POLITICAL PARTIES AS DONATIVE INTERMEDIARIES

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Samuel Issacharoff and Daniel R. Ortiz raise many interesting issues in their analysis of political intermediaries, which in their view serve both as the agents of voters and as the principals (or superagents) of politicians. The extent to which agency analysis does—or does not—offer important analytic insights into the political process is without doubt a worthy subject for inquiry. Agency theory, as applied to the relationship between voters, parties, and other intermediaries on the one hand, and politicians on the other, draws attention to the ways in which politicians and parties may act selfishly rather than faithfully represent the interests of voters. The goal of such an analysis would be to identify how election law might help to restrain these agency costs. The restraint—if not overly costly—would be in the ex ante interest of the agents as well as the principals. In this Comment, I first analyze some of the specifics of applying agency principles to political intermediaries, focusing especially on political parties. I then propose an alternative view of the role of political parties, one that problematizes Issacharoff and Ortiz's view that voters are the principals of parties.

I. PERSPECTIVES ON THE PRINCIPAL-AGENT ANALYSIS

Isabel votes for the Republicans because of their tough stance against Fidel Castro's Cuba. Sally casts her lot with the GOP because of its commitment to lower taxes and freer trade. Robert votes for the Republican candidate because he favors prayer in public schools, and John votes for the GOP because its candidate is taller than is the Democratic standard-bearer.

Whatever the merits of applying a principal-agent framework to politics, it is useful to begin by noting that it can do little to solve the tensions inherent in this situation, which raises what many consider to be one of the crucial

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problems of democracy: Voting does not take account of individual voters’ intensity of preference. Additionally, those who vote for a particular politician (or intermediary, such as a party) will almost always differ with respect to their priorities. Thus, if we designate as the principals of a politician all those within a given electoral district who voted for her, it may be impossible, as demonstrated by Arrow’s impossibility theorem,\textsuperscript{4} to aggregate the actual preferences of those voters in any meaningful way, at least over a range of choices. That is to say, the aggregated preferences of the voters over several choices may be intransitive. No voting system can be expected to aggregate individual preferences in even a minimally rational and fair way.\textsuperscript{5} Therefore, the employment by voters of even entirely faithful agents would not solve the problem of how disagreements between voters themselves should be mediated.

Some assumptions about voter preferences, however, do allow for a rational aggregation. In particular, if voter preferences are single-peaked (i.e., voters prefer a particular outcome, such as continuing a war, and are worse-off as the outcome deviates from their preferred outcome in either direction, such as by pulling out troops or by escalating bombing), then the aggregated preferences of voters over an issue falling along a single dimension (e.g., hawk-dove) will be transitive, and cycling will not occur.\textsuperscript{6} There is some evidence that American politics, over significant periods of time, can be characterized surprisingly well with a two-dimensional model, with the first dimension (the role of government intervention in the economy) being far more important than the second (most commonly, race).\textsuperscript{7} But to the extent that issues are aligned on one dimension and preferences are single-peaked, parties are of little importance. Politicians will be induced by self-interest to serve the desires of the median voter and will not be differentiated in any meaningful sense.\textsuperscript{8}

Parties can play a role, however, where voter preferences are not single-peaked, which becomes more likely when issues fall along several dimensions,\textsuperscript{9} although it may be true even with one dimension. Thus, for example,

