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HOW TO *STEAL* AN ELECTION

The crazy history of nominating Conventions.

By Jill Lepore

Delegates on the floor at the Democratic National Convention at Boardwalk Hall in Atlantic City, August 26, 1964.

At sunrise on the day before the Republican National Convention begins, in Cleveland, a hundred women will take off their clothes and pose for the photographer Spencer Tunick outside the convention hall. Naked, they'll be holding up big, round mirrors to the sky, to catch the light. "Women will decide the outcome of this election," Tunick says. He insists that his installation is not a political protest. "This is a work Republican women can participate in," he says, bipartisanly.

This year's Conventions will be held back to back, like a doubleheader, or two root canals in a row. The week after the Republicans meet in Cleveland, the Democrats will meet in Philadelphia. First Trump, then Clinton. But, what with the anti-Trumpers and the pro-Sandersers, some people are worried that all hell might break loose, which is unusual, since people more commonly worry that the Conventions will be boring. "At first blush, the Republican National Convention at Cleveland next week promises to be a very dull show," H. L. Mencken wrote in 1924, when the incumbent, Calvin Coolidge, was the all but assured nominee.

"Some dreadful mountebank in a long-tailed coat will open . . . with a windy speech; then another mountebank will repeat the same rubbish in other words." And, while that really is what happens, lately more than ever (since 1952, no Convention has gone past the first ballot) the Conventions are never boring, if only because of the high jinks, not to mention the low jinks. In Chicago in 1864, the Democrats installed a giant sign made of coiled gas pipe. It was supposed to read "McClellan, Our Only Hope," but the gas jets broke and the thing just flickered and died, hopelessly. Roscoe Conkling was so sure he'd get the nod in 1876 that he picked his Vice-President and a motto—"Conkling and Hayes / Is the ticket that pays"—only to be defeated by his erstwhile running mate, ever after known as Rutherfraud B. Hayes.

Until 1932, when F.D.R. decided to show up to accept his nomination, the candidates themselves skipped the Conventions, citing modesty, a precedent set a century before by Henry Clay. Asked by letter if he would be willing to be nominated by the short-lived National Republicans, at their one and only Convention, Clay wrote back to say yes but that it was impossible for him to attend the Convention "without incurring the imputation of presumptuousness or indelicacy." When Grover Cleveland received a telegram at the White House informing him that he had been renominated by a Democratic Convention meeting in St. Louis, he said, "Heavens, I had forgotten all about it." Many a journalist might not have minded if the candidates had maintained the tradition of keeping away. "Interviewing a candidate is about as intimate as catching him on television," Norman Mailer wrote from the Republican Convention in Miami in 1968, to which some G.O.P. genius had flown in a pachyderm. "Therefore the reporter went to cover the elephant."

It's not all a bamboozle, especially not this election. The White House is at stake, and more, too: the state of the union. The worry, this time around, isn't that the Conventions will be boring; it's that they'll be interesting, frightfully.

The Presidential-nominating Convention is an American invention. It is the product of a failure of the Constitution. Kings are born; Presidents are elected. How? This is a math problem and it's a political problem, and it's been solved but never resolved. The first nominating Convention was held in 1831. It was an attempt to wrest power away from something known as the legislative caucus, which was itself an attempt to wrest power away from the Electoral College. The first primary was held in 1901. It was an attempt to wrest power away from the nominating Convention. This year, there's been a lot of talk about how the system is "rigged" by "the establishment." It was exactly that kind of talk that got us the caucus, the Convention, and the primary, institutions built in the name of making American democracy more representative and more deliberative. But the more representative the body the less well it is able to deliberate: more democracy is very often less.

