MONEY, EQUALITY AND THE REGULATION OF CAMPAIGN FINANCE

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The influence of money on politics poses an acute problem for American democracy. That is hardly surprising since the United States is among the most durably democratic and fiercely capitalistic of nations. The tension between these two systems—economic and political—reaches its apex in the electoral context. Tremendous financial resources are indispensable to the mass media campaigns that characterize contemporary national politics. Yet, as Senator Barry Goldwater has written, "unlimited campaign spending eats at the heart" of the process of self-government.

The dangers of unregulated electoral financing are multifaceted and well known. Campaigns in which one side greatly outspends the other have few elements of a fair fight. Monetary resources have a direct impact on the candidates' ability to communicate with the electorate. Politicians believe, with apparent cause, that expensive advertising campaigns pay off at the polls. Faced with such expenditures, some citizens see politics as the arena of the rich. Wealth also presents the potential for corruption. The ever increasing cost of campaigns renders elected officials too dependent on financial supporters. Even if candidates resist the temptations of high finance, the appearance of wrongdoing remains.

Unbridled political expenditures threaten more than the fairness of our elections and the perceived virtue of our leaders. Citizens whose wealth allows them to complement their enthusiasm for a candidate or an issue with a substantial financial contribution enjoy a special "equality" of electoral participation. Their speech is amplified by the mass media in a way that less affluent participants will be unlikely to match. They also obtain easier access to the officeholder. Their ideas and interests are apt to be given a fuller, and perhaps understandably, a more sympathetic hearing.

This does not mean, of course, that levels of campaign finance are always at odds with democratic sentiment. A political candidate's ability to raise money may well be a function of the popular-

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ity of her ideas. Nor is it true that money is everything in a political campaign. Occasionally, the more extravagant candidate loses. Frugal supporters may work longer hours, be more persuasive as they proceed from door to door, know more about grass roots organizing, or possess skills not employed by better financed adversaries. Still, the reality of modern electoral campaigning leaves them at a disadvantage. Money remains the mother's milk of politics and contributors enjoy a unique status in electoral participation. One person, one vote hardly captures the essence of modern politics.

Recognizing the potentially corrosive impact of excessive spending, Congress has, through a variety of statutory provisions, sought to regulate federal campaign funding. The Federal Election Campaign Act amendments limit the size of political contributions and the amounts which may be spent "relative to a clearly defined candidate." The Act requires groups who spend or receive campaign funds to disclose the names of contributors, and the amount of the contributors, good will. For presidential elections, the statute also initiated a system of public funding to forestall the need for large contributions.

But campaign spending regulations implicate core first amendment values. As a result, campaign finance reforms have received a mixed reception in the courts. The landmark decision in *Buckley v. Valeo* ratified parts of the congressional scheme and invalidated others. For example, public funding and disclosure requirements were upheld. Financial limitations, however, sustained a split verdict. More specifically, the Court held that individual contributions to campaign committees may be limited and that across the board campaign spending caps are permissible as part of a public funding scheme. At the same time, ceilings on the total expenditures by a candidate were said to violate the first amendment. Perhaps most importantly, limits on independent expenditures on a candidate's behalf by individuals or groups were held unconstitutional.[1]

Over the next decade, the Supreme Court employed the *Buckley* approach to a variety of state and federal electoral regulations, with mixed consequences. The result at the national level, as Justice White has argued, is that an apparently "coherent regulatory scheme" has been transformed into a "nonsensical, loophole ridden patchwork."[2] The distinction between political contributions and independent expenditures, which forms the core of the campaign finance cases, has proven both unpersuasive and anomalous. The

1. 424 U.S. 1 (1976) (*per curiam*).

2. F.E.C. v. National Conservative Political Action Commitee, 105 S. Ct. 1459, 1479 (1985) (White, J., dissenting).

Court's attempt to treat contributions as mere demonstrations of solidarity shortchanges the expressive interests entailed in political benefaction.[3] Moreover, *Buckley* allows Congress to prohibit a $50,000 offering to a candidate to help defer the costs of a television campaign, but not direct payment by a donor to the station to keep the ads running. The drafters of the FECA were correct in thinking that this "wooden" interpretation of the Constitution renders the Act "virtually meaningless." If the unequal political access that wealth can buy is a "critical problem for contemporary first amendment theory," *Buckley* doesn't seem to be the solution.[4]

