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Outside Influence on Democratic Elections

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Abstract

The 2019 Indian general election, and especially the enormous amount of money spent on campaigning and befriending voters during the election season, has drawn attention to the question of whether and when "outside" support (in the form of money and other assistance) from companies and persons not directly involved in an election should be forbidden, tolerated, or even encouraged. Common reactions to outside influence are inevitably inconsistent, even if we account for the fact that losers are likely to decry the outside influence that advantaged the winners or, more likely, the incumbent party expected to win. A novel approach, influenced by law-and-economics and public choice theory, compares the value of each democratic jurisdiction deciding its own rules, with one that makes room for significant externalities across borders and among constitutions. Money transfers, or even vote buying, might make citizens better off than a constitutional or legislative rule allowing only nonmonetary transfers. Forbidding all outside influence is impossible as a practical matter and in a way that is consistent with free speech and other democratic values. Some money transfers might also be a means of taking intense preferences into account. The most important result is that common intuitions are likely to be wrong and are, in any event, certainly inconsistent.

I. Introduction

The 2019 Indian general election, and especially the enormous amount of money spent on campaigning and befriending voters during the election season, has drawn attention to the question of whether and when "outside" support (in the form of money and other assistance) from companies and persons not directly involved in an election should be forbidden, tolerated, or even encouraged. Common reactions to outside influence are negative, but ultimately and necessarily inconsistent. The losing side (or sides) is likely to regard vote buying through any means as anti-democratic, as well as a practice that fosters corruption. It is unusual for the losing party (or parties) to have collected more money,[2] or more outside money, than the winning party, but this alone hardly proves that money brings about victory in a political campaign. Donors, as we might call them, are often looking for rewards, and thus are more likely to support the

[1] Thanks to Paresh Lal for help with the details of and insights regarding Indian law.
[2] There is a strong correlation between electoral success and fundraising. *See* Wesley Lowery, "91% of the time the better-financed candidate wins. Don't act surprised." The Atlantic (2014). The correlation holds in many countries, though it hard to ignore the obvious selection effect; donors may prefer to give to candidates expected to win. *See* Gary W. Cox and Michael F. Thies, How Much Does Money Matter? "Buying" Votes in Japan, 1967-1990, 33 Comparative Political Studies 37-57 (2000); Myungsoon Shin, Youngjae Jin, Donald A. Gross, and Kihong Eom, Money Matters in Party-Centered Politics: Campaign Spending in Korean Congressional Elections, 24 Electoral Studies 85-101 (2005).

perceived winner and the incumbent party.[3] When in doubt, it is not unusual for donors to give to multiple contestants. Their goal is often not so much to influence the election, but to gain favor with the eventual winner or even with the incumbent during the period prior to the election. As Part II will show, it is difficult to fashion a consistent policy about outside, or cross-border, influences on politics. The discussion considers arguments based, first, on an idealized version of democratic rule, and then on one driven by the reality that what happens in one country, or jurisdiction, often affects another. These sensible approaches, labeled here as "confidence-in-democracy" and "concern-for-externalities," are shown to be in tension with one another. Part III then develops the somewhat surprising case for allowing or even encouraging outside interventions, especially in the form of money. It touches on ideas about decision-making outside of general elections, including the question of whether elected legislators ought to be able to pay one another for votes, and whether there is an argument for allowing judges on multi-member panels to do the same. Part IV concludes and suggests that allowing or even welcoming limited interference in politics, whether from inside or outside a jurisdiction, may be a second-best solution for some democracies.

II. Democracy and externalities

A. Confidence-in-democracy

There are at least two important arguments against outside influence.[4] First, that the very idea of democracy is that those who are governed should decide things for themselves, normally by majority vote or by delegation to representatives or their delegees. The matter is complicated in India because many people remain registered in constituencies where they matured rather than in jurisdictions in which they live, and where voting has a direct impact; voters rarely return to their home districts to cast votes.[5] Indian law seems aimed at preserving long term affiliations or ensuring that elected representatives will have strong ties to their original home constituencies.[6] A second principle is that outside interest groups are likely to be tilted in favor of moneyed interests, and so should be limited or forbidden to interfere. Democratic decision-making, and

