

Doing Good, Doing Well or Doing...What?

Politicians' Self-Limits on Private Donations

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*You know we've got to find a way
To bring some understanding here today
What's going on
Tell me what's going on.¹*

I. Introduction

Debates about limits on campaign contributions , and how limits might improve democracy, are long-standing.² That I was a law student when *Buckley v. Valeo* hit the streets indicates how long ago that all was.³ But that case concerned just the latest attempt at the time to keep money out of politics. New legislation and more adjudication on the subject of campaign giving have continued. As does writing on the subject.⁴

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¹ R. Benson, A. Cleveland & M. Gaye, "What's Going On." Sung by Marvin Gaye, the song, reached the #2 position on the *Billboard Charts* in 1971.

² I use the terms "contributions," "giving" and "donations" as equivalents, referring simply to "writing checks."

³ *Buckley v. Valeo*, 426 U.S. 25 (1976).

⁴ The following are noted here to facilitate later reference and citation. Acemoglu & Verdier, *The Choice between Market Failures and Corruption*, 90 *Am. Econ. Rev.* 194 (2000); S. Rose-Ackerman, *Corruption and Government: Causes, Consequences and Reform* (1999); Alm, *The Welfare Cost of the Underground Economy*, 24 *Econ. Inq.* 243 (1985); Benson, *Corruption in Law Enforcement: One Consequence of the "Tragedy of the Commons" Arising with Public Allocation Processes*, 8 *Int'l Rev. L. & Econ.* 73 (1988); Benson & Baden, *The Political Economy of Governmental Corruption: The Logic of Underground Government*, 14 *J. Legal Stud.* 391 (1985); Cheung, *A Simplistic General Equilibrium Theory of Corruption*, 14 *Contemp. Econ. Policy* 1 (1996), Bopp, *Constitutional*

The questions raised about campaign giving are essentially two: (a) normatively, should campaign giving be restricted; and (b) positively, what benefit relative to cost is achieved by donation restrictions. The issues are both legal and economic. Unsurprisingly, with the pecuniary stakes involved, lawyers and social scientists (especially economists) have been drawn to questions concerning campaign finance limits. They often see things differently, and so frequently reach different conclusions.

The thesis here is that lawyers and economists can benefit by recognizing finance-giving limits as what they are: price fixing by an incumbent cartel, albeit price setting of a somewhat subtle sort. Legal rules against cartel price-fixing and economists' routine study of price-fixing would seemingly expose the essential nature of campaign limits. But for the most part they have not. Certainly, moreover, public media and popular opinion largely misperceive and misinterpret what is going on.

As the author is not a constitutional lawyer, this paper does not derive from first amendment concerns. Seeking only to understand what campaign donations and their restriction are all about, the paper looks to recent cases only to learn what judges think explains the current vogue for limiting giving. The focus is on why this is all happening, and if it makes sense, not what is constitutional or not.

Limits on Campaign Contribution Limits, 11 Reg.U.L.Rev. 235 (1998); Eaton and Gersovitz, A Theory of Expropriations and Deviations from Perfect Capital Mobility, 94 Econ J. 16 (1984); Lindgren, The Theory, History, and Practice of the Bribery-Extortion Distinction, 141 U. Pa. L.Rev. 1695 (1993); McChesney, "Rent Extraction and Rent Creation in the Economic Theory of Regulation," 16 *Journal of Legal Studies* 101 (1987); F. McChesney, Money for Nothing: Politicians, Political Extortion and Rent Extraction (1997, hereinafter Money for Nothing); McChesney, Ever the Twain Shall Meet, 99 *U. Mich. L. Rev.* 1348 (2001); McChesney, "Economic Analysis of Corruption," in *Handbook on the Economics of Crime* (B. Benson and P. Zimmerman, eds.) (2010); Polinsky & Shavell, Corruption and Optimal Law Enforcement, __ *J. Public. Econ.* __ (2000); Rasmusen & Ramseyer, Cheap Bribes and the Corruption Ban: A Coordination Game Among Rational Legislators, 78 *Pub. Choice* 305 (1994); Shleifer & Vishny, Corruption, 108 *Q. J. Econ.* 599 (1993); Stigler, The Theory of Economic Regulation, 2 *Bell J.Reg.* 3 (1971); Tullock, The Welfare Costs of Tariffs, Monopolies and Theft, 5 *West. Econ. J.* 224 (1967).

The first question is why this is thought a matter of concern in the first place. That issue is addressed in the next section. The paper then contends that the wider corruption problem supposedly requiring limitation of donations is seemingly non-existent. Which leaves the paper's final discussion, why the donation-limit laws exist. It is argued that the laws may serve no important public-interest goal, but that the limitations have narrower political beneficiaries.

II. Law Against Bribery and Extortion

*Them's that got shall get
Them's that's not shall lose
So the Bible says
And it still is news
Mama may have, Papa may have
But God bless the child that's got his own.*⁵

A. Current Law

Claims that limiting campaign giving would improve democracy are not new. Theodore Roosevelt sought legislation to ban corporate contributions for political purposes. In response, the United States Congress enacted the Tillman Act of 1907, which banned corporate giving .

To skip ahead, existing law seemingly limits political giving only by legalistic definitions, ones with debatable practical significance.⁶ Direct donations to candidates themselves ("hard money") are limited by both amount and donor. Corporations, labor unions and other entities for a generation have been prohibited from hard money donations completely.⁷

⁵ B. Holiday & A. Herzog, Jr., "God Bless the Child." Billie Holiday recorded the song in May 1941 for the Okeh label, and it has been covered by a large number of the greatest singers since.

⁶ What follows is a gross summary of the rules. But the discussion in this paper relies on general notions of restricting giving, not the specific rules of doing so.

⁷ Citizens United v. FEC, 130 Sup. Ct. Rep. 876 (2010).

But money given indirectly to political parties and similar organizations (“soft money”) is essentially unrestricted, by amount or source, although the money may end up in the same place. Finally, there are no source or quantitative restrictions on “expenditure for issue advocacy, including that which is virtually indistinguishable from express support of a particular candidate.”

[Existing] campaign finance regulation places no meaningful restraint on the financing of Federal elections. It simply forces those who wish to spend or contribute substantial amounts to exercise care in structuring their contributions or expenditures.⁸

B. Current Concerns About Political Donations⁹

*[W]hen you give, they do whatever the hell you want them to do. As a businessman, I need that.*¹⁰

Self-evidently from imposition of legal limits, it is felt that political giving can be a “bad thing,” in need of restraint and policing. It is difficult to appraise fully the normative objections said to require regulation, because the goals stated for the political constraints are amorphous. Several purposes supposedly explain the giving constraints.

1. Limits Will Reduce “Corruption” (or “Influence”? or “Negative Ads”?)

Arresting “corruption” is the explanation for limiting donations most often encountered. For example, the *New York Times* laments, “More big money can only leave less hope for voters

⁸ Miron, “Campaign Finance Regulation,” Library of Economics, <http://econlib.org/library/Columns/Mironcampaign.html>

⁹ The issue here is not with political giving historically or in the abstract, but with expressed concerns about operation of the current regulatory system with its donation limits.

