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THE STATUS OF POLITICAL PARTY ORGANIZATION IN MINNESOTA LAW

Selected Aspects of Party Statutes and Political Dynamics

G. THEODORE MITAU*

This article seeks to deal with two questions: (1) how much have Minnesota’s formal governmental actions—incident to legislatively enacted electoral reforms and the direct primary—interfered with political party organizational autonomy, and (2) what are some of the powers left to party autonomy as a result of recent judicial determination.

GENERAL PRELIMINARIES

Party organization in Minnesota, as in most Midwestern states, is typified by hierarchical arrangements of caucuses and conventions and parallel structures of committees and officialdom. This type of structure developed largely as an institutionalization of consequences that were inherent in Jacksonian democracy. Masses of voters had to be organized and trained in partisan combat to give political direction, if representative government was to reflect the people’s thinking and respond to the people’s demands. Just as American democracy itself was to find its own indigenous forms and expressions—similar in essence yet also noticeably different in operation from those of its European antecedents—so this country’s party system too was soon to take on characteristics unique to the federal framework and quite unlike the party systems functioning within the parliamentary and unitary traditions.

Disdained as “factions” by the Founding Fathers and unacknowledged in the U. S. Constitution, political parties in this country were to find their legal basis in the fabric of the common law which had affirmed and ratified the people’s inherent rights to peaceable assembly, association and petition. 2 “No expression,” a California Supreme Court insisted, “is needed in the declaration of rights to the effect that electors holding certain political principles in common may freely assemble, organize themselves into a political party, and use all legitimate means to carry their principles of government into active operation. . . . Such a right is fundamental. It is inherent in the very form and substance of our govern-

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1. The Federalist No. 10 (Madison).
ment and needs no expression in its constitution.” Some authorities have linked a party's right to survival to the doctrine of individual self-preservation and personal freedom.

The attempt of the Minnesota legislature to define a political party mostly in terms of numerical criteria was interpreted by the state's Supreme Court as explicit evidence of legislative unwillingness to invade the inherent rights of citizens to organize political parties. Similarly it was insisted by the court that although the legislature may well pass statutes safeguarding the names of political organizations, these laws—alogous in nature to the protection offered owners of trade marks—were in no way to be construed as a mere legislative grant for parties to exist, for such rights are inherent in the electorate and cannot be taken from the people.

In the generation following the Civil War, political party organization grew more and more oligarchic in a legal setting which treated them essentially no different from any voluntary, unincorporated, non-profit association of private citizens. By the end of the 19th century they “... paralleled the structure of government, entrenching themselves in each political unit from election precinct to nation, seizing upon the legal institutions and determining their tone and tendency.”

Rapid industrialization accompanied by urbanization and corporate growth offered unheard of opportunities for franchise favors and special legislation in state house and city hall. Political opportunists could and did trade votes for wealth as popular revulsion

4. As rights cognate to those of free speech and free assembly, see Abernathy, The Right of Association, 6 S. C. L. Q. 32, 44 (1935); also see Thiede v. Town of Scandia Valley, 217 Minn. 218, 14 N. W. 2d 400 (1944).
6. Davidson v. Hanson, 87 Minn. 211, 219, 91 N. W. 1124, 92 N. W. 93, 95 (1902).
8. Davidson v. Hanson, 87 Minn. 211, 91 N. W. 1124, 92 N. W. 93, 95 (1902); Lind v. Scott, 87 Minn. 316, 92 N. W. 96 (1902); Morledge v. Redington, 92 Minn. 98, 99 N. W. 355 (1904); O'Brien v. O'Brien, 213 Minn. 140, 6 N. W. 2d 47 (1942). From these cases it appears that Minnesota not only protects the names of political parties but the names of "so-called" political organizations as well, i.e., those groups that cannot fully qualify for party status in terms of the specific procedural prerequisites. It also precludes the combining of "safeguarded" names with new designations such as "Real Democrat" by candidates named by petition. Thus, in 1944, when the Democrats fused with the Farmer-Labor party it was first necessary for the Farmer-Laborites, in order to satisfy the statute, to change their name to "Fellowship" party before its former name could be hyphenated with that of the Democrats. See Holmes v. Holm, 217 Minn. 264, 14 N. W. 2d 312 (1944); see also note 15, infra.
led to ever-increasing and persistent demands for reform. Previous popular apathy—perhaps lack of understanding and indifference—had permitted the nominations of candidates as well as the election of party leaders to fall into the hands of small but highly disciplined cliques of selfish partisans who spoke of popular sovereignty but practiced popular irresponsibility.

Since the party’s primaries represented the basis of the hierarchy—the place of origin for nomination and election to office and to the next higher echelons of delegate convention—the bosses increasingly built fences around these primaries lest the “unrestrained” practice of democracy might well constitute a real threat to their monopoly of power. This the reformers knew. Cleaner and more responsible politics would result, so they reasoned, through state intervention in the form of primary protective legislation. Although state legislatures first seemed somewhat reluctant, there too the forces for reform gained considerable momentum and support as they went along. Even the usually conservative judiciary seemed rather favorably inclined to experiment in this field. There were heard, however, voices of judicial dissent of which the following opinion of a New York justice offers a classic example: “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, or intimidation or other crimes in political organizations, the same as in business associations, but beyond this it cannot go.”

