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## CHOOSING CANDIDATES

### *The Problem with Presidential Primaries*

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#### The Endless Primary

An appropriate way to set the background mood for this discussion may be to quote Winston Churchill's famous remark that "Democracy is the worst form of government, except for any other."

There are many fine and even remarkable things about the way this huge country - which is so geographically and demographically diverse - is governed. Its public institutions at all levels - Federal, state and local - have their faults, surely, and sometimes their errors are manifest. But taken one with the other, they normally perform satisfactorily; not infrequently, given the size and complexity of the tasks, they perform uncommonly well.

I would like to focus this evening, however, on a significant aspect of American government which functions not well, but awkwardly and defectively: the method by which we select nominees for the presidency. Sad to say, it is a system which is cumbersome, which is needlessly drawn-out, and which regularly produces unhappy surprises or unexpected results. Unfortunately, the process is deeply embedded and has proved remarkably resistant to change. But given the significance of the office of the presidency, it seems strange that we, as a nation, have allowed it to remain so debilitated.

The system by which we choose presidential candidates is also *sui generis*; it is entirely and uniquely American. No other country selects its leadership in similar manner. For one thing, no other country drags out the procedure as endlessly. In every other Western democracy, the campaign for leadership lasts but a few weeks.

It received little notice, but a curious side show took place at both the Democratic and Republican conventions in the summer of 2004. The side show had nothing to do with the 2004 election. Rather it was the beginning of the 2008 campaign. Aspirants, and potential aspirants, for their party's 2008 presidential nomination were busy meeting and glad-handing delegates from Iowa and New

Hampshire at cocktail parties and receptions.

Similar goings-on took place at the meeting of the National Governor's Association last July. The meeting took place in Iowa, the site of the first primary event, a fact not lost on anyone. One of the participants, New York Governor George Pataki was entirely candid. He told the *New York Times* that "he was looking forward to touring a state that has played a pivotal role in American primary politics for thirty years". Others using the occasion to shake hands with Iowans were New Mexico Governor Bill Richardson, Massachusetts Governor Mitt Romney and then Virginia Governor Mark Warner, all active hopefuls in the coming presidential race.

These events were some among many in the opening rounds of what is sometimes referred to as the "invisible primary". It might just as readily be called the "endless primary". Would-be candidates start campaigning four or more years prior to the actual state primaries. They test campaign themes and policy positions. They make contacts and start building organizational structures, particularly in the early primary states. And, of course, they spend hour upon hour on the telephone and in personal appearances, raising campaign funds.

Candidates obviously require money for such things as staff, travel, polling, focus groups, and advertising. But having money on hand is just as important for psychological and public relations reasons. That is because the ability to raise money is seen by political observers and the press as a key point in assessing a candidate's viability. In this regard, as in other aspects of campaign psychology, the perception creates the reality. The appearance of being well funded attracts additional funding. Similarly, the appearance of strength and momentum draws additional media attention and support in cascading fashion. The opposite is equally true. A stumble, misstatement or lag in fundraising, can easily result in a quick, even panicky, withering of support.

#### A Full Time Job

The race for the 2008 nominations is unusual in one important respect. This will be the first presidential contest since 1952 in which the nominations of both parties are wide open. In every other race since that time either a president was running for re-election or a sitting vice president sought to move up to the presidency. The open nature of the contest this time assures that rivalry in both

parties will be especially intense.

The concentrated activity of the pre-primary (or “invisible primary”) period means that serious aspirants are forced to give it their full time. For this reason, neither governors George Pataki nor Mitt Romney will be seeking re-election to their state posts in November. Neither will Bill Frist, the Senate Majority Leader be seeking re-election to the Senate. Rudy Giuliani, another apparent aspirant, has been free from governmental chores for several years. Former Speaker Newt Gingrich, and former Senate Minority Leader Tom Daschle are both said to be in the race, and both are free of responsibilities. Daschle has popped into Iowa several times in recent weeks.

