

## Vote Markets

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ABSTRACT: This paper argues for the legalization of vote markets. I contend that the state should not prohibit the sale of votes under certain institutional conditions. Jason Brennan has recently argued for the moral permissibility of vote selling, yet thus far no philosopher has argued for the legal permissibility of vote selling. I begin by giving four prima facie reasons in favour of legalizing vote markets. First, vote markets benefit both buyers and sellers. Second, citizens already enjoy significant discretion in their use of their vote, including the ability to use their vote in ways antithetical to justice and the public interest. Third, vote markets are relevantly similar to other democratic practices that are legally permissible. Fourth, vote markets enable elections to better reflect the intensity of citizens' preferences. Next, I reply to two counterarguments. The first contends that vote markets will increase the political power of the wealthy; the second contends that votes must be used in the service of the public interest rather than private interests or influenced by participation in collective political deliberation. I argue that vote markets will not increase political inequalities relative to democracies without vote markets. There is little reason to expect electoral regulations to be less effective in satisfying egalitarian criteria in democracies with vote markets than in democracies without vote markets. Moreover, the claim that votes must be influenced by participation in collective deliberation or serve the common good implies counterintuitive restrictions on political liberties beyond a ban on vote buying and selling, including an abridgement of equal suffrage.

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According to Cicero, there is nothing so absurd that some philosopher has not already said it. He has a point. Philosophers tend not to be deterred from advancing an argument simply because it seems absurd (a tendency that I consider a virtue of the discipline). Some have thought that a good case could be made for the claim that everything is ultimately derived from water<sup>1</sup>, we have no knowledge of the external world<sup>2</sup>, I don't exist [Unger 2006], and blades of grass are humans' moral equals.<sup>3</sup>

Yet there is a claim that seems absurd but that, as far as I can tell, no philosopher has advanced it: buying and selling votes should be legalized. According to Supreme Court Justice William Brennan, 'No body politic worthy of being called a democracy entrusts the selection of leaders to a process of auction or barter' [1982]. Michael Sandel says, 'No one defends the outright purchase and sale of votes' [2000:114-115]. Debra Satz writes similarly, 'No one defends the outright sale of voting' [2010: 102].

This paper defends the outright sale of voting. In particular, I argue for the legalization of vote markets. There is not much in the philosophical literature by way of sustained argument against vote markets—and even less in favour of it. Jason Brennan has recently argued for the moral permissibility of vote buying and selling under certain conditions [2011a]. I argue for the *legal* permissibility of vote buying and selling. More specifically, my goal is to offer a plausible *prima facie* case for lifting bans on vote markets. *A priori* assessment of vote markets is likely indeterminate; however, I hope to show, at a minimum, that the case for vote markets is considerably more sensible than is universally assumed.

The paper's structure is straightforward: I offer defeasible reasons to permit vote markets and then rebut their alleged defeaters. I begin with reasons that favour the

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<sup>1</sup> According to Aristotle, Thales holds this view [*Metaphysics* 983b].

<sup>2</sup> For an overview of external world skepticism, see Greco [2008].

<sup>3</sup> Paul Taylor [1981] defends biocentric egalitarianism, a view that implies the moral equality of all living things.

legalization of vote markets (1). First, vote markets enable mutually beneficial exchanges between vote buyers and sellers. Second, citizens already enjoy significant discretion in the use of their vote, including the ability to use their vote in ways antithetical to justice and the public interest. Third, vote markets are relevantly similar to other democratic practices that are legally permissible. Fourth, vote markets enable elections to better reflect the intensity of citizens' preferences.

Next, I consider two counterarguments. First, the *equality argument*: vote markets will increase the political power of the wealthy (2). I argue that vote markets will not increase political inequalities relative to democracies without vote markets. Procedural safeguards intended to ensure equality in democracies without vote markets will be at least as effective in democracies with vote markets.

Second, Sandel and Satz offer the *republican argument* against vote markets: votes must be used in the service of the public interest rather than private interests or influenced by participation in collective political deliberation (3). I reply that the republican argument might specify a plausible moral constraint on the use of the vote but not a plausible legal constraint. The legal interpretation of the republican argument implies unwanted restrictions on political liberties beyond a ban on vote buying and selling, including an abridgement of equal suffrage. I close by acknowledging the limits of my argument (4).

## **1. The Case for Vote Markets**

I'll start by explaining what I have in mind when I talk about buying and selling votes. We can understand vote selling in a variety of ways, which differ in terms of implementation but not in terms of principle. To clarify one point up front: none of the forthcoming proposals imply that people have the right to sell their vote because they own their vote as property. For instance, following Brennan's treatment, we can understand vote selling as a kind of paid

performance [2011a: 137]. Vote buyers pay vote sellers to vote for a particular candidate or policy. To use an analogy inspired by Brennan, if a drug manufacturer pays someone to consume an experimental drug, they do not thereby acquire ownership rights over that person's body; instead, they are paying him to use his body in a certain way [2011a: 138]. Alternatively, we might understand vote selling as involving a transfer of rights over the ballot such that vote buyers acquire additional ballots. This proposal does not imply that citizens *own* their vote anymore than the transfer of rights involved in (e.g.) surrogacy contracts implies that the parties own the child being transferred.

