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Note

The Politics of Institutional Choice: Presidential Ballot Access for Third Parties in the United States

MICHAEL S. LEWIS-BECK AND PEVERILL SQUIRE*

During the nineteenth century, a presidential voter actually selected a party-prepared candidate list, casting it in full view of others. The ‘Australian’ ballot, adopted in nearly all states by 1900, took away party preparation of the ballot. State officials now prepared overall candidate lists from which the voter picked in secret. The introduction of the Australian ballot was heralded as a blow against political corruption and for ‘good government’. But practical questions arose. With the state itself responsible for the ballot, how should it decide which candidates to list? Some barriers to entry seemed necessary, otherwise the list would be unwieldy. Each of the states began to pass laws restricting ballot access, often aimed at third parties.

Given the winner-take-all Electoral College system, one might expect that presidential ballot access state-to-state would be the same, once idiosyncrasy or random factors were taken into account. Following Duverger, this plurality-rule electoral system, operating in each state, should reduce third-party activity on matters like entry to the ballot to a small – and roughly equivalent – amount.¹ Despite that, we know third-party activity can be substantial – and vary substantially – across the states. Since 1900, individual third-party candidates have received over 10 per cent of the presidential popular vote on four occasions (Theodore Roosevelt in 1912, LaFollette in 1924, George Wallace in 1968 and Perot in 1992). In the period after the Second World War, 1948 (Henry Wallace), 1976 (Eugene McCarthy) and 1980 (Anderson) also offer examples of serious third-party challenges.

Major-party candidate names routinely appear on all state ballots. However, for these third-party candidates to appear on the ballot, they had to spend considerable time and money to meet the particular access requirements of each separate state. In 1980, for example, John Anderson had to spend about half of his campaign budget just getting on the ballot in the fifty states.² The usual procedure involves circulation of a petition. However, states differ in terms of petition time allowed, start-and-stop dates, and the number and qualifications of the signers. Furthermore, the states tinker with these rules, changing the number of signatures or altering the filing procedures. Indeed, each state has, at some time or other, rewritten its ballot access rules.³

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¹ M. Duverger, *Political Parties* (New York: Wiley, 1954).

² R. Whittle, ‘John Anderson Still Trying to Dump His “Spoiler” Image’, *Congressional Quarterly Weekly Report*, 27 September 1980, 2834.

³ For this, and other valuable background information drawn on here, see the excellent work by S. Rosenstone, R. Behr and E. Lazarus, *Third Parties in America: Citizen Response to Major Party Failure* (Princeton, NJ: Princeton University Press, 1984), chap. 3.

Overall, across the states, ballot access rules have come to vary considerably. In 1992, for example, California required 134,781 signatures for a third-party candidate to get on the presidential ballot, whereas in Tennessee it took only 275 signatures to qualify.⁴ The number of signatures for the other states is widely scattered, but falls within these two extremes. (For the fifty states the average signatures required is 17,580.) We focus on the absolute number of signatures required, rather than the percentage of registered voters whose signatures are needed, because we are concerned with the real effort third-party activists must make to overcome registration obstacles. Clearly, certain state ballots are 'easy marks', while others require an enormous investment.

In what follows, we wish to explain this important difference in ballot access. We emphasize a political explanation, where strategic parties make institutional choices in their favour. As the statistical testing shows, this model receives considerable support, whereas rival models – from notions of good government, political culture, or social heterogeneity – do not. To begin, we pose a simple theory of party behaviour as applied to ballot access. Then, the theory is tested, against rival theories, using current data on the states. Finally, the enduring potency of ballot barriers is demonstrated with 1992 data on the Natural Law Party.

STRATEGIC PARTIES AND BARRIERS TO BALLOT ENTRY

We base our work on the belief that, in politics, preferences determine behaviour. Following Downs, we assume that a party in a democracy prefers, first, to win an election and, secondly, to further an ideology.⁵ We also assume that parties are strategic – that they are bent on utilizing election rules to further their preferences, albeit under conditions of uncertainty.⁶ From this core set of assumptions, we draw three propositions (and corollaries), which suggest testable hypotheses.