Regulation of party primaries started in Minnesota in 1887. In 1895 precinct caucuses and party conventions were given formal legal recognition, in the regulation of the manner of calling and conducting them and the carrying out of their respective functions. The names of political parties were given explicit statutory protection in 1901 and at the same time a compulsory primary election

10. Sait, op. cit. supra note 9, at 289.
11. See Merriam, Primary Elections 104, 115; Tuttle, Limitations upon the Power of the Legislature to Control Political Parties and Their Primaries, 1 Mich. L. Rev. 466 (1902-1903).
15. Minn. Gen. Laws 1901, c. 312, §§ 1-2. A so-called “party divorce” bill, S. F. 1608, was introduced in the Minnesota Senate, March 28, 1953, which bill provided, among other features, an amendment to Minn. Stat. § 205.72 (1949). This legislative proposal, in effect, would have taken from the existing political parties their right to the exclusive use of their names.
law was passed exempting certain offices. The law was made applicable throughout the entire state.16

Minnesota's statutory recognition of party organization reached a peak in 1921. At that year's session the legislature spelled out in some detail the duties of party conventions,27 the make-up of primary election ballots with special provision for indicating the candidate's pre-primary party endorsements,18 and the size,19 composition and manner of electing membership to the state central committee.20 This proved too radical an intervention into party self-government, so most of these provisions were either repealed outright or greatly modified in the 1923 session.21

Minnesota's present statutory definition of political parties requires neither evidence-of-membership tests nor formal statements of party platforms and principles. It restricts itself to viewing political parties almost entirely in terms of their relationship to the nomination process, i.e., the party's participation and role in the primaries. Thus a party may become a party statutorily, in the first place, if it maintains an organization in the state and its subdivisions and if its candidates, having been voted upon in all the counties, obtained not less than 5% of all the votes cast within the state at the last preceding election.22

Secondly, party members with signed petitions numbering not less than 5% of all the county's votes cast at the preceding general election are entitled to obtain a place for their party on the primary ballot. By way of party structure the law stipulates a minimum: a state central committee, congressional district committees and county committees.23 In the absence of such organization, the party's nominees for office, state and Congressional, are permitted to meet and elect these committees (except county committees).24

and permitted another new political party to appropriate any part of such a previously safeguarded name. It would, for example, be legal under the terms of the bill, for a political party to call itself the Democratic party as distinguished from the Democratic-Farmer-Labor party, and to have this name printed on the official ballot. The potential political threat to the Democratic-Farmer-Labor party inherent in such a bill, particularly in view of the state's three party tradition, was not lost on that party's leadership. See Minneapolis Star, April 7, 1953. Reported back to the Senate "without recommendation" by a 5 to 4 vote of the election committee (April 1, 1953); the bill died in the closing hours of the session.

17. Minn. Gen. Laws 1921, c. 322, §§ 1, 10-13, 16.
24. Ibid.
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statutes to the contrary—such as the provisions governing notifica-
ton and methods of call to delegate conventions and the rather
detailed instructions for the precinct caucus—party committees,
ventions, and party officials were to have such powers as are cus-
tomary.26

CORRUPT PRACTICES LEGISLATION—PROBLEMS IN FOCUSING
FISCAL CONTROL

Minnesota’s first comprehensive corrupt practices act was passed in 189527 although some statutes against disorderly election con-
duct and vote corruption go back as far as 1851.28 Subsequent
amendments and additional legislation expanded the corrupt prac-
tices act along the following major lines: requirements for proper
identification and marking of political literature,29 prohibitions
against campaign contributions by business corporations and the
“sale” of editorial support, limitations upon campaign contribu-
tions and expenses, restrictions as to the objects for which disburse-
ments may legitimately be made, specifications as to financial re-
ports and publicity to which candidates are subject.30

The over-all efficacy of such legislation both on the federal and
state level has been seriously questioned by experts for years.31 One

a clear terminological distinction between “primary elections” which serve as
the first echelon of electing delegates to the various levels of party delegate
conventions (county, district, and state) and “primary elections” which serve
to nominate the party’s candidates for presentation at the general election.
Moreover, the choice of heading § 202.14 “Conduct of Conventions” gives
little indication upon first glance, at least, that this is the very important
statute that governs the conduct of the “precinct caucus”—the highly critical
entry to party influence and power.
27. Minn. Gen. Laws 1895, c. 277. The law was upheld in Saari v.
Gleason, 126 Minn. 378, 148 N. W. 293 (1914); on the historical aspects
of Minnesota’s early corrupt practices statutes, see Folwell, 4 History of
Minnesota 261—283 (1930).
29. In one of the state’s most notorious and bitter political battles, the
Nelson-Kindred campaign of 1882, Mr. Nelson was epitomized in an unsigned
 circular as follows:
“He is an infidel.
He don’t believe in God.
He don’t keep his promises to man.
He is not an American.
He persecutes church people.”
Adams, The Nelson-Kindred Campaign of 1882, 5 Minnesota History Bulletin
103 (1923).
30. Minn. Stat. §§ 211.01—211.21 (1953).
31. Pollock, Party Campaign Funds 260 (1926) ; Overacker, Money in
Elections c. 13 (1932) ; see also “Campaign Expenditures,” Hearings before
the Special House Committee to Investigate Campaign Expenditures, 82d
Cong., 2d Sess., 119 (1952) and Hearings before the Subcommittee on
Privileges and Elections of the Senate Committee on Rules and Administra-
particular phase of the corrupt practices problem—of great importance to political parties—is that of unrealistically low and rigid limitations of campaign contributions and the exceedingly detailed yet ineffective control of the objects of disbursements. This represents one of the most severely criticized aspects of such legislation.\textsuperscript{32}

