

Vote Buying and Tax-cut Promises

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Abstract: Both vote buying and tax-cut promises are attempts to manipulate voters through cash incentives in order to win elections, but only vote buying is illegal. Should we extend the ban on vote buying to tax-cut promises? This article will argue for three conclusions. The first is that tax-cut promises should be understood as a form of vote buying. The second is that campaign promises are a form of vote buying. The third conclusion is that campaign promises, including tax-cut promises, should not be banned. An important distinction is drawn between enforceable wrongful incentives and unenforceable wrongful incentives. The difference between vote buying and tax-cut promises is not wrongfulness, but enforceability.

Keywords: bribery, campaign promises, democracy, election fraud, tax-cut promises, voting

I

Consider the following two cases:

Vote-buying case. Adam is running for political office and he wants to win election. He offers cash to voters as an incentive for voters to vote for him.

Tax-cut promises case. Eve is running for political office and she wants to win election. She offers promises of tax cuts to voters as an incentive for voters to vote for her.

Both cases feature attempts to manipulate voters through cash incentives in order to win elections, but only vote buying is illegal.¹ Should we extend the ban on vote buying to tax-cut promises?

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This article will argue for three conclusions. The first is that tax-cut promises should be understood as a form of vote buying and this is problematic insofar as it involves the wrongful manipulation of voters. The wrongfulness consists in manipulating voters to subvert justice for the sake of private monetary gain. Both are cases where candidates for elected office offer money to voters to gain their support in an election. It is argued that notwithstanding differences between them, each is a form of voter manipulation offering cash for votes.

The second conclusion expands the discussion from tax-cut promises to include campaign promises, such as to deliver certain benefits to a particular group or class of voters. It is claimed that they too can embody a form of vote buying and so can be similarly problematic. The third conclusion is that campaign promises, including tax-cut promises, should nevertheless not be banned. An important distinction is drawn between enforceable and unenforceable wrongful incentives. The difference between vote buying and tax-cut promises is not wrongfulness, but enforceability. There are limits to how far we can constrain the kinds of incentives candidates for elected office might offer voters, including where these include wrongful manipulation.

II

We begin with the distinction between bribery and vote buying: vote buying has been described as ‘bribing’ the electorate, for example.² Bribery is often defined as the offer or acceptance of something of value in exchange for wrongful influence on a public official.³ We are said to *bribe* a public official where we offer money for a planning permit that we

would not otherwise receive. The inducement of a bribe might influence a public official to perform his official role differently than if no such bribe was offered. Such influence might lead to a public official failing to fulfil a public duty to enforce regulations impartially (see Carson 1985: 81).

Now consider bribery in relation to electoral fraud. Bribery is where members of the public attempt to influence public officials wrongly. Public officials engage in electoral fraud where they attempt to influence the public wrongly. Electoral fraud may take many forms, including vote buying. Electoral fraud may take many forms beyond vote buying, such as damaging ballots. Damaging ballots would be one attempt to manipulate an election result, but it may be different from the case of vote buying as cash incentives may be absent. This article will focus specifically on vote buying as one form of electoral fraud that bears important resemblances with bribery and tax-cut promises.

Bribes occur when people try to buy the influence of officials. Vote buying occurs when a political candidate tries to buy the votes of the public.⁴ For example, Robert Dahl (1959: 69) has argued that '[i]n a rough sense, the essence of all competitive politics is bribery of the electorate by the politicians'. Bribery and vote buying share a similar structure: I intend to provide you with some benefit in return for a potentially unfair influence that may pervert public justice, such as an election result (Dal Bo 2007). Influencing election results through bribery or vote buying may often lead to unfairness; but perhaps not in every case. If bribing is sufficiently widespread, then it may not be unfair to bribe where doing so might contribute to having a minimum of political influence and failing to do so would lead to my having none.

The central idea is that the object of this benefit— understood as the person to receive something of value— might not have shown the same favour if no such benefit were offered. The benefit offered is linked with an attempt to incentivise individuals to vote

for a particular candidate. This situation is different from attempts to incentivise individuals to vote by offering to compensate every voter for voting because they are attempts to get individuals to vote and not for any particular candidate. My focus is on attempts to manipulate individuals to vote *for a particular candidate* and not for merely casting a vote in an election.⁵

Bribery is more than a potential benefit to public officials and vote buying is more than a potential benefit to voters: both are *wrongful manipulations* of others. Their wrongfulness consists in their being *intentional* manipulations of others that pervert public justice. A key point is that the manipulation is intended. This raises questions about the *motivation* behind this intention. Suppose Annie is a political candidate promising tax cuts to the electorate. There may be a difference between whether (a) her promise is motivated only by the intention to manipulate voters to select her for political office irrespective of other consequences and (b) her promise is motivated by an intention arising from a justified true belief (for the sake of argument) that less tax revenue may contribute to consequences for all, including greater employment and more government revenue to fund public services. The motivation behind the intention to manipulate others has importance. Note that the motivation behind an intention to manipulate need not be disingenuous to count as wrongful manipulation as a political campaigner might believe their manipulative rhetoric.

