

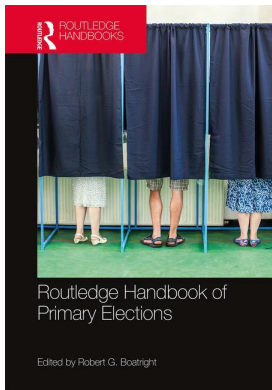
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## **Routledge Handbook of Primary Elections**

Robert G. Boatright

### **Beyond Open and Closed**

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## 25

## BEYOND OPEN AND CLOSED

Complexity in American Primary  
Election Reform*J. Andrew Sinclair and Ian O’Grady*

In many respects, American political institutions are the outliers among Western democracies. The formal rules of political interaction reflect the age of the Constitution and uniqueness of its initial federal design. Comparative scholars of election rules often struggle to place the United States in the context of other countries because it relies on a complex separation-of-powers structure rather than electoral rules, like proportional representation, to drive policy bargaining (see Powell 2000, 41).<sup>1</sup> Furthermore, these institutions evolved alongside an unexpected development: the Constitution’s framers did not envision a role for the type of political parties which swiftly – and, critically, endogenously – developed (see Aldrich 2011, 71). American electoral institutions serve as an arbiter of conflict both between and within political parties. The story of primary election reform – more than just the specialized and unique area of presidential primary elections – is fundamentally a story about political actors seeking policy change by altering institutions within America’s comparatively malleable and strongly localized framework (as in North 1998).

The combination of single-member districts (for most – but not all – legislative offices, as discussed below), a single (mostly) directly elected national chief executive, and aspects of historical accident have generated a stable arrangement in which two national parties obtain almost all of the votes cast in most elections (see Cox 1997). Although there have been realignments, these two great parties have been stable enough for voters to develop a personal “party identification” with substantive meaning in common across states (see Campbell et al. 1960). Nationally, both major parties are competitive: between 1945 and 2017, there were six Democratic Party presidents and seven Republican Party<sup>2</sup> presidents; recently party control of the U.S. House of Representatives flipped after the 1994, 2006, and 2010 elections; and filibuster-proof majorities in the U.S. Senate are rare. The electoral machinery serves to select candidates for office and regulate the manner and extent in which a contest for votes influences conflict over policy. Although the institutions drive participants into a two-party *system* (see Aldrich 2011, 310–312), the policy space is clearly multi-dimensional. Aldrich’s argument about the development of parties describes them as “driven by the consequences of majority instability, that is, by the social choice problem” (Aldrich 2011, 71). The result is often reasonably simplified into a single dimension, which helps explain the enduring usefulness of the Downsian (1957) spatial model.

The relative competitiveness of the two major parties nationally does not imply local competition. In many individual states, one party or the other dominates. Figure 25.1 displays

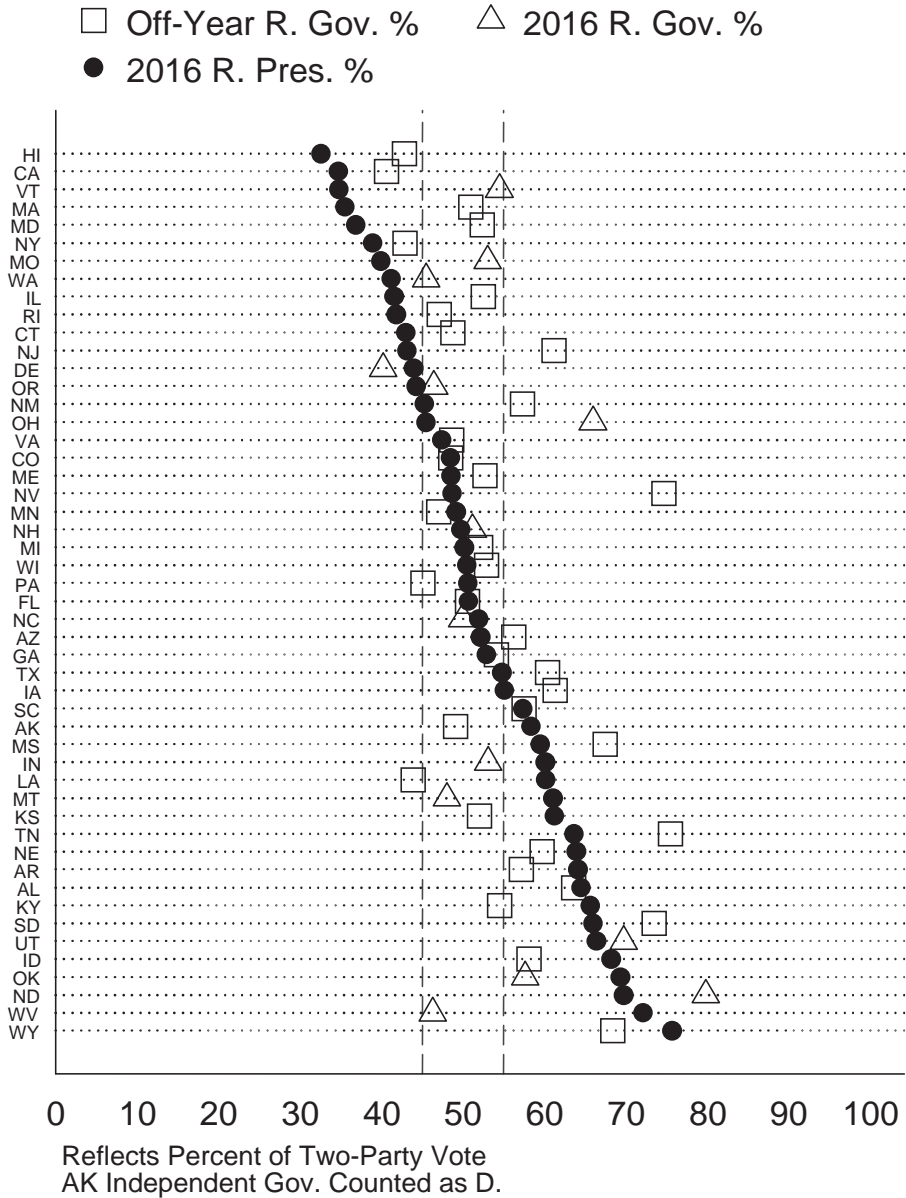


Figure 25.1 Party Strength by State; Republican Two-Party Vote Share in the 2016 Presidential and Most Recent Gubernatorial Election

the vote share of current governors in their last election and the most recent state presidential vote share. Uncompetitive states are not new; V.O. Key wrote at mid-century:

In only a dozen states do the two major parties compete on a fairly even basis . . . the net effect of the overwhelming attachment of many states to one or the other of the national parties means that, in reality, no party system exists within such states for state purposes.

*Key 1958, 318*

Of course, most states operate a two-stage election procedure: a *primary* resolving intra-party conflict followed by a *general* election resolving inter-party conflict. Key famously remarked that “the Democratic primary in the South is in reality the election” (1949, 407).

While it is broadly understood that Democracy means “rule by the people,” there is not universal agreement on how to operationalize this principle. Powell (2000, 8) organizes a large literature into concepts arranged on two dimensions: the voter’s time perspective (retrospective, prospective) and the target of a voter’s choice (representative agents or collective government). The four resulting combinations – accountability, mandates, trusteeship, or representative delegates – do emphasize different ideal qualities and, Powell argues, are associated with different institutional arrangements. Nevertheless, some level of contestation, if not close competition, is necessary for any of these. Key wrote that “[politicians] are keenly desirous of public office, an honorable ambition, perhaps the most honorable of ambitions. Only through the clash of such ambitions can the ideals of democracy be approached” (1949, 297). Riker (1982) saw the liberal interpretation of democracy, one functionally about accountability, as resting on the ability to remove public officials for perceived poor performance.<sup>3</sup> There are many reasons to believe that even Riker’s minimal requirement is difficult to obtain: Bertelli (2016) observes that only if it is clear who is doing the policy work and what the worker is doing can retrospective accountability be obtained in public administration; Achen and Bartels (2016) are quite pessimistic about a voter’s ability to do this under any circumstances. Many of the challenges scholars identify even in settings with high voter information and competitive parties, like presidential elections, are more problematic for lower offices like the U.S. House, state lower houses, and state upper houses.<sup>4</sup> As Key wrote, absent meaningful cross-party competition, the existence – or absence, or extent – of genuine meaning to democracy relies on the functioning of the primary election institutions.

Do primary elections help mitigate these concerns? Merely holding an election is generally understood to be insufficient: “the American political tradition caps decisions made by popular vote with a resplendent halo of legitimacy,” although this may be fictional both for reasons Key addressed (the small necessary electorate in many primaries; Key 1956, 133) and for reasons he did not emphasize (the social choice problem better addressed by others). Riker’s concerns (grounded in Arrow 1951) about a “populist” interpretation of elections still leave room to evaluate whether some types of election systems seem to perform better than others on average. For those willing to contemplate the existence of mandates in certain circumstances, the lopsidedness of some districts is not as concerning: a mandate, after all, means that “a clear majority of voters chooses a package of policies they desire” (Powell 2000, 70). In that vein, the questions relating to the diverse primary institutions operated in different states largely must try to answer Key’s concern that “so few votes determine the party nomination that aspirants for office need only command the loyalties of a relatively small following” (1956, 140–41). Bueno de Mesquita and Smith (2011) observe that for all politicians, in democracies and non-democracies alike, the fundamental concern is really how many people have to be provided with a return in exchange for support and how easily those partners can be replaced. The persistent concern with the operation of primary elections is that the size of the (meaningful) winning coalition may be so small as to upset the always tenuous relationship between rulers and the mass of the ruled.

Given the diversity of types of primary election laws, and the number of parameters one could manipulate, primary reform has long been a subject of interest for both practitioners and scholars. While Arrow’s Theorem and the other theoretical results (see Riker 1982) indicate that there will be no perfect electoral institution in all circumstances, some types of rules might at least produce some outcomes more often than others in a statistically reliable way. The naïve expectation here would be to at least be able to choose off a menu of primary types with

well-defined tradeoffs. Diversity of preferences and political endowments would explain why some groups seem interested in “reform” and others more interested in maintaining the status quo. There is one small problem: scholars have not come close to reaching a consensus on the information required to guide such a choice.