Different forms of vote selling might have different practical costs and benefits. However, I won't spend much time detailing the specifics of how we might implement and enforce a vote market beyond what is needed to give context to my discussion of the philosophical challenges facing vote markets.<sup>4</sup> The reason is because such specifics are generally irrelevant to my aim in this paper. My aim is to make the case for the in-principle permissibility of vote markets and to address the philosophical objections of those who oppose vote markets *as such*—objections alleging that we should ban the practice of exchanging money for votes regardless of the particulars of its implementation. To be clear, then, the success of the in-principle case for vote markets leaves open the question of precisely how—or, critically, *whether*—to implement vote markets in practice.

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<sup>4</sup> For instance, in the case of vote selling as paid performance, a secret ballot could not be maintained if vote sales are to be enforceable. We can imagine a system under which citizens consent to relinquish anonymity if they wish to buy or sell a vote. *Prima facie* support for the in-principle permissibility of such an arrangement might come from the apparent permissibility of our current system's disclosure requirements for certain campaign contributions. In both cases citizens consent to relinquish anonymity as a precondition of providing support for a candidate. Alternatively, if we ought to reject such disclosure requirements, we would have reason to favor the rights transfer model, which *is* consistent with anonymity. In any case, even if the reasons for implementing a secret ballot outweigh those for implementing a 'vote selling as paid performance' scheme, this result would not imply that the exchange of money for a particular voting performance is impermissible in itself; rather, it implies that the conditions within which such an exchange could occur are themselves undesirable. However, as noted, I will not pursue these details of implementation in much depth.

This section offers reasons in favour of permitting vote markets and the next two sections address objections. My first argument is that vote markets enable mutually beneficial exchange. James Tobin opposes vote markets but concedes that ‘any good second year graduate student in economics could write a short examination paper proving that voluntary transactions in votes would increase the welfare of the sellers as well as the buyers’ [1970: 269]. I hope to make an argument that is at least as persuasive as one produced by a second year graduate student in economics, so I’ll briefly explain why vote markets will increase the welfare of both vote sellers and vote buyers.

Under normal conditions voluntary economic exchange is *ex ante* mutually beneficial. A trade is not consummated unless both parties expect to benefit. I will exchange a quarter for an apple only if I value the apple more than the quarter and an apple seller will exchange an apple for my quarter only if she values the quarter more than the apple.<sup>5</sup> The same analysis applies to votes. I’ll sell my vote for  $n$  dollars only if I value  $n$  dollars more than my vote and the buyer will buy my vote for  $n$  dollars only if she values my vote more than  $n$  dollars. All things equal, vote markets leave both buyers and sellers better off.

Here’s an objection: vote sales are mutually beneficial all things equal, but things aren’t always equal. Markets sometimes fail due to (e.g.) negative externalities. In this spirit, economist Greg Mankiw objects to vote markets on the grounds that they can harm third parties:

Suppose three voters are deciding whether to provide a public good that costs \$9, which would be financed by a \$3 tax on each voter. Andy values the public good at \$8, while Ben and Carl do not value it at all. Under majority voting, Ben and Carl vote against, and the public good does not get provided, which is the efficient outcome. Suppose, however, that Andy could buy Ben’s vote for \$4. He could then ensure the project gets passed. Andy is better off by \$1 (the \$8 benefit

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<sup>5</sup> As an anonymous referee notes, someone might undertake an exchange if she is perfectly ambivalent between her good and that of a potential trading partner, and the partner prefers her good. The exchange would be undertaken only if the ambivalent party values conferring the benefit to the other party enough to incur the transaction cost involved in the exchange.

minus the \$3 tax and the \$4 price of the vote), Ben is better off by \$1 (the \$4 price of the vote minus the \$3 tax), and Carl is worse off by \$3 (the \$3 tax). The Andy-Ben vote deal has negative externalities on Carl [2007].

Mankiw notes that vote selling can also result in efficient outcomes. His point is only that the presumption of market efficiency in general does not straightforwardly apply to vote markets in particular.

Sandel objects—correctly, to my mind—that Mankiw’s argument proves too much [Mankiw 2007]. Suppose Andy *persuades* Ben to vote for the project. This act of persuasion creates negative externalities for Carl but it is and should be legally permitted. We can take Sandel’s argument a step further: voting itself can create negative externalities. Suppose Andy values the \$9 public good at \$4 and Carl does not value it all. Ben, without any input from Andy, also happens to value it at \$4. Simply by casting his vote for the project, Ben imposes negative externalities on Carl. Yet it is, and ought to be, legally permissible for Ben to cast this vote. Therefore, we can safely infer the following: that a political act creates negative externalities is not sufficient to justify prohibiting that act.