Unlike Britain, where the corrupt practices statutes and the laws of agency have been very restrictively interpreted so as to prevent the expenditure of money on behalf of the candidate without his express approval,\textsuperscript{33} American statutes and courts have generally not charged the candidate with responsibility for expenditures made by groups and individuals on his behalf and even with his knowledge.\textsuperscript{34} This also appears to be the law in Minnesota. The Minnesota court has ruled that while authority for such an act may, under a principal-agent relationship, either be express or implied, it must be shown explicitly that the candidate has personal knowledge of or had consented to the specific disbursement before he could be held personally responsible.\textsuperscript{35} In a subsequent corrupt practices violation case the court held that even where "the candidate himself was a dues-paying member of the association, and fully aware of the advertising support given him in the association's newspaper," the test had to be a specific request given either directly or indirectly. Absent such action, the candidate could not be held liable on an agency basis for failure to include such service in his statement of expenses.\textsuperscript{36}

The focusing of fiscal responsibility in the realm of campaign finance is made more difficult by another feature of Minnesota's corrupt practices legislation which permitted judicial interpretation so as actually to discriminate in favor of the so-called "volunteer" committees. The law, the court held, "prescribes the purposes for which a candidate, his personal campaign committee, and a party committee may disburse money or incur indebtedness in the campaign, [and] limits the amount to be so expended [but] the law

\textsuperscript{32} Key, Politics, Parties, and Pressure Groups 559 (1952) ; McKean, Party and Pressure Politics 361 (1949) ; for a careful analysis of some of the legal problems involved in establishing effective expenditure limitations with particular reference to Minnesota law, see Note, 40 Minn. L. Rev. 156 (1956).

\textsuperscript{33} Butler, The Electoral System in Britain 9 (1953) ; Carter, Ranney & Herz, Major Foreign Powers 63 (1952) ; see also McKenzie, British Political Parties 165 (1955). Campaign expenditures when made on behalf of a political party rather than on behalf of a particular candidate are not subject to fixed limitations. See Note, 40 Minn. L. Rev. 156 (1956) ; Note, 66 Harv. L. Rev. 1259 (1953).

\textsuperscript{34} Sait, American Parties and Elections 565 (2d ed., Penniman 1952).

\textsuperscript{35} Mariette v. Murray, 185 Minn. 620, 625, 242 N. W. 331 (1932).

\textsuperscript{36} Trones v. Olson, 197 Minn. 21, 265 N. W. 806 (1936).
places no definite limit upon the amount of money which such a
[volunteer] committee may raise, collect, or expend."

Thus in Minnesota law, it is the volunteer campaign committee,
largely independent of political parties and candidates, that has be-
come a judicially acknowledged vehicle for legally raising, collecting
and disbursing funds outside the fixed limitations of the corrupt
practices act. This discrimination in favor of the volunteer com-
mittee may represent a judicially sanctioned adjustment to inade-
quate and overly rigid statutory campaign limitations or to the pecu-
liar divorce of responsibility between the candidate and his sup-
porters which certainly characterizes the realities of American
politics. If, however, the legislative end is to be a more responsible
party system or a more effective corrupt practices code, then such
development in the direction of possible financial irresponsibility
may well call for additional legislative attention.88

Two rather significant and unique efforts to encourage and
regularize political campaign finances, other than by way of the
customary corrupt practices statutes, were made in the 1955 session
of the Minnesota legislature.89 First, subject to specified limits,48
contributions to political parties, candidates or causes, made by indi-
viduals, party national committeemen or committeewomen, congress-
ional district party committee members, and by county chairmen
and chairwomen, may be taken as credits against taxable net in-
come.41 Second, candidates for public office, both state and federal,
were permitted to deduct from gross income specified amounts42 in
computing their net incomes.43

38. For a very similar conclusion see Note, 40 Minn. L. Rev. 155, 167
(1956). The legislatures of Florida and Texas have recently passed legislation
removing fixed campaign limitations and providing for candidate-centered
control over campaign expenditures. Ibid.; see also Roady, Florida's New
Campaign Expense Law and the 1952 Democratic Gubernatorial Primaries,
39. "...[B]eing considered in Washington is the Minnesota innovation
which permits income tax deductions for personal political gifts of moderate
size. This is also intended to encourage public participation in politics. It is
likely that such a proposal will be introduced in Congress next year." Edi-
40. Contributions by individual natural persons—$100.00; national com-
mitteeman, national committeewoman, state chairman or state chairwoman—
$1000.00; congressional district committeeman or committeewoman—$350.00;
county chairman or chairwoman—$150.00.
41. Minn. Sess. Laws 1955, c. 775, amending Minn. Stat. § 290.21, 290.09
(1953).
42. For governor or U. S. Senator—$5000.00; for other state office or
U. S. Representative—$3,500.00; for State Senator, State Representative, or
presidential elector at large—$500.00; for presidential elector from a con-
gressional district—$100.00; and for any other public office—$4 the annual
salary.
MINNESOTA'S OPEN PRIMARY AND THE ISSUE OF PARTY RESPONSIBILITY

Minnesota's tradition of the very moderately closed,\(^4\) and since 1933,\(^5\) outright open primary sought to assure the voter the widest possible access to the direct primary—access free from any identifying party tests and registration requirements whatever.\(^6\) This is now the law with respect to all direct primary elections in the state with the possible exception of the Presidential Preferential Primary Law.\(^7\) In the regular Minnesota primary election, the voter upon receiving one consolidated ballot containing the various party tickets, must then select the party within which he wishes to make his choice. But he cannot, as he might well under the provisions of the “blanket” or Washington State-type primary, pick his choices from among the candidates of more than one party. If he were to do this in Minnesota his ballot would be declared void.\(^8\)

