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BILLIONAIRE DEMOCRACY



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THE HIJACKING OF
THE AMERICAN
POLITICAL SYSTEM



GEORGE R. TYLER

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POLITICAL SYSTEM

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10440 N. Central Expressway, Suite 800
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www.benbellabooks.com
Send feedback to feedback@benbellabooks.com

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*Toward a Better Democracy
for Alexia, Tibber, and Tippi*

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INTRODUCTION



Removing the Dead Hand of Pay-to-Play

Fifty-seven percent of surveyed Albuquerque voters think that federal elections are overly influenced by special interest money. In contrast, only 23 percent think that Albuquerque elections are overly influenced by special interest money . . . Seventy-one percent believe that [campaign] spending limits improve the fairness of elections by ensuring that ordinary citizens, not just the very wealthy, can run for office in Albuquerque without having to raise so much money from special interest groups.¹

—US District Court, D. New Mexico, September 2001

Well, I checked the Citizens’ Clean Election commission website this morning and it says that this act was passed to “level the playing field” when it comes to running for office. Why isn’t that clear evidence that it’s unconstitutional?²

—Chief Justice John Roberts, *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 2011

In Germany, giving money in politics is always seen as trying to buy access.³

—Andrea Römmele, Hertie School of Government (Berlin)

FOUR IN FIVE AMERICANS support higher minimum wages, mandated paid sick leave, and filling gaps in Social Security coverage by raising taxes on the wealthy. These and a host of similar popular policies are commonplace in wealthy democracies like Australia and Germany, but not in America. This country's failure to reflect supermajority preferences in its public policies marks it as a low-quality democracy.

The search for ways to improve the quality of America's democracy begins with an examination of a system as old as mankind: the exchange of goods for value. Inherent in this system, at the intersection of politics and economics, is a default setting that occurs in virtually all societies, including capitalist ones: A handful of powerful individuals inevitably come to dominate both economic and political life. Democracy was devised to neutralize this default setting, and the quality of a democracy is measured by how effectively it disrupts that default—by how well its political process succeeds in dispersing the gains from economic activity. Aristotle argued over two millennia ago that the quality of democracy can best be measured by the extent of influence enjoyed by the landless.⁴

Aristotle also observed that oligarchs are naturally displeased by democracy. Democracy's evolution in Europe over the last millennium—especially after voting for representatives began in Britain in 1430—has been a struggle marked by revolution, regicide, and debate as kings and elites resisted being corralled. Democracy, let alone high-quality democracy, has historically been a tenuous condition—it is under continuous threat from plutocrats and authoritarians and is thus hard won and hard to sustain. Today's America provides real-time evidence of that historic fact, and *Billionaire Democracy* explains why.

America's founding fathers* and constitutional framers made two significant contributions to democracy's global evolution—the Bill of Rights and an unprecedented expansion of the franchise. Other republics of their day restricted the franchise to elites and the educated. But our founding fathers adopted low property thresholds, enabling 60 to 70 percent of white males to vote. By the nineteenth and twentieth centuries, other nations had adopted this broad American-style franchise and crafted democracies that flourish today, the superior ones characterized by political equality where

*As used herein, the founding fathers refer to those involved with the Declaration of Independence and the Articles of Confederation, not the later constitutional framers.

voters are sovereign. But American democracy has floundered because it never followed suit. In 1787, only a handful of years after expanding the vote, America adopted a constitution that explicitly rejected the seminal principle of political equality.

At the root of this rejection is a protest known as Shays' Rebellion. In 1786, farmers in western Massachusetts protested high taxes and limited credit. In response, the Massachusetts legislature in early 1787 rushed through laws imposing progressive taxes, providing debt relief, and facilitating the printing of (easy) money. Their reaction revealed for the first time in the new nation the power of a vastly expanded electorate to sway lawmakers.

Bankers, wealthy colonials, and merchants were stunned, and quickly developed misgivings about the consequences of a grandly expanded electorate. To address their concerns about an electorate that had proven ill-informed and too easily misled, these elites gathered later that year in Philadelphia to replace the too-democratic Articles of Confederation crafted by the founding fathers. The design and architecture of the resulting Constitution was driven by a compelling fear, expressed by Alexander Hamilton in what proved to be his last letter, capitalization included, sent one day before his calamitous duel: "Our real disease . . . is DEMOCRACY."⁵

Three Imperatives of the Constitution

The framers not only had misgivings about the outsize influence voters could wield on policy decisions when given full equality and sovereignty, but they also wanted to ensure that lawmakers themselves could not be unduly influenced. The Constitution addressed their concerns about legislative decision making in three ways.

