

Delegating Democracy: How the Parties Can Make their Presidential Nominating Contests More Democratic

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“The first principle of republicanism is that the lex majoris parties is the fundamental law of every society of individuals of equal rights; **to consider the will of the society enounced by the majority of a single vote as sacred as if unanimous** is the first of all lessons in importance, yet the last which is thoroughly learnt.”

-Thomas Jefferson

Summary

Political parties have broad authority over how they conduct their nomination procedures, including in primary elections administered by the state. Parties are private associations with protections under the first amendment that enable them to go beyond state and federal laws in expanding suffrage, increasing participation and allowing for more democratic contests. With this flexibility and freedom, parties have great opportunities to review and improve their election systems by incorporating reforms that give more voters an equal voice and an equal vote. From representative delegate allocation regimes to ranked choice voting and expanded suffrage rights, a political party's nomination process can be a true laboratory of democracy. We can start with elections for the president, although parties ultimately could explore reforms even more daringly in state and local elections in areas such as campaign finance.

1. The Nominating Calendar

The first, and most essential, change the parties must make to their presidential nominating contests is the voting schedule. The front-loaded game of chicken used by both the Democratic and Republican parties in 2008 to determine their nominating calendar was a disservice to both the candidates and the public. The parties should strive for an orderly and fair process; one that gives all states an equal opportunity to weigh in and also has teeth to hold states accountable for failing to follow predetermined party rules – and deter them from rogue actions that cause their voters to suffer.

The irony of the “ghost delegate” situation with Democrats in Michigan and Florida, who both held their contests on January 29th in defiance of Democratic Party rules, is that leaders in both states believed they would gain influence by holding their contests earlier in the process. States have long envied the position of New Hampshire and Iowa for good reason, who only have their “first in the nation” status due to tradition and state determination. This year's frontloading led Iowa to consider holding their caucus before the first of the year. Other states finally relented and allowed Iowa to keep their contest in 2008 – although barely, with the final candidate push occurring over the winter holidays.

The million-plus voters who participated in the unsanctioned contests in January still should have their voice heard in determining their party's nominee; they also deserve to know their votes count for something. Yet at the same time, many potential voters may not have participated or may have voted in the Republican contest because they knew that the Democrats had determined that their votes would not count toward seating delegates at the convention in Denver. Independent voters may have registered for the Republican contest knowing that voting in the Democratic race would be meaningless. Both categories of voters—those who participated in the January contest and those who did not vote because they believed their votes were irrelevant—deserve fair treatment to ensure they are not disenfranchised in the process. These voters were victims of their state's stubbornness, to be sure, but also of an overall broken process that created incentives for states to challenge the rules. Conducting a revote (particularly in Michigan, where

Senator Obama's name did not appear on the ballot) is one way to include these voters in the process. Another option, while less savory but possibly more politically feasible, is to split the delegates in Michigan in half and seat ½ of the Florida delegation as they were elected on January 29th. Regardless of what the party decides, the Democrats must solve this puzzle and give the citizens of these states a voice. At the same time, the party must take steps to avoid such situations in the future.

There are several proposals to solve the calendar problem that would allow parties to conduct a more orderly nominating process. Proposals include a random drawing of states based on increasing state size (American Plan) to open voting from January until June (National Plan). Others propose some combination in which a June national primary vote would follow a series of contests in all states. At the 2000 GOP convention, the party came very close to adopting a graduated primary plan, commonly referred to as the Delaware Plan because small states would vote first, followed sequentially by bigger and bigger states with gaps between contests, but George W. Bush's campaign team pulled it from the floor when it looked like the debate might take too much time. On April 2nd, the Republican National Committee rules committee endorsed the Ohio Plan – a new proposal that combines aspects of the graduated schedule and the “rotating regional primary plan” favored by the National Association of Secretaries of State.

Some elements of the current calendar should be preserved. Having small state contests vote early on, a role traditionally played by New Hampshire and Iowa, is important because they force retail politicking and intensive campaigning in one or two states. Small state contests early in the process encourage “dark horse” candidates to join the race and limit the money advantage of “celebrity” candidates. But the same states should not always have this favored position, and the schedule should not be so compressed that even a surprise result for such a candidate—as with Mike Huckabee in the Republican contest this year—does not give such a dark horse time to be competitive across the country.

It is also important that the contest not evolve into a one-day affair – that can be left to the general elections. A single national primary day without preceding contests would give an insurmountable advantage to well-financed front-runners and make lesser-known candidates virtually irrelevant. It would make the role of money even more dominant and end retail campaigning as we know it. Candidates would not be forced to answer tough questions or have time to have their positions (and personalities) fully vetted.

