

Chapter 17

Elections and Voting

Final Draft, August 2009

Elections are at the very core of democracy. Even if democracy is conceived as involving much more than elections, and even if an ideal democracy includes important forms of direct participation by citizens in many aspects of public decisions, still the most basic constraint on oppressive state authority that we have is the fact that we elect the decision-makers and can get rid of them if we dislike what they do. Any evaluation of democracy in America must include a careful examination of its electoral system and how it works.

In this chapter we will explore two broad themes about voting and elections in American democracy. The first concerns an important theoretical puzzle about democratic elections: why do people bother voting in the first place? Given that a single vote almost never decides large elections, on the face of it voting might seem to be a waste of time: doing something that has no practical effects. Answering this question will help us get a sense of some of the conditions which strengthen or undermine the vitality of electoral politics.

The second theme concerns the problem of how deeply democratic are elections in the United States. In the transition to democracy within authoritarian regimes the code words “free and fair elections” are often invoked in assessing democratic a society really is. There are countries that hold regular elections in which a single candidate receives 99% of the vote, but we don’t consider this in the slightest democratic. But what precisely do we mean by “free and fair”? There are obvious ways in which an election might be unfair – stuffing the ballot box, faking the numbers, preventing people from voting by intimidation or simply excluding them from the voter lists. Until the 1960s in the U.S. South most African-Americans were blocked from voting through various devices. The most notorious was the infamous literacy tests in which potential black voters had to show a thorough knowledge of the constitution (for example) before they could be registered, whereas White voters had much less demanding tests. This, by any standard, was unfair.

Fraud, intimidation, and illegal exclusions are obvious ways in which elections can be rendered less democratic. Although these kinds of processes do happen in the United States – for example in the 2000 presidential election when the state of Florida purged its voter lists of felons in such a way that many non-felons, mostly black, were illegitimately denied the right to vote – fraud and repression of voters are not generally the most important issues in the U.S. We will focus instead on three crucial features of our electoral system that undermine the fairness and democraticness of elections: (1) representation rules, (2) the boundaries of electoral districts (3) Campaign finance.

WHY DO PEOPLE BOTHER VOTING?

During election campaigns people are encouraged to vote by claims that “every vote matters,” but this is plainly false. *Voting* matters and the *aggregate* of all votes matter, but each single vote as such doesn’t “matter”, at least in the sense of really influencing the outcome of the election. Since it does take time and effort to vote, and in some times and places a lot of time and effort, why do people do it?

If people really behaved as simple self-interested rational actors making cost-benefit calculations in the way that is described in the prisoner’s dilemma, then virtually no one would actually bother voting. The fact that even in low turnout national elections in the United States somewhat more than 50% of the eligible voters do vote means that something else is going on. What is going on is that people make many choices on the basis of what they believe is the morally right thing to do, and their more general sense of their efficacy as a citizen, rather than on the basis of a simple cost-benefit analysis of what is in it for them. People are moral beings, not just self-interested actors, and for many people voting is seen as an obligation, a duty. This sense of moral obligation can take different forms. One possibility is that when people recognize that they care about the outcome of the election – they believe that one candidate or party will be better than another –they then feel it would be wrong to be a free-rider on the efforts of others. Norms against free-riding are quite pervasive in all societies, even in a highly individualistic, market society like the United States. Not doing ones “fair share” or not “pulling one’s weight” is broadly viewed as a violation of social norms in situations in which one is benefiting from some process of cooperation. Elections are one example. People may also believe in “civic obligation” and see voting as a strong duty that comes from membership in a community. In this case the issue is not simply that it is unfair to be a free-rider on other people’s efforts, but it is a violation of one’s identity as a citizen not to vote.

The fact that people vote, then, reflects the presence of important morally-infused motivations. The vitality of popular participation in elections, therefore, depends in significant ways on the way a society nurtures or undermines these kinds of civic identities and moral sentiments.

How does the United States fair in these terms? Table 17.1 indicates the average voter turnout rates in elections for the lower legislative houses from 1965-1995 for the United States and other capitalist democracies that had at least five free elections in this period (The figures for the United States are only for elections in presidential years. In off-year elections the figures for the US are 10-15 percentage points lower). Of the 28 countries in the table, the United States ranks 27th with an average turnout of only 54%, 25 of the countries had average turnouts above 70%, and most had turnouts above 80%. What is more, the longer term trends in the United States do not point to a reversal of this low voter turnout. In off-year congressional races the rate has declined from over 45% in the period 1962-1970 to close to 35% in the elections of 1998-2006. In presidential elections, even with the enthusiasm of Obama supporters in the 2008 election, voter turnout was still below the levels of the 1960s (see Figure 17.1). By comparative standards we have an extremely apathetic electorate, with barely 50% of voters voting even in high profile presidential elections, and only about a third voting in off-year national elections. In state

and local elections the turnout figures are even worse, often falling below 10%.

-- Table 17.1 and Figure 17.1 about here --

There are a variety of factors that come into play in explaining this low level of voter participation in the United States. One issue that is often stressed is that in most places in the United States voter registration procedures are much more difficult than in other democratic systems. Typically in the United States people have to register to vote in special venues like county court houses weeks before elections, and every time they move to a new address they have to re-register. The seven states in the United States that have same-day voter registration at the polls – Idaho, Iowa, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming – have significantly higher voter turnout than the United States as a whole: in the 2008 election about 68% compared to 56%. This suggests that the voter registration rules in other states contribute to the depressed voter turnout rates. Still, even this rate of 68% falls well below that of nearly all other democracies.

