AUSTRALIAN BALLOT

A Discussion of Principles Involved and Comments on the Kansas Law

Because of certain misunderstandings regarding the Kansas election law, I feel inclined to touch somewhat upon the technical side of the question, even at the risk of being prosy and, perhaps, dull. Every reasoning man knows that the republican legislature enacted the law not for the purpose of preventing any abuse of the elective franchise but solely to prevent two or more parties from cooperating in the nomination of a union ticket and at the same time each preserving its party identity. Perhaps it may be said that any party in power will naturally enact such laws as will materially aid that party in retaining control; but how far may a party go without violating the underlying principles?

The Australian ballot (a general term which includes some forms not "Australian") is comparatively a new thing in American elections. Up to October, 1889, only eleven of the United States had adopted some form of it. These states were Kentucky, Masachusetts, Indiana, Rhode Island, Montana, Tennessee, Minnesota, Missouri, Wisconsin, Connecticut, and Michigan. Since that year nearly every other state has adopted some form of the Australian ballot.

It is not my purpose to go into the history of this form of ballot in other countries, or even in the United States, except where necessary to make clearer some point in the law under consideration. Seekers after information along this line would do well to read John H. Wigmore's "Australian Ballot System" and the works and cases therein cited; also files of The Nation for 1889, and American Law Review, same year.

It seems hardly necessary to discuss at length the arguments which led to a change from the old systems of conducting elections to the Australian ballot. Everybody understands why the change was made. Yet to some extent the new system has grown sufficiently old for some of its fundamental principles to be forgotten, or at least disregarded.

In matter of detail, both in form of ballot and in manner of voting, the Australian systems vary greatly, hardly two states having adopted like methods. Yet the underlying principles are the same everywhere, the chief one being to make the ballot what its name implies—a secret vote as distinguished from a viva voce vote.

A rought classification, however, will place all these laws in two groups. In one all the candidates for a particular office are grouped under one head with names of candidates arranged (a) alphabetically according to initial of candidates' surnames (as in Massachusetts and Nebraska laws first enacted) or (b) according to voting strength of the respective parties at the preceding election (as in present Nebraska law.) This is the Australian ballot proper. The other provides for grouping all the candidates of one party under one head in a separate column with the columns placed side by side, usually according the strongest party first place, or the left hand side (as in the Nebraska law of 1897 and in the Kansas laws of 1897 and 1901). This is known as the "blanket" or Belgian ballot.

In either form there may or may not be a provision for voting a straight party ticket with one mark. The Nebraska law of 1891 had the alphabetical arrangement of candidates' names and no provision for party voting; but the gold emocrats' scheme of nominating Adams, Allison, Bibb, Brown and Bates, in order to profit by mistakes by having first place, suggested a change. The Nebraska legislature of 1897 adopted the Belgian ballot with party emblems and circles for straight party voting. The same year Kansas also adopted the blanket ballot but made no provision for emblems or straight voting. Both these legislatures were populist bodies.

In 1899 the Nebraska legislature went back to the original form, with party strength arangement of candidates' names and a provision for group voting in the case of presidential electors, but leaving out the party circle straight vote. In 1901 the law was again amended by adding party circles at top of ballot for straight voting and a circle for group voting wherever more than one officer was to be elected in a group, as in case of several representatives from one district.

In Kansas the legislature of 1901 amended the law of 1897 by providing for emblems and straight party voting, retaining the blanket form. The frequent changes of form and arrangement in Nebraska have had the effect of disfranchising a good many voters, who had barely time to learn how to vote one ballot until a different one was forced upon them. In Kansas the changes in form and arrangement have caused little difficulty, but the provisions in the law of 1901 regarding nominations are so outrageous, in the light of actual conditions there, as to deserve the condemnation of every fair-minded American citizen.

Mr. Wigmore, writing to the American Law Review, October, 1889, on "Ballot Reform; Its Constitutionality," says: "Nominations for public office may be considered in two aspects. First, it involves the right of every eligible person to be voted for by any elector who desires to do so; secondly, it involves the right of each elector to exercise choice among all who are eligible. The two rights may be protected by the same legislation, but it is important to remember that there is involved not merely the right of an individual to be a candidate, but the right of every other person to select him for the office; practically the feasibility of independent political movements depends upon the second right."