Proposition 1. A party seeks to limit competition for votes.

Corollary 1. The more votes at stake, the more barriers to competition for those votes the party seeks.

As applied to the politics of state ballot access, these principles suggest that a party in power, to the extent it is able, will try to limit the entry of other parties into the electoral arena. Although one major party has, at times, managed effective ballot exclusion of the other major party (for example, the Southern Democrats' virtual exclusion of the Republicans in certain post-Reconstruction contests), and some states have been afflicted with notorious one-party dominance (for example, the Republicans in Vermont), no Democrat or Republican presidential ballot exclusions have occurred in recent times.⁷ Therefore, in seeking to limit competition, a major party in power concentrates its energy on minor parties – where it is more likely to be successful.

Each major party, once in office, acts the same way. Since both (Republican or Democrat) seek to limit minor-party competition, it may appear that they are 'co-operating' to exclude third parties. After all, major-party politicians owe their own

⁴ Our data on state ballot requirements are reported in the *New York Times*, 'Perot's Progress', 26 June 1992.

⁵ A. Downs, *An Economic Theory of Democracy* (New York: Harper & Row, 1957), pp. 111–12.

⁶ K. Bawn, 'The Logic of Institutional Preferences: German Electoral Law as a Social Choice Outcome', *American Journal of Political Science*, 37 (1993), 965–89.

⁷ V. O. Key Jr, *Southern Politics* (New York: Vintage Books, 1949), p. 552.

success to the two-party system. As John Aldrich put it, 'The two parties, their nominees, and interest groups, therefore, make the argument publicly that a vote for a third-party candidate will be wasted.'⁸ Further, this incentive to limit competition is greater, the more votes are at stake. Because the party aims to maximize its vote share among its available vote targets, it will devote more of its limited resources to erecting greater barriers in high-stake states. Thus, in the states with more electoral votes, the barriers to entry will be greater, as the major parties are even less desirous of sharing the spoils. Operationally, the following hypothesis is suggested:

Hypothesis 1. The greater the number of electoral votes the state possesses, the more signatures it will require for a third-party candidate to appear on the ballot.

Proposition 2. A party has a preferred ideology.

Corollary 2. A party seeks more barriers against a party with an ideology closer to itself.

Parties want office, and see implementation of an ideology as one means to that end. Although a party's ideology is obviously broader than the concrete policies that it may pursue, its ideology is highly correlated with policy. As Downs notes, 'An ideology is a public statement about party policy, since it either contains or implies specific proposals for action.'⁹ Indeed, for Downs, the party in power is in fiercest ideological competition with those parties that are closest to it, since it 'cannot leap over the heads of its neighbors.'¹⁰

In general, then, Democrats in office seek especially to exclude left-wing parties (such as those with extreme peace or environmental platforms), and Republicans in office seek especially to exclude right-wing parties (such as those with extreme religious or militaristic platforms). Further, the more a party dominates a state's politics, the more easily it can restrict those minority parties it finds most undesirable. Thus, in heavily Democratic states, for example, more effort would go to curbing the participation of leftist third parties – though, in so doing, conservative party entry is also necessarily restricted because of the blanket nature of ballot access rules. This leads to the following testable hypothesis:

Hypothesis 2. The greater the one-party electoral dominance, the more signatures will be required to appear on the presidential ballot.

Proposition 3. A party wishes to reduce uncertainty.

Corollary 3. The more certain a party is about its place in the competitive environment, the fewer barriers it will erect against trivial rivals.

As Jackman reminds us, in any Downsian analysis a central assumption is that parties act under the condition of uncertainty.¹¹ Uncertainty makes it difficult for a party to carry out a campaign, implement a programme, allocate money, convince big contributors,

⁸ J. Aldrich, 'Rational Choice and Turnout,' *American Journal of Political Science*, 37 (1993), pp. 246–78, p. 270.

