Working Papers in Social and Political Theory

The Australian National University

PAYING FOR POLITICS

Working Paper 2000-W1

23 June 2000

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I. Introduction

In *Disclosure V. Anonymity in Campaign Finance*, Ian Ayres broaches a very particular issue in the design of democratic institutions, discusses that issue in a very particular context, and advocates a very particular institutional remedy. The specific issue concerns the regulation of information concerning political donations. The specific context has two relevant dimensions. Ayres is clearly concerned with the case of the US, and, implicitly and explicitly, the discussion takes many other aspects of the US political environment as the relevant background. At the same time, Ayres is primarily concerned with the prevention of corruption, so that the relevant criterion by which alternative institutional regimes are judged is just the extent to which corruption is deterred. Within this context, Ayres argues that the norm of full anonymity in respect of political donations would operate more effectively to prevent corruption than would the norm of full disclosure; so that rather than ‘sunlight [being] the best of disinfectants; electric light the most efficient policeman’, Ayres argues that total darkness is the real cure for corruption. Ayres’s constructed ‘veil of ignorance’ is nothing like Rawls’s, but it does involve a putatively constructive use of ignorance in the same way that Rawls’s construction does.

The essential argument is simple enough. Under full information, all campaign donations are matters of public record, so that there can be nothing covert about the funding process; nevertheless, the possibility of buying political favours is still present. Indeed, in the limit, one might imagine that competitive political donations constitute a straightforward market for political influence that operates alongside the electoral process to determine political outcomes. Whether or not we describe open financial transactions in such a market as ‘corrupt’
1, or ‘unfair’ (given an unequal distribution of income and wealth), there is certainly a presumption that such a ‘market’ might be expected to influence political outcomes and so reduce the reliance of political outcomes on the electoral process and other more strictly ‘political’ mechanisms. At the other extreme, under perfect anonymity, campaign donations are organised in such a way that no one (other than the donor - and specifically not the recipient) has any reliable information about the existence,
or size, of any individual donation. In this case, so the argument goes, since there can be no proof that a donation has been made, there can be no political deals struck: it is impossible to buy influence if it is impossible to demonstrate payment.

Of course, this sketch does not do full justice to Ayres’s argument, but we believe that it suffices to focus attention on the key issues: the idea that corruption takes the form of market-like deals that ‘pervert’ the democratic process in the sense that political outcomes differ from those that would be realised under purely political process; and the argument that such deals are effectively ruled out by complete anonymity. We also note that Ayres’s discussion is informed by a recurring analogy with the process of voting itself - and with the idea, in particular, that the secret or ‘Australian’ ballot provides an appropriate exemplar for secrecy in the political process. We will return to the significance of this analogical reasoning, and to other aspects of Ayres’s specific argument, in due course but first we wish to make some effort to widen the discussion a little.

The design of democratic institutions may be approached in either of two styles - a ‘piecemeal’ style or a ‘synoptic’ one. A piecemeal style characteristically focuses on this or that piece of institutional practice and subjects it to scrutiny. A synoptic style is one that attempts to work from general principles in developing an overview of the operation of democratic institutions and to develop thereby implications for the design of particular institutional devices. Clearly, neither style holds a monopoly on usefulness, and it is likely that the iteration between these styles offers the most plausible route to reasonable conclusions. It is for this reason that, initially at least, we wish to respond to Ayres’s piecemeal proposal in a rather more synoptic mode.

Even if we narrow our range of concern to the institutional framework for financing democratic politics, we must recognise that a number of inter-related issues are raised: the relative merits of private and state funding of political parties or candidates; the possibility of regulating either the set of agents who may make political contributions, or the size of the political contributions they may make; the possibility of regulating the flow of information about the financial affairs of donors, parties or candidates; the possibility of
regulating expenditures made by parties or candidates; and so on. None of these issues is trivial either in the sense that the normatively appropriate answer is obvious, or in the sense that the same practice has developed almost universally across democratic countries. And matters become still more complicated if we open up the possibility of interactions between these various issues, or with other aspects of the institutional fabric such as voting rules, the structure of representation, and so on. Indeed, it is not even obvious how we should go about addressing these matters. Two ingredients seem essential however - a reasonably clear statement of the model of democratic politics to be used as the test-bed within which to conduct the relevant thought-experiments, and a reasonably clear statement of the relevant normative criteria. Unfortunately, neither ingredient is readily available or widely agreed. The first aim of this brief essay is to say something about the appropriate ingredients to use in constructing particular arguments concerned with the funding of democratic politics or, indeed, any other aspect of the design of democratic institutions. Only then will we return to the specific issue of anonymity in political donations.

