

# Introduction

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## A. RULES

At an 1826 caucus in Philadelphia, the matter was taken up of whether or not to adjourn from a crowded courtroom to the nearby yard. A voice vote was taken, and when the chair found himself unable to discern between the two factions, a calamity broke out. Reports of the event discussed the ‘material injury’ of furniture, the ejection of the chairman, who became a ‘floor man’ when his chair was abruptly taken from under him, and members of the quorum brandishing knives, fighting, and biting each other.<sup>1</sup> Other stories of caucus violence and corruption are not hard to come by. One scholar relates a story of viva voce votes at an 1890s caucus, where whispers of aye defeat boisterous nays. One candidate for nomination in Boston presented his party chairman with a request to see the open ballot box before voting commenced. The written request was torn up, thrown in the fire, and the candidate was escorted out by police. In the final tally, the man lost 510–234, a staggering defeat considering the 300 who were in attendance that day.<sup>2</sup>

While these examples of unruly behavior and outright electoral fraud make for interesting and humorous anecdotes, the reality of the electoral landscape in America is that we have been on a perpetual quest to refine our election procedures since the founding of the nation. We have fought to end the disenfranchisement of large majorities of the populace, and to make voting easier and more accessible for all. We have simultaneously struggled with the integrity of our electoral processes, combating those who would wish to defraud our political systems. Our electoral system today consists not only of a complex set of federal rules, but also of election rules and codes in all 50 states. These diverse sets of rules each have particular and peculiar eccentricities which are the product of each state’s unique journey. In some states, the progressive impulse has fashioned open and liberal election laws, where in others, strong party machines

fashioned more restrictive rules. Throughout the south, election laws are marked by a history of racial discrimination and disenfranchisement.

The aim of this book is to explain the nature, history, and application of the rules that govern our electoral processes. At its core, the central premise of this book is that *rules matter*. This is to say, the rules which govern our electoral processes have meaningful consequences for our elections. To state it in another way, our rules are not neutral—they determine who votes, who runs for office, and how we cast and count out ballots.

Our laws determine who may vote in our elections. The Constitution did not originally specify who would be allowed to vote, leaving the eligibility of voters up to state laws. Today, the Constitution protects the right to vote for nearly all Americans, but state laws still contain important restrictions on voters, like registration rules and voter identification laws. These rules are not neutral in that they have a clear and meaningful impact on the outcomes of our elections. Changing the makeup of the electorate by making it easier or harder to vote could affect the outcome of an election. Thinking more normatively, we can ask ourselves questions about the importance of participation for democratic governance. Should we make it easier for individuals to register to vote, or harder? How concerned should we be with the integrity of our elections? Are there certain responsibilities attached to voting? Should convicted felons be allowed to vote? Should individuals with intellectual disabilities or other mental health disorders participate in our elections? By setting the parameters of the electorate we are making important choices about our country's relationship with democracy, and which voices will be heard on Election Day.

Our laws determine who may run for office. Again, the Constitution sets very specific qualifications for federal office, limiting the field of potential candidates. State laws do the same for a wide array of statewide and local offices. In many cases these qualifications set a low threshold for eligibility, only speaking to age, residency, and citizenship. Should we have more rigorous qualifications for candidates for public office? Perhaps our meager qualifications are already too strict, disqualifying capable leaders who do not meet citizenship requirements or happen to be too young. In addition to these rules, candidates are bound by term limits in some cases and have to follow specific procedures to have their names placed on the ballot. Conversely, there are no term limits for members of Congress. Do these elected officials become better as they stay in office longer, or should we force them out after only a few terms? While running for office, we restrict the behavior of candidates, especially with regards to campaign finance, setting the bounds for how candidates raise and spend money. Government is not

the only player in this process, as parties play an important role by setting rules and procedures for nomination. This constellation of rules structures our elections by limiting the universe of potential choices.

Our laws determine how we cast and count our ballots. When, and in what form do we designate our choices? Things as simple as ballot design have the potential to alter election outcomes by structuring how we vote. Some designs have been shown to increase the chances that a voter casts an invalid ballot, whereas other ballot designs can make casting a vote much easier. We can design simple voting systems that elect simple plurality winners, or more complex systems that allow us to rank order our choices. Even after we vote, sets of rules determine how ballots are counted, or even recounted, ensuring the accuracy of the tabulation of votes. Whether it be the specific procedures of a party nominating contest or the complex process behind the Electoral College, rules control how we determine the winner of a particular election.

In addition to making the argument that these rules matter, this book hopes to explain *how* these rules matter. While the bulk of the upcoming chapters will help to explore and explain different systems of rules across the states, each chapter contains a section dedicated to exploring the potential consequences of these rules. It is important to understand what rules exist, and how they operate in practice, but it is also important to understand the practical implications of these differences. Recent research in the field of political science will help us to illuminate the relationships between rules and outcomes. Should we expect different candidates to run if we change the qualifications for office? Will more people vote if ease registration requirements? We will attempt to explore these questions and grapple with the normative implications of rules throughout this book.