¹⁰ Donald Trump, quoted in Kessler, “The Art of the Donald in 10 Easy Steps.” *Wall St.J.* Sept 11, 2015, p. A11.

concerned that the richest donors are buying ever more influence over politicians, with favoritism and corruption an inevitable result.”¹¹

Two problems attend the “corruption-reduction” explanation. First, what exactly is “corrupt”? Politicians have always been free to accept contributions, both in the United States and elsewhere. In a democracy, with no government financing of campaigns, political contributions are essential for an electoral system with informed voters to work.

If some contributions are necessary for the system to go, why is being offered and accepting greater contributions undesirable? More particularly, if giving of some amounts is necessary, even desirable, at what dollar amount, exactly, does a campaign contribution become corrupt? How can anyone know what the desirable amount of hard money giving is, beyond which it becomes undesirable (now illegal)? Why not eliminate all giving, and thereby all corruption?

The notion of “influence” (to return to the *Times* claims above) illustrates the confusion as to what is corrupt. To the *Times*, influence itself is tantamount to corruption.¹² In selling spots (for \$1.34 million) at affairs sponsored by the Republican National Committee, potential ticket buyers were promised “influence messaging and strategy” at exclusive dinners and retreats,” a phenomenon decried by *The New York Times*.¹³ Yale’s Susan Rose-Ackerman says corruption “describes a relationship between the state and the private sector....The relative bargaining power of these groups determines both the overall impact of corruption on society and the

¹¹ New York Times, “The Soaring Price of Political Access,” Sept. 27, 2015, p. 10.

¹² Recall, the *Times* refers to campaign giving as engendering “more influence over politicians, with favoritism and corruption an inevitable result.”

¹³ “The Soaring Price of Political Influence,” *N.Y. Times*, Sept 27, 2015, p. 10. The Democrats were offering similar opportunities for \$1.6 million.

distribution of the gains between the bribers and bribees.”¹⁴ Bribers supposedly obtain influence that they then use to negotiate the best deals possible.

The casual reference to “bribery” is noteworthy. Bribery has for centuries been illegal, long before American “campaign reform” – indeed, long before America.¹⁵ But it is not an easy way to riches when many votes are needed. To achieve some legislative end, in a federal, bicameral system, single bribes would be ineffectual.

Perhaps the most interesting datum is the paltry amount of money spent by politicians in American federal elections – all of \$3 billion in 2000, a pittance of the trillions in government spending (the goodies bribers were presumably trying to attain). When one factors in that some politicians (lately, Senator Sanders) will only take relatively small amounts, the danger of capitulation to donors seems further diminished.

A recent *New York Times* review of a book about the Koch brothers is illustrative.¹⁶ The Kochs’ large political donations are Exhibit A as to why campaign giving supposedly should be restricted. Why are their donations objectionable?¹⁷ “They could invest in the campaigns and essentially buy their way to political power.”¹⁸ The review concludes, “As is always true with political money, there is no easy way to delineate where ideology ends and where self-interest

¹⁴ Susan Rose-Ackerman, *supra* note __, at __.

¹⁵ Lindgren, *supra* note __, provides an excellent historical survey. See also Bopp, *supra* note __.

¹⁶ Ehrenhalt, “Rightward Bound,” *N.Y. Times*, Jan. 24, 2016.

¹⁷ Although perhaps unrelated, Koch giving outside politics seems to engender similar worries. Koch’s donations for university research are vast, as are their many other contributions, which predictably incite criticism from those not included in the Koch giving.

¹⁸ *Ibid*, at 18.

and corruption begins.”¹⁹ The author’s apparent distinction between ideology (acceptable, seemingly) and self-interest and ”corruption” (unacceptable) is unexplained.

Arguments against political giving sometimes raise cause-and-effect problems (not always recognized). Do the Kochs “buy their way to political power” they otherwise would not attain? Or do they only help continue political power already established by others? The question is power *at the margin*. Given that the Koch’s political spending is a trivial amount of that received by those they favor, how can one know whether anything new is being acquired? In fact, “Most systematic studies... find no effect of marginal campaign spending on the electoral success of candidates.”²⁰

Yet another claim underlying the wisdom of campaign-donation limitations is that they will reduce “negative advertising.” Senator McCain himself stated, in defense of the McCain-Feingold Act, that negative ads “do little to further beneficial debate” and that his legislation would ”raise the tenor of elections.”²¹

There is rarely a definition of “negative ads” provided in debates over campaign restrictions said to diminish today’s political discourse. One source seemingly equates it with

¹⁹ Ibid., at 19.

²⁰ Milyo, “campaign Finance,” *The Concise Encyclopedia of Economics*, <http://econlib.org/library/Enc/CampaignFinance.html> (citing research). “Conventional wisdom holds that money plays a central and nefarious role in American politics. Underlying this belief are two fundamental assumptions: (1) elective offices are effectively sold to the highest bidder, and (2) campaign contributions are the functional equivalent of bribes. Campaign finance regulations are thus an attempt to hinder the operation of this political marketplace. Of course, the scope of such regulation is itself limited by the constitutional protection of political speech, association, and the right to petition. Nevertheless, many Americans are willing to sacrifice their, and others’, free-speech rights in an attempt to limit the influence of moneyed interests in politics.” Ibid.

²¹ Munger provides multiple quotes from other politicians. Michael Munger, “Unintended Consequences 1, Good Intentions 0,” <http://econlib.org/library/Columns/y2006/Mungergoodintentions.html>.

“mudslinging,” hardly an incisive addition to the analytic debate.²² Casual empiricism suggests that donation limitations, to the extent they have led to less advertising, have not reduced the extent of negative advertising (or mudslinging).²³

Even were there agreement on what “negative advertising” was, donation critics provide no causal link between increased giving and negativity. Assume, as seems sensible, that more giving leads to more candidate spending on advertising. Why would not the increased advertising entail *more* positive advertising? There is no reason to believe that negativity is a positive function of a candidate’s budget.

C. Are These Concerns Really of Concern?

The law fetters campaign giving only to a nominal personal (a particular candidate) *versus* an impersonal institution that may ultimately use the money in support of the candidate, indeed, in ways that s/he would have chosen to have the money spent anyway. That is, a donor can give the same amount (although using two checks) and have the money spent the same way in the end.²⁴

While soft money cannot be used by political parties to support federal candidates, it can be used for "party building" activities. These efforts have become controversial because they are almost indistinguishable from party support for federal candidates. For example, a political party would have to

²² “Voters seem to be increasingly turned off by negative campaign ads and mudslinging. “This Nation,” <http://www.thisnation.com/question/031.html> For proof that “mudslinging” today lags well behind historical standards, see DiBacco, “Political Mudslinging, 1828”, Wall St. J. Mar. 2, 2016, p. A17. Much of that “mudslinging” was closer to actionable libel than to simple name-calling.

²³ Donald Trump’s making an issue of Senator Cruz’s being born in Canada satisfies the casual-empiricism criterion self-imposed here.

