

# “The Return of the Brokered Convention? Democratic Party Rules and Presidential Nominations.”

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Front loading, proportional representation and super delegates are changing the dynamic of the Democratic presidential nomination. Since 1976 capturing the early momentum was the key ingredient to winning. Barack Obama's nomination in 2008 demonstrates how these three forces are converging to re-write the campaign playbook.

Front loading created a 2008 Super Tuesday that approached national primary day status. Proportional delegate allocations kept the race close when another system might have put the delegate count out of reach; and with a different result. Super delegates made the final decision. The 2008 Democratic presidential contests produced, in effect, a brokered convention. Without reform, many more brokered conventions appear to be in their future.

Below is a discussion of how the reforms of the 1970s and 80s combine to produce this perfect storm. Then, the 2008 campaign illustrates the effects. The major reform proposals are examined. Finally some conclusions are drawn.

## **Reforms of the 1970s and 80s**

American political parties grant their nomination to a single candidate at a national convention. Both the Republican Party and the Democratic Party nominations can be won with a simple majority of the delegates. Delegates are pledged through a series of caucuses and primaries. Both parties are following similar calendars but Republican Party rules result in a different type of contest than Democratic Party rules.

Parties have met in quadrennial national conventions for the purpose of selecting a presidential nominee since 1832. The first ever presidential nominating convention grew out of competitive frustration. The goal was to build a coordinated campaign apparatus that could capture the presidency. The effort was successful and parties have been meeting in convention ever since.

State parties sent delegates to the convention. The delegation leaders would wheel and deal until a sufficient coalition formed around one candidate to capture the nomination. Often this took several ballots and involved the promise of considerable patronage. The process changed very little during the next 130 years.

With the advent of television the messiness of intraparty politics came directly into voters living rooms. This was particularly evident in the 1964 Republican convention and the 1968 Democratic convention. Following the '68 convention the Democrats empowered a reform commission to write a set of rules that would create greater public involvement and alleviate the perception that party bosses controlled the nomination without regard to the public's desires.

The McGovern-Fraiser Report, as it became known, established several new procedures for the Democrats including:

- Proportional representation for women, minorities and youth in state delegations,
- Limited convention registration fees,
- Publication of notice, agendas and rules for party meetings,
- Eliminated the “unit rule” which a majority of state delegates to cast the entire state vote for one candidate,
- Created proportional delegate allocation to any presidential candidate receiving 15 % of the vote or more in a contest.

Since the McGovern-Fraser report to the Democratic National Committee in 1971 the lengthy presidential nominating contest has become a winnowing process. A set of expectations are developed about the candidates based on early fundraising and polling. Some have called this the money primary. Once the actual voting starts, candidates who fail to meet expectations in early primaries and caucuses lose the ability to raise resources and are forced to withdraw (See Patterson 1994). Candidates who exceed expectations press on to the next set of primaries and caucuses with renewed vigor. The last candidate standing consolidates power and enters the nominating convention triumphant.

Jimmy Carter found the winning formula in 1976. Carter, the Governor of Georgia, was hardly known outside the state. Surprisingly, he beat all other candidates in Iowa. Then, he went on to win New Hampshire. Soon, resources dried up for Carter’s rivals and they begin to fold. Candidates have tried to emulate the Carter model ever since.

This process empowers states with early primaries or caucuses and frustrates states who reserve their delegate selection contests until later in the year. Voters in early states enjoy a wide selection of the candidates and receive much national attention. Later states’ contests offered far fewer candidate choices and little attention because the party nomination is *fait accomplis*.

For states, the incentive is to move their primary or caucus to the front of the line. States with traditionally early contests, in an effort to preserve their place of honor, are forced to move even earlier. The Democratic Party attempted to limit this front-loading by creating a delegate selection window. It allowed Iowa, New Hampshire, Nevada and South Carolina to maintain their traditional place at the front and prohibited others from beginning the process before February. Republicans followed suit with similar rules.

By 2008 several iterations of working within these rules resulted in two unintended consequences. First, the first Tuesday in February is looking very much like a national primary day. Second, some states ignored the party rules and their potential sanctions and held delegate selections prior to February 5.

Caucuses and primaries occurred in 22 states on February 5. This nationwide event was described as Super Tuesday, Super-Duper Tuesday, Mega Tuesday, Giga Tuesday, Tsunami Tuesday, the Powerball Primary and the Tuesday of Destiny (Wikipedia 2008). February 5, 2008 is as close to a national primary day that American has experienced.

