

THE MONEY OF POLITICS: FINANCING AMERICAN AND BRITISH ELECTIONS

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I. INTRODUCTION

One of the great contributions to American governing structures is the “one person—one vote” concept of democracy. Another is the peaceful transition of power that occurs through regular staggered elections. However, these two concepts, in conjunction, require candidates to raise large amounts of money in order to participate in the process. Thus, American political campaigning can now be summarized by the unfortunate slogan, “one dollar—one vote.” The Democrats’ and Republicans’ total campaign fundraising reached a record \$881 million during the last election cycle, a seventy-three percent increase over the

1991-92 cycle.¹ This staggering data creates a presumption that monied interests are buying influence and access, often to the detriment of the general population. The public is crying out for sweeping changes² in campaign finance law that will free candidates from the pan-handling required to run a successful campaign and return integrity to the electoral process so that an individual can, again, stand for an election, instead of run for an office.³

Unfortunately, this is not only an American phenomenon; election contributions and political fundraising have also raised heightened concern in Great Britain.⁴ Recent scandals have led party officials and citizens alike to call for greater financial transparency in party funding.⁵ Lord Nolan, Chairman of the Committee on Standards in Public Life, has publicly encouraged such an inquiry.⁶

Both the United States and Great Britain have made efforts to address the issue of campaign finance. The first part of this Comment examines the development of modern American campaign finance regulation. The second part examines the British system. The third part examines scandals which have resulted from loose enforcement and creative interpretation of the laws. The final section notes where some campaign financial reform efforts are currently being implemented and looks to the future of campaign financing law and practice.

II. THE AMERICAN WAY

A. *A Brief History*

The United States has a history of campaign financing scandals and reform efforts that pre-date today's media-driven campaigns. The

1. See Ron Harris, *Political Parties' Fundraising Hits \$881 Million*, Federal Election Commission Press Release, Jan. 10, 1997, reprinted in CAMPAIGN FINANCE INFO PACK, CONG. RES. SERVICE, Jan. 1997.

2. See Richard Morin & Mario Broussard, *Those Who Give and Those Who Watch Want a New Direction*, WASH. POST, Feb. 9, 1997, at A1. *But cf.* Eliza Newlin Carney, *On the Front Burner*, 278 NAT'L J. 2707, Dec. 14, 1996 (describing a two-year League-Harwood Group study revealing that many of the assumptions fueling campaign finance reform on Capitol Hill are not foremost concerns of U.S. citizens).

3. See ROBERT E. MUTCH, *CAMPAIGNS, CONGRESS, AND THE COURTS: THE MAKING OF FEDERAL CAMPAIGN FINANCE LAW* (1988).

4. See James Landale, *Political Funding Inquiry Rejected*, TIMES (London), Feb. 6, 1997, available in 1997 WL 9191430.

5. See Rachel Sylvester, *Fayed Gives £1 Million to Fight Sleaze*, DAILY TELEGRAPH, Jan. 13, 1997, available in 1997 WL 2276676.

6. See Christian Wolmer, *Nolan Puts Party Funding on the Agenda*, INDEPENDENT, Jan. 23, 1997, available in 1997 WL 4473671.

transformation of campaigning in America, however, seems to have evolved from the tradition of “stump-speaking” to an “auction block” democracy⁷ in the short time since the Kennedy-Nixon debates and the Watergate scandal.

The history of American campaign funding can be categorized into three periods.⁸ During the first period, from our nation’s independence in 1776 to the early nineteenth century, only wealthy candidates who paid their own election expenses ran for office.⁹ The second period, beginning in the early nineteenth century, is characterized by professional politicians who could not initially afford to pay their own expenses, but would get into office and take two percent “kickbacks” to cover costs from people they placed into appointed positions.¹⁰ Those kickbacks generated the first effort at campaign finance regulation.¹¹ Finally, during the late nineteenth century, industrial growth gave rise to a new, larger source of funds—corporate America. Today corporations remain a primary source of campaign financing.¹²

The public concern at the turn of the twentieth century regarding the effects of private industry making large contributions to political campaigns¹³ prompted campaign finance regulation. In the legislation, Congress prohibited corporate political contributions, passed a disclosure requirement, limited individual contributions, and set an expenditure cap.¹⁴ However, the Supreme Court in 1921 ruled in *Newberry v. United*

7. See Paul D. Wellstone, *True Election Reform*, CHRISTIAN SCI. MONITOR, Mar. 22, 1993, available in LEXIS, NEWS Library, CSM File. U.S. Senator Paul Wellstone refers to the American electoral process under the current state of campaign finance as an “auction-block democracy, where public policy is often sold (or at least rented) to the highest bidder.” *Id.*

8. See *All Things Considered: Fundraising Scandals in History* (National Public Radio broadcast, Feb. 14, 1997, available in LEXIS, NEWS Library, NPR File) (author Robert Mutch discusses campaign irregularities in U.S. history, focusing on the scandal surrounding Theodore Roosevelt’s fundraising efforts during the 1904 presidential campaign).

9. See *id.*

10. See *id.*

11. See Mutch, *supra* note 3. In a 1933 House investigation, the investigating committee discovered public officers were being assessed to support party elections. As a result, the Whigs sponsored unsuccessful legislation the following year, seeking to prohibit any federal officer from contributing to the election of any federal or state official. Congress passed the first Federal Campaign Finance legislation in 1867 prohibiting federal officers from soliciting contributions from Navy Yard Workers. See Federal Election Commission 10 Year Review (Apr. 1985) [hereinafter FEC Review].

12. See *All Things Considered*, *supra* note 8.

13. See Mutch, *supra* note 3, at xvii. Mutch notes that the corruption of politicians was not what concerned voters, rather the issue focused on the lack of control over public policy due to corporate contributions.

14. See *id.* Congress based the 1907 legislation on an unsuccessful 1901 version written by Senator William E. Chandler of New Hampshire.

*States*¹⁵ that Congress did not have the authority to regulate primary elections, as primaries and “elections” within the meaning of the Constitution are “radically different.”¹⁶ For fifty years after the *Newberry* decision, legislators ignored political fundraising practices until the Watergate scandal forced Congress to recognize the inadequacies of the system and make substantial changes.¹⁷ Those changes came in the form of the Federal Election Campaign Act Amendments of 1974 (FECA).¹⁸

B. Buckley v. Valeo

Modern campaign finance regulation began with FECA, which contained four basic forms of regulation for presidential and congressional elections: public financing, disclosure, limits on campaign contributions, and limits on campaign expenditures.¹⁹ In December 1974, Senator James Buckley of New York, Ira Glasser of the New York Civil Liberties Union, and former Senator Eugene McCarthy of Minnesota held a press conference to announce their intention to challenge FECA’s constitutionality in federal court.²⁰ The group brought suit against the congressional and executive branch officials charged with administering FECA, including then-Secretary of the Senate Francis R. Valeo²¹—hence *Buckley v. Valeo*,²² the most significant case in the area of campaign finance.

In *Buckley*, the plaintiffs challenged every aspect of FECA as contrary to the First Amendment. The Court held that the First Amendment did not forbid all campaign finance laws.²³ Further, the Court reasoned that limits on campaign contributions are permissible to combat actual corruption or the appearance of corruption that stems from large campaign contributions.²⁴ Congress “could legitimately conclude that the avoidance of the appearance of improper influence ‘is . . . critical

15. 256 U.S. 232 (1921).

16. *See id.* at 250. Attorney Charles Evan Hughes argued successfully that primaries are part of a nomination procedure and, thus, not intended by the framers to be regulated by Congress. *See Mutch, supra* note 3, at 18.

17. *See Mutch, supra* note 3, at 45.

18. 4 U.S.C. § 453; 11 CFR 108.7(a).

19. *See* DANIEL H. LOWENSTEIN, *ELECTION LAW: CASES AND MATERIALS* 507-08 (1995).

20. *See Mutch, supra* note 3, at 50.

21. *See id.*

22. 424 U.S. 1 (1976).

23. *See* Cass R. Sunstein, *Political Equality & Unintended Consequences*, 94 COLUM. L. REV. 1390, 1395 (1994).

24. *See id.* *See also* THOMAS M. DURBIN, *CAMPAIGN FINANCE: FIRST AMENDMENT ISSUES AND MAJOR SUPREME COURT CASES*, CONG. RES. SERVICE, Sept. 17, 1996.

