

The Shifting Power of Political Parties (Part 2)

A Talk with Professor Richard Pildes

I. Shift to Primary System

A. 1968 Democratic National Convention

1. Background

- a. The 1968 DNC Convention occurred in the midst of a turbulent era in American politics and history. Fresh on the public's mind were the Vietnam War and the assassinations of Martin Luther King, Jr. and Robert F. Kennedy. While the convention was going on inside the convention center in Chicago, riots ensued outside around the city.
- b. Leading up, there was no clear winner. President Lyndon B. Johnson dropped out in March, and Vice President Hubert Humphrey entered in his place but did not participate in any primaries. Robert F. Kennedy was assassinated in June, leaving his delegates to be divided up mostly among Humphrey, Eugene McCarthy, and George McGovern. The Democratic Party nominated Humphrey, a divisive choice perceived as the establishment candidate, who had garnered the most delegates through caucuses and inherited from Johnson's primary wins.

2. Post-1968

- a. After the contentious convention, the DNC created the McGovern-Fraser Commission, which aimed to open up the selection process. Created new complex caucus rules with enforcement tools to ensure compliance with the rules.
- b. As a result of the Commission, more states moved away from caucuses and adopted primaries.
- c. McGovern-Fraser Commission aimed to open up the primary process and created the modern primary system.
 - i. Democratic Party wanted to create a more open selection process but it wasn't trying to create a purely populist, primary-controlled system that essentially eliminated the party leaders' voices.
 - ii. Commission recommended way to make the caucus process more open and representative, but it didn't push for a greater role for primaries. States perhaps chose to have primaries instead because the new caucus rules were complex and failing to follow them could lead a state delegation to be disqualified at the convention.
- d. Republicans followed suit.

II. Primaries vs. Caucuses

A. Order of caucuses/primaries – rolling primary

1. Caucus vs. primary
 - a. Caucus: a political party organizes meetings, usually in every precinct around a state. Party members attend the meeting and cast a vote for the nominee. Typically, members vote by raising hands or breaking into groups. In some instances, the candidates themselves may attend and speak to the party members.
 - i. Caucuses were once the most common way of choosing presidential nominees. Today, primaries are more common.
 - ii. States with caucuses: Alaska, Colorado, Hawaii, Kansas, Maine, Minnesota, Nevada, North Dakota, Wyoming, D.C., Utah, and Iowa.
 - iii. Territories with caucuses: American Samoa, Guam, Virgin islands, Northern Marianas,
 - iv. All other states and Puerto Rico use primary elections.
 - b. Primary: direct statewide process of selecting candidates or delegates who will go to the convention.
2. Importance of order of primaries
 - a. Who determines the order?
 - i. The national party committees set the rules and impose penalties for states that violate the rules. Generally, the order is set every 4 years. New Hampshire has held the first primary since the 1920s, and Iowa the first caucus of the election year since 1982.
 - ii. Iowa law provides that the caucus be held at least 8 days earlier than the date of any other caucus or primary.¹
 - iii. New Hampshire law provides that the presidential primary is held on the second Tuesday in March or on a date chosen by the secretary of state that must be at least 7 days preceding the date that any other states holds a similar election.² The Iowa caucus is not considered a similar election.
 - b. Outsized influence and benefits for early primary states
 - i. Frontloading is the process of shifting the primary elections to the beginning of the election year.
 - ii. Early primary/caucus states get prominent press coverage, attention from the candidates, and a disproportionate influence on the nomination race, economic benefits from campaign and media spending, free publicity for state businesses and resorts, and special policy concessions, among many things.
 - iii. Huge media coverage of primary elections forces the candidates to enter the race early to gain publicity.

¹ Iowa Code § 43.4 (<https://www.legis.iowa.gov/docs/iacode/2001supplement/43/4.html>)

² NH Rev Stat § 653:9 (2016): <http://www.gencourt.state.nh.us/rsa/html/LXIII/653/653-9.htm>

- c. Criticisms
 - i. Frontloading places high demands upon candidate and leads to a highly compressed campaign schedule.
 - ii. Candidates have to spend large amounts of money for primary election campaigns before the general election campaign starts. Candidates must win favor with media early to get positive media image.
- 3. Proposals
 - a. National primary
 - i. Would eliminate complicated calendar and constant shifting of dates. Would eliminate confusion for the voters.
 - ii. A downside is that it would make money and name recognition even more important than they already are. Less well-funded candidates would be at a disadvantage.
 - iii. Candidates would have to focus on the largest population states.
 - b. Regional primaries
 - i. E.g. Time zone primaries or rational regional primaries.
 - ii. Would make campaigning more efficient and would give voters more time to get to know the candidates.
 - iii. Would still run the risk of the race in the states voting last to be meaningless.
 - c. Delaware Plan: divide up the states based on population into 4 groups. The smallest population states vote first, Group 2 a month later, etc.
- 4. California primary system
 - a. In a closed primary, only voters registered in a political party can vote in that state's primary ballot.
 - b. Top-two primary system: CA voters approved the system in 2010.
 - c. All candidates running for an office are listed on one ballot, regardless of their party preference. The candidate's party has no impact on how the election is conducted. The two candidates who receive the most votes qualify for the general election. Because candidates are not appearing on the ballot representing a party, it is possible for 2 candidates from the same party to advance to the general election.
 - d. California's top-two primary applies to the following offices: U.S. Senators, U.S. Congressional Representatives, State Senators, Assembly members, Governor, etc.
- B. Political parties vs. Super PACs
 - 1. How parties can spend money
 - a. Parties may directly contribute to federal candidates, subject to limits.
 - b. Party committees may make coordinated expenditures, subject to limits, and may make unlimited independent expenditures.
 - 2. Super PACs

- a. Super PACS are independent expenditure committees.
- b. Prohibited from donating money directly to and coordinating with candidates.
- c. Able to raise unlimited amount of money from corporations, unions, associations, and individuals and spend unlimited amount of money to directly advocate for or against candidates.

III. Third parties

A. Role of third parties

1. Third parties act as a signal to the major parties on what issues are important to the voters. Many third parties center on specific issues:
 - a. The Green Party centers on the environment.
 - b. The Libertarians center on reducing the role of government.
 - c. The Constitution Party advocate for a strict interpretation of the Constitution and greater states' power.
2. Effect of third parties in a presidential election: Ross Perot in the 1992 Election
 - a. Ross Perot was the Independent Party candidate in 1992. He gained significant support, focusing his campaign on balancing the federal budget, implementing an electronic system for a more direct, and democracy, He gained 19% of the popular vote, the most won by a third party candidate since Theodore Roosevelt in 1912. The two major parties allowed him to participate in all three presidential debates.
 - b. Analysis of the results indicated that Perot had little real electoral impact for Clinton and Bush – he took votes in relative equal amounts from both candidates. Perot appealed to disaffected voters across the political spectrum weary of the two-party system.
 - c. Perot's strong showing is speculated to have influenced the Clinton administration paid heed to the balanced budget issue, which had been a focus of Perot's campaign.