On the Brink of Reform: Political Party Funding in Britain

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ARTICLES

ON THE BRINK OF REFORM:
POLITICAL PARTY FUNDING IN BRITAIN*

Lisa E. Klein**

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* The views expressed herein are those of the author and do not necessarily reflect the views of the Federal Election Commission.

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This article is a synthesis of the author’s research and experiences while serving as an Atlantic Fellow in Public Policy, a program sponsored by the British Government. During this fellowship, she was associated with King’s College School of Law and worked for six months with the Committee on Standards in Public Life (CSPL), an advisory committee to the Prime Minister. She worked with the CSPL during the investigatory phase of its recent inquiry into British political party funding.

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I. INTRODUCTION

For anyone who has worked in the area of campaign finance in the United States, Britain would at first sight appear to be nothing less than a Paradise Island. General elections are not set quadrennial events, preceded by months if not years of active campaigning. Instead, general elections are called at the discretion of the Prime Minister at some point within a five-year period,1 and the formal election

1 See ROBERT BLACKBURN, THE ELECTORAL SYSTEM IN BRITAIN 18 (1995). It is a royal prerogative of the Queen to dissolve Parliament, but by constitutional convention she does so only upon the advice of the Prime Minister. The Prime Minister may request the Queen to issue a proclamation of dissolution at any time so long as he does so within five years of the date of a Parliament’s first meeting. See id. at 18-21.
campaign period generally lasts just over a month. Moreover, the United States heralds a constitutional right of free speech and the Supreme Court, as final arbiter in such matters, has viewed Congressional attempts to regulate campaign finance as an infringement of that fundamental right. Great Britain has no unified written constitution, much less an unequivocal right of free speech, and the traditional view is that the power of Parliament is supreme. The actual size of electoral districts are dramatically different as well. Unlike the United States, where a U.S. Senate candidate in a state such as California must campaign across vast distances to reach millions of voters, electoral districts in Britain are relatively small, with an average of 70,000 voters per parliamentary constituency. Finally, whereas campaigns in the United States are expensive broadcast media events dominated by television and radio advertisements, Britain bans all paid election broadcast advertisements. In short, given the differences in time, size and methodology of election campaigns, the financial component would appear to be a non-issue in British politics. However, such a conclusion would be manifestly wrong.

Financial scandals have punctuated British politics throughout this century, many of them directly related to political party funding. In the early years, the conferring of honours for significant party donations “was the done thing” which ultimately led to the passage of the 1925 Honours (Prevention of Abuses) Act. The Act made it illegal to give or accept money or other valuable consideration for the inducement or reward for obtaining a title. Nonetheless, a “culture of money for honours” allegedly has continued. There has never been a conviction under the 1925 Act. One commentator noted that such

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2 There are various events which flow from the dissolution proclamation, such as the issuance and service of writs, notice of the election by publication and notice of the time for filing and challenging of nomination papers. Given the statutory time-frames for these events, a minimum of 17 days will elapse between the issuance of the proclamation and election day. See GUIDANCE FOR ACTING RETURNING OFFICERS IN ENGLAND AND WALES, HOME OFFICE, ch. 2 (1997). Since 1959, the median length of time between announcement and vote had been 31 days. See DAVID BUTLER & DENNIS KAVANAUGH, THE BRITISH GENERAL ELECTION OF 1997, 82 (1997).


5 Id. at 12; see also BLACKBURN, supra note 1, at 325-26.
convictions are unlikely because "unless someone makes the mistake of putting an offer in writing, it is impossible to establish any causal connection between a cheque written by an individual to a political party and a knighthood conferred by the Queen five years later." Statistics compiled by the Labour Research Department, which studies annual reports of companies for political donations, show a high correlation between honours granted to business executives and donations from their respective companies during the Thatcher government. This suggests that the practice did not fade with the passage of the 1925 Act.

Indeed, the 1990s brought its own sleaze headlines involving party funding. For instance, Mohamed Al-Fayed, reportedly anxious to obtain British citizenship, gave the then governing Conservative Party £250,000. According to press accounts, when citizenship was not forthcoming, Mr. Fayed went public with his allegations of cash-for-questions, which ultimately led to the demise of Neil Hamilton’s parliamentary career. Another episode that engendered negative press involved Asil Nadir, a businessman who fled the country when his business empire collapsed, amid allegations of embezzlement and fraud. The Conservative Party had accepted some £440,000 from Asil Nadir and then refused to return the money when told that it may have came from stolen funds.

These and other news stories concerning Tory funding practices appeared regularly in the press the year before the 1997 general election. One series focused on funding from Yugoslav businesses subject to an embargo under UN sanctions against Yugoslavia. Another series focused on the Government’s failure to disclose to the Scrutiny

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6 See Martin Linton, Money and Votes 73 (1994)
7 See generally Committee on Standards in Public Life, Fifth Report, Vol. 2, 1998 (reporting on the funding of political parties in the United Kingdom) [hereinafter CSPL]. Others argue that the alleged correlation is misleading and that those receiving honours would have been selected regardless of their political contributions. See, e.g., CSPL. ¶ 2399 (testimony of Brian Wyldbore-Smith on May 6, 1998); id. ¶¶ 3140, 3157 (recording testimony of Lord Pym on May 13, 1998).
9 See generally James Blitz et al., Tories Urged to Return Nadir Cash, Fin. Times, May 21, 1996, at 1; Blackburn, supra note 1, at 321.
Committee that it had received some £4 million from a knighthood nominee a few months before the honour was recommended. Still others detailed allegations that the Tories were accepting large anonymous donations from foreign sources, including £500,000 from the son of a drug trafficker who had fled Hong Kong for Taiwan. The press also published articles describing Tory fundraising "clubs" where donors contributing above certain amounts were conferred membership and awarded invitations to functions with ministers and even, for top donors, to dinner with the Prime Minister. Stories also began to emerge that questioned Labour Party funding practices. In particular, questions were raised concerning the creation and financ-

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11 The money allegedly was given as a loan and then converted into a gift a month after knighthood was granted. See Fiammetta Rocco, Graham Kirkman's Big Secret Since He Received Knighthood in the New Year's Honours List, DAILY TELEGRAPH, Sept. 15, 1996, at 22, available in LEXIS, MARKET Library, PROMT File. The Political Honours Scrutiny Committee (PHSC) consists of three Privy Counsellors, drawn from different parties, which advises the Prime Minister on a confidential basis. PHSC scrutinizes nominations for political service, which amount to about five percent of all nominees on the honours list, to ensure the probity of the honour to be awarded. The committee takes into consideration the nominee's party contributions and obtains information on such contributions for the previous five years from the relevant party's Chief Whip. See CSPL, supra note 7, at 258 (opening statement by Lord Pym, Chairman of the Political Honours Scrutiny Committee on May 13, 1998). Political donations are not viewed as a disqualifying factor and indeed, may be viewed in a positive light. "[T]he principle we follow is that if somebody gives their money to a political party, that is a bonus point rather than a minus because they are supporting what they believe in with their own money". See CSPL, supra note 7, ¶¶ 3124 & 3153 (PHSC Chairman Lord Pym's Evidence to CSPL, May 13, 1998). According to the Labour Party's Director of Finance, the Chief Whip will call him for information pertaining to an individual's party donations. Information concerning possible donations to blind trusts operated on behalf of any members of the party leadership would not be revealed to the Chief Whip by the Finance Director. Accordingly, the Political Honours Scrutiny Committee would not be aware of a nominee's contributions to any blind trust. See CSPL, supra note 7, ¶¶ 3464-68 (testimony of David Pitt-Watson on May 13, 1998).


ing of "blind trusts" to fund Mr. Blair's private office as Leader of the Opposition and other members of Labour's front bench.\textsuperscript{14} Even the Liberal Democrats' fundraising practices were challenged when the party issued invitations to businessmen to meet with local councillors at a luncheon which cost £195 per person.\textsuperscript{15}

In the year since the election, there has been continued focus on the finances of both the Tory and Labour parties. Questions have been raised about how the Tory Party was able to eliminate their nearly £20 million debt as of 1995 \textit{and} spend £28 million on the 1997 election.\textsuperscript{16} On the Labour Party side, articles documented the shift toward new sources of funding, particularly large contributions from various industrialists "linked to companies which stood to make huge profits from ministerial approval of controversial planning decisions."\textsuperscript{17} Once again, news accounts drew attention to the award of peerages, noting that several of Labour's biggest donors or fund-raisers had been selected for such honours.\textsuperscript{18}

The biggest story, in the post-election era, commonly known as the "Formula One Fiasco," broke in mid-November, just six months after Labour's victory in the 1997 election. Bernie Ecclestone, a former donor to the Conservative Party and mainstay of Formula One racing, gave the Labour Party a £1 million donation in January, 1997. In mid-October, Mr. Ecclestone met informally with Mr. Blair at Downing Street and two weeks later, the Government, despite its party platform or manifesto commitment to ban cigarette advertising in sporting events, agreed to press the European Union to exempt

\begin{itemize}
\item \textsuperscript{17} David Leppard et al., \textit{New Peer Gave Labour £1M}, SUN. TIMES, Nov. 16, 1997, available in LEXIS, News Library, Non-U.S. File.
\end{itemize}
Formula One racing from such a ban. The matter attracted further public attention because the government slowly released information, some of which was either inaccurate or misleading. The Government ultimately referred the issue of party funding to the Committee on Standards in Public Life (CSPL or Neill Committee). Tony Blair made an extraordinary television appearance to explain the affair and to apologize for the way it had been handled.

The mere intensity of press coverage and the catchiness of headlines do not establish wrongdoing. Indeed, one of the problems associated with the current lack of disclosure in party funding is that the shadow of secrecy easily fosters an appearance of impropriety that can transform innocent transactions into sinister scandals. This increases public cynicism of the political process, deters benevolent contributors from giving and makes it harder for parties to raise the funds they need to perform their functions effectively.

This article is aimed at helping the American reader understand political party funding in Britain. It might be helpful to convey some preliminary information about the major political parties in Great Britain, their role, structure, and funding sources. Once this contextual framework has been set out, we can turn our attention to the political party funding regime, its problems, possibilities for reform and the actual process for reform. And, of course, we should pause to consider what lessons we, as Americans, might learn from a system so different from our own.

II. POLITICAL PARTIES IN GREAT BRITAIN

A. Role of Political Parties

In the British governmental system, as in other parliamentary systems, the role of the political party is more prominent than in the

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20 The author notes that the CSPL is an advisory committee to the Prime Minister that examines standards of conduct for public officeholders and proposes recommendations for changes in this area.

United States. The selection of parliamentary candidates is determined within each party in lieu of the primary election contests that are part of American political life. Each party determines its own candidate selection process but to the extent that process is "open," formal party membership is a prerequisite. Party membership, which entails paying subscription or membership fees, in essence replaces the American practice of declaring party affiliation upon registering to vote. It also means that there is an actual basis for determining the relative size of parties, which is notably non-existent in the United States.