II. Some Basic Ingredients

We have already mentioned two basic ingredients - an appropriate normative criterion and a benchmark model of democratic political behaviour. We will say a little about each in turn.

It is clear that political institutions are not, and should not be, judged solely by their ability to deter or avoid corruption. The central task of political institutions is to play their part in improving social outcomes. Corruption is certainly one way in which institutions may fail, but concentrating on one potential failure is unlikely to lead to good overall design. The point is simple enough and should be familiar as an application of the general theory of the second best. If there are many criteria that aggregate in some way to indicate the overall value of a particular set of political institutions, and if one of these criteria is (the avoidance of) corruption - defined in some specific way - then it will in general be the case
that the optimal amount of corruption will be non-zero. Furthermore, it cannot be assumed that a reduction in corruption is necessarily a good thing.

We will say nothing very specific here about the precise nature of the overall normative criterion - whether it be some utilitarian social welfare function or some other conception of the good. The only points that seems important at the synoptic level are: first, that the normative criterion employed should be broadly consistent with the idea of democracy as such - so that it should take seriously the idea of serving the interests of the people and seek to do so via a political system that embodies the idea of government by the people; and second, that the normative criterion employed should be sensitive to the wide variety of ways in which the political system impacts on the people so that, as already noted, (the avoidance of) corruption is seen as just one aspect of the good, which may be traded-off against other aspects in an overall evaluation.

Although Ayres is not explicit about the underlying model of political behaviour he has in mind, it seems that his model of politics is a variant of the model associated with ‘rational actor political theory’. The central emphasis on political deals and on the role of informational conditions in determining whether (rational) individuals will enter into deals, is sufficient to make a strong connection with the rational actor model. At the same time, there are a number of indications that the model in question is not the standard economists’ model in which all agents - whether potential voters, potential candidates or potential donors - are both rational and motivated by a relatively narrow view of their self-interest. References to "independent deliberation and reason-giving", and such observations as "At times, representatives should take positions that are not merely aggregations of their constituents’ preferences" display both a degree of unease with the standard rational actor model and a tendency toward what we might term a ‘deliberative democracy’ model. The simple point that we wish to emphasise is that without some reasonably explicit and coherent account of the underlying model of political behaviour by candidates, voters and donors, it is not possible to analyse the impact of alternative institutional arrangements.
satisfactorily. And the analysis that one gets depends quite crucially on the details of the
model employed.

The problem is that the rational actor model and the deliberative democracy model offer
very different diagnoses of the central problems of democratic politics: those models
therefore, point to very different cures\(^5\). In the rational actor framework, the central
problems are those of aggregation and agency - how to design an institutional structure that
aggregates interests appropriately and also ensures that political agents are appropriately
constrained to enact the relevant policies. In the deliberative democracy model, the central
problem facing the design of political institutions is the creation of an environment that
encourages reasoned public debate - and this against the background assumption that
individuals are motivated, at least in appropriate institutional settings, to seek out policies
that are in the public interest (in some particular sense of that phrase). Voting may play a
role in deliberative procedures, but that role need not be central. Certainly, the electoral
process will not bear interpretation as a simple aggregation of private interests - though it
may be interpreted along the lines of the Condorcet jury theorems in which voting plays
the role of amplifying the enlightenment of the individual jurors and reducing the
probability of mistakes.

The most fundamental difference between the two models clearly lies in the motivational
structure that they assume of individuals. The standard ‘public choice’ model takes
individuals to be essentially self-interested and construes the political problem as
constructing social choices out of individual values, and then implementing those choices
through individual (self-interested) agents. The deliberative model, by contrast, assumes
more socially or morally motivated individuals, and identifies the political problem as
essentially one of attempting to reach consensus on what a more or less commonly shared
morality requires.