Aside from cumbersome registration rules, the very low level of voter turnout suggests that in the United States the sense of civic obligation around voting is low, for in the absence of civic obligation, the individualistic cost/benefit calculation on voting strongly favors staying home. The question then becomes why civic obligation is generally so weak in the U.S. We would stress a number of contributing factors:

First, there are important elements in American culture which run directly counter to values of collective responsibility and civic obligation: consumerism stresses the importance of private consumption over public goods; individualism stresses the importance of autonomously pursuing one's own life goals rather than being a member of a collective; and privatism emphasizes the superiority of private solutions to social problems over public initiatives. While there is also an important strand of civic and even communitarian values within American history, these have been relatively marginalized in the last decades of the 20th century.

Second, since the 1970s, the constant attack on “big government” and the zealous praise of the virtues of the market has undermined many people's identification with the government and belief in politics. If “government is the problem, not the solution”, then to many people politics will seem a largely irrelevant, even a discredited, activity. People with strong moral commitments towards the welfare of others are more likely to be drawn to participation in nonpolitical community service activities, often connected to churches, rather than to politics. These kinds of morally-driven service activities have the advantage that there is a tangible positive effect from each individual's participation, unlike voting in which the positive effect comes from the collective aggregation of individual acts.

Third, the very high levels of economic inequality in the United States erode the sense of community, of everyone being in the same boat together, and with that erosion, the sense of mutual obligation that is the core of civic obligation is weakened. This reinforces efforts to seek private solutions to collective problems: gated communities in the face of urban poverty and crime; private schools in the face of deteriorating public education.

Finally, the role of money in politics and the recurrent stream of political scandals at all levels of government have led to a significant erosion of trust in government and politicians since the 1960s. Corruption breeds cynicism and cynicism breeds apathy. But even aside from pure corruption, the importance of corporations and money in politics leads many people to feel that politics is not their affair, that it is rigged in favor of elites and their interests don't count. People feel alienated and disconnected from the political system because it is so unresponsive to their needs.

Taken together these factors mean that a significant proportion of citizens do not feel any strong sense of civic obligation to participate in electoral processes. This doesn't mean, of course, that all nonvoters lack civic motivations altogether, and certainly it doesn't mean that they lack moral commitments. What it means is that for many people voting is not seen as a meaningful way of expressing moral commitments and civic obligations. The result is the low turnout equilibrium and a relatively apathetic democracy.

THE RULES OF THE ELECTORAL GAME

In chapter one in our discussion of what it means to study something sociologically, we emphasized the importance of understanding the way our social activities are *governed by rules*. This is a very general idea applicable to all social contexts, but there is probably no better example of this idea than elections. Elections are one way of accomplishing a critical task that is faced in all complex social organizations: How to select the people who will make decisions that are binding on everyone. There are many ways of doing this. For example, in privately owned corporations, the procedure is that the owners of the corporation (the shareholders) choose the governors of the corporation. Private property rights confer on people the right to make binding decisions on the people who use that property, and when those rights are dispersed among many people in the form of shares, then these owners collectively decide who will direct the business, usually on the basis of one-share-one-vote. Election by all members of an organization is another way of choosing decision-makers.

While all democratic states share in common the general principle that political leaders are elected, there is enormous variation in the precise ways this general idea is translated into concrete rules that govern the actions and strategies of people in political systems. Democratic elections are such a good illustration of the general sociological idea of rule-governed activity precisely because the variation in these rules is so clear and the consequences of this variation so important. Here we will focus on three clusters of rules of the game that shape the nature of American democracy and affect the extent to which it lives up to the ideals of democracy as "rule by the people": representation rules for legislative elections; rules governing the boundaries of electoral districts; rules governing financing elections.

Representation rules

It is not enough to say that in a democracy people vote for candidates, these votes are counted, and the winner is elected. This is far too vague to actually define the way an election is organized. What defines "winning"? What happens if no one gets a majority?

How many candidates can you vote for? Do you vote for specific candidates or for parties? A full specification of an electoral system requires answering these and many other questions. Answering these questions is critical because different electoral rules generate very different dynamics of political competition with very different long term effects on democratic life. This is a really interesting idea: that when you design an electoral system, the technical rules you create can generate dramatically different long term patterns. Some electoral rules make it almost impossible for new political parties to become successful; others lead to massive fragmentation of the political system into tiny unstable parties. Studying this sort of thing is what political scientists do. Here we will only sketch the most fundamental features of the representation rules in American elections and how this reduces democracy.

Basic structure of US elections: single member districts with plurality voting

This is also called “first past the post single member district elections.” Here is how it works: Within an electoral district there are a number of candidates running for a single seat. Whoever gets the most votes wins. End of story. If you have three candidates, one could get 34%, and the other two 32%, and the candidate with 34% wins. This is the way we elect people to congress and the U.S. Senate in almost all states, and it is the way nearly all elections to state legislatures and local political offices.

