

Struggle for Power and Control: Constitution and Party

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“Democracy substitutes election by the incompetent many for appointment by the corrupt few.”

George Bernard Shaw
Maxims for Revolutionists

Introduction

The scope of this paper requires a lengthy introduction to prepare the reader for the main argument, and to weave together a number of sub-themes that follow. Unfortunately, and unavoidably, these sub-themes cannot be fully addressed in a paper this size. This overview is intended to place them in the context of the main theme so that, even with cursory treatment, each sub-theme may contribute to an understanding of the whole. Political processes seldom lend themselves to limpid analysis, yet that is no excuse for failing to clearly articulate an argument. My argument is simple: the two-party system has an inherent tendency to undermine republican liberty, and to preclude the selection of effective leaders. That may seem like an outrageous claim, but the following outline forms the basis for making it.

When the Constitution of the United States was being framed by the Founding Fathers, there was strong sentiment that power emanating from a single source was the material cause of tyranny. Power should therefore be divided; and the more divisions that existed, the better it would be. This, of course, was the origin of the separation of powers, and the checks and balances system. In seeming contradiction to this view of the need to decentralize power, factions were themselves despised. This was because they were not viewed as destroying unity. Instead, they were viewed as aggregators (unifiers) of opposition. While a case could be made that they lead both to disunity and to centralization, there is a relative and subtle distinction between these two functions of factionalism.

Individualism was a cherished attribute in revolutionary times in America. Deism was widespread, with its myriad expressions of faith, and its denial of both revelation and the absolute authority of the Church. It was an atomistic philosophy which virtually assured no two individuals would ever completely agree on the method best suited to worshipping God. Each man was his own priest; righteousness was a matter of individual judgement. It was a bottom-up instead of top-down form of religion.

In this same way, government was to be operated by a disconcerted process in which individual voters and statesmen made their *own* judgements about civil matters. The framework, the very structure of the government itself, would provide the necessary cohesion to an otherwise chaotic process. And it would provide a means by which to reconcile and implement the disparate judgements of its participants. In such a context, however, factions destroy those individual judgements, and they impair structural unity, by suppressing individual motivations and desires within the factional group as a whole. Factions aggregate power in structures outside those which are provided for and governed by the Constitution.

Factions eventually developed into full-fledged party systems and appear to have naturally limited themselves to two in number. Whether or not this has indeed been a natural development is important in determining if the intent of the Constitution has been vitiated. The intent, as we see it, was to control excesses of government power in order to provide the American people with freedom. It was not merely to ensure they could lead a peaceful and protected life, but to have a vital role in determining their own destiny. And here the essential word to introduce is *participation*. Does the two-party system effectively limit the freedom of the individual to participate in their own government? If so, then it conflicts with the intent of the Constitution. Therefore, some alternative system would need to be created, or there would have to be the same kinds of constraints placed on parties as exist within the Constitution.

Parties, though, are not inherently evil things that should be outlawed. Neither is the two-party system inherently evil. What we are concerned with here is the legitimization of the party system. That is, we are concerned with the institutionalization *in law* of the party structure, and the subsequent regulatory

provisions that control it. There seems to be no practical way to stop the rise of factions, because men of like inclinations and purposes tend to gravitate towards one another. It is not this right of association or its extra-legal organization that has the power to control access to the political sphere. What it controls is access to its own leadership positions. It is when this organization attains positions of power in the government, and uses these positions to entrench itself and disenfranchise its opponents, doing so by the power of law, that that we find the Constitution has been subverted, and freedom has become a mockery.

There are two paths to political power in the United States: one is by subservience to the Democratic Party, and the other is by subservience to the Republican party. Even those who exert great economic power must gain access to political power through one or both of these parties. If the desire to lead exists in an individual, if the drive, courage, and ability are present in him, he must still be acceptable to one of the two parties that can put him into office. If the parties truly represented the broad spectrum of the American people there could be no objection. But the electorate is generally not active in a party. Only about four percent of the populace ever really becomes involved in politics.¹ The rest either identify with the parties, or they contribute money to them so that they will *not* have to become involved actively. The institutionalization of the party system has been a major factor in making it unnecessary for the general populace either to take an interest in the workings of their own government, or to actively participate in it.

The reasons for this may be found in the aggregatory nature of parties (nearly all spheres of power find a voice in one or the other of the major parties), and in the fact that through the process by which candidates are selected, the electorate is relegated to ratifying the choices already made by the party. Third-parties and alternative candidates are doomed to defeat by law, and by 200 years of indoctrinating the voters to accept the two-party system. Even the extensive “independent” camp is restrained to one of three choices: vote Republican, vote Democrat, or abstain from voting at all. Any other vote cannot win at the polls, and therefore it would be a wasted vote. It benefits one or the other of the two major parties.

