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# A Problem Posed in Tampa

At the 2012 Republican National Convention in Tampa, in an interview with NPR's Robert Siegel, former Congressman Thomas Davis (R-Va) talked about the future of American politics. "What you're finding is that both parties are just moving right and left," he said.[1] Siegel then asked if Davis thought this would change. Congressman Davis replied that he thought it would get worse. "And I'll explain to you why," he added:

> these congressional districts today are drawn to favor one party. About 80 percent of the districts are pre-drawn to elect one party or the other, which means their race is the primary election. That means members are not rewarded for compromise. They're punished in their primaries for compromising.

In this interview, Congressman Davis concisely explained the commonplace view that the incentives for candidates in their primary elections, combined with "gerrymandering" (making safe seats), causes political polarization.

This observation is neither new nor original; many people have made variations of this argument over the years both in academia and in public political debate. For example, President Barack Obama, in an interview with *The New Republic* early in his second term, repeated a similar theme:

> The House Republican majority is made up mostly of members who are in sharply gerrymandered districts that are very safely Republican and may not feel compelled to pay attention to broad-based public opinion, because what they're really concerned about is the opinions of their specific Republican constituencies.[2]

Like Congressman Davis and President Obama, many commentators have attributed the polarization of the U.S. Congress, and recent high-profile political

[1] For a transcript, see http://www.npr.org/2012/08/29/160265970/moderate-republicans-lost-in-gops-official-platform (aired August 29, 2012; accessed August 31, 2012).
[2] See Foer and Hughes (2013).

events like the 2013 shutdown of the federal government, to legislators in safe districts worrying more about keeping faith with the ideologues who vote in their party primary than achieving bipartisan compromise.[3]

Nevertheless, a coalition of reformers in California thought they had a solution to this problem. The reformers managed to get the legislature to put on the ballot a state constitutional amendment in 2010, Proposition 14, the "top-two" nonpartisan primary, which the voters of California enacted into law. Only the state of Washington uses the same rule (and has only done so since 2008).[4] This type of primary is a radical departure from the traditional partisan primary conducted in most states for nearly all legislative and statewide offices. This book analyzes what happened the first time voters used this new rule in June 2012 in California. We test a number of hypotheses about how the new primary rules affected candidates and voters in an effort to better understand the results of primary reform.

While few states have so far implemented this type of primary law, this is a national issue. The problem the law purports to solve plagues voters frustrated with legislative polarization across the United States. Justice Louis Brandeis once explained, "it is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."[5] This is California's – and Washington's – testing time in the laboratory. In such a large state as California, the extent that the top-two achieves the promises of its supporters will certainly affect the way the rest of the country views the top-two as a solution to the polarization problem.

There are many different possible approaches to studying this issue. The academic study of primary elections touches on many different areas of traditional political science inquiry. We will preface our study with some elementary political theory, not developed specifically to study primaries, which can help explain the basic problem to which Congressman Davis referred. The "median voter theorem," popularized by Anthony Downs (1957), makes a simple prediction about what happens in an election if voters and candidates are arrayed along a single dimension. Given some assumptions, the theorem predicts that the

[3] In an October 8, 2013 news conference on the government shutdown, President Obama again blamed polarization on gerrymandered districts and said, "A big chunk of the Republican Party right now are in gerrymandered districts where there's no competition, and those folks are much more worried about a tea party challenger than they are about a general election where they've got to compete against a Democrat or go after independent votes. And in that environment, it's a lot harder for them to compromise." The complete transcript of the news conference is available at http://www.whitehouse.gov/the-press-office/2013/10/08/press-conference-president (accessed August 10, 2014).

[4] Louisiana has used a similar rule to some extent, as has Nebraska for its nonpartisan unicameral legislature. The Louisiana rule differs because the runoff may not always occur. The Nebraska rule only applies to the state legislature.

[5] This is from his dissent in *New State Ice Co. v. Liebermann*, 285 U.S. 262, 311 (1932).

winner of an election should be relatively close to the middle of the electorate participating in the election.

