5-2003

Hybridizing Citizenship

Kathryn Abrams

University of California, Berkeley School of Law; Cornell Law School

Follow this and additional works at: https://scholarship.richmond.edu/lawreview
Part of the Election Law Commons, and the Law and Politics Commons

Recommended Citation

Available at: https://scholarship.richmond.edu/lawreview/vol37/iss4/2

This Comment is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in University of Richmond Law Review by an authorized editor of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.
COMMENTARIES

HYBRIDIZING CITIZENSHIP

Kathryn Abrams *

I. INTRODUCTION

In Voting with Dollars, Ackerman and Ayres propose a system of campaign finance that they candidly describe as "hybrid." It is hybrid in the sense that it combines two strategies for addressing the ills of current campaign funding. It addresses the corrupting influence of private contributions by requiring that they be made through a "secret donation booth," a blind trust that prevents candidates from knowing the identities of their supporters. In addition, it addresses the disproportionate weight of such contributions by introducing a novel system of public finance: the government provides each registered voter with fifty "Patriot" dollars, which can be pledged to the candidate(s) of the voter's choice. But, more importantly, the proposed system is a hybrid of the conceptual models on which it draws. In some respects the system "mimics ... core attributes of the franchise." It offers equality and non-transferability, which in the case of private do-

* Herma Hill Kay Distinguished Professor of Law, University of California, Berkeley School of Law (Boalt Hall); Professor of Law, Cornell Law School. B.A., 1980, Harvard University; J.D., 1984, Yale Law School. Many thanks to Angela Harris for helpful conversations on the subject of this Comment, to Dan Farber for thoughtful comments on an earlier draft, and to Ginny Irving and Guy-Uriel Charles for wonderful, resourceful guidance on some aspects of the research.

1. BRUCE ACKERMAN & IAN AYRES, VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE (2002).
2. Id. at 25.
3. Id. at 6.
4. Id. at 12–18.
5. Id. at 9.
nations is supplemented with anonymity. Yet the system also enlists the individualistic energies of the market. Each voter spends her Patriot dollars in the way that she sees fit, exercising a "citizen sovereignty" that draws consciously on the dynamics of consumer sovereignty.

In this Comment, I consider the implications of this hybridity by focusing on the Patriot dollar feature. This feature is crucial to the operation of the paradigm, not simply because this public funding has the potential to outweigh private spending and to compensate for the deficits created by the anonymity of the donation booth. It is also valued by the authors as a means of re-energizing participatory democracy and rendering the individual voter, quite literally, more invested in the stakes of electoral contests. I will argue, however, that the hybrid character of this system works more neatly in theory than it is likely to work in practice. Individual voters may have difficulty conceiving this new role, and they may respond to it in ways that conflict starkly with the authors' purposes. The role may be more readily understood by the intermediaries who, as Ackerman and Ayres acknowledge, will hasten to reap the benefits of this new source of support. But, far from facilitating the emergence of a new paradigm, their interventions are at least as likely to import into the electoral system the worst of current campaign practices and the worst of current consumer culture. In Part II, I examine the authors' description of and aspirations for the Patriot system. In Part III, I consider the ways in which the Patriot feature may be understood by voters. In Part IV, I consider the ways that this feature may be conceptualized and implemented by intermediaries such as patriotic political action committees ("PACs") and candidates' campaign committees. In conclusion, I suggest that a plan that is elaborately designed to prevent circumvention may require more work in elaborating and fostering among participants the affirmative understandings on which it is intended to be based.

6. Id.
7. Id. at 12–18.
8. Id. at 15.
9. See id. at 174–75.
In describing their new paradigm, Ackerman and Ayres alternately emphasize its comparability to the franchise and underscore its resonances with the market. They unveil the new system through its juxtaposition to an “old paradigm,” consisting of spending limits, public subsidy, and full information about the identity of private donors. Citing this paradigm as the very model of economic regulation, they note: “We reject a paradigm drawn from the regulation of widgets and build on a more democratic tradition centered on the franchise.” The authors then stress the equality-based origins of the Patriot feature and the vote; they derive the anonymous donation booth from the time-honored practice of the secret ballot. Patriot dollars are conferred upon registered voters, and, like the vote, they are non-delegable, non-transferable, and disappear if they remain unused.

Yet intertwined with this analogy to the franchise is a second claim that appears as a subtext of the more explicitly democratic arguments. According to this analysis, Patriot does indeed bear the markings of an intervention in the market, but it is not one that regulates production—rather, it is one that facilitates consumption. Patriot is, after all, a system of spending that permits citizens to use their money to express their preferences, mainly through routine transactions at the ATM. In a paradoxical progression, the authors both enlist the energies of consumer sovereignty and seek to transcend its individualistic, privatizing dynamic. A concluding passage frames Ackerman and Ayres’s embrace of the consumer dynamic most clearly:

Not that we are opposed to free markets. To the contrary, we have used marketlike reasoning in the service of democratic ideals. Our whole idea is to carve out a vibrant sphere of politics by creating new forms of marketlike choice—forms that purify the practice of private giving while rejuvenating the reality of citizen control. We are, in

---

10. See id. at 4, 59.
11. Id. at 4.
12. Id.
13. Id. at 6.
14. Id. at 12–18.
15. Id. at 69.
16. See id. at 160–61.
short, responding to the current wave of market triumphalism with an exercise in intellectual jujitsu: We are calling on our fellow Americans to rejuvenate their citizenship with the very same consumerist paraphernalia—credit cards and ATMs—that seem to threaten it most.

Some may find our embrace of these consumerist images disheartening, but Americans will never be persuaded to don tunics and return to some (idealized) version of the Athenian agora. The challenge is to enable twenty-first century people to build new forms of citizenship out of the ordinary materials of modern life—and from this perspective, there is no better place to look than the neighborhood ATM.\(^{17}\)

Yet Ackerman and Ayres also make clear that their pragmatic accommodation of the consumer culture does not exclude the possibility of transformation. They aim not simply to enlist the dynamics of consumer sovereignty but to improve upon them; expenditure is, in this sense, the vehicle through which a longer-term public engagement and political enlivenment will occur.\(^{18}\)

When Americans encounter a barrage of political advertisements on television today, they think of themselves as passive consumers—just as they do when viewing advertisements commending fancy cars or prescription medicines. But political advertising in the patriotic world will carry a different social meaning. Turning on the TV will become an occasion for citizens to reflect on their own communicative choices—should I send my Patriot dollars to insurgent X or political party Y? In turn, these questions will prompt millions of informal conversations as countless face-to-face groups consider their options together.