The activities at the polls are also an aspect of the antipathy between political parties and the Constitution. Who may vote, i.e. suffrage or franchise, depends on the registration laws of the state in which the election takes place. And these, since the nation began, have been written by the members of the party or parties in power. While this provides stability, it may not allow for change; nor does it allow for the pursuit of happiness by the very people whom the government seeks to benefit. This is because the government denies them a voice and a role in its operation apart from their party affiliation. The disenfranchised may be protected and provided for, but the right of everyone to hold the reigns of his own life in his own hands is destroyed. His political efficacy, and his personal control, is channeled through a party mold that erases his individual needs in favor of the needs of the many.

As if this weren't enough, the party structure and party function are both geared to winning elections – not to administering the government. Once in power, parties turn government into a campaign platform. The quality of leadership declines in inverse proportion to the breadth of the public appeal the party has. When a candidate must be acceptable to many varied and competing interests in society, his greatest assets are his mediocrity and his inoffensiveness, not his leadership ability nor his foresight, nor his understanding of the problems before him. He becomes a mediator in the tradition of the chairman of the board, rather than an executive in the tradition of the company president. This might be for the better were it not for the fact that almost from the time he takes office, he is running for re-election; or he is helping other party members to run for their own re-election. The party demands this of its members. It is a sign of loyalty.

The purpose of a republic as distinct from a broad-based democracy, is to avoid the tyranny of the majority, and to diminish the drive of the majority to fill their bellies at the public trough. We choose educated, reasoned, visionary leaders with a sense of civic duty and responsibility, and then we put ourselves in their hands. If one fails us, we remove him from power and try another. But the two-party system instead ensures that we select the least offensive, least visionary among us, and then we turn

¹ Alfred de Grazia, *Politics for Better or Worse* (Glenview, 1973), pp. 136-138

them into puppets of the party. The actual positions of power arise in the background of the unregulated party organization, where Constitutional constraints cannot bind them. The public display of power by elected officials becomes mere window-dressing. The only thing that keeps us from becoming an authoritarian state is the opposition of the other party. But that is not enough to keep us from becoming an aristocracy – even the middle class who make it into office are placed there by a party machine that is dominated by those with economic power. Getting elected is an expensive proposition, and it cannot be achieved without substantial party backing. Political power therefore feeds on economic power. And conversely, economic power determines and influences those with political power. The goal in election reform is not to restrict the power of the elite, but to expand the power of the rest. In a republic, that power is expressed through effective participation in the election process. If parties restrain that power by restricting access, then they must be curbed, or the American experiment is over.

There is a leadership vacuum in the United States. How we recruit our leadership (the elite) depends almost exclusively on our political party system. How that elite responds to the needs of the electorate depends on the election process. That in turn has developed under the party system. The control of government by the electorate is the primary concern of the Constitution. When that control goes awry, it is not unreasonable to look to the party system for the causes. To re-institute popular control (if that were desirable) no amount of structural change, no legal or Constitutional modifications, will aid us in the effort unless the structure and not just the procedure by which the leadership is chosen is also changed. Allowing everyone to vote while restricting who may run and what issues may be directly voted on is not freedom in any sense of the word. The party becomes a mechanism by which a relative minority may consolidate the voting power of a majority along party lines. The majority loses the right to govern itself by default. Neither the time nor the money to participate in either government or party is available to them, much less the requisite education and skills.²

Where the intent of the Constitution is to break up power, and to keep it divided, so that sovereignty ultimately resides in the people, the function of the party system, when embedded in law, becomes an *institutional* adversary to that intent. This is because it seeks to overcome the disunity of power that the Constitution demands. It becomes a *practical* adversary because it controls access to the political corridors of power through a largely unregulated party system. This then is our major theme.

This is not to say that there is a conspiracy to control the nation by some small, unknown group of men sitting in smoke-filled rooms, or behind corporate desks on Wall Street. Yet, where the reigns of control are numbered, over so vast and diverse a society as the United States, there is an invitation to tyranny, whether overt or covert, explicit or implicit. The possibility exists.

Were that this state of affairs was intentional. But it would appear that history and happenstance have created a system of government and party that is no more perfect than any preceding it. It is inescapably flawed to a fault. And we hope to show that the system is in need of revamping. In its present form, the controlling minority is as much a slave to the whims of the faceless majority as it is a keeper of the latter's estate. It accedes to the majority's whims for the sake of re-election and at the cost of good judgement. It is a government up for sale to the highest bidder. Such appeasement is as reprehensible in a free society as mob rule would be. The leaders and the led have become slaves to one another.

² Ibid.

Then none was for a party;
Then all were for the state;
Then the great man helped the poor,
And the poor man loved the great.

Thomas Babington MacCaulay,
Lays of Ancient Rome, xxxii

The term party will be employed to designate an associative type of social relationship, membership in which rests on formally free recruitment. The end to which its activity is devoted is to secure power within a corporate group for its leaders in order to attain ideal or material advantages for its active members... By definition, a party can exist only within a corporate group, in order to influence its policy or gain control of it.