We might nevertheless still worry about a looming collective action problem: a few vote sales are unproblematic but the widespread sale of votes can create significant social costs.<sup>6</sup> However, this problem does not suffice to justify prohibiting vote sales. Note that a similar collective action problem arises in the case of uninformed votes. A few uninformed votes are unproblematic but widespread uninformed voting can create significant social costs. Yet few seek to disallow uninformed votes.<sup>7</sup> Before moving on, let me note that there might be morally important differences between uninformed voting and vote selling that would justify prohibiting the latter but not the former. I’ll return to this issue in section three. For now, I’d

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<sup>6</sup> Thanks are due to an anonymous referee for raising this objection.

<sup>7</sup> However, see Mueller [2002] and Brennan [2011b] for a defense of requiring voters to demonstrate sufficient knowledge on an exam.

simply like to suggest that the kind of collective action problem that could arise from vote sales is not sufficient to justify prohibiting those sales.

The next consideration in support of permitting citizens to sell their vote is what I'll call the *presumption of voter liberty*. To paraphrase David Estlund, citizens have the legal right to make voting decisions within broad limits without interference by the state [2007: 261]. The best evidence for the presumption in favour of voter liberty is probably the very wide discretion that people have to use their vote badly. Citizens are permitted to use their vote to maximize their economic return or even to advance downright antisocial and unjust ends (e.g., votes for openly racist candidates count). The presumption of voter liberty implies that there is *prima facie* reason to allow citizens to use their vote as they see fit and that the burden of justification rests with those who would abridge that liberty.

The presumption of voter liberty is a plausible self-standing judgment. That said, it coheres with a variety of background democratic theories that underpin arguments for universal suffrage. Consider Estlund's *Qualified Acceptability Requirement* (QAR), according to which 'no one has authority or legitimate coercive power over another without a justification that could be accepted by all qualified points of view' [2007: 33].<sup>8</sup> Estlund takes QAR to undercut claims that those who are less likely to make good political decisions ought to be deprived of their democratic power:

Even if we grant that there are better and worse political decisions (which I think we must), and that some people know better what should be done than others (we all think some are much worse than others), it simply does not follow from their expertise that they have authority over us, or that they ought to. This expert/boss fallacy is tempting but someone's knowledge of what should be done leaves completely open what should be done about who is to rule. You might be right, but what makes you boss? [2007: 3]

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<sup>8</sup> Note that Estlund doesn't offer a detailed specification of the conditions required for a point of view to count as qualified.

We can redeploy Estlund’s argument to defend a prima facie right to sell one’s vote. As long as vote sellers have qualified points of view, they can reasonably reject interferences with their decision to sell their vote. (And note the presumption is that voters of sufficient age *do* have a qualified point of view: there is no burden on citizens to show that they have a qualified point of view before they are entitled to vote, e.g., by passing some substantive test. More on this later.) So, drawing inspiration from Estlund, we can imagine vote sellers saying to a vote market blocker: ‘You might be right that selling my vote in support of Candidate A will lead to worse political outcomes—just as you might be right that *casting* my vote in support of Candidate A will lead to worse political outcomes. But what makes you boss such that you have the authority to stop me?’

To be clear, the presumption of voter liberty only establishes a prima facie right to sell one’s vote. It shifts the burden to the blocker of vote sales to justify her claim to be ‘the boss.’ And there might be justifications available. Perhaps, for example, the mere willingness to sell your vote is evidence that you do not hold a qualified point of view: this willingness shows that you misunderstand, at a very basic level, what a vote is *for*. I’ll discuss this and other objections in sections two and three, so I will set them aside for now. Moreover, I want to emphasize that the presumption of voter liberty does not *require* Estlund’s QAR as a substantiating principle; rather the QAR is just one possible background theory that could justify the independently plausible presumption.

Next, democracies with vote markets can increase the extent to which an electoral outcome reflects the intensity of citizens’ political preferences [Buchanan and Tullock 1962; Haefele 1971; Mueller 1973; Philipson and Snyder 1996; Hasen 2000: 1332]. Consider the limit case. Suppose 50.01% of the electorate *just barely* supports Candidate A. If they judged Candidate A to be only marginally worse, all 50.01% would flip to Candidate B. The



remaining 49.99%, by contrast, are in such enthusiastic support of Candidate B relative to Candidate A that they will all emigrate if Candidate A wins. The election of Candidate B is, plausibly, preferable to the election of Candidate A. If vote markets are permitted, those who care more about the election can buy more votes, leading to the election of Candidate B. The result is a process with an ability to better reflect *how much* people prefer a given candidate.<sup>9</sup>

Vote markets might also hold special appeal for ambivalent voters. Suppose there is a citizen who is ambivalent with respect to an electoral outcome and decides to sell her vote. Because the seller will be equally satisfied with any of the electoral outcomes, her preferences will still be reflected in the electoral outcome regardless of how the buyer uses her vote.<sup>10</sup>

Of course, citizens' ability to express their preferences in a vote market is limited by their ability to buy, so a vote market set against a background of economic inequality might not track preference strength as well as one set against a background of economic equality. For instance, the rich are more likely to buy votes than the poor. The poor are more likely than the rich to value the income gained from a vote sale and the wealthy can afford to buy more votes than the poor. Thus, we should worry that a distorted picture of citizens' political preferences will emerge from a vote market.<sup>11</sup>

In reply, let me first note that there is good reason to doubt that individual votes will command such high prices that the poor will receive irresistibly lucrative offers for their votes. The likely price of a vote is difficult to estimate in part because vote markets are rare and exist only as black markets. However, a recent case is instructive. In a race for county commissioner of Dodge County, Georgia, two candidates bid for absentee ballots and votes

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<sup>9</sup> Of course, there are other democratic procedures that can reflect intensity of preference, e.g., the Borda count method and approval voting. One advantage that vote markets have over these methods is their ability to enable citizens to make more fine-grained expressions of preference intensity through the negotiation of specific prices for votes.