The major consequence of a single member district plurality voting system is a very strong tendency for two political parties to dominate the political system, or what is called a “two-party duopoly”. In this kind of political system it is extremely difficult for third parties to play a sustained, important role. The reason for this is that third party candidates chronically confront the problem of the fear of wasting vote on third party. Suppose that there are three candidates running, from three parties in an election – the Democratic Party, the Republican Party and the Independent Party. You really like the Independent Party candidate, but despise the Republican. The opinion polls indicate that about 40% of the electorate supports the Democratic Party candidate, 35% supports the republican and 25% the Independent. You much prefer the political positions of the Independent to the Democrat, but you really dislike the political positions of the Republican Party. What should you do? You fear that if you (and other people like you) vote for the Independent Party, that this will help the Republican get elected. So, in spite of your preference, you in the end vote for the Democratic Party. Most people who support the Independent share your worries and also vote for the “lesser of two evils”, so the Democratic Party candidate is elected. The final tally was 55% Democrat, 40% Republican, 5% Independent. This hardly reflects the true political sentiments of the electorate. The Democrat is elected with a strong “mandate”, and the political position of the Independent Party is marginalized.

This kind of scenario is not simply a theoretical possibility. In the 2000 Presidential election, the Green Party ran Ralph Nader as a Third Party candidate opposed to both the Republican Party and the Democratic Party. Many people who actually supported Nader’s positions nevertheless voted for Al Gore, fearing the consequences of a Bush victory. In spite of this fear, in one key state, Florida, Nader received 95,000 votes or 2% of the total. Bush won (after the hotly contested irregularities in the vote count), by roughly 500 votes. While it is true that if Nader had not run in Florida some of those

95,000 voters would not have bothered even voting on the grounds that no candidate represented their views, many of them would have voted, and in that case those voters would have voted strongly for Gore over Bush. The Green Party was widely criticized after the election of being a spoiler, and while there are arguments on both sides of this issue, the net effect on the fate of the Green party was to reduce its political standing.¹

There are many consequences of this monopoly of power by two major political parties. Most obviously, this tends to put on the political margins social interests that are not represented by the two dominant parties. It is very hard for a new political party to be taken seriously, for it to gradually increase its standing in the political system. Typically, new parties grow by beginning small and then gaining credibility by first getting limited representation in local elections, and eventually getting representation at higher levels of the system. If all levels of the political system are organized as first past the post single member districts, then this process is blocked from the start. This is a particularly serious problem if, as we will see below, it is also the case that both dominant political parties rely heavily on financial contributions from elites for elections. This common dependency of both dominant parties on the support of the wealthy means that neither party is likely to adopt policies that are strongly opposed by corporations and the capitalist class. A privately financed two party system, therefore, reinforces the resource constraint faced by popular social forces discussed in chapter 16.

The historical consolidation of the system

While the United States has basically had one version or another of single-member district first-past-the-post elections since its inception, the system functioned very differently in the 19th century in ways that created much greater space for third parties. Specifically, in the 19th century, states allowed what was known then as “fusion” voting. This meant that contending parties could “share” or jointly nominate selected candidates, with votes cast on any nominating party’s ballot line counting in that candidates total against rivals. Say, to take a contemporary instance of what this might look like, there is a Republican Party nominating someone named Bush and a Democratic Party nominating someone named Gore. With Gore’s consent, a minor party, let’s say a Green Party, could also nominate Gore. In a fusion voting system, the votes cast for Gore on either the Democratic or Green ballot line would count in his contest with Bush. Let us say this was done, as illustrated in Table 17.2, with Gore losing to Bush (35-48) on just the Democratic/Republican lines, but still winning overall (52-48) because of the 17 percent of the vote he got on the Green Party ballot line.

-- Table 17.2 --

A couple of things have happened here, besides Gore winning the election. First, Green Party members have been able to vote their values without wasting their votes.

¹ Defenders of the Nader candidacy in the 2000 election argue, with some force, that it is unfair to say that Nader caused the Bush victory, since if Gore had run a more progressive and populist campaign, Nader would not have taken 95,000 votes in Florida. This may be true, although it is always hard to know such things since a more populist campaign by Gore would have also lost him some “swing votes” of people wavering in the center. Nevertheless, even if this were the case it is still true that if Nader had not run, Gore would almost certainly have easily won Florida.

They have helped decide a national election not by being spoilers, but by contributing to an electoral majority, and they have done so without changing their partisan color. Two, Gore now knows that he would not have won this election without the Greens. He owes them something: a seat or two in the cabinet and a stronger environmental vision. Three, the Democratic Party now knows that they need some working agreement with the Greens. In return for Green support at the top of the ticket, they might throw their support to the Green nominee at the bottom of the ticket. And so on. In essence, fusion permits a distinct American answer to the question that is elsewhere answered by proportional representation: how to give real weight to minority electoral sentiment.

Throughout the post-Civil War period, fusion candidacies appeared up and down the ballot, across America, in almost every election. The Graingers, Free Soilers, and other minor parties of that era all depended on the tactic, as did the most famous third party in American history, the People's Party, also known as the Populists. Populism was a mass-based popular mobilization against large corporations and banks during the long deflation of the American currency that followed the Civil War. Populists forged an alliance between small farmers and workers, especially in the Midwest and, at least for a time, parts of the South. The Populist Party gained strength because it could endorse Democratic Party candidates in elections where there was a sympathetic Democratic candidate, and the votes would be counted as "People's Party" votes. This was critical to creating space for the party to gradually increase its popular support and influence. It also meant that in some instances it was the Democratic Party that cross-endorsed the Populist candidate. Through this strategy, the Populists elected people to state legislatures and the U.S. House of Representatives, and even a number of governors and senators.