It is appropriate at this point that we say something about our own position on this
issue\(^6\). We take as our point of departure the rational actor model, but depart from that
model in several respects. First, and most fundamentally, we believe that the basic desires
that serve as motivational triggers for rational agents include a desire to act as morality requires. Our rational agents are open, at least potentially, to moral argument; and moral reasons will count among their motives for action. But the desire to act as morality requires is only one desire among many - including the normal range of self-interested desires. In making our agents open to moral argument we do not wish to make them moral angels. In this sense, we seek quite explicitly to occupy a position somewhere between the standard rational actor model and the full model of deliberative democracy.

Our approach has other distinctive features. We take seriously the criticism of instrumental, self interested voting that gives rise to the ‘paradox of voting’⁷. The basic problem here is that self-interested and rational individuals almost never have a private, instrumental incentive to vote in large-scale elections. Since the probability that their vote will be decisive is vanishingly small, voting is literally ‘inconsequential’. An additional, related problem is that of rational ignorance - the idea that self-interested and rational individuals will almost never have a private, instrumental incentive to gather information relative to political decision making, so that any votes they may cast may be expected to be ill-informed. Our reaction to these problems is to argue that voting in large-scale political elections is more appropriately conceived as an expressive rather than an instrumental act. Since voting is inconsequential, rational citizens will take the low-cost opportunity of expressing their support for this or that party, candidate or position rather than consulting a private interest calculus.

An important point here is that expressions of support cannot necessarily be assumed to correlate well with interests. To re-use an example, in a situation in which the real choice is between war and a negotiated settlement to a dispute, and on the assumption that a negotiated settlement is in everyone’s interests, we might still expect some - perhaps even a majority - to vote for war. All that is required is that (some) individuals sense that their individual votes are effectively irrelevant, and choose to use their vote to express their nationalistic pride. Of course, the expression of support might also yield better - that is, more moral - outcomes than any simple aggregation of interests in some other cases. Our
point is simply that the logic of the failure of the instrumental account of voting points to expressive voting which in turn points to a very different understanding of the potential advantages and disadvantages of the electoral process.

Combining these elements of a more moral motivational structure and an expressive account of voting, we obtain the bare outline of a model of representative democracy. The model includes some aspects of the deliberative democracy tradition insofar as it admits moral argument as a relevant part of the political process, but retains much of the structure of the rational choice theoretic account of politics. The model offers a basis for institutional analysis that recognises that political institutions do more than simply aggregate interests and provide instrumental incentives. In this sense, our model is broadly consistent with Ayres’s concerns and style of analysis, though since Ayres’s discussion leaves his precise conception of the details of agent motivation somewhat shadowy, it would be misleading to cast our model as the one that Ayres seems to have in mind.

III. The Analogy with the Secret Ballot

An important part of Ayres’s rhetorical force derives from an appeal to the analogy with the secret ballot. Specifically, Ayres suggests that the example of the secret ballot provides an insight into the more general case for secrecy/anonymity as an appropriate part of political institutions. We are, ourselves, by no means opposed to argument by analogy, but we think this particular analogy can cut several ways. We are interested in particular in the question as to how Ayres’s appeal to the authority of the secrecy property fits with his general picture of politics and the understanding of voting that is implied. As we see it, what is at stake here is a tension between the narrow interpretation of the rational actor model and the more expressive/deliberative model of politics. As we have already suggested, the rational actor model views voting as the revelation of essentially private interests in a process designed to aggregate those interests. It might seem that the secret ballot is an institutional arrangement well suited to this model since it allows individuals to reveal their preferences without fear or favour, and may also serve to moderate any strategic influences that arise from information on the voting behaviour of
others. Call this the anti-corruption view. This view may be questioned from within the rational actor model, but let it stand for the moment. How does this fit with Ayres’s ‘deliberative’ picture of politics? On the face of things, poorly. One would think that any deliberative model of democracy would be inclined to see voting as an integral part of the process of deliberation. The very essence of the deliberative idea is that individual citizens should engage in public debate, giving reasons for their political views that are intended to be influential in the political decision making of their fellow citizens. Similarly, an important aspect of an expressive account of voting seems to be that voting provides the opportunity to express opinion in public in a credible manner - to publicly declare allegiance to some ideal or principle, for example. But in this case, the idea of secret voting seems curiously out of step with the main thrust of the model. Secret voting breaks the most obvious connection between argument and vote, and undermines the reliability of the vote as a serious and responsible political input. If individuals are not held responsible for their vote, at least to the extent of being called to defend their stated opinion, it is difficult to see how the full discursive ideal is being taken seriously. Any model that tries to combine rational and deliberative elements will therefore face a trade-off between the anti-corruption argument for secret ballots and the expressive/deliberative argument for open and responsible political debate. Neither argument is clearly superior in terms of the overall normative criterion of improving political outcomes as seen from the perspective of citizens. But what does seem clear is that secrecy and discussion belong in rather different camps.