In Great Britain, the leader of the victorious party at a general election becomes the Prime Minister with the right to form a government. Members of the Prime Minister's Cabinet are drawn, by convention, from elected Members of Parliament and in some instances from the House of Lords, which would, of course, violate the separation of powers doctrine within the U.S. system. In advance of the election, each party publishes its manifesto, which becomes the "authoritative statement of policy intent and ideological belief." The Prime Minister, his/her Cabinet, and the party's Members of Parliament strive to implement that manifesto, and have wide latitude to do so.

A successful party is in fact in a uniquely powerful position in government for there are no legal constraints on what it may do. The only constraints are practical, coming from the legacies of previous governments, the restrictions arising from international obligations, and from the limitations imposed by the economic and political environment.

One other constraint that might well be added to this list is that of party cohesion. Indeed party unity is essential to the success of any party in government. Adherence to the party line is reinforced by the concept of collective responsibility at the Cabinet level and by a system of strict party discipline in Parliament. Parliamentary discipline is reinforced by the political parties' Whips, who serve as links between the party leadership and the ordinary Members of Parliament. The Whips are influential in advancing the career of back-benchers and

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22 In Britain, the government annually establishes a registry of voters and bears the cost of doing so. This is not the case in the United States, where parties actively conduct campaigns to encourage voters to register. These voter drives are costly and the means for financing them is subject to ongoing litigation. See, e.g., Fed. Elec. Comm'n v. Cal. Dem. Party, 13 F. Supp.2d. 1031 (1998).


may bring their influence to bear in persuading Members to support the leadership’s position in debates and parliamentary votes.\(^\text{25}\)

The non-governing political parties play an important role in opposition as, in many ways, they serve as the “check” on the government of the day. As previously noted, unlike the United States, Britain does not have the rigid separation of powers between the legislative, executive, and judicial branches of government. In the absence of the built-in institutional checks and balances present in the U.S. system, this responsibility must be borne by the parties in opposition. In recognition of this important role, the opposition parties receive funds, known as “Short money” to assist them in their work.\(^\text{26}\)

In the United States, the general perception of political parties centers on their electoral function. Indeed, the national legislation governing political party funding is called the “Federal Election Campaign Act” (emphasis added). In Britain, the issue of party funding is broader and reflects the multi-faceted role of the political parties. It is often noted in this regard that the British have historically voted for a particular party and its policies, and less for the particular candidate running for office, as is done in the United States. Some have suggested that British electors think of political choice along party terms because the party is the most concrete connection they have with government and it is the vehicle for exerting control over government.\(^\text{27}\)

In essence, the British system merges the electoral and governance functions of political parties into a unified process, or in the words of one commentator, “without part[ies] we would not have coherence in government or coherence of decision-making.”\(^\text{28}\)

\(^{25}\) “Whip” derives from the fox hunting term “whippers-in” which refers to those responsible for keeping the hounds together during the hunt. HAWTREY & BARCLAY, PARLIAMENTARY DICTIONARY 233-34 (1970).

\(^{26}\) See EWING, FUNDING, supra note 24, at 118-21. In addition to Short money which is granted to all opposition parties, the primary opposition party is given special recognition by legislation and is known as “Her Majesty’s Opposition.” The Leader of the Opposition receives special compensation and appoints a “Shadow Cabinet.” See BLACKBURN, supra note 1, at 11-12.

\(^{27}\) See generally G. ALDERMAN, BRITISH ELECTIONS: MYTH AND REALITY 70-71 (1978) (describing the importance of political parties in British elections).

\(^{28}\) CSPL, supra note 7, ¶ 7 (testimony of Peter Riddell on Apr. 15, 1998).
B. Current Major Parties in Great Britain

i. The Conservative Party

Measured by the years in government during this century, the Conservative Party has been the dominant party. In the post-war period alone, it was in power for two long stretches of time, from 1951 to 1964, and from 1979 to 1997, some thirty-one years. The Conservatives were also in power from 1970 to 1974.

Historically, the party dates back to the eighteenth century. Until changes enacted earlier this year, the Conservative Party's structure set it apart from the other major parties. It consisted of three distinct and autonomous groups: the parliamentary group consisting of Conservative Party MPs at Westminster (dating back several hundred years); a national organization, the National Union of Conservative and Unionist Associations, begun in 1867, encompassing all local conservative constituency associations, which operate quite independently of each other, and the Conservative Central Office, or national party headquarters, which was founded by Benjamin Disraeli. Collectively, these groups were known as the Conservative Party.

In a 1982 court case, the Conservative Party successfully argued that it could not be assessed corporate tax as it was neither a corporation nor an unincorporated association within the meaning of the tax code but rather “an amorphous combination of various elements,” linked together by the party leader. The Court of Appeal agreed, concluding that the party consisted of the three separate components identified above which were not bound together by mutual undertakings (with mutual duties and obligations).

Until recently, individuals could only join the Conservative Party by becoming members of their local constituency associations. Membership fees were collected by the local constituency associations, and a portion would then be forwarded to the Central Office on a quota basis. There is an annual Conservative Party Conference but it has not been a forum for policy decision making and any resolutions emanating from the conference have been nonbinding on the party leadership.

29 The author notes that this section relies heavily upon the work of FISHER, supra note 23; BLACKBURN, supra note 1.
30 See FISHER, supra note 23, at 7, 35-38.
However, since the selection of William Hague as party leader in 1997, many changes have been initiated within the Conservative Party. For the first time, for example, the party will have an actual legal existence. It is assembling a national membership list, and has taken steps to increase member participation in policy formulation. As Lord Parkinson, Chairman of the Conservative party told the Neill Committee:

We have just been through a process of reform. We now exist, we have a constitution, we have a governing board which will be responsible for all aspects of the Party's organisation, and the associations will affiliate to the new body but they will also supply to the new body their membership lists, so we will for the first time in our history have a central list of members . . . .

Although the Conservative Party tightly controls information concerning its sources of funding, studies conducted by Dr. Pinto-Duschinsky and information presented during various public inquiries suggest there has been a continual decrease in funding from institutional and corporate donors, an increase in the percentage of overall income from individual donors, and marginal changes in the amount of funding derived from constituency quotas. Although the Conservative Party still receives more corporate donations than any other party, the number of companies making political donations, especially large donations, has plummeted.

The Conservative Party acknowledges that its membership has declined in recent years and estimates there are between 300,000 and

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33 CSPL, supra note 7, ¶ 1367 (testimony of Lord Parkinson on Apr. 22, 1988).
35 For information on the decline of company donations, see generally PIRC LTD., TRENDS IN POLITICAL DONATIONS AND SHAREHOLDER AUTHORISATION (1998). The research undertaken by Pensions & Investment Research Consultants Limited reveals a tremendous drop in the number of companies making political donations in the past six years, down by half among FTSE 350 companies. See id. at 3. The number contributing over £50,000 also has dropped from 17 to 4. See id.
36 See id.
350,000 paid members among its constituency associations. It further estimates the income of its constituency associations to be about £18m per year and its Central Office income to be in the neighborhood of £42.5 million for 1997. According to the Chairman, the Central Office spent £28.3 million in the thirteen months leading up to the 1997 election, with half of it dedicated to advertising.

ii. The Labour Party

The history and structure of the Labour Party contrast sharply with that of the Conservative Party. It took its current name in 1906, having been formed by trade unions and socialist societies a few years earlier. Unlike the Conservative Party, it had no members already sitting in Parliament at its creation, has operated under a written constitution from the outset and has maintained a mixed membership of individuals and institutions since 1918. For example, trade unions are members at the constituency, regional, and national levels. The individual trade unionists are formally members of the affiliated organization, but have participatory rights "as individuals in internal party affairs . . . such as the right to vote for the leader and deputy leader of the party . . . and on the election manifesto of the party." The Labour Party consists of constituency labour party associations and affiliated organizations that each elect delegates to the Labour Party Conference. The Conference is the sovereign decision-maker on the party programme and the National Executive Committee (NEC), a standing committee, decides which part of the programme goes into the party manifesto. The NEC is also the administrative authority of the party, tasked with running party business between conferences. Seats on the NEC are distributed among the various interest groups or "stakeholders" within the Labour Party including affiliated trade unions, socialist societies, and constituency party associations. Members of the House of Commons and the House of Lords are organized into the Parliamentary Labour Party (PLP). The PLP, individ-

37 See CSPL, supra note 7, ¶ 1365 (testimony of Lord Parkinson on Apr. 22, 1998). In 1994, Conservative Party membership was estimated to be 750,000, and Labour Party membership was estimated at 260,000. Justin Fisher, Political Donations to the Conservative Party, 47 PARLIAMENTARY AFFAIRS 61, 61 (1994).

38 See Tories Raised £38m in Pre-Election Year, supra note 16; Abrams, supra note 16, at 6.

ual members, and members of affiliated organizations form an electoral college that elects the leader and deputy leader of the party.\footnote{Id. at 4. In addition to the national level organization, the Labour Party has regional branches and local constituency organizations throughout Britain. The regional parties have structures similar to that described for the national party and at the local level, there may be branches and women and youth sections. See CSPL vol. 1, infra note 132, at app. V, ¶¶ 4.2, 4.3, 4.4, 4.5 (discussing the Labour Party’s submission to the CSPL).}

Trade unions have been an important source of funding for the Labour Party since its inception. Their support has come in many forms: from affiliation fees and donations, specific grants, sponsorship of Members of Parliament, and through various forms of support in-kind including secondment of staff, use of equipment and advertisements in trade union publications.\footnote{See FISHER, supra note 23, at 78.} However, this traditional source of support has been on the decline. According to the Labour Party’s own statistics, in the mid-1980s, approximately eighty percent of its income came from trade unions but has now dropped to about thirty-five to forty percent; individual and company donations during that period have risen from twenty-eight to fifty-five percent of central party income. The number of individual/company donations over £5,000 rose from 24 in 1995 to about 135 in 1997.\footnote{BACKGROUND BRIEFING, supra note 39, at 6. The Labour Party claims to have 400,000 individual members, the highest number for many years. Id. at 2.} It is estimated that the Labour Party spent £26.8m in the two years leading up to the election.\footnote{See Michael White, “Black Holes” as Tories’ Accounts Are Published, GUARDIAN, Feb. 14, 1998, at 5 (as discussed infra, all party funding figures must be viewed with much skepticism given the lack of consistency as to what is included in them and their unverifiability).}

In the landslide victory in May 1997, Labour won 418 of the 659 seats in the House of Commons, assuming power with its best electoral victory ever. The Labour Party has been in power on three prior occasions since the end of World War II: from 1945 to 1951, from 1964 to 1970 and, more recently, from 1974 to 1979.