Without wearying the reader with long quotations from the law (which may be had in full in Laws of Kansas, 1901, chapter 177, beginning at page 311) it may be stated that the republican amendments of 1901 provide that (a) Party nominations can only be made by convention of ONE political party, having a national or state organization. (b) That a party name shall consist of not more than two words, one of which shall be "party;" and that no compound or hyphenated word shall be used. (c) That "no person shall accept more than one nomination for the same office." Other provisions of lesser importance, intended to make effective these three provisions, need not be noticed particularly here.

Now, the largest three political parties in Kansas are the republican, the people's, and the democratic, with voting strength in about the order named. By harmonious co-operation between the people's and the democratic parties, the two have an undoubted majority in the state under normal conditions. And they have co-operated each year since 1894 by agreeing upon an equitable division of the offices, each furnishing part of the candidates and nominating the entire ticket, which went upon the official ballot under both party heads. This practice has received the erroneous name of "fusion"—it is really co-operation—but, like the term "trusts," it has doubtless come to stay. Whenever the term fusion is used, co-operation is really meant.

The Kansas law of 1901 was enacted by an overwhelmingly republican legislature for no other purpose than to prevent fusion and thus, by dividing majority into factions, win all elections with a minority vote. "But," says the person unacquainted with Kansas people, "couldn't these factions unite as one party?" The student of Kansas history knows they cannot. The history of the early settlement of Kansas furnishes the key to the situation. A majority of Kansas populists came from the republican party—they will not adopt the name "democrat." And the democrats are equally tenacious in retaining their party name. Next to religious prejudice, there is probably no other that is as strong as party prejudice. And whether it ought to or not does not matter—it is an undoubted fact that a name cuts considerable figure. It may seem foolish to haggle over a name when the party platforms and principles are so nearly alike as they are in Kansas, but one must take conditions and people as they are—not as he imagines they ought to be. On this head I quote from Prof. C. Vincent in Central Farmer:

"The cold truth is that owing to inherent prejudice and breeding for forty or fifty years, any party movement, with any platform, bearing the name 'democrat' is foreordained to sure and overwhelming defeat. That party in half a century has never gained but one victory in Kansas and that was a political accident. It has helped the populists in some cases, and together the forces have won some victories, but, alone, the democrats never gained but one election in Kansas."

I think it will not be contended that the Kansas law is a fair expression of the spirit of the Australian ballot. Wm. M. Ivins in "Electoral Reform," summing up the evils of the old system and urging the Australian ballot as a remedy, says: "It will enable any body of citizens of the number prescribed by law to have the name of their candidates printed on the same ballot with the names of all other candidates for the same office, so that before the law and before the voters all candidate and all party organizations will stand on a perfectly even footing. But it remained for republicans to "evilize" the remedy. This they have done in Iowa, South Dakota and Kansas. They wanted to do it in Nebraska but lacked the nerve.

Section 6 of the Kansas disfranchisement act provides that "when no nomination has been made by a political party, or if a nomination has been made but under the provisions of this act the name of the nominee can not be printed on the official ballot, the title of such office shall be printed in such party column, and underneath such title shall be printed * * * the words, "No nomination." Does this place all party orgnizations on an even footing? Does the prohibition against any person accepting more than one nomination "enable any body of citizens to have the name of their candidate printed on the ballot with the names of all other candidates?" Does this prohibition protect "not merely the right of an individual to be a candidate, but the right of every other person to select him for the office?" There can be but one answer. Where a person has received more than one nomination for the same office, he is permitted to choose but one, and shall be deemed to have declined all but that one, or the first one made if he fails to signify his choice.

