

## ELECTION LAWS AND PARTY RULES: CONTRIBUTIONS TO A STRONG PARTY ROLE?\*

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The political scientists who authored *Toward a More Responsible Two-Party System* (APSA, 1950) would in all likelihood react with mixed emotions to the status of American political parties 50 years after their seminal effort at proscriptive political science. They would take pleasure in some of the post-1950s changes. The heightened intra-party unity within the congressional parties would be consistent with their goals, although their pleasure would be tempered by the prevalence of divided party government and seeming policy gridlock. Strengthened national party organizations taking a more active part in presidential and congressional elections and the heightened integration national and state parties they would surely see as positive developments. And they would be pleased to see many of the barriers to voting that were so prevalent in the post-war years being removed. However, as informed political analysts, they would no doubt recognize that most of these salutary developments came about not through adoption of their recommended reforms, but rather because of electoral forces (*e.g.*, realignment of southern white and African American voters), changes in party rules and practices, and changes in election law stemming from legislation, regulatory agency decisions, and judicial interpretation.

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On the whole, it is likely that the *Report's* authors would be deeply disappointed in the state of the parties in 2000, particularly in the trends away from party-centered politics toward a more candidate-centered politics in which party organizations operate in service to their candidates (Aldrich, 1995: 269-274). The electoral process is characterized by more open and participatory systems for nominating partisan candidates, an absence of party leader accountability to rank and file party members, and party membership that has retained its ambiguous and largely informal quality.

Using the publication date of the APSA Report on Political Parties as a benchmark, this paper surveys significant changes in election/party law, party rules, and party practices to reveal how the cumulative impact of these developments has simultaneously moved some aspects of the parties substantially closer to the *Report's* model, while at the same time pushing American parties away from the reformers' responsible party ideal in significant ways. The experience of the 50 years since issuance of the *Report* suggests that the impact of changes in election/parties law, party rules, and party practices will continue to follow two seemingly contradictory patterns. National organizations will continue to play an expanded electoral role in a more integrated party structure. However, this organizational structure is likely to be functioning within a highly candidate-centered political arena in which the rules will continue to promote two-partyism.

## I. TOWARD A MORE NATIONALIZED, INFLUENTIAL AND INTEGRATED PARTY STRUCTURE

### *Goals of the Report*

Central to the *Report* was the concept that parties are “indispensable instruments of democracy” (APSA, 1950:15) and that they were not fulfilling those responsibilities. Therefore, the report made a series of recommendations to improve the functioning of American parties as responsible parties. Many of those recommendations involved party structure and the relationships among the various level of party organization. The *Report* stressed the need for an integrated party structure with strength emanating from the national level if a responsible party system were to be achieved.

### *Party Rules and an Integrated Party System*

The authors of the *Report* clearly recognized the importance of our federal system. At the same time, they worried our decentralized party system, characterized by autonomous state and local parties, gave the national party too small a role and too little power. They called for a better balance among the party organizations at the various levels, not for total dominance by the national parties (APSA, 1950:26). However, the *Report* also suggested that the national party should be able to sanction errant state and local units (APSA, 1950:23).

The Democratic party has taken various steps since the issuance of the *Report* that the authors would surely view favorably. The party has promulgated various rules on the manner through which delegates are to be selected to the national convention (see Section III. below) and has mandated that state party organizations follow those rules, refusing to seat delegations chosen through procedures not

in compliance.<sup>1</sup> The mechanism through which rule changes have been adopted by the Democrats has involved commissions appointed by the national committee that report back to the national committee for final approval.<sup>2</sup>

The Republican party differs from the Democrats significantly in this area. First, the Republican rules mandate that only the national convention can set rules for delegate selection to the subsequent national convention. Thus rule changes between conventions—in response to dissatisfaction with the performance of the first convention's nominee, dissatisfaction that was blamed on the process through which the nominee was selected—are impossible. Second, and perhaps more important for our

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<sup>1</sup> The right of the national party to dictate rules that state party's must follow was challenged by Wisconsin, which wanted to hold an open presidential primary, a process not permitted under the party rules beginning with the 1976 selection process. In *Democratic Party of the United States v. Wisconsin*, 450 U.S. 107 (1980), the Supreme Court ruled in favor of the national party, forcing state party's in states that insisted on open "beauty contest" primaries to select convention delegates through an alternative system.

<sup>2</sup> While these commissions all have had formal names, they have generally been referred to by the names of their chairs: the McGovern-Fraser Commission that set the rules for the 1972 delegate selection process; the Mikulski Commission that amended those rules for the 1976 process; the Winograd Commission that made further changes for 1980; and the Hunt Commission that altered the 1980 rules for 1984. After the 1984 election the DNC named a new commission, the Fairness Commission, in response to complaints by Rev. Jesse Jackson that the rules advantaged Walter Mondale over him; but that group, chaired by Donald Fowler of South Carolina, made no major suggestions for change.

discussion, the Republicans have retained a confederate structure in their rules. That is, the national party does not dictate how the state party units should act. In structural terms, therefore, the authors of the *Report* would find little to cheer about in the Republican procedures.<sup>3</sup>

The authors would find mixed satisfaction in changes that have occurred regarding the membership of the national committees. On the one hand, they wanted to move away from national committee members thinking of themselves merely as representatives from the states, calling for a greater role by the national conventions in choosing the members of the national committee (APSA, 1950:39). No movement has been made in this direction; the national convention delegates merely rubber stamp national committee nominees chosen in the states. The *Report's* recommendation involved a concept of active national convention delegates, chosen because of their commitment to the party organization that defies today's reality (see Section III. below).

On the other hand, the authors of the *Report* would be more pleased with changes in the composition of the national committees, changes that move toward the recommendation that the

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<sup>3</sup> As a result of general dissatisfaction with the front-loading of the presidential nominating process in 2000, leaders of both parties have sought means to reform the system. While the two parties are following parallel tracks, acknowledging that changes in the timing of delegate selection for one party would impact the others, the Republicans have moved much more quickly than the Democrats, knowing that any change they envision would have to be approved by the 2000 National Convention. Early drafts of reform proposals due impose temporal restraints on state parties, though they do not impose procedural restraints (get a newspaper reference).

committee membership “reflect the actual strength of the party with the areas [members] represent” (APSA, 1950:39). The Democratic National Committee membership reflects an apportionment system that considers not only party strength geographically but also constituent groups that contribute to the party's following. The Republican National Committee, which automatically includes state chairmen, has an extensive system of ex officio representation by various affiliated organizations, including those representing elected GOP officeholders. It should be noted, however, that both national committees remain too large to function as effective decision-making bodies; their actions are directed largely by the national chairmen, smaller executive committees, and the professional staffs. To the extent that this is true, the more representative composition of the committees is less meaningful.