Max Weber

The Main Argument

Edmund Burke observed that “party divisions, whether on the whole operating for good or evil, are things inseparable from free government,”³ and by 1798 Thomas Jefferson was in complete agreement: “In every free and deliberating society, there must ... be opposite parties, and violent dissensions and discords; and one of these, for the most part, must prevail over the other for a longer or shorter time.”⁴ Madison, too, was resigned to their existence. He wrote in Federalist No. 10 that the most common source of factions is the various and unequal distribution of income which gives rise to debtors and creditors, landed interests, moneyed interests, and mercantile and manufacturing interests. Man’s reason, being fallible, gives rise to different opinions which also produces factions. “The latent causes of faction are thus sown in the nature of man.”⁵ We must admit of their necessity, then.

However, in the last century and a half, party has come to refer “to that paramount private association that is *privileged* to compete for control of a government.”⁶ This “privilege” has basically been brought about by the rise of the two-party system and its subsequent enfranchisement in law. The Founding Fathers had not envisioned this development, but they did have the foresight to provide for at least nominal protection against what Madison had called “majority factions.”

Richard Hofstadter describes the origins of this protective effort thus: in battling the royal governors, the American colonists found that organization that united rather than divided the assemblies secured for them the desired legislation. The mode they used was that of the disciplined caucusing group. After the Revolution, however, when the need for organization was not so great, the consequent increase in factions was seen as an alarming disorder by many respectable men, among them, Madison and Washington. Hofstadter attributes the source of this “political pluralism” to the extant religious freedom in America, especially as espoused by Protestantism with its many varied sects.⁷

³ J. Gould and W. L. Kolb, eds., *A Dictionary of the Social Sciences* (New York, 1964), pp. 482-483

⁴ *Ibid.*

⁵ James Madison, “The Size and Variety of the Union as a Check on Faction,” *The Federalist*, ed. B. F. Wright (Cambridge, 1972) p. 131

⁶ *Ibid.*

⁷ Richard Hofstadter, “A Constitution against Parties” in *Political Parties in American History 1789-1829*, ed. W. E. A. Bernhard (New York, 1973), I, 38.

Madison equated party and faction, pejoratively defining faction as,

a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.⁸

Acknowledging that factions are in the nature of man, that their causes cannot be eliminated without destroying either man's liberty or his individuality, Madison still felt that in the end the effects of faction could be controlled, and this could be accomplished in two basic ways. First, prevent a majority from acquiring the same passions or interests, and second, if failing in this, ensure that the majority cannot implement its desires by concerted action. The former would result from the sheer size of the country and the variety of interests that would be represented. The latter would be provided by a federal republic.⁹

In the Constitutional Convention the central issue for the Founding Fathers was liberty versus power; power tends to encroach on liberty. The basic challenge was how to check power without weakening the government to the point of instability. The Fathers felt that checks on power had to be an integral part of the constitutional structure itself. They had little faith that party competition, as a political process, would suffice as a check, even if party structures were to be institutionalized. Parties were seen as antipathetic to constitutional checks and balances by their tendency to mobilize too much force for one limited interest. "The Fathers hoped to create not a system of party government under a constitution; but rather a constitutional government that would check and control parties."¹⁰

Madison and Hamilton, the spokesmen for the new Constitution, had emphasized that enveloping coalitions were adversaries of freedom. In Federalist number 47, Madison wrote,

The accumulation of powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.¹¹

For this reason, the branches were separated and checks and balances between them were created. The Congress is checked by the existence of two houses, by Presidential veto, and by judicial review. The President is checked by the right of Congress to appropriate funds, over-ride his veto, and to impeach him; by the Senate to approve his treaties and certain appointments; and by judicial review. The judiciary is checked by Presidential appointment of judges and by the congressional power to impeach and to determine the size and appellate jurisdiction of the courts.¹² To overcome these obstacles, a majority faction would need two thirds of the votes in Congress, the President's consent, and the support of a majority of the justices on the court. Considering that the terms of office for each are different, this is a virtual impossibility.

But if all three branches are composed of only two groups of interest, if those two groups have only nominal differences (as is often charged), and all minority group members must either conform to the party majority to gain access to office, or deal only with party members who already hold office, then we must assume that there is a tacit tyranny in government that operates without direction and yet maintains an active role in limiting access to government.

⁸ Madison, p. 130

⁹ Ibid., pp. 131-133

¹⁰ Hofstadter, p. 42

¹¹ A. Hamilton, and others, No. 47, *The Federalist* (Cambridge, 1972), p. 336.

¹² Daniel R. Grant, "The Government of the United States," in *Government and Politics*, eds. J. Wahlke and A. Dragnich (New York, 1966), p. 81.

Alternatively, Hofstadter wonders if any room has been left in Madison's model for forming a majority sufficiently effective to govern at all. Madison shows too little fear of minority tyranny and destruction by virtue of superior wealth, organization, and influence. In practical application, and as if to contradict his own philosophy, Madison's party, the Republicans, already controlled the Executive and Legislative branches, while the opposition resided in the Judiciary. Unsatisfied, the party then sought to control that branch also. Wasn't this the tyranny of the majority that Madison had so vehemently opposed? Or was it simply an expeditious method, asks Hofstadter, to achieve desired goals?¹³ To which we might reply, if we had wanted expediency, we would have had a king. Hofstadter is too enamoured with the extension of the voting franchise and the development of a powerful central government. Historians tend to idolize power and organization, denigrating power when it is diffused. Parties remedied the "deficiency" in Madison's model, Hofstadter tells us. They became,

essential vehicles to convey man's loyalties to the State under a central government that often seemed rather distant and abstract. So much so that we may say that it was the parties that rescued this constitution against parties and made it a working instrument of government.¹⁴

Interestingly, social pluralism made itself effective within each of the two major parties, rather than creating a plurality among parties, as Madison had thought.

