

community, the student must trust the university's commitment to educating its students. A university would not impose a policy on its students to suppress their thoughts or words because it would be a contradiction of its purpose of existence. Moreover, the students are a powerful component of the community; they serve not only as a body which absorbs knowledge, but also as an active group participating in the molding and shaping of

Does our campus really need a policy?

the university's character. In a way, the student body serves as a check upon the university; if a university exercises bad policies, the students will respond. The university is thus more reactionary than pro-actionary because it acts in accordance with the changing needs of the students. Garcetti makes a statement along similar lines when he says that "speech codes are not created in a vacuum. They're created in response to an uncivil or intolerant campus environment." So, if Yale's decision to remain unregulated results in an outburst of racist incidents, they may adjust their views accordingly, as may Stanford and any other institution that finds itself in a similar situation.

Apart from a speech code, it is important for the university to show that it wants to eradicate racism on campus by exercising positive measures consistent with its racist speech policy. The university could hire more faculty of color, create programs that encourage tolerance, and develop course requirements to replace parts of its pre-existing set of requirements (such as our rather musty-smelling, homogeneous Core) with a more current flavoring: perhaps moral and ethical issues from the 20th century, rather than the second. If students wish to express their views about race, gender equality, or sexual orientation, they should be given their chance to speak in an appropriate atmosphere such as the classroom, where words that might be considered racist and hurtful someplace else can be confronted in a neutral, thought-provoking environment. Words that may have at one time impeded discussion can in this way be used as an impetus for debate.

No one denies that racial insults have become a serious problem on college campuses. Many lawyers, administrators, and scholars have produced a great number of works on whether the university ought to install a speech code, or why a university should not install one. But the issue of racist speech does not have to extend into the legal realm. If everyone would consider the real purpose of an educational institution and the true objec-

tives of every student, the issue may slowly unravel itself. But we must first begin with faith. Students must have faith in the institution's intentions, and the university, in turn, must have faith in the goodwill of their students. If a policy is drafted, students should look upon this document critically and openly, not with suspicion or pessimism. In return, a university should not underestimate the virtue of the student body by outlining a defensive regulation that may indeed suppress the voice of the students. Professor Hamilton describes ours as "a community of honest scholars," and we should strive to meet that definition by resolving this issue of offensive speech without resorting to the legal realm. We must apply precisely that which the university has stressed: intellectual, rational discourse and an untiring devotion to ascertaining truth, because racism isn't truth, and we need not tolerate it any longer.

Bibliography

Byrne, J. Peter. "Racial Issues and Free Speech within the University." *Georgetown Law Review* Vol. 79, num. 3, Feb. 1991:386-462.

Lawrence III, Charles R. "If He Hollers Let Him Go: Regulating Racist Speech on Campus." *Duke Law Review* Vol. 1990, num. 3, 1990:452-486.

Rosenberg, David. "Racist Speech, The First Amendment, and Public Universities: Taking a Stand on Neutrality." *ComellLawReview* Vol. 76, num. 2, Jan. 1991:546-600.

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DEMOCRACY IN NEW YORK?

By Brandon Mitchell

With the tremendous world political changes of the last few years, democratic movements and demands for political pluralism are on the ascent in Latin America and Africa, Asia, and Europe, all of which invoke the American model of democratic government. Yet, in many states across America, electoral competition and participation is either stagnating or in decline.

Americans were deeply moved and proud that the Chinese students in Tiananmen Square in 1990 fashioned their symbol of Liberty after our statue of Liberty. It seems ironic, however, that in New York State, where the statue of Liberty stands, electoral competition

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for the state legislature is declining and democracy is consequently vulnerable. Consider the following:

- Nearly half of all election law litigation in the entire country takes place in New York State. In 1986, 200 candidates for office at all levels were disqualified from the ballot. The vast majority were challengers for technical or insubstantial reasons.
- In New York, state legislators running for reelection had achieved, by 1990, nearly 100 percent reelection rates. They had run unopposed 30 percent of the time and outspent their nearest challengers by margins as high as six to one.

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Electoral competition is crucial to maintaining a resilient and viable democratic system. A lack of competition undermines our democratic foundations. Electoral competition should ideally provide citizens with choices. It should promote discussion of the important issues of the day, foster a sense of responsibility for one's community, and cultivate a feeling that one's community has a stake in the outcome of an election; it is perhaps the best means by which to hold public officials accountable. However, as the examples cited above clearly demonstrate, our political system in New York State, indeed our citizenry, is not receiving the full benefits of electoral competition. This anti-competitive trend is, however, no recent phenomenon. In 1757 George Washington, arguably the most revered of the Founding Fathers, ran for a seat in the Virginia State Legislature, by employing "the customary means to win votes"—namely 28 gallons of rum, 50 gallons of rum punch, 34 gallons of wine, 46 gallons of beer, and two gallons of cider royal.