²⁴ Nothing in the law of course prevents a donor from learning about how non-political recipients spend their money, or even discussing that matter with potential recipients.

use hard money contributions, which are limited and regulated, to pay for a television advertisement that explicitly encouraged voters to vote for a specific candidate. If the ad, however, simply showed a particular candidate and then encouraged voters to support that candidate's party, soft money could be used to pay for it.²⁵

As Boston University's Jeffrey Miron writes,

[a financing limitation] simply forces those who wish to spend or contribute substantial amounts to exercise care in structuring their contributions or expenditures.... [T]his explains why, after so much legislation, those who worry about the influence of money in politics are dismayed by the status quo. If the goal is to limit the ability of those with money to spend it "in connection with" Federal elections, then current campaign finance regulation is a complete failure.²⁶

Laws against bribery (and to a lesser extent extortion) are centuries old.²⁷ That bribery has been illegal for so long raises the question why campaign giving has become so topical, and why new legislation and regulatory institutions recently have been so common.

While the populace and press express concerns about giving, courts have been less concerned. Supreme Court jurisprudence has established a first-amendment distinction between citizen donations and subsequent politician spending. To an economist, the distinction is the

²⁵ This Nation, <http://www.thisnation.com/question/004.html>

²⁶ <http://econlib.org/library/Columns/Mironcampaign.html>

²⁷ The discussion at this point focuses on bribery. Bribery is a corrupt benefit given or received to influence official action." Lindgren 1995, at 1696. Extortion is discussed further below.

familiar one between inputs and outputs. Ordinarily, outputs are the only thing of economic interest, and so inputs are relatively uninteresting as long as outputs can be assessed.²⁸

The Supreme Court has implicitly been mindful of that economic distinction, indicating more concern for the outputs than for the funding inputs in elections. The distinction emerges from the Court's discussion of matters of like "corruption" and "influence." In its first split of giving from spending, in *Buckley v. Valeo*,²⁹ the Court found preventing corruption a "sufficiently important" rationale for restricting contributions (but not for limiting spending). The size of the inputs, that is, motivated concerns about subsequent outputs.

Yet, the Court later noted in *Citizens United v. Federal Election Commission*, "The practices *Buckley* noted would be covered by bribery laws, if a *quid pro quo* arrangement were proved."³⁰ The Court returned to the issue of donor-created corruption in the pursuit of influence.

That speakers may have influence over or access to elected officials does not mean that those officials are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy.³¹

²⁸ Alchian & Demsetz, Production, Information Costs and Economic Organization, 62 *Amer. Econ. Rev.* 777 (1972).

²⁹ 42 U.S. ___, 25 (1976).

³⁰ *Citizens United v. FEC*, 130 Sup.Ct.Rev. 876, 908 (2010).

³¹ *Citizens United v. FEC*, 130 Sup.Ct.Rev. 876 (2010), at ___. Similar conclusions were expressed in *SpeechNow.org v. FEC*, __ F.3d __ (D.C. Cir. 2010), in which the court held that the first amendment protects unlimited contributions from any source to an independent expenditure committee (SuperPAC), because such committees pose no threat of corruption.

Relatedly, the Court noted the futility of any attempt to limit political speech. “Political speech is so ingrained in this country’s culture that speakers find ways around campaign laws.”³² As do donors?

D. If Not The Current System, What?

One must ask also, if donations are desirable to reduce influence over politicians, what will influence political decisions instead? Implicit in the campaign-limitation claims apparently is a belief that, with reduced contributions, politicians will decide on other bases. But those other grounds for political decisions – the alternative sources of influence -- are not identified. How can one know that an alternative state of the world is superior when that alternative is not identified.

The issue is “compared to what?” Decisions are not made in a vacuum, but for a reason. With campaign contributions constrained to reduce undesired influences, what other influences will then affect decisions?

The debate seemingly presumes that, uninfluenced pecuniarily, politicians will just do the “right thing,” will “act for the best.” But this is, alas, nonsense. No better example of the “nirvana fallacy” could be found. What decision made by politicians could predictably be non-political? Unable to contribute to political candidates, unions could still deliver campaign workers and votes, as indeed they do now. Religious and other groups opposed to abortion likewise can provide workers and votes favoring candidates they prefer. These and other interests would, in the absence of money donations, have larger influence in issues concerning them.

³² Citizens United, at 912.

Even were the nirvana fallacy not at work, debate over campaign donation limits suffers from failure to acknowledge the law of unintended consequences.

In the economic sphere an act, a habit, an institution, a law produces not only one effect, but a series of effects. Of these effects, the first alone is immediate; it appears simultaneously with its cause; *it is seen*. The other effects emerge only subsequently; *they are not seen*; we are fortunate if we *foresee* them.

There is only one difference between a bad economist and a good one: the bad economist confines himself to the *visible* effect; the good economist takes into account both the effect that can be seen and those effects that must be *foreseen*. Yet this difference is tremendous; for it almost always happens that when the immediate consequence is favorable, the later consequences are disastrous, and vice versa.³³

Concerning election giving limits, deference to the law of unintended consequences is wise. As noted above, damming one branch of a financial river will just shunt giving down an unimpeded tributary. Attempts to hold back monetary torrents, that is, recalls Canute's futility in restraining the sea. Who foresaw the rise of super-PACs and other devices in the wake of McCain-Feingold and other restrictive legislation? Change advocates must be careful about what they wish for.

III. Deconstructing Donation Delimitations

*What's it all about
When you sort it out, Alfie?*

³³ F.Bastiat, "What Is Seen and What Is Not Seen" (pamphlet 1850).
<http://www.econlib.org/library/Bastiat/basEss1.html>.

*Are we meant to take more than we give?*³⁴

The somewhat tangled set of purported concerns underlying campaign giving limitations invite a more structured evaluation. A few principles underline the analysis.

A. Basics

First, the point of departure for those who would limit campaign giving must be granted. There can be no denial, neither by proponents nor opponents of contribution limits, that the game is essentially a commercial one. Campaign “giving” is anything but. It is not a donation, but a commercial exchange.³⁵ Legislators have something to sell that buyers want to buy. What else are they doing in *House of Cards*?

This is hardly a condemnation of sellers or buyers. Ordinarily, all of us will insist on a price for something we own that others value enough to pay for it. But perhaps surprisingly – and this point is key-- the fact of exchange may not reveal what is being transacted for. Recognizing what constitutes consideration for the exchange requires greater precision, and so is discussed in more detail below.

If exchange in political markets works like exchange in markets generally, the usual economic rules apply. With increased prices -- of copper, or of real estate in Santa Fe – one ordinarily can know what is happening. The demand for and/or the cost of the relevant commodity is rising.

³⁴ B. Bacharach & H. David, “Alfie.” The song has been recorded by many, including Cher and Dionne Warwick, who had hits on the *Billboard Charts* in 1966 and 1967, respectively.

³⁵ Were “donations” truly that, contributions with no strings of political expectation attached, they presumably would not provoke the current concerns.

