1995

What is the Goal of Campaign Finance Reform?

David A. Strauss

Follow this and additional works at: http://chicagounbound.uchicago.edu/journal_articles

Part of the Law Commons

Recommended Citation

What is the Goal of Campaign Finance Reform?

David A. Strauss†

Does the current system of campaign finance need reform? We cannot answer that question, or decide what specific reforms might be in order, until we identify what the objective of any reform effort should be. Is it to eliminate what amounts to legalized bribery? To dampen interest group activity? To prevent officials from, in effect, extorting contributions? To protect elected officials from the demands of fund-raising, so that they may devote their time to governing? To implement more fully the ideal of one person, one vote?

Each of these justifications for reform has strong proponents, and each has something to be said for it. But each is also, in some respects, problematic. One reason it is so difficult to specify the objectives of campaign-finance reform is that campaign-finance reform implicates two fundamental, and on some level unresolvable, tensions in democratic theory. The first is the famous question whether representatives in a democracy should act on the basis of their own conceptions of the public interest or should be responsive to their constituents. The second tension results from the ineluctable fact that a democratic system of accountability—the two-way communication between rulers and ruled—requires resources, and those who invest more resources on either side are, other things equal, more likely to succeed.

My claim is that most of the justifications commonly given for campaign-finance reform do not succeed on their own terms. This is true, for example, of the widespread concern with the "corrupting" effects of campaign contributions, where corruption is thought of as something akin to bribery. Many of these arguments for reform in fact reflect unease about the underlying tensions in democratic theory—for example, concern that repre-

† Harry N. Wyatt Professor of Law, University of Chicago. I am grateful to the participants in the University of Chicago Legal Forum Symposium, Nov 4-5, 1994, for their comments on an earlier version of this Article, and to Zoe Milak for research assistance. The Russell Baker Scholars Fund and the Lee and Brena Freeman Faculty Fund at the University of Chicago Law School provided financial support.
sentatives are too responsive to their constituents, or concern that groups with greater access to resources have undue influence. This is not to deny that the system of campaign finance should be reformed. But the reform program must be seen as part of a larger agenda, not simply as a matter of “cleaning up” campaign finance. It must be seen, for example, as part of an effort to reduce the influence of interest groups in American politics, or to free representatives somewhat from the pressure to be responsive to their constituents so that they can exercise their independent judgment better.

The one conventional justification for campaign-finance reform that succeeds in principle is the argument that the current system of campaign finance allows too much political inequality. Apart from any other agenda, one might justify reform on the ground that inequalities in wealth should not be translated into inequalities in political influence. But while this is true in principle, it may be difficult in practice to justify any specific reform measures on this ground. In particular, it may be difficult to remedy inequality without introducing other problems. Moreover, the issue of paying for democracy reasserts itself; we have to ask whether the gains from promoting equality are worth the costs. It does not necessarily follow that we should be skeptical about campaign-finance reform in general. But we should understand that in proposing reforms we are engaging certain long-lasting and perhaps intractable problems that will occur in any democratic system. We should also be clear on what the objective of campaign-finance reform is, so that reform efforts, if they are appropriate, do not defeat each other or dissipate their energy.

I. CORRUPTION

The Supreme Court has said that the interest in “preventing corruption or the appearance of corruption” is “the only legitimate and compelling government interest[ ] thus far identified for restricting campaign finances.”\(^1\) The claim that the current system of campaign finance is corrupt can mean many things, and the Court has sometimes used the term to mean something that is hard to distinguish from inequality\(^2\)—even though in


other decisions the Court has said that remedying inequality is not a permissible reason to limit campaign contributions or expenditures.\(^3\) The most common understanding of the "corruption" claim, however, is that campaign contributions are, in practice, not much different from bribes. Candidates are "bought" by their contributors and, in carrying out the duties of their office, they respond to contributors' wishes at the expense of other constituents and the public interest.\(^4\)

One obvious problem with allowing candidates to be "bought" is that people with more wealth are, other things equal, in a better position to buy them. Corruption of this kind, therefore, presents problems of inequality. But "corruption" and "inequality" are conventionally treated as different justifications for campaign-finance reform,\(^5\) and separating these two justifications will help us identify the kind of remedy that might be needed. Inequality, if it is the problem, calls for one kind of reform; bribery, if that is what is in fact going on, might call for a different kind of reform. So the question is whether, apart from inequality, the potentially "corrupting" effect of campaign contributions is a problem.

