

# Who pays?

## Political donations and democratic accountability

Benjamin Hourigan

The old adage is that money is the root of all evil, and common wisdom holds that nowhere is this more true than in election campaigns. All sides of politics share a fear of governments held hostage to wealthy individuals or organisations that use donations to buy influence. Efforts must be made to make the role money plays in election campaigns transparent, but as we do so we must remember that the right to spend in politics is also a right to speak. However bizarre or self-interested their motives, individuals' freedom to support the political causes they favour must be our highest concern when we consider campaign finance regulation.

In July this year, a scandal linking campaign finance and corruption rocked British politics. The UK's two most influential political parties, Labour and the Conservatives, were drowning in astonishing debts. The Tories owed £18.1 million, Labour £20.9 million. On Labour's side, allegations arose that the party had effectively been selling peerages to wealthy private donors. Spectacularly, Scotland Yard arrested Lord Levy, Labour's major fund-raiser, in its investigation into the

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matter, releasing him without charge. The 'cash for honours' affair has led to calls for more regulation of party funding in the UK. Labour MP Jack Straw has called for caps on party spending, Tory leader David Cameron has supported the introduction of a £50,000 cap on donations from individuals and organisations, and new regulations will come into effect on 11 September 2006 requiring parties to report regulated transactions to the Electoral Commission within 30 days.

The UK faces dire problems with respect to party finance: its leading political organisations are spending beyond their means in extravagant election campaigns, and its government stands accused of selling favours to wealthy patrons. Yet will capping spending and obliging parties to disclose donations and loans decisively prevent corruption?

### The Donation Booth

Australia, New Zealand, Canada, the UK and the United States all require that donations to candidates and political parties beyond a threshold must be disclosed and donors identified. After this year's lifting of the threshold from \$1,500, Australian donors and recipients will have to report gifts of \$10,000 or more to the Australian Electoral Commission, which releases donation details to the public on 1 February every year. Thresholds and other de-

tails vary between nations that employ disclosure regimes, but the world's major English-speaking democracies are united in their use of disclosure as the major tool against political corruption. Yet it is clear from the cash-for-honours scandal that disclosure alone does *not* eliminate corruption.

Bucking the trend to favour disclosure, Ian Ayres of the Yale Law School has proposed that donors ought to be forced to remain anonymous. Ayres notes that in the United States 'there



is no legal prohibition against selling access ... and today's jaded citizenry rarely imposes any electoral punishment on candidates known to have sold political access'. Making information about political donations available to the public, then, will 'deter only the most egregious and express types of influence peddling'.

Just as the secret ballot makes it difficult for candidates to buy votes, so Ayres calls for the institution of a 'donation booth,' a system of blind trusts that would channel money from donors to candidates and parties without letting the recipients know who had given to them. Donations could not buy favours, access or influence, Ayres argues, if parties and candidates could never really know who had given what.

At first glance, the idea is simple and compelling. Yet Kenneth R. Mayer of the University of Wisconsin, Madison, raises strong objections in a reply article which calls Ayres' mandatory anonymity proposal 'a remarkably bad idea'. 'A blind trust', he points out, 'would require the government to prohibit the release of donation records, which would create an astonishing and unprecedented category of state secret, with the government forced to apply sanctions to anyone who chooses to reveal it'.

More importantly, Mayer argues that mandatory anonymity of donors 'would have the effect of driving valuable information out of the electoral arena'. Being able to **quickly identify** a candidate's supporters can allow 'otherwise unsophisticated and uninformed voters to act rationally', since 'a group's willingness to commit its resources to a candidate is an unambiguous signal of where it stands', and potentially of where a party or candidate stands itself. Information about who donates is also valuable to parties and candidates, giving them feedback about what portions of society support their policies and who does not. It also allows them to pre-empt the appearance of improperly favouring donors. Taking information

out of any field is unlikely to be beneficial: modern management theory puts free information flow within and around businesses as one of the central factors in business success, and free-market economics values the price-mechanism so highly because it transmits information that allows individuals to make decisions that contribute to an optimal overall allocation of the world's scarce natural and human resources. We should not presume that campaign finance is a field where information is any less vital.

Writing just before the 2004 federal election in Australia, Dr Andrew Leigh offered Ayres' proposal to the Australian public in the *Sydney Morning Herald*, and introduced another consideration into the debate about the donation booth idea. 'The advantage of blind trusts over reforms such as pure public funding or strict ceilings on donations is that they encourage people to put money into politics', he writes, and 'with Telstra's advertising spending this year likely to exceed that of all political parties combined, there is a good argument that there is too little money in Australian politics, not too much. The challenge is to break the link between donations and favours'.