⁹ Downs, *An Economic Theory of Democracy*, p. 102.

¹⁰ Downs, *An Economic Theory of Democracy*, p. 122.

¹¹ R. Jackman, 'Rationality and Political Participation', *American Journal of Political Science*, 37 (1993), 279–90, p. 279.

figure out the needs of its supporters or evaluate the plans of the opposition. As a result, parties strive to gain information. Of course, the better organized the party – in or out of office – the better it can do this. Parties with a solid organizational (as opposed to electoral) base will know more about their own strengths and weaknesses, and those of the opposition. More certain of where they stand in relation to the competition, they will have less incentive to establish barriers against opponents whom they *know* to be trivial, such as many third parties. This suggests the following hypothesis for testing:

Hypothesis 3. The more organizationally secure the state parties, the fewer signatures will be required to appear on the presidential ballot.

We test these three hypotheses on strategic party behaviour and presidential ballot access, comparing the results to tests for rival explanations, which we first develop below.

RIVAL EXPLANATIONS OF BALLOT ACCESS

The large variation in presidential ballot access throughout the states is a fact, but it may have little to do with direct partisan calculation. Instead, it could be a more remote response to certain organizational, social or cultural pressures. We postulate three such pressures – ‘good government’, ‘social heterogeneity’ and ‘liberal ethos’ – and consider each, in order.

The adoption of the Australian ballot, which deprived the parties of an immediate role in candidate list preparation, was part of the larger reform movement of the late nineteenth century. In various areas of government, efforts were made to ‘separate politics from administration’. In line with Woodrow Wilson’s notion of party government, political parties were reminded of their civic responsibility. Public and private organizations were urged to restructure themselves in accordance with Taylor’s principles of scientific management.¹² In these circumstances, it might be expected that the ballot access decisions of state officials were motivated by a public-spirited commitment to ‘good government’. Under this model, we would hypothesize that a state with a professionalized legislature, stiff lobbying laws and a strong chief executive would be more likely to increase signature requirements for third-party ballot access. We test this speculation below, after considering the other two models.

According to the social heterogeneity argument, the more diverse a state’s population, the more third-party activity it is likely to experience. As Lijphart recently put it, ‘there are other important causes of multipartism, particularly the number and depth of cleavages in a society.’¹³ At the end of the last century, farmers were especially active in third-party movements, and their political independence remained pronounced afterward.¹⁴ Young people, because of a lesser identification with one of the two major

¹² J. Rusk, ‘The Effect of the Australian Ballot on Split Ticket Voting’, *American Political Science Review*, 64 (1970), 1220–38.

¹³ A. Lijphart, ‘The Political Consequences of Electoral Laws, 1945–85’, *American Political Science Review*, 84 (1990), 482–96, p. 488.

¹⁴ Rosenstone, Behr and Lazarus, *Third Parties in America*; pp. 63–75; and M. Lewis-Beck, ‘Agrarian Political Behavior in the United States’, *American Journal of Political Science*, 21 (1977) 543–65.

parties, are more easily drawn to a third party.¹⁵ Beside the cleavages of agriculture and age, there of course exist many other possibilities, such as race, ethnicity, religion and community. The configuration of cleavages in a state determines its general social heterogeneity. In states with a high level of social heterogeneity, we should find more third-party support. To the extent that election rule-makers are responsive to that support, one would expect ballot access to be less difficult in those states.

The third model – liberal ethos – comes from the idea that states vary in their political culture.¹⁶ In states where there is a greater commitment to the liberal values of freedom and equality, it might also be the case that third parties would receive a warmer welcome. The Iowa state official in charge of elections, for example, commented in 1992 that ‘It’s very easy to get on Iowa’s presidential ballot... It’s part of our look at democracy – it should be free and open to everyone.’¹⁷ The difficulties of defining, then precisely measuring, political culture concepts are notorious. With this caution, we would venture that states with high public opinion scores on liberalism – especially those in the north with a record of receiving dissidents – should tend to have more open ballots.