The idea that Downs developed was based on earlier insights by the statistician Harold Hotelling (1929) and the economist Duncan Black (1948). Hotelling was interested in what social scientists now call "spatial competition." As a non-political example, think of a boardwalk, along a busy beachfront in the summer. The beach is crowded, and generally people do not cluster at one location or another – the sun, sand, and surf are pretty much the same along the entire stretch of beachfront. There are two entrepreneurs, each of whom sets up an ice cream cart at opposing ends of the boardwalk (selling the same ice cream, at the same prices). One of the entrepreneurs realizes she could probably capture more sales if she moves her ice cream cart just a little bit toward her competitor; her competitor realizes the same. Hotelling showed in his 1929 paper that with this logic, in the end, the two ice cream carts would end up "in equilibrium" right next to each other in the exact middle of the boardwalk.

Hotelling saw that this logic applied to politics, an insight that Black built upon in his 1948 work on committee decision making, and which Downs extended into the study of electoral politics. But instead of a beach and a boardwalk, imagine a line between 0 and 1, where a person located at 0 represents the "most liberal" possible positions on issues and 1 represents the "most conservative." Every voter holds opinions that place him or her somewhere along this line (and the voters are arrayed uniformly, or evenly, along this line); for example, a more liberal voter might be "located" at a value of 1/4 while a more conservative voter might be located at 3/4. Assume that voters want to vote for the candidate ideologically closest to them. Then assume that there are two candidates running in the race (Christopher and Allison). Finally, assume that the candidates can decide where to locate themselves on this scale; each candidate asks "how liberal or conservative do I want to be to win the election?"

If Allison wants to defeat Christopher, under our assumptions, Allison needs to have more voters ideologically closer to the position she chooses than the position Christopher chooses. If Christopher located himself at 1/4, and Allison at 1/2, then every voter between 0 and 1/4 is "closer" to Christopher than Allison, as is every voter between 1/4 and 3/8 (because 3/8 is halfway between 1/4 and 1/2). However, voters between 3/8 and 1/2 are closer to Allison, as are voters from 1/2 to 1. Allison wins the election, then, with 5/8 of the vote to the 3/8 of the vote for Christopher. This analysis might be much easier to grasp with a picture (Figure 1-1).

Christopher, of course, does not want to lose the election. Because he has a smart campaign consultant, his team works out this logic just as we did. So Christopher will not locate at 1/4, because neither he nor his campaign team wants to lose the election. The only place where Christopher and Allison can locate without giving the other person an opportunity to win the election


FIGURE 1-1 Out of Equilibrium: Allison wins the election because Christopher is located too far to the left.

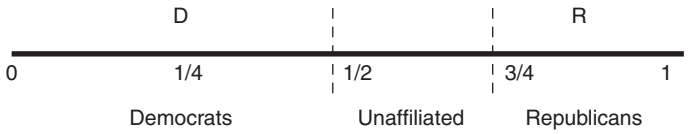


FIGURE 1-2 The Implications of a Closed Primary

outright is at 1/2. If both of them locate at 1/2, neither has a unilateral incentive to locate anywhere else (making this a "Nash Equilibrium"), and we assume each has an equal chance of winning the election (if they "tie" by locating at the same place, you can assume a winner is chosen randomly with equal chances for each candidate).

Our two-stage election process causes the problem Congressman Davis described to Robert Siegel when we apply the median voter theorem to the first stage. Assume that the first stage of the election (the primary election) determines the ideological position of candidates for the second stage (the general election). Because you have to win stage one to get to stage two, this sort of reasoning suggests that the winner of each party primary should be relatively close to the center of the voters who participate in *that party's primary*. Consider the implication of the following drawing (Figure 1-2).

Figure 1-2 depicts the consequence of applying the median voter theorem to the first stage (primary election) under a certain set of rules: a "closed" partisan primary in which only registered members of each party can vote in the party primary. Assuming a uniform distribution of voters along points on the line, and assuming it is a Democratic-leaning district (so, registered Democrats range from 0 to 1/2 while registered Republicans range from 3/4 to 1), the winning Democrat in this closed primary should be somewhere around 1/4, and the winning Republican somewhere around 7/8. The Democrat wins the general election because he is "closer" to the median voter – but note that he is not exactly what you would call "close." This describes what Congressman Davis discussed, derived from the same logic that we described earlier in terms of ice cream carts at the beachfront boardwalk.