It is not my purpose here, however, to explore generally the constitutional validity of campaign finance regulations. I shall examine instead a single central premise of *Buckley* and its progeny. Various components of the Federal Election Campaign Act are designed, at least in part, to "equalize the relative ability of individuals and groups to influence the outcome of elections." Since the Supreme Court's decisions have closely equated political spending with speech, however, the expenditure equalization rationale of the FECA has been regarded as suspect. In *Buckley*, the Court ruled that "the concept that government may restrict the speech of some elements of society in order to enhance the relative voice of others is *wholly foreign* to the First Amendment."[5] *First National Bank of Boston v. Bellotti*[6] used the same premise to invalidate a Massachusetts statute prohibiting certain corporate political expenditures. And more recent Supreme Court efforts have held that Congress may not use its regulatory powers to attempt to equalize the effects of campaign spending. Scholars have echoed the claim, arguing that the "enhancement theory . . . has no place in any sensible treatment of the First Amendment."[7]

The Court's rejection of the equality justification for regulating

3. People donate money to campaigns to support ideas as well as candidates. They recognize that their views are apt to get the widest play out of the mouths of candidates. *See*, Polsby, *Buckley v. Valeo—The Special Nature of Political Speech*, 1976 SUP. CT. REV. 1, 23. I think, for example, that providing financial support for Ronald Reagan's 1980 presidential campaign was a decidedly effective method of furthering conservative political values. This, of course, does amount to hiring someone to speak for you. But surely "hired" speech is constitutionally protected. And one would guess that the great bulk of candidate-identified independent expenditures which the FECA sought unsuccessfully to regulate are purchased professional efforts as well. See, Powe, *Mass Speech and the Newer First Amendment*, 1982 SUP. CT. REV. 243, 258-59. Moreover, the Supreme Court has been unable to maintain the "speech by someone other than the contributor" rationale. *NCPAC*, 105 S. Ct. at 1461.

4. See, Carter, *Technology, Democracy and the Manipulation of Consent* (Book Review), 93 YALE L.J. 581 (1984). *See also* S. REP. NO. 93-689, *reprinted in* 1974 U.S. CONG. CODE & ADMIN. NEWS 5604-05.

5. 424 U.S. at 48-49.

6. 435 U.S. 765 (1978).

7. Powe, *Mass Speech and the Newer First Amendment*, 1982 SUP. CT. REV. 243, 246;

campaign finance will be the focus of this essay. I believe that restricting the amount of money some can spend "in order to enhance the relative voice of others" is far from "foreign" to our system of free expression. It may well become an essential component of the first amendment's development. That does not mean, of course, that all, or even any, efforts to further equal political participation through regulation are constitutionally permissible. Equality is but one of several values implicated by limitations on campaign finance. Moreover, restrictions on the amount of money which may be spent on political expression present such intractable problems of application and demarcation—both theoretical and practical—that their constitutional status can hardly be assessed with confidence.

The Court's hasty rejection of the equality rationale may suggest, however, that the campaign spending decisions have unnecessarily hindered electoral reform. Whether or not that ultimately proves to be the case, *Buckley* and its progeny have clearly managed to sidestep the constitutional dilemma presented by the regulation of campaign spending. As long as the impact of money on the political process remains problematic, the tensions that *Buckley* avoided still lie ahead. Perhaps the first amendment's free speech guarantee should be interpreted in its third century to address the frictions between our political and our economic traditions more directly.

I

Restrictions on campaign contributions and expenditures obviously limit political expression. *Buckley* measured these restraints against three asserted government interests: preventing real or perceived corruption, slowing down the rising cost of campaigns, and equalizing individual influence over the outcome of elections by muting "the voices of affluent persons and groups."[8] The rejection of the third rationale—equalization—as a legitimate governmental concern led to the result in *Buckley*. Under *Buckley*, campaign contributions were held to be clearly related to the corrupting dangers of a political quid pro quo. Expenditures advocating the election or defeat of a candidate "made independently of the . . . campaign," however, apparently neither directly increase the cost of running for office, nor "pose dangers of . . . corruption comparable to . . . [those resulting from] campaign contributions."[9] Accordingly, the case for sustaining the contribution limits while invalidating the expendi-

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and BeVier, *Money and Politics: A Perspective on the First Amendment and Campaign Reform*, 73 CAL. L. REV. 1045 (1985).

8. 424 U.S. at 25-26.

