The Growth of Florida's Election Laws

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One of the neglected phases of American history is the development of election laws in the different states. Several monographs have been written showing the evolution and progress of certain reforms, such as the introduction of the Australian ballot, in the country as a whole, but these are usually not explicit and often not reliable regarding the subject in individual states. Articles and monographs on elections in each state are needed. It is entirely true that to obtain an accurate view of this subject the final monograph must contain a survey of the record of development in all states, but it is just as true that necessary antecedents of such a work must be studies of election conditions in the several states, which together will form the bases of the final work. It is the purpose of this article to give a brief summary of the development of the election laws in Florida in the hope that future historians may give more detailed information about the causes and results of this development and may show more clearly its relations with similar movements in other states.

The history of Florida election laws has been a record of growth from comparatively simple machinery at the time that civil government was instituted in 1822, to the present complicated system, of primaries and general elections. In this respect, the state has simply. followed the tendency of the times. One cause of the increasing complexity is not far to seek. As more offices were made elective, the more glaring became the abuses that crept into the elective process, with the result that elaborate laws were passed to safeguard democracy.

The beginning of the election laws of Florida was contained in the national statute [1] of March 30, 1822. giving the territory a civil government, and permitting the inhabitants to elect a delegate to the national Congress. Section 14 of this act contains the following, "The said delegate shall be elected by such description of persons, at such times, and under such regulations, as the governor and legislative council may, from time to time, ordain and direct". Accordingly, one of the early bills passed at the first session of the legislative council which began in July, 1822, was the first election law that Florida had [2]. Since this was the period when property qualifications for suffrage were becoming unpopular in many states, it occasions no surprise to find that all free white male inhabitants of the age of twenty-one or more, who had been residents. in the territory when the United States took control in 1821, and all white male citizens of the United States of the age of twenty-one or more, who resided in the territory at the time of the passage of the act, were considered qualified voters. These provisions show that the spirit of so-called western democracy was rampant. in Florida. So far as is known, the people of Florida were satisfied with these liberal suffrage qualifications in all particulars except one. They objected strenuously to the inclusion of soldiers and sailors in the list of voters. [3] Apparently the United States government concurred in the objection, for Congress in March, 1823, passed a bill [4] which declared that "soldiers of the United States . . . shall under no circumstances be qualified to vote." It is interesting to note that the suffrage qualifications in Florida, as

[1] *3 U. S. Statutes at Large, p. 654 ff.* [2] *1822, Acts of the Legislative* Council, p. 9 ff. This session was held in Pensacola. [3] See See Caroline Mays Brevard (J. A. Robertson, ed.) : A. History *of* Florida *from the Treaty of 1763 to our own Times"* (DeLand, Florida, 1924), Vol. I, pp. *74-75.* [4] *3 U. S. Statutes at Large,* p. *754 ff.*

well as the qualifications for holding offices, have remained practically on this broad general basis ever since.[5] The election machinery, provided for in the act of the council of 1822, was very simple. The governor[6] was authorized to select the polling places and to appoint two judges of elections for each polling place, who were in their turn to appoint a clerk to assist them. Two poll books were to be provided for recording the votes, one of which was to be given after the election to the sheriff of the county, and the other was to be open for inspection by the citizens. The poll was open for three consecutive days, and voting was viva voce. The nucleus of a corrupt practices act may be seen in the provision that all judges convicted of fraud were liable to heavy fines.

Three features of this first election law were modified or eliminated in 1823. ***Viva*** voce voting was displaced by the ballot, but no particular kind was specified.[7] This was in harmony with the practice in all of the neighboring states.[8] The judges were required to provide a ballot box into which one of them was to place the ballot immediately upon its receipt from the voter. At the end of each day (the balloting continued three days as before), the votes were to be publicly counted and recorded in a book. This method of voting led to two further provisions to prevent fraud, the public recording of the name of each person after he had voted, and the throwing out of ballots, if two or more were folded together. The latter provision, of course, indicates the danger of stuffing the ballot box

[5] This statement should probably be qualified. The law at present specifically disfranchises idiots, criminals, etc., but these were undoubtedly disqualified in the early days, even if the law did not state it. [6] He was appointed by the President. [7] 1823 *Acts*, p. 91. [8] See Eldon Cobb Evans: *A History of the* Australian *Ballot System in the United States* (University of Chicago Press, 1917, p. 5.

so long as each voter could prepare his own ballot before coming to the polling place.