... if confidence in the system of representative Government is not to be eroded to a disastrous extent.”²⁵ *Buckley* maintained the limits established by FECA of \$1,000 per person per candidate, \$5000 per political action committee (PAC), and \$25,000 limitation on total contributions by an individual during a calendar year.²⁶ Essentially, the decision put a cap on the amount of funds any single candidate could collect in a year.²⁷

To the contrary, limitations set on campaign expenditures are unconstitutional because they impose “direct substantial restraints on the quantity of political speech.”²⁸ Additionally, expenditure limits do not serve the same societal interest of curbing corruption or the appearance of corruption as did the contribution limit.²⁹ The Court found that independent expenditures, personal/family expenditures and campaign expenditures, were all protected by the Constitution.³⁰ However, the Court created an exception for public financing of presidential elections.³¹ The *Buckley* Court concluded that such provisions encourage public discussion rather than censor speech.³²

By contrast, expenditures that, “in express terms advocate the election of or defeat of a clearly identified candidate for federal office,”³³ do not serve any governmental interest in stemming the guise or actuality of corruption, and are consequently “wholly foreign to the First Amendment.”³⁴ Limitations on personal and family expenditures were found to impose a substantial restraint on a person’s First Amendment freedom of expression. Similarly, the interest of equalizing candidates’ financial resources were found to be ancillary to First Amendment rights.³⁵ Campaign expenditures are likewise protected.³⁶ The Court rejected the notion that the government has the power to determine the amount of money spent in promotion of one’s candidacy to be excessive

25. *Buckley*, 424 U.S. at 27 (quoting *CSC v. Letter Carriers*, 413 U.S. 548 (1973)).

26. *See id.* at 27-38.

27. *See* Burton Neuborne, *One Dollar, One Vote*, Address at Tulane Law School (Feb. 5, 1997).

28. DURBIN, *supra* note 24.

29. *See id.*; *see also* Sunstein, *supra* note 23, at 1395.

30. *See* LOWENSTEIN, *supra* note 19.

31. *See Buckley*, 424 U.S. at 92-93.

32. *See* DURBIN, *supra* note 24.

33. *Buckley*, 424 U.S. at 44.

34. *Id.* at 49.

35. *See id.* at 51-54.

36. *See id.* at 55.

or wasteful.³⁷ Its purpose is to allow citizens, candidates, and associations collectively to exercise control over the quantity of debate in a political campaign.³⁸

However, such control is not being exercised by the candidates, campaigns, or parties. As a result, *Buckley* has become highly criticized.³⁹ Some scholars argue that FECA and *Buckley* have failed to reform campaign financing practices.⁴⁰ Rather than let themselves be regulated, candidates maneuver through the loopholes to find new and creative ways to raise money.⁴¹ Furthermore, there is ambiguity in the distinction between contributions and expenditures in post-*Buckley* cases.⁴²

C. *Status Quo*

Candidates and consultants alike know that “big money talks—and that early money screams.”⁴³ Since *Buckley*, political fundraising has become something of “political slight-of-hand, [because parties and candidates are] promising to abide by the old rules while concocting new ways to evade them.”⁴⁴ Today politicians are spending a great deal of their time fundraising, and their efforts are paying off.⁴⁵ In the 1996

37. *See id.*

38. *See id.*

39. *See generally* Frank J. Sorauf, *Politics, Experience, and the First Amendment: The Case of American Campaign Finance*, 94 COLUM. L. REV. 1348 (1994) (suggesting an incremental change in the current system); Leslie Wayne, *After the Election: Readjusting and Reconsidering—Campaign Finance—Scholars Ask Court to Backtrack, Shutting Floodgates on Political Spending*, N.Y. TIMES, Nov. 10, 1996 (a group of Constitutional Scholars urging the Supreme Court to overturn *Buckley*); 143 CONG. REC. S55 (daily ed. Jan. 21, 1997) (statement of Sen. Specter) (“[T]he *Buckley* decision was based on unsound constitutional interpretation and certainly created unsound public policy . . .”).

40. *See* Neuborne, *supra* note 27. Professor Neuborne analogizes the current campaign finance system to drug trafficking. Because there is an unlimited demand for money and a limited supply due to contribution limits, candidates, like addicts, are forced to come up with new and creative ways to get the money needed to run a successful campaign.

41. *See id.*

42. *See* Sunstein, *supra* note 23, at 1395. “First, it is not clear that this distinction is relevant, since expenditures on behalf of a candidate can create some of the dangers of contributions. Candidates often know who spends money on their behalf, and for this reason, an expenditure may . . . give rise to the same reality and appearance of corruption.”

43. *See* Wellstone, *supra* note 7.

44. Ruth Marcus & Charles R. Babcock, *The System Cracks Under the Weight of Cash; Candidates, Parties and Outside Interests Dropped a Record \$2.7 Billion*, WASH. POST, Feb. 9, 1997, at A1.

45. *Frontline: An Interview with Bill Bradley* (PBS television broadcast, transcript available in <<http://www.pbs.org/wgbh/frontline/president/interviews/bradley.html>> (visited Feb. 3, 1997)). When asked if politicians are spending too much time raising money, Sen. Bradley replied

general election, congressional candidates raised a record \$659.6 million, up eight percent from the previous election cycle.⁴⁶ With each election cycle costs increase due to new techniques and technology, so fundraising must also increase.⁴⁷ However, the real problem may not be the amount of money actually raised; the concern stems from the sources of those funds.

George Washington Plunkitt, the boss of Tammany Hall, once said, “[T]he problem with money in politics, is there’s never enough to go around.”⁴⁸ Because most political campaign contributions come from a fraction of the electorate, candidates are spending a great deal of time “wooing” that small group.⁴⁹ Thus, “[t]he real problem of money in politics is not the amount spent, but the influence it buys.”⁵⁰

1. Fundraising: PACs and Soft Money

Although PACs accounted for only twenty-nine percent of all 1996 congressional campaign funds,⁵¹ the perception (and perhaps the reality) is that candidates are pandering to special interest groups for donations in exchange for influence. Yet PACs are a natural result of individual campaign contribution limits.⁵² When, after *Buckley*, it became illegal for individuals to contribute over \$1,000 to a campaign, there was a need to find a method to aggregate individual campaign contributions.⁵³ PACs developed as a way by which individuals could pool their resources to exert influence. The question remains, however, as to whether PACs hinder or ameliorate electoral competition.⁵⁴

that he thought that was generally true. He had to raise \$20,000 a week on average, for six years, to raise a good fund to run for reelection in New Jersey. *Id.*

46. Ian Stirton, *1996 Congressional Financial Activity Continues Climb*, Federal Election Commission Press Release, Dec. 31, 1996, reprinted in CAMPAIGN FINANCE INFO PACK, CONG. RES. SERVICE, Jan. 1997.

47. See *A Habit Too Hard to Break*, ECONOMIST, July 6, 1996, at 27. “Candidates without deep pockets or ready access to a network of wealth contributors are virtually eliminated from competition. Not by coincidence, at least 28 senators are millionaires; in nine out of ten congressional races in 1994, the candidate who spent more money won.” *Id.*

48. See Michael J. Sandel, *Votes for Sale*, NEW REPUBLIC, Nov. 18, 1996, at 25.

49. See *American Survey*, supra note 47, at 27.

50. See Sandel, supra note 48, at 25.

51. See Stirton, supra note 46.

52. See *id.* at 1403.

53. See *id.*

54. See JOSEPH E. CANTOR, CAMPAIGN FINANCING, CONG. RES. SERVICE, Jan. 21, 1997, at CRS-2 [hereinafter CANTOR, CAMPAIGN FINANCING].

One criticism of the PAC is that candidates are indebted to the PACs that contributed to the successful campaign.⁵⁵ Some Members of Congress have expressed concern regarding the influence a PAC retains over an elected official.⁵⁶ Senator Dale Bumpers of Arkansas spoke bluntly about the problem: “[E]very Senator knows I speak the truth when I say bill after bill after bill has been defeated in this body because of campaign money.”⁵⁷ The amount of money contributed by the PACs, combined with the concerns of Members of Congress, certainly lends credence to the perception of quid pro quo relationships between special interest donors and political recipients.⁵⁸

However, PACs are not merely exchanging money for influence. To the contrary, PACs are groups of interested citizens expressing opinions on issues that concern them.⁵⁹ Supporters of PACs “challenge the presumed dichotomy between ‘special interest’ and ‘national interest,’ asserting that the latter is simply the sum total of the former.”⁶⁰ Additionally, it may be argued that PACs serve the national interest by keeping the political system competitive and diverse. Because it is sometimes difficult for minority candidates to compete without assistance, the establishment of PACs that specifically benefit minority candidates has created the opportunity for more candidates to run for office.⁶¹

PACs, nevertheless, are not the only source of money for candidates, nor are they the only source of concern for the public. Soft money⁶² is a big loophole in current American campaign finance regulation.⁶³ Some soft money is not subject to reporting and disclosure

55. *Id.* at CRS-3.