iii. The Liberal Democrats

The Liberal Democrats evolved from the formal merger in 1988 of the Liberal and Social Democratic Parties,\footnote{The Social Democrat Party originated as a breakaway group formed by four former Labour Party ministers and a former Conservative MP. See Bamber Gascoigne, ENCYCLOPEDIA OF BRITAIN 576 (1994).} which had formed
election alliances in 1983 and 1987. The party operates on a federal basis with a national party organization. It operates state organizations in England, Scotland, and Wales as well as local groups. Members join at the state level with levies paid by the state groups to the national group. Administrative matters at the federal level are handled by the Federal Executive Committee, policy proposals are drafted by the Federal Policy Committee, and are debated and considered at the Federal Conference. Party members cast votes for party leader, short-listed parliamentary candidates and for Conference representatives. Responsibility for drafting the party’s manifesto falls upon the Federal Policy Committee, in consultation with the Parliamentary Party.45

In the 1997 elections, with the assistance of tactical voting,46 Liberal Democrats were elected to Parliament. The party has been a significant factor in local government, as the second party behind Labour. The party receives virtually no institutional financial support and depends heavily on membership fees and individual donations. The party had an income of about £3.9 million in 1997.

iv. The Scottish Nationalist Party (SNP) and Plaid Cymru (PC)

These parties share common characteristics, starting with the shared view that English interests subordinate the concerns of Scotland and Wales in Westminster. Broadly speaking, both parties seek to decentralize the power of Westminster, with the SNP aspiring toward an independent Scotland within the European Union. The Welsh Nationalist Party, Plaid Cymru, favours “self-government rather than outright independence.”47 Both parties have similar organizational structures, each having an annual conference at which policy decisions are made; an assembly or council for interim decision making and a relatively powerful executive.

Both parties have regional groups with branches at the local level. SNP selects candidates from a nationally compiled list, with constituencies “short-listing” the candidates and members casting votes for those short-listed. PC follows a different selection practice. Branches nominate candidates, who are then presented to a selection committee

45 See Blackburn, supra note 1, at 9-10; Fisher, supra note 23, at 97.
46 In various constituencies, the desire to defeat the Tory incumbent motivated voters not to split the opposition vote. Labour and Liberal Democrat voters thus opted to vote for the stronger opposition candidate regardless of his or her party affiliation. See Butler & Kavanaugh, supra note 2, at 251-52, 309-12. Based on Author’s conversations with Prof. Anthony King, Professor of Gov't. Univ. of Essex and member of CSPL, and Lord Goodhart, Q.C., member of CSPL.
47 Fisher, supra note 23, at 128.
composed of representatives from the various branches, constituencies, and regional councils. Historically, PC has been more gradualist in their approach than the SNP and in its early years focused more on cultural issues (such as the retention of the Welsh language) than on economic issues.

In its 1997 election manifesto, the Labour Party proposed to hold referendums in Scotland and Wales concerning the establishment of legislative entities for those countries. The establishment of a Scottish Parliament and a Welsh Assembly and the devolution of certain powers to them is envisioned as a means to "make government more accessible, open and accountable."

In September 1997, the electorate voted affirmatively on both referendums, by a large margin in Scotland and by a relatively small percentage in Wales. Accordingly, legislative elections will be held in both Scotland and Wales in mid-1999, in close proximity to local and European Parliamentary elections. Unlike elections to the Westminster Parliament, the 129-member Scottish Parliament will be elected using an additional member system for a four year term. Seventy-three of the members will be elected on a constituency, first past the post basis, while the remaining fifty-six members will be elected by party lists using proportional representation methodology (additional member system). The sixty member Welsh Assembly will also use an additional member system: forty seats will be filled using the traditional, constituency based, first

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48 Matters pertaining to Scotland and Wales have been handled by the central government which has a Scottish and a Welsh Office, each headed by a Secretary of State. See A VOICE FOR WALES: THE GOVERNMENT'S PROPOSAL FOR A WELSH ASSEMBLY 7 (White Paper) [hereinafter A VOICE FOR WALES].

49 SCOTLAND'S PARLIAMENT (White Paper 1997) (prefacing the White Paper with a letter from Prime Minister Tony Blair). The government "believes that those controlling the spending and setting of standards for public service should be answerable to the people they serve; and that a more responsive elected body will be better place to promote economic prosperity and quality of life across Wales." A VOICE FOR WALES, supra note 48, at 7.

50 Similar referendum issues failed to gain the requisite level of support when presented to the electorate in Scotland and Wales by an unpopular Labour government near the end of its term in 1979. Some attribute the difference in result to the popularity of the current government, while others suggest that the unity of those supporting devolution in the most recent referendum campaign was critical. The fact that the Conservative Party had lost all of its parliamentary seats in Scotland just months before the referendum and, thus, was not in a particularly strong position to mount a "no" campaign may have also affected the result in the Scottish referendum. See James Mitchell et al., The Scottish Devolution Referendum, 51 PARLIAMENTARY AFFAIRS 166 – 81 (1998).
past the post system. The other twenty will be elected using the additional member system of party lists and proportional representation.

v. Other Political Parties

Along with the main political parties described above, there are a number of small and fringe parties in Britain. The ecologically oriented Green Party, for example, enjoyed a brief period of success when it obtained approximately fourteen percent of the vote at the 1989 elections to the European Parliament. Other small parties include the Socialist Labour Party and the Democratic Left, the renamed Communist Party. There are also extremist parties such as the British National Party on the far right and fringe groups that present candidates, such as the Official Monster Raving Loony Party and the Loony Green Giant Party.51

III. REGULATORY REGIME FOR CAMPAIGN FUNDING

A. Historic Background

Toward the end of the 19th century, there was increasing alarm over the high costs of elections in Britain. The fact that voting was conducted in the open and many electors viewed their "vote a salable commodity" may well have accounted for some of the extensive spending.52 Parliament unsuccessfully tried to eradicate the purchase of votes on various occasions since 1695 through the passage of several acts including the Bribery Act 1729, the Reform Acts of 1832 and 1854, and the Corrupt Practices Prevention Act 1854.53 Notably absent from such legislation, which in part extended the right of suffrage to more people, were limits on the amount candidates could spend on their campaigns. Campaigns were largely self-financed affairs, limited to wealthy candidates who could afford to finance a campaign that had to include incentives for an expanding electorate.54

A new weapon against bribery developed as a result of the Ballot Act 1872. That Act introduced the secret ballot, which theoretically made the purchase of votes unenforceable. Nonetheless, the costs and

51 See generally F.N. BALDWIN, MASTERING BRITISH POLITICS, 51-57 (1985). The author notes that over 900 candidates ran as independents or as minor party candidates in the 1992 general election.
53 Id. at 135-36.
54 See Johnston & Pattie, supra note 34, at 125.
the corruption in the 1880 general election remained high and engendered concern. In response, Parliament passed the Corrupt and Illegal Practices Act 1883, which established the basic framework for today’s election funding regulation. The 1883 Act imposed ceilings on candidate expenditures, limited the type of permissible expenditures, and imposed liability on candidates. These provisions, which have undergone various revisions are now embodied in the Representation of the People Act 1983 (RPA).

B. Current Regulatory Scheme

In contrast to the U.S. Federal Election Campaign Act of 1971, as amended, which governs party and election funding in the United States, the Representation of the People Act 1983 does not mention much less proscribe the source of, or limits on the amount of, contributions to political parties. There is, for example, no prohibition on corporate or foreign contributions to either candidates or political parties. Indeed, political party funding and spending is not touched upon by the Act at all. The Act instead focuses exclusively on expenditures and then, exclusively in the context of constituency spending.

i. Expenditure Regulations

Section 76(1) of the Act limits the amount candidates may spend on their election. The precise amount depends on two factors, whether the constituency is urban or rural and the number of electors in the constituency. In general elections, there is a flat base amount per constituency, £4,965 in 1997, plus an additional 4.2 pence per elector (urban constituency) or 5.6 pence per elector (rural constituency). The higher rate reflects the additional costs associated with campaigning in a larger, less densely populated area. Thus, as a general rule, the spending limit in most constituencies for the 1997 general election would not have surpassed £9,000, as the average constituency consists of 60,000 to 70,000 electors. Expenditure limits for by-elections, or what might be called “special” elections in the United States, are computed differently. The current base amount is £19,863, with an additional 22.2 pence for each registered elector in a rural constitu-

55 Id; see also RAWLINGS, supra note 52, at 136-37.
57 See Justin Fisher, The Situation in Britain 5 (presented at the Funding of Political Parties: Europe and Beyond, Bologna, 1998) (on file with the author).
ency and an additional 16.9 pence per elector in an urban constitu-
ency. The expenditure limits are not automatically indexed for inflation, but may be raised at the initiation of the Home Secretary and laid before Parliament.

To ensure accountability, the Act mandates that candidates appoint election agents, and all contracts which will result in election expenditure must be made by the candidate or the election agent. Moreover, only the election agent may provide payment for any election expense. Essentially, all expenditures must be authorized by the candidate or agent and all payments made by the agent so as to “prevent the restrictions being avoided by various persons making payments and pleading ignorance of what payments have been made by others.” The election agent is also responsible for maintaining an account of the campaign’s finances and must file an election return and supporting documentation evidencing all income received and expenses incurred within weeks after the end of the campaign.

The statute contains a second key expenditure provision, Section 75, which governs spending not authorized by the candidate’s election agent. This provision was added to the statute after a flurry of activity by a variety of pressure groups, including Suffragettes who campaigned against certain Members of Parliament opposed to extending the right to vote to women. In broad terms, the provision purports to prohibit third parties or pressure groups from spending more than £5 “with a view to promoting or procuring the election of a candidate at an election.” The purpose of such a limitation is two-fold. First, it

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59 Any person wishing to stand for election to Westminster must post a £500 deposit, which is forfeited if the candidate fails to obtain more than one-twentieth of the total number of votes cast. See GUIDANCE FOR ACTING RETURNING OFFICERS IN ENGLAND AND WALES, HOME OFFICE, supra note 2, §§ 5.37, 10.07. This requirement serves to winnow out the most frivolous of candidates.
60 See RPA §§ 72, 73(1).
61 PARKER’S CONDUCT OF PARLIAMENTARY ELECTIONS 304 ¶ 15.04 (R. J. Clayton ed. 1994) [hereinafter PARKER’S].
62 See RPA § 81.
63 See LINTON, supra note 6, at 7; see also EWING, FUNDING, supra note 24, at 80-81.
64 The provision provides, in pertinent part:

No expenses shall, with a view to promoting or procuring the election of a candidate at an election, be incurred by any person other than the candidate,
reinforces the candidate expenditure limits by foreclosing the loophole of having others undertake spending on the candidate’s behalf. Secondly, it reflects the view that election campaigns are times when candidates and political parties are center-stage and entitled to dominate the debate while members of the general public quietly remain on the side-lines.\textsuperscript{65}

In February 1998, the European Court of Human Rights issued its decision in \textit{Bowman v. The United Kingdom}, holding that the £5 limit violated the right of freedom of expression under Article 10 of the European Convention on Human Rights.\textsuperscript{66} Ms. Bowman, Director of the Society for the Protection of Unborn Children, was prosecuted for having spent £10,000 on 1.5 million copies of a leaflet, of which 25,000 were distributed in one constituency during a tight election race. The leaflet characterized the incumbent candidate as a “leading pro-abortionist” and noted that the Conservative candidate was a staunch “defender of the unborn child.” When the case was dismissed

his election agent and persons authorised in writing by the election agent on account –

(a) of holding public meetings or organising any public display; or
(b) of issuing advertisements, circulars or publications; or
(c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate.