One way to set aside any concern with inequality is to assume, as a thought experiment, that everyone has an equal opportunity to "bribe" the official or candidate of his or her choice by making campaign contributions.\(^6\) This will isolate the problem of corruption. For example, one might assume that the law requires campaign contributions to be made in vouchers that are distributed according to some conception of equality.\(^7\) Or one

\(^3\) See Buckley v Valeo, 424 US 1, 48-49 (1976) ("[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment."). The Court has repeated this statement many times since. See Meyer v Grant, 486 US 414, 426 n 7 (1988); Citizens Against Rent Control v Berkeley, 454 US 290, 295-96 (1981); First Natl Bank of Boston v Bellotti, 435 US 765, 790-91 (1978).


\(^5\) See National Conservative Political Action Committee, 470 US at 496-97; Buckley, 424 US at 47-49.

\(^6\) For these purposes there is no reason to distinguish campaign contributions from independent expenditures. See, on this distinction, the discussion in Buckley, 424 US at 19-23.

\(^7\) See Bruce Ackerman, Crediting the Voters: A New Beginning for Campaign Finance, 13 Am Prospect 71 (Spring 1993).
might assume a scheme that equalizes people's ability to make contributions by multiplying contributions by a factor inversely related to the contributor's income.8

One could argue that even in such an "equal" world, the corrupting effects of campaign contributions will be a problem because officials will be unduly responsive to contributors. The claim that elected officials respond to the wishes of their contributors is certainly plausible. But the question, once inequality is removed from the picture, is why this is troubling. Elected officials also respond to the wishes of past and potential future voters. While that may sometimes be a problem, no one thinks it is the same kind of problem as bribery. If everyone had the same capacity to contribute to campaigns—that is, if equality were somehow secured (or if we decided it was not an issue)—the difference between contributions and votes would diminish sharply.

That is because, so long as contributions are really spent on the campaign (an important qualification I will consider shortly), they benefit a candidate in only one way: they can be used to gather votes. Giving a dollar is, nearly enough, like delivering to the candidate some fraction of a vote. Of course, there is not an exact equivalence. Among other things, votes are seldom a linear function of dollars spent. But these differences do not make contributions more like bribes. Bribes go into the candidate's pocket. Campaign contributions just help her win the election. On these assumptions, an elected official's decision to please past and future contributors is difficult to distinguish from her decision to please those who voted for her in the past and to try to appeal to those who might vote for her in the future.

In fact, in certain ways, a system in which representatives respond to campaign contributions might be said to be (in theory) more democratic than one in which representatives respond to voters. For one thing, a system of contributions mitigates the bundling problem.9 A voter is likely to approve of some positions

---


Strictly speaking, this assumption only secures equality of financial resources, not equality of other resources that might affect individuals' influence over political campaigns—such as education, information, leisure, celebrity, and so on. In order to separate the effects of inequality and the effects of corruption (understood as something like bribery), we must assume equality along those dimensions as well.

9 On the bundling problem in voting for candidates, see James D. Gwartney and
a candidate takes and disapprove of others. But the voter can only vote in favor of or against the candidate’s entire package. Contributions can be more discriminating. A contributor can make a legislator’s reward depend precisely on the degree to which the legislator has taken positions of which the contributor approves, and the contributor (in a “corrupt” system) can tell the legislator which positions will produce greater contributions. In that way, a system of delivering contributions might better reflect popular sentiment than a system of delivering votes.

Second, contributions allow voters—that is, contributors—to register the intensity of their views. At the ballot box, a voter has a difficult time showing how enthusiastically she supports a candidate. She can vote for or against, or she can abstain. By contrast, a contributor can spend her money in direct proportion to the intensity of her views.

This line of argument does assume, in addition to equality, that campaign contributions are really spent on the campaign instead of being placed at the personal disposal of the candidate. There have been some egregious violations of this principle, such as the arrangement under which members of the United States House of Representatives who retired by 1992 could retain any unused campaign funds for personal purposes. And no doubt there are many more subtle violations. It will often be difficult to draw the line between a candidate’s personal well-being and the well-being of the reelection effort, especially when the candidate is absorbed in a campaign. In any event, a substantial portion of a candidate’s actions at any time can plausibly be said to be related to seeking reelection.

Still, even assuming these problems can be solved, the intuition remains that there is something unseemly about candidates’ serving the desires of those who make contributions. The difference between contributions to the campaign and payments to the candidate might seem only technical, or in any event not signifi-


10 Sometimes voting for a third party candidate may also be a way of expressing a weak preference for one of the major candidates.

