May 2003

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https://doi.org/10.15779/Z38ZX4K

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Playing with House Money: Patriot Dollars Considered

John Ferejohn†

INTRODUCTION

Over two centuries ago, Jean-Jacques Rousseau argued that democracy cannot flourish where economic and status distinctions among citizens are too great: "There must also be much equality in the rank and fortunes of all the citizens, or there will not be equality of rights or authority for long." Rousseau may seem overly fastidious on this point, but free markets can sometimes produce patterns of unequal wealth and status so extreme that the idea of true equality of political influence among the citizenry is at best official fiction. Indeed, we live in such an era of inequality. As Bruce Ackerman and Ian Ayres rightly point out, those committed to democracy need to insist that democratic institutions may and should intervene to limit the political and sociological effects of economic inequality.

Roughly speaking, this may be done in two ways: first is the traditional liberal approach, which imposes limits on the degree of economic inequality that can be generated in the market. Redistributive policies serve to limit the economic inequalities that the market generates through taxes, transfers of wealth, or by imposing other regulatory restrictions that limit wealth creation. Such policies may come at a cost measured in terms of either economic dislocation or economic growth, and to many this cost has become less bearable over time. The American people, speaking through their representative institutions, seem in fact to have accepted a high degree

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of income and wealth inequality over the past two decades\(^3\) as a reasonable price for their prosperity, and this acceptance shows little sign of abating. The second approach insulates the sphere of politics from that of economic power so that vast wealth disparities do not carry over to inequalities of political influence. We see this latter strategy in the institution of the Australian ballot and the prohibition on campaigning near balloting places.\(^4\) Campaign finance regulation may be seen as another effort in this direction. Indeed, with the collapse of traditional liberal policies for generating income equality, restrictions on campaign contributions and expenditures bear virtually sole responsibility for limiting the influence of economic status on public policy-making.

Insulating the political from the economic is not the only—and certainly not the ostensible—purpose of campaign finance regulation. Often, these regulations are better understood as having the narrower aim of preventing certain kinds of objectionable transactions: quid pro quo exchanges in which private actors pay money for governmental favors. In quid pro quo corruption, the political and economic spheres might become permeable to one another. Indeed, campaign finance law since *Buckley v. Valeo* seems guided by the idea that the public interest in regulating contributions and spending is limited to preventing quid pro quo corruption (or its appearance).\(^5\)

Quid pro quo corruption is hard to define and measure.\(^6\) But even if campaign contributions constitute few outright purchases of policy, much of the money that goes to candidates and political organizations is given for the purpose of getting something valuable in return. Defenders of current practices of campaign finance often argue that contributors really get no more than “access” to political leaders for their money—a chance to make their case—and that public policy decisions are rarely bought or sold.\(^7\) One must suspect, however, that at least part of the increase in private contributions to political campaigns over the past quarter century must be motivated by the expectation that donors will get something of real value for their contributions. At the very least, when we see a firm or its executives regularly making large contributions to politicians who wield direct influence over their industry, it is hard to avoid such an inference. Indeed, the usual story, that contributions assure “access” rather than buy

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6. Because transactions involve the donor and the candidate, neither party has an incentive to report.

special treatment, is nearly as noxious as the allegation it means to refute. If contributions assure access, then implicitly, those who do not contribute (that is, people like you and me) will face closed doors when we try to petition our representatives. Presumably, contributors pay for access because they believe, probably rightly, that their sophisticated legal, technical, or political arguments will persuade public officials. So, money is buying something even if it is not direct government favors.

But even if we were to classify access-motivated contributions as corrupt, I doubt that ending both vote buying and access buying would put an end to the corrosive effects of economic inequality on political life. More likely, corrupt exchanges, however broadly defined, are probably narrowly concentrated in parts of the economy that stand to gain or lose significantly from dealings with the government such as construction, contracting, tobacco, race tracks, liquor, and other heavily regulated industries. And even in these segments of the economy, it probably makes sense to contribute to politicians only when the individual firm stands to benefit directly from a particular governmental action and when it can verify that the public official actually took the expected action. For most businesses, investing in governmental favors is not a very good investment. Leaving aside the risks of being caught, there is often little that public officials can do to induce favorable outcomes. Even if relief were possible, collective action and informational problems attenuate investment incentives.

In any case, economic pressures on politics and politicians are probably more pervasive and "structural" than is implied by a corruption model. Even if we want to fund campaigns entirely with public money and prohibit contributions altogether, politicians would continue to have plenty of reasons to accord special access to industrial and financial leaders, to avoid redistributing wealth, and to relieve important business interests of the burdensome regulations that are important to their constituents.

