pp. 33-52.

161. Wells v. Brundidge, 109 Ark. 250, 160 S.W. 330 (1913).

162. Clark v. Colquitt County Democratic Executive Committee, 158 Ga. 642, 124 S.E. 40 (1924).

Alabama court tended to construe liberally the statutes in their relation to the powers of committees by refusing mandamus to compel action by the members thereof.[163] The earlier cases in other southern states are similar in most respects. The high court of Louisiana, in 1904, refused to enjoin a party committee from making a nomination in the absence of a statute expressly conferring such authority on the courts.[164] The supreme court of Kentucky, though inconsistent in a number of ways rendered a number of earlier opinions in which it strongly upheld the independence of the party machinery from the processes of the courts. In two cases before it in 1900 this tribunal refused to review the decisions of the governing authorities of a party in regard to either party officers or nominations.[165] Following the same reasoning this court refused to enjoin the holding of an election called by party authorities,[166] and, in a series of cases, asserted the power of party authorities to conduct primaries and declare nominees without establishing any right of appeal to the courts.[167] The procedure in committee meetings

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163. Blackwell v. Hawkins, 145 So. 477 (Ala.) (1932); Smith v. McQueen, 166 So. 788 (1936).

164. State v. Foster, 111 La. 939, 36 So. 32 (1904).

165. Davis v. Hambrick, 109 Ky. 139, 58 S.W. 779 (1900); Moody v. Trimble, 109 Ky. 139, 58 S.W. 504 (1900).

166. Meachem v. Young, 115 Ky. 346, 72 S.W. 1094 (1903).

167. Beasley v. Adams, 118 Ky. 695, 82 S.W. 249 (1904); Whittaker v. Swanner, 121 Ky. 281, 89 S.W. 164 (1905); Commonwealth v. Combs 120 Ky. 688, 80 S.W. 697 (1905); Harris v. Bruce, 130 Ky. 682, 87 S.W. 1078 (1905); Democratic Executive Committee of Harrison County v. Dougherty, 134 Ky. 402, 120 S.W. 343 (1909); Gilbert v. Smith, 145 Ky. 165, 140 S.W. 147 (1911)

was likewise passed over by the court when it refused to declare a committee nomination illegal because one member was erroneously represented by proxy.[168] Where this court did assume any jurisdiction it was careful to point out that its sole power was to compel the committee to act and that it had no power beyond this.[169] Early cases decided by the supreme court of Colorado were equally indicative of reluctance to interfere with committee powers.[170]

A few courts, in refusing to assume jurisdiction over committee proceedings, have lent judicial sanction to the theory that the state committee is the supreme voice in all party affairs within the state. This was the opinion of the Missouri court in refusing to interfere with a decision of the state executive group on a contested nomination.[171] Similarly, the West Virginia court declined to recognize a different committee from that upheld by the higher party committee.[172]

Where the courts have ruled on the powers of committees under the control of detailed primary laws there are marked differences to be noted in the opinions. In some decisions there is a

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168. Montgomery v. Chelf, 118 Ky. 786, 82 S.W.388 (1904).

169. Lucas v. Avis,28 Ky. L.R.184, 89 S.W.1 (1905); Democratic Executive Committee of Lincoln County v. Baughman,134 Ky. 864, 121 S.W.468 (1909) See also Henry v. Secrest,114 Ky. 677, 71 S.W. 892 (1903).

170. Capps v. Crier, 25 Colo. 474,55 P.166 (1898); People v. District Court,32 Colo.15,74 P.896 (1903). See also In Re Ganley, 154 N.Y.S.773, 90 Misc. Rep.445 (1915). Note, however, later cases decided by the courts of Colorado and Kentucky.

171. State v. Lesueur, 103 Mo. 253, 15 S.W.539 (1891).

172. Boggess v. Buxton,67 W. Va. 679,69 S.E.367 (1910). See also Williams v. Lewis, 6 Idaho,184, 54 P. 619 (1898).

noticeable tendency to construe the law so as to give greatest vent to the exercise of powers that were considered to be natural and inherent.

In one of the earliest cases involving the interpretation of a regulatory law the supreme court of Montana construed a law regarding certificates of nominees by a committee in a manner that respected the wishes of the committee at the expense of a literal application of the statute.[173] The same view may be noted in a Minnesota case where the high court held that the power of a committee to make nominations, if clearly authorized by the convention, would not be hampered because such authorization was not signed in accordance with the letter of the statute.[174] The power to fill vacancies was liberally construed by the Kansas court the following year.[175] The power to make nominations as the party committee decided was held to be unimpaired by a primary law in Missouri in 1901,[176] and a similar interpretation was given to statutes relating to committee nominations in 1912.[177] The same court was willing to uphold the removal of a chairman by doubtful majority

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173. Stackpole v. Hallahan, 16 Mont.40,40 P.80 (1895(. This case modified an earlier opinion in Price v. Lush,10 Mont.61,24 P. 749 (1890).

174. White v. Sanderson, 74 Minn. 118, 76 N.W.1021 (1898).

175. Bowers v. Clemans, 61 Kan.129, 58 P. 969 (1899(.

176. State. v. McCafferty,160 Mo. 317, 60 S.W.1067 (1901).

177. State. v. Kortjohn, 246 Mo. 34, 150 S.W. 1060 (1912).

of a committee where the statute governing procedure did not expressly prohibit it.[178] The court of Iowa followed the Kansas and Missouri courts in its interpretation of the power of committees to fill vacancies in nominations in 1902, declaring that any literal application of the statute regarding this power to nominate would disfranchise a great number of voters through no fault of their own.[179] In Maryland the court followed a similar vein in construing a statute giving a committee the power to issue calls for primary elections. The language of the opinion, in declaring the right of the committee to change the time of the primary, is typical: "We think it is clear that the power of the state central committee for the county is not exhausted by the mere issuance of a call selecting a day for holding primaries and a county convention. Before the passage of this law the committee was unquestionably the sole governing power of the party... This act in no wise restricts or limits the county committee in that regard."[180] Similar respect for what are considered natural or inherent powers of committees at the expense of strict interpretation of regulatory statutes may be found in a more recent opinion of the supreme court of Illinois. This tribunal, in holding a law giving power to senatorial committees to decide on the number of nominees from

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178. State v. Riechman, 239 Mo. 81, 142 S.W. 304 (1911).

179. Reese v. Hogan, 117 Ia. 607, 91 N.W. 907 (1902).

180. Revell v. Holliday, 102 Md. 82, 61 a. 1081 (1905).

legislative districts not unconstitutional, declared that no law could confer power on political parties. Parties, it held, are voluntary associations with inherent powers of self-government and laws can only regulate the exercise of their powers to nominate.[181] The reasoning of these two courts was, in general, that of the high courts of Florida, Indiana, Texas, and West Virginia in a number of decisions that tended to defend the powers of committees at the expense of strict application of the statutes.[182]

A greater number of courts, where regulatory laws have furnished a basis for decisions, have not hesitated to apply the full strength of the law toward curbing the powers exercised by committees. The decisions that take this turn emanate from nearly all the state tribunals. Some courts that appeared reluctant to go into the party field in the early years of regulation seem eager to assume this jurisdiction when the laws are clear and mandatory. Only in a few states have the courts maintained a consistent attitude in the face of regulations of increasing rigidity.

An unusual case decided by the supreme court of Pennsyl - vania may be considered a preface to the later interference with committees and their authority by the orders or edicts of the

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181. People v. Emerson, 33 Ill. 808, 165 N.E. 817 (1929)

182. State v. Mitchell, 150 So. 775, (Fla) (1935); State v. Board of Election Commissioners of City of Tipton, 198 Ind. 472, 149 N.E. 89 (1925); Hunt v. Sims, 167 So. 188 (La) (1936); Gettys v. Cobble, 244 S.W. 880 (Tex) (1933); Sourry v. Nicholson, 9 S.W. (2nd) 361 (Tex) (1933); State v. Payne, 87 W. Va. 306, 104 S.E. 733 (1920); State v. Fielder, 157 S.E. 897 (W. Va) (1931).

regular courts. Here the law made the rules of the party the law concerning primary elections. The court did not hesitate to mandamus the members of a committee to compel them to conduct party affairs in accordance with the rules.[183]

The courts of Kentucky and Louisiana have made unusual decisions in holding that the powers of party committees were purely ministerial and enforceable as such by mandamus. Strangely enough, these two states were among those that most strongly disclaimed jurisdiction over such affairs before the enactment of regulatory legislation.[184] In 1903 the high court of Kentucky declared, in two cases before it, that party committees were strictly bound by the law, having no exemption from the jurisdiction of the courts on the grounds of performing "political" duties.[185] The Louisiana courts were stronger, in three cases decided at widely separated times, holding that the duties of the committees were of a ministerial nature and could be performed only in the manner prescribed by the law, with no duty that could not be mandamused by writ of

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183. In Re Chester County Representative Nominations, 213 Pa. 64, 62 A. 258 (1905).

184. See: State v. Foster, 111 La. 939, 36 So. 32 (1904); Davis v. Hambrick, 109 Ky. 276, 58 S. W. 779 (1900); Moody v. Trimble, 109 Ky. 139, 58 S. W. 504 (1900).

185. Neal v. Young, 25 Ky. L. R. 183, 75 S. W. 1062 (1903); Young v. Beckham, 24 Ky. L. R. 2135, 72 S. W. 1092 (1903).

the courts.[186]

Most courts are less definite in regard to the exact status of committeemen and have been content to require strict observance of the laws as stated. This attitude has prevailed in cases covering all phases of committee powers.

The early doctrine that the political party is mistress of its own household has suffered serious modifications under the later regulatory laws. As early as 1897 the supreme court of Massachusetts, in a case involving a statute regulating caucuses, declared that a city committee could not go behind the election commissioners set up by the law in determining its own membership.[187] The New Jersey court asserted the power of the legislature to define a party committee and held that only a committee recognized by the legislature had any right to deal with the election machinery.[188] The high court of Louisiana, in a case decided in 1912, denied the power of a committee to declare its members elected before the date of the primary, even though they were unopposed.[189] The South Carolina court, contrary to some southern tribunals, interpreted a statute making a state committee the final authority on party

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186. State v. Parish Democratic Executive Committee, 120 La. 620, 45 So. 526 (1908); State v. Parish Democratic Committee, 173 La. 844, 138 So. 857 (1931); Parker v. Democratic Executive Committee of Franklin Parish, 5 La. App. 712 (1926). The latter case was decided in the second circuit of the Louisiana Court of Appeals.

187. Atty. General v. Drohan, 169 Mass. 534, 48 N.E. 279 (1897).

188. Heath v. Rotherman, 79 N.J.L. 32, 77 A. 520 (1909).

189. State v. Everett, 130 La. 35, 57 So. 576 (1912).

affairs to mean that the committee decisions were final "only so far as the party councils are concerned"[190], and the same court subsequently gave evidence that it was equally eager to enforce party rules where there was no statute.[191] A New York case revealed the court interfering to prevent a town committee from altering the rules of a county committee in violation of the election law.[192] Other cases on the subject were decided in Arkansas and Rhode Island where the supreme courts of both these states interpreted the laws on the term of committeemen so as to prevent them from being removed by fellow-members until their terms had expired.[193] In Louisiana a parish committee was held to have no power to make a rule adding commissioners for conducting an election of its members in contradiction of a state committee ruling.[194]

Powers of committees to call conventions and influence their deliberations have been curtailed sharply by the courts. Thus a state committee in Missouri was held to have no power to call a new convention in a county where two contending factions claimed recognition when no fraud was proven.[195] In Nevada a vacancy in a convention nomination was held to be illegally filled by an

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190. Hyde v. Logan, 113 S.C. 64, 101 S.E. 41 (1919).