On the other hand, Hillary Clinton is busy running for re-election to the Senate in New York; In addition, Joe Biden, John McCain and another half-dozen or so other Senators also said to be running for president intend to remain in the Senate, as did John Kerry the last time around. The Senate usually only meets three days a week, so a senator, as opposed to a governor with executive responsibilities, is able to spend more time on the road. Even so, no one has successfully graduated directly from the Senate to the presidency since John Kennedy managed the feat in 1960. More than fifty senators have tried, and all have lost. Of our five most recent presidents, only George Bush the elder had not been a governor.

There are reasons for this, I believe. A governor is thought to have greater managerial experience than a senator. In addition, governors do not have a voting record on controversial subjects the way senators do. A senator sometimes votes for or against a bill for tactical reasons and then votes another way on the legislation itself. Opponents take great joy in picking apart such seeming contradictions. With national security and foreign policy issues having moved to the front of voters’ concerns in this post 9/11 world, the familiarity senators claim in these areas could give them an advantage, though this is a theory that remains to be tested.

### The System Elsewhere

With the exception of France, which is a sort of hybrid, other Western democracies are parliamentary in form, which allows nominating procedures to be far quicker and more strait forward. In these countries each party draws up its own nominating process and is solely responsible for operating it. Prospective leaders are selected from a narrow pool of prominent party members. Candidates have almost

always held senior cabinet posts and have known and established capabilities.

In Great Britain, for example, the Prime Minister is chosen by his (or her) party colleagues in the House of Commons. Although under recently introduced practices a wider group of party members also takes part in the balloting, the Prime Minister is almost always a party veteran. In Germany, the selection process is even narrower. Senior party leaders choose a candidate for chancellor in a closed meeting. Their choice is afterwards rubber-stamped by a party congress.

### A Complex Mixture

Variations aside, the process in these countries, as in other Western parliamentary democracies, is done entirely at the national level. By contrast, the American system involves a highly complex mixture and interplay among national parties, state parties, state governments and the Congress. And therein lies much of the problem. The two major American parties are neither exactly private, nor exactly public, institutions. Each sets up its own rules. In addition, state parties set their own priorities and procedures. States determine the dates when their primaries are to be held. New Hampshire, for example, actually has a law requiring it to hold its primary election before that of any other state. Congress also establishes a few campaign ground rules. For instance, the McCain-Feingold Act, passed by Congress in 2001, regulates elements of fund-raising, though a number of its provisions were invalidated by the Supreme Court, and some are yet to be tested.

The Founding Fathers were suspicious of political parties, and parties are nowhere mentioned in the Constitution. But, as in every other democratic country, parties not only emerged as essential political institutions, but came to play a fundamental role in the electoral process. George Washington was, in effect, a consensus nominee, chosen without serious opposition, the first and only time that occurred. After he left office, presidential nominees were named by Congressional caucuses for two decades. Following a transitional period during which state legislatures and local conventions nominated candidates, the political parties contrived a new mechanism: the national convention. These first took place in 1831 and remained the principle mechanism for choosing nominees for some 140 years.

### National Conventions

You will certainly recall the conventions: they were raucous, colorful and very American affairs with lots of noise, music, banners, funny hats, buttons and other

gaudy political paraphernalia. Delegates were chosen by state parties, sometimes by the governor and sometimes by the party's state committee. A few Western states adopted primaries as early as the Progressive Era at the end of the nineteenth century, but these did not play a significant role until the 1970's.

Transparency was a concept that had not yet come into fashion. Although the conventions were showy affairs, the real drama went on behind the scenes. The legendary smoke-filled back rooms were where party bosses argued, bartered and intrigued. When their deals were sealed relatively easily, a nominee emerged after only a few ballots. If the power-brokers had difficulty reaching a consensus, the balloting went on and on. The all time record came at the Democratic convention in 1924, when it took 103 ballots before John W. Davis was nominated.

