

## Mitchell's Musings 6-23-14: Leland, We Hardly Knew Yee

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California adopted a new non-partisan primary system in 2010 via ballot proposition for state administrative and legislative offices which has become known as "top-2." Under this system, all candidates for an office *regardless of party* run in one primary and the top 2 then compete in the general election. There is a top-2 runoff even if one of the candidates achieved a majority of votes in the primary. For example, in the gubernatorial primary of June 2014, incumbent Governor Jerry Brown received 54% of the vote. Yet in the fall, Brown will run against the second highest vote getter, Neel Kashkari (with 19%). Under top-2, the candidates in the runoff can be in the same party (although they won't be in the Brown-Kashkari contest). Since the primary is non-partisan, if two Democrats or two Republicans come in first and second, they will be in the runoff.

I have previously mused about the intended behavioral consequences of the top-2 system.<sup>1</sup> In essence, under the former partisan primary system, legislative districts that were heavily Democratic or Republican essentially decided their races in the primary. In a heavily Republican district, for example, the votes of Democrats, third party members, and independents were essentially irrelevant. The system was seen, therefore, as promoting extremism rather than centrism in the legislature since elected Democrats would be chosen by the median Democratic voter and elected Republicans would be chosen by the median Republican voter.

Under top-2, *all* voters are relevant and candidates have an incentive – so the theory goes – to compete for their votes. Just appealing to your party's base may not be a winning strategy. The first time a statewide election under top-2 was held, Democrats tended to understand the new logic better than Republicans and so enough swing districts tilted toward Democrats so that Democrats achieved a tenuous two-thirds majority in the legislature.<sup>2</sup> Having two-thirds is important for certain kinds of legislative decisions such as raising taxes or putting constitutional amendments on the ballot.

However, top-2 is more complicated than it first appears. It is non-partisan and yet has potential rewards for party control or at least discipline. If a district is heavily Democratic and there are many Democratic candidates but few Republicans, the Democratic candidates may dilute the votes of their party to the point where a Republican gets the most votes. If a party has a mechanism for discouraging myriad candidates, its odds of getting into the general election improve. With enough dilution, the top 2 winning candidates in the primary might both be Republicans so that the general election would provide only a Republican choice in an otherwise Democratic district.

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<sup>1</sup> <http://www.employmentpolicy.org/sites/www.employmentpolicy.org/files/field-content-file/pdf/Daniel%20J.B.%20Mitchell/MitchellMusings%206-18-12.pdf>

<sup>2</sup> Because of a scandal involving three state senators – all Democrats – there is no longer a two-thirds majority.

Like all incentive systems, the institutions of primaries affect behavior (of candidates and parties). The rules matter. But when you change the system, there can be a learning process before the optimum behavior becomes evident. It will take several rounds of top-2 elections in California before its full ramifications become clear, both to outside observers and to candidates. In that respect, political incentive structures are similar to workplace incentive structures. And like all workplace incentive systems, political incentives are capable of producing anomalies and what might seem to be perverse results at times.

There is often a decrying of low turnout in primary elections and the June 2014 California primary was no exception. Early estimates suggest a turnout of registered voters of under one fourth.<sup>3</sup> Note, however, that low turnouts mean that those who *do* vote are presumably those who are most interested in politics and political outcomes. Presumably, they are more knowledgeable about the issues and candidates than other voters. So what can we learn from the June 2014 California primary results about voter knowledge of the candidates and issues? Again, a low-turnout primary should have a disproportionate number of politically-interested voters. If such primary voters have little knowledge, the larger electorate that votes in general elections must have even *less* information.

What attracted considerable attention in this regard was the race for secretary of state. It's not clear how many voters know what the California secretary of state actually does. In fact, the secretary of state's main task is administering elections. But there are other duties, too, such as looking after the state archives, a state museum, and dealing with certain business records and filings.<sup>4</sup> In the June 2014 primary, the top two candidates that emerged were Democrat Alex Padilla (30.2%) and Republican Pete Peterson (29.7%). So roughly three out of ten voters went for the top Democrat and three out of ten voters went for the top Republican, i.e., they both did equally well. How did that equal result occur in a state which tilts heavily toward Democrats?

Essentially, there was Democratic dilution which divided the vote. There were only two Republicans in the primary and Peterson was the only serious candidate among the two. There were four Democrats on the ballot. Two were not serious candidates. The third was state senator Leland Yee who before the primary, had been arrested on various charges of corruption, had been suspended from the senate as a result, and who had then withdrawn from the race. Thus, Yee wasn't really a candidate at all but because of the timing, his name remained on the ballot and he came in third with 9.5% of the vote. One

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<sup>3</sup> At this writing, some absentee and challenged ballots are still being counted.