We would suggest that a similar trade-off is present in relation to the institutional arrangements for campaign financing. Even if the anti-corruption argument taken by itself points toward secrecy as an appropriate norm, the culture of candour that goes with disclosure is also an input into creating a more deliberative and discursive form of democracy. In fact, there is a particular wrinkle to the use of secrecy in the campaign contribution case that gives special force to this observation. Although both the secret ballot and Ayres’s scheme involve the constructive use of secrecy, only Ayres’s scheme is parasitic on the prevalence of deception. Ayres’s argument depends on the claim that
unverifiable statements are worthless, and on its being common knowledge that this is so. As Ayres conceives it, there are likely to be plenty of claims by those who request political favours that campaign contributions have been made. But no rational candidate will believe any such claim: there will be no trust without verification. This is part and parcel of the traditional economistic approach to rational behaviour. But again we would suggest that this approach is not well suited to any political environment in which genuine trust - that is, acceptance without verification – is supposed to be in play. And such trust seems a necessary feature of many forms of representative democracy and particularly of those forms in which discussion as such is conceived to play a critical role.\(^{10}\)

Suppose, for example, that some potential contributors are trustworthy, and suppose that trustworthy donors would find it offensive to be treated as untrustworthy. In this setting, it is easy to see that trustworthy people may refrain from making donations if their claims to have made donations are not believed. If this is so, there may be good reason for the candidates to act as if those who claim to have made contributions are telling the truth - that is, to trust everyone regardless of verification. This might well be the overall contribution-maximising strategy for candidates, at least in the short run. Then Ayres’s scheme might operate perversely to reward the liars among the putative donors, since they can now gain political favours at no cost. Of course, in the longer run, Ayres’s presumption of universal mistrust may come to be justified as the liars profit and come to dominate. We will then have established a politics in which truly all men are liars (except where it is instrumentally rational for them to tell the truth). But the norm of anonymity will have been instrumental in bringing that state about, whereas a more open norm, designed in recognition of the possibility of genuine trust, might offer a better prospect of trustworthy conduct.

In this sense, there is an important difference between secret voting and campaign contributor anonymity. The secret ballot depends on, and encourages, a culture of privacy. Each can respond to questions about voting behaviour with the quip: “It’s none of your business”. But Ayres’s scheme depends on and encourages a culture of widespread
mistrust. A candidate’s response to claims of financial support must be “I don’t believe you”. One might be prepared to tolerate a demand for privacy (with appropriate reluctance), without wanting to promote a culture of cynicism.

IV. Financing Elections

Let us at this point set the matter of analogies aside, and look directly at the question of campaign contributions and the work - for good or ill - that they do in electoral politics. Within the rational actor context, repeated elections play the dual role of identifying the chosen policy and of disciplining otherwise untrustworthy agents. In the simplest possible version of the rational actor model - that characterised by the median voter theorem - electoral competition performs both these roles ‘perfectly’. The logic of the median voter theorem is that, whatever the motivations of the candidates themselves (or their sponsors), the competition for votes will drive candidates to adopt the policy associated with the median voter: any other policy platform will lose. In this simple text-book model, political contributions could have no real impact, so there is little prospect for an argument for their regulation. The real puzzle in such a model is why campaign contributions would ever be made at all.