Several leaders stated publicly that the national attention gained through an early primary was worth the potential loss of delegate votes at the convention. Others speculated that ultimately the party conventions would not have the backbone to deduct

delegates from highly populous (important in the general election) states who violate the selection window. Florida and Michigan decided to take their chances with the convention credential committee and scheduled their primary before February 5.

This brought the total number of Democratic contests prior to February 5 to six, accounting for 8.5% of the pledged delegates, as seen in Table 1. Michigan's January 15 primary had Iowa and New Hampshire, who have pledged to be the first in the nation no matter what, considering dates in December 2007.

Together the early contests and February 5 account for 57% of the pledged delegates to the Democratic convention (see Table 1). These totals would suggest that the contest would be substantially over if a particular candidate was able to amass a sizable lead as of February 5. However, Democratic rules provide an interesting twist.

McGovern-Fraser established, proportional delegate allocation. Any candidate receiving a minimum of 15 percent of the votes in a state's primary or caucus must receive a proportional share of the state's pledged convention delegates. If several strong Democratic candidates were able to avoid the winnowing process through February 5, proportional representation could divide 57% of the delegates into several small camps. This would make it difficult for any one candidate to gain the 50% of the vote needed to win the nomination on the first ballot.

The possibility of a brokered convention is greatly enhanced by the combination of front loading and proportional representation. As the number of states voting on a single early date increases the likelihood of delegates being divided among a number of candidates increases. If a single national primary day was adopted and the proportional rule retained the Democrats would certainly face a brokered convention.

Republicans have no national rules regarding proportional representation and most state parties have chosen to award delegates on a winner-take-all plurality basis. Front loading in 2008 selected 54% of Republican delegates by February 5. A single primary day could throw them into a brokered convention, but it is less likely. One candidate could win several big states and secure the nomination on the strength of the winner-take-all delegate total.

## **The 2008 Campaign**

2008 illustrates how the campaign strategy is changing as a result of front loading and proportional representation. Perhaps the only thing preventing a brokered convention in 2008 was the string of 6 states voting before February 5. The proportional representation rule is what pushed the contest to the super delegates. Without proportional representation Hillary Clinton may have overcome Barack Obama's challenge and ended the primary season with more votes than he. In fact, he may have been winnowed from the field shortly after February 5<sup>th</sup> if not for proportional representation.

Hillary Clinton's campaign managers understood this winnowing process and built their strategy around knocking out all of the other competitors by February 5<sup>th</sup>. When that plan did not work the super delegate and proportional representation rules of the Democratic Party came into play.

Table 1 illustrates both how the proportional rule kept the race close and how a winner-take-all rule might have eliminated Obama. There are three forces to be considered. First momentum, is one candidate gaining enough strength publicly to push

the other candidates out? Second delegate count, is one candidate building a sufficient delegate lead that it becomes mathematically unlikely that anyone else can win? Three the delegate allocation formula, what mathematical difference is proportional representation making? Because these forces are intertwined they are considered jointly.

Describing every state's vote is beyond the scope of this paper (as much fun as that would be). The first two states demonstrate well how momentum is a factor and how proportional representation changes the delegate count. Then this discussion jumps forward to a couple of break points where the race may have changed under a different set of rules.

Momentum is about exceeding expectations. It may involve a variety of factors like fundraising, polling, endorsements and votes. Capturing some of these enhances a candidate's chances for gaining others. Once the state contests begin, winning is by far the most important momentum builder. The early momentum appeared to be on Hillary Clinton's side. In fact, many thought she was inevitable. Obama's fundraising help propel him forward as the anti-Clinton candidate. His grassroots organizing in Iowa set up the two way race.

Obama's surprise win in Iowa solidified his position as the challenger and opened the resource spigot full bore. Her third place finish to Edwards put her campaign on the ropes. Suddenly pundits were saying that if she did not win in New Hampshire she would be out of the race. Of the other 6 candidates only John Edwards remained a serious contender after Iowa. The winnowing process had begun and Obama had the momentum. Among attendees, Obama gathered 38% of the vote, Edwards 30% and Clinton 29%. In a winner-take-all system Obama would have collected 45 delegates. Because of proportional representation he got 25 and Clinton got 14. (The exact numbers vary by reporting source. The delegate counts are from RealClearPolitics 2008. The popular vote counts are from CNN 2008.)

Momentum returned to the Clinton campaign when she narrowly defeated Obama in New Hampshire 39% to 37%. The momentum race was considered even and both candidates needed a win to prove that they were the front runner. Winner-take-all would have given Clinton 22 delegates but the proportional distribution produced 9 votes for each candidate 9. Obama was slightly ahead in delegate count by both measures.