In our politics, each majority party has become a compound, a hodgepodge, of various and conflicting interests; and the imperatives of party struggle, the quest for victory and for offices, have forced the parties themselves to undertake the business of conciliation and compromise among such interests.¹⁵

According to Winfred Bernhard, "the primary function of parties is to control the inevitable struggle for power in politics and to moderate the clashes."¹⁶ This was to have been a governmental function. If minority factions must accommodate their interests to the majority will, before giving input to the government, then the input ceases to be effective. As a consequence, alternative interest groups are created which compete with parties for the affections and loyalties of the office holders, while simultaneously seeking to influence the parties themselves. While being unable to compete with majority interests within the party, these minority interests seek to control a smaller and more manageable group of party leaders and government representatives. This 'corruption' is inherent in the system.

In number 51, Madison wrote, "in a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects."¹⁷ Whether this multiplicity has been eliminated by the merger of the many into a corporate whole is a difficult thing to assess. It falls into two related parts as previously mentioned: the rise of the two-party system itself, and its later enfranchisement in law. First, the rise of two major parties will be discussed.

...the Constitution, by focusing more attention on nationwide issues, and indeed by itself first becoming a nationwide issue, became a major force, perhaps the major force, in creating two great parties.¹⁸

Arthur Macmahon concludes that the two-party division was, in part, "induced by the existence of two major complexes of interest in the country."¹⁹ These antedated even the adoption of the Constitution

¹³ Hofstadter, p. 50.

¹⁴ Ibid., p. 54.

¹⁵ Ibid., p. 55.

¹⁶ Winfred E. A. Bernhard, "Commentary," in *Political Parties in American History 1789-1829* (New York, 1973), I, 4.

¹⁷ Hamilton, and others, p. 358.

¹⁸ Hofstadter, p. 55.

and represented “a cleavage between agriculture and the interests of the mercantile and financial community.”²⁰ Hofstadter points out that in the thirteen colonies there had been thirty-one different parties. These were reduced to two major parties by 1790, he says, largely because of the issue of federal versus state power. V. O. Key Jr. emphasizes three major causes of dualism:

These included 1) the accidents of history that produced dual divisions on great issues at critical points in our history (as mentioned), 2) the consequences of our institutional forms [e.g. single-member districts, plurality elections, and a winner-take-all presidential election], and 3) the clustering of popular opinions around a point of central consensus rather than their bi-polarization [i.e. the notable lack of extremists and irreconcilable factions].²¹

In a study by Jaros and Mason, it was learned that those individuals who feel little civic obligation and suffer from anomie and alienation are most apt to select a demagogue regardless of the strength of the party symbols (e.g. civil rights, limited government, etc.).²² This represents a surrender of responsibility to the group and its leadership, and it confirms a well-known condition of collective behavior. Ralph Turner has noted that “collective behavior occurs only... when the established organization ceases to afford direction, and supply channels for action.”²³ If the major parties resulted from accelerated collective behavior, then we may assume that there was a lack of channels for action in the government. Other conditions inducing this type of collective behavior or party formation would include conflicting values and norms, a breakdown in mechanisms of social control, social deprivation (e.g. poverty, discrimination, religious persecution, defeat in war, and unemployment) and normlessness.²⁴ These were the very conditions that predominated in the early 19th century in America, and continued to predominate right up through the Industrial Revolution. This is the theoretical basis of the party system in America and possibly the cause of the movement for expanded suffrage.

Mr. Key observes that “human institutions have an impressive capacity to perpetuate themselves...”²⁵ How political institutions do it is a fascinating study that, in itself, provides a less theoretical source for the two-party system. It is noted that “parties recruit leaders, educate the electorate and even organize governments; but the state organizes elections.”²⁶ The distinctions between the party and the state functions blur noticeably when only two major parties compose the state; the capacity for self-perpetuation in this case is very impressive indeed. “To assert that party organization reflects the structure of political opportunities is not to deny that parties in turn affect the opportunity structure.”²⁷ Once in control, a party is able to manipulate the machinery of access, to “lock the door behind it.” The political pragmatists plied their trade well in the early stages of party development in search of job security, but it seems that only the dualistic system itself became firmly entrenched while the individual parties have come and gone (at least until the post-Civil War period when enfranchisement began). This of course is not to deny that the remnants of the defunct parties were absorbed by the new coalitions. Self-perpetuation began in a philosophical dispute between two contraposed factions.