Of course, once we depart from the simplest model, campaign contributions can have a real effect in influencing outcomes - so that there may be some grounds for regulating campaign contributions in some way. However, the nature of the role campaign contributions play, and therefore the nature of any argument for regulating such donations will depend on the precise nature of the departure from the simplest model of electoral competition. It is at least possible that the role played by campaign contribution actually improves political outcome - so that rather than ‘perverting’ the political process, campaign contributions may form a valuable part of that process. One such possibility is explored by Rietz et al (1998)\textsuperscript{11}. The basic idea in that paper is that making a campaign contribution is a costly and therefore credible way of signalling support for one or other candidate; and that such signals may provide valuable information to other voters in determining their voting behaviour. Campaign contributions, in this sense, allow citizens to ‘put their money where
their mouth is’ and so escape the problem that political argument might be dismissed as ‘cheap talk’. Other models are, of course, possible. Our point is not that this or that model is appropriate, but rather the more fundamental point that campaign contributions could conceivably have some positive role to play, so that it is not appropriate to assume that any impact on political outcomes is evidence of corruption.

Part of the difficulty in evaluating Ayres’s case for secrecy is that he tends to cast the definition of ‘corruption’ pretty broadly. Following Cass Sunstein’s insistence on a clear demarcation between “market processes of purchase and sale on the one hand, and political processes of voting and reason-giving on the other” (as quoted in Ayres, pxx), Ayres seems disposed to consider any element of political exchange (as, for example, in logrolling) and/or the intrusion of any element of private-interest, as opposed to more conventionally political/ideological reasons for political support, as an instance of ‘corruption’. Such a broad definition fails to distinguish between practices that almost everyone would regard as depraved - such as direct clandestine payments of cash to a political decision-maker in return for determination of policy in the donor’s favour -- and practices that many might feel are, if not entirely admirable, at least fall well short of the worst that can be imagined. Using invitations to a White House dinner as a means of raising funds for the Democratic party may be decidedly tacky and less than one ought to expect from one’s President, but it is not on a par with giving huge defence contracts to the tender offering the largest cash bribe. In other words, if we are to model all transfers between political representatives/candidates and external agents in quid pro quo terms, we need to be reasonably precise about the nature of both the quid and the quo in that transaction if an appropriately nuanced evaluation of such transfers is to be secured. And this would be so even if minimization of corruption were the only normatively relevant game in town. If some quid pro quo arrangements are much more objectionable than others, we have to be careful that we do not regulate the less objectionable forms out of existence at the cost of encouraging more objectionable forms. We should be careful about outlawing a practice that is merely dubious or whose effects we only suspect, if doing so risks increasing a practice that may be much more objectionable.
To focus the discussion here a little, consider a matrix of possibilities. To simplify, we consider just two categories of *quid* (rows) and three of *quo* (columns). Consider the *quo* dimension first. At one extreme, we can conceive of direct policy determination by the ‘donor’: policy-making is effectively up for auction to the highest bidder. At a more modest level, the donor may acquire policy influence - perhaps by means of privileged access, the opportunity to offer comment, relevant information and/or advice. In this case, there may not even be any particular presumption of sympathy on the political agent’s part: the candidate/politician simply makes herself available to hear the argument the donor seeks to make. It may even be that any such argument will itself have to pass a general ‘public interest’ test if it is to be ultimately effective. Presumably, the donor believes that this privileged access will lead to policy influence in at least some cases but, from the normative perspective, it is by no means obvious that this policy influence is necessarily a bad thing. The access that the contribution makes possible simply serves to secure the public interest (though admittedly only in that subset of cases in which the public interest and the donor’s private interest happen to coincide). The third and final type of *quo* that may be relevant arises when the benefit to donors takes the form of ‘incidental services’ of the kind that political agents routinely provide for constituents - from assistance in getting visas, to the rental of the White House dining room for one’s daughter’s wedding, to the simple prestige of being seen (and photographed) with prominent politicians or the acquisition of a knighthood. Much of the practice here may be rather tacky and some of that practice may, in the long run, be corrosive of the esteem in which public office is held, but it is not obviously deeply sinister and may not have any effect on policy at all – even of the most indirect kind.