Examples include bribing officials for swift approval of permits and politicians buying votes from the public. These acts pervert public justice in unlawfully manipulating permit approval and an election result. It must be emphasised that candidates for political office can and do make promises to the electorate with material consequences for how voters respond. This is an important part about what politics is (and perhaps should be) about. The issue explored in this article is discovering the line, if any, between permissible attempts and non-permissible attempts at voter manipulation. The argument defended here is that the

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difference between vote buying and campaign promises is enforceability and not wrongfulness. Bribery and vote buying are illegal and uncontroversial.

III

Bribery and vote buying share much in common. But what about vote buying and tax-cut promises? Politicians across ideological divisions often promise tax cuts in return for their election. Tax-cut promises have at least a *prima facie* similarity with vote buying and this similarity appears in the cases of Adam and Eve in section I. A political candidate engages in vote buying if she offers cash for votes. This act of electoral fraud gives an incentive to members of the public to pervert public justice and alter the outcome of an election through manipulation.

An analogous situation may arise with tax-cut promises. When political candidates engage in tax-cut promises, they are also offering cash for votes in the hopes of manipulating the result of an election in their favour. Political candidates act on the intention to manipulate voters through the promise of future rewards when engaged in vote buying and tax-cut promises. Both promise benefits in exchange for votes and the benefits are monetary. Vote buying and tax-cut promises share much in common (Dekel et al. 2008: 352).⁶

The claim that each is a form of manipulation is not to deny voter agency or independence of mind: voters may not respond to manipulation attempts in the ways manipulators anticipate. Instead, the claim that vote buying and tax-cut promises share much in common as forms of wrongful manipulation is to claim they can affect the autonomous decisions by voters in elections.

Such cases can be difficult to identify – and this renders enforceability very difficult. Two people who are similarly situated in all relevant respects may respond to the same incentives differently.⁷ One might respond positively to a tax-cut promise because of pre-

existing ideological commitments. Another might ~~respond~~ likewise be motivated purely by the promise of a cash return for his vote. It is not clear in any intuitive sense that the first voter is manipulated in a wrongful way: that voter reacts to the incentive from an established position. The second voter does appear manipulated in a wrongful way insofar as the primary motivation for voting one way or another is the promise of a cash reward to that person – he perceives the incentive as a cash for votes and votes accordingly in the hope of receiving a monetary reward without much concern for other factors.

IV

Vote buying and tax-cut promises share much in common, but there are important differences. The first difference is that only vote buying is illegal, although this has not always been the case historically. This article is considering whether this ban on vote buying should be extended to tax-cut promises and our conclusion cannot be determined at this point.

There are other important differences. Consider the case of vote buying:

Vote-buying case. Adam is running for political office and he wants to win election.

He offers cash to voters as an incentive for voters to vote for him.

Adam is running for political office and he wants to win the election. His offer of cash to potential voters is not meant merely to win over more votes; but win the election. This distinction is important to the analysis: Adam buys votes to manipulate public justice in terms of influencing who is selected as the winning candidate. This is different than a candidate uninterested in winning an election; but who attempts to buy votes for other purposes, such as pride or satisfying his ego. Adam offers an incentive to voters to vote for his election in the

form of cash. This incentive may lead some to vote for him who might not have done so without this incentive.

The key features of vote buying include its being offered in secret and paid upfront to potential voters.⁸ Adam will not offer to buy votes in public; but in secret. This is because vote buying is illegal and Adam attempts to buy votes in order to win election: if he is discovered ~~vote~~-buying votes, this act of electoral fraud will disqualify him from the election. One contingent difference is that vote buying will be conducted in secret to avoid detection by election officials. Furthermore, Adam will offer to buy votes upfront. This is because he cannot buy votes post-election; but instead pre-election. The idea is to manipulate the election result and not post-election results. Vote buying will be conducted in secret and paid upfront to voters. Only potential supporters may receive this incentive.

Now consider the case of tax-cut promises:

Tax-cut promises case. Eve is running for political office and she wants to win election. She offers promises of tax cuts to voters as an incentive for voters to vote for her.

Tax-cut promises are declared in public. Eve may have little reason to keep such a promise secret. She will want her promise known to potential voters; but may also want to limit knowledge of the promise beyond her constituents if highly unpopular with the public. Eve wants to win election and hopes this incentive may help her win the election. Tax-cut promises are not illegal and so their public declaration will not lead to her becoming disqualified from running for office. Tax-cut promises are different from vote buying because the former is conducted in public and the latter is not. This difference is because of the illegality of vote buying. If we believe the ban on vote buying should be extended to tax-

cut promises, then tax-cut promises would also be offered in secret and this difference might disappear.