But many observers of electoral markets tend not to reach that conclusion. Instead, their reasoning is the reverse: it is the ability to spend on an item that accounts for its value to the buyer. The rise in political contributions is attributed to the amount that can be spent on what is bought (the Koch brothers have more money than most of us), not on what the value of the commodity is – or, critically, why the value is rising.

So, for example, under the title “The Soaring Price of Political Access,” the *New York Times* writes:

The prices for getting into the inner sanctum are rising because of loosened restrictions on political money.... [Courts and Congress] ended caps on donor maximums and expanded the party organizations’ ability to amass more of the big money that has engulfed politics....³⁶

Economically, the reasoning is suspect.³⁷ If metal or home prices rise, it cannot be due to buyers’ being allowed to spend more money on those things: they were already free to do so earlier at the assets’ existing prices. Rather, the higher prices must be due to higher valuations of what is for sale. Politicians must have more and/or higher-valued items to sell.

That is, “Corruption is a direct consequence of discretionary authority by government officials.”³⁸ More government spending authority means politicians have more to sell. And so bidders will pay more at the auction for what’s up for grabs. The more the value of what is on the block, the greater and higher will be the bids.

³⁶ NYT, supra note __.

³⁷ There is a quasi-Marxian notion of a labor theory of value at work here: the value of what is being bought depends on the costs of the inputs necessary to produce it.

³⁸ Benson, supra note __, at 74.

If this is true, increases in campaign donations must indicate greater government spending. The spending data bear this out. Real (inflation-adjusted) government spending rose almost three times between 1975 (the last year before *Buckley*) and last year.³⁹ However perceived by campaign reformers as nefarious, the increase in political buying, given the increase in government selling, hardly surprises an economist.

B. Donation Limits as Price Fixing

If buyers are prohibited from offering the political-market price, statutory giving limits are just another form of government price-fixing. At the auction, bidders for the favors (contracts, etc.) will be restricted in bid sizes. Whatever it is that legislators have to sell will go at a lower price. Whether that is desirable or not remains to be seen.

That campaign spending limits are just disguised price controls is perhaps not novel here, but leads to another point of economic relevance. Price controls merely shift transactions into non-pecuniary channels, as valuable goods and services find their market-clearing level. As long as there is money on the table, transactors will find ways to transact.

That outside observers perceive political transactions as just that – commercial transactions – is clear from the claims that limitations will reduce the price of access to politicians. Limits should, and doubtless will, have that result: pecuniary prices will fall. Lower pecuniary payments will be required for access.

But that leaves begging the economic question that arise in all other markets where price controls are imposed: if prices that can legally be charged are constrained, how and to whom will the economically valuable good or service be allocated?⁴⁰

³⁹ <https://www.whitehouse.gov/omb/budget/Historicals>. “[T]he data have been adjusted to provide consistency with the 2016 Budget and to provide comparability over time.”

⁴⁰ The question arises whenever there are price controls. Rent ceilings, for example, result in allocation on the basis of gender, race and other non-pecuniary buyer aspects, once allocation on the basis of price is illegal.

C. “Corruption”: What Is for Sale?

With the popular and political focus on corrupt bargains, one might think that control partisans would define what was being bargained over, and especially, why the bargains were bad. But such is not the case. Popularly and politically, all deals are treated monolithically as trades for “influence” or “access,” although in fact the deals are very different generically. And they entail different sets of costs and benefits.

1. Political Favors

Apparently, that donating is tantamount to bribing is the principal worry underlying calls for donation restraints. Yet, obtaining benefits by compensating political officials constitutes classic bribery, representing a contract between politicians promising to make private actors better off.⁴¹

If campaign giving led to “corruption” in the form of bribery, limiting campaign spending might seem easier to understand. Interestingly, however, there is almost no evidence of any such bribery. True, American sugar producers, dairy farmers, tobacco growers all receive supra-competitive profits (“rents,” to economists) from various government programs. Yet none of these is thought to be bribery – just traditional legal rent-seeking.

The complaint against political giving has rested instead on claims like “influence.” The Supreme Court has held that there seems no evidence of what it calls *quid pro quo* corruption,⁴² noting that such bribery would long ago have been illegal anyway if it occurred, regardless of

⁴¹ “We define government corruption as the sale by government officials of government property for personal gain.” Shleifer and Vishny, *supra* note __, at 599.

⁴² “In fact, there is only scant evidence that independent expenditures even ingratiate. Ingratiation and access, in any event, are not corruption.” *Citizens United*, at 910.

recent campaign donation legislation.⁴³ One economist writes, “Are campaign contributions the functional equivalent of bribers? The conventional wisdom is that donors must get something for their money, but decades of academic research on Congress has failed to uncover any systematic evidence that this is so.”⁴⁴

2. Threats of Political Disfavors

*That ain't work
That's the way you do it.
Money for nothing.*⁴⁵

Bribery offers bidders a better life through political dealing. If they did occur, *quid pro quo* transactions would obviously benefit politicians (and bribers). Yet that is not the end of the story concerning interactions between the two groups. Politicians interact with private actors in ways other making them better off; however, dealing with politicians may leave private actors *worse* off.

Besides selling favors, politicians can also be paid not to exercise their power to make private interests worse off. Taking money to forebear from harm is sometimes referred to as “rent extraction.” With *quid pro quo* rent seeking, private and public parties both end up better off: the politician has the money and the constituent has the favor. With rent extraction, however, the private party is paying not to suffer. “Your money or your life” is the back-alley equivalent of

⁴³ This of course does not mean bribery does not occur. Any denizen of Maryland, including the author, knows how frequently bribery issues arise there, with implications for the likes of Marvin Mandel, Spiro Agnew and Tommy D’Alessandro. But in no case of which the author is aware was the alleged bribery connected with above-the-board campaign donations.

⁴⁴ Milyo, *supra* note __.

⁴⁵ M. Knopfler and Sting, “Money for Nothing.” The song was a #1 record in the United States in 1985 for Dire Straits.

political rent extraction. Private parties give politicians something rather than lose something of even greater value.

The process unfolds in steps: (a) political threat of action that would reduce the value of privately-held assets; (b) negotiation between the wealth-holder and government official over whether the threat will materialize; (c) if negotiation is successful, withdrawal of the threat or, if negotiations fail, imposition of the measure threatened. The sequence can be summarized:

[Politicians can] maximize returns by threatening existing private rents and forbear implementation of the threat in exchange for a payoff. The threat could take the form of proposed regulation raising firms' costs, reducing prices, or imposing narrowly targeted taxes. The threatened firm or industry would be willing to pay politicians to forbear if the payment were less than the potential loss of economic rent. This payment need not be made in cash for the personal use of politicians... Payments may take the form of campaign contributions..., fees paid to politicians for speeches made to special-interest groups, or tickets to political dinners. For political threats to be credible, they must be carried out on occasions where payment is not forthcoming.⁴⁶

Examples of politicians' rent extraction are ubiquitous.⁴⁷ But since they involve action ultimately not taken, they are harder than bribery to detect. Many contributions in response to government threats go unnoticed because so much of the action is centralized, involving just a handful of players. Traditional political "bribery" for things like tariffs, agricultural subsidies and the like supposedly involve just a few firms and politicians (but massive amounts of money).

