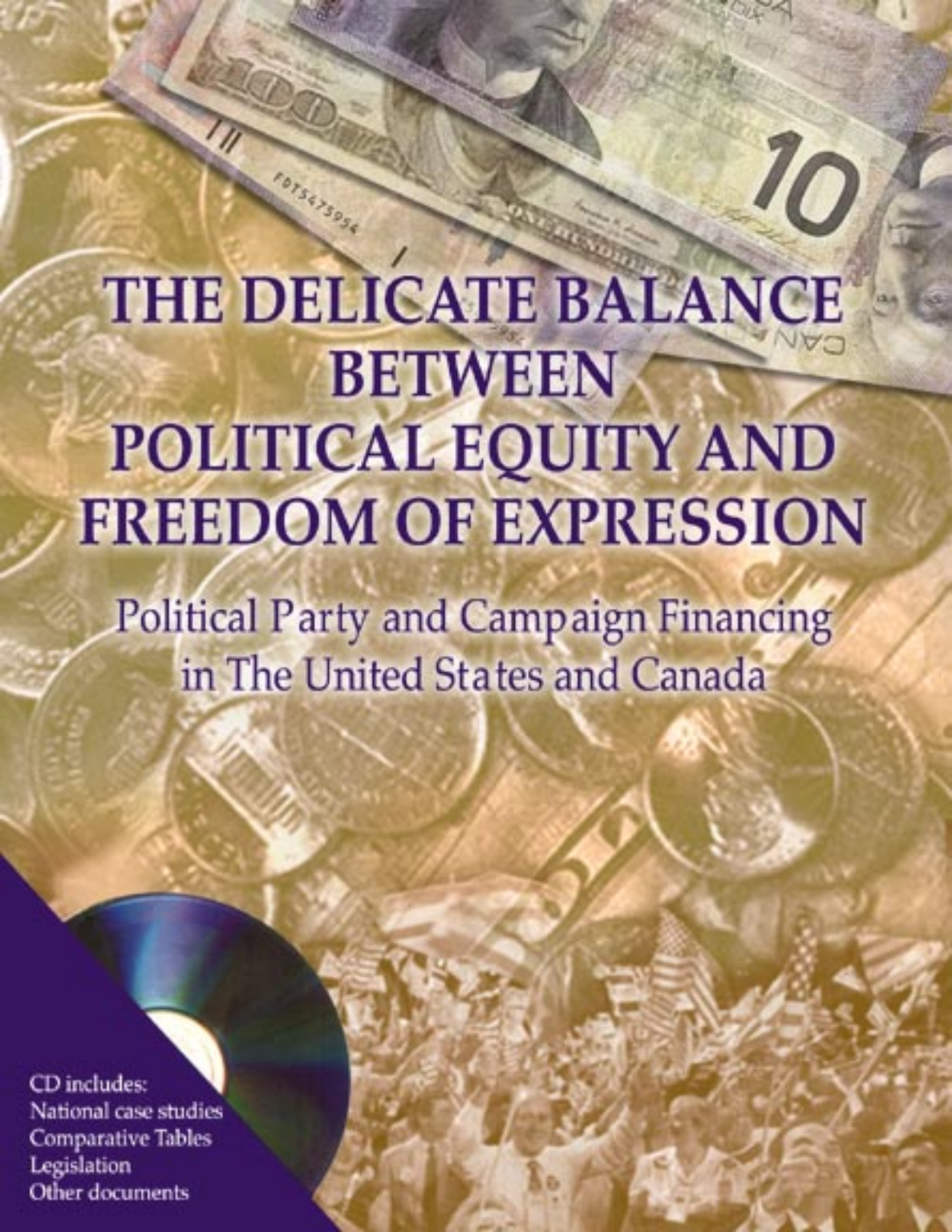

THE DELICATE BALANCE BETWEEN POLITICAL EQUITY AND FREEDOM OF EXPRESSION

Political Party and Campaign Financing in The United States and Canada

CD includes:
National case studies
Comparative Tables
Legislation
Other documents

THE DELICATE BALANCE BETWEEN POLITICAL EQUITY AND FREEDOM OF EXPRESSION IN CANADA AND THE UNITED STATES[1]

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JUNE 2005

Published by
ORGANIZATION OF AMERICAN STATES
INTERNATIONAL IDEA

1 The opinions expressed in this document do not necessarily reflect those of the Organization of American States.

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ACKNOWLEDGEMENTS

This publication is the result of a joint effort by the Office for the Promotion of Democracy of the Organization of American States, and by International IDEA under the framework of the Inter-American Forum on Political Parties. The Inter-American Forum on Political Parties was established in 2001 to fulfill the mandates of the Inter-American Democratic Charter and the Summit of the Americas related to the strengthening and modernization of political parties. In both instruments, the Heads of State and Government noted with concern the high cost of elections and called for work to be done in this field. This study attempts to address this concern.

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.

The national researchers are the pillars supporting this study. Without their dedication in seeking out information and interviewing political party leaders, it would not have been possible. We would like to acknowledge their contributions here: Herbert Alexander and Clyde Wilcox (the United States); and Peter Aucoin (Canada).

We would also like to acknowledge the assistance of Jean Pierre Kingsley, Chief Electoral Officer of Elections Canada and Ellen Weintraub, Commissioner of the Federal Elections Commission of the United States, who reviewed each national report and thematic chapter and provided invaluable support for this study.

Finally, special recognition goes to Cesar Arias and Francisco Reyes of the OAS and Ileana Aguilar of International IDEA, for monitoring the different stages of the research and ensuring the uniformity of the information provided.

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CHAPTER I

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

Herbert E. Alexander

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.

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] 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.

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

[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.

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 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.

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 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.

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

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.

[5] Data supplied in a telephone call to Robert Biersack, FEC Press Office, March 12, 2004.
[6] *Ibid.*
[7] *Ibid.*

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 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 then 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

8 "2004 Presidential Spending Limits," Federal Election Commission, FEC Press Office, undated.
9 "FEC Approves Matching Funds for 2004 Presidential Candidates," March 1, 2004

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 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

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

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.

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.

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.

[11] Campaign Media Analysis Group, December, 2000.

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.

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.

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.

CHAPTER II

Transparency in Money in Politics: A Comparison of the United States and Canada

Gene Ward

Introduction

Few Canadians appreciate being compared to or mistaken as Americans and even fewer Americans feel comfortable comparing their presidential system with the Canadian parliamentary system. Nevertheless both nations despite their differing political cultures and size would agree that their disclosure systems for following money in politics have more in common than differences.

Arguably, Canada and the United States represent the most advanced disclosure systems and public transparency of political finance in the world. Both have experienced years of major transformations since the 1970s (and major adjustments in the last two years) and have had their fair share of court battles and political corruption scandals. This chapter points out the important role played by disclosure in controlling money in politics and highlights some of the similarities and differences between the Canadian and US approaches to transparency. Lastly, it will attempt to arrive at some lessons learned about disclosure that might be mutually beneficial or relevant to other parts of the world.

Disclosure Defined

The public's need to know who finances what party or candidate can be summarized in a single but difficult question: "Who gave how much to who for what purpose and when?" It is both an accounting question as well as an accountability question. The "accounting" side is the systematic collection of the receipts and expenditures of a party or candidate and the organized reporting of such to an election commission. The other side of the equation is "accountability" or making sure the public has access to the financial reports as quickly as possible. The major intent of campaign finance transparency is to allow the citizens of a democracy to answer the disclosure question and then make up their own minds about the meaning of the sources and amounts of money given to their leaders.

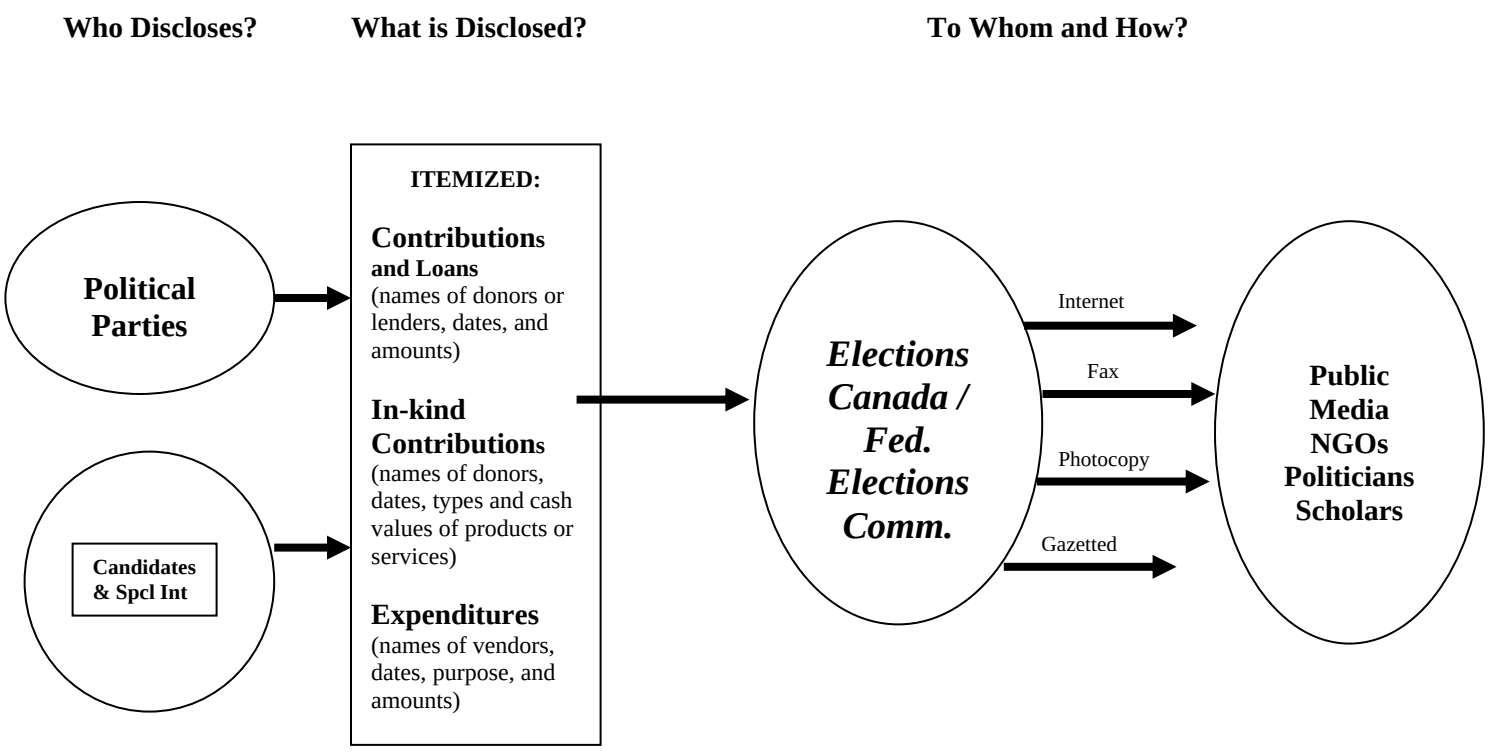
As simple as this might appear (and as indicated Diagram 1 below) a complexity of regulations and exemptions as well as loopholes and lack of enforcement have made disclosure less transparent than it should be, especially in clearly and unequivocally revealing to voters who or what organizations underwrite their leaders or who their leaders might be beholden to. Though flawed by its implementation in many nations, disclosure is still the best though not perfect measuring device for all types of campaign finance reform regarding source identification or dollar volume limitation to. As practiced in Canada and the US, disclosure is rather tightly calibrated and donor sources and volume limitations are precisely measured and shared with the public. For example, in the United States in the 2000 elections, approximately US $2 billion was

processed through the disclosure system, while in Canada disclosure reports accounted for about CAN$100 million spent in the 2000 general election. Every dollar, with only a few exceptions in both countries, was traceable to an individual or group. The robust disclosure processes required to account for such large sums of money is represented graphically below (see Diagram 1).

Diagram 1 depicts Canada and the US with basically the same disclosure systems. As shall be seen later in this chapter, this is both the appearance and the perception, but the reality is that considerable, though subtle, differences remain between the two systems.

Diagram 1

US-CANADIAN DISCLOSURE PROCESSES



Some Conditioners of Disclosure

Before discussing detailed similarities or differences between Canadian and American disclosure, some structural differences should be noted that influence the way each country handles disclosure. For example the Canadian financing system is party-based with the lion's share of income generated by the parties and not candidates. The exact opposite is true in the United States where candidates prevail and a type of American 'rugged individualism' makes the parties the weaker fundraisers compared to individuals.

Other values also condition the two disclosure systems and provide the enabling environment for high levels of disclosure. For example, one important value driving Canadian policies is akin to an 'equalitarian social contract" mediated by government. Values behind US campaign finance are more akin to private sector and First Amendment-driven demand for "openness, equality of opportunity, and free speech."

Consequently, Canada has stronger political parties and large doses of public funding compared to the United States which has weaker parties and very little public funding. In this financial milieu US parties and individuals tend to stand up to government regulations and create more court cases and weaker enforcement. On the other hand, Canadian litigation is discouraged by the social contract as well as a statute that bans attempts to circumvent campaign finance laws – directly opposite of the intents of some lawyers in the US whose major job is to find ways around laws that restrict party and candidate creativity and innovativeness to raise and spend money[12]. Getting around the law is the challenge of parties and candidates, and plugging the loopholes is the challenge of the government. Consequently US parties and candidates tend to play an avoidance game with regulators and many campaign finance laws are often tested in court before they are fully implemented[13].