TESTING THE RIVAL MODELS OF BALLOT ACCESS

For each of the four models, standard state-level indicators were identified. The Good Government Model incorporates professionalization of the legislature, degree of regulation of lobbyists, the voter registration closing date and executive power of the governor.¹⁸ The Social Heterogeneity Model includes the Sullivan Diversity Index, the percentage of the population aged 65 years or more and the number of farms.¹⁹ The Liberal Ethos Model contains the Erikson–McIver–Wright ideology measure, the past percentage vote for third-party candidates and a regional variable for the South.²⁰ Finally, the Strategic Parties Model is based on electoral vote strength, extent of

¹⁵ A. Campbell, P. Converse, W. Miller and D. Stokes, *The American Voter* (New York: Wiley, 1960).

¹⁶ D. Elazar, *American Federalism: A View from the States*, 3rd edn (New York: Harper & Row, 1984).

¹⁷ J. Norman, ‘14 names on Iowa’s ballot,’ *Des Moines Register*, 7 October 1992.

¹⁸ Our measure of gubernatorial power is taken from T. Beyle, ‘Governors’, in Virginia Gray, Herbert Jacob and Robert B. Albritton, eds, *Politics in the American States*, 5th edn (Glenview, Ill.: Scott, Foresman, 1990). The lobby regulation measure is taken from C. Opheim, ‘Explaining the Differences in State Lobby Regulations’, *Western Political Quarterly*, 44 (1991), 405–21. The voter registration closing date is taken from *The Book of the States 1988–89* (Lexington, Ky: The Council of State Governments, 1988). The professionalization measure compares state legislatures to the US Congress and is taken from P. Squire, ‘Legislative Professionalization and Membership Diversity’, *Legislative Studies Quarterly*, 17 (1992), 69–79.

¹⁹ The Sullivan Index is calculated using the proportions of foreign born, Catholics and Jews, education, housing and income levels, and occupation distribution in each state. We use the version of the measure updated using 1980 census data in D. Morgan and L. Wilson, ‘Diversity in the American States: Updating the Sullivan Index’, *Publius*, 20 (1990), 71–81. State population demographics (population over 65 years of age, the number of farms) were taken from *Statistical Abstract of the United States 1992*.

²⁰ The state conservatism measure is derived from extensive pooling of exit polls and is found in R. Erikson, J. McIver and G. Wright Jr, ‘State Political Culture and Public Opinion’, *American Political Science Review*, 81 (1987), 797–813. The data for the third-party vote were collected from the *America Votes* series. We considered ‘the South’ to be the states of the Confederacy.

TABLE 1 *OLS Estimates on Rival Models of Ballot Access*

<i>Good Government</i>		<i>Liberal Ethos</i>	
Professional legislature	63,533* (2.15)	Liberalism	909 (1.05)
Lobby regulation	321 (0.39)	Third party candidates	- 5,543 (0.85)
Gubernatorial power	- 1,667 (- 1.24)	South	9,522 (1.02)
Closing date	290 (0.83)		
Constant	29,992	Constant	3,404
Adj. <i>R</i> ²	0.10	Adj. <i>R</i> ²	0.00
<i>Social Heterogeneity</i>		<i>Strategic Parties</i>	
Social diversity	141,560 (1.53)	Party competition	- 8,022* (- 2.40)
Seniors	- 607 (- 0.38)	Electoral votes	1938* (7.69)
Farms	235 (2.64)	Traditional party organization	- 2,137** (- 1.40)
Constant	- 51,010	Constant	5,444
Adj. <i>R</i> ²	0.10	Adj. <i>R</i> ²	0.56

Notes: The variables are defined in fnn. 17-23. *N* = 50 (states). For each model, the unstandardized *b* of the variable is reported, with its *t*-ratio below in parentheses. *Statistically significant at 0.05, one-tailed. **Statistically significant at 0.10, one-tailed.