The high watermark for the Populist Party was the tumultuous election of 1896 with William Jennings Bryan running as both the Democratic Party and Populist Party candidate. While the pivotal issue of the campaign was the attack on the gold standard – which Populists believed was a key source of the power of bankers and large corporations against farmers and workers – many populists also called for nationalization of the railroads, strong regulations of banks and corporations in the interests of the wider public, and promotion of other more "commonwealth" forms of ownership, insurance, and finance. The elite political establishment and the capitalist class were terrified by the Populists, seeing it as potentially a real threat to their power. The American economy had just witnessed a terrible panic in 1893 and there was little confidence in its future stability. While, in the end, it turned out that this upsurge in radicalism dissipated in the years after 1896, at the time the ruling class did not know if this was the peak or merely the opening gambit of accelerating movement.

After the election of 1896 the political establishment was not about to sit by passively and see what would happen next. There was a general realization that the rules of the game needed to be changed to make political movements like the Populists more difficult in the future. One of the key components of the reforms was to make fusion elections illegal in most places in the US precisely because abolishing fusion was a way of preventing third parties from gaining any credibility. Fusion is still legal in a few states in the United States, but throughout the second half of the 20th century was only commonly practiced in New York. There it still had an effect. Republicans like Ronald Reagan, and Democrats like Jack Kennedy, owed their success in NY presidential politics to votes cast

on the lines of other parties that nominated them. The socially liberal Republican senator Jacob Javits owed his career to steady cross-endorsement by the Liberal Party. And Rudolph Giuliani won the New York Mayoralty, defeating Democrat David Dinkens, largely because the same Liberal Party endorsed him.

In the 1990s a national attempt was made to resurrect the fusion idea as a way of opening up more political space for third parties. The “New Party” was a social-democratic type political party formed by a group of activists disaffected with the Democratic Party with the core slogan “A Fair Economy, A Real Democracy, a New Party.” The organizers realized that third parties had virtually no chance to seriously contest elections unless the rules of the game changed, and since fusion had once be a legitimate party of American politics and would not require a major overhaul of the whole machinery of elections, they decided to challenge the prohibitions of fusion. The grounds were fairly straightforward. Under the First Amendment’s right to freedom of association previous law had established two principles of party freedoms, one about autonomy, the other about freedom from abusive monopoly. The autonomy principle held that any political party should be allowed to nominate “the standard bearer of its choice.” Assuming the person wanted their nomination, parties could nominate any qualified candidate they desired. The anti-monopoly principle, declared in prior litigation over the right of a minor party, was more complicated. The Supreme Court had long recognized that America’s single-member-district-plurality-voting system strongly inclined it toward two-party dominance. It had also often noted the virtues of a two- vs. multi-party system. But it held that the particular two parties in that duopoly, at any given time, had no right to abuse their de facto monopoly on state legislative power to discriminate against minor parties, or establish rules that would have the effect of such discrimination. The prohibition against fusion, the New Party argued, was a fundamental violation of both the autonomy and anti-monopoly rule. But in 1997 the Supreme Court ruled 6-3 in *Timmons v. Twin Cities Area New Party* against the New Party, holding that it was perfectly constitutional for the two major existing parties to pass laws with the intent of limiting competition. This was a remarkable setback for the First Amendment, not just the New Party. Over the previous two hundred years, the Court had been very careful to say no such thing.²

Alternative rules

There are many alternative rules of the game for choosing political officials in popular elections, and many variations in the details of any given general set of rules. Two general kinds of alternatives have been particularly important in discussions of how the American system of electing its officials might be made more democratic.

The first alternative is *proportional representation* (PR). In a PR system, electoral districts are represented by multiple elected officials rather than a single official. In the simplest form of PR, each party has a rank-ordered list of candidates and voters vote for the party, not directly for individual candidates. The party wins a proportion of the seats roughly equal to the proportion of votes. For example, if there are 6 representatives from

² One of us, Rogers, was the lead attorney for the New Party, and chair of it of at the time.

a district and a party gets 33% of the vote, then the top two people on its list get elected. In such a system, every party that receives votes among some minimum threshold gets representation in the legislature.

There are many variants and details of PR systems. Some systems dispense with geographical districts altogether: the legislature is selected from the entire geographical area of its jurisdiction on a proportional basis. Other systems combine representatives from geographical districts with at-large representatives. One particularly interesting form of PR allows voters to vote for specific candidates on different party lists. Through a complex procedure the ultimate distribution of elected officials reflects the proportional support for the different parties, but the specific elected candidates are chosen by the voters rather than by the parties themselves.

A second alternative to single-member districts with plurality voting is called *Instant run-off voting* (IRV). In an IRV system, elected officials are still tied to a specific geographical district, but they need a majority of votes – not a plurality – in order to win. One way of doing this would be to have two rounds of elections: in the first round you have many candidates, then the top two face each other in a second round of voting. This has the problem that if there are many more than three candidates in the initial, so the top two could themselves only represent a small proportion of the preferences of voters, and also it takes more time, effort, and resources to organize two rounds of voting. An alternative, then, is a single election in which voters rank-order as many of the candidates as they want to from their most to least preferred. Everyone's first choices are then tallied. If no one gets 50% of the votes cast, then the candidate with the fewest 1st rank votes is eliminated and the second choice of those voters are added to the remaining candidate's tallies. This procedure is continued until someone gets 50% of the votes. This simulates a much more expensive and cumbersome system in which there were multiple rounds of elections, one candidate being eliminated after each round.

In both PR and IRV systems, third parties have much more room for maneuver since voters have much less to fear that their vote for a minor party will inadvertently help a party they dislike. In an IRV system, voters who liked Nader in the 2000 U.S. Presidential election could have ranked Nader 1st and Gore 2nd knowing that their vote could not contribute to a Bush victory. Both IRV and PR would therefore considerably increase competition among parties. More people would feel their ideas and interests were given political voice and this would make it more likely that they would feel connected to the political process.