While Eve promises tax cuts to voters during her election campaign, she cannot deliver tax cuts upfront. Instead, she may only deliver on her promise to cut taxes post-election if she wins. Tax-cut promises can only take effect after an election is won and the benefits are shared by supporters and non-supporters alike. Eve may only *promise* benefits to potential supporters in the form of tax cuts post-election. Her promise is conditional on winning the election and her ability to pass this legislation.⁹ She cannot guarantee tax cuts upfront before the election result is known.

Tax-cut promises differ from vote buying as the latter can be guaranteed up-front and paid to supporters before an election. Tax-cut promises are not guaranteed and they are not limited to supporters alone: voters may benefit from tax cuts whether or not they voted for Eve.¹⁰ While tax-cut promises may aspire to appeal to select potential voters more than others, this appeal cannot be guaranteed and the benefits cannot be limited to supporters only.¹¹

Tax-cut promises lack the degree of certainty of vote buying. Vote buying has greater certainty in its being a benefit directed towards potential supporters alone and it can be paid in advance of an election. This signifies the conditional structure of vote buying. One form is payment whereby paper money is cut in half: voters receive one half prior to the election and the second half after the election, but only if the candidate wins. A second form is non-monetary, such as providing one shoe prior to an election and the rest of the pair afterwards.

Tax-cut promises are more conditional. Their benefit is conditional upon election success and legislative success whereas vote buying need not. Note the argument is not that vote buying lacks a conditional structure, but that it need not be conditional on electoral success. Tax-cut promises are different because they are conditional on electoral success.

Tax cuts may not benefit all supporters and they may benefit many non-supporters. Vote buying are benefits that can be directed more easily to supporters alone in advance.

It might be objected that the most important difference is that vote buying is where a candidate uses his or her own money to influence voter choice versus tax-cut promises whereby a candidate advocates returning some share of the voters' pre-tax money: so it is a difference between a candidate giving out money to voters or taking less of the voters' own money.¹² But this distinction can run into difficulties. Vote buying need not involve any of the candidate's personal resources. Others, such as wealthy special interests supporting his or her campaign, could supply the resources on his behalf. Furthermore, tax-cut promises need not lead to voters having more of their own resources. One reason is because the tax cut might pertain to an expected future income not yet realised – it is not uncommon for working-class support in favour of lower tax burdens on the more wealthy in the hope that they may join them in future. But also where cuts are made in one area, they may need to be raised in others: cuts to public subsidy for rail fares in the U.K. led to higher prices year on year, for example. Cutting public funding for public services can lead to tax payers making the same, if not higher, costs for the services they have enjoyed.

Both vote buying and tax-cut promises are forms of promising, but they differ in terms of their certainty and inclusion. Adam may offer to buy votes upfront and directed only at potential voters. Eve may only promise to provide tax cuts after the election is concluded and dependent upon her winning office and her ability to pass a tax-cut bill. Moreover, Eve's promise may benefit many of her supporters, but the benefits may not extend to all potential supporters and they will likely extend toward many non-supporters. Nor might Eve be able to know with certainty which of her claimed supporters did, in fact, vote for her in an election because voting takes place through a secret ballot.

V

Vote buying and tax-cut promises are forms of promising, but only tax-cut promises are promises that are *public*.¹³ Tax-cut promises are not unique in this respect: tax-cut promises are one form of campaign promises. Consider the case of campaign promises:

Campaign-promises case. Cameron is running for political office and he wants to win election. He offers campaign promises to voters as an incentive for voters to vote for him.

Political candidates offer voters incentives in the form of campaign promises. These promises attempt to manipulate voters to supporting their candidacy over other candidates for public office.¹⁴ Campaign promises include pledges to cut taxes, but these pledges may take other forms including improved public pensions or job-creation initiatives. The promises that Cameron might offer will be limited in many of the respects that Eve's tax-cut promises are limited. Both may be declared publicly because neither is illegal, but neither can be guaranteed in advance and both are conditional on post-election success and implementation. Campaign promises are no more certain than tax-cut promises.

All tax-cut promises are campaign promises, but not all campaign slogans are tax-cut promises. Tax-cut promises offer incentives to voters in the form of monetary benefits: if Eve wins office, then she promises voters that they will have more money through tax cuts. Campaign promises offer incentives to voters that may take the form of monetary benefits and non-monetary benefits. If Cameron wins the election, he may promise voters that they will see benefits such as improved public services.

Campaign promises offer benefits to supporters not unlike tax-cut promises. Both are conditional promises of future benefits that are offered to potential voters in order to

manipulate election results. Potential voters might choose candidates differently in the absence of such promises. Key differences between campaign promises and tax-cut promises are that tax-cut promises are a form of campaign promises and that campaign promises may offer non-monetary benefits.

Campaign promises and tax-cut promises are both conditional promises: neither offers any guarantee. Both promises are conditional on election victory and implementation. We should also note that not all promises are promoted sincerely: some promises are offered to supporters to manipulate their votes without any sincere commitment to make good on promises made. While failure to implement a campaign promise, such as a tax-cut promise, may be politically damaging, political support differs over time: promises that attracted much favour on the campaign trail may turn into potential liabilities if brought into law after an election victory.