<sup>10</sup> Thanks are due to an anonymous referee for this insight.

<sup>11</sup> I owe this objection to helpful comments from anonymous referees.

were sold for between \$20 and \$40 dollars [Hasen 2000: 1329]. The prices were low despite being purchased for use in an extremely close race: the margin of victory was a mere 31 votes out of about 11,000 cast [Hasen 2000: 1329 fn. 35]. Indeed, we should expect considerably lower prices in national elections because of the considerably lower value of each vote.

Furthermore, the state can also put regulatory safeguards in place to ensure that the price of a vote does not exceed some preferred limit, thereby preventing irresistibly lucrative offers for a vote. Along similar lines, the state can limit the influence of wealth by limiting spending on votes, limits that could draw inspiration from proposals for limiting electoral spending in general. I explain these regulatory possibilities in greater depth in the next section.

Finally, arguments for the legal impermissibility of vote buying and selling imply the impermissibility of other democratic practices that are legally permissible such as logrolling and earmarking. First consider legislative vote trading, often called ‘logrolling.’ Logrolling occurs when a legislator secures the vote of another legislator on behalf of his favoured legislation in exchange for offering his vote on behalf of her favoured legislation. Logrolling is functionally equivalent to vote buying and selling even though no money is involved [Hasen 2000: 1338ff; Mueller 2003: 105]. Money is simply a medium of exchange that facilitates the trade of other things of value. Legislative logrolling is a form of bartering but there is no fundamental moral difference between barter exchanges and exchanges involving money. The principle is the same in both the case of vote markets and legislative logrolling: votes are exchanged for the sake of the mutual advancement of the parties’ ends. The legal status of logrolling is not entirely clear, as it is sometimes considered illegal and sometimes considered legal [Hasen 2000: 1339-1340]. Yet even though there is reason to believe that

the practice is common, prosecutions are rare—even in publicly known cases of legislative vote trading.<sup>12</sup> So it is reasonable to say that logrolling is generally not regarded as a prosecutable offense.

Certain kinds of earmarking are also relevantly similar to the practice of vote buying. Earmarking or ‘pork barrelling’ involves allocating public funds to specific projects or recipients, typically with the intent of winning some particular portion of the electorate’s support. Consider the candidate who promises farm subsidies to win votes from Iowa corn farmers. We can use this case to rule out another plausible principle that would justify a ban on vote markets: practices that offer material incentives to persuade voters to support a candidate or policy on the basis of their economic self-interest (rather than the public interest) are (legally) impermissible. Here’s my counterargument:

P1: If practices that offer material incentives to persuade voters to support a candidate or policy on the basis of their economic self-interest are impermissible, then earmarking is impermissible.

P2: It is not the case that earmarking is impermissible.

C: Thus, it is not the case that practices that offer material incentives to persuade voters to support a candidate or policy on the basis of their economic self-interest are impermissible.

Someone might reject P2—more on that in a moment. For now, let me say more in defence of the claim that indirectly ‘buying’ votes by offering policies that cater to voters’ narrow economic self-interest is relevantly similar to outright vote buying.

Sandel considers and rejects three possibilities that could differentiate earmarking from direct vote buying. Perhaps an agricultural subsidy is more acceptable than a direct payment because it comes from public funds. But this feature seems to make the policy *worse* than the

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<sup>12</sup> On the pervasiveness of logrolling, see Mueller [2003: 104]. On the rarity of prosecutions, see Hasen [2000: 1339-1340]. For a discussion of some cases of publicly known but unprosecuted logrolling, see Oleszek [2014: 24]. Thanks are due to John Thrasher for insight and information on logrolling.

payment [Sandel 2000: 117]. The policy but not the payment imposes a cost on third parties, namely the taxpayers.

Second, a campaign promise can be broken. But as Sandel writes, 'If voters are skeptical that the promise will be kept, they can simply assign it a discounted value that reflects their degree of uncertainty' [2000: 117]. For example, 100 corn farmers could assign the promise of a \$1,000 subsidy with a 30% chance of being enacted a value of \$300.

Finally, the direct payment targets specific groups rather than the public at large. Yet this feature of direct payments fails to differentiate them from campaign promises because the latter often target specific groups as well. In the case under consideration, the promise targets a very narrow economic interest—namely, corn producers.

