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CAMPAIGN FINANCE AND DEMOCRATIC CONTROL: COMMENTS ON GOTTLIEB AND LOWENSTEIN'S PAPERS

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I.

Any thoughtful discussion of campaign finance practices inevitably raises basic issues of democratic theory. Disagreement usually reflects the fundamental tension in American political theory (and practice) between equality and liberty: one person, one vote versus the first amendment. Restrictions on raising and spending campaign money are defended as necessary to protect political equality or attacked as restrictions on freedom of speech. While not ignoring this dimension of conflict, Professors Gottlieb and Lowenstein[1] draw fresh arguments for equally contradictory positions from competing conceptions of how elected officials can be kept responsive to voters.

The core of their implicit debate can be clarified by restating it in terms of principal-agent theory.[2] The relationship between a citizen and an elected official is, in the language of principal-agent theory, an agency relationship. Agency relationships are ubiquitous; they arise whenever one individual (technically the principal) has another (the agent) act on her behalf.[3] Almost any agency relationship is beset by problems of diverging interests and asymmetrical information. Unless the agent's interests coincide exactly with the principal's, or the principal can monitor the agent perfectly and without

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1. *See* Gottlieb, *The Dilemma of Election Campaign Finance Reform*, 18 HOFSTRA L. REV. 213 (1989); Lowenstein, *On Campaign Finance Reform: The Root of All Evil is Deeply Rooted*, 18 HOFSTRA L. REV. 301 (1989).

2. For a concise review of principal-agent theory, *see* Pratt & Zeckhauser, *Principals and Agents: An Overview*, in PRINCIPALS AND AGENTS: THE STRUCTURE OF BUSINESS 1-35 (1985).

3. "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." RESTATEMENT OF THE LAW (SECOND) AGENCY § 1 (1958).

cost—rare circumstances indeed—she cannot be sure that the agent is, in fact, acting on her behalf.

The twin problems of hidden action and hidden information highlighted by principal-agent theory[4] are especially prevalent in the agency relationship between citizens and elected officials. The agent (official) has the ability to do things that the principals (citizens) cannot observe and, when the action is at best imperfectly related to observable consequences, principals are unable to determine how loyally or effectively the agent has performed. The agent also knows of things affecting the principals' interests of which the principals are unaware. Hidden action and hidden information give the agent an opportunity to "shirk"—to serve his own rather than the principal's ends.

The ubiquity of principal-agent problems is reflected in the variety of organizational devices designed to strengthen sanctions, facilitate monitoring and align the agent's interests more closely with the principal's in order to reduce shirking. In democracies, competitive elections are the primary mechanism through which government officials are monitored, sanctioned and thereby induced to pursue their principals' interests. Elections allow the principals to pass judgment on their agents' performance at regular intervals and to dismiss and replace shirkers. They create incentives for outside parties—candidates aspiring to replace the current agents—to monitor agents and to report their failings. Competitive elections raise the expected costs of shirking by increasing the probability of detection and by threatening the sanction of dismissal. As a consequence, competitive elections reduce the incidence of shirking.[5]

From this perspective, the basic disagreement between Professors Gottlieb and Lowenstein is over what sort of campaign finance system discourages shirking most effectively. Gottlieb's central claim is that restrictions on campaign donations and expenditures interfere with monitoring; they reduce the information reported to principals on the shortcomings of current agents or the superiority of alternative agents. Unrestricted campaigning would permit better monitor-

4. *See* Arrow, *The Economics of Agency*, in PRINCIPALS AND AGENTS *supra* note 2, at 38-40 (1985).