A second change in the election laws made in 1823 dealt with the election judges. Instead of being appointed by the governor, they were now chosen by the county judges, [9] and their number was raised to three for each polling place. The laws now specified the compensation of the judges at two dollars a day and the clerks at three dollars. The third modification made in 1823 related to the resident requirement of voters, who were now not permitted to vote before they had resided three months in the territory.

One other important change was made two years later. The polls were to be open for one day only. [10] Thus by the end of 1825, the foundations of the present-day election laws of Florida were fairly well laid: appointive election officials, democratic suffrage qualifications, one day balloting, the beginnings of the corrupt practices act, and voting by ballot. Thereafter no important change in the election laws was made for eighteen years. [11] During this long period, elective offices became. ever more numerous., In 1826 the United States Congress gave Floridians the right to elect the legislative council, [12] and in 1829 all civil and military officers except those appointed by the President of the United States, and justices of the peace, and treasurer, and auditor. [13] In 1838, another group of offices was added when the legislature was made bicameral. [14]

Before considering the further development of the election laws, it may be well to digress and see through

[9] The judges also designated the polling places. [10] 1825 *Acts*, p. *4* f. [11] In 1828 (see 1828 Acts, p. 248 ff.) a long election law was passed but it amounted to practically a codification of the earlier law. Its chief addition is a provision for the punishment of repeaters *(see* p. *256).* [12] 4 *U. S. Statutes at Large, pp.* 164 ff.

the eyes of a contemporary naturalized American how an election was actually conducted in those early days. Achille Murat, a nephew of Napoleon Bonaparte, wrote the following description, [15] about the year 1830, on his plantation, Lipona, in Jefferson County -

To enjoy an election, however, a stranger must see it "al fresco" in the country. The day arrives - for several months the candidates and their friends have been actively engaged in canvassing, going from house to house, and settlement to settlement, full of persuasion, explanation, solicitation &c, until the poor elector becomes completely bewildered with promises. In general, the friends of the candidate give themselves more trouble than he himself. The Governor, by proclamation, has fixed the day, and divided the country into sections, in each of which he selects a central house, and appoints three election judges or scrutiniers. [16] These three dignitaries of a day assemble at early dawn, and swear on kissing the Bible, to demean themselves with integrity, etc. They seat themselves at a table near the window. An old cigar box duly patched up, with a hole in the top, a sheet of paper, pen and bottle as an apology for an inkstand, form next to themselves, the prominent features of this august tribunal! Each elector presents himself at the window, gives his name, which is registered on the paper, deposits his ballot in the box which is presented to him, and retires. If the judges doubt the elector's qualifications (from age or residence), they put him on his oath. In the room itself, all is conducted with the greatest order; not so, however, without. The forest is encumbered with wagons and horses. The electors arrive in squadrons, laughing and singing, not unfrequently half so-and-so [17] since the commencement of their morning's ride, when they become eloquently vociferous in praise of their favorite candidate. The candidates, or their friends, present themselves to the electors on their arrival, and pounce upon them with ballots already prepared and often printed, which only exposes them to the rough railleries of the countrymen. Hardly is one arrived, before he is questioned as

[13] 4 *U. S. Statutes at Large*, p. 333. [14] 5 U. S. Statutes *at* Large, p. 263 f. [15] Achille Murat: *America and the Americans* (New York, 1849), pp. 55-57. There is an earlier (English) edition of this work, published in 1833 under the title, *Moral and Political Sketch of the United States of North America.* [16] Murat errs. In his time the judges were appointed by the county courts, see above. [17] drunk.

to his vote and is either greeted with applause, or hooted, according to his opinions. If an influential man presents himself at the poll, he announces his opinion in a short address, the clamor ceases, for a moment, while his "sweet discourse" wins over a party to his principles, and nobody presumes to molest him. The whiskey, however, (not exactly the "nectar of the gods"), all this time is going its rounds; towards evening all have, more or less, disposed of their sober qualities, and it is rare that the sovereign people abdicate power without a general set-to, where nobody can be heard, and from which all who claim the enviable distinction of possessing a vehicle take very good care to keep aloof. Each now goes home; the judges examine the votes, and transmit the result to the capitol. On the following morning, friend and foe, conqueror and conquered, become good friends, as if nothing had happened; so much so, that a little rough encounter has been known to make the best friends imaginable. Vox populi, vox Dei, is here an absolute axiom; where all have been taught from earliest infancy to yield to the majority. It must be observed, that the public interest suffers not in the least for this tumult, because, generally, before voting each has long previously made his mind up, as to who shall be his favorite; and be he drunk or sober, at the election, he adheres to his resolution. The excitement of an election passes off rapidly; before it takes place, it forms the general topic of conversation, but on the following morning it is no more talked about, nor thought of, than the Great Mogul.[18]

Since 1843 the chief developments in election laws have been along four main lines : the form of the ballot, greater precision in defining corrupt practices, more exact definition of suffrage qualifications, and, quite recently, the regulation of political parties in the nomination of their candidates. In order to follow the more readily the development in these particulars, each of them will be discussed separately.