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[3] *See* Taylor C. Boas, Daniel Hidalgo, and Neal P. Richardson, The Spoils of Victory: Campaign Donations and Government Contracts in Brazil, 76 Journal of Politics 415-429 (2014); Michael Barber, Donation Motivations: Testing Theories of Access and Ideology, 69 Political Research Quarterly 148-159 (2016). For an interesting proposal to reduce the influence-based incentives of political donations, see Ian Ayres and Jeremy Bulow, The Donation Booth: Mandating Donor Anonymity to Disrupt the Market for Political Influence, 50 Stanford Law Review 837-891 (1998);

[4] To be sure, there are many other arguments that can developed against vote buying. Perhaps votes should be inalienable because they are personal and reflect a core human capacity. It is impossible to take on all such arguments here, as conceded in Part III, but the discussion concentrates on the two arguments noted in the text. As for an argument that voting is about human dignity, and must therefore never be commodified, note that very few democracies make voting mandatory, and this is perhaps an indication that it is something that belongs to the individual, who can set it aside or sell it. The argument against any one entity or person having multiple votes is more difficult to develop or defeat. Democracies allow coalitions and political parties, and these are devices for combining votes, and are rarely criticized on the basis of dignity-based arguments.

[5] *See* Anupama Roy, Identifying Citizens: Electoral Rolls, the Right to Vote, and the Election Commission of India, 11 Election Law Journal: Rules, Politics, and Policy 170-186 (2012). Nevertheless, for the purposes of the discussion here, it is easier to think of a democratic model as opposed to an externality model, while keeping in mind that the democracy model is imperfect, or can be subdivided, because of voter registration systems.

[6] *See* Representation of the People Act 1951 (Part II.—Acts of Parliament), Chapters I–II.

majority vote in particular, is an alternative to markets; a central decision for a democracy is to decide what should be allocated to markets as opposed to voting – and then to judges or other government decision-makers bodies appointed by elected officials or elected in direct fashion. Some of this allocation between markets and democratic decision-making is written into constitutions, but some is decided by democratic decision-making itself, as when governments decide to privatize some government functions or – to the contrary – to forbid private ownership of weapons, and monopolize law and order in the hands of the government.[7] Even when we understand that the government (or the constitution) decides what is allocated to governmental decision-making, there is the underlying question of whether some form of market is available to affect elections, and thus the lawmaking itself. Every democracy allows candidates for office to hire advertising firms and to rely on polls run in the private sector, to take two simple examples, so there is always some outsourcing to private markets. All democracies permit neighbors to try to influence one another through conversation, so that a one-person-one-vote principle is subject to rules or market-mechanisms that influence how voters are informed. Any system that penalizes citizens who try to influence fellow citizens' political judgments would be derided as illiberal. It is probably impossible to completely separate politics from markets.

Still, some countries, like the United States, forbid money contributions from abroad to political parties or candidates for office, while other countries do not.[8] India permits limited contributions from foreign entities, and places various limits on contributions, especially to individuals rather than parties, but enforcement of these rules is difficult and rare.[9] Most of these countries allow

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[7] Political elections as currently organized have many defects but also some obvious virtues. Among these virtues is that no voter or contributor who prefers candidate G has reason to vote for, or to support, H. In contrast, a market in votes will create the risk that voters, while holding out for higher prices or waiting to buy at lower prices, will vote or sell perversely. This does not rise to the level of a paradox, because it is not as if the rational voter is expected to vote for the candidate she least prefers (at the offered price), but it does amount to a serious danger that markets will do harm rather than good, even when measured on their own terms. Another, perhaps overwhelming, defect of a market in voting rights, is that wealth effects might dominate preference intensities, just where a majority is inclined to limit the effects of unequal wealth. But there are ways of limiting wealth effects. Eventually, limited markets may retain the quality of avoiding perverse voting behavior even as they remain simple enough to provide a sense of legitimacy.

[8] For United States law, see 52 USC § 30121. India, as of 2016, relaxed its legal definition of "foreign" for purposes of foreign contributions, which are still unlawful. See Milan Vaishnav, Political Finance in India: Déjà Vu All Over Again, Carnegie Endowment for International Peace (2019). Canada, France, Israel, Mexico, and Brazil do not allow any foreign corporations or entities, or domestic corporations, to make political donations. At the other extreme South Africa, has no campaign restrictions, and Italy, does not restrict foreign donations. In the middle are Germany and Russia, which allow corporate giving if firms are not majority foreign-owned. Japan has recently legalized foreign corporate contributions. Jieun Lee, Foreign Direct Investment in Political Influence, Working Paper, 2018. https://www.internationalpoliticaleconomysociety.org/sites/default/files/paper-uploads/2018-10-28-21_42_07-leejieun@umich.edu.pdf. Within the United States, Alaska now restricts partially-foreign-owned corporations from spending in its elections process. *See* Alaska Stat. § 15.13.068 (2018), 132 Harvard Law Review 2402-2409 (2019).

