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Private Electoral Finance and Democratic Theory

Sarah Birch

John Stuart Mill believed it would be unethical to spend any money on his campaign for parliament in 1865 (Norris 1986). A century and a half later, elections have changed almost beyond recognition, yet the same ethical debates surrounding the role of money in politics remain. Writing almost exactly 100 years after Mill had expressed his view, political scientist Stein Rokkan quipped that in elections "votes count but resources decide" (Rokkan 1966: 105). It has long been the received wisdom that this is the reality in so-called established democracies, a situation that John Girling has described in terms of a 'misfit' between democracy and capitalism (Girling 1997). This topic is therefore a salient one for democratic theory, although it is noteworthy that a disproportionate amount of the theoretical discussion of campaign finance has taken place in the empirical context of a single country – the United States – which has rules and traditions of political finance that are relatively unusual among democracies. As a result, the broader links between political donations and democratic theory remain under-explored.

It is often held that political donations are a legitimate form of political participation, reflecting norms of freedom of expression and freedom of association. Making a monetary contribution to a party, candidate or political organization of choice may seem like a reasonable alternative for those who want to 'do something' but are time poor. The problem from a democratic perspective is that, above a very low level of universal affordability, citizens have differential ability to contribute, which means that any contribution of a typical real-world value represents a far larger cost to some citizens than to others.

The impact of these perverse effects of private money on electoral politics is one of the reasons why two-thirds of states fund electoral campaigns from the public purse and three-fifths provide direct funding to parties (IDEA 2018), numbers that have grown in recent years (van Biezen 2008; Koss 2010). The uneasy cohabitation in really-existing democracies between unequal economic resources and the norm of political equality is generally accepted among political practitioners as a necessary evil, given the cost of modern electoral campaigns. The practical electoral arrangements of contemporary democratic states virtually all reflect mixed models combining public and private financing, and the majority of democracies place some limits on political donations (IDEA 2014; 2018). No democracies currently ban private donations, though in some the cap is relatively restrictive; for example, in Estonia, the maximum donation is €1,200 and in Belgium €2,000 per annum (IDEA 2018).

In the era of cheap and virtually universal internet access, dense media coverage of politics and widespread public funding of political processes, there is scope for revisiting this question and exploring whether under non-ideal conditions there is still a justified role for the private funding of electoral campaigns. The aim of this analysis is to assess the role of private money in electoral politics against core criteria of democratic theory, drawing on empirical experience from across the range of contemporary democracies. My conclusion, which is consistent with classic liberal, deliberative, republican, social and communitarian understandings of democracy, is that private funding is incompatible with democratic principles on two grounds: it risks resulting in political inequality among citizens and it threatens the judgmental autonomy of elected representatives and those who would seek election to representative bodies. I argue that parties, candidates and other political organizations should be funded instead from the public purse, and from private contributions in the form of flat party membership or supporter fees, or a system whereby the state gives vouchers of equal value to all citizens, and citizens can then donate the value of their voucher to the political object of their choice.

While there is discussion in the field of democratic theory that is devoted specifically to campaign finance (Beitz 1989; Christiano 2012a; Hopkin 2004; Pelletier 2014; Thompson 1987; 2002), the normative study of this topic tends to be dominated by American jurisprudence, which frames the debate within the narrow confines of US constitutional law. The intended contribution of the current analysis is thus: (a) to broaden out this debate and re-center it in relation to key democratic theory concepts, specifically democratic rights and political equality as understood with reference to systems of political finance common in established democracies across the globe; (b) to specify seven distinct ways in which private finance can violate political equality (and hence seven finance-related phenomena that must be prevented in order to preserve political equality); and (c) to develop an argument about the relationship between private finance and judgmental autonomy which concludes that payments by voters to politicians should be treated in the same way as payments by politicians to voters. The discussion will be limited to the democratic ethics of electoral finance, defined as money and in-kind resources used to fund electoral campaigns. Money inveigles its way into politics in a multitude of ways, and this analysis does not pretend to be relevant to all of them.

My argument against private political donations assumes political equality to be fundamental to democracy. It also embraces the non-ideal conditions of social and economic inequality, vulnerability to manipulate and be manipulated, and heterogeneous citizen adherence to democratic norms.

The argument starts in the first part with the case against private electoral finance on the grounds that it is a violation of political equality among citizens. The second part offers a critique of private finance as a violation of the judgmental autonomy of electoral representatives and candidates for public office. The third part assesses common justifications for private finance on the grounds of freedom of association and freedom of expression. The fourth part considers possible objections to the perspective set out here based on empirical evidence of the effects of different electoral finance regimes found in contemporary democracies, while a fifth part concludes.

I Private electoral finance, corruption and inequality

In this section I explore what is entailed in the principle of political equality in elections and the various ways in which private electoral finance may be held to violate that principle. Two main types of violation are identified: unequal consideration of citizen interests (pertaining to political elites) and unequal opportunity to persuade others (pertaining to citizens). These are elaborated in terms of seven specific negative effects that private finance can have on political equality in institutional contexts typical of contemporary democracies.