9. *Id.* at 46.

ture caps seemed to flow from the first amendment with ease.[10]

The legislative history of the FECA reveals, however, that the "chief goal of the contribution and expenditure limitations [was] to provide the federal election process with a greater measure of equal political opportunity."[11] By gutting vital portions of the regulatory program, the Court's treatment of spending limits and the equality rationale deprived the Act of its central aim. In the process, the debate over the constitutional boundaries of electoral reform shifted to a series of relatively technical distinctions. Few areas of constitutional jurisprudence, for example, have engendered so much debate over the appropriate standard of review as have the campaign finance cases. Entire articles have been written analyzing whether the *Buckley* Court correctly applied "strict scrutiny." Surprisingly, the advocates of judicial deference count among their numbers Professors Tribe, Cox and Judge Wright—not otherwise known for counselling timid visions of the first amendment. To my mind, this strange alignment is not unrelated to the rejection of the equality rationale. If equalizing the relative ability of individuals to influence the outcome of elections with their financial resources had been recognized as a permissible, and sometimes overwhelming, goal of government, some spending limitations might survive elevated review. It would no longer be necessary to attempt to characterize spending limits as essentially untroubling. After all, a law that makes it a crime for a person to place a "single, one-quarter page advertisement . . . in a major metropolitan newspaper" is nothing to sneeze at.[12]

The equally energetic debate over whether money is speech can be seen in a similar light. The Court's complete rejection of the equality rationale inappropriately disregards Congress's concern about the linkage of financial and political resources. But the financial regulations are also not simply limitations on spending money. They limit the spending of money to engage in a particular activity, and that activity is constitutionally protected. The impact on political expression is intentional, significant and direct. Imagine Judge Wright's response to a statute that restricted the amount of money a woman can spend to obtain an abortion to $200 per year, or that

10. 424 U.S at 25-26, 28-29 and 46-47. In result, of course, the Buckley majority turned aside only part of the congressional effort to promote equality. The public funding scheme for presidential elections was sustained as an acceptable tool "to reduce the deleterious influence of large contributions on our political process." *Id.* at 91. The federal election cases indicate, therefore, that in the campaign finance context Congress can use the carrot to foster political opportunity, but not the stick.

11. *Id.* at 40. *See* S. REP. NO. 92-96, 92d Cong., 1st Sess. (1971).

12. Wright, *Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?*, 82 COLUM. L. REV. 609—11 (1982).

limited the amount of money an individual can give to a church to $20 a week. The exacting question presented by the campaign finance regulations of the FECA is not whether those restrictions burden constitutionally protected speech. They clearly, even dramatically, do so. The question lying at the heart of *Buckley*, rather, is whether speech may be so burdened in order to enhance the relative voice of other speakers. The refusal of the Supreme Court to address that issue seriously has bestowed questions like the standard of review and the link between money and speech with greater significance than they deserve.

II

The campaign finance decisions draw a "tight equation" between the expenditure of money and constitutionally protected speech. That conclusion, without more, is unsurprising. Political communication in today's mass society costs money. "Increasing dependence on television [and] radio," in the Court's view, "has made these expensive modes of communication indispensable instruments of effective political speech."[13] This nexus, of course, provides the basis for the Court's demanding review of campaign finance limitations. And since the equalization premise of the FECA has been deemed invalid, (at least with regard to limits on independent expenditures), strict scrutiny has proven fatal.[14]

It is difficult to quarrel with this logic—as far as it goes. But the direct linkage of money and speech is a double-edged sword. *Buckley* and its progeny purport to be rooted in the real world of American political life. If you can't spend money, the theory goes, you can't meaningfully speak. Yet if we think of the millions of Americans who, under the Court's premise, simply cannot afford to "speak," the equalization rationale begins to take on a different cast.

Consider Dean Stone's defense of the *Buckley* Court's strict review of expenditure limits. Stone persuasively argues that "an individual willing to spend $10,000, but limited by law to $1,000, has no ready alternative to make up for the $9,000 reduction in the total amount of his expression. It simply won't do to tell that individual to distribute leaflets instead."[15] No indeed. Cheap speech is no substitute for mass communication. But it is hardly appropriate to examine only one side of *that* coin. If a $1,000 expenditure limit

13. 424 U.S. at 19.