In 2012 Arizona voters rejected Proposition 121, a version of a nonpartisan top-two primary procedure, by a wide margin (nearly 2:1).<sup>5</sup> The proposition was largely backed by former Mayor of Phoenix and Democrat-turned-Independent Paul Johnson, although no notable additional faction of either the Republican or the Democratic Party signed on to support it (Khan 2012; Lemons 2012; Wylodge 2013). This came up again in 2016 but the campaign failed to qualify for the ballot (Pitzl 2016). In Arizona, the minority party (the Democrats) did not favor this reform, while in California, only a few years earlier, several key figures in the minority party (the Republicans) did. In Arizona, why did both major political parties – and traditional opponents – unite to oppose this reform?<sup>6</sup> In other words: did someone make a mistake? North (1998) suggests it is reasonable to believe the standard assumption of many game-theoretic models – that the players “know what they are doing” – may not hold in many complex policy processes; players may not perceive all available opportunities until policy “entrepreneurs” find them.

One reason to study politics is to produce useable information – information participants could use to inform the choices they make. The literature in political science on primary elections is growing and benefiting from many of the new methodological developments. Nevertheless, basic questions like what different factions of the Arizona Democratic Party should have expected from a nonpartisan primary remain as subjects of considerable controversy. Our goal in this chapter is to offer a slightly different way of conceptualizing primary “reform” and use three contrasting recent cases – a change in Idaho, a change in California, and the retention of the status quo in Arizona – to better frame the choices parties make.

### What Is a “Primary Reform”?

To explain our case selection, it is necessary to consider more broadly the question of what a primary election reform actually is. Contemporary reform proposals are best understood as reforms-of-reforms. Direct primaries date back about a century and altered existing nomination procedures. No form of direct primary is described in the Constitution of the United States for any office. States have broad authority granted in Article I, subject to modification, to determine their own election procedures. The direct primary is largely the endogenous creation of political processes within states (Ware 2002), with the design of the laws in each state likely influenced by the dynamics of policy diffusion and thus often working similarly within some broad outlines.<sup>7</sup> While diffusion is not always geographic (see Shipan and Volden 2012), there often appear to be components of the development of primary election laws that have regional or temporal similarities.

And why do the rules change? American states have adopted and modified their election procedures through the complex interaction of party conflict at the state level, the interaction of national politics with state institutions, citizen initiatives and “good government” advocacy, and the intervention of the courts (see Ware 2002). The election rules interact with other unique state institutional arrangements, including specific items often minimized or ignored in the primary elections literature, like the availability of direct democracy to get around the legislature or the existence of supermajority rules in the state legislature.<sup>8</sup> The rules states use to elect candidates to office are diverse, endogenously generated, and subject to change and ongoing controversy.

Changes to primary laws are nested within the larger universe of election procedures as well. The set of institutions most directly relevant to the primary laws include: the ways voters are

registered and what information is retained about them; the way parties and candidates get on the ballot, including ballot fees or signature requirements; the rules in both the primary and general phase by which candidates get on the ballot or may be written in – including “sore loser” laws, the procedures parties use to endorse candidates (if they do; formal or informal), and the timing of those procedures; the voting technology; the extent of the connection between presidential and non-presidential nominating rules; which voters may vote for which candidates, who gets to decide this, and how that decision is made; and the way primary results are mapped into the configuration of the general election contest. The approach in much of the primary election literature is to try to collapse all of the variation of electoral institutions into perhaps four or five types for analysis; although in some settings this may be appropriate, it is important to keep in mind that there is considerable potentially meaningful variation from state to state even within the broad classifications.

The typical classification system used in the study of primary elections places the institutions along a scale of “openness.” This approach (most notably: Gerber and Morton 1998; Kanthak and Morton 2001; McGhee et al. 2014; Rogowski 2013) focuses on the options available to voters at the first, primary, stage. A *closed* primary requires voters to affiliate with a party to have access to that party’s ballot; a *semi-closed* primary also allows independent voters to pick a party for the entire primary election ballot; a *semi-open* primary allows any voter to pick a party for the election in some public fashion; and an *open* primary allows voters to choose a party on election day in private. At the extreme, there are several types of primaries (*blanket*, *nonpartisan top-two*, and related) which allow voters to pick any candidate for any office. McGhee et al. (2014, 340–341) present the best summary of this standard view, building on Gerber and Morton (1998).<sup>9</sup> McGhee et al. (2014) also point out that the formal theory literature provides weak and sometimes contradictory guidance in terms of what to expect from these different rules.

Several influential papers, including McGhee et al. (2014), use some version of this classification scheme, applied to data collected for U.S. states across time, to examine the impact of primary type on some measure of legislator ideology. Effectively, this is an application of a simple spatial model, reflecting the conventional wisdom: the more open the primary, the more centrist the median voter, and thus the more centrist the winner.<sup>10</sup> The results of this intuitive approach have been inconsistent; McGhee et al. argue “states’ political economy, political culture, demographics, or other political institutions” may be driving polarization but that “primary elections [types] are not among the most important factors” (2014, 348). They further note, to explain variation in the findings, some limitations in both the data and methods of earlier work, in particular “the inability to compare polarization both pre- and post-treatment for a wide range of states” (2014, 348). In many ways, this remains a challenge for this type of approach, no matter how competently executed.

The primary laws are not randomly assigned and change in an identifiable pattern over time. Due to a series of court decisions, followed by modifications to the laws in some circumstances, a number of states went from having a traditional closed primary to a “party choice” rule, in which each party can decide to hold a closed or semi-closed primary. This accounts for many of the changes, as illustrated in Figure 25.2, between 1980 and the present – the period most extensively studied in the literature. In general, states are either in a universe in which party registration is required (closed, semi-closed, party choice) for administering the rule or a universe in which it is not (semi-open, open, blanket, nonpartisan).<sup>11</sup>

Why focus on the three states we describe in the next sections? Very few states make changes across the major categories, largely separated by the existence and role of party registration. California is one of the few with multiple changes: it goes from a closed primary to the blanket primary (1998, 2000); adopts a semi-closed system (2002–2010); and then ends up with a

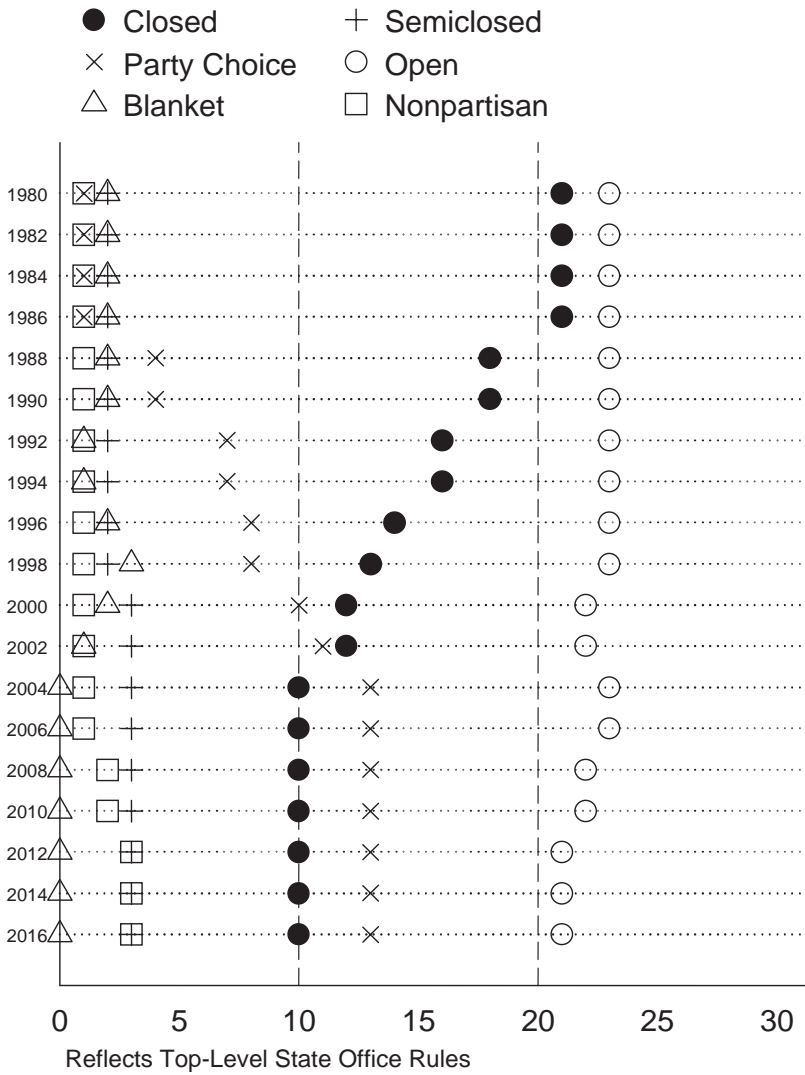


Figure 25.2 Use of Primary Election Types Since 1980

nonpartisan system (2012–2016). Idaho is the rare case of partially leaving the open primary to adopt partisan voter registration (beginning in 2012), so the Republicans could close their primary. Arizona is more typical: the state passed by voter initiative a switch to go from pure closed to semi-closed in time for the 2000 elections (Berman 2016) but this does not require large changes in other aspects of election administration.<sup>12</sup>

The drift from closed primaries to semi-closed or party-choice primaries is a consequence, at least in part, of a series of judicial decisions giving parties a greater ability to make these choices, even if existing state law forbids it. In *Tashjian v. Republican Party of Connecticut* (479 U.S. 208, 1986), the Republican Party sued the state to obtain the right to allow nonpartisan voters to vote in the (previously closed) Republican Party primary.<sup>13</sup> Courts subsequently limited this

ruling to unaffiliated voters in *Clingman v. Beaver* (544 U.S. 581, 2005). Nevertheless, a state-mandated closed primary existed in any state after *Tashjian* only by the sufferance of both parties (and not just the party in the majority, capable of passing a new state law). Although one could argue all closed states should be coded “party choice” after *Tashjian*, we have retained the closed coding in Figure 25.2 for any state that did not formally change its laws or challenge the ruling in court.<sup>14</sup> Even so, several party-choice states have held mostly closed primaries, although the mechanism is in place for them to do otherwise. Nevertheless, adjusting these rules – from a closed primary to a party-choice (closed, semi-closed) primary – represents one of the major shifts in the laws between 1980 and 2016.

The other major decision of this era driving institutional change is *California Democratic Party v. Jones* (530 U.S. 567, 2000). Persily (2002, 306) observes: “after *Tashjian*, it was clear that the state could not force a party to restrict participation in its primary to party members. The precise question in *Jones*, however – whether a state could force a party to *expand* participation in its primary – remained unanswered.” Several California political parties, including both the Republicans and Democrats, had sued to stop the blanket primary, a rule passed by initiative in 1996. This type of primary, long used in both Alaska and Washington, allowed any voter to choose any candidate. Candidates of each qualified political party competed for the nomination of that political party; voters effectively could switch between parties as they moved down the ballot. In *Jones* the Court found that the blanket primary infringed too much on a party’s associational rights. This had several consequences: the three states with blanket primaries replaced them with other rules (as analytically exploited in McGhee et al. 2014); California and Washington both ended up with a nonpartisan “top-two” primary as a consequence of a suggestion included in the *Jones* decision; and Idaho’s Republican Party tried what Persily (2002) suggested was a logical extension and sued to close a traditional open primary (see Alvarez and Sinclair 2015, 26–27).