The political equality of citizens is at the core of democracy. There is a relatively widespread consensus among democratic theorists working in different traditions that all citizens have an equal right to take part in the making of political decisions, and a right to equal consideration by the public institutions (e.g. Christiano 2012b; Dahl 1989; Dworkin 2000; Pettit 2012; Phillips 1991; 1998; Walzer 1983; Wilson 2019; Young: 2000). The reasoning of these authors is broadly consistent with the view that the bargain at the heart of liberal democracy is the toleration of economic inequality in society, provided political equality is maintained.

Discussions of the negative effects of private political finance are often framed in terms of corruption. But corruption understood in a narrow legalistic sense may not be the best frame, as it does not always succeed in fully encompassing the problem. Corruption is commonly defined as the abuse of public trust for private gain (or some variation thereon) (e.g. Girling 1997; Johnston 2014; Rose-Ackerman 1999; Rothstein and Varraich 2017). The politics of many democracies have been punctuated in recent years by political party funding scandals involving the allegedly corrupt use of money to finance election campaigns, from the UK Ecclestone Affair in the 1990s to the Alternative for Germany donation scandal of 2017-2020. Yet the frequency of the empirical link between private finance and corruption is not evidence that there is a necessary logical or causal connection between the two. In the US context, the Supreme Court's *Buckley v. Valeo* ruling of 1976 found that preventing (the appearance of) corruption was a legitimate reason for restricting campaign finance, and this was a justification given for allowing limits on campaign donations to stand. Commenting on the academic debate provoked by this case, Strauss maintains that "those who say they are concerned about corruption are actually concerned about two other things: inequality, and the nature of democratic politics" (Strauss 1994: 1370). Abstracting away from legal definitions of what is corrupt, the problem with corruption from a *democratic* perspective is that it generates political inequality. A criminal who bribes a judge, a businessperson who bribes a politician to vote a certain way, a construction company that bribes a bureaucrat in order to be awarded a contract and a motorist who bribes a policeperson to avoid being given a speeding ticket are all benefitting from a breach of the neutrality norm that the public office holder in question is meant to respect. Not all political inequality takes the form of corruption, but corruption virtually always enacts political inequality. If campaign donations induce politicians and parties to alter their policy positions or otherwise treat citizens differentially depending on the amount of money citizens have given to support an election campaign, this is a violation of the principle of political equality, whether or not it falls into legal or normative definition of corruption (Thompson 2002: 109). Arguments about campaign finance that are framed in terms of corruption are thus to a great extent red herrings; what is legally corrupt in one context will not be legally corrupt in another context, as laws vary across jurisdictions, but the actions in both contexts may be problematic for the same reason that corruption is problematic if they generate political inequality.

There is also a second way in which private finance violates political equality: differential ability to donate or spend on behalf of a campaign affords citizens unequal opportunity to persuade others; in other words, it is a violation of the principle of equality of opportunity for political influence, or the principle that "people who are equally motivated and equally able to play this role, by influencing binding collective decisions, ought to have equal chances to exercise such influence" (Cohen 2001; cf Brighouse 1996; Christiano 2012a; Pettit 2012: 209-11). If citizens have differential ability to influence politics due to variations in personal wealth, they are not equal in their opportunity to contribute to the political process through agenda-setting and debate. This is true whether or not the contributions in question generate political change. It is also true of small donations, if a large number of small donations come disproportionately from more affluent citizens. For example, if there is a cap on donations of $100/€100 per annum, but only citizens with an annual salary of at least $40,000/€40,000 can afford to give that much, then parties have an incentive to adjust their policies to cater to people earning over $40,000/€40,000. If only 70% of the electorate has an income over $40,000/€40,000 a year, then parties have less incentive to pay attention to the interests of the 30% of the electorate that is unlikely to make donations. In as much as the more affluent will undoubtedly have policy references and positions on issues that differ systematically from those of the less affluent, even relatively modest donations are likely to bias the positions taken by parties/candidates.

This argument is compatible with the existence of influence differentials that derive from variations in interest in politics. Dworkin argues that the distribution of resources should be 'ambition-sensitive' but not 'endowment-sensitive' (Dworkin 2000: 89). The same logic can be applied to political influence (even if Dworkin himself does not make this connection). If someone cares passionately about politics and they want to influence political outcomes, there should be no limit on their ability to do this through persuasion, which is a discursive act. Those affected by a ban on private donations could, and most likely would, avail themselves of discursive modes of influence. Those channels of influence are roughly egalitarian, in that differential access to the internet, to time and to discursive resources are not nearly as pronounced as differential access to money. If someone cares enough about politics to try to influence it, they can rearrange their life such that they have time to blog, tweet, and campaign face-to-face to advance the cause they support. The point is sometimes made that more educated people have a discursive advantage in politics in that they are able to make more persuasive arguments, but recent experience suggests that this may be an academic fantasy. Plenty of poorly-educated people have advanced political claims that may not conform to the logical standards of university professors, but can, in the age of social media, reach out to and convince a very large number of people. Prohibitions on private finance do not interfere with the right of citizens to persuade others; they simply limit this influence to discursive tools.