Nowadays, electioneering prompts affirmative activity from most citizens only on election day, when they spend the half-hour or so going to the polls. But the democratization of campaign finance will invite millions to take a small but active role throughout the election campaign. By casting their patriotic dollars, Americans will be giving renewed social meaning to their self-understanding as free and equal citizens, engaging in democratic deliberation.\(^{19}\)

In theory, the proposal effects a neat synthesis—the sober equal opportunity of the franchise, invigorated by energies of consumer sovereignty, and cleansed of its individuality and isolation by a reconnection to public purpose. But how this synthesis is

---

17. *Id.* (citation omitted).
18. *See id.* at 15.
19. *Id.*
likely to proceed in practice is a more complicated question, to which I now turn.

III. CITIZEN SOVEREIGNTY IN THE MIND OF THE VOTER

Imagine that you are a voter, under the recently-enacted Voting with Dollars regime. You take a stroll to your ATM and discover that, overnight, the government has deposited fifty dollars in a special account to be used on the campaign(s) of your choice. Like large numbers of your fellow citizens, you vote with at least some regularity, but are not a frequent contributor to political campaigns. How will you understand the transaction in which you have been invited to take part? To what other activities, in which you or your fellow citizens regularly engage, will you analogize it?

In their cheerful appropriation of the dynamics of consumer sovereignty, Ackerman and Ayres suggest that you will feel as if you had been invited to make a market choice—as if, for example, your mother had sent you a check or a gift certificate to Amazon.com. They are undoubtedly correct in observing some simi-

20. One could assess the prospects for implementing Ackerman and Ayres's model in more than one way. Some scholarship in public choice literature, for example, has attempted to determine theoretically and empirically whether the animating principles assumed to be characteristic of market transactions are distinct from or confluent with those that animate political action, on the part of either voters or representatives. Compare James M. Buchanan, Politics without Romance: A Sketch of Positive Public Choice Theory and Its Normative Implications, in THE THEORY OF PUBLIC CHOICE—II, 11, 11–21 (James M. Buchanan & Robert D. Tollison eds., 1984) (arguing that similar models of behavior apply in political and economic realms), with GEOFFREY BRENNAN & LOREN LOMASKY, DEMOCRACY AND DECISION: THE PURE THEORY OF ELECTORAL PREFERENCE 10–16 (1993) (contesting the application of the assumptions of homo economicus to the political sphere). My approach in this Comment will be more phenomenological; it will focus on subjective experience as it bears on understanding and motivation. It will ask, for example, what we know about the subjective experience of consumption in the market and consider whether the external features related to that experience (i.e., the enlistment of bank accounts, ATM cards, and citizen choice), which have been incorporated in the Patriot proposal, will be sufficient to encourage voters to assimilate their understanding and practice of campaign contribution to that experience.

21. See ACKERMAN & AYRES, supra note 1, at 14–15. As I note above, Ackerman and Ayres hope to modify or enrich this consumerist impulse in the realm of campaign contribution, by encouraging voters to make better-informed and more public-spirited decisions on spending their Patriot dollars than they do in spending their "green" money. See id. at 16–17. But at the outset they seek to draw on its familiar, compulsive energies in order to draw voters into the practice of spending their Patriot dollars on electoral candidates. See id. at 4–5.
larities; you make your transaction at a screen, you expend some
form of financial asset, and you are free to choose as you will
among a range of possibilities contending for your dollar. But
market participants are not activated to the role of consumer
choice by the simple weight of a credit card in their pocket. There
is a set of understandings and expectations that underlie the
practices of contemporary market consumption. These under-
standings are distinct from those likely to accompany a Patriot
contribution; so distinct, in fact, that it is unlikely that voters will
see consumerism as the trope through which to construe the gov-
ernment's invitation.

A. The Dubious Analogy to Consumption

To begin with, consumer decisionmaking is based on the notion
of a quid pro quo; in the classical formulation, the consumer's
money is exchanged for some desired commodity. Such a quid pro
quo is not easy to identify within the Patriot scheme. There is not,
in any obvious sense, a tangible product for the citizen to con-
sume. Moreover, a central goal of the new paradigm is to remove
from the process of campaign finance the most conspicuous quid
pro quo of the present system—the exchange of financial support
for political influence over one's preferred candidate. Of course,
consumption in late capitalist societies has become both more
complex and less concrete than the quid pro quo idea might sug-
gest. Some theorists have suggested that consumption in our cul-
ture is not entirely—perhaps not even primarily—about the "use
value" of particular commodities. Consumers also derive satis-
faction from "anticipation of use value"—a feature perpetuated
by increasingly elaborate practices of packaging. More centrally,
the consumer may derive utility from the appearance of use
value, an attribute seized upon in advertising. Since the mid-

22. See id. at 67–70.
23. See id. at 6. In addition, the level of public funding that any individual can provide
under the Patriot scheme—twenty-five dollars for a presidential candidate, fifteen dollars
for a senatorial candidate, ten dollars for an aspirant to the House—would not be enough
to secure influence, even in the absence of the secret donation booth. See id. at 182.
25. Id. at 6.
26. See id. at 1–7.
27. See id. at 6–8 (emphasis added) (discussing the forms of value in consumer com-
modities).
twentieth century, when producers recognized that an ever burgeoning supply of goods was, in effect, chasing a finite supply of dollars, a stream of increasingly sophisticated advertising has helped consumers not only to differentiate among products, but to understand those products as addressing a range of non-material consumer needs. The purchase of a particular good may contribute to the image that the consumer has of himself, or to an image he would like to foster in the minds of others. It may help to mediate relations with particular social groups, including class or status-based groups, racial or ethnic groups, or family of origin. Advertising has made a contemporary art form of cultivating these ascriptive meanings and the desires with which they are associated, to the point where a young man deliberating about the purchase of a car may be thinking as much about independence or masculinity as about a means of transportation.