How to elect a President was vexed from the start. At the constitutional convention in Philadelphia in 1787, the men who framed the federal government made a great many compromises, but "the Convention were perplexed with no part of this plan so much as with the mode of choosing the President," as the Pennsylvania delegate James Wilson later explained. Some delegates believed that Congress should elect the President. This allowed for popular participation in government while avoiding what Hamilton called the "excess of democracy." But having Congress elect the President violated the principle of the separation of powers. Wilson proposed that the people elect the President directly, but Madison pointed out that the Southern states "could have no influence in the election on the score of the Negroes." That is, the South had a lot of people, but a third of them were slaves; in a direct election, the North, which had a lot of people but very few slaves, would have had more votes. Wilson therefore suggested the Electoral College, a proposal that built on a mathematical compromise that had taken the delegates most of the summer to devise. Under the terms of the three-fifths compromise, each state was granted one representative in Congress for every thirty thousand people, except that slaves, who could not vote, counted as three-fifths of a person. Wilson's proposal

applied this formula to the election of the President: the number of each state's electors in the Electoral College is the sum of its congressional delegation, its two senators plus its number of representatives. Substituting electors for voters conferred on the slave states a huge electoral advantage, once the first census was taken, in 1790. Virginia and Pennsylvania had roughly equivalent free populations, for instance, but Virginia, because of its slave population, had six more seats in the House than did Pennsylvania, and therefore six more electors in the Electoral College. This bargain helps to explain why the office of the President of the United States was, for thirty-two of the first thirty-six years of its existence, occupied by a slave-owning Virginian.

In the first two Presidential elections, George Washington ran unopposed. But by 1796, when Washington announced that he would not run for a third term, the polity had divided into parties, a development that the Electoral College was not designed to accommodate. One Federalist complained that he hadn't chosen his elector "to determine for me whether John Adams or Thomas Jefferson is the fittest man for President. . . . No, I choose him to act, not to think." To better delegate their electors, Federalists and Republicans in Congress began meeting in a caucus where they decided their party's Presidential nominee.

Early American Presidential elections were not popular elections, not only because the vote was mainly restricted to white male property owners but also because delegates to the Electoral College were elected by state legislatures. The legislative caucus worked only as long as voters didn't mind that they had virtually no role in electing the President, a situation that lasted for a while since, after all, most people living in the United States at the time were used to having a king. But a new generation of Americans objected to this arrangement, dubbing it "King Caucus." "Under what authority did these men pretend to dictate their nominations?" one citizen asked in 1803. "Do we send members of Congress to cabal once every four years for president?" New states entering the union held conventions to draft state constitutions, in which they adopted more democratic arrangements. This put pressure on old states to revise their own

constitutions. By 1824, eighteen out of twenty-four states were holding popular elections for delegates to the Electoral College. Between 1824 and 1828, the electorate grew from fewer than four hundred thousand people to 1.1 million. Men who had attended the constitutional convention in 1787 shook their gray-haired heads and warned that Americans had crowned a new monarch: "King Numbers."

That king still sits on his throne. "The first principle of our system," Andrew Jackson, of Tennessee, insisted, is "that the majority is to govern." The Electoral College couldn't be undone except by a constitutional amendment. But the legislative caucus could be. The first call for the beheading of King Caucus came in 1822, in the pages of the New York *American*. Two years later, after the press learned about a caucus meeting to be held in the House, only sixty-six out of two hundred and forty legislators were willing to appear before a disgruntled public, which flooded the galleries shouting, "Adjourn! Adjourn!" And so it did.

The Anti-Masonic Party, formed to end the reign of secret cabals, held the first Presidential-nominating Convention, in September, 1831. Unfortunately, the man chosen as the Party's nominee turned out to be . . . a Mason. The Anti-Masons left two legacies: the practice of granting to each state delegation a number of votes equal to the size of its delegation in the Electoral College, and the rule by which a nomination requires a three-quarters vote. Other practices have not endured. Two months after the Anti-Masons met, the National Republican Party held a Convention of its own, in which it called on the states not in alphabetical order but in "geographical order," beginning with Maine, and working down the coast, causing no small amount of consternation among the gentlemen from Alabama. The practice of holding a national Convention might not have endured if Jackson hadn't decided that the Democratic Party ought to hold one, too. Jackson wanted to boot out his Vice-President, John C. Calhoun, who believed that states had a right to nullify federal laws, a position that Jackson opposed. Jackson and his advisers realized that if they left the nomination to the state legislatures, where Calhoun had a lot of support, they'd be stuck with him

again. Jackson contrived to have the New Hampshire legislature call for a national Convention. In 1835, Jackson issued the call for a nominating Convention himself, in an extraordinary letter to the American people:

