leading officers of the federal army can the Vasquists make good.

As President Madero is a man of sincerity and high democratic ideals, it is the duty of progressives everywhere to sustain him in his endeavor to hold his post in spite of the conspiracy against him of the millionaire criminals of the old regime.

R. B. B.

HOW NOT TO DO IT.

Brooklyn, N. Y., March 5.

Of political progressiveness in the East, perhaps the best we can say is that there are sporadic cases. Even here in the very web of the money spider there is a constantly growing public sentiment in favor of direct primaries. You need not take my word for that. There is better evidence in the fact that both principal parties in convention assembled indorsed a principle of that nature. This could only be because they had their ears to the ground and heard something convincing. That is what happened here in 1910. The Democratic and Republican parties embodied in their respective platforms a pledge to pass a direct primary law.

The plank of the Democratic party, which was the successful contestant for popular favor, declared for State-wide direct primaries. But the legislature of 1911 was a long while about giving any attention at all to that pledge. They finally tackled the job, however, with the same alacrity that a small boy exhibits about washing the back of his neck in cold water on a winter morning.

The first thing in their law is that "party nominations be made by conventions composed of delegates." That was hardly what we had a right to expect from a party that had specifically pledged itself to State-wide primaries; but when we had glanced over the provisions for the direct primaries we did get, we found that we did not care so much whether they were the width of the State or the width of Ann street.

I don't want to be prolix, but I do want you to understand. On the ballot used in elections in New York each party has a column. Over the column is the party emblem, and under the emblem is a circle. A cross in the circle means a "straight" vote for all the candidates in the column, and it makes "straight" voting easy. The ballot to be used in primary elections under the new law will be gotten up in the same manner, with columns for each *faction*, and an emblem and circle at the top of each column. Stick a pin in that piece of information.

Party committees having been elected, these committees may name candidates for all offices other than State offices, but including delegates to State conventions. The names of the candidates thus designated by the committees must be printed in the first column of the official ballot, and the *party emblem* must head that column. The names of the other fellows must be printed in columns to the right of the first; and they *may* have an emblem if they care about it, but they are interdicted from adopting certain symbols, such as the national flag and the "party emblems of any party."

A candidate nominated by petition must file his petition not more than five days after the filing of the "regular" nominations, but not earlier than the "regular" nominations. His petition must be signed by not less than five per cent of the enrolled members of the party, and not less than four per cent of the last vote cast for the party's candidate for Governor, and each signature must be certified by a notary public. A candidate for Assembly is specifically required to obtain 800 signatures. Perhaps the gentlemen who framed that section did not know what they were doing; and again, perhaps they did. Anybody who has ever been engaged in the effort to obtain signatures to an electoral petition will realize how nearly a physical impossibility it is to obtain within five days four per cent of the vote cast for Governor, which is a very different thing from five per cent of the enrollment. It is true, signatures might be sought before the party committee had filed its nominations; but as no one could be certain that such nominations would be objectionable until they were made, disinterested party members would withhold their signatures until they knew good reasons for giving them. Even to obtain five per cent of the enrollment in such a time would be a considerable achievement.

Let me quote parts of two sections as the quickest way of unfolding one of the cleverest pieces of skulduggery ever sneaked into a legislative act.

Section 38 provides that—

> Each committee may, and each State and county committee must, prepare rules and regulations for the government of the party and the conduct of the official primaries within its political subdivision, which may include the payment of dues.

Then, away off at the other end of the act, we find:

> No contributions of money, or the equivalent thereof, made, directly or indirectly, to any party, or to any party committee or member thereof, or to any person representing or acting on behalf of a party, or any moneys now in the treasury of any party, or party committee, shall be expended in aid of the designation or nomination of any person to be voted for at a primary election, either as a candidate for nomination for public office, or for any party position; **except that such funds may be used to pay the expenses of holding any meeting of a party committee called to designate a candidate or candidates for nomination for public office in accordance with the provisions of this chapter and for the purpose of printing and distributing any literature regarding such candidates, the postage, clerk hire and necessary expenses incident to informing the voters regarding such candidates, the holding of meetings and other legitimate expenses necessarily incurred in promoting the canvass of such candidate.**

These sections, read together, create a paradise for political highbinders. A committee empowered to make rules may fix a stated sum as dues to be paid into the party treasury. They may also make a rule that one who has not paid dues cannot vote at a primary. If there is opposition to their nominations, they are prohibited by the law from spending this money for primary purposes—*except* for every blessed thing necessary to elect their candidates. I am at a loss for words to express my admiration of the genius who manufactured that political sandbag. To compel the adherents of an insurgent candidate to contribute funds to be used to defeat that candidate is a proposition of such sublime audacity, yet of such practical efficiency for the purpose for

which it was intended, that in my amazement I forget to be indignant.

