



The Only-Two-Party System: Why Third Parties Are Unconstitutional

Richard A. McFarlane

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In the United States of America, third political parties are unconstitutional. "Unconstitutional" does not mean illegal or even extralegal. "Unconstitutional" means incompatible with the governmental structure created by the Constitution of 1787, as amended and interpreted. "Third political parties" means any group, however organized, which seeks to influence public policy primarily by nominating, campaigning for, and electing candidates to public office, especially to the Presidency and Congress, other than the two major parties, currently and since 1854 the Democratic Party and the Republican Party. This definition does not include any group which seeks to influence public policy by other means, such as circulating petitions, raising money, endorsing candidates nominated by one party or the other, bringing litigation, demonstrating, and so forth. Chapter Two explains that there is an unwritten American constitution which parallels and supplements the document drafted in 1787 at Philadelphia. When a constitution does not explicitly define important elements, traditions, customs, precedents and past practices fill the gaps. The unwritten parts of the United States Constitution make more than two political parties than two unconstitutional. Third parties are unconstitutional because the structure of the government created by the Constitution, specifically the presidential system (Chapter Three) together with the apportionment of legislators in geographically-defined, single-seat constituencies at both the State and Federal levels (Chapter Four) and American political tradition does not allow any political party other than the two major parties — whether Democrats and Republicans, or Democratic-Republicans and Federalists — any space in which to function. This is why a third party has never elected its candidate to the presidency, nor is one ever likely to do so. This is why third parties may occasionally elect a few members to Congress, but they are politically insignificant. Narrow single-issue, or fringe parties such as the Greenback Party or the Populist Party of the late nineteenth century (Chapter Five) or factions of one of the two major parties such as the Progressive Party of Theodore Roosevelt in 1912 or the American Independent Party of George Wallace in 1968 (Chapter Six) have appeared from time to time. There are a few doctrinal parties (Chapter Seven) but these parties have placed themselves outside the political mainstream and have no political space in which to operate. Third parties may have some influence in bringing certain issues to the attention of the major parties, or occasionally taking just enough votes from one major-party candidate to ensure the election of the other, but this is their limit. They may elect a few members of Congress, but these Senators or Representatives are essentially captives of the two major parties. They may vote for or against any bills introduced in Congress, they may even introduce a bill or two into Congress, but, unlike the junior partners of a parliamentary coalition, cannot demand their priorities be taken seriously. Democracy exists at the political center and to the extent the two major political parties who occupy this space are willing to negotiate and compromise their differences in the interests of the "public good" and "getting things done," two parties work well. Unfortunately, as the two major parties push farther to the extremes, and are less and less willing to negotiate and compromise, democracy is put at risk (Chapter Eight). Further, under even the best circumstances, the two-party system leaves about half of Americans unrepresented in Congress or the state legislatures. Absent a general constitutional revision, which is unlikely and probably undesirable, there is very little chance the only-two-party system will change so long as the President remains independent of Congress (Chapter Nine).

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