Yet, even when understood in these more encompassing terms, the payoff for the citizen who expends her Patriot dollars seems unclear. There are possible, albeit attenuated, analogies to the anticipation of use value. If Brennan and Buchanan are correct in their hypothesis that some voters regard an electoral contest as an engaging competitive ritual—which one approaches with the enthusiasm of a spectator at a sports telecast—then contributing to a campaign might be a way of sharing in the preseason or pregame excitement, like purchasing a t-shirt or a pennant for one's favorite team. Yet whether participating in such festivities

28. Many cultural theorists would argue that these are needs that the consumer did not even know he had, prior to his exposure to the advertising. In this sense, they argue that a pervasive flood of advertising is responsible for engendering those needs that it then attempts to fill. For examples of this kind of analysis, see Ronald K.L. Collins & David M. Skover, Commerce & Communication, 71 TEX. L. REV. 697, 699 (1993); Sut Jhally, Commercial Culture, Collective Values and the Future, 71 TEX. L. REV. 805, 805 (1993) [hereinafter Jhally I]; Sut Jhally, Advertising at the Edge of the Apocalypse [hereinafter Jhally II], at http://www.sutjhally.com/onlinepubs/apocalypse.html. I return to this analysis of advertising, in Part IV, infra.

29. The purchase of a diet cola or fast food, for a teenager with immigrant parents, may satisfy hunger or thirst; but it may also signal assimilation into an undifferentiated category of active, spontaneous American youth, or establish needed distance from her family of origin. Historian Gary Cross argues that consumerism won the struggle for the hearts and minds of twentieth-century Americans, specifically because it performed these functions of social mediation more flexibly and with less conflict than more substantive or ideological forms of social solidarity. See GARY CROSS, AN ALL-CONSUMING CENTURY: WHY COMMERCIALISM WON IN MODERN AMERICA 2 (2000).

30. For a discussion of the role of commodity capitalism, with an emphasis on sexuality regarding the gendering of men and women, see WILLIS, supra note 24, at 23-40.

31. See Geoffrey Brennan & James Buchanan, Voter Choice: Evaluating Political Al-
would have much allure, particularly for those who are not habitual enthusiasts of this particular sport, remains to be seen.

The appearance of use value raises more complicated questions.\textsuperscript{32} Contributors might draw some identitarian value from the contribution, if it led them to regard themselves as part of a particular group, political movement, or candidate-related insurgency. Ackerman and Ayres allude to the possibility of this kind of transformation—in the contributor’s self-conception and in her understanding of her relation to politics—in the final chapter, when they discuss the momentary soaring of the campaign (and the campaign chest) of Senator John McCain.\textsuperscript{33} However, this sense of identity might be undercut by the small size of the contribution—ten or fifteen dollars seems too modest an amount to foster a strong sense of identity or membership,\textsuperscript{34} particularly if citizens have not been socialized to believe that any contribution is sufficient to ground a sense of affiliation.\textsuperscript{35} More importantly, this potential for the development of politically-grounded identity would be undercut by the slim chance of the materialization of a political movement. True, the transformation of campaign finance might make such insurgencies more likely. But citizens still confront a system fraught with devices such as geographic districting and winner-take-all elections, which tax insurgencies and slow departures from a centrist, two-party status quo. Furthermore, citizens will be encouraged to contribute early in the campaign, when it is hard to tell whether a promising candidacy will gather steam. To citizens in this position, a Patriot contribution may appear more analogous to the purchase of a lottery ticket, which offers the chance of an identitarian, rather than a financial, payoff.

\textsuperscript{32} See WILLIS, supra note 24, at 7.
\textsuperscript{33} See ACKERMAN & AYRES, supra note 1, at 168.
\textsuperscript{34} Ackerman and Ayres note that following McCain’s victory in the New Hampshire primary, he received one million dollars worth of “small” contributions over the Internet. See id. They do not, however, explain whether these contributions were as small as ten or fifteen dollars.
\textsuperscript{35} Here, campaigns under the Voting with Dollars paradigm might have something to learn from public radio membership drives, which work vigorously to make clear that a listener can become a full-fledged member and valuable supporter through any level of contribution. Such socialization seems inconsistent with the present campaign finance regime, which promises proximity to the formation of public policy in direct relation to the magnitude of one’s contribution. It is not inconsistent with Ackerman and Ayres’s scheme, but it is one among several forms of normative elaboration or reinforcement that they do not provide in the statement of their paradigm.
Perhaps more to the point, the sense of identity that is derived from consumption often comes from its capacity to mark a consumer in the eyes of others. Consumers, as historian Gary Cross argues, acquire the habit of "reading" each other through the public consumption of commodities. There is little opportunity for such reading, however, in the context of political contribution. Citizens render their support privately (and in most cases anonymously) and the Patriot scheme provides no concrete indicia of contribution that can be publicly consumed. Without changes in the elements of the scheme, it seems unlikely that group membership or any other characteristic will be ascribed to a citizen as the result of her having contributed Patriot dollars to a political campaign.

Finally, the lack of transferability or fungibility of Patriot dollars may disturb the analogy to consumer activity. A dollar not spent on shoes can be spent on a DVD, or it can be saved or invested. Even a gift certificate to Amazon.com can be spent on books, music, or kitchen supplies. But Patriot dollars cannot be traded for conventional currency or spent outside of electoral campaigns. This feature distinguishes it from activity in the market and underscores its analogy to the vote. It may even be a source of disaffection to the poorest citizen-consumers, who may feel that the fifty dollars in the Patriot account might be better expended on a basic need, such as food or rent.

