

AMERICAN POLITICS

Big Money Unleashed: The Campaign to Deregulate Election Spending. By Ann Southworth. Chicago: The University of Chicago Press, 2023. 336p. \$99.00 cloth, \$32.50 paper
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Despite contradicting liberal values, most aspects of the Republican Party's rightward lurch do not violate the basic precepts of representative democracy. When it comes to abortion, firearms, immigration, international engagement, and cultural backlash writ large, it is difficult to maintain that Republicans have betrayed republicanism. To travel to most places within the country's great geographic expanse is to experience American exceptionalism up close and personal. Why should not regressive views find representation in Washington? The success of illiberal populists in other well-established democracies only reinforces this sinking realization—perhaps there is nothing inherently liberal or progressive about representative government. Perhaps, American democracy, as polarized and illiberal as it has become, is an accurate representation of the American people and their political views. *Big Money Unleashed* reveals the flaw in this pessimistic narrative. Well before Trump's "big lie," a sophisticated conservative legal movement had already undermined the republican form of government at its source: election law. This movement constitutionally entrenched the vast political power of private wealth, an achievement that defies public opinion, even in illiberal and regressive quarters. Southworth highlights the key strategic task facing liberals and progressives today: to build an organizational and ideological platform powerful enough to defeat oligarchy.

Focusing on the Supreme Court's invalidation of campaign finance laws from 1976 to the present day, Southworth asks "How did the First Amendment become a major obstacle to regulating money in American politics?" (p. 2). Her answer accounts for the role of intellectuals, attorneys, advocacy groups, financial patrons, networks, and coalitions in constructing the "bizarro world" or "different constitutional universe" (p. 124) inhabited by the Supreme Court's conservative supermajority. Her answer also accounts for the role of politicians, organizations, and funding sources in the nomination and appointment of the justices who predictably came to inhabit that world with great gusto. However, above all Southworth's answer centers on the ideas that comprise this world or universe, and how those ideas were produced and deployed so effectively.

Big Money Unleashed explores the principles and arguments advanced by the conservative legal movement, including the constitutional frames—the amalgamations

of ideas, analogies, understandings, assumptions, and ultimately constitutional interpretations—that have proven decisive in the landmark campaign finance cases. In true *Upside Down* fashion, these principles horrify most Americans but appear self-evident to today's conservative justices. They include money as speech; political equality as an illicit government interest; corporations as protected political speakers; political access and influence on the basis of donations as a proper form of democratic responsiveness; political corruption as a concept limited to obvious cases of bribery; and, on the whole, regulations that restrict, balance, or disclose the power of wealthy donors and spenders as forms of incumbency protection, censorship, thought control, privacy invasion, and even political persecution.

The incorporation of oligarchic principles into constitutional law represents the primary way in which the conservative legal movement has betrayed its populist base and republicanism itself. While restricting voting rights, denying the results of a legitimate election without evidence, and fomenting an insurrection to interrupt the certification of electoral results are more obvious violations of republican principles, these undemocratic strategies have either not been legitimated by the Supreme Court or, as in the case of voting rights restrictions, have not been thoroughly justified and consolidated in constitutional doctrine. Southworth provides helpful summaries of the plutocratic doctrine announced in such cases as *Citizens United* and *McCutcheon*, but that content merely serves to orient readers as to the significance of these decisions. This book's contribution to the literature and to society, truly, consists in revealing how the legal edifice of American oligarchy—including the cases challenging campaign finance law, the arguments made in those cases, the reasoning featured in judicial decisions, and even the composition of the Supreme Court today—was manufactured at oligarchs' behest. It demonstrates how representative democracy was corrupted through the strategic production and deployment of constitutional frames.

