

SOCIETY FOR LINGUISTIC ANTHROPOLOGY

Auctioning American Democracy

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Language Ideology and the US Supreme Court

As recent Supreme Court decisions reveal, legal perspectives that equate money with speech are grounded in folk ideologies of language that privilege referential meaning and speaker intention over the contextual and performative dimensions of signs. On April 2, 2014, the US Supreme Court's conservative majority issued a decision on *McCutcheon et al v Federal Election Commission* that declared important limits on campaign contributions to be unconstitutional. This decision, "taken together with *Citizens' United*... eviscerates our nation's campaign finance laws," lamented Justice Breyer in his Dissenting Opinion. Here I'll analyze the majority decision, which is divided into a "Plurality Opinion" and a "Concurring Opinion," authored by Justices John Roberts and Clarence Thomas, respectively.

The *McCutcheon* case challenged one of the two kinds of limits to campaign contributions introduced by the Federal Election Campaign Act of 1971 (FECA). In 2012, a Republican donor (Shaun McCutcheon) maxed out both his "basic individual contributions" to each candidate (\$1,776), and his "aggregate contributions" of \$33,088 (spread across 16 candidates). McCutcheon "wished to contribute to various other political committees" so he and the RNC filed suit claiming that the "aggregate limits on contributions to candidates and noncandidate political committees were unconstitutional under the First Amendment" (Plurality Opinion, pp 5-6). The Court found in McCutcheon's favor: no more aggregate limits.

Chief Justice Roberts claimed that "First Amendment rights are important regardless of whether an individual is, on the one hand, a lone pamphleteer [] or corner orator in the Tom Paine mold, or is, on the other, someone who spends 'substantial amounts of money in order to communicate [his] political ideas through sophisticated' means" (Plurality Opinion, p 15). The assumption here is that money, like the pamphlets Paine passed around, is a communicative medium, thoughts channeled on paper. The only difference, we are led to believe, lies in style and persona—the lone, commonsense-talking everyman, or the schmoozing mogul who has more "sophisticated" means of self-expression: "Either way, he is "participating" in an electoral debate" (ibid, p 15).

Viewing money-giving as an act of democratic "participation" becomes thinkable only within certain language ideological frameworks. The first is that giving money must be seen as a communicative act that references some state of affairs in the world (presumably the donor's convictions), and so the spreading of money becomes the dissemination of convictions to fellow citizens and elected representatives. All other performative functions of money, such as its promising, wagering, and soliciting aspects disappear within that referentialist framework. Ironically, it was the 1976 *Buckley v Valeo* decision, which upheld both sets of limits, that laid the groundwork for this reading of money. In *Buckley*, the court found that contribution limits pose only a minimal restraint on free speech because they "permit [] the symbolic expression of support evidenced by a contribution but do [] not in any way infringe the contributor's freedom to discuss candidates and issues" (*Buckley* cited in the Plurality Opinion, p 8). So regardless of the amount, money-giving amounts to an affirmative verbal gesture, like making the "Okay" sign with your hand. Only Justice Thomas directly attacked this logic in the current case, claiming that the amount of money figures as part of the speaker's message insofar as its quantity indexes the volume of the donor's individual "voice." Thus, money quantity affords added referential value as a "quantifiable metric of the intensity of a particular contributor's support" (Concurring Opinion, p 3). By this logic, we might just get rid of all spending contribution limits altogether.

However, it was the conservative plurality's genius not to attack the base limits head-on, but to dismantle only the aggregate limits. That's all they needed to do to unleash whatever legal dams had till now restrained the torrents of money waiting to flow to our officials. Drawing on its prior *Citizens' United* ruling, Roberts argued, "Congress may target only a specific type of corruption—quid pro quo corruption" (Plurality Opinion, p 19). This one-to-one model of perverse exchange is defined by the giver's intention to solicit direct repayment. Roberts ignored the fact that all gifts create some form of "credit" (Mauss). He upheld the part of the *Buckley* decision that maintained that only "large contributions to individual candidate" implied "the subjective intent of the donors" to solicit quid pro quo exchange (ibid, p 13). This maneuver allowed him to reaffirm the quid pro quo model of corruption that is restricted to two corrupt individuals operating in a vacuum. Like the classical Saussurian diagram of (referentialist) dyadic communication, the model is totally extracted from context such that the actors are presumed to be inattentive to anything else going on outside the perimeter of their exchange. But people don't necessarily buy influence through two-party transactions; they can give money across the board in order to establish a diffuse field of pressure that works on many politicians. *McCutcheon* allows this field of corrupting pressure to expand ad infinitum with impunity.

Justice Breyer and others in the minority resisted the language ideological premises underlying the ruling. In addition to citing precedent for a wider definition of “corruption,” Breyer argued that the public has an “interest in preserving a democratic order in which public speech matters” (Dissenting Opinion, p 6). To “matter,” speech must be “the means to hold officials accountable to the people (ibid, p. 5, emphasis in original). When “money calls the tune,” “the chain of communication” and “the public will not be heard” (ibid, p 6). Breyer’s argument rests on a theory of communication that is attentive to the performative effects of utterances that accumulate within context. But because this is not the dominant ideological frame for reading meaning in our society, Roberts got away with a quick dismissal of these effects: “The First Amendment does not contemplate such ad hoc balancing of relative social costs and benefits” to democracy (ibid, p 17).

Our popular language ideologies have given the conservative Supreme Court license to put our democracy up for auction.

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