191. Walker v. Price, 162 S.C. 64, 159 S.E. 914 (1931).

192. In Re Scott, 228 N.Y. 566, 128 N.E. 717 (1920).

193. Williamson v. Killough, 46 S.W. (2nd) 24 (Ark); La Grace v. Sprague, 151 A. 894 (R.I.) (1930).

194. State v. St. Paul, 111 La. 713, 35 So. 838 (1903).

195. State v. Crittenden, 164 Mo. 237, 64 S. W. 162 (1901).

executive committee because the convention had not expressly delegated it this power, though the statutes confirmed such general powers of party committees.[196] The high court of Texas refused mandamus to permit a party executive committee to review a certificate of nomination by a convention chairman where the power of certification was clearly set out in the statute.[197]

Most powers of committees, naturally, deal with nominations and it is in this field that most of the laws restraining them have been enforced and interpreted by the courts. The general arrangements for nominating primaries, usually given by statute to executive committees, have brought the courts to pass on these powers in several cases. An early case in Kentucky found the supreme court of that state denying the right of a committee to fix an earlier date for filing the names of candidates than the time mentioned in the statute.[198] The high court of Louisiana has strongly supported the statutes relating to its primaries at the expense of the powers of its executive committees. In 1912 it declared a parish committee incompetent to pass on the eligibility of candidates because this power was not enumerated in the statute.[199] Several years later a notice of the state executive committee fix-

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196. State v. Wilson, 40 Nev. 131, 161 P. 306 (1916).

197. Mays v. Cobb, 100 Tex. 131, 96 S. W. 1079 (1906).

198. Hagan v. Berwe, 112 Ky. 833, 65 S. W. 437 (1901).

199. Roussel v. Dornier, 130 La. 367, 57 So. 1007 (1912).

ing a date for filing candidacies that differed from the statutory requirement by one day was promptly declared illegal.[200] The duty of an executive committee to accept names of candidates whose petitions appeared on the face to be regular was legally affirmed in 1931[201] and a recent case revealed the court to be of the attitude that the primary law was the only authority for power which the committee had and that any additional requirements made of candidates at the primaries would be of no validity.[202] The high court of Texas has denied the powers of party executive committees to require pledges of past party loyalty of persons voting in the primaries,[203] to require a pledge of candidates that they would vote for all the party nominees,[204] and to apportion the costs of a primary election among congressional candidates.[205] All these powers were denied by strict interpretation of the statutes relating to them.

A common power of committees is that of filling vacancies in nominations. In this respect the courts have generally sought to keep committees within their statutory limits. As early as 1890

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200. State. v. Fields, 164 La. 954, 115 So. 45 (1927).

201. State v. Parish, 173 La. 857, 138 So. 862 (1931).

202. Rousseau v. Democratic Parish Executive Committee, 164 So. 175 (La), (1935).

203. Briscoe v. Boyle, 286 S.W. 275 (Tex) (1926).

204. Clancy v. Clough, 30 S.W. (2nd) 569 (Tex) (1928).

205. Holzschuher v. Wurzbach, 286 S.W. 289, (Tex) (1926).

the Montana court held that the language of a statute fixing the form of certificates of nominations was mandatory.[206] In another early case the Colorado court denied the right of a committee to fill a vacancy without express authority in the statute.[207] The opinion of the Minnesota court that it would construe the words of a statute "arising otherwise" in the light of the doctrine ejusdem generis operated to deny a party committee the power to fill a vacancy where there had been no candidate in the primary.[208] The Iowa court extended this interpretation to cover tie votes in primary elections, holding that a vacancy could be filled only where a nomination had been made.[209] In Missouri the court interpreted a statute allowing a committee to fill vacancies to prevent that committee from declaring that a vacancy existed.[210] The Kentucky court denied the power of a committee to nominate a person for a vacancy

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206. Price v. Lush, 10 Mont.61, 24 P.743 (1890); Cf. Stackpole v. Hallahan, 16 Mont. 40, 40 P. 80 (1895).

207. People v. Kerwin, 10 Colo. App. 473,51 P.530 (1897). See also La Mert v. Shirley, 24 Colo.389,50 P.862 (1897) where a committee was denied the power to rescind a nomination to fill a vacancy.

208. Corser v. Scott, 87 Minn. 313,91 N.W. 1101 (1902); This was also the opinion in State v. Board of Ballot Commissioners, 82 W. Va. 752,97 S.E. 284 (1918).

209. State v. Hayward, 141 Ia. 196, 119 N.W. 620 (1909); See also: State v. Karnes,83 W. Va.14,97 S.E.302 (1918); Koehler v. Baggs 121 Kan.897,250 P.268 (1926); Hamilton v. Raub,131 Kan.392, 292 P.396 (1930); Udie v. Byrne,233 N.W.648 (N.D.) (1930); State v. Tyler,130 So. 72 (Fla) (1930).

210. State v. Roach, 246 Mo. 56, 150 S. W. 1073 (1912).

who was ineligible to compete in the primaries.[211] A committee in Texas was declared to be without its rights in filling a vacancy in a nomination at the beginning of a regular term where the previous incumbent had died two years before.[212] Another case before the Montana court found that tribunal of the opinion that the power to fill vacancies in nominations did not include a vacancy occurring after an election.[213] A case before the California court the same year was decided so as to preclude the filling of a vacancy when the highest candidate in the primary was disqualified,[214] and a recent decision in Rhode Island held that the voiding of a nominating caucus would not create vacancies within the statutory power of the state committee to fill.[215] Two courts have asserted their jurisdiction over contests concerning nominations to mean that committees that decide such questions are strictly bound by statute and their decisions reviewable by the courts.[216]

The liability of committees as legal corporations has

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211. Francis v. Sturgill, 163 Ky. 650, 174 S.W. 753 (1915); For a slightly altered viewpoint see Lewis v. Mosely, 215 Ky. 573, 286 S.W. 793 (1926)

212. Gilmore v. Naples, 108 Tex. 167, 188 S. W. 1037 (1916).

213. State v. Duncan, 55 Mont. 376, 177 P. 248 (1918).

214. Heney v. Jordan, 179 Cal. 34, 175 P. 402 (1918).

215. McLymon v. Molloy, 162 A. 849, (R.I.) (1932).

216. Ashford v. Goodwin, 103 Tex. 491, 131 S.W. 535 (1910); Ex Parte Sanders, 63 S. C. 478, 31 S. E. 280 (1898).

been ruled on by the courts in three states. The supreme court of Wisconsin held in 1913 that members of a voluntary political committee were personally liable, jointly and severally, for expenses of elections incurred with their knowledge.[217] An earlier case in a lower court of Missouri had been similarly decided.[218] In 1907 the supreme court of New York held that a county committee, regardless of the form of its membership, constitution, by-laws, or rules, or the purpose of its existence, may be sued as a voluntary association under a statute authorizing suits against unincorporated associations.[219] Three earlier cases and one of recent date decided in lower courts of the same state place a somewhat different interpretation on the legal nature of committees. The supreme court held in 1873 that liability to the plaintiff was incurred only by those members who had voted for the resolution to incur the expenses.[220] The same court decided in two later cases that members of a political committee cannot be considered to have pledged their personal credit for the obligations of the party paper.[221] A city court recently denied the liability of a political committee for goods purchased. The fact that such an association was voluntary and of a non-profit

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217. Vader v. Ballou, 151 Wis. 577, 139 N.W. 413 (1913).

218. Richmond v. Judy, 6 Mo. App. 465 (1879).

219. Brown v. Cole, 104 N.Y.S. 109, 54 Misc. Rep. 278 (1907). This case was decided at a special term of the court in Fulton County.

220. Sizer v. Daniel, 66 Barb. 426 (1873).

221. Hoesman v. Kinnealy, 88 N.Y.S. 363, 43 Misc. Rep. 76 (1904); Lightbourne v. Balch, 89 N.Y.S. 856,97 App. Div. 187 (1904).

nature was stressed as ground for the decision.[222]

It is manifestly impossible to associate any appreciable number of decisions so as to arrive at what may be called judicial attitudes on the regulation of party committees. The angles of interpretation are too numerous and the courts are too widely at variance to admit of any such conclusions. Were it possible to collect decisions that pointed to any well-defined attitudes at any particular time, the constant amendment of existing laws and the enactment of new legislation would immediately render such formulations useless. Though but few cases involve purely interpretation of the statutes themselves, there is no consistency in the general principles which they enunciate. The decisions become the more confusing when the same courts, at different times, hand down opinions that are so far from agreement.

The most that can be said of the courts that have dealt with the matter of committee regulation is that they have not stretched the laws so as to hamper the committee system. Committees have suffered serious restrictions in the legal control of their organization and functions, it is true, but in almost all instances the laws on the statute books, and not the judicial interpretation thereof, have been the cause. Though the interpretation and application of regulatory legislation have, in some cases, been strict, there are no cases where the law has been stretched or twisted at

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222. Empire City Job print v. Harboard, 266 N.Y.S. 450, 148 Misc. Rep. 231 (1933).

the expense of the committee machinery.

It would not be too much to say, after a study of the cases in all the states, that, had only regulatory laws of a general nature been passed, the courts would have refrained from interfering at all with committees or their functions. The nature of the opinions of some courts, notably in the one-party states of the south where legal regulation is usually general, or optional, give this impression. The inference is properly drawn, then, that the judicial interpretation of committee regulation in the future will not greatly expand or contract the actual provisions of the statutes.X

X The statutes that have been enacted by practically every state make the committee system by far the most important branch of the party machinery. Much of this importance is due to the duties and powers of an executive and administrative nature that have been placed upon committees by legislative enactment. A great deal of importance would attach to them, however, because of the multiplicity of party tasks that no other agency than an executive committee can suitably perform.

Though not perfectly integrated, the committee system is, nevertheless, a complete party hierarchy. The laws impose all sorts of restraints, but there have been no laws or judicial decisions that would seek to impair the supremacy of the state central committee over the other parts of the system. Opportunities for exerting this supremacy, or for exercising any real control over the lower units of the system, have been greatly reduced by the laws, but no law has sought to break down the general theory that the state

central committee is the highest state authority on purely party affairs.

Most of the regulation of the committee system is involved in laws on primary elections. For this reason the functions of these groups have been subjected to more regulation than the actual organization of the committees themselves. Few laws indicate that the legislatures place any importance on the selection and organization of the committee membership, except as these matters relate to the conduct of honest primaries or conventions and other party affairs of a public nature. States have not regulated party committees merely for the sake of regulation.

The legislation on party committees has not increased with succeeding primary laws. Having set up a committee system in the beginning of primary regulation, many states have been content to leave these provisions intact despite changes in the laws on the primary election. There are laws in which the committees are even less closely regulated than under previous legislation. This trend can in no way be called general but it is interesting to one predicting future control of the committee machinery by the legislative process.

CHAPTER IV

REGULATION OF NATIONAL PARTY ORGANIZATION

It is a commonplace to say that, according to the legal theory of the American system of government, national laws control national institutions. The rule appears applicable to the institutions of party government. Logically, the power to legislate on national organization would belong, if at all, to Congress. Other than in acts to purify elections, enacted under its constitutional authority to control the election of its members, this body has not, however, essayed to include organization of parties among the matters upon which it would legislate. The voiding of one of these acts, and the narrow construction placed upon the powers of Congress over party affairs by the Supreme Court, discouraged the belief that party government or functions are proper subjects for national legislation.[1]

A

National Legislation and Theory

Only two major laws have been enacted by Congress that

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1. A number of bills have been introduced which would establish national regulation of party organization. Notable among them are: the Owen bill of 1911, the Cummins, Norris, and Rowland bills of 1912, and the Ferris, Hinebaugh, Lafferty, and Sherman bills of 1913. Congressional Record, 62nd Congress, 1st Session, p. 3596; Ibid., 2nd Session, p. 3531; Ibid., p. 3868; Ibid., p. 9445; Ibid., 63rd Congress, 1st Session, p. 85; Ibid., p. 86; Ibid., p. 161; Ibid., p. 1686. See a discussion later in this chapter.

relate in any way to the national organization of political parties. Both were corrupt practices acts, and, though one repealed the other, contained almost identical provisions concerning party machinery.