Electoral Districts

Is unlikely in the near future that there will be any major overhaul of the basic electoral rules of representation, and therefore Americans are stuck for the moment with single-member-district-first-past-the-post elections. But even here there are ways that the system can be made more or less unfair. One of the pivotal problems is what is called “gerrymandering” – the strategies for drawing the boundaries of electoral districts in such a way as to give advantages to one party or another.

An example is given in Table 17.3. Suppose you have a state with 6.3 million voters and 3 electoral districts. Suppose 4 million are democrats and 2.3 million are republicans.

And suppose the democrats are geographically more concentrated than are the Republicans. It might be possible to draw boundaries in such a way that the three districts would have equal populations as required by the principle of one-person-one-vote, but the Democrats would be highly concentrated in a single district:

-- Table 17.3 about here --

There are a number of strategies in redistricting to give advantage to one party or another: In “*packing*” lines are drawn to pack as many of your opponents voters into a single district; “*cracking*” splits your opponent’s supporters into two or more districts to dilute support; and “*gerrymandering*” = drawing electoral district boundaries in very odd shapes to accomplish electoral goals. These are illustrated in Figure 17.2.

-- Figure 17.2 about here --

There are many examples of this kind of gerrymandering of electoral districts in United States history. One of the most notorious is the redistricting of the Texas Congressional Districts in 2003 after they had already been redrawn in 2001 following the 2000 census. Districts have to be redrawn every ten years to adjust for population changes. The 2001 redistricting map had been agreed to by both Republicans and Democrats. Then in 2002 the Republicans gained control of both houses of the state legislature in Texas and, on the urging of Ken Lay, the majority leader of the U.S. House of Representatives, the legislature decided to redraw the map again. The result were a number of bizarrely shaped districts which stretched for hundreds of miles along narrow strips in order to concentrate democratic voters in a fewer number of districts. One such district is illustrated in Figure 17.3

-- Figure 17.3 about here --

With some special exceptions (like using gerrymandering to eliminate the possibility of racial minorities getting elected), gerrymandering is entirely legal in the United States. Since in most states electoral districts are drawn by state legislatures, this means that once a particular party has strong control of the legislature it is able to draw district boundaries in such a way as to consolidate its power and prevent challenges. This clearly violates any principle of democracy as given all citizens equal access to the political process.

Money and Politics

Money plays a direct role in politics in two principle ways. First, money plays a critical role in lobbying, both legislators and administrative agencies responsible for translating legislation into specific rules and regulations. Legislators have limited staffs to study problems, work out policies, and acquire information. Well-funded lobbyists representing the wealthy interest groups and corporations are in a position to provide vast amounts of information and arguments to legislators. The same is true for administrative agencies, who often rely on trade associations of various sorts of data crucial for the formulation of regulations. While occasionally groups without much money are able to effectively mobilize people for effective lobbying efforts, money gives lobbyists a tremendous advantage. It is one of the important ways that the resource constraint operates in democratic politics.

But money also matters, crucially, for the heart of the democratic process: the election of people to public office. It costs an enormous amount to run for national public office and this necessity transforms the fundamental process of democratic competition. It is almost always the candidate that raises the most money that wins. While candidates still need to get votes, they have to chase dollars before chasing voters. This means that an enormous amount of time and energy of politicians is spent raising funds, and of necessity this means that politicians have to in one way or another try to appeal to the interests of potential donors. Sometimes this crosses the line to outright corruption, where there is a direct quid-pro-quo between donations and political favors. More generally the need to acquire campaign funds simply creates a general disposition to act in ways favorable to the interests of large donors.

The nature of the problem

One might think that if the reliance of politicians on monetary contributions from rich donors undermines democracy, then the solution is pretty straightforward: put serious, systematic constraints on how much money people can give to politicians and provide a good system of public finance of elections.

Unfortunately, in a crucial decision in 1976, *Buckley v. Valeo*, the Supreme Court basically ruled that restrictions on spending amounted to restrictions on free speech: governments are prohibited from regulating individual candidates spending from their own pockets or overall amounts spent on campaigns or limit “independent expenditures”, particularly “issue ads” in favor of a candidate paid for by independent bodies. The reasoning was pretty simple: limiting spending is the equivalent of limiting ability to speak, and this constitutes an unconstitutional restriction on the first amendment guarantee of freedom of speech. Certain kinds of limits on direct individual contributions to specific candidates were still allowed, but there are many ways of getting around this and it has not proven to be an effective way of constraining the influence of wealthy donors on the political process. Since 1976 each attempt by Congress to legislate some kind of campaign finance reform has basically failed to solve the problem.

The result of the existing system is that candidates without strong financial networks or personal fortunes cannot run for office. The Senate is filled with millionaires. In 2006, according to the nonpartisan research organization Center for Responsive Politics, 58% of the members of the Senate were millionaires and the median net worth of all U.S. Senators was \$1.7 million. A number of Senators are so rich that they can run their campaigns entirely out of their own pockets: Herb Kohl from Wisconsin proudly proclaims that he is “nobody’s Senator but yours” because he is so rich that he does not need financial contributions.