Currently, the customary means of winning election to the New York State Legislature seem remarkably consistent with those used by George Washington. One would hope that a viable candidacy would depend on the candidate's ideas, policies, or party affiliation. Instead, candidates for the legislature are increasingly distinguished by access to large sums for campaign funds. A funding base is fundamentally irrelevant to a candidate's ideas or policies, but fundamental to electoral

competition. The "marketplace of ideas" increasingly resembles a gourmet shop patronized only by the elite—those with access to large funds, generally incumbents, in leadership positions.

Admittedly, incumbents have advantages which are unmatched by most challengers, such as franking, patronage, and high name recognition, all of which play a significant role in the high reelection rates. In addition, each party skillfully redraws district lines after each census, a practice which successfully protects most of their members from challenges.

It is precisely because incumbents have inherent advantages over challengers that the public needs to be particularly concerned about any factors, such as election laws, which constitute an unfair advantage and consequently stifle electoral competition. Election laws which establish the rules under which incumbents and challengers compete are particularly worthy of scrutiny in light of the fact that incumbents have attained nearly perfect reelection rates. Campaign finance laws should also be the subject of examination, given the large disparities in the amounts and sources of campaign funds between incumbents and challengers. Scrutinizing the application of campaign finance laws upon corporations, legislative parties, and incumbents is of particular importance because it reveals repeated instances of incumbents amassing unfair advantages over challengers. The complexity and unavailability of consistent information about campaign finance practices in New York State is tremendous. Thus, the focus upon corporations, legislative parties, and incumbents is also driven by practical considerations of relative availability and consistency of information.

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An Historical Overview of Campaign Funding Practices

The fact that government and its policies reach all facets of life inevitably compels citizen attention and interest. That attention is often manifested by advancing or opposing political candidacies by means of financial contributions. Financial contributions to political campaigns are, however, a double-edged sword. Funding permits candidates to advance their ideas by disseminating

information to the public and the media, and also, for better or worse, provides some measure of a candidate's credibility and degree of public support.

At the same time, funding political campaigns inherently poses disadvantages and threats to the integrity of the electoral system. It has, throughout American history, resulted in individuals seeking undue influence with public officials by means of financial contributions. Public attention was widely drawn to issues of corruption during the Reform Era at the turn of the century. Since then, statutory attempts to regulate campaign financing by subjective standards of fairness and equity have been a protracted battle. Although the means by which one seeks public office have undergone dramatic structural and technological changes, the one question of what is an appropriate means of financing a political campaign remains unresolved. Jesse Unruh, the legendary leader of the California State Assembly during the 1960s claimed, "Money is the mother's milk of politics."

In the early days of the American republic, methods of campaigning for public office as we know them today were disdained and not extensively practiced. Instead, candidates for public office campaigned with pamphlets, partisan newspapers, and rallies. The candidates themselves, however, generally stayed at home. Expenses were paid directly by candidates and their wealthy friends and benefactors.

In the early 19th century, as religious tests for the franchise were voided and the population continued to expand dramatically, the need to reach the enlarged electorate led to what could charitably be called electoral innovations: the professional political operative. Electioneering evolved into active campaigning in which candidates armed with political paraphernalia, such as "Old Tippecanoe" (William Henry Harrison) handkerchiefs and songbooks, sought out the voters. The practice of buying votes and voters also came into vogue at this time. Perhaps the most famous vendor was Edgar Allan Poe who, in appropriately bizarre fashion, is reputed to have died from alcohol poisoning from liquor purchased with the profits from his vote. Wealthy individuals were consistently willing to help candidates defray the rising campaign costs. The 19th century list of supporters who bore the financial brunt for political candidacies is a veritable "Who's Who" of American industry, banking and railroads. Belmont, DuPont, Tilden, McCormick, Morgan, Astor, and Vanderbilt were a few of the captains of industry who contributed generously to political candidacies.