VI

It is time for a few initial results. The first is that bribery, vote buying, and tax-cut promises are related closely. Bribes are monetary incentives the public offers to public officials to manipulate their decision that may threaten public justice. Vote buying is a form of electoral fraud whereby political candidates offer cash incentives to the public to manipulate their decision on how to vote that may also threaten public justice. Tax-cut promises are also cash incentives to the public to manipulate their decisions on elections. Tax-cut promises differ from vote buying in that the former are more conditional and cannot be guaranteed in advance to supporters-only.¹⁵ Campaign promises are incentives to the public to manipulate their decisions on elections. Campaign promises are similar to tax-cut promises in all respects except that the former may offer both monetary and non-monetary benefits.

There is a fine line between vote buying and tax-cut promises.¹⁶ Moreover, this fine line also exists between vote buying and campaign promises more generally.¹⁷ It is unclear how vote buying is more wrong than any form of campaign promising, such as tax-cut promises. It might be objected that the key difference between vote buying and tax-cut promises is that tax cuts must be passed through a set of proper procedures. Thus, it might be said, the promised benefits to a particular group of voters is determined in a lawfully established way and so the claim that vote buying is private and tax-cut promises are public misses this important distinction. I disagree with this objection because it assumes too much. The fact that tax cuts must be endorsed through agreed procedures does not make the fact they were promised – as an effort to manipulate voters into providing electoral support – normatively satisfactory.

Likewise, the fact that legal procedures are followed does not render those procedures normatively acceptable. Suppose a government passed tax cuts to its supporters following procedures in place prior to the election – and with the new majority it has thanks to the manipulation of voters into supporting the government's new majority through tax-cut promises. The fact that tax cuts follow certain procedures does not render them morally unproblematic all things considered. So I am unpersuaded by this objection.

Both vote buying and tax-cut promises attempt to manipulate the public vote for candidates through the use of monetary incentives: voters are promised monetary benefits in return for their votes. Both are attempts to manipulate voters through offering incentives. Whether or not these attempts manipulate individual voters will depend on whether individuals would vote different if these attempts were not present. A key difference is that the promise of vote buying is more certain and limited to supporters. There is an important divergence between promises to cut taxes versus promises to not raise taxes. The promise to cut taxes is a promise to reward voters through gain. The promise not to ~~not~~ raise taxes

maintains the status quo. This is not to argue that it cannot be manipulative also, but rather to claim it is less certain to be manipulative compared with the promise to cut taxes.

This difference need not lead us to conclude that vote buying is more wrong than tax-cut promises as an attempt to manipulate voters. Several arguments have been advanced on why vote buying is wrongful manipulation (see Hasen 2000: 1325–26). One argument concerns *equality*: the poor will be more likely to sell their votes than the wealthy and this may lead to political outcomes that favour the wealthy over the poor. Therefore, some social groups may be more likely to change their vote in relation to manipulation of their choice because they are more financially vulnerable. They may be less able to resist attempted infringement of their autonomously made best judgements all things considered because of the vulnerability of their class rather than their actual preferences.

Moreover, vote buying creates an asymmetry that fosters inequality: ‘No matter how appealing a promised program or how gratifying an incumbent’s programmatic accomplishments, support flows away from those who “do not have money to give” and toward those who “have things to give away”’ (Stokes et al. 2013: 247–48). Vote buying creates inequalities not only between sellers but buyers as well.

A second argument focuses on *efficiency*: vote buying undermines overall social wealth. Resources are diverted from where they might be needed most to best serve the public good to an instrument for winning power for a person or group. A third argument concerns *inalienability*: votes are the inalienable possession of voters and not alienable – and, thus, not for sale – by voters.¹⁸ Vote buying is wrongful manipulation because its incentives may lead to undermining equality and efficiency, as well as rejecting the inalienability of a person’s vote.¹⁹

It is unclear that many campaign promises do not lead to similar possibilities. Campaign promises are incentives for voters that often appeal to their individual well-being.

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These promises may include more money for voters through tax cuts post-election. Indeed, many tax-cut promises may fail to improve equality.²⁰ Similarly, vote buying is thought to violate the inalienability of a person's vote. The idea is that votes are not for sale.²¹ The problem with vote buying is that it is an attempt to 'purchase' votes from individuals through monetary incentives. Likewise, a potential problem for tax-cut promises is that they may also offer monetary incentives for the same ends. In other words, tax-cut promises attempt to 'purchase' votes through monetary incentives not unlike vote buying.²²

Vote buying is illegal, but it is not always wrongful in any obvious sense. For example, the manipulation of voters to ensure a particular result on an election day may be the best result for the prosperity of all: the most popular candidates for office may not be the best able or even competent to succeed if elected. It is possible to consider the potential argument for vote buying where this were the only way to avoid an elected fascist government. Such cases may be controversial and rare, but they make clear that vote buying is not clearly wrong in all cases.