I suspect that Ackerman and Ayres share these doubts and, as a result, attempt to do more than provide a solution to the nagging but narrow problem of limiting quid pro quo corruption of politics by illicit campaign contributions. Their larger ambitions: to establish conditions for more equal political influence in order to foster a flourishing civic life. They envision a world in which people regard themselves as having an authorial relation to the policies crafted by their representatives: "the new paradigm will place ordinary Americans firmly in the driver's seat... they will be actively shaping the terms of ongoing competition." For everyone to experience

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such a relationship to politics requires, at a minimum, a genuine equality of citizenship and not merely the formal and chimerical kind of promise of equality offered today. And, they imagine that by moving campaign finance from the private to the public realm and by distributing the control of that money equally to ordinary citizens, we will be able to achieve more genuine democratic control over our political life. Their model statute combines a proposal that would limit the incentives for economic interests to engage in vote or access buying with a proposal to permit individual voters to fund federal campaigns with public money.

These ideas seem attractive, but in spite of the pain to which the authors go to make the marriage of their two proposals appear seamless, it remains easy to characterize their reforms as an effort to smuggle in a system of public funding under the guise of reducing the incidence of corruption. I am not unsympathetic to this tactic. Corruption is indeed a popular topic, and it appears that the American public may actually be willing to pay attention to this narrower issue long enough for serious reforms to be made. The issue of campaign finance provided the impetus to John McCain’s challenge for the Republican presidential nomination in 2000, and since the publication of Voting with Dollars: A New Paradigm for Campaign Finance, President Bush signed the bill popularly known as “McCain-Feingold” into law. This is, at the very least, a significant inconvenience to incumbent politicians and political parties. The popular press has paid a fair amount of attention to the implementation, or failed implementation, of this law. If the public responds to these press reports, the issue may have legs, and we may be ready to adopt serious new reforms, perhaps even the kind of sharp departures that Ackerman and Ayres seek. Perhaps the public would be willing to take steps to wean politicians from the private money troughs by fully funding election campaigns. If the masses accept public funding for campaigns, perhaps allowing ordinary citizens to allocate this money—as Ackerman and Ayres propose—will make public finance politically attractive. Assuming that all these contingencies are met and that the details are worked out, Ackerman and Ayres’s idea of combining a new mechanism for public funding with a specific way to cure the addiction of politicians to private money has serious potential.

10. As I suggest below, creating the kind of authorial relationship of individual citizens to democratic rule requires more than equality of influence. Somehow, individual citizens must find it worth their time and effort to try to act as equal partners in gathering information and making judgments about policies and candidates. The authors say, “[w]e believe that the grant of 50 Patriot dollars will subtly change each American’s relation to the candidates’ media campaigns . . . . They will begin to think of themselves as the potential authors of the candidates’ themes . . . .” ACKERMAN & AYERS, supra note 9, at 159. It is hard to see how Patriot dollars will achieve this effect when the equal provision of votes to a large electorate has not done so.

Still, while I am sympathetic to the notion of seizing the reform issue while it is hot and expanding the reform agenda to include leveling the playing field for all citizens, a couple of unassuaged worries remain. The authors fail to appreciate some good features of the current system and, as a result, their reforms may undermine the good features in the name of sweeping out the bad. First, the reforms would undermine the role of political parties in ways that would attenuate democratic accountability. If their reforms work as intended, ideological interest groups may dominate the new fundraising environment and displace economic interests as sources of private money. These same ideological groups, by setting up Patriot Political Action Committees ("PACs"), may dominate the direction of Patriot dollars as well. True, in the new world, politicians will not need to pander to economic interests to raise money for campaigns, but they will have to offer policy concessions to ideological groups for the same purpose. Such ideological bargaining will have unforeseeable political consequences, but I doubt that a democracy organized around ideologies improves the current system.

Second, the authors seem to overestimate the willingness of citizens to play their prescribed role in the new Patriot dollar system. Ackerman and Ayres model the political-donation booth on the anonymous-voting booth. In this setting, the familiar problems of nonvoting, underinvestment in information, voter alienation, and irresponsibility will likely be reproduced and not eliminated. As with voting, most citizens find it irrational to acquire much information about political competitors or policy alternatives; this phenomenon will be especially severe early in the campaign season when candidates are shadow boxing, and policy alternatives are unclear. Alienated, ignorant, and irresponsible voters will, in turn, form a fertile ecology for the ideological groups that will likely dominate the new landscape. To some extent, the authors themselves recognize that the new citizenship must be hedged about with bureaucratic restrictions aimed at limiting various kinds of potential abuses and transitional problems. But these hedges, insofar as they are needed, undermine the attractiveness of the new system by limiting the scope for the development of a robust conception of citizenship.

I
WHAT'S WRONG WITH THE CURRENT SYSTEM

Ackerman and Ayres see the current system of campaign regulation as an unmitigated failure. Far from preventing corruption, it has fostered unequal political influence among citizens. Perhaps worse, the current regulatory system is incapable of offering effective remedies for these evils. The

system is, they say, "trapped in a time warp." This system, shaped jointly by Congress in campaign finance legislation enacted since the 1970s and the Supreme Court in *Buckley v. Valeo*, as well as in subsequent administrative and court rulings, establishes a sharp distinction between how campaign expenditures and campaign contributions may be regulated.

In *Buckley*, the Court insisted that campaign spending is a form of constitutionally protected speech that can only be regulated in pursuit of a narrowly defined governmental interest in preventing corruption (or its appearance). Contributions are subjected to less constitutional scrutiny and can be limited as long as the limits are not set so low as to infringe upon speech rights.