The introduction of corporations into campaign financing also occurred in the Industrial Era. Corporate contributions during the late 19th century had reached such proportions that a popular joke of the day was that Standard Oil had done everything to the Pennsylvania

State Legislature except refine it. Corporations blatantly attempted to buy influence but often had the tables turned on them by local and state officials who controlled licensing and franchises. Thus corporations, either in self interest or through coercion, became integral players in funding political campaigns. Mark Twain commenting on the corporate largesse of the time, is quoted as saying, "I think I can say and say with pride that we have legislatures that bring higher prices than any in the world."

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political process in the late 19th and early 20th centuries that the efficacy of the Reform Era laws was seriously undermined. State Senator Thomas Platt of New York, who in 1906 was the subject of a federal conflict of interest investigation, best articulates the prevailing attitude: When asked if large corporate contributions to state legislators obligated them not to harm the donor's interest, Platt responded, "That is naturally what is involved."

Platt's response belies the reality and dilemma of legislative reforms of campaign financing throughout the Reform Era, and indeed throughout the entire legislative history of campaign finance reform. Public officials must regulate themselves, but have generally proven unsuited to the task, especially when large contributors stand to be hurt. A prescient observation was made by political commentator Frank Kent in 1923: "No law has been enacted through which politicians cannot drive a four-horse team." In New York, the Platt investigations led to the passage of legislation which specifically prohibited corporations from making political contributions. However, corporate contributions continued unabated, and even assumed some measure of legitimacy in 1974. In a burst of post-Watergate reforms, the New York State Legislature permitted corporations to make contributions limited at \$5,000 per year, but those the limits proved to be ineffectual; the law also permits corporate subsidiaries to make \$5,000 annual contributions regardless of whether the parent company and subsidiary share the same bank account.

Dave McKay of the Gannett Newspapers revealed in a 1990 series on corporate compliance and enforcement of New York's election laws that the laws are evaded regularly, and with impunity. The McKay series divulged that dozens of corporations exceed the limits each year because the State Board of Elections

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(SBE), divided into over 60 autonomous offices, has no central repository of information with which to monitor compliance. During 1988 and 1989 alone, 117 corporations gave \$550,000 in excess, illegal contributions.

Since the law's enactment in 1974, no corporations found to be in violation by the SBE have ever been fined or penalized. Corporations are often permitted by the SBE to plead ignorance of the election law limits. Many of the direct beneficiaries of the corporate largesse and excess were the state legislative leaders (Mel Miller (D) Speaker of the Assembly and Ralph Marino (R) Senate Majority Leader, also controllers of state legislative party funds which receive substantial amounts of corporate donations) as well as chairs of important committees. Virtually no challengers were recipients of corporate contributions.

A random sampling of 1990 campaign finance filings at the SBE in Albany illustrates the extent to which the current campaign finance laws permit incumbents and particularly leaders to benefit from corporate goodwill:

- Senate Majority Leader Ralph Marino of Long Island, who faced no opponent in his 1990 reelection race, received thousands of dollars in corporate contributions to add to his \$200,000 reelection fund. Among the corporate donors were: Grumman, Bear Stearns, Citicorp, Manufacturers Hanover Trust, and Allstate. Upon assuming the leadership he nearly tripled the amount of money he had previously been able to raise.
- State Senator Roy Goodman of Manhattan a 20 year veteran, began his 1990 reelection effort with one million dollars while his opponent, Jack Lester, was able to raise just \$20,000. Yet Goodman received contributions from dozens of corporations such as Manufacturer's Hanover Trust, General Contractors Association, Con Edison, Paine Webber and Merrill Lynch. During a two month period Goodman, with the help of his corporate supporters, raised six times the amount his opponent raised during the entire election. Goodman's opponent received neither corporate nor corporate PAC money.
- Assembly Speaker Mel Miller, from Brooklyn, began his 1990 reelection race with \$175,000. His opponent Vincent Handal raised no funds during the entire campaign. Despite his overwhelming advantages Miller nevertheless received thousands in corporate contributions, among the contributors: Phillip Morris, Pfizer, Merrill Lynch and AT&T.
- The advantages of incumbency extend to

minority leaders in each party, who presumably may be required, on some future vote, to deliver a block of swing votes. Clarence Rappleyea, the Republican minority leader of the Assembly faced no opponent in 1990, yet, like his prominent colleagues, received and spent nearly \$100,000 with the help of many of the state's largest corporations.

The Parties

Political parties are also a major source of campaign money and are important in the overall functioning of the American political system. The parties provide a structure which politicians can use to reach an ever expanding and diverse electorate. They also provide some measure of organization and order to legislative bodies and enable citizens and activists to establish at least nominal associations by which to express their political opinions.