In order to assess how anxious about campaign contribution regulation we ought to be, we would need to know just where in this spectrum of these possibilities, actual practice lies. On this question, Ayres neither offers evidence himself nor refers to relevant literature. We simply don’t know how much influence on actual policy determination a million dollars of campaign contribution buys: nor do we know what other factors are relevant in affecting that degree of influence. Rather, we are left to induce from the *fact* of the contributions that
the donors must see themselves as getting their money’s worth; and we are asked to base our suspicions accordingly.

A Matrix of Possibilities

<table>
<thead>
<tr>
<th>Quid</th>
<th>Quo</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Policy Auction</td>
</tr>
<tr>
<td>Cash</td>
<td>1</td>
</tr>
<tr>
<td>Campaign Support</td>
<td>4</td>
</tr>
</tbody>
</table>

It is worth stressing that there is at least one kind of *quo* within the range labelled ‘privileged access’, where donor anonymity will not be effective in reducing campaign contributions or their impact on policy. Suppose that candidate C chooses her policy platform in order to maximise the probability of her election - and that this involves being sensitive to the fund-raising potential of different policies. Suppose also that potential donor D makes a contribution to candidate C’s campaign funds if C’s policies are in D’s interests. Here, D is effectively ‘buying’ an increased probability of C’s victory, and C is ‘selling’ policies to attract potential donors. But C’s awareness of D’s identity is immaterial for the rationality of D’s decision to donate, and may be equally immaterial for C’s decision as to which policy to espouse. Even in the presence of full anonymity, C can be aware that espousing certain kinds of policies - ones that give a substantial benefit to particular salient interests, perhaps - is conducive to larger campaign contributions, and can tailor her policy platform accordingly. We might say that the political trade or contract
between candidate and donors is implicit rather than explicit, yet the same effects on policy platforms arise in this case as might arise under full disclosure. Indeed, because such implicit transactions are not *publicly* accessible, there may not be the same general mistrust of such contributions, or any real possibility of electoral backlash over such implicit political exchanges. But whether anonymity here supports such forms of ‘corruption’ or not, there does seem to be the potential for a form of corruption that is immune from Ayres’s proposed cure. Ayres would doubtless, and correctly, point to the free-rider aspects of any potential donor’s decision problem if the benefits of C’s election are spread across many people. But this argument does not depend on the distinction between anonymity and disclosure. The free rider problem may arise, and arise equally, whether anonymity applies or not; so that the shift from a norm of disclosure to a norm of anonymity might have no significant effect at all. Indeed, if disclosure helps to solve free-rider problems among teams of donors, then anonymity will simply serve to discriminate in favour of the most concentrated interests.

Consider now the *quid* side of the transaction - the rows in our matrix of possibilities. The spirit of Ayres’s discussion and much other treatment of campaign contributions is that the precise form of campaign contributions is largely irrelevant. This conclusion arises from the fact that candidates are modelled as a homogeneous set of simple utility maximisers for whom money income and the benefits from holding office are fully substitutable in the utility function. From the candidate’s point of view, campaign contributions, of whatever form, are a close substitute for cash payments. Or so the argument goes. We would argue, however, that the form or ‘currency’ in which benefits are received is far from insignificant. To see this, suppose that different candidates differ in their motivational structure - with some displaying more venal motivations, and some displaying more ‘public-interestedness’. Consider a comparison between two extremes. In one case a cash payment of $10,000 is offered that might be appropriated as income by the candidate; in the other case, the offer is made in terms of campaign support services - printing pamphlets, paying for TV time or whatever - valued at $10,000. This second form of reward is such that it will be more attractive, *ceteris paribus*, to the relatively virtuous
candidate – the one who values office highly relative to cash. The preference for office may reflect a value for office for its own sake, or because office provides an opportunity to ‘do good’, or because of the public esteem that office offers. In all cases, the candidate who looks to politics as a way of making money will be screened out in favour of those candidates with other motivations. And for those who distrust the venal in politics, this must surely be an attractive feature.