Informed by fifty-two interviews with lawyers on both sides of campaign finance litigation, *Big Money Unleashed* uses insider knowledge to dig in the right places. Southworth uncovers the synergistic relationships between "norm entrepreneurs" (such as Ralph Winter, John Bolton, Martin Redish, and Bradley Smith), major donors (including the Kochs, Adelsons, Mercer family, and DeVos family), strategic organizations (including the Federalist Society, the American Enterprise Institute, the Heritage Foundation, and the US Chamber of Commerce), lawyers (especially James Bopp), Republican party leaders (especially Sen. Mitch McConnell), and diverse coalition members (including the NRA, the Tea Party, the ACLU, and religious conservatives). Southworth notes that conservative campaigns to transform First Amendment doctrine have produced victories in policy areas

beyond campaign financing, including in health care, securities regulation, and antidiscrimination law. However, in terms of political economy, Southworth rightly concludes that the fundamental effect of conservatives' deregulatory agenda is "to translate one species of power and influence—economic might—into durable political power" (p. 209).

Big Money Unleashed uncovers the actors, strategies, and processes that achieved this effect. And it demonstrates the surprising extent to which justices' worldviews, the cases that reach the docket, and the opinions handed down are epiphenomenal. Revealing the workings of the conservative legal movement beneath the surface, *Big Money Unleashed* adds to other important exposés, such as Jane Mayer's *Dark Money* (Penguin, 2016), Nancy MacLean's *Democracy in Chains* (Viking Press, 2017), Alexander Hertel-Fernandez's *State Capture* (Oxford, 2019), Kurt Anderson's *Evil Geniuses* (Penguin, 2020), and Theda Skocpol & Caroline Tervo's *Upending American Politics* (Oxford, 2020).

Even among such important books, Southworth's analysis stands out as a twenty-first-century corrective to James Madison's theory that the U.S. Constitution would protect the republican form of government against oligarchy. In *The Federalist No. 10*, Madison recognized that economic inequalities would divide Americans into distinct socioeconomic classes with competing interests. Calling the unequal distribution of property the "most common and durable source of factions," Madison warned that the interests of a wealthy minority could prove "adverse to the rights of other citizens, or to the permanent and aggregate interests of the community" (p. 79 of the 1961 Signet Classics edition of *The Federalist Papers*). Responding to the Anti-Federalists' allegation that the constitutional design would permit such a minority to control Congress, Madison agreed that "oligarchy...strikes at the very root of republican government." He responded, however, that when a faction consists of a minority of the population, "relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote" (p. 80). Madison conceded that a minority faction might interfere with the administration of government

and cause social upheaval, but he insisted that it would be "unable to execute and mask its violence under the forms of the Constitution" (p. 80).

Big Money Unleashed shows how the conservative legal movement has proved Madison wrong. Oligarchic interests persuaded other groups within the Republican Party to join their cause (partly through financial incentives). Through fundraising, outside spending, and strategic moves spanning decades, a single Republican senator silenced those within the Republican Party who would have protected representative government from plutocrats and competitive markets from crony capitalists. And ultimately the conservative legal movement harnessed judicial power (of a magnitude unknown to Madison) to not only strike down anti-oligarchic legislation but also to constitutionally reframe oligarchy as democratic in nature. Southworth points out important parallels between the strategies of this conservative legal movement and those of the progressive legal movement that helped achieve civil and political rights for minorities. This comparison leads to vital lessons (that liberals and progressives appear to have forgotten) about the importance of long-term investments in political discourse and constitutional framing, coalition building, legal advocacy, and judicial appointments.

Although Southworth points out the hopeful fact that a large majority of citizens, Republicans included, oppose both the role of big money in politics and the plutocratic decisions of the Roberts Court, her analysis shows how powerful conservative interests have neutralized this facet of public opinion. It further shows that the left's sustained losses at the Supreme Court are symptomatic of deep ideological and organizational failures, which have yet to be remedied. Her summary of reformers' current strategies gives little hope for the near future, but readers should not blame the messenger. Southworth deserves high praise for exposing how an oligarchic legal movement co-opted the arguments of the Civil Rights Movement and reversed the gains of the campaign finance movement. Americans who still wish to achieve freedom, equality, and representation for all citizens, regardless of wealth, can finally learn what they are up against.