

1

Introduction

Who makes the rules? One of the first lessons children must confront is that the rules are hard to change while the game is being played – especially by the players themselves. It is tempting to declare that the Free Parking space on the Monopoly board garners a \$500 bonus when one is the first player to land on that corner real estate. This is, after all, an informal rule that is customary among some players of Monopoly. Yet, if it is not clearly decided in advance that the game will be played with this rule in place, allowing such ad hoc rulemaking by a rulemaker who is also a player, and whose conflict of interest is all-too-apparent, would risk a precarious slide down a slippery slope. The game itself may collapse as players in turn seek to institute new self-serving rules, conflicts ignite, and general trust in the game rapidly spirals downward. Fortunately, for families with avid board game players, this lesson is quickly learned: If we are going to add to the rulebook, we have to do it *before the game begins*. There is an opportunity to learn from every board game controversy, because board games end. And they begin anew.

Now imagine it is a game without end. This is perhaps not difficult to envision – considering the seemingly interminable duration of many Monopoly games. But, here I am suggesting a game that continues day in and day out. Let's posit that the game just isn't working very well. The younger siblings are consistently upset and frustrated, the older kids seem to have intractable advantages, Mom and Dad are at their wit's end, and healthy competition seems to have been replaced by domination and complacency. It's just not very fun. This might be cause for tweaking the rules. But how is this to be done, and which player should do it? Indeed, should it be a player who rewrites the rules at all? Or would it be preferable to hand that contentious job to a Platonic guardian at corporate headquarters who is immune from the natural ire that will be felt by those players whose relative position suffers a disadvantage from the rules change?

This is the challenge of constitutional democracy. It is a game that is, as political scientists Steven Levitsky and Daniel Ziblatt explain, designed to be played

indefinitely.¹ It is also a game that the vast majority of Americans were born into – this was not a game most Americans self-consciously chose. Yet, an end to the game would signify failure: The U.S. Constitution’s status as the longest-lasting, continually operative national governing document is a source of great pride and international aspiration. The multilayered horizontal and vertical complexity of the rulemaking (or lawmaking) process is one explanation for the historical success of the American government. Rulemakers exist on many levels, and, in theory, they check and balance one another. By design, some rules are easier to change than others. These are devices most Americans are at least superficially familiar with: federalism, the separation of powers and a hierarchy of law.

Rules govern rulemaking, which governs additional rulemaking. However, some rulemakers – like political parties – are the product of extra-constitutional private choices. They spring up organically. Individuals see that it is in their interest to join together and establish associations with their own rules, and to utilize these organizations to increase their political power, advance their interests, and establish a forum for the promotion, propagation, and development of their ideas. And over time, although not established by the U.S. Constitution, these associations, messy in their complexity, can grow to be an integral and integrated part of constitutional government.² And indeed, they have. Political parties have become embedded in American politics such that they are no longer a choice, they are a *fait accompli*. We might call our real-life game in which the two major parties we know today have consistently dominated for more than 150 years, *Duopoly*. Who, then, governs *these* governors?

By way of our board game analogy we might imagine a number of possibilities. In our hypothetical, suppose the *Democratic Monopoly Players Association*, made up of the four participants, could add the Free Parking bonus rule only in the case that there is majority support – in other words, the four players would vote. Like a political party, the *Players Association* could make new rules as a collective body. This could, of course, leave the single player who votes against the new rule quite perturbed, particularly if she also happens to be the only player to have just passed the Free Parking space on the board and thus the least likely to benefit from this rule change on the next role. Now, if this unhappy outvoted player happened to be Mom, she could presumably – acting as a state might – simply override the decision of the *Players Association* and establish a household rule banning the Free Parking bonus. After all, from the household policy perspective, the bonus might make this game of luck even more arbitrary, unpredictable, and disruptive to family harmony.

Is Mom acting in her capacity as a governor of the household, as a member of the association, as a disgruntled participant, or a combination of all three? Skeptics might understandably object to the apparent conflict of interest. And even if we

¹ STEVEN LEVITSKY & DANIEL ZIBLATT, HOW DEMOCRACIES DIE 107 (2018).

