

Corruption in party financing: the case for global standards

By Keith Ewing

Introduction

Preventing corruption in the funding of political parties is crucial to the quality of democracy. Crude electoral bribery and political malpractice, the ‘capture’ of the political process, whether by commercial or criminal interests, and the absence of independent institutions all mar the democratic process.

A particular concern in contemporary politics is the rising costs of elections and campaigns, a factor that is now partly responsible for corruption in party financing. A related concern is the large donations that are given to finance campaigns, sometimes in brazen disregard of the law.

The nature and scale of the problem¹

Although the rules and traditions governing party politics vary the world over, basic patterns of illegal party funding and campaigning clearly emerge. These include setting up ‘front’ organisations, through which funds can be channelled in excess of legal limitations,² or smuggling hidden ‘slush’ funds into party coffers. In some instances, funding operates through legal loopholes, and is thus not hidden or in any way criminal, as is the case with ‘soft money’ in US political campaign financing. But there are critics of the latter nonetheless.

Transparency laws related to party funding were fatally evaded across the globe during 2000–01. In Germany, Chancellor Kohl was forced to resign as honorary chairman of the Christian Democrat Union (CDU) following revelations of illegal donations to his party during his chancellorship. In Southeast Asia, the rising costs of elections were cited as being partly responsible for the different forms of corruption that were exposed in Indonesia, the Philippines and Thailand. In Ecuador, large, illicit donations were discovered to have been made to the campaign of the former president, leading to the arrest of a prominent banker.³

Even countries that claim to have tough regulatory bodies and independent courts do not escape censure – as Germany’s recent history testifies. Paradoxically the ‘independence’ or ‘relative autonomy’ of courts can present another set of problems for those wishing to clean up politics. Many party funding problems in

the US are a direct result of the 1976 decision of the Supreme Court to strike down spending limits introduced after Watergate – limits that were established to eliminate electoral corruption by reducing campaign costs. The Court invoked the First Amendment (which guarantees freedom of speech) and delivered the opinion that money is speech. It ruled that it was unconstitutional to reduce the spending of wealthy candidates to enhance the relative voice of the less wealthy.

Global standards: the seed is sown

What can be done? Many countries have identified campaign financing and the funding of political parties as serious problems and have taken steps to deal with them.⁴ These include bans or limits on private political contributions; state subsidies for parties and/or candidates; controls over political expenditures; and rules securing transparency of contributions and expenditures. Such measures are applied in varying combinations in different political systems. But the global nature of this problem raises questions about whether there is at least a global response that might be contemplated, if not yet a global solution.

International initiatives

Recent initiatives by the OECD confirm the possibility of international standards. The OECD Anti-Bribery Convention provides that countries that sign it shall take measures to ensure that it is a criminal offence to bribe a foreign public official. A foreign public official is defined as any person holding legislative, administrative or judicial office, but this does not include the officials of foreign political parties. This last omission needs to be addressed in order to close an important loophole in the Convention.⁵

Meanwhile, if an international convention prohibiting bribery of foreign government officials is possible, why not a convention prohibiting corporate donations to foreign political parties? This is a question that demands broader analysis and discussion.

Also significant at an international level are the revised OECD Guidelines on Multinational Enterprises, which were adopted by 29 member states (as well as non-members Argentina, Brazil, Chile, and now-member Slovakia) in June 2000. Although these voluntary guidelines will be difficult to enforce, they nevertheless make encouraging reading. They are wide-ranging and far-reaching, dealing with issues such as the environment and workers' rights. They also exhort multinationals to 'abstain from any improper involvement in local political activities'. A section on 'combating bribery' clearly states that enterprises should 'not make illegal contributions to candidates for public office or to political parties or

Soft money and what it buys

Common Cause believes that the integrity of US democracy is gravely compromised by the arrangements that currently govern the financing of campaigns for federal office. The corrupting feature is 'soft money'. This is money that private interests donate to political parties, evading legal restrictions on contributions.