Brennan argues for a similar position, but for different reasons. He argues that citizens, if they choose to vote, 'must vote well, on the basis of sound evidence for what is likely to promote the common good. They must make sure their reasons for voting as they do are morally and epistemically justified' (Brennan 2011: 4). Call these duties the Duties to Vote Well. Brennan claims that 'vote buying, selling and trading are morally permissible' where it does not violate our Duties to Vote Well and so not wrongful. One problem with this argument is that the 'reasons for voting' which must be 'morally and epistemically justified' should arguably omit vote buying, selling and trading. Brennan disagrees because selling my vote might not violate my Duties to Vote Well where the choice supported by my Duties is consistent with the electoral choice my vote is paid for. This is controversial, but if accepted we might still raise a second problem for his argument, which is this: in this context, the

exercise of my choice is independent of manipulation – and can I? This may be an empirical matter concerning whether it is possible for some, if any, citizens to sell their votes while exercising their choices consistently with their Duties to Vote Well, which is at the least unproven and doubtful.

Campaign promises are not obviously morally acceptable in all cases. For example, some promises may create or maintain structural inequalities based upon ethnicity, gender or sexual orientation. Campaign promises may often be understood as wrongful manipulation, but this is not always true. Vote buying may be illegal and often understood as wrongful manipulation, but it is not always true that vote buying is wrongful manipulation of voters across all cases.

So it is not clear that campaign promises would not lead to the same problematic results we might expect from vote buying. Both vote buying and campaign promises may lead to wrongful manipulation, but not necessarily in every case. Their difference is not that one is never a case of wrongful manipulation of voters.

VII

The difference between bribes and vote buying is that the former is where the people attempt to manipulate public officials through monetary incentives and the latter is where public officials attempt to manipulate the public through monetary incentives. Vote buying is akin to political candidates bribing voters to win election. Both bribery and vote buying is illegal.

This article has argued that the wrongness of vote buying may be attributed to its being a wrongful manipulation of voters through monetary incentives that may damage public justice by wrongfully influencing an election result.²³ The wrongfulness of vote buying is not dissimilar to the potential wrongfulness of tax-cut promises or campaign promises more generally where a political candidate is also seeking to offer incentives in the

form of future benefits to voters in order to influence an election result. Vote buying and campaign promises share much in common and in terms of their potential wrongfulness.

One key difference between vote buying and campaign promises has concerned certainty and scope. Vote buying has greater certainty because the monetary incentive is offered pre-election whereas campaign promises are conditional upon winning the election and implementation. The scope of vote buying is limited to potential supporters offered monetary incentives whereas campaign promises may benefit supporters and non-supporters alike.²⁴ One reason to ban vote buying and not tax-cut promises is because tax-cut promises have insufficient certainty and they are not limited to supporters-only. While campaign promises may be directed towards specific groups in the electorate, they may be enjoyed by persons not in these groups at the time of an election and so not limited to supporters-only. Campaign promises to enact laws favoured by labour unions might apply to persons not presently in a union and so not limited to supporters alone.

The case of vote buying through offering the reward of a lottery ticket is different. Both vote buying through issuing a lottery ticket and tax-cut promises might possess insufficient certainty about potential benefits, but a key difference is that this version of vote buying remains limited to supporters-only and not all potential voters. This partiality towards supporters-only might help explain why many might claim such vote buying is illegal perhaps despite its insufficient certainty.

Tax-cut promises may often consist in a wrongful manipulation of voters, but they fail to satisfy a threshold above which a ban would become justified.²⁵ Tax-cut promises are then similar to bribing the public, only not *as wrongful* as directly offering monetary incentives for votes pre-election to supporters-only.

There is a second key difference between vote buying and campaign promises, such as tax-cut promises. This difference is that banning vote buying is much easier to ban than

tax-cut promises. Both may offer wrongful manipulations of voters in many cases. The key difference is the possibility of enforceability of any ban. Vote buying can be easily identified. It is easier to track payments to potential supporters because the monetary incentives are offered pre-election to supporters-only.²⁶ This is untrue with tax-cut promises. These promises are presented to voters, but may not become enacted until after an election. Voters may select candidates with the expectation of monetary reward, but no such benefits are possible pre-election and their condition post-election is to be shared potentially with non-supporters if the candidate delivers on this campaign promise.

Furthermore, it is difficult to imagine political campaigns without campaign promises, including campaign promises to cut taxes. The public may only come to an informed decision on which candidates to elect if the public knows what is on offer from these candidates. If voters choose candidates based on the criteria that a candidate offers an individual voter the most benefits, then such a voter is effectively selling his vote to the highest bidder. This is a case where the line between vote buying and campaign promises is thin. If voters choose candidates for their political community based on the criteria that a candidate offers the political community the best outcomes, then such a voter is not selling his vote to the highest bidder. Her vote is not for sale.