History of Disclosure in North America

The case of the United Sates and Canada demonstrates that neither country started out with disclosure as an end in itself but as a means to an end. Both had other regulatory priorities that took precedence over the development of their disclosure systems. In Canada for example, the two biggest priorities of the nation's campaign and party finance regulatory regime was a strong national desire for strict spending limits and public funding for political parties or reimbursements to candidates[14]. More recently contribution limits have been added. In Canada parties as well as candidates receive public funds either by grants, reimbursements, or tax credits. These together can account for up to a 65%+ subsidy for electoral politics paid for by Canadian taxpayers, in comparison to a very small subsidy for only US presidential contests. Canadian disclosure is thus most beholden to tracing government funds while US disclosure focuses primarily on tracing private funds. Disclosure in Canada is also more stringent for political parties than candidates, and will be discussed later.

Consequently, Canadians have specialized in controlling spending, and the US has specialized in controlling contributions, but both have depended upon disclosure as the means to the end. US disclosure for example was codified almost 100 years ago by Congress when big donors like banks and corporations were prohibited from making campaign contributions[15]. The US campaign finance system was driven by an early national desire to control the influence of big donors and a high demand for transparency and openness about money in politics. Early disclosure requirements were set forth as a founding principle shortly after political finance regulations began in 1867 with prohibition of government officials coercing naval shipyard workers to make

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12 While Canada is known for its strict spending limits and lawyers who are not always looking for a way to circumvent the law like their US counterparts, it should be noted that spending limits in Canada apply only during the five-week election periods.

13 For example, the recently passed Bipartisan Campaign Reform Act (BCRA) of 2002 (McCain-Feingold) was challenged in court within hours of its passage by a group of sitting Senators and political action committees (PACs).

14 The Canadian public funding formula is $1.75 per vote; these funds go to the parties only, not to candidates.

15 Political donations by banks, though illegal in the US, are still legal in Canada.

campaign contributions. In 1910 the first disclosure laws were enacted for U.S. House candidates to file financial statements with passage of the "Federal Corrupt Practices Act". The reach of disclosure was later broadened in 1925 and served as the basic campaign transparency requirement until 1971 and 1974 when present day disclosure laws were completely put in place.

Though US policy makers have generally fought for campaign finance reforms when they needed to, political scandals have been one of the bigger motivators for change. For example it was not until the Watergate scandal that the most far-reaching reforms, especially enforcement of disclosure regulations, in US political finance history took place. US civil society did show its strength during this period and ably articulated the national desire for uncompromisingly high standards of transparency, but it was the media and the scandal that catalyzed and locked in the actual disclosure enforcement legislation[16]. Others have suggested that Watergate also prompted as many changes in Canadian politics since both countries conducted their major reforms during this period.

It was the Federal Election Campaign Act of 1971 (modified in 1974) that put the most stringent disclosure rules into effect in the US. Not only were donors to be identified by name and address, but also occupations were to be listed so corporate or other affiliated networks could be traced or linked to political donations. But the most important of all of the Watergate reforms was the formation of the Federal Election Commission in 1975, which began in earnest to enforce the decades old disclosure laws. Following the landmark Supreme Court decision in *Buckley* v. Valeo in 1976 spending limits were declared unconstitutional, however disclosure laws and contribution limits were sustained, and were thereafter locked in as the mainstays of the American political finance system.

Canada's disclosure regime is even a more recent phenomenon- though strengthened by strict enforcement required of public financing. Canadian finance laws date back to 1891 but it was not until regulations from Quebec (1963) and New South Wales (1981) that the federal government was inspired to pass laws on disclosure and public financing[17]. Today disclosure in Canada and the US however different their origins, have present-day systems that are quite similar though subtly quite different. As two of the most open societies in the world, Canada and the US rely on disclosure to meet each society's demand for transparency and accountability. Disclosure and enforcement however do have a price. In fiscal year 2003, for example, the US Federal Elections Commission had a budget of about US$ 50 million dollars in comparison to the Canadian Electoral authority's budget of CAN$ 201 million dollars - almost three times larger than the U.S. system[18].

Highlights of Similarities and Differences between US and Canadian Disclosure

The literature on political finance in the United States is generally more cynical about campaign finance in the US than the Canadian literature is cynical about

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16 Regarding the role that scandals play as a catalyst for campaign finance reform, some have argued that if the Enron scandal had not been juxtaposed to the public debate on the Bipartisan Campaign Reform Act (McCain-Feingold) of 2002 its passage might have been delayed or even rebuffed.

17 See "Political Finance in Old Dominions (Australia and Canada)" by Dima Amr and Rainer Lisowski, in Karl-Heniz Nassmacher (ed), *Foundations for Democracy: Approaches to Comparative Political Finance*, Baden-Baden: Nomos, p. 53.

18 Aucion, Peter "Comparative Analysis on Political Party and Campaign Financing, Appendix 1" December 2003.

campaign finance in Canada. Criticisms include just about all aspects of US campaign finance save one, disclosure. Disclosure is an area in the US that has consistently earned more praise than scorn. Disclosure has been called the cornerstone of campaign finance in the United States and one of the few areas where the US excels[19]. While other parts of campaign finance such as spending and contribution limits are contentious and without consensus, nearly all sides of the campaign finance debate accept the disclosure requirement that parties and candidates make known the sources of their money and the way they spend those funds. Even those in the United States who suggest an end to all campaign spending limits, regulations, or fundraising ceilings, agree that disclosure is first and foremost in importance in controlling, maintaining as well as understanding political finance.

One of the differences between Canadian and US disclosure is the level of intensity of enforcement, with the US having a history of laxity. Enforcement in the US started out rather ineffectively because the US Congress designated itself as the agent or watchdog of enforcement starting back in 1925. Due to this conflict of interest, disclosure laws on the books were not enforced for over 40 years until 1967 when former Congressman W. Pat Jennings became the Clerk of the House of Representatives and began enforcing the regulations. However because the U.S. Justice Department ignored his list of violators, it was not until the Watergate scandal and the establishment of the Federal Election Commission in 1975 that serious enforcement of the disclosure laws actually began.

To get a more comprehensive view of the historical differences and similarities between Canadian and US disclosure, Charts 1 and 2 (below) record the changes that have taken place over the past two years. As indicated in Chart 1, the disclosure gap between the US and Canada just a few years ago was quite substantial. For example, disclosure was not required of all special interest groups (called “third parties” in Canada“ or US PACs) as well as “constituency associations” and leadership contests, and party and candidate financial disclosure reports were of little value because they were not required to be filed until months after the election. Additionally, MPs were not required to declare contributions collected in the off-election period, and bank loans required very little documentation, and finally, donor identification did not require the occupation of the contributor.

These substantial differences demonstrate that disclosure is not only a more recent phenomenon for Canada but also one that was less comprehensive and ineffectively timed. In 2003 legislation was passed in Canada (Bill C-24) that required tightening these disclosure requirements that would become effective January 2004 and January 2005. In this legislation, political parties were required to file quarterly financial reports before elections as well as filing their usual annual reports after elections. Likewise ‘third parties” (PACs) were required to begin reporting all of their funding sources.

Chart 2 represents the “post reform” state of disclosure for Canada and the US following the passage of Bill C-24 as well as Bipartisan Campaign Reform Act (McCain-Feingold) of 2002. From a comparative perspective, it can be seen that the United States maintained the same stringent disclosure requirements before and after McCain-Feingold. (McCain-Feingold prohibited “soft money” from being raised and spent by

[19] See Herb Alexander and Clyde Wilcox, “American Exceptionalism? Campaign Finance in the U.S,” January 2004.

political parties, and has largely forced previous soft money donors, such as wealthy individuals, corporations and unions to other areas off the campaign playing field and is mentioned in more detail later in this chapter.) In addition to far-reaching disclosure reforms, Bill C-24 also impacted spending limits. Though Canada is most known for its strict spending limits, it was not until passage of Bill C-24 that corporations and trade unions were not allowed to contribute with no restrictions to Canadian political parties and candidates. Unknown to many outsiders, traditionally Canadian parties had depended on contributions from large corporations[20].

Another unique feature of Canadian disclosure is its system of incentives for compliance. For example Canada offers tax credits[21] for donations that serve as an incentive to file accurately and quickly so donors can benefit on their annual tax returns; and secondly Canada has a large well-financed cadre of investigators armed with auditing authority and sanctions that serve as an incentive for parties and candidates to disclose quickly and accurately.

[20] Ibid., p. 60.

[21] According to research by Michael Pinto-Duschinsky, "Financing Politics: A Global View," in *Journal of Democracy*, Vol. 13, No. 4, October 2002, about 18% of nations have tax credits as a means of providing incentives for filing disclosure reports.

CHART 1

"BEFORE DISCLOSURE REFORMS"	2001[22]	2001[23]
DISCLOSURE REQUIREMENTS:	**CANADA**	**UNITED STATES**
Income and Expenditure Disclosed by:	***Parties & candidates excluding some "3rd party groups", such as special interests, constituency associations, leadership contests" MPs also not required to disclose all donors between elections***	Parties, candidates, and all other "special interest" organizations and political action committees (PACS) must file disclosure reports
Electronic Filing Required	***No***	Yes, Required[24]
Donor Identity Disclosure Requirements:	Full disclosure including address, ***except occupation not required***	Full disclosure including address and occupation of donor
Thresholds of Disclosure:	Canadian $200	US $200
Non-Cash "In-Kind" Contributions Counted	Yes, including loans, but ***key terms of bank loans not disclosed***	Yes, including loans and all details of bank loans are disclosed
Vendor Identity Disclosed	Yes	Yes
Timing of Disclosure	***After Elections***	Before & After Elections
Public Access to Reports	Yes	Yes
When Reports Available	***If available, Immediately***	Immediately
How Reports Accessed	Internet, Photocopying	Internet, Photocopying
Ease of Access to Reports	Yes	Yes
Reports are Itemized	Yes	Yes
Disclosure of Assets Required:	Yes	Yes
Off-Election Period Disclosure by MPs Required	***No***	Yes
Bank Donation Disclosure Required	***Legal, with disclosure***	Contributions from banks are illegal
Unregulated Trust Funds or Legislative Accounts held by MPs, Congressmen	***Legal, with no disclosure required***	Unregulated Accounts by Members of Congress are not legal

[22] This chart reflects the disclosure requirements in Canada preceding amendments to the *Canada Elections Act*, *Bill C-24* passed in 2003 which became partially implemented in January 2004 and will become fully operational in January 2005.
[23] This chart reflects disclosure requirements in the United States as of 2001 prior to passage of the Bipartisan Campaign Reform Act (McCain-Feingold) of 2002.
[24] The U.S. Senate has not yet been required to file its disclosure forms electronically but is nearing its deadline. The House of Representatives has had mandatory electronic filing since 2000; also the vast majority of State Legislatures have electronic filing.

CHART 2

"AFTER DISCLOSURE REFORMS[25]"	2004/5 (Bill C-24)	2002 (McCain-Feingold)
DISCLOSURE REQUIREMENTS:	**CANADA**	**UNITED STATES**
Income and Expenditure Disclosed by:	Parties, candidates, but not ***"MP Trust Funds"***	Parties, candidates, and others with partial exception of "527s"
Electronic Filing Required	***No, Optional***	Yes, Required[26]
Donor Identity Disclosure Requirements:	Full disclosure including address, ***w/o occupation***	Full disclosure including address w/ occupation
Thresholds of Disclosure:	Canadian $200	US $200
Non-Cash "In-Kind" Contributions Counted	Yes, including loans (***key terms of bank loans not disclosed?)***	Yes, including loans
Vendor Identity Disclosed	Yes	Yes
Timing of Disclosure	***After Elections***	Before & After Elections
Public Access to Reports	Yes	Yes
When Reports Available	If Available, Immediately	Immediately
How Reports Accessed	Internet, Photocopying	Internet, Photocopying
Ease of Access to Reports	Yes	Yes
Reports are Itemized	Yes	Yes
Disclosure of Assets Required	Yes	Yes
Off-Election Period Disclosure by MPs Required	***No***	Yes
Bank Donation Disclosure Required	***Legal, with no disclosure***	Contributions from banks are illegal

Contrasting Strengths and Weaknesses:

- **Loopholes in Disclosure:** Whereas the US appears to be constantly plugging loopholes in its disclosure system, the Canadian system appears less prone to such de-stabilization. For example, a new generation of "527 committees" in the US proliferated within a few months after the Bipartisan Campaign Reform Act (BCRA) of 2002 made 'soft money' illegal and the "527s" inherited most of the soft money in the nation. According to Professor Clyde Wilcox, "probably the biggest hole in the U.S. campaign finance disclosure system is issue advocacy, which is spending that technically advocates an issue, not the election or defeat of a federal candidate. In the U.S. groups often try to persuade the public on a policy issue. The Supreme

[25] These present disclosure requirements in Canada resulted from amendments to the *Canada Elections Act* passed in 2003 and became effective January 2004 with parts not becoming fully effective until January 2005.

Court ruled that issue advocacy spending need not be disclosed to the Federal Election Commission unless it expressly advocates the defeat or election of a federal candidate, using any one of a series of "magic words" such as "vote for" or "defeat[27].

"527 committees" have thus resurrected 'issue advocacy' advertising and remains the latest loophole for corporate and union funds that were declared to be illegal since 1907 and 1943 respectively. "527s" were challenged in the FEC in early 2004, but will not be decided upon until after the presidential election of November 2004. Canada on the other hand with comparatively fewer legal challenges to its disclosure regime has nonetheless also been subject to ridicule for its loopholes. For example, Karl-Heinz Nassmacher noted that "Canada, despite its almost perfect model regulation, has loophole ridden regulations about disclosure because it neglects debts and assets, constituency associations and leadership contests"[28]. Bill C-24 will largely do away with these loopholes though not all of them until January 2005, and it is still uncertain whether the undisclosed and unregulated trust funds held by Members of Parliaments will be eliminated[29]. Trust funds or slush funds such as this are illegal in the US because they are not accountable to any government oversight.