The blanket primary has a slight, but legally critical, difference from the nonpartisan primary procedure (the “top-two”) now used in California and Washington: in these nonpartisan primaries, the first-round primary does not purport to select the nominee of a political party for the second-round general election runoff. McGhee (2010, 3) effectively illustrates this selection process by drawing lines separating candidates by party and voters by party for a traditional partisan primary, separating only candidates by party for the blanket primary, and separating neither candidates by party nor voters by party for the nonpartisan top-two. While it is common for the blanket and the nonpartisan top-two to be lumped together, the blanket primary remains a partisan primary for the candidates and the general elections are structured like other partisan systems; the nonpartisan top-two, however, impacts both the primary and the general election by potentially changing the general election field.<sup>15</sup>

As we will describe, Idaho is a rare case of a state moving from an open primary to a party-choice system based on partisan registration. This too is a consequence of the *Jones* decision, although of considerably lower profile than the changes in California. In the opinion, the United States District Court observed in *Idaho Republican Party v. Ysursa*: “recognizing the difference between blanket and open primaries, this Court nevertheless finds the Supreme Court’s analysis in *Jones* instructive . . . choosing ideologically extreme candidates is precisely what a political party is entitled to do in asserting its right of association under the First Amendment” (765 F. Supp. 2d, 2011, 8, 17). Idaho had previously operated an open primary; after the decision, the state began allowing registration by party and, per the Party’s request, closed the Republican primary.

Idaho’s story differs from Utah’s, another Republican-dominated western state, and one of the other few states to leave an open primary system. This serves to illustrate the advantage of considering individual cases, given the unsatisfying results in the national studies. Utah’s rules were complicated (as noted in McGhee et al. 2014, who decided to count it as closed for this



reason) by the presence of a strong pre-primary party convention system sufficiently powerful recently to deny incumbent Governor Olene Walker (Askar 2011) and incumbent Senator Bob Bennett (Catanese 2010) the opportunity to even run for reelection.<sup>16</sup> Nevertheless, in the lead-up to the 2000 election Utah switched from having open to party-choice primaries; the Republicans closed theirs while the Democrats kept theirs open. This only applies, of course, when a primary actually occurs, which was still only if there was sufficient competition but insufficient agreement in the party convention.<sup>17</sup> The Utah legislature, dominated by Republicans, passed a primary reform bill (SB 54) in 2014 that both provided for an alternative path to the ballot around the convention and re-adopted open primaries; the Republican Party sued and lost in the District Court on the path around the convention but won on the open primary issue (Romboy 2016). The Utah story helps to illustrate how the various pre-primary ballot access and endorsement procedures (McNitt 1980) complicate the coding of primary election types; even simple pre-primary approval endorsements can have a meaningful impact on election outcomes (Kousser et al. 2015) and of course these will vary from state party to state party.<sup>18</sup>

Despite the changes in a handful of open primary states, it is still the case that most observable primary changes happen between closed, semi-closed, and party-choice systems.<sup>19</sup> Identifying effects is further complicated by other institutions which could interact with the primary rule type or overwhelm the effects; in some cases, these rules are systematically associated with one type of primary because states share other common historical origins. Some of the southern open primaries also have a second primary for some offices (potentially requiring three election stages) that operates as a runoff between the two highest vote-getting partisan candidates (see Bullock and Johnson 1992; Kousser 1984).<sup>20</sup> Furthermore, in some states the party still has a right to hold a convention instead of a primary for some offices; although this seems to be a right rarely exercised, it has been recently contentious among (for example) Virginia Republicans (see Geraghty 2015). The Virginia Republican Party only arrived at the decision to hold a primary to select their 2017 statewide candidates by a 41:40 vote of the state party's Central Committee (Vozzella 2016). Of course, differing rules across multiple levels can have impacts on participation at all levels: one has to wonder if the unusual rules for other offices in the 2014 campaign influenced Republican House Majority Leader Eric Cantor's defeat (see Sherman 2014).

Other related election laws could also be important. For example, the available means of voting (early in-person, early by mail, and election day<sup>21</sup>) and the particular rules about the administration of the vote can increase or decrease the size of the electorate (Burden et al. 2014). The extensive use of mail voting – and in some places, only mail voting – creates not only a “rolling deadline” (Pirch 2012) for election day but also dramatically different conditions under which voters may fill out ballots – privacy of party ballot choice (where applicable) works differently, as might the role of information on the ballot if voters have their home computer close at hand.<sup>22</sup> These rules could meaningfully interact with primary types.<sup>23</sup> Typically in states in which voters may choose a primary, if those voters are also voting by mail they must make a request about which party ballot they desire in advance of the election; raising the cost of meaningful participation. Overall, a decrease in the use of closed primaries, an increase in the forms of convenience voting available, falling cost of information search and a fragmenting media environment, and increased campaign mobilization technology have all changed together over time. While scholars have made reasonable efforts to identify the impact of changes in primary election laws, the conditions for observing an impact are far from ideal. As McGhee et al. note: “endogeneity is a difficult problem to address, since we cannot randomly assign primary systems by state and observe the result” (2014, 345). Furthermore, the coding of the laws themselves is subject to meaningful measurement error, as with any exercise of trying to group alike but not identical items into categorical bins.

Ultimately, it appears scholars have developed some skepticism that primary election laws matter at all, at least when it comes to ideology (“we should expect little from open primary reform in the modern political age,” McGhee et al. 2014, 349). There are good reasons to believe political parties have a large influence over the outcomes, if merely from the perspective of understanding sources of political power (Bachrach and Baratz 1962) or the attributes of the “guardians of the formal agenda” (Cobb and Elder 1971). This fits more modern theories of political parties (Cohen et al. 2008; Maskett 2011), in which parties are best understood as organizations of policy demanders able to guide resources and provide opportunities to those who will be effective agents for those policy priorities. Other authors have focused on different attributes of primary elections (beyond ideology) and pointed in a valuable direction: for example, Hirano and Snyder (2014) find that primary elections can help select higher quality candidates in places absent meaningful cross-party competition.

If primary election laws do not matter, why do some participants seem to go to such great lengths to change them? One possibility is that the participants who have made changes have made them in error – as discussed below, there is an ongoing and robust debate about this in California. At least a reasonable starting place, though, is to look at a few recent changes in primary election laws, the political situations coincident with those changes, and to closely examine what sorts of outcomes the participants driving the change might count as success. This is not, by any means, the end of the story; it is simply a good place to begin the process of better understanding how primary reforms might work.

### **Policy Entrepreneurs and Party Factions**

The conversion of most states to direct primary elections took place shortly after the turn of the last century and the resulting rules were very much creatures of their time, place, and institutional context; the direct primary developed from a combination of reformist zeal and party-insider interest, particularly in terms of trying to leverage the benefits of legal regulation (Ware 2002).<sup>24</sup> A rigid story of reformers-against-parties does not work well for the origin of primaries (as Ware 2002 argues, although this is the popular perception) and a healthy skepticism of this dynamic seems appropriate in evaluating recent reforms as well. “Good government” is only part of the reform story. Institutional change comes from successful policy entrepreneurs: someone or some group both interested in shifting the outcomes and able to see a path to do so. We should expect different types of choices from different kinds of participants – and, given some of the dynamics outlined in Ware (2002), we should also expect that any successful institutional change will require the assistance of at least some faction of a relevant political party.

We should not expect the same reforms in all cases, nor the same groups pushing for them. Figure 25.3 illustrates both the Republican partisan strength and the ideological position of the majority (using the Shor and McCarty 2015 state legislative scores) for Idaho, California, and Arizona. If each party can be divided into its Haves and Have-Nots,<sup>25</sup> and there is a majority and a main minority party, this describes a four-faction universe in each state. It is a simplification, but a useful one:

- If one party is dominant: it matters by how much, and which faction controls the formal party apparatus. In general, we should expect parties with very large majorities to have a higher chance of seeking to close the primary, and shrink the meaningful electorate, if ideological purists manage to take control of the party machinery. Idaho serves as an example of this dynamic. In these circumstances the minority party is generally so helpless as to have limited capacity to change the rules.<sup>26</sup>