[9] *See* Ellen L. Weintraub and Samuel C. Brown, Following the Money: Campaign Finance Disclosure in India and the United States, 11 Election Law Journal: Rules, Politics, and Policy, 241-266 (2012).

domestic contributions, though sometimes these are subject to limits.[10] It is apparent, but also usually attractive, that each jurisdiction (or nation) decides the degree to which markets and wealth are permitted to influence democratic decision-making. Outright bribes and vote buying might be forbidden, whether from inside or outside a jurisdiction, and we can imagine that each jurisdiction is trusted to decide its own rules consistent with democratic, self-rule principles. Each decides on the allocation between markets and politics, and then also about the degree to which money is allowed to influence politics (from inside or the outside). Confidence-in-democracy is consistent with a view that each jurisdiction will do a good job if allowed to decide these rules for itself.[11] It leads to the principle that each jurisdiction should decide in some democratic way how much, and what kind of, outside influence to permit. For example, and quite relevant to India, and several other nations, a country might decide to allow citizens who "intend" to return home to vote while they are abroad, even though this presents obvious problems of enforcement. An alternative is to require citizens to return "home" in order to vote, as is the case in Israel.[12] With respect to this and other matters, the more one has confidence in democracy, the more one is inclined to trust a state to decide its own rules.

We might expect institutions that are liberal in this regard to require disclosure of the source of funds that affect political outcomes. Just as some jurisdictions require candidates for office to announce the source of their campaign funds and their approval of campaign advertisements, they might be even more insistent that the voters know when influence has come from outside the jurisdiction. Such revelation might help or disadvantage a candidate running for office, but if the idea is to abide by the confidence-in-democracy idea, then voters need all the knowledge that can be mustered. I will return below to the question of why voters might like direct contributions from abroad, whether or not disclosed to their compatriots. Similarly, each jurisdiction can decide in democratic fashion how much its government or its citizens are permitted to try and influence *other* jurisdictions. Interference is an export as well as an import. No symmetry is required, and there is certainly no need for a balance of trade. Americans and Europeans may be horrified at the prospect of Russian influence on their elections, but they take as given their own newspapers' and politicians' freedom to try and influence Russia's government or Israel's elections. A trade imbalance is considered desirable and even moral, when the observer is confident about right and wrong.

There is an analogy here – or even a direct symmetry in law – to boycotts. Most democracies feel free to boycott the goods of another nation, much as individuals feel free to choose one store

[10] Canada, for instance, does not allow corporate campaign contributions at the federal level, though some provinces allow corporations to contribute to parties. For the federal Canadian rule, see Canada Elections Act, S.C. 2000, c. 9, 363(1). For a discussion of provincial rules, see D. M. Brock and H. J. Hanson, Raising, Spending, and Regulating Party Finances in the Provinces, 9 Canadian Political Science Review 55-74 (2015). Israel does not allow campaign contributions by corporations to national political candidates. LOC https://www.loc.gov/law/help/campaign-finance/israel.php. France has a nearly total ban on entity contributions, other than political parties and certain groups. https://www.loc.gov/law/help/campaign-finance/france.php.

[11] A country might decide to allow citizens who "intend" to return home, to vote while they are abroad, though this presents obvious problems of enforcement. As emphasized in the text, the more one believes in democracy, the more a state ought to be trusted to decide its own rules.

[12] *See* Rainer Baubock, Expansive Citizenship: Voting beyond Territory and Membership, 38 PS: Political Science and Politics, 683-687 (2005).

over another, and even to advertise a private boycott, whether for personal or political reasons. An example of political aims was the wide boycott of Apartheid-era South Africa, beginning in the 1960s and ending in the 1990s when true elections began. Nations feel free to ban both exports and imports, often for political reason, and they may do one and not the other. They may forbid their citizens from visiting another country while not refusing entry to citizens from that country. Correspondingly, foreign trade is used to encourage political regimes abroad, or to encourage instability. The conflict between externalities and democratic thinking disappears in the minority of cases where the cross-border intervention can be said to promote democracy in the foreign country, for the point is to advance confidence-in-democracy.