- **Uneven Disclosure Filings:** The reforms of 2004 required that Canadian parties, but NOT Canadian candidates file quarterly financial reports. Since candidates and political parties spend almost the same amount of money during the election season, this appears to be a disclosure weakness and in favor of candidates who don't have to file their expenses until after the elections are over. This has the appearance of being an uneven playing field, and as noted earlier places more stringent disclosure requirements on the parties rather than candidates. In the United States, on the other hand quarterly financial reports have been required since the Teapot Dome scandal of 1925.

- **Seasoned Court Decisions:** As previously suggested, Canadian disclosure and other regulations have not had to be tested in court quite as often as US regulations, but could be subject to change in the future. For example a serious legal challenge is presently being waged in Canadian courts that might change the political landscape of Canada in the near future. "Third Party" organizations or special interests are presently battling in court against spending limitations. Decisions of lower courts so far have favored striking down Third Party spending limits (such as the US courts did in 1976), but the Canadian Supreme Court is still deciding the case. If special interests spending limits are not sustained, disclosure and the entire political landscape of Canadian elections could somewhat shift away from the political parties which are now the center of gravity for Canadian political culture.

  US campaign finance law is marked with a variety of legal battles especially over the past thirty years, and with the parties and candidates usually coming out on top. The only exception to strict US disclosure requirements, for example, was the US Supreme Court exemption given to the Socialist Workers (Communist Party) of America from disclosing the names of its donors in fear that it would hamper

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[27] "Transparency and Disclosure in Political Finance: Lessons from the United States," Paper presented by Prof. Clyde Wilcox, at the *Democracy Forum for East* Asia, Sejong Institute, Seoul, Korea, June 2001.

[28] "Major Impacts of Political Finance Regimes" by Hiltrud and Karl-Heinz Nassmacher, in Karl-Heniz Nassmacher (ed), *Foundations for Democracy: Approaches to Comparative Political Finance*, Baden-Baden: Nomos, p. 196.

[29] As of this writing, a "Bill C-34" had been introduced in the House of Commons to possibly close this "trust fund loophole" or force some kind of disclosure on these funds.

donations or invite harassment. The Supreme Court ruled that the threat of reprisals against donors would mean that forced disclosure would limit the party's ability to raise funds to compete in election contests.

Overall the role played by the US courts in campaign finance has been almost as important as that played by the US Congress, though harsh measures to restrict disclosure or contributions have been largely avoided in favor of moderate or compromise measures.

- **US and Canadian Disclosure Closest From a Distance:** What Canada and the US share in common is what distinguishes it from most other parts of the world. For example, regarding disclosure of loans in campaign accounting, it is common for Canada and the US to not only count loans, but also include in-kind contributions as income, whereas most other nations overlook these categories. More importantly a vast majority of countries (estimated to be 70%+) do not require the itemized reporting of donor names and addresses, or the identification of vendors by name and addresses, though this is a common characteristic of the US and Canadian disclosure systems. The US and Canada also insist that the public has immediate and easy access to party and candidate disclosure statements, something that many countries make available months or even years later and make it difficult for NGOs and the media to have easy access to the data. The United States and Canada are also alike in requiring financial reports to be both aggregated and disaggregated, (itemized) so outside agencies, (NGO's and the media), will be better able to scrutinize and interpret the data without difficulty. Lastly the US and to a lesser extent Canada have electronic filings and most disclosure reports are available on the Internet for downloading and analysis but this is rare elsewhere.

LESSONS LEARNED

What, if anything, can Canada and the US learn from each other's disclosure systems and what, if anything might be relevant to other countries? The reality of political finance is such that no nation's political finance system has yet matured enough to be considered a model for others. However, some countries like Canada and the US have more experience than others in grappling with the influence of money in politics and particularly with the subject of disclosure, and some lessons learned might be useful to others.

Disclosure and Enforcement: The Best of the US and Canada

If it were possible for the best parts of both systems to be cobbled together it might prove beneficial to both as well as something other nations might consider. For example to combine the strict disclosure of the US system revealing the names and addresses of donors and vendors with the strict enforcement of the Canadian system could prove to be a very strong combination. The lesson learned to date is that disclosure without enforcement is of limited value and enforcement without a comprehensive disclosure system is guesswork. To strengthen enforcement in the US and other nations, it would likely necessitate the creation of an "Enforcement Czar" much like the present politically independent and authoritative powers enjoyed by Elections Canada. While the level of funding required for the Canadian model might be

a barrier, there is already some discussion about such an office in the US[30]. Canada on the other hand, would need to tighten its disclosure requirements somewhat to match that of the US level of stringency. Lastly other nations without disclosure of donor or vendor identity might see the US and Canadian model as the best way of adding credibility to their existing disclosure systems as well as a way of encouraging civil society organizations to become more proactive watchdogs in the political arena. The reality is that without donor and vendor identity NGOs and the media are denied their rightful watchdog positions in society and politicians and parties control the playing field.

Election Deposits Might Increase Disclosure

The lessons learned about election deposits in Canada are not only that they are an incentive for disclosure for election finances, but that they also go hand in hand with public funding. As previously noted, Canada requires a candidate to post an election deposit of CAN $1,000 and is used as an incentive/leverage for prompt disclosure of contributions and expenditures, however this system would be more difficult to administer in the US where there is no public funding and because races are so expensive, the size of the deposit could be prohibitive. Using $70,000 as the average cost of a Canadian election contest for a member of parliament and $750,000 as the average cost of a US House seat, the deposit would be about $10,000 which suggests the deposit system might be more relevant at the state level where legislators have experimented with public funding and is a good incentive for fast and accurate disclosure.

From an international perspective where the vast majority of nations have some form of public funding, an 'election deposit' and might be more relevant. There is a danger however that deposit requirements could be manipulated and create unequal access to office. A nation could for example set the deposit level so high it could become a way of shutting out the poor (or honest) from entering politics. Access to office is already difficult in many countries where fees range from US $5,000 to $10,000 just to get one's name on the party list, and that is not at the top where the cost is much greater.

Public Funding Should Leverage Disclosure

Public money provides the majority of the money in politics in Canada but the cost to the parties and candidates is strict compliance. This structure of incentives may have applicability to other nations that rely on public funding but still have weak disclosure systems and are allowing public and private funds to go unaccounted for. Probably the best lesson learned here is that if a nation has not yet established public funding, it should do so only after first establishing strict disclosure standards before filling the coffers of any parties or candidates. Using public funding as an incentive for agreeing to stringent disclosure requirements has been argued as one of the best forms of persuasion according to some key scholars[31]. Regarding nations which already have

[30] For example, Senators McCain and Feingold et.al. introduced legislation in 2004 that would abolish the Federal Elections Commission and put in its place a more Elections Canada-like non-partisan organization headed by a single non-partisan individual (appointed for life)with strict powers of enforcement and oversight of disclosure. So far no action has been taken on the measure and some doubt such a system fits US political culture where politicians rarely trust government officials.

[31] Two strong advocates of this approach for example are Professor Karl Heinz-Nassmacher of University of Oldenburg, Germany and Professor Menachem Hofnung of Hebrew University, Israel.

public funding but are denying their taxpayers this vital public information, these monies should also be leverageable by civil society for more transparency.

Privacy vs. Public Interests to Disclose

Where it is weak or doesn't exist, disclosure is controversial and philosophically opposed. For example, some countries in the Americas are still waging the debate about the place of political finance in a democratic society. Some have used the argument (which likely originated in Sweden and Switzerland) that money in politics is nobody's business except the donor and recipient. It equates the privacy of a donation with the privacy of the ballot box. If a person is protected by the privacy of the ballot box and does not need to reveal who one voted for, then one should not be required to tell anyone who one supported with their financial contribution. The lesson learned has been that this type of logic generates a low incidence of enthusiasm for disclosure and the value of transparency to "name and shame" is curtailed.

The opposing argument in favor of full disclosure is that political parties fulfill a public function and are therefore subject to public oversight and scrutiny and part of the public debate. Parties and candidates revealing their sources and amounts of funding are therefore doing so in the public's interest and that monitoring campaign and party finances is an essential public policy[32]. The lesson here is that scrutiny of party finances by the public, including names of donors, requires some underpinnings in the political culture before it will be adopted by politicians and political parties themselves. The citizens of the US and Canada have already won the 'right to know' how much money goes into politics and who is financing their leaders, but for many years their parties felt this was nobody's business but their own.

Caveat about US-Canadian Disclosure

A final word of caution about disclosure is in order here. Although the more open a society the more disclosure it will have in its campaign finance system, it should be pointed out that the US and Canadian systems are so open and so comprehensive they could ill adapt or actually be dangerous to different levels of democratic culture. In countries like Ukraine for example, where donations to opposition parties can cause a host of tax and fire inspectors to descend upon the business and nearly shut it down, US and Canadian disclosure is ill advised. On the other hand if a nation is a beacon of hope for democracy in Africa, and it has no disclosure laws on the books for private funding, a nation like South Africa might want to consider the US and Canadian disclosure systems. Every nation will eventually be ready for full disclosure, but only according to its own time frame and level of pressure from civil society organizations and citizenry.

Summary and Conclusion

Money in politics goes to the heart of democracy and the core requirement for outfitting a government. Canada and the United States have perhaps developed the most sophisticated disclosure systems in the world to date, though not perfect, are effectively following money in politics. The main difference remains one country's

[32] Resistance to disclosing names of donors has been particularly strong in Latin America and fear of losing donors contribution is the most often cited reason, though some parties more likely fear revealing their illegal sources of funding.

reliability on transparency and controlling contributions (US) while the other stresses controlling spending (via mostly government funding) and enforcement. Since undergoing significant changes in the past two years with passage of Bill C-24 and McCain-Feingold, the two systems have never looked more the same as now, and the disclosure gap has about closed, but not quite on the Canadian side.

Will they continue to be so similar? According to some US-Canada-watchers the answer is yes, with Canada likely being fast-forwarded by US scandals or court cases[33]. The cycle of reform in both countries appears to come about every 15-20 years between major changes in US and Canada campaign finance law. In the meantime small changes in disclosure can be expected such as elimination of trust funds and increased mandatory electronic filing in Canada and likely quicker electronic filing requirements for the US. The biggest potential disclosure changes in Canada will result from the present court case being argued about special interest spending limits, and could have a very large impact. The biggest potential disclosure changes in the US will result from the legal challenges now being waged against the "527 committees" which will determine the future of 'soft money.'

One final point about disclosure in North America: disclosure and the transparent display of money in politics have probably been the best insurance policy the US and Canada have had against corruption in their political processes. Scandals in the US and Canada have rarely been about hidden money or secret donor identity; in fact, generally the opposite is true. Enron is a case in point. Following its financial collapse, campaign disclosure reports revealed to the public that the Enron Corporation, its major subsidiaries, and its executives had made millions of dollars of political contributions at the national and state levels. These disclosure reports propelled the media to break the scandal and the later momentum for new campaign finance reform measures in 2002. Disclosure was the key to exposure, and demonstrates the impact that transparent financial systems can have in a democracy. Every nation could benefit from this first line of defense against corruption as much as the US and Canada.

[33] Diffusion theorists suggest that neighboring states exert some of the biggest influences for political finance change on each other which in turn migrates throughout the region. See for example "Comparative Political Finance in Established Democracies," by Karl-Heinz Nassmacher in Karl-Heniz Nassmacher (ed), *Foundations for Democracy: Approaches to Comparative Political Finance,* Baden-Baden: Nomos, p. 17 .

CHAPTER III

Campaign Finance Law Enforcement in Canada and the US

Clyde Wilcox

Campaign finance laws that require disclosure or that impose contribution or spending limits do little good without consistent enforcement. Indeed, campaign finance laws that are not enforced probably damage citizen's trust in their government. Designing and operating enforcement agencies are not a straightforward process. Across the hemisphere and across regional governments in some countries, enforcement agencies vary widely in their mandate and resources.

This chapter compares campaign finance enforcement in the U.S. and Canada. The two countries share much in addition to a common border. These two former British colonies are both large nations that have federal systems in which national elections are regulated by the national government, but where state or provincial elections are regulated by those governments. In both nations, political parties are not uniform across jurisdictions, and field candidates who compete in single member districts. Both have well-developed campaign finance regulations, and an independent agency to implement those regulations. Both have Courts that have sought to protect free expression by checking campaign finance regulations (Paltiel, 1989; Sorauf, 1989).

Yet the countries have important differences as well. The U.S. political culture assigns its highest value to individual liberty, whereas the Canadian culture values most equality and good government (Lipset, 1991), and this has resulted in complex regulations in the U.S. case that make enforcement difficult in the best of circumstances. American political parties are relatively weak, allowing individual candidates to define their own political agendas and to raise their own funds by assembling their own financial coalition, whereas Canadian campaign funds are primarily raised by the political parties, which are more disciplined organizations. Weak parties allow U.S. lawmakers to insert special provisions in legislation that can benefit specific narrow interest, and thus creates an incentive for those interests to provide maximum campaign assistance to key incumbents. Moreover, because elections occur at fixed intervals in the U.S., campaigns have become quite long and expensive. Presidential campaigns often last two years, and House incumbents are always in campaign mode. Canadian election campaigns average 36 days.

Recently in the US the intrusion of cultural issues into politics has led to a polarization of the two political parties. Increasing numbers of party supporters believe that the victory of their preferred candidates is essential to the wellbeing of the republic, and many are willing to bend campaign rules in order to win. Combined with the underlying litigious culture, this creates an atmosphere where the boundaries of campaign finance laws are regularly tested, and where political actors challenge regulations. In Canada in contrast there appears to be widespread acceptance of the value of campaign finance limits and the vigorous and neutral enforcement of these limits.

The Campaign Finance Laws

Enforcement and the content of campaign finance laws must be considered in tandem. Vigorous enforcement of flawed laws may do little good and even perhaps do harm, and the best laws will do little good if enforcement is lax. Enforcement is a difficult task, and requires an agency with significant powers. Yet even the best designed enforcement agency will founder in the face of poorly designed or overly complex regulations. Before we can compare regulatory agencies, therefore, it is useful to compare regulatory regimes.

