



1982

Reforming the Electoral Reforms

Cyrus R. Vance

Follow this and additional works at: <http://digitalcommons.law.yale.edu/ylpr>



Part of the [Law Commons](#)

Recommended Citation

Vance, Cyrus R. (1982) "Reforming the Electoral Reforms," *Yale Law & Policy Review*: Vol. 1: Iss. 1, Article 6.
Available at: <http://digitalcommons.law.yale.edu/ylpr/vol1/iss1/6>

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in *Yale Law & Policy Review* by an authorized administrator of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.

Commentary

Reforming the Electoral Reforms

Cyrus R. Vance*

In 1980, more than a dozen candidates in 37 primaries spent more than \$100 million campaigning for the privilege of being nominated for the Presidency, a situation which will likely be repeated in this Presidential election cycle. The experience has produced, among politicians and voters, the growing conviction that we must change the manner in which we choose our Presidential candidates. In a world of rapid change, we can no longer afford an electoral system that tends to hobble the governmental decision-making process for months. This not only harms us at home, but concerns and alarms our friends and allies.

Presidential candidates are currently nominated in the quadrennial rite of the national party conventions, which are preceded by months of state conventions, primaries and caucuses in which delegates to the national conventions are chosen. The process suffers from a number of problems. First, it takes too long. The state primaries and caucuses stretch from January to June of the election year. A successful campaign requires many months of preparation before the first primary to organize supporters and raise money. The successes of George McGovern in 1972 and Jimmy Carter in 1976 have shown the value of early grass-roots organization in primary and caucus states. Senator McGovern announced his candidacy in January 1971, 18 months before the Democratic convention, and President Carter announced his candidacy in December 1974, 19 months before the convention. And, this election cycle has so far proved no different. Both, in fact had spent many months testing the political waters before making their formal announcements. In addition, the Federal election law of 1974 gives a financial incentive to an aspiring candidate to begin his campaign early. The law requires a candidate, in order to qualify for public financing, to raise \$5,000 in at least 20 states through contributions of \$250 or less.

The upshot is that the race for the nomination has become at least an 18- to 24-month endurance test which provides an advantage to non-incumbent candidates who can devote a substantial amount of time to campaigning and forces incumbents also to devote substantial time and effort to their re-election despite the already overwhelming demands on

* Member, Simpson Thacher & Bartlett; Secretary of State, Carter Administration. Adapted from "The Further Need for Electoral Reform," originally published in *The New York Times Magazine*, February 22, 1981, at 16.

Presidential time. In the last two elections, two former governors—both free of any official public office long before they were nominated—have won their party's nomination and gone on to be elected president. Two of Governor Reagan's principal opponents in the 1980 Republican primaries, George Bush and John Connally, were also free of the demands of public office when they ran as candidates.

In short, the nominating process has become a marathon in which many highly qualified potential candidates, unable to leave private jobs or public responsibilities, cannot compete as effectively as others. Senator Baker, who started his primary campaign late because of his duties as Senate minority leader, learned this lesson well in 1980.

A second, related and very serious problem is the effect that a long primary campaign has on the ability of the executive branch to make policy decisions. An incumbent President who must campaign for his own party's nomination must begin running for re-election as early as the third year of his four-year term of office. The long period of highly charged electioneering results in the shelving of critical policy decisions until after the campaign. Also, and equally important, day-to-day decisions may be influenced by the politics of re-election, thus subjecting the President to the charge that the office is being used for political purposes—a result which undermines public trust in government at all levels. As President Johnson said, "The old belief that a President can carry out the responsibilities of his office and at the same time undergo the rigors of campaigning is, in my opinion, no longer valid."

While the prospect of a second term has always affected Presidential decisions to some degree, this condition has been aggravated by the fact that incumbent Presidents have recently been forced to campaign vigorously for renomination. Traditionally, the power of incumbency was sufficient to assure that a President would be renominated without challenge. A serious challenge from inside the party ranks to an incumbent President—a rare event prior to the 1960's—was tantamount to a party's admission that his nomination in the first instance was a mistake. The present system, which relies heavily on primaries, with public campaign financing and an emphasis on a grass-roots support, encourages challenges to a President's renomination. President Ford narrowly defeated a bid by Governor Reagan in 1976, and President Carter came from behind in the polls to defeat Senator Kennedy in 1980.