> I consider the true policy of the friends of republican principles to send delegates, fresh from the people, to a general convention, for the purpose of selecting candidates for the presidency and vice-presidency; and, that to impeach that selection before it is made, or to resist it when it is fairly made, as an emanation of executive power, is to assail the virtue of the people, and, in effect, to oppose their right to govern.

The point of this Convention was to assure the nomination of Jackson's handpicked successor, Martin Van Buren, and to allow Van Buren to contrive for his choice, Richard Johnson, to win the Vice-Presidential nomination. But Tennessee, whose support for Jackson had begun to waver, refused to send a delegation to the Convention, held in Baltimore. With fifteen electors, Tennessee had fifteen votes at the Convention. Unwilling to lose those votes, Van Buren's convention manager went to a tavern, found a Tennessean named Edward Rucker, who just happened to be in Baltimore, and made him a one-man, fifteen-vote delegation. "Rucker" became a verb.

Populism is very often a very clever swindle. But since 1831, with only one exception—the Whigs in 1836—every major party has nominated its Presidential candidate at a Convention.

There is no end to the ruckery in the annals of American history. "Absolutely rigged," Trump said about the nomination process in April. "I wouldn't use the word 'rigged,' " Bernie Sanders said in May. "I think it's just a dumb process."

The first party "platform" was adopted at a Convention in 1840, during an election that also introduced more rough-hewn lumber in the form of log cabins. (Whigs paraded them around the country, on wheels.) Platform-committee meetings are chest-thumping contests between warring clans within the parties; in exchange for conceding, defeated candidates tend to have a lot of influence

over the platform. Even without having conceded, Sanders won from the D.N.C. additional seats on the platform committee; he then named as his delegates celebrity progressives like Cornel West and Bill McKibben. R.N.C. platform-committee delegates include the conservatives Tony Perkins, the head of the Family Research Council, and David Barton, a Texas evangelical and amateur historian who has lectured for Glenn Beck's online university; both were supporters of Ted Cruz. This year, the G.O.P. is also crowd-sourcing the committee's work at platform.gop, asking anyone who visits the site to rank issues about, for instance, the Constitution: Which is more important to you, human life or the Second Amendment?

In 1844, when the incumbent President, John Tyler, found himself without a party, he called for a third-party Convention to nominate him, in order to persuade the Democrats to nominate him at their own Convention. (These and other escapades are recounted by Stan Haynes, the most exhaustive chronicler of the Conventions, in a series of invaluable books.) Tyler campaigned on a promise to annex Texas. Two weeks before the Democratic Convention was to begin, in Baltimore, Jackson called a meeting. Jackson said he wanted "an annexation man, and from the Southwest." James K. Polk, who was unknown outside Tennessee, became that man. ("I wish I could slay a Mexican," Henry Clay said four years later, when the names on the ballot were mainly those of generals who had fought in the Mexican-American War.)

One lesson of American Presidential history: You can't beat somebody with nobody. Desperate, late-in-the-day attempts to draft into the race, say, Mitt Romney are unusual at this point in American history. But running a dark horse was a minor American art form well into the twentieth century. George Bancroft finagled Polk's nomination by making sure that Polk's name wasn't mentioned until the third day of the Convention. "My name must in no event be used until all efforts to harmonize upon one of the candidates already before the public shall have failed," Franklin Pierce warned when he was the dark horse of the Democratic Convention in 1852. James Garfield, a Republican delegate, made

such a good speech, nominating his fellow-Ohioan the uninspiring John Sherman, that Conkling, a New York delegate, handed Garfield a note that read, "New York requests that Ohio's real candidate and dark horse come forward." Garfield's nomination was masterminded by a Philadelphia banker, who seated Garfield supporters at strategic sites around the hall so that, from his seat on the stage, he could cue them to greet Garfield with perfectly timed ovations.