56. See Wertheimer & Manes, *Campaign Finance Reform: A Key to Restoring the Health of Our Democracy*, 94 COLUM. L. REV. 1126, 1128 (1994).

57. See *id.* at 1129 (citing 139 Cong. Rec. S7187 (daily ed. June 15, 1993) (statement of Sen. Bumpers)).

58. See CANTOR, CAMPAIGN FINANCING, *supra* note 54, at CRS-3; see also Wertheimer & Manes, *supra* note 56, at 1128 (quoting Senator Robert Byrd of West Virginia). “[M]oney talks, and the perception is that money will talk here in this Senate. Money will open the door. Money will hold the balance of power.” 134 Cong. Rec. S1534 (daily ed. Feb. 26, 1988) (statement of Sen. Byrd).

59. See CANTOR, CAMPAIGN FINANCING, *supra* note 54, at CRS-3.

60. See *id.*

61. See Sunstein, *supra* note 23, at 1409.

62. See CANTOR, CAMPAIGN FINANCING, *supra* note 54, at CRS-4. “Soft Money” refers to money that may indirectly influence federal elections but is raised and spent outside the purview of federal laws and would be illegal if spent directly on a federal election. *Id.*

63. See Marcus & Babcock, *supra* note 44 (discussing the tremendous amount of money spent in the 1996 presidential election). The Democratic National Committee enabled the Clinton-

requirements and easily slips through the loopholes. Consequently, it has become a major issue in federal campaign finance reform.⁶⁴

Soft money is intended for use in non-federal elections; however, the expenditure of these funds often has an impact on federal elections.⁶⁵ Two types of soft money exist under FECA: political party soft money, and corporate and labor union soft money.⁶⁶ Political party soft money is raised by national parties in federally prohibited amounts from federally prohibited sources.⁶⁷ The money is then transferred to state parties, to the extent allowed under state law, for grass-roots and party-building activities.⁶⁸ During the 1996 election cycle, Republicans increased soft money spending 219% over the 1992 election cycle, while Democrats increased soft money spending by 255%.⁶⁹ Because such funds are not subject to record-keeping or disclosure rules, there is no way of determining how this money is spent; nor is regulation forthcoming.⁷⁰ According to *Colorado Republican Committee v. FEC*,⁷¹ the First Amendment prohibits the application of FECA coordinated expenditure limitations to political party expenditures made independently and without coordination with a candidate or his campaign.⁷² In essence, the *Colorado* decision banned any campaign financing restrictions on political party expenditures when made without coordination with a candidate's campaign.⁷³

FECA provides three exemptions from its general regulation of contributions and expenditures by corporations, labor unions, membership organizations, cooperatives, and corporations without capital stock, making up the corporate and labor soft money.⁷⁴ The exceptions

Gore campaign to spend \$44 million beyond the spending cap by paying for pro-Clinton advertising. Republicans soon followed suit on behalf of Candidate Dole). *Id.*

64. See JOHN CONTRUBIS & M. ANN WOLFE, SOFT MONEY IN CAMPAIGN FINANCE REFORM, CONG. RES. SERVICE, Jan. 7, 1997.

65. *See id.*

66. *See id.*

67. See JOSEPH E. CANTOR, SOFT AND HARD MONEY IN CONTEMPORARY ELECTIONS: WHAT FEDERAL LAW DOES AND DOES NOT REGULATE, CONG. RES. SERVICE, Jan. 10, 1997, at CRS-4.

68. *See id.* Under certain conditions, these funds may be used for purchasing campaign materials used in connection with volunteer activities benefiting a candidate (e.g., buttons, bumper stickers, yard signs). Voter registration and get-out-the-vote activities for the president and vice president are also approved expenditures. See CONTRUBIS & WOLFE, *supra* note 64, at CRS-2.

69. *See* CONTRUBIS & WOLFE, *supra* note 64, at CRS-2, -3.

70. *See id.*

71. 116 S. Ct. 2309 (1996).

72. *See* DURBIN, *supra* note 24, at CRS-13.

73. *See* CONTRUBIS & WOLFE, *supra* note 64, at CRS-3.

74. *See id.* These categories make up the corporate and labor soft money.

are: (1) establishing, administering, and soliciting money for a PAC; (2) nonpartisan get-out-the-vote and registration drives; and (3) internal communications with members on any subject.⁷⁵ Under recently promulgated regulations, labor unions and corporations are permitted to become involved in a greater range of activities than previously allowed, including using treasury funds to make expenditures for communications.⁷⁶ The exempt activities are generally thought to be a more effective medium for unions than corporations because of the larger numbers in the restricted class.⁷⁷

2. Current FEC Regulations and Recent Efforts at Reform

In response to the financial excesses of the 1972 Presidential campaign, Congress created the Federal Election Commission (FEC) under the 1974 Amendments to FECA.⁷⁸ The FEC oversees federal elections by performing the major functions of administering public funding, disclosing campaign information, encouraging and monitoring compliance with the law, and enforcing and defending the law.⁷⁹

President Theodore Roosevelt introduced the idea of public funding for elections in 1905 during his address to Congress.⁸⁰ The Revenue Act was the first of a series of laws enacted in the 1970s that implemented his idea of financing presidential elections by providing a voluntary tax check-off.⁸¹ The funds are currently distributed under three programs. First, under the primary matching payments program, eligible candidates are offered public matching funds for individual contributions

75. See CANTOR, SOFT AND HARD MONEY, *supra* note 67, at CRS-4. The exemptions apply only to certain "restricted classes." For a union, these restricted classes include its members, officials, and families. For a corporation, these categories include executive and administrative personnel, stockholders, and families.

76. See CONTRUBIS & WOLFE, *supra* note 64, at CRS-4. Treasury fund expenditures are conditioned such that they: (1) do not advocate the election or defeat of a clearly identified candidate, (2) are truly independent of any candidate without any cooperation or consultation, and (3) do not contribute to any federal election.

77. See CANTOR, SOFT AND HARD MONEY, *supra* note 67, at CRS-4.

78. See MUTCH, *supra* note 3.

79. See FEC Review, *supra* note 11.

80. See generally the Federal Election Commission, *The FEC and Federal Campaign Finance Law* (last modified Aug. 1996) <<http://www.fec.gov/pages/fececa.htm>>; *All Things Considered*, *supra* note 8. Mutch comments, "Teddy Roosevelt has a lot of unmerited credit for starting that ball [public financing for presidential elections] rolling. But he didn't really do that much . . . [h]e didn't have anybody write a bill to that effect. Nor did he give any support whatsoever to the two other [campaign finance reform] bills that had already been introduced." It was actually William Bourke Cockran, Tammany boss and Manhattan congressman who, in 1904, first proposed public financing of presidential elections. *Id.*

81. See FEC Review, *supra* note 11.

up to \$250 per contribution. Second, general election grants make available a basic \$20 million grant, adjusted each year for inflation, to the winners of the Republican and Democratic nominations provided they agree not to raise private contributions (from party committees, PACs or individuals). This also works to limit campaign expenditures to the amount of public funds received. Finally, Party Convention Grants are given to each major party to pay for its national Presidential nominating convention and to eligible other parties.⁸²

FECA requires candidates, parties, and PACs to disclose to the FEC the amount of funds raised and spent in periodic reports. The FEC then provides public access to that information through the Public Records Office.⁸³ Some argue that the mandatory disclosure and public access to campaign funding gives voters the information needed to make informed choices about candidates.⁸⁴ Due to the steadily growing public interest in campaign financing, the FEC has increased efforts to make information available to the public in user-friendly formats.⁸⁵

The FEC monitors and enforces campaign finance law. The Commission checks all campaign finance reports for potential violations and may audit committees for record-keeping problems and to offer solutions. Questions on specific applications of federal campaign finance law can be answered in advisory opinions from the Commission. Moreover, because only the FEC has jurisdiction to bring civil enforcement actions of federal campaign finance law, these advisory opinions can be relied on without risk of enforcement action.⁸⁶

The FEC is, however, a political structure; and as a result, the Commission's bi-partisan nature⁸⁷ can render it wholly ineffective.⁸⁸ One illustration of this ineffectiveness is the FEC's investigation of the upset victory of Montana Senator Conrad Burns in the 1988 U.S. Senate

82. *See The FEC and Federal Campaign Finance Law, supra* note 80. To be eligible to participate in the matching fund program, a candidate must prove viability by raising more than \$5000 in matchable contributions in each of 20 different states. *See id.* In 1996 the general election grant, adjusted for inflation, was \$61.82 million. *See id.* Party convention grants are statutorily set at a basic \$4 million. In 1996 the party convention grant, adjusted for inflation, was \$12.36 million. *See id.*

83. *See id.*

84. *See Wertheimer & Manes, supra* note 56, at 1127.