In 1843, the legislative council codified and changed slightly the laws relating to elections. [19] One

[18] Call Long: *Florida Breezes* (Jacksonville, 1882), p. 185 ff.. has a description of a Florida election held about 1835. Internal evidence, however, would seem to indicate that she drew her account almost entirely from Murat. [19] 1843 *Acts*, pp. 3-14.

of the most striking innovations in this act was the introduction of a more nearly definite description of the ballots which were to be used. They were to be paper tickets containing the name or names of the candidates for which the elector wanted to vote, and the names of the offices. The outside of each ballot when folded, should have the name of the office written or printed upon it; but failure to comply with the requirement was not to cause disfranchisement. It was provided that there should be as many ballot boxes as there were offices and that the ballots should be placed in the proper boxes, although none in a wrong box should be rejected, if properly endorsed.

No changes were made in the form of the ballot when Florida became a state in 1845. [20] After a lapse of almost twenty years, in 1862, a provision was enacted that each ballot must be numbered so as to correspond with the number given to the elector in the poll book. [21] This act, violating the secrecy of voting, was repealed in 1864. [22] When the reconstructionists took hold of the state in 1868, a law was passed that all candidates voted for by an elector should appear on one ballot and no more. [23] Another provision in the same law attempted to nullify the evils of repeating. It was ordered that if the number of ballots cast exceeded

[20] A new act was passed (see 1845 Acts, pp. 77-88, adjourned session). This, however, is practically a reaffirmation of the act of 1843. [21] 1862 Acts, p. 22. [22] 1864 Acts, p. 26. [23] 1868 Acts, p. 5. Whether the multiple ballot had been used the entire time between 1843 and 1868 is very doubtful. In 1852 a law was passed for the purpose of simplifying elections (see 1852 Acts, p. 118 ff.). Although the use of one ballot only is not specified, there is no mention of the multiple ballot, nor of multiple ballot boxes. The same is true of the 1862 law (see 1862 Acts, p. 22). This law provides that all names of candidates "for whom said person may be authorized by law to vote and the name of the office to which said voter may desire the person or persons for whom he votes to be elected, [shall be] written or printed on one and the same peice [sic] of paper" This rather ambiguous statement would seem to indicate that the multiple ballot was no longer used.

the number of voters, one of the inspectors should draw from the box enough ballots so that there would be no surplus. [24]

It is remarkable that no other changes in the ballot law were made during the entire troublesome reconstruction period and that only a minor one was made immediately after white supremacy had been reestablished, this being the requirement that the ballot was to be of plain white paper, blank on one side. [25]

Since 1877 three important changes have occurred in the ballot laws. In 1889 the requirement was made that ballots should not be more than six inches long, and two and one-half inches wide, and that they should be clear and even cut, without ornament, designation, mutilation, symbol or work of any kind except. the name or names of those voted for. [26] The multiple ballot and ballot box system of 1843 was re-introduced with the added provision that all ballots found in the wrong boxes should be discarded. Since most of the negroes were illiterate, they did not know which box was the right one, although the law provided that each box should be plainly marked with the name of the office. As the Democratic election inspectors refused to direct the negroes, the vote of the latter was practically eliminated. [27] To make the election machinery still more elaborate, two polling places, one for national offices and the other for state and local offices, were now required in each precinct. [28]

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[24]This provision really aided the party in power, so long as the ballots of the different parties were not made of paper of the same texture. The inspector would be careful to draw out and thus the ballots of his political opponents. This practice was, according to old inhabitants, resorted to by both parties. [25] 1877 *Acts*, p. 71.

[26]1889 *Acts*, p. 101. [27]In 1888 the Republican candidate for governor received 26,485 votes, while in 1890, the party candidate for comptroller received only 4,711 votes. (From official election returns in the office of the Secretary of State, Tallahassee, Florida.) [28]The separate polling places were abolished in 1899 (see 1899 *Acts*, p. 73).

In 1895 the multiple ballot law was repealed and the present Australian ballot was introduced. [29] As its very nature required that all the ballots should be alike in texture and size, they were now printed under the supervision of the county commissioners and at public expense. The names of all candidates for all offices are now on one sheet without any party designation whatsoever. The order of the candidates' names is left to the discretion of the officer who has charge of the printing.