Third, the present primary system isolates the candidate from party and Congressional leaders—the very people on whom he must rely and whom he must accommodate upon gaining office. In the past, candidates usually rose through party ranks in a system that relied on party

Reforming the Electoral Reforms

activists and, to a significant extent, party bosses. The system tended to produce candidates accustomed to working with diverse groups and to forging a consensus among the competing factions within the party. The rules have changed, however, and now a candidate can win his party's nomination by appealing directly to primary voters and bypassing party leaders.

In 1980, more than 75 percent of the delegates at both national conventions were selected by voters in primaries. This process has the virtue of giving an "outsider" a chance to win the nomination, as seen in the case of Senator McGovern in 1972 and President Carter in 1976. But this process places a premium on stamina, early grass-roots organizing, fund raising and catering to special interest groups. It does not ensure that a successful candidate will have the experience, acumen and political skills needed for leadership. Nor does it ensure that a candidate will have the support of political leaders whose alliance may be essential in enacting legislation. Such a candidate may find it impossible to transform an electoral victory into a governing coalition.

The isolation of candidates from party leaders has also contributed to the weakening of the party system. Over the years, the importance of political parties has been diminished by the growth of single-interest groups, the appeal to voters through television and direct mail, and the wide use of polls. The present trend of increased use of primaries may prove to be the death knell of the parties by eliminating the role of party leaders in the nominating process.

Moreover, in the past decade, news organizations have replaced the parties in designating the crucial testing grounds, determining which candidates are to be taken seriously and interpreting the votes of the electorate. The Iowa caucuses and the New Hampshire primary have been elevated by the media into major contests that can affect the outcome of an entire campaign. A candidate does not even have to win in these early contests to be successful; he merely has to win more votes than the press and television have predicted he will win thereby gaining "momentum", which, in turn, provides increased media coverage and fund raising ability.

Finally, the system inhibits convention delegates from exercising independent judgment in casting their votes at the national party conventions by restrictions on 85% of the delegates' votes on the first ballot. But during the months between the state primaries and caucuses and the national conventions, public opinion may shift significantly or events may transform the political scene. Given this fact, and the fact that every Democratic and Republican Presidential candidate after

1952 has been elected on the first ballot, it is doubtful that conventions as presently run now serve any useful nominating purpose.

* * *

Many political analysts and politicians now believe that the present nominating system should be changed, and numerous proposals to alter the system have been put forth; some even were enacted as recently as 1982 in the Democratic Party following the report of the Hunt Commission. Any review of the proposals and new changes must begin with consideration of the objectives the system should serve.

First, the selection procedure must be legitimate; the public must have confidence in the system. The process must be perceived by the public as being consonant with democratic principles and general notions of fairness. A system not perceived in this way will lead to disrespect and confusion on the part of the electorate and a focus on issues not germane to the election. Democrats learned at the bitter and acrimonious Democratic convention of 1968 that an unruly and divided convention can forfeit a subsequent election.

Second, the selection process must be rational and efficient; it should not be a costly endurance contest discouraging participation by qualified potential candidates. Nor should it be so long that it adversely affects the decision-making process of an incumbent President.

Third, the selection procedure should insure that a successful election coalition will be transformed into a governing coalition. The nominating process should embrace both the democracy of the direct primaries and the judgment of political leaders. To insure that a candidate has the support of party, state and Congressional leaders, the system should include the participation of the political parties. But the role of political peers should not be such that it discourages participation by "outsiders."

With these objectives in mind, I would like to discuss several of the more promising proposals yet to be enacted to change the nominating process. Unfortunately, there is no one change that will solve all of our problems or meet all of the objectives. A number or combination of changes will be required. It is also clear that the effort will require the Federal Government, the states and the political parties to work closely together to develop a rational and coordinated package of reforms.

One proposal, which I favor, is simply to shorten significantly the period of primary elections. The primary campaign could be compressed into two months rather than six months, and the long delay from the last primary to the national conventions could be eliminated. The primaries could be held within a required period of time: for example, from June 1 to July 31. The national conventions could then be sched-

Reforming the Electoral Reforms

uled for the last two weeks of August. Seventy-five years ago, when transportation and communications were slower, it may have been prudent to set aside a month between the end of the primaries and the holding of a convention. That is no longer necessary.

A second proposal would group the numerous state primaries into several regional primaries. The party conventions would remain intact, but five or six primaries scheduled several weeks or a month apart could be held in different regions of the country. If a state within one region held a primary election, it would be required to schedule it on the same day as the other states within the region. Such a plan would prevent the "momentum" gained only on the basis of the results of one state, such as New Hampshire or Iowa, from being exaggerated by media coverage.