B. Externalities

A second, often opposing, view, is that it is fair and efficient to allow outside influence because the confidence-in-democracy idea does not fully consider the utility of people in other jurisdictions. One country might want to encourage another to pollute less or to save an endangered species, and it might do so by trying to influence political decisions across borders. Readers who start out intuitively opposed to outside intervention, usually because it favors the moneyed class or it interferes with the confidence-in-democracy idea, should consider two counter-points. First, many democracies, including India, allow internal money to be used for advertisements and other campaign expenses.[13] This can be defended as necessary to inform voters, to allow for free speech, or to allow for the expression of intense preferences. Second, nothing stops a democracy from limiting or banning inside and outside money, unless there is a constitutional restraint on free speech grounds.[14]

Law-and-economics suggests a third reaction, based on the external effects of one jurisdiction on the citizens of another. If, for instance, the U.S. is worried about climate change so much that its government or several of its citizens use their wealth to encourage India to use different fuels, or to “pay” for India to pass legislation that limits the use of certain kinds of coal, would anyone really object on the grounds of a distaste for outside influence and a tampering with India’s democratic process? Both sides would be better off – as is true of most transactions – as one side’s greater wealth would benefit the less-well-off recipient. The benefit comes in the form of the transferred resources, and might be enhanced by long-term environmental benefits. There is well-known moral objection to one country paying another to *accept* pollutants, or simply trash, but it is unlikely that there would be a similar objection to payments made in order to improve the environment rather than to transfer unwanted materials form one country to another. These examples nearly dispose of the argument that it is always offensive for wealth to affect cross-border arrangements.

It remains, however, for us to consider the claim that cross-border interference on grounds of externalities is only acceptable when wealth serves to advance a common good, at least as perceived by the international community. Most people look back on the international

[13] *See* David Gilmartin and Robert Moog, Introduction to “Election Law in India,” 18 Election Law Journal: Rules, Politics, and Policy, 136-148 (2012); M. V. Rajeev Gowda and E. Sridharan, Reforming India’s Party Financing and Election Expenditure Laws, 18 Election Law Journal: Rules, Politics, and Policy, 226-240 (2012).

[14] The United States remains an anomaly in this regard. See *Buckley v. Valeo*, 424 U.S. 1 (1975); *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

Anti-Apartheid movement with admiration, and most regard cross-state Freedom Riders (Civil Rights activists in the U.S. who went from Northern to Southern states in the 1960s to promote the cause of civil rights) as heroes, rather than as persons who could afford to travel to other states and thus impose their preferences regarding racial equality. Had it been the reverse, with rich Southerners in the U.S. traveling north to encourage race discrimination, we might well frame the objection as one based on using wealth to influence politics in another jurisdiction. The larger claim is that interference from other jurisdictions is simply based on the politics or preferences of the observer, so that there is no right answer to the general question about outside intervention and influence. This claim is stronger when the interference is in the hands of wealthier countries or people, so that we cannot be sure that their utility can be compared with that or poorer people or jurisdictions. If a group thinks that a policy or candidate in its own jurisdiction is morally offensive, it will disapprove of foreign interference that solidifies this policy or candidate. And if the foreign interference is an attempt to undo what is regarded as offensive, then suddenly foreign interference will be welcomed by the global community.

But imagine that we can put wealth aside, as when there is a serious limit on individual politically directed contributions, or when two jurisdictions, or adherents to opposing viewpoints, have similar wealth per capita. In this case, there is a reasonable argument for foreign interference because of external, or cross-border, effects. Consider the case where one state, O, has factories that employ many people but that also pollute the atmosphere; prevailing winds drive these pollutants to the east, to a neighboring jurisdiction, P. Voters in O might rationally prefer laws that permitted the pollution because they do not take the cost and preferences of P's citizens into account. An even more interesting case is where P's citizens value scenic beauty that for some reason does not appeal to citizens of O. O will not take P's (pure) preferences into account. If there is some negative externality running in the other direction, O and P might simply agree that each will behave in a way that satisfies the other. If not, a law-and-economics reaction, beginning with the Coase Theorem, is that the government of P could buy the factories in O and install better smokestacks, or shut them down with some payment to employees.[15] But the more interesting application of the bargaining idea is for P, or interest groups in that jurisdiction, to pay O to enact laws that reduce the pollution or save the scenic view. Another version of this kind of foreign interference or influence would be to finance the election of political candidates in O, who promise to reduce the pollution. Finally, and somewhat equivalently, P or some of its offended citizens, might actually pay voters in O in order to change the outcome; these recipients would vote for new environmental laws or for politicians who are dedicated to reducing the problem that largely affects the neighboring state, P. Payments from across the border can in this way change the political outcome and take account of the negative externality suffered by non-voting, foreign citizens. It is apparent that voters in O (and especially poorer voters, though the discussion here has tried to eliminate the issue of wealth disparities) might be better off with a rule that allows or even encourages payments from abroad, and this is especially so if some of the transferred money is directed to workers in O who are made worse