Finally, the effective requirement for candidates in some jurisdictions to draw on private resources to fund their election campaigns can lead to inequalities in the ability of citizens to put themselves forward for election to representative assemblies (Cagé 2018; Lessig 2015). Not only does this impinge on equality of opportunity to contest elections, but it can also have consequences for the adequacy of representation. When candidates are disproportionately drawn from the richer groups in society, this will lead to a demographic skew in elected assemblies that could potentially bias policy-making in favor of the better off, even in the absence of pressure on representatives to please donors.

In sum, citizens have differential ability to contribute money to parties and candidates. If the ability of parties and candidates to achieve their ends depends in part on raising money from private donations, their activities will be skewed toward those most able to contribute. This is true whether or not donations are capped at a moderate amount such as $100/€100, as a cap set at a level which makes donation far more affordable for some than for others will result in contributions coming disproportionately from the affluent, and the views, needs and expectations of the affluent are bound to differ systematically from those of the poor. Only if donations are limited to a level at which everyone can afford to contribute will differential political influence be eliminated; at this level (say $10/€10), it makes more sense to convert payments into flat membership or supporter fees.

We can draw out the implications of these arguments by specifying seven principal channels through which private campaign donations can negatively affect political equality: four that operate via their effects on political elites, including the effects of donations on party positions, their effects on the decision to enter politics, their effects on the behavior of individual elected representatives, and their effects on the behavior members of the executive (government ministers or presidents); two channels that operate via their effects on voters: mobilization effects (affecting turnout) and conversion effects (affecting vote choice), and a seventh channel that operates via its effects on political discourse more generally and what is considered to be a legitimate position to take:

Party position effect: Donations to political parties (or the anticipation of such donations) might potentially sway the policy positions parties take, or the extent to which they prioritize certain policies over others and make greater efforts to get some issues onto the political agenda.

Political recruitment effect: The differential ability of prospective candidates to raise campaign funds might deter talented individuals from seeking elected office.

Representative behavior effect: Donations to the campaigns of individual elected representatives (or the anticipation of such donations) might, in relevant electoral systems, influence the issues raised in the legislature by these representatives, the committees they choose to sit on, or their voting behavior.

Executive behavior effect: Donations to the parties of government ministers or to the campaigns of presidential candidates (or the anticipation of such donations) might, where such donations are possible, influence donor access to members of the executive and the opportunity to shape policy at the stage where options are formulated and selected.

Mobilization effect: Donations to election campaigns might influence the ability of candidates and parties to mobilize electors to go to the polls.

Conversion effect: Donations to election campaigns might influence the ability of candidates and parties to persuade voters to change their view on policy issues relevant to the election, to change the priority they accord to different issues, and/or to change their vote choice.

Legitimation effect: Donations to political parties and candidates might enable political elites to reshape, through their campaign material and other political discourse, what are considered to be acceptable policy positions.

All seven effects have in common their ability to reshape political agendas, public deliberation and decision-making so as to benefit donors, and thereby undermine citizens' equal right to exercise their freedoms of expression, association and political participation. Any democratic defense of private campaign finance would need to argue against all seven effects, and it is unclear that any defense so far advanced has met that requirement. It is also worth noting that the effects on political elites are largely structural features of donation regimes: they may well function even in the absence of actual donations, as the possibility of donations can be expected to condition the choices that parties and elected representatives make about their policy priorities, positions and activities.

II Private electoral finance as a threat to judgmental autonomy

A somewhat different argument against the use of private finance in democratic elections is that it constitutes a threat to the deliberative process through which elected representatives and parties debate policies. Autonomy of political judgment, and in particular the expression of judgments in deliberative fora, is a crucial component of democratic public reason (Christiano 1996; Kolodny 2014: 310; Pitkin 1967; Rawls 1997). Representatives whose views have been conditioned by private donations can be expected to be less willing to give accurate reasons for their positions and be less open to deliberation (Sunstein 1997: 25), and donations may thereby hinder autonomous political judgment (Christiano 1996: 222, 257; Strauss 1994; Thompson 1987:111-16). The policy positions that politicians are expected to advance vary with the model of democracy under consideration – according to a Burkean model, elected officeholders are expected to promote the collective good, whereas in the party accountability model, politicians advance the interests of the supporters of their party or those of their constituents. Regardless of the model adopted, it is not unreasonable to expect democratic politicians to justify the positions they take, to deliberate, and to use their autonomous judgment to promote the interests they have been elected to represent. If a legislator is aware that they need to appeal for funding to fewer people than they need to appeal for votes, they have an incentive to shape their expressed judgments so as to cater to prospective donors rather than to all voters. And if the judgments they express in deliberation and voting are biased by pecuniary considerations, this is a challenge to public reason (Rawls 1997). Thus Rawls argues that “Public deliberation must be made possible, recognized as a basic feature of democracy, and set free from the curse of money” (Rawls 1997: 772). The alternative is an impoverishment of democratic debate and a distortion of representation bearing a structural similarity to that which results from payments by politicians to voters, commonly known as 'vote-buying'.