² JOHN H. ALDRICH, WHY PARTIES? A SECOND LOOK 17 (2011).

consider her to be a governor of that household, should she have the power to dictate the rules of a “private” *Players Association*? Does this infringe on the association’s fundamental rights? Suppose the instruction manual implies that the players of the game should have autonomy over rulemaking, and the *Players Association* decides to bring its case interpreting this fundamental document directly to the game-maker, Hasbro. Should Hasbro – like the U.S. Supreme Court interpreting the Constitution – be able to overrule Mom?

What if its interpretation of the instruction manual is not based on a straightforward textual reading – because the meaning of the text in the manual is not a 100 percent clear; and what if Hasbro is, as a consequence, required to make its own policy determination, balancing the burden of the reduced family tranquility against the imposition placed on the *Players Association* – interfering with its freedom to make its own rules *according to* its own rules? Suppose the rules the association has chosen appear unfair to some of the individuals, perhaps even a majority, who make up that association. Should we prioritize the individual players, the association, the household, or the interpretation of the document that created the game in the first place? Stepping away from our board game analogy, what institution should have the power to decide who is given priority: the party organization, the government, the individual voters who make up the electorate, or the courts? What are the normative implications of (and what correctives might courts make to) the constitutional precedents that have already shaped the law of democracy? These are the questions – applied to America’s two-party system – this book explores.

The two major parties structure representative governance, and, at their best, facilitate democracy by making electoral choices comprehensible to the masses. As institutions, the two major parties also defy traditional definitions, they are private but also public, they are singular but also plural; they are made up of individual voters, party leaders and operatives, grassroots activists, and elected officials, but also party organizations at the federal, state, and local levels. As we shall see, parties are admittedly confounding even to many of the scholars who devote their careers to studying them. Most political scientists accept, at minimum, a three-part definition of parties, each part with its own unique (and sometimes contradictory) interests;³ and some scholars today see parties as extensive and fluid networks that can be defined so broadly as to incorporate even the vast array of interest groups and donors that at times support the party.⁴ That it has been a profound struggle to

³ MARJORIE RANDON HERSHEY, *PARTY POLITICS IN AMERICA* 8 (14th ed. 2011); JAMES A. GARDNER & GUY-URIEL CHARLES, *ELECTION LAW IN THE AMERICAN POLITICAL SYSTEM* 459 (2012).

⁴ Hans Noel, *Towards a Networks Theory of Political Parties: A Social Networks Analysis of Internal Party Cleavages in Presidential Nominations, 1972–2008* (2012) (Paper Prepared for the “American Political Parties: Past, Present, and Future” conference). http://faculty.georgetown.edu/hcn4/Downloads/Noel_SNA_UVa.pdf; Heather K. Gerken, *The Real Problem with Citizen United: Campaign Finance, Dark Money, and Shadow Parties*, 97 *MARQ. L. REV.* 903, 919 (2014).

conceptualize the two major American political parties for the purposes of constitutional law should hardly be surprising. Nonetheless, the Supreme Court's inability to consistently and satisfactorily resolve constitutional questions involving political parties is consequential; it is a jurisprudence that potentially exacerbates the challenges faced by a democracy in crisis.

In the remainder of this introductory chapter, I will explore why this is such a critical line of inquiry. I take a look at what political science and legal scholarship have had to say about the American political party system, its place in contemporary politics, and the urgent need to better understand and rationalize its constitutional treatment. For legal purposes political parties live on the periphery between “private” and “public,” and from the perspective of political science they constitute at least three distinct components: a *party organization*, a *party in government*, and a *party in the electorate*. The chapter moves into a broad exploration of the many perspectives on the benefits, burdens, and impact of the party system, from the founding fathers to today's scholars. What does the literature tell us about the potential harms posed by a misaligned party system? If the detrimental or affirmative aspects of the party system may be exacerbated or improved upon by regulatory choices, should the states be permitted to overrule the ostensibly private choices of parties? When should constitutional law intervene to overrule them both?

1.1 WHY REGULATING PARTIES MATTERS

The Framers held political parties in low esteem.⁵ To America's founding fathers, parties were vehicles for self-interest that inhibited the promotion of the common good.⁶ George Washington, in his 1796 Farewell Address, spoke of the “baneful effects of the spirit of party,” emphasizing how the “spirit of party . . . enfeeble[s] public administration . . . agitates the community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foment[s] occasional riot and insurrection[; and] opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passions.”⁷ Even with the early success of the Jeffersonian-Republican Party in beating back the Federalists, both Jefferson and Madison expressed hope that eventually their own party's influence would dissipate, “restoring the nonpartisan character of the Constitution.”⁸ Ultimately, however, Madison conceded that

⁵ L. SANDY MAISEL & MARK D. BREWER, *PARTIES AND ELECTIONS IN AMERICA: THE ELECTORAL PROCESS* 9, 22 (Niels Aaboe et al. eds., 6th ed. 2012).