The 1999–2000 election cycle, which saw presidential candidates George W. Bush and Al Gore fight to the last inch of victory, was fuelled by US \$463 million of soft money, about evenly split between the two parties. This represents more than 90 per cent more money than either party had raised during the previous presidential election cycle. The bulk of this money (over US \$360 million) was given by corporate interests.¹

Since 1907, corporations have been prohibited from donating to federal office candidates, and labour unions have been subject to the same rule since 1947. But in recent years, the two major parties have come to depend more and more heavily on television advertising – while television broadcasters continue to refuse to give candidates free or even reduced-rate time for their campaign messages.

Both Republicans and Democrats now pretend that television advertising fulfils legal requirements, provided that it avoids certain prohibited expressions such as 'vote for', or 'vote against'. As an election cycle approaches, the parties and their candidates frantically solicit soft money contributions that both donors and recipients know are intended to pay for campaign advertising. Meanwhile, efforts to raise support at the grassroots level have declined.

When in 1978 the Federal Election Commission (FEC) ruled that unlimited and unregulated contributions could be made to national political parties for grassroots campaign efforts for state and local candidates, they opened up a huge loophole. Although parties did not begin taking full advantage of

it until the mid-1990s, by the 1996 presidential election, the loophole had completely swallowed up the law's prohibition of corporate and union money. The parties did not use this unlimited money for local, party building efforts, but to influence federal elections, eroding the efficacy of laws enacted in the wake of the Watergate scandal, which limited individuals' contributions to US \$1,000 per candidate per election.

The implications are serious. According to a survey of US business executives conducted by the think-tank Committee for Economic Development, some of the contributors who volunteer donations actually acknowledge that they do so in hopes of special treatment in legislative or regulatory matters. The result is that federal campaigns have come to resemble auctions, in which candidates and parties sell what they disingenuously call 'access'.

Common Cause, founded in 1970, began pursuing the campaign finance issue during the scandals that erupted in the Nixon administration, and as a civil society actor has had a major impact on the subsequent drive for reform. Since 1988, its commitment to the issue has intensified. Some 80 volunteers help mobilise the 200,000 Common Cause grassroots members, who lobby elected officials and maintain pressure for reform. In Washington, Common Cause lobbies both incumbents and challengers, documents the accelerating sale of 'access', and feeds the results to both national and local news media.

Common Cause has worked on reform legislation with both the Senate and the House of Representatives since these were first mooted in 1997. In April 2001, a Senate bill passed after grassroots pressure helped Senator John McCain frighten opponents into allowing a fair vote. By that time the movement had won new allies, some of them from unexpected quarters, as public revulsion at the soft money scandal grew.

Diversity is now a striking feature of the reform coalition. It has come to embrace not only those whose material and political interests are damaged by soft money, but also peo-

ple and corporations whose selfish interests would be served by continuing to play the game. Many Fortune 500 corporations have stopped making soft money contributions out of frustration with what one former CEO, Ed Kangas of Deloitte Touche Tohmatsu, flatly called 'extortion'. Successful investor Warren Buffett and other individuals have publicly called for reform, saying that if money cannot be eliminated from US politics, tough legislation will at least 'minimise the amount that arrives via the sewer system'.²

Recognition of prevailing corruption is also seeping into the parties themselves. 'The political parties have become nothing more than money machines,' lamented Paul Kirk, former head of the Democratic National Com-

mittee, in 2000. And William Brock, former chair of the Republican National Committee, argued that 'parties were stronger and closer to their roots before the advent of this [soft money] loophole'.³

In mid-2001, reform legislation is still being considered in the US House of Representatives. Even if it is not enacted into law by the time the current House session ends, the growing size and breadth of the reform movement gives reason to expect eventual success.

Common Cause

¹ Figures from Common Cause:

<<http://www.commoncause.org>>.

² *The Buffalo News* (US), 25 March 2001.

³ *The Hill* (US), 29 April 1997.

to other political organisations. Contributions should fully comply with public disclosure requirements and should be reported to senior management.'⁶

Regional initiatives

Initiatives of a different kind have been taken at regional level, with the Council of Europe and EU taking the idea of international standards even further. The Council of Europe has established a Working Group on the Funding of Political Parties and a study was undertaken by the Political Affairs Committee of the Parliamentary Assembly. The report of the latter was given in the Assembly's Spring Meeting in Istanbul in May 2001. It focused on the need for transparency in party funding, the need to regulate the source and size of donations, the role of the state in the funding of political parties and the need to control campaign costs in an era of expensive media. It seems possible that a recommendation will be made for a standard-setting legal text based on the report.