\textsuperscript{5} See, e.g., Dennis C. Mueller, Public Choice II 384–86 (1989) (asserting that no process—“voting, the market, or otherwise”—exists that can satisfy Arrow’s basic ethical axioms); William H. Riker, Liberalism Against Populism 116 (1982) (“[N]o method of amalgamating individual judgments can simultaneously satisfy reasonable conditions of fairness on the method and a condition of logicality on the result.”).\textsuperscript{1}
\textsuperscript{7} See Keith T. Poole & Howard Rosenthal, Congress: A Political-Economic History of Roll Call Voting 18–19, 35, 53–54 (1997).
\textsuperscript{8} See Harold Hotelling, Stability in Competition, 39 Econ. J. 41, 54–55 (1929). This “median voter theorem” may apply when preferences are single-peaked while falling along multiple dimensions, but only under stricter assumptions. See Mueller, supra note 5, at 73.
\textsuperscript{9} See Mueller, supra note 5, at 67.
a voter may prefer either a troop pullout or increased bombing to the continuation of a war on its current path.\footnote{See id.} The cycling that can occur in such situations, however, makes principal-agent analysis problematic. Differences in the preferences among voters (e.g., Isabel likely favors continued trade sanctions against Cuba while Sally likely favors their elimination) make it difficult to detect deviations from the desires of principals in the actions of agents. This situation gives the agent considerable discretion: She could choose a course of action for purely personal reasons yet justify it as a plausible action given voter preferences. To be sure, some options (perhaps increasing her salary or perks) might be precluded if they were not a part of the "top cycle" of choices over which voter preferences were intransitive.\footnote{See Riker, supra note 5, at 186. Even here, unless it can be determined that the cost to the voters is not counterbalanced by the gain to the agent (i.e., that the policy is socially inefficient) it would not be obvious that such an action represents a true agency cost.} Yet, for some issues, particularly the redistributive ones with which most modern governments are preoccupied, the set of possible outcomes over which voter preferences cycle will be large.\footnote{See id. at 186–87.}

Likewise, the delegation of power to a group of agents may not eliminate the tendency of collective decisionmaking to devolve into cycling, where any alternative is ultimately chosen arbitrarily (perhaps by an agenda-setter).\footnote{See Mueller, supra note 5, at 63–65.} Voters cannot preempt cycling by employing only one or two agents: The tendency to cycle will be replicated in the voters' coalition building as they attempt to settle on which agent(s) to choose. To their credit, Issacharoff and Ortiz implicitly recognize that agency theory does not offer a solution to these dilemmas.\footnote{See Issacharoff & Ortiz, supra note 1, at 1630.} Thus, in Part III of their article, they discuss the rent-seeking that may be promoted by effective political intermediaries.\footnote{See id. at 1661.}

Finally, even if it is possible, at times, to identify voters' aggregate interests in some meaningful way, it is not a simple matter to conclude that a politician pursuing a course of action contrary to those interests is imposing an agency cost on voters. The politician may be engaged in some broader, implicit exchange with other politicians (e.g., logrolling).\footnote{See Saul Levmore, Precommitment Politics, 82 Va. L. Rev. 567,578 & n.24 (1996).} Alternatively, voters may have delegated decisionmaking to a politician or intermediary expecting that the divergence of interests between principal and agent will be in the strategic interest of the voters.\footnote{See generally Edward Iacobucci, Strategic Delegation and the Law (Feb. 27, 1998) (unpublished draft manuscript, on file with the Virginia Law Review Association) (discussing the strategic use of agents with particular attention to predatory pricing).} Voters (such as Robert) who favor prayer in schools but are frustrated by the political system's inability to pro-
vide it, for example, might cast their votes for a fundamentalist party. Here, the voters may in fact rely on the fundamentalists’ greater extremism (as compared to their voter-principals) but expect that only by employing agents with such extreme views could a compromise to their benefit be attained.\footnote{See Thomas C. Schelling, The Strategy of Conflict 142–43 (1960) (discussing the “conspicuous delegation of authority to a military commander of known motivation” as “a common means of making credible a response pattern that the [delegator] might have been thought to shrink from or to find profitless”).} Issacharoff and Ortiz’s suggestion that agents might find it in their interest to become the “Taliban of politics”\footnote{Issacharoff & Ortiz, supra note 1, at 1633.} thus might be even more true than they suspect.