In 1909, when the state was making ever stricter regulations regarding the methods of nominating candidates by political parties, [30] the type of ballot to be used in primaries was prescribed. [31] The size of type and the quality of paper were to be in conformity with that used in general elections. In addition to this, each ballot was to have two stubs, each of them containing the words, "Official Ballot, Number _____." Ballots were to be numbered consecutively. The inspector was required to write the name of the voter on the upper stub and his own initials on the lower one. The lower stub was to remain attached to the ballot handed to the elector, but was detached before the ballot was put into the box. In 1913, a law was passed requiring the names of all candidates for an office to be printed in alphabetical order on the primary ballot. [32]

The second line of development in the election laws of Florida since 1843 relates to a greater precision in defining and penalizing corrupt practices. As we have seen, the first election law of the territory made a beginning in this. direction. The act of 1843 devoted an entire section to the prohibition and penalization of perjury, neglect of duty, bribery, hindrance in vot-

[29] 1895 *Acts*, p. 56 ff. [30] See below, on primaries.
[31] 1909. *Acts*, p. 71 ff. [32] 1913, *General Acts, 242 ff.*

ing, fraud, and the destruction of ballots. [33] In 1845 this section was extended and enlarged. [34] From that time on, the laws have become ever more stringent, culminating perhaps in the strict Corrupt Practices Act attached to the law of 1895 [35] and to the primary election law of 1913. [36]

A third tendency since 1843 is noticeable in the various attempts to define more precisely the qualifications of voters within the broad general requirement that they must be twenty-one years of age and citizens of the United States. The first state constitution required two years' residence in the state and six months in the county, [37] but this was changed by amendment in 1847 to one year in the state and six months in the county, - provisions that have been retained since that time. No change was made during the Civil War except that the voters had to be citizens of the Confederate States. The constitution of 1865 established the same qualifications that were in existence before the War, permitting only free whites to vote. [38]

More specific limitations were included in 1868, at the same time that aliens who had taken out their first papers and negroes were enfranchised. [39] The following were now disqualified: those under guardianship, the insane, idiots, those convicted of felony, bribery, perjury, larceny or other infamous crimes, duellers, and bettors on election results, - disqualifications that have remained since that time. The constitution of 1868 also required that the legislature should disfranchise the illiterate after 1880, although nobody should be disqualified who had voted or registered at

[33] 1843 *Acts,* p. 13 f. [34] 1845 *Acts,* (adjourned session p. 87. [35] 1895 *Acts,* p. 56 ff. [36] 1913 *General Acts,* p. 242 ff. For other laws relating to this subject, see 1854 *Acts,* p. 47; 1868 *Acts,* p. 7 and p. 106; 1881 *Acts,* p. 83; 1909 *Acts,* p. 71 *ff., et ad.*

[37] Article 6, clause 1. [38] See Francis Newton Thorpe: The *Federal and State Constitutions.* Vol. II. p. 695. [39] See 1868 *Acts,* p. 3 ff. See also 1868 Constitution, Article XV. [40] 1868

any previous election. [40] This is the only provision ever made in Florida for an educational test and it was never made effective. In 1868 the registration laws which had their rather vague beginnings in the first state constitution [41] and in the acts of 1845, [42] were made much stricter. [43] All qualified electors who desired to vote had to register at least six days before the election and take the following oath: "I do solemnly swear that I will support, protect, and defend the constitution and government of the United States and the constitution and government of the State of Florida, against all enemies, foreign or domestic ; that I will bear true faith, loyalty and allegiance to the same, any ordinances, or resolutions of any State Convention, or Legislature, to the contrary notwithstanding, so help me God."

The principles of these reconstruction election laws were retained after the era had come to an end. In 1877 an annual revision of the registration lists under the supervision of the county commissioners was ordered. The time limit for registration was set not later than ten days before the election. [44] The constitution of 1885 continued the requirement of registration for voting. The oath was now changed to the *following :* "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and of the State of Florida, that I am twenty-one years of age, and have been a resident of the State of Florida twelve months and of this county for six months, and I am qualified to vote under the Constitution and laws of the State of Florida." [45]

In 1887 the provision was made that a person need not register a second time so long as he did not move

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Constitution, Article XIV, section 7. [41]1839 Constitution, Article VI, section 2. [42]1845 *Acts* (1st session), p. 36. [43]1868 *Acts,* p. 4. 1868 Constitution, Article XV, section 1.
[44]1877 *Acts,* p. 64 ff. [45]1885 Constitution, Article VI.