There are some settings in which it is plainly inappropriate to "buy" government action, whether by campaign contributions or in any other way. No one, for example, believes that a judge's decision in a case, or an administrative official's quasi-judicial decision (such as an elected attorney general deciding whether to seek an indictment), should be responsive to payments of any kind. Campaign contributions would be little better than bribes in such a setting, and neither would be an acceptable way to influence action. But by the same token, it would be unacceptable for these decisions, at least in particular cases, to be made on the basis of election returns. A judge, even if elected, should no more decide a case by anticipating how the voters will react than she should decide it on the basis of who contributes to her campaign or who paid her a bribe. That is a bit of an overstatement; surely it is worse to take a bribe than to be responsive to the voters, and in adopting their general policies and approaches to classes of cases (as opposed to the decision of specific cases), it may be acceptable for a judge or an administrative official to respond to the voters. But there is a core of truth to the idea that no form of responsiveness, whether electoral or monetary, is appropriate in such settings.

On the other hand, there are settings in which it is relatively unproblematic for government decisions to be bought and sold, quite literally. The Federal Communications Commission ("FCC") recently auctioned off the right to use certain frequencies on the electromagnetic spectrum.\(^\text{12}\) That is a clear case of a government decision being purchased. But no one believes this decision was corrupt or improper. On the contrary, a substantial body of opinion holds that this way of making the decision is far superior to trying to make it by reference to the public interest.\(^\text{13}\) And no one, so far as I am aware, thought that auctioning off frequencies was akin to allowing officials to be bribed. It would certainly have been objectionable if the payments had gone not into the treasury but into the pockets of the FCC commissioners. But this suggests that the central distinction between campaign contribu-

---

\(^{12}\) I am indebted to my colleague Professor Richard Craswell for this example.

tions and bribes—that the former, unlike the latter, do not (in principle) enrich the candidate—may indeed be decisive. Prosaic user fees can be seen in the same light, as payments that determine government decisions.

Why is the purchased judicial or administrative decision so unacceptable, and the purchased telecommunications frequency so unobjectionable? One reason is that the former decision is supposed to be made according to certain norms. This is true not just of judges, but of prosecutors, building inspectors, police officers writing traffic tickets, and so on. At least arguably, it is also true of government decisions about whom to hire and which contractors to engage. Those decisions are supposed to be made according to criteria that may diverge from willingness to pay or from electoral strength. But the decision about who should obtain which space on the electromagnetic spectrum is different. It is unobjectionable to have that decision made according to willingness to pay. No other norm is so obviously superior to willingness to pay that allowing people to purchase broadcasting rights seems a form of corruption.

On one view of the political process, most decisions made by our system are like the decisions of judges. This view holds that there is a comprehensive conception of the public interest. That is, decisions in general are to be made by consulting the public interest, and we can determine what the public interest is by engaging in some form of normative reasoning. One might hold, for example, a moral view that requires utility to be maximized, or certain rights to be protected, or a certain form of equality to be secured; and one might say, in addition, that the duty of every elected representative is to make each decision in the way best calculated to implement that moral vision. To the extent one holds that view, then a political decision that was made in response to campaign contributions would be just like a judicial decision that was made for that reason, and neither would be much better than a decision made in response to a bribe.

The problem is that this approach also seems to leave no room for elections. This is the first tension in democratic theory that I mentioned at the outset. Elected representatives are supposed to respond to their constituents; otherwise, what is the point of having elections? But they are not supposed simply to

---

transmit the views of their constituents. To some degree they are supposed to exercise independent judgment, on the model of a judge deciding a case. To the extent that elected representatives are supposed to implement a conception of the public interest, a decision made in response to campaign contributions is little better than a decision made in response to a bribe. But neither is much different from a decision made in response to the voters' wishes. Officials, according to this conception of the function of government, are supposed to decide according to a moral conception, not according to what someone else—a contributor, briber, or voter—thinks. Of course, one might say that officials are more likely to make the right decision if they follow (to some degree) the wishes of the voters. But once we go this far, we have to explain why they are not going to be more likely to make the right decision if they follow the wishes of contributors.

Seen in this light, responsiveness to voters or contributors is sometimes acceptable, sometimes unacceptable. In either event, assuming throughout that the problem of inequality is solved, there is no sharp line between a system in which contributions determine officials' actions and a thoroughly "democratic" one in which votes determine their actions.

Bribery, however, is unacceptable across the board. It must be, then, that what makes bribery so clearly wrong is the element of unjust enrichment. The problem is not that the government responds to individuals' wishes; that is true of democracy generally. It is not that the decisions respond to the wishes of those who are willing to pay. Inequality aside, that will sometimes (not always) be a good thing, for roughly the same reason it is good in ordinary markets. The FCC example shows this.