⁶ GARDNER & CHARLES, *supra* note 3, at 450–51.

⁷ George Washington, President of the United States, Farewell Address to the People of the United States (Sept. 19, 1796), in S. Doc. No. 106-21, at 16–17 (2000).

⁸ SIDNEY M. MILKIS, *POLITICAL PARTIES AND CONSTITUTIONAL GOVERNMENT: REMAKING AMERICAN DEMOCRACY* 22 (Michael Nelson ed., 1999).

political parties were likely “unavoidable evils in a free society, forces to be condemned, yet patiently endured.”⁹

Much has also been said in favor of America’s party system. While as originally drafted, the Constitution may have failed to account for political parties, later amendments were certainly influenced by their parties’ undeniable presence.¹⁰ E.E. Schattschneider famously opined: “Modern democracy is unthinkable save in terms of the parties.”¹¹ The parties provide heuristics to voters, an important and practical shortcut for deciding which candidates to support.¹² With only two major parties, there is bound to be quite a lot of diversity within each party; however, they are also likely to be broadly distinguishable on ideological grounds.¹³ Thus the implications of a candidate’s party affiliation becomes comprehensible to even the relatively disengaged citizen.

Parties provide a centralized organizational structure to represent and advocate for a massive amalgamation of ideas, positions, and personalities. The parties help voters narrow down the list of candidates. This function helps ensure that the set of choices voters confront is not too long, and that voters don’t simply disengage from the democratic process because it is intolerably overwhelming. At the same time, representing such a broad swath of the population, political parties must remain responsive to the world around them. “[A]s an encompassing coalition, [a party] is able to accommodate a large number of diverse groups and viewpoints, giving each group a stake in the outcome of the election.”¹⁴ They are stable, yet flexible and changeable.

We have lived with a system in which the two political parties we know today are an integral part – if not the integral part – of America’s democratic process for more than 150 years. Scholars generally trace the emergence of the modern two-party system to the Jacksonian era of the 1830s.¹⁵ To explain the continued durability of the two-party system in the United States, political scientists point to the prevalence of winner-takes-all representation.¹⁶ This may be contrasted with the proportional representation that results in multiparty systems in many other parts of the world. Nonetheless, we still have trouble identifying just what America’s two major political parties *are*. They affect the government, are the government, and are controlled by

⁹ GARDNER & CHARLES, *supra* note 3, at 451.

¹⁰ Travis Crum, *Reconstructing Racially Polarized Voting*, 70 DUKE L.J. 261, 266 (2020) (“Whereas the Founders failed to foresee the rise of party politics, the Reconstruction Framers were intimately familiar with partisanship”).

¹¹ E. E. SCHATTSCHNEIDER, *PARTY GOVERNMENT* (1942).

¹² See Richard L. Hasan, *Entrenching the Duopoly: Why the Supreme Court Should Not Allow the States to Protect the Democrats and Republicans from Political Competition*, 1997 SUP. CT. REV. 331, 349–50 (1997).

¹³ GARDNER & CHARLES, *supra* note 3, at 459–60.

¹⁴ *Id.* at 347.

¹⁵ See MILKIS, *supra* note 8, at 22–34.

¹⁶ See GARDNER & CHARLES, *supra* note 3, at 31.

the government – and all of these attributes are true in different ways and to a varying extent, at different times. Parties are fluid and rigid, combative and conciliatory, diverse but unified. They are ubiquitous, yet hard to know.