5. Rational voters would not themselves pay the cost of monitoring; election outcomes are collective goods, and the likelihood of casting a decisive vote is incredibly small. Electoral competition induces parties and candidates to provide the voters with free (if biased) information on the performance of their agents. *See* J. SHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 269-73 (3d ed. 1950).

ing and thus less shirking, enhancing democratic control.[6]

Although sensitive to the need for effective monitoring, Lowenstein is more concerned with another source of shirking: the diverging interests of agents and principals. To the extent that elected officials must raise campaign money from a minority of people who are not representative of their entire electorate—constituents commanding one vote each—they are induced to shirk. Hidden action and information make many forms of shirking almost impossible to detect or demonstrate to voters, so better monitoring cannot solve the problem. The solution is to remove the temptation to shirk by severely limiting private campaign contributions, especially from organized interests groups, and by financing campaigns mainly from the public treasury.[7]

From the principal-agent perspective both authors raise legitimate concerns. The difficulty is that policies designed to inhibit shirking on one dimension may encourage it on the other. The issue becomes one of balance, and the proper balance depends on the weight assigned to the problems identified—just how bad are they?—and to the problems that would predictably arise from proposed solutions. The details of their arguments and proposals thus require further examination.

II.

Although Professor Gottlieb presents a lengthy and complicated set of arguments, his basic position comes through clearly enough. *Any* plausible theory of democracy requires that voters be given a choice among alternatives.[8] Meaningful choice requires information about the alternatives.[9] Any regulation that limits the flow of information thus weakens democracy.[10] Legitimate regulation of politics must be strictly neutral and not interfere in any way with communications between voters and candidates (or parties).[11] Accordingly, any regulation that compels candidates to reveal information of any kind or otherwise influences their statements also weakens democracy.[12] The first amendment upholds democracy by protecting not

6. *See* Gottlieb, *supra* note 1, at 285-92
7. *See* Lowenstein, *supra* note 1, at 351-60.
8. Gottlieb, *supra* note 1, at 279-300.
9. *Id.*
10. *Id.*
11. *Id.* at 291-92.
12. *Id.* at 284-86.

only the rights to speak and to associate freely, but also the right to hear what is said undistorted by government regulations that might affect the quantity or shape the content of political speech.[13] Thus, according to Gottlieb's logic both democratic theory and a correct reading of the first amendment require that there be no legal restrictions on campaign contributions and spending, and no mandatory disclosure of campaign finances.[14] Any limits on, or reporting of, the flow of campaign money should be purely voluntary; the government has no legitimate role in either helping or hindering the "monitoring" feature of electoral politics.[15]

This is laissez-faire with a vengeance. Although Gottlieb recognizes inequality and corruption as potential threats to democratic control,[16] his final position is that no other democratic value ultimately carries any weight against the most permissive reading of the first amendment. It is not difficult to make a persuasive argument that democracy involves electoral choice and that meaningful choice requires information about alternatives. It is quite another thing, however, to conclude that current regulations seriously restrict or otherwise shape campaign information, that the goal of maximizing the flow of information free from regulatory distortion need never be balanced against other democratic values or that a completely unregulated campaign finance system would actually maximize the flow of political information.

Gottlieb builds his case on a number of defensible, if not always uncontested, empirical claims: (1) that restricting what individuals can spend on politics may actually hurt the poor, who depend on wealthy liberals and radicals to finance the pursuit of their interests;[17] (2) that limits on campaign money are likely to benefit incumbents because campaign spending is so much more essential and productive to challengers;[18] (3) that no regulatory scheme is neutral, and officeholders will, given the chance, regulate campaign finance to serve their own electoral interests;[19] (4) that reducing the amount of money available to campaigns reduces political speech;[20] (5) that

13. *Id.* at 286-92.
14. *Id.* at 279-300.
15. *Id.* at 295-300.
16. *See id.* at 282.
17. *Id.* at 220-21.
18. *Id.* at 222.
19. *Id.* at 274-76.
20. *Id.* at 214-28, 238-39.

limits on contributions interfere with freedom of association.[21]

These are not trivial points and it is important to keep them in mind when evaluating any campaign finance system. Indeed, all of them have been made repeatedly in debates on campaign finance regulation. If no values other than maximizing campaign speech and associative political activity were at stake, then they would carry the libertarian case. Other values, however, are at stake. Inadequate monitoring is not the only source of shirking, and it is necessary to consider just how damaging existing or proposed regulations are to freedom of political speech and association. In principal, it is possible to agree with Gottlieb that regulation of campaign contributions interferes with first amendment rights.[22] Nonetheless, how severely political speech and association are distorted by any particular form of regulation is an empirical question.