36. See CROSS, supra note 29, at 3–5.
37. There are a variety of non-profit organizations that have pioneered the use of "thank you gifts" for membership contributions, or low-cost consumer items whose purchase price and logo offer forms of support to the organization. These gifts and commodities obviously serve as forms of advertising; however, they also serve other purposes in a society geared to visible and legible consumption. They permit supporters to enjoy an experience of consumption connected with their expenditure (i.e., some people actually enjoy using the tote bags or coffee cups that come with contributions to National Public Radio). They also permit contributors to identify themselves, and each other, as like-minded supporters of particular public-spirited enterprises. This serves an identitarian function, and also permits consumers to take part in the habitual satisfactions of reading each other through visibly-consumed commodities. There may well be a role for such gifts under the Voting with Dollars paradigm: they might well help citizens to analogize contributions both to activities of mainstream market consumption and to (generally low-level) support of services such as public radio. However, such a role is not elaborated in Ackerman and Ayres's articulation of the Patriot dollars scheme.
38. See ACKERMAN & AYRES, supra note 1, at 182.
B. The Uncertain Effects of Uncertain Analogies

If citizens do not perceive Patriot contribution as analogous to market consumption, to what other activities might they draw a parallel? Some might view it as philanthropy, although the small and well-heeled group for which the category would have salient meaning would be more likely to apply it to major contribution through the donation booth than to the comparative pittance available through the Patriot scheme. Here, too, the absence of direction or control over the expenditure of one’s funds might disturb the analogy. Those drawn to a philanthropic analogy might find Patriot contributions more comparable to the garden-variety charitable donations made by individuals across the socioeconomic range. But in this case as well, conspicuous disanalogies might disrupt the perceived parallel. Some of the most salient motivations behind charitable donation are not present in the Patriot setting. It is not clear that citizens would experience the satisfactions of self-sacrifice that help fuel charitable donations when they are contributing funds that they received as an allocation from the government. Moreover, the emotions of empathic arousal for the acutely distressed, or concern for those who lack what the giver may himself possess—that motivate many kinds of charitable giving—may not be present in the case of campaign contribution. An underfinanced candidate is likely to be perceived as disadvantaged only in a narrow, relative sense, and would not prompt the feelings that animate contribution to organizations concerned with poverty, hunger, or disease. It is possible that Patriot contributions might be animated by another

39. For an interesting discussion of the new kinds of relations that major philanthropists have come to expect with the objects of their largesse, see John A. Byrne, The New Face of Philanthropy, BUS. WK., Dec. 2, 2002, at 82–84.

40. ACKERMAN & AYRES, supra note 1, at 182 (proposing governmental allocation of Patriot dollars).

41. See id. Some analysts have suggested that people make charitable contributions to alleviate a sense of guilt (i.e., a sense of undeserved good fortune or of responsibility for injurious actions or events) or other negative emotional states. See DAVID A. SCHROEDER ET AL., THE PSYCHOLOGY OF HELPING AND ALtruism: Problems and Puzzles 65–70 (1995) (discussing the “negative-state relief model” of helping or contribution); GERALD S. SOROKER, Fund Raising for Philanthropy 17–18 (1974) (discussing guilt as a motivator of charitable giving).

42. See ACKERMAN & AYRES, supra note 1, at 43; SCHROEDER ET AL., supra note 41, at 71–74 (discussing the role of “empathic arousal” in helping or contribution).

43. See ACKERMAN & AYRES, supra note 1, at 19 (“Candidates compete with one another for scarce Patriot dollars, and those who can’t persuade citizens to give will quickly fall by the wayside.”); SCHROEDER, ET AL., supra note 41, at 63–64.
instigator of charitable contribution—the desire to give back to or support one’s community. But such an urge is differentially present even in the voting population, and may or may not become attached to the financial support of fledgling campaigns.

For those who view Patriot contributions as being more in the realm of political than economic activity, other conceptualizations might emerge. Citizens with some preexisting sense of investment in the political system might conceive Patriot contributions as a means of performing one’s civic duty—much like turning out on election day, though perhaps less inspiring because unaccompanied by the most salient symbols of civic participation. Committing one’s publicly-provided funds to a candidate might be viewed as doing one’s part to support the discussion of issues or elicit the full range of candidacies—an alternative to shirking or free-riding. Such motivations, however, may be less than pervasive in a country with one of the lowest voter turnout rates of all Western democracies. In any case, the Patriot scheme provides voters little help in connecting this form of civic commitment with financial contribution.

44. See Schroeder et al., supra note 41, at 87–88 (discussing the role of social norms such as the “norm of social responsibility” in conditioning donation of time or funds); Charles E. Bartling, The Psychology of Asking and Giving: Taking a Crash Course in Fund-raising, ASS’N MGMT., Nov. 1999, at 55 (“People give because they feel they have an obligation to pay back.”).

45. Psychologists have hypothesized that proclivity for contribution is affected by personality traits, such as “empathy, a sense of responsibility, concern for the welfare of others, and a sense of self-efficacy.” Schroeder et al., supra note 41, at 179. See also id. at 88–89 (discussing effect of variability in personal norms), 176–79 (discussing “prosocial personality”).

46. Ackerman & Ayres, supra note 1, at 19.

47. Id. at 17. There is an interesting debate in the literature about whether rendering political participation more private, for example through the authorization of Internet voting, would decrease participation. Some commentators predict increases in participation by virtue of the relative ease of such expedients. See Dick Morris, Direct Democracy and the Internet, 34 Loy. L.A. L. Rev. 1033, 1051–52 (2001) (predicting “high turnout and enthusiasm”). Others predict that the absence of familiar symbols of participation—such as the polling place and the opportunity to perform this responsibility side by side with one’s fellow citizens—would weaken citizens’ inclination to participate. See Rick Valelly, The Case Against Virtual Ballot Boxes: Voting Alone, THE NEW REPUBLIC, Sept. 13 & 20, 1999, at 21. Many of the same pros and cons would apply to the prospect of ATM-based campaign contribution. See Ackerman & Ayres, supra note 1, at 18, 67–68 (discussing the role of the ATM in the Patriot scheme).

48. Ackerman & Ayres, supra note 1, at 15–16.


50. Ackerman & Ayres, supra note 1, at 17.
For those with a more attenuated sense of investment in the political realm, the Patriotic exercise might be the subject of a more idle interest. Citizens who regard elections as a form of ritualized competition might view the Patriot system as providing them an opportunity to put money on their favorites. But in a culture where the impulse to abandon oneself to the vagaries of fortune is in constant tension with a stringent norm of responsibility and self-direction, it is difficult to imagine the analogy to gambling holding great sway.