First, the framers stripped power from voters, placing policy decisions in the hands of senators, federal judges, and a president selected by elites. Hamilton expressed the intent that "All men of respectability . . . must [ensure] that the power of government is entrusted to proper hands."⁶ James Madison, the primary author of the Constitution and the smartest man in the room, explained in *Federalist 10* that the Constitution was designed for lawmakers to naturally second-guess voters, their duty being to "refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country . . ."⁷

The framers' retreat from a government featuring voter sovereignty was quickly criticized by advocates of democracy. Within days of the Constitution's unveiling, the *Federal Farmer*, on October 12, 1787, lamented ordinary voters' lack of power as well as the hurdles placed by the framers to prevent reformers from unwinding the new, undemocratic constitution with amendments: "Every man of reflection must see, that the change now proposed, is a transfer of power from the many to the few, and the probability is, the artful and ever active aristocracy, will prevent all peaceable measures for changes . . ."⁸

As historian Michael Klarman accurately summarized, "The Constitution was designed to reverse the democratic trajectory of American politics."⁹

Second, the framers sought to enhance the independence and integrity of the representatives by banning bribery of public officials. Indeed, they viewed the buying of lawmaker votes a seminal threat to the new nation. In his *Federalist* 52 essay, for example, the meticulously prepared Madison insisted that members of Congress must resist entreaties by donors and favor seekers.¹⁰ Their fear was existential: The framers believed the success of the new nation hinged on preventing bribery in any guise.

The third way the framers sought to elevate decision making in the new nation was to strengthen the electorate itself. One option was to mimic Britain, where the limited franchise was buttressed by bankers and university graduates being granted two votes in parliamentary elections.¹¹ Instead, they embraced fact-based media reporting—only newspapers in their day—in hopes of creating an informed electorate resistant to being misled by fabulists. With the recent uprising by his western neighbors in mind, for example, prominent Massachusetts delegate Elbridge Gerry warned the Constitutional Convention that voters were being "daily misled . . . by the false reports circulated by designing men," whom he alliteratively labeled "pretend patriots."¹² And Madison warned in *Federalist* 63 that voters must become alert in order to reject what today we call fake news—he termed it "artful misrepresentations by interested men."¹³ In addressing the Constitutional Convention, Madison was explicit, warning that ill-informed, misled voters "will become the tool of opulence and ambition, in which case . . . property and individual liberty will not be secure in their hands."¹⁴

An electorate armed with factual information was central to the framers' vision for the First Amendment and indeed to the success of the new nation. Here is the single most powerful sentiment that Madison expressed of all the dangers that confronted the new nation: "A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives."¹⁵

Madison and his fellow framers viewed the choice starkly. A democracy whose voters are misinformed or otherwise lack factual information and thus "the power knowledge gives," will assuredly be a troubled nation, destined to become a farce or worse. Abraham Lincoln, America's greatest president, shared the founders' obsession with the centrality of facts to a democracy: "I have faith in the people. They will not consent to disunion. The danger is, that they are misled. Let them know the truth and the country is safe."

The Low Quality of American Democracy Is Documented by the Income Bias

The low quality of American democracy reflects the failure of lawmakers and the Supreme Court to honor and operationalize the second and third imperatives set forth by the framers. They have failed to corral political corruption or to seek an electorate armed with facts. These failings are long-standing, but have become considerably more pronounced in recent years. Above all, the embrace of *pay-to-play*—decriminalizing the buying of lawmakers' votes—by the Supreme Court is the primary reason that American democracy is of low quality.

The most credible and objective proof is provided by what political scientists refer to as the *income bias*, examined in chapter 2. Income bias describes a society where public policy outcomes reflect elite preferences rather than broadly held preferences. The income bias explains why American wages in the key manufacturing sector are \$10 an hour lower than in other wealthy democracies, why America lacks employer-paid maternity or annual leave, why America has the lowest minimum wages and why America alone among the rich democracies elects huckster

populists. It also captures the array of policies responsible for the decline in the share of national income received by middle- and working-class Americans in the bottom half from 20 percent in 1980 to 12 percent in 2014. That income has been redirected upward. The share accruing to the top 1 percent rose from 11 percent when Ronald Reagan took office to 20 percent by 2014.¹⁶ (Overall, the top 20 percent or so of workers—so-called knowledge workers—have enjoyed some gains in real wages in recent decades, although the gains are highly skewed to the top 5 percent and especially the top 1 percent.)