According to Heather Gerken, parties are “a loose collection of interests, gathered together to compete with other interests to put policies in place. They can thus take different forms as circumstances dictate They are shape-shifters.”¹⁷ As legal scholar Daniel Lowenstein colorfully put it: “Unlike a chair, or a planet, or a baked potato, a political party is not something that occupies a particular space at a particular time or that can be discerned with the senses.”¹⁸ And as mentioned before, the tripartite political science model that frames much of this book understands parties to be three distinct things at the same time: an organization made up of activists and leaders (referred to as the *party organization*), a group of elected and appointed officials who form parts of the government and act under the party banner (the *party in government*), and individual citizens and voters who affiliate with the party (the *party in the electorate*).¹⁹

Even assuming that Madison’s concession was correct, and political parties must likely be tolerated as inevitable, the form political parties and the political party system would take was wide open at the time of the founding. Granted, certain structural elements established by the Constitution have placed weight on the scales. Attributes such as a unitary executive requiring a majority of electoral votes and at large election of Senators (after the ratification of the Seventeenth Amendment) encourage a two-party rather than a multiparty system. However, by and large, the possibilities as to how the party system might be structured – and potential repercussions to American democracy – are vast.

Should party candidates be chosen through primaries, caucuses, or at party conventions in which party elites hold all of the cards? If primaries are used, should such primaries be open to independents or members of opposing parties? Should parties endorse particular primary candidates or remain agnostic? What role should parties play in supporting their candidates? Should they be permitted to raise and spend unlimited funds for their campaigns? To what extent should party be integrated into governance – for example, dictating parliamentary procedure in Congress, the balance of power in administrative agencies, or how the boundaries of representative districts will be drawn? Who should determine a party’s platform, and to what extent should parties tolerate candidates who diverge from it? Do we want our parties to be “weak” or “strong”?

Political scientists remain divided on many of these questions about political parties. There is, however, an emerging consensus – both inside and outside of the

¹⁷ Gerken, *supra* note 4, at 913.

¹⁸ Daniel Hays Lowenstein, *Associational Rights of Major Political Parties: A Skeptical Inquiry*, 71 TEX. L. REV. 1741, 1759 (1993).

¹⁹ HERSHEY, *supra* note 3, at 8; GARDNER & CHARLES, *supra* note 3, at 459.

academy – that democracy itself may be at risk. Political polarization, legislative paralysis, inflammatory rhetoric, and a spate of antidemocratic norm-violating behavior have all contributed to this growing sentiment. The party system has been a central player in this narrative of democratic tumult. As political scientists Carlo Invernizzi Accetti and Fabio Wolkenstein recently pointed out, it has become “commonplace” to assert that “political parties are in crisis.”²⁰ Today, in a tradition consistent with the country’s founders, the American public retains a troublingly grim view of political parties. Political parties ranked dead last in one recent poll of perceived corruption in America’s governing institutions.²¹ The party system is in desperate need of reform. Yet, as I shall show, the Supreme Court has locked in a constitutional interpretation that may be making things much worse. Not only does party jurisprudence make reform much more difficult and give preference to major parties over minor third parties, it tilts the playing field to favor *political party organizations* while disempowering the individual members who make up the *party in the electorate*.

1.2 A PARTY SYSTEM IN CRISIS

As Christopher H. Achen and Larry M. Bartels explain, “each party organizes the thinking of its adherents. A party constructs a conceptual viewpoint by which its voters can make sense of the political world.”²² However, these perceptions can shift over time. Political scientists have identified critical moments in American history in which the parties realign, establishing new coalitions of supporters to form their electoral base. David Brady and Bruce Cain observe: “Since what is stable today may not be tomorrow, parties and candidates periodically create new majorities, which are stable for a time.”²³ And today, for the first time in over two decades, majorities of both major parties hold a view of the opposite party that is *very unfavorable*.²⁴ The past quarter century has seen a marked increase in the percentage of Democrats who identify as “liberal” and Republicans who identify as “conservative” and a concomitant decrease in overlapping ideologies among the major parties.²⁵ Indeed, 2018 was the first year the percentage of Democrats considering themselves to be “liberal” surpassed 50 percent – a dramatic shift from 1994, when self-identification as

²⁰ Carlo Invernizzi Accetti & Fabio Wolkenstein, *The Crisis of Party Democracy, Cognitive Mobilization, and the Case for Making Parties More Deliberative*, 111 (1) AM. POL. SCI. REV. 97–109, [97] (2017).

²¹ SETH E. MASKET, *THE INEVITABLE PARTY* 158–59 (2016).

²² CHRISTOPHER H. ACHEN & LARRY M. BARTELS, *DEMOCRACY FOR REALISTS: WHY ELECTIONS DO NOT PRODUCE RESPONSIVE GOVERNMENT* 268 (2017).

²³ David Brady & Bruce Cain, *Are Our Parties Realigning?*, NATIONAL AFFAIRS, Fall 2018.