In 91.1 per cent of the world's countries, it is illegal for a candidate or party to pay a voter for their vote (IDEA 2018); this is because the purchase of votes substitutes for genuine programmatic preference expression a vote that is cast in exchange for a particularistic benefit, and it undermines political equality by advantaging those who are in positions to vote (Birch 2011; Satz 2010; Schaffer 2007; Stokes et al. 2013). These considerations are sufficient that the market in votes is 'blocked' (to use Debra Satz's term) in democracies. This logic can be extended to private campaign donations, as donations have the same relationship to their recipients as payments for votes have to voters. Consideration of the way in which vote-buying is commonly regulated will help to draw out the implications of this analogy. The concepts of voter 'treating', bribery and 'undue influence' were developed originally in English case law to describe situations where people employed positions of power to exert inappropriate influence over the less powerful; in the context of elections, bribery is typically pecuniary, and undue influence is coercive (Watt 2006; 124-5). One might query the applicability of these concepts to political elites, yet there is considerable empirical evidence that the need for cash to compete in donation-fueled elections often places politicians and parties in established democracies in situations where they are vulnerable to pressure from donors to alter their political positions (as has been documented in numerous empirical cases, e.g. Alexander and Shiratori 1994; Gokcekus, Omer and Sonan 2017; Gunlicks 1993; McMenamin 2013; Stratmann 1991; Thompson 1987; Williams 2000), and that policy-makers are more responsive to better-off groups in the electorate who are more likely to make donations (Bartels 2008; Gilens 2012). In newer democracies, political elites are at risk of capture by powerful economic interests that wield considerable control over their political clients (Hellman and Kaufmann 2000; Rothstein and Varraich 2017); in such cases it is no exaggeration to speak of politicians as being in a vulnerable subordinate position with respect to private sector interests, in the same way that rural dwellers in traditional societies are often vulnerable to pressure from vote-buying local patrons.

When influence is said to be ‘undue’, this is a claim about the impact of money on the objectivity or quality of autonomous political judgment, in that the exchange of money for votes induces preference falsification on the part of voters. Voters do not change their minds, just their votes. Inappropriate influence on a candidate or party would result when that candidate or party altered their policy positions in order to solicit campaign donations. In as much as democratic party competition relies on parties offering policy packages that are attractive to sectors of the electorate and competing for votes on this basis (Downs 1957), incentives that systematically bias the positions taken by one or more parties can be expected to skew the party system in favor of the interests represented by funders.

Political systems that rely on proof of illicit influence to pinpoint corruption or other forms of wrong-doing pose significant evidential challenges. In practice it is often not feasible to identify bias or distortion of this type, though this is no justification for not seeking to protect against it. Efforts to affect political outcomes may fail, and the recipients of a donation may not be entirely conscious of the extent to which their policy offers are shaped by donations. A grandmother who donates a low denomination banknote to a candidate standing for election to her local elected assembly can safely be said to have no intention of thereby altering the policy position of the candidate or influencing the actions that person may take when elected to office. If she donates a larger sum, she may do so with the intention of influencing that person’s policies, but she may be wrong, as the amount she is offering may be insufficient. Likewise, a candidate eager to be elected to office may craft a policy offer that she believes will appeal to wealthy donors in her area, but she may fail to attract the donations she seeks.

It is also empirically difficult to trace the causal impact of a donation, as that impact may well be circuitous. Burke differentiates between what might be termed the indirect, semi-direct and direct forms of impact that campaign donations can have on the behavior of recipients. The most indirect form of impact is the 'distortion' of campaign contributions, which "do not reflect the balance of public opinion and thus distort policymaking through their influence on elections" (what I describe above as the conversion effect); semi-direct impact is 'monetary influence', where office-holders "perform their duties with monetary considerations in mind" but no explicit deal is made (what I describe above as the representative behavior effect); direct impact is quid pro quo exchanges of money for votes in the legislature (or other action) (also a representative behavior effect) (Burke 1997: 131). On the face of it, more indirect forms of influence might appear to be normatively less objectionable. But Burke argues that the standard by which campaign finance behavior should be judged is not the extent to which influence is direct or indirect – which is irrelevant in normative terms – but the impact that behavior has on the electoral and legislative processes (Burke 1997: 138). I would argue that the standard should be the *potential* impact such behavior could have on the legislative process and the *opportunity* to skew judgmental autonomy, by analogy with the institutional approach to vote-buying that is common in democracies.

An important characteristic of bans on vote-buying is their blanket nature. In many contexts, voters take the money that a candidate pays them, and they nevertheless vote for their preferred candidate; the privacy of the polling booth goes some way toward insulating them from sanctions that might arise were they discovered not to have kept their side of the vote-purchase deal. Nevertheless, attempts at vote-buying are typically illegal even when they do not alter vote choice and there is thus no *quid pro quo*; there is no onus on prosecutors to show that a voter has in fact been influenced by the provision of a reward to deem vote-buying laws to have been breached. Given the practical impossibility of distinguishing between a donation that simply helps a politician to put forward a predetermined stance and one that alters that stance, private campaign donations are normatively problematic for the same reason that efforts to buy votes are problematic, even if *quid pro quo* cannot be ascertained. Moreover, outlawing vote-buying is not viewed as an inappropriate infringement the free speech of candidates, parties or voters, though the case for this certainly could be made in the same terms as the case is made for allowing campaign finance donations on grounds of freedom of expression.