85. *See FEC Review, supra* note 11, at 8.

86. *See The FEC and Federal Campaign Finance Law, supra* note 80.

87. The FEC is composed of six commissioners, with no more than three being from the same party, *i.e.*, three democrats and three republicans. *See FEC and General Campaign Finance Law, supra* note 80.

88. *See Wertheimer & Manes, supra* note 56, at 1148.

election.⁸⁹ Although it was eventually determined that tens of thousands of dollars had been improperly given to Senator Burns's campaign, the case is still under investigation with the FEC, well into Burns's second six-year term.⁹⁰ Politicians on both sides of the aisle appear undaunted by the FEC largely because of the unlikely event of the commission ever getting four votes.⁹¹ "Once hailed as the two-fisted enforcer that would protect the body politic from future Watergate scandals and the corrupting scourge of unregulated campaign cash, the commission has proved to be weak, slow-footed, and largely ineffectual."⁹² Consequently, no campaign finance reform will be successful without overhauling the FEC.⁹³

Nevertheless, campaign finance reform has not, on its own, been widely successful anyway. Since the mid-1980s, Congress has considered and implemented changes in campaign finance laws⁹⁴ that have led to nowhere. In the 100th Congress, a Republican-led filibuster defeated legislation introduced to provide public funding for Senate general election candidates in exchange for agreed spending caps. The 101st Congress produced a Senate bill with voluntary spending limits, communication vouchers, lower postal rates and subsidies, as well as a House bill providing for lower postal rates, free broadcast time, and a tax-credit.⁹⁵ Differences between the two bills and a veto-threat prevented the Congress from even convening a conference committee.⁹⁶ The 102nd Congress succeeded in passing a bill that included, among other things, soft money restrictions, lower PAC limits for Senate candidates, and lower postal rates.⁹⁷ The final package was considered to be reasonably tough; commentators, however, speculated that Congress passed the bill knowing that President Bush would veto it, which he did.⁹⁸ The 103rd

89. See Benjamin Weiser & Bill McAllister, *The Little Agency that Can't: Election-Law Enforcer is Weak by Design, Paralyzed by Division*, WASH. POST, Feb. 12, 1997, at A1.

90. See *id.*

91. See Wertheimer & Manes, *supra* note 56, at 1149 (citing Brooks Jackson, *Off Guard: Election Commission Set Up as a Watchdog, has Become a Pussycat*, WALL ST. J., Oct 19, 1987, at A1 (quoting Daniel Swillinger), and Thomas Edsall, *Is the FEC Undermining Campaign Law?*, WASH. POST, Oct. 20, 1986, at A23).

92. Weiser & McAllister, *supra* note 89, at A1.

93. See *id.*

94. See CANTOR, CAMPAIGN FINANCING, *supra* note 54, at CRS-9.

95. See *id.*

96. See *id.*

97. See *id.*

98. See *Clinton and Congress: United We Stand, for the Moment*, ECONOMIST, Apr. 3, 1993, at 21.

Congress's effort ended in a filibuster.⁹⁹ The Senate adopted a sense of the Senate amendment stating that Congress should consider reform in the 104th Congress, but nothing passed.¹⁰⁰

For more than ten years Congress has pontificated on the great need for campaign finance reform. Democrats and Republicans alike grandstand on the topic, but, for unknown reasons, cannot come to a sufficient compromise. "Across the political spectrum, reformers have proposed measures to reduce the power of money—spending limits, free television time, the closing of loopholes that allow massive contributions to be funneled through the parties, the proposals . . . leave untouched the deeper corruption that afflicts our campaigns: the politics of self-interest."¹⁰¹ As one citizen commented, "The issue isn't whether the Democrats or the Republicans are corrupt. It is U.S. politics that is corrupt."¹⁰²

III. THE BRITISH SYSTEM

Until recently, the British campaign finance system has been relatively unaffected by scandals in the number and nature of those that have plagued the United States. Recent British scandals have provoked outcry to improve electoral regulation,¹⁰³ but, until a few years ago, the American political phenomenon of continuous examination and reexamination for comprehensive reform was nonexistent. In fact, for many years there seemed to be a general belief that matters of ethics in British politics, especially with regard to election expenses, contrasted greatly with those in the United States.¹⁰⁴ Perhaps this feeling is attributable to the fact that the British have been fine-tuning for so long.¹⁰⁵

99. See CANTOR, CAMPAIGN FINANCING, *supra* note 54, at CRS-11.

100. *See id.*

101. Sandel, *supra* note 48.

102. *The High Price of Elections*, TIME, Dec. 2, 1996, at 4 (letter to the editor about campaign finance).

103. See A.T. Barbrook, *Atlantic Crossing: Campaign Finance in Britain and the USA*, 47 PARL. AFFAIRS 435, Jul. 1994.

104. *See id.*

105. See H.F. RAWLINGS, LAW AND THE ELECTORAL PROCESS, (1988); *see also* CORNELIUS O'LEARY, THE ELIMINATION OF CORRUPT PRACTICES IN BRITISH ELECTIONS 1868-1911 (1962).

A. *A Brief History*

The British Code of Electoral Ethics is almost as old as Parliament itself.¹⁰⁶ Recognition of bribery, treating,¹⁰⁷ and undue influence as impediments to electoral freedom date back to the fifteenth century when the first case of electoral bribery was recorded.¹⁰⁸ Thomas Long, found too simple and unfit to serve in the House of Commons, was returned to the borough of Westbury after admitting he bribed the Mayor and another corroborator with £4 to win the election.¹⁰⁹ The House of Commons fined the corporation of Westbury £20 for “their scandalous attempt.” To add insult to injury, Parliament made them repay the £4 bribe to Long.¹¹⁰

As competition for seats increased, so did the “cost” of elections due to the instances of bribery and treating. Finally, Parliament took action with the Act of 1696 intending to curb treating and election expenses.¹¹¹ The legislation, however, failed miserably. Borough corporations were openly selling seats and setting the cost of elections at the price of the particular seat.¹¹² The Bribery Act of 1729 met a similar fate, probably because it was perfectly acceptable for a member to “show favour” to his constituents.¹¹³

Reform efforts in the early part of the nineteenth century established voter registration and increased the franchise.¹¹⁴ Officials hoped to create a “respectable and honest” body of voters that would not take part in the trends of the time.¹¹⁵ Although controlling bribery was one of the pronounced reasons behind the Reform Act of 1832, the Act did little to curb bribery, and less to reform.¹¹⁶ The voter registration initiative, however, led to “registration societies” that were admittedly

106. See O'LEARY, *supra* note 105, at 5.

107. See *id.* “Treating” is defined as directly or indirectly paying the whole or part of the cost of providing any meat, drink, entertainment or other provision for a voter. See RAWLINGS, *supra* note 105, at 147.

108. See O'LEARY, *supra* note 105, at 5.

109. See *id.* at 6.

110. *Id.*

111. See *id.* at 8.

112. See *id.* at 9.

113. See RAWLINGS, *supra* note 105, at 135.

114. See *id.*

115. See O'LEARY, *supra* note 105, at 14.

116. See RAWLINGS, *supra* note 105, at 135. The practice of bribery even increased after the Act of 1832 as candidates tried to win over the newly enfranchised members of the electorate. In fact, bribery and treating were more wide spread than ever in the decades immediately following the Act's passage. See O'LEARY, *supra* note 105, at 3.

partisan, and quickly gained much power.¹¹⁷ Despite the societies' influence, however, they were unorganized. Fulfillment of this need came from the London political clubs, precursors to the modern parties: the Carlton and the Reform.¹¹⁸

During the next few decades, most of the reform amounted to futile efforts.¹¹⁹ In fact, Parliament made no concerted attempt to eradicate corrupt practices until 1868 when it passed the Parliamentary Elections Act.¹²⁰ This effort to improve the system removed the power to oversee election law from the House of Commons and placed it with the High Court.¹²¹ In other words, the fox was no longer in charge of the hen house. The Ballot Act of 1872 was the next step toward meaningful campaign reform.¹²² This Act brought into existence the secret ballot, which had long term effects on curbing bribery.

