

The Washington Post
January 10, 2016

Book Review

Plutocrats United

Campaign Money, the Supreme Court and the Distortion of American Elections

by Richard L. Hasen, Yale, \$32.50, 241 pp.

Combating the influence of wealthy donors

by [Greg Sargent](#)

The parade of plutocrats in this year's campaigns is already on the march — even though Election Day still is nearly a year away. As of the fall, a mere 158 families had lavished \$178 million on the presidential race. The oil billionaire Koch brothers and their donor network may pump out nearly \$900 million in an effort to elect Republicans to various offices across the country. Billionaire hedge-fund manager and climate activist Tom Steyer may dump more than \$100 million to help elect Democrats. Ten individual donors or couples — many of them major players on Wall Street or in Silicon Valley — have each shelled out more than \$1 million in support of Hillary Clinton.

All of this free flowing of funds raises a critical question: Should such a tiny group of elite donors be allowed to wield vastly more influence over the political process than the rest of us?

The answer seems simple enough. But as Richard Hasen shows in his new book, "Plutocrats United," the question is far more complicated than many of us realize. In his view, no one should have vastly more sway over the political process than anyone else simply because of an outsize bank account. He says that to effect change, reformers must seriously engage the issue's many hidden complexities, and in sharply argued fashion, he demonstrates how progress on reform might be achieved after a long, difficult struggle.

Hasen, a political science professor at the University of California at Irvine, outlines in a thorough, yet readable, manner how we got to this point. The process of opening the campaign donor spigots took place over decades as the Supreme Court whittled away the limits Congress had placed on political giving. In the 1970s, the court struck down parts of a post-Watergate

reform law that limited the total amount an individual could spend in a single election cycle. In so doing, the court invalidated a longtime rationale used by reformers to limit political spending — the “equality rationale,” which holds that no citizen should wield vastly more influence over an election than any other citizen. The court ruled that to deny an individual the opportunity to spend freely infringed on the donor’s First Amendment right to engage in an “unfettered” exchange of ideas.

In the same ruling, however, the court upheld that law’s limits on contributions to individual candidates on different grounds: that preventing corruption or the appearance of corruption is a legitimate rationale for spending limits that infringe on the First Amendment. Congress has long acted in the belief that it has a legitimate interest in battling corruption, or the appearance of corruption, to maintain public confidence in our political process. In its ruling, the court dispensed with one longtime rationale for limits (the equality rationale) but allowed another one to remain (the anti-corruption rationale).

Over time, however, the Supreme Court has also weakened that anti-corruption rationale. In the *Citizens United* decision, striking down limits on independent spending in elections by corporations and unions, the court affirmed that such spending is protected speech, and that political giving that is rewarded by increased access to politicians does not constitute corruption or the appearance of corruption. Instead the court ruled that only quid pro quo giving — which is extremely rare — constitutes corruption or its appearance. In several subsequent decisions, courts also knocked down limits on contributions to political committees and on aggregate contributions to multiple candidates by individuals.

Those decisions ushered in today’s free-for-all. “U.S. citizens, corporations, and labor unions can now contribute and spend millions of dollars or more on political campaigns because the government cannot prove to a skeptical Supreme Court that limits are necessary to prevent *quid pro quo* corruption or its appearance,” Hasen writes, “and because the Court has taken off the table real concerns about political inequality in a system of increasingly unlimited political money.”

Now what? Many reformers hope that a future Supreme Court may return to a broader reading of the anti-corruption rationale — one that would allow the restoration of previously accepted limits on political giving — on the grounds that unfettered contributions facilitate donor ingratiation or access, or distort the political process by rendering politicians dependent on the biggest spenders. Hasen, however, sees benefits in a different approach. He believes that the corruption argument is probably a lost cause, because defining corruption broadly is a slippery, elusive task that is unlikely to persuade the court. The better argument for future reform, Hasen maintains, is that limits are justified in the quest for political equality. This argument, he says, has a greater chance of winning over five future Supreme Court justices and thus should be revived.

It’s a tough case to make. Hasen begins by reviewing the political science literature indicating that money actually does buy increased political power. While money does not guarantee electoral outcomes, some researchers have concluded that it influences legislative outcomes. Because politicians are sensitive to the priorities of major donors, money can skew policy toward

the interests of big contributors and lobbyists, and may result in overall policy outcomes that favor the interests of the wealthy.

Hasen's argument, then, is not focused on politicians who might be corrupted by unfettered political spending. Instead, it's focused on donors — specifically, on a tiny handful of elite spenders and the increased influence they reap from their largesse. Put simply, “those with wealth” should not have a “much greater chance than an average voter of having their preferred policies enacted into law,” Hasen writes. “The main problem with money in U.S. politics is the translation of vastly unequal economic power into unequal political power.”

Rising inequality, Hasen posits, may render these disparities of influence ever more grotesque. So he proposes capping total spending by individuals, corporations or other entities at \$25,000 per federal election — and \$500,000 per cycle. The goal: to limit giving enough to prevent the escalation of vast disparities in political power, while keeping limits loose enough to avoid meaningfully restricting the political speech of those subjected to them. Hasen is not wedded to his reforms and offers them in the spirit of experimentation. But whatever reforms we do adopt, he argues, will need a solid legal justification grounded in a serious effort to get the balance right between competing interests: political equality and robust, unfettered political speech. That balance will inevitably be fine-tuned over time.

While some maintain that political spending is not speech, Hasen forthrightly admits that limits on it do burden free speech. But he argues that the government's interest in addressing vastly unequal political power justifies burdens on speech, provided that limits are carefully drawn and closely monitored by the courts, and don't render elections less robust or competitive.

Limiting donations and spending is not a form of censorship, Hasen argues, because it does not suppress speech. What's more, he writes, “it is sometimes permissible to burden speech for a compelling enough reason,” and it is “simply an incorrect reading of First Amendment doctrine and practice” to argue that it means “literally no regulation ever of speech, expression, or the spending of money on speech [or] expression.” The question, then, is “what reasons should be sufficient” justification to “impose limitations consistent with a commitment to robust speech and political competition?”

Reformers must hone the argument that reducing political inequality is a compelling enough societal interest to justify spending limits. As precedent, Hasen cites previous court decisions upholding the idea that all citizens should have equal voting power.

Of course, some die-hard foes of limits are skeptical that any rationale — even combating vast political inequality — is compelling enough to justify burdens on speech. Hasen concedes that there may be no way to bridge this difference: “If you disagree with me, and believe that political equality is not an acceptable interest that the government or U.S. voters can choose to promote, you are not likely to accept the rest of my analysis.”

But anyone who views Hasen's argument with skepticism should be asked: Does vastly unequal spending translate into vastly unequal political power? If so, is this troubling? Is there any point at which disparities of political influence could grow large enough to justify such limits?

In the end, what may matter most is the view of a mere nine people. Four current Supreme Court justices — two liberals and two conservatives — are likely to retire in the next eight years. So the 2016 election could decide the makeup of the next court — and whether reform happens anytime soon.

Hasen advises reformers to prep for an Armageddon-like showdown over the court's future — and to develop their equality-based arguments now in preparation for a court that might be more receptive to future reforms based upon them. In this sense, Hasen's book is best seen as a war manual designed to equip and fortify would-be reformers for a brutal and uncertain struggle that could drag on for years to come — but that must be waged to prevent our democracy from sinking deeper and deeper into plutocracy.

Greg Sargent writes The Plum Line, a reported liberal opinion blog, for The Washington Post.

@2016 The Washington Post