

Not Invited to the Party

James T. Bennett

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How the Demopublicans Have Rigged
the System and Left Independents
Out in the Cold

 Springer

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Acknowledgments

Politics, says the old adage, makes strange bedfellows, and this book is a testament to the truth in that claim. Surely, readers must be surprised (shocked may be a more appropriate word) to find a book with a Foreword by Ralph Nader, an activist well known for his liberal views and his advocacy of government regulation, and with an Afterword by William Redpath, Chairman of the Libertarian National Committee, whose views are at the opposite end of the political spectrum. When left and right, liberal and libertarian are in complete agreement on the same issue, something clearly is seriously wrong with the status quo that must be fixed. In this instance, the status quo involves the virtual exclusion of third parties and independent candidates from effective participation in elections for local, state, and federal offices. Governmental regulations have effectively guaranteed the dominance of the Demopublican duopoly in virtually every election. In 1968, when George Corley Wallace ran for president as a third-party candidate, he made a statement that I have long remembered – “there’s not a dime’s worth of difference” between Democrats and Republicans. Arguably, history has more often than not proved Wallace correct: thus this book.

I am grateful to many for their assistance with and support of the research and editing of this work. The research would not have been possible without the generous financial support of the Sunmark Foundation and help from the Locke Institute. Research assistance was provided by Steven M. Davis. I also owe profuse thanks to my editor, Bill Kauffman, for I am indebted to him for significant contributions to this study.

Finally, I must express my unbounded gratitude to my wonderful wife of more than 40 years, Sally, to whom I dedicate this book. Only a saint could have put up with my ranting and raving about politics and economics (and life in general) for more than four decades. Equally important, she has never

read any book that I have written, and that for me is a true blessing – the last thing that I want to do after work is to come home and debate my views and defend my work. Sally is the inspiration for much of what I do well and is blameless for the rest. If only every husband were so lucky, the world would be a much happier place.

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Foreword

I wrote my first article on ballot access obstacles to small political starts and candidates in 1959 for the *Harvard Law Record*. Little did I anticipate that 50 years later the political bigotry, the Jim Crow-type laws against a competitive electoral process, and the shared monopoly of the Republican and Democratic duopoly would be more obstructive and more deeply ingrained than ever in our history. The intolerant legal and political systems and practices continue to intensify. The grotesque word “spoiler” continues to be applied to dissenters, even though dissent is the mother of assent over time, even though the cash register political rackets themselves are the ones spoiled to the core.

Nor did I anticipate personally experiencing the relentless obstructions of wildly varying state laws with their numbing ambiguities, and even county tripwires, through three presidential campaigns in 2000, 2004, and 2008. As my campaign manager in the first two, Theresa Amato, recounts in her recent book, *Grand Illusion*, the daily drumbeat of these choreographed impediments with all their short deadlines, phony lawsuits, harassments, and their drain on time and resources must be engaged in order to demonstrate more fully this tragic mockery of democratic elections.

“Freedom,” wrote Marcus Cicero, “is participation in power.” That is what voters are supposed to be doing when they participate in elections. The transgression of voter rights in so many ways recalls some of the struggle of the civil rights movement. Still, there are new violations and confusions to replace the racist laws of the past. Even accurately counting the votes has become a many-sided challenge in numerous jurisdictions. Yet, fundamental to voter rights are candidate rights to be on the ballot and to compete fairly by offering more choices, differing agendas, and broader debates.

While voter rights often command media, scholarship, and intensive public controversies involving the major parties, comparable questions affecting

smaller parties and independent candidates remain largely in the shadows with the repressed and excluded crying in the wilderness. However, those who do stay the course inside the manipulated electoral arena are documenting the tyranny, winning some cases in court, and providing the necessary pulses for an ascendant public recognition of how valuable a function they could perform in an otherwise converging two-party dominance.

Speaking around the country for the Nader/Gonzalez 2008 presidential ticket, I discussed major, often majority-supported, redirections that Senators McCain and Obama either ignored or opposed. These included full Medicare for all; an inflation-adjusted minimum wage from 1968; subordination of fossil and nuclear fuels energy to energy conservation and solar and geothermal energy; crackdown on corporate crime, fraud, and abuse; an end to corporate welfare and corporate personhood; military withdrawals from Iraq and Afghanistan; addressing forthrightly the two-state solution for the Israeli–Palestinian conflict; an end to civil liberties violations post-9/11; and an adherence to constitutional checks and balances, due process, and habeas corpus. Also argued was the impeaching of Bush and Cheney; a carbon and derivatives speculation tax; helping to reduce taxes on labor; cutting the bloated, wasteful military budget; and several procedural ways to advance the empowerment of voters, candidates, consumers, taxpayers, and workers through the “facilities of democracy.”