#### *Party Activities and an Integrated Party System*

The *Report* called for stronger permanent headquarters staff for the national committees, seeing a permanent professional presence as essential for a responsible party (APSA, 1950:49-50). Both parties now have impressive national headquarters within walking distance of the Capitol. Each is staffed, year round, with highly prized professionals, skilled in all aspects of politics. Furthermore, the offices of the four Hill committees and their equally skilled professional staffs have moved into the national party headquarters, adding the important ingredient of coordination among party units. Perhaps none of the *Report's* recommendations has been so completely fulfilled as has this one.

Furthermore, these professional party staffs now play an important role in providing services and material for state and local party headquarters. National party staffs are equipped to assist state and local organizations with candidate research, media production assistance, fund-raising assistance, voter identification programs, and various other campaign services. They conduct polls and share the

results with their constituent units (Herrnson, 1998). The centralizing effect of these enhanced roles responds to the *Report's* call for increased integration in party activities.

### *Campaign Fund Transfers as a Means of Party Integration*

As noted above, the Republicans did not follow the Democrats' example of instituting and enforcing an array of rules upon that state affiliates. The RNC did, however, embark on a series of programs that had the effect of strengthening the national committee in its relations with state GOP organizations. The Republicans were the first to use their ability to raise massive amounts of money to institute programs of financial, technical, and staff assistance to their state parties during the 1960s and 1970s (Bibby, 1981:107-114). By the 1980s, the DNC was consciously following the Republican example by providing assistance to its state parties. Among the programs of assistance to state parties by the national committees are cash grants, professional staff, consulting services for organizational development, media operations, and redistricting. Both the RNC and DNC operate programs to assist state legislative candidates, and there have been major investments of money and personnel to develop and maintain voter lists and operate get out the vote activities. Because the RNC has been more proficient in raising money, it has been able to be more aggressive and generous in supporting its state parties than the DNC. However, the DNC has sought to compensate by encouraging state parties, state-level candidates, and allied interest groups (especially organized labor) to pool their resources with the national party and run "coordinated campaigns" within the states.

### *Integrating Impact of Party Activities: A Summary*

By providing an array of services to their state and local party units, the national committees have gained unprecedented intra-party influence and leverage. These programs operate in a manner not

unlike federal grant-in-aid programs in that before the state parties can receive aid they are frequently required to accept conditions—albeit flexible conditions—imposed by the national party committees. Through national-to-state party aid programs, the state parties have gained valuable campaign assets, e.g., professionalized staffs, money, current voter lists, telephone banks, and computers (Bibby, 1998:41-43).

Among the consequences of these RNC and DNC state party aid activities have been the linking of state parties more closely to the national party committees, enhancement of the national party organizations' intra-party influence, a reduction in the autonomy of the state parties, and the enlargement of the state parties' campaign resources. The heightened intra-party integration and strengthening of the national party committees would please the *Report* writers, as would the improved organizational resources made available to the state parties.

## II. TOWARD THE REMOVAL OF BARRIERS TO VOTING

The authors of the *Report* were concerned about institutional barriers that prevented citizens from turning out to vote. Voting is obviously essential to the functioning of a representative democracy. Fifty years ago, scholars noted with alarm that only about half of those eligible to vote cast ballots in the 1948 presidential election; fewer than 40% had voted in the congressional election of 1946 and only slightly over 40% did so in 1950 (see Figure 1). The reforms suggested that removing obstacles to voting would lead to an increase in the number of those exercising the franchise and thus giving legitimacy to the government officials chosen and, as a consequence, to their decisions.

*Constitutional Amendments*

Three constitutional amendments dealing with access to the polls have been passed and ratified since the *Report* was issued. The Twenty-third Amendment to the Constitution, ratified in April, 1961, removed the specific barrier that prevented citizens of the District of Columbia from casting votes for President and Vice President, granting them the right to elect three electors to the Electoral College, i.e. the number equal to that of the least populous state.

The *Report* had called for this expansion of the franchise (APSA, 1950:77); yet the irony involved in this amendment cannot be ignored. In acknowledging the unfairness of District's half million residents having no say in the presidential election, the framers of the amendment maintained the status quo in terms of congressional representation and self-government. Thus, the citizens of the seat of government, nearly 200,000 of whom voted in the 1996 presidential election, still consider themselves residents of the "last colony."

By February of 1964, the requisite number of states had ratified the Twenty-fourth Amendment, thereby imposing a constitutional ban on poll taxes or payment of other taxes as a qualification for voting for federal office. Two years later, in the case of *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), the Supreme Court extended this ban to any election held in the United States. The amendment and the Court's application of the ban to state and local elections also instituted a reform envisioned by the *Report* (APSA, 1950:77). They address and remove a specific barrier that had been imposed with the goal of restricting access to the ballot by poor citizens, a vestige of the Jim Crow laws common in many southern states in the first half of the twentieth century.

During World War II, when many 18-year-olds volunteered to fight for their country and many more were conscripted into military service, political observers saw the contradiction that young men

were old enough to die for their country but not to vote. However, only Georgia (in 1943) lowered its voting age to 18. Even when President Eisenhower expressed support for such a change, only Kentucky followed suit. When Alaska and Hawaii were admitted to the Union in the late 1950s, their constitutions called for voting ages of 19 and 20, respectively. One of the provisions of the Voting Rights Act of 1970 made 18-year-olds eligible to vote in all federal, state, and local elections; however, that provision was struck down by the Supreme Court in *Oregon v. Mitchell*, 400 U.S. 112 (1970). In 1971 the Twenty-sixth Amendment, which had been passed by the Congress and was working its way through the state legislatures, was ratified and accomplished by amendment what the Voting Rights Act had failed to do by law.