14. Polsby, *Buckley v. Valeo—The Special Nature of Political Speech*, 1976 SUP. CT. REV. 1, 18. 424 U.S. at 20.

15. Stone, *Content-Neutral Restrictions*, 54 U. CHI. L. REV. 46, 59-60 (1987). See, Williams, *The Idea of Equality*, in JUSTICE AND EQUALITY 116, 128-29 (H. Bedau ed. 1971).

threatens to render a potential $10,000 speaker ninety per cent censored, what is the status of a citizen who would like to engage in mass speech but has no money? Is it clear that Congress must disregard the plight of the bulk of the American populace in its electoral expression calculus?

Tensions between our economic and political frameworks come to the fore at this point. If the non-affluent are unable to engage in effective political expression, our economic traditions, buttressed by the state action doctrine and our custom of negative rights, teach that government is not the source of inequality. Our political aspirations, however, lead in a different direction. Some of the cornerstones of constitutional jurisprudence assert in uncompromising tones that "wealth . . . is not germane to one's ability to participate intelligently in the electoral process," and that "each and every citizen has an inalienable right to full and effective participation in . . . politic[s]. . . ."[16] Those statements are difficult to square with the Court's twin conclusions that on the one hand it is impossible to speak without money, and on the other that it is impermissible to "restrict the speech of some elements of our society in order to enhance the relative voice of others."[17]

One possible escape from the dilemma is to use the carrot rather than the stick. *Buckley* sustained the implementation of campaign spending ceilings in publicly funded presidential elections. "Public financing" was characterized as an acceptable means of "eliminating the improper influence of large private contributions. . . ."[18] Funding formulas, however, present their own inequality problems; and it is unrealistic to suppose that government subsidization of elections will be implemented across the board. It is one thing for the federal government to foot the bill in presidential elections. It is even possible that the Congress will pass legislation to publicly fund House and Senate races. Local governments, however, can hardly be expected to follow the federal lead. Nor is it clear that public funding is a viable option in referendum campaigns. But most important, as long as enthusiastic and generous supporters are left free to "supplement" publicly funded campaigns by the unrestricted use of independent expenditures, the right to political participation is threatened by economic inequality. Unless funding schemes are accompanied by meaningful spending limitations, the schemes won't work. If expenditure limits are used, how-

16. Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1966). *See also* Hill v. Stone, 421 U.S. 289 (1975), and Reynolds v. Sims, 377 U.S. 533, 565 (1964).

17. *Buckley*, 424 U.S. at 48-49.

18. *Id.* at 96.

ever, the asserted tension between freedom of expression and the equality rationale remains.[19]

In part the difficulty arises because the Court's characterization of the equality rationale is too sweeping. The campaign finance cases describe the FECA's concern with economic disparity as the desire to "equalize the relative ability of individuals and groups to influence the outcome of elections."[20] But contribution and expenditure limitations do not literally try to equalize everyone's chances of influencing electoral campaigns. Hundreds of the factors which citizens, organizations, and candidates bring to bear on the election process are left unmolested. Differences in persuasive ability, appearance, charisma, name recognition, organizational skill, community ties, and other often determinative concerns remain free to affect elections. Nor, as has sometimes been claimed, does the regulation of campaign financing posit an "ideal" deliberative selection procedure and then attempt to force our democracy into the imagined mold. The FECA does not prohibit candidates from running campaigns dominated by content-free, thirty-second advertisements that threaten to leave American political life devoid of both issues and intelligence.[21]

Campaign finance measures turn on simpler premises. They arise from the recognition, echoed by the Supreme Court in *Buckley*, that financial distinctions dramatically affect citizens' opportunities to participate in the political process. This empirical conclusion is then measured against the democratic ideal, reflected in cases like *Harper v. Virginia Board of Electors*, that wealth is not "germane" to political participation. Responding to this clear tension, contribution and expenditure limitations are designed to mitigate the harm to equal political opportunity which results from financial disparity. Efforts to curb the influence of wealth on politics present inherent conflicts with free speech only if we assume that the first amendment enacts a system of expression reserved for those who can compete with dollars in a free market. That premise, however, is not demanded by the text, nor is it consistent with judicial acceptance of public funding schemes. As Professor Van Alstyne has written in another context, this premise is also based on a "fatal myopia in its failure to see how clearly freedom of speech is abridged by a government policy that adheres only to a private property system and a market pricing mechanism in determining

19. 424 U.S. at 97-100. *See also* 424 U.S. at 293 (Rehnquist, J., dissenting). S.2, Senatorial Election Campaign Fund Act of 1987, 100th Cong., Report No. 100-58.