The income bias is a consequence of a skein of Supreme Court rulings explored in chapter 3 that have placed the industrial-scale buying of public officials' votes at the center of American democracy. Beginning with *Buckley v. Valeo* (1976), pay-to-play has been empowered by the Court. The narrow majority of Supreme Court justices responsible for the *Buckley* genre believe that the buying of lawmaker votes is some sort of free enterprise variant of democracy where (to paraphrase Stanford economist Tibor Scitovsky) what voters receive depends on how much each of them spends on politics—a rather stark abandonment of James Madison, the framers, and of *originalism*. (Scitovsky was a pioneer in marrying the study of happiness and economics, writing, “Consumer sovereignty in a free enterprise economy is a plutocracy, the rule of the rich, where each consumer’s influence on what gets produced depends on how much he spends.”)¹⁷ Thus, while America adheres to many of the practices of other wealthy democracies in conducting its elections, its ballot boxes are de facto stuffed by judicially empowered elites. For their part, lawmakers honor the preferences of the wealthy donor class for the same reason robber Willie Sutton focused on banks—“Because that’s where the money is.”

The transformation of the US economy wrought by the *Buckley* era is widely acknowledged; here is how prominent hedge fund manager Jeremy Grantham put it: “Steadily increasing corporate power over the last 40 years has been . . . the defining feature of the US government and politics in general.”¹⁸

Writing in June 2017, in the wake of Associate Justice Neil Gorsuch’s confirmation to the Supreme Court, the conservative Grantham explicitly credited the Supreme Court for this transformation: “Corporate power, however, really hinges on other things, especially the ease with which money can influence policy. In this, management was blessed by the

Supreme Court, whose majority in the *Citizens United* decision put the seal of approval on corporate privilege and power over ordinary people. Maybe corporate power will weaken one day if it stimulates a broad push-back from the general public . . . I suggest you don't hold your breath."¹⁹

Corralling Aristotelian oligarchs more effectively has enabled the quality of democracy in other wealthy nations to forge ahead, leapfrogging well beyond the United States. In comparison, America is a low-quality democracy lacking voter sovereignty, with policy outcomes commonly unreflective of middle-class or majoritarian preferences. Indeed, in the eyes of the late dean of American political scientists, Robert Dahl, that characteristic calls into question whether the United States should any longer be viewed as a democracy. In his book *Polyarchy*, Dahl asserted that "A key characteristic of a democracy is the continuing responsiveness of a government to the preferences of its citizens, considered as political equals."

The low quality of America's democracy is responsible for rising economic inequality in recent decades, characterized by wage stagnation and the decline of collective bargaining among blue- and most white-collar workers. Political inequality has begotten economic inequality with flat wages while there have been handsome and rising returns on capital. That further begets political inequality, trapping most Americans in what French economist Thomas Piketty calls an "endless inegalitarian spiral." This spiral unsurprisingly has nurtured cynicism, bringing the inestimable value of democracy itself into question: 32 percent of surveyed Americans now express support for an authoritarian government.²⁰ They have grown disaffected with the foundational values of democracy that are responsible for the remarkable international spread of human rights, prosperity, and middle classes since the nineteenth century. Frankly, it's stunning that so many Americans are discontented with the only device in history proven capable of disrupting mankind's dismal default setting.

Even before the 2016 election, pay-to-play had caused America to be viewed as the most corrupt of all wealthy economies. The global scold Transparency International, surveying internationally in 2015, ranked America as only sixteenth best in controlling public corruption, its governance more corrupt in recent years than Barbados or Uruguay, and on a par with Chile, Qatar, and the Bahamas.²¹ Gallup surveys have found that government corruption is perceived to be more widespread in the United States than in nations such as Belize, Estonia, Malta, or Slovakia.²²

These assessments are evidenced by two of the last five elections, in which popular-vote losers were elevated over winners to become US president. In the 2000 presidential election, five Supreme Court judges overruled the majority decision of 104 million American voters to elevate a member of their own political party. If the two preceding sentences were not associated with this country, most Americans reading them would instantly consider such a nation to be a corrupt, faux democracy.

Accountability for the Income Bias

The Supreme Court is responsible for pay-to-play, supplanting votes with dollars as today's political medium of exchange. But responsibility for policies that reflect the income bias itself is shared in different degrees by lawmakers from both political parties. Democrats shoulder some of the blame, but scholars hold Republicans considerably more accountable—a consensus that is also reflected in much of this book.