The two major groups that first emerged were the Federalists and the anti-Federalists. They were spawned in the Constitutional convention of 1787 from a conflict over how strong the central government

¹⁹ V. O. Key, Jr., *Politics, Parties, and Pressure Groups* (New York, 1964), p. 208

²⁰ *Ibid.*

²¹ *Ibid.*, pp. 207-210.

²² Dean Jaros and Gene Mason, “Party Choice and Support for Demagogues,” in *The American Political Process*, ed. D. L. Smith and L. W. Garrison (Santa Barbara, 1972).

²³ Ralph Turner, *Handbook of Modern Sociology*, ed. R. Faris (Chicago, 1964), p. 392.

²⁴ David Popenoe, *Sociology* (New York, 1971), pp. 509-511.

²⁵ Key, p. 207.

²⁶ Joseph A. Schlesinger, “Political Parties,” *International Encyclopedia of the Social Sciences*, 1968, II, 430.

²⁷ *Ibid.*

should be.²⁸ These two camps eventually became the rallying points for the diverse interests that Madison spoke of and laid the foundations of the two-party system. We might venture to say that the groups represented the conservatives and the liberals respectively, and that this was the major distinction between each party dyad that followed.²⁹

To illustrate the rapid development of duo-partisan politics, during the party formation period of 1790-1796 non-party voting in the House of Representatives declined from 42 percent to 7 percent. Joseph Charles, with some lack of perspective, attributes this and the rise of Jeffersonian Republicans to the Jay Treaty which, he says, made Jefferson a leader, altered party alignments, and close party ranks. He does tell us that party conflict at this point was not based on principle, as we might have hoped, but was a struggle between two groups in pursuit of power.³⁰ Charles may be referring to Burke's distinction between "a generous contention for power" and "the mean and interested struggle for place and emolument." We find, with chagrin, that the latter is the more documented facet of American political history.³¹

Under Jefferson's leadership the Republicans became an "acceptable" political group. By the 1820's parties were democratically oriented, highly organized, and professionally directed groups;³² and by 1828 professional politicians like the notorious Thurlow Tweed were able to take full advantage of the system laid down by the gentry of the preceding generation.

On all sides, politicians had learned a lesson from Federalist experience that would not be forgotten: in party competition, survival demanded that one should not assume a haughty anti-popular stance, that one should not scorn the arts of party organization and management, or fail to keep up with any new technique of popular suasion that might become available.³³

It was a new creed – a new pledge of allegiance. The Argus newspaper of the Albany Regency wrote in 1825,

We hold it principle that every man should sacrifice his own private opinions and feelings to the good of his party – and the man who will not do it is unworthy to be supported by a party, for any post of honor or profit.³⁴

"Personal careers, like personal views, were to be sacrificed to the common interest."³⁵ A dramatic example occurred in 1824 when seventeen party members put their careers on the line by voting down a popular electoral bill that would have allowed voter selection of presidential electors on a general ticket. Here we see the effect of the party on legislative action and how it inhibits the "aggregate interests of the community." The party is a self-protected unit.

²⁸ William N. Chambers, "Parties and Nation-building in America," in *Political Parties in American History 1789-1828*, ed. W. E. A. Bernhard (New York, 1973), I, 8.

²⁹ See Dolbeare and Dolbeare, *American Ideologies*, (Chicago, Markham Publishing Company, 1971) for an excellent contrast analysis of the Liberal versus Conservative ideologies.

³⁰ Joseph Charles, "The Jay Treaty: Origins of the American Party System," in *The American Political Process*, ed. D. L. Smith and L. W. Garrison (Santa Barbara, 1972).

³¹ Arthur M. Schlesinger, "Introduction," *History of United States Political Parties* (New York, 1973), I, xxxiv.

³² Bernhard, p. 2.

³³ Richard Hofstadter, *The Idea of a Party System* (Los Angeles, 1970), p. 210.

³⁴ *Ibid.*

³⁵ *Ibid.*, p. 245.

Taft, too, subordinated party reform to his need for Southern votes in the 1912 nominating convention.³⁶ He commented,

Without parties, popular government would be absolutely impossible. In a party, those who join it, if they would make it effective, must surrender their personal predilections on matters comparatively of less importance in order to accomplish the good which united action on the most important principles at issue secures.³⁷

We are talking here of the attractions parties hold for political activists only. The appeal for the general electorate is qualitatively different. It illustrates the dichotomy that exists between the active and passive party members. Arthur M. Schlesinger aptly points out that, "if the task of the first party system had been the achievement of nationhood, the task of the second was the broadening of representation in and access to the political process; it was the task of democratization."³⁸ It was also the task to offset the narrow but powerful interests of the one party with the broad-based power of the other through expanded suffrage.

In a study by Althoff and Patterson of activism in a rural community, we can see the qualitative difference in the dichotomy. It was found that the majority of voters hold long-standing party preferences by a type of "brand-name loyalty." They vote for a particular party because they have always voted for it. Campaigns reinforce the pre-existing attitudes rather than create new converts (shifts do occur, but out of a rejection of the traditional party rather than a preference for another). In addition, it was discovered that "party loyalty is in all probability the most powerful force in determining the behavior of office-holders."³⁹ To the general electorate then, party voting is simply a habit, while to the office-holders it is an apparent obligation, at least in rural cities.