Sandel concludes that there is no difference in principle between candidates' offers of policies that target voters' narrow economic self-interest and candidates' offers of direct payments to voters. Sandel infers that because direct payments are wrong, promises of 'pork' are wrong too. He might be right about this. But what is relevant for our purposes is not whether pork barrelling is morally wrong but whether it should be *criminal*. The grounds for the latter claim are weaker than those for the former.

For one, earmarking is, as a matter of actual practice, legally permissible. Moreover, some policies that benefit specific groups such as students, homeowners, or the elderly do not appear objectionable simply in virtue of benefiting specific groups rather than the general public. Thus, with respect to the legality of vote markets, we can make a claim that is the reverse of Sandel's: since candidates' offers of policies that target voters' narrow interests should not be considered criminal acts, offers of direct payments to voters should not be considered criminal acts.

In reply, some could object that a just democratic system *would* eliminate pork barrelling and the like. Maybe tax benefits to homeowners are justified only if they redound to the benefit of the general public. Yet if pork barrelling and other forms of political favouritism are excised from the political system, then a just democratic regime has room for vote markets. The reason is because the regime would deprive potential vote buyers of their incentive to bring about the negative outcomes associated with vote markets.

## **2. The Equality Argument**

The preceding section discussed some reasons to permit vote markets. But there also seem to be compelling reasons to prohibit them. The next two sections attempt to rebut counterarguments. I could only locate two arguments against vote markets in the philosophical literature. The first is the equality argument: vote markets will cause wealth-based political inequalities. The second is the republican argument: proper votes serve the public interest rather than private interests. This section addresses the equality argument; the next addresses the republican argument.

The equality argument asserts that vote markets would enable the rich to acquire unequal political power. Wealthy individuals and groups could advance their political interests by simply buying votes, thereby undermining political equality. Satz writes,

The regulative idea of democracy is that citizens are equals engaged in a common cooperative project of governing themselves together. Thus citizens participate with others on an equal footing in deciding on the laws and policies that will govern them. A market in votes would have the predictable consequence of giving the rich disproportionate power over others since the poor would be far more likely than the rich to sell their political power [2010: 102].

Here Satz frames her objection to vote markets partly in terms of the interests and preferences of the rich being overrepresented—by acquiring additional votes, the wealthy would no longer be on ‘equal footing’ with the poor in democratic decision making processes. Other variations on the equality argument, like Tobin’s, focus more directly on

the potential for vote markets to enable the rich to wield greater coercive power than the poor [1970: 269]. Either possibility is troubling, given the liberal commitment to limiting inequalities in political representation as well as limiting the ability of the rich to acquire unequal control over the coercive power of the state.<sup>13</sup> A number of theorists have offered variations of the equality argument and it is probably the most common challenge to vote markets in the literature [Buchanan and Tullock 1962: 271; Tobin 1970: 269; Rose-Ackerman 1985: 963; Levmore 1996: 609].

I will begin my reply by noting that democracies *without* vote markets produce wealth-based political inequalities. They have, to borrow Satz's words, 'the predictable consequence of giving the rich disproportionate power over others' [2010: 102]. John Rawls observes, 'Those with greater wealth and position usually control political life and enact legislation and social policies that advance their interests' [2001: 148]. He expounds the worry, noting that historically 'the democratic political process is at best regulated rivalry [...] Political power rapidly accumulates and becomes unequal; and making use of the coercive apparatus of the state and its law, those who gain the advantage can often assure themselves of a favoured position' [Rawls 1999: 199]. Even without vote markets, better funded, better connected, and better organized groups tend to control the electoral process for their benefit.<sup>14</sup>

Thus, existing democratic systems fall short of what Satz calls the 'regulative idea' of democracy. If a system that fails to satisfy this standard is thereby illegitimate, then not only are vote markets illegitimate, existing democratic systems without vote markets are illegitimate too. Of course, maybe existing democracies *are* illegitimate. They might lack many of the regulatory safeguards that a legitimate democracy would have and thus fail to

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<sup>13</sup> Thanks are due to an anonymous referee to drawing attention to the need to differentiate between these two versions of the equality argument.

<sup>14</sup> On this idea see Olson [1982].

minimize unfair, wealth-based political inequalities relative to available alternative democratic regimes.

Satz, for example, says that she favours the regulation of markets governing the production and distribution of political information [2010: 103]. Although Satz doesn't specify the particulars of the regulation she has in mind, she refers readers to Rawls's proposals. These proposals break down into measures that (i) target disparities in the means of acquiring political power by minimizing background economic inequalities through wealth and income redistribution and (ii) directly target money in politics through various forms of campaign finance regulation [Rawls 1999: 198; Rawls 2005: 359-63].

I contend that imposing these regulatory conditions on justified democratic regimes actually *strengthens* the case for vote markets. If the regulations are effective in satisfying egalitarian criteria in democracies without vote markets, there is little reason to expect them to be less effective in satisfying egalitarian criteria in democracies with vote markets. Both the 'equality of representation' and 'equality of coercive power' versions of the equality argument focus on the greater ability of the rich to make use of the vote market for their own political ends; thus, if there is a way to constrain inequalities in this ability, we could mitigate the egalitarian concerns expressed in each version. I contend that regulation offers one such way.