RPA § 75.

\textsuperscript{65} At the Charter 88 Conference in January 1988, the author notes that Martin Linton, MP, commented that election contests could be viewed from different perspectives ranging from free-for-all combat to well-controlled jousting matches. In his view, the jousting match, with well-defined rules of engagement was the appropriate form for Britain and opined that limitations on third party spending prevented the match from degenerating into a free-for-all.


Article 10 of the Convention provides:

\begin{quote}
Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as prescribed by law and are necessary in a democratic society, in the interests of national security . . . for the protection of the reputation or rights of others.
\end{quote}

for having been brought beyond the one year statute of limitations, Ms. Bowman appealed, arguing that the prosecution violated her right of free expression under Article 10 of the European Convention on Human Rights.

The Court ruled in Ms. Bowman’s favour by a vote of fourteen to six, with two judgments being rendered for the majority. The principal judgment concluded that Section 75 contributed to promoting equality between candidates and thus served the legitimate purpose of protecting the rights of others, in particular, the candidates and the electorate in the constituency. The Court further noted that “free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system.” In balancing these two rights, the court acknowledged the discretion of the Member State and the fact that during the election period, certain restrictions on free expression might be needed to ensure the free expression of the people in choosing their legislature. However, the court ultimately concluded that the £5 limit imposed by Section 75 was not a reasonable restriction, especially in light of the fact that the press was unrestricted and political parties were not limited in what they could spend on their national campaigns.

The modest amount of permissible election expenditure, both by candidates and presumably by third parties in the post-Bowman era, makes it critical to determine what counts against those expenditure limits. Section 118 of the 1983 Act broadly defines “election expenses” as “expenses incurred, whether before, during or after the election on account of or in respect of the conduct and management of the election.” Moreover, as previously noted, Section 75 limits the amount outsiders may spend “with a view to promoting or procuring the election of a candidate.” Although these statutory definitions are strikingly broad, there are exclusions, which can be broken down into three categories: costs that are statutorily excluded from the expenditure limitations, expenditures that judicial decisions have deemed to

67 Bowman v. United Kingdom, ¶ 42; Article 3 of the First Additional Protocol to the Convention provides that Member States will hold “free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.” Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952, art. 3, 213 U.N.T.S. 221, 264.

be outside the limitations' scope, and costs that are excluded as a matter of general practice.

a. Statutory Exemptions

The statutorily exempt category includes two significant items. First, the Act specifically exempts personal expenses incurred by candidates during the course of the election campaign. Such expenses would include reasonable traveling, lodging, and subsistence costs associated with the candidate's campaign, but do not extend to costs incurred by those accompanying the candidate such as family members or staff. Second, the statute, at §75(1)(c)(i), exempts election campaign coverage for newspapers, periodicals, and radio and television broadcasts. This latter exemption largely mirrors its American statutory counterpart embodied at 2 U.S.C. §431(9)(B)(i), both in intended effect and judicial construction. These provisions were designed to enable the media to cover campaigns as part of their news services. As construed by the courts, these provisions would not exempt advertisements or special election editions that promote particular candidates, as such activities would fall outside the traditional news function for which coverage was intended.

b. Exclusions Based on Judicial Construction

As noted, the very wording of the statute expressly includes as an “election expense” all expenses incurred “before, during and after

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69 See RPA §§ 74, 118.
70 The statute does not exclude such costs for those traveling with the candidate. According to research conducted by Michael Crick, an investigative reporter for BBC Newsnight, minimizing or excluding the costs of the candidate's family and entourage is one avenue for circumventing the constituency expenditure limit. See CSPL, supra note 7, ¶ 1936 (testimony of Michael Crick on Apr. 30, 1998).
71 The British regulation of election coverage differs from that in the U.S. by prohibiting broadcasts about a constituency during the election if a candidate in that election “takes part in the item and the broadcast is not made with his consent ...” See RPA § 93(1). This provision, intended as a protection for minor candidates, allegedly has been used by strong incumbent candidates to curtail coverage of their lesser known opponents. See BLACKBURN, supra note 1, at 258, 260-61.
candidacy" on account of or in respect to the conduct or management of the election. However, early court decisions held that costs associated with the selection of candidates would not count toward the ultimate selectee's limit.\textsuperscript{73} Candidates have also been allowed to attend and participate in meetings organized by their local constituency party in anticipation of a future election without having to attribute associated costs to the election campaign limit. This "protect[s] the freedom of constituency parties to pursue their normal political and social activities, even though the candidate will benefit indirectly as a result of this activity."\textsuperscript{74}

In short, determining what expenditures count against the limit is a factually specific question and clear guidelines are difficult to articulate. In a relatively recent but unreported case, Mr. Justice Kelly set forth a two-prong test. In his view, if the expenditure was "closely related to 'the machinery of the election'" and "primarily or principally for the promotion of the interests of the candidate," it would count against the candidate's expenditure limit.\textsuperscript{75} However, even after selection, candidates are fairly free to campaign without incurring expenditures that will count against their campaign limit, provided they describe themselves as "prospective parliamentary candidates" and do not explicitly ask people to vote for them.

With regard to third party spending, judicial interpretation of section 75 has significantly altered the application of that provision. One of the early issues to arise under Section 75 was whether negative campaigning fell within its scope. Was it sufficient for prosecution if the defendant opposed the election of a candidate or did the defendant actually have to promote the election of one of the other candidates? Two decisions, following different rationales, confirmed that negative campaigning would suffice, although one of them so held on the grounds that such campaigning reflects the intention to advance the candidacy of one of the remaining candidates.\textsuperscript{76}

\textsuperscript{73} See Birbeck v. Bullard (1886) 3 O'M and H 84, discussed in Ewing, Funding, supra note 24, at 75-76.

\textsuperscript{74} See Ewing, Funding, supra note 24, at 76.

\textsuperscript{75} See Parker's, supra note 61, ¶ 15.41. The Chairman of the Association of Electoral Administrators opined that "there is no clear definition of when an election starts, so it is a matter of interpretation for the agent" and then acknowledged that he had "never seen a case where someone has put in an invoice or receipt for something, say, six months before an election." CSPL, supra note 7, ¶¶ 2172, 2176 (testimony of John Turner on Apr. 30, 1998).

ON THE BRINK OF REFORM

The second significant line of judicial interpretation involving Section 75 concerns its application to materials that are clearly election related, but not specific to a particular constituency campaign. In the leading case of *R. v. Tronoh Mines Ltd.*, the defendant company placed an advertisement in a national newspaper criticizing the government's economic program and encouraging readers to vote for a party other than Labour. The Court held that the Act did not "prohibit expenditure incurred on advertisements designed to support, or having the effect of supporting, the interest of a particular party generally in all constituencies . . . and not supporting a particular candidate in a particular constituency." In so holding, the Court created an opening for unregulated national election spending. The parties eventually began to adopt a "national election" advertisement strategy. The Liberal Party took the first step in this direction in 1974 with the purchase of national newspaper advertisements. In all subsequent elections, parties have dedicated increasingly significant resources to national newspaper advertisements and billboard poster campaigns. According to the Director-General of the Advertising Association, the statistics that exist show the following trend in advertising expenditures by political parties in recent elections.

<table>
<thead>
<tr>
<th>Election</th>
<th>Reported Advertising Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979</td>
<td>£1.4 million</td>
</tr>
<tr>
<td>1983</td>
<td>£3.8 million</td>
</tr>
<tr>
<td>1987</td>
<td>£7.9 million</td>
</tr>
<tr>
<td>1992</td>
<td>£7.5 million</td>
</tr>
<tr>
<td>1997</td>
<td>£14.5 million</td>
</tr>
</tbody>
</table>

However, these statistics lack reliability due to inconsistent approaches as to which costs the parties include in their figures. Ac-
counting for under-reporting, the Director-General estimates the amount spent on advertising on the 1997 elections to be between £30 and £40 million.\(^{80}\) In short, the *Tronoh Mines* decision fundamentally altered British campaign methodology. It formed the basis for the birth and rise of the national electoral campaign, which now dominates electoral campaigns in Britain.

c. Exclusions Based on General Practice

Various media accounts suggest that certain practices have evolved to avoid counting various costs against candidate expenditure limits. The practices range from creative accounting techniques to fraudulent concealment. Conversations with former candidates or election agents of all major parties, many of whom would only speak on condition of anonymity, confirm the existence of such practices, especially in by-election and marginal general election seats. These practices fall into two classes.

In the first instance, there is the practice of simply not reporting certain costs. Candidates and constituency associations, for example, may stock up on staple items such as poster board, envelopes, and other office supplies well in advance of the election campaign period but in anticipation of it. Although clearly intended for use in the election, these early purchases often go unreported.

Costs associated with travel expenses attributable to the candidate’s family, staff, and party leaders during visits to the constituency are also likely to go unreported, and if reported at all, then at a value less than actual cost. Others have remarked how today’s campaigns nearly always involve telephone canvassing and mobile phones, but such costs rarely appear in expenditure reports. Similarly, support from the national parties in the form of staff or equipment are not reflected in candidate reports. The amount involved in unreported staff salaries, unreported direct mail/telephone canvassing, and unreported

\(^{80}\) See CSPL, *supra* note 7, ¶ 2691-95 (testimony of Andrew Brown on May 7, 1998). He emphasized the unreliability of the statistics, noting that the Labour Party did not include any costs for poster advertising in 1997, a main-stay in British electoral politics, on the grounds that the Conservative Party had failed to provide such information in an earlier campaign. *See id.*

In an article written shortly before the election, Pinto-Duschinsky noted that in “recent elections, national publicity has accounted for up to two-thirds of central Tory expenditure and up to half of Labour’s campaign costs” Michael Pinto-Duschinsky, *Big Spenders May Be Holding Back For a Final Flourish*, *Times*, Apr. 5, 1997, at 15.
computer equipment can quickly add up to substantial sums, especially in the context of by-elections.  