Gottlieb believes that the current system of regulation under the Federal Election Campaign Act (FECA),[23] its amendments,[24] and the relevant case law[25] severely limits political speech and association. However, he offers very little evidence for this belief, and there is plenty of reason for skepticism. The amount of money spent on congressional election campaigns has sextupled under FECA.[26] Competitive challengers—those with a plausible chance of winning—have more money at their disposal than ever before.[27] Campaign spending by national and local parties has also increased steeply.[28] If anything, the evidence suggests FECA stimulated an

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21. *Id.* at 228-32, 238-40.

22. *See id.* at 293-300.

23. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended 2 U.S.C. §§ 431-55 (1982)). For a brief and concise summary of the major provisions of federal campaign finance laws, see MONEY AND POLITICS IN THE UNITED STATES 7-9 (M. Malbin ed. 1984) [hereinafter MONEY AND POLITICS IN THE UNITED STATES].

24. Federal Election Campaign Act (FECA) Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974); FECA Amendments of 1976, Pub. L. No. 94-293, 90 Stat. 475 (1976); FECA Amendments of 1979, Pub. L. No. 96-197, 93 Stat. 1339 (1979).

25. *See* Gottlieb, *supra* note 1, at 228-32 (discussing and criticizing Supreme Court jurisprudence concerning campaign restrictions).

26. Congressional candidates spent $72.5 million on campaigns in 1973-74. *See* VITAL STATISTICS ON CONGRESS 1987-88, at 72, 77 (N. Ornstein, T. Mann & M. Malbin eds. 1987) [hereinafter VITAL STATISTICS]. In 1987-88 they spent $458 million. *Id.*

27. VITAL STATISTICS, *supra* note 26, at 79-84. *But see* Gottlieb, *supra* note 1, at 216-28.

28. In fact, "[p]arty committees spent in excess of 2.5 times more in the congressional elections of 1986 than they spent in those of 1978." F. SORAUF, MONEY IN AMERICAN ELECTIONS 127-36 & chart 5.1 (1988). While Democrats spent $2.1 million on congressional elections in 1978, this amount increased to $10.1 million in 1986. *Id.* at chart 5.1. Similarly, Republicans spent $8.6 million in 1978 and $17.7 million in 1986. *Id.* The amounts reflected in

enormous amount of campaign finance activity and therefore contributed to a substantial increase in the quantity of political speech. Indeed, a primary complaint about the present system, even if woefully misguided, is that too much money is spent on campaigns.[29]

Gottlieb also contends that FECA distorts campaign messages.[30] Unlimited campaign funding, he argues, promotes a politics of issues and ideologies, while restrictions on funding campaigns limits choice to reputation.[31] No evidence is offered for this claim, and again experience under FECA does not support it. Certainly recent elections have not been devoid of ideological and partisan conflict; both were arguably more prevalent in the 1980s than they had been since the New Deal. Nor has the system discouraged a politics of issues. Single-issue groups, such as those opposing abortion or gun control, and those groups promoting environmental protection or nuclear arms reductions, are a familiar component of contemporary electoral politics. If anything, the present system appears to have encouraged the formation of ideological and interest group PACs by clarifying their legal status and providing a framework for legitimate participation in funding campaigns. Finally, not only are national party organizations far more active now than ever before in financing congressional races,[32] they have also taken to promoting common partisan campaign themes through generic advertisements.[33]

Gottlieb simply asserts that current regulations make it more difficult for the public to be offered " 'a choice, not an echo.' "[34] He produces no evidence that the electorate has been kept ignorant of any politically viable alternative (candidate, ideology or issue position) by campaign finance regulation. It has probably happened on occasion, but even plausible anecdotes are hard to find. Nor does

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these figures were comprised of "the total of contributions to candidates and expenditures made on their behalf." *Id.* at 127.