### *Federal and State Legislation*

Figure 1 clearly reveals that these reforms did not provide a complete solution to the problem they addressed. Two of the amendments, of course, extended the franchise without addressing low turnout by those already enfranchised, a concern expressed in the *Report* (APSA, 1950:76-77). The *Report* went on to suggest that public bodies supervising elections should be responsible for assuring that voters in their areas had every opportunity to vote.

In the Civil Rights Act of 1957, Congress gave the Civil Rights Commission the power to investigate voting rights violations and to suggest appropriate remedies. In the 1960 Civil Rights Act, the Congress went further, empowering the federal courts to appoint referees to help blacks register in areas in which discrimination had been found. Like the Supreme Court ruling in *Smith v. Allwright*, 321 U.S. 649 (1944), which eliminated the “whites only” primary elections common in many southern states, these attempts to remove the effects of Jim Crow laws met with limited success. In 1964, only

6.7% of the blacks of voting age in Mississippi, 19.3% of those in Alabama, 27.4% of those in Georgia, and a total of 33.2% of those living in the former states of the Confederacy were registered to vote (Maisel, 1999:Table 4.1, 97). Literacy tests, strategic placing of polling places and timing of registration periods, poll taxes, but mostly social pressure continued to impact negatively on black participation in the electoral process.

The Voting Rights Act of 1965 addressed these issues head on, suspending the use of literacy tests and empowering federal registrars to replace local or state officials as those who registered voters in those areas that had used literacy tests in the 1964 election or in which fewer than half of those eligible to be registered were in fact registered to vote in that election. The result of this legislative initiative was dramatic; by 1968, black registration had increased nearly tenfold in Mississippi, tripled in Alabama, nearly doubled in Virginia, and increased over 30% in total in the covered states (Maisel, 1999:94-96).

While barriers to black voting have been removed and black registration and voting have increased dramatically, particularly in southern states, the problem of low turnout throughout the nation remains troubling. Specific actions have been taken to ease the process of registration. The mobility of the American population was long thought to be a significant barrier to voting; the Voting Rights Act of 1970 established a thirty-day maximum residency requirement for voting in federal elections and called for uniform minimal state standards regarding absentee ballots. Four states—Maine, Minnesota, Oregon, and Wisconsin—have long allowed instant registration on Election Day, essentially eliminating the residency requirement at all. Idaho, New Hampshire and Wyoming have added similar provisions in recent years. Clearly the technological advances permitted by computerizing voter registration lists

renders the requirement for a period of time between the close of registration and Election Day as meaningless.

A number of political scientists have entered the debate over the extent to which easing registration requirements would raise voter turnout (Wolfinger and Rosenstone, 1980; Erickson, 1981; Powell, 1986; Squire, Wolfinger, and Glass, 1987; Teixeira, 1987; 1993; Timpone, 1998). In the 101<sup>st</sup> and 102<sup>nd</sup> Congresses Democrats tried to pass legislation that would have eased the burden on potential voters as they sought to register by linking voter registration to motor vehicle registration; those attempts fell to a Republican Senate filibuster of a House-passed bill in 1990 and to failure to override a veto by President Bush in 1992. The National Voter Registration Act (NVRA), often referred to as the Motor Voter Bill, finally passed and was signed into law in 1993. A recent report by the Federal Election Commission highlights the success of the effort to register new voters; voter registration in states covered by the bill rose 3.7% between 1994 and 1998, to the highest level in an off-year election since 1970 (FEC 1999).<sup>4</sup> However, the impact of the bill in terms of increasing voter turnout has been far from impressive.

While the Motor Voter Bill seeks to increase the number of registered voters, approximately half of the states have enacted reforms aimed at easing the process of voting itself. Twenty states have liberal absentee ballot rules, generally sending an absentee ballot to any vote who simply requested that option; no excuses were needed and notarization, a clear impediment to ease of casting absentee ballots

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<sup>4</sup> Six states—Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming—are exempt from the provisions of the NVRA because of their past performances in registering voters.

were not required in many of these states (Busch, 1996:24; Romano, 1998:A1).<sup>5</sup> In 1988, Texas instituted a system of early voting; twelve other states have since adopted some variation of the Texas system, through which citizens can cast their votes at designated places well in advance of election day (Busch, 1996; Romano, 1998).<sup>6</sup> Note that many states permit both forms of eased access to voting. With each election cycle additional states are adopting their own variations of these reforms, seeing them as contributing to the goal of increased voter turnout.

In December, 1995, Oregon held the first state-wide primary conducted totally by mail, in the primary elections for the party nominations for the special election to succeed Senator Robert Packwood, who had resigned. The special election itself, held a month later, was also administered by mail. Oregon officials since the early 1980s, and officials in seventeen other states for various lesser periods of time, have been using mail ballots for local and county elections and for special elections as a means to increase turnout and reduce cost. The Oregon senatorial election was the first statewide election (or election for federal office) using this system. Local officials declare their use of mail ballots an unquestionable success, in that turnout was much higher than expected and the cost of administering

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<sup>5</sup> California, in 1978, was the first state to permit this type of unrestricted absentee voting. The other states using this system are Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Iowa, Kansas, Maine, Massachusetts, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, Vermont, Washington, and Wyoming.

<sup>6</sup> The states that permit early voting in addition to Texas were Arizona, Arkansas, Colorado, Hawaii, Idaho, Indiana, Iowa, Nevada, New Mexico, Oklahoma, Tennessee, and Wisconsin.

the elections less than half of what they would have been under normal procedures (USA: The States, 1996; Kiesling, 1996; see also Southwell and Burchett 2000).<sup>7</sup> Nevada and North Dakota also have provisions for mail-in elections (Busch, 1996).

The most recent innovation aimed at increasing voter turnout in elections deal with Internet voting. Internet voting has been used on occasion for a few districts in extremely remote portions of Alaska. However, the use of the Internet by the Arizona Democratic party in their March 11 presidential primary was the first use of this system in an election that gained national attention. Basic issues of fairness were immediately raised, and it is difficult to evaluate the result based on one non-competitive primary. However, turnout was up over what had been traditional or expected. This technological advance could well be the wave of the future.

