

## Bribes and Freedom

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Democracy promises a precious kind of freedom to its citizens. Democracies guarantee us rights: Ordinary citizens must have the right to publish our opinions, to assemble freely, to petition government officers, to object to the decisions of officers, to compete for public office ourselves, and, periodically, to vote in elections to throw the current officers out of office in a peaceful transfer of power.

No actual democracy protects all those rights flawlessly. Healthy democratic cultures at least strive to come close to respecting those rights.

The Torah does not insist on democratic rights; the Torah antedates modern democracy. Torah-observing Jews have survived under many other sorts of political entities. The Torah clearly wants us to create a virtuous society, in which the powerful protect the weakest and most vulnerable, who represent the “image of God” as well as powerful people do. As such, the Torah imposes duties on leaders, recognizing, in common with other ethical systems, that “With great power comes great responsibility.”<sup>[1]</sup> I believe that democracy can function as a system to encourage leaders to bear that responsibility. In a democracy, if the leaders disappoint the citizenry, the citizens can throw the rascals out, and elect others who seem more fitted to lead.

What qualities would those more fitted leaders have?

Perhaps they should act as statesmen or stateswomen, rather than as politicians, a distinction recently presented by Rabbi Marc D. Angel.<sup>[2]</sup> Politicians assess the desires of the public, and then advocate whatever the public wants. Statesmen and stateswomen lead the public to want wise and virtuous policies. Abraham Lincoln described those wise and virtuous policies as the promptings of “the better angels of our nature.”<sup>[3]</sup> I read these categories as archetypes. No leader fits exactly into the

category of statesman/woman or politician. The best of real leaders sometimes function more like statesmen/women, and sometimes more like politicians. Other function more like politicians nearly all the time.

And let me propose, leaders can function in a couple of other ways: as demagogues or as exploiters. Demagogues lead the public to follow the promptings, not of the better angels, but of the other side of our natures—promptings to feel aggrieved, to seek revenge, rapine, and bloodshed. Exploiters<sup>[4]</sup> seek their own advantage and take what they can for themselves, with little interest in how their actions affect the general public.

But to encourage a virtuous leadership, the ordinary citizens of a democracy must actually have the power to influence their leaders, and even to throw them out. I feel frustrated by how little power ordinary citizens have to influence the behavior of our leaders in the democratic United States of America.

Part of that frustration centers on how far our leaders can stray from the ideals of good leadership. In fairness, we should recognize the theme throughout Tanakh that we do not have a solution to the problem of political leadership. All leaders have flaws. No model works for long. The book of Judges ends in disaster (see the concubine in Gibeah, [Judges 19–21](#)); the kings of Israel and Judah often get summarized as “doing evil in the eyes of God” ([2 Kings 23:37](#), for example).

The Torah actually presents a list of the desirable qualities of leaders, when Yitro recommends that Moses appoint those who are “able, God-fearing, truthful, hating dishonest gain” ([Exodus 18:21](#)). Implementing this advice, Moses appoints leaders who are merely “able” (18:25). Rabbi Avraham ibn Ezra reads “able” as a short statement meant to include the other virtues; or perhaps Yitro’s standards were too exacting, and Moses had to settle for what he could get.<sup>[5]</sup>

Yitro wants leaders who “hate dishonest gain.” The Torah formulates that as a prohibition: “Do not tilt justice; do not recognize a person, and do not take a bribe, for a bribe blinds the eyes of the wise and soils the words of the righteous” ([Deut. 16:19](#); see also [Exodus 23:8](#)). At first glance, this prohibition applies to judges. On further reflection, everyone else in the judicial system, witnesses, bailiffs, police officers, cannot have permission to take bribes. On even further reflection, bribes have the power to corrupt political leaders, military leaders, bureaucrats, admissions officers, school administrators, teachers, and pretty much anyone with any authority.

Later in the story, Moses defends his own leadership with the claim “I have not taken one donkey from them, neither have I hurt one of them.” ([Num. 16:15](#)). Samuel makes a similar point with the question, “Whose ox have I taken, or whose donkey?” ([I Sam. 12:3](#)). Perhaps the “taken a donkey” means, not “extorted ownership of the donkey” but even only “taken a ride on someone’s donkey without paying.”<sup>[6]</sup>

The Torah teaches that a bribe “blinds the eyes of the wise and soils the words of the righteous.” How can we call someone who accepts a bribe “righteous”? Perhaps the verse simply means a person who was righteous until the moment when the judge succumbed to the temptation to accept a bribe.<sup>[7]</sup> Reading literally, the Talmud understands this to mean even if the judge determines to accept gifts only from the party who deserves to win the case ([Ketubot 105a](#)). Further, even if an extremely wise person takes a bribe, “he will not leave the world until he has suffered blindness of heart” ([Ketubot 105a](#)). Psychologist Robert Cialdini identifies the mechanism behind this phenomenon as “the power of reciprocity.”<sup>[8]</sup> People say yes to those who have given them a gift. Even if one determines to ignore the gift, one will unconsciously tilt toward the giver.