This effort to separate the treatment of expenditures from that of contributions has, over time, distorted the system of campaign finance. The objectionable elements of this system are many: first, candidates wealthy or peculiar enough to fund their own campaigns can spend unlimited amounts in their own election campaigns because the Court treats their campaign expenditures as protected speech. Second, we permit anyone interested in engaging in direct political communication to make unregulated expenditures for what is called "issue advocacy." Such expenditures, which can be used to purchase media ads or to engage in direct-mail advertising, are not subject to federal regulation as long as: (1) they are not "coordinated" with the candidates' campaigns and (2) they do not expressly urge people to vote for or against a particular candidate. In practice, neither of these restrictions has proven particularly meaningful. Expenditures are deemed uncoordinated as long as the candidate's campaign and his surrogates have not requested the spending or explicitly cooperated in its allocation, a test which is both easily met and may actually benefit the candidates. While it is difficult to estimate the total size of these

13. ACKERMAN & AYRES, supra note 9, at 5.
16. *Id.* at 23. In striking down the limitations on certain kinds of expenditures, the majority opinion concluded: "In sum, although the Act's contribution and expenditure limitations both implicate fundamental First Amendment interests, its expenditure ceilings impose significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions." *Id.*
17. New campaign finance legislation does try to limit the capacity of groups to do issue advocacy in the two-month period before the election. It is doubtful that this effort is consistent with *Buckley*. The new legislation also attempts to redefine what counts as coordination making it easier to find that advocacy ads are coordinated with campaigns. While this aspect of the new law may survive *Buckley* review, I doubt that it will deter clever lawyers from erecting firewalls that survive Federal Election Commission scrutiny.
18. For example, uncoordinated issue-advocacy expenditures are often used to run negative ads against a candidate's opponent, for which the assisted candidate can claim not to be responsible. As for qualifying as unregulated issue advocacy versus regulated express advocacy, the Federal Election Commission has required only that communications undertaken with such money not mention certain particular "key words" urging a vote for or against a specific candidate. But the research on issue-
expenditures, they likely are large and growing. Based on tracking a relatively large, though incomplete, set of interest groups, the Annenberg Public Policy Center has estimated that $135 million was spent in issue advocacy in 1996 and $509 million in 2000.

Wealthy contributors also participate without running afoul of the law via unrestricted “soft-money” contributions to the political parties that further “party-building” activities. This money may legally fund voter registration drives, phone banks, mail operations, and efforts to turn out the vote, provided that such activities are not directed to the election or defeat of particular candidates. The Federal Election Commission (“FEC”) requires that soft-money spending be accompanied by hard-money commitments—donations subject to FEC limits, so that parties continue to seek hard-money donations to meet the matching test. But, partly as a result of the matching requirements, most soft moneys are transferred to state party organizations that impose less-stringent spending restrictions. In any case, the wall of separation between soft-money contributions and ordinary hard-money contributions has grown so porous that soft money is routinely used to wage electoral campaigns in very much the same way as hard money.

Thus, the system designed to provide a level playing field for citizens by eliminating really large economic donations to politicians has in the end been overrun by a relatively small number of large contributors.

Ackerman and Ayres substantially agree with the “hydraulicists” that clever lawyers and political operatives have created this patchwork system by reacting to each new law or regulation with a devious new means to channel private money into politics. Hydraulicists argue that, like water running to the lowest point, the money is destined to find its way through the cracks in the system. Events since the new campaign finance law went into effect serve as further evidence of this phenomenon. First, it now

advocacy ads suggests that the key-word test is essentially meaningless: voters tend to understand issue-advocacy ads that satisfy the key-words test as urging the election or defeat of specific candidates. See David Magleby, Getting Inside the Outside Campaign: Issue Advocacy in the 2000 Presidential Primaries, BYU Center for the Study of Elections & Democracy, at http://www.byu.edu/outsidemoney/2000primary (last visited Dec. 6, 2002).

19. IssueAds@APPC Previous Home Page, at http://www.appcpenn.org/issueads/old/previous-research.html (last modified May 9, 2001).


21. See Magleby, supra note 18.

22. All this may change under the new McCain-Feingold regime, but I have my doubts (and so do Ackerman and Ayres). State party committees can continue to receive soft-money donations and, as far as I can see, there is little to limit the number of such committees that can be set up at the state and local levels. And, as Ackerman and Ayres frequently emphasize, the FEC as currently constituted is likely to widen whatever weasel room exists under the new statute.

appears that the FEC is inclined to permit state parties to receive unregulated soft-money donations in amounts that possibly overwhelm the statute’s limitations on soft money for the national parties.\textsuperscript{24} Second, the limitations on issue advocacy in the new campaign finance law may not survive strict scrutiny under \textit{Buckley}. This is, for the authors, the prime reason for abandoning the old paradigm and changing to an altogether different regulatory approach.