The problem is that bribes go into the officials' pockets. The officials have converted authority given to them for public purposes into private gain. This is likely to be inefficient (since presumably the money could be put to more productive uses than supplementing the officials' salaries), but the real problem with it seems to have more to do with fairness. That is why the FCC auction would seem so unacceptable if the proceeds went to the FCC commissioners. But campaign contributions do not have this feature. They go, not to the officials themselves, but to enhancing the officials' reelection chances.

That is, in a regime in which campaign contributions are freely allowed, officials' decisions are made on the basis of what will most enhance their chance of reelection. That is crucially different from a regime of bribery. Whether it is a good thing
CAMPAIGN FINANCE REFORM

depends on how we resolve the question about the extent to which representatives should be responsive or should exercise independent judgment, the question of democratic theory that I mentioned at the outset.

From what I have said so far, it follows that, to the extent reformers are concerned about bribery-like corruption, the proper reforms are, in principle, relatively modest. One might want to ensure that contributions were made public, which could have the democracy-enhancing result of letting voters know to whom a candidate was beholden. One might want to limit contributions by persons who are not a candidate's constituents (although it is not obvious that a representative should be responsive only to her particular constituents and not to some larger national constituency). Finally, one might want more rigorous auditing and accounting procedures to be sure that candidates and their staffs spend campaign contributions on the campaign. But it is certainly not obvious that the concern with corruption, taken alone, justifies public financing, or restrictions on contributions, or any of the other relatively dramatic measures that some commentators have proposed.

II. INTEREST-GROUP POLITICS

Much of the concern about the corrupting effect of campaign contributions may be directed at the dangers of excessive interest-group power. The widely held view that political action committees ("PACs") are evil, for example, suggests that this is the core concern about "corruption." Relatively small groups whose members are intensely interested in an issue have an organizational advantage over much larger groups whose members have a smaller interest. This organizational advantage can translate into an advantage in democratic politics. This is a basic insight of public-choice theory. The problem of excessive interest-group power is a different problem from bribery; interest groups can exert disproportionate power even in a system in which there are no campaign contributions at all, only voting. But it seems rea-

141


sonable to suppose that a system of unrestricted private financing of campaigns heightens the advantage that interest groups have, for several reasons.

To begin with, contributions can be put directly under the control of interest groups. While interest groups also promise to deliver votes, they deliver them much less efficiently and reliably, because of the secret ballot and because individuals must cast their own votes. More subtly, voting at the ballot box rather than through contributions may encourage voters to concern themselves with the public interest, or at least with a range of issues, rather than with their more narrow group interests. That is partly because of the bundling effect: a voter is forced to express approval or disapproval of a candidate's entire record, while a contributor has the opportunity to limit her approval or disapproval to specific actions.

Finally, a voter looking for an intermediary group to channel her contribution—that is, a PAC—may be hard pressed to find a "public-interest" PAC precisely because small groups of intensely interested members are more likely to be organized. There are many reasons for a contributor to want to take advantage of an intermediary like a PAC. For example, they have more knowledge and a greater capacity to monitor an elected official's performance, so they are likely to spend her contributions more effectively. But a contributor who wishes to use a PAC for these purposes may have to choose among various groups that represent narrow interests.

It is certainly not out of the question that the current system of campaign finance has increased the influence of narrowly interested groups. Is that a reason for reform? The question raises many complex issues, and of course it points to another of the great, and so far unresolved, tensions in democratic theory and practice. Nearly everyone agrees that some narrowly focused interest groups do good things, by registering the intensity of voters' preferences and by forcing officials to pay attention to the legitimate grievances of groups the officials might otherwise ignore. But most people also agree that interest groups are sometimes not healthy, because they can bring about results that are inconsistent with the public interest. People differ, of course, over

---

which interest groups are good and which are pernicious. For some, the villains are the gun lobby and the sugar lobby; for others, they might be civil-rights and environmental-protection groups.

It might well be that interest groups should be weakened across the board, because the harm they do outweighs the good. Campaign-finance reform—the public financing of campaigns, for example—seems a plausible step toward this objective. There is, of course, the question whether we can rely on a political process that is, by hypothesis, too subject to interest-group pressures to produce such a reform, as opposed to a reform that masquerades as something that reduces interest-group influence but actually favors certain groups over others. But even if that practical obstacle could be overcome, it would not be obvious that the objective—weakening interest groups across the board—is a good one. If special-interest groups are weakened, there might just be more opportunities for pandering and demagogy. Single-issue voting would not go away even if single-issue contributions did. The weakening of intermediate organizations that aggregate people's views might lead to a less well-informed electorate. It might also lead to an increased degree of alienation from politics. In any event, these are the questions that a reform agenda would have to address.

