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**Multiparty Politics in America**

Edited by

**PAUL S. HERRNSON**

and

**JOHN C. GREEN**
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Barriers to Minor Party Success and Prospects for Change

Diana Dwyre and Robin Kolodny

The chapters in this volume have given us a sense of how minor parties develop, their current role in the American political system, and how contemporary minor parties plan to address the future. Here we focus on changes that would help minor parties become viable in the United States, and then assess the potential for such changes. We will consider three kinds of barriers to minor party success: cultural biases against minor parties in the electorate; legal obstacles, such as ballot access laws and the structure of elections; and institutional hurdles, such as campaign finance regulations and the lack of media exposure. We conclude that few such changes are likely in the short run, although some modest ones are possible, and they could have significant long-term effects.

Cultural Biases

Scholars have long noted the powerful cultural supports for the two-party system in the United States, which are discussed throughout this book. Thus it is worth asking: Would Americans support minor parties, let alone a multiparty system, even if legal and institutional barriers were removed? Advocates of “multipartyism,” such as Kay Lawson (chapter 3) and Richard Winger (chapter 11), answer this question in the affirmative. If minor parties were allowed to compete on an even playing field, they argue, public opinion would eventually become more sympathetic. Other scholars are skeptical of this assertion, including Paul Herrnson (chapter 1) and John Bibby (chapter 4), arguing that the American party system is largely appreciated on its merits, notwithstanding the legal and institutional biases in its favor. There are at least three sources of cultural bias against minor parties. The first
element is the way that Americans define democracy. Central to this
definition is the notion of majority rule. Specifically, the American
electoral system is based on single-member plurality districts with first-
past-the-post winners, which discourages candidates who cannot defeat
all other opponents from engaging in electoral politics. Thus, to over-
come a basic bias in favor of the present system will require Americans
to accept alternative definitions of democracy and majority rule, such
as proportional representation, multicandidate districts, a parliamen-
tary system of national government, and coalition governments. In-
deed, the necessity of such a redefinition lies at the heart of Lawson’s
argument in favor of a multiparty system.

The second element is more practical: most Americans recognize
the entrenchment of the two-party system, so they have a strong in-
centive to work within it. As a result, the two-party system manages some
political discontent reasonably well. The major parties are highly per-
meable and internally diverse, giving voters and organized interests an
opportunity to influence party platforms and the choice of candidates.
From this point of view, supporting minor parties is wasted effort and a
“wasted vote.” Thus, to overcome this practical bias will require
Americans to come to view the two-party system as unresponsive to
pressing problems or issues. In fact, the success of the system lies at
the heart of Bibby’s defense of the two-party system, while the possi-
bility of failure is the theme of David Broder’s essay that begins the
book.

The third element is political: Do minor parties offer plausible al-
ternatives? One of the paradoxes of public support for the two-party
system is that the same public appreciates many choices in other as-
pects of life. However, most Americans do not view minor party plat-
forms or candidates as realistic alternatives to the two major parties;
John Green and William Binning (chapter 5) and Christian Collet
(chapter 6) suggest why: minor parties tend to combine poor electoral
showings with extreme or narrowly focused agendas. As Robert
Spitzer shows in his review of the New York “multipart” system
(chapter 7), voters are more likely to support minor parties if they are
tied to major party candidates. Of course, minor parties can have a
major impact on the two-party system by raising new issues, mobiliz-
ing new groups of activists and voters, and putting stress on the major
parties, a point well illustrated by Herrnson’s review of the American
case and Robert Harmel’s consideration of the European situation
(chapter 2). Thus, to overcome this political bias will require Ameri-
cans to see minor parties as viable alternatives in their own right.

Legal Obstacles

Legal biases against minor parties in the United States are well known,
and this book documents them, especially in Lawson’s and Winger’s
chapters. Here we offer a summary of these problems and possible
remedies, including the legal definition of a party, voter registration,
bailout access, fusion, and the structure of electoral competition.

The Legal Definition of Party

Perhaps the most perplexing facet of the American political system
is the lack of a universal definition of legitimate political actors. There
is no one national policy regarding political parties. Instead, the defi-
nitions vary by state and by topic. As Winger illustrates, there are over
fifty separate definitions of political party for the purposes of ballot
access. Each state and the District of Columbia decide how average
citizens may engage in party activities through their voter registration
laws. They also decide what a political organization must do to attain
party status, to nominate candidates, and to retain a position on the
ballot. Many of these definitions are hostile to minor parties. The clos-
est thing to a national definition is found in federal campaign finance
regulations, such as the rules that stipulate which candidates receive
public money in the presidential race and what role parties can play in
the financing of congressional campaigns. These national definitions
are not particularly favorable to minor parties. Clearly, minor parties
would benefit from a more favorable and consistent definition of politi-
cal party across all governments and all activities.

