


THE DELICATE BALANCE BETWEEN POLITICAL EQUITY AND FREEDOM OF EXPRESSION

Political Party and Campaign Financing
in Canada and the United States



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Editors
Steven Griner
Daniel Zovatto

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The overall objective of this study was to provide a comparative analysis of the 34 member states of the OAS, assessing not only the normative framework of political party and campaign financing, but also how legislation is actually put into practice. The specific themes addressed included Disclosure, Enforcement, Public and Private Financing, Access to the Media, and Gender. The study, to be published in three separate volumes, includes in-depth analysis of all the countries of the hemisphere.

Political leaders, academics, and civil society activists made up the team of national researchers. We believe that the diversity of these researchers provides a three-dimensional picture of political party and campaign financing, albeit at the risk of incorporating some personal opinion. Every effort has been made to provide a balanced, yet nuanced, view of this topic. Given the fluidity of political party reform in the region, some information may already be out of date upon publication of this report, an inherent hazard in a complex project such as this.

Numerous North American experts contributed their time, expertise and knowledge of political parties in the United States and Canada. First and foremost, we would like to thank Distinguished Professor Emeritus Herbert E. Alexander of the University of Southern California; Dr. Gene Ward of the United States Agency for International Development; Professor Clyde Wilcox of the University of Georgetown; and Professor Lisa Young of the University of Calgary for drafting the thematic chapters of this report.

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Comparative Analysis of Political Party and Campaign Financing in the United States and Canada

Herbert E. Alexander

I. Introduction

The philosophy underlying the United States regime regulating its political finance system stands in stark contrast to that of Canada. Canada pursues a more egalitarian approach, providing public financing of about two-thirds of candidate and party costs, while seeking to achieve a “level playing field” by imposing expenditure ceilings on candidate, party, and even “third party” or interest group spending.

On the other hand, the United States follows more of a libertarian or free-speech approach, with more dependence upon private financing through more generous contribution limits from individual, political action committee and political party sources. Spending limits are provided only in presidential campaigns and according to a Supreme Court decision, *Buckley v. Valeo*,² are acceptable only when candidates voluntarily agree to them as a condition of their acceptance of public financing.

Both the United States and Canada are federal systems. The U. S. has fifty-six different systems of regulation, counting the Federal along with the fifty State laws and those of four Territories and the District of Columbia. Canada has fourteen different systems, counting the Federal along with ten Provinces and three Territories. This paper describes and analyses only the federal or national regimes.

² *Buckley v. Valeo* (424 U.S. 1 [1976]).

The major objectives of the Canadian system are well stated by Professor Peter Aucoin: “fairness in the electoral process, equitable access to elected office, and integrity in the electoral process.”³

It is striking that both Canada and the United States enacted major legislation in the 1970s and experienced those laws for decades before undertaking significant changes following the turn of the century: the U. S. in 2002 and Canada in 2003. The Canadian changes brought new contribution limits, extensions of disclosure, significantly increased public funding, and banned outright contributions to political parties by corporations and labor unions. The United States changes brought higher individual contribution limits, infusing more private money into the system, while adversely impacting political parties, soft money, issue ads and interest group activity. Both countries have had major challenges to the laws through litigation in the courts. In the U. S., in particular, the Supreme Court has defined the laws in ways that impact heavily on the behavior of candidates, political parties, and interest groups.

The U. S. and Canada differ markedly in their treatment of political parties. Canada’s parliamentary system is built on the premise of strong parties, and this is abetted by public financing to parties provided by the government, not just for elections but funding for parties in non-election years as well. In the U. S., the parties adapted to changes required by the Federal Election Campaign Act of 1971 and its 1974, 1976, and 1979 Amendments (FECA), but are now regulated more heavily under the Bipartisan Campaign Reform Act of 2002 (BCRA), with their uses of soft money and issue advertising proscribed. The only public funding for the parties is for their national nominating conventions every four years, and that amount is hardly half of the funding needed.

The United States is unique in that its presidential-congressional form of government produces a distinct electoral system far different from the parliamentary, party-oriented type of politics common to Canada and Western European countries. Parliamentary systems feature a highly centralized party structure, and the important functions of funding, coordination and distribution of money rest largely with party committees.

U.S. politics, on the other hand, centers on candidates, not parties. Money is most often contributed to candidates and their personal campaign committees, and political parties must compete with candidates for the available dollars. The reforms of the 1970s tended to weaken the power of the political parties; indeed, so much so that critics blame those laws for the proliferation of interest group politics omnipresent at both the federal and state levels. Campaign strategies and tactics, particularly since the advent of radio and television, tend to project a