Most contemporary democracies therefore operate under electoral rules that are logically inconsistent, as they outlaw donations by politicians to voters with no guarantee of political reward, yet they allow donations by voters to politicians with no guarantee of political reward. If donations to one type of electoral actor are illicit from a democratic point of view, then so are donations to another type, as both types of actor are potentially vulnerable to democratically-inappropriate inducements.

III Private electoral finance as a democratic right

Objections to private money in politics are commonly met with the following riposte: but what about the rights of freedom of association and freedom of expression? This section considers these rights in relation to campaign finance. A strain running throughout virtually all versions of modern democratic theory is the idea that democratic politics is built on the bedrock of free and open debate, discussion and grassroots organization that serve to develop and test ideas deliberatively before the aggregative procedures of elections are employed to select leaders. Where freedom to gather and exchange views is hampered, it cannot be said that voters face meaningful choices at the polls. Those who see private finance as an important means of promoting freedom of association and expression typically defend it on these grounds, though as I shall seek to demonstrate in this section, such arguments are often flawed in the context of electoral politics that is grounded in the principal of political equality.

Freedom of association: The freedom to form and take part in associations to pursue political ends is relevant to electoral finance as this right may be used to justify donations to political parties and other political groupings such as American political action committees, Japanese *koenkai*s (local support groups), French *commités de soutien* or trade unions that support political parties in many jurisdictions. Key questions relevant in this context are whether spending can be viewed as a form of association, and whether the state can legitimately intervene to regulate the internal activities of parties and other voluntary groups.

That the right to associate should entail the right to donate to one's association of choice follows from the fact that beyond the most rudimentary activities, any form of association requires resources, and the most realistic source of resources is the members who have come together to form the association. Even in states with well-developed public funding regimes (which include the vast majority of democracies), parties must typically meet certain threshold requirements – calculated in terms of vote or seat percentages, or some other indicator of popularity – to be eligible for state funds, and in order to get to the point where they meet these threshold requirements, the party must be self-funding. Were it the case that political parties were funded entirely through flat membership subscription or supporter fees, election campaign spending by parties would pose relatively few problems from the point of view of either liberty or equality. Indeed, this appears to be one of the few forms of private electoral campaign finance that would largely accord with democratic electoral precepts.

The right of the state to regulate the internal workings of political parties is more contentious, and varies in practice according to trajectories of party development. Cultural norms in many societies militate against state intervention to regulate party finances. For example, in Sweden, a country known for its cultural commitment to equality, private party finance is virtually unencumbered by caps or bans due to a widely-held view that parties ought to be free to pursue their activities independent of state interference (Nassmacher 2014: 10-11; IDEA 2018). Likewise in the United Kingdom, political parties were until the 21st century not recognized as a distinct form of voluntary association, and there were few effective limits on their right to collect or spend money, save those restrictions pertaining to individual electoral contests (Clift and Fischer 2004). In newer democracies, political party development is more likely to have been an explicit goal during the democratization period, and political parties are more commonly viewed as 'public utilities' that can legitimately be subject to public intervention (van Biezen 2004; 2008). In recent years, the view of parties as public utilities has gained in prominence, and state regulation of the internal finances of parties is widespread (IDEA 2014; Koss 2010; Norris and van Es 2016).

It might be supposed that programmatic parties have a strong interest in curbing the abuse of electoral finance within their ranks in order to preserve their corporate reputation, and that this incentive might be sufficient to curb undemocratic uses of campaign money. Comparative evidence suggests that absent public funding and bans on certain types of donation, private electoral finance invariably generates reputational disbenefits for political parties (Bowler and Donovan 2016; Donovan and Bowler 2019; vanHeerde-Hudson and Fisher 2013), and if they support maintaining systems of non-state donations, it is undoubtedly due to the fact that their need for funds outweighs reputational concerns. Though there is very limited empirical evidence as to the level of popular support for state funding of parties, research by the UK Electoral Commission suggests that voters also perceive this trade-off, and that, following deliberation, they prefer public over private funding (Electoral Commission 2006). Orr notes that recent proposals to increase public funding of parties in

Australia have not met with the same popular backlash as previous proposals, possibly due to the fact that they were launched in the wake of scandals involving donations from private sources (Orr 2018). This suggests that attitudes toward public funding must be seen in comparison with attitudes toward funding from alternative sources, namely private donations. Recent survey evidence suggests that a majority of US citizens view private campaign contributions of even small magnitudes as corrupt (Bowler and Donovan 2016; Donovan and Bowler 2019). And in a UK study, 54 per cent of survey respondents agreed with the statement that "Funding political parties by voluntary donations is unfair because there is a risk that some political parties will end up with more money than others", a far larger share than the 28 per cent who disagreed with the proposition (the remainder were neutral) (vanHeerde-Hudson and Fischer 2013). Moreover, party reliance on private donations could also be argued to attenuate the ties between parties and their grassroots, and the introduction of public funding could be seen as a way of freeing up party activists from fundraising so they could do more political work on the ground (Briffault 1999; Christiano 1996; 258; Ewing 1987: 133).