Even assuming we can solve these problems, and assuming further that agents act in the interest of their voter-principals, Issacharoff and Ortiz suggest that the use of political intermediaries can introduce a new agency cost. This problem, in their view, arises from “fractionated supervision.”\footnote{Id. at 1635.} They give the example of a voter who (a) holds shares in a corporation that pollutes and (b) donates to an environmental group.\footnote{See id. at 1655.} The political efforts of these groups, they suggest, may work to cross-purposes. A single agent could balance the voter’s profit-making interest against his environmental interest and then lobby in one direction or the other, and to the proper degree, on proposed environmental legislation.\footnote{See id. at 1656.} But by employing two agents, Issacharoff and Ortiz argue that both will lobby “without compromise” and, indeed, to cross-purposes from the perspective of our voter.\footnote{See George J. Stigler, The theory of economic regulation, 2 Bell J. Econ. & Mgmt. Sci. 3, 3–6 (1971) (arguing that regulated industries benefit from regulations).}

Such an analysis, however, seems too narrow. As the fact that voter preferences can be intransitive across a range of possibilities reminds us, politicians are unlikely to be faced with the binary choice of protecting the environment or allowing it to be degraded. Once we remember this, we can see a way out of the impasse of fractured supervision. The voter’s environmental group may lobby for broad-based environmental coverage consistent with its principals’ concerns. The corporation, in the meantime, may lobby not against environmental protection \textit{tout court}, but rather, for an exemption or perhaps for a special tax credit reflecting its cost of compliance. Such an outcome may be \textit{better} from the voter’s perspective than defeat of the environmental bill. The environmental bill will raise the cost of production of rival firms, thereby placing the voter’s corporation in an improved competitive situation.\footnote{See id. at 1655–56.}
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Issacharoff and Ortiz tentatively advise that intermediaries be required to open their meetings and to keep better records. This issue is complex, and, to their credit, they recognize that these measures bring costs. It is important to note, however, that the case against such measures arises from the benefit side of the equation as well as the cost side. Since most voters are rationally apathetic, they are unlikely to do much with additional information or even pay much attention to it. We may then be left with costs, but no benefits, from additional disclosure. Intermediaries, after all, are utilized by voters in order to economize on their information-gathering costs, as Issacharoff and Ortiz note elsewhere. Nonetheless, this desire to economize on information does not suggest that voters necessarily seek no information. They might, for example, plausibly want intermediaries to reveal conflicts of interest. Since contracting about these issues with intermediaries is likely to be costly to voters, it may be justifiable to require such disclosure. Such a requirement should be a default rule, however, so that in situations in which costs outweighed benefits (including the benefit of avoiding contracting about the issue) the parties could contract for nondisclosure.

II. An Alternative View

When Issacharoff and Ortiz analyze political parties, they suggest that parties are the agents (or “superagents”) of voters. Such an analysis implies—because principals select their agents—that voters play a governance role with respect to the party. Indeed, Issacharoff and Ortiz suggest that this governance relationship be intensified, as, for example, through the more wide-
spread use of political primaries. The greater threat of removal, they suggest, will increase the faithfulness of the (super) agents to their voter principals.

As an alternative to this analysis, consider viewing the political party as a firm. As a preliminary matter, we can ask why parties arise in the first place. Their existence must be explained by some value that they add to the political process (and that justifies their costs, as discussed below). Parties exist at least in part because they serve an intermediation role in the political marketplace. This role can be analogized to that of financial intermediaries, such as banks, in financial markets. Individual savers deciding to which firms to lend their money are likely to have little information about potential borrowers, modest incentives to gather additional information, and little expertise in negotiating contracts with borrowers. This situation leads to the creation of financial intermediaries, such as banks, that have economies of scale and scope in terms of information and expertise. These financial intermediaries take on the role of making loans to businesses, thereby simplifying the transactions that ordinary savers must undertake (e.g., merely making a deposit in their accounts).

Voters lack good information about which candidates to elect. The prohibition on vote-buying leaves each voter with but a tiny say in an election. The rational response for most voters is therefore one of apathy. Political intermediaries thus arise and harness economies of scale and scope in gathering information about and in evaluating candidates. They can also impose some ex post sanctions on politicians who deviate from their