20. 424 U.S. at 48.

21. BeVier, *supra* note 7, at 1067.

who shall be able to speak."[22]

Nor is the notion of separating economic power from political participation "wholly foreign" to our system of governance. Limitations on the use of corporate and union funds to support political candidates have traditionally been rooted in just such a premise. Consider the Supreme Court's decision in *Federal Election Commission v. Massachusetts Citizens for Life*.[23] There the Justices ruled that federal regulations which prohibit the use of corporate treasury funds to make independent electoral expenditures cannot be constitutionally applied to certain advocacy groups using the corporate form. General corporate restrictions were thought permissible, however, since "direct corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace."[24] *Massachusetts Citizens for Life* explicitly "acknowledge[s] the legitimacy of Congress' concern that *organizations*" which amass wealth in the economic sphere not be allowed to exercise undue political power as a result.[25] But if wealth is not "germane" to participation in politics, what goes for organizations should go for individuals as well.[26]

There is a sense, however, in which the expenditure limitations set forth in the FECA take the goal of political equality a step beyond decisions like *Harper* and *Reynolds v. Sims*. Those rulings sought to remove impediments to equality constructed by the state—a poll tax in one instance and a malapportioned legislature in the other. Campaign reform measures seek to mitigate the harm flowing from disparities created by the operation of a "private" market. Relying on an equality standard rather than existing patterns of wealth to determine individual opportunity is hardly the norm in our society. Moreover, the traditional vision of the first amendment demands complete governmental neutrality, or inaction, in the face of political expression.

Of course the lines between action and inaction, neutrality and

22. Van Alstyne, *The Mobius Strip of the First Amendment: Perspectives on Red Lion*, 29 S.C.L. REV. 539, 562 (1978) (rebutting claim that free market pricing should determine licensing issues in electronic media context). *See also* Baker, *Scope of the First Amendment Freedom of Speech*, 25 U.C.L.A. L. REV. 964, 981-90 (1978).

23. 479 U.S. 238 (1986).

24. *Id.* at 247.

25. *Id.* at 263.

26. In United States v. Automobile Workers, 352 U.S. 567 (1957), for example, the Supreme Court upheld a statutory prohibition on the use of union funds in elections for federal office. The prohibition was described as essential to "curb the political influence of those who exercise control over large aggregations of capital." *Id.* at 585. *See also* Federal Election Commission v. Massachusetts Citizens for Life, 107 S. Ct. 616, 628-31 (1986).

intervention, have become increasingly difficult to manage in all of constitutional law. And the inaction which *Buckley* and its supporters demand is of a particular variety. Cass Sunstein has written that "both neutrality and inaction [are] defined by reference to the behavior of private actors . . . in light of the existing distribution of wealth and entitlements."[27] Neutrality, therefore, perpetuates the existing order and escapes constitutional sanction. Government conduct which proposes change, on the other hand, represents "action" and is subject to review. This apparent constitutional presumption favoring the preservation of the status quo may render the public-private distinction problematic.[28]

Wherever one comes out on that debate, however, campaign finance reform presents a particularly unappealing case for the application of a rigid government neutrality requirement. As the race decisions have demonstrated, persistent state inaction in the face of pervasive private deprivation blurs the distinction between inflicting, and merely failing to prevent, harm. An electoral scheme that strongly tracks existing patterns of wealth knowingly accepts a significant denial of political equality. A reasonable argument could be made, therefore, that a congressional regulatory regime ignoring the disparities in political power resulting from economic advantage imposes considerable harm to the egalitarian ideal. Given the difficulty of separating cause from failure to prevent harm under any neutrality theory, the Court has little justification in overturning Congress' choice, through the FECA, to ameliorate existing economically-based, political inequalities.[29]

What the Court in *Buckley* characterized as the "equality" rationale is, in fact, an attempt by Congress to segregate political from financial power. It aims to protect the equality the Constitution demands in the former realm, from the massive inequalities that characterize the latter. So understood, the governmental interest undergirding both contribution and expenditure limitations is not only an acceptable, but often a compelling public concern.

Of course, an embrace of the equality rationale does not lead inexorably to the conclusion that all independent expenditure limits or overall campaign spending ceilings are constitutional. Such restrictions raise many questions. Expenditure limits often restrict

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27. Sunstein, *Lochner's Legacy*, 87 COL. L. REV. 873, 917-19 (1987).