Three points are worth making with reference to the right of parties to raise and spend funds: first, that freedom of association is a right enjoyed by individuals, not corporate entities. Civil society organizations such as trade unions have historically had strong links with political parties in many democratic contexts, however. The philosophical basis for attributing collective rights to unions and other civil society organizations, above and beyond the rights of their members, is that they represent organized groups with distinct interests, and that their right to organize means that unions have a right to have those interests recognized in the democratic process (Ewing 2007; McGinnis 2016). But the fact that voluntary organizations may have some political rights does not mean that they have all political rights, and it does not follow that they should be accorded special status when it comes to campaign funding, if so doing afforded trade unionists and members of other groups more political influence than non-members. The classic democratic functions of civil society groups are to aggregate and articulate interests, and this can be done very effectively via their own internal and external communication channels, without the need to donate money to political parties or candidates. A situation in which a citizen is able to contribute to a political party as an individual and also as a member of a trade union violates the principal of equal rights, as that citizen has greater opportunities for influence than someone who does not belong to such a corporate organization. Canada's union-allied New Democratic Party (NDP) agreed to reforms that severely restricted the funds that trade unions could donate to it on the grounds that, as stated by one of the party's spokespeople, "the only people who should be allowed to contribute to political parties are those who are actually eligible to vote at election time" (cit. Ewing 2007: 217). There is no reason why trade unions cannot, as in the Canadian context, affiliate with parties, help them develop policies and provide the party with insights as to the views of union members on matters of public policy without at the same time making pecuniary contributions to those parties. Alternatively, affiliation by a trade union could be allowed on the condition that the union paid to the party an affiliation fee equivalent to the individual dues of all its members, who would not then be able to join the party individually. This would recognize the role of unions and similar groups in aggregating interests, while at the same time not undermining democratic equality.

Second, political parties do play a role in the democratic process that distinguishes them from other voluntary associations that may have political interests (associations of toy manufacturers, for example) in that they enable freedom of association but also freedom of contestation. They are not voluntary associations like any other; they are organizations largely devoted to contesting and winning elections. As such, they will invariably be affected by electoral institutions. Thus, freedom of association is not an obstacle to the regulation of campaign finance, including restrictions on the ability of political parties (and other groups that contest elections) to raise and spend funds on the election campaigns they contest over and above that which they obtain from flat membership dues or supporter fees. Individuals' freedom to associate in political parties is protected sufficiently by the right of parties to charge them a fee and use the money raised for the ends of the association. Moreover, banning campaign finance donations from corporate entities (political groups, trade unions, commercial enterprises) that do not contest elections does not infringe individual freedom of association.

Third, it may appear necessary to consider 'fairness to parties' in addition to 'fairness to voters.' There is a general recognition in the comparative political finance literature – and in the policies of democracies – that fairness to parties does not mean treating them equally, but rather allocating proportional treatment to them, with the metric used to quantify such treatment generally being votes (or seats) won at previous elections, and thresholds to exclude frivolous parties (Christiano 2012a; Ewing 2007; Orr 2012: 257-8). Fairness to parties might also be understood in terms of giving them sufficient funds to do the job they need to do. But however construed, fairness to parties is a fundamentally different concept from fairness to voters, due to the fact that parties do not have the range of individual rights that voters enjoy, and due to the fact that they perform a different function. There is a more general sense in which public funding can, if well designed, generate fairness to parties that indirectly serves to guarantee fairness to voters. Given that political parties typically have demographically different support bases, they often have vastly different abilities to raise funding from private sources. Public funding may be seen as a useful means of engineering campaigning parity between major parties that broadly reflects their support in the electorate (Ewing 2007).

Freedom of expression: The freedom of expression argument in favor of allowing private finance in electoral campaigns is that citizens have a right to participate in politics through any means at their disposal. Those who are too busy or limited by physical incapacity to undertake campaign activities should be allowed to substitute personal speech with spending, thus assuming that the right to freedom of expression also implies a right to freedom of surrogate expression. In the current day and age, campaigns involve less face-to-face interaction and are more reliant on electronic forms of communication that cost money if not person-power. If the right of individuals to take part in politics is to be honored, so the argument goes, they should be able to contribute to political campaigns in this way. Assuming one accepts the somewhat dubious proposition that spending can legitimately be construed as a form of speech, such positions are in theory compatible with limits on types or amounts of donations/spending. Some use this reasoning to justify limitations on campaign donations and/or expenditures to a level that everyone can afford, such that all are able to avail themselves of this right - say, the equivalent of one month's income at the minimum wage (Pelletier 2014). This is also the gist of Rawls's claim that "the prohibition of large contributions to political candidates is not an undue burden [...] on wealthy persons and groups. Such a prohibition may be necessary so that citizens similarly gifted and motivated have roughly an equal chance of influencing the government's policy and attaining positions of authority irrespective of their economic and social class" (Rawls 1993: 358).