The Council of Europe is not alone in being poised to intervene with an international standard. The EU took powers at Nice in 1999 to introduce Community-wide legislation to govern political parties at the European level, in particular rules regarding party funding. This will inevitably lead to some form of regulation by the Community, though any such initiative will clearly have limitations, and measures developed as a result will be confined to the operation of the EU itself. At the same time, it is not certain whether any legislation on 'funding' would extend to the related issue of 'spending', which seems crucial if the law is to have impact.

In 1998, Organisation of American States (OAS) member-state governments proposed 'to promote cooperation and consider measures to prevent organised crime and drug traffickers from making financial contributions to electoral campaigns'.⁷ Other regional political organisations, such as the Southern African Development Community (SADC), have adopted standards relating to fighting corruption, but have not yet addressed the issue of corruption in party financing. But given the prevalence of the problem, it is now time the issue was addressed in other forums as well.

The challenges

The idea of global standards in an era of globalisation, establishing a benchmark by which all might be assessed and judged, is an attractive possibility. But is it far-fetched? There are serious problems to overcome. The first is that democratic systems are different. Is it possible to have common standards that could apply equally to developed and developing countries, to democratic and non-democratic regimes, and to presidential and parliamentary systems of government? Does it make a difference that some countries are federal and that others are unitary states? And what about differing electoral systems?

A second problem is that constitutional structures are different. Constitutions provide a framework of restraint within which party funding law may be developed and applied. Not all countries are as permissive as others, with similar rights being applied in different ways in different countries.

Related to this framework for rights, one reform strategy may be to fund political parties in part by the state, while another may be to reduce the levels of permitted campaign expenditure, thereby dousing the demand for money. The former approach has run into difficulties in Germany, while the latter has encountered serious problems in the US and Canada. In Australia, restrictions on political advertising as a way of reducing costs were ruled unconstitutional.

In less developed democracies, weaker bureaucratic, judicial or constitutional arrangements further complicate the issue. Parties in Russia, for instance, play a restricted role because of vast presidential power. The Russian party funding model is based on tax exemptions for political donations, among other subsidies. While there are rules to ensure fair party financing processes, these have tended not to be enforced.⁸

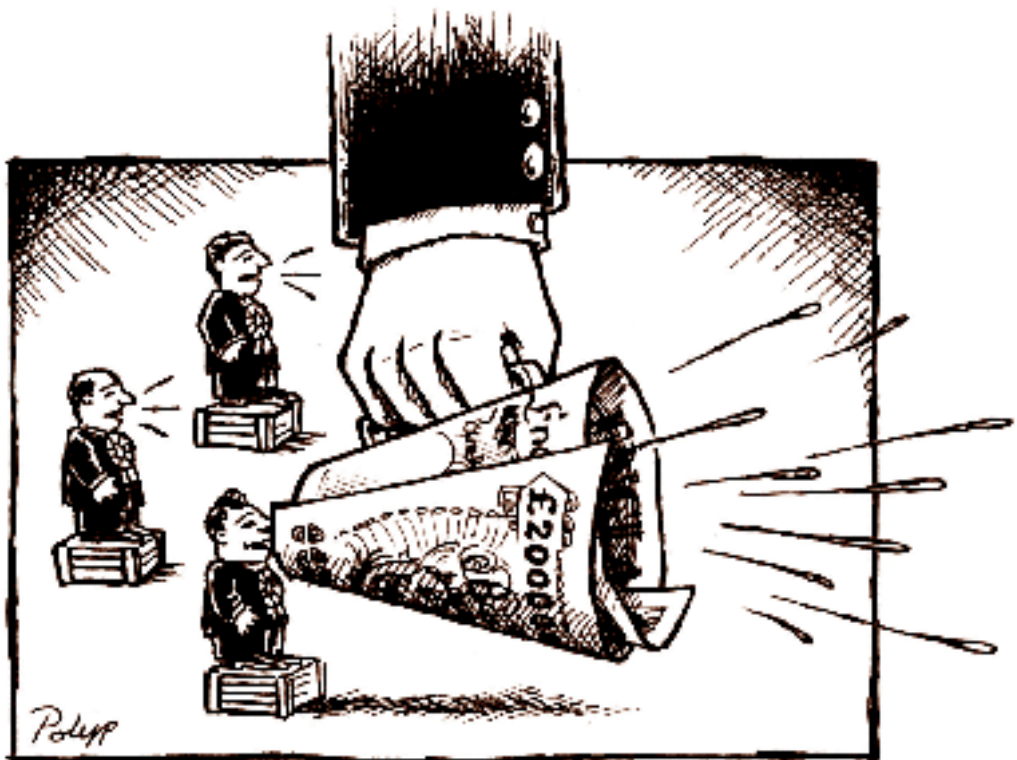
Apart from such systemic variations, there is a third problem for consideration. To be universally acceptable, any international standards would have to take into account the different models for political parties themselves. The typical character of a political party is one of an association of individuals bound together