The Federal Corrupt Practices Act of 1910[2] defined political committees as "the national committees of all political parties and the national congressional campaign committees of all political parties and all committees, associations, or organizations which shall in two or more states influence the result or attempt to influence the result of an election at which Representatives in Congress are to be elected." The act stated further that each political committee must select a chairman and treasurer before any contributions were made and included detailed requirements of these officials in the way of publicity of campaign funds in primary elections, conventions, or general elections. This act was amended without changing the provision pertaining to party organization in 1911 and again in 1912.[3]

When the 1910 law, as amended in 1911, came before the

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2. 36 Statutes at Large, 822. The act of 1907 is not discussed as a major law here. It prohibited any corporation from making a money contribution in connection with an election at which U. S. Senators (by legislatures) or presidential and vice-presidential electors were chosen. Violations were made punishable by fine and imprisonment. 34 Statutes at Large, 864.

3. 37 Statutes at Large, 25; 37 Statutes at Large, 360.

Supreme Court for interpretation[4] upon a violation of the provisions limiting funds in a Michigan primary, its regulations, so far as they concerned party primaries, were held unconstitutional by a divided court.[5] Three possible sources of constitutional power for federal regulation of primaries were considered in this decision. The power of Congress to regulate the election of its members was the principal clause on which the case of the government was predicated, though the "general welfare" and "necessary and proper" provisions were also urged.[6] The court denied the authority to regulate under any of these provisions and refused to consider the argument that Congress had an indefinite, undefined power to pro-

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4. In two previous decisions involving corrupt practices at elections the court declined to pass on the constitutionality of the 1910 law. See: U.S. v. Cruckwell; U.S. v. Bambly; U.S. v. O'Toole, 243 U.S. 476, 61 L. Ed. 857 (1917); Blair v. U.S., Templeton v. U.S., Phillips v. U.S., 250 U.S. 273, 63 L. Ed. 979 (1919). In the first of these cases the court held that a conspiracy to cause illegal voting at a party primary did not violate the U.S. Criminal Code in regard to the protection of the elective franchise and civil rights and that the primary laws of states were not in effect adopted by Congress with the enactment of the laws of 1910, 1911, and 1913. In the second the court held that witnesses summoned to testify before a Federal grand jury could not justify their contumacy on the grounds of the possible invalidity of the statute under which the investigation was conducted. In both cases the court refused to rule on the validity of the statute of 1910 because it was unnecessary for the decisions rendered.

5. Newberry v. U.S. 256 U.S. 232, 65 L. Ed. 913 (1921). The court was divided five to four but Justice McKenna, one of the majority judges, concurred only as to the statute enacted prior to the Seventeenth Amendment, reserving his opinion as to the constitutionality of such a law under that Amendment.

6. See Art. I., Secs. 4 and 8 of the Constitution.

tect offices created by the Constitution in this manner.[7]

Whatever hope proponents of national regulation of party organization had held was dispelled by this decision. The next act of Congress,[8] passed in 1925, though including sections similar to earlier provisions concerning a campaign committee, specifically exempted[9] party primaries and conventions from its regulation. Since this law tended to avoid the question of party affairs and functions,

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7. The Court said in part:
"We cannot conclude that authority to control party primaries or conventions for designating candidates was bestowed on Congress by the grant of powers to regulate the manner of holding elections. The fair intendment of the words does not extend so far; the framers of the Constitution did not ascribe to them any such meaning. Nor is this control necessary in order to effectuate the power expressly granted. On the other hand, its exercise would interfere with the purely domestic affairs of the state, and infringe upon liberties reserved to the people." For an analysis of this decision see E.S.Corwin "Constitutional Law in 1920-21," American Political Science Review, Vol. 16, p. 22. For criticism see C.E.Merriam's note in Michigan Law Review, Vol. 19, p. 860

8. An act prohibiting corrupt practices at primary, general, or special elections was passed in 1910. It did not refer to the party machinery and was repealed in 1925. 40 Statutes at Large, 1013. See also an act of 1909, 35 Statutes at Large, 1088, repealed in 1925.

9. 43 Statutes at Large, 1070. This act defined a political committee as "any committee, association or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates or presidential or vice-presidential electors (1) in two or more states, or (2) whether or not in more than one state if such committee, association or organization (other than a duly organized state or local committee of a political party) is a branch or subsidiary of a national committee, association, or organization."

there was little doubt about its constitutionality and the matter of national regulation of party organization seems, for the time being, settled. A recent decision of the Court, though involving a different part of the constitution, supported the general theme of the Newberry case that parties and their primaries are not elections and party affairs not a proper subject of national control.[10]

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10. Grovey v. Townsend, 295 U.S. 45, 79 L. Ed. 1292 (1935). This was the third of three notable Texas cases which concerned the application of the Fourteenth and Fifteenth Amendments to party primaries. In Nixon v. Herndon, 273 U.S. 73, 71 L. Ed. 760 (1927), the question involved was the constitutionality of a Texas statute which prohibited Negroes from voting in the Democratic primaries. Mr. Justice Holmes' opinion for the majority of the court said in part: "We find it unnecessary to consider the Fifteenth Amendment because it seems to us hard to imagine a more direct and obvious infringement of the fourteenth.... States may do a great deal of classifying that it is difficult to believe rational but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case."
In Nixon v. Condon, 286 U.S. 73, 76 L. Ed. 984 (1932), the constitutionality of a resolution, authorized by statute, of the state executive committee which barred Negroes from the primaries was before the Court. But the court could see little distinction between this and a law, declaring, "We do not impugn the competence of the legislature to designate the agencies whereby the party faith shall be declared and the party discipline enforced.... When those agencies are invested with an authority independent of the will of the association in whose name they undertake to speak they become to that extent the organs of the State itself..." The opinion indicated, however, that such a resolution, unauthorized by statute, would be constitutional. Justices McReynolds, Van Devanter, Sutherland, and Butler dissented.
In Grovey v. Townsend, the Court passed on the constitutionality of a resolution of the Democratic state convention, unauthorized by law, which prohibited Negroes from voting in the primaries. The court upheld the action in a brief opinion which stated, "We are not prepared to hold that in Texas the state convention of a party has become a mere instrumentality or agency for expressing the voice or will of the state.... The point that primaries amount to elections is not of significance. It is to confuse the priwilege of membership in

It appears, therefore, that whatever legal restraint, except in regard to campaign finances, is exerted over the national organization of parties must be looked for in the laws of the various states. Some states either directly state or imply that provisions in regard to the selection and control of members of the national machinery are subject to the pleasure of the national bodies themselves.[11] In a few states, however, this matter is omitted from the statutory provisions, and in a noteworthy case arising in Wisconsin the question was raised as to the result of a

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10. (continued)
a party with the right to vote for one who is to hold a public office. With the former the state has no concern, with the latter it is bound to concern itself..." For discussions of this question see O.D.Weeks, "The White Primary". Mississippi Law Journal, Vol. 8, pp. 135-153; J. Feigenbaum, "Political Discrimination by Party Control over Primary Elections," St. Louis Law Review, Vol. 17, pp. 155-183; R.W.McDonald, "Negro Voters in Democratic Primaries", Texas Law Review, Vol. 5, pp. 393-400; F. G. Davidson, "Right of Political Party to Exclude Negroes from Party Primaries", Virginia Law Review, Vol. 16, pp. 193-197.

11. The Nevada law declares that the state convention "if consistent with the rules and regulation of the party" shall select the national committeeman and committeewoman. Compiled Election Laws of Nevada, 1936, p. 38; the West Virginia Law states that the national committee shall be elected by the state committee "unless the rules of the national party otherwise provide, in which latter event they shall be selected in all respects as provided for the selection thereof by the rules and regulations of the national organization of the political party..." Compiled Election Laws of West Virginia, 1936, p. 16; the Wyoming law provides that the state convention choose "in accordance with the rules and regulations of its party" delegates and alternates to national nominating conventions. Compiled Election Laws of Wyoming, 1934, p. 45.

conflict between the decisions of a national party organ and the laws and court decisions of a state. In this case the law provided that preference on the party ticket would be given to the nominees of the convention certified by the official committee of the party. Two conventions claimed recognition and made nominations. The national convention having seated the delegates of one, proceedings were instituted by its nominees for state office against the state committee claiming the right to a place on the ballot as the official representatives of the party. But the court chose to uphold the statute making the party state committee the tribunal to decide such contests, declaring that the decisions of the national convention were of no significance in determining the contest, either to the committee or to the court.[12]

The significance of this case may well be noted with respect to the independence of the state organization of the national councils when supported by legislative authority. Obviously, the laws of the states cannot change the deliberations of the national convention or committee, but it is equally evident that the edicts of the national organization cannot change or affect the state party organs, so far as state affairs are concerned, when these organs are acting under authority of the state. The question arises, then, as to the effect on party organization of a whole

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12. State v. Houser, 122 Wis. 534, 100 N.W. 964 (1904). The contest was between the "regular" and the LaFollette branches of the Republican party. The regular delegation was seated in the convention but the state nominees of the LaFollette group were given the place on the ticket as official representatives of the party.

group of state laws that required state organs to ignore or violate the conclusions of the national party authorities. Certainly this would result in a serious break in the party hierarchy.

B

The Background of State Regulation

The first state law to enter the field of national party organization was the Wisconsin act of 1905.[13] This law provided for the direct election of all delegates to national conventions. The following year the Pennsylvania legislature enacted a primary law that included a provision for the direct election of district delegates to the national nominating bodies.[14] South Dakota followed in 1909 with a statute that provided for popular election of national convention delegates, partly by districts and partly at large.[15] Direct election of all convention delegates was included in the Oregon act of 1910[16] and was copied by a number of states in rapid

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13. Laws of Wisconsin, 1905, Ch. 369. This act was the result of the controversy over the seating of delegates to the Republican national convention of 1904. See State v. Houser, 122 Wis. 574, 100 N.W. 964 (1904).

14. Pennsylvania Laws, 1906, (Ex.) No. 36. Delegates-at-large were to be chosen by the state convention.

15. Session Laws of South Dakota, 1909, Ch. 297, Sec. 36.

16. This act was approved by the people at the general election of Nov. 8, 1910 and proclaimed by the governor on Dec. 3, 1910. General Laws of Oregon, 1911, pp. 18-33. See J. D. Barnett, "The Presidential Primary in Oregon", American Political Science Quarterly, Vol. 31, pp. 81-104.

succession.[17] In 1911 California,[18] Nebraska,[19] New Jersey,[20] North Dakota,[21] South Dakota,[22] and Wisconsin adopted original or amendatory laws providing for direct election of delegates. The same year Ohio and Pennsylvania specified the election of district delegates to national conventions,[23] and New York enacted a law making the popular election of district delegates optional with the state committees.[24] In 1912 Illinois, Maryland, and Massachusetts were added to the list providing for direct election of delegates,[25] and the following year Iowa,[26] Montana,[27] Texas,[28] Minnesota,[29] and New Hampshire,[30] passed such laws. In 1915 West Virginia provided for direct

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17. Laws of California, 1911 (Ex) Ch. 15.