Candidates generally get most of their money from wealthy individuals and corporations. In 2008 less than 1% of the adult population contributed \$200 or more to political campaigns. The vast majority of these donors come from elites. A study of Congressional elections published in 2003 reports that of the individual donors to Congressional elections, 52% were business executives, 17% attorneys, 13% medical professions, and 11% education and media occupations. That leaves less than 10% of

donors from all other occupation groups.³ As the study notes, “if the donor pool looked like America, one might not care that a small number of donors provide so much of the funding for congressional candidates. But the donor pool clearly looks like an ‘upper class choir.’ Contributors to House and Senate campaigns are overwhelmingly rich and well-educated, and they are also overwhelmingly middle-aged white men.”⁴

There is plenty of evidence that there is a strong correlation between the votes of politicians and their sources of funding: The 213 members of congress who voted to spend almost half a billion more on B-2 stealth bombers received on average nearly \$2100 from the contractor; the 210 who voted against only got about \$100.⁵ This, of course, does not prove an explicit *quid-pro-quo*. These 213 members of Congress could be people who would have voted anyway for these kinds of policies even if there were no contributions from contractors. And, of course, contractors are more likely to contribute money to re-elect politicians who they know will vote for their interests for ideological reasons even in the absence of contribution. More generally, the fact that interest groups give large sums of money to sympathetic politicians does not prove that those politicians *change* their votes in order to get the money: the NRA is going to give money to gun supporters to help them get elected, but this does not prove that these candidates support the NRA *because* they get money from them. Still, as Barney Frank says, “we are the only human beings in the world who are expected to take thousands of dollars from perfect strangers on important matters and not be affected by it.”⁶

What can be done?

The dominant approach to campaign finance reform can be called the patchwork option: adopting specific measures to deal with specific aspects of the problem. The McCain-Feingold reform of 2002 was designed to reduce certain particular kinds of abuses, but not really tackle the central issue. Even after the initial proposal was weakened to deal with objections it still had great difficulty getting passed. The reform imposes some constraints on “soft-money” -- money contributed for open-ended purposes to parties -- but it does not fundamentally break the link between private wealth and political influence.

A more promising line of reform is represented by measures like the *Maine Clean Elections Act*, passed as a citizen initiative in 1996 and first applied in 2000. A similar Act was passed in Arizona. Here is how the official website of the state of Maine describes the act:

The Maine Clean Election Act (MCEA) established a voluntary program of full public financing of political campaigns for candidates running for Governor, State

³ Peter Francia et al. (2003) *The Financiers of Congressional Elections: investors, Ideologues and Intimates*. New York: Columbia University Press, Table 2.4.

⁴ *Ibid.* p. 27

⁵ Ken Silverstein, “US: The Northrop Grumman B-2 Boondoggle” *Multinational Monitor*, September 1st, 1997 (<http://www.corpwatch.org/article.php?id=7831>)

⁶ Quoted by Paul Taylor, “Lobbyists' Success at Raising Funds Proves Costly,” *Washington Post*, Aug. 2, 1983, at A2.

Senator, and State Representative. Maine voters passed the MCEA as a citizen initiative in 1996. Candidates who choose to participate may accept very limited private contributions at the beginning of their campaigns..... To become eligible, candidates must demonstrate community support through collecting a minimum number of \$5 checks or money orders payable to the Maine Clean Election Fund.⁷ After a candidate begins to receive MCEA funds from the State, he or she cannot accept private contributions, and almost all goods and services received must be paid for with MCEA funds⁸

Maine Clean Election Act (MCEA) candidates may receive matching funds based on their opponents' contributions and expenditures, and independent expenditures made by third-parties. The purpose of matching funds is to ensure that a candidate participating in the MCEA will not be greatly outspent by private campaign funds of a non-participating opponent or by independent expenditures.

To determine whether a MCEA candidate is entitled to matching funds, the Commission will add the opponent's contributions or expenditures (whichever is greater) plus the independent expenditures made in favor of the opponent or against the MCEA candidate. If that sum is more than the amount of the initial distribution received by the MCEA candidate, he or she will receive matching funds.⁹

The program is entirely voluntary, so this does not put any caps on private spending and thus does not violate the Constitutional restrictions mandated by the Supreme Court. In spite of this, it has effectively marginalized private spending from Maine elections, since candidates who accept public funding have a potent argument against candidates who rely on private money. The very name “clean elections” implies that a candidate who refuses the clean money from the public must be using “dirty” money. In the 2008 general election, 81% of the legislative candidates participated in the MCEA.

Statutes for public financing like the MCEA work extremely well in small states with relatively small populations where the stakes in running for political office are relatively modest. It is less certain that this would be a satisfactory model for national elections. Furthermore, since the Maine system funds all candidates equally whether they are candidates of major parties with large followings or fringe extremist parties there are ways in which it violates the egalitarian norms of democracy: each *candidate* gets equal funding, but each *voter* is very unequally represented in the funding mechanism – voters of small, marginally parties have much greater per capita funding of their political organizations than voters of larger parties. If scaled up as a national program it would mean that small, marginal political parties would receive hundreds of millions of dollars of public funding.

Bruce Ackerman, a law professor at Yale Law School, has developed a provocative

⁷ The minimums are: 50 qualifying contributions for House candidates (at least \$250), 150 qualifying contributions for Senate candidates (at least \$750), 3,250 qualifying contributions for Gubernatorial candidates (at least \$16,250).

