Summer 2005

Giving the Gift of Public Office

James A. Gardner

University at Buffalo School of Law

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/articles

Part of the Election Law Commons, and the Political Science Commons

Recommended Citation

Available at: https://digitalcommons.law.buffalo.edu/articles/235

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Journal Articles by an authorized administrator of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.
Giving the Gift of Public Office

JAMES A. GARDNER†

In 1996, at the age of ninety-three, Strom Thurmond announced that he would seek reelection to his U.S. Senate seat from South Carolina, a seat to which he was first elected in 1954, following what had already been a twenty-year career in public service as a county official, state senator, governor, and presidential candidate. At the time of his announcement, Thurmond’s mental acuity had for some years been the subject of quiet doubt. On Capitol Hill, it was an open secret that Thurmond relied almost entirely on his staff to do the real work of the office and that his main activities consisted of photo opportunities and naps. Thurmond’s Democratic opponent in the 1996 race, real estate developer Elliott Close, demanded repeatedly that Thurmond debate him, a demand that Thurmond’s campaign repeatedly refused. With his hair dyed a shocking shade of red, Thurmond cut an absurd figure. He looked ridiculous. He was ridiculous. Had it been possible to detach the man from his record, his candidacy would have been a joke. Yet the people of South Carolina returned Thurmond to office by a comfortable margin of nine percentage points over his Democratic challenger. Why?

In 1988, the entertainer Sonny Bono ran for and was elected Mayor of Palm Springs, California, and then ran successfully in 1994 for the U.S. House of Representatives. Bono had enjoyed brief fame during the 1970s as half of the pop vocal duo Sonny and Cher, which had recorded several hit songs and hosted a television variety show from 1971 to 1974. He was widely, and quite obviously correctly, known

† Joseph W. Belluck and Laura L. Aswad Professor of Civil Justice, State University of New York, University at Buffalo Law School. Thanks to Jack Schlegel for valuable comments on an earlier draft.
as the less talented, even untalented, half of the duo. While Bono was no doubt a shrewd manager and businessman, he adopted for Sonny and Cher's act the persona of a colossal jerk. He was convincing. When Cher divorced him in 1975 and began a highly successful solo career as a singer and actress, Bono faded from the public eye. Why would the people of Palm Springs elect to high public office a man who had become famous for being an untalented, if likeable, idiot?

The story of Sonny Bono's political career would be strange enough if it ended there, but it didn't. In 1998, Bono died in a skiing accident. A special election was held to fill the remainder of his term. The winner of that election was Mary Bono, Sonny's widow, who had married Sonny following her graduation from college and thereafter had been a full-time mother and homemaker. Mary Bono's election to replace her late husband is, in fact, only one of the most recent examples of a fairly common phenomenon in American electoral politics. In the last eighty years, nearly forty widows have been elected to the House seats formerly occupied by their deceased husbands, and they have a combined record, in running for these seats, of thirty-seven victories against only two defeats.¹ What gives? Why would Americans elect to Congress more than three dozen individuals whose main qualification for office is that they happened to have been married to a Congressman at the time of his death?

One might easily go on. Why, in 1986, did voters elect Clint Eastwood mayor of Carmel, California, at a time when, before his recent public retooling as a sensitive auteur, he was known merely as a stupendously bad actor? Why did Californians elect Arnold Schwarzenegger—an unreconstructed stupendously bad actor—their governor? Why, for that matter, did voters return George W. Bush to the White House after a first term of, at best, no significant positive accomplishments?

The reason in all these cases is simple: they asked for it. What all these individuals have in common is that they wanted, for reasons best known to themselves and apparently irrelevant to voters, to occupy a high public

---

office, and asked for that privilege in circumstances where the public had the power and the opportunity to grant their wish. These men and women, in other words, asked the people for a gift, a gift only the people have the power to bestow—the gift of public office—and the people obliged.

Certainly none of them could make any claim to the people’s votes according to the standards we conventionally apply to election contests. Although highly experienced, Strom Thurmond, at the age of ninety-three, was qualified to retire, not to spend another six years in the Senate. Sonny Bono was perhaps qualified to open a restaurant, which is what B-list celebrities did in the days before reality television. Mary Bono was qualified to get on with her life, not to take a seat in Congress. These people did not win office on the strength of any particular qualification. They got the job simply and exclusively because the public happened to like them, and believed that the appropriate way to treat people whom you like, and who want something you have the power to provide, is to do the nice thing and give them what they want. Office was dispensed in all these cases not, as we conventionally suppose, as a means of implementing public policy or of holding government accountable to the popular will, but simply as a kind of reward—a reward for having in some way, at some time, done something to please, or entertain, or otherwise gain the personal favor of the jurisdiction’s voters. There is a word we use to describe the dispensing of office to people upon whom someone with authority wishes to confer a personal favor: patronage. Sometimes we also use another word for this: corruption.