In addition to issue advocacy and soft money, incumbency itself makes firms with economic interests more likely to contribute because when a politician’s reelection is more probable, they are more likely to reap in policy what they sowed in contributions. While the campaign finance system was developing, incumbent politicians became more and more insulated from effective challengers. Limitations on campaign contributions probably have played an important role in this development by making it relatively difficult for challengers to fund effective campaigns. This is so for two reasons: private funding advantages and public subsidies. First, as long as incumbents remain very likely to win elections, economic interests have reason to contribute to their campaigns. The Washington cocktail party hosted by incumbents or parties (at which attendance is mandatory for interest groups interested in access to incumbent congressmen) has become a standard part of the fundraising repertoire. Second, incumbents already enjoy a federally financed advantage in name recognition because their opportunity to use the frank and other means of advertising, combined with limits on campaign spending, prevents challengers from overcoming this advantage.\textsuperscript{25}

Like many legal scholars writing about campaign finance, Ackerman and Ayres appear to assume that defects in the 1974 Act or its interpretation by the FEC or the courts contributed to the rise in campaign contributions.\textsuperscript{26} Despite the suspicious temporal coincidence, I suspect that other forces may have played a role as well. In the 1960s and 1970s there was a substantial rise in federal regulatory activity. Some of the new regulation was spurred by new concerns with the environment, product safety, and energy dependence. Other initiatives derived from the concerns of the Johnson and Carter administrations with discrimination and segregation. Shrinking growth rates that made regulatory solutions to public problems relatively more attractive than those involving governmental spending may have played some part also. In any case, the rise of regulation would seem to provide ample motivation for regulatees to seek political influence


\textsuperscript{25} The “frank” is the right to mail things to constituents at federal expense. \textsc{Gary Jacobson}, \textsc{The Politics of Congressional Elections} (4th ed., Longman 1997).

\textsuperscript{26} See Sullivan, \textit{supra} note 23; Issacharoff & Karlan, \textit{supra} note 23.
through contributions.\textsuperscript{27} Even if you cannot directly purchase favorable governmental decisions, at least you can help defeat or deter politicians from regulating too aggressively.

Fundraising has also increased because, over the same period of time, the congressional delegations of the major parties have become much more ideologically homogeneous. With the implementation of the 1965 Voting Rights Act, Democratic control of southern congressional delegations began collapsing. The remaining southern Democrats increasingly came to represent urban arcas, like their northern colleagues; rural and suburban southern districts became mostly Republican. As a result, the conservative southern Democrat largely has been replaced either by conservative Republicans or liberal Democrats. Congressional Democrats today are pretty homogeneously liberal and Congressional Republicans homogeneously conservative.\textsuperscript{28} This change implies that major legislative changes no longer require extraordinary majorities. After the 1994 election, House Republicans were able to pass most elements of their “Contract with America” with only a relatively small majority in the House.\textsuperscript{29} To be sure, some impediments remained in place in the Senate, but even they were not enough to forestall the welfare reform law in 1996.\textsuperscript{30} That major legislation can emerge from a closely divided Congress implies that interests have additional reasons to seek political influence either to seek or to prevent legislation. So I doubt that campaign finance reform will automatically dry up motivations to contribute to politics. Ideological groups that favor smaller government or new social programs certainly will tend to see the electoral sweepstakes as more consequential than they might have a quarter century ago. And, if it turns out that issue-advocacy spending cannot be regulated effectively, I doubt that the reforms proposed by Ackerman and Ayres will actually eliminate the incentives for regulated firms or those seeking governmental business to seek political influence with money.

Whether we blame economic interests, regulators, incumbent officials, or the Supreme Court, we can indict the current system for distorting democratic practices and perhaps undermining them. The courts have placed severe limits on the regulatory restrictions that can be placed on contributions and expenditures. Candidates cannot be restricted in funding their own campaigns. Citizens cannot be stopped from spending as much as they like “independent” of the campaigns. Contributions may be limited in some


\textsuperscript{29} See Online Newshour, Contract with America Scorecard, at http://pbs.org/newshour/bb/congress/scorecard.html (last visited Dec. 6, 2002).

ways, but myriad methods of evading these restrictions have been invented. And even after McCain-Feingold, the smart money is still betting that moneyed interests will discover further innovative evasions.

As the authors emphasize, disclosure offers the one standard remedy for the ills of the current system. The hope is that if citizens were automatically to be made aware of gifts to politicians from interested parties, there would be a chilling effect on special-interest contributions. Politicians would refuse them, and the economic interests would not offer them for fear of losing the chance to secure favorable governmental treatment.