Alternatively, the point might be not to weaken interest-group influence generally, but to weaken only bad interest groups, not good ones. But then changes in campaign-finance laws become a way that the combatants over various substantive issues—gun control, tax reform, environmental protection, etc.—can try to advance their positions. On this approach, there is no independent agenda of reforming campaign-finance laws in order to improve the system of democratic accountability generally. It may well be correct to think about campaign-finance reform as a way to undermine, not interest groups generally, but only unworthy interest groups. But this is a different kind of agenda from what the advocates of campaign-finance reform usually describe.

In short, interest-group influence may be a worthy target of campaign-finance reform, but the matter is much more complex than it might appear to be at first. Interest-group activity in a

---

18 On the general question of the role of intermediary groups, see the discussion in Robert D. Putnam with Robert Leonardi and Raffaella Y. Nanetti, Making Democracy Work: Civic Traditions in Modern Italy (Princeton University Press, 1993).
democracy can have valuable, as well as harmful, effects. It is possible that reducing interest-group pressure across the board would be a good idea; but it is not obvious that this is so. And if the goal of campaign-finance reform is selectively to reduce the power of some interest groups, then campaign-finance reform is no longer an independent project, justified on "good government" grounds, but rather part of a different, more partisan agenda that has to be justified on its own terms.

III. EXTORTION

The problem of extortion has received surprisingly little attention in the public debate over campaign-finance reform. As a conceptual matter, it is the opposite of the concern with corruption (understood as a form of bribery): the problem is not the power that contributors have over officials, but the power that officials have over potential contributors. Elected officials might extract contributions from individuals and groups who have no desire to contribute but fear that the official will take actions unfavorable to them if they do not.

It is surprisingly common, for example, for certain groups to contribute to both competing candidates in an election campaign. Some reformers point to practices like this as evidence that the contributors are trying to buy influence with the official, and do not much care who is elected. But that account does not seem right. Why would any official be "bought" under these circumstances, since she knows the contributor helped her opponent as well, and presumably will help her opponent in the future no matter what she does? Similarly, in the last decade or so there has been a dramatic increase in contributions to incumbents with safe seats. This, too, is sometimes cited as a sign of efforts to buy influence. But to the extent that the incumbent's

---

19 See, however, the discussion in Frank J. Sorauf, Inside Campaign Finance: Myths and Realities 60-97 (Yale University Press, 1992)(cited in note 11).
23 Michael W. McConnell, Redefine Campaign Finance Reform', Chi Trib 1-15 (June
seat is truly safe, it is again unclear why she would care about appeasing her contributors, at least very much.

In both of these cases, the more likely explanation is that the victim is not the public trust, supposedly betrayed by a "bribed" official, but the contributor. It is more likely that the contributor felt compelled to make a contribution for fear that, if she did not (and especially if a competitor did), the official would retaliate. The same may be true when groups whose interests are often in conflict contribute to the same side in a campaign (environmental groups and manufacturers' trade associations, for example, or plaintiffs' lawyers and the insurance industry, or railroads and the trucking industry). 24

An official who explicitly extorted funds in this way would, of course, be committing a crime. But there are many ways that an official could subtly signal her intentions and extract the contributions without being overt. In fact, the official might make no threat at all. Even if the official has no intention of doing anything against the public interest as she understands it, groups likely to be affected by her decisions may fear that they run too great a risk that she will hold it against them if they do not contribute to her campaign.

Oddly, even an official who is quite consciously engaged in extortion will, to the extent she succeeds, often have little reason not to go ahead and do what she thinks is right. If her extortion is successful, after all, she will not have to punish anyone. Her decisions may be distorted by the need to give the impression, in general or to some specific group, that she is prepared to retaliate if support is not forthcoming in the future. But as I said, many contributors may feel coerced to contribute even though the official had no bad intentions at all.

Whatever the effects of extortion on the decisions made by officials, extortion of this kind does operate to impose a kind of tax. It is an involuntary exaction from certain members of the public. One might say that, to the extent this kind of extortion is going on, we already have a form of public financing of cam-

24 For an argument to the effect that extortion of this kind is always a danger in the absence of strict limits on legislative authority, see Fred S. McChesney, Rent Extraction and Rent Creation in the Economic Theory of Regulation, 16 J Legal Stud 101 (1987).
paigans. Instead of the money being raised through the official tax system, it is the result of "shakedowns." That is, these "taxes" are assessed arbitrarily, on those groups that are most vulnerable to the officials involved.