Voter Registration

The closed nature of voter registration in many states often im-
pedes minor party success. A major problem is the requirement that
new parties collect signatures of registered party members in order to
appear on the ballot; that is, the signatures of voters registered to their
not-yet-existent party. Moreover, giving such support to minor parties
often precludes a citizen’s participation in other parties. For example,
a minor party in West Virginia seeking to acquire ballot position would
need to convince voters to sign a petition for their cause, which auto-
matically results in the surrender of their current party registration.

In order to vote in primary elections, many states require voters to
declare a party affiliation well in advance of primary election day.
While other states have no partisan registration (e.g., Missouri) or have
registration on election day (e.g., Illinois), many close registration to new voters or to changes in party affiliation weeks or months before election day. Although the new motor-voter law does make registration easier for citizens by allowing them to register to vote when they apply for a driver’s license, it does not change how party registration relates to ballot access or the flexibility citizens have in changing their party affiliation on or before election day. Amending “motor voter” to standardize nonpartisan or open registration across the fifty states would allow minor parties to gain more support from voters who are currently reluctant to give up their opportunity to vote in a major party primary.

**Ballot Access**

Ballot access laws in the fifty states are often formidable obstacles to minor party success. Simply put, party-nominated candidates have no chance of winning if their names do not appear on the ballot. Also, the U.S. Constitution provides for state governments, not the federal government, to set the time, place, and manner of elections. Some states have structured their conception of guaranteed ballot position to mean that only Democrats and Republicans will get on the ballot automatically each election year. Generally, any party whose candidates received a certain minimum number of votes statewide is spared from having to collect signatures or expend any other effort to remain on the ballot. North Dakota has actually codified the right to ballot position for Democrats and Republicans by name in their ballot access laws, thereby erecting extraordinary barriers for minor parties in that state. On the whole, minor parties must collect signatures, pay fees, and in many states identify individuals who have officially registered as minor party members. These burdens are extremely difficult for minor parties to overcome, as the case of Perot and numerous other candidates reveal. Despite these numerous obstacles, the number of minor party nominees below the presidential level continues to increase, as Collet finds.

In order for minor parties and their candidates to fully participate in American electoral politics, ballot access requirements need to be less daunting. First, the traditional measures of party support used to grant ballot position would have to be relaxed. States would have to require fewer signatures on ballot petitions, not require those who sign ballot petitions to be registered voters of the new or minor party, and reduce or eliminate filing fees. Second, the deadlines for filing ballot petitions should be relatively close to election day to give minor parties more time to organize. Finally, states would have to lower the thresholds currently in place to give political parties automatic ballot position once they have run candidates. Here again, uniformly favorable laws across the states would be desirable. Achieving such a standard would require persuading each state either to adopt less restrictive ballot access laws or to adopt a constitutional amendment to take the power to set the time, place, and manner of elections away from the states and invest it in the federal government. This, of course, would require the assent of thirty-eight state legislatures.

**Fusion**

Legalized fusion holds some promise for minor parties as well, a point well documented by Spitzer. Fusion allows a candidate to be the nominee of more than one party, thus appearing on multiple party ballots. Fusion is legal in just ten states, but only regularly employed in New York. Fusion tickets can make a difference in terms of outcomes (for example, the votes Ronald Reagan received on the Conservative party line helped him win New York in 1980). Fusion makes it easier for minor parties to realize some success because fusion tickets allow citizens to vote for a minor party without feeling they have wasted their vote.

The U.S. Supreme Court recently ruled on the legality of banning fusion in *Timmons et al. v. Twin Cities Area New Party* (1997). The defendant in the case, the New Party, claimed that a Minnesota law banning fusion tickets was a violation of the party’s First Amendment right of free association. The ban was declared unconstitutional by a U.S. appeals court and the state of Minnesota appealed to the Supreme Court. Minnesota’s assistant solicitor general argued that the state forbids fusion to prevent voter confusion and to guard against ballot manipulation. The high court overturned the appeals court decision, finding that Minnesota’s law against fusion was permissible, though they did not rule fusion itself unconstitutional. The ruling confirmed the right of states to regulate access to the ballot in ways that may discourage minor party participation.

**The Electoral System**

Scholars have long known that the nature of the American practice of single-member plurality elections discourages minor parties. By having only one winner in each of several hundred districts, minor parties have to garner a significant amount of support to make even a small dent in the composition of the national legislature. Perhaps more important, only one view (that of the plurality winner) gets represented in the government, often denying a majority (who did not support the
winner) its say. As Harnel and Lawson argue, the multiparty systems in Europe have very different election laws, usually with some form of proportional representation. Not surprisingly, some minor parties in the U.S. have endorsed proportional representation. A good example is the Green party (chapter 10), whose interest derives in part from the party's origins in European Green parties.