However, little evidence shows that the electorate actually punishes politicians who take money from economic interests. Indeed, existing evidence probably points in the opposite direction. If a politician fails to raise a lot of money, the voting public perceives him or her not as a serious competitor for office but as a fringe candidate. Such relatively “clean” candidates seem to draw little attention from the media, and the commentary they attract tends to be derisive. Moreover, it is pretty clear that Americans do not think it is wrong for economic interests to contribute to political candidates or to try to influence policies in ways that benefit their businesses. If the government is threatening to impose costly regulations on your business or property, people see nothing wrong with your trying to oppose, delay, or at least influence these efforts. Voters may disapprove of quid pro quo bribes or shakedowns, but my guess is that most people define such exchanges very narrowly. 31

In any case, as Ackerman and Ayres rightly point out, disclosure requirements may actually facilitate the exchange of economic for political goods. Trade cannot take place unless both parties are in a position to verify that the other has done her part. Disclosure requirements permit economic groups to make verifiable contributions to politicians and in this way permit exchanges to occur that would otherwise be impossible. Consequently, disclosure, the standard remedy of the standard paradigm, is worse than useless in Ackerman and Ayres’s view. 32 It makes the problem of corrupt practices worse than it would be without it. Within the standard paradigm, there is really no alternative remedy: the Court insists that most forms of spending by candidates or citizens are protected by First Amendment doctrine; the only possibility is to place more restrictions on

31. If someone gives money to a politician in exchange for a government contract where both parties understand and intend the exchange, most people would probably understand that as a corrupt exchange. But if the same person gives money to the same politician and receives a contract subsequently, without any direct evidence of an intent to engage in a trade, my guess is that most people would not conclude that there was a bribe. Even if they thought that both the politician and the contributor benefited from the practice of giving contributions and awarding contracts, as long as there was no evidence of an intention to trade money for the contract, voters do not seem to regard such practices as corrupt. Or at least they do not seem to think such patterns are corrupt enough to warrant punishment by the ballot.

32. ACKERMAN & AYRES, supra note 9, at 6.
contributions. But such a course does not permit us to limit what candidates can give to their own campaigns or what citizens or organizations can spend on issue advocacy. The creation of soft money has only opened this back door a bit wider. Ackerman and Ayres say a new approach is needed.

II
THE NEW PARADIGM: PATRIOT DOLLARS AND THE SECRET DONATION BOOTH

Ackerman and Ayres's new paradigm is conceptually simple: give everyone fifty Patriot dollars that they can pass out to candidates, parties, or interest groups of their choice in each election period. Then, create a mandatory secret donation booth to dilute the incentives of private interests to contribute money to politicians by making such contributions anonymous and therefore unverifiable. The resulting system would, they say, lead to a world in which politicians raise the bulk of the money for contesting elections from ordinary voters, each of whom has an equal chance to exert influence by using their donations. Private interests, at least those with economically defined interests, will no longer find it valuable to spend money on politicians. Of course, ideological groups still will want to contribute to their favorite politicians to help them get elected, but they will face new "free rider" problems of their own. Ackerman and Ayres expect private donations to plummet, and over a period of time, they expect that citizens will learn to exercise their new political rights to change the nature of democratic citizenship.

The plan's benefits are numerous. Politicians will be freed of the humiliation of begging for donations from interests seeking special favors, and they will be able (or forced) to seek funds, more or less as they seek votes, by making appeals to voters. Citizens, as they become aware of their new resources, will spend more time and energy on politics, monitoring aspiring office seekers as well as incumbent politicians, and taking part in political life throughout the long election cycle. Thus, the shift in funding should be accompanied by a real shift, reclaiming our public life from the smoke-filled rooms of lobbyists and politicians and exposing it to the sunshine of civic life.

Besides creating a new regime of public funding, Ackerman and Ayres's proposal has a number of other virtues. First, while public funds finance federal campaigns, neither bureaucrats nor automatic formulae direct these funds. Rather, ordinary citizens decide how to allocate their Patriot dollars to candidates, PACs, and political parties. Second, Ackerman and Ayres claim that their proposal stays safely within the regulatory framework established by Buckley v. Valeo. The Court need not back away from that decision; the speech values it enshrined are not threatened by the new system. Indeed, Ackerman and Ayres propose raising the limits
The devil, of course, is in the details, especially when it comes to regulating the political process. The authors recognize that simply giving each voter fifty Patriot dollars might lead to some perverse allocations of funds among campaigns. Perhaps people would allocate nearly all their money to presidential candidates or commit so much to primaries that they would leave general elections underfunded. People would also be free to send their money to congressional or senatorial candidates in close races outside their district, perhaps leaving their local congressional candidates without adequate funding. Then there is the problem that only a third of the Senate seats are up for grabs each year, hence allocating Patriot dollars equally would advantage those voters not deciding senatorial contests. If most funding is to come from Patriot dollars, it is important to guard against such distortions.

The authors respond to these uncertainties by placing constraints on the use of Patriot dollars. For example, they require that voters spend at most $25, $15, and $10 for presidential, Senate, and House contests, respectively, and, when there is no Senate contest, the overall Patriot-dollar allocation shrinks to $35. They also limit the amount that can be spent on presidential primaries.