### *Continued Low Turnout*

The Gingrich revolution of 1994 was accomplished with a nationwide plurality of 2% for the Republican party. As Figure 1 shows, turnout in that election was only 36% of eligible voters. Turnout by those registered to vote was just over 55%. The total GOP vote in the House elections was 20% of

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<sup>7</sup> The turnout for the primary was 57% of the registered voters; for the special election itself, the turnout was 66%, a record for special elections in Oregon. By comparison, in the June, 1993, special election in which Kay Bailey Hutchison was elected to succeed Lloyd Bentsen in Texas, the turnout of registered voters was 21%. The procedure used in Oregon is described in Kiesling 1996.

the eligible electorate; the Democrats polled 18%.

Despite adoption of some of the reforms suggested in the *Report* and concerted and continuing efforts in many states, turnout in American elections remains disturbingly low. Turnout in the 1996 presidential election was below 50%; turnout in off-year congressional elections has not topped 40% since the 1970 election. The record even in the states that have adopted various forms of early voting and easy absentee voting is mixed, with few showing sizeable increases in turnout—though many have shown slight gains.

Few recent efforts have focused on political parties. Political parties have been deeply involved in absentee and early voting campaigns. However, it is clear to party officials that strategic assumptions must be reexamined when the voting timetable changes (Romano, 1998). That the old order is changing is clear; the shape of the new is less certain. The role that parties can play in increasing voter turnout in the early elections of the 21<sup>st</sup> century will be a function of their ability to see and adapt to the new order as it emerges.

### III. TOWARD A MORE CANDIDATE-CENTERED POLITICS

#### *The Direct Primary*

The direct primary constitutes a nominating method that lends distinctiveness to American politics. As Leon Epstein has observed “in no nation apart from the United States are party nominees regularly selected by unorganized voters in legally mandated state-conducted elections” (1999: 44). The *Report* recognized that the direct primary had become “an established institution” of party nomination for state and congressional offices and, therefore, pragmatically recommended that it be retained as “useful weapon in the arsenal of democracy” even though it violated the reformers’ belief in membership-based intra-party decision-making. Hence, the *Report* gave the direct primary only grudging support and noted “the primary election laws in many states badly need improvement.”(APSA, 1950: 71). The open primary was seen as undermining responsible parties because it “tends to destroy the concept of membership as a basis for organization,” whereas, the closed primary was deemed preferable because “it tends to support the concept of the party as an association of like-minded people” (APSA, 1950:71). Washington’s blanket primary and cross-filing (then practiced most notably in California) were viewed as even more corrupting of a responsible party system. In addition, to advocating the closed primary, the Report also called upon state party organizations to engage in preprimary proposing or endorsements of candidates. The past 50 years have seen the recommendations of the *Report* undermined by changes in state laws, party rules and practices. However, the U.S. Supreme Court, in a series of decisions, has granted parties constitutional

protections from some state regulations that hold the potential to move the parties closer to the ideals of the *Report* .

Toward More Open Primary Systems via State Legislation. The states and the parties have not heeded the call for closing their primaries (Bibby, 2000: 169-174; Maisel, 1999:194-204). Only sixteen states have completely closed primaries in which party registration is required for voter participation and an additional ten states have only semi-closed systems in that they either permit voters to change their registration on election day.<sup>8</sup> The balance of the states operate primaries with varying degrees of openness—eleven have semi-open primaries that permit all voters to participate, but require them to publicly indicate in which party primary they wish to vote; and nine have completely open primaries in which voters decide in the secrecy of polling booth in which party’s primary they will vote.<sup>9</sup>

More disturbing to the advocates or responsible parties has been the spread to the blanket primary from Washington, first to Alaska and then to the nation’s largest state, California, which adopted it through a ballot initiative in 1996. (See the discussion of the Supreme Court’s ruling on the blanket

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<sup>8</sup> The closed primary states are Arizona, Connecticut, Delaware, Florida, Kentucky, Maryland, Nebraska, Nevada, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Dakota, and West Virginia. Semiclosed primary states include Colorado, Iowa, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, Ohio, Rhode Island and Wyoming.

<sup>9</sup> Semi-open primary states include Alabama, Arkansas, Georgia, Illinois, Indiana, Mississippi, Missouri, South Carolina, Tennessee, Texas, and Virginia. The open primary states are Hawaii, Idaho, Michigan, Minnesota, Montana, North Dakota, Utah, Vermont, and Wisconsin.

primary below.) In addition, Louisiana in 1975 adopted a so-called “nonpartisan primary” system that opens the primary to all registered voters. All candidates, irrespective of party affiliation are listed alphabetically in office blocs on the ballot. If a candidate receives a majority in the primary balloting that individual is declared elected, but if no candidate receives a majority, then a run-off election is held to determine the winner. The run-off may be a contest between two candidates of the same party. Needless to say, the opening of primaries by allowing changes in party registration on election day, the spread of the blanket primary, and Louisiana “nonpartisan system have all worked against the reformers’ vision of party members exercising control over nominations. The primary system, particularly in its open varieties, lessens the incentives for formal, dues paying party membership, encourages a candidate-centered style of politics, and requires candidates to build personal organizations (Epstein, 1999: 49-50).

Court Granted Associational Rights: Consequences for Parties and Primaries. In a series of decisions that the *Report* authors would no doubt have applauded, the U.S. Supreme Court has held that national (*Cousins v. Wigoda*, 419-U.S. 477 [1975]; and *Democratic Party of the U.S. v. LaFollette*, 419 U.S. 107 [1981] and state (*Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 [1986]; *Eu v. San Francisco Democratic Central Committee*, 489 U.S.214 [1989], and *California Democratic Party v. Jones*, No. 99-401 [2000]) parties have associational rights that limit state authority to regulate them. In bestowing First Amendment protections upon political parties, the Court. In *Eu v. San Francisco Democratic Central Committee*, threw out California’s ban on parties engaging in preprimary endorsements and a requirement that the chairmanship of the parties alternate between northern and southern regions on the state. In the Connecticut case, *Tashjian v.*

*Republican Party of Connecticut*, the Republican party had sought via a party rule to open its primary to independent voters, as a means of broadening its appeal, in violation of the state's closed primary law. The Court sided with the state's GOP and citing its associational rights denied Connecticut the power to limit primary participation to registered Republicans. Although few state parties have taken advantage of *Tashjian* to open their primaries (Epstein, 1989: 260-270), it does provide a precedent that can be used in an increasingly candidate-centered era to create more open primaries.