The U.S. campaign finance law comes primarily from the Federal Election Campaign Act (FECA) of 1974, and from the Bipartisan Campaign Reform Act (BCRA) of 2002. In general, these regulations focus primarily on contribution limits and disclosure. Individuals are limited in the sums that they can give to candidates for federal office, and in the amounts that they can give to political parties and the political committees associated with interest groups (PACs). Parties and PACs are also limited in the amounts that they can give to candidates, to PACs, or to party committees. There are source limitations as well: corporations and labor unions are banned from direct contributions of treasury funds to candidates, although they can form PACs and raise money from their members which can then be given to federal candidates and committees.

Two major difficulties have arisen in the regulation of the size of contributions. First, the Federal Election Commission (FEC) allowed in the late 1970s and early 1980s the creation and growth of a special type of contribution called “soft money” that avoided both size and source limitations. There was no limit to the size of these contributions, and they could come from the treasuries of corporations, unions, or other political groups. The money was ostensibly to be used only for party building and state and local elections, but was quickly channeled directly into federal campaigns in violation of the spirit (and most would argue letter) of the law. By 1988 both parties had organized major soft money campaigns that were obviously aimed primarily at electing federal candidates, and some officials admitted this in public. In 1996 Bill Clinton directed millions of dollars of party soft money to bolster his reelection chances in the months leading up to the election, and GOP candidate Bob Dole used millions of dollars of party soft money to maintain his campaign after the end of the primary season.

Second, because the Courts have ruled that spending limits violate freedom of speech, individuals and groups can spend unlimited amounts to advocate the election or defeat of a candidate, so long as the money is not given directly to the candidate or spent in coordination with the campaign. This spending could be done through PACs and subject to the contribution size and source restrictions – this kind of spending is called “independent expenditures.” But it can also be done directly by groups that do not directly advocate the election or defeat of a candidate, even if they make it quite clear that they support or oppose a candidate. This “issue advocacy” spending is in many cases considered to be non-electoral spending and therefore not subject to disclosure requirements, and the sources of the funds are not subject to contribution limits or source limitations. In other words, wealthy individuals, corporations, and unions can channel unlimited sums into special ad-hoc groups that would then advocate an issue while in spirit advocating a candidate. In the 2004 presidential race, for example, a number of special committees have raised and spent millions on behalf of

John Kerry including large sums donated by a few individuals and groups. Republicans formed similar committees to aid George W. Bush. BCRA limits this kind of spending on mass media during the final months of the campaign, although these groups can spend unlimited sums on direct mail, phone mobilization, and personal contact campaigns.

Disclosure is the success story of the U.S. case. Federal candidates, party committees, and PACs must file regular reports on their receipts and spending, and this information is readily available on at the FEC web site. Recently the Commission has required that major candidates and committees file electronically, and these reports are available very quickly on the Internet. Non-profit groups like the Citizens for Responsive Politics and the Campaign Finance Institute work through these reports and make the data available in even more accessible formats. It is possible for journalists or even citizens to determine to which candidates specific individuals or groups have given, or to profile the financial base of candidates and parties. Yet because issue advocacy spending is not covered by FECA, information on the receipts and spending of groups engaged in this activity have until recently been unavailable, and are still available in only limited form.

The U.S. also provides public funding for presidential nomination candidates, although accepting these funds requires the campaign to limit its spending. In 2004 the major candidates in both political parties – Bush, Kerry, and Dean – did not accept these funds. In the general election, major parties receive a flat grant from the federal government to mount their campaigns, and minor parties that receive more than 5% of the vote also receive more limited funding. These public funds are to provide the entire funding of the campaign, although the political parties and interest groups can mount parallel campaigns to assist the candidates.

Canadian law now limits both contributions and spending. There are contribution limits for individuals, corporations, and unions, and these are indexed to inflation. Spending limits are in effect for political parties, candidates, and “third parties” -- non-party organizations that seek to influence election results. These limits apply to contestants seeking the nomination of a party, but there are currently no spending limits for intra-party leadership contests. The combination of contribution and spending limits is an obvious advantage for enforcement, as is the banning of attempts to circumvent the law. The law prohibits circumventing or attempting to circumvent these spending limits.

Candidates that receive at least 10% of the vote are entitled to public reimbursement of up to 60% of all spending, as are parties that receive 2% of the national vote or 5% of the total vote in the constituencies in which they nominate candidates. Canadian law also subsidizes elections by providing an income tax credit for a portion of the contribution. Political parties (but not candidates) are entitled to free broadcast time on television and radio. Finally, Canadian law requires disclosure of receipts and spending, although this disclosure is required after the campaign and therefore is not timely. Beginning in 2005, however, parties and candidates will be required to file regular reports that will be made available in advance of elections.

The Administrative Agencies

Both the U.S. and Canada have a single agency that is primarily responsible for enforcing campaign finance law. In the U.S., the Federal Election Commission (FEC) is generally seen as an ineffective regulatory agency in marked contrast to the widespread support domestic support for Elections Canada. The FEC is generally perceived to be weak by design, although the individual commissioners are also seen as lacking the will to regulate.

There is general consensus on what a strong enforcement agency requires. As one Canadian scholar observed, "Enforcement demands a strong authority endowed with sufficient legal powers to supervise, verify, investigate, and if necessary institute legal proceedings. Anything less is a formula for failure" (Paltiel, 1976, cited in Davidson 2004). An enforcement agency must have the power and the manpower to audit reports, and to conduct investigations of irregularities in those reports. It should be independent of control of the elected officials that it investigates, and operate in a non-partisan manner.

The Federal Election Commission

The FEC was designed by legislators who were decidedly reluctant to face an independent regulatory agency that might aggressively enforce the law. The agency is structured to make rapid action difficult – and indeed to make any regulatory action that damages the fortunes of either political party impossible. It is limited by statute in its audits and investigations, and is hampered by severe budget constraints. In 2003 the leading campaign finance reform advocates in the U.S. House and Senate introduced a bill to replace the Federal Election Commission with a new agency.

The FEC is headed by six commissioners appointed by the president but in practice selected by Congress (Jackson, 1990) No more than three can be from any single political party, which in practice has meant three Democratic and three Republican commissioners. Both political parties have in recent years sought to appoint commissioners who would favor their interests, including a Republican member in 2000 who had written that almost all national campaign finance laws were unconstitutional,[i] and another in 2002 who had served as general counsel to George W. Bush's presidential campaign.

Four votes are required for action, and not surprisingly the commission is frequently deadlocked on a partisan basis. Project FEC's task force report in 2002 lists a number of such cases, including:

In 1999 the commission deadlocked 3-3 on a party line vote over whether to find probable cause to believe that the Republican National Committee and an associated policy group worked together to channel foreign contributions into federal elections
In 1999, the commission deadlocked 3-3 on a party line vote over whether to ask the U.S. Solicitor General to participate in a Supreme Court case that challenged the legality of contribution limits

In 2002, the FEC deadlocked along party lines over whether to appeal a lower court ruling that overturned the Commission's definition of "express advocacy".

In 2002, the FEC again deadlocked 3-3 over whether to investigate a group called “Republicans for Clean Air” that served as a front for two brothers who spent more than $2 million in advertising that helped George W. Bush beat John McCain in the New York primary

Even when the Commission does not vote along party lines, it often fails to act despite strong evidence. One case is particularly striking. In its investigations of a 1988 Montana Senate Race in which the GOP appeared to have violated limits on coordinated spending, all five Commissioners who voted on the case agreed that the law had been violated, but none of the specific charges had four votes. The Commission therefore dismissed the case. Two years later, the Commission was ordered by court to proceed with the case. But six years later the Commission dismissed the case as “too stale to pursue.”

Thus the FEC is an unwilling regulator, headed by commissioners with partisan interests and in some cases a philosophical aversion to regulation. During the 1980s and 1990s, the FEC allowed both political parties to channel large unregulated contributions to aid federal candidates, although such funds were in theory limited to party building and state and local campaigns. In 1996, the Commission rejected 6-0 a recommendation by counsel and auditors that the Clinton and Dole campaigns be required to repay federal funds because of illegal soft money issue ads by both political parties, thereby allowing unlimited soft money spending by parties on behalf of presidential candidates.

There are many other cases where the Commission has ignored recommendations of its legal staff. In one important case, a district judge ruled against the Commission that the Christian Coalition had not coordinated its efforts with the Bush campaign in 1992. The ruling established a very narrow definition of coordination, and the federal judge invited the Commission to appeal the case to get a more definitive ruling from the Court of Appeals and perhaps eventually the Supreme Court. But the Commission ignored the advice of council and instead codified this narrow account of coordination, thereby essentially making it impossible to prove that supporting campaigns were coordinated.

In 2003 and 2004 the Commission issued regulations to implement the new Bipartisan Campaign Reform Act, and these rulings almost all served to weaken and undermine the law. The Commission allowed for state and local parties to raise and spend soft money, and to use it to pay a portion of ads that identify federal candidates, and to pay the salaries of consultants who work on federal campaigns. It allowed the formation of “independent” committees set up by the national parties that could raise and spend soft money to attack or support federal candidates. It ruled that the law’s ban on federal officeholders soliciting soft money for non-party committees merely meant that they could not explicitly ask for the contribution – although they could organize and speak at the fundraising event. In the spring of 2004, the Commission decided not to rule on the legality of special “527” committees that were raising and spending unlimited sums to help the Kerry campaign until after the election. The authors of the House version of the BCRA, Christopher Shays (R, CT) and Martin Meehan (D, MA) went to federal court in early 2004 to challenge the FEC’s rules, while the Commission sought to dismiss the suit.

Even if the commissioners were inclined to vigorously enforce the law, however, Congress has imposed important structural impediments to action. The Commission cannot conduct random audits of campaigns. It cannot respond to anonymous complaints. These two requirements alone handicap the Commission significantly in enforcing the law. Moreover, the Commission cannot seek a court injunction to halt potentially illegal activity while it investigates.

The procedural requirements for investigations and findings are so cumbersome that it is impossible for the Commission to act in a timely manner. In any investigation, the Commissioners must approve of several key steps, including subpoenas of documents and deposition of witnesses. Individuals who are issued a subpoena can refuse to comply, and the Commission must then go to Court to get an order to comply, for these efforts can take years to resolve. Complex cases routinely take 3-4 years to resolve (Thomas and Bowman, 2000). Indeed, in one case the Commission took 2 years to proceed on a case that began with a voluntary admission of wrongdoing in the form of a letter from a foreign national contacted the Commission.

As a consequence, the Commission has developed an Enforcement Priority System to help it decide which cases to pursue. The commission focuses on cases of serious violations, where the violation had an impact on the electoral process, the topicality of the violation, and the date of the offense. This has led to the dismissal of hundreds of cases, and the development of dispute resolution procedures to deal with many other offenses (Mann, 2003). Although in many cases the cases dismissed have been minor ones, in other cases the Commission has declined to investigate cases that would prove difficult to conclude in a timely manner. In one case of a former Democratic National Committee Finance Vice Chair, a memorandum from the counsel noted that because the individual had close ties to the Vice President and is a prominent fundraiser, he would be unlikely to settle the matter short of litigation (Hendrie, 1998).

Moreover, Congress failed to give the Commission multi-year budgets (as it does to other independent agencies) and has consistently underfunded the FEC. The Commission has many hard-working, committed lawyers, accountants, and other employees, but they lack the capacity to act because of the incredible workload. In the mid 1990s, for example, half or more of FEC cases were inactive because there were not attorneys available to work on the cases. Between 1976 and 2000, spending on federal elections increased by 1000 percent, but allocations for the budget and staff of the FEC increased by less than 100%. Funds are now available for only 45 audits per election cycle, which constitutes fewer than 0.6% of all committees filing reports.

Elections Canada

Elections Canada is charged with a broader range of tasks in addition to campaign finance regulation. Enforcement of campaign finance laws falls to the Chief Electoral Officer, who is appointed by the Cabinet following a resolution of the House of Commons, and can only be removed by a joint resolution of the House of Commons and the Senate. The Chief Electoral Officer appoints the Commissioner of Canada Elections who has the responsibility of enforcing the law. The Commissioner is generally seen by all sides as non-partisan and fair.

Political parties (including local party units), candidates (including candidates for nomination), and party leadership contestants must file returns with Elections Canada. All financial returns must be audited before submitted, but the agency then examines the reports for completeness and accuracy. The Commissioners' office has some 26 investigators under contract, many of whom work part time.

In cases of violations, the Commissioner may seek a criminal prosecution through the regular court system, using attorneys who are on retainer for Elections Canada. The law makes distinctions about the degree of intent involved in a criminal act, and also prohibits attempts to circumvent the law. The Chief Electoral Officer can also issue administrative incentives and sanctions, including the forfeiting of candidate's nomination deposits, and the suspension of a political party. Finally, the Commissioner can negotiate compliance agreements that include sanctions, with considerable discretion on the type of penalties to impose. These latter two powers are relatively new, and as yet there is little data to evaluate their functioning. The Commissioner has negotiated a number of compliance agreements since gaining the new power, including one with a candidate who exceeded the spending limit. All compliance agreements are available to the public, and can be viewed at the web page: www.elections.ca/content.asp?section=loi&document=index&dir=agr&lang=e&textonly=false. Many of these compliance agreements focus on "third parties" – non-party actors such as individuals and interest groups who did not file reports.

The Commissioner can also seek injunctions during the election campaign, although this power was created in 2000 and none were issued in that election. Injunctions can only be sought during the brief campaign period, which limits the usefulness of the tool. Elections Canada also has undertaken a program of campaign finance research, both within Canada across the provinces, and cross-nationally. It has offered advice to other nations seeking to build an effective enforcement agency.

Although there have been challenges to various elements of the Canadian law at the national and provincial level, the Courts have generally been supportive of limits to both contributions and spending. This creates many fewer "grey" areas for regulation than in the U.S. case where spending is not controlled. There is a generally high level of support for the autonomy of the Commissioner, and for the highly professional staff of Elections Canada. The major political parties support the regulatory regime. For this reason, Elections Canada has been held forth as a model by U.S. reformers seeking to design an effective regulatory agency.