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[15] *See* R.H. Coase, The Problem of Social Cost, 3 Journal of Law and Economics 1-44 (1960); Fred S. McChesney, Rent Extraction and Interest-Group Organization in a Coasean Model of Regulation, 20 Journal of Legal Studies 73-90 (1991). For a re-interpretation of Coase's case study of lighthouses which argues that public-private bargaining reaches an efficient result, rather than private-private bargaining as Coase originally indicated, see Elodie Bertrand, The Coasean Analysis of Lighthouse Financing: Myths and Realities, 30 Cambridge Journal of Economics 389-402 (2005).

off. This is the essence of the concern-for-externalities argument in favor of allowing foreign payments, or other intrusions.

The assumption, or trick, of eliminating wealth effects is not entirely fanciful, but size effects must also be taken into account. It is common, for example, though perhaps tongue-in-cheek, to hear citizens of The Netherlands or of Canada say that they ought to vote in American elections, inasmuch as American policies, and especially its trade and tax policies, have a great impact on these other countries. To be sure, this impact is less than that experienced by residents of New York or other domestic groups in the United States, but at least these groups have votes. Presumably the Dutch would be happy with an arrangement that gave each Dutch voter one-fifth of a vote in U.S. elections, though it is hardly clear how the right percentage would be calculated and adjusted over time. The suggestion is fanciful for several reasons. Dutch and Canadian citizens do not pay taxes to the United States; they would hardly agree that the U.S. could draft them in case of war; and they would hardly agree that Americans should get comparable votes in elections in their countries, if only because the vast number of U.S. voters, even if each is given a mere fraction of a vote, would overwhelm the voters who live in Canada and The Netherlands. Relative size does not, however, explain much; it seems absurd to say that residents of Pakistan should vote in Indian elections, though there are even greater externalities in that setting. Cross-border externalities or conflicts are better decided by discussion or even by payments or threats of a sort. Externalities do not translate well to votes, though they surely influence votes within each jurisdiction.

It is important to see that the “confidence-in-democracy” and “concern-for-externalities” approaches are not always in conflict, however easy it is to see particular cases of conflict. The more we have faith in democracy, the more a country like O, in the stylized example just presented, should be trusted when it allows or disallows payments or other interference from abroad. But a slightly weaker form of the confidence-in-democracy approach takes differing wealth into account and suggests that democracy is itself a choice *not* to have a market, and thus not to allow the buying and selling of policies, politicians’ power, or votes. In the case of O and P, and depending on how money arriving from P is allocated to government projects or voters in O, people in O can be made better off by allowing outside interference from P. And yet, there is something startling and offensive about the prospect of vote buying. If it really benefits recipients, even as it permits citizens of P to express their preferences, then why not favor markets for votes quite generally? This question is addressed below in Part III.

There is, it should be noted, a different kind of political solution that sometimes discourages P from paying O, or even encourages O to lose the option of encouraging P to pay for the right to impose costs on some citizens of O. Instead of bargaining, either can go to a superior legislature. If, for example, P and O are states within a single nation that has the power to create binding national rules, then P might coordinate with other states that pay taxes from wealth created by their (polluting) factories and obtain the “right” to pollute up to some level from the national legislature. Citizens of O will now have lost the advantage that tort law might give them, although they can still pay P to reduce the pollution heading towards O. Similarly, O might find it difficult to extract payment from P sufficient to compensate O, and O might coordinate with other states suffering from wind-blown pollutants and they might have the votes to get a national anti-pollution rule. This power to obtain national legislation might reduce some of the problems emphasized here, unless the national legislature is also captured by wealth effects. In the case where O and P are not states within a nation, but sovereign and separate nations, the possibility of law taking charge is diminished. Countries like O might seek international treaties, but these can be ignored; they might try to involve the United Nations in the same way that states try to combine interests and impose rules by a national government, but again these rules have much less power. The European Union is a nice example of an intermediate "solution," and it is no surprise that some of its rules are welcome by some member countries but much resented by others.