Interestingly, the *Tashjian* precedent was not successfully invoked by state parties seeking to close their primaries until California's Republican and Democratic parties, along with two minor parties, the Libertarian and the Peace and Freedom parties, challenged that state's blanket primary law. In a seven-to-two decision, in June, 2000, the Supreme Court declared that California's blanket primary law constituted a "stark repudiation of political association" that denied parties the power to control their own nomination processes and define their own identities. In taking this position, the Court adopted a view of the party primary as a private rather than public affair. Writing for the majority, Justice Antonin Scalia state "in no area is the political association's right to exclude more important than in the process of selecting its nominees." Scalia further stated that the state's interest in opening up the nominating process could be better served constitutionally by adopting a "nonpartisan" primary swimilar to that used in Louisiana.

The decision left open the question of whether or not open primaries are constitutional, since Scalia noted that the Court was not required to deal with that issue in the California case. However, the dissenting justices, John Paul Stevens and Ruth Bader Ginsberg, said that the majority decision cast serious doubt on the constitutionality of other forms of the open primary.

Clearly, the Court's decisions according parties associational rights and the California blanket primary case in particular would be applauded by the authors of the *Report* as a means of strengthening the role of parties and of creating parties that are distinct in policy from each other. It is not so clear, however, that the states, the parties, or the Court are prepared to abandon traditional open primary systems that have become established parts of states' political cultures.

Preprimary Endorsements: Declining Effectiveness. Not only has there been a trend toward more open primaries, but preprimary endorsements by state party conventions for gubernatorial nominations have declined in effectiveness. Jewell and Morehouse's research (1999; 2000) has demonstrated that there has been an increase in contested primaries particularly in states with informal rather than state-mandated endorsement procedures and that whereas endorsed candidates in states with both legally mandated and informal preprimary endorsement procedures won contested primaries in at least 80 percent of the cases between 1960-1980, those winning percentages dropped to the 50 percent range between 1982-1998. In the most recent elections of 1994, 1996, and 1998, endorsees won 56 percent of contested primaries. Even in traditionally strong party organization states such as Connecticut, a party endorsement is no longer tantamount to winning the nomination. A candidate with a substantial funds who runs an effective media campaign has become difficult to beat, even for an endorsee.

The Direct Primary and Responsible Parties in 2000. Aside from the California blanket primary case, the full implications of which are still unclear, there has been little progress toward reforming the nominating process for state and congressional offices in a way that move it toward having nominations made by like minded party members as recommended by the *Report*. On the whole, the nominating

process has become more open to non-party adherents, and party endorsements have declined in effectiveness. The 1950 advocates of more responsible parties would probably agree with V.O. Key's observation that the nomination remains a dilemma since the introduction of the primary as a "means for popular control of party hierarchies also plants the seeds for fission....of statewide party organization" (Key, 1956:168).

### *Presidential Primaries*

The *Report* envisioned a national nominating system dominated by the national conventions. The national conventions had become "unwieldy and unrepresentative" (APSA, 1950:28); the authors called for smaller and more representative conventions (APSA 1950:77) with delegates who "should be chosen by a direct vote of the rank and file" (APSA, 1950:73).

The contemporary presidential nominating system could not be further from that envisioned by the authors of the *Report* if someone set out to propose a system to achieve the anti-thesis of the reformers' goals. The notion that national nominating conventions should be decision-making bodies comprised of party leaders elected by the rank and file in recognition of their dedication to the party and its principles is totally alien to the body politic today.

To be sure, the system has been "reformed." However, those reforms have moved the system toward candidate-centered politics and away from influence by party organization. And this movement was intentional. The thrust for reform of the nominating process came out of the McGovern-Fraser Commission Report that followed the tumultuous 1968 Democratic National Convention in which Vice President Hubert Humphrey was nominated despite the fact that he did not win any of the presidential primaries. The McGovern-Fraser Commission Report analyzed the nominating system and deemed it

unrepresentative of the constituencies within the Democratic party and unresponsive to voter concerns. They called for a new system that was open, timely, and broadly representative of voters in the Democratic party (Commission on Party Structure and Delegate Selection, 1970).

This is not the place to review the reforms that followed that report (see Bibby, 1999: ???; Maisel, 1999:266-280). Suffice it to say that many state political parties found that the easiest way for them to comply with the mandates of the McGovern-Fraser Commission, once they were adopted by the Democratic National Committee, was to select delegates to the national convention through primaries in which the allocation of delegates among the candidates for nomination was to be proportional to the candidates' votes in the primary and the delegates themselves were to be cleared by the candidate whom they supported. Frequently changes in Democratic party processes required changes in state law; thus, in many cases, the process for the Republicans was changed as well.

Today, whether states select delegates through primary elections, which is in the case in nearly forty states, or through caucuses, the identity of the individual delegate is less important than that of the candidate he or she favors. Only in the Republican party in New York state do the voters cast ballots for individual delegates, the system envisioned by the authors of the 1950 *Report*. In the Democratic party delegates are allocated proportionally according to the vote in primaries or at the first-level of caucuses. The Republicans use that system in some states and a winner-take-all system in others; but in either case the vote is for delegates supporting specific candidates and not, with the sole exception of New York, for the delegates themselves.

Some dissatisfaction was expressed after the first experiences under this system, because party leaders and public officials elected under the party label had no influence at the convention or on the

nominating process. Some accommodation was made, with the appointment of Superdelegates in the Democratic party and party officials in both parties. However, none can deny that the process is totally centered on the candidates for nomination and their own campaigns. Party as an independent entity has virtually no role.

The *Report* saw national nominating conventions as an important element in a reformed party system. All movement in thirteen presidential nominations since the adoption of the *Report* has been to reduce the influence of the convention as an institution and the influence of parties within the nominating process generally.

#### *Financing of Campaigns: Legal Restrictions and Creative Applications*

The *Report* saw accurately that the role of parties could be enhanced if campaign funds flowed through party coffers. To facilitate a financial link between parties and their candidates, the authors called for “a specified measure of government assistance to parties” (APSA, 1950:75). Once again, the contemporary situation could not diverge more fully from that proposal.