Few political scientists today think that this sort of simple model could accurately capture all of the important dynamics in an election. For example, the Republican voters could perceive this intended election result (described in Figure 1-2) and vote strategically for a candidate located elsewhere. Candidates

might also choose to play more sophisticated strategies, taking into account strategic behavior on the part of voters, in which case they may not locate as precisely the medians of their own party. There may be uncertainty over candidate placement. The election may take place across multiple dimensions, not just the ideological one. More than two candidates might compete. The candidates might care more about holding a certain position than winning the election. Scholars have considered a number of variations like these (and others besides). Nevertheless, the basic intuitive result seems to fit with the popular understanding of the typical election rules. The "conventional wisdom" holds that winners of a closed party primary tend to be more toward the center of their party than toward the center of the electorate.

The proponents of the "top-two" or "nonpartisan" primary believe that it could provide a solution for that problem. The top-two primary does not limit voters to casting ballots for candidates of their own party. Any voter can vote for any candidate; in fact, candidates only list their "party preference" rather than any kind of formal party status on the ballot. Additionally, the two candidates with the most votes move on to the general election even if they have listed the same party preference. Under the top-two, two Democratic candidates could win the primary and compete in November. The law does not guarantee every party a candidate on the general election ballot. The reformers had in mind something like the picture in Figure 1-2; they imagined that a third candidate would enter somewhere between 1/4 and 7/8, come in second place, and then win the general election because she would be closest to the median voter in an election with only two candidates.

Formal theoretical predictions are difficult to make for the top-two primary, and indeed for any complex election procedure (for an example, see Callander 2005, discussed more in the next chapter). For the "back of the envelope" theoretical understanding of the top-two to operate as expected, more than two candidates have to run; unfortunately, with more than two candidates, it is generally not possible in many models to make a firm theoretical prediction about precisely where candidates will locate even in a political world limited to a single dimension and under other very simple assumptions. Formal models can be very sensitive to the assumptions a scholar makes about how many candidates enter the race, when they enter the race, where they may locate, the dimensions of political conflict, and voter behavior. This remains an active area of research; political scientists have not settled on a single formal model, supported by substantial empirical testing, that captures all of these potential election dynamics.

This book takes a practical approach to evaluating the top-two primary. It focuses on what happened in the first use of this law in California in 2012. While this type of primary procedure has been used in Washington (and, to a lesser extent, in a few other places), California is our laboratory for a number of reasons. First, California is a large, populous, and very diverse state – this means we have the opportunity to study whether changes in election laws have

different effects across socio-demographic, and in particular racial and ethnic, lines. Also, as a consequence of its size, anything that affects the California congressional delegation affects national politics as well.[6] Second, California has been the epicenter for election reforms like changes to primary election laws, and some of the important legal decisions regarding these procedures have their origins in California.[7] Third, we happen to have the great opportunity to live and work in California, where we both have studied and followed politics for many years. Finally, recent political reforms like the top-two are being closely followed by observers of California politics; nonprofit organizations like the James Irvine Foundation generously provided research support to study the new rules and how they affect state politics.

We draw upon a variety of political science theories to help develop testable hypotheses for our research about what those effects might be. The next chapter discusses in more detail the existing research on primary elections and helps to place this study in the context of the previous work. In the broadest sense, our research can contribute to several of the big debates in political science. The top-two primary provides an interesting perspective on the number of viable parties under different types of election systems (see Cox 1997). The top-two also represents an attempt to come up with a better way to conduct elections; it touches on the challenges (or as some might say, impossibility) of designing a perfect electoral system (see Arrow 1951, Riker 1982). Because the top-two can generate runoffs between candidates of the same party, it can also add to our understanding of the purpose and function of political parties (like Aldrich 1995). We also look at voter behavior, the role of ideology, party identification, and strategic incentives (in the spirit of Downs 1957, Campbell et al. 1960, Cain 1978, Fiorina 1981, Keith et al. 1992). Finally we can examine the extent to which democracy functions reasonably in low-information elections, taking into account the limited incentives for voters (Riker and Ordeshook 1968) and the types of cues they have available to them (like Lupia 1994). This is only a partial list but serves to make the point: because few American elections take place under similar conditions, California's experiment with the top-two primary provides a new angle to look at the major questions in American political science.