Among other reasons, the partisan nature of *election* officials and this sense of party obligation has led to many abuses of election procedure.⁴⁰ Early attempts at election reform, however, never mention political parties, or even acknowledge their existence. Nor would any legislation until after the Civil War. In New Jersey's case, the year was 1866. This is significant because up until this point the trend of a two-party system had been an unsanctioned, informal development. With the New Jersey legislation, the party system would be embodied, or more accurately, embedded in law, with all the corresponding privileges and protections of a government-based entity. Thus, New Jersey will serve as our model to examine the trend toward formal enfranchisement of the party system.

Following the Civil War, the voting procedures that had been used in New Jersey since 1839 were found to be inadequate. There had been a rapid increase in population, a massive influx of immigrants, expansion of urban centers (feeding the competition between mercantile and farming interests), and increased intensity in the strife between the parties. All of these were reasons to seek change. Three major innovations arose: uniform election districts, bipartisan election boards, and a registration system.

In 1866, parties were mentioned in law for the first time when the Republicans suggested that voter registration should be changed to ensure that only qualified citizens would be casting their ballots. The Democrats were strongly opposed, apparently sensing that putting a stop to their use of "floaters and

³⁶ Bruce L. Clayton, "An Intellectual on Politics," in *The American Political Process*, eds. D. L. Smith and L. W. Garrison (Santa Barbara, 1972).

³⁷ William Howard Taft, *Messages and Papers of the Presidents* (New York, 1912), XV, p. 7405.

³⁸ A. Schlesinger, xxxvi.

³⁹ P. Althoff and S. C. Patterson, "Political Activism in a Rural City," in *The American Political Process*, ed. D. L. Smith and L. W. Garrison (Santa Barbara, 1972).

⁴⁰ Richard P. McCormick, "New Jersey's First Congressional Election, 1789: A Case Study in Political Skulduggery," in *Political Parties in American History 1789-1828*, ed. W. E. A. Bernhard (New York, 1973), I, 74.

repeaters” would cut into their support.⁴¹ In 1890, the *Werts Ballot Reform Law* was passed, which dramatically altered the political process in the state of New Jersey. Through this law “only official ballots, prepared at public expense under the direction of the city clerk were used.” Lots of fifty or more ballots could be purchased in advance, at cost, by any qualified voter. Party workers naturally bought them and distributed them to their constituents who took them to the polls to cast them legally.⁴² We may assume that they had been dutifully marked by the party workers to “help” the voters make their choices.

The introduction of the official ballot necessitated the establishment of a formal procedure for nominating candidates. Any convention of delegates, or nominating body of a political party, was entitled to select candidates whose names would be included in the ballot.⁴³ It then became necessary to define a political party, so that election officials would have a legal standard to determine which of several lists of nominees would be printed on the ballot, and to fix the nominating procedure for parties.⁴⁴ New Jersey defined a political party this way:

An organized body of voters that had polled at least five percent of the votes in the division for which the nomination was made at the previous state election. Thus the Prohibition Party, for example, might be a ‘party’ in one county and not in another.⁴⁵

The constitutionality of the act was challenged on the grounds that the requirement that an official ballot be used unduly limited a person’s freedom in voting, and it compelled him to vote under a party title or designation. The New Jersey Supreme Court upheld the act in *Ransom v. Black* 54 NJ 446. It was their decision that the right to vote, as secured by the constitution, is subject to any reasonable legislative regulation for the purpose of securing an enforced secrecy of the ballot. The clause restricting parties to those groups polling a given percentage of the votes in the previous election is also a valid regulation to restrain the number of ballots to be printed and distributed within reasonable limits. The potential candidate may present a petition in substitution for the party restriction, and so he is not entirely bound by it anyway. The right of the voter to erase the names of all the candidates on the ticket renders the party heading on the ballot meaningless; i.e. it would not bind the voter’s freedom to write in non-party candidates on the ballot. If this were not true, the judge says, then the voter’s constitutional rights would indeed be violated, and his suffrage would be practically denied.⁴⁶ Curiously, no one challenged the judges to recuse themselves on the grounds that they were members of a major political party.

The nominating process favored the two-party system and disadvantaged third parties. V. O. Key enumerates the reasons why this is true:

1. The power of the election board is such that it may decide which names will or will not go on a ballot, and may dismiss anti-organization candidates’ petitions on technical grounds if it so desires.
2. By raising the percentage of votes in the previous election that is required to keep a party candidate on the ballot, third parties may easily be eliminated by incumbent parties.
3. Even where petitions may be used to place a candidate’s name on the ballot, the number of signatures required may frustrate third parties. In Illinois it had been required to obtain 25,000 signatures including 200 registered voters in each of 50 counties.

⁴¹ Richard P. McCormick, *History of Voting in New Jersey 1664-1911* (New Brunswick, 1953), p. 146.

⁴² *Ibid.*, p. 178.

⁴³ *Ibid.*, p. 179.