voluntarily in a common cause. But not all parties conform to this type: across the globe a range of differing organisational characteristics are found.

The content of global standards

Notwithstanding the scale of the challenge, something is beginning to stir. The threat to democratic government and the fear that public confidence in democracy is being undermined by lax political funding regimes are generating concern not only within nations but also between nations. The problem of political funding is a global one, and there is a case for universal standards that establish a framework of principle to which all can be encouraged to subscribe and apply, and by which all can be judged.

How might such a framework be constructed? Most agree that the starting point is transparency. There is a need above all for a regulatory standard that requires political parties and candidates for political office to account for their funds. This includes a requirement in particular to account for the size and source



Polyp, UK

Changing incentives in Argentinian politics

Come election time, Argentina was once a perfect place for candidates and political parties with self-interest in mind. The particular combination of legal, political and institutional factors in the country created both incentives and opportunities for the illegal financing of electoral campaigns.

In political and institutional terms, Argentina has high levels of corruption, low levels of accountability, weak rule of law and low respect for institutions. Current campaign finance law imposes no limits on donations, no limits on campaign expenditure and no limits on campaign duration. With regard to the control of private funds, Article 41 of the Political Parties Law enables donors to require candidates to withhold donors' names for at least three years.

The informal economy also represents a serious problem in Argentina. According to a recent study, annual income tax evasion could amount to as much as US \$1.8 billion, an evasion rate of between 45–50 per cent. Meanwhile, annual VAT evasion could be US \$9.1 billion, an evasion rate of 35 per cent.¹

This feature of economic life in Argentina indicates the existence of a large and uncontrolled flow of illegal funds, some of which may turn into financing not reported on the parties' balance sheets.

How is it possible, in this context, to monitor political parties' election fund raising?

Poder Ciudadano's model

Poder Ciudadano, Argentina's TI chapter, has developed a model that seeks to change political parties' incentives from below. Politicians are first encouraged to sign a 'transparency agreement' (TA). As part of this agreement, they pledge to inform Poder Ciudadano on a monthly basis of their expenditures, and to allow the NGO to review their campaign budgets. For comparison, Poder Ciudadano also compiles its own data on campaign financing and spending, in collaboration with

an outside private sector company. Complete monitoring should include all party expenditure, but, given limited resources in terms of money and time, this is generally not feasible. Poder Ciudadano's research focuses instead on monitoring expenditure in media advertising – on the assumption that spending in this one vital campaign area can be taken as indicative of parties' funding and expenditure patterns as a whole.

In short, the Poder Ciudadano model produces highly relevant, reliable and easily understood data on the expenditures incurred by parties and candidates during elections. By widely publicising this information in the media, and putting it at the disposal of all citizens, the model set forth in Argentina is a tool that encourages collective action and generates pressure from civil society by correcting deliberate information asymmetries.

With this pressure, it has now become more costly for politicians not to sign the TA than to sign it. Once the TA is signed, it is similarly costly for the parties not to honour its terms.