None of these important subjects was raised or discussed on the three presidential debate stages occupied only by McCain and Obama.

The above considerations are reason enough to welcome the entry of a powerful new voice and scholar – Professor James T. Bennett – into this rising protest against the exclusion and silencing of candidates other than those identified as Republicans and Democrats. In his historically and analytically informative book, *Not Invited to the Party: How the Demopublicans Have Rigged the System and Left Independents Out in the Cold*, driven by an empirically based moral indignation, Professor Bennett guides the engrossed reader through the history of how the cartelized duopoly obstructs small starts. But renewal comes primarily from small starts given a chance to compete. The crushing of competitors by the two-party duopoly, if it occurred in the marketplace, would lead to indictment and conviction under the antitrust laws. Without entrepreneurs in the marketplace or seeds in nature, neither would be revitalized. Instead, there would be decay or stagnation, as there is year after year in the theatre of politics. Our country will never know, for the most part, the great talent, integrity, and electoral commitment of Americans who were deterred or blocked from attaining,

in Lincoln's words, "a new birth of freedom" for "a government of the people, by the people and for the people."

Not Invited to the Party starts with the Founders' deep skepticism and dread over the prospect of political parties controlling the Republic. Even the Federalists or Republicans were, in historian Richard Hofstadter's words, "men who looked upon parties as sores on the body politic." As with the word "corporation," the words "political parties" are not once mentioned in our Constitution. Yet, these two extra constitutional forces control our nation's political economy.

To his credit, Professor Bennett – an informed libertarian and economist – provides an astute analysis of concentrating power, starting with the adoption of the Australian ballot in the late nineteenth century and how subsequent statist absorptions of the electoral process – in the name of reform – served to cartelize the country's politics as a "Democrat–Republican duopoly." The symbiosis between this cartel and state authority tightens with each passing decade – garnished by a closed system of political debates and taxpayer subsidies that reach all the way to the two parties' national conventions. Imagine, if you will, Congress deemed these predictable outcomes of the conventions and their extravagant corporate hospitality soirees "educational" enough to make you pay over \$30 million for them every four years.

So averse to competition are the Republicans and the Democrats that they go to great lengths to gerrymander one or the other from any prospect of contention. At the congressional and state legislative levels, one-party domination prevails beyond anything seen in the early decades of our country. And, once again, the big parties use governmental authority to install authoritarian controls that deny voters choice. After all, an election implies a contest, and a contest implies at least two viable contestants. Instead, over 90% of the voters for the House of Representatives are confronted with a coronation – for the incumbent.

James Bennett shows that all these restrictions on voter choice and candidates' rights keep getting worse compared to our nation's earlier history, when small parties paved the way against slavery, the denial of women's right to vote, and labor, farmer, and minority needs, so that they share more in the power and benefits of the land. His next to last chapter sobers any vestige of political jingoism by showing how other western countries surpass us in providing for a more fluid and competitive politics.

There is much to ponder in this book. It makes one wonder just how the voters, given the ultimatum that only one of two candidates – if that – can

win the elections – can ever escape their chattled desire to vote for “winners” while they – the people – keep losing.

It also makes one wonder about the insidious genius of a straight-jacketed electoral system that leads otherwise intelligent people to vigorously oppose smaller candidates they largely agree with because of the winner-take-all, least-worst syndrome. Because this attitude has no discernible breaking point, it becomes a trap that regularly prevents them from utilizing even a pre-election political lever on a variety of issues over their intransigent least-worst choice.

This wonder argues for the widest readership of this book and should attract many Americans who want to escape the two-party trap and break out of their leg irons and handcuffs into a world of free and imaginative possibilities for our presently demeaned politics.