29. *See, e.g.,* Jacobson, *Enough is Too Much: Money and Competition in House Elections* in ELECTIONS IN AMERICA 173-76 (K. Schlozman ed. 1987).

30. *See* Gottlieb, *supra* note 1, at 216-29, 280-81, 284-86.

31. *Id.* at 280-81, 284-86.

32. *See supra* notes 26-28 and accompanying text.

33. *See* F. SORAUF, *supra* note 28, at 131-32 (describing the Republican's generic advertising campaign in the 1980 election); *see also* Jacobson, *Money in the 1980-82 Congressional Elections*, in MONEY AND POLITICS IN THE UNITED STATES, *supra* note 23, at 50 (noting that in the 1982 election, the Republican Party spent $11 million on a national advertising campaign urging voters to "stay the course"). The focus of "generic" or "institutional" advertising is to obtain votes or contributions to the part in general, rather than a particular candidate.

34. Gottlieb, *supra* note 1, at 284.

Gottlieb demonstrate that regulation induces a bias favoring personal over issue-oriented campaigning. On the contrary, tight money should encourage coordinated campaigning (partisan and otherwise) by drawing attention to the economies of scale inherent in campaigning for candidates as a bloc. A completely unregulated system, on the other hand, permits an unlimited variety of ways to raise funds and would allow the widest latitude for candidates to individualize their campaigns.

If the type of campaign finance regulation has no logical or empirical connection with the content of campaigns, Gottlieb's conclusion that democratic theory and the first amendment require that "candidates have the right to choose their own financing system"[35] cannot be sustained. Taken literally as a guide to policy, this proposition leads to absurdity; no House candidate is going to be permitted the choice of financing his campaign with, say, $100 million from the U.S. Treasury. In fact, Gottlieb recommends that candidates be given a choice between raising and spending money free of any regulation and voluntarily accepting some set of restrictions, perhaps accompanied by some kind of unspecified voucher system.[36]

The choice is framed between two such options because of the distinction Gottlieb draws between a "Burkean" electoral politics of reputation and public consensus, which functions best with restrictions on campaign contributions, and an electoral politics of conflicting issues and dissensus, which flourishes only with unrestricted campaign funding.[37] He evidently expects candidates to choose funding systems appropriate to prevailing political circumstances because voters will reward them for doing so (or punish them for not doing so).[38] In reality, however, these distinctions dissolve. Electoral politics always involves both personalities and issues, areas of consensus and points of sharp disagreement. Neither voters nor candidates would have a reliable guide as to what is appropriate.[39]

35. *Id.* at 289-90.

36. *Id.* at 292-93; *see also id.* at 255 n.244 (discussing voucher system).

37. *See* Gottlieb, *supra* note 1, at 281-84.

38. *Id.* at 284-86.

39. Gottlieb's notion that the debate rests on the differences between "Burkean" and competing conceptions of representation is thoroughly misguided. *See id.* at 281-84. As Lowenstein's analysis and the principal-agent framework make clear, the purpose of regulating contributions is not necessarily to free elected officials to follow their own consciences or even their considered views of their constituents' interests; it can also be thought of as a way to induce them to act according to their constituents' rather than their donors' preferences. *See* Lowenstein, *supra* note 1, at 335-48.

One striking curiosity in an argument extolling the critical importance of an informed electorate is Gottlieb's apparent conclusion, unstated but clearly implied, that candidates should not be required to report contributions and expenditures.[40] His view is presumably that a candidate's refusal to reveal financial data would itself be an item of information influencing voters' decisions; if voters mind, they can vote against the candidate. Of course, if both candidates refuse to disclose their sources of funds, voters are out of luck; they could face a choice between candidates financed by the Medellin cartel and the South African government and never know it.