18. Nebraska Laws, 1911, pp. 616-632.

19. New Jersey Laws, 1911, Ch. 183.

20. Laws of North Dakota, 1911, pp. 516-517.

21. Session Laws of South Dakota, 1911, pp. 256-257.

22. Laws of Wisconsin, 1911, p. 306.

23. Ohio Laws, 1911, pp. 414-417; Public Laws of Pennsylvania, 1911, pp. 43-45.

24. Laws of New York, 1911, Ch. 891, Sec. 53.

25. Laws of Illinois, 1911-12 (Ex) pp. 43-45; Laws of Maryland, 1912, pp. 393-397; Acts & Resolves of Massachusetts, 1912, pp.173-174.

26. Acts of General Assembly of Iowa, 1913, pp. 98-104.

27. Laws of Montana, 1913, pp. 590-593.

28. General Laws of Texas, 1913, pp. 88-89.

29. General Laws of Minnesota, 1913, pp. 554-557. The Minnesota act provided that the elected delegates and alternates choose the national committeemen.

30. New Hampshire Laws, 1913, pp. 711-713.

election by plurality vote of all delegates and alternates,[31] and a law in North Carolina specified the direct election of delegates-at-large.[32] An amendatory law in New York provided for compulsory direct election of all delegates to national conventions in 1913.[33] Since 1915 no additions have been made to the states providing for the popular selection of delegates.

The Pennsylvania statute of 1906 was, in some respects, the first to seek to control the action of delegates in the assembled national conventions. This law permitted each delegate to have the name of his preference for President printed on the ballot at the right of his name. The first compulsory provision of this nature was found in the initiative measure of Oregon in 1910 which provided for a preference vote for President and Vice-President in the primary at which delegates were elected. Six other states adopted similar provisions for control the following year, and two states enacted optional primary laws that made preference primaries possible.[34] A law of Michigan in 1912 provided for the presidential preference vote,[35] and the laws of Illinois, Maryland, and Massachu-

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31. West Virginia Laws, 1915, pp. 223-246.

32. Public Acts of North Carolina, 1915, pp. 154-168.

33. Laws of New York, 1913, (Ex) Ch. 820.

34. California, Nebraska, New Jersey, North Dakota, South Dakota and Wisconsin, Florida and Georgia enacted optional laws; Revised Statutes of Florida, 1920, Secs.303,324,326,332,344; Park's Annotated Code of Georgia, 1914, Secs. 127-138. See L. R. Aylesworth, "Presidential Primary Elections: Legislation of 1910-12". American Political Review, Vol. 6, pp. 429-433.

35. Public Acts of Michigan, 1912, 1st Special Session, Act 9.

setts of the same year contained this provision along with the regulation of the selection of delegates. The Iowa law of 1913 contained a provision for a preference vote on the candidates to determine the sentiment of the voters. More stringent provisions for controlling the delegate vote were contained in the acts of that year in Minnesota, Montana, and Texas. The laws in Indiana, and Vermont in 1915 required a preference vote on presidential candidates and the laws in North Carolina and West Virginia of the same year included similar means of control. The Ohio law was amended in 1913 to provide that voters may express their preference for President and Vice-President;[36] Massachusetts eliminated the preference vote and provided for the election of delegates whose preferences were known in 1913,[37] and California enacted a similar amendment in 1915.[38]

The popularization of the committee branch of the national machinery has not proceeded as far as that of the other part of the organization. The first laws with these provisions were enacted in 1911 when the direct election of committeemen was included in the presidential primary laws of Nebraska, North Dakota, and South Dakota.[39] The Iowa law of 1913 also contained such provision and

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36. Ohio Laws, 1913, p. 478.

37. Acts and Resolves of Massachusetts, 1913, Ch. 835.

38. Statutes and Amendments to the Codes of California, 1915, Ch.137.

39. The optional law of Florida of 1913 made the popular election of national committeemen optional with the party authorities.

Michigan and Oregon amended their laws to that effect.[40]

The movement for state control stopped almost completely after the year 1915. Since that year only Alabama has been added to the list of states providing control of national conventions, a short-lived statute which provided for a preference vote on presidential candidates, with the successful candidate to select his own delegates, having been enacted in that state in 1923.[41] On the contrary, reaction has been evident in numerous ways and a number of presidential primary laws have been repealed or otherwise removed from the statute books.

The presidential primary laws in Minnesota and Iowa were repealed in 1917, after only one election had been held under each of these.[42] Vermont repealed her law in 1921,[43] and in 1923 the Montana legislature discarded its law in a measure that was upheld by popular referendum in 1924.[44] In 1927 North Carolina repealed her law after a twelve years' trial.[45] Michigan repealed the popular

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40. Acts of General Assembly of Iowa, 1913, pp. 92-104; General Laws of Oregon, 1915, Ch. 124; Public Acts of Michigan, 1913, pp. 749-750. This act was repealed two years later. Ibid. 1915, p. 253.

41. General Acts of Alabama, 1923 No.272. This law was said to have been intended to give Senator Underwood a right to pick his own delegation.

42. Minnesota Laws, 1917, Ch. 133; Acts of General Assembly of Iowa, 1917, Ch. 14.

43. Laws of Vermont, 1921, No. 9.

44. Laws of Montana, 1925, pp. 468-469.

45. North Carolina Laws, 1927, Ch. 82.

features of her law in 1931, leaving the delegates to national conventions to be chosen as prescribed by the state committee,[46] and in 1935 North Dakota abandoned its law providing for popular vote on national party officials and presidential candidates.[47] Indiana accomplished virtual repeal of her presidential primary in 1929 when a law was enacted that eliminated the popular preference vote.[48]

The laws of two other states that employed the popular vote as a method of controlling the members of the national convention were eliminated by other means. In Texas the law of 1913 was ruled unconstitutional by the state supreme court in 1916,[49] and the 1923 law of Alabama was abandoned upon the opinion of the Attorney-General of that state that it violated the constitutional provision prohibiting compulsory primary elections.[50]

Besides repealing acts and constitutional barriers, popular participation in the control of national conventions has experienced other setbacks. In various states amending laws have given evidence of a revulsion from the earlier trend. New York amended her laws at two different times to remove direct control--

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46. Public Acts of Michigan, 1931, pp. 179, 330

47. North Dakota Laws, 1935, ch. 135.

48. Acts of Indiana, 1929, p. 223.

49. Waples v. Marrast, 108 Tex. 5, 184 S. W. 180 (1916).

50. The opinion of the Attorney-General was not contested.

once to make delegates-at-large elective by the state convention instead of by the people, and again to make party rules the determinant as to whether the selection of those officials be by the state convention or the state committee.[51] The Illinois law was changed to place the selection of delegates-at-large in the state convention and to eliminate the provision for printing the presidential preference of each candidate for delegate after his name on the ballot. The preference vote was retained, though it was merely to secure "an expression of the sentiment and will of the party voters".[52] South Dakota retained popular selection of delegates under the Slocum law of 1929, though the preferential vote was eliminated.[53] Y

Y The selection of the party national committeemen appears to have had little relation to the movement away from the direct election and instruction of the delegates to nominating conventions. However, it is of interest to note that, of the states repealing the presidential primary, none provide for the popular selection of national committeemen, though this was a common means of choosing them under the provisions of the presidential primary laws. Whether this indicates a sentiment to revert from popular control or a mere

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51. Laws of New York, 1933, p. 1551; Ibid., 1937, p. 814.

52. Laws of Illinois, 1927, p. 471 ff. The provision on the preference vote was the same as in the 1913 law. Y

53. Session Laws of South Dakota, 1929, Ch. 118.

desire to find a more convenient means of selecting these officials would be difficult to ascertain.

This brief resume of the movement to make the national party organs subject to control by state legislation is of importance chiefly because it reveals certain clear-cut tendencies. Of twenty-six states that have at one time or another enacted laws seeking to control by popular vote the action of members of the national nominating conventions, only fourteen today have anything that may be called the presidential primary.[84] The halt in the movement in 1915, followed by the revocation of numerous laws, some of them repealed quite recently, is conclusive proof that this phase of control of national conventions is definitely on the decline. Though there is no reason why delegates may not be instructed in other ways, the laws give no indication that other methods have been made compulsory, and the addition of instruction by the direct primary has usually meant the abandonment of all statutory control.

Regulation of the National Convention

Twenty-seven states today have laws that contain provisions

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84. California, Illinois, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Dakota, West Virginia, Wisconsin. This does not include Florida and Georgia where the primary is optional with the party authorities.

for regulating national conventions.[55] In a great many cases this regulation amounts to little more than designating a means of selecting delegates. Other laws, however, seek to bind delegates to vote in the convention in a certain manner and thus materially influence the deliberations of the convention. Some laws exert a sort of semi-control by providing that the entire scheme of regulation is contingent upon its conformity with the rules of the party authorities. In all it may be said that hardly more than half the laws provide any real control over the assembled national conventions.

1. Selection of Delegates

Delegates to national party conventions are nearly all chosen by popular vote or by state convention, though there is little preference shown for either of the two methods. In a number of states the combination of the two makes the distinction difficult.

In California, Massachusetts, Nebraska, New Hampshire, New Jersey, Ohio, Oregon, South Dakota, Pennsylvania, West Virginia, and Wisconsin the laws provide that all delegates be chosen by popular

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55. California, Florida, Idaho, Illinois, Indiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Vermont, Washington, West Virginia, Wisconsin, Wyoming.

vote in the primaries.[56] In all these states except two the delegates are divided into two groups, with the district delegates chosen from districts and delegates-at-large voted on by the people of the entire state. California and South Dakota make no distinction between delegates, providing that all be elected from the state at large. Alternates for all delegates are generally provided for with the method of selection the same as of the delegates. Wisconsin however, uniquely provides for the selection of alternates by the state central committee. Besides making provision for alternates the laws of two states provide a means of filling vacancies. Massachusetts gives this duty to the remaining delegates.[57] New Hampshire places this task on the state central committee. The number of delegates in Massachusetts is left to the decision of the state committee, and in Wisconsin the law specifies that the number be designated by the national committee. Other laws that omit reference to the number of delegates imply that the number is to be fixed by higher authority.

Idaho, Indiana, Maryland, Mississippi, Nevada, Missouri,

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56. Statutes and Amendments to the Codes of California, 1915, Ch. 147; Compiled Election Laws of Massachusetts, 1934, pp. 91-115; Annotated Code of 1924, Ch. 32, Secs. 1114-1114w; Compiled Election Laws of New Hampshire, 1929, pp. 144-148; Compiled Election Laws of New Jersey, 1938, pp. 150-153; Compiled Election Laws of Ohio, 1932, pp. 61-63; Compiled Election Laws of Oregon, 1933, pp. 57-59, 61-64; Session Laws of South Dakota, 1929, Ch. 118; Purdon's Pennsylvania Statutes, 1936, Tit. 25, Secs. 1081-1109; Compiled Election Laws of West Virginia, 1936, p. 18; Compiled Election Laws of Wisconsin, 1933, pp. 74-75.

57. Or, in case of neglect by this group, to the state committee. A tie vote creates a vacancy in Massachusetts.

Montana, North Dakota, Texas, Vermont, and Wyoming have laws providing that all delegates to national conventions be chosen by state conventions.[58] As would be expected in laws that provide this method of selection there is little attention paid to the matter of territorial representation. In Idaho the law requires that one-third of the delegates be from Congressional districts and the remainder from the state at large, and in Indiana the stipulation is made that the delegates from the Congressional districts in the state convention may choose the national delegates from their district if the party rules so provide.[59]

In Indiana, Montana, Nevada, North Dakota, and Wyoming the laws prescribe alternate delegates. Maryland provides that vacancies in delegations may be filled as the rules and regulations of the party specify. The number of delegates to be selected is not referred to in this group of states, except in Vermont where the provision is made for delegates "in number apportioned to the

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58. Idaho Code of 1932, Ch 32, Sec. 634; Compiled Election Laws of Indiana, 1936, p. 62; Compiled Election Laws of Maryland, 1936, pp. 138-141; Mississippi Code of 1930, Sec. 5866; Compiled Election Laws of Nevada, 1935, p. 32; Compiled Election Laws of Missouri, 1936, p. 70; Montana Laws of 1927, Ch. 126; North Dakota Laws, 1935, Ch. 135; Texas Code of 1925, pp. 876-877; Compiled Election Laws of Vermont, 1934, p. 98; Compiled Election Laws of Wyoming, 1934, p. 45. The Missouri law provides that the state committee "may" call a convention for this purpose.