The question of how Patriotic contribution is viewed by voters is critical to determining whether the system is likely to function in the way that the authors suggest. This is a question first about whether citizens will take part in the Patriot funding scheme—for notwithstanding the short-term protections of their drought-averting feedback loops, Ackerman and Ayres are quick to admit that the Patriot funding scheme will flounder if citizens decline to take part on a long-term basis. The foregoing discussion does not bode particularly well for the scheme’s long-term viability. The gap between the consumer-inflected manner in which the authors present the system and the way that citizens themselves are likely to perceive it may be an early source of disillusionment. Citizens will come to see that, for the range of reasons elaborated above, Patriot expenditures do not feel like an afternoon of shopping at the mall. This insight may be disafflicting, leaving many to feel indifferent toward their Patriot funds. Moreover, citizens’ understanding of the act of Patriot contribution affects not only whether they participate but how they participate. Political enlivenment and reengagement are among the most highly-touted byproducts of the Patriot regime. Citizens who allow their Patriots to languish in their bank accounts and citizens who spend Patriot dollars randomly or with a high level of indifference will not follow campaigns with urgency or experi-

51. Although here, as in the analogy to the lottery above, the “payoff” for victory is considerably more abstract, particularly if the scheme eliminates the relationship between financial support and political influence. See id. at 6.
52. See JACKSON LEARS, SOMETHING FOR NOTHING: LUCK IN AMERICA 2–3 (2003).
53. ACKERMAN & AYRES, supra note 1, at 120.
54. Id. at 84–87.
55. Id. at 15.
56. Id. at 17.
57. Id. at 12–13.
58. Id.
ence a sense of involvement that precedes and follows voting on election day.\textsuperscript{59}

The success of the Patriot scheme, however, is unlikely to hinge exclusively on the way that contribution is perceived by individual citizens. Ackerman and Ayres may be prepared to let the Patriot scheme die quietly on the vine if citizen sovereigns are not inclined to spend their publicly-allocated dollars. But once their plan is enacted, candidates are unlikely to be so fatalistic.\textsuperscript{60} From the time that exploratory efforts end and candidacies are declared, candidates will become enmeshed in a struggle to secure a new kind of public support—not the citizen's vote, but her Patriot dollar.\textsuperscript{61} This will lead, as Ackerman and Ayres acknowledge, to multiple forms of intermediation.\textsuperscript{62} How such intermediaries proceed in the effort to solicit Patriot funding will also bear directly on the prospects of the system.

IV. "CITIZEN SOVEREIGNTY" AND INTERMEDIARIES

A. Organizational Intermediation

In a world in which Patriot dollars form a new and uniquely valuable currency, there are two kinds of tasks that will have to be performed by or for those who hope to mount successful campaigns. First, aspirants will have to reach a large and geographically dispersed group of voters.\textsuperscript{63} The size of the necessary pool stems from the relatively small amount allotted to each voter under the proposed Patriot scheme.\textsuperscript{64} The dispersal stems from the fact that candidates for Congress, who are generally understood  

\textsuperscript{59} These aspirations are expressed most rhapsodically by the authors in stating that citizens will “tak[e] the time and trouble to pick out the candidates and groups that best represent [their] hopes for America.” \textit{Id.} at 161. The authors further intone: “Merging symbol with practical power, [they] will be doing [their] bit to carve out a special space for democratic citizenship—in which ordinary people confront one another as equals as they hammer out the basic terms of their ongoing social contract.” \textit{Id.}

\textsuperscript{60} See \textit{id.} at 88–89.

\textsuperscript{61} \textit{Id.} at 5 (stating that the Patriot plan “encourag[es] Americans to vote with their [Patriot] dollars as well as their ballots”).

\textsuperscript{62} \textit{Id.} at 19–20.

\textsuperscript{63} \textit{Id.} at 77–78.

\textsuperscript{64} \textit{Id.} at 75–83 (hypothesizing the allocation of fifty dollars to subaccounts for the Presidency, the Senate, and the House).
to represent states and local districts, may receive Patriot contribu-
tions from those outside their electoral jurisdictions. The sec-
ond task that aspirants, or those assisting them, will have to per-
form is persuading voters that they want to spend their Patriot
funds and (in the case of direct appeals from candidates) that
they want to spend them on a particular candidate. These tasks
are, to some degree, similar to those undertaken in current cam-
paings to raise funds and solicit votes, but, under the Voting with
Dollars scheme, they are likely to be undertaken earlier and on a
broader scale than current efforts. Two kinds of instrumentali-
ties show particular promise in addressing these tasks, but they
also risk importing into the system the distinctive flaws of both
current campaign finance and current consumerism.

The first type of intermediary is the "patriotic PAC." These
organizations would be assured a central role through a striking
exception to the contributor anonymity enforced by the authors' regime. Ackerman and Ayres provide that organizations raising
contributions from Patriot funds alone, and turning them directly
over to their candidate(s) of choice, could make such transfers
without the mask of anonymity. The authors justify this excep-
tion on the grounds that a candidate's knowledge of the identity
of a patriotic PAC that supports her would not facilitate inappro-
priate influence. The funds thus raised and transferred would
not be those of the PAC itself, but of large numbers of individual
citizens who have chosen to expend their Patriot dollars. A can-
didate's responsiveness to substantial aggregations of citizens is
not inappropriate influence; it is, rather, the essence of democ-

The authors' suggestion that no influence will follow from the
solicitation and transfer of funds by patriotic PACs is unpersua-
sive. While responsiveness to the will of aggregated majorities is,
in theory, the essence of democracy, there remains the problem of

65. Id. at 77–78.
66. Id. at 81–82.
67. Id. at 82–83.
68. Id. at 72–74.
69. See id.
70. See id. at 73–74.
71. See id.
72. See id. at 74.
understanding that will in concrete or particularized terms. While devices such as polling, focus groups, or town meetings are always possible, a candidate might most readily (and most cost effectively) interpret the will of citizens who have supported her through contributions to a patriotic PAC by reference to the goals of that organization itself. More importantly, while it is true that the funds transferred by a patriotic PAC would not be those of the organization itself, it is incorrect to suggest that a candidate would not feel beholden to a PAC that made this kind of transfer. The ability to reach for and solicit funds from a vast and geographically dispersed pool of voters is likely to become its own kind of currency under the Patriot dollar scheme; there is no question that any patriotic PAC that transfers funds to a candidate will have paid in this particular coin. Because of such efforts and because a candidate will want to be remembered by a patriotic PAC in its future fundraising ventures, it seems likely that a candidate will bear in mind the priorities of those who have so assisted her when she succeeds to office. Thus, in the context of this transaction, inappropriate influence is not eliminated—it simply operates through a new vehicle. Organizations or advocacy groups will simply perform the in-kind service of soliciting, aggregating, and transferring Patriot dollar contributions, rather than seeking influence through private donations.