³ Peter Aucoin, “Comparative Analysis on Financing Political Parties and Campaigns: Canada,” prepared for the Organization of American States, Unit for the Promotion of Democracy, December 18, 2003, p. 3. The Aucoin paper, consisting of 14 pages, and its Appendix No. 1, consisting of 31 pages, were followed closely on the approach to the Canadian system. Also used as sources on Canada were: Aide Memoire, Working Session on Canada, OAS, UPD, “Comparative Analysis of Political Party and Campaign Financing in Canada and the United States,” Conference held in Ottawa, Canada, September 15-16, 2003; Jean-Pierre Kingsley, “Democracy and Political Party Financing,” International Symposium on Democracy and Political Party Finance, International Political Science Association, Montreal, Canada, May 8-9, 2003, 20 pages; Raymond Landry, “Enforcement Under the Canada Elections Act, September 2003, 12 pages; and Miriam Lapp, “Enforcement Mechanisms for Political Party Financing,” Second Annual Meeting of the Inter-American Forum on Political Parties, Vancouver, Canada, December 2002, 8 pages. Used as sources on the United States were: Herbert E. Alexander and Clyde Wilcox, “American Exceptionalism? Campaign Finance in the U.S.,” OAS, UPD, September 2003, and its Appendix I, pages unnumbered; Herbert E. Alexander, “Political Parties and Public Financing,” International Symposium on Democracy and Political Party Finance, International Political Science Association, Montreal, Canada, May 8-9, 2003, 20 pages; Herbert E. Alexander, “The Political Process After the Bipartisan Campaign Reform Act of 2002,” *Election Law Journal*, Volume 2, Number 1, 2003, pp. 47-54; Kenneth A. Gross and Ki P. Hong, “Summary of the Bipartisan Campaign Reform Act and Impact of the Supreme Court Decision in *McConnell v. FEC*,” *Impact*, the Newsletter of the Public Affairs Council, December 2003, 9 pages; Record, Federal Election Commission, Volume 29, January 2003, 24 pages; Michael J. Malbin, “Political Parties Under the Post-McConnell Bipartisan Campaign Reform Act,” *Election Law Journal*, Volume 3, Number 2, 2004, pp. 177-191; and Anthony Corrado, “Political Party Finance under BCRA: An Initial Assessment,” Visiting Fellow, Governance Studies, The Brookings Institution, 22 pages. These are generalities that are suited to the American—or any other—system as well, but are the ideals that inform the substance of the Canadian system.

candidate's personality; in many instances, party identification is downplayed or even totally ignored. Now the BCRA of 2002 even further decreased the parties' status within the law.

The treatment of what Canadians call "third parties"—or Americans call "interest groups"—differs significantly from that of the U. S. Under the 2003 Canadian amendments, interest groups are limited to \$1,000 in expenditures; the limit is being challenged in the courts. In the U. S., interest groups participate heavily in both parallel campaigning, on which there are no limits, and through corporate, labor or other issue-based political action committees, limited to a \$5,000 contribution limit per candidate per election and \$15,000 to a party committee. There is no overall limit on the amounts that PACs or those engaged in parallel campaigning can spend. The only limit to parallel campaigning is the blackout periods of thirty days before a primary election and sixty days before a general election, to be explained in detail below.

Both the U. S. and Canada have generated agencies to deal with elections, campaigns, and their financing. The Chief Electoral Officer administers the Canadian law; he is appointed by the Cabinet following a resolution of the House of Commons, and can be removed only for cause on a joint resolution of the House of Commons and the Senate. The Chief Electoral Officer administers the laws regarding the financing of campaigns.

The Commissioner of Canadian Elections is responsible to enforce both the Canadian Election Act and the Referendum Act. He is appointed by the Chief Electoral Officer. The Commissioner is an independent and impartial officer of Parliament, and not of the government. In addition to having a senior counsel and a chief investigator and their support staffs, the Commissioner hires on contract former law enforcement officers to carry out investigations, and he retains legal counsels in private practice in the regions to prosecute cases. While the Chief Electoral Officer can refer cases, most of the work of the Commissioner is based on outside complaints. The three main enforcement tools are injunctions; compliance agreements and prosecution. Penalties include a range of fines and imprisonment, and suspension of some rights for a period of five years for an illegal practice and seven years for a corrupt practice.

The United States approach does not vest administrative or enforcement responsibilities in single persons, but rather has established a bipartisan commission. The Federal Election Commission (FEC) is composed of six commissioners, with no more than three from a single party. Appointments to the FEC are made by the President on the recommendations of Senate and House leaders, and require confirmation by the Senate. In the twenty-nine years of existence of the FEC, there have always been three Democratic commissioners and three Republican commissioners. Each nominee of the two major parties is offered as a pair with one from the other party. Terms of office are for six years without reappointment, and terms are staggered for a new Democrat and a new Republican every two years. It takes four votes within the Commission to decide an issue, an advisory opinion, a regulation, or a prosecution. Thus, some element of bipartisanship must be present for the Commission to take action. Some issues die for lack of a fourth vote, but many actions are unanimous. Regulations must be submitted to the Senate and House and are subject to vote by either, but in recent years this has been only a pro forma requirement.

Unlike the Canadian system, the FEC has both administrative and enforcement functions. It does not administer elections; that is done by the states with the help of a newly-created Election Assistance Commission. The FEC administers the presidential public financing system, and has jurisdiction over campaigns for U. S. Senate and House, as well as party and nonparty committees.

It has subpoena power and its enforcement responsibility is first to seek compliance through a conciliation process. It can impose civil fines. Cases are rarely prosecuted as criminal matters, but the agency must refer such matters to the U. S. Attorney General to seek criminal sanctions. The FEC is charged with auditing campaign finance reports, but they are generally undertaken only when there is a complaint; an exception is that audits are required in presidential campaigns in which public financing is provided. Critics charge that the FEC is purposely a weak regulatory body and was so designed by the Congress in enacting the law.