While the chapters of this book address specific topics in great detail, everything eventually boils down to a simple question: is the top-two potentially a

[6] For a sense of the relative impact on national politics between California and Washington, the other state with a top-two: California sends fifty-three members to the House of Representatives while Washington sends only ten. Additionally, California's district diversity produced well-publicized legislative gridlock in the years before the implementation of the top-two.

[7] Both Washington and California used a precursor to the top-two, the "blanket" primary. In choosing California as a laboratory to study these types of election changes, we are merely following Cain and Gerber's (2002) edited volume on the blanket primary. Furthermore, some recent scholarship on political parties has focused on California politics as a laboratory, as well (see Masket 2011).

solution for the problem posed in Tampa? The results matter not just for Californians but for all Americans. The legal framework – the way courts interpret the rights of voters, candidates, parties, and states – continues to evolve for primary elections. California adopted the top-two in part because the Supreme Court struck down an earlier reform effort as unconstitutional. Washington and Louisiana also operate somewhat similar elections and, because of the changes to the legal framework over the past thirty years, many more states may soon debate changing their primary election laws. A better understanding of how the top-two affects California politics can help identify whose interest these laws serve.

In the pages that follow, we evaluate California's recent experience with the top-two primary in many different ways. Our intention here is to use the tools of social science to document the first use of the top-two primary in the state, which we believe will provide a strong foundation for later evaluation studies of primary procedures in California and other states. We also hope that our work sparks more theoretical and empirical study of these important electoral institutions. As we will note repeatedly throughout this book, there is not a great deal of prior theoretical work on statewide primary elections that we can draw upon in the research presented here. However, while we are able to report on many important issues regarding the top-two in California, we do not claim that we are providing an exhaustive study – there are questions that we were unable to study, either because of resource, data, or space constraints, which we or other researchers will no doubt examine in the future. We will return to some of these questions in the conclusion.

## HOW THE TOP-TWO WORKS

The top-two applies to most, but not all, offices on the California ballot. The key legal aspect of the top-two is that it officially is a "nonpartisan" primary and as such does not interfere with internal party business (see *California Democratic Party v. Jones*, 2000). Parties are formally excluded from the process altogether; the candidates selected in the primary are not "nominees" of a political party. The winners are just those who have qualified for their names to appear on the ballot for an office in the first round of elections and who have won enough approval from their fellow citizens to move on to the second round. Parties now can use an alternative procedure to nominate candidates, although the nomination (or lack of it) does not affect who gets on the ballot. Candidates file to get on the ballot, announce their party preference, and voters vote for whichever candidate they want.

There are a few offices printed on the ballot for which the state still runs the party's nomination process. Those offices include positions within the political party itself, known as the party central committee, and the U.S. presidency. With U.S. president, voters are actually selecting delegates for each party's convention, which technically nominates that party's candidate for U.S.

president and vice president. These elections operate according to the old primary laws in California; the state prints a ballot for every qualifying political party (Republican, Democratic, Green, and so on) and a nonpartisan ballot as well. Voters still register by party, which determines the ballots they may select. For example, a registered Republican picks up a Republican ballot. Unaffiliated voters ("Decline to State" or "Nonpartisan") may select the ballot of any party that allows their participation, or they may vote on the nonpartisan ballot.

Under the top-two, the only difference between a Republican and Democratic ballot are the party central committee and presidential races. The rest of the races that used to be partisan are the same on both ballots; the old nonpartisan races (local offices have had nonpartisan elections for years) operate according to their own nonpartisan rules and are the same across ballots.[8] For a voter on Election Day, though, the procedure was the same as under the old law: she approaches the table, the poll worker asks for her name, she receives the correct ballot (or is asked to select one, if nonpartisan), and then she walks into a polling station and votes. While that procedure is the same, the differences across ballot types have dramatically shrunk.[9]

Anecdotally, the new primary system confused some voters. Some appear to have thought that they could vote for two candidates since two advanced to the next round. While a reasonable error, it was indeed an error: for each office, one voter could cast only one vote. As part of this research, the authors went to some of the polling stations on Election Day and watched the election take place. Observers reported a possible increase in the number of "over-votes" – the term for what happens when a voter attempts to vote for two or more candidates in the same race. As polling places throughout the state were required to have voting machines that would check ballots for common errors, poll workers could explain the problem to voters who may have made mistakes – and those voters could obtain a new ballot and then try to cast a ballot free of error. Still, confusion about the new election rules certainly plays a part in the overall story.