Whether or not the direct primary has in effect tended to weaken party responsibility and if so to what extent, represents questions which have occupied civic leaders, journalists, legislators, party politicians, and students of government for many years.\(^9\) Those gen-

\(^{44}\) Minn. Gen. Laws 1899, c. 349 §§ 16, 17 (“open” primary law); changed by Minn. Gen. Laws 1901, c. 216, § 16 into a moderately “closed” or “challenge type”: “All persons entitled to registration as voters in the election district on the day of the primary election... shall be entitled to participate in the primary election... shall be entitled... to receive a ballot of the political party with which he then declares (under oath, if his right thereto is challenged) that he affiliated, and whose candidates he generally supported at the last general election, and with which party he proposes to affiliate at the next election.” This is often called “moderately closed” in view of the very rigid type of provisions with which some other closed primaries are surrounded. Oregon might serve as an illustration of such a system: “Every elector shall be asked by the clerk... of what political party or voluntary political organization he is a member, and it shall be the elector's duty to answer said question if he wishes to take part in making the nomination of any political party, and his answer shall there and then be entered in the register...” Ore. Laws 1905, c. 1, § 38.

\(^{45}\) Minn. Gen. Laws 1933, c. 244, § 5.

\(^{46}\) Minn. Stat. § 206.17 (1953). “[N]o entry, nor notation shall be made in such (election) ... register... showing to which party any voter belonged or which political party ballot he voted nor shall the judges knowingly permit any other person within the polling place to make such an entry or notation.” Similar provisions may be found in the laws of Idaho, Michigan, Montana, North Dakota, Utah, Wisconsin.

\(^{47}\) Minn. Sess. Laws 1949, c. 433, § 9, as amended Minn. Sess. Laws 1951, c. 156, § 1. The Attorney General ruled that the law’s provision calling for “separate” ballots for each party meant that “a voter in communities using paper ballots at presidential primary elections is required to name his party choice in order to obtain proper ballot.” Ops. Atty. Gen., 28-C-5 (1952). At the time of this writing the court has not ruled on this question.

\(^{48}\) Minn. Stat. § 206.15 (1953).

\(^{49}\) On the “pros” and “cons” see the following as rather representative treatments: 106 Annals (1923); Key, op. cit. supra note 32 at 411; Sait, op. cit. supra note 34, c. 13, 19; David, Moos, and Goldman, Presidential Nominating Politics in 1952 (1953).
eraly favorable to political party organization and party responsibility attack the direct primary and more particularly the open primary with arguments such as the following: that it weakens party organizations by permitting “outsiders,” voters unsympathetic with the party’s principles and leadership, to pick candidates often entirely unrepresentative of the party and its sentiments; that it tends to crowd the field of candidates by offering incentives to publicity seekers and the wealthy; that it tends to prevent the parties from properly tying candidates to platforms and “issues” and thus precludes the development of party government which is so necessary to render our political institutions more responsible, issue-centered, and mature.

Those who support the direct primary as a method of nominating candidates often emphasize that it tends to decrease the sense of narrow partisanship by placing the interest of country and good government above that of party; that rather than weakening the political parties, it takes the power irresponsibly exercised by party bosses and “palace guards,” and returns it to the people who want it (and to whom the party and its leadership should have been responsible in the first place). They further argue that it offers an opportunity for political independents to help choose those candidates most qualified, regardless of party label or affiliation; that the direct primary has won the people’s confidence and support; that even if political parties were now weaker than before (and there is wide-spread disagreement on this point) the direct primary itself was less cause than symptom in that a party organization well organized and responsible should have nothing to “fear” from the electorate.

Then, thirdly, there are those, perhaps best represented by Professor Penniman, who maintain that much of the argument concerning the effect of primaries upon political party strength or weaknesses reveals a serious confusion of cause and effect. Political parties should be strong and well organized for responsible government in a democracy. This requires, above all, a radical reduction in

50. This argument is presently in the forefront in discussions favoring the enactment of some form of presidential preferential primary legislation; the “Gallup Poll” of July 1952 showed the following: 73% pro presidential primary, 16% favoring the present convention system, 11% undecided. The “California Poll” in the Berkeley (Cal.) Daily Gazette, August 14, 1952: 69% pro presidential primary (67% Dem., 72% Rep.), 20% prefer the present convention system (21% Dem., 18% Rep.), 11% undecided; the “Minnesota Poll,” Minneapolis Sunday Tribune, March 30, 1952, 67% pro presidential primary (68% Men, 65% Women), 13% disapprove of a presidential preferential primary (16% Men, 10% Women), 19% “no opinion,” 1% qualified; Minneapolis Morning Tribune, April 9, 1955, 63% approve of a presidential preferential primary (61% Men, 65% Women), 23% “disapprove” (26% Men, 19% Women); 14% “no opinion.”
the number of elective positions for public office. As in Great Britain, only those of a truly policy-determining nature should be voted upon. If this were done, parties should and could help the voter to acquaint himself with the issues and assist in making possible a more meaningful selection of candidates. Under conditions such as these and “... with the restoration of a robust party spirit, the non partisan primary will lend itself readily enough to party interests.”