⁴⁴ Key, p. 641.

⁴⁵ McCormick, p. 180.

⁴⁶ See Appendix A

4. The arrangement of names on the ballot itself may influence the outcome of the election, encouraging either straight party voting or splitting the ticket (choosing candidates from different parties).⁴⁷

In New Jersey, separate ballots for each party made split ticket voting or independent voting difficult and unlikely.⁴⁸ The electorate began to complain “that the voter on election day was presented merely with a choice between two sets of candidates selected by bosses or machines that were not properly responsible to the people.”⁴⁹ The primary selection that had been used by the parties for years now came under state scrutiny. Primary reform went through three phases:

1. honesty in the election of delegates to the party convention
2. substitution of a direct primary for the convention itself, and
3. the use of a primary to choose party committees in addition to the candidates for office.⁵⁰

As Frank R. Kent wrote in *The Great Game of Politics* in 1923,

Primaries are really the key to politics... they are the exclusive gate through which all party candidates must pass... So long as the machine controls the primaries, it is in a position to limit the choice of the voters in the general election to its choice in the primaries... The only place a machine can be beaten is in the primaries...⁵¹

The practical aspects of “beating the machine” are encountered at the lower levels of the party in the district or precinct elections. The electing power of the party is strongest at the polls where the incumbent majority group has extensive control, as we will see from Mr. Kent’s continued examination of the election process.

The election precinct is the smallest political division. It contains an average of 600 voters. The precinct executive is the smallest unit in the party machine, or “structure” to be less critical. If the precinct is divided evenly between the major parties, there are approximately 250 members of each party; the rest are independents or minority parties. Only about 125 members will vote, and therefore only 65 are needed for a safe majority in any primary fight.⁵²

The members of the election board and all the judges and all the judges and clerks are appointed by the majority party. The governor receives the recommendations from the county and city committees and invariably appoints them to the board. The election board receives recommendations from the party executives in each ward for judges and clerks. These names are received from the precinct captains. The judges (like the election boards) generally consist of two from the party in power and one from the opposing party.

Returning to the 65 votes, the precinct captain “has his own votes, plus those of his wife, brothers and sisters and their spouses, his parents and a few aunts and uncles... At a minimum he should control five votes. If his is the party in power, he gets to select two judges and a clerk. If each can ‘deliver’ five votes, that is a total of twenty.”⁵³ Frequently he selects the site of the polling place which is rented at a substantial sum by the election board. The precinct captain recommends a location whose owner can deliver five votes. He also hires “runners” to help get out the vote by driving people to the polls, and telephoning party regulars to come down and vote. Each is good for influencing his own family and

⁴⁷ Key, pp. 641-642.

⁴⁸ McCormick, p. 181.

⁴⁹ Ibid., p. 190.

⁵⁰ Ibid., pp. 189-191.

⁵¹ Robert A. Liston, *Politics from Precinct to Presidency* (New York, 1968), p. 41.

⁵² Ibid., pp. 41-42.

⁵³ Ibid., pp. 43-44

friends. Then there are those, of course, who owe the captain favors...⁵⁴ Sixty-five votes are easy to obtain for the incumbent party. It's built into the system. But at what cost?

I agree to this Constitution with all its faults, if they are such; because I think a general government necessary for us, and there is no form of government but what may be a blessing to the people if well administered, and believe farther that this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other.

Benjamin Franklin

On the closing day of the Federal Convention of 1787

A democracy cannot exist as a permanent form of government. It can only exist until the voters discover that they can vote themselves money from the Public Treasury. From that moment on, the majority always votes for the candidates promising the most benefits from the Public Treasury with a result that a democracy always collapses over loose fiscal policy always followed by dictatorship. The average age of the world's greatest civilizations has been 200 years. These nations have progressed through the following sequence:

From Bondage to Spiritual Faith

From Spiritual Faith to Great Courage

From Courage to Liberty

From Liberty to Abundance

From Abundance to Selfishness

From Selfishness to Complacency

From Complacency to Apathy

From Apathy to Dependency

From Dependency back into Bondage

Alexander Tytler,

18th century Scottish historian,
Decline and Fall of the Athenian Republic.

⁵⁴ Loc. cit.

Conclusion

The elective suffrage is not guaranteed by the Constitution; it is a franchise granted by law, and subject to qualification by the law. This paper is not directly about either suffrage or the elective franchise. It is about a power struggle that has been going on in America for two hundred years. It asks, "Does an elective franchise, embedded in law and sustained by its incumbents, undermine the very liberty that it was intended to protect, and prevent the selection of the best and the brightest?" It's a fox in the hen-house question.

We began with three basic propositions:

1. Parties are unavoidable
2. Access to an elective office is generally limited to members of major political parties, and
3. This limitation results from the nature of a two-party system, and its enfranchisement in law.

We then sought to find out what the original intent of the Founding Fathers was in structuring the Constitution the way they did. We found that it was to check political parties. They considered factions or parties to be the source of a power struggle. Parties were to be checked by,

1. maintaining a multiplicity of competing interest groups, and
2. by structuring the government in such a way as to prevent the accumulation of executive, legislative, and judicial power in one majority faction.