II

In the eighteenth century, electoral and voting practices were understood very differently than they are today. During the colonial period, Americans lived political lives typical of British subjects. Their politics occurred within a royalist structure of hierarchy and dependence with the monarch at its source. In this system, the practice of political patronage played a central role. As Gordon Wood has explained, the Crown dispensed office as a way of
reinforcing royal authority. Under this “patrimonial conception of officeholding,” colonial politics was “essentially a contest among prominent families for the control of state authority.” Ordinary people, Wood argued, simply did not understand government in the contemporary sense of a vehicle “by which economic and social power might be redistributed or the problems of their lives resolved.” Instead, general acquiescence to the holding of political power by social elites was based primarily on “traditional habits of deference.”

Although the Revolution led to the death of many ideas and practices, it did not immediately wipe out the habits of political and social deference with which the founding generation had grown up. Men of power and wealth in the late eighteenth century expected, and received, deference from those of lesser social standing, and this deference extended to the newly reshaped political realm. Thomas Jefferson may have advanced the radically democratic idea that the Revolution would replace a hereditary aristocracy with a “natural aristocracy” of talent and virtue, but even Jefferson did not conceive that members of this natural aristocracy would not continue to enjoy the kind of deference that had formerly been reserved for those whose claim to status had derived from the king. Good republicans, that is, believed—not without reason—that ordinary voters would simply recognize the outstanding men among them, defer to their talent, and give them their due by elevating them to office. That is why, for example, good eighteenth-century republicans such as Washington, Adams, Jefferson, and Madison would never have dreamed of campaigning actively for office in the modern sense. The person of true republican virtue and quality would merely stand for office, not seek it out; the votes would come to him as a matter of entitlement.

Might our current voting practices, then, be seen as a revival of the eighteenth-century practice of political

4. Id. at 87.
5. See id. at 88.
deference, but with the distinctly modern substitution of celebrity for civic talent and virtue? Have we reached a point where we elect celebrities to office because, in the twenty-first century, celebrities comprise the new aristocracy to whom the rest of us owe not only social but electoral deference? Although this explanation has some possible appeal in the case of a Hollywood A-list personality like Arnold Schwarzenegger, it doesn’t quite fit the evidence. First, many of the seemingly unqualified people who have been elected or returned to office had no prior claim to celebrity before entering politics. That is most clearly the case for the widows of public officials, many of whom had previously shunned the limelight before the deaths of their husbands propelled them into the public eye. To be sure, all of these people have in some way come to public attention, but commanding the public’s attention is not the same thing as commanding its deference.

Second, Americans’ relation to their celebrities is not really one of deference in the traditional mode. In the old order, deference and patronage were two sides of the same coin; each party to the relationship had clear and reciprocal obligations. Nevertheless, according to the rules of that system, public displays of deference by social inferiors were obligatory, even to the undeserving, and any member of the lower orders who failed to abide by prevailing social norms risked harsh, if largely informal, punishment. It is true that the American system of celebrity also imposes reciprocal obligations on those whom the public favors with its attention; for example, one quid pro quo for enjoying the benefits of contemporary celebrity appears to be the obligation to expose the intimate details of one’s private life. Yet those who live by the code of celebrity are entitled to the public’s gaze, not its votes. Election to public office is not obligatory in the way that eighteenth-century social deference was obligatory; on the contrary, the dispensing of public office, even among celebrities, involves the use of some degree of judgment and discretion by the voting public. That is why Tom Hanks and Oprah Winfrey could easily obtain public office just by asking for it, but Roseanne Barr and Ben Affleck could not.

A more apt precursor of contemporary politics may well be found in the political practices of the nineteenth century. Within a few decades following the Revolution, prevailing American political norms changed dramatically. Social
relations based on status and hierarchy yielded to a kind of radical egalitarianism in which Americans "came to believe that no one in a basic down-to-earth and day-in-and-day-out manner was really better than anyone else." By the 1820s, the long-settled understanding of the relationship between the people and their leaders had reversed itself in the public mind. Instead of conceiving of politics as the enterprise of choosing the wisest and most virtuous citizens to lead their inferiors, Americans of the Jacksonian era came to understand politics as a continual struggle by an intrinsically wise and virtuous populace to avoid being cheated and enslaved by corrupt and small-minded politicians.

This ideological reversal now cast the ordinary voter in the role of a kind of democratic king: he was not judged by the powerful, but judged them; his activities were not offered to the high and mighty for their approval, but theirs for his; he did not seek handouts from the powerful, but himself did the handing out. In this environment, political practices understandably changed. To gain office in the nineteenth century, candidates could no longer rely on their reputation, character, or social position and wait for office to come to them. Instead, candidates had to seek office actively, and were required to do so in the way that one would seek anything from a king, even a democratic one: by pleading for it. As a result, politics during the nineteenth century became a combination of public spectacle and personal supplication in which candidates sought to compete by any means possible for public favor.