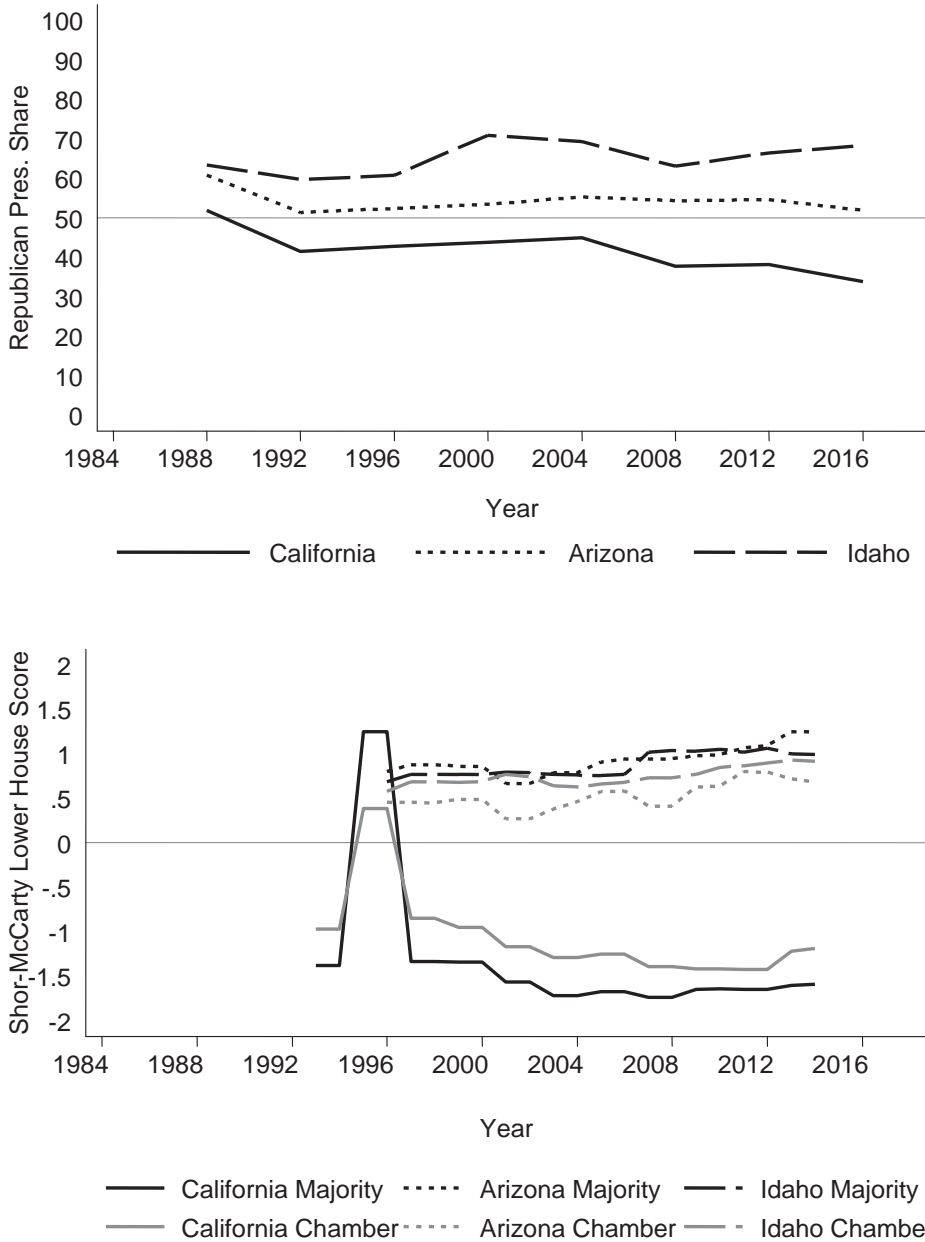


Figure 25.3 Republican Two-Party Vote Share 1988–2016 and Shor-McCarty Legislative Scores

- If there is a dominant party but the minority party retains some bargaining leverage, we should see interest in primary reform aimed at moderation or opportunities for influence provided that a moderate faction of the minority party can gain control and that the prospects of future victory are low. This is the case of the California Republicans and the non-partisan primary. These conditions should also be relatively rare.

- If the partisan balance is close or likely to become close, the participants who in other circumstances might push for either vastly shrinking the (effective) electorate or moderating the party for the sake of electability are more likely to try to balance reaching centrist voters with maintaining some cohesion. We may be more likely to see symmetric approaches across both parties. This turns out to be the story in Arizona.

The Idaho, California, and Arizona cases each contribute to our understanding of these circumstances. As shown in Figure 25.3, Republicans dominate Idaho in terms of vote share and the policies of the legislature are correspondingly right-ward; Republicans are headed towards extinction in California, having last held a majority in the legislature in the mid-1990s and steadily dwindling since; and in Arizona, Republicans hold a narrow vote share lead but have been able to translate this into ideological positions not so far different from Idaho’s legislature. Idaho shifts to closed primaries for the Republican Party but the Idaho Democrats keep theirs open. California’s centrist Republican wing, leveraging their last relevance in the state legislature, manages to obtain nonpartisan primaries by negotiation in the legislature, followed by a ballot measure. In Arizona, a similar rule to California’s failed to capture the interest of any sizeable faction of the state’s Democrats, the most likely insider-group to favor such a rule.

### Idaho: The Monopolists

Idaho looks like Key’s one-party South – a state where the primary is the election.<sup>27</sup> The recent change from an open to party-choice system, as one should expect, emerged out of the factional politics in the dominant party. The push to close Republican primaries (the “reform”) originated with a small group of political Have-Not Republicans. Since the Idaho reform required the intervention of the courts (in *Ysursa*), this was not likely something readily accomplished in the legislature itself, even though the Republican Party held large majorities. As elsewhere, it matters which type of person controls the key legislative, executive, and party offices in each party.<sup>28</sup> In Idaho, when the change was first proposed, prominent party figures opposed it,

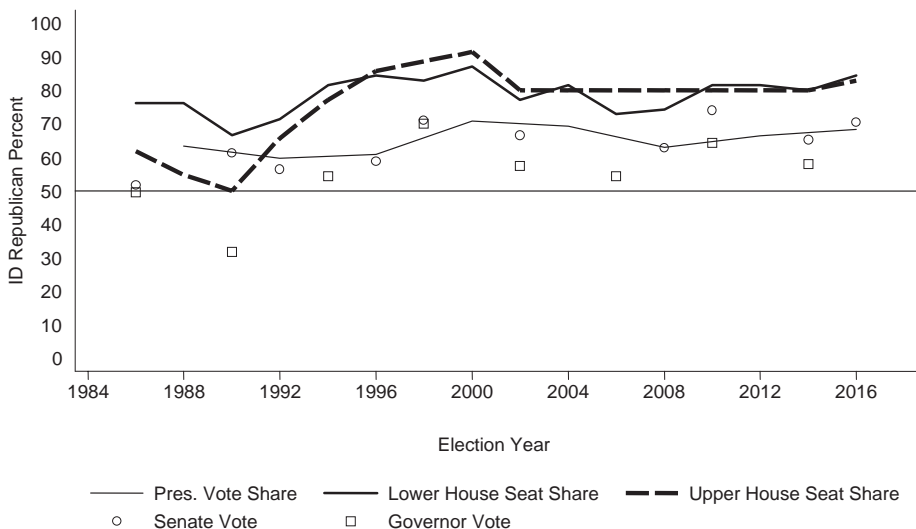


Figure 25.4 Time Trends in Idaho Politics

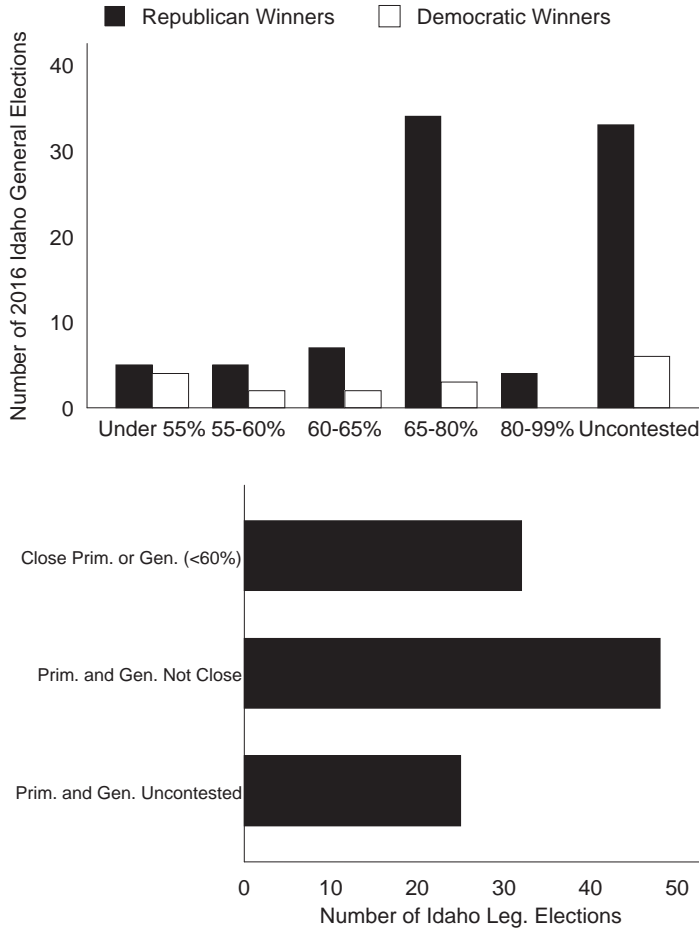


Figure 25.5 2016 Idaho Snapshot

including Idaho’s Republican Party Chair and Republican Governor (see Andersen 2007 and Russell 2008a).<sup>29</sup> The insurgents eventually obtained enough support in the state party organization to bring the lawsuit. It appears that the insurgents convinced the “intense policy demanders” that the party could get away with acting more like a political monopolist.

Figure 25.4 shows the Idaho Republican Party’s dominance over time. Since the mid-1990s, the Republicans have held substantial majorities in both chambers of the legislature and routinely win statewide elections. In the 2016 election, only six of 35 legislative districts elected a Democrat to the state legislature – to the Senate or either one of two House seats per district. Four of the six Democrat-electing districts are located around Boise, Idaho’s most populous city. Put differently, out of 105 Republican primary winners for the state legislature in 2016, 88 went on to win the general election.

Beyond holding large majorities in the legislature, Idaho Republicans also tend to win both rounds of the elections by large margins (see Figure 25.5). In the general elections, most winners were either unopposed or won greater than 65 percent of the vote. Only a very small handful won with under 55 percent of the vote, and even had the Democrats won all

the (relatively) close contests, they would not have captured a majority in the legislature. The lower-half of Figure 25.5 focuses on Key's question about whether accountability can be imagined at any stage; in this sense, it matters if either the primary or the general election was close. A quarter of current legislators ran unopposed at both levels; only in about a third of the races did the winner face either a close primary or general contest (defined very loosely: winning by less than 60 percent of the vote).

We should not presume failure. As Erikson and Wright argued about U.S. House elections:

Candidates, generally desirous of attaining and staying in office, heed their electorate's wishes and work to give them what they want. Elections bring about much higher levels of policy representation than most observers would expect based on the low levels of citizen awareness.

2013, 113

But who are the necessary constituents in different primary systems? Suspicious that non-party members were adulterating the nominating process, former Idaho State Senator and Majority Leader Rod Beck – who himself lost in the state's open primary system to another Republican for U.S. Senate in 1992 – began his campaign for closed primaries (see Russell 2008a).<sup>30</sup> At the 2007 GOP Central Committee Summer Meeting, he successfully lobbied members to vote for closing Republican primaries; the motion was passed 88 to 58 (Russell 2007a). He then rallied more than 70 other Republicans, some in elected office, to join him in his lawsuit against Republican Secretary of State Ben Yursa, demanding that he bring state law into compliance with the Central Committee's wishes (Andersen 2007). The lawsuit stalled when then-Party Chairman Kirk Sullivan signed an affidavit stating that the party members' lawsuit did not represent the interests of the Party (Russell 2007b). With Sullivan's affidavit in hand, the state filed a motion to dismiss, arguing the Central Committee vote did not necessarily imply Party support of the lawsuit; the court agreed and dismissed the suit (Andersen 2007). Sullivan's actions enraged Beck and his allies (Andersen 2007). As a consequence, Sullivan pushed Republicans in the legislature to enact a solution into law. Legislators, however, ran into constitutional concerns regarding an imposed closed primary for the Idaho Democratic Party. Without a solution by the end of the 2007 Session, Beck looked elsewhere (Popkey 2014).