Who might benefit by this alternate route to leverage? One group would be organizations whose ongoing activities—non-electoral fundraising, educational campaigns, or mobilization of citizen response to proposed legislation—bring them into contact with large, geographically dispersed groups of Patriot dollar holders. Groups with existing (and extended) communications infrastructures that could be used to solicit Patriot dollars would face minimal start-up costs in this form of solicitation; they could use

73. See id. at 71–75; see also Morris, supra note 47, at 1044 (arguing that the Internet has resulted in a “democratization of the flow of information”).
74. See ACKERMAN & AYRES, supra note 1, at 161–64; Morris, supra note 47, at 1049–50.
75. See ACKERMAN & AYRES, supra note 1, at 73, 163.
76. See id. at 163.
77. See id.
79. See ACKERMAN & AYRES, supra note 1, at 163.
existing mailing lists, and include solicitations for a patriotic PAC in their ongoing appeals. In this respect, the Sierra Club might have an advantage over newer groups such as Ackerman and Ayres’s hypothetical labor group, “Automobile Lovers of America,” or candidate-inspired organizations such as “Environmentalists for Joe Smith.” Though this feature would not necessarily confer a partisan advantage, it would reward those with communications infrastructure, direct mail lists, broad and readily mobilized constituencies—in other words, the usual indices of groups that already enjoy some measure of organizational power. Also, technology might make these benefits available to a wider array of PACs; the Internet might make it possible for groups that are less financially or organizationally well-endowed to connect with large, geographically dispersed groups of Patriot dollar holders. However, as Elizabeth Garrett and others have observed, competing successfully in the crowded field of Internet solicitation will probably require the services of consultants and other experts, which is likely to boost the barriers to entry for small or less organized groups. Finally, successful patriotic PAC fundraising requires that organizations not only reach large numbers of voters, but effectively solicit their funds as well. This requirement gives an advantage to those groups with loyal, readily mobilized constituencies already in place—another point in favor of preexisting organizations. Again, there might be some advantages for the outsider or less organizationally advantaged—for example, groups based on socially-salient ascriptive characteristics might have high yield rates. But in general, an

80. See id. at 73, 163.
81. See id. at 173–178.
82. See id. at 73, 173–78. Some of these assets could be acquired by other kinds of organizations; yet this possibility, too, would not always point in the direction of the political outsider. Corporate players accustomed to making large campaign contributions, but wary of the mandatory anonymity of the secret donation booth, could invest instead in mailing lists or other forms of communications infrastructure, and thus become involved in the business of raising Patriot dollars.
83. See id. at 174; see also Morris, supra note 47, at 1044–46.
85. See ACKERMAN & AYRES, supra note 1, at 78–79, 81–82, 84, 174.
86. See id.
87. Frequent examples cited by Ackerman & Ayres include the Sierra Club and the NRA, which provide the opportunity to “maximize [one’s] citizen sovereignty by contribu-
exception permitting patriotic PACs to substitute solicitation labor for direct financial contributions as a vehicle for political influence would seem to benefit those who are already organized on a national level and engaged in various forms of political action. As in the present system, the potential for influence will be distributed on the basis of inequalities in resources—i.e., organizational resources, which in any case are not wholly separable from financial resources—reanimating the "circularity" problem at which Ackerman and Ayres take aim. 88

Patriotic PACs would not be the only vehicle, however, for reaching citizen sovereigns and their Patriot dollars. Many candidates, particularly those who are less well-known, will be unwilling to leave the prospects for their support to the discretion of well-organized advocacy groups. Similarly, many voters—particularly those who contribute later in the campaign—will decline to leave the choice of beneficiaries of their support to a patriotic PAC. All of these developments underscore the importance of a second instrumentality—advertising by the candidate's own campaign.

B. Candidate-Sponsored Advertising

Under the current electoral regime, candidates must devote a good deal of their energy (and large portions of their war chests) to the task of reaching voters. 89 This mandate will persist under the Voting with Dollars paradigm, but the Patriot dollar feature in particular will produce changes in the timing and focus of candidate efforts. 90 The opportunity and, with the anticipated drop in larger donations, the need to solicit hundreds and thousands of
smaller contributions, often from voters outside a candidate's state or district, will require that such efforts both begin earlier in the campaign process and reach a larger number of potential supporters. Candidate communications will likewise be designed, to a greater extent than is currently the case, to elicit Patriot-based, as well as electoral, support. And, while there may be more substantive strategies for eliciting financial backing, such as making high-profile policy statements and debating with other candidates in public, it seems inevitable that candidates will draw on another time-honored means of communicating with the electorate—political advertising. Ackerman and Ayres are cryptic about both the role and content of such appeals. Their book contains only occasional references to the anguished candidate who beseeches potential supporters to "send money now!"

But if we reflect on the features of what is likely to be a supersaturated market for voter attention, beginning in the early stages of a campaign, it appears that the need to elicit Patriot dollar donations may bring some of the most troublesome excesses of contemporary advertising into the heart of political participation.

First, all substantively based communications by candidates are likely to become occasions for soliciting funds. Campaign advertising aimed at securing the vote, and even public debates, are likely to be punctuated with references to campaign committee

91. See id.
92. See id.
93. See Collins & Skover, supra note 28, at 725–27. Some evidence suggests that, under the current regime, potential funders respond more to information about a candidate's campaign organization than to information generated through the course of a campaign. See Paul S. Herrnson, Campaign Professionalism and Fundraising in Congressional Elections, 54 J. POL. 859 (1992); Katherine Hinkley & John Green, Fundraising in Presidential Nomination Campaigns: The Primary Lesson of 1988, 49 POL. RES. Q. 693 (1996). However, the current campaign finance regime relies to a much greater degree on elite contributors who are well-informed, sophisticated analysts of campaigns than would be the case under a regime of Patriot contribution, so the degree to which these patterns would carry over is unclear.
94. See ACKERMAN & AYRES, supra note 1, at 258 n.15.
95. See, e.g., id. at 33, 57–58, 81, 174–75. Even this gesture toward a mode of operation fails to reflect the actual circumstances of Patriot dollar fundraising. Only the most seasoned incumbents, and perhaps those least likely to need an emergency infusion of Patriot dollars, will have a clear sense of who their supporters are and how to reach them. See id. at 38–40, 253 n.16.
addresses or Web sites that accept on-line contributions. This shift in itself may begin to blur the line between campaign appeals and more standard commercial solicitation. The possibility that even policy-based statements or civically-oriented appeals may acquire the flavor of infomercials is one of the less savory prospects raised by the authors’ proposal.