2. Superdelegates

At first blush, superdelegates—the unpledged delegates who can vote for whichever candidate they choose, regardless of the delegate count or popular vote—appear to be the least democratic institution in this entire nominating process. These party leaders have votes at the convention, completely unbound to public opinion, which will ultimately decide the Democratic nominee.

The reality though, is that most superdelegates are elected officials—either members of Congress or elected state officials—that have to eventually answer to the people. As party leaders, they have the long-term interest of the party in mind when making their decision in Denver. As part of making that decision, they also realize that voting against the will of the people would alienate a lot of Democrats.

But the question remains: what does the “will of the people” mean? The many definitions explained by pundits and the campaigns are enough to confuse even the most astute political observer. Should the superdelegates vote for the winner of the total elected delegate count, the winner of the national popular vote, the winner of their local/state popular vote, the number of states won, the size of the states won? Or should superdelegates forget about the “will of the people” completely and simply cast their vote for the candidate that would make the best general election candidate and President?

The concept of a “superdelegate”—someone, whose vote is mathematically worth more than someone else’s— in and of itself, is an undemocratic institution. But parties can do what they choose because of their freedom of association rights under the first amendment. If the Democratic Party is going to keep the superdelegate system, they should at least consider putting some restrictions or rules on how they can cast their “super votes.”

First, superdelegates should not be permitted to vote in the first balloting at the convention – that should be based only on the votes as determined by democratic contests. If a candidate fails to receive a clear majority of elected delegates, then the superdelegates should step in to put the nominee over the top. Second, superdelegates should never overrule the clearly defined will of the voters. If a candidate wins a majority of the popular vote and the most elected delegates, the superdelegates should be prohibited from reversing that decision. If there is a more muddled result in the primaries, the superdelegates should be part of the decision-making process in deciding the nominee, particularly if the convention may turn to a compromise candidate who did not compete in the nomination contests.

3. Suffrage Rights

Parties have broad authority over who can vote in their primary contests. In more than a dozen states, parties allow 17-year-olds who will be 18 on or before General Election Day to participate in their primary or caucus. In Maryland this year, the state Republican and Democratic Parties pushed back against a State Board of Elections decision ending the practice. This example shows that even when the state makes a decision about primary election rules, the parties’ have the final word.

Democrats and Republicans should encourage 17-year-old primary voting as a matter of basic fairness. If someone is eligible to vote in the general election, he or she should have a say in who is on that general election ballot. In addition, studies show that voting is habit forming—by letting young people vote early, they are more likely to vote for life. Finally, people decide party affiliation early on in life. If one party allows 17-year-old

primary voting and the other does not, young people may be more likely to vote—and keep voting—for the party that gives them the opportunity to participate.

Parties do not have to stop at granting suffrage rights to young people. Many states have stringent prohibitions that make it difficult for people convicted of felonies to vote. Parties have the right to establish more lenient rules to allow people who may not be eligible to vote in the general election to vote in their party primary. The same goes for legal immigrants—people who pay taxes and send their children to school, but have no voice in the political process. Like young people, if a legal immigrant is allowed to vote in a party primary, he or she may be more likely to vote with that party for life once they become a citizen.

4. Caucuses vs. Primaries

A debate is also necessary about role of caucuses in the nominating process. Many argue that they discourage participation because some voters are intimidated or confused by the process. Other voters, with family or work obligations during the time of the caucuses are unable to participate. Military, overseas and voters not near their caucus site during the election are completely shut out of the process. States with a history of caucuses, like Iowa, may want to continue their tradition, but it is imperative that they open up the process by expanding accessibility as much as possible. The online primary system used by the Democrats Abroad is one way to update the caucus process for the 21st Century.

States without a recent history of competitive caucuses, like Texas, should be wary of incorporating caucuses as part of their delegate allocation process. Many Texas caucus sites were woefully unprepared to handle the volume of voters and there is continuing controversy over the eligibility of some caucus goers who may not have voted earlier in the day in the primary contest, per party rules. Ensuring equal access to the polls is a basic right that the Democratic Party should mandate that every state follow when designing their primary.

5. Delegate Allocation Rules

The biggest difference between the Democratic and Republican primaries is that the Democrats require states to allocate delegates proportionally and the Republicans use a winner-take-all system of delegate allocation in most of their contests after their early votes in Iowa and New Hampshire. If a Republican candidate wins a state, even by the slimmest plurality, he or she wins *all* of the delegates for that state. While this system boosts frontrunners to their party's nomination after winning a few large states, it has many drawbacks. It discourages candidates from staying in the race, even if they consistently come in second place narrowly. It also stifles debate by forcing challengers to drop out much earlier than if delegates were awarded on a proportional basis. The worst aspect of winner-take-all is that in a multiple candidate race, the voice of the majority of voters can be completely ignored – which means the nominee could be a true fringe candidate who poorly represents the party.