Democratic politics in the nineteenth century was thus to a great extent a form of public entertainment; it was, quite simply, "the best show in town," especially in rural areas where other forms of entertainment were not widely available. The public turned out in great numbers for speeches and debates, and listened patiently to hours of oration, but not so much to be informed as to be diverted or moved. Votes in this era "were given not on principle, or as a manifestation of policy preferences, but as a matter of

6. Id. at 234.
personal reward or favor.” It was possible, in these circumstances, for candidates to run and win on platforms very different from those we would deem acceptable today. Altschuler and Blumin, for example, report the following campaign advertisement placed in a local newspaper by one Joshua Walker, the incumbent coroner of Richmond County, Georgia, in his 1850 bid for reelection: “I am poor and unfortunate, . . . and therefore it is that I am constrained thus to appeal to your generosity. . . . Snatch from me the perquisites of this office, and you virtually doom myself and little ones to almost certain want and poverty.” Walker’s ad made no mention of his partisan affiliation and said nothing about his performance during his first term. Nevertheless, his coarse appeal apparently succeeded, for the poor fellow was reelected to draw a paycheck at public expense for another term.

In this nineteenth-century politics of individualized pleasure and personal favor, then, may perhaps be found the roots of the phenomenon that leads, in our own time, to the reelection of a well-liked, ninety-three-year-old father figure who is really too old to serve; or the election of a popular actor with no obvious qualifications or experience; or the election of a presumptively poor, miserable widow who, if there is any mercy or justice in the world, ought to inherit her husband’s public office just as a farmer’s wife might inherit the family farm. The voters, that is, dispense the office as a favor or reward to an individual who has given them a few hours of pleasing entertainment or has touched their heartstrings with a tale of personal suffering. But why public office? Why not a pension, or their picture on a stamp? The reason, apparently, is because that’s not what they asked for. The elderly pol, the actor, the widow—each has asked for a seat in the legislature or in city hall, and if that is what they want, why, isn’t that just what they should get? After all, what skin is it off our backs?

There is, of course, an important difference between handing out public office as a gift or reward in the nineteenth century and doing it in the twenty-first: the twentieth century intervened. Voting practices in the eighteenth and nineteenth centuries reflected then-prevailing social and political norms, and however unfavorably we might assess those practices according to the standards of our own time, we cannot very plausibly claim that they were particularly illicit or out of place in their own. In today's world, however—the world created by the twentieth century—those practices are badly out of place, for American norms of democratic politics underwent a dramatic revolution during the last hundred years.10

The deference that eighteenth-century voters displayed toward their social superiors was more than a thoughtless transplantation of royalist social practices to a democratic political order; it was, on the contrary, a logical manifestation of a widely embraced, if transitional, ideology of democratic politics. According to that ideology, ordinary voters in a democracy possessed only a very limited kind of competence: the competence necessary to distinguish wise and virtuous men from foolish and venal ones. On this view, the ordinary person—poorly educated, uninformed, and typically lacking both the innate capacity and the leisure time to comprehend public affairs—could not be expected to evaluate something as complex as competing policy alternatives. On the other hand, such individuals could be expected to do a very good job at evaluating a person's character, something that was, in Montesquieu's words, "obvious to the sense."11 According to Jefferson, the ordinary yeoman, in virtue of his plain simplicity and earthy connection to the real world, was actually in a better position than his social superiors to evaluate a man's character: "State a moral case to a ploughman and a professor. The former will decide it as well, and often better than the latter, because he has not been led astray by...
artificial rules." Eighteenth-century voting practices thus arose from, and displayed a kind of organic congruence with, that era's prevailing ontology of citizenship.

Much the same can be said of political practices in the nineteenth century. Breaking decisively with eighteenth-century norms, the radically leveling political ideology of the early nineteenth century stressed both the democratic equality and the fundamental political competence of ordinary citizens. For Jacksonians, the ordinary American voter was not only "good, trustworthy, and capable of self-rule," but actually superior in virtue to his ostensible rulers—a set of beliefs that fully justified the era's rapid expansion of the scope of the franchise to something approaching universal white male suffrage. At the same time, nineteenth-century understandings of democratic governance also broke with their predecessors by denying that the business of governing was any more difficult, demanding, or complex than any other occupation to which a person might aspire. As Andrew Jackson contended in an 1829 address to Congress, "The duties of all public officers are, or at least admit of being made, so plain and simple that men of intelligence may readily qualify themselves for their performance."

On this conception of democratic politics, nineteenth-century voting practices seem much more logical and much less sinister than they might otherwise appear. If voters are no worse than their rulers and are in some ways better, and if the task of governing is sufficiently simple that virtually anyone can perform it competently, two conclusions seem to follow. First, the precise identity of office-holders does not make a great deal of difference to the quality of public decisions; and second, whatever criteria voters choose to apply to candidates for office will likely be adequate to the task, and will result in a government that is as reasonably well run as one selected by any other criteria. Consequently, if voters choose to select from among fundamentally equally competent candidates on the basis of

---

some tiebreaking criterion such as the candidate’s ability to entertain or his personal financial need, no harm is done; American democracy will survive intact.