²⁴ LILLIANA MASON, *UNCIVIL AGREEMENT: HOW POLITICS BECAME OUR IDENTITY* 3 (2018).

²⁵ https://news.gallup.com/poll/245813/leans-conservative-liberals-keep-recent-gains.aspx?utm_source=twitter&utm_medium=o_social&utm_term=&utm_content=&utm_campaign=

“liberal” and “conservative” among Democrats were equal at roughly 25 percent, respectively.²⁶

At the same time, there has been an increasing trend away from political party affiliation. Some scholars suggest that this move toward independent status may be a result of the growing extremism and vitriol between the parties.²⁷ Polling over the last decades reveals that a consistent plurality of Americans now identify as independents; roughly 40 percent decline to affiliate with either of the two major parties.²⁸ In 2018, the country had its highest percentage of self-proclaimed independents – 42 percent – since at least 1951.²⁹ With party polarization and extremism at a high point at the same time that parties represent a smaller portion of the overall electorate, the elected government is likely less reflective of the population as a whole than it has been in the past.

Legal scholars Joseph Fishkin and Heather Gerken have argued that heightened polarization, in conjunction with lax campaign finance rules, increases the risk “of manipulation by party elites, just as consumers are sometimes subject to manipulation by firms and their advertising.”³⁰ This is because party volunteers, activists, organizers, and small donors – what the authors refer to as the “party faithful” – who ordinarily act as a bridge between party elites and party voters, are effectively sidelined under these circumstances.³¹ With the *party organizations* denuded to a mere shell of their former selves, parties may be losing their capacity to serve as centers for democratic contestation by a full range of constituencies. Instead of being fueled by “engagement and pluralism,” the two-party system risks becoming an arrangement of “professional producers and passive consumers.”³²

This is not to say that all scholars see party polarization as bad for democracy. Political scientist Seth E. Masket, for example, asserts that sharp party differences make voter participation meaningful by offering the primary method by which participants distinguish one candidate from another.³³ Masket is skeptical of reform efforts he sees as attempts to weaken or depolarize America’s two major parties.³⁴ Nonetheless, today partisans who are politically engaged increasingly hold sharply negative personal views of members of the other political party that cut well beyond mere policy differences.³⁵ Political scientist Lee Drutman cautions: “When all our

²⁶ <https://fivethirtyeight.com/features/most-democrats-now-identify-as-liberal/>

²⁷ SAMANTHA KLAR & YANNA KRUPNIKOV, INDEPENDENT POLITICS: HOW AMERICAN DISDAIN FOR PARTIES LEADS TO POLITICAL INACTION 32 (2016).

²⁸ <https://news.gallup.com/poll/15370/party-affiliation.aspx>

²⁹ <https://fivethirtyeight.com/features/most-democrats-now-identify-as-liberal/>

³⁰ Joseph Fishkin & Heather K. Gerken, *The Party’s Over: McCutcheon, Shadow Parties, and the Future of the Party System*, 2014 SUP. CT. REV. 175, 206 (2014).

³¹ *Id.* at 204–05.

³² *Id.* at 211.

³³ MASKET, *supra* note 21, at 162.

³⁴ *Id.* at 166.

³⁵ Brady & Cain, *supra* note 23.

group identities are aligned into two competing teams, two-party politics is completely unworkable.”³⁶ For this and other reasons, many scholars view endemic problems in the political party system as a contributing factor to the larger challenges facing American democracy.

Indeed, Drutman takes aim at the two-party system itself, arguing that many of the old assumptions about the moderating effect of such a system no longer hold.³⁷ He suggests “scrambling the current party system” by adopting reforms such as ranked-choice voting, multi-member districts, and other changes that might allow for a proportional, rather than a winner-takes-all, outcome.³⁸ David Brady and Bruce Cain propose that the instability American democracy is experiencing may be a product of a transitional period in which the alignments of the two major parties are resorting – creating significant uncertainty and “unease about the future direction of the country.”³⁹ In other words, the strain American political institutions are feeling, such as dysfunction in Congress, may be more a short-term consequence of the destabilizing (and still unclear) shift in the coalitions that make up America’s political parties, than an indication of a broken democracy.⁴⁰