The individual who emerged after difficult bargaining sessions was seldom prominent. Back room deal making produced quite a few second-raters: unqualified war heroes like Ulysses S. Grant, or compromise candidates like Warren G. Harding, an obscure Senator from Ohio. The main attribute of candidates of the latter sort was that they were too little known to have made important enemies. The conventions also produced candidates of distinction: Lincoln, Wilson, the two Roosevelts, Dwight Eisenhower and Adlai Stevenson, being prominent examples. The question of whether primaries represent an improvement over the days when party elders selected the nominees is still hotly debated by historians and political analysts.

The substance of this argument was succinctly, if cynically, articulated by George Bernard Shaw when he wrote: "Democracy substitutes election by the incompetent many, for appointment by the corrupt few". Some historians claim that the back-room deal making accurately reflected the wishes of the rank and file. But, as one writer put it, this view suggests that "either the rank and file were fully as discerning as the party elites or the party elites were fully as unenlightened as the rank and file."

### Proliferation of Primaries

Three quarters of convention delegates were still chosen by state caucuses as late as 1952. But change began to come rapidly following the chaotic Vietnam era Democratic convention of 1968. That, as you will recall, was the year that Lyndon Johnson dropped out and Gene McCarthy and Robert Kennedy competed in the

primaries until Kennedy was assassinated after winning in California. Hubert Humphrey won the nomination, even though he had entered the race late and despite the fact that he had not won a single primary.

The ensuing bitterness among McCarthy and Kennedy supporters led to the appointment of a party commission headed by George McGovern which recommended reforms. The Republicans set up a similar panel. Although reforms were implemented only slowly and over considerable resistance, they succeeded in eroding the dominant role of party leaders. Over forty states now hold primaries; the remainder still choose their delegates through state conventions or caucuses. Rules vary by states. On the Republican side, the primary elections and caucuses are generally “winner-take-all” while the Democrat’s are proportional.

State primaries began to proliferate at the same time that television became prominent in the reporting of news, a fact that some observers believe is not entirely a coincidence. Television was a poor medium for covering behind the scenes maneuvering. Primaries, with man-in-the-street interviews, polling, and breathless appraisals of who is ahead at any given point, permit more exciting stories. Media coverage, rather than party stalwarts, now determined who were the favorites, dark horses and also-rans, with the emphasis always on the “horse-race” aspect, not on the substance.

Richard A. Posner, the distinguished judge on the U.S. Seventh Circuit Court of Appeals in Chicago, has written what I think is an accurate summary of election coverage:

“Relatively little attention is paid to issues. Fundamental questions, like the actual difference in policies that might result if one candidate rather than the other won, get little play. The focus instead is on who’s ahead, viewed as a function of campaign tactics, which are meticulously reported. Candidates statements are evaluated not for their truth but for their adroitness; it is assumed, without a hint of embarrassment, that a political candidate who levels with voters disqualifies himself from being taken seriously, like a race horse that tries to hug the outside of the track. News coverage of a political campaign is oriented to a public that enjoys competitive sports, not to one that is civic-minded.”

### Front Loading

Although most states now hold primaries, the reality is that only a few have much of an impact on the final outcome. Furthermore, those that do are not the states with the largest populations but smaller states like Iowa, New Hampshire and

South Carolina. The states themselves determine the order in which primaries are held. As the states holding the earliest caucuses or primaries have the weightiest impact, there is a constant jockeying for position. As a result, primaries and caucuses are held earlier and earlier in a ridiculous process known as “front loading”. As I mentioned earlier, New Hampshire has a law requiring it to hold the first primary in the nation. In order to ward off competition, it has had to keep moving up its dates. It used to hold the event in March, then moved it to February and now holds it in late January.

Iowa holds its precinct caucuses two weeks earlier, in mid January. This means that formal voting for presidential candidates begins ten whole months before election day. The results in Iowa and New Hampshire are not determinative, but they are endlessly analyzed by the media and can end the campaign of those who falter. Subsequent primaries follow rapidly, with twenty-two states and the District of Columbia voting in February. The most important are South Carolina which votes in the first week and Michigan and Wisconsin which vote in subsequent weeks.