Some Major Studies and Findings

Professor Pollock in his study of the operation of the open primary in Michigan found no evidence that it weakened party responsibility. A more cautious report is submitted by Professor V. O. Key of Harvard whose findings seem to point to a “... trend toward a weakening political leadership within the stronger party in the district, and to at least a net decline in cohesion of the inner core of the stronger party with of course local exceptions.” Neither Professor Pollock in his Michigan study nor Professor Ogden in his analysis of the Washington blanket-type primary found any serious evidence of “party raiding.” Where voters do invade the other party’s primaries, this is done not as a Machiavellian tactic but because of the voter’s wish to support the candidate in the general election as well. But in an earlier study of the Washington primary, it was found that if such a stronger candidate did not then win the nomination, the voter would immediately return to his party and vote for his own party’s nominee in the general election.

Professor Starr commenting in the 1930’s on “party-raiding” in Minnesota saw “little evidence of this kind of cross voting,” and this despite carefully organized and dues-paying membership in the Farmer-Labor Association which he felt might well have found an invasion of one of the other major parties tactically useful.

51. Sait, op. cit. supra note 34 at 415.
52. Pollock, Michigan Politics in Transition (1942); this corresponds to the findings of earlier studies by Professor Horack in Iowa and Professor Guild in Indiana. See 106 Annals 148, 172 (1923).
54. Pollock, op. cit. supra note 52 at 60.
55. Ogden, The Blanket Primary and Party Regularity in Washington, 39 Pacific North West Quarterly 34 (1948). “During a 12 year period, out of 34 offices for which nominees were selected by each voter in only 4 instances is there any evidence that significant numbers of voters crossed party lines.”
56. Pollock, op. cit supra note 52 at 60; Ogden, op. cit. supra note 55 at 38. See also Ogden, Washington’s Popular Primary, 19 Research Studies of the State College of Washington 160 (1951).
On the other hand, raiding has occurred even within the framework of Minnesota's moderately closed primaries (pre-1933) in a crisis situation as classically illustrated by the efforts of the Non-Partisan League from 1916 through 1920. Those were the years when the League, under Townley's leadership, successfully invaded the direct primary of the Republican Party not only in North Dakota but in Minnesota and Wisconsin as well. That era's most acrimonious primary contest probably occurred in Minnesota in 1918 in the Burnquist-Lindbergh battle for the Republican Party's gubernatorial nomination. No holds were barred. From the political left came the Non-Partisan Leaguers in support of Lindbergh. Conservative Democrats responding "... to the call of the Twin City dailies ... asking [them] to vote in the Republican primaries for Burnquist," invaded from the right and so helped assure Lindbergh's defeat.59

Under the present open primary law, it is not enough for the parties in this state to concern themselves with the problems of "raiding" and "invading" merely when statewide direct primary elections are held. Equally important, they must guard the integrity of their precinct caucuses. Any voter may participate in such a caucus if he satisfies the judges with respect to the following two stipulations: (1) that he affiliated or voted with such party at the last general election, and (2) that he intends so to vote and affiliate at the ensuing election.60 These "tests" have, however, little practical significance in the absence of an effective general party registration system.

Just how much of a serious threat "invasions," if well organized, can pose to a major party was recently well illustrated by the events occurring in Minnesota in the Spring of 1948. The Wallace-Benson faction, although nationally already committed to a third party movement, sought in this state to seize the Democratic-Farmer-Labor party instead, by gaining control of the party's precinct caucuses and conventions.61 As a tactic, it proved unsuccessful only after a most bitterly fought struggle in which nearly every precinct caucus, county and district convention, and finally the state convention itself became a battleground for the rival factions.

Developments such as these certainly tend to substantiate the position taken by some of the leading party experts in American

political science. In preferring the "closed" over the "open" type of primary, they concluded that the former deserved preference because "... it is more readily compatible with the development of a responsible party system ... [since] ... it tends to support the concept of the party as an association of like minded people ... [whereas] the open primary tends to destroy the concept of membership as the basis of party organization."\(^{62}\)

Even this very brief analysis of some of the literature dealing with the relationship of primaries to party organizations necessarily leaves a number of notable difficulties. There are important practical distinctions between the open, closed and blanket-type primaries, but there is altogether a paucity of empirical evidence.\(^{63}\) There remains the use of such imprecise language as "party strength," "party weakness," and "party responsibility." If to these be added the American political tradition of "non-ideological politics,"\(^{64}\) of "localism," of pride in political independency and the constitutional doctrines of separation of power and dual federalism, it becomes obvious why it is impossible at this stage for the science of politics to provide more categorical answers—if such be desired. Meanwhile, the great laboratory of American politics continues to experiment with these various types of primaries in the complex process of adjusting and harmonizing competing interests and factions. In this process legislative experimentation with primaries represents but one aspect of the larger picture in which state parties and candidates seek to build the winning coalition which, after all, constitutes if not the essence then the \textit{sine qua non} of all political objectives and the aim of all organizational effort.