⁸ <http://www.maine.gov/ethics/mcea/index.htm>

⁹ <http://www.maine.gov/ethics/mcea/matchfunds.htm>

proposal for a comprehensive campaign finance reform that avoids these problems while still being consistent with the strictures of *Buckley v. Valeo*.¹⁰ The basic idea is simple: At the beginning of every year every citizen would be given a special kind of debit card which Ackerman dubs a *Patriot Card*, but which we would prefer to call a *Democracy Card*. He proposes putting \$50 in each card. With 220 million people above the age of 18 this would cost a total of roughly \$10 billion per year. The funds on this card can be used exclusively for electoral campaigns: to contribute to a candidate for a specific electoral campaign or to a political party that participates in elections.¹¹ However – and this is the pivotal condition that makes this a deeply egalitarian proposal – any candidate or party accepting funds from democracy cards cannot accept funds from *any* other source. But why should candidates and parties opt for this restriction? Why not still court the fat cats and rely on private funding? There are two reasons for this: First, if the funding level of the democracy cards is sufficiently high, it will swamp other sources of funding. There simply will be much more money to be had through the democracy card “political market” than the private funding market, and since the two courses of funding cannot be mixed, most candidates will find it easier to raise funds from voters. Good money will drive out bad money. Second, once the system is in place and becomes part of the moral climate of political life, using private funding is likely to itself become a political issue. Candidates who rely on the democratic mechanism of seeking funding from equally endowed citizens will have a potent weapon to raise against candidates who seek funding from corporations and wealthy individuals. We have already seen this happen in the much more limited Clean Elections funding in Maine and Arizona.

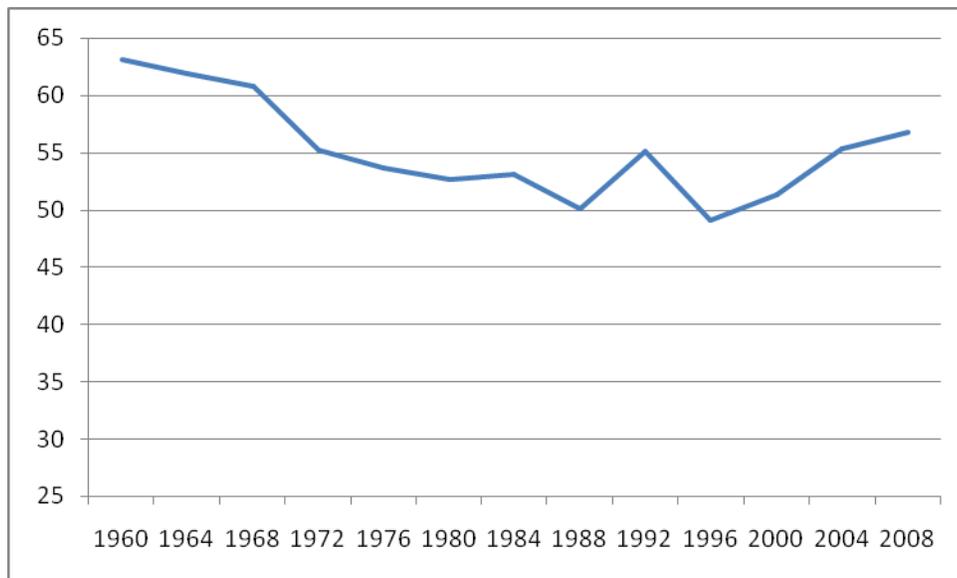
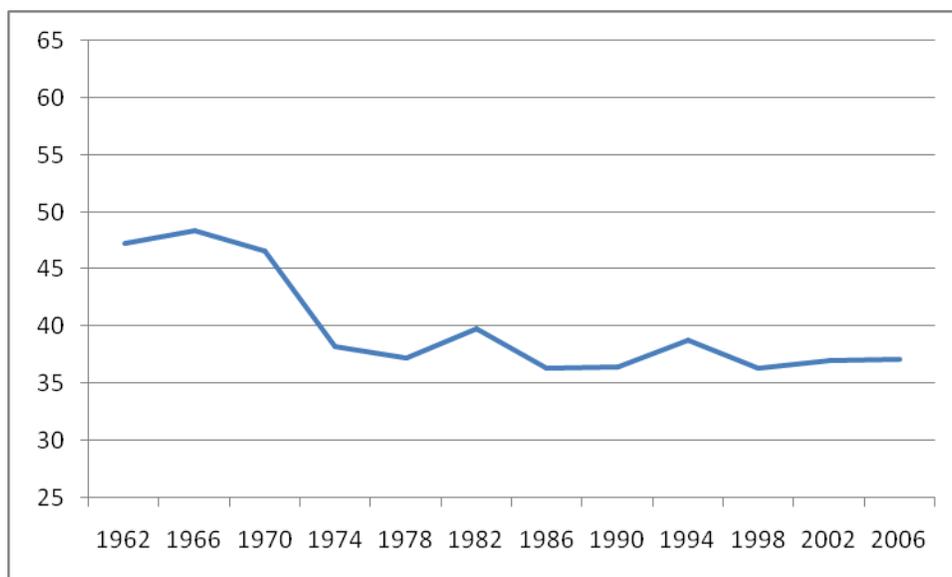
The Democracy Card would set in motion a very different kind of electoral process. In effect, all elections would have essentially two phases: first, a phase in which candidates and parties attempt to recruit democracy dollars from citizens, and second, a phase in which parties and candidates would use those dollars in electoral competition. Of course, under current conditions electoral politics also have these two phases. Electoral campaigns in any democratic system require financial resources, so the question is whether the mechanisms available for providing these funds are consistent with democratic principles of political equality. Under the existing rules of the game, the first phase is a radically inegalitarian process: wealthy people and corporations are the major players in the game of recruiting funding. What the system of democracy cards does is restore a strong notion of political equality to both phases of the electoral process. In addition to one-person-one-vote in the casting of ballots, there is now one-person-one-card in the funding of elections. The mechanism therefore provides public funding for electoral politics based on a simple egalitarian principle – each citizen has exactly the same capacity to contribute financially to political activity – but it is citizens, not the state, which decide on the actual allocation of these funds to different political causes.