34 See Issacharoff & Ortiz, supra note 1, at 1648.
35 "Party" in this context refers to the extragovernmental organization rather than to the party's supporters among the electorate or to the office-holding politicians who are affiliated with the party. See Daniel Hays Lowenstein, Associational Rights of Major Political Parties: A Skeptical Inquiry, 71 Tex. L. Rev. 1741, 1764 (1993) (making this tripartite distinction).
36 See, e.g., Or. Rev. Stat. § 248.004 (Supp. 1998) (treating political parties as nonprofit corporations). A "firm" is an intermediary that serves as the common signatory for a web of explicit and implicit contracts with a number of parties, see Jensen & Meckling, supra note 3, at 311, and within which the price mechanism is, to a greater or lesser degree, suppressed by more "command and control" measures, see R.H. Coase, The Firm, the Market and the Law 37-38 (1988).
37 See infra text accompanying notes 42-43.
39 See 18 U.S.C. § 597 (1994 & Supp. III 1998) (outlawing the offer and acceptance of compensation "in consideration of" a vote and "the withholding of" a vote). Of course, even without such a ban, the secret ballot is a formidable barrier to a market for votes. There may, however, be limited ways around the secret ballot, such as the use of absentee balloting by vote-buyers. See Pamela S. Karlan, Not by Money but by Virtue Won? Vote Trafficking and the Voting Rights System, 80 Va. L. Rev. 1455, 1464 n.32 (1994).
some ex post sanctions on politicians who deviate from their promised path, such as withholding discretionary party funds, failing to re-endorse the politician, or frustrating the politician’s legislative accomplishments (including the amount of pork brought home). This discipline is not perfect, however, for direct financial discipline and incentivization of the politician is limited by the ban on bribery.

In this conception, then, political intermediaries choose and endorse candidates from among the pool of potential candidates. This simplifies the action that voters need to undertake (i.e., voting the party line). From this perspective, the greater use of primaries that Issacharoff and Ortiz advocate as a way to reduce agency costs is unwarranted. Involving voters in the selection of candidates from a large pool of potential office-holders erodes the very intermediation justification for the existence of political parties. An analogy could be drawn to mutual funds, which vote the shares of the fund’s investment portfolio. Were these votes to be “passed through” to fund investors, we would expect a deterioration in decisionmaking because individual investors would be more rationally passive than managers of the fund.

As a firm, a political party necessarily enters into relationships with a wide variety of outside constituencies (e.g., workers, suppliers, etc.). In the usual firm, most of these constituencies regulate their relationship with the firm via contract. One constituency, however, typically undertakes a governance role (usually paired with holding the residual claim to the firm’s income) instead of (or in addition to) maintaining a contractual relationship with the firm. This governance role allows that constituency to select the agents who will be in charge of the firm’s day-to-day operations and also to make the discretionary decisions that the firm is left with once it has met its contractual obligations to other constituencies.

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42 This was, of course, the pattern followed for much of U.S. history. See Frank J. Sorauf, Party Politics in America 202 (1968) (stating that, “as recently as the beginning of the 20th century, the direct primary had come into use only in scattered communities in scattered states”).
43 See Michael A. Fitts, Can Ignorance Be Bliss? Imperfect Information as a Positive Influence in Political Institutions, 88 Mich. L. Rev. 917, 941-43 (1990) (discussing the ability of parties to reduce the “information overload” of voters and to focus them on simpler cues such as party labels); Michael A. Fitts, The Vices of Virtue: A Political Party Perspective on Civic Virtue Reforms of the Legislative Process, 136 U. Pa. L. Rev. 1567, 1607-08 (1988) (“[P]olitical parties can increase the rationality of popular voting by giving voters a visible cue—party affiliation—by which they can judge a candidate’s connection with a broad spectrum of issues.”) (original emphasis omitted); Sam Peltzman, Constituent Interest and Congressional Voting, 27 J.L. & Econ. 181, 197 (1984) (“[P]arty labels, like brand names generally, can be cheap sources of information about which candidates are likely to best serve the interests of voters or contributors.”).
In deciding which constituency should undertake the governance role, the firm compares the cost of transacting with each constituency by contract with the cost of a governance relationship. The governance role will be assigned so as to minimize the total sum of contracting and governance costs. Governance costs are typically lower the more homogenous a constituency is, because homogeneity decreases the intensity of conflicts of interest that could spark frequent disagreement. Of course, homogeneity only reduces conflicts over the firm’s goal(s); actors with governance powers may still disagree with each other about how the firm’s profits are to be divided among them. Costs generated by such disagreement, however, can be lessened through ex ante rules about profit-division, such as lock-step compensation for a law firm’s partners or an equal-sharing rule for a firm’s shareholders. Other things being equal, a smaller group will have lower governance costs than will a larger group because undertaking the gathering of information about the firm’s prospects, and monitoring other decisionmakers, will be more cost-effective for individual members of the smaller group.