Disclosure and registration were enhanced by the 2003 Canadian law, which broadened coverage. Committees must register and report, but belatedly in some cases. Electoral district associations must report all contributions and expenditures, and their total dollar amounts across the country are considered to be substantial. Anonymous contributions cannot exceed \$25, and like the American threshold, contributions in excess of \$200 require itemized full identification of the donor. But candidates do not file reports while campaigning, only following elections. Candidates must file within four months after an election and political parties within six months. Unlike the American system, there is late and delayed disclosure in Canada, and accordingly, information has not always been available before an election in time for voters to take it into account in their voting decisions. However, changes made in the 2003 legislation will require party committees that qualify for annual subsidies—called allowances by the law—to start reporting quarterly, beginning January 1, 2005. Party leadership contestants will have to report weekly in the final four weeks, before a selection is made. Within six months after a leadership contest, a full report of all contributions and expenditures will be made. The Chief Electoral Officer publishes the reports soon after their submission and they are now available on the Internet. Electronic filing is encouraged but not required under the law.

The disclosure system in the U. S. is the least controversial and most efficient and effective of any provisions of the laws. Information from reports is available on a timely basis to ensure transparency before and during as well as after elections. The FEC provides a building-front office in Washington, D.C., available to anyone wanting information. User-friendly data can be retrieved on screens readily and also on the Internet, within twenty-four hours of its receipt. In fact, any report of \$50,000 or more must be submitted electronically by both candidates and committees. Quarterly reports in non-election years are stepped up to monthly reports required during campaign season. In addition, there are pre- and post-election reports and twenty-four hour filing of larger contributions is required through election day. Filings must include itemized information, with name, address, date and amount, and principle place of business for all receipts in excess of \$200, and gross amounts aggregated for lesser amounts, as well as full identification of disbursements. The FEC scrutinizes reports as they are received for technical errors and can require corrected, amended reports. As noted earlier, full audits are undertaken upon complaints and can be initiated by the Commission; because tax dollars are used, presidential campaigns are fully audited. The FEC compiles and publishes quarterly reports tabulating selected data, providing rich data useful to the media and the public.

II. The United States System

The U. S. regulatory system can best be described as a hybrid. On one hand, there is the presidential campaign structure, a highly regulated system in which candidates in both the prenomination and general election campaigns receive significant amounts of public funding in

return for agreeing voluntarily to expenditure ceilings and limits on the use of their personal wealth; the public financing system also provides partial funding of the parties' presidential nominating conventions—the only form of party public financing at the federal level.

On the other hand, there is the congressional regimen, where—like the presidential system—candidates must disclose receipts and expenditures and abide by limits on contributions from individuals, PACs and political parties. Other than that, however, the political equivalent of the free market reigns in congressional races as a result of the 1976 Buckley Supreme Court ruling—tying expenditure limits to acceptance of public financing—coupled with the unwillingness of the Congress to enact public financing in order to legalize spending limits for campaigns for the Senate and House.

Overlaying both the presidential and congressional campaign environment has been the growth of parallel campaigning by interest groups undertaking considerable spending outside the control of candidates or parties, in the form of independent expenditures or issue advertising. Issue advertising is made possible by the raising and spending of “soft money”, which is partly outside the control of federal law, in the form of large individual, corporate, labor and other contributions that go well beyond the contribution limits and presidential and party spending limits of the Federal Election Campaign Act.

In an effort to curtail soft money and issue advertising, the U. S. enacted in 2002 the Bipartisan Campaign Reform Act. It prohibited soft money contributions to federal candidates and national political party organizations, which previously had been acceptable for certain selected purposes. It restricted non-party issue organizations from sponsoring television or radio advertising that mentions the name of a candidate in the period thirty days before a primary election or sixty days before a general election; they can carry on their issue advertising at times not blacked out, with reference to candidates, and they can spend soft money on newspaper and magazine ads, billboards mail, Internet, registration and get-out-the-vote drives including telephone banks on election day, at any time. But they can switch to hard money under PAC regulations including limitations on contributions and the naming of candidates during the specified 30-60 day time period and for independent expenditures. It remains to be seen if many or any issue organizations transform themselves in this way, or spin-off their own PACs. Within the BCRA twin bans on soft money and issue advertising at the federal level, there is being spawned a new generation of political committees, known as 527s, that are functioning under the new law's parameters, and taking over some party operations using soft money in the form of large individual, corporate, labor or other contributions that go well beyond the contribution limits and presidential and party spending limits of the FECA; they can and do spend on television and radio ads.

The BCRA introduced a new term, electioneering communication, defined as any broadcast, cable, or satellite communication that refers to a clearly-identified candidate for federal office, is made within sixty days of a general, special, or runoff election, or within thirty days of a primary, and is targeted to a relevant electorate (meaning if the communication can be received by 50,000 or more persons in a relevant House district or state for a Senate candidate). Corporate and labor union treasury funds for electioneering communications are prohibited, but strangely the law does not specifically restrict such broadcast ads that are financed by contributions from wealthy individuals. Certain 527 committees can make electioneering communications that are federal-election related but they must comply with FEC rules. And tax-exempt organizations can make such communications so long as they comply with FEC disclosure requirements.