\textbf{Pre-Primary Endorsements}

Minnesota's statutory experimentation with electoral reforms and party legislation reached something of a peak in the early nineteen twenties. It was the 1921 legislature, to be specific, which

\footnotesize{\textbf{62.} \textit{Towards a More Responsible Party System}, 44 Am. Pol. Sci. Rev. Supp. 71 (1950). The Committee that made these recommendations had the following membership: Thomas S. Barclay, Stanford University; Clarence A. Berdahl, University of Illinois; Hugh A. Bone, University of Washington; Franklin L. Burdette, University of Maryland; Paul T. David, Brookings Institution; Merle Fainsod, Harvard University; Bertram M. Gross, Council of Economic Advisors to the President; E. Allen Helms, Ohio State University; E. M. Kirkpatrick, Department of State; John W. Lederle, University of Michigan; Fritz Morstein Marx, American University; J. B. Shannon, University of Kentucky; Louise Overacker, Wellesley College; Howard Penniman, Department of State (Yale University); Kirk H. Porter, State University of Iowa; E. E. Schattschneider, Wesleyan University, Chairman.\}


\footnotesize{\textbf{64.} See Truman, \textit{The Governmental Process} 262-287 (1951).\}
authorized state and local party conventions to endorse candidates prior to the primary election and have such endorsements shown on the ballot. After the extensive repeals of 1923 (which included the pre-primary endorsement system), some of the past actions that aimed at weakening the political “machines” were subjected, many years later, to a long and serious second sober thought by various political forces in this state. Within the ranks of the newly fused Democratic-Farmer-Labor party, the Humphrey-Freeman led faction urged a pre-primary endorsement of candidates for the major state offices as a device of building a more effective party within the framework of the state’s open primary. Despite regular and heated convention floor fights with factions of opposing points of view, this has become that party’s general rule and practice, at least since the Brainerd convention of 1948.

The following table offers a brief summary of the success and failure of that party’s ten year practice of pre-primary endorsements.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of major contests</th>
<th>No. of DFL endorsed candidates</th>
<th>No. of such candidates victorious in the primary</th>
<th>No. of such candidates victorious in the general election</th>
<th>Total of DFL party ballots cast</th>
<th>Percentage increase or decrease over preceding election</th>
</tr>
</thead>
<tbody>
<tr>
<td>1944</td>
<td>10</td>
<td>9</td>
<td>6</td>
<td>1</td>
<td>103,480</td>
<td>18.4%</td>
</tr>
<tr>
<td>1946</td>
<td>10</td>
<td>8</td>
<td>7</td>
<td>2</td>
<td>122,550</td>
<td>plus 18.4%</td>
</tr>
<tr>
<td>1948</td>
<td>14</td>
<td>14</td>
<td>10</td>
<td>4</td>
<td>234,229</td>
<td>plus 91.1%</td>
</tr>
<tr>
<td>1950</td>
<td>9</td>
<td>9</td>
<td>5</td>
<td>0%</td>
<td>231,770</td>
<td>minus 1.0%</td>
</tr>
<tr>
<td>1952</td>
<td>12</td>
<td>12</td>
<td>11</td>
<td>3</td>
<td>252,355</td>
<td>plus 8.1%</td>
</tr>
<tr>
<td>1954</td>
<td>12</td>
<td>11</td>
<td>11</td>
<td>8</td>
<td>351,389</td>
<td>plus 39.2%</td>
</tr>
<tr>
<td>Total number of DFL endorsed candidates (1944-1954)</td>
<td></td>
<td>63</td>
<td></td>
<td>Total number of such candidates victorious in the primaries (1944-1954)</td>
<td>50</td>
<td></td>
</tr>
</tbody>
</table>

68. The data shown in this table are based on the election returns as reported in the Legislative Manual for the appropriate year. The formal documentary basis for the “pre-primary” endorsements of individual candidates however, was found to be the most inadequate. The “record of endorsements” had to be reconstructed. In the absence of complete newspaper coverage—especially in cases of Congressional district convention endorsement—and missing convention records, some of the information on endorsements had to be obtained on basis of personal memory of those who participated prominently in the events of a particular campaign. The assistance of the Executive Secretary of the Democratic-Farmer-Labor party State Central Committee is hereby gratefully acknowledged.
69. The contests for such offices as Clerk of the Supreme Court and for the short terms of the Railroad and Warehouse Commission are not included.
70. The four Democratic-Farmer-Labor incumbent U. S. Representatives from the third, fourth, sixth, and eighth Congressional districts had no primary opposition and continued to win their seats in the general election.
Two observations appear to be in order. First, the over-all ten year figure of 79% success at the primary for Democratic-Farmer-Labor pre-primary endorsed candidates seems rather impressive. This is true not only in view of Minnesota's open primary statute but more so in terms of the party's relatively short history and the intensity of its internal factional struggles.

Secondly, it is interesting to note also that the one year (1950) in which the total number of ballots cast for the Democratic-Farmer-Labor party showed a percentage decline was also the most unsuccessful year with reference to the number of pre-primary endorsed candidates winning in either the primary or the general election. Among those defeated in the primary were candidates for such important offices as that of Lieutenant Governor, State Treasurer, and Railroad and Warehouse Commissioner.

Thirdly, the recency of the Minnesota presidential preferential statute—its distinct political problems and its administration separate from that of the direct state-wide primary—made it unwise to include the results from its 1952 operation in the above analysis and in this article generally.

The Republican party in Minnesota has not favored the principle of formal pre-primary endorsements. Its state central committee, meeting on September 24, 1955, considered such a motion but tabled it with the recommendation that the matter be taken up by the party's district conventions. When the issue was again presented to the state central committee it was turned down without further discussion with only the eighth congressional district having voted in favor of such pre-primary endorsements.

Pre-primary party endorsements are legal in this state even for offices that are filled by election on a non-party designated ballot. "In our democratic system of government," the Minnesota Supreme Court held, . . . “absent constitutional and statutory provisions to the contrary, there is nothing wrong in groups or political parties doing their utmost within the scope of propriety to advance the candidacy of an individual satisfactory to them.”