Consider first equalizing background economic inequalities. A number of philosophers have argued that by redistributing income, we can increase political equality—there would be fewer inequalities in the means of acquiring political power [Nagel 2003: 106-7; Scanlon 2003: 205; Rawls 2005: 328]. The wealthy would have fewer resources to spend on the acquisition of political advantages, thereby reducing their unfair political advantages. However, if income redistribution successfully limits the means that the wealthy have to

spend on the acquisition of political advantages, then it would limit the means that they have to spend on votes. The rationale for equalizing background inequalities applies to vote buying just as well as it applies to any other form of electioneering.

The same point holds for directly targeting money in politics. Consider, for example, the imposition of spending caps on parties, candidates, and supporters or bans on the use of ‘soft money’ (contributions to parties and committees rather than to candidates themselves) to affect electoral outcomes. If regulations successfully limit the amount of money that is spent on various forms of electioneering, then they should also successfully limit the amount of money that can be spent on vote buying. Here again, the rationale works just as well for vote markets as it does for other kinds of campaign finance.

Indeed, there is reason to think that regulation will be *more* effective in the case of vote markets than other kinds of campaign finance. Mancur Olson writes, “The limited incentive the typical citizen has to monitor public policy also implies that lobbies for special interests can sometimes succeed where matters are detailed or complex but not when they are general and simple’ [1982: 69-70]. Straightforward vote markets are ‘general and simple’ processes compared to the detailed and complex matter of campaign finance. The comparative complexity of campaign finance renders it more vulnerable to capture by wealthy special interests. It is costly for the typical citizen to read (e.g.) the Bipartisan Campaign Reform Act, let alone monitor the faithfulness and effectiveness of its implementation. This cost increases the likelihood that special interests will go unnoticed and unopposed in their efforts to lobby for loopholes that undermine the regulation’s efficacy (such as the exemptions of so-called ‘527s’—issue advocacy groups that are not subject to contribution or spending limits). By contrast, compliance with a simple cap on vote purchases is less



costly to monitor, which in turn decreases the likelihood that concentrated wealthy interests will go unnoticed and unopposed in attempts to undermine the regulation's efficacy.

Consider also a special feature of vote markets that plausibly enhances the efficacy of its regulation relative to other kinds of markets: the state directly oversees the domain over which buyers and sellers contract. This feature gives rise to a simple but effective method of enforcing spending regulations. The state could simply refuse to count those votes purchased by buyers who have exceeded their spending limit.<sup>15</sup> At the least, the preceding considerations suggest that there is little reason to expect regulation to be less effective for vote markets than other forms of electioneering.

We need empirical evidence that we do not have to offer a definitive assessment of the equality argument. Thus, arguments on both sides are speculative; philosophy alone cannot resolve the question of whether political equality is consistent with vote markets. So at this stage it seems reasonable to suspend final judgment on the permissibility of vote markets. Yet this very indeterminacy neutralizes the equality argument's ability to defeat the case for vote markets. At a minimum, the equality argument against vote markets is not decisive.

### **3. The Republican Argument**

Next is what I'll call the *republican* argument against vote markets.<sup>16</sup> Here's Sandel:

[C]onsider the rights and obligations of citizenship. If you are called to jury duty, you may not hire a substitute to take your place. Nor do we allow citizens to sell their votes, even though others might be eager to buy them. Why not? Because we believe that civic duties should not be regarded as private property but should be viewed instead as public responsibilities. To outsource them is to demean them, to value them in the wrong way [2012: 10].

Elsewhere Sandel writes, 'Our reluctance to treat votes as commodities should lead us to question the politics of self-interest so familiar in our time. It should also lead us to

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<sup>15</sup> I owe this point to Adam Lerner.

<sup>16</sup> Hasen calls this the 'inalienability' argument [2000: 1335]. Margaret Jane Radin argues against vote selling on the grounds that voting rights implicate 'moral or political duties related to a community's normative life' [1987: 1854].

acknowledge and affirm the republican ideals implicit but occluded in contemporary democratic practice' [2000: 118]. What are these republican ideals? They are those that strive to cultivate in citizens 'a moral bond with the community whose fate is at stake, a sense of obligation for one's fellow citizens, a willingness to sacrifice individual interests for the sake of the common good, and the ability to deliberate well about common purposes and ends' [2000: 108].

Satz offers a similar argument. Votes are properly cast after collective deliberation and with the aim of advancing the public interest. Vote markets are antithetical to this ideal:

[*Votes are acts of political co-deliberation.* Even if a vote market were not monopolized by the rich, we would still have a reason to proscribe vote trading on the grounds that voting is not about the aggregation of private interests; it is an act undertaken only after collectively deliberating about what is in the common good. Distributing votes according to preferences views citizens as consumers, not co-deliberators [Satz 2010: 103].

Perhaps the republican argument provides a compelling account of the moral constraints on citizens' use of their votes. However, it does not provide a compelling account of the *legal* constraints on citizens' use of their votes. Even if we should criticize citizens for failing to vote in accordance with republican standards, we should not follow Satz in concluding further that the republican argument gives us 'a reason to *proscribe* vote trading' [2010: 103. Italics mine].