One candidate has normally collected sufficient delegates to claim victory during these early primaries. In 2004, the Democratic party race ended on February 17, when John Kerry won the Wisconsin primary. He effectively won the nomination after only eleven states had held primaries. The race was thus over six months before Kerry was formally crowned at the party’s now purely ceremonial summer nominating convention.

In the days when candidates were chosen at the midsummer nominating conventions, the campaign by tradition did not begin until after Labor Day. The fact that candidates now emerge so early presents them with a number of problems. The public’s attention span is notoriously short, so they must develop themes, issues and projects that can sustain voter interest. They have to avoid peaking too soon or having their message become repetitive and stale. The endless and tiring campaign opens more opportunities for blunders or missteps that the opposition can leap upon. It also allows more openings for the development of rivalries and infighting among campaign staff. Finally, it costs money - lots of it - so that huge amounts of time and effort must be put into fund raising.

### Iowa and New Hampshire

New Hampshire has held the first primary in every presidential race since 1920. Similarly, Iowa's caucuses have represented the first voting confrontation between candidates in six of the last seven presidential elections. Every effort to alter this curious fact have met with stiff resistance and zero result. The two states have maintained their lead position with hardball tactics. In the 1996 election cycle, for example, Arizona and Delaware sought to move their primaries to the front of the pack. New Hampshire Republicans responded by demanding that major candidates sign a pledge supporting New Hampshire's right to be first. Those refusing to sign were warned not to come to New Hampshire to campaign. Faced with this blackmail, most candidates complied. Indeed, it is not uncommon for candidates to put forward ideas which blatantly appeal to narrow interests in the early primary states. For example, George Pataki recently sought to appeal to Iowa voters by proposing that ethanol be manufactured in New York and that it be sold tax-free in New York service stations.

A not-so-friendly competition even exists between New Hampshire and Iowa. New Hampshire politicians, resentful that the Iowa caucuses have captured a share of the limelight, like to downplay their significance. Former New Hampshire governor John Sununu once proclaimed that "The people of Iowa pick corn, the people of New Hampshire pick presidents" Both states are now so associated in the public mind with presidential campaigning that any politician who so much as sets foot in either is automatically assumed to be running. The idea is so ingrained, in fact, that Hillary Clinton (though it is universally assumed she will seek the Democratic nomination in 2008) is reported to be consciously staying out of both states so as to avoid being prematurely labeled a candidate.

### Distorted Results

Defenders of Iowa and New Hampshire's dominance in presidential campaigning argue that, as small states, they can provide a springboard for dark horse candidates with relatively modest war chests. However, recent history provides little support for this notion. The last long-shot candidate to gain momentum from the early primaries and go on to victory was Jimmy Carter in 1972.

A further claim is that Iowa and New Hampshire furnish an appropriate

setting for so-called “retail politicking”. According to this thesis, candidates can travel from farm to village to small town, chatting up locals in diners and at malls, sampling greasy meat loaf or maple syrup, and patting babies on the head, all as if they were running for sheriff or the town council. With the TV cameras rolling, the broader American audience is exposed to the candidates’ personalities and styles.

Obviously, however, equivalent scenes could be staged elsewhere, in states large and small, and in big cities as well as in small towns. Furthermore, as is frequently pointed out, neither New Hampshire nor Iowa is particularly representative, though I would argue that no state adequately represents the country as a whole. Taken together, Iowa and New Hampshire account for less than 1.5% of the nation’s population. Neither contains a large city, nor a substantial minority population. Blacks make up only 2.2% of Iowa’s population and less than 1% of New Hampshire’s. As urban and black voters represent important Democratic party constituencies, many of its party professionals view the current primary alignment as leading to particularly distorted results on their side.

The distortion becomes even starker when one examines who actually turns out to vote. In the 2004 season, fewer than 100,000 people participated in the Iowa caucuses, and less than 300,000 voted in the New Hampshire primary. This is a pretty paltry number, only a fraction of one percent of the 122 million people who voted in November.