As noted above, I go further and argue that even small donations are inequitable. If political equality applies to the most important political act in this process – voting – it stands to reason that it should apply also to all the ancillary aspects of elections, including opportunities to run for election, to campaign, to lodge legal challenges to the conduct of the polls, etc. (Wilson 2019: 260-5). One could even go so far as to say that *if the norm of political equality is not applied equally to all aspects of the electoral process, the effect of the* *one-person-one vote norm is undermined*. Modern principles of electoral justice recognize different phases in the electoral cycle, and acknowledge the principle of impartiality at each stage in this process (IDEA 2010). As Foley argues, “a citizen does not have equal input into the electoral process if she is denied an equal opportunity to participate in the argumentative [campaign] stage of the process” (Foley 1994: 1227). Sunstein makes a similar point when he maintains that “The ‘one-person-one-vote’ rule exemplifies the commitment to political equality. Limits on campaign expenditures are continuous with that role” (Sunstein 1997: 225; cf Briffault 1999). It is illogical that the principal of voter equality should govern only part of the electoral cycle, when the function of elections is to afford each citizen and equal and effective input into democratic decision-making *tout court*. [1]

The principle of equal freedom has been advocated by many democratic scholars in broad terms, not just in relation to elections (e.g. Dahl 1989; Dworkin 1987; 2000; Rawls 1993). If equality is built into liberty (and vice versa), then all should have an equal right to persuade their fellow citizens, as they have equal rights to all liberties. This does not mean that they will in practice have equal influence; as Dworkin notes, achieving equal influence is unrealistic and the effort to do so probably undesirable (Dworkin 2000: 197), but there should not be insuperable impediments to the equal *opportunity* to exert influence on the electoral process, and unequal wealth is for most an insuperable impediment.

[1] For Beitz, whose understanding of political equality does not require equal citizen power or equal opportunity to influence outcomes, election finance regulation should focus more on ensuring fair deliberation than guaranteeing equal election campaign influence to citizens (Beitz 1989). The argument presented here builds on the principle of equal opportunity to influence political outcomes.

Above and beyond the conceptual critique of equality violation justified by appeals to freedom of expression, the empirical experience of private campaign finance is also relevant to the consideration of norms that are appropriate in a democratic society. It is implausible that most donors themselves should view their contributions as mere expressions of their political views. It is difficult to imagine that any individual would see giving to a party or candidate as the most cost-effective means of conveying political views to their fellow citizens. For virtually no money, a person could set up a blog, tweet, organize a demonstration, publish an online book or find other more individualized and tailor-made means of communicating their opinions and persuading others of them. As a form of expression, donating to a party or candidate is a rather blunt instrument; it is very rarely the case that the donor agrees with every position the candidate or party takes, yet a donation goes toward funding the promotion of an entire policy package, including those aspects that the donor disagrees with.

Moreover, many donors have been quite clear that donations have far more than expressive intent. Ample comparative evidence from empirical studies of campaign donations suggests that donors by and large expect a political return on their donation, especially in liberal market democracies (McMenamin 2013; Stratmann 1991). Despite the theoretical emphasis on freedom of speech and freedom of association in discussions of campaign finance reform, the empirical evidence indicates that the exercise of democratic rights is not what, in the main, motivates most giving.

IV Other objections

The practical implications of the argument I have put forward in the previous three sections are that: (1) private finance of electoral campaigns should be either eliminated or regulated such that it is egalitarian, and that (2) a fairly-designed scheme of public funding of candidates and/or parties should be a major source of campaign finance. In addition to the rights-based arguments discussed in the previous section, several practical objections are commonly made to limits on private finance and/or the public funding of electoral campaigns: incumbent advantage, cartelization of the party system, non-compliance and displacement. This section will consider these objections in turn.

Incumbent advantage: Incumbency can give power-holders an advantage if they misuse public resources for political ends (van Biezen and Kopecky 2001; IDEA 2014), but even if office holders seeking re-election refrain from the misuse of state resources, they might potentially be at an advantage over newcomers. It is sometimes argued that if private finance is limited or eliminated from politics, this will mean that current holders of elected office gain, as they benefit from media exposure and familiarity to voters by virtue of the fact that they have been in office for several years building reputations. Indeed, there is evidence from the US context that incumbent politicians have benefited from caps on donations (Jacobson 1990). Yet if voters are generally disapproving of political elites, incumbency could in theory be a considerable disadvantage, and voters might be inclined at every election to 'throw the rascals out'. Indeed, incumbency has been found to confer a disadvantage in many new and democracies, but also in established democracies such as Canada and India (Feasby 2012; Klašnja and Titiunik 2017; Roberts 2008; Samuels 2001; Uppal 2009), possibly at least in part for this reason, and it has been found to be in decline in the US since the 1980s following partisan polarization and the nationalization of politics (Jacobson 2015). Moreover, any benefit to challengers of access to private finance would apply also to public funding, which would in addition serve to right the balance between those in office and those seeking to unseat them (Thompson 1987: 116), provided the rules governing public funding were sufficiently inclusive.

