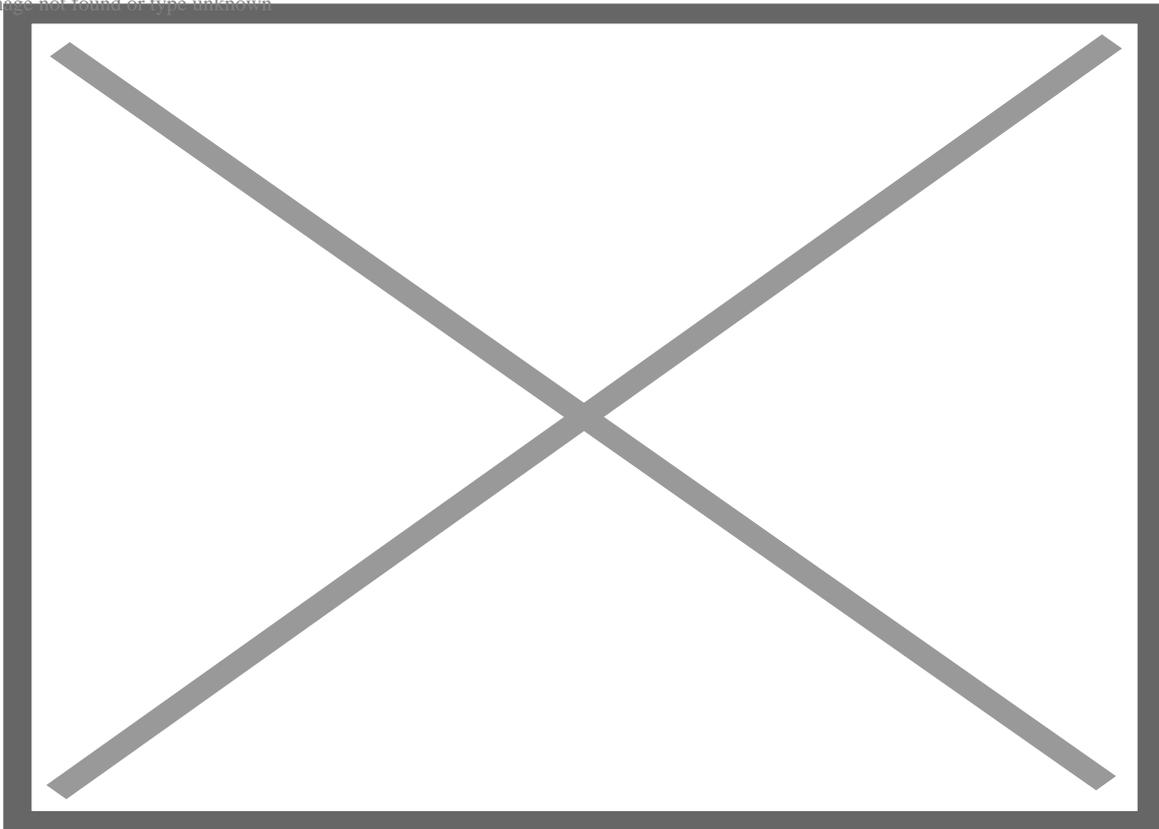


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Banning Political Donations Is Banning Freedom

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In the wake of the Chinese donation scandal engulfing “Shanghai” Sam Dastyari, more than a few politicians have massively overreacted by calling for bans on all political donations from not only foreign sources, but companies and unions too.

Tony Abbott last week advocated such a ban: “We need to look long and hard at restricting donations to real people on the electoral roll. To that end, there should be no union donations, company donations or foreign donations.”

Other members of parliament have since agreed. While current MPs fought over who had the strongest plan to crack down on an important means of democratic participation, another former prime minister – John Howard – was resolute in his defence of political donations: “I’ve spent 40, 50 years of my life and interest in politics fighting the nationalisation and socialisation of things and I don’t want to see the political party system owned by the state.

“The more you make it difficult or you discourage companies, individuals, foreigners from



donating, the more you end up with the state controlling it.”

It’s a brilliant defence of the primacy of the individual over the state. And is there any area where that principle is more important than in the structure of our democratic system?

Howard is right. Under the current political funding model, individuals, companies and unions make voluntary donations. The alternative is compulsory financing. That means your tax dollars get siphoned to candidates you would never support.

Abbott has form in this area. As leader of the opposition in 2013, he made a deal with the Greens and the Labor Party that would have seen them hand themselves hundreds of thousands in extra taxpayer funds.

Public funding is bad. But there’s a more fundamental issue here; banning political donations represents a huge attack on freedom of speech.

In the 1976 case of Buckley v Valeo, the US Supreme Court held that making a political donation “serves as a general expression of support for the candidate and his views”.

In Australia, the High Court has developed the doctrine of the implied right to freedom of political communication, limiting government bans on speech. The court has held that political donations give rise to political communication. It was on these grounds the High Court in 2013 invalidated New South Wales laws prohibiting donations from anyone not on the Australian electoral roll. Given this precedent, identical federal laws would also be struck down as unconstitutional.

The proposal creates a false distinction between individuals acting alone and individuals acting - collectively. Individuals participating in the democratic process under the umbrella of a distinct legal identity, such as a company or a union, are as entitled as individuals to make donations. Banning them is an attack on free speech.

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