Beck worked with allies at the following GOP Central Committee meeting to again pass a closed primary resolution. This resolution authorized party members to sue on behalf of the Party, reinitiated the original lawsuit, and tied the hands of Sullivan and other party "elites" (Russell 2008a).<sup>31</sup> At the June 2008 State Convention just six months later, Beck helped oust Sullivan as Chair, dealing Governor Otter, who backed the moderate Sullivan, an embarrassing loss in the process (see Russell 2008b; Hoffman 2008; and Popkey 2014).<sup>32</sup> Beck may have defeated Sullivan himself if Norm Semanko – another politically experienced conservative – had not jumped in days before the party convention as a compromise choice. When asked why he sought the chairship, Semanko responded, "I made no bones about it that I didn't think Rod Beck would have been a good chairman . . . When I was convinced that Rod was going to beat Kirk [Sullivan], that's when I had to make a decision . . ." (Hoffman 2008). As Chairman, Semanko would join the lawsuit against Yursa for closed primaries in his capacity (see *Idaho Republican Party v. Yursa*, 660 F. Supp. 2d 1195, 2009).

In 2011, *Idaho Republican Party v. Yursa* decided the issue in favor of the party's request to close the primary. The state legislature passed HB 351 to alter law to comply with the court's ruling.<sup>33</sup> Provisions included adding partisan registration, allowing parties to "open" and "close" primaries to voters of their choosing, and improvising for the 2012 election, where voters

would be allowed to formally affiliate with a state political party for the first time up to election day. Republicans have maintained closed primaries since, while Idaho Democrats have left their primaries open to participation from both unaffiliated voters and registered members of other political parties.

Although much of the news coverage of Idaho's intraparty struggle centers on Rod Beck, it is quite possible that someone else would have fought for the same thing.<sup>34</sup> Functionally, this is following the spatial logic: the reason to close the primaries is to shrink the electorate, removing the chance of Democrats adulterating their primaries and supported by the opposition of "moderates" like Sullivan and Otter (Russell 2008b). Even without the spatial considerations, shrinking the electorate would seem to reduce potential opportunities for entry and limit the size of the constituency to which an incumbent must provide value (in the spirit of Bueno de Mesquita and Smith 2011). The Republicans should not care very much if nominating more conservative candidates comes at some risk of defeat (as in Hall 2015) since they can afford to lose a few seats now and then without giving up control of the legislature. Furthermore, the Democratic Party was so weak that it is not obvious they would be in a position to take advantage of the spatial asymmetry; in some parts of Idaho, how many Democrats are willing to pay the cost of running for office with such a low expected return on the effort?

The interesting question in Idaho is what to expect and measure from this reform. On one hand, if the result is the nomination of ideologically more extreme candidates (even more conservative), Hall (2015) would predict some defeats – possibly in the long run moderating the legislature (the opposite of the inferred intended consequence). The asymmetry means some voters, who under the old system may have chosen to join the Republicans, can now only join the Democrats, possibly making the Democratic electorate more conservative. The smaller electorate might help protect right-wing candidates against accountability for overall performance while also being more accountable to right-wing constituents.<sup>35</sup> Additional years in the operation of the new primary will also produce more data to use to examine changes in the rate of primary challenges, incumbent defeats and retirements, and voting history, and so on. Some of the outcomes may be less obvious and reflect resource distribution that may have little to do with stated policy preferences on "big picture" and high-profile issues.

Given the current state of the literature, we should not expect the shift in Idaho's law to change much about polarization in the legislature. So why did they do it? As with the other states, it is possible that individual or anecdotal experience, or the same sort of back-of-the-envelope theory, generated an expectation about moderating effects of open primaries that is otherwise not supported by more rigorous analysis – that is, the faction advancing this made an error and paid a cost to change the law for no ideological return. It has not yet been very many years in Idaho with the new rule, and this is a shift that is somewhat rare in the data in a state that is an outlier in other respects, so this likely deserves further analysis in this regard. In any event, it may also be the case that the proponents will derive other benefits from having a smaller coalition unrelated to ideology. What is clear is that the situation in Idaho does match a fairly simple idea about many bargaining games: winners should construct coalitions out of the minimal number of participants in order to maximize their share of the benefits. The California Republican Party in 2009–2010, covered in the next section, had no such luxuries.

### **California: The Rear-Guard**

In 2009, California Republicans were solidly in the minority in the state legislature: nevertheless, they were not irrelevant. Republican Governor Arnold Schwarzenegger, a well-known action film actor, was elected in 2003 as part of a recall election of an unpopular Democratic

governor. Schwarzenegger won again in 2006, maintaining a tenuous Republican hold on the state executive branch. In 2010 and 2014, no Republicans would capture a statewide office while the Republicans continued to lose strength in the legislature. Overall, the Republican Party had been in a decline at least since the mid-1990s (see Figure 25.6; also see Sinclair 2017). Part of what kept the party relevant, though, was a supermajority requirement for the state budget. In 2009, Democrats found themselves in a position in which some bargaining had to take place with Republicans. Schwarzenegger and a few key allies in the legislature used this leverage to advance a political reform agenda, including a change to the primary elections.

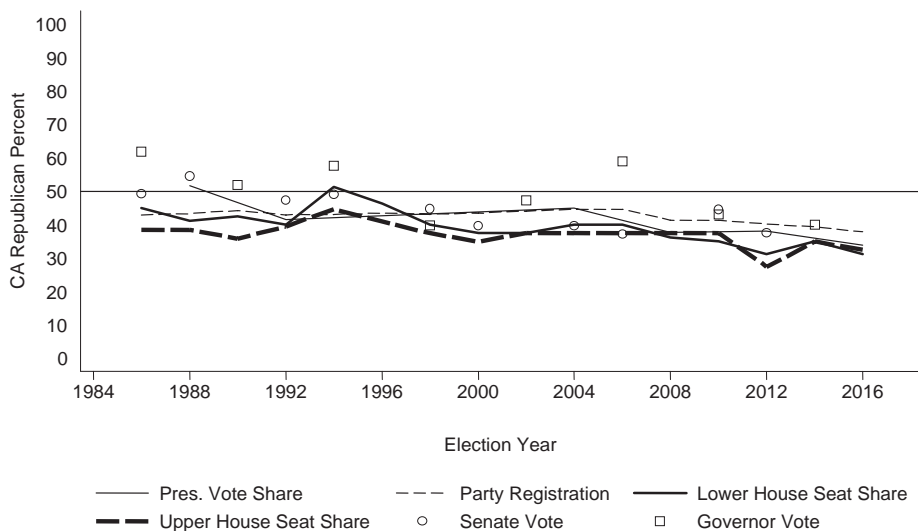


Figure 25.6 Time Trends in California Politics

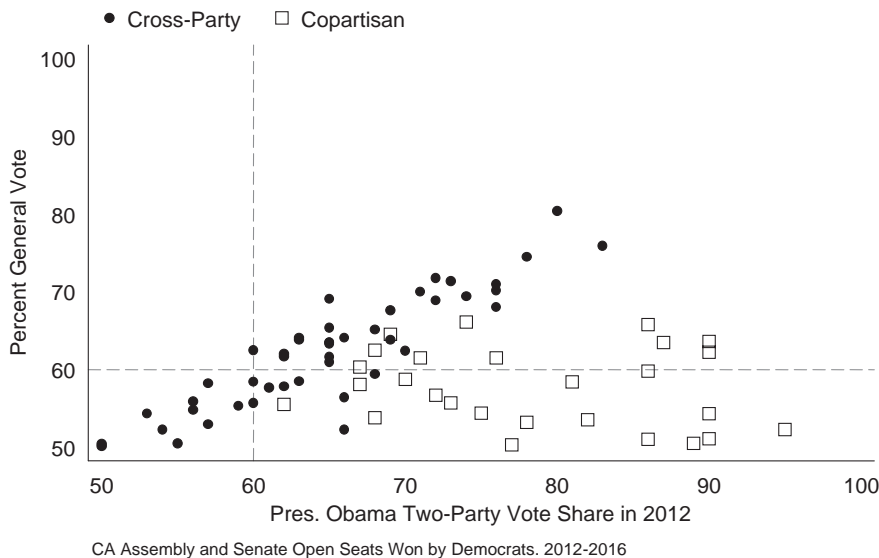


Figure 25.7 2012–2016 California Snapshot



Although the nonpartisan primary election system is often viewed as an “anti-party” reform, that risks falling into the intellectual trap Ware (2002) describes. Certainly some voters were very frustrated with the actions of political parties and ultimately voted for the initiative in that spirit (Alvarez and Sinclair 2015). Proposition 14, though, was a legislatively referred amendment, sent to the ballot as a deal for the vote of then-State Senator Abel Maldonado and five others. This was an act of political courage because it involved agreeing to solve a budget hole through a combination of budget cuts and tax increases. Although the *Los Angeles Times* pronounced that “Maldonado . . . walked away a huge prize winner” from the deal (Skelton 2009) and he would soon be made Lt. Governor, the deal was unpopular with conservatives. Running for a U.S. House seat in 2012, he struggled to gain the endorsement of his own Party Central Committee (Bartowski 2012) and went on to lose the general election. He pulled out early from an effort to run for Governor in 2014. At the time, some thought Maldonado supported the nonpartisan primary to make it easier for center-right Republicans like himself to win public office; at least judged by his own case, if that were the motivation, it failed.

The involvement of the moderate wing of the Republican Party, temporarily empowered by holding the governorship and a few key votes in the legislature, demonstrates the relevance of Ware’s observations about earlier reforms. Ware writes: “Party politicians were not the ‘victims’ of anti-party reformers who somehow imposed a debilitating reform on them” (2002, 257). Schwarzenegger, Maldonado, and the interest groups and party elites supporting them – Charles Munger, Jr. most notably – engaged in a reform that enlarged the potential pool of voters, and scrambled the way in which candidates competed, for some reason. Although the formal organization of the Republican Party did not support the measure when it went to the ballot as Proposition 14 in 2010, the adoption of the new rule involved a powerful faction of the Republican Party in alliance with angry voters and “good government” groups. So we ask again: why did they do it?

One reason was certainly that it had the potential to elect more moderate legislators, or at least allow them to get through the primary; as McGhee (2010) observed, this was the most commonly cited goal for the reform. For centrist Republicans, the Republican brand in California was becoming a problem; as Figure 25.6 illustrates, the fortunes of the party were sinking, in part because of the policy positions taken by the national version of the party.<sup>36</sup> Having candidates for office espouse more moderate policy positions could potentially help revive the party as a whole. For legislators in Sacramento it would also be possible to take riskier votes on governing the state with less fear of retaliation in subsequent primary elections (or so the theory went). As the state’s voters drifted left, the moderate (or, at least, willing to compromise in order to win) wing of the party wanted to shift as well.<sup>37</sup> This was not successful; the party’s fortunes have continued to fall, in part because the state Republicans are not entirely in control of their own destiny. President Donald Trump only captured 32 percent of the California vote, illustrating how even a nationally successful campaign can act as a liability for the state party.