And not just the person who receives the bribe; the corruption applies to those who exist in a system that tolerates bribes. Yoel Finkelman observes that “an environment of bribery destroys the

moral integrity of everyone in the system.”[\[9\]](#)

The United States at this time still has statutes against bribery. In 2008, a state Governor was convicted of bribery. Given the opportunity to appoint a Senator for an interim term, the Governor explicitly told political leaders that the office was for sale. The Governor had served nearly eight years in prison when his sentence was commuted by presidential order.[\[10\]](#)

A few years later, in 2014, another Governor was convicted of taking improper gifts and loans from a constituent named Jonnie Williams. The constituent had asked the Governor and his wife for help with state regulation of a business deal, and received answers like this one, from the wife:

According to Williams, she explained that the “Governor says it’s okay for me to help you and—but I need you to help me. I need you to help me with this financial situation.” Mrs. McDonnell then asked Williams for a \$50,000 loan, in addition to a \$15,000 gift to help pay for her daughter’s wedding, and Williams agreed.

The Supreme Court unanimously overturned the conviction on appeal, in 2016, on the grounds that the statute was too broad, that repeated introductions to officers in state government who could help with a business deal do not constitute an “official action.”[\[11\]](#) As Justice Roberts noted in that decision, elected officials often do favors for members of the public by arranging meetings with other government officials, so the benefit Williams got for her gifts were not extraordinary.

Elected officials often do favors for members of the public; Justice Roberts does not consider how much money members of the public should have to give to their elected officials to get these favors. The elected official can legitimately ask for gifts, and the constituent can give gifts. The Supreme Court did not consider the effect of these mandatory gifts on the sense that we live in a country with democratic freedoms. These gifts may instead inspire the perception that we have a government of the wealthy, by the wealthy for the wealthy.

Furthermore, in order to become an elected official, one needs to win a campaign. Campaigns cost boatloads of money. Some of the people who donate this money might expect consideration in return for their generosity. For this reason, we have laws prohibiting accepting campaign contributions from foreign nationals and from foreign governments. Since, however, the Supreme Court has ruled that corporations may sponsor political advertisements, and may also conceal the identities of their donors,[\[12\]](#) interested parties can easily circumvent these laws. Current law seems uninterested in the question of when campaign contributions cross the line from political action to outright bribery.

Voters get to elect judges in many states. Judicial campaigns, like other campaigns, take large sums of money, much of which can come from opaque sources. Journalists may not succeed in finding who donated the money to the committee to elect the judge; the donors probably have some way of letting the judge know. It seems likely that a case involving one of these secret admirers might come before the judge. Perhaps that possibility inspired the donation in the first place.[\[13\]](#)

The Torah prohibits profiting from commercial transactions in which one benefits from another person’s ignorance. The prohibition of “*onaah*” forbids buying or selling when you have concealed special information about the value of the merchandise (see [Lev. 25:14](#), Talmud *Bava Metsiah* 55a, and the subsequent codes). Insider trading appears as a prime example of “*onaah*.”

Insider trading also runs afoul of the Torah prohibition against putting a stumbling block before the blind ([Lev. 19:14](#)), which the ancient rabbis understand as applying to misleading people to their disadvantage (Sifra de Rav, [Lev 2:14](#)). Misleading others for financial advantage obviously falls short of the positive commandment to “Love your neighbor as yourself” ([Lev. 19:18](#)).

When health officials informed legislators of the danger of a terrible epidemic, weeks before the news became public, legislators had time to plan our nation’s responses to this crisis. The legislators also had time to adjust their stock portfolios to make the greatest profit from the coming cataclysm. One Senator responded to the health information alertly, selling more than \$18 million dollars of shares in health care corporations that stood to lose value when knowledge of the epidemic went public.[\[14\]](#)

The purchasers of these shares presumably did not have inside information. That identifies this Senator as an exploiter. Other elected legislators of both parties displayed similar ethical sensitivities, at perhaps smaller amounts.

The Department of Justice investigated these suspicious-looking stock transactions, and found nothing illegal. The Senate Ethics Committee also investigated, judging not merely the legality, but also the ethical standards, of the senator’s behavior. “Deborah Sue Mayer, the chief counsel and staff director of the Senate Ethics Committee, dropped the investigation, ruling that, ‘Based on all the information before it, the Committee did not find evidence that your actions violated federal law, Senate Rules or standards of conduct,’ Mayer said. ‘Accordingly, consistent with its precedent, the Committee has dismissed the matter.’”[\[15\]](#)

Apparently 18 million dollars of insider trading does not offend the ethical standards of the Senate. Feel free to speculate about what it would take to offend those ethical standards.