Note that we must interpret the republican argument as a legal argument if it is to undercut the case for legalizing vote markets. And there are a variety of ways we can interpret the legal principle specified by the republican argument. Consider first Satz's claim that voting 'is an act undertaken only after collectively deliberating about what is in the common good' [2010: 103]. If we interpret this claim as specifying a condition that must be satisfied lest one's use of the vote be proscribed, then active democratic deliberation becomes a necessary condition of suffrage. I conjecture that many democratic theorists

would oppose disenfranchising citizens who do not engage in collective political deliberation.<sup>17</sup> This policy is at least controversial, as it implies unequal suffrage.

Another interpretation of the republican argument captures Sandel's emphasis on advancing the common good. Perhaps the state can restrict a given use of the vote when there is good reason to doubt that this use will satisfy some standard of the common good (or satisfy the standard to some degree of adequacy). Yet this interpretation of the republican principle also implies a variety of institutional measures that seem intuitively unacceptable. For example, it implies that we should treat a farmer's self-interested vote for farm subsidies as a criminal act. This implication seems sufficiently counterintuitive to enable us to infer the falsity of the republican legal principle via *modus tollens*.

Moreover, the republican principle under consideration seems to imply that the state is justified in preventing uninformed citizens from exercising their use of the vote. To have justified beliefs about what is in the public interest, voters must possess adequate general knowledge about fields like economics, political philosophy, and history and specific knowledge about the candidates and the offices in question. Estlund delineates just some of the daunting amount of information people need to vote well:

A smart decision about whom to vote for would seem to require some information and understanding about the merits of policy proposals, since these will be some of the major reasons to prefer one candidate to another. These merits depend on lots of facts, many of them publicly contested. Should I vote for the Republican candidate for Senate? He supports shifting Social Security funds into private financial markets. How well will they perform? What other effects does this have on Social Security's viability over time? And so on. The merits, of course, also depend on an understanding of moral matters concerning justice, equity, rights, and responsibilities . . . In addition, intelligent votes for office holders seem to require information of another kind: information about how a candidate is likely to behave. This, in turn, would seem to require information about the formal and pragmatic powers and constraints of the office in question, some understanding of what the future is likely to bring (partly as judged in light of history), and so on [2007: 260].

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<sup>17</sup> One objection to mandatory political deliberation is that it conflicts with what Rawls calls 'reasonable pluralism.' As Rawls writes, 'In a well-governed state only a small fraction of persons may devote much of their time to politics. There are many other forms of human good' [1999: 200].

The state could license voters on the basis of demonstrating a sufficient body of relevant knowledge on an exam.<sup>18</sup> Yet as Estlund notes, evidence indicates that voters tend to lack this knowledge [2007: 260]. So a republican-inspired voting exam would likely disenfranchise many, if not most, citizens. I conjecture that most democratic theorists would oppose disenfranchising citizens who do not pass a voting exam. This policy, like mandatory deliberation, implies unequal suffrage. Even theorists like Brennan who support voter exams and thus reject equal suffrage note the widespread support for equal suffrage [2011b: 711].

One might object as follows. The republican argument does indeed provide *prima facie* reason for the suffrage restrictions discussed above. However, there are additional considerations that count against these further suffrage restrictions but not against a vote market ban—for instance, prosecuting citizens for voting in favour of agricultural subsidies would involve excessive intrusion, harassment, or coercion and voter exams would stigmatize disenfranchised citizens.<sup>19</sup> Thus, we can revise the republican principle to include a new condition. Perhaps the state can restrict a given use of the vote when there is good reason to doubt that this use will satisfy some standard of the common good (or satisfy the standard to some degree of adequacy)—but only if it does not involve excessive intrusion, coercion, stigmatization, or the violation of basic rights.<sup>20</sup>

This revised republican principle would justify vote market bans but not the further suffrage restrictions discussed above because vote market bans can be implemented without intrusion, excessive coercion, stigmatization, and so on. However, I believe there is reason to oppose restricting the use of the vote to those uses that satisfy some republican standard of

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<sup>18</sup> For proposals along these lines, see Mueller [2002] and Brennan [2011b].

<sup>19</sup> Thanks are due to an anonymous referee and an associate editor for raising these concerns.

<sup>20</sup> I am grateful to an associate editor for suggesting that a revised principle along these lines could support a vote market ban but not the further suffrage restrictions under consideration.

the common good, even apart from concerns about intrusiveness and the like. Such a restriction seems objectionable in itself.