By the turn of the twentieth century, however, these political mores came under attack from reformers, most notably the Progressives, who were intent on changing the way that democratic politics was practiced. Convinced that the people had habitually, if unintentionally, entrusted their government to corrupt and incompetent officials, the Progressives adapted prior American political thought to the circumstances of a rapidly changing world to create a new and very different ontology of citizenship. Like eighteenth-century republicans, the Progressives believed that the management of a great nation required complex decisions and informed, technically competent leadership. But, like nineteenth-century populists, they also believed that democratic citizens, when properly trained and educated, possessed the capacity to understand and to evaluate the policies by which individual candidates proposed to govern. On this synthetic view, however, the identity of elected officials mattered a great deal, for different officials might pursue significantly different courses of action. Moreover, the choice of criteria by which to judge candidates was no longer up to the individual voter, who was now obliged to use criteria that were in some sense objectively “correct”—those, that is, best suited to selecting honest, competent leaders who would most capably pursue the common good in a complex, high-stakes policy environment.

This conception of politics raised significantly the prevailing public standards of citizen competence. To the Progressives, citizens could not properly and honorably sit back and observe politics as though it were some kind of spectacle for their entertainment. As the Progressive historian Benjamin Parke De Witt argued at the time, “[t]he theory of democracy upon which the entire progressive movement is based is that every normal citizen who is mentally and morally fit not only has the right, but is also under a duty to participate in the solution of political problems.” These reformers, then, “helped transform

voting from a social to a civic act," thereby "rationalizing electoral behavior."16

Progressive political thought was strongly reinforced by parallel intellectual developments in other areas. In the newly emerging field of social science, Max Weber identified instrumental rationality—a comparatively technical and demanding form of reasoning—as the naturally dominant mode of public thought and organized behavior in capitalist societies. Later, political scientists such as David Truman and Robert Dahl developed a political model of interest pluralism, according to which politics consists mainly of a forum for the pursuit of self-interest by a multiplicity of interest groups, and for the resolution of their conflicting claims. Meanwhile, a series of events on a scale never before seen in human history—two world wars, a global depression, the advent of nuclear weaponry, and the civil rights movement, for example—served only to cement the idea that public affairs was a matter of grave concern to all, and that all good democratic citizens therefore labored under an obligation to attend closely to politics.

By the late twentieth century, the public's collective understanding of politics had solidified into one that placed significant demands on citizens; according to Michael Schudson, in this understanding the "twentieth-century voter was obliged to act out something new and untested in the political universe—citizenship by virtue of informed competence."17 This sea change in public political ideology allowed the authors of a classic, mid-century study of voting behavior, for example, to write, without fear of contradiction: "The democratic citizen is expected to be well informed about political affairs. He is supposed to know what the issues are, what their history is, what the relevant facts are, what alternatives are proposed, what the party stands for, what the likely consequences are."18 This is a considerable burden, yet one that voters were expected to take up with energy and enthusiasm as a kind of obligation associated with the privilege of living in a free, democratic society—a privilege that needed to be guarded jealously in a

16. Schudson, supra note 7, at 147.
17. Id. at 173.
world that, for much of the twentieth century, seemed distinctly hostile to Americans’ enjoyment of democratic self-determination.

Yet in spite of its wide public acceptance, the twentieth-century model of democratic citizenship was questioned almost from the moment it emerged. From early critiques by John Dewey and Walter Lippmann questioning the coherence of the concept of a democratic public, to Joseph Schumpeter’s rejection of the idea of democratic popular sovereignty as a pernicious myth, to the empirical findings of contemporary social science research demonstrating the ignorance and inattentiveness of the voting public, academics and other intellectuals have arrived at a consensus to the effect that the political behavior of the average American voter falls well short of the twentieth century’s prevailing standards of democratic citizenship. This gap between democratic expectations and actual voter performance has occasioned considerable hand-wringing and anxious reflection, not just in academic circles but among serious, high-minded politicians and citizens as well.

American democracy thus confronts at the dawn of the new century a challenge it never faced in the eighteenth or nineteenth centuries: voters are routinely behaving in ways at odds with prevailing democratic norms. This is the result, to be sure, of a significant increase in what those norms demand of citizens; giving deference to social superiors and choosing arbitrarily among personal favorites were not voting practices that greatly taxed the citizenry of earlier times. Nevertheless, today’s problems cannot be dismissed on the ground that contemporary norms of democratic citizenship demand more of voters more than they are capable of giving, any more than we might dismiss criticisms of, say, the use today of nineteenth-century methods of child-rearing on the ground that contemporary norms of parenting hold parents to impossibly high standards. In the short term, at least, prevailing norms are facts that necessarily provide the starting point for analysis.

To say, however, that American voters often fall short of the demands placed on them in our time by prevailing norms of democratic citizenship is not necessarily to deny that there may be better and worse ways of failing to clear the bar. Surely there is a meaningful difference between voters who take their obligations seriously and fall short for
lack of time or ability, for example, and those who have the
time and ability to fulfill the demands of democratic
citizenship but simply decline to expend the required effort.
Certainly the former case suggests much more
straightforwardly than the latter the possibility of remedial
measures.