We need to demand more of our political leaders. In a democracy, we are responsible for the leaders we elect. Perhaps we get the government we deserve. However, given the electoral structure of the United States, it seems difficult to see how ordinary citizens can use elections to replace unsatisfactory leaders.

No actual political system can achieve flawless democracy. The election cannot perfectly reflect the views of a majority of the voters, because some unfairness has to creep into any method of aggregating the votes. An economist, Kenneth Arrow, demonstrated that no election can meet all of the three most simple tests for fairness.[\[16\]](#) However, relatively fair elections can enable citizens to choose their preferred candidates fairly well.

Because donations to political candidates and officeholders can come from corporations directly or through dark channels, people with money can influence legislation more or less blatantly, and the public has not been able to overcome this influence in gun control, taxation policy, public health, pollution, climate change, and a host of other areas.

Besides the influence of money, structural imbalances make it unlikely that voters can have much influence.

The Torah, as I have observed earlier in this article, antedates political democracy. However, the Torah, as interpreted by the ancient rabbis, does have a commandment that could serve as the central commandment of political democracy. The rabbis rule that one must follow the majority.

They find their source in the biblical verse, “You shall not follow the many to do evil; nor shall you testify in a dispute so as to turn aside after many to pervert justice do not do evil by inclining to the many.” ([Exodus 23:2](#)). The ancient rabbis extracted from this verse that one must, in general, follow a majority, quoting the final three Hebrew words “inclining to the many”[\[17\]](#) In biblical word *rabbim*,

“many,” means “majority” in rabbinic Hebrew. As Rabbi Avraham ibn Ezra explains, the warning not to follow the many to do evil implies that one should generally follow the majority to do good.

A central precept of democracy demands that when we conduct an election, the majority of the voters should determine the outcome. The United States segments the electorate, so that in each significant election, portions of the electorate get counted separately. A paradoxical result of this segmentation follows, that the winners of the segments win the election, even if they do not form the majority of the electorate. In the Senate, each state elects its own two senators. Small states get no fewer than two senators, and large states no more than two. As a result, the nationwide vote can favor one party by a substantial number of votes, and the other party can win the senate. In fact, this happens in about half of elections for Senate.

In elections for the House of Representatives, after the census each decade, states get divided in to districts, each of which elects its own representative. If partisan officials divide up the districts according to the interests of their party, they can perform gerrymandering. They divide the state into two kinds of districts: as many districts as possible provide a small but comfortable majority for the favored party; as few districts as possible provide an overwhelming majority for the disfavored party. Gerrymanders often result in disproportionate power to the politicians who draw the boundaries. It can often happen that the nationwide vote can favor one party by a substantial number of votes, and the other party can win control of the House. In fact, this happens in about half of the elections for the House.

Gerrymanders also generally waste the individual voter’s choices. Gerrymanders make every district predictable; they try to eliminate contested districts. In gerrymandered states, voters can vote in the general election, but their votes are extremely unlikely to change the outcome.

The electorate gets segmented for the Presidential election as well. Most states have a strong majority for one party or the other. The election is contested in a half dozen or so swing states, where the outcome could go either way. The parties know this, and invest their campaigning time and money in those swing states. It hardly pays to campaign in about 85 percent of the country, where one party or the other has a big advantage. The millions who vote there have, predictably, almost no chance of effecting the outcome. The candidate who wins the predicted share of those states typically builds a lead of several million votes over the other candidate, without affecting the outcome of the race at all. By definition, a small number of voters determine which party wins a swing state. Vote margins in the tens of thousands in the swing states determine who gets elected President. As a result, no one feels much surprise when the candidate who comes in a relatively distant second in popular vote in the two-person race wins the election.

Gerrymandering, practiced with varying degrees of enthusiasm by both major parties, constitutes a current and ongoing offense against voters for the benefit of the politicians in power. The voters who turn out for primaries—a miniscule number—might have an influence in who gets elected. The large number of voters in general elections just ratify foregone conclusions. No wonder many people do not bother to vote at all.

The other structural imbalances that cause failure to follow the majority do not represent active corruption. They rather represent passive acceptance of traditional offenses against the basic commandment of democracy. No one has to do anything to continue the flawed structure of the Senate or the Electoral College. People who want their votes to matter would have to actively challenge current practices that benefit their elected officials.