⁴⁶ Beck, Hoskins and Connolly, Rent Extraction through Political Extortion: An Empirical Examination, 21 J. Legal Stud. 217 (1992).

⁴⁷ For many statistical demonstrations of firm-victims' losses from politicians' rent extraction, see Beck, Hoskins and Connolly, *ibid.*

The action occurs (if indeed it does) at the top of the commercial and political hierarchies. And so, much of it invites popular observation.

But many threat-induced contributions occur at the bottom. Police shake-downs of gamblers, prostitutes and others committing “victimless” crimes are everywhere, but often the corruption extends up to politicians and judges themselves. The following describes the transvestite “Miss All-America Camp Beauty Pageant” and similar drag beauty contests of the 1960s:

The organizer was Jack Doroshow, also known as Sabrina, who held 46 contests a year from 1959 to 1967 through his company, the National academy, which in its hey day had 100 employees on the payroll. Mainstream America didn’t know it, but the nation had a flourishing drag subculture, and not just in the major cities. . . . Since local laws often prohibited cross-dressing, Mr. Doroshow would meet with officials and propose a donation to some unspecified charity. In return, the town would pass a variance allowing the contest to take place.⁴⁸

Use of transvestite shows might seem dated. But the same shake-downs of gamblers, drug dealers and prostitutes still occurs regularly, merely a tax they must periodically pay to continue working. “The DuPage County sherriff’s office created an illegal cigarette-trading-sting but never filed criminal charges and ended up packeting \$400,000 in illicit profits.”⁴⁹ The rise of criminal and now civil forfeitures – “policing for profit,” as it has come to be called – has shifted police enforcement into those areas where property seizures are more likely, which then

⁴⁸ William Grimes, “‘The Queen’ on the Runway Again,” New York Times, May 27, 1993, p. 13.

⁴⁹ Jenkins, “A Crooked World Needs Panama,” Wall St. J., Apr. 9/10, 2016, p. A.11.

can be added to police budgets.⁵⁰ Chicago’s Operation Greylord stands as perhaps the greatest example of bribery by city officials, local police, and judges.⁵¹ But generally, “[all] governments devote primary attention to extracting resources from their subjects, not always in a manner consistent with the spirit of law and due process....[Author] Harvey Silverglate shows that every American criminal is waiting for the federal government to determine if he or he should be prosecuted or shaken down.”⁵²

Examples from municipal police and politicians might suggest that local-government shakedowns only occur outside the Beltway. But sale of relief from government is a daily feature of Washington life. What is the tax legislative process, if not partly politicians’ threatening onerous new taxes and then often removing them?⁵³

Selling relief from political disfavors was a feature of President Clinton’s failed attempt to increase government’s role in health care. President and Mrs. Clinton’s threats in 1993 to impose price controls on the health-care industry –proposed but ultimately abandoned—resulted in a flood of private money not to legislate. The *New York Times* reported in 1993:

As Congress prepares to debate drastic changes in the nation’s health care system, its members are receiving vast campaign contributions from the medical industry,

⁵⁰ Bruce Benson, [citation]. See Brad Cates, “Taking the Profit Out of Police Work,” *Wall St. J.*, Feb. 11, 2016, p. A11. “Numerous U.S. Police Agencies have exploited ‘asset forfeiture’ law to take money from citizens against whom no crime has been proved or even alleged.” Jenkins, *supra* note __.

⁵¹ In total, 92 people were indicted for bribery and related crimes: 48 lawyers, ten deputy [sheriffs](#), eight policemen, eight court officials, a [state legislator](#), and 17 judges, Out of the 17 judges indicted, 15 were convicted.

⁵² Jenkins, *supra* note __.

⁵³ For many examples of tax shake-downs, see Doernberg and McChesney, “Doing Good or Doing Well? Congress and the Tax Reform Act of 1986,” 62 *New York University Law Review* 891 (1987); “On the Decreasing Durability and Increasing Rate of Tax Reform,” 71 *Minnesota Law Review* 913 (1987)

an amount apparently unprecedented for a non-election year. While it remains unclear who would benefit and who would suffer under whatever health plan is ultimately adopted, it is apparent that the early winners are members of Congress.⁵⁴

Statistical testing illustrates the process that was underway in this episode of rent extraction.⁵⁵ Clinton's presidential campaign had made it clear that he would attempt to impose new government rules on the health care industry (e.g., pharmaceutical firms, insurance companies), which would include price controls. After inauguration, he quickly followed up on the threats by establishing a "task force" headed by his wife to create those rules (which became known as "HillaryCare"). Ultimately, with the industry response noted by the *Times*, the threat was defeated.

But the defeat cost the industry irretrievably, as revealed by stock market returns associated with the episode. With other factors controlled for, industry returns fell when HillaryCare was a possibility. When the government announced it was abandoning its plans, stock returns did not rebound. The money had already been lost in ("corrupt"?) payments to fend off the threat. But in paying to ensure the government did nothing, the industry got what it paid for. Money for (the desired) nothing.

Recent discussions of presidential candidate Hillary Clinton's receipt of millions from Wall Street focus on the dollars donated, referring to "influence" but not interested in what donors are buying -- favors or protection. The *New York Times* writes, "Mr. Sanders and Mr. O'Malley have argued that big donors inevitably had influence with her,

⁵⁴ Neil A. Lewis, "Medical Industry Showers Congress with Lobby Money," *New York Times*, December 13, 1993, p. A1.

⁵⁵ For more details on this event, see McChesney, *Money for Nothing*, ch. 4.

her campaign has pushed back against suggestions that the financial services industry has bankrolled her campaign. Her aides also said ads by a new group, Future 45, attacking Mrs. Clinton would underscore her independence, because the group's major donors include Wall Street magnates like Paul Singer."⁵⁶ That is, Wall Street may either be buying favors or buying protection, but to the press it is all just "influence."

The amount of anti-Hillary money suggests that those donors to other recipients are not buying favors. "When billionaire hedge fund managers are forming [super PACs](#) to run ads attacking her, it's clear they fear she will take action as president to crack down on the industry's abuses," said Brian Fallon, a Clinton campaign spokesman."⁵⁷ "The Clinton campaign also points to her record, saying it shows a history of working to regulate the industry. Negative ads run by a group called Future 45, a super PAC backed by six-figure checks from hedge fund managers, demonstrate that Wall Street expects her to follow through, aides said."⁵⁸ Clearly the hedge-fund super PAC is worried that a Clinton victory would lead to fund losses, once she was in office.

