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In the 1996 campaign, the two and a half political parties spent something in the neighborhood of a billion dollars in our nation's quadrennial contest for the presidency. Meanwhile, congressional campaign spending, our biennial outrage, climbed to a record of more than $600 million. The two party outlay for a seat in the Senate now averages more than $4.5 million dollars, although it is no longer uncommon for a single candidates to spend ten or fifteen million, sometimes more. Even in House elections, those local to-do's where in most states communication with the entire constituency is theoretically possible without radio, television, or a substantial overhead in motel rooms and takeout meals, the ante has been upped to a corresponding extravagance.

Concerned citizens should be forgiven for jumping to the conclusion that well-heeled lobby groups are twisting the system to their own ends through generous funding of the party machinery, that in effect the victors in the race for offices are politically beholden to their financial investors. That is, after all, one plausible explanation for why many donors give to both parties, without apparent regard for the ideologies and principles espoused. Although election costs have been on the ascent for decades, the kind of cash being tossed around in the 96 election was bound to alarm those Americans still capable of being surprised by what their politicians do. Consequently, the media, the wonks, and, once they determined that it made a good political issue, the culprits themselves, have sounded the cry for campaign finance reform. Whether or not the cry results in actual legislation, the public is sure to get an earful from prattling talk shows, think tanks, presidential commissions and the appropriate congressional committees, all weighing in on the subject of limiting who gives what quantities under what circumstances and how it can be spent.

Opponents of campaign spending limits like to point out that the total spending on elections averages less than what Americans spend on renting videocassettes. That may be true, but it is nonetheless irrelevant. The typical American, although he does in fact rent videos, does not willingly give a dime in support of the political machinery. Thus, lumping him in with wealthy contributors and the membership of organized pressure groups disingenuously lowers the average political donation and deflects attention from more pertinent questions, such as: Is public policy being made on behalf of the special interests who underwrite elections, and if so, at what cost to the general interest?

Whether all this money-changing in the temple of politics is sinister in appearance only, or in actuality, the advocates of legal limits on campaign contributions and campaign spending face two considerable challenges. Most obvious is the First Amendment. To limit spending is to limit the opportunity to broadcast, which currently falls well within the penumbras that emanate from the original meaning of "speech." For that reason the courts have allowed Congress and the Federal Elections Commission to nibble here and there, but have been reluctant to permit any draconian abridgments.\(^1\) Retired Senator and perhaps presidential aspirant Bill Bradley, rushing in where angels fear to tread, has intrepidly proposed to amend the Amendment, in order to set campaign spending outside the Constitution's free speech guarantees. He has recently been joined by other Democratic leaders, such as Senator Tom Daschle and Congressman Dick Gephardt, but even in the extremely unlikely event that they should succeed, or in the not unthinkable event that a different court with different enthusiasms should embark upon its own agenda of campaign finance reform, there is an even more formidable obstacle in the very nature of our democracy itself.

To define, or rather to illustrate, this obstacle, it is first necessary to invoke the distinction
between "democracy" and the republic as outlined in the Constitution of 1787, a distinction long ignored or dismissed, albeit with important consequences to the American system of elections. The founders, whatever warts and imperfections recent generations might have discovered in them, were shrewd observers of human nature, and deeply familiar with the workings of politics. Unlike the academic dainties in the salons of Europe, they were actively engaged in both the low horse trading and the high statesmanship of their day. Most of them had a strong grounding in the political experience of Great Britain, as well as in the history of the ancient republics. In the early years of America's independence, their personal encounters with fickle popular governments, led by impassioned demagogues, more or less confirmed the political lessons that had been handed down from the days of Aristotle and earlier, and made them mistrustful of any simple theories of sovereignty. They learned to be as wary of power in the hands of a popular majority as in the hands of an arbitrary monarch like George III.