In Issacharoff and Ortiz’s principal-agent view of the voter-party relationship, the governance role is assigned to voters. Voters, however, face high costs in attempting to govern political parties (and politicians) effectively. As discussed above, voters are numerous and rationally apathetic. Perhaps more importantly, voters, as we saw above, are not homogenous. Heterogeneous interests render reaching agreement among a party’s voters difficult. The losing voters might feel (and might in fact be) exploited by the winning faction. Decisionmaking is likely to be contentious, and the policies undertaken by the agents might be reversed or abandoned as cycling results in a different faction seizing control.

Because voters face such high governance costs, political firms could reduce their costs of operation by shifting the governance function to another constituency. This might be the entrepreneurial founders of a party (and their successors), financial donors, or politicians. A small group of entrepreneurs could be quite homogenous and share similar goals, thus lowering governance costs. Financial donors (at least large ones) would also be a relatively small group; they might share many policy goals, but also might differ on

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46 See id. at 39–42.
47 See id. at 93.
48 See, e.g., Sinclair Oil Corp. v. Levien, 280 A.2d 717, 719 (Del. 1971) (applying “intrinsic fairness” standard to analyze validity of corporate transactions that disproportionately benefit majority shareholder).
49 See supra notes 4–19 and accompanying text.
some. Politicians would certainly have their own individual interests but would also agree on an overall goal (increasing the success of party politicians).

The shift of governance power from voters to another, more homogenous constituency makes the latter, rather than voters, the principals of political parties. Voters then transact with the party via some other means. Typically, a constituency that does not exercise governance power over the firm interacts with it via contract. This is not such an attractive outcome in the case of a political party, however, because the cost of contracting with voters is also likely to be quite high. Transaction costs would be high because the large number of voters means that many contracts would need to be written. These contracts could not be standardized (without reducing the attractiveness of the party) because voters differ in their goals and intensities of interest. Contracting would thus be complex.

Moreover, according to the intermediary conception, parties provide a service to voters. This suggests that voters should be providing net payments to parties (as corporations make net payments to executive search firms). The incentive of individual voters to free-ride and decline to make such payments, however, will be enormous: Large percentages of voters already choose not to vote due to the small likelihood of affecting the outcome. Adding another cost to voting would drive more voters from the polls. The price would be increased because parties’ ability to control politicians is limited. Therefore, the chance of the party breaching its contracts would be nontrivial, and parties would need to charge voters for bearing this risk.

When a firm has a constituency with which it faces both high governance and high contracting costs, it often adopts the nonprofit form. The rationale is that, given the high contracting costs they face, voters tend to be exploited in their contracts with parties. Ordinarily, such a group might be assigned

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A parallel may also be seen in Joseph Schumpeter’s writings on democracy, in which he criticizes what he terms the “classical theory” of democracy for its assumption that the electorate has rational and definable opinions and the initiative to see that they are carried out. See Joseph A. Schumpeter, Capitalism, Socialism, and Democracy 269–70, 283 (6th ed. 1987). He instead emphasizes the competition between potential leaders and defines a party as a group of politicians coordinating their struggle for political power. See id.


53 While voters might lose on individual contracts, the owners of political parties would also bear some of the costs of this inefficiency, as voters would tend to avoid entering into contracts that would be made in the absence of high contracting costs.
the governance role, but voters face high costs of governance as well. Therefore, parties might be expected to take a form "without" ownership, by imposing a nondistribution constraint on themselves and interacting with voters in a donative manner. That is, voters are donors, not principals. For a typical donative nonprofit, the nondistribution constraint helps to reassure donors that their contributions will not simply line the pockets of the firm's residual claimants. In the case of political parties, votes cannot be diverted directly (the way cash can) to the benefit of managers. This suggests that parties might not be nonprofit in the strict sense of having a nondistribution constraint, although financial donors to parties may prefer that one be in place.