In light of this evolution in public norms, the dispensing
of public office as a kind of gift takes on a different aspect.
Clearly, this is not voting behavior of the kind contemplated
by twentieth-century norms of democratic citizenship. But
taken as one of a variety of possible modes of failure—or, to
put it more positively, as one of several possible second-best
behaviors—how should we evaluate it? Does this kind of
behavior represent a relatively benign form of democratic
default that we may legitimately, if regretfully, excuse? Or
does it suggest something more pernicious, something about
which we ought to be concerned?

IV

All theories of democracy begin from the premise that
politics matters—that the collective choices made by
democratic polities, and the policies pursued by
democratically chosen governments, make a difference in
the lives of citizens. This is the foundational premise of
Lockean liberalism, for example, which holds that people
enter civil society and form governments for the express
purpose of creating and deploying a kind of collective power
sufficient to secure the safety and prosperity that they
would otherwise lack. It is also the foundational premise of
sophisticated modern theories, such as rational choice
models, in which politics is understood as a forum in which
individuals pursue their self-interest by attempting to
influence government policy in their own favor.

Generally accepted theories of democracy, moreover,
tend explicitly to make the soundness of democratic
outcomes depend significantly on the quality of democratic
inputs—votes, opinions, communications with officials, and
so on—provided by citizens. Yet the quality of these inputs
is typically taken for granted on the basis of assumptions
about citizens' incentives: voters are presumed to have
strong incentives to make sound, well-informed, rational
political decisions precisely because the eventual
translation of those decisions into governmental policy is
presumed to have an impact on citizens' lives of a magnitude sufficient to induce them to attend to public affairs.

Some modern democratic theorists, beginning with Anthony Downs, have, it is true, raised doubts about this premise by showing that abstention from politics can, in certain circumstances, be economically rational. But the practice of dispensing public office as a kind of gift poses a much more serious and fundamental challenge to these basic assumptions of democratic theory. As with any form of gift-giving, to vote for someone for the purpose of giving him or her a gift of elective office presupposes that electing the person to the office sought is a nice thing to do for that person. But no respectable theory of democracy considers its benefits to accrue to office-holders except in trivial ways. On the contrary, in every major theory of democracy the elevation of someone to public office is essentially an instrumental act that is understood to confer a benefit upon the voter, or the community, by increasing the likelihood that certain individually or collectively beneficial policies will be adopted by the government. In other words, you vote to do a favor for yourself, or your social group, or the general public, but not to do a favor for the person for whom you vote. In a democratic system, the successful candidate for office is merely an agent of the voting public, and although principal-agent relationships by definition benefit agents as well as principals (otherwise no one would ever agree to be an agent), no principal enters such a relationship for the sole or main purpose of benefiting the agent. We employ agents to benefit ourselves.

What does it mean, then, that substantial numbers of voters are willing to give away their votes as gifts instead of using them as instruments of public policy? The most obvious explanation is that these voters do not use their votes as tools of public policy because they simply do not believe that their votes are tools of public policy; they do not, that is, perceive a connection between their votes and government actions that affect them. Perhaps they think that every candidate for office will act identically once elected, so it makes no difference for government policy whom they select. Or perhaps they believe that government policies, and actions taken pursuant to those policies, do not really affect their lives in any meaningful way, again making the identity and subsequent actions of office-
holders a matter of indifference. In either case, the conclusion is quite remarkable: for these voters, voting has no political salience—it is not a political act.

This is a deeply troubling prospect. Voting, in democratic normative theory, is the quintessential political act. Many Americans have struggled mightily for the privilege. Today, people around the globe are willing to fight and even die for the opportunity to participate in politics that voting confers. That some Americans might find voting to lack any political relevance to their own lives suggests either that we have finally achieved an ultimately just society in which the need for politics has withered away (alas, not likely), or that some voters feel so far removed from the nation's political life that they cannot perceive any personal connection to it.

V

In 1999, during his final term in office, Senator Strom Thurmond voted to convict President Bill Clinton on both articles of impeachment filed against him by the House of Representatives. For more than a year during Thurmond's last term, during 2000 and 2001, the Senate was split evenly between Democrats and Republicans, making Thurmond's vote a potential tiebreaker on each and every issue to come before the Senate. For these reasons alone, it is difficult to take seriously the idea that Thurmond's 1996 reelection could have been an act without political consequences for the voters of South Carolina.

Although Sonny Bono did not leave an extensive record of legislative accomplishment, he was a driving force behind the posthumously adopted Sonny Bono Copyright Extension Act, which extended for twenty years the term of existing copyrights, thereby delaying for a generation the introduction of large amounts of material into the public domain and assuring present copyright owners, most of which are large corporations, a lengthy and continued stream of exclusive profits. Lois Capps, a former school nurse who was first elected to Congress in 1998 to succeed her late husband, Representative Walter Capps, has since cast votes against restrictions on abortion and cloning; in favor of allowing school prayer in certain circumstances; against easing federal gun controls; and against authorizing the use of force against Iraq. By any definition, these are
actions with real political consequences for many people on
questions of the highest public political salience, and it is
thus hard to see how voters might reasonably deny the
connection between their votes and the content of public
policy.