## B. OUTLINE

Before beginning our exploration of election rules, let's look at an overview of the topic we will explore.

Chapter 1 introduces the voter as perhaps the most fundamental of all actors in an election. This chapter deals primarily with setting up the right to vote and the requirements and restrictions surrounding the act of voting. The chapter will introduce, briefly, major changes which have expanded the right to vote to non-property owners, non-white males, women, and those aged 18–21. The discussion will then turn to those groups that remain disenfranchised in the American electoral system. The chapter will also cover registration laws in the states,

including recent changes like same-day, or election-day registration. The chapter will also introduce, but will not completely cover, how registration affects the ability to participate in partisan primaries. Specifics about these systems will be included in Chapter 4. Finally, the chapter will conclude with a discussion of voter identification laws, their legal basis, and status in the states.

Chapter 2 will introduce laws that affect the candidates. Broadly, these rules cover basic Constitutional requirements for federal office (including what ‘natural-born citizen’ means), term limits, ballot access, and independent candidacies. The chapter will also contain a discussion of sore-loser laws, petition requirements, and other rules that govern independent candidates.

Chapter 3 will examine the apportionment of U.S. House seats, districting, and gerrymandering. This chapter answers important questions about how we determine the number of House seats a state receives, how often we do this, and how electoral maps are drawn. We will examine state-by-state differences on how this procedure is conducted. While many states allow their state legislature full autonomy in drawing district lines, other states use some form of partisan or independent commission to complete this process. After this discussion, the chapter examines how districts are actually drawn. What characteristics do we value? What constitutes a compact or contiguous district? Do we split towns, or try to maintain communities of interest? This chapter will also look at legal controversies surrounding equal-population, at-large districts, and gerrymandering. What exactly constitutes an unconstitutional gerrymander versus a constitutional gerrymander, and why do these geographic districts matter?

Chapter 4 will introduce the party as an important player in the process and discuss the legal status of parties over time, as well as how they structure the first part of our electoral procedure—nomination. The discussion will proceed from parties as loose associations, to their status as quasi-public entities, akin to public utilities. Part of the focus of this chapter will be on how many early election laws were not state laws themselves, but rather party rules. It was not until the late 19th and early 20th century that states began either giving legal force to party rules or adopting party rules as statutes. This chapter will also focus on nominations in two parts. The first section will discuss the direct primary, which is the system that nominates candidates for most sub-presidential offices. This section will briefly touch on why we use primaries, caucuses, and conventions to nominate (*vis-à-vis* parties) and how these rules have evolved over time. The second section on nomination will discuss presidential nominating politics. The main goal of this section will be to discuss the rise of the primary system for choosing delegates to the national party conventions. Who are the delegates to the conventions? How

do we select these people, and do the rules differ by state? How do we determine how many delegates there are per state? This chapter will demystify these differences by highlighting the role of the parties in the process, explaining how parties determine the number of delegates per state, and discussing the various delegate allocation rules that exist in the states.

Chapter 5 will turn to a discussion of the Electoral College. This institution is one that, while relatively simple to understand, is cloaked in mystery. This chapter will lift the veil on these electors, how they are chosen, and what role they fill in electing the president. This chapter will also discuss the normative implications of the Electoral College through an examination of historic scenarios that threw the College into crisis. Looking back on contested elections, we will learn about the process and procedure that the Electoral College uses to deal with contested electors, unfaithful electors, ties, and other scenarios. Finally, this chapter will introduce some of the more popular possibilities for reform of the Electoral College and discuss their practical implications on presidential elections.

Chapter 6 is a very important chapter, but one that often receives little attention in the classroom. Campaign finance laws are muddled and complex, and often pose a challenge to students of politics. This chapter will begin by briefly introducing the history of campaign finance laws in the United States, before looking at legal developments over the past two decades. The Bipartisan Campaign Reform Act, as well as a number of court cases, have dramatically altered the campaign finance landscape. The chapter will present the legal status of spending, fundraising, and other campaign finance laws, and discuss the normative implications of these rules. One hurdle to understanding campaign finance is in distinguishing various types of spending groups. This chapter will discuss these groups in detail, explaining abilities and restrictions, and how groups can even work together to finance campaigns.

Chapter 7 will examine elections by looking at how we cast, count, and recount votes in the United States. By comparing and contrasting various alternative methods for determining winners we can see how basic majority and plurality rules can lead to different outcomes. The chapter also discusses other vote counting systems in use across the country, including runoff elections, and preferential systems like ranked choice voting. We will then turn to balloting methods, and we will explore how voters in different states cast their ballots, whether by hand or by machine, as well as how election authorities go about counting votes. This chapter will also cover rules regarding recounts—how are they triggered, and how are they conducted.

Hopefully, by the end of this book, you will have a better understanding of what rules exist, how they are different, and why these rules matter for our elections.

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<sup>1</sup> Niles, W. Ogden. Niles, H. 1837. Niles' weekly register. Baltimore: H. Niles. P. 85.

<sup>2</sup> Dallinger, Frederick. 1897. Nominations for Elective Office in the United States. Longmans, Green and Co: New York. p. 119.