Indeed, in U.S. elections, votes are formally given to political candidates. They are only indirectly—but importantly—donations to parties, both because the reputation of parties improves when their candidates are successful and because public funding may flow to political parties depending on the fate of their candidates. Such a funding structure represents a way of paying parties for their intermediation function without making them dependent on free-riding voters for such payment. In electoral systems with proportional representation, votes are given directly to parties. Parties, by drawing up the party list, determine which of their politicians will serve in the legislature.

In a recent article, Saul Levmore suggests that donations can be seen as serving a function similar to that of voting. Donations can reveal real preferences because they have real costs to the donor. Therefore, the political sector can better carry out voter preferences if it allocates some government funds to supplement private donations. The charitable contribution deduc-

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54 See Hansmann, supra note 45, at 228 (describing nonprofit form arising where class of patrons faces high costs of contracting and high governance costs).

55 Interestingly, the tax code does not impose the inurement and private benefit restrictions on parties that it imposes on traditional charities. See I.R.C. §§ 501(c)(3) (West 1999). It does, however, provide tax exemption to parties only to the extent that they are "organized and operated primarily for the purpose of... accepting contributions or making expenditures for an exempt function activity ..." Treas. Reg. § 1.527-2(a)(1) (1999). In any event, the tax exemption provided is partial and does not cover, for example, investment income. See I.R.C. § 527(c)(3).

56 See, e.g., I.R.C. §§ 9002(6), 9002(7), 9004(a) (granting an equal share of federal campaign funds to candidates of parties receiving 25% or more of the popular vote in the preceding presidential election and a proportionate amount to parties receiving between 5% and 25%). Such financing is common in other nations as well. See, e.g., I World Encyclopedia of Political Systems & Parties 558, 560 (George E. Delury ed., 2d ed. 1987) (noting that, in Israel, "[t]he state also provides some financial assistance to the parties according to the number of seats held in the previous Knesset. New parties get a set amount."); Law Library of Congress, Campaign Financing of National Elections in Foreign Countries 112–13 (1991) (describing how, in Italy, the bulk of government funds are distributed to parties proportionally according to votes received).

57 See III The Encyclopedia of Democracy 1010 (Seymour Martin Lipset ed., 1995) (discussing proportional representation); see, e.g., I World Encyclopedia of Political Systems & Parties, supra note 56, at 539 (describing Israel's proportional representation system).

tion is one mechanism for doing so. Private charities might develop similar mechanisms for allocating donations that are not earmarked.\footnote{See id. at 420–21 (analyzing various options within the context of the United Way).}

Levmore's analysis implicitly (and perhaps naturally) views voting as a fundamental category, or "primitive." Analyzing political parties as nonprofit firms, however, reveals the insight that voting may (merely) be one form of making a donation. That is, for our purposes, the interesting analog is not that donations can serve a function similar to that of voting, but rather that voting itself can be viewed as a donative act. We can describe voting as arising from the government's distribution of an equal subsidy to each voter (one vote). Because the government forbids the sale of votes,\footnote{That is, the right to vote is an inalienable entitlement. See Guido Calabresi & A. Douglas Melamed, Property Rules, Liability Rules, and Inalienability: One View of the Cathedral, 85 Harv. L. Rev. 1089, 1111 (1972) (discussing inalienable entitlements generally). Margaret Jane Radin argues that the inalienability of votes is not a "market-inalienability" but rather a "community-inalienability" because votes carry with them a duty to be exercised as well as a prohibition on sale. Margaret Jane Radin, Market-Inalienability, 100 Harv. L. Rev. 1849, 1854 & n.21 (1987).} and because (unexercised) votes have no inherent consumption value, this distribution has only donative value. The government also establishes an electoral process in which voters use their votes to make donations to their favorite among a class of nonprofit firms (political parties). Voters can be expected, of course, to make their donations with an eye toward which political party they expect to act most in their interest.\footnote{See Brown v. Hartlage, 456 U.S. 45, 56 (1982) ("We have never insisted that the franchise be exercised without taint of individual benefit; indeed, our tradition of political pluralism is partly predicated on the expectation that voters will pursue their individual good through the political process ....").} Elections, then, are similar to days in which citizens can allocate special "charity dollars" distributed to them by the government but only recognized for spending purposes after having been donated to a nonprofit.