Centrist Republicans had another reason to support the nonpartisan primary. Even if they failed to improve the Party’s fortunes, in 2009–2010, they at least had the opportunity to act as an effective rear-guard for its retreat, seeking to inflict the most policy damage possible on the Democrats. The moderating effect was not only aimed at their own party but also at the Democrats (perhaps more so); even if the Republican candidates were irrelevant in the future, primary reform gave Republican voters a chance to matter. Charles Munger Jr., a major backer of moderate Republican campaigns noted that “our role as Republicans for a while will be to choose the best Democrat” (Alvarez and Sinclair 2015, 42; citing York 2010). This comes in two flavors, outlined as different visions of democracy in Powell (2000): a retrospective angle, focused on the ability to reward or punish incumbents, and a prospective angle, focused on selecting Democrats with more moderate positions.

The debate about the success or failure of the nonpartisan primary continues in California. Mirroring differing opinions on primaries more generally, a clear picture does not emerge from the scholarly literature. Ahler, Citrin, and Lenz (2016) argue voter behavior in the primary stage was unlikely to generate ideological moderation. Nagler (2015) raised the possibility of considerable roll-off among voters without a candidate of their own party on the ballot in November. Evidence for only limited amounts of strategic voting behavior in the primary can also be found in Alvarez and Sinclair (2015) and Sinclair (2015). Hill and Kousser (2016) conducted a field experiment to see if it was possible to turn out unlikely voters; although they find this possible, it is not clear that the candidates and parties have been sufficiently “entrepreneurial” to do this on a large scale. That is consistent with Hill’s earlier argument that primary laws do not seem to shape the composition of the electorate (2015).

There are corresponding concerns that the nonpartisan primary did not quickly deliver on some key promises, including ideological moderation. Kousser, Phillips, and Shor examine if the joint impact of the redistricting reforms and the adoption of the nonpartisan primary produced better congruence with district preferences and find “the clear message of the data . . . is ‘no, not yet’” (2016, 13). Along with several other authors making early examinations of the nonpartisan primary, they are careful to highlight the early nature of the results; in their case, a focus on comparing 2010 to 2012. McGhee (2010) also argues that while there may be some differences in the success of the California Chamber of Commerce’s agenda, it is difficult to attribute these to the electoral reforms. Grose (2014) was more positive but similarly cautious. It is commonly asserted that the nonpartisan primary has not achieved the objectives of the moderate Republican faction or the interest groups and voters who backed Proposition 14. The comfortable victory of U.S. Senate candidate Kamala Harris, with the endorsement of the state’s Democratic Party, over (at least nominally) “Blue Dog” Democrat Loretta Sanchez in 2016’s first statewide copartisan election would seem to confirm this view.<sup>38</sup>

There are some reasons to suspect that the nonpartisan primary has changed the dynamics of California politics to some extent. Figure 25.7 illustrates the vote share for Democratic winners of the general election (2012–2016) in open-seat elections for the California legislature relative to the district’s (two-party) vote share for President Obama in 2012. The hollow squares represent copartisan, Democrat-vs.-Democrat elections; the solid dots represent all the other elections in which a Democrat won. There is a fairly linear relationship with a bivariate slope not far from one for the traditional election configurations: the lower-tier candidate, subject to some noise, more or less tends to get about the same amount of the vote that Obama obtained in 2012. The slope is much flatter for the copartisan elections; there are some that are still relatively uncompetitive (with the winner getting more than 60 percent of the vote) but several that are very close (Alvarez and Sinclair 2015, 58, produced a version of this figure for 2012 only). In competitive copartisan elections, the Republican voters are potentially important.

What are the consequences of having close copartisan general elections between two Democrats in places otherwise unlikely to competitive elections in November? One possibility, of course, is “no effect.” If these copartisan general elections are merely delaying the result of what a partisan primary would have produced at the primary stage, then the elections would appear more competitive without necessarily producing any new (small-d) democratic meaning. It also could be the case that the other institutional incentives – within the party, within the legislature, etc. – are so strong as to render any electoral incentive inadequate in comparison. To borrow from *Yes, Minister*: “the principle of democratic accountability requires the occasional human sacrifice,” although for this to be more than just a randomized risk of the job, it must be the case that the other institutional actors are unable to enforce party discipline.<sup>39</sup>

Alvarez and Sinclair (2015), in their surveys in five specific Assembly Districts, do see more centrist candidates prevailing in copartisan elections (echoed in Sinclair 2015). Sinclair and Wray (2015) find voters are engaging in more information search in copartisan elections, at least suggesting a logical pathway by which copartisan elections could produce moderation. Furthermore, Alvarez and Sinclair (2015) advanced the argument that the most important institutional innovation in the nonpartisan primary is not the availability of strategic voting opportunities in the primary round but the reduction of the final choice to two candidates. Given only two options, a voter in that case is most likely to pick a candidate attempting to offer something – if not necessarily ideological moderation, at least more effective constituent services or competent policymaking.

It seems that so far the nonpartisan top-two has reserved for the Republican voters some potential relevance, although the jury is still out on whether this is more than mere untapped potential. The California case also highlights how these rules conceivably could have decidedly nonlinear effects, depending on a state's partisanship. As in Idaho, at some point the majority faction can afford to lose some seats – whether to the other party (probably a greater risk in Idaho) or to a policy nonconforming centrist of the same party (probably a greater risk in California) – and that should impact the incentives of a number of participants; California may be nearing that point, at least in the short term. There is still much to learn about the nonpartisan top-two primary. For our purposes, though, the key observation is that a powerful enough faction of the minority party thought this would help their cause to invest resources in its passage.

### **Arizona: The Aspirants**

Nonpartisan primary reform encountered a very different political environment in neighboring Arizona in 2012 than it had in California in 2010. While both political parties opposed it (see Khan 2012), the key difference was that no significant faction of the minority party, the Arizona Democratic Party, supported it in the same way as Schwarzenegger and company in California (Wyloge 2013). One way to explain the choice is that the Arizona Democrats are anticipating having a reasonable chance of becoming the majority party.

Former Mayor of Phoenix and Democrat-turned-Independent Paul Johnson chaired the pro-reform campaign, but was unable to garner the political support needed to pass the initiative.<sup>40</sup> This did not represent a substantial faction of the Democratic Party; Johnson later commented, “We had almost no candidates outwardly supporting it.” Leading the way, Democratic (and Hispanic) State Senator Steve Gallardo and Maricopa County Supervisor Mary Rose Wilcox joined with conservative Republican Maricopa County Attorney Bill Montgomery and long-time U.S. Senator Jon Kyl in opposing the ballot measure (Wyloge 2013).

There is a palpable sense in Arizona that “demographics are destiny” and that the state will ultimately have political geography more like New Mexico's (Nagourney 2012), or even California's (see Badger 2017). Figure 25.8 illustrates the partisan dynamics in Arizona, with Republicans holding a slight advantage persistently over time. Nevertheless, anticipation of a shift is certainly part of the public perception of the state's politics and the lower half of Figure 25.8 illustrates the application of a naïve bivariate regression on presidential vote share over the most recent elections; in some way, the Republican share trends downward (if one is adequately selective with the data). In the final stretch of the 2016 presidential election, Hillary Clinton's campaign decided to “aggressively compete in Arizona, a state with a growing Hispanic population that has been ground zero for the country's heated debate over immigration” (Flegenheimer and Martin 2016). While that bet did not pay off in 2016, it still represents a common belief about the state's future: “destiny” is just a bit further off. Figure 25.9 illustrates

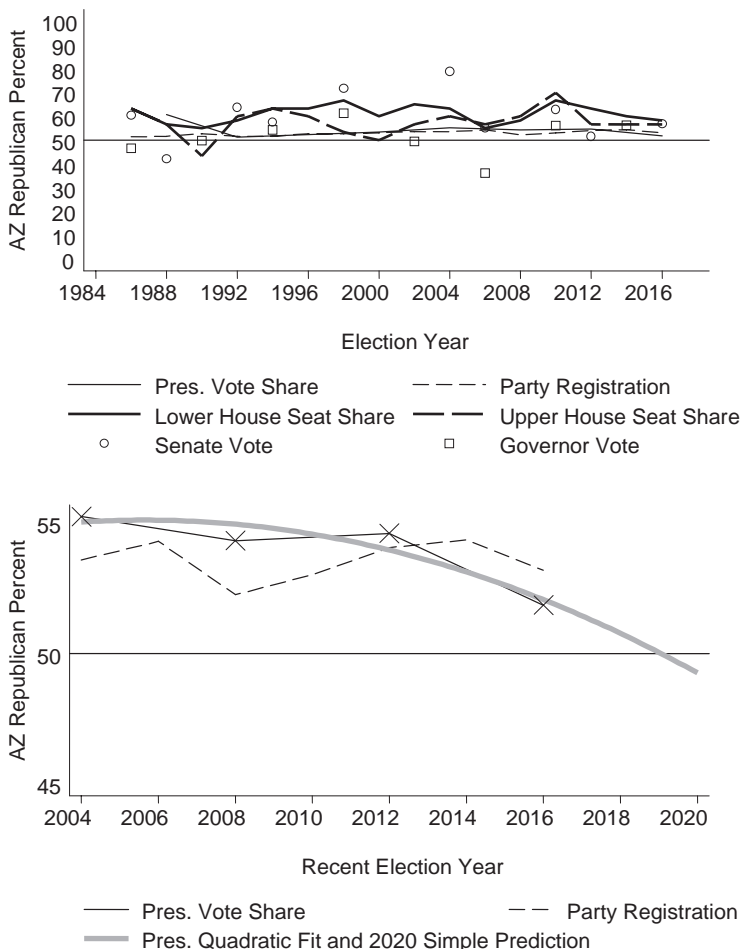


Figure 25.8 Time Trends in Arizona Politics

the Democratic Party vote share in 2016 by legislative district. To really compete in the state, Democrats will have to make some serious gains in a few additional districts or hope for a more favorable redistricting in the next cycle. It is possible for the Democrats to take the majority in the relatively near future, but it seems likely at this point to be a close thing if they should.