More importantly, candidates are likely to mount advertisements that are designed explicitly to solicit Patriot donations. As previous research makes clear, candidates tailor their methods of outreach, depending on the nature, size and diffusion of the population that they hope to reach. Though television, radio, or on-line advertisement might appear to be more costly vehicles for solicitation, the large and diffuse character of the potential body of funders suggests that candidates may have to spend money to make money. These advertisements are likely to be produced under circumstances that increase the tendency toward commercialized appeals, and bode ill for their contribution to substantive deliberation during the campaign.

To begin with, such advertisements will likely be used by lesser-known candidates, who are not incumbents. (Though in-

97. This approach was successfully pioneered by Senator John McCain in his 2000 bid for the presidency. See Schwartz, supra note 84, at 1076. McCain used appearances on television and advertisements in traditional media outlets to publicize the existence of the contribution Web site. Through this approach he raised donations at a rate of up to $20,000 an hour at the height of his New Hampshire campaign. See id.

98. See e.g., Robert Hogan, Voter Contact Techniques in State Legislative Campaigns: The Prevalence of Mass Media Advertising, 22 LEGIS. STUD. Q. 551 (1997) (indicating that use of mass media outreach approaches in state legislative campaigns is positively related to total population to be reached, geographic diffusion of population to be reached, and congruence between mass media markets and voter population to be reached). All three of Hogan’s factors would point toward the use of mass media advertising to solicit Patriot dollars. Although Hogan’s study looks at state legislative races, he observes that reliance on mass media outreach is greater and of longer standing in federal elections. See id., at 553.

99. The characterization of on-line advertisement as a potentially costly strategy assumes, as argued above, that successful Internet solicitation in a crowded field will require the services of consultants and other experts. See Garrett, supra note 84, at 1056–60.

100. Robert Hogan observes that given the comparative breadth of the market reached by any given mass media appeal, the resort to television or radio advertising may be less expensive than initially assumed. Hogan, supra note 98, at 565.

101. See John G. Geer, Assessing Attack Advertising: A Silver Lining, in CAMPAIGN REFORM: INSIGHTS AND EVIDENCE 92, 72–74 (Larry M. Bartels & Lynn Vavreck eds., 2000) (explaining that campaign communications that are rich in substantive or “position” issues are more likely to be mounted by incumbents because they have concrete policies to discuss).
cumbents may occasionally resort to such methods, they are likely to have a clearer sense of the populations that form their most likely supporters and how to reach them.) They are also likely to be mounted at a comparatively early stage of the campaign when the identities of opponents, and the most salient substantive issues have not yet crystallized. Each of these factors reduces the likelihood that a campaign advertisement will emphasize informational or policy-related content. Moreover, the range of candidates seeking to solicit the large and dispersed audience of Patriot holders is likely to result in a glut of appeals to voters. Citizens will encounter such appeals not only in their mailboxes and in traditional media outlets, but through Internet advertising, which is already becoming saturated with commercial appeals. In the face of such a glut, and in the absence of crystallized substantive issues, production values may become increasingly important. It may be necessary, as consultant Dick Morris has argued with respect to Internet advertising, to use “humor, incentives, and attractive messages . . . to lure the voter to pay attention.” Incited to entertain and lure the voter, as well as to differentiate their candidate in a crowded market for funds, there is good reason to believe that campaigns will move, like their commercial advertising counterparts, from an emphasis on “product information” to an emphasis on “product image” in presenting their candidates.

Patriot holders will be invited to support candidates for reasons that depend even less on the policy programs of candidates than current primary or general election votes do, and more on the candidates’ personal qualities. While some of these qualities such


Research suggests that even under the current paradigm, this generalized motivation involves different subsidiary judgments and different patterns of contribution. Some contributors are deeply loyal to their candidates, and will be particularly inclined to contribute when their candidate appears to be losing ground in the polls or primaries. Others wish to contribute but, lacking a strong affinity for a particular candidate, will contribute only when a candidate’s primary performance suggests that their money will be effectively spent. See Diana C. Mutz, Effects of Horse-Race Coverage on Campaign Coffers: Strategic Contributing in Presidential Primaries, 57 J. POL. 1015 (1995).

103. Morris, supra note 47, at 1043.

104. See Collins & Skover, supra note 28, at 707–10 (discussing the twentieth century move from product information to product image in commercial advertising).
as energy and integrity may speak to a candidate's merits as a future representative, others such as personal attractiveness or telegenicity may not. This movement toward the commercialized or commodified presentation of the candidate may be exacerbated as candidates learn more about what motivates citizens to contribute Patriot dollars. Ackerman and Ayres assume that the motivation will be similar to that involved in electoral choices—citizens will support with Patriot dollars those candidates that they believe will make the best elected officials. However, this assumption may not prove to be well-grounded. Just as voters sometimes support primary candidates that they would feel ambivalent about supporting in the general election, voters may support campaigns to meet political needs quite separate from the election of the best representative. They may funnel Patriot dollars in order to cast a protest vote, or to satisfy a nostalgia for a kind of politics or community that they are unlikely to find in functioning, contemporary government.

Moreover, given the difficulty of associating Patriot contribution with the most obvious market or participatory analogies, it is also possible that at least some voters will make Patriot donations on the basis of motives unrelated to serious political judgments. Donations may become the subjects of office betting pools or operate as a form of collective entertainment, similar to fantasy sports leagues. Campaigns might choose to exploit this attenuated connection to political judgment by marketing candidates much as they market other commercial commodities, such as satisfying needs and longings for youth, sexual appeal, status, and a sense of security or belonging. Campaigns might focus not only on product image advertisement, but also on its more re-

105. See ACKERMAN & AYRES, supra note 1, at 16–17 (comparing citizens' votes with Patriot dollars); see also supra Part III.