Campaign Finance Laws and Candidate-Centered Campaigns. The Federal Election Campaign Act (FECA) and its various amendments follow a clear theme. Campaign funds should be spent by candidate committees that are accountable for how the money is raised and how it is spent. Disclosure of funding sources is deemed essential to a “clean campaign finance system.” The role of parties in all federal campaigns is specified in detail and limited. Again, the details are not important to understand the impact of the FECA. At the congressional and senatorial level, candidate campaigns raise their own money and must disclose the source of all money. Party committees can give to campaigns, but the

amount is specified and limited.<sup>10</sup> At the presidential level, the political parties play no role in financing the nominating process, even for incumbent presidents. The parties are given money to pay for the national conventions. Once the nominee is chosen, however, the public financing provision calls for money to go to the candidate, not to the party.<sup>11</sup>

The political parties have been searching for a meaningful role in financing today's campaigns. Today's party leaders, like the authors of the *Report*, understand that money leads to power and influence. The four Hill committees, as examples, have been influential in directing PAC money to certain candidates, in stressing the importance of certain campaigns to potential funders. However, even this role does not approximate the kind of influence the *Report* envisioned. The entire system of campaign finance, flawed as it is, favors candidate-centered politics, not party domination.<sup>12</sup>

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<sup>10</sup> In the most recent election cycles parties have found ways to spend more money than is specified in the law through soft money advertisements. The role of party in the campaigns in which they invest in this manner is clearly enhanced, though not to the point of replacing candidate-centered organizations as the dominating element.

<sup>11</sup> Perhaps the ultimate expression of this separation is the effort of Patrick Buchanan to take over the Reform Party in order to qualify for the more than \$12 million in federal money that the party nominee receives as a result of Ross Perot's showing in 1996.

<sup>12</sup> The major reform effort at the state level, embodied in the public financing schemes adopted in Maine, and either recently adopted or on the ballot in a number of states in 2000, follows the same theme. Money goes directly to candidates, in primaries and in general elections, not to parties or even to party

Party Nationalization and Intra-Party Integration as a Result of Campaign Financing. The revolution in campaign finance that has occurred since enactment of FECA in 1974 has transformed electoral politics and expanded the campaign role of parties in terms of their level of activity and ability to run uniform national campaigns with consistent themes (Holt, 2000:19). This trend toward party nationalization and integration is consistent with the themes of the *Report*. However, since these developments have been achieved to a significant degree through the parties' ability to raise unlimited amounts of soft money, it is doubtful that the reform-minded political scientists of 1950 would feel comfortable with how the parties have enhanced their campaign roles.

In 1979 Congress amended the FECA to permit parties to spend unlimited amounts of money on general party building activities such as providing sample ballots, recruiting volunteers, and getting out the vote on election day. This legislation enabled the parties—particularly the national level party committees with their well developed funding operations—to raise vast sums which were frequently transferred to state parties to implement national party electoral strategies. In the 1995-1996 election cycle, the Republican National Committee (RNC) transferred \$66.3 million (\$48.2 million of which was soft money) to its state parties and the Democratic National Committee (DNC) sent \$74.3 million (\$54.2 million of which was soft money) to its state affiliates (FEC, 1997). By transferring funds to state parties for party building activities, the national parties could indirectly support in crucial ways the

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nominees. Independent candidates are treated the same, in terms of qualifying for public funds, as are party nominees. The thrust of these reforms, in addition to ridding the system of private money, is to threaten the two-party system itself.

campaigns of candidates for federal office without violating the contribution and expenditure limits imposed on them by the FECA. In allocating their resources to state party organizations, the national party organizations have sought to implement a national strategy geared toward winning key states in the presidential race and maximizing the parties' seats in the House and Senate. State parties do not, therefore share equally or proportionally in their national parties' largess. The scope of party activities funded by these fund transfers is illustrated that the RNC's Victory '96 direct-voter contact operation. It included candidate-specific mail, slate mail (84 million pieced of targeted mail), absentee voter programs, voter identification and turnout telephone calls (14.5 million calls to Republican households), volunteer phone centers, and collateral materials. These operations were funded by \$15.3 million in RNC money and \$48.3 million in state party funds (Republican National Committee, 1997:9-10).

National party involvement in campaigns was given a major boost by the Supreme Court in *Colorado Republican Committee et al v. FEC* (1996). Citing the parties' First Amendment rights, the Court gave party organizations the right to engage in unlimited independent expenditures. Immediate beneficiaries of the decision were the 1996 presidential candidates who benefited from a flood to party-funded issue advertisements that were really thinly veiled candidate ads. A dramatic example of a national party using its state organizations to carry out a national strategy using soft money occurred when the DNC transferred \$32 million to state parties in 12 battleground states. These state parties in turn paid for television advertising that had been developed and placed in the media by the DNC's media production company (Abramson and Wayne, 1997). In 1996, national-level Democratic committees raised \$92.8 million in soft money, while Republican national organizations had soft money receipts of \$131.6 million (FEC, 1997).

National-level transfers of funds for party building and national party independent expenditures in support of candidates in key competitive contests intensified in the 1998 midterm elections. Indeed, soft money financed party activity has become so important in targeted House and Senate races that the political scientists' widely accepted view of campaigns as being candidate-centered requires a partial modification, at least in the case of closely contested races targeted by the national parties. The research of Magleby and his associates demonstrated that these campaigns in 1998 were less candidate-centered as candidates were forced to compete with parties and interest groups (which also engage in independent expenditures) for control of the electoral agenda and the attention of the voters (Magleby, 2000: 211). In competitive races, parties (and their allied interest groups) may actually outspend the candidates. The hotly contested 1998 Senate race in Nevada illustrates the scope of national party fund transfers to state parties to support candidates. Both the RNC and the National Republican Senatorial Committee sent \$1.3 million to the GOP organization in Nevada, a sparsely populated state with inexpensive media markets (Holt, 2000:35).

In a perceptive insight, Alexander Heard observed in 1960 that “any changes that freed the national party committees of dependence on state organizations could importantly affect the loci of party power” and enable the parties to develop “a more cohesive operational structure” (1960:294). The conditions that Heard envisioned have now become reality as the national party units have been strengthened in their campaign roles and state parties have become an integral part of national campaign strategies. In the process, state parties have benefited from the funds and expertise flowing to them from the national parties. However, they have also lost some of their traditional autonomy and become partially dependent upon national party largess. In some instances, state parties headquarters quite

literally have been taken over by the national party or presidential campaign operatives and the state party has become little more than a check-writing mechanism to avoid the restrictions of the FECA.