**THE NON-PARTY DESIGNATED MINNESOTA LEGISLATURE**

The non-partisan method of electing members to the state legislature has also been made the subject of serious re-appraisal. This...
method had been a somewhat incidental legislative by-product of a complicated maneuver in which the "wets" had hoped to undermine the hostility of certain standpat Republican leaders to "local option." **74**

Farmer-Labor leadership in the nineteen thirties, for one, looked at the non-partisan method of electing legislators with increasing antagonism and demanded its repeal at various conventions. In discussing this period and in an analysis of the Farmer-Labor party's failure to capture the legislature, Professor Naftalin attributed this failure largely to a lack of party discipline and to the observation that "... the non-partisanly elected legislator, left to his own judgment, finds Conservative affiliation an easier matter because it requires no positive avowal on his part in support of a definite program..." **75** The Stassen segment of the Republican party was to observe similarly that the non-partisanly elected legislature even though under conservative leadership, greatly complicated the enactment of its party's legislative objectives. In his gubernatorial message of 1943 Mr. Stassen recommended its repeal, **76** and since 1944 it has become a formal plank in the Republican party's state platform.

Yet despite the calls for repeal by the leaders and platforms of both major parties, strong forces in both legislative caucuses (more numerous in the ranks of the conservative caucus) have been quite successful in preventing a return to the pre-1913 status. Also, with the exception of certain committed groups such as the parties, the League of Women Voters, and various labor unions **77** public sentiment in the state at large has reflected, in all but one of the opinion polls, a remarkable insistence to cling to the present system. **78**

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74. See Adrian, *The Origins of Minnesota's Non-Partisan Legislature*, 33 Minnesota History 155 (1952); the Minneapolis Journal of May 17, 1912 called it not a reform move but "... the desperate act of a beaten man [the governor]."


76. Minneapolis Star Journal, January 6, 1943.


78. See Minnesota Poll

"Do you favor or oppose the election of legislators with party designation?"

<table>
<thead>
<tr>
<th>February 1946 (a)</th>
<th>March 1947 (b)</th>
<th>July 1954 (c)</th>
<th>February 1955 (d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Favor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>41% D*</td>
<td>59% D</td>
<td>41% D</td>
<td></td>
</tr>
<tr>
<td>45% R*</td>
<td>56% R</td>
<td>45% R</td>
<td></td>
</tr>
<tr>
<td>Oppose</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>38% D</td>
<td>30% D</td>
<td>47% D</td>
<td></td>
</tr>
<tr>
<td>46% R</td>
<td>36% R</td>
<td>46% R</td>
<td></td>
</tr>
<tr>
<td>Undecided</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21% D</td>
<td>11% D</td>
<td>11% D</td>
<td></td>
</tr>
<tr>
<td>9% R</td>
<td>8% R</td>
<td>8% R</td>
<td></td>
</tr>
</tbody>
</table>

*Roosevelt voters.

**Dewey voters.

(This footnote continued on next page)
A “party label” bill with an amendment to include county officers was defeated in the House of the 1955 legislature by a vote of 68 to 62. Of the two caucuses, the conservatives provided nearly twice as many negative votes, 44 to the 24 cast by the liberals. Thus the legislators remain without party designation, and the party remains with little control over them.

**SOME JUDICIAL ACKNOWLEDGEMENTS OF THE RIGHTS OF PARTY ORGANIZATIONS TO SELF-GOVERNMENT**

In upholding the constitutionality of Minnesota’s primary law the Supreme Court considered such statutory interference with party autonomy to be justified largely as a method of protecting the voter against “... the corrupt control by party managers of caucuses and conventions,” and of securing “... a pure and orderly election free from unfair combinations, undue influence, and coercion.” The courts did not wish to question the utility of political party conventions, since their committees and duly elected officials had in Anglo-American law and experience long been allowed

<table>
<thead>
<tr>
<th>March 1945 (a)</th>
<th>February 1946 (a)</th>
<th>March 1947 (b)</th>
<th>July 1948 (c)</th>
<th>February 1955 (d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Favor</td>
<td>16%</td>
<td>43%</td>
<td>39%</td>
<td>53%</td>
</tr>
<tr>
<td>Oppose</td>
<td>70%</td>
<td>40%</td>
<td>46%</td>
<td>37%</td>
</tr>
<tr>
<td>Undecided</td>
<td>14%</td>
<td>17%</td>
<td>15%</td>
<td>10%</td>
</tr>
<tr>
<td>Makes no difference</td>
<td>1%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(a) Minneapolis Sunday Tribune, February 24, 1946.
(b) Minneapolis Sunday Tribune, March 2, 1947.
(c) Minneapolis Sunday Tribune, July 4, 1954.
(d) Minneapolis Morning Tribune, February 11, 1955.

79. Among the representatives voting against party designation only two came from the state's thirty-five larger cities; see Cowles, John R., Jr., in *Minneapolis Star*, February 16, 1955.


82. *State ex rel. Nordin v. Erickson*, 119 Minn. 152, 156, 137 N. W. 385, 386 (1912).


84. See 18 Am. Jur., Elections §§ 132, 143 (1938). “One of the things that impressed all early travelers in the U. S. was the capacity for extra-legal, voluntary association. . . . [T]his power of the pioneers to join together for a common end and without the intervention of governmental institutions was one of their marked characteristics.” Turner, *Middle Western Pioneer Democracy*, 3 Minnesota History Bulletin 400 (1919-1920). Also see Schlesinger, *Biography of a Nation of Joiners* 50 American History Review 1 (1944).
the customary powers of self-government insofar as they have not been restricted or prohibited by statute. Thus the Minnesota court has said that "... a political convention ... has control over its own proceedings and officers, in the absence of statutory regulations, and may proceed according to its own party usages and customs." Even when there is appropriate legislation, the statutory language must be explicit to the contrary before the courts can intervene in the conduct of a political party delegate convention.