Poder Ciudadano has been monitoring campaign expenditures since the 1997 elections, including the 1999 presidential elections and the 2000 municipal elections for Buenos Aires. This experience has been very encouraging. For example, while it was possible to access only very limited information on candidates' campaign expenditure during the 1996 elections, during the 1999 presidential elections all three main presidential candidates (Domingo Cavallo, Fernando De la Rúa and Eduardo Duhalde) and their respective parties committed themselves to cooperating with Poder Ciudadano to fulfil the demands for disclosure of expenditures. This unprecedented experience marked a turning point in government-civil society relations in Argentina.

In the May 2000 elections for the legislature and mayor of the city of Buenos Aires, this success was repeated. All candidates agreed to the monitoring and signed a TA. The monitoring results were highly publicised and resulted in extended controversy in the media.

The monitoring of campaign expenditures has also begun in Peru where the NGO Asociación Civil Transparencia applied the model in the first round of the 2001 presidential elections.²

As the Argentinian case shows, increased public debate and pressure from civil society can change politicians' incentives and actions. The high level of public debate on the topic has led to an increased involvement of civil society in politics generally. The model is a powerful tool for empowering citizens and increasing transparency in campaign expenditure. Now the challenge in Argentina, and elsewhere, is to extend this commitment to

transparency and integrity to party funding and politics more generally. By combining greater public information with collective action, the rules of the political game can and must be changed for the better.

Poder Ciudadano (TI-Argentina)

- 1 Fundación de Investigaciones Económicas Latinoamericanas (FIEL), *La Economía Oculta en Argentina* (Buenos Aires: FIEL, 2000).
- 2 Poder Ciudadano has trained other NGOs across Latin America to use this model of monitoring party spending. For a discussion of such NGO networks, see p. 180.

of contributions above a prescribed *de minimis* limit. People in any political system are entitled to know who is funding their parties and candidates, in order to be fully informed of the interests they are likely to serve.

Options for reducing costs

The greatest need is for measures that control spending. This strategy has been grievously underestimated and overlooked thus far. Until steps are taken to control the demand for money, it will be impossible to regulate its corrupt use. Of course this will be difficult, since neither the independently wealthy nor the corrupt will like having their influence restrained or their current role diminished. But it remains the case that high spending is the engine of corruption, and large contributions its fuel. Unless spending is kept under control in an era of escalating media costs, attempts to reform corrupt party-funding systems will ultimately be futile.

Containing the costs of elections can be justified on a number of grounds. It is not simply a way of controlling the demand for dirty money, soft money or any other money; it is a way of responding to fundamental democratic principles. Politics should be conducted on the basis of the quality of a message, not its volume. The spoils of office should not go to those with the ability to shout loudest. These aphorisms reflect the first principle of democratic self-government, which is the principle of political equality: those representing major sections of opinion within a community should not be excluded from office because of the wealth of their opponents.

There are in fact several cost-reducing options available. The first would be to require a limit to be imposed on the amount of money that candidates and parties can spend on a campaign. This would have to be set low enough to be mean-

ingful, but high enough to allow candidates and parties to be heard and to prevent the election being dominated by the institutional press and its proprietors.

The second option, for states where freedom of expression is an obstacle, would be to outflank it by creating a regime of public funding of elections as a whole, or in part (say for broadcasting costs). The underwriting of costs by the state in this way has the double advantage of further reducing the demand for money by parties themselves.

Options for addressing the problem of donations

When addressing the challenge of financial contributions to a political party, one first has to grapple with the question of who should be permitted to donate. Arguably, a general rule could be that contributions from foreign individuals or corporations should not be permitted. Political parties should represent the interests of local people and not foreign companies. An exception might be made for donations from permitted foreign sources (such as political foundations). Such provision needs to be made with extreme caution, in order to ensure that it does not become a laundry for foreign money.

But it is more difficult to say who within a particular jurisdiction should be permitted to donate, and how much. A requirement that only individuals may donate could lead to a critical funding crisis in some parties and could seriously affect party structure and organisation in others. A limit on the amount that individuals or others may donate could have similar consequences. This means that it would be necessary to meet the shortfall by one of a number of methods of public funding (such as tax relief for political donations or annual block grants). It is, however, not clear that it would be prudent in a transnational instrument to seek to compel governments to fund political parties in this way.