As they conceived it, the constitution best suited to preserve liberty balanced the sovereignty claimed by the popular majority against that claimed by the aristocracy and that by the king, much like the eighteenth century British Constitution balanced the Commons, Lords, and Crown. Each had its proper sphere. None could make the government act without the consent of the others, and thus the system avoided the governmental extremes likely to occur when any of them held absolute power for long: Mob rule, oligarchy, or tyranny. Yet with few exceptions, the founders were also committed (small "r") republicans who had no intention of installing a hereditary monarch and a politically privileged aristocracy. They had to face the dilemma, in other words, of trying to create a "balanced republic" without two of the requisite social elements: How were they to check the majority’s misuse of power, yet through popular elections?

Their answer was ingenious, though short-lived. A House of Representatives would represent the "democracy." The Senate would duplicate the restraining function of the House of Lords, and unlike the other branch of Congress, its members would not be elected by direct popular suffrage. Originally, United States senators were elected by the state legislatures. The president would wield the executive authority, although with certain oversight and consenting powers retained in the hands of Congress. He in turn would have a broad but not unlimited veto power over congressional legislation. And he would be elected by a College of Electors who were appointed by the state legislatures, or elected by the people of the states, in whatever arrangement the states decided for themselves. What the founders created, in effect, was a tripartite manner of appointment, in which election to any federal office originated in popular suffrage, but in which no branch answered in the immediate sense to the same voting constituency. The people voted for Congressmen and their state legislators, and no more. The House answered immediately to the people; the Senate to the state legislatures. The President was promoted by a temporary body holding power for a single day. Originally intended to be an august assembly of the most esteemed citizens of their communities, the Electoral College was to convene its members in their respective state capitals to cast votes for the nation’s chief executive, independently of popular or party considerations.

This balancing act was all the more ingenious when it is considered that, along with the equal representation of states in the Senate and the careful apportionment of Electoral College votes, the graduated, indirect system of elections through state legislatures retained some measure of protection for the states against a "consolidated" national government. Today, the very mention of states' rights sends shivers down the collective spine of an Oprah Winfrey audience, but in 1787, popular sentiment ran entirely the other way. Without such an arrangement, the founders could never have persuaded "the people of the states" to adopt the new constitution.
In retrospect, the indirect election of presidents and senators would also have obviated the current need for the mass advertisement of candidates. The largest voting group to which a citizen belonged was that of the congressional district. The vote for state legislator was cast among a small constituency where substantive, first hand knowledge of the candidate was possible, and where, in turn, the candidate could have a personal acquaintance with sundry smaller interests that would otherwise be drowned out in a mass election. A few score legislators then surveyed the state for a US senator, and for members of the Electoral College, and this small body of the chosen’s chosen appointed a president. For those concerned that the popular will would get lost in all these intricate filters, the entire machine could be brought to a halt by the House of Representatives, whose members answered immediately to the people. Thus, in every sphere the majority prevailed, but never was the voting element so large and unwieldy as to require a slick public relations campaign to "get the message out."

At first glance, this would seem to be a somewhat anachronistic observation, there being neither the technological means of mass advertising, nor the mass market audience, at the time the Constitution was written. But amid the thinly scattered, mostly rural and insular settlements of eighteenth century America, the authors of The Federalist, at least, perceived that direct election to the higher offices would have necessitated extremely broad constituencies that favored the intrigues of well organized elites who were adept at "taking advantage of the supineness, the ignorance, and the hopes and fears of the unwary and interested." The system of electoral gradations, by contrast, restricted voters at every stage to the level of their natural competence, that is, to a level where first-hand acquaintance was at least possible. The design, said Publius, would thwart the demagogue and promote to the higher offices "those men only who have become the most distinguished by their abilities and virtue."²

The merits in favor of this hierarchical scheme of elections, as it turned out, were never any match for the modern ideology of "democracy." Despite the evidence that an Electoral College with some degree of deliberative autonomy would select a Washington, an Adams, or a Jefferson to be president, or that state legislators who were not under the lash of popular political parties would choose Clays, Calhouns, and Websters to represent them in the Senate, anything less than universal and direct participation in every election was viewed as an infringement of natural rights. By the end of the Jacksonian Era, the Electoral College had suffered complete collapse. In the place of those wise and patriotic elders were substituted the party hacks who could be counted on to vote for a candidate already nominated in a popular convention. Eventually the names of these non-entities would be dropped from the ballot altogether, leaving voters with a simple choice between a slate of electors for President X or a slate for President Y.