A Canadian Model for US Reform?

Many of those who have followed the FEC closely over the years propose scrapping the agency and replacing it with one headed by one or a few non-partisan commissioners who would have expanded enforcement powers. In his insightful book Broken Promise, for example, longtime FEC watcher Brooks Jackson recommends replacing the Commissioners with a five member panel headed by a strong chair who would have non-partisan credentials. Jackson suggests that the president be required to nominate the chair from outside his own party, forcing him to pick a judicious and non-partisan regulator. He suggests that the chair be someone who is not affiliated with either major party – a retired judge, university president, or member of the clergy.

This change at the top would be coupled with a substantially increased budget, a staff of trained investigators, and an increased audit team. It would be permitted to investigate based on the chair's decision, and could investigate anonymous complaints and conduct random audits.

A bill introduced by the four authors of BCRA would replace the FEC with a new agency with three commissioners, with a chair serving a 10 year term and two commissioners (one from each party) serving six year terms. The chair would have no connection to either political party. The new agency would have expanded powers much as Jackson had proposed.

The bipartisan task force of Project FEC recommended scrapping the FEC (though probably employing many of its able staff) and replacing it with a system that resembles the Canadian model. They suggest a single agency headed by a single administrator with responsibility for civil enforcement of the law. This new agency would be independent of the executive, and would have the authority to act quickly and to impose penalties subject to review by the courts. They recommend a system of adjudication before administrative law judges to handle appeals. The agency should be guaranteed sufficient funding in a multi-year budget. The task force also recommended a limited right to private action when the new agency ignores a case.

There are reasons to believe that the organizational structure of Elections Canada might be less effective in the US than it is in Canada. Although in Canada there seems to be general agreement by the political parties on the value of campaign finance limitations, US parties are far less supportive of campaign finance restrictions. Many Republicans oppose all restrictions on spending and contributions in principle and for political reasons, and many Democrats pay lip service to supporting these regulations while secretly working to weaken them. The current US Presidential election is a case in point, where a frenzied money chase has led to huge increases in fundraising and spending. An entire industry exists in the US of legal experts who game the loopholes in laws and advise clients on how to exceed limits without violating the law.

Moreover, the highly litigious nature of US society makes it unlikely that enforcement would be so simple in the US. As Nassmacher (2004) notes, campaign finance regulations work less well in societies where regulations are regularly challenged in courts. Finally, the distinction made by the Supreme Court between contributions (which can be limited in the interest of preventing corruption or its appearance) and spending (which cannot be limited because of free speech guarantees) opens up many potential difficulties in regulating campaign finance that any agency must face.

Still, it seems likely that a single administrator or a smaller Commission with a strong chair would be a substantial improvement over the currently constituted FEC. Even in the US political climate, other regulatory bodies (such as the California Fair Political Practices Commission and the New York City Campaign Finance Board) have earned bipartisan praise for their enforcement efforts. The FEC has many excellent attorneys, auditors, and data analysts who support disclosure and vigorous enforcement of current law, and who would be an asset to a new agency. There is general consensus that the FEC is a broken agency, and Elections Canada constitutes one promising model for its replacement.

References

AuCoin, Peter. 2003. "Comparative Analysis on Financing Political Parties and Campaigns: Canada." Report prepared for Organization of American States.

Davidson, Diane R. 2004. "Enforcing Campaign Finance Laws: What Others Can Learn from Canada." Forthcoming, Election Law Journal.

Frandsen, Jon. 2002. "Campaign Reform Focuses on Enforcement." Detroit News, March 24. http://wwww.detnews.com/2002/politics/0203/24/a13-447632.htm accessed 3/26/04

Hendrie, Paul. 1998. "No Controlling Legal Authority" FEC Drops Probe of Prominent Fundraiser." Capital Eye 5: 2. www.opensecrets.org/newsletter/ce52/52text/04fec.htm accessed 3/13/04.

Jackson, Brooks. 1990. Broken Promise: Why the Federal Election Commission Failed. New York: Twentieth Century Fund.

Koszczuk, Jackie, 1998. "Money Woes Leave FEC Watchdog with More Bark than Bite." CQ News. http://www.cnn.com/ALLPOLITICS/1998/03/02/cq/fec.html accessed 3/26/04.

Lipset, Seymour Martin. 1991. Continental Divide: The Values and Institutions of the United States and Canada. New York: Routledge. Reprint Edition.

Malbin, Michael J., and Thomas L. Gais. 1998. The Day After Reform: Sobering Campaign Finance Lessons from the American States. Albany: Rockefeller Institute Press.

Mann, Thomas E. 2003. "The FEC: Administering and Enforcing Campaign Finance Law." Chapter 9 of The New Campaign Finance Sourcebook. http://www.brookings.edu/gs/cf/sourcebk01/InternetChap9.pdf accessed 5/13/04.

Nassmacher, Karl-Heinz. 2004. "Monitoring, Control, and Enforcement of Political Finance." Chapter 9 of IDEA Handbook on Funding of Political Parties and Election Campaigns http://www.idea.int/publications/funding_parties/index.cfm accessed 5/13/04.

Paltiel, Khayyam Zev. 1976. Party, Candidate and Election Finance: A Background Report. Ottawa: Royal Commission on Corporate Concntration.

Paltiel, Khayyam Zev. 1989. "Canadian Election Expense Legislation, 1963-85: A Critical Appraisal or Was the Effort Worth It?" in Herbert E. Alexander (ed.) Comparative Political Finance in the 1980s. New York: Cambridge University Press.

Project FEC, 2002. No Bark, No Bite, No Point. Task Force Report http://www.democracy21.org/vertical/Sites/{3D66FAFE-2697-446F-BB39-85FBBBA57812}/uploads/{B4BE5C24-65EA-4910-974C-759644EC0901}.pdf Accessed 5/13/04.

Public Citizen, 2002. "Public Citizen's Analysis of How the FEC is Undermining the Bipartisan Campaign Reform Act (BCRA) of 2002. http://www.citizen.org/documents/BCRATables.pdf accessed 5/21/04.

Thomas, Scott E., and Jeffrey H. Bowman. 2000. "Obstacles to Effective Enforcement of the Federal Election Campaign Act." Administrative Law Review 52: 578-608.

CHAPTER IV

Campaign Finance and Women's Representation in Canada and the United States[34]

Lisa Young

Women remain substantially under-represented in the politics of both the United States and Canada. Even after decades of feminist organizing around this issue, less than one-quarter of national legislators are women in either country. An extensive body of research in both countries has identified a number of factors that explain women's continued under-representation: the single-member electoral system, women's apparent unwillingness to run for office, and in the American case, the very low rate of turnover in Congress.

Another factor that might be added to this list is access to campaign funds. In the United States, and to a lesser extent Canada, electoral competition has become a very expensive undertaking. Contemporary voters are reached not by knocking on doors but by buying television advertising. Campaigns are staffed by high-priced professionals. Media buys, polling, direct dial and a presence on the Internet are the hallmarks of modern campaigns, and all of them are expensive. If we want to understand barriers to the election of women in this era of capital-intensive politics, then it is necessary to examine the issue of whether access to money belongs on the list of impediments to women's election.

This chapter asks whether the systems of campaign finance employed in Canada and the United States contribute in any way to women's persistent under-representation in their national legislatures. Are women able to raise the same campaign funds as male candidates? Have measures designed to channel campaign funds to female candidates made a difference? Are there sets of rules governing campaign finance that have a demonstrable effect on the representation of women in legislatures? By examining the experience in Canada and the United States, primarily at the national level but to a lesser extent at the sub-national level, this chapter provides a comprehensive overview of the interaction of money in politics and women's representation.

The conventional wisdom holds that money is, in fact, a substantial barrier to the election of women in Canada and the United States. Two arguments underlie this assumption. First, despite significant legal gains and widespread participation of women in the workforce, women in both the United States and Canada continue to earn less, on average, than do men. In Canada, women employed full-time year-round earn $35,258, while similarly employed men earn $49,250. In the United States, these same figures are $30,203 and 39,429, respectively.35 Overall, women earn approximately 75% of similarly employed men in Canada and the United States. One might extrapolate from

34 The author wishes to acknowledge expert research assistance from David de Groot, and to thank Munroe Eagles and Linda Erickson for providing information from datasets they have assembled. All errors in interpretation are my own.
35 Canadian figures supplied by Statistics Canada, drawn from the Survey of Labour and Income Dynamics, 2001. American figures provided by the US Census Bureau, Income in the United States: 2002 (Washington D.C.: U.S. Government Printing Office, 2003) 10.

this that women are less able to finance their own candidacies. Alternatively, if one assumes that women are more likely to turn to other women to finance their campaigns, they will be disadvantaged because female donors will have less disposable income than will male donors. Moreover, studies in the United States have found that women are far less likely than men to make campaign contributions. A survey of contributors to Congressional candidates found that three-quarters of habitual contributors were male, that women were more likely to be occasional donors, and that women were more inclined to give smaller amounts to fewer candidates than male voters.36

The second underpinning of the conventional wisdom is a perception that women are in some way less able or less suited to the task of asking potential donors for campaign contributions.37 Although women have traditionally acted as fundraisers for a variety of causes, the prospect of raising money for themselves clashes with societal expectations about women's appropriate behaviour, according to this argument.

In fact, most of the available research on the subject throws into question the validity of these assumptions. In both Canada and the United States, there is no evidence that women are consistently less able than men to raise funds to contest general elections. To the extent that campaign financing affects the electoral representation of women, the difference lies in (a) women's perceptions about the difficulty of raising funds, and (b) their ability to raise funds at the candidate selection level (US Primaries and Canadian nominations). Accordingly, the chapter will break down the electoral process into three components: the decision to run, candidate selection, and the general election. For each stage of the process, the potential and actual implications of campaign finance regulation for women will be discussed.

The Decision to Run

Much of the research examining the persistent under-representation of women identifies women's unwillingness to run for office as a factor that contributes significantly to the low numbers of women holding office.38 The source of this unwillingness is not well understood. A number of factors may be in play, including perceptions that politics is a male preserve, a relative lack of interest in politics, and an incompatibility between a political career and family life. But it is certainly possible that one barrier affecting women's willingness to run may be a perception that the task of raising money to mount a competitive candidacy is insurmountable.

In both countries, research has uncovered some evidence suggesting that the prospective of raising money discourages female candidacies. Janine Brodie's research for the Canadian Royal Commission on Electoral Reform and Party Financing found that female candidates in the 1988 federal election reported that funding outweighed all the other factors that female candidates considered to be major barriers to nomination and candidacy.39 It should be noted, however, that Brodie's research only surveyed

36 Peter L. Francia, John C. Green, Paul S. Herrnson, Lynda W. Powell, and Clyde Wilcox, The Financiers of Congressional Elections: Investors, Ideologues and Intimates (New York: Columbia University Press, 2003), 29.
37 For a discussion of the pervasiveness of this assumption in much of the US Women in Politics literature, see Barbara Burrell, A Woman's Place is in the House (Ann Arbour: University of Michigan Press, 1994), 102.
38 See, for example, Lynda Erickson, "Women and Candidacies for the House of Commons" in Women in Canadian Politics: Toward Equity in Representation. Ed. Kathy Megyery, (Toronto: Dundurn).
39 Janine Brodie with Celia Chandler, "Women and the Electoral Process in Canada" in Women in Canadian Politics: Toward Equity in Representation. Ed. Kathy Megyery, (Toronto: Dundurn).

female candidates, so it is possible that male candidates might have been just as likely to report similar concerns. That said, Erickson's survey of candidates in the 1993 Federal Election found that 85 percent of female candidates, as compared with 77 percent of male candidates, favoured spending limits governing nomination contests.40 Although this is not a direct measure of perceptions of the difficulty of raising money, it may lend some support to the idea that women are somewhat more concerned about their ability to raise sufficient funds than are men.

There is somewhat more compelling evidence that the high cost of running for office discourages women in the United States. Sandy Maisel, Walter Stone and Cherie Maestas have identified potential candidates in a number of congressional districts and studied their decision to run or not to run. They find that the high cost of campaigns appear to deter some potential candidates from running for Congress, and that this effect is greater among women.41

Perceptions do not always reflect reality, however. These differential perceptions reflect the conventional wisdom identified above, but as we will see bear very little relation to women's actual ability to raise funds at either the nomination/primary stage or in the general election.

Winning the Nomination or Primary

In order to run for office in either Canada or the United States, a candidate must first secure their party's nomination. Both countries have single member plurality electoral systems, so the selection of a candidate is a winner-takes-all situation. This can be contrasted to the construction of a list of candidates in a Proportional Representation system, in which it is possible to balance considerations of gender, ethnicity and other characteristics on a list.

While the two countries share a common electoral system, they have very different practices for selecting candidates. In Canada, the selection of candidates is highly decentralized, with the electoral district associations of political parties exercising considerable autonomy in candidate selection. In all of the major parties, the selection of candidates takes place through a vote of those individuals who hold a party membership in that electoral district at the time of the contest. Generally, parties require that members have held a party membership for a number of weeks prior to the vote in order to be eligible to vote in the nomination contest. For the most part, the selectorates for Canadian political party nominations are relatively small. In his study of nomination contests in the 1993 federal election, Cross (2004) found that the average attendance at a nomination meeting was just over 400 party members, and that the average attendance at a contested nomination was 574. There are, however, always a number of hotly contested nomination battles in which candidates recruit thousands, or even tens of thousands, of new party members. These high profile nominations have been a source of considerable controversy, as they often involve candidates signing up hundreds, if not thousands, of new party members to vote for them. In many instances, these new party members are recruited from specific ethnic or religious groups and often include many new immigrants and possibly even non-citizens (which is not prevented by the rules of some of the parties). Until 2004, nomination contests were

40 1993 Candidate Survey, Lynda Erickson Principal Investigator.
41 See Clyde Wilcox chapter in this series, note 9.

governed only by the rules set out by each party. Some parties enforced spending limits for nomination contests, while others did not. As of January 2004, the Canada Elections Act set out limits for nomination spending which are enforced by Elections Canada.