All of which is to suggest that the problem of the source and size of contributions could again best be addressed in a transnational standard by a menu of options from which each state could select to accommodate best their own domestic circumstances. Option one would be to require a restriction on the size of donations (no big contributions) and the source (natural persons only). The *quid pro quo* would be an obligation to ensure that parties had enough funding from public sources, if necessary, to enable them to meet their needs. Option two would be to accept the legitimacy of funding from legal persons, but to impose a requirement that companies and trade unions could donate only with the authority of their shareholders and members, who ought to be consulted on a regular basis. But it may be difficult to resist the case for a limit on the size of contributions.

Setting and enforcing global standards

Who should set these international standards and how could they be enforced? It is not enough that this matter should be left to specialist bodies. Political corruption is a subject ripe for the UN, which has a responsibility to develop standards that in turn can be a source of inspiration for regional bodies such as the EU, the Asia Pacific Economic Cooperation (APEC) forum, the Organisation of African Unity (OAU) and the OAS. These standards could be sufficiently flexible – while remaining meaningful – to accommodate the rich variety of different political systems.

The UN is already doing important work on corruption in related political fields.⁹ But there is a sense that more could be done to promote better standards relating to the funding of political parties. These include programmes of support to promote and consolidate new or restored democracies. The Global Compact is a missed opportunity to address the issue of political corruption.¹⁰

The case for a transnational standard for the funding of political parties is a strong one, based on a number of principles of universal application. These principles need to be sufficiently flexible to be relevant to all democracies. And, in addition to strategies based on transparency, controlling costs and regulating the source and size of contributions, there is also a need to address the question of enforcement. Without an independent regulatory body with strong powers and a proper budget to monitor standards backed by tough sanctions, the utility of standards becomes dubious. In many countries of the world there is no tradition of an independent judiciary, and in others there are regimes in which the law enforcement agencies are part of the problem of corruption, rather than its solution. How realistic is it to look for genuinely independent electoral commissions in these regimes?

It is at this point that we confront the reality that the funding of political parties is part of a wider problem, not only about electoral politics, but about the nature of civil society and its institutions on the one hand; and about constitutional government on the other. Control of spending and standard setting in party funding is one vital aspect of a multi-dimensional effort in the fight against corruption. Global standards would play a crucial role. Such standards would ultimately have to be enforceable and effective at the national level – but the possibility of international pressure to enforce them ought not to be ruled out.

1 Research for this section contributed by Kevin Casas-Zamora.

2 In 1999, the One Israel Party of then premier Ehud Barak allegedly evaded spending limits in his campaign by using monies raised by supposedly independent non-profit organisations. Michael Pinto-Duschinsky, *Handbook on Funding of Parties and Election Campaigns* (Stockholm: IDEA, forthcoming 2001), overview available at <http://www.idea.int/publications/funding_parties/funding_overview.pdf>.

- 3 Both the banker and the former president's party were required to pay back the funds in this case. *La Hora* (Ecuador), 8 March 2001.
- 4 Recent examples include the UK's comprehensive Political Parties, Elections and Referendums Act of 2000; the Rau Commission in Germany, established in 2000 in response to the CDU party donation scandal to examine existing party funding methods; and the Federation Parliament in Bosnia, which passed a new party funding law in July 2000.
- 5 For more on the OECD Anti-Bribery Convention see the following report.
- 6 Available at: <<http://www.oecd.org/daf/investment/guidelines/>>.
- 7 OAS, Summit of the American Information network:
<<http://www.summit-americas.org/corruption/corruption.htm>>.
- 8 Daniel Smilov, 'Structural Corruption of Party Funding Models,' contribution to the Joint Conference on Corruption, Budapest 1999, <<http://www.coc.ceu.hu/smilov.html>>.
- 9 UN work on corruption is undertaken by UN DESA, UNICRI and UNDP PACT.
- 10 Kofi Anan's 1999 'Global Compact' challenges world business leaders to change corporate practices and support public policies in line with a number of principles that relate to human rights, labour and environment, but not explicitly to corruption in party funding:
<<http://www.unglobalcompact.org>>.