In the second instance, items are reported but at less than their actual cost. In addition to travel costs referred to above, campaigns may fudge the amount spent on postage by avoiding franking machines in favour of stamps, as the actual number used will not be verifiable and receipts are not required. One former agent noted that printers who are sympathetic to the candidate may be willing to doctor invoices in order to keep the reportable costs to a minimum.

The same technique of undervaluing the amount or costs applies to telephone line installations, telephone canvassing, staffing, and direct mail. Again, it is difficult to assess the actual amount that does not get reported, but many of the items are associated with the biggest items of expenditure in today's election campaigns. Moreover, even if the amount of spending that does not get properly reported were minimal, the very fact there is an understanding that some creative accounting will help massage the numbers at least in marginal, tough races, suggests a tolerance to law breaking by those who seek to hold public office and public trust, and invites a more effective enforcement mechanism.

ii. Regulation of Broadcast Advertisements

An estimated $50 million was spent on advertising by each of the 1996 presidential candidates in the United States, much of it on radio and television advertisements. Britain has a long history of banning paid political advertisements in the broadcast media, which many cite

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81 Michael Crick examined the issue of by-election overspending in the context of the Wirral South by-election held in March 1997. Based on his investigation and research, Mr. Crick estimates that the Conservative and Labour Parties each spent more than £100,000 on their campaigns, far in excess of the limit. In marginal general election constituencies, his anecdotal evidence, disputed by some, suggests that candidates may exceed the expenditure limits by two or three times the allowable amount, spending between £20,000 and £30,000. See CSPL, supra note 7, ¶¶ 1968, 1976 (oral testimony of Michael Crick on Apr. 30, 1998).

82 "The trouble with franking machines is that they provide evidence of how much you have spent on postage. Much better to send volunteers down to the post office to buy the stamps and, as I understand it, post offices in by-election towns do a roaring trade." Id. ¶ 1916.


as the primary reason for the relatively low cost of campaigns. Instead, the parties are allocated free political party broadcasts (PPBs) and free party election broadcasts (PEBs) during election campaigns.

This practice dates back to the creation of the British Broadcasting Corporation (BBC) in the early 1920s. The BBC, by Royal Charter, was tasked with controlling radio broadcasts and later television broadcasts with political impartiality. Beginning with the 1924 general election, the BBC offered and the parties agreed to broadcast election messages on the radio. The practice evolved that the BBC would propose a schedule of broadcasts, parties would be afforded an opportunity to comment and agreements would be reached regarding the allocation of time and scheduling. This process eventually became "institutionalized" in 1947 with the establishment of the Committee on Political Party Broadcasting (CPPB), consisting of representatives of the parties and the broadcasters. As one commentator remarked about the Committee on Political Party Broadcasting:

> In the best traditions of British constitutionalism, this body is unofficial in status, unknown to the general public in the details of its membership, applies uncertain and unpublished criteria of allocation, and is, within its particular field of competence, all-powerful.

The concept of the CPPB may be a bit misleading. From the time it last met in 1983 until it was formally disbanded in June 1997, the broadcasters would present their proposal to the Secretary of the Committee, who was also the Secretary to Leader of the House. The government whip would then work the proposal through with the leaders of the other parties and present an agreed upon proposal back to the broadcasters.

The abolition of the CPPB perhaps reflects the shift away from the old "traditions of British constitutionalism" and the entry into a new era. It appears that the BBC began to question whether the process for making allocation determinations was appropriate in 1996 and based on legal advice, decided it should decide rather than propose allocation arrangements. Then, the Referendum Party sued the BBC

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85 See Blackburn, supra note 1, at 236. Party election broadcasts on television began in 1951, and were handled in the same manner as radio spots. See id. at 235-36. In 1956, the practice was extended to commercial television companies who had representatives join the CPPB. See id. at 236-37.
86 See Rawlings, supra note 52, at 153.
87 See Blackburn, supra note 1, at 237.
88 The Referendum Party was established and largely funded by the late Sir James Goldsmith. The objective of the Referendum Party, was to advocate the holding of a
and the Independent Television Commission, challenging their alloca-
tion determinations on both procedural and substantive grounds. Al-
though the court rejected the Referendum Party’s application on all
grounds, including unlawful delegation by the broadcasters to the
CPPB, it was clear the broadcasters would be on safer ground if they
were the decision-makers on allocation issues. In June, 1997, the
BBC and the Independent Television Association dismissed the Secre-
tary of the CPPB “thanking him for his services over the years and
explaining that on legal advice it would be more appropriate for the
BBC to receive representations directly from the various political par-
ties rather than through the Committee.”

Although the methods and precise criteria used for determining
allocation of PEBs still are not publicly known, both the BBC’s “Pro-
specify that parties fielding at least fifty candidates are entitled to at
least one five minute party election broadcast. In the past, there have
been a maximum of five such broadcasts allocated for any one party
with an equal number given to the parties in government and in oppo-
sition. The allocation determinations carry significance beyond the
actual party election broadcasts. In order to meet the requirement of
political impartiality, broadcasters rely on the allocation formula for
determining how much time should be spent covering the various par-
ties during news programs.

This system, which is so foreign to the American observer, repre-
sents an effective means of controlling election costs. Many have sug-
gested applying the same methodology to the treatment of print and
poster advertisements, which currently account for a substantial per-
centage of all election expenditures. At the same time, however, there
is growing debate about the value of the party political broadcast and
the lack of interest in those that occur outside of election campaign
periods. Indeed, the BBC recently issued a consultation document
suggesting that the number of such broadcasts be reduced.

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See BUTLER & KAVANAUGH, supra note 2, at 71-73.
See CONSULTATION PAPER, supra note 84.
See BLACKBURN, supra note 1, at 238.
See CONSULTATION PAPER, supra note 84.
iii. Company and Trade Union Regulation

Regulation of trade unions is a complex area worthy of its own in-depth study. For purposes here, it is important to recall that trade unions played an instrumental role in creating the Labour Party at the beginning of this century. They have also been a key funding source for the party throughout its existence, providing support through affiliation fees, grants, donations and contributions in-kind. Trade union political support came under attack early on, and in 1910, the House of Lords ruled in *Amalgamated Society of Railway Servants v. Osborne*, that trade union parliamentary funds were invalid and enjoined trade unions from engaging in political activities. The effect of the *Osborne* decision was short-lived as the Liberal government partially reversed it when it passed the Trade Union Act 1913. Under this legislation, trade unions could make political contributions provided that certain conditions were met. The union had to ballot its members to adopt political objects. Armed with this approval, it could then set up a political fund from which political payments would be made. Any member could ask to be exempt from paying the political fund levy by “contracting out” without incurring any discriminatory repercussions.

Since 1913, the rules governing participation in trade union political funds have varied according to the party in government at the time. The Trades Disputes and Trade Unions Act 1927, enacted under a Conservative government, required that union members affirmatively take steps to participate in the political levy, and hence “contract-in.” The Trade Disputes and Trade Unions Act 1946, reversed that requirement, as the Labour government preferred a system whereby union members could elect not to participate by “contracting out.” Then, under the Thatcher government, a new requirement was imposed in the Trade Union Act 1984. Trade unions were required to ballot their members every ten years to see if they wanted to continue to have a political fund. In addition, the Trade Union Act 1984 broad-

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95 See Ewing, TRADE UNIONS, supra note 94, at 97-121. See Brotherhood of Ry. & S.S. Clerks v. Allen, 373 U.S. 113 (1963) (citing the British Trade Union Act 1913 to suggest a means of accommodating union members who object to the political activities funded by mandatory union assessments).
ened the scope of activity that had to be financed through the unions’ political funds. 96

Trade unions file annual returns with the Certification Office for Trade and Employers Associations. 97 These returns set forth basic balance sheet information pertaining to the fund’s financial activity for the year, including cash in hand, income received, and expenditures made. An examination of ten political funds over the span of five years, however, revealed that the information provided widely varies in specificity, and may or may not provide the reader with an understanding of how the funds were spent. 98

In contrast to the regulation covering trade unions, corporate involvement in party and election funding remains virtually unregulated. Unlike trade unions, companies need not establish a separate political fund from which to make political donations. Nor do companies need to seek shareholder approval before making such donations. It was only with the passage of the Companies Act 1967, that companies were required to declare contributions made to political parties. Currently, declarations for contributions of £200 or more must be made in the company’s annual report, a copy of which is filed with the Companies Office. That Office does not maintain a separate listing of company donations. Accordingly, the only way to determine which companies are making political donations, the amount of such donations, or the identity of recipients is to examine the reports manually, a laborious and expensive proposition. 99 Even if the annual reports for

96 See id.; see also FISHER, supra note 23, at 78 (describing the ways in which trade unions fund the Labour Party). The initial balloting resulted in the retention of all existing political funds and the creation of some new ones.

97 The Certification Officer approves the establishment and continuation of trade union political funds. In addition, complaints concerning political funds are filed with and investigated by the Certification Officer and it is the Certification Officer who is authorized to issue an order remedying any violations of the rules. See Trade Union and Labour Relations Consolidation Act, §§ 32, 32A (1992).

98 As of the end of 1996, there were 39 political funds in operation by trade unions. These political funds had total income of £15.7 million in 1995 (down from £18.1 million in 1994) and made some £16.2 million in expenditures (down from £18.4 million in 1994). CERTIFICATION OFFICE FOR TRADE UNIONS AND EMPLOYERS’ ASSOCIATIONS, ANNUAL REPORT OF THE CERTIFICATION OFFICER ch. 7 (1996).