This view of the voter has a clear tradition in democratic thought, including Jean-Jacques Rousseau's argument that we should be bound by the general will, rather than mere private interest: '[n]othing is more dangerous than the influence of private interests on public affairs' (1997: 91).²⁷ Moreover, Rousseau argues that '[t]he better constituted the State, the more public business takes precedence over private business in the minds of Citizens' (1997: 113). It is essential to good government that voters make decisions based upon the good of all. However, many voters will make decisions based upon their private, short-term interests instead — and which may undermine their well-being in future. The promise of an

immediate reward can outweigh its long-term greater costs. The problem is that we could not easily ban votes from citizens who decide their voting preferences for the wrong reasons.²⁸

Rousseau may be correct to warn that some voters may threaten public justice by prioritising private interest over the common good, but this could never be enforced. The only protection the public has against tax-cut promises serving as vote buying is itself.²⁹ The primary difference between vote buying and campaign promises is not that one is always more wrong than the other, but that both may be wrongful and only one may be wrongful and enforceable. This is why vote buying should be banned and not tax-cut promises.³⁰

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References

- Alvarez, R., T. Hall, and S. Heyde (eds). 2008. *Election Fraud: Detecting and Deterring Electoral Manipulation*. Washington, DC: Brookings.
- Brennan, J. 2011. *The Ethics of Voting*. Princeton: Princeton University Press.
- Brooks, T. 2012. *Punishment*. London: Routledge.
- Carson, T. 1985. 'Bribery, Extortion, and "The Foreign Corrupt Practices Act"', *Philosophy and Public Affairs* 14: 66–90.
- Dahl, R. 1959. *A Preface to Democratic Theory*. Chicago: University of Chicago Press.
- Dal Bo, E. 2007. 'Bribing Voters', *American Journal of Political Science* 51: 789–803.
- D'Andrade, K. 1985. 'Bribery', *Journal of Business Ethics* 4: 239–48.
- Davies, J. and M. Hoy (2002). 'Flat Rate Taxes and Inequality Measurement', *Journal of Public Economics* 84: 33–46.

- Dekel, E., M. Jackson, and A. Wolinsky. 2008. 'Vote Buying: General Elections', *Journal of Political Economy* 116: 351–80.
- Eisenberg, M. 2001. 'The Theory of Contracts', in Peter Benson (ed.), *The Theory of Contract Law*. Cambridge: Cambridge University Press, pp. 206–64.
- Freiman, C. 2014. 'Vote Markets', *Australasian Journal of Philosophy*. DOI: 10.1080/00048402.2014.892147.
- Hasen, R. 2000. 'Vote Buying', *California Law Review* 88: 1323–72.
- Heckelman, J. 1998. 'Bribing Voters without Verification', *The Social Science Journal* 35: 435–43.
- Karlan, P. 1994. 'Not by Money but by Virtue Won? Vote Trafficking and the Voting Rights Regime', *Virginia Law Review* 80: 205–12.
- Lehoucq, F. 2003. 'Electoral Fraud: Causes, Types, and Consequences', *Annual Review of Political Science* 6: 233–56.
- Lippert-Rasmussen, K. 2011. 'Vote Buying and Election Promises: Should Democrats Care About the Difference?' *Journal of Political Philosophy* 19: 125–44.
- Lockwood, B., A. Philippopoulos and A. Snell. 1994. 'Fiscal Policy, Public Debt Stabilisation and Politics: Theory and UK Evidence', *The Economic Journal* 106: 894–911.
- Lopez-Guerra, C. 2014. *Democracy and Disenfranchisement: The Morality of Electoral Exclusions*. Cambridge: Cambridge University Press.
- Medearis, J. 2001. *Joseph Schumpeter's Two Theories of Democracy*. Cambridge: Harvard University Press.
- Nichter, S. 2008. 'Vote Buying or Turnout Buying? Machine Politics and the Secret Ballot', *American Political Science Review* 102: 19–32.

Panagopoulos, C. 2013. 'Extrinsic Rewards, Intrinsic Motivation and Voting', *Journal of Politics* 75: 266–80.

Paulus, A. and A. Peichi. 2009. 'Effects of Flat Tax Reform in Western Europe', *Journal of Policy Modeling* 31: 620–36.

Philips, M. 1984. 'Bribery', *Ethics* 94: 621–36.

~~Panagopoulos, C. 2013. 'Extrinsic Rewards, Intrinsic Motivation and Voting', *Journal of Politics* 75: 266–80.~~

Rousseau, J. 1997. *The Social Contract and Other Later Political Writings*, ed. V. ~~ietor~~ Gourevitch. Cambridge: Cambridge University Press.

Satz, D. 2010. *Why Some Things Should Not Be for Sale*. Oxford: Oxford University Press.

Schaffer, F.; (ed.) 2007. *Elections for Sale: The Causes and Consequences of Vote Buying*. New York: Lynne Rienner.

Shapiro, I. and C. Hacker-Cordon (eds). 1999. *Democracy's Edges*. Cambridge: Cambridge University Press.