The anti-minor party effects of single-member plurality elections are compounded by the Electoral College. Presidents are not elected by popular vote, but are chosen by the Electoral College. Electoral College members are selected in each state based on the state's popular vote. The method of choosing electors is left up to the state. Currently, forty-eight states and the District of Columbia have adopted what are essentially single-member plurality elections: winner-take-all on the basis of a plurality of the vote. Maine and Nebraska have different systems. Maine, for example, has a mixed apportionment system in which the winner of each congressional district wins that district's elector and the winner of the statewide vote wins the two "senatorial" electors. However, election results in Maine have paralleled the winner-take-all system. This system discourages minor parties from seeking the presidency because they must defeat all others in a state to obtain any electoral votes. Major party candidate defeats have occurred when minor party or independent candidates have run strong regional campaigns, such as Strom Thurmond in 1948 and George Wallace in 1968. Had they won enough electoral votes to deny one major party candidate a majority of the Electoral College votes, their efforts could have forced the election into the House of Representatives. However, if a minor party has broad-based national support, even an impressive showing at the polls may produce no electors, such as with Ross Perot in 1992 and 1996.

To increase minor party influence, states could abandon the winner-take-all method of apportioning electoral votes in favor of some form of proportional representation. Even following the Maine system of apportioning electors by congressional district would allow minor party candidates a greater chance of success. If minor parties were to regularly win electors and the majority requirement to elect the president were maintained, they could influence the choice of president as part of a coalition, or send the election into the House of Representatives. In any event, almost any move away from single-member plurality elections to proportional representation would benefit minor parties.

Institutional Hurdles

In addition to legal obstacles, minor parties face severe hurdles in acquiring the resources and exposure to be effective in politics. Some of these hurdles are based in statutes, such as federal campaign finance laws, and others are based in custom, such as access to the media. We will consider two examples of these problems at the national level; there are no doubt countless more problems at the state and local levels.

Campaign Finance

The Federal Election Campaign Act (FECA) is a significant impediment to minor party success at the presidential level. First, the FECA encourages serious presidential candidates to pursue major party nominations through its system of matching funds in primaries and caucuses. Second, the FECA provides significant funding for the major party national nominating conventions and full public funding for major party candidates' general election campaigns (payable to those campaigns as soon as the nomination is made official). For these purposes, the FECA defines a major party as a political party whose candidate for the office of president in the preceding presidential election received, as a candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for president.

Third, the FECA treats minor parties differently from major parties. A minor party is defined as one whose candidate for president received between 5 and 25 percent of the presidential vote. Minor parties can receive some public financing. New minor parties can be reimbursed for individual contributions raised under FECA rules after the election if they receive 5 percent or more of the vote. In subsequent elections, minor parties and their presidential candidates can receive advance payments in proportion to the vote they received in the previous election (as Perot did in 1996). The FECA gives federal matching funds to any minor (or major) party candidate who raised at least $5,000 in amounts of $250 or less in twenty states. Minor parties are entitled to partial funding for their national nominating conventions and the general election based on their performance in the previous presidential election compared to that of the major parties. Minor party fund-raising is also subject to the same contribution limits as major parties, which can be a serious burden because minor parties usually have a smaller base of contributors from which to raise funds. After all, Perot's personal funds in 1992 and 1996 made the Reform party possible. To enjoy the benefits of such a patron, minor parties must operate outside of the FECA.

Unlike most of the legal obstacles discussed above, the FECA does provide some benefits to minor parties, but not on par with the major parties. A more level playing field could be established by expanding the definition of a minor party. For example, the standard could be
lowered to 2.5 percent of either the presidential vote or the aggregate congressional vote in a previous election (many European countries have thresholds of 1 percent or less). New parties could receive matching funds based on the number of congressional candidates they field, the number of contributors, or their strength in opinion polls. Along these lines, larger subsidies for party conventions and nomination efforts could be provided.

Finally, minor parties should not have to meet the demanding current requirements to attain national committee status. Recently, the Federal Election Commission (FEC) declared the organization designated by the Green party as its national committee to be “insufficiently active” to qualify as such. The definition of “national committee” is important because it determines how much money a party can raise from various sources. The FEC’s ruling forces the Green party to raise money in much smaller increments than the major parties, clearly putting the Greens at a disadvantage.