3. The Costs of Political Favors and Disfavors

At common law, bribery and extortion overlapped. The same exchange could lead to convictions for both. The same has been true in more modern jurisprudence.⁵⁹ This is doubtless true in part because of the difficulty of separating the two factually. As Professor Lindgren notes in his historical review of the two crimes, "the same envelope filled with cash can be both a

⁵⁶ http://www.nytimes.com/2015/11/22/us/politics/wall-st-ties-linger-as-image-issue-for-hillary-clinton.html?_r=2

⁵⁷ Ibid. [New York Times]

⁵⁸ <http://bigstory.ap.org/article/4be4efd27dac466e962485557a937b5a/01-clintons-collected-35m-financial-businesses>

⁵⁹ Lindgren 1996, at 1697-98.

payment extorted under a threat of unfairly negative treatment and a bribe obtained under a promise of unfairly positive treatment.”⁶⁰

Likewise, superficially, rent-creation and rent-extraction may be hard to distinguish. Economically, however, bribery and extortion entail different sorts of costs. Indeed, some of those activities are not costly, but economically beneficial. The distinction is critical. In the second-best world we inhabit, it all depends. If some “corruption” is actually good, blanket legislation to curb it all will sometimes throw the baby out with the bathwater.

a. Bribery

What might be called “classic bribery,” or *quid pro quo* exchanges in the Supreme Court cases, refers in economic parlance to “rent-seeking.” It entails only costs. Private interests vie for political outcomes beneficial to them but of negative social value (a publicly-funded “bridge to nowhere”). Vying for negative-sum outcomes like publicly-created monopolies creates the additional (and typically greater) costs needed to win the political competition (rent-seeking).⁶¹

But not all such exchanges need amount to classic bribery, with associated costs. Suppose a government project (dam, highway) of true social value, one also of potential profit to the private contractor building it. Senator A opposes the project; Candidate B supports it. A hopeful contractor who donates to Candidate B does so for purely selfish reasons, but those donations further approval of a socially valuable project. This sort of campaign giving is in

⁶⁰ Lindgren 1996, at 1700.

⁶¹ Tullock, *supra* note __.

effect the political analogue of Smith's "invisible hand."⁶² Private contractors, caring only about their own welfare, nonetheless advance social welfare in pursuing their own gain.

In other words, there is good and bad bribery. A good bribe would induce a public official to do what he should do otherwise. But she may not know what in fact was socially most beneficial. Or, in the world we inhabit, she might not make the right choice unless persuaded monetarily to do it. In either way, the bribe benefits both the briber and society.⁶³

b. Extortion

The costs of rent extraction (extortion) are several. One is foregone investment in assets that are potentially expropriable, as countries prone to nationalization have learned.⁶⁴ In all countries, foresaking wealth for leisure because the former can be taken when the latter cannot is a similar cost of governments' ability to take. For similar reasons, the rise of second-best black markets entails welfare losses when market profits are expropriable.⁶⁵

*When you ain't got nothin'
You got nothin' to lose.*⁶⁶

⁶² A. Smith, *The Wealth of Nations*, Book IV, Ch. II, para. IX: "[The typical person] intends only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was not part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it."

⁶³ This is by definition a second-best world. In the first-best world, the politician would somehow be required to do the "best thing," and omnisciently know what that was.

⁶⁴ Eaton and Gersovitz, *supra* note __.

⁶⁵ Alm, *supra* note __. Recognition of the costs is apparent from arguments in favor of decriminalizing activities like drugs and prostitution because the transactions could then be taxed.

⁶⁶ B. Dylan, "Like a Rolling Stone." Sung by the author, the song reached #7 on the *Billboard* charts in October 1965.

The rent extraction scenario also entails the sorts of dead-weight (transaction) cost losses that rent-seeking does. Would-be victims of extortion expend time and money to keep assets away from expropriators. Investments are made in black-market enterprises if those are easier to conceal. More valuable investments that are less mobile and thus more expropriable are made instead in more mobile assets. Before a firm decides on a new plant location, for example, which would be very immobile once in place, the company negotiates long term tax deals with state governments, lest they be threatened with higher taxes after installing the fixed facilities.

Is money paid to government officials to avoid having harm imposed on them a good or bad thing? Consider the example of bribes paid by Jews to get weapons into and people out of the Warsaw Ghetto. Though illegal and so corrupt in the eyes of the Nazi government, surely this is good corruption.⁶⁷ While extreme, the Warsaw Ghetto example is applicable in many contexts. Abortions occurred illegally and therefore secretly in the United States for most of our history. Were the payments necessary to keep abortionists in business good or bad corruption?

4. The Real Culprit

If legislators truly wanted to limit corruption, they would focus on its true source: the size of government, as noted above. But also on what government is doing. Some government power may be good, some is bad. So, corruption can be bad or good, depending on what causes it. Concerning government regulation, economist Steven Cheung summarizes the view “apparently shared by most economists:”

Corruption generally is good, though sometimes not so good. It is good because most regulations and controls move the market away from Pareto optimality.

⁶⁷ See Becker and Stigler, *supra* note __, at 6: “bribes that reduced the effectiveness. . . of the laws in Nazi Germany against Jews. . . would improve, not harm, social welfare (although not as defined by the legislature).”

Corruption will then cause a move back toward the Pareto condition. Some regulations, are good because they move the economy closer to Pareto optimality. Given good regulations, corruption moves the market away from efficiency. Therefore, some corruption is good, and some is bad, with bad regulations, corruption is good. With good regulations, corruption is bad.⁶⁸

Corruption, like practically everything else in life, has costs and benefits. Those costs and benefits are the flip side of government action. *Pace* John McCain and Russell Feingold, when government is wrong, working around its errors must be good; when government is right, circumventing its edicts is bad.

IV. Why Do They Do It?

As noted earlier, the Supreme Court does not find evidence that donors are able to buy much with their (restricted) donations. Nor does social science research contradict the Court.

Indeed, legislators tend to act in accordance with the interests of their donors, but this is not because of some quid pro quo. Instead, donors tend to give to like-minded candidates. Of course, if candidates choose their policy positions in anticipation of a subsequent payoff in campaign contributions, there would be no real distinction between accepting bribes and accepting contributions from like-minded voters. However, studies of legislative behavior indicate that the most important determinants of an incumbent's voting record are constituent interests, party, and personal ideology. In election years, constituent interests become more important than in

68 Cheung, *supra* note __, at 1.

nonelection years, but overall, these three factors explain nearly all of the variation in incumbents' voting records."⁶⁹

Most informed citizens react to these findings with incredulity. If campaign contributions do not buy favors, then why is so much money spent on politics?

This question, however, misstates what the current debate is about. Donors give either because they will win favors or to ward off losses. This was true since the advent of government itself, long before American campaign giving restraints were legislated. The real issue here is why politicians want to *limit* amounts that can be donated? If they are selling favors, or if they are selling protection, it seemingly makes no sense to reduce the amount of one's own legal swag.

A. Good Publicity

A first possibility is politicians' perception that voters are misled into thinking something bad is happening through donations, and will give electoral points to incumbents who enact limitations. Such "reforms" are based on a "dodgy, feel-good assumption: the key to good democratic government is the total exclusion of all points of interest, or money."⁷⁰ An incumbent need only fool enough of the people, as long as he is running for re-election.

If so, legislation's supposed objective of restricting giving is a sham. Duke University's Michael Munger writes:

⁶⁹ Milyo, *supra* note __.