The Corrupt and Illegal Practices Act proved to be a landmark in British electoral history. This Act created a distinction between corrupt and illegal practices, and introduced fundamental change that laid the groundwork for modern legislative control of political spending.¹²³ First, it limited the number of campaign helpers a candidate could employ.¹²⁴ Second, it imposed a maximum ceiling on expenditures which had an immediate and dramatic effect.¹²⁵ Expenditures on behalf of a candidate could only be made with written permission from either the candidate or his appointed agent; some expenditures were completely forbidden.¹²⁶ Third, it created the modern system of administrative control and placed the liability for over-expenditure in the candidate's lap.¹²⁷ This legislation replaced the piecemeal system with a uniform law that was easily applied and largely successful.¹²⁸ By the turn of the century, bribery was rare and allegations of corrupt practices significantly declined.¹²⁹

117. See O'LEARY, *supra* note 105, at 16.

118. See *id.*

119. See *id.*

120. See *id.*

121. See *id.* at 4

122. See RAWLINGS, *supra* note 105, at 136.

123. See MICHAEL PINTO-DUSCHINSKY, *BRITISH POLITICAL FINANCE 1830-1980*, at 26 (1981).

124. See RAWLINGS, *supra* note 105, at 136.

125. See *id.*

126. See PINTO-DUSCHINSKY, *supra* note 123, at 26.

127. See RAWLINGS, *supra* note 105, at 136.

128. See *id.*

129. See *id.*

Part of this decline is attributable to stronger national party loyalties. Members who often defied party leadership up to this time were developing the subservient nature that marks today's House of Commons.¹³⁰

B. The Modern Era

From the late nineteenth century, despite the ever-growing electorate, the costs of elections remained substantially the same.¹³¹ Instead of a candidate having to rely on personal wealth, he could now look to the new national parties to provide funding for election expenses.¹³² Consequently, the new national parties were obliged to look for new sources for party funding. The parties found willing contributors in rich capitalists who were enthusiastic to give money to gain prestige.¹³³ A scramble for funds ensued with a bevy of honors and titles awarded.¹³⁴ As central party spending and fundraising increased, the modern British system of predominantly party-funded campaigns (as opposed to candidate committee funded campaigns in the United States) offered opportunities for working class men to become viable candidates for office.¹³⁵

Nonetheless, "blue collar" candidates did not receive much attention or assistance from the Liberal or Conservative parties.¹³⁶ While the National Liberal party made a few attempts to support working class candidates late in the nineteenth century, a lack of local support prevented this from happening.¹³⁷ The Conservative Party actively sought the

130. See PINTO-DUSCHINSKY, *supra* note 123, at 29.

131. See *id.* at 31.

132. See *id.* at 32.

133. See *id.* Many of the candidates of this time were wealthy tradesmen who sought the prestige that came with a peerage, baronetcy, or knighthood. A handsome contribution to the national party could secure this desire. By the beginning of the twentieth century, titles were being sold like merchandise. *Id.*

134. See *id.* at 34-41. In 1892, two wealthy MPs, James Williamson, a linoleum magnate, and Sydney Stern, made a quid pro quo deal with Prime Minister Gladstone. Under the deal, the peerages of Lord Ashton and Lord Wandsworth were conferred respectively. However, Williamson was contemptuously dubbed "Lord Linoleum," due to the unpopular status of purchased titles. He was eventually forced to move from his home county. Wealthy newspaperman Alfred Harmsworth, ennobled as Lord Northcliffe, was also suspected of paying handsomely for his title, though his biographers denied it. A tobacco magnate, a brewer, a soap manufacturer, a tea merchant and a mine owner can also be counted among other large donors who, coincidentally received such honors. *Id.*

135. See generally *id.* Most of the money collected at central party levels was subsequently transferred to local organizations for use by the parliamentary candidate. *Id.*

136. See *id.*

137. See *id.*

patronage of working class men, but did not encourage their candidacy.¹³⁸ As a result, the Labour Party was formed and enjoyed quick electoral success.¹³⁹ With this addition, the three major parties now in existence were created. Since their inception, the parties have continued to compete for donations from the familiar sources of companies, trade unions, and individuals.

1. Trade Union vs. Company Donations

Unlike the U.S. system, British Trade Unions and companies are not on equal footing when it comes to political donations. From the beginning, trade union political expenditure has been closely regulated by Parliament, while companies have been free to contribute with few restraints.¹⁴⁰

Because the courts have not expressly authorized company donations, there are some considerations about the legality of these contributions.¹⁴¹ The first consideration is the public interest in ensuring that political parties do not develop such a dependence on big business that they lose perspective on public policy. Second, companies must be accountable to shareholders to ensure their support for the recipient political cause.¹⁴² *Horsley & Weight*,¹⁴³ the guiding case on company donations, generally provides that if making political donations is a substantive company object, then no legal problem exists.¹⁴⁴ If however, the directors only have the power to make donations, then they, not the company, can be held liable for breach of duty to the other members.¹⁴⁵ The greatest benefit to companies making political contributions is discretion;¹⁴⁶ companies are not required to disclose donations made. In fact, many companies seek to avoid publicity and, as a result, they channel their donations through intermediary organizations.¹⁴⁷ The 1988

138. *See id.*

139. *See id.* The Labour Representation Committee was established in 1900, but later changed its name the Labour Party. *Id.*

140. *See* K.D. EWING, *THE FUNDING OF POLITICAL PARTIES IN BRITAIN* 25 (1987).

141. *See id.* at 25.

142. *See id.*

143. [1982] 3 W.L.R. 431.

144. *See* EWING, *supra* note 140, at 32.

145. *See id.*

146. *See id.*

147. *See* PINTO-DUSCHINSKY, *supra* note 123, at 229. The most notable organization is United Industrialists, its primary purpose being the collection and dissemination of funds to the Conservative Party.

Companies Act does, however, require businesses to note political party donations exceeding £200 in company accounts.¹⁴⁸

Under the Trade Union Act of 1913 and subsequent amendments, the guidelines for British trade union contributions are considerably more onerous than regulations on company donations.¹⁴⁹ The rationale behind the legislation was that working class representatives needed protection if they were to effectively compete with the wealthy.¹⁵⁰ Trade union political donations may be made only from an established "political fund" approved democratically by election of the members; similar regulations govern PACs and unions in the United States. The unions must also provide a "contract out" clause for those trade union members who do not wish to have their wages levied. Finally, there must be full disclosure.¹⁵¹

2. Conservative Party Financing

The Conservative Party is said to embrace the Tory tradition of "a strong state as a means of achieving stable social order," and the conservative tradition of "free market forces in the economy and the exercise of choice in social life."¹⁵² Not surprisingly, Conservative Central Party funds come largely from individuals and businesses: 20% from individuals, with 84.3% coming under the broad category "donations."¹⁵³

The lion's share of Central Office expenditures goes to maintaining party functions, with the responsibility of funding parliamentary candidates placed on the constituency party.¹⁵⁴ Ironically, until the mid-1980s the Central Office heavily depended on the local party for soliciting individual contributions.¹⁵⁵

148. See Barbrook, *supra* note 103, at 437.

149. See EWING, *supra* note 140, at 49.

150. See Vernon Bogdonnar, *Reflections on British Political Finance*, 35 PARL. AFFAIRS 367, 372 (1982).

151. See PINTO-DUSCHINSKY, *supra* note 123, at 212.

152. EWING, *supra* note 140, at 2.

153. See generally Michael Pinto-Duschinsky, *Trends in British Political Funding 1979-1983*, at 38 PARL. AFFAIRS 328 (1985) (discussing sources of revenue for Conservative, Labour, Liberal and Social Democratic Party Funding) [hereinafter Pinto-Duschinsky, *Trends*]. See also PINTO-DUSCHINSKY, *supra* note 123, at 137.

154. See PINTO-DUSCHINSKY, *supra* note 123, at 140. In 1949, a Special Committee on Party Organization penned the new candidate rules that left Conservative candidates' election expenses solely to the constituency party.

155. See Michael Pinto-Duschinsky, *Trends in British Party Funding 1983-1987*, at 42 PARL. AFFAIRS 197, 199 (1989) [hereinafter Pinto-Duschinsky, *Party Funding*].

3. Labour Party Financing

Traditionally, the Labour Party backs legislation and policy that support “trade unions and their members, its constitutional commitment to the public ownership of the means of production, distribution and exchange, and its reforming of capitalism . . . to secure equality of opportunity for full employment and adequate welfare provision.”¹⁵⁶ Accordingly, the majority of Labour Party financing comes from trade unions, while only a small proportion of Party income comes from constituency funding.¹⁵⁷ For that reason, it has been argued that perhaps the Labour Party gives excessive weight to only one particular interest when selecting candidates and making policy decisions.¹⁵⁸ However, the Labour Party is experiencing newfound success with fundraising in the business community, going so far as to create a business committee to optimize that connection.¹⁵⁹

Labour Party Central Office expenditures are actually quite similar to the Conservative Party’s methods.¹⁶⁰ The bulk of the Central Office budget is spent on party-building activities and routine spending.¹⁶¹

4. Liberal Party Financing

The Liberal Party’s inability to find adequate and new sources of funding led to its waning influence as a third party in the traditional two-party system.¹⁶² The Liberal belief in community, rather than centralized government,¹⁶³ likely had an adverse effect on the Liberal Party’s financial structure.¹⁶⁴ Although the party successfully aligned with the Social Democratic Party in 1983, the two parties maintain separate local and central organizations, with largely separate fundraising efforts.¹⁶⁵

156. See EWING, *supra* note 140, at 2.

157. See PINTO-DUSCHINSKY, *supra* note 123, at 155.

158. See Bogdonnar, *supra* note 150, at 372.

159. See Rachel Sylvester, *Labour Names Donors to £6 Million Election Fund*, DAILY TELEGRAPH, Nov. 22, 1996, available in 1996 WL 3996733.