106. Examples of this include: third-party candidates, protest candidates, and candidates of color when a majority of voters are white. See Richard H. Pildes, Is Voting Rights Law Now at War with Itself?: Social Science and Voting Rights in the 2000's, 80 N.C. L. Rev. 1517, 1525 n.16 (2002) (discussing variances in votes for candidates of color).

107. Ackerman and Ayres might answer that one of the goals of the Voting with Dollars system is to make more plausible the kind of candidacies that would vitiate the need for protest votes. Campaign finance, however, is only one of the features of the existing political system that inspires unfairness, or a desire on the part of voters to protest. It therefore seems to be a plausible expectation that some desire to express protest on the part of voters would persist.

108. See, e.g., Jhally II, supra note 28 (explaining that advertisements offer images of human happiness).
cent commercial successor, "lifestyle" advertisement, which associates a particular product with an attractive environment, feeling, or activity, and implies that purchase of the product will connect the consumer to that value.\textsuperscript{109} The final irony of Ackerman and Ayres's proposal is that the consumerist analogy embedded at its heart may be rejected by voters independently considering the logic of the Patriot account, but reinstigated by campaign advertising, in ways that defeat their broader aspirations for political transformation. Instead of feeling reconnected to a world of expanded political possibilities, citizen sovereigns might feel enervated by a glut of non-substantive entreaties or narcotized by a slick, commercialized appeal to a range of apolitical needs.\textsuperscript{110}

V. CONCLUSION

Imagining the chain of events that would be triggered by a proposal that itself has many features of a thought experiment is an inherently speculative enterprise. While the dystopian consequences I explore above are possible, none is an inevitable consequence of the Voting with Dollars paradigm. In closing, I want to suggest some ways in which Ackerman and Ayres's proposal might be modified, or simply elaborated, to address some of the problems I have surveyed.

It seems worth noting that, in some respects, Ackerman and Ayres's proposal isn't a thought experiment at all. In addressing the most palpable threats of circumvention or cooptation, the proposal has the precision of a piece of enacted legislation. The proposal is replete with five-day cancellation periods for Patriot transactions,\textsuperscript{111} backup plans for governmental pro-activity in adjusting the balance between public and private,\textsuperscript{112} and complex algorithms for keeping large donations from upsetting the anonymity of the secret donation booth.\textsuperscript{113}

\textsuperscript{109} Collins & Skover, supra note 28, at 710.
\textsuperscript{110} As Jules Henry explained in Culture Against Man: "[I]n order for our economy to continue in its present form people must learn to be fuzzy-minded and impulsive, for if they were clear-headed and deliberate they would rarely put their hands in their pockets; or if they did, they would leave them there." Collins & Skover, supra note 28, at 712 (quoting JULES HENRY, CULTURE AGAINST MAN 48 (1963)).
\textsuperscript{111} ACKERMAN & AYRES, supra note 1, at 101.
\textsuperscript{112} Id. at 89–90.
\textsuperscript{113} Id. at 91.
But while it is highly developed in its object of preventing circumvention, the authors’ plan, as I have argued, is radically underdeveloped in what should be one of its most prominent features—a set of understandings that help to socialize inexperienced and potentially alienated citizen sovereigns to this new form of participation.

Voters will need to be educated to value the act of contributing small sums of publicly allocated funding to political campaigns. In order to persuade citizens that a contribution of ten or fifteen dollars may express a political vision, or confer a sense of membership, it may be necessary to implement the plan in ways that emphasize its origins in the franchise, as well as in consumer sovereignty. It may be necessary to designate a series of “donation days,” in order to focus attention, and even public debate around the prospect of Patriot donation.\textsuperscript{1} It may be useful to program ATM machines to print out stickers announcing that the wearer has made a Patriot contribution, in order to stimulate public awareness of the program and introduce a level of peer pressure. What additional measures may be necessary to create a feeling of connection or collectivity through the individualized act of contribution—such as the use, on “donation days,” of specialized ATM terminals at schools or courthouses—will depend on how quickly broad segments of the population become socialized to the new practice.

It is also possible that in the hybrid spirit of the proposal, commercial or mass media vehicles, may also be used to expose citizens to the activity of Patriot contribution. The government, or perhaps other organizations interested in the mobilization of particular segments of the electorate, might explicitly deploy consumerist strategies in order to “sell” Patriot contribution to the public, in much the way that MTV’s “Rock the Vote” campaign presented Madonna, attired solely in an American flag, to persuade young voters that participation was sexy. Or in a less explicitly commercialized vein, those responsible for implementing the proposal might deploy variants of the compelling public service advertisements that circulated after September 11, 2001, in

\textsuperscript{1} I thank Dan Farber for a series of suggestions, from the serious to the whimsical, that included designating “donation day” and more public settings for contribution. It also spurred me to consider further the deployment of commercial strategies in the interest of political socialization.
order to highlight the experience, and implicitly extol the benefits of Patriot contribution. Perhaps the best of those advertisements, which presented a series of citizens from various racial, ethnic and socioeconomic groups, declaring "I am an American,"\textsuperscript{115} could be used as a prototype, to present a similarly broad sampling of participants commenting briefly on the meaning of contributing Patriot dollars to campaigns.

As committed liberals, Ackerman and Ayres may be understandably reluctant to venture onto such potentially prescriptive territory. They prefer, instead, to use a kind of Madisonian logic—allow the foibles of the available human participants (in this case, the tendency toward commercialized consumption) to supply the energies necessary to drive participation. But while this approach may succeed for the constitutional separation of powers—where, in the properly structured environment, ambition will arise almost spontaneously to counteract ambition—it is likely to be less successful with respect to the confluence to consumerism and contribution. The perceived parallels are tenuous, and they are more likely to be exploited by campaign advertisers than deeply experienced by individual participants. The Voting with Dollars regime can succeed only as part of a larger project of political elaboration and socialization. It is possible, I suspect, to address that task in a manner that is sufficiently pluralistic to satisfy the liberal premises of its authors. But it must be addressed, if the project is to yield political engagement, rather than anomic confusion, or commercialized torpor.

\textsuperscript{115} The Ad Council, I Am an American, at \url{http://www.adcouncil.org/campaigns/I_am_an_American/} (last visited Mar. 22, 2003).