Voluntary compliance with informal rules is inherently unstable in the context of competitive election campaigns. The costs in time, energy, staff and money of complying with contribution limits and disclosure requirements are considerable. In the brief period of furious activity preceding election day when political careers are at stake, the temptation to avoid such distractions and to do whatever is necessary to win and deal with the consequences later is extraordinarily strong. Add to this scenario the realization that the opposition faces the same temptation and the result is a conventional prisoners' dilemma, a game in which rational players defect. Only when both candidates believe they could improve their chance of winning by adhering to voluntary restrictions would we expect restrictions to be observed faithfully; the proportion of such contests is probably small. In light of the Federal Election Commission's toothless performance under the current law, it is difficult to imagine the voluntary auditing system Gottlieb recommends constraining candidates effectively.

Despite Gottlieb's defense of pluralism in campaign finance practices, the most likely consequence of the libertarian regime he proposes is a return to the status quo prior to the enactment of FECA where very little accurate information about the flow of campaign funds was available to voters or anyone else. Not only would such a system do nothing to diminish the shirking inspired by the need to please financial backers, but it would make it more difficult for the principals to know when to suspect shirking, or for aspiring alternative agents to expose it.

III.

In debates over campaign finance policy, proponents of reform and regulation have been frequently taken to task for tunnel vision

40. *Cf.* Gottlieb, *supra* note 1, at 289-90.

and ignoring the realities of electoral politics. In this case, proposals for deregulation appear to be inadequately thought through. Lowenstein, on the other hand, presents a case for fundamental reform of campaign finance practices that is sensitive to previous criticisms of reform proposals, to the realities of electoral politics and to the politics of campaign finance issues. Nonetheless, Lowenstein's proposal fails to convince, which suggests how formidable the barriers are to any comprehensive reform of campaign finance practices.

Lowenstein's central claim is that campaign contributions made "to bias the judgment or sway the loyalty of persons holding positions of public trust" are inherently corrupting.[41] Private campaign contributions should be severely restricted and replaced by public funds, because the manifest intention of so many contributors *is* to bias judgment or sway loyalty.[42] Lowenstein argues that it is not necessary to prove that contributions from "special interests" buy roll call votes in order to conclude that the system corrupts.[43] It is sufficient to recognize that campaign finance considerations inevitably enter into the complex web of calculations from which individual and collective political decisions emerge.[44] The effects may be subtle and difficult to detect, but are nonetheless real; elected officials are induced to shirk when the interests of their financial constituencies conflict with those of their electoral constituencies.[45]

Lowenstein's argument is clever. It allows him to discount negative empirical findings and to give form to the widespread sense that campaign contributors must be getting *something* extra for their contributions or they would not make them. To the extent that the argument verges on "it's there even if we can't see it," it is not, however, open to disconfirmation and it leaves unresolved the question of just how important this source of shirking is relative to the other conflicts of interests to which elected officials are unavoidably subject.

Reelection depends on many other things besides money, and actions that promote reelection do not always serve constituents or conscience. Elected officials routinely confront choices between doing what helps them stay in office and doing what they think is best for their constituents, their party or their country. To give some familiar

41. Lowenstein, *supra* note 1, at 302.
42. *Id.* at 308-13.
43. *Id.* at 313-17.
44. *See id.* at 322-29.
45. *See id.*

examples, the prevalence in Congress of the wasteful pork barrel politics, of vacuous position taking, and of endless self-promotion,[46] suggests that money is by no means the only electoral necessity that promotes shirking. Lowenstein falls short of demonstrating that the current campaign finance system, which, after all, limits the amount of money supplied by any particular individual or political action committee (PAC), is an especially egregious source of shirking and, therefore, requires the sweeping reforms he proposes. Still, he makes the strongest case I have seen in the reform literature for the view that the process is "tainted with corruption."[47]

Like Lowenstein's analysis of the problem, his proposed solution reflects thoughtful consideration of points made by critics of earlier reform proposals.[48] He recognizes that even if everyone agrees on the problem, no solution may command a bare majority, let alone a consensus.[49] The campaign finance debate has become highly politicized; any proposed change is scrutinized for partisan bias as well as its potential effect on the competitive balance between incumbents and challengers. Even ostensibly neutral observers have differing views on what would count as improvement. Thus, Lowenstein advances his proposals tentatively as an attempt to define some common ground where pareto-efficient[50] reforms might be sought.