Media Exposure

A significant deterrent to minor party success is the lack of media attention. This problem applies to both “earned” and “paid” media. On the first count, journalists are inclined to report elections as events and therefore give more attention to the horse-race aspects of campaigns (e.g., poll results, candidate gaffes, negative ads) than to policy issues. This bias leads to heavier news coverage of well-established candidates, to the detriment of minor parties, and extends to media events, such as candidate debates and national conventions. Minor party candidates are routinely excluded from the debates, even when they are prominent (such as Perot in 1996), while their conventions are rarely covered at all. On the second count, the costs of the mass media are prohibitive for most minor party candidates and media outlets have been known to refuse to sell time even to well-heeled parties (which also happened to Perot in 1996).

The major criterion for most forms of media exposure is “electability,” which minor parties are hard-pressed to demonstrate. Of course, the electability standard can become a self-fulfilling prophecy, with lack of attention dooming minor parties to a poor finish. Several kinds of reforms might help minor parties gain exposure and thus become newsworthy. One idea would be to provide political parties and their candidates, including minor parties, with free broadcast time through communications vouchers and/or an “equal time” provision. Another idea would be to expand the number of party candidates normally included in the nationally televised presidential debates. Also, broadcasters could be required to provide coverage to all candidates on the ballot as a condition of holding a broadcast license, a sort of “public service programming” extended to political candidates. As with campaign finance, almost any change in this area would help minor parties.

Prospects for Change

Having identified a number of changes that would help make minor parties more successful, we now turn to the likelihood that they will be adopted in the near future. One can easily imagine three sources of change: pressure from within the major parties, the court system, and the ballot box. Each of these sources of change is likely to have the most effect, respectively, on the cultural biases, legal obstacles, and institutional hurdles that minor parties face. Given the magnitude of the challenge, we doubt that major changes will occur soon, but some modest alterations are possible, and they could have long-term repercussions.

Since the major parties control all governmental institutions, significant reforms are unlikely. Indeed, many of the barriers that minor parties face were deliberately erected by the major parties, and more could be created, particularly if minor parties became a threat. Thus, major changes, such as the substitution of proportional representation instead of single-member plurality elections, mandating that all states use proportional representation to allocate Electoral College votes, or the adoption of uniform ballot access laws, are very unlikely in the short run.

However, one should not completely count out the major parties as a source of change. For one thing, they have great opportunities for failure. In fact, it is major party failure that prompts most minor party activity in the first place. The more dramatic the failure, the larger the potential changes. The most significant impact of major party failure is the erosion of cultural biases in favor of the two-party system. There is nothing quite like poor government to undermine the philosophical, practical, and political supports of the party system among the citizenry. Elected officials, interest group leaders, journalists, pundits, and scholars can all be effective critics of the party system. Although many political elites are committed firmly to the present arrangements, others have a passion for reform.

Another potential source of change is the court system. Minor parties are frequently in court arguing that they are denied their political rights. To the extent that such challenges are successful at the state and
federal levels, the legal obstacles to minor parties can be removed or mitigated. State law is particularly vulnerable to court challenges. Suits over ballot access were successful in the past two decades to the benefit of minor parties. But in *Timmons et al. v. Twin Cities Area New Party* (1997), the Supreme Court dealt minor parties a significant blow by upholding Minnesota’s ban against fusion by minor parties with major party candidates. Though states like New York may still have fusion tickets, the majority’s rationale for their decision sets a foreboding precedent. Chief Justice William Rehnquist wrote that “. . . States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.” The court’s finding that minor party rights may mean “disorder” in our politics will certainly impede efforts for minor party ballot access in the future. Indeed, in a dissenting opinion in this case, Justice John Paul Stevens bluntly acknowledged that the real reason for the decision has to do with a disdain for minor parties rather than a genuine concern for order: “The fact that the law was both intended to disadvantage minor parties and has had that effect . . . should weigh against, rather than in favor of its constitutionality.”

A final source of change is the minor parties themselves and their impact at the ballot box. Any gains minor parties make in elections can help change the system in their favor by pushing the present limits of political institutions. This process is also likely to be slow, eroding hurdles in campaign finance and media exposure, which, in turn, can help minor parties compete in subsequent elections. Although minor parties may never gain power by their efforts alone, it is hard to see how the system could become more favorable to them without persistent activity. On the one hand, minor party activity can put pressure on the major parties, and on the other hand, minor parties must be poised to take advantage of failures by the major parties or a legal breakthrough if their status is to improve dramatically. The consequence of discouraging minor party participation is the encouragement of independent candidates, who generally have an easier time getting on the ballot than minor party candidates. Thus the idea of conducting politics through parties becomes compromised, a result few observers seem to desire.

In summary, few of these changes are likely to be enacted in the short run. Yet there is the possibility that some modest changes will materialize and their long-term cumulative effects could be significant. The question we cannot yet answer is this: Will such changes make minor parties more effective participants in the American political system, or will the system itself change, producing multiparty politics in America?

References