single-party dominance from 1968 to 1990 and Mayhew's traditional party organization measure.²¹

The test results are shown in Table 1. With regard to the Good Government Model, only professionalization of the legislature performs as expected, showing a significant positive effect on the number of signatures. Lobby regulation and voter registration date fall short of significance, as does power of the governor (which actually carries a perverse sign). Turning to the Social Heterogeneity Model, age of the population appears to make no impact while the farms measure and the Sullivan Index have incorrect signs. In the Liberal Ethos Model, none of the coefficients comes close to conventional significance levels, correct sign or not. Further, each of these three models offers a poor statistical account, with the largest adjusted *R*² only reaching 0.10. In sum, the three explanations hold little promise – a conclusion we could not contradict even after extensive remeasuring, respecification and re-estimation.

The Strategic Parties results, by way of contrast, are strong. Model fit is quite good (adjusted *R*² = 0.56). Moreover, each of the coefficients carries the anticipated sign, and is statistically significant (at 0.05 for two, at 0.10 for one). Taking the coefficients

²¹ The party competition measure was taken from H. Stanley and R. Niemi, *Vital Statistics on American Politics*, 3rd edn (Washington, DC: CQ Press, 1992), p. 138. We used the traditional party organization measure developed in D. Mayhew, *Placing Parties in American Politics* (Princeton, NJ: Princeton University Press, 1986).

literally, an extra electoral vote leads ruling major parties to require almost 2,000 more signatures before a third-party rival can appear on the ballot; and an additional percentage point margin to majority-party dominance spells over 8,000 additional necessary signatures for third-party aspirants. Finally, the negative coefficient on the traditional party-organization scale suggests that more efficient organization lessens the need for the two-party system to regulate entry. (It should be noted that all these foregoing estimates are stable, remaining basically unchanged if all the independent variables from the other models, or only those with significant coefficients, are included. Moreover, the naive argument – that the number of signatures is a simple function of state population – does not hold up.)²²

BUT ARE PARTIES REALLY STRATEGIC ABOUT BALLOT ACCESS?

Parties appear to pay attention to ballot access rules, altering them to their advantage when they are able, and in response to their informational needs. While the foregoing evidence supports this inference, such strategic behaviour is less decisive if it does not work. That is, if third parties manage to get on the ballot anyway, then the major-party decisions on ballot access may be merely ‘tactical’ (means-focused), rather than ‘strategic’ (ends-focused), behaviour. After all, the two most recent serious third-party challengers – Anderson in 1980 and Perot in 1992 – did achieve ballot status in every state. More broadly, for virtually every presidential election, numerous third-party candidates receive thousands of votes. In the 1992 contest, besides Perot (with 18.9 per cent of the popular vote), seven others received over 25,000 votes: Andre Marrou (Libertarian), James Gritz (independent), Lenora B. Fulani (New Alliance Party), Howard Phillips (Taxpayers Party), John Hagelin (Natural Law Party), Ron Daniels (independent), and Lyndon LaRouche (Independents for Economic Recovery).²³

Given all this third-party voting, it needs to be asked whether barriers to the ballot, at least as measured by petition signatures, really deter third-party entry into presidential races. A statistical response to the question is not as easy as might be supposed. Foremost, there is a variance problem. At one extreme, there are all the third parties (real or potential) that made it on few, if any, ballots. Suppose, for illustration, that one of these was the Radical Vegetarian Party. Its failure to appear on the ballot of a single state provides a dependent variable on ballot access (1 = on the ballot, 0 = not), which consistently scored ‘0’ and thus had no variance to account for. At the other extreme, there are the third-party candidates who made it on all the ballots, such as Perot. (Because his dependent variable score on ballot access would always be ‘1’, we again have a limited variance problem.) However, the dynamics of the Perot campaign provide an important clue. Despite momentous efforts, he was on the ballot in only thirty-seven states by late August. Among the states still out at that point was New York. He did not actually get on all fifty ballots until 18 September.²⁴ Thus, ballot barriers appear to have

²² State population manages to account for less than half of the variance in signatures required (adjusted $R^2 = 0.46$). Further, when state population is added as a fourth independent variable in the Strategic Parties model (Table 1), the electoral vote coefficient is still highly significant ($t = 3.611$). Clearly, population by itself offers a poor explanation of requirements for access to the ballot.