Several other definitions will help in understanding what has happened in recent election cycles in the United States. An independent expenditure is hard money spent for communications expressly advocating the election or defeat of a clearly identified federal candidate (for President, Vice President, Senate or House of Representatives), which is an expenditure made without the cooperation or consent of, and not in consultation with, any such candidates or any of his or her agents or authorized committees. In contrast, issue advocacy refers to spending on issues but without expressly advocating the election or defeat of a candidate. Before the BCRA, a candidate could be mentioned, or image shown, or his or her vote in the Congress or elsewhere on an issue stated, but so long as the ad did not advocate specifically the election or defeat of a candidate, it was considered an issue ad. Soft money refers to unlimited money raised from sources outside the restrictions of federal law, but spent on activities intended to influence federal election outcomes, or more broadly, in connection with federal elections.

Soft money was designed originally to provide financial support to political parties to carry on party-building activities, such as registration and get-out-the-vote drives. It was designed to be used at the state and local levels by party committees, but regulated by state law, and that is why—in the interests of party federalism—it was permitted to be money beyond the scope of the Federal Election Campaign Act. But soft money and non-candidate-specific issue advocacy by the national parties was prohibited by the BCRA, a provision upheld by the Supreme Court in the case of *McConnell v. FEC*.⁴

Much of the spending on independent expenditures, issue advocacy, or using soft money, may be accomplished without the consent or control of the candidate, but nevertheless is directed at affecting the outcome of an election. Much of the spending is negative—against an opponent rather than positive for a candidate. Such spending cannot be coordinated with a candidate's campaign.

In contrast to the Canadian limitations, the United States federal limits on hard money contributions from individuals seem generous:

- \$2,000 per candidate per election (primary and general election)
- \$5,000 per political action committee
- \$25,000 per political party committee

The U.S. contribution limit of \$2,000 is indexed to inflation and is to be adjusted in odd-numbered years.

The BCRA increased the overall limit for an individual from \$25,000 per year to \$95,000 in a two-year election cycle, in all federal party, candidate and PAC giving. But the BCRA has sublimits within a cycle: \$37,500 to all candidates; \$57,500 to all PACs and parties, but no more than \$37,500 of which is to state and local parties and PACs at a limit of \$10,000 contribution to a state party committee. Accordingly, the increase from \$20,000 to \$25,000 in the amount that can be given by an individual to national party committees per year, is a \$5,000 increase; but since the limit is per year, a contributor can give \$50,000 of the \$95,000 upper limit per election cycle. If one adds \$37,500 permitted by the new sublimit to state and local parties, that would leave very little in potential gifts to candidates and PACs. But even \$87,500 to various party committees is problematic considering the increased hard money needs of the parties. Not

⁴ *McConnell v. FEC* (124 S. Ct. 619 [2003]).

many party loyalists are likely to give so much to party committees at the sacrifice of so little left over to give to favored candidates and PACs.

In contrast to Canada's more severe limits on individual contributions, the U. S. depends heavily on individual contributions. The largest source of hard money contributions in the United States is individual citizens who give money directly to candidates, to political party committees, and to political action committees. According to the Federal Election Commission, in the 1999-2000 election cycle—the last presidential election—individuals contributed directly to presidential candidates, \$255.1 million; to Senate candidates, \$252 million; and to congressional candidates, \$315 million—some \$822.3 million in all.⁵

However, individuals also were the source of \$712.4 million contributed in hard money to federal accounts of political parties at the national, state and local levels, and \$619 million in contributions to PACs.⁶ Of course, much of the party money is redistributed in the form of contributions to federal candidates, or is spent directly on their behalf in the form of party coordinated expenditures or independent expenditures. Similarly, much of the PAC money is redistributed in the form of contributions to federal candidates or independent expenditures.

In contrast to all this private financing from individuals, parties and PACs, the amounts of public subsidies in the presidential campaigns amounted to only \$208.4 million in the 2000 prenomination and general election campaigns combined.⁷

Political Parties and Special Interests

Special interests, consisting of corporations, labor unions, trade associations, and membership and ideological groups, seek influence on three levels in addition to lobbying, which is not herein covered. One is the political action route, using hard money and fully regulated by the Federal Election Campaign Act; political action committees (PACs) can give in limited amounts to federal candidates (\$5,000 per election) and to party committees (\$15,000 per year). A second route is through the exercising of independent expenditures, which is hard money that may be spent by PACs or individuals in unlimited amounts but must be disclosed. And the third route is through the uses of soft money and issue advertising; both are regulated but essentially is soft money spent directly by interests for issue advertising outside the 30-60 day limits for broadcast advertising. In recent elections, soft money has been given by a single individual or special interest in amounts as high as \$3 million or more, although most gifts are not that large.

An explanation of political action committees is desirable. While corporations and labor unions are prohibited from contributing treasury funds in federal elections, corporations and labor unions can establish PACs using treasury funds for administrative and fund-raising purposes to seek voluntary contributions from among employees of a corporation or members of a union. PACs also can be established by membership organizations seeking environmental, consumer, health or other goals, but these must use the hard money they raise for their administrative or fund-raising expenses.

A vast array of special interest groups attain a measure of political activism through their PACs—about 4,000 are registered with the Federal Election Commission. PACs act as an

⁵Data supplied in a telephone call to Robert Biersack, FEC Press Office, March 12, 2004.