59. The Maryland law allows delegates to the state convention for choosing national delegates to be instructed and provides that district delegates in the state convention vote as a unit.

state".

In Illinois and New York a hybrid of the popular election and other methods of choosing delegates is found. Illinois provides for the popular election of district delegates and alternates, but requires that delegates-at-large and their alternates be selected by the state convention.[60] The New York law is similar except that the state committee may be substituted as a means for selecting the delegates-at-large if the party rules so provide.[61]

Florida, Michigan, and Washington leave the selection of delegates to party authorities. In Florida the state committee is allowed to declare in favor of candidates for delegate. If such declaration is made the names of the candidates are placed on the primary ballot.[62] Michigan leaves the manner of election to the state central committee, specifying only that if selection is made at a state convention whose delegates are chosen at county conventions, the county conventions must be held on the same day.[63] In Washington the law simply provides that the "state party organization may provide for the election of delegates to the national convention".[64]

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60. Compiled Election Laws of Illinois, 1935, pp. 135-143.

61. Cahill's New York Code of 1930, Ch. 16, Art. 8.

62. Compiled Election Laws of Florida, 1935, p. 31.

63. Compiled Election Laws of Michigan, 1936, p. 76.

64. Compiled Election Laws of Washington, 1936, pp. 35-36.

2. Control of Voting

Regulation of the voting of state representatives to national party conventions is, naturally, of more importance than the laws providing the method by which these delegates are chosen. For it is often of little consequence, so far as the work of the conventions is concerned, what method of selection is used. However, when the states seek to bind these delegates in regard to voting in the convention it becomes highly important, since the control of a great number of delegates by conflicting instructions might conceivably cause serious impediment, or even disruption, of the national nominating assembly.

The two principal methods of instructing delegates to national conventions have been the preference vote on presidential candidates and voting for delegate preferences, printed on the ballot. Variations and combinations of both have been used in the states where presidential primary laws have been enacted. As indicated in an earlier section of this chapter, the presidential primary has, in a number of states, been abandoned. In others it has been modified to eliminate any real control by popular vote. In a number of states, however, it remains a part of the party primary system.

Today fifteen states have laws which seek in some way to

control the delegations to national conventions.[65] In two states of this group the control is so slight as to be of no consequence. Florida provides merely that "the State Executive Committee of any party may, by resolution, declare for ... President and Vice-President..." and that, in case of such declaration, the names of such candidates shall appear on the primary election ballot. The Missouri law is merely a general provision that the state party convention may adopt resolutions or make "such declarations of party principles with reference to national questions as may be deemed advisable".

In nine states the laws provide that voters express their choice for presidential or vice-presidential candidates on the

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65. California, Florida, Illinois, Maryland, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, South Dakota, West Virginia, and Wisconsin. See the statutes in: Statutes and Amendments to the Codes of California, 1915, Ch. 137; Compiled Election Laws of Florida, 1935, p. 31; Compiled Election Laws of Illinois, 1935, p. 151; Compiled Election Laws of Maryland, 1936, pp. 136-141; Compiled Election Laws of Massachusetts, 1934, pp. 91-115; Compiled Election Laws of Missouri, 1936, p. 70; Nebraska Code of 1922, Ch. 32, Secs. 1114-1119; Compiled Election Laws of New Hampshire, 1929, pp. 144-146; Compiled Election Laws of New Jersey, 1936, pp. 150-152; Compiled Election Laws of Ohio, 1932, pp. 61-63; Compiled Election Laws of Oregon, 1936, pp. 57-59, 81-84; Purdon's Pennsylvania Statutes, 1936, Tit. 25, Secs. 1081-1109; Laws of South Dakota, 1929, Ch. 118; Compiled Election Laws of West Virginia, 1936, p. 18; Compiled Election Laws of Wisconsin, 1933, pp. 74-75. It will be noted that Missouri, though not having a presidential primary, provides how delegates may be instructed and New York though providing for direct election of delegates provides no means of control. Under the optional primary law of Georgia control is also left to party rules.

ballot.[66] In two others, Massachusetts and New Hampshire, candidates for delegates may express a preference for President, such preference to be printed on the primary ballot, and in South Dakota the statute requires that candidates for delegates file preferences for President and that their names be grouped under the candidate of their choice on the ticket. The California law allows the candidate for delegate to express his principles or his choice, with a place in a group on the party ticket if the presidential candidate consents.

The intensity of the control which these laws seek to exercise over delegates is of varying degree. Some laws omit reference to the influence of the instructions provided for on the delegates. Others specify adherence to the will of the voters. One state renders the means of control of little importance by directly providing that a preference vote be only advisory to the elected delegates.

The states of Maryland, Nebraska, New Hampshire, Ohio, Oregon, and Pennsylvania have laws which aim at real control over the votes of the national delegates. Maryland provides that its representatives in the national conventions "shall be instructed and bound to vote as a unit" as long as there is a possibility of nominating the candidate for whom a plurality of the vote was cast. In Ohio and Nebraska the candidates for delegate must sign a

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66. Illinois, Maryland, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, West Virginia, Wisconsin.

pledge to abide by the vote of the preferential primary. In New Hampshire candidates for delegate may or may not pledge themselves to vote for certain candidates, but, if pledged, must support this candidate as long as his name is before the convention. Oregon requires candidates for delegate to pledge themselves to use their "best efforts to bring about the nomination of those persons for President and Vice-President of the United States who receive the largest number of votes in the coming primary election". The Pennsylvania law requires candidates for delegate to make statements that they will or will not support the leading candidate in the presidential primary, and these statements are printed after their names on the primary ballot. If an affirmative declaration is made the candidate is considered bound to support the choice of the primaries.√

√In other states where control is attempted the requirements are less rigid. Wisconsin merely makes it legal for a candidate for delegate to include a statement of the presidential candidate or group of principles which he prefers. New Jersey makes no stipulation except that candidates for delegate may be grouped together and have their choice for President opposite their names on the ticket. This is also the only provision for accomplishing control found in the South Dakota law. In Illinois the law expressly provides that the result of the preference vote is to be "for the sole purpose of securing an expression of the sentiment and

will of the party voters".[67]

There appears to be no legal duty on the part of a delegation in a national convention to obey the instructions of a state primary or convention. Though various laws that directly provide for delegate adherence to home instructions are mandatory, the history of national conventions for the last twenty-five years does not indicate that delegates have always considered them as such. No litigation involving this particular part of primary laws seems to have been in the courts. However, the supreme court of Nebraska found occasion to rule on the binding nature of instructions in a case that came before it on another point in 1912. In a suit for mandamus to compel the printing of names of candidates for presidential elector chosen at a primary on the ballot under a particular party designation, the court declared that a preference vote was only morally binding.[68] This court ruling and the loose interpretation that has been generally placed on delegate instructions raise

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67. The California law leaves so much to the discretion of the delegate that it is hardly effective.

68. State v. Wait, 93 Neb. 313, 138 N.W. 153 (1912). This case was a mandamus proceeding to compel the Secretary of State to print the names of candidates for elector chosen at the primary on the election ballot in the Republican column. At the time the electors were nominated Roosevelt was a candidate for the Republican nomination and convention delegates were instructed for him. When he was later nominated by the Progressive party the point was raised as to whether the electors chosen were Republican or Progressive. The court ruled that candidates for elector had no connection with convention delegates and that the persons nominated for electors must go on the ballot as Republicans.

the question of the value of such a system.[69] Obviously, if the instructions are to be considered as only advisory and not binding the plan to control the conventions fails at a vital point and the popular instruction of delegates becomes a farce. More simple methods of instruction have been employed in some states where they are elected, but here the laws leave so much to the discretion of the delegate that the control is hardly more than nominal.[70] A

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69. Prof. Overacker has this to say of instructed delegations: "Our experience with the presidential primary would seem to demonstrate that the mere instruction or pledging of delegates is an unsatisfactory method of control. In times of stress, if the delegates' personal preferences and their instructions are at variance they may totally ignore their instructions, supporting the popular preference perfunctorily on the early ballots and swinging to their real choice at the critical moment, or follow their instructions to the letter in voting on nominees but ignore them on other questions which may be vital to the interest of the candidate for whom they are instructed to support. It is a poor system for it gives the party voters the least effective control where they need the most effective control. The delegates to a national convention cannot be turned into an 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. For these reasons he is in a position totally different from that of the presidential elector, who has but one function to perform and who can be instructed definitely in regard to that function. Moreover, "iceburg" delegations will never win support for their candidate in the convention and the presidential aspirant who enters the convention with such support finds it gradually melting away at the critical moment". The Presidential Primary, pp. 64-65.

70. Prof. Overacker suggests that effective control can be accomplished by choosing delegates whose personal preferences are known, either by grouping the candidates for delegate under their presidential preferences or by retaining the preference vote and allowing the presidential candidate or his representatives to select the delegates. Ibid., p. 85.

working system has not yet been devised.)

Various proposals have been made that would accomplish the purpose of the presidential primary by national legislation. The Owen bill, introduced in the United States Senate in 1911 included such a provision,[71] and three bills providing for presidential primaries were introduced in 1912.[72] The message of President Wilson to Congress recommending such legislation was followed by the introduction of the Ferris, Hinebaugh, Lafferty, Sherman, and Cummins bills in 1913.[73] No action was taken on any of the bills at the time[74] and the interest in the question shifted to academic circles. Proposals for a national presidential primary were made in 1920 by Professors Boots and Ray and by Mr. Pulsifer.[75] Professor Merriam

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71. Congressional Record, 62nd Congress, 1st Session, p. 3596.

72. These bills were introduced by Senator Cummins and Congressmen Norris and Rowland. See Congressional Record, 62nd Congress, p. 3531; Ibid., p. 3638; Ibid., p. 9445.

73. Congressional Record, 63rd Congress, 1st Session, p. 85; Ibid., p. 85; Ibid., p. 161; Ibid., p. 326; Ibid., p. 1696.

74. The proposition was indirectly defeated in 1913 when Senator Owen moved to amend a bill, providing for a constitutional amendment to lengthen the term of the President from four to six years, to include the direct nomination and election of President and Vice-President. The vote was 32 for, 56 against, and 27 absent and not voting. Congressional Record, 62nd Congress, 3rd Session pp. 2361-2362.

75. H.S.Boots, "The Presidential Primary", National Municipal Review Supplement, Sept. 1920; P.O.Ray, "Reform of Presidential Nominating Methods", Annals of American Academy of Political Science, Vol.106,p.83; H.T.Pulsifer, "The Pig and the Primary", Outlook, Vol. 126, pp. 19-21.

is also the author of a proposal for a national party conference.[76]

Two national party platforms have contained provisions endorsing a national presidential primary. The Progressive party platforms of 1912 and 1924 both contained such planks.[77] The improbability that such legislation would be constitutional and the long and tedious process necessary to amend the Constitution has probably discouraged congressional activity in this respect.[78]

The proposals for a national presidential primary fall into three main groups. One of these would eliminate the convention and provide a direct nation-wide primary. Another would combine the convention with the direct primary but make the convention a proposal body for candidates to be ratified at the primary. A third plan would combine the primary with conventions as they now exist but strictly limit the sphere of action of the convention.