The constitution of Nebraska provides that "all elections shall be free, and there shall be no hindrance or impediment to the right of a qualified elector to exercise the elective franchise." (Sec. 22, bill of rights.) Hence, in Nebraska a law like that of Kansas would probably be held void. But the Kansas constitution contains no such provision, merely declaring that elections shall be by ballot. Although the law is undoubtedly repugnant to all principles of natural justice, yet it is doubtful if Kansas fusionists can reasonably hope to have it declared unconstitutional. The Kansas supreme court is republican 5 to 2, and the question being looked up, erroneously perhaps, as a partisan one, it is not difficult to guess what the decision will be if any test case be brought before that tribunal. And the court will have good precedent for sustaining it. It might cite 41 Mo., 171, where the Missouri supreme court quotes approvingly from Mr. Justice Iredell's language in Calder v. Bull:

"If, on the other hand, the legislature of the Union, or the legislature of any member of the Union, shall pass a law within the general scope of their constitutional power, the court cannot pronounce it void merely because it is, in their judgment, contrary to the principles of natural justice. The ideas of natural justice are regulated by no fixed standard; the ablest and purest men have differed on the subject, and all that the court could properly say, in such an event, would be that the legislature (possessed of an equal right of opinion) had passed an act which, in the opinion of the judges, was inconsistent with the abstrict principles of natural justice."

Although there is little hope of having the law declared unconstitutional, yet the populists and democrats of Kansas should not submit meekly without testing it. Co-operation can be effected as formerly, a suit can be brought, and if decided in favor of the law let the republicans bear the burden of deciding which one of the tickets cannot appear on the official ballot. Then a vigorous campaign can be made upon the disfranchisement issue, for disfranchisement of a whole political party will then be an assured fact—accomplished by a republican legislature, a republican court, and republican state officers. The whole thing is so revolting to the American sense of fair play that the fusionists ought to win.

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I. H. Hatfield Attorney at Law

NOTICE.

To Abbie Willsie, Isaac Steppacher, Edward Arnold and Philip Arnold as Steppacher Arnold & Company; Meyer Heldman, Nathan Heldman and Jacob Heldman as Heldman & Company, non-resident defendants.

You are each hereby notified that on March 11 1902, Emily P. Dill as plaintiff began an action in the District Court of Lancaster county, Nebraska, against you and other defendants to quiet and confirm in the plaintiff the title to lots 18, and 23, block 12; lots 30 and 31, block 7; lots 31, 32, 33, and 34 in block 8, all in Belmont; lots 9, 11, and 12, in block 7, West Lincoln; lots 10, block 11, South Lincoln; Lot "C" in Scott's sub-division of the west half of lot 4, and all of lots 5 and 6 in block 14; Lot 3 in block 4; and lot "B" in sub-division of lots 1 and 2, in block 11, all in the city of Lincoln; lot 5 in block 5, and the north half of lot 5 block 4 in Davenport's Addition; lot 6 in block 1 in East Park Addition; lot 1 in block 16 in Kinney's "O" Street Addition; a certain strip of ground about 30 feet wide by 142 feet long, with a frontage of 27 feet, and bounded on the north by lot 4, block 15, North Lincoln; lot 15 in block 2, and lot 6 in block 3, both in North Side Addition; lot 4 in block 1 in South Park Addition; lot 7 in block 45 in Lincoln Heights; the southwest quarter of the southwest quarter of the southwest quarter of section 22, and also the south half of the south half of the northeast quarter of the southeast quarter of section 32; all in town 10, range 6, east of the 6th P. M.; lots 7, 8, and 9, block 17; and lots 9 and 10, in block 29, in Imhoff's Addition to University Place. All of the above described real estate is in Lancaster county, Nebraska. Also all of blocks 7, 8, 9, 10, and 11, in Einsel & Bailey's Addition to the city of Holdrege, in Phelps county, Nebraska. Plaintiff also prays for a decree adjudging that you have no interest in said real estate, that you be enjoined from interfering therewith, and for equitable relief. You are required to answer plaintiff's petition on or before April 21, 1902.

EMILY P. DILL,
By I. H. Hatfield, her attorney.

P. James Cosgrave—Attorney at Law

NOTICE.

To James Milton Granger, non-resident defendant.

You are hereby notified that on the 11th day of March, 1902, Martha Granger filed a petition against you in the District Court of Lancaster County, State of Nebraska, the object and prayer of which are to obtain a divorce from you on the ground that you have willfully abandoned the plaintiff, without good cause, for the term of two years last past, and also as a further ground allegring non-support. You are required to answer said petition on or before Monday, the 21st day of April, 1902.

MARTHA GRANGER,
Plaintiff,
By P. James Cosgrave, her attorney.

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