Such a system, of course, would function more efficiently the more competitive is the market for intermediaries. For example, the United States is characterized by a strong two-party system, largely due to first-past-the-post elections and single-member districts,\footnote{See Issacharoff & Ortiz, supra note 1, at 1657–58 (discussing the inefficiency of the market for political intermediation caused by a first-past-the-post voting rule).} but also due to other regulatory barriers.\footnote{See Samuel Issacharoff & Richard H. Pildes, Politics as Markets: Partisan Lockups of the Democratic Process, 50 Stan. L. Rev. 643, 683–89 (1998) (discussing bans on fusion candidacies, ballot access restrictions, and campaign finance rules as mechanisms by which the two dominant parties reduce the viability of third parties).} This suggests that an advantage of proportional representation would be a better expected functioning of political parties.
Of course, the real issue of importance may be the ease of entry by new parties, rather than the number in existence at any time. Furthermore, this is only one of the costs and benefits that must be evaluated in deciding between voting systems. In particular, even though voters would have a greater choice between party platforms in a proportional representation system, they would likely have a more difficult time ascertaining whether their party actually carries out its agenda should it be elected. This is because, with multiple parties, a single party is less likely to be able to govern on its own. Once the party enters into a coalition with other parties, it may be difficult for voters to distinguish between opportunistic deviations from its platform (driven by agency costs) and compromises entered into for the benefit of voters. That is, while a system with more than two parties will be more transparent to voters on the party level, it is not necessarily more transparent at the level of lawmaking and policy implementation by politicians.

To be sure, it is not obvious that voters are better-off as donors to political parties than they are as principals. Sometimes, when contracting costs are high, governance rights are assigned to a group even though that group faces high governance costs as well. Assigning governance rights to a group at least assures its members that management will not be under the active control of another group with contrary interests, so if the constituency with high contracting costs can do at least some governance to rein in agency costs, the overall situation may be as good as or better than if the firm becomes nonprofit.

Note, however, that from this perspective the agency costs experienced by voter-principals are not likely to be constrainable at a reasonable cost. Rather, they are endemic to the organizational structure, yet nonetheless reflect a least-cost arrangement. Notwithstanding this, it appears to be at least as plausible that the donative structure is preferable for political parties: Governance costs are particularly high for voters, as compared to corporate shareholders, because the secret ballot and the ban on vote-selling make proxies and hostile takeovers unavailable as a means of reducing agency costs. Or, to make another analogy, because donors to charities often consist of a large number of dispersed people contributing relatively small amounts, charities

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64 See, e.g., Dennis W. Carlton et al., Communication Among Competitors: Game Theory and Antitrust, 5 Geo. Mason L. Rev. 423, 428–29 (1997) (noting the effect of entry on whether a duopoly can reap monopoly profits).
66 See Hansmann, supra note 45, at 47–48.
67 See id. at 48 ("It is one thing to transact with a firm whose managers are nominally your agents but are not much subject to your control; it is another to transact with a firm whose managers are actively serving owners who have an interest clearly adverse to yours.")
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typically adopt the nonprofit form since "any effort to organize the contributors for effective governance would cost more than it would be worth."^{68}

I hope, then, that I have suggested that we should be slow to assume that voters are the natural principals of political parties. Exactly what form political parties take, and why, is a subject that requires further study, and may be driven as much by the regulatory structure they face^{69} as by least-cost arrangements entered into between voters and parties from a full range of options. Certainly, however, whatever form they take, it is doubtful that agency analysis will not prove useful in helping us to understand their structure.

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^{68} Id. at 230.

^{69} For a suggestive example, see Lightfoot v. Eu, 964 F.2d 865, 872 (9th Cir. 1992), cert. denied, 507 U.S. 919 (1993) (upholding California law requiring the use of primaries). But see Republican Party of Ark. v. Faulkner County, 49 F.3d 1289 (8th Cir. 1995) (holding a regulatory structure requiring parties to fund and hold primaries unconstitutional).