In the United States, the selectorate for party nominations is much wider. Candidate selection takes place through a process of primary elections run by state election officials. While the rules vary from state to state, primary elections mean that the selectorate for choosing candidates is either all voters registered as supporters of the party in question (closed primaries), or all registered voters, regardless of party affiliation, who have opted to vote in that party's primary (open primaries). Although voter turnout in these primary elections tends to be very low – around 15 percent42 -- the selectorate is nonetheless much larger than for a Canadian nomination contest.

Because of these differences in magnitude, the financial requirements for mounting a competitive nomination campaign vary greatly between the two countries. In the 1993 Canadian Federal Election, Erickson found that candidates reported spending just over C$1000 in pursuit of uncontested nominations, and just over C$3000 when the nomination was contested. In contrast to this, one study estimates that between 1992 and 1998, candidates in open seats (with no incumbent) spent an average of just over US$160,000.43 While spending in Canadian nomination contests is regulated as of 2004, there are no limits on spending in US primary elections. As of 2004, Canada joined the United States in imposing limits on the size and source of contributions to nomination campaigns.

If there are consistent gender differences in the ability to raise campaign funds, we would expect to find these differences at the nomination/primary election stage rather than in the general election. In nomination contests and primary elections, individuals are generally running without the endorsement of their political party. This forces them to rely more heavily on personal networks for soliciting campaign support, rather than drawing on their party's financial backers. If, in fact, women are disadvantaged in some way in their ability to raise funds, it would consequently be more likely to be evident at this stage than in the general election.

In Canada, discussions of the role of money in limiting the ability of women to run for office have tended to focus on the nomination contest as the stage at which ability to raise money acts as an impediment to women's candidacies. In its 1991 Report, the Royal Commission on Electoral Reform and Party Financing suggested that "the financial obstacles to candidacy prevent many from seeking nomination. As a result, the principle of fairness is compromised."44Following from this, the RCERPF recommended that federal elections legislation impose spending limits on nomination contests and make the Political Contribution Tax Credit available to candidates for party nominations in order to increase their ability to raise funds. These recommendations were championed by a number of female MPs, and resulted in legislation in 2003 that imposes limits on spending in nomination contests.

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42 Thomas Patterson reports that "turnout in congressional primaries has also been on a downward trajectory. It fell from 30% in 1970 to 20% in 1986. Since then the average has been closer to 15%." In Thomas E. Patterson, The Vanishing Voter: Public Involvement in an Age of Uncertainty (New York: Alfred A. Knopf, 2002) 10.

43 Calculated from Jay Goodliffe and David B. Magleby, "Campaign Spending in Primary Elections in the US House" (Paper presented to the Midwest Political Science Association Annual Meeting) April 27-30, 2000, Chicago, IL), Table 8.

44 Royal Commission on Electoral Reform and Party Financing, Report (Ottawa: Minister of Supply and Services, 1991), 117.

In addition to this, one political party – the left-of-center New Democratic Party – has implemented a program of financial assistance in which women and minority candidates are eligible for reimbursement of up to C$500 for child care expenses incurred in seeking a nomination, C$500 for travel costs in geographically large ridings, and an additional C$500 for costs incurred in seeking nomination in ridings where the NDP incumbent is retiring. The party also allows female and minority candidates to receipt three times as many funds as other candidates through the party for the purposes of allowing their contributors to take advantage of the generous tax credit afforded to parties.45

While inconclusive, the limited Canadian evidence suggests that women do not experience substantial difficulties in fundraising for nomination bids. In her 1993 survey of candidates, Erickson found that female candidates reported outspending their male counterparts. On average, a female candidate reported spending C$2425 to secure her nomination, while an average male candidate reported spending $2210. Of these candidates, 55 percent of women and 55 percent of men reported that their nomination contest was contested. On average, a female candidate whose nomination was contested spent C$3494 and a male candidate spent C$3117. While this demonstrates that successful female candidates equal or surpass their male counterparts in ability to raise funds for nomination contests, it does not tell us whether unsuccessful female candidates were outspent by their male rivals.46

Barbara Burrell reports similar findings in the United States. Examining primaries in which there was no incumbent running (known as "open seat" primaries) in 1988 and 1990, she found that female contenders on average surpassed male candidates in fundraising. More specifically, she found that in both years female candidates were slightly more likely than male candidates to report having raised funds in the first reporting period. This is a crucial period, because ability to raise early money affects the candidate's ability to raise more significant sums later in the campaign. In addition to this, female candidates had, on average, raised larger campaign treasuries in these early stages. Burrell concludes that "for the most part women began the elections in a stronger position than their male counterparts."47 According to Burrell's research, these gender differences persisted through the primary election. In the second reporting period, female candidates in open seat primaries raised 7 percent more than their male counterparts in 1988, 68 percent more in 1990, and 33 percent more in 1992.48

One of the factors that has helped female candidates, particularly in the Democratic Party, raise money is the emergence of a network of women's Political Action Committees, most notably an organization named EMILY's List. Political Action Committees are organizations that solicit contributions from individuals and make contributions to candidates. Many PACs are affiliated with businesses, unions or other organizations, but some – known as non-affiliated PACs – have been formed independent of any association with another organization. One distinct sub-category of political action committees are women's PACs, which contribute money only to female candidates.49 There are several women's PACs currently active, including the National

45 William Cross, Political Parties: A Democratic Audit (Vancouver: UBC Press, 2004).
46 It should also be noted that these figures do not represent audited or otherwise verified spending reports. They are merely reports of what candidates indicated on an academic survey that they spent.
47 Burrell, 121.
48 Calculated from Burrell, 121, table 6.8.
49 See Lisa Young, Feminists and Party Politics. Vancouver: UBC Press, 2000, 41.

Women's Political Caucus's PAC, the Women's Campaign Fund, WISH List and EMILY's List. Of these, by far the most significant is EMILY's List.

Formed in 1985 by an independently wealthy feminist, EMILY's List solicits contributions for female Democrats who take a pro-choice stance on the abortion issue. The organization specializes in giving early money to competitive female candidates well in advance of the primary election, thereby making the candidate appear more viable in the eyes of other potential contributors. This practice is reflected in the organization's full name – Early Money is Like Yeast (it makes the bread rise). While many other PACs will endorse or give token contributions to female candidates who have little chance of winning, EMILY's List screens candidates carefully to determine the viability of their candidacies. Once a candidate has received the organization's endorsement, she is assured of early money to start her campaign and a continuous flow of contributions.

EMILY's List's effectiveness has been enhanced by its use of a practice known as "bundling." Its members write cheques not to the PAC, but rather to one of the candidates endorsed by the organization. The cheque is mailed to EMILY's List, which bundles it together with other cheques, and then passes it on to the candidate. This allows EMILY's List to circumvent rules limiting the amount that a PAC can contribute to a candidate. The organization claims to have raised $9.3 million dollars for pro-choice Democratic women candidates in the 1999-2000 election cycle. This makes it one of the largest PACs operating in the United States and a very influential player in Democratic party politics. The organization is also active in seeking out potential female candidates and mentoring them on their path to national-level office.

Although there is an expectation that women will face difficulties raising funds in order to secure their party's nomination, the evidence reviewed here suggests that there is no such systematic pattern. In part, efforts such as the development of women's PACs in the US or the assistance provided by the New Democratic Party in Canada may be addressing difficulties women have historically experienced in this regard. Insofar as we are able to measure candidate spending in nomination contests and primary elections, however, there appears to be no reason to believe that women have difficulty raising the necessary funds.

Winning the Election

Just as the contest to win a party's nomination varies tremendously between the United States and Canada, the fight to win an election is also very different in the two countries. In the United States, elections are contests built on the "ascendant importance of individual candidates and campaigns".50 In Canada, in contrast, the academic literature suggests that elections are fought between competing political parties, with individual candidates acting as standard-bearers for their party.51 Reflecting this, candidates for Congress and the Senate in the United States effectively run their own campaigns, including purchasing television and radio advertising,52 while

50 Gary C. Jacobsen, The Politics of Congressional Elections 3rd ed. (New York: HarperCollins Publishers, 1992) 7.
51 Throughout the academic literature the failure to examine the effect of local constituency on national elections suggests a lack of candidate influence. This phenomenon is particularly prevalent in the last two major books on Canadian elections: Neil Nevitte et al., Unsteady State: the 1997 Canadian Federal Election (Toronto: Oxford University Press, 2000) and Andre Blais et al., Anatomy of a Liberal Victory
52 Gary C. Jacobsen, The Politics of Congressional Elections 7.

candidates in Canadian elections tend to run much more modest campaigns, relying on their national party's advertising campaign.

The regulation of campaign finance in the two countries is also substantially different. Until 2004, regulation of election campaign in Canada relied on disclosure of the size and source of contributions, but placed no restrictions on the size or source of contributions beyond banning contributions from foreign sources. The regulatory emphasis in Canada was on limiting spending by both candidates and political parties. As of 2004, the Canadian spending limits is coupled with limits on both the size and source of contributions. Only individuals will be permitted to make contributions to political parties, and the global maximum for any individual in any one year will be C$5000. Corporations, unions and other entities will be limited to a global maximum of C$1000 in any one year, and will only be permitted to contribute to candidates, not to political parties. Considerable public funds are available to candidates in Canadian elections. Candidates for a registered political party are able to issue tax receipts to their contributors. For small contributions (previously C$200 and less, now C$400 and less), a 75 percent tax credit is available for contributions to political parties and candidates. This is, in effect, a 75 percent state subsidy for small campaign contributions. In addition, all candidates who won 15 percent of the vote in their electoral district, and as of 2004 only 10 percent of the vote, are eligible for a reimbursement of 50 percent (now 60 percent) of their total campaign expenditures. Arguably, the use of spending limits for candidates in Canadian campaigns, when coupled with public funds available for candidates, has had the effect of limiting candidates' demand for money and leveling the playing field for candidates with less ability to access wealthy sources.53 The new restrictions on the size and source of contributions should further level this playing field to a perfect plane.

In the United States, the regulatory emphasis is on restricting the size and source of contributions. In the absence of public funding (except for presidential campaigns) and restrictions on spending, American candidates' demand for campaign funds is voracious. In the 1999/2000 election cycle, candidates for the House of Representatives spent on average about $275,000 in their campaigns, and candidates for the Senate approximately $1.3 million. These figures are dwarfed by the amounts spent in the most expensive races: in a tightly fought contest for a North Carolina Senate seat in 2002, for instance, Elizabeth Dole spent $13.7 million, which was almost matched by her opponent, Erskine Bowles, who spent $13.2 million.54

If we do not find persistent evidence of gender differences in ability to raise funds at the nomination/primary stage, then it is even less likely that we would find evidence of gender differences in raising funds for general elections. In the general election campaign, the candidate is the standard bearer for their political party. To the extent that support for a political party motivates the decision to make a contribution, women would only be disadvantaged if donors overtly discriminated against them. Moreover, to the extent that political contributions are motivated by a desire to influence or have access to an elected official, we would expect that the candidate's gender would affect contributions only if it affected potential donor's assessment of the candidate's ability to win the election.

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53 Lisa Young, "Strengths and Weaknesses in the Regulation of Campaign Finance in Canada" Election Law Journal July 2004 (forthcoming).

54 http://www.opensecrets.com

It is not surprising, then, to find that there are no consistent gender differences in campaign spending or fundraising in either country. Analysis of candidates' receipts in the 2000 Canadian General Election shows that in every party except the governing Liberals, total contributions to female candidates were lower than total contributions to male candidates (see Table 1). These differences were, however, fairly modest in scope. They were largest in the right of center Progressive Conservative party, with a gender difference of some C$3400. Similarly, in all the parties except the Liberals and the left of center NDP, female candidates spent less, as a percentage of the spending limit in their electoral district, than did their male counterparts. The magnitude of these gender gaps was five to six percentage points.

Table 1: Contributions received and funds spent by candidates in the 2000 Canadian General Election55

Party	Total Contributions to Candidate (Means in Cdn$)		Percent of Limit Spent (Mean Percentages)	
	Men	Women	Men	Women
Liberal	$58,085	$58,606	72%	74%
Cdn Alliance	$36,767	$32,465	48%	42%
BQ	$61,198	$57,775	83%	78%
PC	$17,833	$13,471	27%	22%
NDP	$17,827	$15,927	24%	24%

While these findings suggest the existence of some modest gender-based differences in the ability to raise funds, these differences may well be a product of women being disproportionately represented among "sacrificial lamb" candidates in electoral districts their party is unlikely to win. To account for this, a regression analysis of the same data was conducted, employing the following independent variables: the candidate's gender, incumbency, the candidate's party's percentage of valid votes in that electoral district in the 1997 general election, and the average employment income in the electoral district.

Based on this analysis, Table 2 reports the effect that running a female candidate had on both campaign contributions and spending as a percent of the limit, holding these other factors constant. The findings are broken down by party. The analysis suggests that candidate gender has only a minimal effect on ability to raise funds and rates of campaign spending. The only exception to this is in the PC party, which has subsequently merged with the Canadian Alliance to form a new political party. In the PC party in 2000, the effect of a female candidate on total funds contributed was a reduction of some $5500, and spending was seven percentage points lower. In the other parties, however, the effect of the candidate's gender was minimal, once the competitiveness of the riding was taken into account.