The direct election of senators, as a formal arrangement, would not occur until the Seventeenth Amendment of 1913, but practically speaking, the legislators began their retreat in approximately the same period. By the time of the famous Lincoln-Douglas debates for the Illinois senatorship in 1858, it had long been common practice for Senate candidates to make their appeals directly before the people, and for candidates to the state legislature to publicize whom they supported for senator as a major plank in their own campaign platforms. In other words, the intended hierarchies became inverted, with the elections of presidents and senators determining the selection of Electors and state legislators, rather than the other way around.

Thus, in spite of the precautions laid against it, the American system of representative hierarchies became one of mass elections. In the absence of any inherent agreement on issues and candidates among large aggregates of voters, the new arrangement necessitated mass political parties organized around no other principle than that of gaining and retaining
elected offices, and all the power that victory accorded. The overthrow of the constitutional nobility required a different hierarchy in the form of party leaders, perhaps more tolerable for being less visible; but because less visible, perhaps less accountable as well. As historian Roland Stromberg recently observed, the necessity of mediating between great masses of voters and the electoral process forced the creation of political parties with a highly elitist structure. "The more voters, the more party organization [had to be] controlled by a small minority." German sociologists of the late nineteenth century would publish scholarly treatises on their discovery of the "Iron laws of oligarchy," but the phenomenon was not unforeseen by American statesmen a hundred years earlier. "The countenance of the government may become more democratic," wrote James Madison, "but the soul that animates it will be more oligarchic. The machine will be enlarged, but the fewer, and often the more secret, will be the springs by which its motions are directed."

As single-minded electioneering organisms, the parties would adopt whatever techniques were available for stirring up the voters. The specious issues and phony candidates that we complain of in the television age, it turns out, are merely the descendants of an American tradition of false advertising dating back to the Whig campaign of 1840, when the handlers of William Henry Harrison transformed him from a scion of Virginia wealth and privilege to the "Log Cabin and Hard Cider" nominee who, in modern parlance, "felt the pain" of the common man. If conditions seem worse now it is only because we are farther down the path, not because of any recent change in direction.

And here we return to the fundamental reason why democracy is not likely ever to produce any enduring solution to the so-called crisis of campaign finance. Demagoguery on a continental scale is an intrinsically expensive undertaking, and even local elections become tainted with money in a political system so preoccupied with the mass election of its highest officers that a prospective Congressman must purchase a megaphone to gain the ear of his neighbors. Any reform that focuses on spending and contributions, be it to limit the amounts or merely to disclose them to the public, will treat only a symptom, not the cause, of the disease, and will more than likely mistreat it. As numerous recent studies have concluded, many of the questionable practices of campaigns in the 1980s and 90s are the side effects of reform legislation passed in the 1970s. But the problem is not anywhere near that recent. Federal campaign publicity laws and spending limits were enacted in the early teens, and Congress was holding investigative hearings on the violation of those laws and limits by the early twenties. At least one scholarly monograph presenting virtually all sides in our current debate had been published on the subject as early as the Coolidge administration.

Then there is the case of the Seventeenth Amendment, providing for the direct, popular election of United States senators. This reform was in no small part a reaction to the big money used to promote Senate candidates in primary elections, often through the purchase of newspaper ads, or even entire newspapers. A dwindling handful of opponents pointed out that the primaries - in effect popular elections for party nomination - interfered with the process of elections by state legislatures, and that the way of reform was to restore the deliberative independence of those bodies in Senate elections. But the reformers countered that money in Senate elections arose chiefly because the legislatures were corrupt intermediaries in the pay of the special interests, that the corruption would wither away once the means were established to express the pure intentioned Will of the People in Senate elections. They conceded some minor mischief might arise from this change in the fundamental law, but none not easily redressed with federal disclosure requirements and/or spending limits.