After wins in Michigan, Nevada and Florida, Hillary Clinton should have had the momentum necessary to winnow the remaining opposition. However, the circumstances of Michigan and Florida complicated the picture. Both conducted their primaries prior to the authorized dates. Campaigning was mostly under the radar. Obama was not even on the ballot in Michigan. His supporters voted for "uncommitted." Then, in Nevada Clinton won the vote, 51% to 45%. But, Obama collected 14 delegates and she only received 11, because of the district proportional allocation system. As a result, in the momentum game he needed to do well on February 5<sup>th</sup> to stay in the race. She needed to win big to prove her strength and push him out.

Using winner-take-all as the standard she would have amassed 203.5 delegates prior to February 5, he would have gathered 92.5. The actual delegate total from the proportional process was 136 for Obama and 133 for Clinton. His strategy of focusing

on delegates was working. Her strategy of focusing on momentum was not. And, proportional representation was keeping the delegate count close.

On Super Tuesday, Clinton won 10 of the 22 states. Her successes included most of the big states—California, New York, New Jersey and Massachusetts. It also included smaller contests—Tennessee, Arizona, Arkansas, Oklahoma, New Mexico and American Samoa. Obama won Illinois, Georgia, Minnesota, Missouri, Colorado, Alabama, Connecticut, Kansas, Utah, Delaware, North Dakota, Idaho, and Alaska. In the momentum game Super Tuesday was pretty much a draw.

If the contests were winner-take-all Clinton would have accumulated 1231.5 delegates at that point. Obama would have 713. (See Table 1.) Based on the proportional rules Obama was leading the official contest, 985 to 965. Although it is impossible to know how things might have played out, it seems likely that momentum might have shifted Clinton's way if she had had a 500 delegate lead after Super Tuesday. Some of the enthusiasm for Obama may have lessened and he may have found it difficult to collect the resources necessary to continue. But the proportional rules kept him in the delegate race and splitting the states kept the momentum teetering.

Between February 9 and February 19 Obama has a string of 11 straight victories. They were mostly small states, but the string was impressive and momentum shifted his way. The proportional allocation prevented him from opening a large delegate lead. He had 1273.5 delegates to her 1130.5. The winner-take-all count still showed her in the lead, 1231.5 to 1167.

Over the next several weeks they split the remaining states with Clinton winning 9 and Obama winning 7. She won several large states like Pennsylvania, Texas and Ohio. He won North Carolina and Oregon. Momentum never really favored one candidate over the other. The proportional delegate allocation system produced more total votes for Obama, a total of 1745.5 to Clinton's 1639.5. A winner-take-all system would have given Clinton the lead at 1965.5 to 1414.

Neither candidate had the 2118 delegates needed to carry the nomination. Both had to rely on super delegates to close the deal. Ultimately, 823 super delegates committed to Obama. Only 463 supported Clinton. While it was not a brokered convention, it was a super delegate decision. The proportional allocation system is what pushed the decision to the super delegates. Without proportional allocation Clinton's delegate lead may have grown large enough to dampen Obama's momentum and reduces his campaign resources forcing him to fold his campaign. Even if the momentum dynamic had not changed, without proportional allocation Clinton would have had enough pledged and super delegates to capture the nomination.

At every turn it seemed like the old fashion momentum game could have taken over and determined the winner. But, when down to the last strike each candidate rallied to tie the game and move to the next inning. 8000 more votes in New Hampshire for Obama may have ended Clinton's campaign. A decisive victory in Nevada or any victory in South Carolina for Clinton could have punched Obama out. If she had won 15 of 22 states on Super Tuesday rather than 10 he would have been in trouble.

Super delegates tend to be party insiders, establishment types. Clinton was the establishment candidate. This is reason enough to believe that they would have supported her if she had shown a little more strength at any one of the critical moment

late in the process. They kept waiting, and he kept winning. They could not find the reason to end the contest in her favor. Ultimately they crowned him the victor.

This is not the first time that super delegates became important. In 1984 super delegates help Walter Mondale overcome a strong challenge by Gary Hart. Hart was gaining ground in the primaries when Mondale's establishment supporters end the contest. In 1988 super delegates helped Michael Dukakis cement the nomination. In 2008 they could not save Hillary Clinton from her insurgent so they joined the insurgent camp and sealed the nomination for Obama.

While many observes found this year's Democratic contest frustrating, it served a very important purpose. Every Democrat got to vote before the nomination was settled. The contest has gone into June several times, but this is the first time in many years that every state got to vote before the decision was made.