Despite Arizona’s history as a Republican state and setbacks in the 2010 election (as for Democrats in all parts of the country), the 2012 Arizona Democratic Party sensed indications that their party was on the cusp of a political breakthrough, including recent successful candidacies for statewide office and promising demographic trends (Fitz, Goldenberg, and Kelley 2012; Nagourney 2012). As a result, there was a smaller incentive for elected Democrats, even the most moderate, to prefer a nonpartisan system, for the direction of state politics favored more Democratic, or less conservative, outcomes, without major institutional change – unlike the situation for their Republican counterparts in neighboring California. Moreover, preserving partisan primaries not only advantaged them when, someday, more winners of Arizona Democratic primaries would go on to hold office, thus exerting more partisan control of state governance; it also possibly disadvantaged the Republicans in the short term, as candidates of narrow, extreme

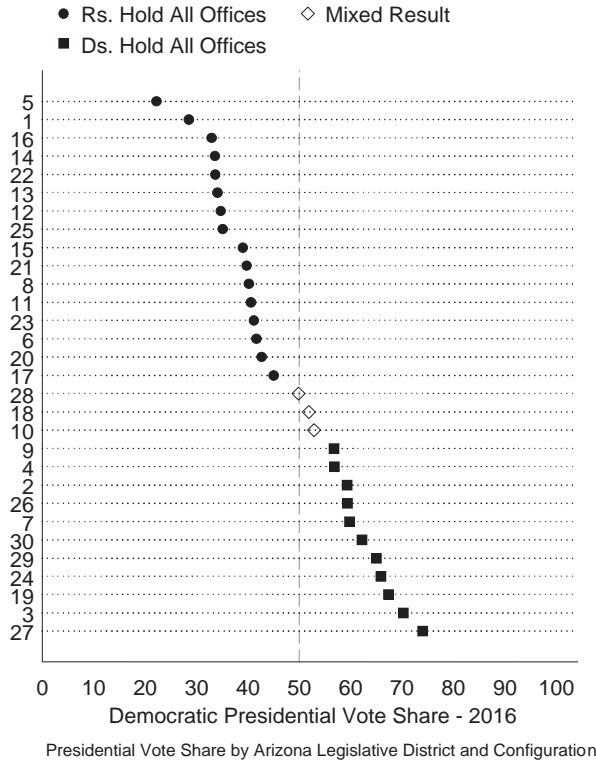


Figure 25.9 2016 Arizona Snapshot

ideologies continued to hold office and pursue fringe legislation (Sterling 2012). It is possible that Republican nomination of an ideological extremist, resulting in an additional Democratic victory in a competitive district (via the mechanism outlined in Hall 2015), could be what flips control of the legislature as Democrats become increasingly competitive over time. Democrats could have their cake (have a tighter partisan hold in their brighter electoral future) and eat it too (allow Republicans to continue to fall victim to the whims of their own primary electorate<sup>41</sup>). This would generate some kind of stability so long as the Republican primary electorate and party officials either sufficiently prioritized ideology, were willing to take on the risk, or were simply placing different bets on the uncertain ability of each side to adapt within the constraints of partisan primaries.

The nonpartisan primary would have also potentially interacted in a different, and unclear, way with Arizona's unusual district and member arrangement in the legislature. Arizona uses multi-member districts in the lower house of the legislature (2 seats), elected from the same geographic region as the upper house. Although other states have a similar arrangement, as in Idaho, these are often simply two single-member district elections happening at the same time within the same district; while that may have interesting consequences for candidate entry-choice, after that stage the elections are functionally distinct. Not so in Arizona, where the semi-closed primary allows each party to nominate two candidates in the primary and then voters cast up to two ballots in the general election stage, although no more than one per candidate. The consequence in most cases is not surprising: in nearly all districts (represented by solid dots in Figure 25.9) both lower house seats and the upper house seat go to members of the same party;

only in a handful do the voters split them. A common electoral strategy appears to be taking a “single shot,” for the weaker of the two major parties to run only a single candidate in the hope that anyone wishing to split their ticket will concentrate on that one candidate. Bertelli and Richardson (2008) test, among other hypotheses, and then support the assertion that the spatial incentives for differentiation (rather than the centralizing tendency of Downsian two-candidate reasoning) should have generated more legislative extremism and greater ideal point dispersion in the lower house. The nonpartisan primary would have been a “top-four,” not a “top-two,” for the lower house<sup>42</sup> and, in that event, very little of the evidence from the other states applies to how this might work.

Democrats may have had ideological or representational concerns as well. A chief concern among Arizona’s Democrats was diluting Latino votes, especially in districts where the Latino population was substantial, but less than majority.<sup>43</sup> In districts that were competitive between the state’s Democrats and Republicans, and where Latinos were a plurality of the population, Latino voters had a strong chance of driving their candidate of choice through the Democratic primary and into a competitive general election. Under a nonpartisan system, Democrats feared that the Latino Democratic candidate (or candidates) would be eliminated in the system’s first-round free-for-all; similar concerns have been raised about southern-style run-off primaries (Kousser 1984), although Alvarez and Sinclair (2015) found little evidence for this in California’s nonpartisan primary. Politically, under a partisan primary system, the Democrats could maintain ranks in strong Democratic (and Latino) districts, as opposed to having to possibly redirect funds to intraparty fights in a nonpartisan system, and focus resources on competitive districts for marginal gains in the legislature; meanwhile, they could also continue to protect and develop Latino candidates and officeholders, the future of the state and their party.

In Arizona especially, the Democrats seemed to have bet on their future success. While they kept the door open for future advantages as a majority party, they may have sacrificed opportunities for greater policy relevance in the short term. The Arizona Republicans have won a relatively disproportionate number of seats in the legislature (relative to its performance at the presidential level and in Congress), and the next politically reachable districts are still some distance away.<sup>44</sup> There does not seem to be so much a “right” answer, as there is the one carrying more or less risk for different types of outcomes. At least for the moment, it appears that both parties will fight it out under their old primary election rules.

### **Into the Unknown: Research Offers More Questions than Answers**

Primary reform is not a simple matter of choosing between open and closed primary rules. It is not merely the case that the web of formal and informal institutions is intricate but also that the conditions for study are typically poor: endogenous institution selection, analytically challenging patterns of variation, and relatively small numbers of events organized along a common time continuum. An underlying tension remains between the nuance this field of study requires and the simplicity of the answers demanded by practitioners, unable to wait for more data to come in – what rules should a given player want now? For the practitioners, the question and the timescale is often clear: what benefits my cause and will this happen for election day? Scholars, meanwhile, are not beholden to such timescales and requirements and are thus free to evaluate choices made by political actors with the benefit of hindsight as well. Even retrospectively, in the cases of Idaho, California, and Arizona, it is not easy to judge if the participants made the best decisions available to advance their goals. The choices made in each state, though, reveal something about the beliefs of each party faction. They are making choices consistent with a facially plausible theory of how these rules might impact their interests.

Future study will need to carefully strike a balance between considering all of the potential factors, and their interactions, that explain relevant outcomes and finding something practically evaluable. The field of primary election reform is bedeviled by complexity; while a simple model might treat both the California Republican Party and the Arizona Democratic Party as long-suffering minority parties, as we argue in this chapter, it is particularly important for the respective factional actors that the California Republicans seem to be on their way down while the Arizona Democrats are on their way up. Furthermore, even a nominally similar primary rule would have to work differently in both states because of Arizona's multi-member district lower house. Furthermore, the specific details of which type of faction has the greatest influence in state party politics at the moment influences both which institutions are selected and to what end, as illustrated in Idaho. The statistical noise generated by these sorts of individual judgments may be relatively large compared to the signal strength given the small (effective) sample size of state observations and the number of things changing in all of these places all the time.

Despite some challenges for the study of primary election reform in the United States, this remains a compelling area for research. First, it is an area of American politics in which there is considerable institutional variation, enabling the many advantages of comparative research; if studying state primaries is difficult, research on the rare presidential nomination process is even more challenging. Second, this is an area of both considerable substantive importance and ongoing change. As Key wrote, in many places the primary is the election. As these recent changes in Idaho and California, and the near miss in Arizona, illustrate, states and parties do change their rules, and may adopt rules that have not yet been used anywhere. Research into primary election reform can greatly add to our understanding and practice of democracy.

## Notes

- 1 In evaluating the constitutional designs of twenty different democracies, Powell writes: "The United States is constitutionally unique in this group. Having very strong independent powers in both the executive and the legislature and a host of other points featuring possible sharing of power, it does not imply strong majoritarianism in its decision rules. The executive has a hard task in implementing its policy commitments even when it has congressional majorities. On the other hand, the United States uses single-member district election rules . . ." (Powell 2000, 41).
- 2 Counting those sworn in: Democrats Truman, Kennedy, Johnson, Carter, Clinton, and Obama; Republicans Eisenhower, Nixon, Ford, Reagan, G.H. W. Bush, G.W. Bush, and Trump. Several were very close: Kennedy (1960) and Nixon (1968) each won the popular vote by less than 1 percent; W. Bush (2000) and Trump (2016) lost the popular vote but won in the electoral college; and Johnson (1964) and Nixon (1972), with the largest margins, still only captured around 60 percent of the popular vote. Compared to many state legislative elections, even the "landslides" at the national level are relatively competitive in terms of the popular vote.
- 3 Riker's views also profoundly influenced Powell's notions of accountability. Powell (2000, 11) wrote: "William Riker put this very plainly: 'the essence of the liberal interpretation of voting is the notion that voting permits the rejection of candidates or officials who have offended so many voters that they cannot win an election.'"
- 4 Nebraska operates a unicameral legislature and is the general exception to the rule; see Masket and Shor (2015). The structure and composition of state legislatures provides for interesting variation; interesting for our analysis, both Idaho and Arizona have lower houses with multiple members representing the same geography, although selected in different ways in each state. More generally, district size also varies tremendously: New Hampshire's lower house has 400 members, with each legislator representing only several thousand constituents. California's lower house has 80 members with districts only slightly smaller than a U.S. House District. Scale should matter: even if New Hampshire used *precisely* the same rules as California, there is no reason to believe that the consequences would be unaffected by the enormous differences in scale.
- 5 Official election results are available here: [apps.azsos.gov/election/2012/General/Canvass2012GE.pdf](https://apps.azsos.gov/election/2012/General/Canvass2012GE.pdf)