The Cummins and Lafferty bills of 1913 would eliminate the

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76. C.E.Merriam, "Nomination of Presidential Candidates", Journal of the American Bar Association, Vol. 7, pp. 79-85. See also his American Party System, pp. 298-304.

77. K.H.Porter, National Party Platforms, pp. 338, 521. The Democratic platform of 1912 endorsed..."legislation in each state which will permit the expression of the preference of the electors for national candidates at presidential primaries". Ibid., p. 383.

78. Sixteen amendments have been proposed to the Constitution providing for the direct nomination of the President by the people through primaries. M.A.Musmano, Proposed Amendments to the Constitution, p. 40

convention and allow the voters to indicate their choice for President at a direct, national primary. Candidates would be placed on the ballot by petition. The Lafferty bill provided that the successful candidate must secure a plurality of the votes by states; the Cummins bill provided for a plurality of the popular vote without regard to state lines. Neither bill made any provision for the drafting of a platform.[79]

The proposals of Professors Merriam and Ray and Mr. Pulsifer would retain the convention and provide a primary but would reverse the order of their functions as they now exist. The Pulsifer-Ray plan provides for a convention for drafting a platform and proposing five or six names to be submitted to the party voters at a national primary election to be held a month after the convention. The candidate receiving the highest number of votes would be declared the presidential nominee and the candidate receiving the second highest would be bound to accept the vice-presidential nomination. The Merriam plan proposes a party conference made up of state and national party leaders to serve as a clearing house for matters of policy and party administration, which might propose the names of presidential candidates for consideration by the voters.

The third group of proposals, which would retain the convention in its present order and add to it a primary limiting its functions, are found in the plans of President Wilson, Professor

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79. These bills are summarized in the American Yearbook, 1914, pp. 69-71.

Boots, and in the Ferris, Hinebaugh and Sherman bills introduced in Congress.[80] The Wilson proposal would have a convention consisting of the nominees for Congress, senators with unexpired terms, the national committee, and the presidential candidate chosen in the preceding primary, to accept and declare the results of the primary and frame a platform. The Boots plan is similar except that it allows the successful candidate for President to name the delegates to the convention, thus removing the possibility that the platform drawn might not fit the candidate. By the provisions of the Ferris bill delegates to a national convention would be elected by the people at the same time a preference vote for President was cast, and delegates would be required to vote for the primary choice on the first twenty-five ballots. The Hinebaugh bill was similar in general but varied to allow candidates for delegate to pledge themselves to a candidate if they chose with a provision for binding the delegates to cast one ballot for the candidate to whom they had pledged themselves in the primary. The Sherman bill was similar to the Hinebaugh proposal except that it provided for recognition of existing primary laws in the states.

Though all of these proposals are open to some objections they represent attempts to correct existing evils in the system

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80. The Wilson plan as proposed in his message to Congress is found in Congressional Record, 63rd Congress, 2nd Session, p.44. The Ferris, Hinebaugh, and Sherman bills are summarized in the American Yearbook, 1914, pp. 68-71.

of nomination of President and Vice-President, and, were they put into practice, might create a more favorable sentiment toward a rapidly-declining system of state presidential primaries.[81]

Regulation of the National Committee

The executive branch of the national party organization has more nearly escaped the attention of state legislatures than the non-permanent branch of the machine. This is to be expected since the duties of the committee are chiefly of an executive or administrative nature and do not directly relate to matters of general public interest. Often, it is true, the committee is of greater importance in bringing about the success of the party at the polls than the convention but this fact has not served to focus public attention upon the selection of its members or the control of its proceedings.

Twelve states provide by law for the selection of members of the national committee.[82] Missouri, Nevada, North Dakota, and

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81. Most of these proposals are treated in Overacker, op. cit., pp. 187-196. See also a debate in the U. S. Senate on the presidential primary on December 3, 1913. Congressional Record, 63rd Congress, 2nd Session, pp. 97-100.

82. Florida, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, and West Virginia.

South Dakota all prescribe election by the state convention.[83] Montana, Pennsylvania, and West Virginia provide for the election of committeemen by the state central committee,[84] and South Carolina provides that its state committee may fill vacancies in the national executive body.[85] Nebraska and Oregon provide that members of the national committee be chosen by popular vote at the primary, and this is the method of selection in Florida if it is so decided by the state central committee.[86] In Michigan the law provides that the delegates to the national convention choose the national committeemen "at the convention".[87] X

X Equal representation of the sexes on the national committee, provided for by the rules of both the major parties, is included in the laws of five states.[88] Vacancies that may occur are

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83. Compiled Election Laws of Missouri, 1936, p. 70; Compiled Election Laws of Nevada, 1935, p. 38; North Dakota Laws, 1935, Ch. 135; Session Laws of South Dakota, 1923, Ch. 113; In Missouri the convention "may" be called at the discretion of the state committee.

84. Compiled Election Laws of Montana, 1936, p. 65; Purdon's Pennsylvania Statutes, 1936, Sec. 1041; Compiled Election Laws of West Virginia, 1936, p. 16.

85. Acts of the General Assembly of South Carolina, 1915, pp. 169-175.

86. Nebraska Code of 1923, Ch. 32, Sec. 1116; Compiled Election Laws of Oregon, 1936, pp. 51-56, 70.

87. Compiled Election Laws of Florida, 1935, p. 31. There are indications that the direct primary method is sometimes employed by party rules. See E.S.Logan (Ed) The American Political Scene, p. 55.

88. Compiled Election Laws of Michigan, 1936, p. 76.

89. Montana, Nevada, North Dakota, Oregon, and South Dakota.

provided for in four. Oregon gives this task to the delegates to the national convention and provides that they organize for that purpose. In the other three states vacancies are filled by the state central committee.[80]

The prevailing conviction that the rules of the national party organization are supreme is evident in a number of laws. The Nevada statute stipulates that its provision on selection of national committeemen shall apply "if consistent with the rules of the party". Pennsylvania and West Virginia show deference for the national authorities in much the same language. The term of office of national committeemen is mentioned in the single state of Montana where the law substantiates the four-year tenure rule of the major party organizations.

In only one state does the law attempt to control the action of members of the national committee. In Oregon the declaration required of candidates for delegates to national conventions, in which they pledge themselves to endeavor to bring about the nomination of the candidate securing the largest vote in the primaries, is also required of the candidates for the committee and they must also promise "to represent their constituents to the best of their ability".[81]

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80. North Dakota, South Dakota, and West Virginia.

81. Compiled Election Laws of Oregon, 1936, p. 58.

National committee regulation by state legislation is of no genuine importance. Consisting, with one exception, of laws that merely establish a method of electing the members of this body, there is no evidence that the laws of the states produce any serious effect on the composition or functions of the national executive board. There are instances where the laws on selection have contravened the rules or customs of the national organization but the national authorities have usually dominated. State laws and the national rules have tended to respect each other in regard to method of selection.[92]

In the field of national organization, more than in any other, state regulation shows definite tendencies to decline. Distinctly an innovation in the field of American legislation, the direct primary for selecting members of national party bodies--- and especially the effort to control their action---was a product of the "progressive" upheaval in the country that occured about the

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92. The Democratic National Committee refused in 1915 to seat a claimant from Oregon who was elected in accordance with a law of that state and held a certificate of election from the governor, though the 1912 platform of the party provided that national committeemen be chosen in the way provided by the Oregon law. See Official Proceedings of the Democratic National Convention, 1916, p. 194. ff. The rules of both the national parties now provide that national committee members be elected by the national conventions, though committeemen chosen by a method provided by state law or state party rules are treated as nominations and ratified as a matter of course. Ibid., 1924, p. 222. Official Proceedings of Republican National Convention of 1916, p. 71.

time of the Roosevelt candidacy of 1912. For a time its spread was rapid and the prediction was freely made that the deliberations of national nominating conventions would become so highly controlled by instructions resulting from state laws that such meetings would become unimportant.[93] That such predictions were entirely erroneous is now a matter of common knowledge. Almost in the wake of the "progressive" era came the first of a number of repealing acts that have continued down to the present time. The reaction has been so decided that today almost half of the original laws providing for state control have been abandoned. In almost every instance the old plan of leaving instructions to the discretion of party authorities has been restored.[94]

It is not within the purpose or scope of this study to analyze the causes of this trend away from state regulation of the national bodies. However, a few observations on the question at this point may help to explain the regulation that has been retained as well as that which has been relinquished.

Various causes have been suggested for the decline of state regulation. In the most extensive study that has been made of the presidential primary, published in 1924, one authority advances the theory that this institution has suffered the fate of all democratic movements due to the conservative reaction following the Great War.[94] This author also discusses technical defects of the

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93. For a list of editorial predictions on the success of the presidential primary see Overacker, The Presidential Primary, p.175.

94. Overacker, Op. cit., p. 32.

statutes, due in part to their emergency nature and in part to the maneuvers of party bosses, as a cause of the decline of the institution. In some states the expense entailed in holding an election for instructing delegates is considered to be sufficient reason for repealing the primary and substituting the older and simpler method of election by convention or committee./ The report of the North Dakota Governmental Survey Commission in 1932 on the presidential primary in that state is a typical example of these criticisms:

> "The theory of the presidential primary system is that the voters of the state are supposed to express their preference at this election from among the presidential candidates of the parties with which they may be affiliated. At the same time they elect delegates to the national conventions of their respective parties, at which conventions the actual nominations are made. It happens in practically every presidential primary that some, often a majority, of the delegates elected to a national party convention from this state, are opposed to the candidate for whom the party's preference vote is cast. The delegates, when they reach the national convention, usually vote according to their own views, and not according to the preference expressed by the voters, thus practically nullifying the preference vote. In the last Republican preference primary in this state neither of the candidates, whose names appeared on the ballot for nomination to the presidential candidacy, had the support of any considerable number of the Republican voters. So far as expressing the preference of the Republican voters of the state was concerned, the election was a farce which cost the taxpayers of this state $134,635. 95

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95. An accompanying table shows this to be an average cost of $.68 per vote.

> The practical purpose served by these elections has been the choice of the party delegates, electors, and national committeemen and committeewomen. These are matters of importance to the political party involved but that fact does not justify that the taxpayers of the state be required to bear the expense of setting up this party machinery. The expense in each case should be borne by the party directly involved. The cost of the present presidential primary election is out of all proportion to its value." 96

Whatever may be the cause or causes behind the abolition of the direct primary for voting for presidential candidates and candidates for delegates, one must accept the conclusion that the trend toward less democratic methods of choosing and instructing national party officials is more than a periodic shift of sentiment. It cannot be explained away as a conservative reaction that, pendulum-like, will swing the presidential primary again into public favor when a progressive period returns. The defects in the particular laws are many and important but they do not serve as the explanation. Recent legislation on the presidential primary has been, not to amend or correct existing laws, but to repeal them.

There is no escape from the conclusion that the movement for state regulation of national organization, at least so far as concerns control of the action of the assembled national councils, is rapidly losing ground. That this continuous decline does not

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96. North Dakota Public Documents, No. 36, p. 3437. For other criticisms of the presidential primary see, R.S.Boots, "The Presidential Primary", National Municipal Review Supplement, Sept. 1930; F.W.Dickey, "The Presidential Preference Primary", American Political Science Review, Vol. 9, p. 467.

result from the tendencies of the times is likewise too evident to merit further consideration. It would hardly be too much to say that another decade will find the presidential primary practically discarded.

The significance of this development is not a matter that will be treated here. It may be only a revulsion from an effort to control party affairs that are without the proper sphere of state regulation. It may be the abandonment of a method that is inherently unworkable. Again, it may be the most outward evidence of a general movement to slacken the hold of the law on party affairs and return to the laissez-faire days of party government. Whatever the importance to other legislation may be, the rise and fall of the presidential primary is an interesting experiment for observation and study by persons who wish to understand trends in the regulation process.