Another proposal, a variation of the regional-primary plan, has been proposed by Senator Robert Packwood, Republican of Oregon. Under this proposal, five regional primaries would be held, and the states in each region would have to hold their primaries on the same day. The order of regional primaries would be determined by lottery by a Federal commission. The date of each regional primary would be revealed only 70 days before the event. Candidates would not know the order of the primaries and, therefore, would not be able to concentrate their campaigning in one area at the expense of another. Although the regional-primary proposal would reduce the number of primaries, there is the risk that the first round would become the equivalent of New Hampshire with all of its excesses.

A third proposal is for a national primary. This system would replace the current state primaries and conventions with a nationwide vote. The attractiveness of this proposal is its simplicity. However, a national primary would be a grand media event, preceded by a blitz of television spots, slogans and barnstorming, and might unfairly favor those with existing name recognition. Such a plan would eliminate local issues and encourage campaigns that focus not on issues but on personalities. It would also, in my view, mark the final demise of the role of the political parties in the selection of a candidate.

A fourth proposal would attempt to restore a balance between direct selection of a candidate by voters in primaries and selection by party and Congressional leaders. There are numerous variations of this proposal, but the common element is that each would reserve a bloc of seats at the convention (from a third to a half of the total) for delegates designated by party officials and office-holders in each state. These delegates would remain uncommitted until the first convention ballot. This uncommitted bloc would give the seasoned party leaders a greater voice in

the nomination. It would also return the convention to the role of a nominating institution and revive the possibility that a candidate could enter the race late and still emerge with the nomination. The Hunt Commission reform, which gives 15% of the convention seats to elected members of the party, is an important first step but may not go far enough to avoid the continuing of rubber-stamp conventions.

Other proposals have been offered which do not call for reform of the primary system but which would significantly change the manner in which a Presidential candidate is nominated. One key proposal—which I support—would limit a President to one term of six years. The idea of a single, limited Presidential term is not new. It was proposed, debated and initially adopted by the Committee of the Whole at the Constitutional Convention in 1787. The issue was later revived by Andrew Jackson, and many Presidents since him have publicly subscribed to the belief that the national interest would be better served by Presidents who are not intent on being re-elected. The virtues of a single, six-year term are that a President could devote his full attention to national needs, rather than spending much of his energy on trying to win re-election; the paralysis in decision-making that grips the executive branch during the long primary campaign could be eliminated, and a single-term President would be less inclined to use his office for the purpose of courting voters to win re-election.

Critics of a single-term Presidency contend that forcing a President to run for re-election keeps him accountable to the voters and acts as a check on the abuse of power. In addition, it is argued that six years might not be long enough for a President to formulate and carry out his programs, while six years is too long for a President who loses the support of the voters during his term of office. I believe there are good answers to each of these arguments.

Finally, it is clear that the campaign-finance laws should be re-examined in the light of our experience with primary campaigns since 1974. For example, the present requirement of raising \$5,000 in donations of \$250 or less in each of 20 states to be eligible for Federal matching funds should be modified or eliminated so that a candidate is not compelled by financial necessity to start a primary campaign early.

Another harmful aspect of this legislation, the contribution limits that encourage the formation of single-issue P.A.C.'s should be reconsidered. Also, the contribution limits which prevent the raising of "seed money", early, large contributions which are often necessary to begin a candidacy. George McGovern's race in 1972 would not have been possible without such contributions. Independent expenditures, the constitu-

Reforming the Electoral Reforms

tional "loophole" which primarily aided the Republicans in 1980, should also be dealt with. In short, a whole host of problems in this complex legislative scheme need examining in light of the goals of the nominating process which I outlined.

The problems arising out our present system are by and large the unforeseen results of well-intended efforts to reform the primary system. It is widely recognized that another round of reforms is needed to reform the reforms. Determining how to effect new reforms may be even more difficult than deciding on a course of action. Any solution can be accomplished only by cooperation among Congressional leaders, governors, and national and state party leaders, with the governors playing a central role.

Before we embark on a new round of reforms, however, it is important to debate the full range of options available to us. It is already late as the primary candidates of 1984 begin to criss-cross the plains of Iowa and the fields and mountains of New Hampshire in their campaign for the Presidency.