The Democrats' proportional system is good in principle because it gives all voters an equal voice in the contest for elected delegates. However, it has quirks when you read the fine print. Some states allocate their elected delegates proportionally by state total; others split their delegates according to congressional or state senate district – without enough delegates allocated to these districts to be responsive to relatively large changes in the popular vote in those areas. This inconsistent, patchwork system of delegate allocation leads to some delegates counting more than others, which seems to be a theme running through the Democratic nominating process. If the DNC truly believes in an equitable system where each elected delegate represents the same number of people, it should mandate a standardized process for allocating delegates that provides both fairness and responsiveness. Proportionality is key—as long as proportionality means the same thing no matter what state you call home.

6. Instant Runoff Voting

The only way to ensure majority support for a candidate in a multi-candidate race and allow voters the freedom to vote their conscious is instant runoff voting (IRV). Advocated by influential major party leaders like John McCain, Barack Obama and Howard Dean, IRV enables voters to rank their choices 1, 2, 3, instead of simply voting for a single candidate. Ballots are counted for voters' first choices. If that first choice is not viable, your ballot moves to your second choice until one candidate wins a majority of the vote. IRV eliminates the “spoiler effect” of voting for a “second-tier” candidate, which often helps the candidate the voter wants least – plurality winners often do not have the support of the majority of voters, which is an undemocratic way to conduct elections.

Consider the Republican contest this year. John McCain earned his frontrunner status in January without ever winning more than 37% of the vote in a primary or caucus. The Republican's winner-take-all rules also aided him in gaining frontrunner status. Even on February 5th, where he essentially locked up the nomination, he only won a majority of the vote in three states. Whether Sen. McCain is the right nominee for the Republican Party is not the point; the reality is that he easily could have been a splinter candidate who didn't reflect the views of the majority of Republican voters.

On the Democratic side, even with proportional allocation rules mitigating the impact on distortions in allocating delegates due to plurality voting rules, the lack of instant runoff voting had a clear impact on the race. The media inevitably focuses on who wins the most votes, no matter how low that percentage might be – consider New Hampshire this year, where Sen. Clinton won a big boost despite securing less than 40% of the vote and potentially not being able to have defeated Barack Obama if supporters of the remaining candidates could have indicated a second choice between the frontrunners.

The process of counting people's second choices is a familiar one because Democrats in Iowa and some other states already use a form of IRV in their caucus process. If a candidate is not declared “viable” at a caucus site (getting at least 15% of the vote), those caucus goers must choose a “viable” candidate, or their second choice. That increases the

number of effective votes, but unfortunately, Iowa does not release the tally of the first vote, which is important to know how much support “second tier” candidates really have in the state.

Instant runoff voting should be used in three ways to improve contests. First, the “Iowa model” should be used in primaries so that any voter casting a first choice for a candidate unable to win delegates as their ballot move to their next choice among the viable candidates. Second, after most delegates have been allocated proportionally, a small “winner’s bonus” could be given to the majority winner statewide as determined by IRV. Finally, instant runoff ballots make particular sense for those voting early or by absentee. What happened to all those Super Tuesday voters on February 5th who voted early or absentee for John Edwards or Rudy Giuliani? Since neither major party used IRV ballots, those ballots were irrelevant. Military voters, people who are out of town on Election Day or those who vote early should have the same opportunity to participate in the process as people who vote on the day of the election. If the parties used IRV, those voters’ backup choices would have counted.

Conclusion

As we have observed over the past year, our presidential nominating system is in need of a major overhaul. Incremental changes, like instituting instant runoff voting or expanding suffrage rights for young people would be a positive start, but more sweeping reform is required to transform the process into what we can truly call “democracy.” The calendar needs a facelift, the superdelegates need some directions and the people need to have a greater voice in deciding their parties’ nominee for President.

Republicans can only reform their system at their convention, which means they may have a similar situation to what happened in 2000—where the nominee does not want a floor fight about the nominating process. At their convention, the Republicans should consider adopting rules to mirror the Democrats, which allow amendments to the process throughout the year. If the Democrats start the process of making these improvements at their convention in August and finish them in the coming years, they will have an opportunity to transform the way we run elections in this country as soon as 2012 and then, perhaps, live up to their name.



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