¹⁰ Bruce Ackerman, *Voting with Dollars* (New Haven: Yale University Press, 2004). The exposition of Bruce Ackerman’s arguments presented here draws heavily from Erik Olin Wright, *Envisioning Real Utopias* (London and New York: Verso, 2010), chapter 6.

¹¹ While the democracy card proposal is specifically directed at financing elections, a modified version of the proposal could allow funds to be used for other forms of political action – referenda, lobbying, social movements. The central issue is creating a mechanism in which inequalities generated in the economic sphere are less easily translated into inequalities in financial resources for actors in the political sphere.

A well designed system of public financing of electoral campaigns through system of democracy cards would largely remove private money from the political process, increase the involvement of ordinary citizens in all phases of electoral politics and thus deepen the political equality and efficacy of citizens.

FIGURES & TABLES

Presidential Elections**Off-year Congressional Elections****Figure 17.1 Voter Turnout in US National Elections, 1960-2008**

Country	Compulsory	No	Turnout
Australia	Y	14	95%
Austria	N	9	92%
Belgium	Y	12	91%
Italy	N	9	90%
Luxembourg	N	7	90%
Iceland	N	10	89%
New Zealand	N	12	88%
Denmark	N	14	87%
Germany	N	9	86%
Sweden	N	14	86%
Greece	Y	10	86%
Venezuela	N*	7	85%
Netherlands	N**	7	83%
Costa Rica	N	8	81%
Norway	N	9	81%
Israel	N	9	80%
Portugal	N	9	79%
Finland	N	10	78%
Canada	N	11	76%
France	N	9	76%
United Kingdom	N	9	76%
South Korea	N	11	75%
Ireland	N	11	74%
Spain	N	6	73%
Japan	N	12	71%
India	N	6	58%
United States	N	9	54%***
Switzerland	N	8	54%
*Compulsory voting until 1998			
**Excludes pre-1968 elections, when voting was compulsory.			
***Only Congressional elections held the same year as presidential ones. Turnout rates for midterm election are approximately 10–15 percentage points lower than the general election immediately preceding it.			
Statistics from Mark N. Franklin's "Electoral Participation", in <i>Controversies in Voting Behavior</i> (2001). Includes only "free" elections.			

Table 17.1 Average voter-turnout, 1960-1995, in elections for national lower legislative house in countries with at least five elections

Party	Candidate	Share of Vote	Total vote for candidate
Democratic Party	Gore	35	52
Republican Party	Bush	48	48
Green Party	Gore	17	

Table 17.2
Illustration of a hypothetical presidential election with three parties under fusion voting rules

District Number	Democrats	Republicans	Winner in election
1	2 million	100,000	Democrat
2	1 million	1.1 million	Republican
3	1 million	1.1 million	Republican
Total	4 million	2.3 million	1 Democrat, 2 Republicans

Table 17.3
Illustration of effects of Gerrymandering on an election

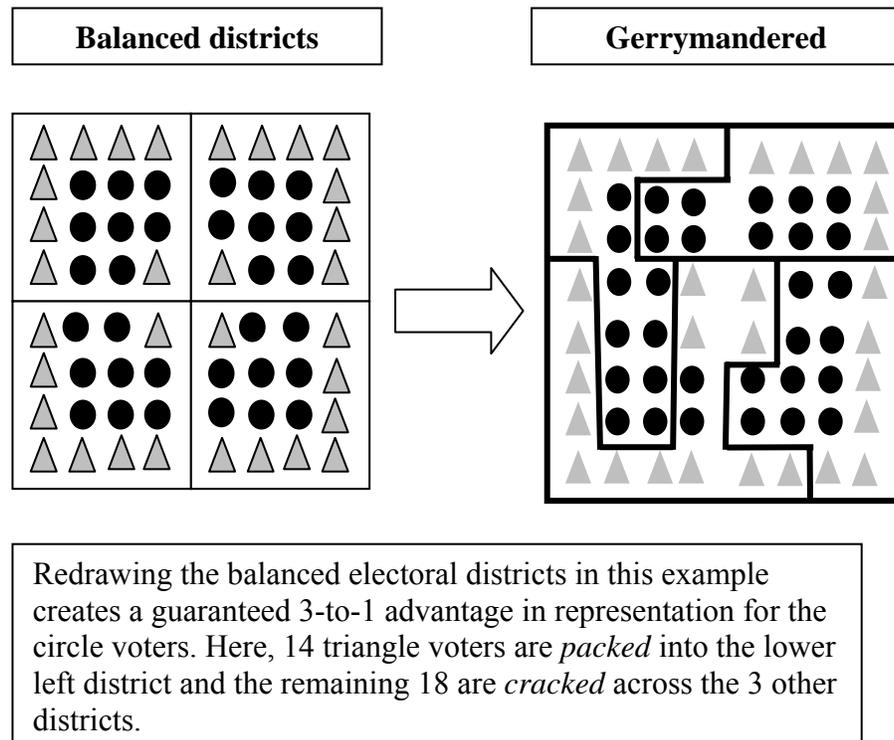


Figure 17.2 Illustration of the process of gerrymandering