to another county. [46] This was changed in 1915 so that biennial registration was required in cities having a population of more than 20,000 [47] and in 1923 in counties with more than 80,000 inhabitants. [48] The present provision for closing the registration books on the second Saturday of the month preceding the general election was passed in 1895, [49] while that for closing the books on April 30 before the primaries was fixed in 1915. [50]

Another qualification for voting was added in 1889, when a poll tax of one dollar a year was added. [51] Exemptions from this payment of poll tax were made in 1895 in the ease of those who were more than fifty-five years of age or who had lost a limb in battle. All others if they had been eligible to vote for the preceding two years were required to pay the poll taxes of these years. [52]

A state constitutional amendment in 1894 disfranchised aliens with their first papers. It will be remembered that the constitution of 1868 had given them the right to vote. The last great change made in the suffrage qualifications occurred in 1920, when the nineteenth amendment to the constitution of the United States doubled the number of voters by giving the ballot to women.

The fourth and latest important development in Florida election laws is part and parcel of that tendency, apparent all over the country in the last thirty years, for state control over political parties. The

[46] *1887 Acts,* p. 66. [47] 1915 *General Acts, p. 150.* [48] *1923 General Acts, p.. 327.*

[49] 1895 *Acts,* p. 61. [50] 1915 *General Acts,* p. 151, [51] 1889 *Acts,* p. 13. [52] 1895 *Acts,* p. 56 ff. The fact that the fundamentals of the election laws of 1868 have remained unchanged would seem to indicate that W. W. Davis in *The Civil War* and *Reconstruction in Florida (New* York, 1913), p. 512, was right in assuming that the constitution of 1868 was a "joint product of the moderate Republicans . . . . . and certain native white conservatives".

Florida, legislature first took official cognizance of the existence of political parties in 1897, [53] when regulations were passed governing the conduct of primary elections, if the executive committee or a majority of the qualified electors of the party decided to use this method of making nominations. The danger of "snap" primaries was guarded against by the provision that twenty days' notice of the election must be given in some newspaper. "Packed" primaries were prohibited by the clause that no person was permitted to vote who was not an elector according to the laws of the state and had not paid his poll tox. Vote by ballot was required. The general election laws of the state were in force, and a plurality of votes was sufficient to nominate. Within the limits of these regulations the executive committee was still supreme. It had the power to decide on the qualifications necessary for membership in the party, to prepare the ballot, and to appoint the election inspectors.

In 1901, the twenty days' notice of a primary was increased to thirty days. A majority of all votes was now required to nominate; if no one received a majority, a second primary was held within four weeks, in which a plurality would nominate. The ballots were now to conform to the requirements of the general election law of the state. [54]

In 1909 the candidates in the primaries were required to file with public officers an account of their expenditures at least ten days before and not later than ten days after the primary. At the same time the form of the ballot was somewhat changed, [55] a strict corrupt practices act was passed and the election inspectors were to be paid. [56]

[53] *1897 Acts,* p. *62 ff.*
[54] 1901 *Acts,* p. 161 ff. [55] See above. [56] 1909 *Acts,* p. 71 ff.

In 1913 the present primary election [57] law came into existence, although it has been modified somewhat since that time. All political parties whose highest candidate at the last preceding general election polled five per cent [58] of the total number of votes cast, were required to nominate their candidates in primaries held on the same day, prescribed by law. The second primary was eliminated by permitting voters to indicate their first and second choice of candidates. The primary was made a hermetically sealed one by the provision that any voter on being challenged at the polls would have to take an oath that he did not vote for the nominee of any other political party at the last preceding general election. [59] A maximum limit to campaign expenditures for candidates for each office was also introduced. Other features of this law are the provision for the publication of a publicity pamphlet which is distributed by the state, and the requirement that all primary candidates must pay to a designated public official a filing fee of three per cent of the annual salary attached to the office. [60]

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In the development of election laws, Florida was probably never the leader ***in a*** new movement, but she seems to have been peculiarly responsive to new developments in other states. This can be seen in the democratic franchise in 1822, in the introduction of

[57] 1913 *General Acts*, p. 243 ff. [58] This was increased to thirty per cent in 1921 (See 1921 *General Acts, p. 400* f.).

[59] This provision is seldom enforced. [60] The party may assess each candidate an additional two per cent. One more development in the state's election laws has occurred quite recently: the provision *for* absent voting. (See 1917 *General Acts*, p. 241 ff.)

the Australian ballot in 1895, and in the rapid development of the regulated primary system.

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