Washington, DC

Ralph Nader
Public Citizen

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Chapter I

The Issue

Few institutions in America are held in such uniformly and consistently low esteem as our political parties. Opinion polls show that Americans regard the parties as less trustworthy than used car salesmen, union officials – even lawyers. (Yes, lawyers!) The parties are thought to be corrupt, unprincipled, and interested only in achieving and maintaining power, not in “the public good,” whatever that amorphous concept may be. They are, in short, despised.

Yet, when we speak of “parties” in America, we are really talking about only two parties: the Democrats and the Republicans. The former have their roots in Thomas Jefferson’s Democratic-Republican Party of the early republic; the latter grew in the mid-1850s from the remains of the Whig, Anti-Masonic, Liberty, and Free Soil parties. The very recitation of those Republican forerunners suggests the tumultuous and colorful history of the early party system. The Whigs were distinguished by their sponsorship of the “American System” of Henry Clay, which envisioned government support of internal improvements (roads, canals, waterways) and a national bank as a means to economic growth. The Anti-Masonic Party, on which so many Republican strategists cut their eyeteeth, stood for an end to secret societies and for openness in government. The Liberty Party was abolitionist; it saw slavery as the great stain on the American escutcheon, and sought to erase that stain by emancipating African slaves. The Free Soil Party combined a determination to stop the spread of slavery into the western territories with a plan to encourage the settlement of those western lands by free farmers who would form the backbone of frontier society.

These parties were fueled by ideas, by passions, by visions of what America could and should be. They were not perfect, of course: the Whigs

were cautious to a fault, avoiding the issue of slavery as futilely as a man might avoid the 900-pound gorilla romping through his trophy room, smashing everything in sight. “The Whig Party died of too much respectability and not enough people,” said Edward Stafford, a Mississippi Republican newspaper editor.¹ The Anti-Masons, born in the furor surrounding the apparent murder of an apostate member of the Masonic Order who had threatened to go public with the fraternity’s secrets, were too narrowly focused on a specific historic incident to retain any kind of long-term relevancy. The Liberty Party was perhaps too radical: abolition seemed too great a step into the unknown to most voters in the 1840s. And the Free Soil Party was too sectional, too tied to New England and the Northwest to generate the nationwide appeal necessary for a national party. But despite these weaknesses, these inevitable flaws, the parties stood for something. What a contrast they make with the Democrats and Republicans of our day. And what is more, those parties waned and waxed, fought and won and lost, in what was a relatively free marketplace of ideas and politics. They had unobstructed access to the ballot: indeed, any party could and did run candidates, without having to jump through hoops or beg the favor of the ruling party. They operated without public subsidy, as did their opponents: none of the parties even dreamt of having their conventions, their candidates, and their campaigns financed by the federal treasury.

Today, of course, the spectrum of political opinion is forcibly channeled into two government-sponsored, government-protected national parties, the Democrats and the Republicans. They constitute a duopoly – that is, a situation in which economic or (in this case) political power is lodged in only two actors. These actors use every means at their disposal, first and foremost the coercive and financial powers of the state, to forbid or punish competitors. Our duopoly has succeeded in suffocating debate, striking dumb other voices, and reducing a once-vibrant arena of political discussion and argumentation to the anemic, lifeless, contentless politics we have today.

In *Not Invited to the Party*, I examine the history and array of laws, regulations, subsidies, and programs that benefit the major parties and discourage even the possibility of a challenge to the Democrat–Republican duopoly. The book synthesizes political science, economics, and American history in a manner that is frankly generalist.

The Founders – supreme generalists – distrusted political parties. Nowhere in the Constitution are parties mentioned, much less given legal protection or privilege. As historian Richard Hofstadter has written, “the creators of the first American party system on both sides, Federalists and Republicans, were men

who looked on parties as sores on the body politic.”² And yet the sores festered, despite the warning of John Adams that “a division of the republic into two great parties . . . is to be dreaded as the greatest political evil.”³

This book explores how the Democrats and Republicans, who by the end of the Civil War were established as the two major parties, guaranteed their continued dominance by means to which the Founders would have objected with the greatest vigor. For instance, I explore the seldom-visited history of how the two parties fortified their positions through such reforms as the Australian ballot, which transferred the design of the ballot from private political parties to the government. The widespread adoption in the 1890s of the Australian ballot gave the dominant parties an opening through which they could suppress challengers. This led, in short order, to ballot access laws, bans on cross-endorsements, and other artificial boosts to the Democratic and Republican parties.