<sup>4</sup> Duties from the official website of the secretary of state: [www.sos.ca.gov](http://www.sos.ca.gov):

- *Serving as the state's Chief Elections Officer*
- *Implementing electronic filing and Internet disclosure of campaign and lobbyist financial information*
- *Maintaining business filings*
- *Commissioning notaries public*
- *Operating the Safe at Home confidential address program*
- *Maintaining the Domestic Partners and Advance Health Care Directive Registries*
- *Safeguarding the State Archives*
- *Serving as a trustee of the California Museum*

out of ten voters (well over 300,000) selected a candidate who was tainted and wasn't running. Presumably, Yee had a kind of name recognition. Even if those voters had seen his name in the context of scandal, however, it made no difference. When they got into the voting booth, they recognized Yee's name, although they didn't recall the context in which they had seen it. Alternatively, they knew Yee's name as a long-time San Francisco area political figure and didn't know of the scandal despite major media attention to it.

As you might imagine, there was much handwringing after the primary about the Yee vote. You can say it was only one out of ten voters but that margin is enough in many cases to swing an election. And there were other signs of voter lack of knowledge in the margins by which two ballot propositions passed. One was for veterans' housing (passed by 65.4%) and the other was a requirement that local governments have "Freedom of Information Act" type procedures for their public documents (61.9%). The margins by which these two propositions passed were quite high relative to most ballot propositions. You would not know that both propositions had controversial elements to them that – if the electorate had been aware of them – might well have driven down the percentages.

California has a veteran's housing program that in the past had been self-financing (no direct cost to the state). Essentially, rents paid by veterans paid off bonds that were floated to construct their housing. Thus, voters were accustomed to approving expansions of the program since it was seen as costless. In this case, however, even though proponents developed confusing language to hide the fact, the expansion was based on bonds to be paid off by the state's general fund. The new expansion was not costless. Would almost two thirds of the electorate have approved the expansion if they had understood that fiscal shift? Probably not.

The public documents proposition also had a hidden element. In fact, local governments had been mandated by the state to provide public document access. Under the state constitution, however, state mandates to local governments had to be paid for by the state. During the most recent state budget crisis, the legislature dropped various mandates to reduce state expenditures, particularly those mandates which were viewed as likely to be carried out at local expense anyway. Public document access was one of these dropped they'll-do-it-anyway obligations.

Unlike the response to other "un-mandated" duties, however, there was a public outcry about local document access. How could you be *sure* local governments would continue to provide access? What if they didn't? To dampen the protests, the legislature put a proposition on the ballot that re-mandated the public access requirement *but said the state wouldn't pay for it*. So the proposition deviated from past practice and imposed a mandate without state reimbursement. Would over 60% of voters have supported such a deviation? Would they have done so if they knew that prior to the proposition, the requirement for access was already in place but with the state paying for it. Probably not.

In past musings, I have noted the fallacy in polling results that pose complicated policy questions to the general population or to registered voters. In many cases, the issues posed are matters with which the respondents are unfamiliar but the reported "don't know" or "no opinion" responses are way too low to

be credible. The responses that are reported rely on the summary of the issues providing (framed) by the pollster; absent such summaries, the “don’t know” or “no opinion” responses would be much higher. The June 2014 California primary is yet another confirmation of limited voter knowledge.

California political processes are dominated by institutions that developed in the early 20<sup>th</sup> century during the Progressive Era. Progressives viewed politicians as corrupt. They thought it was better to have government functions administered by technical experts. The progressive view that you can’t trust politicians leads to such developments as top-2 *non-partisan* primary elections that weaken political parties. But there is an inherent contradiction in such progressivism. Giving more power to voters through direct democracy (ballot propositions, recalls, weakened political parties) as a solution to political corruption puts authority in the hands of decidedly non-experts. It puts power in the hands of folks who voted for non-candidate Yee or who did not understand the controversial elements of the two primary ballot propositions.

It would be nice to offer a simple solution that would somehow enable California – and the U.S. as a whole – to deal with the pressing problems of the day. One consequence of political polarization in California is the development of one-party rule. In the state, Republican legislators have become largely irrelevant to key policy decisions such as budgets. In that context, the only check and balance choice becomes direct democracy and the voice of those non-expert voters. A better solution would be an effective opposition party and to have competition for median voters, not median party voters.<sup>5</sup> The top-2 primary system may turn out to be a (partial) remedy. But it will take a few more rounds of its use before we know.

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<sup>5</sup> There was some move in the June 2014 primary – partly from out-of-state – to try and move statewide Republican politics away from “Tea Party” candidates. Earlier, we mentioned Neel Kashkari who will run against Gov. Brown in the November 2014 election. Kashkari was heavily supported by establishment Republicans against a Tea Party legislator whose candidacy against Brown, had he won the second spot, threatened to embarrass other Republican candidates, even outside California.