Lowenstein's review of the electoral realities which any campaign finance system must take into account is generally on target. He accepts that competitive campaigns are unavoidably expensive—too expensive to finance through small individual contributions.[51] He also recognizes that the potential for serious competition varies widely across districts; most districts are uncompetitive for reasons having nothing to do with money.[52] From Lowenstein's perspective, the basic challenge is to exclude corrupting PAC contributions while still supplying enough money for vigorous competition (and thus effective monitoring).[53] Public funds are the only practical alternative to PAC money. The problem is to design a system which

46. *See generally* M. FIORINA, CONGRESS: KEYSTONE OF THE WASHINGTON ESTABLISHMENT (2d ed. 1989); D. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION (1974).

47. Lowenstein, *supra* note 1, at 306-24.

48. *Id.* at 351-60.

49. *Id.* at 306.

50. A parto efficient change is a change which makes at least one party better off without making any other party worse off.

51. Lowenstein, *supra* note 1, at 348.

52. *Id.* at 248-51.

53. *Id.*

can supply enough money for serious competition when it arises without wasting so much in hopelessly uncompetitive districts that the total cost becomes intolerable.[54]

Lowenstein's solution should find a sympathetic audience among political scientists if anywhere.[55] He proposes to let the parties—specifically, legislative party leaders—decide where to spend the money.[56] Party leaders would have a strong incentive to distribute the money efficiently in order to maximize their party's strength in Congress. Centralized distribution would overcome the collective goods problem generated by incumbents disinclined to increase their own chance of defeat (by relinquishing funds to their party's challengers) in order to enhance their party's overall strength.[57] Lowenstein would also lift all restrictions on the parties' use of privately raised funds and give parties public funds for generic advertising.[58]

According to Lowenstein's proposal, candidates would also be able to raise funds privately but under strict limits. A maximum of $50,000 could come from the "special interests" currently represented by the typical PAC.[59] In the "spirit of moderation," a little corruption is tolerable.[60] Candidates could accept up to another $50,000 from a special category of PACs financed exclusively by individual contributions not exceeding $50; labor and ideological PACs would be most likely to fit in this category.[61] Individual contribution limits would be cut to $100, but with no limit on the total take permitted from this source.[62] Independent spending against a candidate would be matched on an upwardly sliding scale, with full matching of every independent dollar spent beyond $30,000.[63]

Lowenstein's proposal addresses effectively many of the objections to previous reform proposals. It strengthens rather than weakens parties; it abjures expenditure ceilings and so does not protect incumbents or restrict campaigning (and hence does not reduce mon-

54. *Id.*

55. For the classic manifestation of political scientists' affection for strong parties, see COMM. ON POL. PARTIES, AMERICAN POL. ASS'N, TOWARD A MORE RESPONSIBLE TWO-PARTY SYSTEM (1950).

56. Lowenstein, *supra* note 1, at 351-54.

57. *Id.*

58. *Id.* at 354-55.

59. *Id.* at 355-57.

60. *Id.* at 356.

61. *Id.* at 359.

62. *Id.* at 357-58.