Over the years, the Democrats and Republicans in the states became very skilled at devising a truly ingenious array of regulations and restrictions that keep competitors off the ballot and present voters with Tweedledum-Tweedledee choices.

In time, a range of methods developed to protect the duopoly: ballot access laws, restrictions on strategic activities often used by minor parties, and even direct subsidies to the parties. Most critically in modern times, the Federal Election Campaign Act (FECA) of 1971 (as amended in 1974 and 1976), which was sold to the public as an act of good government reformism that only the most hopelessly corrupt politico or deep-pocketed lobbyist could object to, actually reinforced the dominance of the two parties. By placing strict limits on campaign contributions, subsidizing the Democratic and Republican conventions, and filling the tills of major party candidates, FECA further protected the two-party system – despite that system’s obvious lack of any constitutional mandate. The parties have become almost unassailable, thanks in large part to the subsidies and protections offered them by the government – subsidies and protections, it should be noted, that are written into law by Democratic and Republican legislators.

The Federal Election Campaign Act of 1974 was a frank and blatant subsidy of the major parties, whose campaigns and conventions are now federally subsidized upfront. Third parties, meanwhile, are eligible for subsidy – but only if they attracted more than 5% of the vote in the previous election. Insurgents get relative pittance, but they must obey the FECA limits on individual and Political Action Committee (PAC) contributions,

leading three leading scholars of American party politics to write that “The FECA is a major party protection act.”⁴

In the concluding chapter, I examine what might happen if the government withdrew from the field, neither subsidizing nor prohibiting a wide variety of political parties and activities. The political scientist Theodore Lowi has said: “One of the best-kept secrets in American politics is that the two-party system has long been brain dead – kept alive by support systems like state electoral laws that protect the established parties from rivals and by Federal subsidies and so-called campaign reform. The two-party system would collapse in an instant if the tubes were pulled and the IV’s were cut.”⁵ Now wouldn’t *that* be interesting?

The wave of anti-party alienation seems to crest every 20 years or so. It last swept over the shorelines of American politics in 1990–1992, culminating in the Perot campaign, and we seem to be on the verge of something similar. If nothing else, the Iraq War, supported as it has been by both parties, has revealed the essential sameness of the two wings of the duopoly.

Establishment pundits (such as David Broder of the *Washington Post*) explicitly support subsidization of the two-party system as a necessary condition of American republicanism – despite the admonitions of the Founders against the spirit of party and faction. Third parties are consistently demeaned and derided in the mainstream media – witness the mockery of such figures as Perot and former Minnesota Governor Jesse Ventura – while the eminences of the Republican and Democratic parties are treated with wholly undue respect. A rather odd figure like Al Gore, raised in a Washington hotel, a pompous recycler of environmentalist clichés, wins Nobel Prizes and Academy Awards; a much more substantial man of the regulation-happy left, consumer activist Ralph Nader, who, whatever his faults and misconceptions about capitalism, has actually thought hard about American democracy and put forth propositions worth debating – is reviled by the establishment that formerly revered him, and all because he had the temerity to challenge the duopoly.

The two-party system has become a sacred cow against which no one in respectable Washington breathes a word of criticism – but in the sticks, voters are sick and tired of the duopoly. Their restlessness, their unhappiness with the status quo, is not a sign of immaturity or unsophistication, as establishment theorists would have it. Instead, it is evidence that the philosophical assumptions of the American Founders and the spirit of the American revolutionaries of 1776 are not dead. They may be latent, they may be underground, they may not be visible on the six o’clock news, but they are not dead.

Political scientists and good government types are aware of the general contempt for the duopoly. They can see the evidence every election day, when so many Americans stay home, declining to exercise what they are incessantly told is the precious right of voting. The response from too many academics is the proposal of ridiculous gimmicks (lotteries, direct payments to voters) to boost turnout. How about presenting us with more choices instead?

Rather than relying on Rube Goldberg schemes, the simplest and most effective reform would be to abolish the many hidden and not-so-hidden subsidies that keep the two-party system alive. The two parties have rigged and benefitted from the system for so long that few observers even bother to complain, and few voters even notice. Observing – noticing – and informing the reader just how we got here and what we might do get out of this mess is the purpose of this book.