Stokes, S., T. Dunning, M. Nazareno and V. Brusco. 2013. *Brokers, Voters, and Clientelism: The Puzzle of Distributive Politics*. Cambridge: Cambridge University Press.

Weisbach, D. 2000. 'Ironing Out the Flat Tax', *Stanford Law Review* 52: 599–644.

Notes

1. For example, see 18 U.S.C. §597 (1999) and Hasen (2000).

2. See Dal Bo (2007); Heckelman (1998); Lockwood, ~~Philippopoulos et al. and Snell~~ (1994).

3. This definition is commonplace, but there are other definitions relating to bribery and business ethics. See Carson (1985: 70–71, 81); D'Andrade (1985: 239); and Philips (1984: 622, 629).

4. See Alvarez, et al. (2008) and Lehoucq (2003) on general definitions of electoral fraud.

See Schaffer (2007) for a comprehensive examination of vote buying in practice.

5. See Hasen (2000), Karlan (1994), Nichter (2008) and Panagopoulos (2013).

6. I do not argue that bribery and electoral fraud are the same; nor do I argue that electoral fraud and tax-cut promises are the same. Instead, the argument is that there is much shared in common. The following sections dissect important differences and their potential bearing on the relation between electoral fraud and tax-cut promises.

7. I am most grateful to a referee for this journal for highlighting the importance of this distinction to clarify how manipulation can be understood as wrongful.

8. This understanding of electoral fraud is wider than Kasper Lippert-Rasmussen's focus on vote buying. Lippert-Rasmussen agrees on conditions (a) and (b), but he ~~further~~ stipulates further conditions such as that the costs will be borne by private individuals and that the benefits related to vote buying will be targeted primarily to individual vote sellers (2011: 127-8). While I agree with much of his analysis, my understanding is sufficiently wide to include these cases and other cases where the promises used to manipulate voting behaviour where costs are borne by entities other than private individuals and with greater attention to non-monetary forms, such as campaign promises in general (although Lippert-Rasmussen does consider non-monetary benefits, too) (see 2011: 129).

9. It might be objected that promises are not contractual obligations and savvy voters should be able to recognize them as such. But this is not always true. In many Western democracies, political parties contest elections on campaign manifestos which are their stated political commitments for government if elected. Campaign promises may be binding on parties in this way in addition to voters and the press holding an election's winners to account for the campaign promises made that helped secure their election to office.

10. We may draw a distinction between two forms of campaign promises: I will argue in section V that tax-cut promises are a(n uncontroversial) form of campaign promises. The first is *global* whereby global campaign promises are offered to the electorate as a whole. The second form is *individual* whereby campaign promises are offered to individuals, such as individual persons or corporations. It might be argued that tax-cut promises can be directed towards supporters only. For example, a candidate for office can promise a tax cut to a particular business if it sets up a factory in my constituency. In response, I would argue that such promises are relatively rare: most promises to cut taxes are global promises. Moreover, tax-cut promises that are individual, not global, remain less certain and more conditional (and no less problematic) than vote buying for the aforementioned reasons above. However, such tax-cut promises to individuals are one further possibility whereby vote buying and tax-cut promises share deep similarities. For my purposes, our focus will remain on the more common case of (global) tax-cut promises.

11. This highlights a contingent, rather than necessary, difference between vote buying and tax-cut promises.

12. I am very grateful to a referee for this journal for drawing my attention to this distinction.

13. This is a contingent difference because vote buying might take the form of a public promise were it not illegal. I would argue that this difference retains importance insofar as vote buying is illegal and unlikely to gain explicit public support politically or legally while campaign promises to cut taxes possess this support and legality.

14. These promises are best understood as *attempts* because their effects are uncertain. If every voter made electoral choices in light of his or her individual monetary interest alone, then tax-cut promises for all would win 100 ~~per cent%~~ support. However, this is not the reality as voters make choices for a plurality of reasons. Such promises are attempts to manipulate and not guarantees (Medearis 2001).

15. An additional potential difference concerns incentives. It might be argued that a tax ~~-~~cut promise does not offer individual voters an incentive to vote for the candidate. This is because the likely benefit of individuals receiving the benefit of a tax cut may be largely unaffected by whether or not the individual votes for the candidate offering the tax cut. The incentive for individuals might appear to be different with cases of vote buying because the reward is distributed to individuals in advance of elections, but this difference is illusory. Individuals have no more incentive to vote for a candidate offering a tax cut than another offering to buy their votes. This is because either reward can be received without the individual, in fact, voting for the candidate.