This kind of extortion is therefore unfair in an important sense: groups are singled out for an exaction without a democratic vote or any other legitimate reason. Also, these "taxes" are probably inefficient, in the sense that industries subject to extortion will have higher costs, relative to other industries, than they would in a well-functioning market. So here, too, there is a potential agenda for campaign-finance reform, but it is a different agenda from the one usually advanced. The objective is not so much to protect the health of the system of government as to protect potential contributors against unfair and inefficient exactions.

In this connection, it is important to note that "corrupting" contributions and "extorted" contributions are not two distinct categories. The same transaction might be both. Indeed, corrupt public officials who have sold their offices for bribes are often convicted under statutes forbidding extortion. The same bribe, or campaign contribution, might both influence an official to do something she would not otherwise do (the potentially "corrupting" effect) and be extorted in the sense that the donor pays it only because he feels he has to in order to avoid retaliation.

The value of the distinction is not that it sorts two categories of contributions, but that it identifies two different effects with which we might be concerned: the "corrupting" effect of diverting a public official from the pursuit of the public interest, and the inefficiency and unfairness of extortion. These different problems call for different kinds of reforms, and raise different questions about what must be shown before we decide that reform is worthwhile. "Corruption," I have argued, really reduces to a concern either with interest-group pressure or with excessive responsiveness by representatives to members of the public. Extortion is a concern with inefficiency and unfairness to potential contributors.

It is hard to know how prevalent the extortion of campaign contributions is; obviously, if it is not especially prevalent the

---

25 The argument in this paragraph is a response to a point pressed by Daniel Hays Lowenstein at the Legal Forum Symposium, Nov 4-5, 1994. See also Daniel Hays Lowenstein, Campaign Contributions and Corruption: Comments on Strauss and Cain, 1995 U Chi Legal F 163, 182-85 (cited in note 4).

26 See, for example, Evans v United States, 504 US 255 (1992)(upholding elected official's conviction of extortion under the Hobbs Act, 18 USC § 1951(b)(2) (1988)).
case for reform on this ground is weakened. One indication that it is not prevalent is the absence of agreements, among potential competing contributors, not to contribute or to limit contributions. That is how the extorted contributors could defend themselves. In effect, it would be a cartel in the buyers' market for political favors, designed to drive down the price that politicians could exact. Since there is an elaborate reporting regime for contributions, it would be relatively easy to police cheating in the cartel. Were extortion widespread one would expect to see at least some degree of activity of this kind. Perhaps the problem is just that most groups have shifting patterns of conflict and alliance, making it difficult to organize or even identify all the parties needed to make an agreement stick.

Also, if extortion were prevalent, one would expect to see calls for campaign-finance reform from the interest groups that supposedly are the victims of this extortion. But in this country, at least, those groups do not seem to be strong promoters of campaign-finance reform. The evidence of contributions to representatives with safe seats, and contributions by opposing interest groups, does suggest that this problem may be a substantial one. If this is so, however, the reform agenda will have a different objective from the anticorruption ideal that is usually advanced.

In sum, the extortion of campaign contributions—the exploitation of contributors by candidates—is a legitimate concern for campaign-finance reform. Extortion would be troubling for reasons of both fairness and efficiency. Unlike "corruption," extortion does not reduce to something else, such as a concern with inequality or interest-group influence. It is unclear how prevalent a problem the extortion of campaign contributions is; in any event, the need to prevent extortion does not seem to be prominent among the reasons advanced by reformers.

IV. THE BURDEN ON CANDIDATES

Recently, complaints about having to raise campaign funds have become more common, or at least more public, among public officials and candidates for office.27 Candidates find fund-raising to be time-consuming and demeaning. The demands of fund-raising are also said to hurt the public by diverting the time and en-

ergy officials need to do their jobs well and, partly as a result, by
driving many able people from public service.28

This justification for campaign-finance reform is, again, un-
deniably substantial. But when analyzed, this argument seems to
fall into the same pattern as the arguments for reform based on
corruption and interest-group domination. Part of the problem is
inequality. When inequality is factored out, the problem does not
disappear, but it resolves into one of the dilemmas I mentioned
at the outset. The case for reform rests on a judgment about
whether it is more important for an official to stay in touch with
her constituents or to spend time on governing. Moreover, any
argument for reform will have to identify another way to raise
money to finance political activity.