Notes

1. Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York: Oxford University Press, 1999), p. 951.
2. Richard Hofstadter, *The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780–1840* (Berkeley: University of California Press, 1969), p. 2.
3. John Adams to Jonathan Jackson, October 2, 1780, *Works of John Adams, Second President of the United States, with a Life of the Author*, edited by Charles Francis Adams, Vol. 9 (Boston: Little, Brown, 1854), p. 511.
4. Steven J. Rosenstone, Roy L. Behr, and Edward H. Lazarus, *Third Parties in America: Citizen Response to Major Party Failure* (Princeton, NJ: Princeton University Press, 1984, second edition), p. 26.
5. Theodore J. Lowi, “Toward a More Responsible Three-Party System: Deregulating American Democracy,” in *The State of the Parties: The Changing Role of Contemporary American Parties*, fourth edition, edited by John C. Green and Rick Farmer (Lanham, MD: Rowman & Littlefield, 2003), p. 354.

Chapter 2

The American Suspicion of Parties

The political scientist E.E. Schattschneider, whose seminal work *Party Government* (1942) set the terms of scholarly debate for decades, defined the beast: “A political party is an organized attempt to get control of the government.”¹ There is nothing pretty or glossed-up in this definition. There is no high-minded rumble-bumble about American ideals or liberty or justice. Reduced to its essentials, the party is merely an instrument in the naked scramble for raw power.

For this reason, those earliest and most sagacious political scientists, the Founding Fathers, did not put their faith or trust in political parties. In fact, they spurned them as inimical to republican liberty. They agreed with the satirist Jonathan Swift, who remarked: “Party is the madness of many, for the gain of the few.”²

On June 2, 1787, as the Constitutional Convention was just beginning its summer-long labor in Philadelphia, Benjamin Franklin, venerated delegate from Pennsylvania, rose to speak. Or, rather, to have someone speak for him, for as James Madison records, “being very sensible of the effect of age on his memory, he had been unwilling to trust to that for the observations [he wished to make] . . . and had reduced them to writing, that he might with the permission of the Committee, read instead of speaking them.” His Pennsylvania colleague, James Wilson, offered to read the paper for Franklin, and the doctor accepted.

Franklin said very little over the course of the convention, so his rare remarks reflected his greatest concerns. And among these concerns was party, or, in the parlance of that time, faction. Men, Franklin told the convention, are powerfully motivated by “ambition and avarice; the love of power, and the love of money.”

Unite these – as is the case in prominent positions in government – and the “struggles for them are the true sources of all those factions which are perpetually dividing the Nation, distracting its councils, hurrying sometimes into fruitless & mischievous wars, and often compelling a submission to dishonorable terms of peace.”

The typical men who seek such positions “will not be the wise and moderate, the lovers of peace and good order, the men fittest for the trust. It will be the bold and the violent, the men of strong passions and indefatigable activity in their selfish pursuits. These will thrust themselves into your Government and be your rulers.”

The instrumentality which they will use to achieve rulership will be party. Their unseemly arena will be “the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters.”³

Franklin’s was not a lonely voice. The men who drew up the Constitution were not party hacks. They weren’t even party loyalists, or party members. But they were acting in a long tradition of anti-party thought.

It’s not that these early republicans valued unanimity of thought or uniformity of philosophy; no, they desired a rich, full, robust exchange of ideas and debate, from tavern halls to the halls of Congress. But why, they wondered, must this debate be channeled through parties, which are organizations dedicated not to truth or liberty or the common good but rather to seizing, holding, consolidating, and extending political power.

They had been anticipated by John Trenchard and Thomas Gordon, English libertarian authors of the influential *Cato’s Letters*, which historian Clinton Rossiter called “the most popular, quotable, esteemed source of political ideas in the colonial period.”⁴ *Cato’s Letters* had been read avidly in the colonies since 1720; they were incisive, trenchant, and a major carrier of the ideas of liberty throughout America.

On the subject of parties, Trenchard and Gordon were merciless: “How apt Parties are to err in the Choice of their Leaders: How little they regard Truth and Morality, when in Competition with Party. The terrible Consequences of all this; worthy Men decried and persecuted; worthless and wicked Men popular and preferred; Liberty oppressed and expiring.”⁵

“Tis worth no Man’s Time to serve a Party, unless he can now and then get good Jobs by it,” as Cato quoted Lord Chancellor William Cowper. Party business was for abject hacks, squalid opportunists, men who had no principles other than a willingness to climb the slimy pole of self-advancement.