⁶*Ibid.*

⁷*Ibid.*

institutional outreach by providing a legalized process to collect contributions systemically through groups of like-minded persons in corporations or labor unions or in other groupings for whom issues are a unifying element in their political activism. PACs raise funds for their activities by seeking voluntary contributions which are pooled together into larger, more meaningful amounts and then contributed to favored candidates or political party committees. PACs are a mechanism for individuals who desire to pool their contributions to support collective political activity at a level higher than any individual could achieve by acting alone. While individuals can give as much as \$5,000 to a PAC, most gifts are much smaller, and few PACs give the maximum \$5,000 contribution per election to most candidates.

PACs have one advantage over parties. They are adaptable because they can focus on single issues or give priority to emerging issues and still survive with limited but devoted constituencies, whereas parties must attain broad-based consensus in order to survive.

There are not many reform-minded voices calling for stronger parties. Parties are much more likely than political action committees to give candidates who are challengers much needed financial and technical assistance for effective campaigns. And only parties can pool efforts in polling, advertising production, computer and related services, thereby reducing costs and providing assistance that will enable candidates to diminish their dependence on expensive campaign consultants.

In some ways, political action committees have assumed roles in election campaigns once occupied by political party precincts. Geographic neighborhoods have been replaced as centers of activity and sources of values by occupational and issue groups with which individuals identify. The rise of PACs has occurred largely because the groups that sponsor them can provide the possibilities for meaningful political action once provided by the now ideologically ambiguous political parties. The collecting of money has been institutionalized by PACs, making donations possible through payroll withholding and union checkoffs.

There are factors other than the development of PACs that have tended to weaken the political parties: since Civil Service laws replaced party-controlled patronage in filling most government jobs; since government-sponsored social services replaced those which urban party organizations had used to attract the allegiance of voters; since television led attention to be focused on individual candidates independent of their parties; since higher education levels have led many individuals to be independent in their thinking, making a virtue of voters choosing from among candidates of any party, and thus splitting their tickets; at the same time, candidates often campaign independent of their party designation, in order to attract voters.

Presidential Public Financing

At the federal level, the U. S. provides public financing to presidential candidates in both phases of their campaigns: a system of matching funds in the prenomination period, available only to match individually-given contributions up to \$250; and in the general election, bloc grants are provided to qualifying candidates based on a Voting-Age Population formula. Eligibility to receive matching funds requires a candidate to raise \$100,000 in contributions from individuals, broken down into at least \$5,000 amounts in each of twenty states. Individuals can contribute up to \$2,000 to a candidate, but only \$250 per individual applies toward the \$5,000 requirement in each state. The BCRA raised the contribution limit per candidate per election to \$2,000 from

\$1,000, but did not raise the \$250 matching amount. Thus, in effect, the public funding was reduced from a 4-to-1 ratio (\$1,000 to \$250) to an 8-to-1 ratio (\$2,000 to \$250), thereby infusing more private money into the mix.

Candidates also are required to abide by overall spending limits for the 2004 election cycle of \$37.3 million in the period from a presidential candidate's announcement of candidacy to the time of the party's convention (often some eighteen or so months later); to keep certain records; and to submit records to an audit. The Federal Election Commission certifies amounts to be paid by the Treasury Department the following month, starting in the year of the election (2004). Thus candidates' campaigns had to survive in 2002 and 2003 on private funding until the matching amounts were available in early January 2004, although certain bank loans can be sought using certified but unpaid matching funds as loan collateral. In 2003, President George Bush and candidates John Kerry and Howard Dean declined to participate in the matching fund program. In order to avoid the necessity of observing overall prenomination limits of \$37.3 million and also state limits; these latter are based on Voting Age Population (VAP), applicable in primary and caucus states, ranging from \$15.6 million in California to \$746,200 in smaller states. The gross total of the fifty state limits exceeds the \$37.3 million overall limit, but candidates can manage with these limits because they do not contest in all states.⁸

In the general election, party candidates who qualify are provided with bloc grants based on a Voting Age Population formula. Once nominated the bloc grants for 2004 are \$74.6 million for each major party, and in addition, the national parties can provide coordinated expenditures amounting to \$16.3 million.

The only financial assistance to the major parties is to assist them in holding their national nominating conventions, at the rate of \$14.6 million each in 2004.⁹

Minor parties usually do not have competition for nominations, and may qualify for general election funds on a proportional basis if they received 5 percent of the vote in the previous presidential election, or after the election if they receive 5 percent or more of the vote in the present election.

The money devoted to public financing is derived from a voluntary tax checkoff provision on federal income tax forms. It allows individual taxpayers to designate limited tax dollars to the Presidential Election Campaign Fund, a separate fund maintained by the Treasury Department to finance the presidential public financing program. In 1993, the amount of the checkoff was increased from \$1 to \$3 for individuals paying taxes and from \$2 to \$6 for married persons filing jointly. The numbers of taxpayers checking off has declined steadily, and now stands at about 11 percent of individual taxpayers—hardly enough to fund the program. In the 2000 elections, George W. Bush waived the public funding in order not to be bound by prenomination overall spending limits or spending per state holding a primary or caucus. Bush did accept the general election funding. As noted, in 2004, not only Bush but Democratic candidates John Kerry and Howard Dean also declined the prenomination funding. These defections relieved the pressure on the Fund, enabling the public funding program to operate at a lower level of expenditure.