99 Neil Moister, a researcher for the Labour Research Department, told the CSPL:

    We try in our research to cover all the stock exchange companies which produce their glossy reports and make them freely available. The problem we find is that there are over one million limited companies in the U.K., and the feasibility of paying £3.50 a time to look at each company file at Companies House is beyond our financial means.
all publicly traded companies were regularly examined, there could
still be problems in ascertaining the level of company donations since
some companies channel their contributions through front organisa-
tions, such as the British United Industrialists, while others could be
giving through their executives. In neither instance would the contri-
butions necessarily be reported in the annual reports. As previously
noted, it appears that company donations to political parties are in de-
cline. Even with this declining participation and the limits on com-
pany donation research, the Labour Research Department nonetheless
traced 145 companies giving £2.7 million to the Conservative party in
1996, with smaller amounts to Labour and Liberal Democrats.100

C. Election Petitions and Penalties

Although challenges relating to the funding of election cam-
paigns are relatively rare for the reasons discussed below, those that
are brought will generally be based on the returns filed by the election
agent. Election returns must be filed within thirty-five days of the
election, and any petition challenging the election is to be brought
within thirty-one days of the filing of the election return.101 Petitions
are heard by two judges of the High Court, which sit as an election
court. If the court finds that the expenditure limits were exceeded, the
candidate and agent will be found guilty of an illegal practice and the
election result is void.102 Moreover, if it is determined that the candi-

100 See id ¶ 597.
101 As previously noted, the election agent must file a return of election expenses at
the conclusion of the election campaign. To facilitate the expeditious filing of such
reports, the statute requires that: all election-related bills be submitted to the election
agent within twenty-one days after the results of the election are declared; all pay-
ments are to made by the agent within seven days thereafter; and election returns are
to filed within thirty-five days from the announcement of the election results. The
return, which must conform to a specific format, details inter alia all authorized
campaign expenditures, all funds received for the campaign from the candidate or
others, and all personal expenses incurred by the candidate. The completed form,
verified by the election agent and by the candidate before a Justice of the Peace,
together with all campaign bills and receipts, are delivered to the appropriate return-
ing officer. The returns are required to be available for inspection and copying upon
payment of a prescribed fee for a period of two years. See PARKER’S, supra note 61,
at 303-37.
102 Failure to file the election return on time precludes the candidate from sitting or
voting in the House of Commons until the report actually is filed. See RPA § 85(1).
The statute also provides for the voiding of an election where a candidate knowingly
date knew or consented to the illegal practice, the candidate is disqualified for seven years. Corrupt practices, such as the filing a false election return or bribery, are punishable by the criminal courts but may serve as a basis, in civil proceedings, for disqualification. Criminal conviction for illegal practices may result in the imposition of a fine while most corrupt practices carry a prison term of up to one year and/or to a fine, and disqualification from voting, being elected or sitting in the House of Commons for a given amount of time or holding public or judicial office.

The statute contains "escape" clauses which enable, in certain circumstances, those who have committed a violation of the election law to be relieved of responsibility. For example, candidates or election agents may on their own or in response to a petition acknowledge having committed an illegal practice due to some inadvertent miscalculation or error. The application for relief must be made promptly upon discovery of the error, with notice to the prosecutorial authority, and must be substantiated by written or oral evidence that demonstrates the illegal practice at issue, the inadvertent nature of the error, the proper notice given, and that it is just to excuse the applicant from sanctions.

D. Forms of State Aid

Unlike many of its European neighbors, there is no direct state funding of political parties in Britain. Nonetheless, various forms of state aid do exist. For the American observer, party political and election broadcasts (PEBs) are perhaps the most notable form of assistance, although they are not exactly state aid in as much as the broadcasters and not the state provide the air-time. The major political par-

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103 Conviction for some corrupt practices, such as personation, subjects the offender to two years of imprisonment and/or a fine. It should be noted that all criminal prosecutions must be brought within one year of the offence. See RPA § 176(1).

104 See generally PARKER'S, supra note 61, at chs. 17-20.

105 See id. at ch. 21 (discussing grounds and procedures governing applications for relief). Author's discussions with a solicitor who handles election matters for candidates of one of the main parties revealed that applications for relief are not particularly common and rarely are filed for exceeding the expenditure limit. This solicitor filed 9 or 10 such applications in connection with the 1997 general election, mostly for imprint error. None of the applications for relief related to expenditure limit issues.

106 See id.
ties all favour continuing at least the electoral portion of this program, whereby the parties are allocated broadcast time on radio and television during the electoral period to present their views and all paid political advertising is banned. As the Deputy General Secretary of the Labour Party told the Neill Committee, the current system "allows equality of opportunity," and changing it "would escalate the arms race."\(^{107}\) The monetary value of such broadcasts is not insubstantial. In fact, the market value for televised party election broadcasts has been estimated to be in the neighborhood of £56 million, without including PEBs for local and European elections.\(^{108}\)

In addition to the political party broadcasts, political parties are provided with free policing for their party conferences, at an estimated value of £2,310,000 in 1992.\(^{109}\) Similarly, the State conducts and pays for the annual registry of electors, so parties do not need to devote their resources to getting potential voters registered to vote. And, although not part of campaign costs, opposition parties receive "Short money" to assist with carrying out parliamentary work in the House of Commons and "Cranborne money" to assist them in the House of Lords. The estimated amount of subsidy for parliamentary work totals approximately £1,672,000 for 1998-99.\(^{110}\) Candidates themselves are entitled to limited forms of state aid. For example, they are entitled to mail one leaflet, free of charge, to each elector in his or her constituency.\(^{111}\) Candidates are also entitled to use public buildings, without payment for rent, during the campaign period for the purpose of holding public meetings,\(^{112}\) although in practice this has become irrelevant as such meetings are no longer commonly held.

\(^{107}\) CSPL, supra note 7, ¶1001 (testimony of Margaret McDonagh on 21 Apr. 1998). See also CSPL, supra note 7, ¶1186 (testimony of Lord Razzall on Apr. 22, 1998); id. ¶1410 (testimony of Lord Parkinson on Apr. 22, 1998).


\(^{109}\) See LINTON, supra note 6, at 101. As noted by Martin Linton, the local police departments paid such costs until the passage of the Criminal Justice and Public Order Bill 1993. Under this legislation, these costs will be paid by the Treasury for parties with at least two elected MPs or who have obtained over a certain number of votes. Id.

\(^{110}\) See CSPL, supra note 7, ¶2922 (recording testimony of Paul Tyler on May 7, 1998).

\(^{111}\) See RPA § 91.

\(^{112}\) See RPA § 95.
IV. PROBLEMS WITH THE BRITISH SYSTEM

The current U.K. party and election funding system, largely a creature of the Victorian era, suffers from three major problems: secrecy, irrelevancy, and lack of accountability.

A. Secrecy

The secrecy surrounding party finances has been tightly maintained by the major parties in varying degrees. Although the Labour Party has published accounts since 1906 and the Conservative Party since the mid-1980s, the only mandatory disclosure currently in place consists of expenditure returns filed by individual candidates at the constituency level, and as previously discussed, even those mandatory returns suffer from lack of comprehensive coverage and creative accountancy. At the local constituency association and regional party levels, there is simply no mandatory and virtually no voluntary disclosure of financial information. In giving evidence to the Neill Committee, the Conservative Party Chairman noted that local conservative party associations are “very independent and they view questions about their finances from the centre with grave suspicion.” At the national level, parties in recent years have embarked on some voluntary disclosure but the information produced lacks detail, a common format, and remains unverifiable. Thus, at present, any analysis of party funding must be based on “best estimates,” and/or “insider” information gleaned from information released by the parties and supplemented from other sources.

The hesitancy to disclose donors may be difficult to understand for those accustomed to the U.S. system of mandatory disclosure for all contributors giving $200 or more per year. The argument against such disclosure is framed in terms of right of privacy. As one witness informed the Neill Committee:

I absolutely do not think that donations which are legitimate expenditures paid out of taxed income should be declared. We ought to have the privacy of a making a political contribution without being embarrassed. There can be many examples of where public declaration can be embarrassing.

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113 See supra pp. 25-26.
114 See CSPL, supra note 7, ¶1358 (testimony of Lord Parkinson on Apr. 22, 1998).
115 See PINTO-DUCHINSKY, supra note 34, at 320.
116 CSPL, supra note 7, ¶317 (recording testimony of Sir Stanley Kelms on Apr. 16, 1998). Lord Parkinson, Chairman of the Conservative Party, echoed this view, noting that “many very honourable people like to spend their money in the way which
There is grave concern that disclosing the names of donors will diminish the flow of donations to the parties, although there is little concrete evidence to support this fear. Another witness expressed concern for possible retaliation and discrimination in the award of bids by Labour controlled local government councils if it were known that certain companies were financial donors to the Conservative party. The Conservative party has tentatively proposed the establishment of an independently administered Political Donations Institute (PDI), which would serve as a blind trust for large and/or anonymous donations. According to the party, this would preclude parties from knowing who funded them and hence avoid the allegation of influence buying. The proposal suffers from two major problems. It runs counter to the very concept of openness and it could easily be circumvented by donors who choose to tell the party about their donations through the PDI mechanism.

Another concern commonly voiced about mandatory disclosure focuses on the administrative and regulatory nightmare that such disclosure could engender. The treasurer of the Liberal Democrat Party noted that a major concern "is the enormous bureaucracy that would be required . . . to make a declaration of everybody who had given they think fit, and they do not want to sacrifice their privacy as a result." CSPL, supra note 7, ¶1375 (recording testimony of Lord Parkinson on Apr. 16, 1998).

Peter Riddell, Political Columnist for The Times, thinks it depends on "whether you have a culture of privacy" and notes that Americans are not troubled by disclosure.

It is almost a badge of pride . . . giving and wanting it to be known you have given . . . because you want to be in with the people who are elected. In other countries, like Canada and elsewhere, there has been a fall-off in donations. It is very difficult to know which way Britain will go in that." CSPL, supra note 7, ¶ 12 (testimony of Peter Riddell on Apr. 15, 1998). Professor Pulzer concludes that it is impossible "to prove what effect disclosure has," but notes that in Germany, "since the disclosure rules have become more rigorous, the number of very high donations has declined." Id. ¶ 624 (oral evidence of Professor Pulzer on Apr. 16, 1998). Two fund-raisers offered the view that disclosure could generate larger contributions from some donors who do not want to be seen as giving less than others. See id. ¶¶ 1594-95 (recording testimony of Henry Drucker on Apr. 29, 1998); CSPL, supra note 7, ¶ 1397 (recording testimony of Lord Levy on May 13, 1998).

See CSPL, supra note 7, ¶ 1378 (recording testimony of Michael Trend on Apr. 22 1998). See also id. ¶ 5024 (recording testimony of Mike Russell and George Reid on Jun. 3, 1998).

See id. ¶¶ 1398, 1433 (testimony of Lord Parkinson on Apr. 22, 1998).
£50 at the constituency level. We would have to employ more people to do that than to fight elections." One leading British expert recounted his dismay at the American system that generates reams of computerized data. Another confessed disquiet that in the United States, so much information could be obtained at the click of a computer, while others view the system as generating an "over-supply of information of which very little satisf[ies] any legitimate interest." And yet, secrecy surrounding party funding fosters a climate of intrigue and cloaks donations with at least a suspicion of impropriety, if not sleaze. Comprehensive disclosure will not eliminate such news stories; it will, however, enable them to be based on fact and not just innuendo.

Reliable financial information serves another important purpose. Funding trends and practices shift over time. Without data, which disclosure would provide, these trends are more difficult to ascertain and interpret. It has been alleged, for example, that parties are having to rely on larger donations from a smaller number of donors and that greater political participation should be encouraged. Indeed, for many, the health of democracy depends on broad public participation and hence, political parties should be raising money from a large number of contributors rather than large sums of money from a limited number of donors. Steps may be taken to expand a party's donor base, but absent publicly available information on donors and donations, no accurate assessment will be possible as to the success of the measures implemented. Regularized disclosure, moreover, may reveal problems in certain areas of party funding that would not otherwise be visible and that warrant corrective measures. Finally, appropriately detailed disclosure would serve an important role in enforcing any limitations on the source of donations or the amount of permissible expenditures.