"Every attempt to abridge the privilege of becoming citizens . . . ought to be resisted," the Democratic Party pledged, in 1856, countering the Know-Nothings, whose motto was "Americans Must Rule America," and whose platform consisted of a resolution discouraging the election of anyone not born in the United States to any office, of any kind. That wave of nativism passed, only to be replaced by efforts to prohibit Chinese immigration. "It is the immediate duty of congress fully to investigate the effects of the immigration and importation of Mongolians on the moral and material interests of the country," the Republican National Convention resolved in 1876.

Much skulduggery concerns the credentials of delegates. "Why didn't you nominate Rufus Choate?" began a joke told about the old men who'd been rounded up to serve as delegates at a Convention. (Yes, Choate was dead, but so recently!) Then there's more ordinary betrayal. In 1876, when the Democrats met in St. Louis—the first time that a Convention was held west of the Mississippi—a delegation opposed to the nomination of the New Yorker Samuel Tilden hung a giant banner from the balcony of the Lindell Hotel. It read "The City of New York, the Largest Democratic City in the Union, Uncompromisingly Opposed to the Nomination of Samuel J. Tilden for the Presidency Because He Cannot Carry the State of New York." So much for the favorite son.

"We are united," Henry Clay said, halfheartedly, at one of the Conventions in which he failed to win the nomination. In 1860, at a Democratic Convention held in Baltimore—the second Democratic gathering held that year, since the

Southern delegates bolted from the first one—an American flag was adorned with the motto "We Will Support the Nominee." That Convention required delegates to take a loyalty pledge: "Every person occupying a seat in this convention is bound in good honor and good faith to abide by the action of this convention, and support its nominee." This happened again in 1948, when Southerners bolted from the Democratic Convention over civil rights, and held their own Convention, as the Dixiecrat Party, whose platform included this statement: "We stand for the segregation of the races and the racial integrity of each race." After that, Democrats called for delegates to take a loyalty pledge. The Dixiecrat defection also contributed to the Democrats' adoption, in 1956, of a bonus system, awarding extra votes to delegates from states that had voted for the Party nominee in the previous election.

These traditions are why Trump was asked, at the first G.O.P. debate of this primary season, whether he would support the eventual Republican nominee. They're also why so many Democrats lost patience with Sanders for remaining in the race. (Trump says that Sanders is waiting for "the F.B.I. Convention," which is Trump's way of suggesting that Clinton will be indicted before the Democrats meet in Philadelphia.) Second-placers often hanker for an old-fashioned, contested Convention. For a while, Trump wanted one, too, but, when Cruz stepped down, Trump changed his mind: no one wants to contest what's already won. At that point, the Indiana attorney Joshua Claybourn gave up his seat as a G.O.P. delegate. "Party rules would require I vote for Donald Trump," Claybourn explained. "I choose not to let that happen."

The rise of the primary was a triumph for Progressive reformers, who believed that primaries would make elections more accountable to the will of the people. That didn't quite come to pass. Instead, primaries became part of the Jim Crow-era disenfranchisement of newer members of the electorate. Frederick Douglass addressed Republicans at a Convention in Cincinnati in 1876, asking, "The question now is, Do you mean to make good to us the promises in your constitution?" Sarah Spencer, of the National Woman Suffrage

Association, was less well received at that Convention, which marked the centennial of the Declaration of Independence. "In this bright new century, let me ask you to win to your side the women of the United States," Spencer said. She was hissed. In 1880, Blanche K. Bruce—a former slave, a delegate from Mississippi, and a U.S. senator—served as an honorary vice-president of the Republican Convention, and wielded the gavel.