160. See PINTO-DUSCHINSKY, *supra* note 123, at 165.

161. See *id.*

162. See *id.*

163. See *id.*

164. See Pinto-Duschinsky, *Party Funding*, *supra* note 155, at 202.

165. See Pinto-Duschinsky, *Trends*, *supra* note 153, at 335-36.

C. *Status Quo*

Britain, the only European democracy to have never used proportional representation for its governing body, is also unique in its election financing.¹⁶⁶ The British government, unlike the rest of Europe, does not provide public funding for elections and does not require disclosure.¹⁶⁷ Similar to the United States, Britain retains no national spending limits.¹⁶⁸ The legal controls on election expenses have a local, rather than national focus, and are codified in the Representation of the People Act of 1983 (RPA).¹⁶⁹

1. The Representation of the People Act of 1983 and Regulating Election Expenses

The RPA “reflects the rather quaint Victorian concept of the House of Commons as ‘geographical representation of the Kingdom’ and a ‘congress of constituencies.’”¹⁷⁰ Hence, the Act focuses almost entirely on local rather than on national expenditures.¹⁷¹ On the whole, the Act controls three types of expenditures: candidate’s personal expenses, limits on campaign election expenses, and expenditures that are completely forbidden.¹⁷² A candidate is not permitted to spend more than £600 of personal funds on personal expenses in relation to the conduct or management of his election campaign; any expenses beyond that must be paid out of his election fund.¹⁷³ For Parliamentary candidates, personal expenses (up to the £600 limit) are not attributed to the limit on expenditures.¹⁷⁴

Constituency spending limits, drafted to cover expenditures before, during, or after the election, are formula-based on a lump-sum, plus a few pence per head.¹⁷⁵ These figures are adjusted periodically for

166. See *World Politics and Current Affairs: Only in Britain . . . How Others Do it*, ECONOMIST, June 26, 1993, at 61.

167. See *id.*

168. See *id.* In Western European countries the government places national spending limits on elections. *Id.*

169. See RAWLINGS, *supra* note 105, at 133.

170. G.W. Hogan, *Federal Republic of Germany, Ireland, and the United Kingdom: Three European Approaches to Political Campaign Regulation*, 21 CAP. U. L. REV. 501, 523 (1992).

171. See *id.*

172. See RAWLINGS, *supra* note 105, at 133.

173. See The Representation of the People Act of 1983 (R.P.A.), Part II, § 74(1).

174. See RAWLINGS, *supra* note 105, at 133.

175. See R.P.A. § 76.

increased expenses.¹⁷⁶ Though the language of the statute applies to expenses made in the “conduct or management of an election,” it is generally applied to anything which “promotes or procures the election of a candidate.”¹⁷⁷ Thus, the limits apply only to the election of a particular candidate, and therefore exclude national party efforts from spending caps.¹⁷⁸ Although the candidate can be penalized for the breach, the election agent for each candidate is entirely accountable for administering the substantive controls over election expenses.¹⁷⁹ All expenses by a campaign must be authorized by the candidate or the agent. Expenditures must be recorded in an expense report complete with receipts and invoices.¹⁸⁰ The system was designed to minimize uncontrolled third-party interference in elections and thereby protect individual candidates. However, in *Regina v. Tronoh Mines Ltd.*,¹⁸¹ the court created an unrealistic distinction between individual constituency campaigns and national party campaigning.¹⁸²

In *Tronoh Mines*, a company, through its secretary, submitted an advertisement to a national newspaper rebuking the Labour Party’s platform on certain issues.¹⁸³ The advertisement intimated Conservative candidates and encouraged citizens to vote for a government “with Ministers who may be relied upon to encourage business enterprise and initiative.”¹⁸⁴ The company, its secretary, and the newspaper were all “charged with unlawfully incurring election expenses with a view to promoting or procuring the election of a candidate other than the Labour candidate at the parliamentary election to be held in the constituency in which the company had its office and the newspaper was published.”¹⁸⁵ The Court, however, refused to allow the case to go to the jury, stating that general political propaganda, while likely assisting a particular candidate, is not governed by constituency expenditure rules.¹⁸⁶ In other

176. See R.P.A. § 76. Figures are adjusted periodically to account for inflation and increased cost of election expenses. See also Barbrook, *supra* note 103, at 436.

177. See RAWLINGS, *supra* note 105, at 138 (citing Maidston Borough Case, 5 O.M. & H. 200 (1906)).

178. See *id.* at 138.

179. See *id.* at 145.

180. See *id.*

181. 1 All E.R. 697 (1952).

182. See RAWLINGS, *supra* note 105, at 145; see also Hogan, *supra* note 175, at 524.

183. See *Tronoh Mines*, 1 All E.R. at 697.

184. *Id.*

185. See *id.*

186. See Hogan, *supra* note 170, at 525. Hogan goes on to contrast *Tronoh Mines* with *Director of Prosecutions v. Luft*. In *Luft*, Greater Manchester Anti-Fascist Committee activists were convicted of violating the R.P.A. for circulating fliers, which had not been sanctioned by other

words, as long as party candidates and platforms are attacked generally and at a national level, the incurred expenses are acceptable.¹⁸⁷

The expenditures completely forbidden by the RPA fall along the traditional lines of treating, bribery, and undue influence.¹⁸⁸ While the roots of the prohibition on treating are valid, it causes some contemporary difficulties for candidates. For instance, close to election time, candidates typically shy away from hosting coffee mornings or even throwing a victory party after an election because such events are, technically, treating.¹⁸⁹ Bribery, just as it was in the fifteenth century, is still a *verboden* practice. Today, however, bribery is no longer tolerated.¹⁹⁰ Finally, undue influence, defined as the "temporal or spiritual injury, damage, harm, or loss" to another's vote or intention to vote, is associated with bribery, and consequently, comes under the forbidden expenditures section of the RPA.¹⁹¹ The offense reaches beyond the strict sense of undue influence to any fraudulent behavior that affects an elector's vote.¹⁹²

Another method of regulating election expenses comes under the Broadcasting Authority Act of 1960 (BAA), which prohibits broadcasting religious and political advertisements.¹⁹³ Print media advertising, however, is unrestricted.¹⁹⁴ Such regulation seems contradictory, but because of the traditionally state-owned nature of the broadcast medium, the public is acquiescent about it.¹⁹⁵ Broadcasters are bound by a legal duty of impartiality, while application of the BAA affects all parties equally.¹⁹⁶ This public acceptance may be due to the fact that the ban keeps election expenses down and levels the playing field among the candidates.¹⁹⁷

campaigns, in a constituency that urged citizens not to vote for the National Front. The House of Lords held that where there are more than two candidates, incurring expenses against one candidate, such action increases the probability of another candidate's victory, which could result in strategic negative campaigning in constituencies. Therefore, constituency campaigns against an individual candidate are illegal, but are acceptable for promotion of a particular cause or party at a national level. *Id.* at 526.

187. *See id.* at 526.

188. R.P.A. §§ 113, 114, 115.

189. *See* RAWLINGS, *supra* note 105, at 147-48.

190. *See id.*

191. *Id.*

192. *See id.*

193. Hogan, *supra* note 170, at 506.

194. *See id.*

195. *Id.*

196. *Id.*

197. *See id.* at 507.

Such regulation in the United States would probably cause a public outcry because of the blatant infringement on First Amendment rights. This same reaction may not be far from the mark in Britain's future.¹⁹⁸ Because the European Court has used American First Amendment jurisprudence in holding commercial speech to be protected under Article 10 of the European Convention,¹⁹⁹ protection of commercial speech could be a possibility in the future.²⁰⁰

For the time being, free and equal airtime is available to parties with no limits placed on how much parties spend on production of the program.²⁰¹ While this is not considered "advertising," the programs that were once "talking heads" are now "sophisticated documentary-style selling operations similar to those which push consumer products."²⁰² These broadcasts constitute the most important element of national election campaigning.²⁰³

2. Recent Efforts

Currently, three themes are being heard in the call for British election system reform: public subsidies, disclosure,²⁰⁴ and national funding limits.²⁰⁵ The interest in public subsidies is a relatively recent suggestion, purportedly traceable to a speech made in 1973 by Dick Leonard, a Labour Member of Parliament (MP) from Romford.²⁰⁶ The interest in disclosure comes from almost every angle. Conservatives are interested because the rank and file MPs do not know what the party leadership is doing.²⁰⁷ The Liberal Democrats are interested in revealing

198. *See id.*

199. *See* European Convention on the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 10, 213 U.N.T.S. 221.