CHAPTER V

CONCLUSIONS

Since the beginning of the movement to regulate the machinery of political parties by statutory enactment a vast amount of legislation on the subject has been passed. Since the original act of California in 1866 more than three hundred laws have been passed dealing with the organization of political parties.[1] Naturally, a great many of the laws were of an amendatory nature and did not bring about any important change in the effect of the regulation. Other laws were held to be in violation of constitutional provisions and made repeated enactments necessary.[2] A considerable part of the legislation, however, consists of valid attempts to regulate the organs of party government and to change this regulation to fit new conditions or attitudes.

The heterogeneity of legislation on party organization and the correlation of such legislation with various external or local forces makes it difficult to draw any definite conclusions. All deductions will be variable; all statements must be qualified.

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1. The laws used in this study number 311. This number would be considerably increased, however, if certain primary laws that indirectly relate to organization were included.

2. This was especially true in California and Illinois.

A.

Effect of Regulation

In the first place, legislation has brought the party organization closer to the great body of citizens. This was the logical result of the awakening of the national conscience to the importance of party government in the political life of the country, stimulated by the unethical practices of the organization and the effrontery of party bosses. The first reaction of the people, as reflected in the earlier laws, was to curb the party practices, such as bribery in nominations, that were in closest contact with the voters. Actuated, in part, by the belief that it was beyond the power of the legislature to pass more comprehensive and detailed laws, legislators apparently looked to the result rather than to the methods by which the result was reached as the proper point on which to legislate.[3] Once an entering wedge was driven various parts of the machinery were regulated and finally full public control was generally accomplished by legislation. Where the laws did not assert control it appears that legislators were restrained by

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3. A dissenting opinion in one of the first cases to uphold a law regulating the internal conduct of committees stated the early attitude in these words: "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 organizations the same as in business associations but beyond that it cannot go". People v. Democratic Committee, 164 N. Y. 335, 58 N. E. 124 (1900).

considerations of political expediency rather than a lack of power.[4] Thus in a few years after the people evidenced a realization of the importance of party organization and that it was a proper subject of state control, the whole system was, in some states, in the hands of the people. In many other states various parts of the machinery were made subject to democratic processes. This rapid transfer of party government from the hands of the party leaders to the people is the first and most obvious effect of the regulative program.

As the logical co-existent of extreme democratization of the party machinery, decentralization has been one of the marked effects of statutory regulation. Where local party officers are elected according to procedure outlined by law there is naturally little control exerted by the central party body. Responsibility is to the party voters rather than the party organization and the integrating element is lost. Carried through to its proper conclusion a program of regulation could, conceivably, break up the entire party structure.

That regulation has produced no such effect on the American party system is manifestly true. One reason that may be advanced for this is that the democratization program is by no means complete. Laws making party officials elective by the people are not universal in application nor always comprehensive in form. Many

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4. Note especially the Texas law of 1927 giving the party state central committee power to exclude Negroes from primaries which was repealed after the decision in Nixon v. Condon. The lack of regulation in many southern states is doubtless influenced by the one-party system.

of them are fragmentary, applying only to parts of the system and setting up varying methods by which power may be delegated and duties performed. Another reason that would suggest itself is the numerous gaps and defects in the laws which make possible oligarchical control by party leaders. In a number of states where there is general regulation vital parts of the machinery are left without the confines of the law.[5] Still another reason is the improper enforcement of the statutes. It may be expected that laws on party organization would encounter special difficulty in enforcement, for those who administer the laws are often closely connected with those who break them. The person who violates the law in the interest of his party may find himself arrested by officers and arraigned before a judge, not only of the same political party but in whose nomination he was a factor. The ties of party loyalty and interest cannot but influence the administration of laws, deemed to be detrimental to the party welfare but too popular to allow the party to involve itself in a repeal movement in the legislature.

Responsibility in party government has doubtless been made more elusive and obscure under the regulation program, though the extent to which it has been affected is, naturally, evident

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5. The Mississippi laws, for example, regulate the committee system in considerable detail but leave the convention system, the means by which the committees are chosen, almost without regulation and subject to the committees themselves. Thus it is possible that a committee system, once in control of a political faction, could virtually name its own successors and become self-perpetuating.

only to the student of the laws in actual operation.[6] This is the logical result of making so many different constituencies the electors of the party officials. It would be only fair to say that many of the statutes that disseminate responsibility were hastily passed and do not reflect the sober deliberations of American legislatures. They were enacted during the democratic wave that swept the country during the first two decades of the present century, and some of them have since been modified or repealed. Nevertheless, their general effect has been to make the political party a less responsible body. The old adage that what is the duty of all is the duty of none will apply in this case; party government is, in many states, "everybody's business".

Two ways appear open to correct the disruptive effect of

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6. There is a strong feeling among writers on the subject that the effect of regulation of organization, democratizing the machinery, has been to lessen party responsibility. See A. C. Millspaugh, Party Organization and Machinery in Michigan Since 1890, pp. 113-118; C. C. Hormell, "The Direct Primary Law in Maine and How it Has Worked", Annals of the American Academy of Political Science, Vol. 106, p. 138; A. B. Hall, "The Direct Primary and Party Responsibility in Wisconsin", Ibid. p. 54; W. H. Wilson, "Primary Elections as an Instrument of Popular Government", Case and Comment, Vol. 23, pp. 386-389. One defender of the direct primary makes this assertion: "The writer would like to venture the suggestion that some of the evils which are said to have followed from the destruction of party responsibility by the direct primary are really the result of state regulation and control of the party process and not the result of the use of the primary, which is merely one form of this regulation". L. Overacker, "Direct Primary versus Convention System", American Federationist, Vol. 34, pp. 541-545. See also the criticism of state regulation in H. Croly, Progressive Democracy, pp. 342-343.

such legislation------the legal and the extra-legal. Political parties have tried both methods. The first legislative attempt to secure responsibility while retaining the primary was in the Colorado pre-primary law of 1910.[7] This law, unique in more than one respect, provided that parties may prepare a slate of candidates according to their own rules and regulations but required that these candidates be nominated by the people in a referendum vote before becoming valid. The same general principle was applied in the South Dakota law of 1911 and the Minnesota law of 1921, though both these acts have since been repealed. The Massachusetts law of 1932 is the latest measure of this kind.[8] Other laws seeking to combine the scattered portions of party machinery by making the party nominees members of conventions or committees have helped to integrate the organization and thus make it more responsible. Some legislation, especially in recent years, has sought to correct the features most destructive to unity and responsibility by making only the more important offices subject to the will of the people. There are reasons to believe that extra-legal methods to enforce

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7. See supra, p. 80.

8. The idea of the pre-primary proposal convention gained its first publicity in the Hughes plan of a direct primary law proposed to the New York legislature in 1909. See A. Ludington, "The New York Primaries Bill of 1909", American Political Science Review, Vol. 3, pp. 371-381

party unity and responsibility have been widely used.[9]

Though there are laws which furnish outstanding exceptions, the three general effects of the program of party regulation have been democracy, decentralization, and non-responsibility. Each grows out of the other, and the extent to which each organization has experienced these effects depends upon the particular statute or statutes applying. Obviously, it is not regulation but rather the kind of regulation that adversely affects the party organization. Parties are not greatly different from other political institutions. If it has been found that the long ballot and division of similar duties among different officials have made for inefficiency in state and municipal government, there appears no reason why these principles applied to political parties would not tend to produce the same results.

B

Importance of Regulation

Political parties are a vital and essential part of our political life. They formulate the public policies, select public officials, and operate the government. Through the medium of parties a leader is chosen from the throng of aspirants and a program is evolved from a conglomeration of theories. Out of chaos and

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9. One writer on the subject stated, on the basis of a questionnaire mailed to state party leaders in 1923, that twelve states employed an extra-legal pre-primary convention or conference. S. C. Schuyler, "Pre-Primary Conventions", Annals of the American Academy of Political Science, Vol. 106, pp. 97-104.

confusion parties bring order and harmony. Deprived of well-organized political parties, democratic government would be sadly crippled. To threaten the life of political parties is to threaten, in a sense, the life of the government itself.

Good government depends largely upon good party government. Good party government depends upon proper party action and this in turn depends on strong party organization. The organization is the party. Through organization a party elects its candidates, and carries out its policies; the efficacy of the party's organization determines its success or failure.

Our country subscribes to the principle of government by law. Unlike some other countries, we have no important political institutions that have remained without statutory recognition. Since this theory of administration prevails there seems to be no reason why party organization, as a public institution which fills one of the chief places in the political machinery, should not conform to legal regulation. If there is virtue in public control of public institutions, the control should be exerted over the institution that exercises the actual power. To leave party organization without the law is to leave one of the most important parts of the governmental machinery unregulated. The character of the government in such a case would largely depend upon the character of the persons in control of the organs of party machinery.

Shortcomings of Present Regulation

Only the student who has spent years in observation of the application of legislation on party organization can competently

judge of the real defects or shortcomings of that legislation. A perusal of the statutes cannot give anything except general indications of defects. However, there are omissions and imperfections that cannot be overlooked in even the most cursory examination.

The most serious breach in the program of regulation is the group of states that have not enacted any legislation that affects party machinery. In six states the laws are so vague and fragmentary as to make party government operate almost entirely according to party rules.[10] Of these six states five are of the Democratic "Solid South".[11] It seems unnecessary to point out that

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10. Alabama, Georgia, Kentucky, New Mexico, North Carolina, and Virginia. Alabama leaves the committee system subject to party rules except for certain routine duties prescribed by the statutes and the only reference to the convention system is that the state committee "may provide for" such a meeting. Georgia leaves all affairs of party government to the rules and decisions of the party authorities except for statutory requirements that the state committee must be elected by the state convention, if a convention is held, and that a county convention may be called only upon proper notice and at a specified place. Kentucky refers to party machinery in her laws only in such broad terms as "governing authority" and in providing that conventions make certificates of nominations. The New Mexico laws take no cognizance of party organization except to require that conventions file certificates of nominations and that committees have authority to fill vacancies. North Carolina leaves the whole convention and committee systems without the law except for general provisions that the party committee may conduct primaries and make nominations to fill vacancies. Virginia has no regulation of either branch of the party machinery.

11. Alabama and Arkansas have voted solidly Democratic in presidential campaigns since 1892. Virginia and North Carolina have voted solidly Democratic with the single exception of the presidential campaign of 1928 and Kentucky has varied only in the 1924 and 1928 campaigns. E. Robinson, The Presidential Vote, 1892-1932, pp. 47-53.

legal regulation is of special significance in a state dominated by a single party. In a two-party state the elections are means by which the voters can exercise a voice in the selection of public officials, and the free play of competing groups would tend to prevent flagrant abuses in the party system, without statutory regulation. But in a one-party system the party primaries are to all practical purposes the elections, and the party machinery, in effect, the government. Consequently, the legal regulation of party affairs becomes of prime importance, being the only means by which the state exercises any real control over the electoral process.[12] This lack of regulation in one-party states constitutes one of the most serious defects in the whole regulation program. Where legal control is of most importance it is least found.[13]

Where there are laws regulating organization, fundamental defects may be readily observed. A great many statutes make what appears to be the wrong approach to the subject. Democratic control is sought by making the lower branches of the machinery elective, and providing that these representatives choose the members of the

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12. It should be noted that a number of states with little statutory regulation provide that the courts may review decisions of party bodies on primary nomination contests. This appears to be control without regulation and gives the courts considerable voice in the machinery of organization. However, decisions indicate that the courts have in general tended to respect the opinions of party officials and tribunals.