In overview, then, our matrix of possibilities identifies six cases ranging from one extreme (case 1) in which cash bribes are rewarded by the direct determination of policy, to the opposite extreme (case 6) in which in-kind campaign support is exchanged for incidental benefits such as enhanced prestige. And we have suggested that in five of these six cases there may be some genuine claim that the practise has at least some merit. Only in case 1 does the normative argument seem clearly to indicate a genuine corruption of the political process. Of course, the mere enumeration of six cases does not imply that they are of equal importance, and it might be that case 1 is the overwhelmingly relevant case. But we doubt it. We think that the apparent salience of case 1 is more a product of the narrow interpretation of the rational choice approach to politics.

And there is the further consideration that larger campaign contributions may themselves be conducive to a more vibrant, engaged and informed electorate. In a context where individuals may have rather weak incentives to inform themselves about either the attributes of candidates or the policies those candidates endorse, campaign contributions may perform the important function of ensuring that political messages are packaged in a way that voters will find accessible and attractive to attend to. After all, if campaign expenditures influence the probability of being elected at all, they must influence (potential) voters in some way - either in persuading them to alter their votes or to exercise their votes. Much political advertising might strike academic commentators as rather uninformative or less than ideally ‘discursive’, but it is difficult to see how one could coherently be contemptuous of political advertising without being at least somewhat contemptuous of the electorate’s capacity to be influenced by such advertising, and hence
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of the whole process of popular democracy. If on the other hand, one thought that campaign expenditures do some positive work in informing the public, then there is a cost to any proposal that seeks to reduce such expenditures - a cost that ought to be factored into any proper normative calculus. American practice has happened to hit upon a quasi-voluntary mechanism for meeting the considerable cost of providing relevant political information to voters, and of doing so in a way that provides incentives to make this information attractive and accessible to voters. This mechanism may not be ideal; it may involve some effect on policy platforms that draws those platforms away from those that a full application of the public interest norm would require. Even then, however, that cost may be one that it is reasonable to pay. And that is more likely to be one’s conclusion if one believes that voter ignorance and voter apathy are significant problems.

V. Practicalities

Finally, we turn to some of the practical details that may be relevant to any choice between disclosure and anonymity. Ayres argues that a system of full anonymity is practicable and goes into some detail as to how such a regime might be organised. At the same time, it is clear that most discussion of the reform of political funding takes the opposite view. In the UK context, for example, the recent enquiry into the funding of political parties\textsuperscript{12} dismisses the use of blind trusts (which have been used and advocated by the Labour Party prior to this enquiry) or other mechanisms attempting to institutionalise anonymity. It might be that this dismissal depends on other institutional differences between the UK and the US. For example, almost all political donations in the UK are made to political parties rather than to individual candidates; corporate donations are both legal and commonplace in the UK; and so on. It is easy to see that differences of this type will matter. If corporate donations are allowed, for example, one might easily accept that shareholders have a right to decide (or at least monitor) such contributions and such monitoring requires at least some degree of openness.

A further practical doubt concerns the viability of the contributions-booth approach proposed by Ayres. The issue is this - if anyone knows the identity of donors (and the
size of their donations), there will be considerable pressure in the system (from the press, as well as from politicians and donors themselves) for that information to leak out. Those charged with operating the contributions-booth will bear the brunt of this pressure. And however they behave, there will always be the suspicion that some information does leak, not least since it would be impossible to prove the absence of a leak. Of course, one might refine the proposal still further so that all contributions had to be made in cash or other untraceable form so that literally no one other than the donor has information on identity. But this highlights another problem. Put crudely, what prevents the operators of the contributions-booth from simply taking the money rather than passing it on to the candidate or party that it was intended for? If all political agents are to be modelled in the rational choice tradition as venal utility maximisers, the contributions-booth operators must also be modelled in this way, and anything that prevents information on donors and donations becoming public also prevents any monitoring or auditing of their operation. These two practical problems seem to cross-cut in a way that seriously undermines the possibility of an anonymous system. True anonymity would result in no donations reaching their intended target and, recognising this, donors would be unwilling to make donations and the resultant equilibrium would be the degenerate one in which no donations are made. But then the question of how to finance politics has been avoided rather than answered.