There are more things in the law—plenty; and here is another example of "how not to do it." Under section 46, paragraph 3, the party rules may provide that—

> A candidate for election as member of a committee may be designated either by the member or members thereof from the same unit of representation or by such other committee, chosen by the enrolled party voters within such unit, as the rules and regulations of the party may prescribe.

—which is rather involved, but being interpreted is equivalent to saying that enrolled voters may be limited to the election of only one committee, and that all other committee and delegate selections may be made without the direct action of the voters; which is precisely the privilege they had before, with no direct primary law at all.

After the passage of that law there was an election, and the Democrats lost all that could be lost in an off year, namely, the Assembly. Thus it became necessary, in order to pass amendments, that there should be a meeting of minds of the Democratic majority in one House and the Republican majority in the other. Both of them being of the opinion that there was more than enough *directness* in the law already, they contented themselves with a few amendments not requiring extended notice. One of them, however, is worthy of mention as indicating the spirit in which they approached their task. In the original law it was enacted that county committees should be composed of at least one member from each election district in the county. In an amendment it is provided that "the number of members from any unit of representation shall be not less than the number of election districts within such unit." So that while we had a chance of knowing something about our representatives in the county committee under the law as it was, the amendment makes it possible to take the whole number from one or two election districts in an Assembly district under the law as it is. This is the most important amendment, and it is distinctly bad.

To sum up, the only comfort that can be extracted from the passage of this miserable pretense of direct primaries is that, however grudgingly given, it is nevertheless a recognition of the public demand, and in that fact lies hope for future improvement.

A. J. PORTENAR.

INCIDENTAL SUGGESTIONS

THE COURTS AND CONSTITUTIONAL PROBLEMS.

Grand Junction, Colo.

In your issue of February 9th Herbert S. Swan asserts that the only valid argument for the Recall of judges is that they pass upon the Constitutionality of statutes, and he closes with this sentence: "If judges, then, were to be deprived of the prerogative of passing upon the Constitutionality of laws, there would no longer be any valid argument favoring even their popular election, much less their recall." But if courts are not to pass upon the Constitutionality of laws, by whom is the individual to be protected from unconstitutional laws?

The Constitutions of the various States were adopted for the purpose of placing restrictions upon legislative bodies created by the Constitutions, and if these legislative bodies violate those restrictions by enacting laws contrary to the Constitutions, it must necessarily be the duty of the courts to say that they are contrary to the provisions of the Constitutions and that being contrary thereto are null and void. These restrictions were placed upon the legislative bodies by the people in adopting their Constitutions by reason of the experience of the English speaking people for ages before our present Constitutions were adopted, which experience taught them that unrestrained legislative bodies often abuse their power.

The following are common provisions of the Constitutions of most of the States of the United States:

> That the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed. . . . No person shall be required to attend or support any ministry or place of worship, religious sect, or denomination against his consent.
>
> That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.
>
> That no law shall be passed impairing the freedom of speech.
>
> That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the General Assembly.
>
> That private property shall not be taken or damaged for public or private use without just compensation.
>
> That in criminal prosecutions the accused shall have the right to appear and defend in person and by counsel: to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.
>
> That no person shall be deprived of life, liberty or property without due process of law.

Many others might be cited, all of which are common to the Constitutions of most of the States of the United States and all of which provisions are restrictions upon legislative bodies.

If a legislative body in one of the States should pass a law requiring all people to worship according to the rules and regulations of some particular sect or denomination and make it a penal offense for a person to worship otherwise, would you deprive the courts of power to pass upon the Constitutionality of such a law and compel them to enforce it against the individual?

If a legislature should enact a law prohibiting everyone from voting at an election, except such as obtained the consent of some military or civil officer, would you deprive the courts of the power of holding such a law unconstitutional and of protecting