On the other hand, it is possible that voters understand
that their votes affect public policy, but see this influence as
having nothing to do with them personally because they do
not in their hearts believe that the policies and actions of
government have any particularly great impact on their
own lives, leaving them largely indifferent to the content of
government policy. This is certainly plausible. There can be
little doubt that the problems facing government today are
more complex than ever before. In earlier times, local
governments, for example, might have had to decide
nothing more complicated than where to build a road, or
put up a fence, decisions whose impact on individual lives
was usually readily apparent. Today, in contrast, even
small local governments not infrequently take up
exceedingly difficult questions of finance, environmental
regulation, and long-term service delivery the resolution of
which may turn on sometimes abstruse principles of science
or economics. It can be difficult to make a farmer believe
that the way he cleans out his hog pen really does raise the
incidence of childhood respiratory disease in a town miles
away, or to convince a homeowner that an immediate
modest capital investment, the need for which is not
apparent to the naked eye, along with a slight increase in
property taxes to finance it, may prevent much more
substantial investments and tax increases in the future.

Yet complexity in governance is nothing new; every era
has had its share of policy questions sufficiently complex to
escape the understanding of some portion of the citizenry,
yet this did not necessarily lead them to deny the political
salience of government action. Some citizens have of course
dealt with the complexity of public policy by taking the
trouble to educate themselves, but many who have lacked
the time, ability, or inclination to study policy questions
personally have in the past typically compensated for their
lack of knowledge and understanding by deferring to the
opinions of others whom they trust and respect. According
to this well-known “two-step” model of public opinion
formation first developed in the 1950s, political information is initially collected and evaluated by a minority of active and engaged individuals, who then relay the information, along with their opinions, to a wider group of associates. The views of these "opinion leaders" are not necessarily dispositive for group members, but they carry significant weight precisely because opinion leaders earn their status as a result of the apparent energy, enthusiasm, and accuracy with which they investigate questions relevant to their followers. Whether a political opinion leader is someone in a position of acknowledged public authority such as a politician, party leader, or newspaper editor, or merely an enterprising or well-educated neighbor, co-worker, or acquaintance, all opinion leaders have in common an ability to command the trust of those who accept their leadership.

There is today no shortage of experts willing and eager to fill the role of opinion leader—just tune in to any of the cable television news stations, with their endless stream of red-faced, shouting pundits. What may well be lacking in today's political environment, however, is trust—the trust necessary to induce unengaged voters to accept, defer to, and cast votes based upon the opinions of those who are better informed and more politically engaged. There are good reasons to think this may be at least a part of the problem. In a very important recent book, Hibbing and Theiss-Morse demonstrate that many voters not only intensely dislike political conflict, but also tend to presume that any kind of vigorous disagreement over the details of public policy must necessarily result either from the participants' bias in favor of narrow special interests, or from some kind of self-serving opportunism. These are views that reflect a deep cynicism toward political discourse. Robert Putnam has also argued persuasively that civic disengagement is closely related to declining social


and political trust, and that both are part of a regrettable, broad-based decline in crucially important forms of social capital.

VI

Let's sum up. Twentieth-century public norms of democratic citizenship place on voters new and heavy burdens of information, engagement, and political rationality. Many voters are unable or unwilling to shoulder these burdens. Some of these voters reject their civic obligation because they do not perceive voting to have any significant political salience for their own lives, and to the extent that their perception may be mistaken, they do not trust public and social leaders sufficiently to follow their electoral advice. These voters, then, are in the following position: they have been given a resource to dispense—their vote—which is of no use to them, but is extremely valuable to others. This is a dangerous recipe for civic corruption.

To be sure, many voters who believe their vote to be valueless do with it just what they would do with any unwanted gift or opportunity—they toss it away, like a junk mail coupon, by failing to use it. Others, however—democracy's habitual coupon-clippers, one might say—realize that their vote represents an opportunity, if not for them then for someone else, that ought not to be discarded. Some, perhaps, might sell their votes were it legal to do so, but we need not attribute such crass venality to these voters; within the larger class of democratic slackers they are, after all, the thrifty and self-consciously high-minded ones.

So think about this. Someone gives you something that is worthless to you, yet you recognize that it has value to others. You can't sell or trade it. If you consider yourself a fundamentally nice person, what do you do? Obviously, you give it away. But to whom? Most likely, you give it to someone who strikes you as decent and wholesome, and who asks you for it politely and engagingly. Maybe you will give it away to the person who seems to need it the most. Whatever. It makes you feel good to do something nice for

somebody, even a stranger, so what could possibly be wrong with the practice? Wouldn't you give a neighbor some old piece of junk just lying around in your garage if he said he could make some use of it? Of course you would. So why not do the same with your vote?