In 2014, Professors Martin Gilens of Princeton University and Benjamin Page at Northwestern published their analyses of more than 20 years of the influence of the public on elected officials in the United States of America, “Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens.”<sup>[18]</sup> How often do the policy preferences of American citizens determine the outcome in legislation? The two professors found that the policy preferences of average citizens make no

difference in government outcomes. Whether members of the general public strongly oppose a policy, or strongly favor it, does not change the probability that the policy will be enacted. Economic elites generally can squash initiatives that they dislike, and propel initiatives that they like. However, according to Gilens and Page, economic elites must “share their policy interests with organized interest groups.” Organized interest groups also have a limit on their power. They “must share influence with economically-elite individuals.”<sup>[19]</sup>

In the years since 2014, the power of economic elites and interest groups has probably grown. Economic inequality has grown. Gerrymandering has become a more precise science. Malevolent interest groups have become more powerful. I try not to be naïve. I accept that a majority of voters might make unwise decisions. I accept that, however we structure democracy, wealthy people will have disproportionate political power. The promise of wealth will attract demagogues and exploiters to political office, and will corrupt some of the mere politicians who have gained office. In spite of all this, we will probably still elect some statesmen and stateswomen. However, I deeply believe that the promise of democracy demands better than what we have now.

## Notes

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[1] Attributed to Uncle Ben Parker in the Spiderman universe of Marvel Comics. The line appears in the first *Spiderman* film, directed by Sam Raimi in 2002.

[2] Rabbi Marc Angel, “Politicians or Statesman,” *Jewish Ideas*. January 1, 2022. Accessed Jan. 30, 2022. <https://www.jewishideas.org/blog/politicians-or-statesmen-blog-rabbi-marc-d-angel>.

[3] In the First Inaugural Address, March 4, 1861.

[4] Maybe “Predators” would be a better designation. These exploiters or predators act, not as “public servants,” but as those served by the public.

[5] Amos Hakham, *Daat Mikra: Shemot*. [Exodus 18:25](#). Hakham calls this reading “*derekh derush*” =homiletic.

[6] As in “I took a taxi.”

[7] Rabbi Joseph Hertz on [Deut. 16:19](#): “Of men who otherwise would be righteous.”

[8] Robert Cialdini on the importance of reciprocity. *World of Business Ideas You Tube Channel*. <https://www.youtube.com/watch?v=tkyGOAWoYxA>. Published July 8, 2009. Accessed February 21, 2022.

[9] Personal correspondence. Feb. 3. 2022.

[10] Monica Davey and Rich Smith, “Who Is Rod Blagojevich? Why Did President Trump Commute His Sentence?” *New York Times*. Feb. 18, 2020, updated Feb. 19, 2020. <https://www.nytimes.com/2020/02/18/us/rod-bлагоjevich-sentence.html>. Accessed Feb. 23, 2022.

[11] “McDonnell decision substantially weakens the government’s ability to prevent corruption and protect citizens.”

<https://www.scotusblog.com/2016/06/symposium-mcdonnell-decision-substantially-weakens-the-governments-bbility-to-prevent-corruption-and-protect-....>

[12] <https://www.supremecourt.gov/opinions/09pdf/08-205.pdf>. Accessed Feb. 27, 2022.

[13] “Experts: Dark money taints judicial elections, erodes trust in courts.” *ABA*. Feb. 19, 2021. Accessed Feb. 22, 2022. “Abby Wood, a law professor at the University of Southern California, said the problem began years earlier, but was exacerbated by the U.S. Supreme Court’s landmark 2010 ruling in *Citizens United v. FEC*. In that case, the court held that the First Amendment of the Constitution prohibits the government from restricting corporate political spending.

[14] As reported by Katelyn Burns, *Vox*, Updated Apr 2, 2020. Accessed Feb. 22, 2022.

[15] By Marianne Levine, “Senate Ethics Committee drops probe of Loeffler stock trades.” *Politico*, 06/16/2020 06:21 PM EDT Updated: 06/16/2020 07:07 PM EDT. Accessed Feb. 20, 2022.

[16] Nathan Collin, “Arrow’s Theorem Proves No Voting System Is Perfect.” *The Tech, online edition*. Feb. 28, 2003. [ech.mit.edu/V123/N8/8voting.8n.html](http://ech.mit.edu/V123/N8/8voting.8n.html). Accessed Feb. 23, 2022.

[17] Jerusalem [Talmud Sanhedrin 4:2](#) and elsewhere.

[18] Published in *Perspectives on Politics*, American Political Science Association [http://scholar.princeton.edu/sites/default/files/mgilens/files/gilens\\_and\\_page\\_2014\\_-testing\\_theories\\_of\\_american\\_politics.doc.pdf](http://scholar.princeton.edu/sites/default/files/mgilens/files/gilens_and_page_2014_-testing_theories_of_american_politics.doc.pdf)

[19] Gilens and Page 572.