55 Calculated from 2000 General Election Candidate Dataset, Principal Investigator, Munroe Eagles.

Table 2: Effect of Female Candidate (Regression)56

Party	Total Contributions to Candidate	Percent of Limit Spent
Liberal	-$806	2%
Cdn Alliance	$199	-1%
BQ	$1132	1%
PC	-$5546*	-7%
NDP	-$1831	-1%

*Statistically significant at p=0.05

In her analysis of US Congressional candidates' fundraising and expenditures between 1972 and 1992, Barbara Burrell finds that through the 1970s, women were less able than men to raise campaign funds. By the 1980s, however, this pattern had reversed "hitting a peak in 1988 when women raised on average nearly $100,000 more than male candidates, controlling for party and candidate status."57 Burrell concludes that her "analysis of the size, structure and source of money has shown that the idea that female congressional nominees have been disadvantaged in the financing of their campaigns has been a myth, unsupported by empirical evidence."58 This finding echoes that of an earlier study which concluded that "although a candidate's gender affects the likelihood that he or she will have the attributes that contributors reward, it does not have an independent effect on a candidate's ability to raise money. … Our results show that neither voters nor contributors discriminate on the basis of gender once other politically relevant factors have been taken into account."59

In short, we have not found evidence of persistent differences in the ability of men and women to raise campaign funds once they have secured their party's nomination. Perceptions that women are not able to solicit the same magnitude of contributions as their male counterparts are simply unfounded, according to the research results presented here. While there remain barriers to the election of women embedded in both the Canadian and American political systems, the ability of women to raise campaign funds is not one of them.

The Impact of Regulatory Instruments on the Election of Women

The focus of this chapter has been predominantly on the election of women to the national legislatures of Canada and the United States. Because both countries are federal in structure, their sub-national units set the rules governing campaign finance for elections to provincial (Canada) and state (US) legislatures. Provinces and states are free to take any approach they see fit to the regulation of campaign finance, as long as it remains within the boundaries established by relevant judicial decisions. As a consequence, we find considerable variation in the approaches to the regulation of campaign finance in the Canadian provinces and US states. This allows us to draw some very tentative conclusions regarding the effect of different regulatory practices on women's access to elected office.

56 Calculated from 2000 General Election Candidate Dataset, Principal Investigator, Munroe Eagles.
57 Burrell, 107.
58 Burrell, 116-7.
59 Carole Jean Uhlaner, Kay Lehman Scholzman, The Journal of Politics 48:1 (Feb 1986), 30-50: 46.

Because information regarding regulatory practices in the Canadian provinces is centrally available,[60] and there is some substantial variation in the regulatory approach taken by the ten provinces, the Canadian case lends itself to analysis. For this analysis, the ten Canadian provinces, the three northern territories and the federal government were included, yielding a total of fourteen cases.

Table 3 below breaks down the mean proportion of women in legislatures according to three regulatory instruments. It would be reasonable to expect that public funding for candidates would have a positive effect on the proportion of women elected, assuming that fundraising posed a barrier of some sort to women. As Table 3 shows, the average proportion of women in legislatures where candidates' expenses are partially reimbursed is in fact higher than those where there is no direct public funding for candidates. It should, however, be noted that three of the five jurisdictions that do not offer public funding are the northern territories, where social and cultural factors may independently depress the rate of women's election. In the two provinces that do not offer reimbursements to candidates (Alberta and BC), the average proportion of women is almost 22 percent.

Neither limiting the size of contributions nor limiting the amounts candidates can spend appears to have any positive impact on the proportion of women elected. In fact, in both instances the proportion of women is slightly higher in jurisdictions that do not employ these regulatory instruments.

Where we find an apparently substantial impact on the proportion of women elected, however, is in jurisdictions that permit only eligible electors to make contributions to parties or candidates. In the two Canadian provinces that have adopted such legislation – Quebec and Manitoba – the mean proportion of women in the legislature is just under 26 percent, while the mean proportion for the remaining jurisdictions is only 17 percent. Although this suggests that such a measure somehow encourages the representation of women, the finding must be interpreted with some caution. This difference is driven in large part by the substantial number of women in Quebec politics: after the 2003 provincial election, women comprised just over 30 percent of the members of the Quebec legislature. This may well be a partial product of the regulatory regime governing political finance in Quebec for over twenty-five years, but it may also reflect social and cultural differences. Moreover, it must be noted that Manitoba adopted the practice of restricting contributions to eligible electors in 2001. In the one election fought since the rule was brought in, the proportion of women in the legislature dropped by 3.5 percentage points. In short, these findings are suggestive, but not conclusive.

Table 3: Women as Proportion of Legislators, by Regulatory Instrument[61]

Regulatory Instrument (number of cases)	Proportion of women in legislature: means
Reimbursement of Candidate Expenses	
Yes (n=9)	19.6%
No (n=5)	15.2%

60 Elections Canada. "Compendium of Election Administration in Canada" 2003. Available at http://www.elections.ca.
61 Calculated from Elections Canada, Compendium and http://www.stillcounting.athabascau.ca.

Limits on Size of Contributions	
Yes (n=6)	16.6%
No (n=8)	19.1%
Spending Limits for Candidates	
Yes (n=2)	17.9%
No (n=12)	18.6%
Limits on Source of Contributions	
Yes (n=2)	25.8%
No (n=12)	16.7%

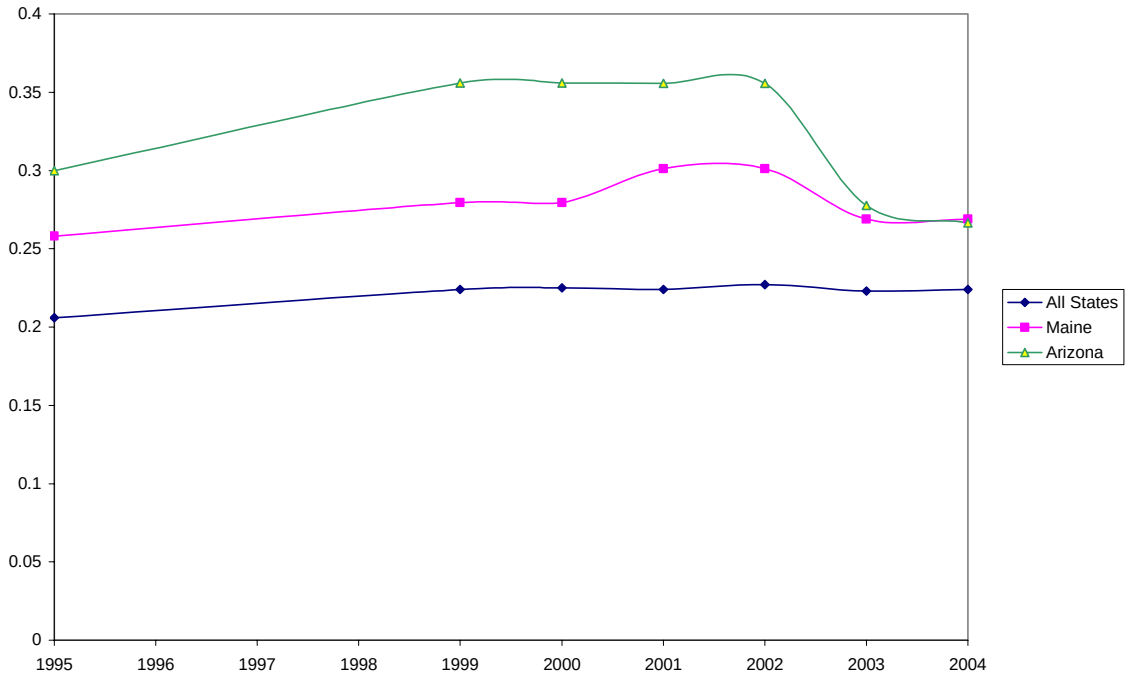
Source: Calculated from data from compendium, and still counting website. http://stillcounting.athabascau.ca/

At the state level in the United States, one innovation in electoral finance that has been touted as having the potential to increase the number of female candidates and women elected has been the innovation of providing total public funding for candidates that opt into a program of public funding. The states of Maine and Arizona adopted legislation providing this public funding. In both cases, it first came into effect for elections in 2000. Eligible candidates who opt into this public funding do not need to raise funds on their own, as they are restricted in their spending to the amount given to them through the public funding program. If one assumes that women have more difficulty raising funds than men, then the availability of public funding programs should increase the number of women candidates. Although the US General Accounting Office has undertaken an extensive analysis of the impact of these programs in Maine and Arizona, it did not study the effect on the numbers of female candidates or women elected.62

A cursory examination of the proportion of women in the Maine and Arizona legislatures over the past decade suggests that the impact of such a program on women's representation is not immediately evident. As Figure 1 below shows, both Maine and Arizona were well above the national average in terms of the representation of women in their state legislatures prior to adopting this legislation. In the first election in which public funds were available, the proportion of women in the Maine legislature increased somewhat, while the proportion of women in the Arizona legislature did not change. In the 2002 elections, the number of women elected in Maine dropped back to prior levels, while the proportion of women in the Arizona legislature plummeted to pre-1995 levels. Although not conclusive, this suggests that public funding does not directly encourage the candidacies or election of women in the US context.

62 Ref of GAO study.

Figure 1: Women in State Legislatures, 1995-2004



Source: Calculated from Center for American Women in Politics, Fact Sheets on State Legislatures.

This examination of innovations at the provincial and state level suggests that the regulatory regimes governing political finance have a minimal impact on women's representation. Given our earlier findings that demonstrate that access to money does not pose a substantial barrier to women's candidacies, this is not terribly surprising. Nonetheless, innovations such as the public funding initiative in Maine and Arizona should be monitored, as they may have the potential for encouraging female candidates concerned about their ability to raise campaign funds to come forward.

Conclusion

This review of women's ability to raise funds to secure their party's nomination and to contest general elections suggests that, all other things being equal, women are just as able to raise political funds as are men. These findings should put to rest any notion that women are not predisposed toward this sort of activity. It should also serve to bolster the confidence of potential female candidates who are concerned about their capacity for fundraising.

A second lesson that can be drawn from this account is the tremendous potential for women's collective action. The experience of women's political action committees in the United States – and particularly the experience of EMILY's List – shows that women can use campaign finance as a tool to further the project of electing more women. The tremendous success of EMILY's List is a model for other jurisdictions insofar as it demonstrates the potential clout of female donors who band together, plot their strategy wisely and exploit the rules governing money in politics to their advantage.

CONCLUSIONS

The delicate balance between political equity and freedom of expression

Steven Griner

Americans should never underestimate the constant pressure on Canada which the mere presence of the United States has produced. We're different people from you and we're different people because of you. Living next to you is in some ways like sleeping with an elephant. No matter how friendly and even-tempered is the beast, if I can call it that, one is affected by every twitch and grunt. It should not therefore be expected that this kind of nation, this Canada, should project itself as a mirror image of the United States.
- (Prime Minister) Pierre Elliot Trudeau

We'll explain the appeal of curling to you if you explain the appeal of the National Rifle Association to us.
-Andy Barrie

Introduction

Despite many commonalities -- including a 3,000-mile border, at least one language and a crossover popular culture -- political parties in the United States and Canada differ markedly. In the Canadian parliamentary system, parties nominate and mobilize support for candidates to the House of Commons and they are responsible for forming the governments after the elections. Party identification, party leaders and party positions drive elections in Canada. In the United States, with its presidential system, the candidate predominates. Few voters know or even care about party platforms or the party activists who draft them. Candidates run on individual qualities and values, which are sometimes at odds with the parties they represent. The different roles parties play in these two countries is manifested in the manner in which they are financed. The Canadian political party is a largely public-financed institution to ensure political equity and affordability. In the United States, the political party is privately funded—excepting for the national nominating conventions every four years—and exists as a platform for the candidate and one point of reference for the voter.

The focus of this study includes only federal financing regulation. It is important to note, though, that the United States has fifty-six different systems of regulation, counting the federal along with fifty state laws and those of four territories and the District of Colombia. Regulations vary from the laissez-faire, free-market approach in the State of Virginia to generous public financing in Maine that resembles the Canadian federal system. Likewise, Canada has a total of fourteen jurisdictions, including the federal, ten provinces and three territories. The provinces pass, interpret and enforce legislation with complete autonomy and often serve as an important laboratory for regulatory innovations. As Gene Ward notes in his chapter on disclosure, for instance, legislation passed in Quebec in 1963 and later in New South Wales in 1981 laid the

groundwork for more stringent disclosure requirements and public financing on the federal level.

Public Financing: A Matter of Degree

During the preparation of this study, Ed Broadbent, the former leader of the New Democratic Party, characterized the Canadian financing regime as one that seeks to promote equality and justice. Limits on contributions and expenses allow newcomers to enter political life without spending millions of dollars. Public funding is provided to Canadian parties and candidates and this public financing was increased under Bill C-24. Indeed, according to Lisa Young of the University of Calgary and an author of this study, an estimated 86 percent of party expenditures in election year 2004 was financed publicly.63 The generous public support is not without its critics, however. Some argue that public financing discriminates against smaller parties as it is distributed according to a formula based on past electoral performance and they worry that the high percentage of public funding will discourage small contributors to give and make the parties too dependent on the public purse.

In the United States, in contrast, federal funding of campaigns is available only for the presidential primary and general elections, and the amounts provided represent a small percentage of total spending. (In 2004, the major candidates of both parties -- Howard Dean and John Kerry for the Democrats and George W. Bush for the Republicans -- opted out of public financing for the primaries so as not to be restricted to the allotted amount provided. Bush and Kerry accepted public funds for the general elections, which amounted to about ten percent of the total amount raised and spent by the campaigns.) No public financing is available for elections in the House of Representatives or the Senate. Members of these bodies begin fundraising practically the first day they take office and spend much of their time raising funds until the next election.

How Much Do Elections Cost?

The magnitudes of spending between the two countries are telling. As depicted by the chart below, the U.S. spent about 72 times that of Canada in the most recent elections. In the 2004, elections for the U.S. president and congress cost a record $4.1 billion compared a total of US $ 56.57 million in Canada. These figures include expenditures by political parties, candidates for congress and the parliament, unaffiliated third parties and, in the case of the United States, the presidential campaigns.