As early as late 2003, Howard Dean had raised in excess of \$40 million, much of it from a widely-heralded drive on the Internet. Then, during Senator Kerry's ascendancy in early 2004, he was able to raise \$50 million in just three months, more than half of it over the Internet. But

⁸ "2004 Presidential Spending Limits," *Federal Election Commission, FEC Press Office, undated.*

⁹ "FEC Approves Matching Funds for 2004 Presidential Candidates," *March 1, 2004*

the Bush campaign and about 40 percent of the Kerry campaign were dominated by contributors in the \$1,000 to \$2,000 brackets.

There is no public financing of campaigns for the U. S. Senate or House, and hence there are no spending limits. There are, of course, contribution limits, up to \$2,000 per candidate per election, and there are coordinated party expenditure limits on the amounts that political parties can spend on behalf of candidates for Congress; these are based on Voting Age Population in their state for candidates for Senate, and the limit for each House nominee is \$74,620 in 2004, based on VAP on House candidates, at about 700,000 population per district. Coordinated party expenditure limits for Senate nominees range from \$3.9 million in California to \$149,240 in small states; half of these Senate and House amounts can come from the national party and the other half from the state party, or the national party can spend it all on agreement that the state party will not spend its half.¹⁰

It is instructive to note how new political finance laws are subject to varying interpretations and how raw politics intrudes on the work of the FEC. Despite a U. S. Supreme Court decision in *McConnell v. FEC* finding most of the BCRA of 2002 to be constitutional, much of the impact of the new law remained uncertain and became a subject for the election authority, the FEC, to determine. Election lawyers planned ways for political committees to bypass the intent if not the letter of the law, and sought to delay certainties affecting campaign behavior until after the 2004 elections.

Following the enactment of BCRA, the Republicans undertook a strategy to file a complaint with the FEC, claiming that some 527-type Democratic committees, which had announced their fund-raising and advertising intentions, were circumventing the new campaign reform law. Certain Democrats (not candidates), due to their greater dependence on soft money in recent years, moved ahead with them while Republicans, more successful in raising hard money, held back on starting such committees. During the period from Senator John Kerry's position as Democratic nominee-designate for president in early March 2004, until thirty days prior to the Democratic national nominating convention on June 26, organizations such as MoveOn.org and the Media Fund, collected many millions of dollars in soft money and aired negative TV ads criticizing President Bush's record on jobs and the Iraq war. Other issue groups including labor and environmental committees, followed suit. The FEC was unable to muster four votes needed to decide the issue in the midst of a presidential campaign.

Meanwhile, the Republicans had ample hard money derived from two main sources: in the presidential pre-nomination campaigns, in which Bush had no opposition, as of mid-April 2004, Bush had raised in excess of \$184 million, maximizing his appeal on \$2,000 contributions; and party committees, based on their traditional efforts to raise big money in small sums, through extensive mail drives, bringing in hard money in smaller contributions. The Republicans generally were better able to survive with hard money and used the complaint process as a strategy to hurt the Democrats. Thus complaints to the FEC were used to seek a finding that opponents may be acting illegally. Because of the perceived slowness of advisory opinions at the FEC, and bureaucratic delay, the Republicans also pursued litigation in the courts in a further effort to stymie financial support for Kerry.

¹⁰ "Coordinated Party Expenditure Limits for 2004 Senate Nominees," *Federal Election Commission*, March 2004.

III. The Canadian System

The Canadian regime features provisions that differ significantly from the U. S. system. The contribution and spending limits are much more severe than those in the U. S. The provisions for spending limits and public financing bring a combination of floors and ceiling--by providing, on the one hand, direct and indirect floors by means of reimbursements of party election expenses, annual allowances to the parties, and tax credits for individual contributions--and on the other hand, ceilings on candidate spending, political party spending, and strict limits on special interest or "third party" spending.

Contribution limits relate to who may contribute, how much, to whom, and when; before the 2003 amendments, the law prohibited contributions by persons who are not citizens or permanent residents, non-Canadian corporations or unions, and foreign governments or their agents or foreign political parties. The 2003 amendments introduced:

- A ban on contributions from corporations and unions (and unincorporated associations) to political parties and contestants in party-leadership selection contests;
- \$1,000 annual limit on contributions from these three sources to candidates, nomination contestants and local party constituency associations;
- \$5,000 limit on contributions from individuals to parties, constituency associations, candidates and nomination contestants;
- \$5,000 limit on contributions to independent candidates;
- \$5,000 limit on contributions from individuals to party-leadership contestants; and,
- \$10,000 limit on contributions from candidates to their own campaigns.

In addition, contributions are barred from government corporations or corporations that receive more than 50 percent of their revenues from the government.

These contribution limits allow considerably less private money into the system than do the U. S. contribution limits. Canada has not had a history of soft money or other means than direct hard contributions. Indirect government funding includes provisions of the Income Tax Act, which provide individual tax credits for political contributions, as follows:

- 75 percent of contributions not exceeding \$400;
- contributions over \$400 but not exceeding \$750, \$300 plus 50 percent of the amount that exceeds \$400;
- contributions exceeding \$750, the lesser of \$475 plus one-third of the amount exceeding \$750, or \$650.