More significant than the numbers, however, is the selective nature of the participation. Primary voters are an atypical group; not only are they more politically oriented than the voting public as a whole, they are more ideological and more militant. Each party’s hard core is heavily over-represented among primary voters; results are thus skewed toward candidates who stand at the wings of their party. The classic strategy for Democratic candidates is to move to the left and for Republican candidates to move to the right during the primary campaigns. Once nominated, the candidate peddles rapidly back to the center for the general election.

Historically, moderates or mavericks like John McCain or Joseph Lieberman have encountered problems in primaries. In this regard, it is interesting that Hillary Clinton has until recently tried to adopt a more centrist public stance and image. Her tactics suggested that she was confident of retaining her left-leaning base in the primaries and was already preparing for the general election. But she wavered

dramatically during the Alito nomination struggle, when she joined the 24 Democrats favoring a filibuster. The non-partisan *Cook Report* wrote of her move that “For all the talk of [her] shift to the center...,she can ill-afford to let a possible adversary outflank her on the left....What Democratic primary voter is going to vote for her if she didn’t do everything to oppose Alito?”.

Some analysts maintain that primaries are responsible for the heightened polarization of American politics in recent years. Primaries may indeed have contributed to this trend, but I believe other factors are even more salient. One is the internet, which provides a cheap and easy mechanism by which to rouse party militants, raise money, and get them to the polls. The other is the manipulation of voting districts by incumbent legislators so as to assure themselves safe seats.

### Participatory Disorder

Despite the media hoopla, few voters pay attention during the early phases of the campaign. Polling in the months prior to the initial primaries consistently shows that much of the public is only dimly familiar with the candidates, if it has heard of them at all. Front loading thus gives an edge to the best known and best financed candidates. One of these is likely to emerge as front runner and gain momentum in the early voting. The competition begins to drop out as moral, support and funding flags. Those seeking a chance at the vice-presidency or perhaps some lesser position, throw their support to the leader. A bandwagon effect ensues, the campaign reaches a climax, and the putative winner takes his congratulatory bows. All this occurs before most primaries have even taken place or before most of the public has focused on the action.

So slapdash and untidy is the process, that it is hardly surprising that it produces problematic results. The late Terry Sanford, a onetime governor of North Carolina and presidential candidate, came up with a good phrase. He said that we choose our presidents “by participatory disorder”. Indeed, it is far from clear whether the individual who endures and raises his arm in victory has the leadership qualities and personal stature the presidency demands. The skills required to run a successful campaign are not the same as those needed to govern the country.

Many, perhaps most, of our society’s truly distinguished leaders are unwilling to expose themselves and their families to the media prying and other onerous aspects of the electoral marathon. Included in this, of course, are the tedious

demands of fund raising. But if this is true, the opposite is equally true. As any U.S.-born individual over 35 years old, regardless of qualifications or background can run, inevitably some who shouldn't do. Criteria to get on the ballot vary by state, but all it takes is ambition, a thick hide, and a source of funding. No screening mechanism, no board, commission or any other device exists to say: "Hey, fella, you don't qualify; you don't have the credentials, you can't run".

As a result, an odd assortment of marginal and narcissistic characters enters the race. Most are aware they have no chance to win, but winning is not really their objective. Instead they are eager to feed their own vanity, bask in the publicity, advance a special cause, or build their power base within a particular sliver of the electorate. So, there they are, lined up on the debating platforms, waving, grinning and posing for the cameras along with the major players. I refer, of course, to candidates such as Al Sharpton, Dennis Kucinich, and Carol Mosely Braun on the Democratic side or Steve Forbes, Gary Bauer and Allen Keyes on the Republican. Some will say their presence can be helpful in bringing forth issues that otherwise would not get a hearing. But I believe that the circus (and sometimes farcical) aspect they append to the nominating process adds to public cynicism and keeps potential voters away from the polls.