Democrats

Democratic Party officials arrogantly overlook concerns of its traditional noncollege white voter base, as argued by scholars such as University of California Hastings College law professor Joan C. Williams and pollster Stanley Greenberg.²³ Infatuated with market fundamentalism, too many left-leaning economists have given only lip service over the past three decades to the Democratic Party's traditional focus on the economic plight of America's working and middle classes. For decades as wages stagnated, they have refused to advance the seasoned systemic innovations used by other wealthy democracies—requiring employers to share productivity gains with employees—that have produced steadily rising real wages. The innovation accomplishing that outcome is German-style codetermination, where employees comprise half of corporate boards of directors (discussed further in chapter 1). This innovation yields the most proficient version of capitalism in the world for avoiding American-style wage stagnation or sending jobs offshore. Yet that potent and time-tested upgrade of corporate governance is ignored despite being for decades the norm for “contemporary corporate governance” in other wealthy democracies across northern Europe.²⁴ The nation's most progressive Democratic politicians,

such as Senators Bernie Sanders and Elizabeth Warren, are in the dark. That has left the Democratic Party with a meek, ersatz wage agenda—with feet of clay on their signal issue. Moreover, both the Clinton and Obama administrations were complicit in job offshoring that has seen imports rise from 6.2 percent of nonenergy manufacturing inputs in 1984 to 16.4 percent in 2010.²⁵

Secretary Hillary Clinton suffered from a drop compared to President Obama in turnout among (unenthusiastic) minorities whose wages have stagnated. And she lost white noncollege voters by a 39 percentage point margin—voters fired by populist anger with flat wages, job offshoring, and the perception that Democrats coddle Wall Street millionaires, minorities, and immigrants at the expense of “real” Americans. In exit polling, 80 percent of white noncollege voters in 2016 said their personal economic situation was worse or no better after eight years of the Obama administration.²⁶ This inattention to Americans of modest means was repaid in kind in November 2016.

Republicans

Democrats have been inattentive to middle-class wage stagnation, but Republican leaders have become overtly hostile to higher wages. And wages will assuredly continue to stagnate during the inept and erratic Trump administration. More responsive than Democrats to the donor class, the GOP aggressively pursues a small-government agenda that features profit maximization through deregulation and wage suppression. The party of Lincoln, Teddy Roosevelt, and Eisenhower is now committed to the narcissistic agenda of many of America’s most affluent families, who are covetous of wealth stratification. That commitment has produced America’s first ideologically pure political party, its lawmakers willing, for instance, to strip health care from tens of millions of working-class families to fund tax cuts for their donors. Thomas Mann of the progressive Brookings Institution and Norman Ornstein of the conservative American Enterprise Institute explained the consequences of this transformation in 2012: “We have no choice but to acknowledge that the core of the problem lies with the Republican Party . . . The GOP has become an insurgent outlier. It has become ideologically extreme; contemptuous of the inherited social and economic policy regime; scornful of compromise;

unpersuaded by conventional understanding of facts, evidence and science; and dismissive of the legitimacy of its political opposition.”²⁷

Fake News

The furtherance of the donor class agenda has been enhanced by the emergence of fake news as a potent GOP political tool. The misrepresentation of facts for partisan gain or profit is as old as humankind. It has been exacerbated in recent years, most dramatically by conservatives on talk radio, at partisan organizations such as Fox News, and on social media platforms by cyber entrepreneurs, polemicists, political partisans, and Kremlin propagandists. Importantly, weaponized fake news proved politically effective for Republicans in 2016. By Election Day, for instance, two-thirds of voters supporting candidate Donald Trump believed the unemployment rate rose under Obama (it fell by more than one-half to near full employment by 2016). Only 17 percent of Republicans believed that Obamacare reduced the number of Americans without health insurance to the lowest in history.²⁸ And two-thirds of Trump supporters also believed that the election machinery in America can be rigged, enabling three or four million illegal votes to be cast for former Secretary Clinton.

The GOP exacerbated its afactual narrative by demonizing mainstream fact-based reporting. Channeling Joseph McCarthy and President Richard Nixon from December 1972,²⁹ for instance, candidate Trump routinely asserted that “the press is the enemy,” attacking factual journalists as “enemies of the American people.”³⁰ The disconcerting outcome was that by the end of 2016, barely one-third of Americans retained faith in factual, mainstream journalism.

The GOP prospered by polarizing America. Immediately before the GOP theology fully embraced pay-to-play in 1994, only 21 percent of party members surveyed by the Pew Research Center had a “very unfavorable view of Democrats.” The transformation since is stunning, with that figure nearly tripling to 58 percent by 2016.³¹ Democrats’ distrust of Republicans has grown as well. Only 21 percent of Americans now believe the nation is united.³² And political scientists document that the share of swing voters has declined by half since the 1990s to barely 5 percent today.³³ The Republican Party’s success with fake news in engineering distrust and

polarization has diminished the moderate middle of American politics, rendering compromise based on an agreed body of facts less likely.

The framers primarily rested their aspirations for the new nation on public officials free from bribery and an electorate well-armed with facts. America today is failing to fulfill those hopes. The challenge before us now is to divine how America can avoid becoming the farce or even the tragedy feared by James Madison.