## Reforms

Three goals of a sound nomination system, according to Thomas Patterson (1994: 216), are "to produce good nominees, legitimize their selection and buttress the parties." These three could be considered using the following criteria. 1) Does the nominating system afford lesser know candidates the opportunity to become serious contenders? Can Jimmy Carter, Bill Clinton, Barack Obama emerge from the back of the pack or are nominations reserved for the famous or rich? 2) Does the nominating process offer every citizen an opportunity to vote before the decision is sealed? 3) Are party leaders able to influence the process? And, are they able to successfully resolve a close contest? (Patterson would probably not approve of my operationalizations.)

A number of reform plans have been floating around for a long time. They can be summarized into three models. The first is a national primary. This could come in various forms. It might be a single primary day where the plurality winner of the national popular vote is declared the nominee. Potentially a convention could be held with delegates allocated based on the national primary. The nomination would be determined by a majority of the delegates rather than the plurality primary winner. Or, a second round runoff could be used in place of a convention.

This suggestion has many problems. Three come quickly to mind. A national primary day would require candidates to have millions of dollars up front for a national campaign. It would be very difficult for a lesser known candidate to succeed. A national primary day would be the purview of the famous and the rich. The potential of a national recount also looms. How would a disputed nomination ever be resolved if all 50 states had to be recounted? Finally, party leaders would have little opportunity to influence a national primary. E. E. Schattschneider (1942) said that those who control the nominating process control the party. In a national primary no one would be in control.

The benefit of a national primary day is that everyone would get to vote before the nomination was determined. For the public a national primary seems like an obvious solution. They would certainly see it as legitimate, until an unresolved dispute arose. Then, they would have difficulty accepting the result.

In 2000 former Republican National Committee Chairman Bill Brock headed a commission which attempted to negotiation an arrangement that would use a ramp us strategy. The process would start the first of March with the 12 smallest states and the

territories. A month later the next 12 would vote. The first of May the next 13 states could hold their contests. Finally, the first of June the 13 largest states would be allowed into the process. This plan gives lesser known candidates a chance to build support. It holds about 50% of the delegates until the final round allowing every voter to participate. It left the selection and allocation processes to state party leaders, giving them some influence over an otherwise unwieldy process. The reform was killed by the RNC just prior to the convention to prevent a ruckus on the convention floor.

The Brock Commission also reported favorably on a rotation option. In 2008 Ohio Republican Party Chairman Bob Bennett and Democratic Rules Committee Chairman Jim Roosevelt tried to move that plan forward. The 2008 version allowed Iowa, New Hampshire, Nevada and South Carolina to have their contests first. Then the 14 smallest states would have their turn. The remaining 32 states would be divided into 3 groups and rotate their turns each 4 year cycle. This plan was also killed just prior to the convention to avoid a floor fight. The plan would give long shot candidates a chance. It might not result in every state having a say, because the winnowing process would likely take hold long before the first state in the rotation got a vote. Party leaders would continue to exercise about the same amount of influence as they currently have.

Of these three genres the national primary day seems like the most obvious and the worst option. It is easy to understand and would be quickly accepted by the public. It presents a host of problems and would quickly lose legitimacy in a disputed election. The Brock Commission recommendations come the closest to meeting the goals of a good nominating system described above.

## **Conclusions**

An unintended consequence of the McGovern-Fraiser reforms to the presidential nomination process is front loading. Front loading is rapidly moving the process toward a national primary day. A national primary day, coupled with proportional representation is not likely to produce a nominee, forcing a brokered convention.

The 2008 presidential primary illustrates this point. Front loading put 22 states on the same day. This is Super Tuesday is fast approaching national primary day status. Proportional delegate allocation kept the contest close when a winner-take-all process would have produced a big lead. In fact, the winner-take-all lead may have been enough after Super Tuesday to end the contest with a different outcome. Instead the proportional system kept the contest going and forced the super delegates to decide. Essentially it was a brokered convention, with the deal being made prior to the meeting. The bigger Super Tuesday gets, the more likely this is to happen.

A national primary day is fraught with problems. If officially adopted, at least a conscious decision would be made and the necessary reforms would be drafted into the rules. The greater concern represented in this paper is that an unintentional national primary day will emerge and that other necessary reforms will not be incorporated. With that, a perfect storm of unintended consequences will create an undesired outcome. Democrats were very concerned that their nomination would look like a backroom deal and not a choice made by the people.

This illustrates one additional point, be careful what you ask for. By creating super delegates and proportional representation Democrats virtually guaranteed that a brokered convention was in their future. The Democratic process worked exactly as

planned. Every state got to vote. Party leaders got to make the final decision. And, they won! Yet, many Democratic voices expressed concern that the contest went all the way to June.

One final thought. Political scientists have long favored strong parties. Meaningful conventions are considered one measure of a strong party. The current track is likely to produce meaningful conventions. Careful what you wish for.

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