63. *Id.* at 359-60.

itoring); it promises adequate funds for competitive campaigns but avoids wasting money on lopsided contests. It retains a significant, though reduced, role for PACs and deals with the threat of independent spending. It avoids overstating the financial potential or moral superiority of small individual contributions.[64]

Lowenstein does not deal with the philosophical objection to public finance of campaigns—that taxpayers are compelled to finance the dissemination of ideas they may abhor—but if one accepts his depiction of the present system as inherently and seriously corrupt, this is a price worth paying. It does not violate democratic norms to tax people to finance the public good of an improved democratic polity. Despite the virtues of Lowenstein's proposal, there are two major problems with his package. On the technical side, it ignores third parties (or independent candidates) and primary elections. Like most students of congressional elections, I do not take third parties very seriously; most of the time they are of no importance and ignoring them is of no consequence. Nonetheless, at a few historically critical moments, third parties have been very important. Dams are designed to withstand the hundred-year flood; a campaign finance system should also be able to handle rare but momentous events. Here, Gottlieb is certainly correct in arguing that regulation should not impose a permanent status quo but afford individuals the right to a continuing choice.[65]

The third party problem can presumably be solved though further tinkering with Lowenstein's proposal. Primary elections are another matter. Lowenstein says nothing about how, or under what restrictions, primaries are to be financed. Rather, he merely acknowledges in a footnote that, "[a]s should be clear from the nature of the proposals, they are not adaptable to primary elections."[66] He was, no doubt, wise to ignore primaries because they introduce so many thorny complications. Not only do primaries vary widely in degree of competition and decisiveness (in some districts, the primary *is* the election), they are also spread out over seven months (early March to early October), and timing governs their relationship to the general election. Lowenstein's dilemma—reducing special

64. The most effective way to raise small sums from individuals is through direct mail solicitation, and appeals are most successful when they can arouse emotions of fear, anger and hatred. Candidates and groups espousing extreme views do this best and so would benefit from any system that places a premium on small individual contributions.

65. Gottlieb, *supra* note 1, at 279-86.

66. Lowenstein, *supra* note 1, at 305 n.20.

interest contributions drastically while supplying sufficient money for serious competition and not wasting money in lopsided races—reappears in primary elections. However, Lowenstein's solution of party leaders deploying funds is not available.

The point is not that Lowenstein has slipped here, but that a major, perhaps intractable problem for any regulatory scheme of the kind he proposes is the diversity of circumstances to which it must be adapted. It is one thing to design a system of mixed public and private financing for a single office such as the presidency; it is quite another to design a system that does not have perverse consequences in primary or general elections in any of 435 districts and 50 states.

The other problem with Lowenstein's package is its politics. He does a reasonable job of sketching the advantages of the proposal to Democrats and Republicans, egalitarians and libertarians, incumbents and challengers.[67] Indeed, he may even understate its attraction to incumbents, assuming they continue to regard fund raising as a "disgusting, degrading, demeaning experience."[68] Lowenstein, however, is wisely modest about the short-term prospects for such a package. Without the stimulus of a major scandal, it is difficult to envision partisans overcoming their mutual suspicions and differences; partial public funding of presidential campaigns would have fallen to a presidential veto but for Watergate.[69] Furthermore, the concentration of financial authority in legislative party leaders, congenial as it is to political scientists, will be hard to sell to a Congress composed of politicians whose career strategies are predicated on autonomy.

The more important political difficulty, however, is public opinion. Considering that flack members of Congress took over a proposed 51% pay raise in 1989,[70] it is not hard to guess how the public would view spending more than three times as much ($90 million compared to about $25 million per year for the pay raise) to finance their election campaigns. Americans are disdainful of campaigning already, and excessive spending heads the list of complaints.[71] Mis-

67. *Id.* at 360-64.

68. D. ADAMANY & G. AGREE, POLITICAL MONEY: A STRATEGY FOR CAMPAIGN FINANCING IN AMERICA 130 (1975) (quoting Hubert H. Humphrey).

69. *See* G. JACOBSON, MONEY IN CONGRESSIONAL ELECTIONS 205 (1980).