The top-two replaced the semi-closed primary used between 2002 and 2010. In a "semi-closed" primary, Republicans vote for Republicans, Democrats vote for Democrats, Libertarians vote for Libertarians, Greens vote for Greens, and unaffiliated voters may choose among the parties that choose to allow their

[8] The difference between historically nonpartisan races and the top-two: in nonpartisan races, the local city offices did not require a second round if one candidate received more than half of the vote in the first round. Under the top-two for the formerly partisan offices, the second round always occurs even if one candidate earned 99.9 percent of the vote in the primary. The city office nonpartisan election rule is closer to the primary election rule used in Louisiana.

[9] They have shrunk to the point of being nearly trivial, especially given the national election schedule in 2012. It was quite clear by June that Mitt Romney would be the Republican nominee for U.S. president, leaving only party central committee as an office with different ballots by party and some possibility of meaningfully effecting *any* outcome.

participation. Depending on how each polling place worked, unaffiliated voters may have had to ask for a party ballot; in others, the poll workers may have offered it (despite heroic efforts to train poll workers, not all poll workers always follow their instructions). In any case, many of the unaffiliated voters who bothered to vote in primaries at all did not pick a party ballot and only voted on nonpartisan local races and ballot propositions. In June 2010, only 40 percent of the decline-to-state (DTS) voters who turned out to vote requested a party ballot.[10] Some of them may not have known which party ballot they wanted and just decided to avoid choosing. Importantly, even for the DTS voters who did choose, they were restricted to candidates of one party *for all offices*. They could not vote for a Democrat for U.S. Senate and a Republican for California governor.

## THE STRUCTURE OF THIS BOOK

This book is organized into four parts. In the first three chapters, including this one, we focus on describing the top-two primary, placing it in the academic literature and explaining its history. These chapters set up the approach in the remaining parts of the book, providing a framework for the diverse analytical approaches in the other chapters. In Chapter 2, we apply the academic literature to hypothesize about the effect of the top-two. In Chapter 3, we present the history of the top-two in California.

The second part of the book takes a statewide perspective on the new primary election. Chapter 4 presents the election results from all the legislative races in California's 2012 election. Chapter 5 examines voter participation. Both of these chapters have the advantage of a wide perspective, looking at aggregate data from all the districts. The wide perspective comes at a cost of local detail and individual motivation, deficiencies we remedy by giving more detailed examinations of a few districts in the next part of the book. This section, and the following one, form the analytic heart of our study and reflect our major sources of data.

Chapters 6 to 9 form the third part of our book. These chapters focus on five California State Assembly districts, relying on a unique survey conducted before the 2012 primary specifically for this project. Chapter 6 describes the contents of the survey and the five districts we study in detail. Chapter 7 looks at voter behavior; specifically at the extent to which voters used the new rules to make sophisticated calculations at the polls. Chapter 8 shifts gears to examine what voters expected the top-two to accomplish. Chapter 9 combines the survey data with some statewide data to assess issues of voting rights and representation.

In the fourth and final part of the book, we have two chapters that broaden our assessment of the top-two. Chapter 10 looks in detail at two of the races,

[10] See http://www.sos.ca.gov/elections/sov/2010-primary/pdf/04-voter-stats-by-county-party.pdf (last accessed December 8, 2013).

AD5 and AD50, with additional sources of data beyond our own survey. In that chapter, we carry the discussion forward from the primary through to the general election. Chapter 11 provides our conclusion, tying the top-two to longstanding and foundational notions about the ability of a democratic society to function. While the top-two may represent a new solution, it is a solution for some very old, and fundamental, challenges.