In a case arising out of intra-party factional disputes, a recent Minnesota Supreme Court decision further developed this concept of organizational autonomy by holding significantly that "... once a political party convention is called in accordance with statute, it is the judge of the election, qualifications, and returns of its own members ...," and that it does not even require "... the presence of a majority of all persons entitled to participate in order to constitute a quorum for the transaction of business and that those actually assembling constitute a quorum. "The withdrawal of either a majority or minority does not affect the right of those remaining to proceed with the business of the convention, and those withdrawing cannot claim to be the legal party of the convention."88

This important case grew out of developments resulting from two state delegate conventions held by two bitterly opposed Democratic-Farmer-Labor party factions. Tactically and ideologically, they represented the local counterpart of the national struggle between President Truman and Mr. H. A. Wallace.85 The Humphrey "right wing" delegates had met in their convention at Brainerd and voted in effect not to seat the Wallace-Benson group whom

86. Phillips v. Gallagher, 73 Minn. 528, 534, 76 N. W. 285, 287 (1898).
87. Manston v. McIntosh, 58 Minn. 325, 60 N. W. 672 (1894); White v. Sanderson, 74 Minn. 118, 76 N. W. 1021 (1898).
88. Democratic-Farmer-Labor State Central Committee v. Holm, 227 Minn. 52, 55-56, 33 N. W. 2d 831, 833 (1948); in these factional dispute cases the Minnesota Supreme Court appears to have taken a rather consistent position reflecting also the majority holding in other jurisdictions throughout the U. S. See Whipple v. Brad, 25 Colo. 407, 55 Pac. 172 (1899). However, in another recent case, where an important factional dispute had reached beyond party councils, and centered around a statutory regulation fixing the time for filing nomination papers for the position of U. S. Senator, a divided court construed contradictory legislative language broadly, "... statutory regulation of the elective franchise must be so construed as to insure rather than defeat full exercise thereof." Allen v. Holm, 66 N. W. 2d 610, 614 (Minn. 1954). The effect of this decision permitted a prominent member of the Democratic-Farmer-Labor party, defeated at the primary for the office of attorney general, to file again now as an "Independent Liberal" and so challenge Senator Hubert Humphrey at the general election.
they considered to be Communist supported and outside the Democratic party.\textsuperscript{90} A Minneapolis rump convention was called simultaneously by the Wallace state leaders. Both factions then claimed to represent the true Democratic-Farmer-Labor party with each seeking to place its own slate of presidential electors upon the state's general election ballot.\textsuperscript{91} The state Supreme Court in \textit{Democratic-Farmer-Labor State Central Committee v. Holm} resolved the issue in favor of the "right wing" slate pledged to Mr. Truman. It may be shown that in some measure at least, the state court actually yielded back to political party councils and conventions, powers of expulsion not readily acknowledged in similar unincorporated voluntary associations. In one such recent expulsion case the court held: "... the absence of express provisions for due process of law is not decisive. ... [C]onstitutions and bylaws relating to such matters are construed ... so as to require specification of charges, notice, and hearing. The law implies or imposes requirements for due process where an association's rules are silent with respect to the matter."\textsuperscript{92}

**Concluding Observations**

Minnesota political party organizations—formerly voluntary, non-profit associations in the common law—lost through statutory intervention considerable areas of their one time nearly autonomous status. Ballot and primary laws in effect integrated parties into the nomination and election processes giving to parties legal recognition and quasi-governmental functions.

In the name of better politics and reform, the parties' fiscal powers were restricted, their primaries opened to all comers and the principle of non-partisanship extolled. In effect Minnesota law seems to have drawn a dividing line between the external relations of the party organizations—particularly their relation to the nomination process—and the internal problems of party self-government.

In the former, interventions have been relatively heavy, whereas, in the latter, party organizations have been able to retain important areas of autonomy. Fiscal controls embodied in the Corrupt Practices Acts have tended to diffuse party responsibility in financial

\textsuperscript{90} L. D. Parlin in Pioneer Press, June 13, 1948.

\textsuperscript{91} Carl Henneman, Pioneer Press, June 13, 14, 1948; see also Minneapolis Star, June 14, 1948.

\textsuperscript{92} Mixed Local of Hotel and Restaurant Employees Union Local 458 v. Hotel and Restaurant Employees, 212 Minn. 587, 592, 4 N. W. 2d 771, 775 (1942); see also Strong v. Minneapolis Automobile Trade Assn., 151 Minn. 406, 186 N. W. 800 (1922); Burmaster v. Alwin, 138 Minn. 383, 165 N. W. 135 (1917); Stevens v. Minneapolis Fire Department Relief Assn., 124 Minn. 381, 145 N. W. 35 (1914).
matters. Although the open primary has in some respect made it more difficult for party leadership to tie issues to candidates, the law in this state does not appear to have made it impossible for the organizations to carry their endorsed candidates successfully through the direct open primary (not the presidential preferential primary) nor does it seem to preclude parties from preserving a considerable amount of organizational integrity even in the face of well organized “invasions.” Minnesota law thus presents a fairly flexible background for the interesting struggle of the parties to maintain and increase this integrity.