To see why, consider a counterexample to the revised republican principle. Suppose that votes for candidates and ballot initiatives that fail to satisfy some standard of the common good (or satisfy the standard to some degree of adequacy) are simply disallowed or disregarded. Call this sort of suffrage restriction *republican screening*. Republican screening would not stigmatize, excessively coerce, or intrude upon citizens.<sup>21</sup> Nevertheless I believe that many democrats would be, at a minimum, uneasy with this restriction, if not outright opposed to it.<sup>22</sup>

Here again, the rejection of republican screening is a plausible freestanding judgment that also coheres with prominent democratic principles. For instance, consider a principle along the lines of Estlund's Qualified Acceptability Requirement (QAR), if not the QAR itself. A democratic process that privileges votes or voters more likely to satisfy a substantive moral standard is subject to reasonable, or, in Estlund's terms, 'qualified' rejection. According to Estlund, the rough idea underlying a commitment to universal suffrage is as follows: 'We are not bound to turn our moral judgment over to any other agency, to 'surrender our judgment,' as the phrase often goes . . . [D]eference to some other agency on

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<sup>21</sup> One might object that republican screening—but not a vote market ban—would be stigmatizing because it involves judging some citizens' preferred candidates and policies to be unworthy due to their failure to satisfy a republican standard. Although vote market bans do not involve identifying specific candidates and policies as unworthy, the same general concern about stigmatization seems to apply: the republican argument for vote market bans involves judging some citizens' preferred use of their vote as unworthy because it conflicts with a republican standard of the common good. Thus, if the potential for stigmatization of the specified sort renders republican screening unacceptable, it also renders vote market bans unacceptable. I am grateful to an associate editor for this journal for raising this worry.

<sup>22</sup> The republican screening case furnishes a further counterexample to the collective action problem objection raised in section 1: the widespread casting of votes that fail to satisfy some standard of the common good could also create significant social costs. Thus, if one rejects republican screening, then one should deny that the collective action problem arising from a given use of the vote suffices to justify disallowing that use, even when disallowed in a non-stigmatizing way.

substantial moral matters is open to qualified denial' [2007: 212-213]. One might reject republican screening on the grounds that it demands, in effect, that those citizens whose votes are disallowed or disregarded surrender their judgment.

If one accepts a principle like the QAR, then one cannot regard the failure of a given use of the vote to satisfy the republican standard of the common good as sufficient to justify disallowing that use (even when disallowed in a non-stigmatizing, non-coercive, or non-intrusive way). I should emphasize that rejecting republican screening does not require one to accept the QAR or a principle in its spirit; rather the point is that there are compelling democratic principles that could justify the independently plausible judgment.

Those who reject republican screening have reason to reject the revised republican principle.<sup>23</sup> The theoretical cost of accepting the revised republican principle (viz. restricted suffrage) is plausibly greater than the alleged benefit (viz. the rejection of vote markets). Of course, not all will agree, so here is how I'll put the point: those who are unwilling to accept the further implications of the revised republican principle must reject the principle—in which case they cannot appeal to the principle in support of a vote market ban.

There is probably some limit in principle to citizens' right to use their votes as they see fit. For instance, if a candidate in favour of, say, slavery or genocide were seriously threatening to win office, then democratic institutions would be justified in proscribing

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<sup>23</sup> Perhaps there is a further reason to reject republican screening that does not apply to vote market bans. A policy of republican screening might cause citizens to be unsure whether their votes will count and thus to worry that they will lose their opportunity for electoral participation. Yet the state could address this worry by publicizing a list of approved candidates and ballot measures for which votes will count. Of course, even a publicized policy of republican screening would prevent some citizens from using their vote in the manner they prefer—but the same can be said for vote market bans. In both cases, the republican principle sets limits on the permissible uses of the vote, limits that would apply equally to all citizens. Thanks are due to an anonymous referee for raising this objection.

citizens from voting for that candidate to prevent catastrophe.<sup>24</sup> But there simply is not enough evidence to suggest that vote markets would result in a catastrophe or even electoral outcomes worse than we actually have or can reasonably expect to have. Even if one disagrees with my arguments suggesting that vote markets could improve electoral outcomes, there is not sufficient justification for thinking they would make electoral outcomes *catastrophically* bad.

#### **4. Conclusion**

I have argued that there is a positive case to be made for permitting vote markets and that we can reject the alleged defeaters for this case. Vote markets have costs that weigh against their benefits, but so do existing democratic institutions and the available alternatives. Whether vote markets are sufficiently costly so as to justify their prohibition is a question that depends partly on matters about which we lack definitive evidence. Thus, I should stress that we cannot conclusively answer the question prior to empirical inquiry into the effects of permitting vote markets.

Although I have not definitively established the case for vote markets, I hope to have at least accomplished a more modest goal—showing that the case for vote markets is more reasonable than commonly assumed. Earlier I noted that no philosophers have argued in favour of the legal permissibility of vote markets. I have tried to show, at a minimum, that the philosophical opposition to vote markets is disproportionate to vote markets’

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<sup>24</sup> One might object that elected officials are obligated to do as instructed by voters (although third parties might also have an obligation to intervene in some cases). My view is that this moral rule must include an ‘escape’ or ‘disaster’ clause, such that elected officials are not obligated to do as instructed by voters when doing so would result in catastrophe. Indeed, I believe that all moral rules must include this sort of clause. I’m grateful for the comments of an anonymous referee on this issue.

unreasonableness. A discipline that relentlessly challenges conventional wisdom should regard the prohibition on vote markets as a convention worth challenging.<sup>25</sup>

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