In sum, there is something of a conflict between confidence-in-democracy and a concern for positive and negative externalities. Within the United States, and in other countries that allow cross-border contributions to political campaigns, it is common for residents of one state to contribute to candidates or causes in another. It is even more common for individuals to refuse to buy goods from other states, or to go out of their way to visit or patronize other states. The usual justification draws on externalities; people are affected, and sometimes simply morally offended (or thrilled) by what happens in other jurisdictions. We have already seen that it is difficult to limit this argument, and that it is often in conflict with a faith-in-democracy in the receiving jurisdiction. The conflict can be eliminated as an intellectual matter if we take the confidence-in-democracy argument further than is usually done, by reasoning that a jurisdiction can simply legislate that it welcomes – or forbids – outside contributions, with or without limits. In any event, when applied to real cases, such attempts to resolve the tension between democratic principles and worrisome externalities, leads to the observation that one's views on cross-border contributions, whether in-kind or in cash, and even contributions within a single jurisdiction (which is to say debates about the wisdom of limiting private financing of political campaigns), quickly reflects the observer's preferences about the winners and losers. Those who contribute to causes that are later seen as obviously correct and moral are regarded as heroes, while those who fund causes or officials that come to be seen as destructive are regarded as reprehensible or even criminal. As before, the continuing task here is to identify nonpolitical arguments for one rule or another.

III. Money in Politics

Consider first the familiar problem of vote buying. It is unlawful in virtually every jurisdiction for one judge to pay another to change his or her vote. Similarly, it is generally regarded as wrongful for me to pay my neighbor in cash so that he will vote for my favorite candidate, though secret ballots make enforcement, and therefore such agreements, difficult. On the other hand, I may discuss the coming election with my neighbor and even take time off from work (and thus lose money) to try to influence my neighbor to vote as I prefer. An economist would point out that, in this last example, my sacrifice along with the fact that my neighbor does not receive anything of value, shows that I have a strong belief or preference, while the neighbor is only receiving information. Payment in such a case might truly satisfy intense preferences, and thus increase overall utility. It seems acceptable to say to a neighbor: "I want you and others to vote for X. If X wins the election, I will give $1,000 to your favorite charity, in order to encourage you to vote for X." My intensity and the fact that the voter is not personally enriched seems decisive. It is common, on the other hand, for legislators, or friends in a restaurant where food is shared, to "buy" a vote by agreeing to vote or order food in a way that gives both parties the thing he or she wants most. It might seem unacceptable to *pay* one friend to order a certain dish, but that is because of the external effect on other friends in the group. In addition, differential wealth distribution reduces our confidence that a payment genuinely shows that one party has a greater preference than another.

We are ready to see campaign finance issues, within a single jurisdiction, in a new light. Current law in virtually every jurisdiction forbids direct vote buying but permits and even protects a willing buyer who is eager to buy votes indirectly through advertising and other campaign expenditures. If direct vote buying were permitted, we would expect buyers to look first to unlikely, unmotivated, or simply indifferent voters, as a source of eager sellers.[16] These citizens do not place great value on their votes, and would likely sell a vote at a very low price. If buyers need a great number of votes, they will eventually need to buy from more motivated voters, who either enjoy voting or, more likely have stronger preferences about the outcome and, irrationally perhaps, believe their votes might be decisive. If this second group can be identified and tends to be the same from election to election, then their members will, by virtue of their strong preferences and constant participation in elections, set the legal rules over time. It is therefore not surprising that this group establishes rules against vote buying. It is as if they know that their votes will be less influential if a buyer can amass the votes of the unmotivated voters, who would otherwise be likely to stay home or randomly distribute votes in ways that do not affect the outcomes in most elections. Only rarely will very highly motivated buyers of votes need to go so far as to buy the more expensive votes held by the highly motivated voters, who are typically dispersed or only loosely coordinated. If the unmotivated citizens have some say in the initial rules, or the government or constitution sets the rules early on with an eye on their later impact, it would not be surprising to see laws protecting the unmotivated voters against whipsaw, as it is called in the corporate and securities law literature.[17] As a practical matter they should be expected to constitutionalize restrictions against vote buying. The unmotivated voters are numerous but not organized. If only they could combine forces, they would see that a party that bought many of their votes has purchased something quite valuable, and the sellers would therefore design a rule that gave each seller an amount equal to the highest price paid to any seller.[18] Alternatively, the motivated voters might (and do) develop a rule that banned the purchase of votes, knowing they would be outvoted by a party that bought a substantial set of votes from those who attached a lower value to voting.