### A National Primary

The many obvious shortcomings of the nominating process have not escaped notice. A great variety of reform proposals have been dreamed up and put forward; so far none have gained political traction. With states demonstrating either no desire or no ability to affect change, the task has fallen to the Congress. And, in fact, literally hundreds of bills have been introduced there over the years. Complicating matters is a controversy as to whether Congress has the Constitutional authority to regulate the nominating process. Some scholars insist that Articles II and III of the Constitution vest the power to regulate elections entirely in the states. They argue that Federally mandated primaries would require a Constitutional amendment.

At the heart of all the reform proposals is an attempt to end front loading and bring some rational order to the primaries. The most popular idea is to hold a single national party primary on the same day in all fifty states. In some proposals the winner can be chosen by a simple plurality; in others the nominee must win a majority. In the latter case, a runoff would be required if no candidate won at least

50% of the vote.

A national primary, it is argued, would introduce focus and tidiness. With public attention centered on a single significant event, voter participation would broaden and increase. If scheduled after Labor Day, a national primary would also mercifully condense the length of the campaign. Most important, it would assure that voters in all states share equally in the process.

There are also substantial negatives. Since campaigning would have to be done nationally, the best known candidates would have a clear advantage. Lesser known candidates would be hard-pressed to pay for the required advertising and publicity. The retail campaigning now so evident in the early primary states would also decline in importance.

#### Other Reform Proposals

A variation on the national primary idea is the regional primary. Under this formulation, four separate regional primaries would be held, one in the Northeast, one in the South, one in the Midwest, and one in the West. A regional primary would save the candidates time and money. They would not be required to dash all over the country and could more readily tap into local media markets. They would also be able to tailor their campaigns to local interests. On the other hand, one contestant would likely emerge the victor by the end of the second regional vote, with the two remaining regions shut out of meaningful participation.

Numerous other schemes have been formulated. One, known as the Delaware Plan, would arrange states into four grouping by the size of their population. The groups would vote at intervals, with the smallest states voting first. Yet another proposal would employ a lottery. States would be grouped into three or four randomly chosen sets. The first group would consist of only five or six states, with the subsequent groups being larger. I rather like this particular idea, which preserves some of the more positive elements of the current system. Contestants could still engage in retail style politicking in the first small cluster of states. But states holding early primaries would be more representative, would change every four years, and would likely embrace large as well as small states.

#### Prospects for Change

As I have suggested, no significant reform proposal is likely to succeed absent Congressional action, an action furthermore that must pass Constitutional muster.

But Congress never acts unless sufficient political pressure is brought to bear, and at present such pressure is lacking. Meanwhile, national parties cannot initiate reform because they lack the necessary power over state parties.

This fact became almost comically apparent just this past December. A Democratic party commission recommended what can only be described as an exceedingly timid change. It proposed that one or two states hold caucuses in the two weeks between the Iowa caucuses and the New Hampshire primary. While it did not specify regions, party members familiar with the proposal revealed that the commission favored states from the West and Southwest. Opposition was loud and immediate. Kathleen Sullivan, the chairwoman of the New Hampshire Democratic party denounced the proposal as “a very bad plan” which would make “the nominating process much more narrow and less democratic”. Iowa Senator Tom Harkin complained that the proposal would “further frontload the process”. And Iowa’s governor, Tom Vilsack, said: “It’s not something we support.” “Iowa is going to stay first”, he added.

Hardly anyone outside the borders of Iowa and New Hampshire regards the current system as sound or sensible. Yet, as I have attempted to show, the prospects for change are not encouraging. Why does so little political will or interest exist in this matter? I don’t know the answer; I find it puzzling. We have just recently witnessed the fierce controversy and emotion that surrounds the choosing of nominees for the Supreme Court. Shouldn’t the method by which we select nominees for the presidency receive at least as much attention?

Candidates for the presidency ought to be drawn from a restricted pool of the nation’s outstanding political leaders. Does the present system attract the finest candidates? Does it propel the best among them to the top? I doubt that it does. The nation’s most powerful position is thus deprived of leaders holding the stature, and commanding the respect, that it deserves.

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Frank Seidner      Chit Chat Club      San Francisco      February 13, 2006  
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