13. The racial question is doubtless chiefly responsible for non-regulation in these states.

higher conventions or committees. It may be seen that this type of law tends to discourage active participation by the voter in the selection of party officials. In the first place, only the persons designated by the party bosses become candidates in a great many localities since the average citizen would not offer himself for such an insignificant position. Too, the party membership is hard to arouse to the importance of local contests for delegate or committeeman and the tendency is for only a small portion of the people to vote.[14]

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14. A writer on the system in Indiana makes this trenchant criticism: 'The so-called democratisation of the party machinery, a fundamental part of the program of the direct primary, has been a total failure in Indiana. It is written into the law and there it has remained---on paper only.
"The Indiana primary law is based on the assumption that the proper place at which popular control should be applied is in the precincts. Hence, under the law, both major parties regularly "elect" precinct committeemen who are chairmen of the precinct committees, and the foundation upon which the party organization is based. There are 3,395 such precinct committeemen in Indiana. These meet in their county meetings as a county committee and elect a county chairman for each county. The 92 county chairman meet in congressional districts and elect 13 district chairmen who constitute the state central committee. These elect the state chairman.
"It would be a cumbersome system at best, were the precinct committeemen the real representatives of the popular sentiment in the precincts elected to have a decisive vote in party affairs. But the real state of affairs is that the average party voter in most instances has no idea that such a committeeman exists, and certainly has no interest in his selection.
"To nominate a United States senator, a governor, or representative, or to express a preference for a presidential nominee; that the voter understands. That he has within his grasp possible complete control of the party itself through the insignificant precinct committeemen, he does not understand. Nor does he understand why party control is of any importance". F. H. Guild, "The Operation of the Direct Primary in Indiana", Annals of the American Academy of Political Science, Vol. 106, pp. 178-180. See also, C. Kettleborough, "The Direct Primary in Indiana", National Municipal Review, Vol. 10, pp. 166-170.

The inclination of party machinery is to work from the top down, instead of from the voters up as is intended in such laws.[15] Thus such a law plays directly into the hands of the party boss. What seems a more logical approach would be to provide for popular control of the central party organ. Though open to somewhat the same objection of apathy on the part of the voters, such a law would gain the advantage of placing on the ballot candidates for a body whose importance was more widely understood and whose activities were less intricate and confusing.[16]

The provisions of many statutes dividing the functions of parties among different branches, or parts of the same branch, of the party machinery, and providing different constituencies for the selection of various parts of the machinery can be considered only as defects. If parties are given duties to perform and are made responsible for the performance of those duties, it seems inconsistent to divide the organization and functions so as to make the task difficult or impossible. The importance of unity to the responsible functioning of an organization does not seem to have been realized in the drafting of a great many regulatory laws. Some

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15. E. B. Logan (ed), The American Political Scene, pp. 71-72.

16. The importance of the central body of a party organization is thus expressed by one writer: "The key to the political machine . . . is control of the state central committee. . . Control of the state central committee is the prime essential for the boss. Take away that control and he is gone". F. R. Kent, The Great Game of Politics, pp. 142-145.

statutes unify one branch of the machinery but completely alienate it from the other parts of the organization; some bring about division in the same branch, devising different schemes and methods of selecting the party officials. Not only does such decentralization appear to be disastrous to the party organization; the will and best interests of the people as a whole are subverted.

Detailed regulation, especially on certain phases of organization, appears as an evil in a number of statutes. This is especially true in regard to the convention branch of the organization. Though divested of its importance in most states it remains, nevertheless, subjected to close regulation. Such details as the method of selection of convention officers and order of procedure are often listed in the law. Such provisions either considerably hamper the work of such bodies, or encourage them to disregard the statutes. Either result is bad and such effects seem unnecessary when, as in so many cases, the conventions are relatively unimportant.

Observations and Suggestions

Party organization is important in the government of any commonwealth. But the bi-party system makes organization of special significance in the United States. There a party is loosely bound together in regard to policies, and since no economic distinctions, the organization becomes correspondingly stronger in order that the party may be maintained when issues and policies fail.

If it be admitted that the quality of the entire government is contingent upon political parties, and that the excellence

of party government depends upon the strength of the organization as evidenced by smooth and efficient action, then it appears that legislation, presumably always designed to promote the betterment of the state and the public welfare, should be so framed as to be conducive to strength of the party machinery, so far as that strength is compatible with responsibility to the party membership.

The first essential of a strong party organization is unity of action. To acquire this the party must have a unified membership; mutual confidence and loyalty must exist between the party representatives in public office, the officials and leaders, and the rank and file of members. It appears, moreover, that the functions of the party must be performed by a unified action if it is to become the truly responsible agent in government that good administration requires. Responsibility cannot be secured without unity in all parts of the organization. Following this hypothesis it appears that the act of nomination is not only a sort of tentative appointment to public office but is also an act of quasi-legislation. The selection of candidates is the selecting of that which is a voice and embodiment of party principles. Nomination is as much an act of party policy as the formulation of a platform. A candidate is expected not only to capture an office, but to repair and strengthen the party structure without altering its foundation. The unification of the organization and functions of parties is indispensable if true responsibility is to be attained.

If it can be said that party organizations without regulation developed strength, efficiency, and unity at the price of

popular control, it must also be said that much of the legislation, placing emphasis on popular control, has sacrificed these three essential elements. If it was incumbent upon the states to intervene to rescue the party organization from self-appointed bosses, it seems quite as incumbent upon them to preserve that organization for the persons for whom it was rescued.

Full and complete democracy in the party organization is not compatible with responsibility and efficiency. This is no more true of parties than of any other kind of government; it is the old task of reconciling democracy and efficiency. The most ardent exponent of party autonomy would hardly suggest, however, that states withdraw from the field of parties and leave their organization and functions entirely without regulation. Such a move would not comport with the theory of American institutions; neither would it be necessary in order to give party machinery the means by which it could preserve its strength and unity. If the application of extreme principles of either democracy or efficiency means the sacrifice of the other, there seems to be no reason why a suitable medium could not be arrived at, and regulation, securing both the principles of democracy and efficiency, could not be enacted.

Such a program would, first of all, be simple. Simplicity is the handmaid of efficiency, and effective control is much better exercised if simple methods are followed. The details of organization---the selection of local and minor officials, matters of procedure---and various other points should not be determined by the legislative body. Reasons of expediency justify such omissions.

effective compromise is essential to party cohesion and solidarity, and procedure and policy must often be shaped to fit a particular situation; if the minor party offices are left without the law they may be effectively used as rewards to stimulate fealty and industry within the organization. If the central or controlling organ is made elective and responsible to the party membership, the democratic element is not lost. The abandonment of regulation on a great many points of the party mechanism would not mean less control of the organization in general; less regulation does not mean less effective regulation.

Unification of all parts of the state party machinery would seem a vital part of a regulative program. This unification would extend to functions as well as to organization. If responsibility is to exist, there must be harmony between the party organization, the party nominees, and the party program. A unified machinery with the power to propose nominees for state and district offices, draft a platform, and select the members of the lower branches of the organization seems the simplest and most effective organization.

Selection of the membership of the central party body would be by popular vote, with the scheme of representation and the election process regulated by law. By the adoption of a system of non-partisan primaries for the nomination of candidates for local offices, the local party officials would be concerned only with the state organization.

The nomination of candidates, a matter of more interest to the party members than that of selecting party officials, would be in the hands of the people. By allowing the voters to approve

of the nominees proposed by the party organization, or, instead, nominate candidates of their own choice, the principle of democracy would be amply protected. Should the voters nominate persons not endorsed by the organization, these nominees could assemble and draft a platform in line with their own ideas and principles.

Such a scheme of organization would meet the standards required of efficient party machinery. By providing that the people select the members of the central body and approve, or nominate, candidates for public office, full protection of the principle of representative government would be assured. By bringing all the party machinery under one management the element of unity would be provided. By making one body responsible for the candidates, program, and organization of the party it would become a responsible organ of government.[17] The duties of the party voter in selecting this machinery would not be burdensome; the short ballot principle would be followed throughout.

The political party tends to adopt or develop a conserva-

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17. Compare with the plan of party machinery contained in the model primary law proposed by Professor Ray. P. O. Ray, "Provisions for a Model Primary Law", American Federationist, Vol. 34, pp. 972-977. See also the suggestions offered by the Committee on Electoral Reform of the National Municipal League. National Municipal Review, Vol. 10, pp. 612-616.

tive or oligarchical type of organization.[18] It was not by mere chance that none of the checks of popular government were placed upon party organizations before their legislative reconstruction. Such features as separation of powers, rotation in office, initiative, referendum, and recall were unheard of in the unregulated organization. This fact in itself bespeaks the close relation of centralized organization and party strength. When organization appeared to disregard the public welfare it was called to task by statutory regulation. It was well and proper that parties be required to give the people a voice in the organization; it is well and proper that such regulation continue. Experience proves that parties will not of themselves respect the principle of democratic control and this principle is properly enforced by legislative enactment. However, there is strong argument for the opinion that the law should be a check on organization rather than a charter of government.[19]

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18. "...Oligarchy depends upon what we may term the psychology of organization itself, that is to say, upon the tactical and technical necessities which result from the consolidation of every disciplined political aggregate. Reduced to its most concise expression, the fundamental sociological law of political parties (the term 'political' being here used in its most comprehensive significance) may be formulated in the following terms: 'It is organization which gives birth to the dominion of the elected over the electors, of the mandataries over the mandators, of the delegates over the delegators. Who says organization says oligarchy'". R.Michels, Political Parties, p. 401.

19. One author, in a recent discussion of this matter, comments: "There is a serious question whether such laws, providing for popular selection of party officers, are not an absolute detriment... . The question is raised whether it would not be better to scrap these laws providing for the selection of party officers, especially in jurisdictions subject to boss control, and return to the system of free play of competing groups." Logan, The American Political Scene, p. 72.

What turn future legislation on party organization will take is, naturally, problematical. Predictions have been made that the direct primary is on the decline and that future laws on nominations will restore the convention to its former position as a nominating agency. Should there be a general repeal or modification of direct primary laws and a restoration of conventions, a more unified and simple organization may be expected. The laws that have restored the convention as a part of the nominating process have generally simplified the party government. This may be an indication of a realization that a unified and simplified party machinery is essential. Such a view would gain strength from the fact that laws in states which retain the direct primary have, in some instances, sought to bring about a unity of functions and organization and promote more responsible party government. The drafting of platforms by party nominees and the pre-primary proposal of candidates can be construed as an expression of this sentiment.

That legislatures will continue to regulate the government of political parties there appears to be little doubt. The character of our legislative assemblies and the theory of American legislation would give this assurance. More convincing proof may be found in the nature of the problem involved. Political parties, whatever opinions to the contrary, are natural subjects of legislation. Their organization is the business of the party members; legislation making it so is but in keeping with the American system.

There are no indications, however, on the basis of recent laws passed, that further democratization in organization will be attempted. Recent primary laws have not added to the popular

participation in the organization itself. This fact may be encouraging to those interested in preserving the strength and unity of party machinery, yet it contains little importance within itself. Decentralization is not necessarily the product of democratization; a law may locate the government in a few persons, yet so separate and isolate these persons that unified action is impossible.

The problem of maintaining party solidarity, yet providing for popular control, cannot be solved by legislative and mechanical devices alone. The first and most difficult task is the clarification of the public mind in regard to the place of party organization in our government. Once this is realized and the value of unity and efficiency in organization to responsible party performance is understood, it seems likely that legislatures will act without hesitancy. In comparison with most other such institutions, party government is still a new field of legislative activity. If new legislative experiments are still being constantly applied on other institutions, it cannot be expected that on this subject legislatures will so soon arrive at the most desirable system of regulation.

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