[63] Anthony M. Sayers and Lisa Young, "Election Campaign and Party Financing in Canada," in *Democratic Audit of Australia*, September 2004, page 4.

Campaign Spending

Federal Elections of November 2, 2004 in the United States
and
The 38th General Election for the House of Commons on June 28, 2004 in Canada

(US $ millions)

	United States	Canada
Presidential campaigns (including primaries)	811	N/A
Congressional/ House of Commons candidates	1,105	15.6 (C $19.5)**
Political Parties	1,616	40.4 (C $50.5)
Advocacy Groups/Third Parties	586	.57 (C $717,000)
TOTALS	**4,118**	**56.57 (C $70.7)**

* Figures for the United States obtained from the Center for Responsive Politics as of January 14, 2005. For political parties and third parties in Canada, figures taken from Elections Canada. While Canada does not have presidential elections like those of the United States, party leadership elections ("nomination contests") are held in each political party. Expenses related to nomination contests were not disclosed and thus unavailable.
** Candidate expenditure for Canadian House of Commons based on estimates cited by Lisa Young in Democratic Audit of Australia, September 2004, page 4.

These comparisons require important qualifications. Canada is a country of approximately 32 million inhabitants, compared with around 290 million in the United States. The Canadian parliamentary system negates the need for a high-stakes, expensive election of the chief executive. Lastly, spending and campaign limits are the cornerstone of the Canadian system, while in the United States such limits are applied mainly to contributions, and only in certain instances.

The manner in which money is spent also differs. Television is by far the largest expense of the presidential campaigns in the United States. Free media in Canada, makes this proportionately less significant expense. According to Herb Alexander, in the 2000 election as much as US $ 1 billion was spent on political advertising in the United States while Canada spent approximately C$30.2 million (US $24.16 million); political advertising in the United States was a full 42 times greater than in Canada.

Equity and Freedom of Expression

The guiding principal of the Canadian political financing regime is equity. For more than three decades, legislation has focused on keeping politics affordable and

relatively accessible. As Peter AuCoin notes in his analysis on the Canadian System, this has been achieved by limits on campaign contributions and expenditures ("ceilings") as well as generous public financing for political parties and their candidates ("floors").64 Public funding includes partial reimbursement of election expenses, annual grants for political parties and tax credits for political contributions. While modified in 2003, the political financing regime put in place in the 1970s has maintained its overall relevance and effectiveness due to a public commitment to its objectives and an effective enforcement of its laws.

Freedom of expression, enshrined in the First Amendment of the Constitution, defines the political financing system of the United States. In 1976, the U.S. Supreme Court ruled that limits on campaign expenditures were unconstitutional since they limited speech; they are possible only when imposed as a condition of the acceptance of public financing. The concern in the United States has less to do with cost or accessibility and more with the relationship between contributors and candidates. Recent legislation, for example, has attempted to regulate the amount of money flowing from large contributors, especially corporations and trade unions to political parties. The objective of this reform was not necessarily to make politics less expensive, a probably unattainable goal anyway, but to avoid the appearance of disproportionate influence on these candidates by the large contributors once in office. Rather than floors or ceilings, political party and campaign financing in the United States relies on public disclosure of information. The theory is that candidates should be allowed to raise as much money as they can, but the public should have a right to know where that money is coming from. For the most part, the onus of discovering conflicts of interest lies with the general public and the punishment with the voter on Election Day.

Enforcement

The manner in which politics is financed in the two countries is manifested in the nature of the enforcement agencies. The six-member Federal Election Commission (FEC) of the United States is comprised of three members of each of the two major parties. The equal presence of both parties ensures that the application of the law will not be enforced in a partisan manner, but outside critics allege that this political balance has sometimes created stalemate. They complain that the FEC is often slow in investigating violations of the law and rarely levies significant punitive sanctions. One important responsibility of the FEC is the administration of political party and campaign financing legislation for federal elections.

The regulatory authority for political financing in Canada is the Chief Elections Officer and his or her agency, Elections Canada. Elections Canada has a broader range of responsibilities, including informing citizens about the electoral process, maintaining the National Registrar of Electors and producing maps of electoral districts, among other things. The Chief Elections Officer is appointed by the Cabinet following a resolution of the House of Commons and can only be removed by a joint resolution of the House of Commons and the Senate. He has the authority to initiate investigations, seek criminal prosecution through the regular court system and negotiate compliance agreements that include sanctions. Clyde Wilcox notes, "The FEC is generally seen as

[64] Peter AuCoin, "Comparative Analysis on Financing Political Parties and Campaigns: Canada," prepared for the Organization of American States. http://upd.oas.org/fiapp.

an ineffective regulatory agency in marked contrast to the widespread domestic support for Elections Canada." Proposals to follow the Canadian model (one of the few times that U.S. political reform has overtly pointed to Canada as a possible model) have been met with skepticism by the political parties. With its voting process responsibilities, Elections Canada has a budget more than three times that of the FEC. In 2003, the FEC had an annual budget of US $50 million in comparison to the CAN $ 201 million (US $160.8 million).

Reforming the Systems

Yet some similarities are of note. Disclosure is a hallmark of the political financing regulatory framework in both countries. According to Gene Ward, requirements in both countries date back to the late 1800s, primarily to prevent coercion of government workers to contribute to political campaigns. The catalysts for present day reforms find their roots in the latter half of the 1900s. As Ward notes, political scandals have proven to be one of the principal motivators for far-reaching reforms. The Watergate scandal in 1970 in particular, fostered unprecedented disclosure requirements, including names and addresses, which allowed the public to link contributors to the candidates and parties they supported. In 1975, the Federal Election Commission was established to enforce enhanced disclosure laws, some of which had already been on the books for decades but never taken very seriously. Both countries require electronic filing and detailed and timely information is available both on campaigns as well as political parties. 65

Some argue that the American Watergate shadow cast as far as Canada and provided impetus to deep and wide reform in that country. AuCoin identified two motivations for this reform: the desire to control the escalating costs of election and the public consensus that the experience in the United States should be avoided. In 1974, parliament passed the Canada Elections Act, a comprehensive package that included limits on contributions as well as spending, public funding, comprehensive disclosure and access to media. Just one year before the establishment of the U.S. Federal Election Commission, Canadian legislation instituted the office of the Chief Electoral Officer, a politically independent and administratively autonomous official charged with the enforcement of this legislation.

By coincidence or otherwise, both political financing regimes—established within one year of each other nearly three decades ago—experienced additional modifications within one year of each other. While several of the issues addressed were similar, the magnitude of the reforms differed. The Bipartisan Campaign Reform Act (or "McCain/Feingold" as it is more commonly known) in 2002 sought to stem the growing reliance of political parties on unregulated contributions from corporations and trade unions; a reform that could fundamentally change the role of political parties in the United States. Canadian legislation—commonly referred to as C24—also addressed corporate and union contributions to parties, but its enactment was viewed as a relatively minor adjustment to a regime that has been generally regarded as effective. According to AuCoin, "The contribution limits introduced in 2003, especially the outright ban on contributions by corporations and unions to national political parties, was largely,

65 One of the few criticisms of the Canadian electoral regime of 1974 was the timeliness of disclosure requirements. Beginning January 1, 2005, parties must file contributions quarterly and party leadership candidates must report weekly in the final four weeks before the party selects its leader.

if not exclusively, a response to public perceptions that few, if any, experts thought had any grounding in reality."66 Legislation in both countries provided a modicum of compensation for the lost revenue by raising the individual contribution limits and, in the case of Canada, increasing public financing for political parties.

Third Parties

One of the most vexing issues regarding political financing in the United States and to a lesser extent Canada is the role of outside groups, unaffiliated with political parties, but active during political campaigns. Canadian legislation requires that these groups register with Elections Canada as a "third party," subject to spending limits just like the parties. (Some 63 third parties registered for the 2004 elections.67) While the limitations on these third parties have been challenged in the Canadian courts, a recent Supreme Court of Canada decision upheld the limitations on spending. The decisions have favored the regulations and upheld the limitations on spending. In the United States, "political action committees" group together like-minded contributors to support candidates or political party committees. PACs are limited to US $5,000 per candidate per election and US $15,000 per party committee per year. There are some 4,000 registered PACs in the United States, of which EMILY's List, an organization that provides support to women candidates, is by far the largest. The BCRA reform called for a moratorium on broadcast advertising 60 days before general elections and 30 days before a primary for such committees. The restrictions have been challenged in U.S. courts, but they remain in place at the writing of this chapter.

Reforms have changed the financing regimes in both countries and it remains to be seen how they will affect political parties. Previous to BCRA, corporations, trade unions and wealthy individuals in the United States could provide unlimited contributions to political parties in the form of "soft money." Soft money could be used only for political party building, issue-oriented or get-out-the-vote activities. These funds could not endorse or defeat any named candidate or coordinate with any particular campaign, but their intent was not difficult to discern. Mobilizing the party base and conducting parallel campaigns for candidates represents the principal raison d'être for parties; prohibiting contributions of these large, important contributors, argue the political parties, could weaken them significantly.

The limits on these contributions redirected some money from the political parties to independent, issue-oriented organizations, commonly known as 527s by their classification in the Internal Revenue code. As previously mentioned, the 527s spent nearly $500 million during the 2004 campaign and while these organizations did not solicit the vote of any one candidate, their political tendencies were clear. Democratic-oriented 527s outraised Republican-oriented 527s by a nearly three-to-one margin. (George Soros alone provided about $26 million to Democratic leaning 527s.) Money is not always an accurate measure of success, though. With a relatively paltry US$ 567,000, the "Swift Boat Veterans for Truth" launched one of the most effective advertisement campaigns in the elections.68

66 AuCoin, page 2.
67 http://www.elections.ca.
68 "On Nov. 2, GOP Got More Bang For Its Billion, Analysis Shows," in The Washington Post, December 30, 2004, Washington Post, page A01.

In Canada, one of the few venues left to corporations to contribute to parties were in the intraparty leadership races, very important in a parliamentary system. Although opposed by his ruling Liberal Party, former Prime Minister Jean Chretian promoted the prohibition of corporation contributions to nomination contests. Indeed, the C$1,000 limit on corporations, unions and unincorporated associations to candidates in essence made their role minuscule if not irrelevant. Additional limits were enacted for individuals and spending on leadership races with the express intent of providing more opportunities to women and minorities who might not have the same access to the big money as men. It remains to be seen if these limits will actually increase diversity.

Does financing affect the Political Participation of Women?

Another commonality between the Canadian and the U.S. systems is the attempt to promote and increase the participation of women in politics and this study sought to determine whether or not financing impeded the political participation of women. Each country has single-member districts making the use of quotas not particularly effective; financing was thus considered as both a possible impediment to participation as well as a potential remedy to better promote women in politics. While women hold important political positions in both Canada and the United States, neither country is close to parity. After the most recent elections in the United States and Canada, womens' representation in the legislative bodies stands at 14 and 21 percent respectively. (In the 2004 elections, 68 women were elected to the U.S. House of Representatives and 14 to the Senate.) According to the Inter-Parliamentary Union, these percentages rank the United States 57th and Canada 31st among the 135 countries in its worldwide survey.69

Different perhaps from Latin America and the Caribbean, financing does not appear to be a major gender-specific obstacle to political participation. Efforts have been made in both countries to better provide for financing to women in the initial stages of their candidacy, the United States through the free market and Canada through public financing. In the United States, EMILY's List has become one of the largest political action committee in the country raising more than $33 million in 2004 for women candidates who share the organizations' commitment to reproductive rights.70 The acronym sums up the organizations' strategy: Early Money is Like Yeast. Other women-oriented political action committees include the National Women's Political Caucus, the Women's Campaign Fund and the WISH (Women in the Senate and the House) List. As previously mentioned, recent reforms in Canada have included spending limits and tax credits for candidates in nomination races. According to Lisa Young, these reforms were championed in particular by female members of parliament. The left-of-center, New Democratic Party took the reforms one step further and has made women candidates eligible for reimbursements of childcare expenses incurred during the nomination process.

[69] http://www.ipu.org/wmn-e/classif.htm
[70] http://www.opensecrets.org/pacs.

How much is too much?

Are elections becoming too expensive? This question has been asked during the preparation of this study as well as by countless reform-minded political regions in the Hemisphere. In the United States and Canada, recent reforms were not enacted a priori to take money out of the system or to necessarily make campaigns cheaper. There was an understanding that political parties need money to survive and candidates need money to mount an effective campaign. Where limits were enacted, compensation was provided. Canada limited corporate contributions, but increased public financing. It sought to remove large donors from the nominating races, but increased tax credits to candidates. The United States prohibited large "soft money" contributions to political parties, but raised the individual limit on hard money contributions. It is not coincidental that in the 2004 U.S. presidential elections, both parties dramatically increased the number of small contributors (less than $50), providing another outlet for citizen involvement in politics and a sense of ownership of the political system. Both C24 and the BCRA sought to change the potentially deleterious relationship between large funders and politics. In both cases, they have achieved at least part of their objective.

Despite it differences in parliamentary structure, party organization and political objectives, the United States and Canada share important commonalties in their political financing regimes. While free speech is the guiding principle in the United States and equity predominates in the regulatory regime in Canada, free speech flourishes in Canada and people with many different backgrounds win elections in the United States. The principal tool for the federal regulatory regimes of both countries remains information: the timely and accessible information that answers the question posed by Gene Ward in this study: "Who gave how much to whom for what purpose and when? Disclosure is an important element of these systems and these models merit attention from other countries seeking to improve transparency in political financing.

As demonstrated in the chapters of this study, reform is a process and not an end in itself. Political circumstances will change and future reforms will be introduced. The regimes will continue to evolve as political circumstances change. Reform is enacted to achieve different political ends that reflect the underlying principals of each country. The means may be different, but the end has been the same: to encourage more people to participate in the democratic process of their countries.