But as a skeptic in this debate remarked, any "Purity In Politics" law, whether based on direct legal limits or on the indirect influence of publicity, would only hurt the honest candidates. "The rogue will work himself through its meshes." Nevertheless, in 1913
campaign reform was implemented at the level of a constitutional amendment, backfiring all the more calamitously as Senate candidates now had to add the cost of a general election to the price of winning a party primary, and moneyminded interests once having to exert their influence with a majority of legislators in a majority of states could now make their political purchases more directly.

In short, there is more than ample evidence that the sort of nipping and pruning currently being discussed is based on a gross misdiagnosis of the malady, and will fail accordingly, if not actually make conditions worse. Nor are the extremes of this debate, each with its own frightful mix of naïveté and cynicism, likely to produce more satisfactory results. At one pole, full public financing of elections would give government a tempting omnipotence to decide which candidacies are worthy of recognition, although gaping loopholes are bound to open up in "pre-candidacy" spending and in "unaffiliated" advocacy of positions that happen to coincide with the known views of a particular nominee.

At the other pole, unlimited spending by anyone for anyone applies the signet to America’s plutocratic order, the insidious end of many a democracy in the past. The check on abuse, urge the laissez fairest, is not to limit contributions or expenditures, but to make public the details of which interests are funding which candidates. It is hard to comprehend why this faith in mere publicity is espoused chiefly by conservatives, who on any other issue disparage the bias of the mainstream media. If they only thought through their position a little more imaginatively, they might realize their panacea’s potential for scaring off contributors of honorable intent, but of unfashionable politics. No doubt, the apostles of disclosure envision voters obtaining the pertinent data for themselves, without the filter of media reporting, as if the availability of campaign finance information was in and of itself sufficient to transform a passive television audience, the target of today’s vapid political appeals, into a vigilant citizenry that scrutinizes the party ledgers before each election.

Some opponents of spending limits argue that money is not as crucial as the alarmists would have us believe in the first place. It’s not the money, they say, but the message that ultimately wins elections, as evidenced by a number of recent instances where the highest bidders failed to get the majority vote. But it so happens that most campaigns are not waged between indigent Davids and affluent Goliaths. Although it may have been superior "vision" that gave Senator Dianne Feinstein the victory in the 1994 California Senate race, in which she spent barely half as much as challenger Michael Huffington, the fact remains that half of almost $30 million dollars, combined with the incumbency, is not exactly a bootstrap political appeal. Her case only confirms the fact that political ideas rarely get their fifteen minutes of mass consideration without a significant outlay for mass publicity.

Of course, we are stretching the definition of "ideas" well beyond reasonable limits in applying it to the ballyhoo of today’s elections, but even if we grant that catcher slogans and smoother sound bites have tended to trump mere spending, we are still left to wonder whose is the ultimate victory in an electoral system where both parties are often bankrolled by the same interests.

The proposal for unlimited spending has at least the merit of sparing the American public the political cant about preventing what it is not in any politician’s interest to prevent. As Steven and Allison Hayward have recently written, "Interests will always find a way around the regulations to feed the politicians' insatiable demand for money." They argue that this phenomenon will continue, not because of the lack of regulation, or even because of the expense of television, but because government commands such a large role in the nation’s social and economic life that organized interests can not afford to leave matters to chance, and will do what is necessary to influence the policies that affect them. "The only sure means of reducing the corrupting effect of money in politics," conclude the Haywards, "is to
reduce the size and scope of government."²
There is undoubtedly truth in this observation, but it is worth considering whether the
growth of government is not itself a symptom of the corrupted electoral process. When the
popular attention is so heavily concentrated on the mass election of a president, is it not
natural for the intermediate offices and agencies to dwindle in power and significance as a
result? If more voters concerned themselves with the candidates of their state legislatures,
or even bothered to learn their names, would they so casually relinquish authority to the
remote and virtually inaccessible seat of empire in Washington?