²³ *New York Times*, 17 December 1992, p. A13.

²⁴ The last state was Arizona. See Dennis Hevesi, ‘Perot drive files petitions for ballot in New York’, *New York Times*, 28 August 1992; David S. Broder and E. J. Dionne Jr, ‘Perot vows to pressure candidates on economy; Texan may re-enter race to get TV time’, *Washington Post*, 19 September 1992.

exercised a strong deterrent that was difficult for even a highly funded, broad-based campaign to overcome until the eleventh hour.

For the lesser third parties, however, the eleventh-hour reprieve never came, and they were denied the ballot in several states. The Natural Law Party, whose presidential candidate John Hagelin won 39,158 votes, made it on the ballot in only thirty-one states. Did the signature requirement act to deter its access to the ballot? Apparently so. Below, is a probit analysis of ballot access for the Natural Law Party in 1992 as a function of the signatures requirement (S) and electoral vote strength (E):

$$B = -19.88 - 0.0001*S + 0.18*E \quad (1)$$

$$(-0.65) \quad (-2.99) \quad (2.44)$$

Pseudo $R^2 = 0.81$ Correctly predicted = 78%
 $N = 50$

where B = ballot access for Natural Law Party in 1992 (0 = not on ballot, 1 = on ballot); S = number of signatures state requires on the petition in order to be on the ballot; E = number of electoral votes; the figures in parentheses are t -ratios; * = a t -ratio greater than 2.0 in absolute value; Pseudo R^2 from McKelvey; N = the fifty states.

The Natural Law Party was significantly less likely to get on the ballot in states with a larger signature requirement, according to the S coefficient and its t -ratio. Hence, this barrier to third-party entry seems to be working as the major parties would have it. More signatures do prevent the smaller, less well-heeled parties from fully entering into the presidential competition.

The result on the independent variable of electoral vote suggests an interesting extension. Thus far, we have confined strategic considerations to major parties. But what about third parties? Are they vote-seeking, as major parties are? Or are they just seeking ideological fulfilment? The Natural Law Party is definitely vote-seeking, according to the significant coefficient for E . Those states with more electoral votes are those where the party was more likely to be on the ballot. There they appear to have campaigned hardest, because the electoral stakes were biggest. While the Natural Law Party may be ideological, it was certainly not unaware of the vote opportunities. A general implication, to be left to future research, is that third-party preferences and behaviour may be less different from major parties than previously supposed.

CONCLUSION

Political institutions are rules of behaviour, and in a democracy election rules have pride of place. We have argued that the rule of the gate-keeper – who gets on the presidential ballot – is based on politics. In particular, ruling major parties, exercising their preferences for office and ideology in an imperfect world, act with differential aggressiveness to keep third parties out. It is in vote-rich states (for example, Florida), where one party is electorally dominant but lacks a traditional organizational base, that signature restrictions are most likely to be high. By way of contrast, vote-poor states with highly competitive, well-organized parties (such as Iowa) are most open to third parties.

A major theoretical implication of these findings bears on Duverger's Law, that single-member plurality districts produce two-party systems. Once the choice of electoral system has been made – for example, single-member plurality vs. proportional

representation – the politics of institutional choice does not stop. The Electoral College system functions as a set of fifty single-member plurality districts. Still, major-party strategies with regard to ballot access vary considerably from state to state. Duverger's Law, as powerful as it is, does not by itself totally determine a two-party system, and thus end major-party concerns over third-party encroachment. Partisan struggle over the election rules, even in single-member plurality systems, continues.