B. Irrelevancy

A second problem area with the current regulatory system relates to the question of its continued relevancy. It is well accepted that the current rules were implemented in an era when "elections were genuinely local affairs" and that now "campaigns are fought at a national scale." New campaign methodologies have evolved as a result of

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120 Id. ¶ 1085 (testimony of Lord Razzall on Apr. 22, 1998).
121 Comment of Dr. David Butler at Charter 88 Conference, Jan. 28, 1998; see also CSPL, supra note 7, ¶ 913 (recording testimony of Ewing on Apr. 21, 1998).
122 See generally Johnston & Pattie, supra note 34, at 123-33 (discussing the history of British campaign finance); THE HANSARD SOCIETY FOR PARLIAMENTARY GOVERNMENT, AGENDA FOR CHANGE: THE REPORT OF THE HANSARD COMMISSION ON
innovations in polling, message development, direct mail, and media manipulation. Using the new campaign technologies, the parties have capitalized on the gap provided by the court’s ruling in the _Tronoh Mines_ case which exempted “generic” advertising from counting against local expenditure limits. As a result, the national campaign blossomed and by 1983, national party spending reportedly exceeded total local candidate spending for the first time.\(^2\) The information available for subsequent elections shows the ever-increasing importance of the national campaign, at least monetarily. In short, the only area regulated under current law is the area of least financial importance in today’s elections; the key area simply remains undisclosed and unregulated.

If the current situation were just an interesting theoretical anomaly, the matter would not necessarily warrant much attention. However, this regulatory conundrum is a pressing concern given other ongoing changes in the British electoral process. In particular, there will soon be four different voting systems in operation in the United Kingdom. Parliamentary elections in Britain are conducted on a “first past the post basis” (FPTP) in single member constituencies, similar to most federal congressional contests in the United States. Under this system, the candidate obtaining the largest number of votes in a particular constituency is declared the winner.

The 1999 British elections for Members of the European Parliament will be conducted on a proportional representational basis using regional lists, and the Scottish Parliamentary and Welsh Assembly elections will be conducted on the additional member system, a mixture of party lists and FPTP models. To confound matters further, in Northern Ireland, the parliamentary elections to Westminster are FPTP but a single transferable vote system is used in local elections, European Parliamentary elections, and elections to the Northern Ireland Assembly. The current regulations, however, are based upon the traditional single member constituency model with expenditure limits imposed on individual candidates. This model does not readily fit the new electoral systems soon to be a part of the British electoral

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Accordingly, new regulatory regimes must be developed and implemented without delay.

Finally, as demonstrated earlier, the current regulatory scheme is confined by practice, if not by law, to short periods of time close to elections. This may have been appropriate in the past, but fails to reflect that campaigns are increasingly an ongoing process. As several witnesses acknowledge in their evidence to the Neill committee, the distinction between election spending and non-election spending is more and more an artifice. The Chairman of the Association of Electoral Administrators stated:

The last general election started many months, if not years, before the election was actually called. Expenditure was undoubtedly being incurred on a national basis and within constituencies, where candidates had already been selected or were likely to be selected and who were clearly letting themselves be known to the public by doing a variety of things. Whether or not the expenditure that they incurred so doing ever ended up in an election return is somewhat questionable.

In short, under current law, expenditures associated with the early part of election campaigning are rarely disclosed or otherwise regulated, and therefore the true cost of campaigns remains undiscoverable.

C. Lack of Accountability

The third area warranting our attention concerns enforcement of the existing laws. Even accepting that early campaign spending might be excluded under a narrow interpretation of the term “expenditure,” there is credible evidence that not all expenditure incurred in the heat of election campaigns is included in election returns. However, the law, as written, provides for judicial scrutiny of petitions (or complaints in U.S. terms) alleging non-compliance with the expenditure limits and for criminal prosecutions for such violations. Indeed, the remedies prescribed are severe, including voiding of the election, fu-

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125 See CSPL, supra note 7, ¶ 2085 (testimony of John Turner on Apr. 30, 1998). See also id. ¶ 1941 (testimony of Michael Crick on Apr. 30, 1998) ("The trouble is that in all of these cases enormous amounts of spending went on before the by-election was officially called . . . "). In key marginal seats, campaigning actually may begin two or three years before the election. See id. ¶ 2802 (recording testimony of Ron Johnston on May 7, 1998).
ture disqualification of the candidate, imposition of a penalty and even criminal liability. The question this raises is whether the system actually works in practice. The fact that the last conviction for submitting a false expenditure return occurred in 1923, despite wide acknowledgment that expenditure limits are not observed, at least not in by-elections, suggests that the system is not as effective as it could be.126

Several factors join together to deter the filing of election petitions. First, there are generally fees imposed for inspecting candidates' expense returns filed with returning officers. Second, the information that must be disclosed on those returns is limited and of dubious accuracy. Third, it takes time to investigate, assemble and analyze information evidencing falsified returns, yet the time for filing such petitions is strictly limited. Fourth, challenges must be brought in court as there is no administrative or regulatory body in existence with an investigative or enforcement role. Judicial petitions are likely to implicate at least three parties (the petitioner, the prevailing candidate, and the returning officer) and the costs might run as high as £50,000. As a practical matter, few electors will be able or willing to put up adequate security for such a petition, which leaves the matter to the parties themselves. The political parties have little impetus to pursue such matters as it would most likely lead to similar complaints being filed against them in return.

No party dares to challenge their opponents, since they all know that, if not in this by-election then in many others, they have all been guilty at some time. There is considerable evidence that top party officials have even discussed the problem amongst themselves and reached a kind of understanding not to shop each other. One former national party official goes so far as to describe it as a "conspiracy."127

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126 Member of Parliament elected in May, 1997 was recently charged with submitting a false election report. See Fran Abrades, MP Charge Over Election Expenses, INDEP., Apr. 24, 1998. Even the news coverage of the event noted that it was "highly unusual for such charges to be brought, even though allegations of election expenses irregularities are common." Id. Another MP, Mohammed Sarwar, faces criminal charges including electoral fraud and expense irregularities in connection with the 1997 election. See Lawrence Donegan, Labour Agents Charged, GUARDIAN, Jan. 16, 1998, at 5.

The criminal prosecution route remains an alternative, but competing demands on police resources, coupled with legal ambiguities make this route less viable than it could be.\textsuperscript{128}

V. PROCESS FOR REFORM

A. Committee on Standards In Public Life: A Peculiarly British Model

There is a phrase prevalent among British civil servants — when faced with dealing with a particularly thorny problem they talk about "hitting the ball into the long grass." The idea is that with the ball having landed in the long grass, everyone will get bored looking for it and go away and get a new one. In the same way, if a problem can be sidelined for long enough it may disappear (or at least be overtaken by new problems).

This was certainly the view of many commentators on the decision by then Prime Minister John Major to set up the Committee on Standards in Public Life to deal with a range of scandals involving Members of Parliament and Ministers who had rocked his government during the summer of 1994.\textsuperscript{129} The prescribed mission of the Committee on Standards in Public Life was:

To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.\textsuperscript{130}

There was one key element to the new Committee, however, that made it very different from any previous attempt at tackling ethical issues in British public life. A true "long grass" solution would have been to set up a Royal Commission or Committee of Inquiry to exam-

\textsuperscript{128} See id. ¶ 1996 (testimony of Rory Mates, co-editor of Scholfield’s Election Law, on Apr. 30, 1998); see also id. ¶ 1924 (testimony of Michael Crick on Apr. 30, 1998).

\textsuperscript{129} There had been accusations that Members of Parliament were accepting money for tabling questions in the House of Commons. Ministers who had left their jobs following sex scandals were supposed to be taking lucrative jobs with companies with whom they had previously had a relationship while in Office; and it was being suggested that appointments to quasi-autonomous non-governmental organisations ("Quangos"), many of which spent millions of pounds a year, were being conditioned by "cronyism" rather than by appointment on merit. See CHALLEN, supra note 4, at ch. 7.

\textsuperscript{130} HANSARD Col. 758 (Oct. 25, 1994)
ine the issues and report maybe two or three years later when most people would have forgotten the issues. This Committee had a continuing existence and was asked by John Major to make its first report within six months.\(^{131}\)

The former Prime Minister made it clear that the remit of the Committee did not extend to investigating individual allegations of misconduct. Although at first some considered this to be a disadvantage, it has meant that the Committee has been able to focus on the future rather than the past with an eye towards establishing ethical frameworks for future conduct.\(^{132}\)

\section*{B. Study on Political Party Funding}

The manifesto on which the Labour Party fought the 1997 General Election contained three significant pledges relating to the funding of political parties. First, the Government said it would outlaw foreign donations; second, donations above £5,000 would be declared; and third, the issue of party funding would be referred, more generally, to the Committee on Standards in Public Life.

Following the election of the new Labour Government in May 1997, Ministers discussed with the then Chairman of the Committee, Lord Nolan, how a study on party funding could be undertaken. Lord Nolan made it clear that, although in principle he was happy to undertake such a study, it would not be practicable for him to do so before his three-year term of office ended in October 1997. The Government

\(^{131}\) The Author notes that the Committee has ten members, appointed for three-year terms, who come from various professions. Each of the major political parties nominates a member of that party to serve on the Committee, but they serve in their individual capacity, not as a representative of the party. The Committee is served by a small secretariat.

\(^{132}\) The Committee's first report, published in May 1995, made significant recommendations on the reform of the ethical procedures in the House of Commons, including the introduction of an independent Parliamentary Commissioner for Standards; new arrangements for vetting ministerial jobs when they left office; and a new Public Appointments Commissioner to audit and oversee appointments to Quangos. See Committee on Standards in Public Life, First Report, Vol. 1 (1995), Cmd. 2850-1, at 7-13 [hereinafter CSPL vol. 1]. The Committee then turned its attention to local Quangos and later to the ethical framework for local government. See id. at 11-13, ch. 4. In each instance, virtually all of the Committee's recommendations have been adopted. The Committee has also developed a number of ethical standards, including the "seven principles of public life" which are intended to serve as an overarching framework for the actions of those in public service. See id. at 14. These principles are: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. See id.
therefore waited on the appointment of the new Chairman of the Committee, Lord Neill of Bladen, QC, before formally referring the issue of party funding to the Committee. On November 12, 1997 the terms of reference for the present study on the funding of political parties, as announced by the Prime Minister, were "to review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements." 