During the New Deal and post-Watergate peri-

Mark Twain commenting on the corporate largesse of all time, is quoted as saying, "I think I can say and say with pride that we have legislatures that bring higher prices than any in the world".

ods, judicial rulings and legislative efforts have imposed regulation on parties' activities, especially fundraising. This regulation reflects a judgement that political parties serve an important government function and are thus subject to regulation. This rationale runs contrary to the position of opponents of regulation, who have argued that parties are private organizations similar to churches and fraternal groups. While there may be general agreement that political parties are subject to regulation and that their fundraising and disbursement practices are subject to scrutiny, there is no consensus on the methods of regulation. Over half of the states permit unlimited party solicitation and disbursement, while others have established fixed or sliding scale limits.

In New York State, the political parties have no limitations on spending and fundraising. The limits on how much can be contributed by any one contributor are often exceeded and the legislative party committees are controlled by the legislative leadership of each chamber.

In 1988, the New York State Commission on Government Integrity (also known as the Feerick Commission) issued a study of the 1986 elections entitled *The*

Albany Money Machine. The study revealed that corporations either directly or through their PACs contributed substantial funds to the legislative parties. The report also showed that 15 to 20 percent of direct corporate contributions were given to the legislative party committees, as well as substantial percentages of the 38 to 50 percent made to the legislative party committees by all PACs.

The study also revealed that incumbents, rather

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than challengers, received the overwhelming majority of party funds. A report issued by the New York State Board of Elections in 1989, which summarizes the financing of the 1988 elections, when combined with the candidate filings, further substantiates the Commission's 1986 findings.

The fact that New York State election law permits unlimited funds to be spent on, or transferred to, candidates running for the state legislature might suggest that virtually no seat would go unchallenged. Yet by 1990 one-third of all seats were uncontested. Precisely because each party can raise and spend an unlimited amount of funds, potential challengers are discouraged, and districts are conceded to the opposition. A 1989 New York State Common Cause report "Changing State, Unchanging Legislature" quotes the testimony of Assembly Speaker Miller during Feerick Commission hearings in which he conceded "The bulk of the money is spent on the 22 seats out of 150...that are truly contestable." During the same hearings Senate Majority Leader Ralph Marino echoed Miller by stating "Obviously, we're not going to spend a lot on a race we can't win."

Conclusion

Based on the evidence, it may be presumptuous to assert that the reason corporations contribute to incumbents, particularly legislative leaders, and the legislative parties, is that they expect special favors in return, while incumbents amass enormous campaign funds which intimidate prospective challengers. There are undoubtedly some who are not alarmed by the above-mentioned statistics. Yet the evidence, if only circumstantial, compels further study and the issue of campaign finance practices, further inquiry because of what is at stake: democracy.

Even in the absence of hard and conclusive

evidence of the corrupting influence of corporate dollars upon the electoral integrity of New York's legislative elections, there remain some disturbing questions: Can a system which permits fully one-third of New York's state legislators to run unopposed be said to be truly democratic? Is a system which allows legislators to raise funds from corporations whose interests they control ethical? The answers to these and other questions are indeed elusive. Yet the necessity of democratic renewal compels us to search. Ironically, much of the world is exercising democracy for the first time, while in New York State it atrophies.

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Law School Profile: Yale Law School

By Brandon Mitchell

I visited Yale Law School on a warm and sunny late October day. I rode the Metroliner to New Haven with an increasing sense of reverence which was perhaps inevitable in light of Yale's reputation and prestige. Past Yale faculty has included William Howard Taft and William O. Douglas, both of whom went on to the Supreme Court. The alumni have been equally prominent, currently boasting several members of the US Senate.

Yet, my sense of reverence was dampened by ambivalence borne out of the Clarence Thomas hearings. Clarence Thomas and Anita Hill as well as Senator Specter and Senator Danforth, Thomas's patron, were all Yale Law graduates. Additionally, an important supporter of Thomas was the Dean of Yale Law School, Guido Calabresi. The hearings and the controversy had damaged everyone involved.

I was warmly greeted by Lauretta Tremblay the Assistant Director of Admissions, whom I had met a few weeks earlier during her visit to Columbia. Ms. Tremblay helped me find the schedule of classes I could attend and informed me of an upcoming tour of the school. I had some free time before class and decided to explore the school and surrounding area.

Yale Law School is completely self-contained. The classrooms, libraries, and dorms, as well as the faculty and administration offices are in the same building. The building also contains a day care center, locker rooms, and a computer center. The school is in a handsome Neo-Gothic building, occupying one square block.