As the national parties have increased their activities and played a more prominent role in setting the campaign agenda in presidential and closely contested House and Senate contests, the party system has shown signs coming closer to having more nationalized and better integrated parties capable of strongly influencing the issue content of campaigns. The *Report's* authors would approve of these trends, even though they would be concerned about the extent to which soft money has helped bring about these changes.

#### *Forms of Ballot: From Party Column to Office Bloc*

The *Report* advocated strengthening partisanship among voters especially the encouragement of active party participation, and hence it may be fairly assumed that the reformers were supportive of institutional arrangements, including ballot forms, that would encourage this type of behavior. Research has demonstrated that the *party column* ballot form, especially when combined with a provision for expedited straight ticket voting by making a single mark, encourages straight ticket voting; whereas the *office bloc* ballot form facilitates split ticket voting (Bass, 1999: 224,260; Campbell, Miller and Stokes, 1960: 275-276,285-286; Rusk,1970; Campbell and Miller, 1957; Walker, 1966; and Weber, 1980). However, as with the direct primary, the proliferation of presidential primaries, and campaign finance regulation, the trend in regulation of ballot form has been away from encouraging partisanship.

At the time the *Report* was published, the party column was the predominant type of ballot with 30 states using the party column form and 18 utilizing office bloc ballots (Bass, 1999: 230-231,237).

However, by 1997 only a bare majority of states 26 continued the party column tradition and 24 did not. There was a similar move among the states away from providing voters with single mark-expedited straight ticket voting. Whereas, 27 states had provided for expedited straight ticket voting in 1946 (Bass, 1999, 232), only 18 did 2000 (Kimball and Owens, 2000). Both of these developments hinder the expression of partisanship and encourage ticket-splitting. The impact of these ballot form changes has in all likelihood been increased by the weakening of partisan attachments in the electorate. For as the authors of *The American Voter* noted, “formal institutions have their greatest impact on political behavior when the attitudes relevant to that behavior are least intense” (Campbell, Converse, Miller, and Stokes, 1960: 283).

The trend away from ballot forms encouraging straight ticket voting has further undermined the reformers’ vision of responsible parties capable of enacting their programs by increasing the likelihood that there will be divided party control of government at both the national and state levels (Bass, 1999:224;). Indeed, divided government has become the norm in recent decades. Ballot forms, of course, can hardly be considered *the* cause of split ticket voting and divided government, but they certainly facilitate it. However, to the extent that voters continue or increasingly split their tickets, changes in ballot forms are likely to accommodate them (Bass, 1999: 263).

#### **IV. TOWARD STRENGTHENING OF PARTIES AND THE TWO-PARTY SYSTEM: THE CONSTITUTIONAL LAW OF PARTIES**

Although trends in nominating politics and some aspects of campaign finance have moved the

electoral system away from the responsible model envisioned in 1950 by the reformers, developments in the constitutional law of parties would give them some renewed hope. As the Supreme Court has had to develop this aspect of the law and elaborate upon the role of parties without any guidance from a Constitution that does not mention parties, the basic issue with which the Court has wrestled concerns the constitutional status of parties. Are they private associations with all the protections of other private organizations, or quasi-public organizations because of their crucial role in the electoral process? If they are quasi-public, are they then entitled to either more protection from governmental regulation than private groups, or does their quasi-public status legitimize state regulations that would not be appropriate for other private organizations (Peltason, 1999:9-10)?

In keeping with the beliefs contained in the *Report*, the Court has sought to protect the right of individuals “to associate with the political party of one’s choice” and “with others for the common advancement of political beliefs and ideas” (*Eu v. San Francisco Democratic Committee*, 489 U.S. 214 [1989]). The Court has also sought to free parties from excessive state regulation by insisting that regulations which impose “severe burdens” on parties must meet the test of “a compelling state interest” to pass constitutional muster. In addition, the thrust of post-1950s decisions has been to strengthen the role of national party organizations at the expense of state party units (*Timmons v. Twin Cities Area New Party*, 137 L.Ed. 2d 589 [1997]; Peltason, 1999:10-11). These developments that strengthen the role of members in party governance and tend to nationalize the parties would no doubt have been applauded by authors of the *Report*.

### *Strengthening the National Parties*

Presidential Electors As Party Instructed Agents. The Constitution writers clearly intended that

presidential electors should be free agents. However, in the aftermath of the 1948 election in which Democratic electors from Alabama voted for the States' Rights ticket of Strom Thurmond and Fielding Wright, the Court upheld the power of state's Democratic party acting under authority of state law to withhold certification of presidential electors who did not pledge support for the nominees of the Democratic National Convention (*Ray v. Blair*, 343 U.S. 214 [1952]). Interestingly the dissenting justices, Robert H. Jackson and William O. Douglas, objected to the way in which this decision enhanced national party influence by permitting a state law to reinforce national party influence. Today roughly half the states have laws which seek to legally bind electors to support their party's nominee (Peltason, 1999: 11-13).

National Party Rules Take Precedence Over State Laws and State Party Rules. Following the national Democratic party's massive rules reform effort after the 1968 convention and election, the Court has come down firmly on the side of national party rules when those rules are in conflict either with state laws or state party rules governing selection of national convention delegates. Thus, in *Cousins v. Wigoda* (419 U.S. 477 [1975]) it upheld the power of the 1972 Democratic Convention to deny seating to Illinois delegates chosen under Illinois laws which violated national Democratic party rules. The parties' First Amendment rights of political association were again invoked in 1981 when the Court held in *Democratic Party of the U.S. v. Wisconsin* (450 U.S. 107 [1981]) that national Democratic rules banning open presidential primaries took precedence over Wisconsin's law which provided for open primaries. Since the Wisconsin case not only strengthened the role of the national parties but also struck a blow for the parties' right to ban open primaries, this decision affirming the right of parties to determine how they would run their national conventions would all likelihood have been

warmly welcomed by the *Report* authors has a step toward creating more responsible parties.

### *Freeing Parties From Burdens of State Regulation*

Because of the states' interest in the integrity of their electoral processes, there is extensive state regulation of political parties. However, because First Amendment protection of political association has been accorded to parties, state regulations that burden the parties' ability to operate in a manner consistent with their own beliefs and which cannot be shown to serve a compelling state interest have been struck down (*California Democratic Party v. Jones*, No. 99-40 [2000]). Like the cases granting precedence of national party rules over state laws, the Court's decisions limiting state regulatory power over state parties are consistent with the *Report's* objective of creating parties governed according to views of their members.