- 6 Republicans and Democrats gave a joint press conference “United in Opposition to Top-Two,” currently available via YouTube: <https://www.youtube.com/watch?v=xo9xQbCzhfg>. The video description reads: “Published on Oct 15, 2012. The Save OurVote committee holds a press conference in opposition to Arizona Proposition 121, the ‘Top Two’ proposition. Representatives from all corners of the political spectrum speak in opposition. Speakers include Senator Jon Kyl, County Attorney Bill Montgomery, State Senator Steve Gallardo, Maricopa County Supervisor Mary Rose Wilcox, Arizona Libertarian Party Communications Director Barry Hess, Arizona Green Party co-Chair Angel Torres, and Alice Stambaugh representing the Arizona League of Women Voters.”
- 7 To the extent that primary procedures are ever exogenously imposed, this tends to happen through the courts. Although scholars have made some effort to use court decisions as exogenous shocks to the system to better understand the way primary laws work (see McGhee et al. 2014, 345–346), courts have limited ability to create (see Persily 2002); thus whatever the states adopt if a current rule is struck down is still rooted in the state’s own political processes.
- 8 An argument made in Sinclair (2017) about the joint impact of California’s top-two election procedure and a change in the majority requirement to pass a state budget.
- 9 Gerber and Morton reflected common uses of these terms in politics at the time, although these words are often used in conflicting and confusing ways. In particular, it is commonplace to see the term “open primary” to describe something other than the partisan open primary most frequently given this name in the academic literature.
- 10 Gerber and Morton (1998, 311) point out that it is actually quite difficult to map the consequences of different types of open primaries into expected outcomes because voters will not necessarily vote for their ideological first-preference; instead, they may behave strategically and “crossover” into another party for a variety of tactical reasons: “we therefore note the possibility for both sincere and strategic crossover voting in open primaries but cannot anticipate, on the basis of our theory, which will be more important.” This problem is difficult to resolve, leaving many scholars to test the standard predictions; McGhee et al. (2014, 340), sixteen years later: “the political science literature has provided little consistent guidance on what to expect from this variation.” It seems unlikely to do so convincingly in the near future as well, for the reasons that McGhee et al. outline.
- 11 Numerous sources were required to construct Figure 25.2. This data is an update based on Sinclair (2013), which re-examined many of the sources listed in Gerber and Morton (1998), Kanthak and Morton (2001), and early versions of McGhee et al. (2014). These include Bott (1990), Lubecky (1987), McNitt (1980) and Jewell (1977). For southern states, see Bullock and Johnson (1992). As in McGhee et al. (2014), the rest of the database was constructed using a combination of direct examination of state laws, review of current state websites, telephone and email conversation with state and party officials, and published news reports. The appendix in McGhee et al. (2014, 349) is a useful illustration of the coding challenges and “judgment calls for borderline cases,” required here as well. For example, we treat Utah (for the purposes of this figure) as “open,” although McGhee et al. treat it as closed because it had (until very recently) a strong pre-primary convention. The critical difference between this version and McGhee et al. is that McGhee et al. code the “party choice” results as simply the choice of each party (without considering the choice of the other party).
- 12 Berman (2016) nicely outlines the connectedness of a series of reforms: term limits (passed in 1992), changing the primary process (passed in 1998), public funding of elections (also in 1998), and an independent redistricting commission (passed in 2000). This makes the 2012 defeat of the nonpartisan primary initiative much more notable as other initiatives for changing the process had been successful.
- 13 This took too long to resolve; the key proponent of the change, Senator Weicker, lost a general election challenge to a Democrat, Joe Lieberman, who obtained the support of some Republicans. Weicker would later go on to be a third-party governor of the state (see Weicker 1995, 180).
- 14 The reason for this: it is still somewhat more difficult to change the rule in a state out of compliance (involving changing the party rule to establish harm and then going to court) than it is in states with a procedure in place for the party to choose.
- 15 Louisiana has used a version of this, although the history of the reform, timing of the elections, and procedure for advancement are different; Nebraska has nonpartisan elections for its state legislature (but not higher offices; see Masket and Shor 2015).
- 16 Connecticut also at one point operated a similar strong convention system paired with a direct primary in absence of agreement, as have other states in some capacity at some time for some offices; McNitt (1980) lists: New York, Connecticut, Utah, New Mexico, Rhode Island, North Dakota, Colorado, Delaware, Idaho, Massachusetts, and Nebraska.



- 17 For example, in the Utah Democratic Party: “In 2014, we only had one state house primary, in House District 38 located in Kearns & West Valley City, and only 260 people voted in that primary. It was open to any registered voter” (Lauren Littlefield, electronic mail, March 22, 2017).
- 18 And many are simply unique: see McGhee et al. (2014) for commentary on coding Colorado’s precinct caucus system.
- 19 This is true tracing the history even farther back than 1980; recent studies seem to focus after this point because data is more easily available for some of the other variables. Sinclair (2013, 154) shows a general pattern of type stability back through 1946.
- 20 As an example of the potential interaction between multiple components of an institutional design, consider the case of Republican Senator Thad Cochran of Mississippi, elected in 1978. Faced with a “tea party” opponent in 2014, Chris McDaniel, Cochran failed to win the primary. McDaniel also failed to win the primary: although McDaniel was half a percent ahead of Cochran, a third candidate had captured about 5,000 votes, enough to deny either a majority. This required a second runoff primary under Mississippi’s runoff rules. Mississippi also had open primary elections and it appears that Cochran managed to win the second round by increasing the total number of voters: “Cochran’s campaign explicitly tried to increase his turnout in the runoff by bringing Democratic-leaning African-Americans to the polls” (Enten 2014). Cochran won. There seems to be a good reason to believe that these voters tipped the scales in his favor (Enten 2014; Hood and McKee 2016). This is not just an impact of having an open primary but also, and necessarily, an impact of having a runoff. The first round was open too but McDaniel still came in ahead – so the runoff was critical. And, had the runoff been closed, it is not likely Cochran could have won it – so the openness was also critical.
- 21 There are several more relevant dimensions to this as well. For mail voting: is it the only way to vote? Do states allow for permanent registration to obtain mail ballots? Do the states require an excuse in order to obtain one? For early voting: is an excuse required? And how many days, for what length of time, and in how many locations will early voting be offered? For more discussion of these types of alternatives, see Alvarez, Levin, and Sinclair (2012).
- 22 Reilly, Richey, and Taylor (2012) analyze the connection between Google search data and roll-off and find that greater searching corresponds with lower levels of roll-off, suggesting that if voters do search for information they are more likely to participate. It seems quite possible that some of the primary types which afford voters greater choice could only have an impact if voters also have convenient access to information.
- 23 Ware argues much the same thing for an earlier period: “changes in campaign technology fundamentally shifted the balance between candidates and parties. Moreover, without the widespread use of the direct primary, the technological advances – television, computer-analyzed opinion polls, and so on – would not have had the effect that they did” (2002, 244).
- 24 Ware’s larger point adds depth to the usual reformer-vs-party story: if the parties were so powerful, why did they let the direct primary through? Ware writes “the conventional account is about as implausible as claiming that the driving force behind the direct primary was a large invisible rabbit called Harvey” (2002, 16). Ware’s counterargument is that political parties “institutionalize because a sufficient number of politicians within those parties come to understand that their own interests are affected by present arrangements . . . the direct primary was not an isolated reform that happened to be enacted when parties were sufficiently weak that their opponents could overcome them (‘heroically’). It was a reform that had its origins in changes in American society that, by the 1880s, were starting to pose severe problems for party politicians” (2002, 22).
- 25 Although these are generic terms, we mean them in the sense of Alinsky (1971).
- 26 And the primary rules may matter very little for the minority party – if the party is particularly helpless, it may struggle to obtain more than one candidate per seat in any case, generating few contested primaries.
- 27 Recent observers have deemed the Idaho Republican primary the “de facto” or “real” election (Trillhaase 2014; Pierce 2016).
- 28 Utah is an interesting contrast. In Utah, the Republican legislature changed the rules and the party sued to stop the changes in court. In Idaho, the legislature did not change the rules and the party sued to change them.
- 29 Governor Butch Otter expressed his concern regarding the “potential damage” of closing the Republican primary (Andersen 2007).
- 30 Beck was known for his support for Paul as late as June 2008, months after John McCain clinched the Republican primary for president: <http://www.idahopress.com/news/beck-ron-paul-supporter-join->

- in-bid-to-oust-id/article\_421234d2-2431-511f-8706-1f76976a53b5.html; Beck would later serve as Donald Trump's Idaho campaign chair in 2016 (Russell 2016).
- 31 Beck's opponents described as "elites" in a local political blog, see Fischer (2008).
- 32 Otter is otherwise a successful politician; he served in various roles: State House from 1973 to 1979, Lieutenant Governor from 1987 to 2001, U.S. House from 2001 to 2007, and Governor since 2007.
- 33 Text of House Bill 351 is available online: <https://legislature.idaho.gov/sessioninfo/2011/legislation/H0351/>
- 34 Delegates at the Idaho Republican Party's state convention twice voted on the issue of closed primaries, passing in 2006, but then losing just narrowly in 2008, 199 to 192 (Miller 2008).
- 35 Navigating this electorate can be difficult, even so: Raul Labrador and Mike Simpson, the two Republican House members, took different initial approaches to the 2017 efforts to repeal the Affordable Care Act (Johnson 2017).
- 36 Take, as an example, support for same-sex marriage: it was on its way to becoming a clear majority position among California independents (by 2013: 67 percent in favor) and voters overall (61 percent in favor); an accelerating upward trend in support in favor of same-sex marriage coincided with these procedural battles (Petek 2014); and the 2008 Proposition 8 ban only passed with 52 percent of the vote.
- 37 One of the Republican candidates interviewed in Alvarez and Sinclair (2015, 163), Brad Torgan, explained that he was willing to run for office in part because it would give him a greater ability to help write the social issues out of the California Republican Party platform.
- 38 A dynamic noted in the national coverage of the race (see Drusch 2015). The *National Review* endorsed Sanchez, including this sub-headline on the article: "Better the Blue Dog Democrat than the contemptible, corrupt, repulsive Democrat" (Gelernter 2016).
- 39 *Yes Minister*, episode 7, April 7, 1980. The line is Sir Humphrey's.
- 40 In a 2012 story, *Phoenix New Times* names Johnson as a political independent: <http://www.phoenixnewtimes.com/blogs/russell-pearce-conqueror-jerry-lewis-endorsed-by-eddie-basha-paul-johnson-democratic-lies-denounced-6500747>.
- 41 Consider, for example, the bind in which Senator Jeff Flake (R-AZ) found himself for the period 2016–2018.
- 42 The text reads: "for any office to which more than one candidate will be elected, the number of candidates who will compete in the general election shall be the number of candidates to be elected times two" (see: [http://apps.azsos.gov/election/2012/info/PubPamphlet/Sun\\_Sounds/english/prop121.htm](http://apps.azsos.gov/election/2012/info/PubPamphlet/Sun_Sounds/english/prop121.htm)).
- 43 Republicans and Democrats gave a joint press conference "United in Opposition to Top-Two," currently available via YouTube: <https://www.youtube.com/watch?v=xo9xQbCzhfg>.
- 44 Currently, Democrats represent four out of nine of Arizona's congressional districts; Democrats represented five out of nine, which is notable compared to the strength of the Republican majority in state legislature.

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