We grant that the likelihood of this accumulation is slight. However, in the first check, the multiplicity of interests has been muffled by the absorption of the various interests into major coalitions. In the second check on power, we developed two major factions which reach across all three of the separated powers, alternating with each other as the majority faction.

We then postulated that if both parties are alike because they have to make similar appeals to gain majority support from the electorate, then access to government positions is limited to dealing with either the party, or an office-holder who is a party member. In these two ways, the original intent to limit the impact of factions has been unsuccessful.

Richard Hofstadter offers an alternative postulate. He agrees that the original intent was to check parties, but that the failure to do so was to the benefit of the nation. It made the Constitution workable. He emphasizes that unity is vital, and parties perform a unifying function. Through this unity, minority tyranny is overcome while multiplicity is still maintained within the party. Parties compromise conflict within themselves so as to limit conflict within the government, which promotes stability.

We pointed out that access for minority interests is limited to the party whereby their goals become compromised and subject to majority approval. Seeking to discover if this was an attempt to silence minorities, we asked the question, "How did the two-party system arise?" We presented the theoretical causes, the practical causes (self-perpetuation), its origins, and its development. And then we saw a dichotomy emerge between 'them' (the voters) and 'us' (the party), each with its passions and interests. Conflict between them led to reform movements in an attempt to end the dichotomy. These in turn led to inter-party conflicts as each major party struggled for domination and the spoils. Law itself, used by partisan politicians, became a source of injustice, excluding competing factions and driving them into one or the other of the two major parties where they were assimilated and dissolved into the whole. The law was used to maintain the status quo of the dominant party.

At this point, we stopped abruptly, because the conflict continues between 'them' and 'us,' and between the two major parties. Another study would be necessary to discover the nature and extent of the legal constraints that have been placed on the parties to ensure they remain democratic and accountable. Without that study, we are not prepared to offer alternatives or

modifications to the two-party system. If Hofstadter is correct about the benefits of party, and if the constraints on them are sufficient to preserve their accountability, then it remains necessary to explicitly identify the purpose of party, the means it may use to foster leadership, and the safeguards that are necessary to preserve our democratic liberty within a two-party system. There must be safeguards because there is an inherent drive in the two-party system to bridge the gaps between the separated powers. Tyranny strives to consolidate those powers under one head. Safeguards may help to ensure that we don't replace government rule by representatives with what must be described as extra-governmental rule by party.⁵⁵

What we are able to conclude from this brief study is that the intent of the Constitution is to break up power, thereby reserving control of government to the people. This in great part is defeated by political parties, and more extensively, by the two-party system. Under that system, the sovereignty of the people is no longer exercised even second-hand through a representative government. It is exercised third-hand using political parties to intercede between the people and their representatives.

If dealing with political parties was an optional affair, then we might simply say that it is the people who are at fault. We might say they have abdicated their liberty and placed it in the hands of a third party willingly. But parties are legal entities now, and they sit in judgement over any proposals to change them. Alternative political parties are virtually doomed to defeat, not merely by chance and lack of popularity, but by legal acts effected by incumbent major parties, as V. O. Key has clearly demonstrated. This is not an abdication of liberty, nor is it our willing surrender to a third party; it is the consequence of public ignorance about the nature, process, and practices of American politics, and party politics in particular.

We must conclude that our freedom to choose representatives has been compromised and restricted by the party system. Our freedom to be independent of mass groups and factional control has been lost. Our representatives' fidelity to us as the electorate has been usurped by the party to which they belong, and to which they have sworn their loyalty. Both the government and the parties have somehow failed to instill in the people the will and the capacity to govern themselves, as Thomas Jefferson two hundred years ago had hoped they would do. Neither public education nor the media have been able to encourage and sustain the original American passion for liberty, independence, and limited governance. If anything, these institutions have been co-opted by the same forces of consolidation to which the political parties have fallen victim. On the bright side, we have a relatively smooth-running government, if not efficient, which has become the envy of the world. But whether this Leviathan⁵⁶ has slipped its leash is a matter for another day.

⁵⁵ We could write a law whereby no party may control all three branches of government. That solves the factional aspect of the dilemma; but it does not address the *inter-party* conflict that hamstring the government any time executive and legislative branches are controlled by opposing parties. But it may not matter. Even when a single party occupies all three branches, *intra-party* conflict has the same effect as voters splitting their ticket. Party loyalty is fractious. Our problems are far more basic than parties. Thanks to JM Keynes, FD Roosevelt, and John Dewey, Government is now perceived by the American people as an agent for good instead of a necessary evil. It is the public trough at which all may drink without guilt or hesitation. We use government legislatures and courts, and even private insurance companies, to steal from our neighbors, giving no thought to the inevitable impact on our own liberties. How can we hope to restore an eighteenth century ideal of American government when our people are no longer capable of it? I think the day Benjamin Franklin once feared has come upon us (p. 13). WHG - 3/1/2007

⁵⁶ Thomas Hobbes, *The Leviathan*, 1651.