In the area of campaign finance regulation, governing bodies face an enormous temptation to change or selectively apply regulations. Ackerman and Ayres recognize the need to be especially careful in establishing the new ground rules and in ensuring that regulators faithfully implement their rules. Roughly speaking, this is done in two ways. First, the proposal seeks to modify and attenuate the incentives of politicians and economic interest groups to distort or undermine the system. The authors’ efforts to ensure that the secret donation booth is genuinely secret is the most prominent attempt in this direction. But in addition, Ackerman and Ayres further limit the opportunities for undermining the system by replacing the FEC with a truly independent body (of retired federal judges) and restricting this new body’s ability to intervene in the automatic operation of the Patriot statute.33

At the same time, Ackerman and Ayres recognize that they have given the American people a great deal of responsibility for ensuring that the system works as intended. Most people are not accustomed to exercising their citizenship rights other than by paying a bit of attention to what political leaders say, particularly at election times, and by occasionally casting a vote. The Patriot system requires them to pay much closer attention to politics in between elections; currently, only the tiny group of politics “junkies” and political professionals follow politics this closely. The authors are

33. See id. at ch. 9.
optimistic that eventually people will meet these demands, but they foresee times when there might be a citizenship deficit.\textsuperscript{34}

\section*{III
Whither the Parties?}

But before drawing conclusions about Ackerman and Ayres's new approach, it is worthwhile to examine some other features of the current regulatory environment. Even before campaign finance laws in the early 1970s, electoral campaigns had become increasingly dependent on money as the principal political currency. One cause of this shift was the decline of local party organizations capable of mobilizing volunteers for purposes of registration and canvassing. Another cause was the long decline in patronage jobs available at any level of government. These developments forced candidates to construct and maintain their own campaign organizations without the help of patronage jobs or party organizations.

The enactment of campaign finance regulations in the early 1970s and subsequent administrative and judicial decisions helped create new opportunities and incentives for organizations concerned with elections. The pressure to raise money in this new regulatory setting forced existing organizations—the campaign organizations of political candidates, the national, state, and local party organizations, and other party related entities—to adopt new strategies to cope with the new and evolving rules. More importantly, the new environment created niches for new organizations, and put pressure on older institutions. It also shifted power and leverage among the population of entities that were already in existence. The most important of these changes was the invigoration and expansion of the national party organizations.

Traditionally, American national parties have been fairly sporadic organizations. They were largely made up of a few generals and, between election cycles, generated very little in the way of either funding or activity.\textsuperscript{35} The party organizations, or the various committees that composed the parties, would fill out somewhat during election years when they would assist candidates seeking election to federal or important state offices. But they remained relatively small and unimportant as organizations. At other

\textsuperscript{34} Ackerman and Ayres most clearly address two such deficits. When the Patriot-dollars system first goes into operation, people may not step up to play their required role. There will be a need for everyone to learn what to expect and how to behave. The second difficulty will occur more regularly: at the beginning of an election cycle, when potential candidates are exploring their options, people may not be willing to contribute badly needed Patriot dollars to finance these efforts. The authors build "transition rules" to address these issues. But they recognize that the transition rules tend to work against the fundamental design features of Patriot dollars. So Ackerman and Ayres bravely limit the extent to which they would allow tinkering with the basic structure. There is a risk therefore that the whole scheme could collapse.

times the organizational ballast of the parties remained in the cities, counties, and states.\textsuperscript{36} Still, parties at all levels declined in importance in American politics for most of the twentieth century, and political scientists and journalists tended to describe electoral competition as candidate centered rather than as party centered.

The campaign finance reforms of the 1970s created a new regulatory environment that began to change this pattern. The regulations permitted and, indeed, stimulated the growth of more permanent and centralized party organizations. Parties can receive soft-money and hard-money contributions and can employ both types of contributions independent of candidates and, more importantly, parties can engage in issue advocacy independently of the candidates. The national party committees and the congressional and senatorial campaign committees have become substantial and stable entities which operate in ways fairly independent from individual candidates. These new committees have played increasingly important roles in recruiting, training, and funding candidates to challenge sitting incumbents from the other party. Incumbents, of course, still do the bulk of their own fundraising and never think that their seats are safe enough, but the new party entities raise and spend substantial amounts of money and sometimes are able even to channel incumbent-raised funds to candidates in more competitive races. In this respect, the national party organizations have come to serve as a counterweight to candidate-centered electoral machines.

It would be wrong to attribute these changes solely to campaign finance regulation. As I have argued, over the same period of time, both parties have become significantly more homogeneous ideologically, and the differences between the parties have sharpened, whether measured ideologically or in the social makeup of their constituencies. Parties have an easier time coordinating the actions of like-minded people than they did when the parties were more heterogeneous. Will Rogers was right to say of parties of his era, "I belong to no organized party. I am a Democrat."\textsuperscript{37} But it seems likely that the changed funding environment has played an important role in the comeback of the parties as fundamental players in electoral competition.

The robust role of national parties is new and fragile, but it also may be of value to our political system; as such, we should think twice about undermining it. Many political scientists have argued that the alternative to party competition is a candidate-centered politics in which interest groups and PACs enjoy major advantages. Parties, especially national parties, can

\textsuperscript{36} In a few states and localities, these organizations remained significant entities capable of allocating campaign resources in ways that were somewhat independent of the candidates.