Inequality seems to constitute part of the reason that fund-
raising is perceived as demeaning and vaguely sordid. The image
that prevails is of a candidate courting “fat cat” contributors
while neglecting ordinary citizens. If everyone had roughly the
same capacity to make a contribution to a campaign—if, for ex-
ample, there were a voucher scheme—seeking contributions
might look more like campaigning for votes. A candidate who
declared that she did not want to run for office because she did
not want to raise money would be like a candidate who said she
did not want to undertake the rigors of campaigning. Few would
deny that some good candidates are lost for that reason, but the
situation would not be seen as a crisis warranting major reforms.

Even under this contribution-equalizing voucher scheme,
there still might be potential contributors, such as intermediary
organizations, who would have access to large sums of money
and whom candidates would especially need to court. This need
not be a sordid process. Charitable organizations, arts groups,
hospitals, universities, and other private entities systematically
raise funds from people and organizations, such as foundations,
who think their mission is worthwhile. It is possible, but it is not
obvious, that public funding of such private institutions would be
an improvement. Trying to raise money is one way in which the
leadership of organizations is forced to keep in touch with con-
stituencies that have a legitimate interest in how the organiza-
tions are run. Thus, for example, if public funding excused a

28 See generally, Vincent Blasi, Free Speech and the Widening Gyre of Fund-Raising:
Why Campaign Spending Limits May Not Violate the First Amendment After All, 94
Colum L Rev 1281 (1994); David Price, The Congressional Experience: A View from the
university president from the need to raise money, the effect would reduce the influence of the alumni, even if, say, the alumni continued to vote for the members of the governing body of the university.

To put the point another way, public financing of elections is in a sense antidemocratic precisely because it relieves candidates of the need to seek an important source of support from constituents. Explaining why one is worth a contribution is arguably part of the job of democratic politics. The German Constitutional Court concluded that unrestricted public subsidies of political parties are unconstitutional partly for this reason: "The parties must remain dependent upon citizen approval and support not only politically but economically and organizationally as well. Public funds thus may not be permitted to liberate individual parties from the risk of failure of their efforts to obtain sufficient support from the voters."29

The possible concerns about "excessive" fund-raising activities by candidates thus identify the same fault lines in democratic theory that I mentioned at the outset. Representatives may be too concerned about responding to constituents and insufficiently concerned with the business of governing. In this context, that means that they may spend too much time persuading constituents to give them money—just as it is sometimes said that elected officials spend too much of their time on positioning themselves for the next election. But it is difficult to specify just what proportion of their time representatives should spend on each of these tasks, even in an ideal world.

Having said that, there is no reason to think that candidates currently spend the right amount of time on fund-raising, or for that matter on campaigning, or that they would if inequality were taken out of the picture. The amount of time and energy candidates must spend on fund-raising depends on (perhaps among other things) people's willingness to contribute and the amount that must be raised. People's willingness to give to political campaigns (or universities or museums) is a function of many things; the cost of campaigns is a separate function of many other things. It will only be coincidence if candidates spend the right amount of time on fund-raising, and there is no reason to think that they do under the current system. But advocates of reform proposals must sort out these various aspects of the prob-

lem; they must decide whether their principal concern is inequality and, if it is not, they must justify the position that representatives spend too little time governing and too much time explaining themselves to members of the public who might give them money. Reform proposals cannot be presented as straightforward ways of eliminating an unquestionably undesirable aspect of the system.

One other point should be noted. It is possible that the emphasis on fund-raising has contributed to the bureaucratization of government. Fund-raising, like campaigning for votes, is not completely unconnected to governing; but it does mean that the candidate or official must concentrate on articulating broad themes and can address details only when they affect a particular target audience. This relationship among an elected official, her staff, and the process of governing—the official articulates broad themes, deals with details when potentially controversial, but otherwise leaves most of the work to the staff—may or may not be desirable. If it is not, there is an additional reason for campaign-finance reform. But once again, it is difficult to get a fix on just how serious these concerns are. And the justifications for reform appear in a different light from that in which they are often presented.

V. EQUALITY

The promotion of equality—a basis for limiting campaign contributions and expenditures that the Supreme Court has ruled out explicitly (although sometimes permitting implicitly)—is the one basis for reform that seems easiest to justify, at least in principle. As many have argued, the principle of one person, one vote has direct application to campaign finance. People who contribute more to campaigns have, in general, more influence over the outcome. If it would be wrong to give more votes to people with more money, then there is a prima facie argument that it is wrong to allow people who have more money to exert greater influence through contributions.