Of party leaders the authors of *Cato’s Letters* said, “They all professed to have in View only the Publick Good; yet every one shewed he only meant his own;

and all the while the great as well as little Mob . . . contended as fiercely for their Leaders, as if their Happiness or Misery depended on the Face, the Cloaths, or Title of the Persons who robbed and betrayed them.”⁶

The followers of these leaders were pathetic indeed: they were “the Tools and Instruments of Knaves and Pick-pockets.”⁷

The American colonists read this. It accorded with their instincts, with the evidence of their own senses, with what they had heard from the Old World and even seen in the colonial governments. They were not eager to import this foul system into the New World.

Parties are “extralegal”⁸; that is, their existence was not prescribed (or proscribed) by the writers of the Constitution. The Framers in Philadelphia never mentioned Democrats, Republicans, Whigs, Federalists, Libertarians, Greens, or Anti-Masons. In the careful notes that Virginia delegate James Madison kept at the Philadelphia convention, there is no evidence that political parties were ever contemplated. The governmental structure that these men created was to be filled by regular elections, but nowhere in the Constitution or the convention in which it was composed is there so much as a jot or tittle that authorizes parties. The candidates who would run for the offices established in the Constitution were to be, presumably, men (and later women) of standing in their communities. They would present themselves for election, standing on character and general principles, and the voters would make their decision. The middleman – the party – was not necessary. It certainly was not provided for in the founding document.

The *Federalist Papers*, those classic short essays in which James Madison, Alexander Hamilton, and John Jay explained the Constitution to their countrymen, are filled with warnings of the danger of “faction,” that is, the tendency of public men to divide into sects or groups that are based on self-aggrandizement and the pursuit of power rather than the general good of the community. (In the late eighteenth century, *faction* and *party* were synonyms.) These factions were probably inevitable, for as Madison wrote in *Federalist 10*, “The latent causes of faction are thus sown in the nature of man.”⁹ The Constitution of which Madison was the chief, though certainly not the sole, author sought to curb the baneful effects of faction through a system of widely distributed powers and checks and balances. It did not propose a role for parties in curbing faction; indeed, parties were viewed warily as a probable source of factiousness, for as Madison wrote, “the public good is disregarded in the conflicts of rival parties.”¹⁰

Yet contrary to the expressed wishes of the drafters and defenders of the Constitution, parties arose. As the historian Richard Hofstadter wrote in *The*

Idea of a Party System (1969), the Founders “did not believe in political parties as such, scorned those that they were conscious of as historical models, had a keen terror of party spirit and its evil consequences, and yet, almost as soon as their national government was in operation, found it necessary to establish parties.” This is the paradox of early American politics. As Hofstadter writes, “the creators of the first American party system on both sides, Federalists and Republicans, were men who looked upon parties as sores on the body politic.”¹¹

George Washington, for instance, despaired that independent-minded Americans were subordinating their own good sense to the demands of party loyalty. The historian of the Founding Era Gordon Wood writes of Washington: “In this new democratic era of party politics, he said, ‘personal influence,’ distinctions of character, no longer mattered. If the members of the Jeffersonian Republican party ‘set up a broomstick’ as candidate and called it ‘a true son of Liberty’ or ‘a Democrat’ or ‘any other epithet that will suit their purpose,’ it still would ‘command their votes in toto!’ But even worse, the same was true of the Federalists. Party spirit now ruled all, and people voted only for their party candidate.”¹²

This complaint was picked up by Washington’s successor in the executive branch, John Adams, who said that party “wrought an entire metamorphosis of the human character. It destroyed all sense and understanding, all equity and humanity, all memory and regard to truth, all virtue, honor, decorum, and veracity.”¹³ Like Madison, Adams was resigned to the existence of parties. They must be firmly controlled, however, and not permitted to plunder the treasury.