It is worth noting, too, that Ayres sees the chief virtue of his scheme to be that of reducing the number of large-scale contributors. The campaign arena may, however, be one in which there is some safety in numbers: a situation in which there are a hundred notable givers may be more desirable than a situation in which there are only a handful, even if there is some doubt as to who that handful are. It is surprising, moreover, in the US context, that Ayres does not give more attention to the problem of extremely rich individuals buying political influence by standing for office themselves (or through members of their families) and using their personal wealth to finance campaigns in a way that other less well-off candidates could never match in the absence of campaign support from external sources. And, of course, there is the familiar point that reduced campaign expenditures would
differentially favour incumbents, because incumbents derive name recognition and general salience via the free mechanisms of ordinary media coverage.

VI. Finale

Ayres’s proposal of an institutional regime of anonymity in relation to campaign contributions seems to us to be interesting but ultimately unpersuasive. The proposal is interesting because it challenges an orthodox belief in openness - a belief that is held more as an article of faith than as the result of clear analysis of the alternatives. All too often in institutional discussion, the onus of proof is decisive and that onus is itself decided by familiarity. Ayres does a positive service by opening up for consideration a possibility that mere familiarity effectively closes off. Ayres’s appeal to the analogy with the secret ballot is rhetorically powerful in this connection precisely because he is able to mobilise a no less common prejudice in favour of secrecy. But this analogy may serve no less to raise reasonable doubts about the secrecy of voting as to encourage secrecy in the campaign contribution case. In any event, the analogy is far from perfect: as we see it, the secret ballot encourages ‘privacy’ in the voting case; in the campaign contribution case, donor anonymity encourages deception.

But our judgment of Ayres’s argument does not depend on the strength or otherwise of any analogy. In our view, Ayres’s discussion is unpersuasive because his arguments are insufficiently general. In particular, there is too little attention to the specification of the democratic context within which his recommendations are to have effect. To be sure, there is a limit on what one can reasonably expect of an author in a single paper. But, as we have tried to show, Ayres’s case for anonymity depends on a whole range of matters, including among others: whether politics is best characterised by universal distrust, so that only verifiable claims are believed or on partial trust where non-verifiable claims have at least some credibility; on what exactly the motives for giving campaign contributions are; on how broadly one understands ‘corruption’ and whether the minimisation of corruption,
however exactly understood, is the appropriate single objective for the design of political institutions; and on what it is exactly that people do when they vote and therefore on the authority of the *vox populi* in various contexts. These are all large questions and, we think, unsettled ones. To say that they should all be settled *before* the Ayres scheme can be properly evaluated is undoubtedly a counsel of despair. But when those questions are treated in the most plausible first-cut way, the balance of considerations does not appear to favour the regulatory regime that Ayres proposes.
Notes

1 In some cases the distinction between a corrupt bribe and a legitimate payment may hinge upon whether the action or service purchased is illegal, or on whether the intention is fraudulent (i.e. based on some deception). But if the action/service purchased is legal, and there is no deception, the difference between a corrupt bribe and a legitimate payment is by no means obvious.

2 Clearly, we do not wish to imply that there are only two approaches to questions of institutional design. Each of the two styles we identify is capable of supporting a wide variety of approaches. For discussion of approaches to institutional design see Goodin, R. (ed.) (1996), The Theory of Institutional Design, Cambridge: Cambridge University Press, which also provides excellent references to the related literature. Brennan, G. and Hamlin, A. (1999), Democratic Devices and Desires, Cambridge: Cambridge University Press, attempts both to iterate between the styles identified here and to develop a particular approach.


5 Of course, there are other models of democracy offering further diagnoses and cures. We concentrate on the two identified models for clarity and because they seem to us to be particularly relevant.

6 Our views are laid out and defended much more fully in Brennan, G. and Hamlin, A. (1999), Democratic Devices and Desires, Cambridge: Cambridge University Press, although the institutional structures discussed in detail do not include campaign financing.


9 Of course, this is not an essential part of an expressive account, since self-expression may be sufficient.