16. Lippert-Rasmussen argues that the ‘essential distinction’ is that a campaign promise is a promise and vote buying is contractual. He says: ‘A contract obliges both parties to act in certain ways. A promise only obliges the promising party to act in a certain way’, but without obligation (2011: 130). I am unconvinced that there is a clear distinction to be drawn. The idea appears to be that contracts place obligations on all parties and promises are one-sided, but this is not always true. If we agree that I will pick you up tomorrow afternoon, then the obligations – and *expectations* – of you and I seem little different where our agreement is the basis for some kind of contract or promise. You will expect me to make good on my obligation to you irrespective of whether my act is contracted or promised. Likewise, you will become disappointed either way if I failed to make good on my obligation (Eisenberg 2001: 225n39 (‘the law of contract is for the most part the law of promises’)).

17. Lippert-Rasmussen notes that ‘it is hard to see the relevant substantial difference between vote buying and election promises’ (2011: 135).

18. This argument relates to the view that vote buying should be banned because it would otherwise undermine democracy: ‘the legitimacy of the political process rests on the

prohibition of such transactions', such as 'voluntary transactions in votes' (Satz 2010: 34, see 96, 102–3).

19. Lippert-Rasmussen considers different objections to vote buying relating to inequality, such as the 'equality of political impact', 'identical opportunities for political influence', 'equally good opportunities for political influence' and 'equality of interest satisfaction'. (2011: 138–43). He raises illuminating insights into the problems many of these objections run into. For example, the objection to vote buying that it denies the equal impact of each vote on political outcomes fails to recognize 'that it is conceptually possible for a group to have a political impact in a way that does not promote its members' interests' (2011: 139). Or the concern that citizens ought to have identical opportunities for political influence may not be undermined by vote buying if we consider that political influence may be exercised in more ways than at the ballot box (2011: 140). Part of his analysis is meant to show that if we want to reject vote buying we might commit ourselves 'on pain of inconsistency' to 'reject inequality-producing election promises' (2011: 143). My argument is that this inconsistency can be avoided because of problems about the enforceability of any such ban on election promises and not their relative wrongfulness.

20. Perhaps one – possibly controversial – example includes the promises to enact a flat tax. Some proponents argue that the flat tax need not benefit the wealthy at the expense of the least well off, but that it is likely a flat tax would benefit the wealthy and least well off at the expense of the middle class (see Davies and Hoy 2002; Paulus and Peichi 2009). There is further evidence that a flat tax would not improve efficiency either (see Weisbach 2000).

21. Recall the earlier distinction made between two voters – similarly situated in all relevant respects – where one is motivated by pre-existing considerations, like ideological commitments, and the other motivated purely by the desire to receive a cash reward for his or her vote. The inalienability of my vote is abrogated where I am like that second voter: I perceive a

campaign promise as offering cash for my vote and I act accordingly without regard to other factors.

22. Freiman (2014) argues that a reasonable case for legalising vote buying and selling can be made, in part, if we recognise the close kinship between campaign promises such as pledges to cut taxes and vote buying. This claim is not meant to be a compelling argument in favour of vote buying, but part of an attempt that a reasonable case can be made. Freiman's argument further rests on the idea that if citizens are permitted to vote however they choose, then they should be permitted to sell their votes however they choose. This claim assumes that the ability to make a political choice should entail an ability to permit others to manipulate or exercise their own choices through a voter: they do not and so I find his case unconvincing however novel.

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23. To clarify: it is not my claim that all forms of *non*-manipulative perversions of the political process are justifiable.

24. This argument about *scope* relates to the idea of votes as public (and purely individual) goods (see Shapiro and Hacker-Cordon 1999). But note that this idea of votes as 'public' is insufficient to distinguish between permissible campaign promises and wrongful vote buying. This is because it might be possible for a sufficiently wealthy candidate to attempt to buy the votes of all and so both campaign promises and vote buying could be similarly inclusive in theory.

25. The fact that some action (or perhaps omission) may be wrongful may be insufficient to secure illegality. Criminalization often requires however imperfectly the satisfaction of some threshold so that only sufficiently serious public wrongs might merit potential liability under the criminal law (see Brooks 2012: 111).

26. While voting will take place in secret, vote buying may be discoverable through any records of agreements made and benefits distributed in return for votes.

27. Note that my position does not rest on an endorsement of Rousseau's philosophical arguments, such as his theory of the general will.

28. It may appear very controversial to argue we should ban self-interested voting even if it were feasible. But my argument is that it is not even if it remains wrongful. Perhaps it is similarly controversial to argue that voting should not be determined by which candidates in an election offer the most cash to voters in return for their votes. It could be argued that voters should be permitted to choose whoever they like. But to say that cash rewards alone can or should be permissible runs very close to arguing electoral bribery is acceptable so long as eligible voters consent to it – and a position most democratic theorists would likely reject.

29. See Lopez-Guerra (2014: 76): 'This is exactly what happens in cases of vote buying.

While it is impossible to identify and nullify the corrupt ballots, the persons involved could be sanctioned :-:- However, the most effective and costless way to prevent instruction would be simply to disenfranchise those who have the instruction handicap'.

30. ~~Acknowledgement [redacted]~~ I must ~~also~~ thank two referees for this journal who each provided constructive and insightful comments that greatly benefited this piece.