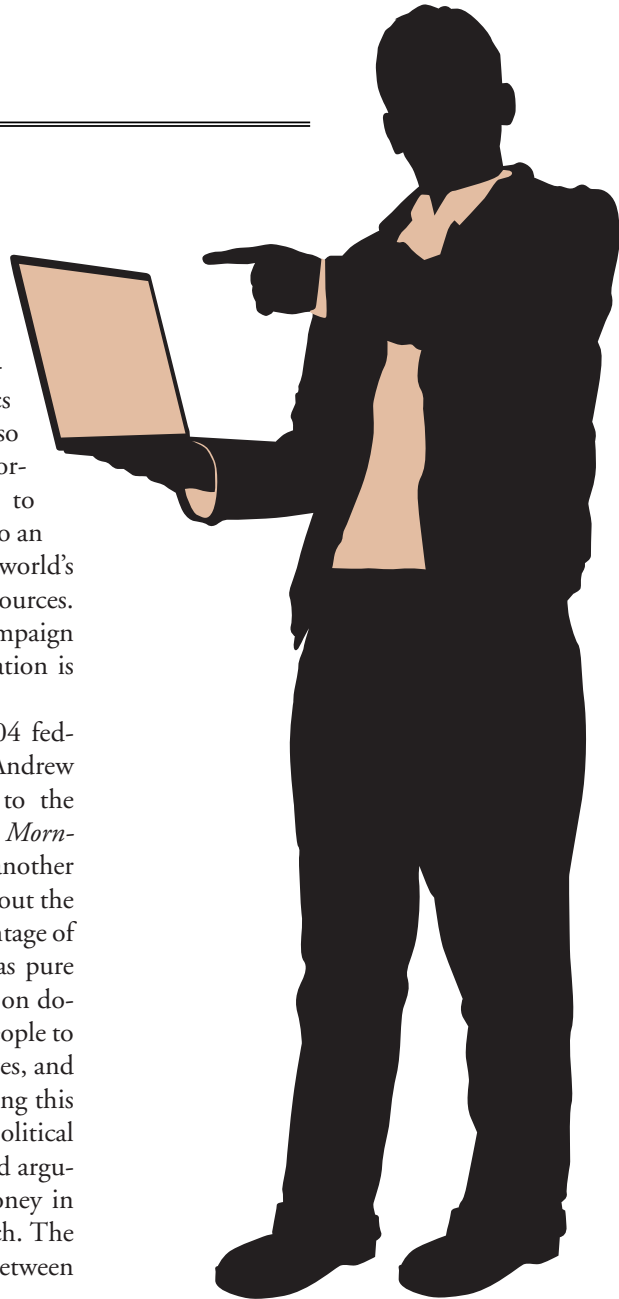
Given Mayer's criticisms of the donation booth idea, mandatory anonymity of political donors may not be an ideal protection against corruption. Could campaign expenditure limits and public campaign funding prove valuable additions or alternatives to regimes of anonymity or disclosure?

### Public Funding and Expenditure Limits

In Australia, political parties who receive at least 4 per cent of the vote are currently entitled to approximately \$2.05 for each vote they receive at a Federal election. The States have their own varying funding regimes. For the 2004 Federal election in Australia, the rate was approximately \$1.94: political parties received a total of around \$41.9

million in funding after the election, around \$18 million going to the Liberals, around \$16.7 million to Labor. Election campaigns in the UK are not publicly funded. If British political parties could receive similar levels of funding to their Australian counterparts, they could have substantially reduced their dependence on loans carrying with them the possibility that party officials would bestow favours upon their creditors. But without limits on campaign spending, writes Elizabeth Sexton, 'Australian parties spend "vastly more" on campaign advertising than their counterparts in comparable countries'.

In his 2003 review of Australian campaign finance law, Graeme Orr saw



political parties ‘locked into an escalating advertising war which needs to be moderated’, and that ‘the attention and affection of party apparatchiks have turned away from individual members and towards corporate donors’. He called for increased public funding of elections, tied to limits on campaign expenditure. There are strong arguments against his recommendation.

\$41.9 million of public funding given to parties participating in the 2004 election made up just a minuscule amount of around \$190 billion spent by the Federal Government in 2004–05. Yet the income of ordinary Australians already dies a death of a thousand cuts at the hands of myriad government programmes that must all be funded by taxation. Governments ought not spend unless the public interest positively demands it. To make public funding of election campaigns more defensible, nations might allow taxpayers to indicate on their returns, as they do in the US, whether they choose to contribute to public funding of campaign expenses.

Against the second element of Orr’s recommendations, expenditure limits restrict speech: in *Buckley v. Valeo* in 1976, the US Supreme Court found spending limits violated citizens’ First Amendment rights to freedom of expression. While there are no such constitutional barriers to expenditure limits in Australia or the UK, the US judgement ought to make us wary of the effects that expenditure limits could have on our political cultures. In his book on campaign finance reform, *Unfree Speech*, Bradley A. Smith asks us to imagine a world where all campaign expenditure was banned. There, only figures who already enjoy public recognition—celebrities, business and community leaders—would be viable candidates for office, since no-one could buy media access to build a reputation in a campaign. In the real world, the influence of prior public recognition on fund-raising and voting makes it

easier for those already elected to stay in office where donation or expenditure limits restrict parties and candidates’ ability to raise money. Indeed, donation limits introduced in the US by



the 1974 *Federal Election Campaign Act* amendments increased incumbents’ reelection rates along with their edge in fund-raising, disadvantaging newcomers to the political arena.