Cartelization: In a widely-cited paper, Richard Katz and Peter Mair (1995) argued that the public funding of political parties led to what they term the 'cartelization' of the party system, which arises when parties' interest in receiving public funding gives the political elite collective interests that are closely aligned with those of bureaucratic state agencies, but not always with those of the voter (Katz ad Mair 1995). The concern is that cartelization distances parties from the grass roots of the citizenry, in which they no longer need to rely for financial support. A more positive interpretation of this process is offered by Ingrid van Biezen, who views political parties as 'public utilities' (van Biezen 2008) and demonstrates that the degree of 'cartelization' depends considerably on the details of the formula through which funding is disbursed; when it is distributed on the basis of seat share, it does indeed seem to have a petrifying impact on party systems, but this is not so much the case when it is allocated on the basis of vote share (van Biezen 2000). Moreover, 'cartelization' can work to stabilize unstable party systems in new democracies (van Biezen and Kopecky 2001), so it can have positive as well as negative effects. There are also ways of addressing this problem without infringing on political equality. A voucher system or other mechanism that would ensure each voter is allocated an equal amount of public funding to donate to the party or candidate of their choice (Ackerman 1993; Cagé 2018; Christiano 1996; Foley 1994; Hasen 1996; Lessig 2015; Pelletier 2014; Sunstein 1997) would go a long way toward obliging parties to engage with the grass roots while at the same time maintaining the principles of public funding and voter equality.

Non-compliance and displacement: Some argue that if private finance is barred altogether, people will find ways to influence politics regardless – illegally or indirectly (Smith 1996: 1077). Yet the fact that a law is challenging to enforce does not mean that enforcement should not be attempted, and it certainly does not mean that the law should not be enacted. Were the same position advanced in other areas it would manifestly lead to outcomes of which people would not approve – laws against rape, for example, are difficult to enforce, but that does not mean that rape should be legalized. The very fact of making something illegal works to establish a social norm that has moral and cultural force in many cases, as the majority of citizens are law-abiding. The argument that moneyed individuals will find other ways to influence politics is more credible. For example, they may start newspapers, television channels or think tanks to communicate their views. But the normative force of a ban on private financing would apply in this case also. If it were obvious that rich individuals were using their wealth to seek to influence politics by funding media outlets, readers and viewers might refrain from obtaining political information from those sources or be less likely to trust political information obtained from them. Moreover, many political donors already spend considerable money on these alternative means of opinion formation, and there may well be diminishing marginal returns on such investments.

V Conclusion

The argument set out here is that the specific features of elections require actors to abstain from the use of private money, except as channeled through a relatively limited range of institutional mechanisms. The paper has sought to show that there are at least two compelling democratic theory grounds for effectively banning private finance in democratic politics: an equality-based rationale and an argument based on judgmental autonomy. The conclusion is that the only legitimate role of money in elections is through systems of public funding (possibly distributed via vouchers) and flat party membership/supporter fees, which equitably enable political parties to serve as public utilities. The rights to freedom of speech and freedom of association can be exercised adequately by allowing people to speak and associate; they do not require violations of democratic principles in order to realize them, and indeed, the preservation of equal freedom requires that private money be kept out of electoral campaigns. Political parties can legitimately raise funds through membership/supporter subscriptions and public funding, but it is not clear that there are justifiable grounds for allowing them to accept private donations to fund electoral campaigns. The regulations of campaign advertising by third parties should by the same token be similarly limited. If payments by parties and candidates to voters cannot legitimately be used as a means of ‘speech’ to persuade voters, then it is illogical for election-related payments by voters to parties, candidates and other organizations to be allowed as a legitimate means of voters exercising free speech.

A system of moderate public funding would enable political parties and candidates to communicate their core messages to voters and would foster public deliberation (Christiano 1996: 278-90). What such a regime would most likely eliminate would be the manipulative, negative and at times misleading paid advertising that campaign funds tend to be spent on. Given that the democratic benefit of such spending is dubious (Dworkin 2000: 351), arguments about the inherently ‘high cost’ of modern campaigns are suspect, and there is every reason to believe that the role of money in the politics of many contemporary democracies delegitimates democratic processes.

It cannot be denied that there are in many real-world contexts considerable challenges in designing campaign finance regulations that effectively limit the role of private money in electoral politics. However stringent the regulatory infrastructure in this regard, it is undoubtedly the case that those with sufficient resources and the desire to convert those resources into political power will seek means to circumventing rules that try to prevent this. Yet the fact that it may be difficult to restrict the role of private money in electoral campaigns by no means invalidates the argument for doing so. On the contrary, securing consensus on the principle of publicly funded elections is the first step in creating a moral climate where abuse of this norm is punished electorally as well as through the legal system.

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