⁷⁰ Munger, *supra* note __.

[O]ne of the fundamental rules of politics is this: Power abhors a vacuum. Restricting the ability of traditional political organizations to raise funds could never reduce the influence of money in politics. [Legislation] would simply redirect the force of that influence in other directions, with even worse consequences for democracy.”⁷¹

However, that contribution limits are enacted by incumbents adds an aura to legislation restricting giving. In effect, politicians can portray themselves as Ulysses, tying their hands to the mast to avoid the temptations to squeeze money from the masses. Self-imposed donation limits seem in particular to maintain a level (if lower) playing field, only adding to the appearance. Incumbents bind themselves to rules no different from those restricting their challengers. Politicians can hold themselves out as reformers, “pretend to obey [self-imposed] restrictions, all the while accepting money hand over fist.”⁷²

B. Electoral Advantage to Incumbents

As cynical as this answer seems, an equally cynical answer is the electoral advantage that incumbents create for themselves when they limit fund-raising by themselves as long as their opponents are likewise limited.⁷³ The advantage is inherent in being an incumbent. Almost all incumbents win re-election. The typical election is not a 50-50 horse-race.

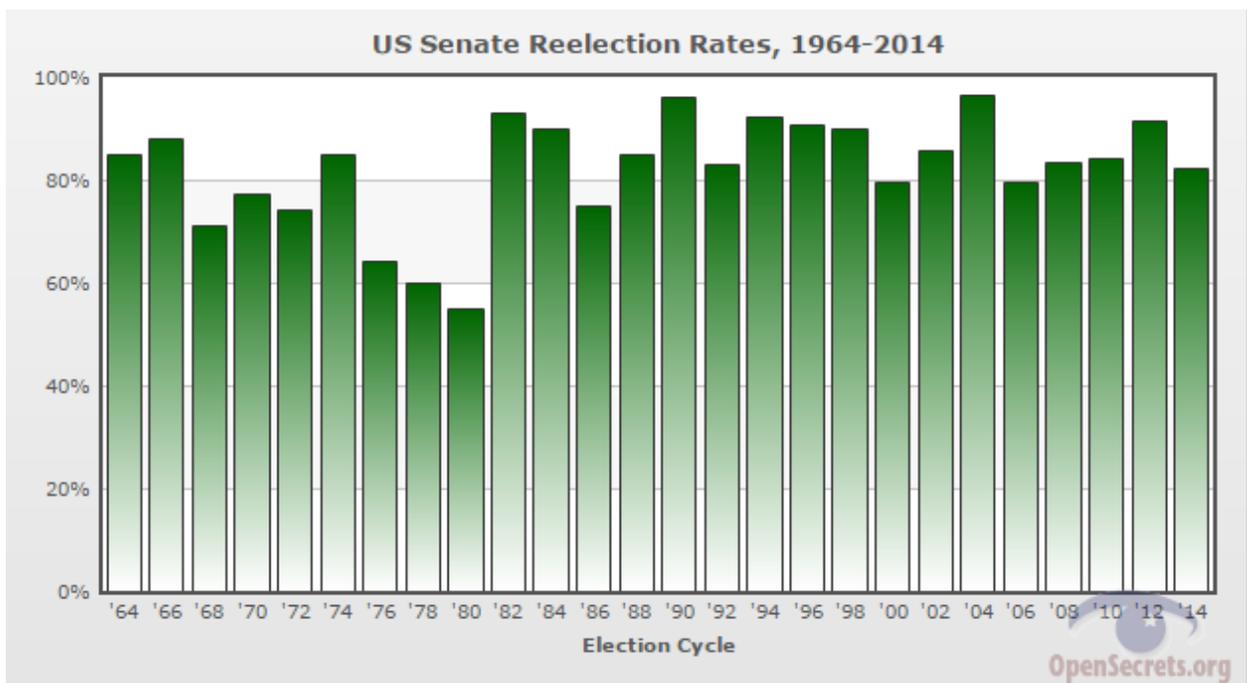
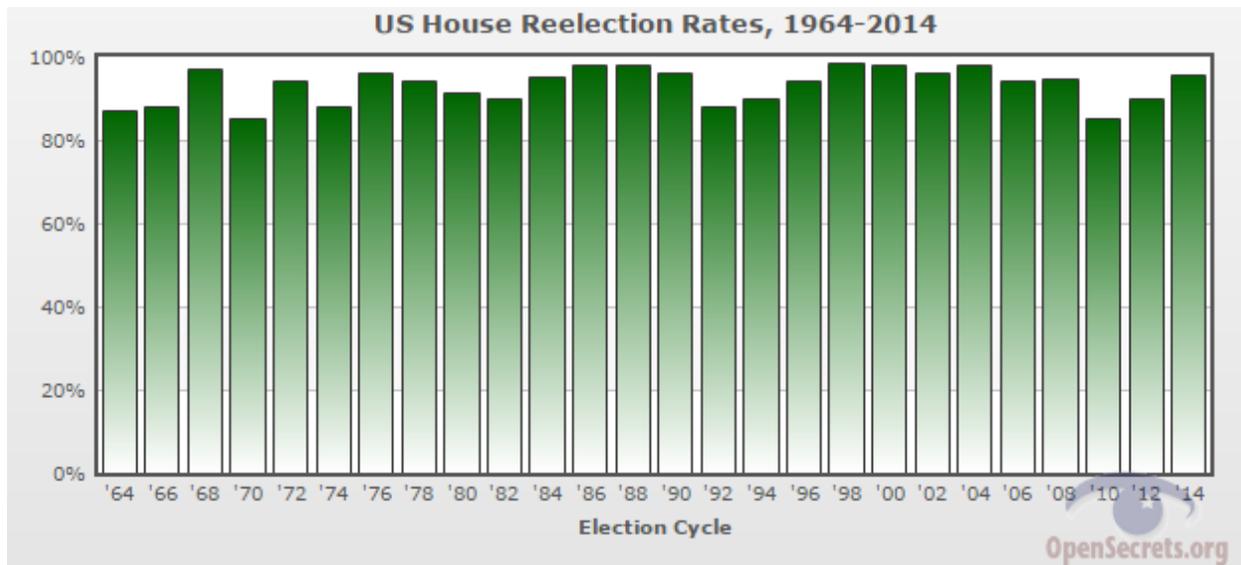
Few things in life are more predictable than the chances of an incumbent member of the U.S. House of Representatives winning reelection. With wide name recognition, and usually an insurmountable advantage in

⁷¹ Michael Munger, “Unintended Consequences 1, Good Intentions 0,” <http://econlib.org/library/Columns/y2006/Mungergoodintentions.html>.

⁷² Miron, *supra* note __.

⁷³ The public-choice of rational voter ignorance applies with force here, and requires no explanation.

campaign cash, House incumbents typically have little trouble holding onto their seats—as this chart shows.⁷⁴



⁷⁴ Center for Responsive Politics, <https://www.opensecrets.org/bigpicture/reelect.php>.