The end of Reconstruction saw the rise of the secret ballot, which, by effectively introducing a literacy requirement, disenfranchised black men. If the Emancipation Proclamation ended the electoral advantage granted to Southern whites by the three-fifths clause, the secret ballot restored it. In Louisiana, black-voter registration dropped from 130,000 in 1898 to 5,300 in 1908 to 730 in 1910. But the real racial recount came with the rise of the primaries; the reform began to gain strength in 1905. The election of 1912 was the first in which a significant number of delegates to the nominating Conventions were elected in state primaries, as Geoffrey Cowan writes in "Let the People Rule," a book that takes its title from Theodore Roosevelt's campaign slogan. Roosevelt wanted to wrest the Republican nomination from the incumbent President, William Taft, and saw the primaries as his only chance. "The great fundamental issue now before the Republican Party and before our people can be stated briefly," he said. "It is: Are the American people fit to govern themselves, to rule themselves, to control themselves? I believe they are. My opponents do not."

Thirteen states held primaries; Roosevelt won nine. Still, winning the Convention was another matter, since the primaries weren't binding. By 1912, blacks had been so wholly disenfranchised in the South, and the South was so wholly Democratic, that most of the Southern delegates to the Republican Convention were black men who had been appointed to Party offices by the Taft Administration. Roosevelt needed their votes and tried to court them. "I like the Negro race," he said in a speech at an A.M.E. church, the day before the Convention. But the next day the New York *Times* reported on affidavits alleging that Roosevelt's campaign had attempted to bribe black delegates. Roosevelt lost

the nomination to Taft. He then formed the Progressive Party, whose Convention refused to seat black delegates. "This is strictly a white man's party," said one of Roosevelt's supporters, a leader of what became known as the Lily Whites. In the general election, Roosevelt and Taft split the Republican vote, allowing Woodrow Wilson to gain the Oval Office, where, as W. E. B. Du Bois remarked, he introduced "the greatest flood of bills proposing discriminatory legislation against Negroes that has ever been introduced into an American Congress."

Party leaders ignored primaries for as long as they could. Beginning in the nineteen-thirties, they instead used public-opinion polls to gauge the prospects of their candidates. Candidates who sought out primaries tended to be weak ones. In 1952, Estes Kefauver entered and won twelve of fifteen primaries; it didn't matter. At the Democratic Convention, he lost on the third ballot, to Adlai Stevenson, who hadn't run in a single primary. That same year, Robert Taft won six primaries to Dwight Eisenhower's five. It didn't matter; at the Republican Convention, the Party went for Eisenhower, who was leading in the polls. John F. Kennedy needed to win primaries to demonstrate to the Party that voters didn't mind that he was Catholic. Barry Goldwater bypassed the primaries but won the nomination because the delegates to the 1964 Convention fell for him. "This Nation and its people are freedom's model in a searching world," he said, accepting the nomination. Another lesson of American Presidential history: Beware of candidates who flatter the people.

Nominating Conventions are extra-legal, and attempted reforms have often been deemed unconstitutional. The rules set by each Convention are essentially peace treaties negotiated between the parties and the voters. It falls to both sides to accept the terms of the peace.

"The invitation to violence arises because partisanship in its most intense forms contests the very basis of a political community," the political scientist Russell Muirhead has observed. The basis of that community, he argues, is a trio of

political settlements, each achieved by violence: the rejection of monarchic rule through the acceptance of the idea of the consent of the governed; the rejection of religious intolerance through the acceptance of freedom of conscience; and the rejection of slavery through the acceptance of political equality. This election season, all three of those fundamental settlements have become, to varying degrees, unsettled. "The will of the people is crap," the influential conservative Erick Erickson wrote, about Trump's primary victories. Trump has called for a religious test for immigrants, in order to ban Muslims. And the argument of the Black Lives Matter movement is that political equality was never settled in the first place.

The protests at the Democratic Convention in Chicago in 1968 resulted in a change in the balance of power between the primaries and the Conventions: before 1968, primaries hardly mattered; since 1968, the Conventions have hardly mattered. A report issued in 1968 predicted that "instantaneous polls of the entire electorate" conducted by "central computers from every home" would make nominating Conventions obsolete, which has, in fact, happened. That's the de-facto change, but the de-jure change is that the primaries became binding.