Adams was not at the Constitutional Convention and so cannot bear any responsibility (or credit) for the extraordinary accomplishment in Philadelphia, but the system itself is in some sense the father of the duopoly. Or rather the system as it developed. For a fairly large body of evidence suggests that the first cause of the bifurcation of American politics into two parties was the single-member district system. In fact, Hofstadter writes that “The American two-party system is the direct consequence of the American election system, or system of representation.”¹⁴

The Constitution apportions representation to the states on the basis of population: as ratified, it provided that “the number of representatives shall not exceed one for every thirty thousand” in population. It does not, however, dictate how those representatives shall be chosen, leaving that up to the states in Article I, Section 4: “The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof;

but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.”

In the early republic, states and districts therein elected U.S. representatives by different methods. The myth of the single-member district election had yet to take hold. Some districts sent multiple representatives to Washington. “The first five federal apportionment laws (1792–1832) simply prescribed the specific numbers of representatives for each state,”¹⁵ writes Stephen Calabrese of the Department of Government and International Affairs of the University of South Florida. Various electoral systems were used to select U.S. House members over the first half-century of the American Republic: the single-member district elections we know today; statewide elections of multimember delegations; multimember elections in discrete districts within a state; and a combination of the aforementioned. In the first Congress, every state selected at least part of its delegation in multimember districts. The method that eventually became the accepted – or rather mandated – standard helped to determine the number of serious political parties that would compete in American elections.

Multimember districts were part and parcel of the legacy of British democracy. Knights and burgesses of the British past were elected in pairs or triplets. This began as a pragmatic measure; as Maurice Klain of Western Reserve University wrote in his classic 1955 study of multimember legislative districts, “In the thirteenth century roads to London were lonely, rough, and bandit-ridden – two or three men would afford each other company and protection.”

The American colonists were often represented by multimember delegations from a single district, as was the case with the Virginia House of Burgesses. “Multiple districts were the rule, single ones the exception,” writes Klain.¹⁶

In 1842, according to Tory Mast of the Center for Voting and Democracy, “six states were electing representatives at-large and twenty-two states were electing representatives by single-member district.” The other three had but one representative.

At-large elections were sharply restricted by the Apportionment Act of 1842, which set the size of the House at 233 members and required that congressmen be elected in single-member districts. The law directed that members of the House “be elected by districts composed of contiguous territory equal in numbers to the number of representatives to which said state may be entitled, no one district electing more than one representative.”¹⁷ This would seem to encroach on the Constitution’s grant of such authority to the states, a point that President John Tyler made, but the measure passed anyway. Single-member districts would,

in theory, produce representatives who embodied the best qualities of the district, whereas statewide at-large elections merely sent party-line slates of candidates to Washington, sometimes depriving whole sections of a state of effective representation.

The 1842 law ruled out anything other than single-member districts, but a number of states – Georgia, Mississippi, New Hampshire, Missouri – simply ignored it, going right on electing members at-large. The House, after some discussion, seated the members thus elected, and for the next 125 years a handful of states continued to elect persons to the U.S. House of Representatives by methods other than the single-district election.

At-large elections for Congress were finally and fully banned in 1967. The putative reason was protection of the rights of African Americans. This was part of the wave of civil rights legislation, because elections other than single-member were seen as one way that Southern states might dilute minority representation. The fact that only Hawaii and New Mexico, states with negligible black populations, held at-large elections in 1966 did not make an impression on the legislators. A more potent reason for the law's passage was suggested by Tory Mast: Many members were concerned that the courts might order at-large elections in states with intractable redistricting problems, and "such elections could have threatened the position of incumbents whose district seats were considered safe for re-election."¹⁸

Why does it matter to parties whether congressmen are elected in single districts or multimember districts?

American voters, at least in congressional races, now cast a single vote for a single candidate. The candidate who wins a plurality of votes within the district is that district's sole congressional representative. This "first past the post" system is simple to understand and easy to administer. But it has the stifling effect of funneling political energies into a two-party system. In a system in which several representatives are elected from each district, a rational voter may well cast her vote for a long-shot candidate or a candidate from a minor party, since that candidate may well come in third or fourth or in a position high enough to win a seat. In a single-member district, the voter is discouraged from "wasting" a vote on a long shot. If she wishes for her "vote to count" – and this is largely an illusion, given the current 635,000-member congressional districts – she will vote for one of the two top candidates: in practice, a Democrat or Republican.

The single-member congressional district, which is nowhere mandated in the Constitution but has been adopted by all of the states, is a bulwark of the two-party system. The link between method of election and number of parties is so strong, so incontrovertible, that political science has endowed it