Thus, perversely, does niceness in politics, when detached from the sense of civic responsibility that ought to guide it, become a kind of corruption—an act that, when performed in this way, in this context, can do real damage to the fabric of civic life. Giving votes as gifts to favored candidates is corrupting, first, to the individuals who engage in it. What kind of character is formed in someone who has items to give away that have neither intrinsic nor transaction value to the giver, but are valued highly by a small number of others? In an exchange, both parties to the transaction enjoy a certain measure of dignity. But there is little dignity in a transaction in which the benefit runs in only one direction, where those who want supplicate, and those who have merely choose among the supplicants.

This is not just begging. Begging is without doubt an act that is demeaning not only to those who are forced to beg, but to those who are begged. But this is worse: giving away one's vote to one among several candidates for any office involves a kind of competitive begging. To choose among supplicants, one must in essence hold an audition, but because an audition for a valueless thing lacks any socially recognizable purpose, it is necessarily an audition without contextual standards. This in turn means that the standards to be applied for choosing among supplicants will be those chosen arbitrarily by the giver, but to subject another to one's arbitrary power is just as demeaning—indeed, in some ways more so—than to endure the exercise of arbitrary power. If, as Madison argued, human beings are by nature weak and unable to resist eventually indulging their baser impulses, how long can it be before niceness turns to arbitrariness, and arbitrariness degenerates ultimately into cruelty? Better, surely, to throw your ballot into the trash than to corrupt and debase yourself by assuming a role that makes of you a potential tyrant.

Giving votes, and in consequence offices, as gifts is also corrupting collectively and systemically in that it corrupts,

22. See The Federalist No. 10 (James Madison).
by betraying and breaking down, the basic principles of
democratic self-governance. At bottom, dispensing offices as
gifts is a form of patronage, and patronage is destructive of
the values that ultimately sustain democracy. After all,
patronage is by definition a form of preferential treatment
based on arbitrarily and unequally distributed opportuni-
ties to gain the personal favor of the authority dispensing
the patronage. Consequently, even in its mildest forms,
patronage contradicts the foundational democratic
principles of intrinsically equal citizens enjoying equal
opportunity based on merit.

But the kind of patronage we are talking about here is
not a mild form. During earlier periods in American politics,
patronage consisted mainly of dispensing low-level govern-
ment jobs to party loyalists. Although Americans ultimately
rejected this kind of patronage and outlawed it through civil
service reform and ethical regulation of office-holders, its
defenders, who number among them two current members
of the Supreme Court, have at least been able to offer a
colorable justification for it. They argue, in substance, that
the dispensing of government jobs as political patronage
helps ensure party cohesion and discipline, which in turn
enhances democratic accountability by improving the
ability both of the incumbent administration to fulfill its
campaign promises, and of voters to turn out and replace
officials who have done a poor job.

Unlike classic political patronage, however, for which a
civic justification may thus in principle be provided, the
kind of patronage exercised when voters dispense elective
office as gifts to candidates cannot be so justified. It has all
the defects of classic patronage—arbitrariness, favoritism,
inequality—without any of the potential advantages
because there is, by definition, no quid pro quo benefit to
the voter or the public. Voters, remember, can conceive of
dispensing offices as gifts to candidates only if they do not
see their votes as conferring any potential advantage to
themselves. This kind of patronage is therefore purposeless,
and consequently damaging to civic life.

Finally, giving away public offices as gifts undermines
the system of incentives that sustains and legitimates

23. See Justice Scalia's dissent, joined by Justice Kennedy, in Rutan v.
democratic forms of government. Democracy is legitimate and justifiable only to the extent that it is a system that makes officials responsive to the public will. Voting, on this model, is the vehicle by which citizens obtain responsive government because votes can and should be used to shape, through electoral reward or punishment, the performance of office-holders. Once voters begin to allocate their votes on some basis other than the performance of incumbent officials, or the anticipated performance in office of non-incumbent candidates, the link between the wishes of the citizenry and the actions of the government is broken, thereby impairing popular sovereignty itself. All that patronage-based voting practices can ever obtain for voters is a steady supply of supplications from candidates that respond to voters' individual tastes in electoral supplication. It cannot, however, produce policy responsiveness. Of course, if public policy has no effect on voters' lives there might be nothing wrong with such a system, odd and illogical though it might then be. But the moment policies begin to have such effects—and it is not implausible to think that public policies always affect voters in some way—democracy is put at risk.

VII

Voters, it seems, need to treat candidates for public office with a kind of tough love that many seem unwilling or unable to provide. “You’re a nice enough fellow, Mr. Candidate,” they need to able to say, “and I’d love to do something nice for you, but I’m afraid that sending you to the capital is not the right way to do you a kindness.” If enough voters cannot bring themselves to formulate such ideas and act on them, might some kind of institutional reform sufficiently stiffen their spines? A few possibilities come to mind.

To the extent that dispensing public offices as gifts is a kind of patronage, we might approach it as we have often approached other forms of patronage: by prohibiting the appointing authority from deciding who fills the office. In this case, that would mean denying voters the opportunity to decide the identity of the specific individuals who are to fill elective offices. Perhaps the most straightforward way to preserve popular electoral control over government while simultaneously denying voters the opportunity to vote for
specific individuals would be to allow them to vote instead only for political parties—to move, that is to say, to a party list electoral system.