28. *See generally*, L. TRIBE, AMERICAN CONSTITUTIONAL LAW 1147-1175 (1978). *See also* Chemerinsky, *Rethinking State Action*, 80 NW. L. REV. 503 (1985); and J. Shklar, *Injustice, Injury and Inequality* in JUSTICE AND EQUALITY: HERE AND NOW 21 (1987).

29. *See, e.g.*, Reitman v. Mulley, 387 U.S. 369 (1967); Shelley v. Kramer, 334 U.S. 1 (1948); Peterson v. City of Greenville, 373 U.S. 244 (1962); and L. TRIBE, CONSTITUTIONAL CHOICES 246-47 (1985).

speech in more pervasive ways than do contribution limits. Like contribution caps, they may operate in a particularly burdensome way on unpopular groups. Expenditure limits, if low enough, may work to reduce expression far more than any hoped for equality gain can justify. It is even possible that the problems of scope and application engendered by meaningful restrictions will prove to be so formidable that the effort should be rejected.

More fundamentally, restraining the quantity of money which can be dedicated to campaign expression runs counter to the normal "more speech" premises of the first amendment. And if government can attempt to minimize the impact of money on the electoral process, why not other "irrelevant" factors like name recognition or good looks? If limiting the money that can be spent on political speech is acceptable, why not "equalize" the money spent on other types of expression? Can the McDonald's advertising budget be checked in order to afford equal economic opportunity to a mom and pop diner?

There may be no satisfactory answers to these sorts of questions. The reasons to confront them directly, however, and to treat the impact of financial power on the political process as an arena of special constitutional concern, are far more clear. John Rawls has written that "the effects of injustices in the political system are much more grave and long-lasting than market imperfections."[30] As those with greater private means are permitted to use their advantage to control the course of public debate, political power accumulates and the coercive apparatus of the state can be employed to ensure favored position. Symbolically, the impact of financial power on the political process is destructive as well. If the less favored are effectively prevented from exercising their fair degree of influence, apathy and resentment are likely to result. A constitutionally mandated laissez-faire system of electoral expression can thus generate pronounced harm to political equality.[31]

Limitations on campaign financing present a clash between liberty and equality interests—both of which have constitutional pedigrees.[32] *Buckley*, by rejecting the equality rationale, sidestepped the

30. J. RAWLS, A THEORY OF JUSTICE 226 (1971).

31. *See* M. WALZER, JUSTICE AND EQUALITY 144 (1986); and Tushnet, *Corporations and Free Speech* in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 253 (Kairys ed. 1981).

32. The relationship between equality and the first amendment in this context has received ample attention. Professor Karst has written that equality is a "central principle" of the first amendment. Karst, *Equality as a Central Principle of the First Amendment*, 43 U. CHI. L. REV. 20 (1975). Others have claimed that the "goals furthered by the principles of equality are, both conceptually and practically, distinct from the purposes of freedom of expression." Redish, *The Content Distinction in First Amendment Analysis*, 34 STAN. L. REV.

constitutional dilemma posed by the FECA. There is perhaps a strong temptation, when faced with the spectacle of competing constitutional values tugging in opposite directions, to abandon completely the weaker, less traditional claim. The constitutional landscape is made to appear less sullied and less complex. But neglected demands often reappear, seeking a fuller hearing. And it is simply not known how far these conflicting claims can be reconciled. The influence of money on politics remains an intractable problem for this democracy. The "thorniest" issues of electoral reform are not rendered less so by being ignored.[33]

113, 136 (1981). *See also* Van Alstyne, *supra* note 17, at 572; Blasi, *Prior Restraints on Demonstrations*, 68 MICH. L. REV. 1482 (1970).

Campaign finance reforms, no doubt, implicate both liberty and equality concerns. Whether the equality interests are appropriately lodged in the first amendment itself, or in Congress' "substantive authority to regulate federal elections" (Buckley v. Valeo, 424 U.S. 1 (1976)) is not crucial—though the former route presents some interesting linguistic difficulties. In either event, there is "some foothold for the notion of equality in these cases." B. WILLIAMS, JUSTICE AND EQUALITY 126-7 (H. Bedau ed. 1971). *See also* F. SCHAUER, FREEDOM OF SPEECH: A PHILOSOPHICAL ENQUIRY 212 n.14 (1982): "The Free Speech principle . . . necessarily implies some degree of equality among speakers."

33. Karst, *supra* note 18, at 64.