As to the other symptoms that we mistake for the causes of money in politics, is it
conceivable that a presidential candidate seeking the independent votes of a mere 538
people in the Electoral College would have need of a multi-million dollar promotional budget,
or that a television advertisement would make much of a difference in choosing a neighbor
to serve as an Elector? Campaign money, and whatever influence it buys, would certainly be
less of an issue in an electoral system which made mass advertising a superfluous
endeavor.

That was essentially the case in the original political arrangement, under which the voting
responsibilities of the people in federal elections extended no further than the choice of local
candidates, and a system of electoral hierarchies checked and balanced against one another
safeguarded them from the abuse of power in high places. Subsequent generations rejected
these limitations as "undemocratic," as insulting to the common man, who was believed to
be perfectly capable and by Nature entitled to decide on the highest national affairs, or at
least to decide which of the pandering flunkies would be promoted to the highest offices.
But, as the founders could have predicted, the result was the rule of party oligarchies and
the organized interests whose money feeds the electioneering machinery.

The right to choose the high functionaries of state, with one vote among scores of millions,
has certainly not increased the political power of the common man, much less exalted his
dignity. In the slander, innuendo, and half-truths on which most political contributions are
spent, it is hard to determine which is the more disheartening, the low respect that
campaigning politicians seem to have for the intelligence and principles of their constituents,
or the possibility that their assessment of the average voter's gullibility and self-indulgence
is what gets them elected. Perhaps, amid the present readership, or among serious readers
of any political persuasion, few, or none, require a fifteen second commercial, or even the
one or two hours of verbal mud-wrestling that we honor with the term "presidential debate,"
in order to make up their minds at the voting booth, but the overwhelming preponderance
of loot in the party treasure chests has not been accumulated for the purpose of persuading
people of reasoned conviction. Rather, the expenditures are intended for the apolitical
hordes who remain indecisive until a scare or a bribe is dimly perceived on their television
sets. It may be a small percentage of voters who could choose a president about as well
with a coin toss or their horoscope as with the actual knowledge they have of candidates
and issues, but they evidently comprise enough of the electorate to justify the politicians'
cynical appeals to the lowest common denominator. The consequence is that even those
who take their political responsibilities more seriously are finding it increasingly difficult to
cast an intelligent ballot in the circus atmosphere of American politics.

I am not making the case against universal suffrage. There are, however, limits to what
universal suffrage can accomplish, regardless of the revolutions in telecommunications, and
our failure to consider these limits is ultimately the source of our discontent with money in
politics. Of course, it is well-nigh impossible to envision the average citizen in our
hyper-egalitarian age showing the humility and self-discipline required to subject his opinion
regarding the choice of a president to that of a neighbor, to that of a man or woman whose
knowledge of national affairs is admittedly greater than his own, and in whose disinterested
patriotism he is fully willing to commit his trust.

Nor, at the risk of sounding conspiratorial, is there reason to expect that the politicians who benefit from mass elections will acquiesce in the genuine restoration that the foregoing analysis implies. Should any proposal remotely hierarchical in form come to the public's consideration, the political elect and their financial sponsors would, with all the resources at their disposal, bombard the airwaves with righteous outrage at the suggestion that "the people can't be trusted." And they could no doubt rely on a sizable contingent from the media, whose profits are in reporting the bloodsport.

It may be, when all is said and done, the system we have is the system we want. Perhaps we prefer a plutocratic government of our own making than the "Natural Aristocracy" championed by the Dead White Males of 1787. If so, we could at least spare ourselves any further travel down the dead end trail of campaign finance reform. If not, if we are truly weary of the path and fearful for the future, then we must sooner or later recognize that, as with all dead ends, the way back is the way out.

Notes:
1Most notably, Buckley v. Valeo, 1976[back].
4The Federalist, p. 382[back].
5See, for example, "National Campaign Expenditures," an unpublished hearing by the Senate Select Committee on National Campaign Expenditures, 68th Congress, 1st Session (Chicago: October 16-18, 1924)[back].
7Congressional Record, 62nd Congress, 1st Session (June 12, 1911): 1881[back].