In a party list system, used throughout most of Europe and in South Africa and Israel, each party prepares a list of its candidates for legislative seats, listing a number of candidates equal to the total number of seats to be filled. Voters then go to the polls, but rather than voting for individuals on the party lists, cast votes instead only for their favored party. On the basis of this voting, each party is awarded a number of legislative seats corresponding to the proportion of the popular vote won by that party. The party then fills those seats by moving down its list of candidates until it has gone as far as it is entitled to go. In such a system, the identity of office-holders is thus controlled by the party, and voters are consequently induced to choose among parties mainly on the basis of the policies to which the parties and their candidates are committed.

Such a change would naturally be quite unpopular in the United States. Indeed, we used to have a system something like this under the old party convention system of nominating candidates. Under that system, candidates were selected, as they are in party list systems, by party leaders and then simply offered to the public in the general election. Public dissatisfaction with this system, however, led ultimately to the widespread introduction of the direct primary election, in which the voting public gets two chances to determine the identity of individual office-holders, once during the primary and again during the general election. Even elsewhere in the world, the traditional closed list primary system is losing ground in favor of hybrid systems, such as the German “topping off” system, in which voters get two votes, one for an individual representative of their choice and another for their party.

Another possible kind of reform would be to take precisely the opposite approach. Instead of fighting voters’ impulse to dispense offices like gifts by depriving them of the opportunity to vote for individuals, we might attempt to channel those impulses in directions that would be less harmful to civic life. One way to do this would be to create new elective offices that would be, in essence, throwaway offices with little real power. Such offices could therefore be given freely as gifts without the risk attendant upon
handing real power to those unqualified to exercise it. Indeed, such offices could conceivably be “marketed” to voters explicitly as offices that ought to be used to reward favored citizens. The hope would be that by providing voters with a legitimate outlet for their gift-giving impulses, they would find it easier to allocate more important offices on the basis of the kind of policy and performance criteria upon which democratic systems depend.

A good example of such an office is the office of president in parliamentary systems. Typically, the president of a parliamentary nation is little more than a figurehead who presides at official occasions and serves mainly as a symbol and embodiment of the values and aspirations of the citizenry. Creating similar offices at the national, state, and local levels in the United States might allow those citizens who are tempted to give away office as a kindness to indulge that appetite legitimately, and without doing violence to the quality of democratic self-governance or civic life.

A final possible reform measure would be to create, and to distribute to voters, a new and different kind of goodie to dispense to personal favorites. At present, the only patronage that voters, as voters, have available to them to dispense is public office itself. Perhaps if we give them something else to use their votes to distribute, they will be able to approach conventional electoral decisions in the proper frame of mind. So, for example, we might create a Great Americans Hall of Fame, and at every election allow voters to elect several people to that august institution—sort of like American Idol, but with real ballots and all the hoopla of a general election. Or we could permit voters to dispense hard cash on the barrel to deserving ex-actors and political widows by allowing voters at every general election to distribute a few large cash honoraria, or perhaps some lifetime public pensions.

VIII

All institutional arrangements rest on foundational assumptions about the ways in which institutional actors will behave, and the success of institutions therefore often depends heavily on the conformity of those who actually inhabit the institutions with the behavioral norms presupposed by the institutional structure. A system of
public roadways, for example, presupposes that drivers will use the roads to get from one place to another as efficiently and expeditiously as possible, and all of its various rules and customs flow from this behavioral assumption at its core. When drivers use public roadways for other purposes—to be seen by their friends, to engage in drag racing, as a venue for an impromptu dance party—the system begins to break down, sometimes with dangerous results. The institution of boxing presupposes that each fighter will attempt to win each bout. When a pugilist uses a fight to pursue other goals—earning a big payday, for example—by engaging in behavior that the institution does not contemplate—taking a dive—the institution is badly damaged.

The institution of democratic politics is no different. It presupposes that institutional actors such as voters and politicians will behave in certain ways, for certain purposes, and the entire edifice can be threatened if enough of these actors begin to behave in ways that the system does not contemplate, for the purpose of achieving goals that the system does not recognize. Democracy is, to be sure, a more commodious institution than driving or boxing in that it does not dictate the participants’ ends with nearly the same degree of specificity. It does, however, presuppose that voters have political goals, and that they will use their votes instrumentally to achieve those goals. Politicians, for their part, are presumed by democratic institutions to offer themselves to voters as public servants who promise to implement to the best of their ability the policies approved by their constituents.

When politicians run for office not to serve their constituents but to indulge their vanity, democracy suffers. When voters cast their votes not in the service of some conception of public policy but to indulge sentimental feelings of kindness or pity toward candidates, the system is similarly stressed. The inappropriate motivations of candidates are, unfortunately, difficult to control, but they are frequently not all that difficult to detect. Voters can go a long way toward ensuring the proper operation of democratic institutions simply by exercising a certain degree of self-control. You like being nice? Fine. Be nice to your family, to your neighbors, to your dog. But please—don’t be nice to politicians. They may appreciate it, but the rest of us can’t afford it.