This complicated formula compares with no United States tax credit under current law; one existed in the federal tax code from 1972 to 1984, but was then repealed.

Spending limits for political parties and candidates apply only during the short campaign period. They were first introduced in 1974 and expanded by the 2003 law. They are considered to be the cornerstone of the Canadian regime, underscored by the extension to include "third parties", or interest groups, thus applying to all contestants, not just parties and candidates. The

2003 amendments also apply to those seeking nomination, and this is considered important to enhance the access of women and minorities to elected office. The raising of the limits included a broader definition of election expenses, encompassing public opinion polling and surveys, leaders' tours, and staff salaries.

Spending limits for parties are about \$13 million, and about \$64,000 for candidates, during election campaigns. Annual grants to the political parties were introduced by the 2003 amendments. To qualify, a party must have received 2 percent of the national vote in the previous election or 5 percent of the total vote in the constituencies where they nominated candidates. The party then receives on an annual basis \$1.75 per vote obtained in the previous election. But if they fail to make the thresholds, they lose their access to public funding. Beyond annual allowances, the parties that qualify receive partial reimbursement of election campaign expenses; they will receive 60 percent of their actual expenses in the first general election held after January 1, 2004, and thereafter, 50 percent of actual election expenses; since the 2003 legislation, research expenditures are included as election expenses and are partly refundable as above.

To give some notion of the dimensions of the public financing system, in the last election, 2000, before the 2003 amendments went into effect, political parties in Canada spent \$35 million in the aggregate and were reimbursed \$7.7 million; candidates spent a gross amount of \$38 million, of which \$16 million were reimbursed. Now the provisions are more generous: more than double the amount for the parties, estimated to be \$22 million per year.

Candidates who obtain 15 percent of the votes cast receive 15 percent of their election expenses limit; those who incur more than 30 percent of the election expenses limit receive the lesser of 60 percent of their actual election expenses (minus the 15 percent voted above) or 60 percent of the election expenses limit.

Spending limits for constituency nomination contests, a new feature of the law, are set at 20 percent of the limit as established for candidates in each constituency, varying according to the number of voters in a constituency, with additional provisions for geographically large and remote constituencies.

"Third parties" may and do advertise and no special provisions of the election law apply, but they are sold time under normal broadcast practices. Spending limits for "third parties" are being considered in litigation before the Supreme Court of Canada; they are being challenged as unreasonable infringements of freedom of expression. An individual or a group spending more than \$500 independently on advertising must register. They are subject to two sets of advertising spending limits: \$3,000 for a local constituency election and \$150,000 in total. These limits, however, do not apply to individuals or groups who advertise their position on issues not associated with a specific candidate or party.

IV. Political Broadcasting

Two provisions of law apply to political broadcasting in the United States. One provides for the "equal time," or better stated, "equal opportunity," doctrine. This states that if a station provides free time, or sells time, to a candidate, it must provide equal opportunity for similar time to all candidates for that office. If the time is sold, the opposing candidates can obtain similar time—if they can afford to pay for it. If provided free, an offer of equal opportunity must be extended to any opponent for that office. This provision is unlike that in most democratic

countries, where broadcast time cannot be bought but is provided free, usually to political parties in party-oriented systems.

A second provision requires broadcasters to charge the lowest unit rate for time bought by candidates for public office. In other words, for a given time period, broadcasters must extend to candidates for public office the same rates as their most favored commercial purchasers of time, including any discounts or reduced rates for frequent purchases. This provision has been reiterated in the BCRA, because some broadcasters auctioned wanted time to the highest bidder, including to candidates who seek to buy a special time, before, during, or after a popular program. A special exception permits debates among presidential candidates.

To get some notion of the dimensions of paid political broadcasting in 2000, several studies document that in excess of \$600 million but perhaps as much as \$1 billion was spent, mostly on thirty-second or sixty-second spot announcements, and mostly at the local station, not network level. The Television Bureau of Advertising reported \$606 million in presidential, congressional, state, and local elections as well as on ballot issues and issue ads, in the top seventy-five media markets. The Alliance for Better Campaigns estimated \$771 million spent in the seventy-five top media markets. All these studies leave out amounts spent in 135 smaller media markets, plus cable television costs, easily bringing the total of \$1 billion in 2000.¹¹

The most interesting aspect of these figures is that parties spent \$164 million on broadcasting outweighing the \$96 million spent by interest groups. Thus the stakes are very high in terms of the BCRA, which prohibits soft money and hence bans party issue-advertising. While paid broadcasting has increased dramatically over the years, there is some evidence of a decrease in news coverage of political campaigns on nightly network newscasts.

While the Federal Election Commission relates to political financing, broadcast regulation remains in the jurisdiction of the Federal Communications Commission, also an independent regulatory body. There has not been friction between these two agencies, and each goes about its business in its statutory domain.

Access to broadcast media in Canada is partly similar to that in the U. S., and partly different. Canada provides free broadcasting time to political parties, but not to candidates. This requirement applies to both publicly-owned channels such as the CBC, and to privately-owned channels. Time must be provided by the broadcasters as a condition of their licensing and broadcasters are not reimbursed by the government.