30 See notes 2-3 and accompanying text.
32 See Foley, 94 Colum L Rev at 1220-26 (cited in note 8); Cole, 9 Yale L & Policy Rev
The problem with equality as a goal of campaign-finance reform comes at the level of practice, and it occurs in at least two forms. First, can the political system be trusted to reform campaign finance for the ostensible reason of promoting equality—or will such reforms just be a cover for incumbent protection and other bad things? Second, even if the political system can be trusted in this respect, is promoting equality worth the costs?

Incumbent protection and related problems have been thoroughly canvassed in the literature on campaign-finance reform. Incumbents share an interest in protecting incumbents, and that interest may outweigh party loyalty or ideological concerns. The one-person, one-vote analogy suggests that there is a dark side of campaign-finance reform: it may be an equivalent to gerrymandering, which, according to most accounts, has been widely used to protect incumbents. Within the limits specified by the principle of one person, one vote, legislatures have ample room to draw district lines to protect those whom they want to protect. The same may be true within a principle of equality in campaign finance.

Of course, the risks of incumbent protection or other distortions may be worth taking, if the harms of inequality are great enough. In addition, as long as some regulation of campaign finance is permitted, there is a danger that legislatures will abuse the power. It is not clear that allowing regulation for the purpose of promoting equality is especially likely to increase the dangers.

There is also simply the question of costs, both monetary costs and what might be called moral costs. The moral costs are incurred because it is arguable (although far from clear) that restricting people's ability to spend what they want to on campaigns infringes their autonomy in a significant way. The monetary costs result from replacing a system of essentially voluntary financing with one of compulsory financing. As things stand now, we have a system in which political campaigns, a very important but very expensive activity, are voluntarily funded. At least this is true if we leave aside the problem of extorted contrib-

---


34 See Bruce E. Cain, Moralism and Realism in Campaign Finance Reform, 1995 U Chi Legal F 111, 128.
butions. Any system that equalizes the ability to influence campaign finance will, unavoidably, require the expenditure of public funds. That is because it will diminish the ability of people who are now financing campaigns to influence the outcome. If their dollars cannot produce as much influence, they will not be willing to pay as much. Since campaigns are so expensive, the public expenditures may end up being very great.

Determining whether these expenditures are worth it will be a dauntingly complex task. Several things must be considered. First, to the extent campaign contributions are extorted today, public financing may be an improvement, from the point of view of both fairness and efficiency. Also, of course, if public financing can reduce some wasteful government expenditures, for example, by diminishing the power of interest groups that bring about wasteful expenditures, it could, in theory, pay for itself.

On the other hand, new government expenditures may be financed, not from taxes or by reducing other, unnecessary, expenditures, but by reducing the amount spent on those who are politically most defenseless. In addition, it is not clear how much true equality can be obtained by regulation. People or groups with great wealth at their disposal may find other ways, apart from contributions or expenditures, to influence candidates, such as offering them advantageous investments or opportunities for financial gain after the official leaves office. It will be very difficult to police all of these avenues of potential influence.

Finally, there is the question of just how harmful inequality is, when separated from the problem of, for example, interest-group pressure. It is conceivable that wealthy individuals, as it were, cancel each other out: that each side in a partisan contest will have wealthy patrons who support it. To the extent that this is true, the distorting effects of inequality may be limited. Precluding the private use of wealth will only eliminate a large source of voluntary funding, with no offsetting gain. Of course it is also possible that the influence of inequalities of wealth is not so benign. It may distort political outcomes in important ways. The point is just that a persuasive case for reform will have to give an account of what the distorting effects of wealth are, whether we can (given the possibilities of evasion and in-kind benefits) overcome those effects, and whether the costs of doing so are worth it.
The conventional justifications for campaign-finance reform raise issues that are more complex and problematic than they might appear to be at first. The one justification that stands up well as a matter of principle is, ironically, the one that the Supreme Court has criticized most directly—the interest in promoting equality. The other justifications do not lack substance, but they conceal deeper issues that implicate important tensions in democratic theory and practice. In particular, the other justifications, such as concerns with corruption and with the misuse of candidates' time, raise basic questions about the extent to which representatives in a democratic government should be responsive to their constituents, and about the appropriate level of interest-group influence in democratic politics.

Does this mean we should be skeptical of all proposals for reforming campaign finance? Not necessarily; in fact, perhaps just the opposite. These arguments suggest that campaign-finance reform cannot be justified on the basis of relatively neutral or technical arguments about democratic government. Instead, any ambitious reform agenda will engage highly controversial and politically charged issues. This may, however, make the question of campaign-finance reform more, not less, urgent.