Finally, the current predicament of the major parties in the UK is a good chance for them to learn some lessons in financial responsibility. If political campaigns have become too extravagant, causing spending to reach unsustainable levels, our political leaders must simply exercise some restraint, as indeed they must when managing government spending. Public funding for elections would shield the parties from shouldering their own financial obligations, making taxpayers finance their excesses.

## Corruption and Influence

If we reject mandatory donor anonymity, public funding (where it does not already exist), and expenditure limits, what alternatives are available to us to minimise corruption associated with campaign finance? Our fallback is mandatory disclosure, already a feature of campaign finance regulation throughout the English-speaking, democratic world. The existence of debate around campaign finance regulation signals that there is no consensus that disclosure alone protects adequately against corruption. Yet is it really the case that corruption and the appearance of corruption is a genuine problem in the Anglophone democracies?

At the heart of all efforts to regulate campaign finance is the concern that our elected representatives’ powers can be bought by rich individuals and organisations, stripping ordinary people of their say in politics. We might feel that the influence of the wealthy on election campaigns is undue, unmerited, since universal suffrage is meant to give every person in a democracy an equal say in how their government will be constituted. Yet from the beginning, we must be aware that equal voting rights do not and cannot equalise our political influence. Quite apart from any ability they may have to donate money to political causes, individuals may give their time and energy, and may band together to form parties or advocacy groups that exert considerable influence on policy-making and on the outcome of elections. Anyone who makes a strong commitment to political life raises their level of influence, as their input sways the votes of others. We could never equalise individuals’ political influence without destroying their freedoms of political speech and action.

Clearly, there are instances where politicians’ favour can be bought, or appear to be. The cash-for-honours scandal is a case in point. In the British example, the integrity of the na-



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tion's system of honours appears to have been compromised, making wealth and not merit the prerequisite for a peerage. The appearance of corruption in situations like these is potentially devastating to the public's trust in their political

leaders.

A far greater concern is that large individual or corporate donors could influence government policy, linking their financial support to expectations that a party or candidate will grant them or their industry subsidies, tariffs on competing imports, tax breaks, exemptions from environmental regulations, or changes to industrial relations laws. Yet donors may simply choose to support those candidates and parties whose policies already accord with their interests. If we fear the influence that wealthy businesses might have on government policy, our best defence is to develop a political culture where all parties' vision is of a government that intervenes so little in business that it has no favours worth buying.

Robert Williams, the editor of a compilation of essays on Party Finance and Political Corruption, gives us a good guide to deciding when we ought to start being anxious about a donor's influence: financial dependency on donors is 'seen as corrupt when it impacts upon the party's declared mission or purpose'. Where such a contradiction

is not apparent, we ought to restrain our fears. Bradley A. Smith indicates the irony of asking those with the most stake in the political system to steer clear of trying to influence policy or the outcome of elections. 'Are efforts to persuade fellow citizens to vote 'corrupting,' or are they the essence of democracy?' he asks. Critics of corporate contributions to election campaigns argue 'that those persons and interests that are affected by government policies and possibly subject to government regulation must give up their right to try to influence government policy'. Corporations can represent vast numbers of stakeholders: employees, shareholders, and myriad customers. Could we really expect that a major company not have a greater influence on election outcomes and policy-making than a single individual?

### Conclusion

Given the importance of a free flow of information about political donations, disclosure remains the best regime of campaign finance regulation. Yet it could be improved. Here, the best regime is the simplest: all direct donations should be disclosed, however small, leaving little room to avoid scrutiny. But this should be the limit of our regulations, and it may be that to leave people free to act, and information free to circulate, we must also tolerate small, occasional acts of apparent corruption, upon which voters will cast their judgement when brought to light. Donors should be free to support parties and candidates at as high a level as they wish, and parties and candidates should be free to use funds to buy as many avenues for political speech as they wish. We should abandon public election funding, allowing market forc-

es to determine how modest or extravagant political parties make their campaigns. If parties sink into unbearable levels of debt, we must let that send the message to voters that their nation's political class has a problem with limiting their spending.

A choice to limit and simplify campaign finance regulations, or to pile them on top of each other as we close loophole after loophole, tells us something about what values our society holds. In the United States, where a great amount of debate occurs about campaign finance regulation, questions about campaign finance regulation are often articulated within the legal question of whether or not they violate individuals' First Amendment rights to speak freely. In countries without such strong constitutional protection, such as the UK and Australia, these questions are not legal, but philosophical. Do we, in election campaigning, value highly the rights of individuals and groups to speak freely on political issues and to support candidates as they campaign for office, at whatever level they choose? Or do we prefer to curtail those rights in the interests of limiting inequalities of influence on the electoral process? This is the old conflict between individualism and collectivism, and it is one that must be decided in favour of people's rights to speak and to spend as they wish.

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