Contribution limits can be portrayed as incumbents' altruistic hands-tied-to-the-mast tactics. But giving limits tie *all* candidates' hands to the mast. True, incumbents will have less to spend, as well as their challengers. But less money is not the same as having less of everything in winning elections.

In any race, political or commercial, in which there are established politicians (commercial firms) contending with newcomers, success depends on more than money. Monetary capital has substitutes. "Brand-name capital," deriving from reputation, experience and past success, favors any established entity over its challengers. For an unknown newcomer, donated financial capital that translates into advertising and related substitutes for brand-name capital can be critical.

Which means that, if both sides are constrained to the same financial capital, that gives an advantage to the one with greater brand-name capital. To illustrate the point, consider the controversy over lawyer advertising a generation ago.⁷⁵ Those who wanted advertising legalized were the newcomers, such as legal clinics.⁷⁶ The "established bar," through its bar associations, fought legitimizing advertising all the way to the Supreme Court, and lost, in part on arguments based on economic (antitrust) grounds.⁷⁷

⁷⁵ See generally McChesney, "Team Production, Monitoring, and Profit Sharing in Law Firms: An Alternative Hypothesis," 11 *J. Legal Stud.* 379 (1982).

⁷⁶ Muris and McChesney, "The Effect of Advertising on the Quality of Legal Services," 65 *American Bar Association Journal* 1503 (1979); "Advertising and the Price and Quality of Legal Services: The Case for Legal Clinics," 1979 *American Bar Foundation Research Journal* 179 (with T. Muris).

⁷⁷ *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977)

Consider Ford, or IBM, or U.S. Steel. They would all love to have government make it harder for competitors to enter markets and challenge them.... Why should we be surprised that political incumbents have the same desires to be sheltered from competition. ...BCRA [the McCain-Feingold Bipartisan Campaign Reform Act] is the evisceration of political anti-trust law, written to ensure that incumbent monopoly power over office-holding is protected.⁷⁸

The strategy is the familiar one of raising rivals' costs.⁷⁹ Incumbents have an advantage similar to that of established commercial firms. Fewer contributions to all mean less advertising for the entrenched and their challengers alike. Incumbents outspend their adversaries, especially in the House.⁸⁰ But incumbents have many substitutes for self-publicity unavailable to aspirants to their office: committee and bill-submission powers, the free-mail (franking) privilege, regular news coverage throughout their electoral cycle, and so on.⁸¹ Few politicians eschew appearing before television cameras.

An example might help clarify. Imagine two groups of golfers, some of which are better putters and others better drivers. They are equal overall: over a full season, the strong putters win half the tournaments and the drivers half. But then, perhaps controlled by the better-driver faction, the PGA changes the rules, adopting new regulations on the type of putter or the way the clubs (e.g., "long putters") can be used, making the putting game harder. The old rules applied

⁷⁸ Munger, *supra* note ____.

⁷⁹ Salop and Scheffman, *Raising Rivals' Costs*, 73 *Am. Econ. Rev. Papers and Proceedings* 267 (1983).

⁸⁰ In 2012, "[o]n average, House incumbents outspent their rivals \$1.7 million to \$587,000, a ratio of almost a 3-1. Incumbent senators spent on average \$10.7 million compared to \$7.2 million for challengers, "CNN Politics" reports. <http://www.cnn.com/2013/07/11/politics/congress-election-costs>

⁸¹ Donald Trump's campaign for the Republican party nomination illustrates how valuable free media coverage can be.

equally before, the new rules apply equally now. Predictably, though, at the margin the strong drivers will begin to win more tournaments.

In electoral tournaments, Congress is the PGA. By definition controlled by incumbents and not challengers, it can change the rules. And composed by *homines economici*, it will do so when of benefit to do so. Truthful claims that “the same rules apply to everyone” nonetheless mask the fact that mandatory adjustments of the equal rules will lead to unequal electoral results. Referring to the McCain-Feingold legislation as an “incumbent protection act,” one source summarizes:

The American system of elections has long tilted toward incumbents. [As much research shows], any “equal” limit on spending hurts challengers. Incumbents have so many nonmonetary advantages: franking privileges, free media access, committee powers and so on. Hard money contributors are notoriously unwilling to contribute to a candidate who is already very likely to win.⁸²

“The immutable fact facing campaign finance reform is that ‘the money will out.’ Those with money who wish to spend it can find ways to do so under any system, absent restrictions that are totally inconsistent with the First Amendment.”⁸³ Here we have politicians determining the prices of bidding for their seats. And, more important, for the price of acquiring the prizes that they, as monopolists, have to sell.

That donation limits favor incumbents has testable implications. Those with advantage-by-incumbency would predictably be more inclined to favor restricted contributions. Incumbent

⁸² Munger, supra note __.

⁸³ Miron, supra note __.

senators have less re-election protection than do congressmen, the earlier tables showed. Predictably, then, senators would be less inclined to vote for contribution limits. The data, however, show just the opposite: 60 percent of the Senate voted in favor of the BCRA (McCain-Feingold), versus 55 percent of Congressmen.

The comparison is a crude one, however. Congressional campaign legislation typically concerns not just contributions but politicians' expenditures as well. Portions of bills concerning the two may fill remarkable numbers of pages. Separating differences in voting based on differences in incumbency would seem nigh onto impossible. Not to mention the other relevant variables that would have to be controlled for.

Thus, in this area a social scientist seemingly ends up with half a model. The underlying theory and the implications therefrom are straightforward. But testing those implications is apparently impossible. Firm resolution of the debate on what politicians are about when they limit contributions to themselves is not to be expected soon.

V. Conclusion

The foregoing has argued a number of points. First, campaign contribution limits supposed to limit "corruption" suffer from failing to define what "corruption" they would extirpate. Journalists' defining "corruption" as including influence, political access, or avoidance of negative advertising equates the ordinary working of democracy with vice. The imprecision in popular use of the term "corruption" has been mitigated by recent courts' (*Citizens United*, *SpeechNow*) reining in attempts to limit campaign donations based on whether the limitations seemed aimed at avoiding classic bribery.

Second, outcries against campaign giving fail to distinguish the reasons that donors give. Bribery and extortion are different phenomena, with different welfare implications. Critics of campaign donations fail to acknowledge that campaign giving of both sorts can be useful economically.

Popularly viewed, self-imposed restrictions appeal to voters and the media, seemingly acts of altruistic self-torture. However, it is difficult for the more cynical and suspicious, to believe that having incumbent politicians limit amounts of money given to themselves could really be a “good thing.” Isn’t this just another case of political foxes running the hen-house? Incumbents’ self-limitation in this case is hardly self-destruction; it is plain old self-interest. “[Campaign restrictions raise] a nearly impenetrable financial force field of protection around incumbents.”⁸⁴

*I ain't no psychiatrist
Aint' got no big degree
But it don't take too much time to see
What you're trying to do to me
You better think
Think about what you're trying to do to me.*⁸⁵

⁸⁴ Munger, supra note __.

⁸⁵ A. Franklin, “Think.” Written and sung by the author, the song reached #7 on the *Billboard* Charts in May 1968.