\textsuperscript{37} WILLIAM SAIF\textsc{R}E, SAIF\textsc{R}E'S POLITICAL DICTIONARY: AN ENLARGED, UP-TO-DATE EDITION OF THE NEW LANGUAGE OF POLITICS 165 (1978).
themmatize political competition, offering more or less coherent platforms to structure voter choice. They can permit voters, who are only attentive to politics during campaigns, to hold elected officials responsible for poor performance. Unlike party-based competition, candidate-centered contestation requires that candidates be evaluated on the basis of their own individual records in office and how well they serve their constituents' interests. Candidates are reluctant to defend national party positions that do not fit their districts. As a result, every two years we see the candidates of one party or the other (and sometimes both) running away from the positions of their own party. This is a system made for unaccountability.

IV

AMERICAN POLITICS WITH PATRIOT DOLLARS

What would political life be like under the Patriot-dollar system? The short answer, of course, is "who knows?" The authors have tried mightily to anticipate how the system would work and what the likely transitional problems would be and to patch up the anticipated rough spots. They surely would admit that if our current experience with the campaign regulations in the past is any guide, we should doubt that they have thought of everything. Soft money and issue advocacy did not spring upon the current system in the 1970s. It took time and practice for people to find or create loopholes in the regulatory system. As the hydraulicists point out, the money tends to find its way through, so the authors could have done little more than scratch the surface of possibilities.

Ackerman and Ayres have convinced me that the secret donation booth will probably restrain hard-money contributions channeled officially into campaigns. The anonymity requirement for contributions will greatly attenuate the incentives for interest groups to give to politicians in order to obtain specific policy benefits. Interest groups will probably also find it harder to buy access in the authors' new world; at least with hard money that effort must be channeled through the secret donation booth.

I am less sure that the secret donation booth will limit the flow of hard money from ideological interest groups. Presumably, the main instrumental purpose of contributions from such groups is not to obtain governmental favors but to get candidates with acceptable issue positions into office. If this is so, making such donations anonymous will not much reduce the motivation of interest groups to make them. At best, those incentives will be attenuated by free riding among ideological groups. Indeed, insofar as

contributions from such groups are directed for expressive rather than instrumental reasons, the reform proposal may have little effect.\footnote{39} Ackerman and Ayres also have not convinced me that after their reforms are in place, the only way that campaign benefits can be delivered to political candidates will be through Patriot dollars or the secret donation booth. Specifically, I doubt that there is any way, short of overturning \textit{Buckley} itself, to stop interest groups (or parties, other politicians, or ordinary people) from engaging in “independent issue advocacy.” Under \textit{Buckley}, independent issue advocacy has become a very large and growing component of campaign spending, and I cannot see how these holes will be plugged by the Patriot-dollars system. Ackerman and Ayres doubt that such expenditures would be “efficient” compared with the candidates’ own campaign operations.\footnote{40} Perhaps they are right, but they ask the wrong question. If valuable and identifiable favors can be delivered to politicians through issue advocacy, one would expect that channel to be used, especially when there are no other ways to credibly claim credit for helping a political candidate. Besides, it is not clear to me that such expenditures are much less efficient than those spent by the politicians’ own campaigns. If the FEC were to erect an effective “coordination” test to detect when issue advocacy has run afoul of the law, the calculus would change, but such a test does not appear to be on the horizon. Besides, a natural division of labor already exists between candidate and interest-group campaigns. Interest groups assume misleading names and run negative ads about a candidate’s opponents of a kind that would be risky for the candidate herself to run. The more successful the FEC is in preventing coordination, the more attractive this “uncoordinated” division of effort is to the candidate. She can say that by the FEC’s newly strict rules, she could have nothing to do with the scurrilous (but possibly true) things said about her opponent.

The authors have also convinced me that their new system will greatly disadvantage political parties. This is, indeed, part of their intention. Parties will compete with PACs to raise Patriot dollars and, predictably, parties will be at a real disadvantage in the pursuit of money from people mainly concerned with a single issue. If you are a committed right-to-life proponent, why would you give your Patriot dollars to the Republican Party rather than to the Christian Coalition? The Republican Party is, after all, concerned with many such issues, and part of its concern entails trade-offs among these issues. This willingness would make the Republican Party relatively unreliable as a supporter of right-to-life issues. Besides, the

\textbf{39.} Contributions aimed at expressing support for a position rather than getting a favored candidate elected are labeled expressive. Expressive contributions are much like cheering for the home team at a football game.

\textbf{40.} \textit{ACKERMAN} \& \textit{AYRES, supra} note 9, at 121-23.
Christian Coalition might be able to find some reliable Democratic allies on this issue too and in so doing prevent any one issue from being held hostage by any one party.

The consequences of this change in donation incentives are hard to predict. Still, if Ackerman and Ayres's reforms work, I would expect first that economic interests will play a reduced role in electoral politics and that ideological interest groups probably will play more of a role. The latter hunch is predicated on the suspicion that a fair amount of ideological money (both Patriot dollars and hard money) would be given for expressive rather than instrumental reasons. Second, the parties will either play less of a role, or they will be forced by the competition for Patriot dollars to mimic ideological groups. Whether they can be successful in doing so seems doubtful, but they will push in that direction. Third, electoral politics will probably move back toward the candidate-centric form it took in the 1960s and 1970s. Parties will be less able to coordinate either the messages or the campaigns of candidates than they have been in the last couple of decades.