The referral coincided with the blossoming controversy surrounding the Bernie Ecclestone donation. As noted earlier, the Chief Executive and effective owner of the Formula One racing circuit had contributed to the Labour Party before the election and had met with Tony Blair in mid-October, at a time when the Government was considering whether to support a ban on tobacco advertising for sporting events. The Labour Party sought the advice of the incoming Chairman of the Committee on the advisability of accepting any further donations from that source. Lord Neill noted that although it was not the Committee's normal procedure to advise in individual circumstances, as incoming Chairman, he felt obliged to offer his views, especially as the advice had been sought by the Labour Party, and consequently the Government, in exceptional circumstances. He made it clear that while he did not see any impropriety either in the giving or in the receipt of the donation, given the circumstances surrounding the exception of Formula One from the ban on tobacco sponsorship, the Party (and the Government) had a significant problem of perception which could only be dealt with by returning the donation.

With this high-profile beginning, the Committee set about the investigation of party funding. The Committee decided that the process that had served it well in its previous investigations should be broadly followed in its investigation into the funding of political par-

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133 The author notes that the Prime Minister announced Lord Neill's appointment in mid-October and it became effective in early November 1997.

134 CSPL vol. 1, supra note 132 at 15.

135 The author notes that the Labour Party's request for guidance did not disclose the amount of the initial donations (£1 million), nor any information about the circumstances surrounding the solicitation or making of the contribution.

136 The issue of political party funding and election financing has been subject of several studies. See, e.g., REPORT OF THE COMMITTEE ON FINANCIAL AID TO POLITICAL PARTIES, 1976, Cmnd. 6601 (Houghton Committee Report); THE HANSARD SOCIETY FOR PARLIAMENTARY GOVERNMENT, PAYING FOR POLITICS: THE REPORT OF THE COMMISSION ON THE FINANCING OF POLITICAL PARTIES (1981); AGENDA FOR CHANGE, supra note 122; see also HOME AFFAIRS COMMITTEE, FUNDING OF POLITICAL PARTIES, SECOND REPORT (1994).
ties. In December 1997, the Committee published a consultation paper which set out the issues and questions that it considered relevant to its study. Some 30,000 copies of the paper were distributed to the political parties, to academics, to commentators, and to others who requested the paper following widespread newspaper advertising. The text of the document was also published on the Internet. Overall, some 350 submissions were received in response to the consultation document.

The Committee concluded that it would be helpful to have a degree of factual information about party finances in recent years and thus asked the political parties to provide information about the source, origin, and amount of income, and the type of expenditures incurred at the national and local levels for the previous five years. The parties cooperated with the Committee's request, for, as noted below, the Committee has no power to compel production of documents or answers to written questions.

The Committee also believed it should take account of overseas experience. Members visited Sweden, Germany, Canada, and the United States to look at the political party and election financing systems in force in those countries. In common with previous studies, the Committee decided to hold open public hearings to which commentators, academics, players in the process (e.g., current and past party chairs, fund-raisers, donors, etc.) and others who had provided interesting submissions would be invited to provide testimony in public. Hearings were scheduled over a ten-week period, April through June 1998, in England, Scotland, Wales, and Northern Ireland.

C. Prospects for Reform

With the completion of the public hearings, the Committee prepared its report and recommendations, which it published in late 1998. The Committee's report was submitted to the Prime Minister, who will decide how its recommendations will be implemented.

The Government, as noted, is committed to legislating on the two areas of party funding set out in its Manifesto. It is clear that, when it receives the Committee's report, the Government will introduce legislation on those areas, but it will also be expected to deal with the other aspects of party funding covered in the Committee's report and to produce draft legislation during the 1998-99 session of Parliament.

137 The consultation document, THE NEILL COMMITTEE, ISSUES AND QUESTIONS: THE FUNDING OF POLITICAL PARTIES (1998), covered topics such as spending limits, prohibitions and limitations on contributions, disclosure, state funding, honours, and accountability.
As an advisory Committee to the Prime Minister, the Committee on Standards in Public Life has no powers to summon witnesses. It has no powers to call for papers or for the production of documents. As mentioned earlier, it cannot investigate individual allegations of improper behaviour. It appears, however, to be extremely influential. That influence arises from a number of sources. First, although a creation of the Conservative power when in government, the Committee continues to be supported by Prime Minister Tony Blair and by the political parties. Second, its members have considerable experience in a variety of public and private sectors. Third, as mentioned previously, the Committee, as a standing body, has a continuing existence; in practice that means it is able to return to issues it has previously examined and comment on the success or failure of those to whom the recommendations are addressed in implementing them.

In short, the structure produced in Great Britain to deal with issues of ethics and, by extension, questions of party funding — the creation of a body with no power, but with tremendous influence — can be seen as a typically British approach.

VI. LESSONS FOR THE UNITED STATES

Given the structural differences between the U.S. and U.K. governmental systems, few, if any, components of the British party and election funding system would appear to have direct applicability to the U.S. model. Nonetheless, consideration of the British approach helps highlight some of the basic assumptions that underlie the U.S. system, and that implicitly frame the debate on campaign finance reform. In this sense, the British example can serve as a catalyst for reassessing those assumptions to see if they warrant reaffirmance or disavowal. The process ideally could clarify the values we seek to foster and facilitate the development of a regulatory framework tailored to fit the current needs of our own system.

A. Party Versus Campaign Funding

The British refer to this subject area as “party funding” as opposed to the U.S. phrase of “campaign finance.” The different terminology is not merely a question of semantics for it reflects a significant conceptual divergence between the two countries. The British phraseology places the emphasis on the general funding of political parties, which are viewed as having a role to play in democracy beyond the fielding and funding of candidates for election. It also reflects the greater importance of the political parties in the parliamentary system. By contrast, the American expression gives prominence
to the electoral campaign, and to all the players in the process. Indeed, the focus of U.S. legislation in this area speaks in terms of "political committees" which includes, but is not limited to, political parties. It may well be beneficial to step back from the minutiae of campaign finance reform proposals to reassess what role political parties play and what role they should play in the American system. If a broader role than the current one is envisioned, then consideration must be given to how legislation could be drafted to most effectively advance those aspirations.

B. Freedom of Expression

A second revelation for the American observer, especially one versed in constitutional jurisprudence, is the discovery that democracy need not collapse simply because the right of free speech is given less deference than it is in the United States. The British regulatory scheme with its spending limits on parliamentary candidates and third parties, its ban on paid broadcast advertising, and the requirement that all candidates participating in a program consent to its broadcast\(^\text{138}\) would simply never survive judicial scrutiny in the United States. Indeed, the U.S. Supreme Court expressly found similar provisions unconstitutional on the grounds that they violate the constitutional right of free speech in *Buckley v. Valeo*,\(^\text{139}\) and has continued to rule in favor of an expansive reading of the First Amendment ever since. And yet, as the European Court in the recent *Bowman* decision and the Canadian court in the *Libman* case demonstrated,\(^\text{140}\) there are other means to balance the right of free speech and the desire to preserve the integrity of the electoral process. Both the European and Canadian courts recognized the crucial importance of freedom of expression in a democratic society and the need to scrutinize carefully any infringement of that right, especially when political speech is at issue. In so doing, both of these courts found it entirely legitimate for legislation to strive for "equality of participation" or "a level playing field" and acknowledged that some restriction on freedom of expression would be tolerated to achieve that goal. In *Buckley*, the U.S. Supreme Court found that restricting "the speech of some elements of our society in order to enhance the relative voice of others is wholly

\(^{138}\) During a pending election, the statute prohibits broadcasts about a constituency election unless those candidates who take part in the program consent to have it broadcast. *See* RPA § 93.

\(^{139}\) *See* *Buckley v. Valeo*, 424 U.S. 1 (1976).

foreign to the First Amendment." Since that decision, the principle of equality has virtually disappeared from the framework of the debate.

The United States holds itself out to be a leader of the democratic tradition, yet its system for financing elections, the keystone of the democratic process, is subject to national and international derision. British experts in the field have uniformly criticized the vast sums of money involved in American elections and have variously described the system as an "administrative nightmare," "almost openly corrupt," and "immensely cumbersome, bureaucratic and unsatisfactory." It may be time to shift the focus of the debate in the United States from what reform proposals will pass constitutional scrutiny to reconsidering the constitutional construct itself. In so doing, the United States would be well served to examine the regulatory practices and jurisprudence of other countries where greater restriction on freedom of expression has been accepted in an effort to provide fair and equitable elections.

C. Process of Reform

It has been nearly twenty years since Congress enacted the last significant campaign finance bill. Yet cries for reform have been nearly continuous and from many different sources — from successful and unsuccessful candidates, from the regulators, from public interest groups, and from disenchanted, individual citizens. Why then, has virtually every attempt at reform failed? The answer to this question is certainly multi-dimensional. One facet of the problem relates to the

141 See Buckley, 424 U.S. at 48-49.
142 The author of the Court of Appeals decision in Buckley, Judge Skelly Wright, wrote a critical essay on the Supreme Court's rejection of political equality. See J. Skelly Wright, Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality, 82 COLUM. L. REV. 609 (1982). The goal of equality has reemerged in recent years and has been a motivating factor in some of the legislative reform measures considered and enacted in various states. See generally ANTHONY CORRADO ET AL., CAMPAIGN FINANCE REFORM: A SOURCE BOOK, 337-43 (1997) (discussing attempts by states and the courts to clarify the boundary lines of campaign finance reform); see generally Thomas E. Mann, Deregulating Campaign Finance: Solution or Chimera?, BROOKINGS REV., Winter 1998, at 20-21.
143 CSPL, supra note 7, ¶ 6168 (comment of Lord Parkinson on Jun. 11, 1998).
144 David Butler, Comments at Charter 88 Seminar, Jan. 28, 1998; CSPL, supra note 7, ¶ 2198 (testimony of Martin Bell on Apr. 30, 1998)
145 CSPL, supra note 7, ¶ 6025 (comment of Anthony King on Jun. 11, 1998).
process for reform itself. The congressional track record suggests that it is not the right forum for the development of reform proposals.

It is time to explore other approaches, including the idea of an independent committee, comprised of academics, practitioners and possibly jurists. The all-party Committee on Standards in Public Life in Britain or the Royal Commission on Electoral Reform and Party Financing in Canada are two models that may offer valuable insight into such an undertaking. An ongoing and committed group with an explicit mandate and a fixed time-frame in which to issue its initial report could generate proposals that could be presented to Congress in the same manner the committee that examined and made recommendations regarding the closing of military bases operated.146

In developing a solution to the campaign funding problem, such a committee would be wise to consider not only reform attempts at the state level in the United States, but can also the experience of other countries. Exposure to other governmental systems will enable the committee members to view our own system with a fresh perspective. In addition, despite the differences, there a number of common issues. Great Britain, for example, like the United States, is encountering definitional issues, such as what constitutes an "election expenditure." Similarly, both countries are grappling with the issue of third party or pressure group involvement in the electoral process. And, of course, the issue of circumvention and effective enforcement remains a common concern.