200. *See id.*

201. *See* Barbrook, *supra* note 103, at 436.

202. *Id.*

203. *See id.*

204. *See* Barbrook, *supra* note 103, at 437.

205. *See* Michael White, *Labour Calls for National Funding Limit*, *GUARDIAN*, Nov. 23, 1996, available in 1996 WL 13388920.

206. *See* EWING, *supra* note 140, at 130. Mr. Leonard pointed out in his speech to the Fabian Society that political activists were a disproportionately burdened by the work involved in the increasingly expensive political campaigning and that they should not be required to pay the entire bill when others reaped the benefits.

207. *See* Barbrook, *supra* note 103, at 437.

“Tory Sleaze.”²⁰⁸ The Labour party, which recently made some voluntary disclosures, is supporting the issue as a political tool.²⁰⁹

a. Public Subsidies

There have been three major reports that promoted the case for state aid: Leonard's in 1975, Lord Houghton's Committee on Financial Aid in Politics in 1976, and the Hansard Society's in 1981. Leonard's and Houghton's reports are founded in the “rescue” argument that state aid is necessary for parties to keep up with modern political demands.²¹⁰ The Hansard Society, on the contrary, took the position that the needs of the electorate, rather than the needs of the parties, required state aid.²¹¹

Leonard's was the first in a series of studies on developing methods of strengthening the democratic element in the British system of government.²¹² Leonard, finding that current sources of political funds were not meeting demands, studied subsidy systems in Germany, Sweden, and Finland to find ways of improving the British political system.²¹³ Leonard suggested that problems of insufficient income and party disorganization can be improved by providing annual sums to national parties which would, in turn, dispense money to constituencies and candidates.²¹⁴

The Houghton Committee worked off the same premise proposed by Leonard.²¹⁵ The Committee recommended annual grants from Exchequer funds to central party organizations and limited reimbursement of local election expenses for parliamentary as well as local governmental candidates.²¹⁶ Unfortunately for the Houghton

208. See Colin Brown, *Ashdown and Blair Seek Party Funding Inquiry*, INDEPENDENT, Nov. 23, 1996, available in 1996 WL 13507040 (party leaders call for a Nolan [ethics] inquiry into Conservative Party funding).

209. See Sylvester, *supra* note 159 (contrasts decision of Labour leader Tony Blair to announce the its intention to disclose the party's biggest company donors with the Tories' decision to keep donors' names confidential).

210. See Bogdonnar, *supra* note 150, at 367.

211. See EWING, *supra* note 140, at 132.

212. See Roger Morgan, *Introduction to DICK LEONARD, PAYING FOR PARTY POLITICS: THE CASE FOR PUBLIC SUBSIDIES* at vi (1975).

213. See *id.* at v.

214. See DICK LEONARD, *PAYING FOR PARTY POLITICS: THE CASE FOR PUBLIC SUBSIDIES* 36 (1975).

215. See EWING, *supra* note 140, at 130. The Houghton Committee essentially believed that parties were insufficiently funded to meet the tasks expected of them and that no other sources were available.

216. See COMMITTEE ON FINANCIAL AID TO POLITICAL PARTIES, *FIRST REPORT, 1976*, Cmnd. 6601, at xv.

Committee, the report came out at the same time the Labour government required a loan from the International Monetary Fund to stabilize the pound. Consequently, the public was not willing to support state subsidies to political parties at that time.²¹⁷

From the perspective of the Hansard Society, public financing is in the best interest of the public.²¹⁸ The Society determined that public aid should be available to a particular party based on the percentage of support it commands.²¹⁹ Additionally, the Society determined that funds should be made available on a matching basis to be administered by the constituency party.²²⁰

Three main objections have surfaced regarding the use of public subsidies to fulfill party funding needs.²²¹ The first is that political parties are voluntary and independent of the state; consequently, public subsidies would jeopardize that independence.²²² Second, state aid could reduce volunteerism in British politics.²²³ Lastly, resolving the problem of inadequate funding with state aid would only exacerbate the problem of already declining party membership.²²⁴

b. Disclosure and Spending Limits

Currently, major parties are not required to disclose sources of party funding by publishing their accounts.²²⁵ Party contributions can be determined, however, because the trade unions are required to disclose all donations, and companies are required to report any contribution over £200.²²⁶ The Hansard Society suggested stricter provisions for disclosure. It felt that parties should be required to disclose the origin of donations because the public, if asked to contribute, has a right to know other sources of funding.²²⁷ However, a 1994 House of Commons report suggested that no changes were needed in the current British campaign

217. See Bogdonnar, *supra* note 150, at 368.

218. See *PAYING FOR POLITICS, THE REPORT OF THE COMMISSION UPON FINANCING OF POLITICAL PARTIES, THE HANSARD SOCIETY FOR PARLIAMENTARY GOVERNMENT* 1.17 (July 1981).

219. See *id.* at 5.1.

220. See *id.* at 5.2-3.

221. See EWING, *supra* note 140, at 134.

222. See *id.*

223. See *id.*

224. See *id.*

225. See Barbrook, *supra* note 103, at 437.

226. See *id.*

227. See *PAYING FOR POLITICS, supra* note 218, at 6.4-5.

finance laws.²²⁸ The report read ““that in a free society which cherishes the secret ballot, we believe it would be wrong to oblige the disclosure of commitment to a political party by a requirement to identify financial benefactors.””²²⁹

As it appears, such is no longer the case. Labour is now calling for disclosure and limits on national party funding.²³⁰ The move seems to be politically, rather than reform, motivated because it would likely even the playing field between the Labour Party and the Conservative Party.²³¹

IV. DIFFERENT SYSTEMS, SIMILAR PROBLEMS

Two systems, really very different in practice, are suffering from the same problem of too much money and too little accountability. This is likely attributable to the one strikingly similar aspect of the American and British systems—party fundraising. Although the American system requires full disclosure for donations made directly to candidates, the potential for the largesse of party money makes candidates like kids in a candy store. And while American contributors with the most money can only donate a limited amount to their favorite candidate, they certainly are not limited on the amount of money that can be donated to their favorite party, which is usually spent in a way that seems to benefit the favorite candidate. The British, even with spending caps imposed on constituency candidates, are experiencing a new wave of public interest in party funding because of the seemingly questionable methods of funding national parties and the way that money is spent.

A. *Questionable Financing*

The recent deluge of party funding scandals substantiates the notion that money buys influence and legitimizes the demand for a political funding overhaul. Not surprisingly, the origins of the “tainted” money are similar and evoke similar cause for distress.

Foreign contributions are one source of contention for both countries. Although foreign contributions are perfectly legal in Britain,

228. See Fred Barbash, *Influence by the Pound; Money Flows to British Politicians Without Disclosure or Limits*, WASH. POST., Mar. 25, 1997 at A12.

229. *Id.* (quoting a 1994 House of Commons Campaign Finance Committee Report).

230. See White, *supra* note 205.

231. See *id.* It is estimated that Conservatives have raised £50 million in the last year.

there has been a strong interest in making such donations illegal.²³² Labour Party leaders claim that the Tories received over £15 million in foreign donations before the 1992 election and some recent foreign contributions are allegedly linked to the Serbian Government.²³³ Probably as a consequence, Labour Party leader Tony Blair described foreign donations as “quite wrong” and said that a Labour government would consider banning them all together.²³⁴

Foreign donations are banned in the United States, nonetheless, the aftermath of the 1996 election cycle has been rife with allegations of foreign money contributions. The Democratic National Committee (DNC) has been at the center of most of the foreign money inquiries, the most troubling being the possible efforts of the Chinese Government to influence the election.²³⁵ As a result of implied foreign indiscretions, the DNC has established an extremely cautious policy in that it no longer accepts money from American subsidiaries of foreign-owned companies.²³⁶ The policy likely ensures that impropriety cannot even be implied, however it could also relegate Americans who work for such companies to second-class citizens.²³⁷ Employees of the many companies which are long-established in the United States have a vested interest in having their company participate in the political process.²³⁸

Another mutual problem is the perception, or reality, that contributions from big business or lobbyists have undue influence on politicians. The British “Cash for Questions” scandal certainly illustrates this concern. British lobbyist Ian Greer, who claims to have raised over £750,000 for the Conservatives over the past decade, is at the center of a scandal in which he is alleged to have been involved in payments to Mr. Neil Hamilton, a former minister, in exchange for tabling Commons

232. See Joy Copley and George Jones, *Reviewing Funding of Political Parties*, DAILY TELEGRAPH, Jan. 23, 1997, available at 1997 WL 2279010.