After the chaos of 1968, political reformers called for the abolition of the nominating Convention, to be replaced by a national primary, and the American Bar Association called for the abolition of the Electoral College, to be replaced by direct, popular election. These proposals, which had been made before and have been made since, have a ready appeal. The nominating Convention is a messy and often ugly accident of history. "No American political institution is more visible than the convention, or more often visibly shoddy," the constitutional scholar Alexander Bickel admitted. But changing the structure of government carries its own dangers, Bickel insisted: "The sudden abandonment of institutions is an act that reverberates in ways no one can predict, and many come to regret. There may be a time when societies can digest radical structural change, when they are young and pliant, relatively small, containable, and readily understandable; when men can watch the scenery shift without losing their sense

of direction. We are not such a society."

The loss of direction that Bickel warned of has come to pass, even without radical change. Instead, there's been incremental change. The rules have changed, and changed, and changed. The parties change the rules when they lose, with an eye toward winning the next time around. There's no grand plan; there's a plan to win in four years' time. The rule changes since 1968 have made the primaries more binding, notwithstanding the argument that they violate the 1965 Voting Rights Act (since the course of events is disproportionately determined by the very nearly all-white states of New Hampshire and Iowa). The system, as it stands, rewards political extremism, exacerbates the influence of money in elections, amplifies the distorting effects of polls, and contributes to political polarization. Debatable, but often asserted, is that it also produces poor candidates and ineffective Presidents.

Since 1968, no one in either party has successfully defeated at the Convention the candidate who won a plurality of the primaries and the caucuses. In 1972, George McGovern, who'd chaired the Democratic commission that rewrote the Party's delegate-selection rules, won its nomination despite an "Anybody but McGovern" challenge at the Convention, in Miami. McGovern lost to Nixon in a landslide: he carried just one state. In 1976, at the G.O.P. Convention, in Kansas City, Ronald Reagan challenged Gerald Ford and, very narrowly, lost. Jimmy Carter, who'd won a lot of primaries, won the Democratic nomination and even the election, but after his failed Presidency many Democrats regretted binding their delegates to the primaries. In 1980, at the Democratic National Convention, in New York City, Ted Kennedy tried to challenge Carter but was defeated by the rules. That's why, in 1984, the D.N.C. invented superdelegates, high-status Party officials who are pledged to no one candidate. This year, a lot of Republicans are regretting binding their delegates to the primaries. The rules committee meets the week before the Convention. Hundreds of anti-Trump Republicans have formed an organization called Free the Delegates and begun plotting a strategy to block his nomination by adding a "conscience clause" to the

rules, unbinding the delegates. Paul Ryan said that he wouldn't object: "It's not my job to tell delegates what to do." This tactic has been tried before. A savvy souvenir collector could even hawk on the streets of Cleveland the buttons that Kennedy supporters wore in 1980, which read "FREE THE DELEGATES."

Mencken said that going to a Convention was something between attending a revival and watching a hanging. Going to this year's Conventions could feel more like getting trapped in a forest fire. The Cleveland Police Department has stocked up on riot gear. Protesters are expected at both Conventions, in droves, if, generally, in clothes. Much of the sense of foreboding is a production of the press, and especially of Twitter, each Tweet another match lit on the pyre of the republic. But part of the foreboding is founded. Trump renounced violence only after inciting it. "It goes without saying that I condemn any and all forms of violence," Sanders said in a statement that included a lot of "but"s.

No nomination is ever entirely uncontested; the only question is what form the contest will take—sound or fury. The gavel used at the 1880 Republican Convention had a handle made of cane grown at Mount Vernon and a head made of wood taken from the doorway of Abraham Lincoln's house in Springfield. American elections are makeshift. Another gavel will rap in Cleveland, on July 18th, calling the Convention to order. The people remain as unruly as ever. ♦

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