The analysis is more complicated, but perhaps more rather than less convincing, when wealth differentials are added more completely to the picture. If poorer voters are as motivated to vote as more fortunate citizens, they might still favor a rule that allows the sale of votes, because some interest group will offer more money (or other benefits) than the vote is worth to any individual. This is especially so when each voter knows that solving the collective action problem among voters is difficult. If I know that my vote is just one of many, I will surely accept a dollar for my vote, for it is essentially worth nothing to me, unless I think that holding out will raise the price. What drives up the price is likely to be competition from other prospective

[16] A more expansive version of the argument found in this Part can be found in Saul Levmore, Voting with Intensity, 53 Stanford Law Journal 159 (2000).
[17] See Levmore, supra note 16. Inasmuch as voter turnout in India is relatively high, they are referred to here as unmotivated, while the cited literature thinks of them as "unlikely."
[18] This is what happens in securities law in many countries, as in the Unites States' Williams Act.

buyers. The buyer of votes like mine needs to offer enough to discourage competitors from an auction for votes like mine. In public choice terms, the result is interesting and close to what we observe. Those who can solve the collective action problem, like a large corporation that stands to gain from a specific government policy, will find it worthwhile to give money to the candidate or party it expects to win. The recipient needs this money to defeat opponents or simply to enjoy life. In turn, the receiving party will spend much of this money "buying" votes from those who cannot solve their collection problem. No one will pay $3 to a CEO for his vote, and expect much in return. But the CEO might pay thousands of dollars to gain favor with a person or party that is likely to be in a position to award contracts or other favors, knowing that the recipient will use this money to pay $3 per vote to voters who are not organized and not particularly motivated.

There is more to the story from the point of view of those who are not particularly motivated and who have little expectation of forming coalitions. As we have seen, they will benefit if parties or other entities compete for their votes, but we have not yet touched on the question of whether they (rather than the empowered voters or interest groups) benefit from a ban on vote buying. If there is an effective ban of this kind, interest groups will turn to non-monetary benefits. They may make extravagant campaign promises or hold lavish meetings, or pay for campaign workers to go from home to home to try to convince (what I have called) unmotivated people to vote one way or another. All this is less attractive to the recipients than is cash; it is also, and perhaps of greater interest to see that it is, an inefficient waste of resources. The money spent on non-monetary inducements is largely a waste of resources compared to cash. Cash allows each recipient can spend on goods he or she truly wants. From the point of view of poorer voters who are not organized, it is likely that vote selling is more attractive than its likely alternatives. To be sure, this claim ignores other arguments including the idea that many poor people, along with their more fortunate fellow citizens, think of voting as a matter of dignity, and thus favor its inalienability. As is apparent, the discussion here has focused on two important arguments, labeled as confidence-in-democracy and concern-for-externalities, and it has not insisted that there are no other reasons to fear even limited vote buying. As emphasized shortly, the case for vote buying is a second-best one.

IV. Conclusion

In the best of all worlds, significant resources would be spent providing public goods that really benefit the citizenry. Few resources would be wasted on campaign strategies or on inefficient favors eventually handed out as pay-back to those who contribute to the winning party in an election. But when the private interests of politicians and donors are unlikely to move in this direction, the second-best outcome could conceivably be a transfer of wealth from donors to those recipients who will accept small payments for their support. They may do so because they are unmotivated voters – because they know that one vote makes little difference, because they are not well organized into groups, because they have lost faith in government, or for a host of other reasons. The task of law is surely to move towards the first-best solution, in which governments provide useful public goods, and campaigns are limited to providing useful information to voters. In this first-best world, public goods are provided on the basis of taxes and votes that reflect the wisdom of crowds and the ability to pay. But when law has not succeeded in bringing a democracy to this state, it should be no surprise to see payments intended to impact politics in the ways described here. When compared to the most desirable forms of democracies, it is painful to see, but it may be a kind of second-best result, especially when seen from the eyes of those who are paid, in one way or another, for their political support.