My more general worry is that by making campaign contributions more like the act of voting, the proposed reform would induce voters and contributors to behave in ways that are less predictable and less capable of fulfilling the coordination functions that current electoral practices accomplish. Ackerman and Ayres's reforms invite people to a new forum in which, like voting, their fifty dollars is too small to swing an electoral result. Besides, it is not their money at all; at least not in the sense that it can be used for things of value outside of politics. Indeed, spending Patriot dollars intelligently will require people to engage in costly activities of information acquisition that they currently avoid. Unlike the act of voting, which takes place at a point in time at which people have reached the pinnacle of political knowledge and political interest (admittedly, a very short pinnacle), contributions need to be made (if they are to be made) throughout the election cycle in dim conditions of political ignorance. This seems like a recipe for contributor ignorance, irresponsibility, and apathy. How likely is it that three months before election day, when the papers are full of pennant races, suicide bombings, kidnappings, budget deficits, and the like, that ordinary people will be willing or able to form beliefs (accurate or not) about the policy positions or characters of new politicians? The authors are hopeful that the world will change following the reform in ways that will induce citizens to take up these new responsibilities. But is it not as likely that most people will contribute expressively or not contribute at all?

CONCLUSION

The Patriot-dollar system combines an effort to reduce the influence of economic interests on electoral competition with a much more ambitious effort to increase citizen equality by creating a system of public funding for federal-election campaigns. These seem to me to be quite separate proposals. The only strong connection between them seems to be the refreshing idea that, for once, the good money will help to drive out the bad money. Otherwise, it seems that we could buy the idea of a secret donation booth without accepting the Patriot-dollars scheme at all.

So what is wrong with smuggling in a solution to citizen inequality under the guise of ameliorating problems of corruption? Perhaps the authors should be congratulated for cleverly recasting the problem of corruption as a problem of assuring democratic equality. It seems pretty likely that part of the solution that they propose—the equal distribution of Patriot dollars—would probably increase citizen equality. The trouble is that the other part, the secret donation booth, seems easily severable from their system of Patriot dollars, and it is the component of Ackerman and Ayres's proposal that most directly addresses problems of corruption. Ackerman and Ayres will of course insist that we see their proposal as a whole. While I agree with them as a philosophical matter, I doubt that it will be easy to keep their proposal together. The authors present no justificatory arguments defending their real guiding principle—ensuring citizen equality—and instead rest the justification for the new statutory scheme wholly on problems with the existing regime of campaign finance regulation. But what if there is reason to doubt how bad the current system is, or how likely it is that Ackerman and Ayres's scheme would work, or how effectively it would ameliorate corruption problems? The promise of improving citizen equality and that of enriching the conception of citizenship more generally are compelling projects for our democracy, and they should not be held hostage to the prospect of fixing nagging problems of corruption.

Besides, I am not convinced that Patriot dollars, as a practical matter, will work as the authors claim. I do not think that their defense—that if citizens fail to respond as Ackerman and Ayres hope, American democracy must be in worse shape than they had thought—is persuasive. Democracy in a large and heterogeneous nation may not require the kind of continuous participatory involvement that was (barely) possible in ancient Athens. Why should people find it a good use of their time to learn about candidates and issues months before an election? And, assuming that most people would find such activity unrewarding and would wish to turn to other organizations to do the job for them, is there any reason to think that these choices would be well informed? Proxy organizations, I imagine, would tend to be ideologically motivated single-interest groups more focused on the pursuit of discrete ideological objectives than on creating broad-based
support for candidates capable of effectively governing. Of course the candidates will still strive to create a broad base of support, but there is reason to doubt that citizens will be troubled to sort them out very effectively. If I could be convinced that political parties, which have at least some interest in creating and maintaining broad coalitions of voters, could be effective in the world of Patriot dollars, I would be more sanguine. But Ackerman and Ayres have convinced me that political parties are likely collateral damage of their reforms.

Ackerman and Ayres will also insist that it is not enough merely to insulate the political sphere from the economic sphere because it would lead to an underfunded system of political competition. They, like many students of politics, believe that the total expenditures on democratic politics are trivially small when compared with advertising expenditures. But, as the authors surely know, this argument does not hold much weight among the general population. Moreover, it requires a defense of the unique American practice of the continuous campaign. Other democratic polities seem to subsist with much shorter and more sharply defined periods of electoral competition and to operate with much lower levels of funding. Of course, those other polities do not select their candidates in popular primaries, and they do not employ elections to choose nearly as many officeholders or to make popular legislation (through referenda and initiatives). And, in any case, it is not clear that those other nations are flourishing as fully democratic polities with high levels of citizen involvement and genuine political equality.

Perhaps, in the end, the informational demands of a truly democratic political system are very high and will require massive levels of public funding in order to operate well. This argument seems politically difficult, however, and one can be pretty sure that political leaders will not be seen making it. I think Ackerman and Ayres, as academic reformers, have fallen short of justifying this aspect of their proposal and this is a particular shame because public funding is the key to its success.