The landmark case, *Eu v. San Francisco Democratic Committee* (1989), involved provisions in California law which forbid official party units from engaging in preprimary endorsements, made it a misdemeanor for a candidate to claim an official party endorsement, required the chairs of the state central committees to be rotated between northern and southern California, and required parties to establish county level governing bodies. These provisions were declared unconstitutional on the grounds that they violated the associational rights of the parties and that the state had failed to demonstrate its regulations were justified in order to promote stable government and protect voters from confusion and undue influence.

The Court showed a further willingness to allow parties to determine their own internal procedures when it upheld the decision of the Connecticut Republican party to open its primaries to independent voters even though state law provided for a closed primary system in which only persons

registered as party voters were allowed to vote in party primaries (*Republican Party of Connecticut v. Tashjian*, 1984). In this instance, the Court rejected Connecticut's claim that its closed primary law was needed to prevent opposition party affiliates from engaging in primary raiding and to avoid voter confusion. The Court observed that the state was substituting its judgement for the party's in deciding how to protect the party's integrity (see Epstein, 1999: 58-59). Given their aversion to open primaries, the authors of the *Report* would have derived satisfaction from the fact that few state parties have sought to take advantage of the *Tashjian* decision and opened their primaries.

#### *Protecting the Parties' Nominating Processes and the Two-Party System*

Given their commitment to responsible parties and the two-party system, the writers of the *Report* would gain additional satisfaction from a series of Court decisions that been protective of the role major parties' nominating processes and the two-party system.

Preventing Raiding and Sore Losers. In a series of cases in the 1970s, the Court upheld state laws which discouraged raiding in primary elections. In *Rosario v. Rockefeller* (410 U.S. 752 [1973]), it upheld a New York statute that required voters to be registered in the party of their choice 30 days prior to the general election on the grounds that it was a reasonable means to prevent raiding. However, later that same year the Court threw out an Illinois law that prohibited a person from voting in the primary of one party if that individual had voted in another party's primary within the preceding 23 months (*Kusper v. Pontikes*, 414 U.S. 51 [1973]). In the Illinois case, the Court held that the state was preventing voters from participating in the next primary of their most recent choice, while in the New York case the state had only required voters to meet one deadline (see Peltason, 1999: 19).

On the grounds that the states have a legitimate interest in preventing "splintered parties and

unrestrained factionalism” within their borders, so-called “sore loser” laws were upheld when California’s law banning candidates from running as independents after they had lost in a party primary were upheld (*Storer v. Brown*, 414 U.S. 737 [1974]).

Maintaining the Two-Party System. The Supreme Court has taken the position that both Congress and the states are not forbidden from adopting measures that promote two-partyism on the grounds that dualism promotes political stability. However, the Court has asserted that the two-party system need not consist of any particular set of parties such as the Republicans and Democrats (*Anderson v. Celebrezze*, 460 U.S. 780 [1983]).

Clearly the Federal Election Campaign Act (FECA) affords special protection to the two major parties by providing them with substantially higher levels of public funding for their conventions and candidates than is given to minor or new parties. In upholding a challenge to FECA, the Court noted that third parties have not constituted credible threat to the major parties since 1856 and 1860 and that Congress has an interest in not spending public funds on hopeless candidates. Furthermore, it held that Congress had a legitimate interest in not creating artificial incentives for splintered parties and heightened factionalism (*Buckley v. Valeo*, 424 U.S.1 [1976]).

In addition, the Court has given its approval to practice followed in most states of paying the costs of primary elections of major but not minor parties (Peltason, 1999: 23). A particularly significant decision which put the Court squarely on the side of promoting two-party politics was its 1997 decision in *Timmons v. Twin Cities Area New Party* upholding a Minnesota law which banned “fusion candidates” or “cross-filing”—i.e., running as the nominee of more than one party simultaneously.

Writing for the Court, Chief Justice William Rehnquist acknowledged that parties have associational

rights to select their own candidates, but asserted that states have also the constitutional right to regulate elections. He noted that “The Constitution permits the Minnesota Legislature to decide that political stability is best served through a healthy two-party system.” The Chief Justice also stated that the ban on fusion tickets imposed only an insignificant burden on a minor party, leaving it “free to spread its message to all who will listen.” Clearly, this decision was a major blow to minor parties which believe that a route to influence is through alliances with the major parties, as has been demonstrated by the New York Conservative and Liberal parties, which have taken full advantage of the state’s laws permitting cross-filing.

## V. CONCLUSIONS

Perhaps it is unfair to look to the *Report* of the Committee on Political Parties of the APSA as a basis for evaluating changes in the party system of the last half century. After all, many of the changes in the polity could not have been foreseen by the authors of that *Report*. At the beginning of the new millennium we can only speculate how the scholars serving on that committee would have viewed parties today; for today’s parties operate in a very different milieu from those of fifty years ago. In all likelihood the call for responsible parties struck a responsive chord among the students of those who wrote the *Report*. Today’s students would probably be appalled at the very thought of strong responsible parties. At the very least, we must admit that our students today—and their parents if national polls give us any indication—would not really comprehend the possibility of a strong party system.

With that caveat, we note how many of the changes suggested in the *Report* have come to pass,

not because of the suggestions of the APSA Committee, but because of changes in the electoral process, changes brought about by demographic and other societal changes, by technological changes, by changing in campaign techniques, and by reactions to those new circumstances by party leaders, state legislators, regulators, and the courts. The result is a vastly transformed system in which parties play a very different role. While this transformed party system has developed some features consistent with the goals of the *Report* (e.g., stronger national party organizations, better integrated party structures), the overall thrust of the changes identified in this paper, particularly changes in nominating processes, have been to move toward a more candidate-centered rather than the party-centered political system envisioned by the reformers of 1950.

The party system may not have been reformed as the scholars serving on the APSA Committee had hoped, but in the last fifty years political parties have shown—as they have throughout the history of the nation—that they are adaptive institutions. The story of the last fifty years, therefore, is not one of party leadership responding to the reform ideas put forth by political scientists, but one of the parties responding to new situations in such ways as to guarantee their own continued existence.

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**Figure 1. Turnout in National Elections, 1930-1998**