Although most political science scholarship is not centrally focused on normative assessments of the political party system, political theorists have produced an extensive literature exploring and defending the qualities parties might possess if they are to be democracy-enhancing rather than democracy-degrading.⁴¹ For Frances McCall Rosenbluth and Ian Shapiro, extreme partisanship in American politics is a consequence of parties becoming too weak.⁴² For a party to be strong, it must be able to offer voters a “coherent policy agenda,” which would mean thwarting extremist candidates and rebellious factions – the opposite of what has been seen in American politics of late.⁴³ As they argue, “Parties with strong internal hierarchies are best able to deliver on policy promises, particularly concerning policies that are important for long term economic growth and development.”⁴⁴

Steven Levitsky and Daniel Ziblatt explain that over time the two major parties in America have become “stewards of democracy,” taking the place of the Electoral College “gatekeepers” originally intended to play that role by America’s founding fathers.⁴⁵ However, since the early 1970s, the parties have ceded virtually all

³⁶ Lee Drutman, *United We Fall: The More Homogenous The Parties Become, The Uglier The Divide Between Them*, WASHINGTON MONTHLY 54–56, July/August 2018.

³⁷ Lee Drutman, *Why America’s 2-Party System Is on a Collision Course with Our Constitutional Democracy*, VOX, March 26, 2018.

³⁸ *Id.*

³⁹ Brady & Cain, *supra* note 23.

⁴⁰ *Id.*

⁴¹ Accetti & Wolkenstein, *supra* note 20.

⁴² Frances McCall Rosenbluth & Ian Shapiro, *Political Partisanship Is Vicious. That’s Because Political Parties Are Too Weak*, WASHINGTON POST, November 28, 2018.

⁴³ *Id.*

⁴⁴ FRANCES MCCALL ROSENBLUTH & IAN SHAPIRO, THE YALE REVIEW (June 2017) 27–28.

⁴⁵ LEVITSKY & ZIBLATT, *supra* note 1, at 40–41.

decision-making over candidate-choice to a binding primary process. This has diminished the ability of party elites to filter out dangerous demagogues who might pose a threat to democracy, and risks abdicating the parties' crucial gatekeeping function.⁴⁶ In other words, rules that are more democratic within a party – what we might call “intraparty democracy”⁴⁷ – offering a direct say of party members and a circumvention of the party establishment, may ironically have the effect of endangering democracy more broadly.

The regulation and self-regulation of political parties in America is a high-stakes game. The rules *party organizations* and *parties in government* establish effectively become part of the core body of rules governing American democracy itself. In a multilayered and complex polity such as the United States, determining an ideal regulatory regime for political parties – entities that are both regulated by and regulators of democracy – is a distinctively challenging task. Rosenbluth and Shapiro imagine those who have the job of tinkering with electoral systems as dog breeders.⁴⁸ Sometimes choices will lead to unexpected results – some good, some bad. Informed trial and error will necessarily play a role. Like dog breeders, regulators of democracy intending to achieve a desirable, perhaps improved, outcome do not work with a blank slate. However, in the world of politics the challenge is even more confounding because of “the added wrinkle that political parties are at once the breeders and the dogs. Whereas dog breeders want only to create the most pleasing dog, politicians vote for electoral systems that enhance their own electoral prospects.”⁴⁹

The goal of this book is to take the next step. Where political science ends, law begins. Even if we are able to see flaws in our current system that could benefit from minor, if not major, adjustments, who has the constitutional power to do this tinkering? As we will see, while the original text of the U.S. Constitution may itself have been silent on political parties, the courts have not.

1.3 A UNIQUE CHALLENGE

Studying political parties is difficult. The distinctive challenges have been widely acknowledged within political science. L. Sandy Maisel and Jeffrey M. Berry explain that there are at least two reasons for such difficulties. First, political parties “are often informal and often extralegal institutions that do not follow transparent and universal rules; and second, . . . they permeate so many domains of politics – all branches of government at the state and federal level, the electorate, and other

⁴⁶ *Id.* at 51.

⁴⁷ Austin Ranney, *Toward a More Responsible Two-Party System: A Commentary*, 45 (2) AM. POL. SCI. REV. 488–99, 489 (June 1951).

⁴⁸ FRANCES MCCALL ROSENBLUTH & IAN SHAPIRO, RESPONSIBLE PARTIES: SAVING DEMOCRACY FROM ITSELF 18 (2018).

⁴⁹ *Id.*