70. Hook, *How the Pay-Raise Strategy Became Unraveled*, CONG. Q. WEEKLY R., Feb. 11, 1989, at 265.

71. *Campaign Finance Reform: Hearings Before the Task Force on Elections of the Comm. on House Administration*, U.S. House of Representatives, 98th Cong., 1st sess. 154, 164 (1983) (statement of Alan Swift, Chairman, Task Force on Elections).

guided as this view is, it is understandable to people at the receiving end of most contemporary campaigns. That Congress was willing to give up honoraria in return for a pay raise made no difference to the public. Similarly, the anticipated benefits of weakening "special interests" are unlikely to carry the day against an even deeper invasion of taxpayers' pockets. Of course, a sufficiently egregious scandal might move popular majorities to support public funds for congressional campaigns; but public opinion would probably insist upon perniciously low spending limits as part of the package. The effort to reduce the divergence of interests between agents and principals would then also reduce monitoring—precisely the tradeoff Lowenstein is anxious to avoid.

IV.

Neither Gottlieb's or Lowenstein's proposal has much prospect of adoption. Does it matter? Not very much. Gottlieb's proposal is a solution in search of a problem. It is usually the proponents of regulation who have to be reminded that despite FECA, anyone who wants to put any amount of money into electoral politics can find a legal way to do so.[72] Of course, the point applies equally to arguments for deregulation. Insofar as present restrictions inhibit fund raising, and thus monitoring, the remedy is to raise contribution limits. Considering how inflation has eroded the value of the dollar since 1974, and with campaign costs outstripping inflation, an argument for higher contribution limits under the current regulatory system is compelling. Higher limits might also mitigate a problem often mentioned by candidates but ignored in these papers: the amount of time and energy they must devote to fund raising when they have to raise large war chests in small chunks.

Lowenstein has identified a problem to justify his solution—private campaign contributions create incentives to shirk—but leaves in doubt how this source of shirking stacks up against the other problems. Campaign contributions are by no means the only way interest groups attempt to influence politicians, nor is it obvious that junkets and honoraria, book contracts and real estate deals, and all the other perks and favors we might list, can be regulated out of existence without strangling pluralist politics. Reducing the PACs' role in financing campaigns will put a very small dent in the overall pattern of interest group activity. Diminishing the need for campaign

72. *See* F. SORAUF, *supra* note 28, at 317-25.

funds will do nothing to reduce the personal greed that has been the source of recent congressional scandal. Even if it is believed, along with Lowenstein, that it is still worth lighting one little candle, there are practical and political difficulties. The difficulties involved with designing a campaign finance system that limits private contributions without seriously hampering competition (and thereby reducing the capacity of elections to monitor and sanction elected officials), appear at present to be nearly intractable.

Nonetheless, Lowenstein is on the right track. The best way to diminish the importance of PACs, assuming that is desirable, is to strengthen the parties. Political scientists generally favor strong parties because they offer another solution to the principal-agent problem; they make it easier for the citizens to hold leaders collectively responsible. When the principals can use party labels to sanction political agents collectively for the aggregate performance of government, problems of hidden action and information recede. Regardless of what goes on behind the scenes, members of the ruling majority are held accountable for the overall quality of governance. Elections that enforce collective responsibility create incentives for effective party performance, encouraging leadership and discipline in the legislature. The opposition's role of monitoring and offering an alternative is also simplified and focused in ways that enhance control of agents by principals.[73]

Gottlieb, like Lowenstein, gives parties an important role in facilitating democratic control, and a good case can be made for loosening restrictions on parties under the current law. Indeed, it seems that stronger parties would diminish many of the problems seen in the present system of campaign finance. However, if history is any guide, there is little chance for much movement toward significantly stronger, more responsible legislative parties. At least since the progressive era, American parties have been shaped by the political environment—the complex constitutional structure, cleavages within as well as between party coalitions, changing communications technologies and the career strategies of individual politicians—far more than they have shaped it in return. The same holds true to an even greater extent with the campaign finance system; it reflects underlying political realities far more than it affects them. If this is so, eliminating the problems for which the campaign finance system is rou-

73. *See* Fiorina, *The Decline of Collective Responsibility in American Politics*, 109 DAEDALUS 26-27 (1980).

tinely blamed would require a fundamental restructuring of the political system.