Time is allocated to the parties according to a formula that provides all registered parties with two minutes of time, and the remainder is allocated on the basis of the percentage of seats won in the previous election; the percentage of the popular vote; and the number of candidates nominated by each party at the previous election. No party may receive more than 50 percent of the total time. The program is administered by an impartial Broadcast Arbitrator appointed by the Chief Electoral Officer.

Canadian broadcasters are also required to make time available for purchase by political parties during “prime time” and during the election period (from the official calling of the election to the midnight on the second day before the election). As in the U.S., prices must be at the lowest rate charged to commercial sponsors, and broadcasters must be willing to sell to any other party willing to buy the same amount of time.

¹¹ Campaign Media Analysis Group, December, 2000.

In the 2000 election, all Canadian parties spent about 70 percent of their advertising expenses on television and radio; candidates spent only about 15 percent of their advertising expenses. Of course, spending is within the overall spending limits of parties and candidates. In the 2000 election, the parties were provided with 396 minutes of free time, and were sold up to 390 minutes of time bought by the parties.

Canadian election debates are held between political party leaders, and between candidates at the local level, on a purely voluntary basis. The practice is to hold two nationally broadcast debates, one in English and one in French. Broadcasters are required to be impartial and neutral and they do not editorialize; they are expected to be fair and balanced in their reporting and coverage of the election campaigns.

V. Conclusion

Both the United States and Canada have undergone significant rounds of reform in recent years. In both cases, the reforms came about following the turn of the century, after several decades of experience with laws that had been enacted in the 1970s. Both regimes have implications that are constitutional in nature and both have been the subject of litigation. Both affect the roles of political parties, but in divergent ways: clearly supportive of parties in Canada but ambiguous as to impact on parties in the U. S. Canada now provides strong public funding assistance to parties; the United States law is now very challenging to the parties to adjust and adapt, to raise more hard money since they were stripped of soft money receipts--\$495 million or about 40 percent of total revenues in the 2000 election year--no longer available under the BCRA. That represents a great deal of money if the same level of receipts is to be attained in 2004.

The U.S. represents an exceptional electoral environment. Relative to Canada, the parties are weak and nominees are chosen not by parties but by voters in primaries. The separation of powers and the federal system create a huge number of candidates seeking to inform the voters of their unique and idiosyncratic issue positions.

Financial support for political parties is important in three ways: one, for public campaigning before elections; two, for issue development, necessary to attract voters; and three, for mobilization potential, what Americans call "party-building" in the form of registration and get-out-the-vote drives. Canada does not need party work for registering voters, and floors for these other activities are provided by the government. Excepting for partial support of the national nomination conventions, no floor is provided in the U. S. But there is no limit on party spending in the U. S.

Because the BCRA seeks to control soft money at the state and local levels as well as at the federal, it has the effect of federalizing state parties and state-level campaigns. In the effort to control soft money that might affect federal campaigns, the federal law contains language that impinges on state party committees. United States parties have traditionally been confederations, with much state autonomy.

The prohibition of the use of soft money in effect amounts to a federal prohibition on national party activity in gubernatorial, state legislative, judicial, mayoral, and other state and local elections, unless hard money is used. It even extends to a ban on national party participation in referenda and ballot issues at the state and local levels. And if party committees decide to engage in party

independent expenditures, as a substitute for issue advertising, they must do so under conditions requiring the strict separation of those persons working on independent expenditures from the rest of the party apparatus.

While the BCRA has impacted parties in ways that have been suggested, there have been impacts on interest groups as well. Issue groups and 527s can continue their soft-money issue advertising at times not blacked out for the thirty days before a primary and sixty days before a general election. They can turn to hard money during the blacked-out periods, and for independent expenditures. But some 527s are assuming functions of the parties: their potential influence on the parties is uncertain.

The United States law is voluminous and open to varying interpretations. There is reliance upon the Federal Election Commission to flesh out the meanings of the law, and the courts to adjudicate. There is a residual distrust of the administrative and enforcement mechanisms, and public trust in the system has not been demonstrably increased since the new law went into effect.

The American political parties generally are at odds, with the Democrats for reform, and the Republicans against. Ironically, the Republicans with their greater access to hard money may fare better under the new law.

In contrast, the Canadian regime is more public, less private, and yet mixed. The administration of the law is considered to be impartial and effective, and public confidence in the law appears to be high. The leading parties supported the 2003 enactments, and there are few if any criticisms of the ways the law is framed, administered and enforced.

In both countries, there is uncertainty about the extent to which the usual questions need to be asked: does spending influence election outcomes?; do contributions influence public policy?; will changes in the laws lead to more bureaucratization of the parties, to more centralization, to more federalization, to party membership gain or loss?; and to the increase or decrease in volunteerism?

Political finance reforms are not neutral. Instead they are used as instruments to achieve political goals. They change political institutions and processes, sometimes in unforeseen, and not always salutary, ways. Their consequences are often unintended, but even when intended, may have unexpected impact.

We know that candidates prize votes more than dollars, but we also comprehend that most candidates and parties cannot win votes without spending dollars. The problem is how to apply democratic principles to elections in a highly technological media age dominated by high campaign costs. The electoral process continues to present a classic case of conflict between the democratic ideal of full public dialogue in free elections and the conditions of an economic marketplace.