233. See *id.* Rachel Sylvester, *Donation Refusal Cost Me Honours, Claims Branson*, DAILY TELEGRAPH, Jan. 13, 1997, available at 1997 WL 2276740.

234. David Wighton, *Blair Calls for Ban on Foreign Funding of Political Parties*, FIN. TIMES, Jan. 13, 1996, available at 1997 WL 3766004.

235. See *The White House and the F.B.I.*, N.Y. TIMES, Mar. 13, 1997, at A26. In the spring of 1996, the FBI learned that China might try to funnel money into American Congressional campaigns and as a major foreign rival China's efforts to influence campaigns affects the relationship between the two countries.

236. See Leslie Wayne, *Subsidiary Asks Democrats to Return \$15,000*, N.Y. TIMES, Jan. 30, 1997.

237. See *id.*

238. See *id.*

questions.²³⁹ In the United States, many corporations benefited greatly during the 1996 election cycle.²⁴⁰ Although the minimum wage bill recently passed by Congress increased the minimum wage by ninety cents per hour, companies benefited because the bill was festooned with tax breaks for corporate America.²⁴¹ As it turned out, many congressional members benefited as well because "more than \$36 million was donated to the campaigns of members who would vote for the 'business-friendly' provisions added to the minimum wage bill."²⁴² Such a correlation tends to support the old suggestion that a legislator's vote, while it cannot be bought, can possibly be rented.

In London and in Washington, D.C., party officials reward financial supporters with privileges not available to the average citizen. For example, thirty-six of the fifty-three industry honors conferred during the Thatcher government were awarded to Tory contributors.²⁴³ And White House Lincoln Bedroom guests donated an average of \$10,849 per night.²⁴⁴ While noting that the industry honors may have been rightfully deserved and many of the Lincoln Bedroom guests donated nothing, the appearance of impropriety is glaring.

The major indiscretions, however, do not go unchecked; the loyal oppositions are usually quite eager to investigate in a particularly partisan fashion. When Conservative Lord Nolan was asked to look into Conservative Party funding because of the appearances of improprieties, he responded that such investigations were not in the purview of his committee. When he eventually agreed to consider the issue, the House of Lords voted it down. However, when Liberal Democrats were suspected of similar improprieties, Prime Minister John Major suggested an independent investigation.²⁴⁵ The United States is no different. While there is plenty of campaign scandal to go around after the 1996 season, Republican Senator Fred Thompson of Tennessee, who is heading the inquiry into the scandals, has been "heckled" by fellow Republicans

239. See James Cusick and Anthony Bevins, *Greer Claims He Raised £750,000 for Tory Funds*, INDEPENDENT, Oct. 7, 1996, available at 1996 WL 10962349. James Blitz, *MPs to Quit Probe on "Sleaze,"* FIN. TIMES, Oct. 17, 1996, available at 1996 WL 10620262.

240. See Eric Pianin, *Money Machine: The Fundraising Frenzy of Campaign '96: How Business Found Benefits in Wage Bill*, WASH. POST, Feb. 11, 1997, at A1.

241. See *id.*

242. *Id.*

243. See *News in Brief: Party Funding Call Defeated*, GUARDIAN, Feb. 6, 1997, available at 1997 WL 2363475.

244. See James Bennett, *Lumps, Ghosts and Chips*, N.Y. TIMES, Mar. 2, 1997, at A1.

245. See Arthur Leathley, *Major Ribs Lib Dems Over Funds "Sleaze,"* TIMES (London), Nov. 16, 1996, available at 1996 WL 6532845.

because they want a “strictly partisan roasting of Bill Clinton.”²⁴⁶ Moderate and reform-minded heads won the day and the Senate unanimously voted to approve a broad investigation into “improper” as well as illegal activities.²⁴⁷

B. Status Quo

There are lessons to be learned from each system. Namely, free television airtime and a limited campaign season brings elections costs down, and disclosure laws keep tainted money out. While paid political advertising on television is prohibited in Britain, broadcasters offer a limited amount of free and equal airtime to parties.²⁴⁸ The free broadcasting is widely considered to significantly reduce election expenses. The United States did the same in 1996 and it met with approval.²⁴⁹ Federal Election Committee (FEC) Chairman Reed Hundt fully endorses free airtime for candidates as part of successful and effective campaign finance reform, and he is not alone.²⁵⁰ Recently, President Clinton asked broadcasters for free airtime for candidates in exchange for new licenses to provide digital-high definition television.²⁵¹ How successful the effort will be is questionable. Already the National Association of Broadcasters and the American Civil Liberties Union are opposing the plan, claiming that it would violate Fifth Amendment protections against private property being taken for public use and First Amendment free speech rights.²⁵²

A limited six-week campaign season is also attributed to lower campaign costs in Britain. This is part of what some commentators in the United States suggest to be effective structuring of reform.²⁵³ By limiting the time in which candidates can spend money and providing free broadcast airtime, candidates are in a position to spend money on less expensive mediums to win supporters. As a consequence, campaigns will become less expensive. The estimated cost of this year’s British election

246. Mary McGrory, *Senator Fred, the Man They Dread*, WASH. POST, Feb. 23, 1997, at C1.

247. See Eric Schmitt, *Money and Politics: The Investigation, Senators Endorse Campaign Inquiry with Wider Scope*, N.Y. TIMES, Mar. 12, 1997, at A1.

248. See Hogan, *supra* note 170, at 523.

249. See *All Things Considered* (National Public Radio broadcast, Jan. 28, 1997, available in LEXIS, NEWS Library, NPR File) (columnist Lee Cullum commenting on campaign reform).

250. See David S. Broder, *A TV “Time Bank” for Candidates*, WASH. POST, Feb. 12, 1997, at A23.

251. See James Bennet, *Perils of Free Air Time*, N.Y. TIMES, Mar. 13, 1997, at A1.

252. See *id.*

253. See *All Things Considered*, *supra* note 249.

is \$90 million, almost one-tenth of the 1996 American presidential race.²⁵⁴

Although disclosure has been discussed for years as a potential reform measure in Britain, the United States certainly can serve as a model for successfully implementing the requirement, even if there is room for improvement. The current British opaque style does not prevent scandal and may actually lend to it.²⁵⁵ Because party officials rarely comment on contributions, the press grabs on to whatever it can get and publishes what it pleases on the matter.²⁵⁶ This may present a distorted picture to the public.

V. CONCLUSION

The two systems appear to be converging, perhaps to the benefit of both. With goals to have American elections become less expensive and to have British funding become more transparent there is room and need for reform in both countries. However, it seems, as always, that campaign finance reform on both sides of the Atlantic will focus on partisan politics rather than on a true effort to streamline and improve the ailing systems. With the House of Lords voting down the demand for an investigation into British party funding²⁵⁷ and campaign finance reform on Congress's back burner,²⁵⁸ both countries' efforts are stalled for the time being. All hope is not lost, however. With British elections pending, it is likely party funding reform will be tackled by the anticipated Labour Government.²⁵⁹ Furthermore, President Clinton, in his State of the Union Address, challenged Congress to pass campaign finance reform legislation by July 4, 1997.²⁶⁰

Criticizing campaign finance reform is easy because there is so much room for improvement; by contrast, fixing the system seems an almost insurmountable task. Free speech, economics, and the realities of modern campaigning are tight frameworks within which leaders must

254. See Fred Barbash, *British Parties to Campaign American-Style: Major Agrees to T.V. Debate Before May 1 Vote; Labor Leads Polls*, WASH. POST, Mar. 1, 1997, at A1.

255. See Barbash, *supra* note 228.

256. See *id.*

257. See James Landale, *Political Funding Inquiry Rejected*, TIMES (London), Feb. 6, 1997, available at 1997 WL 9191430.

258. See Peter Baker and Eric Pianin, *Clinton, Hill Leaders Agree on 5 Priorities: Campaign Finance Reform Not on Agenda*, WASH. POST, Feb. 12, 1997, at A1.

259. See Wighton, *supra* note 234.

260. See Juliet Eilperin, *Morning Business*, ROLL CALL, Feb. 6, 1997, available at LEXIS, NEWS Library.

work. As one commentator has put it, “if it fits on a bumper sticker, it’s probably wrong.”²⁶¹

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261. *All Things Considered: Campaign Finance Reform* (National Public Radio broadcast, Feb. 14, 1997, available in LEXIS, NEWS Library, NPR File) (Mickey Edwards commenting).